YESHIVAT HAR ETZION

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**Halakha in the Age of Social Media**

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**Shiur#17:**

***Lashon Ha-ra* in the Digital Age,Part II:**

***Lashon Ha-ra* in Front of Three**

**Recap**

As we have already noted, the Gemara in several places presents the possibility that *lishna bisha* said in front of three people (*be’apei telata*) may be repeated. According to several authorities, such as Rav Achai Gaon, this is the source for interpreting *lishna bisha* as the prohibition against breaching confidentiality. The argument is that once something is public, either there is presumed permission to spread it further, or it is automatically permitted as further spreading the information is meaningless. We began discussing some explanations that apply to the understanding of *lishna bisha/ lashon ha-ra* as gossip, and we will flesh those out, as well as introducing several others.

**Rambam**

As we noted, the Rambam understands this dispensation as follows:

If such evil be spoken in the presence of three persons, the matter is thereby considered public. Thus, if one of the three who heard it repeat it to others no sin of an evil tongue is found therein, provided that in re-telling it he had no intention to spread the rumor and advertise it still more. (*Hilkhot* *De’ot* 7:5, Glazer translation)

This means that the dispensation is limited to repeating gossip to audiences who may already be presumed to have heard it. However, if one intends to increase the size of the audience, it is prohibited. We noted that this basic understanding is accepted by the *Chafetz Chayim*.

Furthermore, several modern authorities develop the notion that even the Rambam might agree that information which is not only public but universally known might not carry this limitation.

It is worth noting that the very fact that the written word, and even more so that which is published on the internet, lasts, may meant that according to the Rambam it will rarely be permitted to spread something simply because it is permitted.

Rav Menasheh Klein (*Responsa* *Mishneh Halakhot* 9:253), for example, states that it is obvious that *lashon ha-ra* applies in writing (see *Chafetz Chayim, Hilkhot Lashon Ha-ra* 1:8), but even more so, written gossip may be worse because it lasts longer. Thus, as the Rambam notes, the intent to spread information further negates the dispensation of “in front of three,” so writing gossip would be permitted in far fewer circumstances, as the intent in writing is often to ensure that the gossip will have staying power beyond what it would have had were it only said publicly.

In *Responsa* *Be-mareh Ha-bazak* (6:96) the authors invoke this argument for digital media as well. While the authors are willing to argue that even such information may be shared if it is not only “in front of three” but universally known, one could argue, as we saw some authorities do, that when it comes to digital media, the staying power of the internet may (as it were) make things which are universally known even more universally known, by keeping it in people’s minds after they might have forgotten it. Still, as the authors of the above responsum note, it may be that such considerations are irrelevant and information that is known by all has no limitations at all upon it.[[1]](#footnote-1)

**Rabbi Eliezer of Metz**

The passage in *Arakhin* presents the discussion about *lishna bisha* as follows:

What constitutes evil speech? — Rabbah said: For example [to say] there is fire in the house of So-and-so. Said Abaye: What did he do? He just gave information? — Rather, when he utters that in slanderous fashion: ‘Where else should there be fire if not in the house of So-and-so? There is always meat and fish’. Rabbah said: Whatsoever is said in the presence of the person concerned is not considered evil speech. Said Abaye to him: But then it is the more impudence and evil speech! — He answered: I hold with R. Jose, for R. Jose said: I have never said a word and looked behind my back. Rabbah son of R. Huna said: Whatsoever is said before three is not considered slander. Why? Your friend has a friend, and your friend's friend has a friend (*Arakhin* 15b-16a, Soncino translation)

This passage is quite enigmatic. Several questions immediately emerge:

1. Why would it ever be prohibited to talk about there being a fire in someone’s house, which most Rishonim understood to mean that they are always cooking, or perhaps are hospitable?!
2. Even if this is *lashon ha-ra,* why would this be the paradigmatic case of *lashon ha-ra*?
3. Why is it not *lashon ha-ra* if one would not be afraid to say it in front of the subject of the gossip?
4. Is there a connection between the position of Rabbi Yosei that one does not violate *lashon ha-ra* if the speaker would be willing to say it in front of the subject and the exception of “in front of three”?

Rav Eliezer of Metz (*Yere’im* 191) suggests the following resolution: *Lashon ha-ra* is really a prohibition against being hypocritical or two-faced. By simply gossiping, one may violate other prohibitions, such as the general prohibition of *ona’at devarim,* harming people throughout words. However, *lashon ha-ra* is only gossip that one says while pretending to like and not to wish to hurt someone. Thus, if one is willing to say something to the subject’s face, or is willing to say it publicly such that the information will surely get back to the subject, this is not *lashon ha-ra.*

The *Shita Mekubetzet* (*Arakhin* 15b) offers another text of the Gemara which may support this view. His version does not read “in front of three,” “*be’apei telata,”* but rather “**in front of the subject,” “*be’apei mara.”***

According to the *Yere’im*, there is no reason to allow the spreading of information already said by someone else in front of three people. However, his position is relevant when we discuss the question of whether in cases in which it is permitted to spread gossip, one is allowed to do so anonymously. In fact, his position most accurately is a prohibition against anonymous sourcing or gossiping anonymously or pseudonymously.

Textually, the *Yere’im* diverges from the explanations that we have seen until now. Most commentaries understand that information said by the **subject** in front of three, or perhaps by a **third party**, might be permitted. If the issue is the subject, that is because he or she clearly waives the expectation of privacy. If we are dealing with a third party, the principle at play is that information already public can be further spread. The *Yere’im* argues that **saying *lashon ha-ra* in front of three people** is permitted.

**Tosafot** i**n** ***Arakhin***

Tosafot (*Arakhin* 16a s.v. *Kol milta*) accept the linguistic understanding of the *Yere’im*, according to which the issue at hand is that there are cases in which it is permitted to say *lashon ha-ra* in front of three people. However, they maintain that the issue at hand is gossip, not hypocrisy.

This seems to emerge from the first two questions which we raised above. Tosafot reject the notion that this case is the paradigm. Rather, they argue that unambiguously negative gossip is always prohibited, whether it is said in front of three or not. The issue at hand is an ambiguous statement. That there is a fire in someone’s house could mean that a given family is hospitable and is always hosting, or something positive like that. On the other hand, it could indicate something negative, such as that family is rich and gluttonous and is always cooking.

Tosafot argue that in such a case, the barometer of whether the intent is hurtful or complimentary/ neutral is whether the speaker is willing to say it to the subject’s face. If the speaker is, the statement must not be intended it as gossip. Hence, if the speaker does not bother turning around to check if the subject is present, or if the speaker would say it publicly knowing the information would reach the subject, it is permitted to spread the statement further.[[2]](#footnote-2)

**Rabbeinu Yona**

Rabbeinu Yona discusses this passage in two places (*Aliyot De-Rabbeinu Yona, Bava Batra* 39b, s.v. *Kol;* *Sha’arei Teshuva* 3:228). Like Tosafot, he assumes that the content of the information being spread is not gossip per se. However, unlike Tosafot, he does not think we are dealing with ambiguous gossip. Rather, in this case, there is negative data which is being shared for a constructive purpose, and therefore it is permitted to do so. (When and why a constructive purpose permits gossip will be discussed in a future *shiur*.).

He derives this from the passage in *Bava Batra,* where a landowner is issuing a challenge to the rights of a resident to prevent the latter from gaining squatter’s rights. The need for publicity is to prevent the **appearance of ill intent.** When the landowner issues his challenge in front of three people, he makes it clear that he wants what he says to reach the ears of the subject. This makes it clear that his intent is constructive and permitted. However, were he to issue the challenge in front of one or two people, while he may still have constructive intent, rendering what he says permitted, the secret manner in which he acts **makes it** **seem as if he is merely gossiping.**

In a second argument, reminiscent of the view of the *Yere’im*, Rabbeinu Yona argues that if one does not speak in a public manner, it **seems as if he or she is trying to hypocritically ingratiate himself or herself with the subject.** While the *Yere’im* writes that the prohibition of *lashon ha-ra* is to be two-faced, Rabbeinu Yona argues that it is the appearance of hypocrisy that is the issue in this case, thought the prohibition remains that of gossip per se. However, since for Rabbeinu Yona the issue is merely one of perception, he permits speaking negatively about someone in private, when the intent is constructive, if the speaker has a legitimate reason to be afraid of the subject.

Rabbeinu Yona offers yet another argument. When one is sharing necessary information, secrecy makes the publicizing less effective. What is critical in order for listeners to take the information seriously is that they trust the source. Were the speaker to be anonymous, listeners would be less likely to believe the information and take the necessary actions, thus negating the justification for sharing the information in the first place. The statement must be public, thus putting the speaker’s reputation on the line and granting authority to what the speaker says. Even if the listeners don’t immediately believe the speaker, they will hopefully at least take the warning seriously enough to investigate it.

Finally, Rabbeinu Yona raises the possibility that the *lashon ha-ra* under discussion should not be classified as spreading gossip but rather as breaching confidentiality, in which case the very fact that the information is public may permit spreading it further, whether or not one’s intent is constructive, a position we have developed previously.

The *Sefat Emet* (*Arakhin* 15b, s.v. *Kol milta*) takes a similar position as to the meaning of Rabbi Yosei’s statement. If something is said in front of the subject, it is probably intended as rebuke, which is a biblical commandment. However, if the speaker is unwilling to say it to the subject, it is likely false (or, one might suggest, pointless gossip, even if true), and thus prohibited.

**Tosafot in *Bava Batra***

Tosafot in *Bava Batra* (39b, s.v. *Kol*) simply say that it is permitted to say *lishna bisha* in front of three people. The *Chafetz Chayim* (*Hilkhot Lashon Hara* 2:1:1) notes that some people understand this passage to offer carte blanche; it is only prohibited to gossip in private. Rav Elchanan Wasserman (*Kovetz Shiurim, Bava Batra* 166-7) seems to take this as the simplest understanding of the view of Tosafot. Thus, he throws up his hands and references the *Chafetz Chayim* for the rejection of this position. The *Chafetz Chayim* strongly rejects this possibility, noting that it makes no sense. If the Torah doesn’t want us to hurt people through words, then publicly shaming someone is surely worse, rather than better. He proves this from the general prohibition against causing pain through words, *ona’at devarim,* as well as the uniquely harsh statements found in the Gemara about those who embarrass others publicly. Furthermore, the Gemara (*Arakhin* 16a) specifically notes that the *Me’il,* the robe of the High Priest, secures atonement for *lashon ha-ra* said in public, thus implying that is indeed prohibited.

It could be, therefore, that Tosafot in Ba*va Batra* mean the same thing as Tosafot in *Arakhin,* or perhaps they accept positions such as that of Rabbeinu Yona or the *Yere’im*. However one understands it, it is indeed difficult to accept that they would simply permit publicly gossiping.

**Rashbam**

The Rashbam (*Bava Batra* 39b), at least as interpreted by the *Chafetz Chayim (Hilkhot Lashon Hara* 2:1:1)*,* understands that the dispensation offered in this Gemara is for what the Rambam understands as *rekhilut:* namely, if A speaks about B publicly, then C may inform B of this. While this is normally *rekhilut,* when A knows that it might get back to B, it is permitted. *Rekhilut,* as understood here, is somewhere between a breach of confidence and gossip. Thus, the Rashbam seems to be assuming that if the speaker does not care that the fact that he or she has gossiped be kept private, the listener may share the information, even though it may harm the relationship between A and B. Rabbeinu Yona briefly alludes to this possibility at the end of his comments in *Bava Batra.*

**Gossip vs. Confidentiality**

What emerges from these positions, especially those of Tosafot in *Arakhin* and Rabbeinu Yona, is that while Poskim are relatively ready to accept that there may be no prohibition against sharing information that is already public, they are more reluctant to permit actual gossip. The Rashbam, though talking about *rekhilut* which is in between, seems to support this general tendency as well. This may be due to their conviction that even if the damage is done, there is an ethical problem with badmouthing others.

Alternatively, as we noted based on Rav Feldman’s position, facts may often be untrue in the sense that the effect they have on the listeners is beyond what is deserved. Perhaps these Rishonim understand that the more people hear a specific piece of gossip, the more it will affect their opinion of the subject. Reinforcing what is likely a one-sided perspective of the subject can actually cause more harm, making it harder for the listeners to form positive or unbiased opinions of the subject’s later actions.

Finally, as suggested by the *Chafetz Chayim,* they may see *lashon ha-ra* from the perspective of other verbal prohibitions such as *ona’at devarim*. Even when a subject knows that gossip is swirling around about him or her, it may still hurt every time it is repeated.

These Rishonim are willing to accept that whether someone is willing to say something in public may shed light on whether information that is ambiguous in its intent is positive or negative.

Rambam, as we have already seen, is never willing to allow further publicizing harmful information, though he does permit sharing information within circles that have likely already heard it. Perhaps he understands the primary problem of *lashon ha-ra* as being the damage to the subject, without accepting our suggestions for Tosafot and Rabbeinu Yona above.

The*Chafetz Chayim* (*Hilkhot Lashon Ha-ra,* Chapter 2) combines many of these sentiments to issue a very strict ruling. First, as mentioned above, he notes that forbidden *lashon ha-ra* said in public is surely worse than that said in private (2:1). For the most part, he accepts the stringent view of Tosafot and Rabbeinu Yona, limiting the dispensation to cases where the information is not clearly negative, and the very act of saying it publicly indicates that the speaker has positive intent.

Then, he accepts the added limitation of the Rambam, namely that even in cases when information might be public, it can never be permitted to intentionally spread it further (2:3), though as we noted, his position is less clear regarding information that is universally known (2:4). He further notes that even these dispensations might apply only when the three people who hear the information are not righteous, but if they are (or are otherwise motivated to not share the gossip, perhaps because they are friends or relatives of the subject), the information cannot be presumed to be known, and thus it cannot be spread according to anyone (2:5). The three people must also hear the gossip at the same time (2:8). He also suggests that even when gossip is public in a given place, no assumption can be made about other cities. There, one must assume the information is not known, unless one finds out otherwise (2:6).

Furthermore, he notes that even in cases in which it is permitted to share *lashon ha-ra,* this does not necessarily imply that the listeners may believe the information. They must do their due diligence and investigate what is being said (2:4).

As mentioned in previous installments, he further says that if a speaker specifically forbids anyone from sharing what was said, the prohibition against breaching confidentiality would prevent one from sharing information, even if it is already known (2:7-8).

Even if all these conditions are met, the *Chafetz Chayim* notes that this at most would allow one to share the information exactly as it was stated. However, to add or spin the information would be a qualitative addition and be prohibited (2:9). Furthermore, if the speaker knows the listener will spin it or exaggerate it, the speaker must not share it (2:10).

He notes that these principles are particularly important when dealing with communal institutions sharing private information which is neutral or negative (2:11).

However, when it comes to confidentiality, the *Chafetz Chayim* accepts the more lenient positions, arguing that at least when a subject has shared secrets publicly, further sharing of that information is permitted (2:13).

**Applications**

As we have seen, while Poskim are relatively more lenient about sharing information that is already known as long as the only issue at hand is privacy, they are more reluctant when it comes to gossip. In the age of social media, the reasons are obvious. Even if information has already spread, every new share on Facebook opens up a new circle of friends to the information (prohibited according to the Rambam). Even if it does not, sharing may hurt the subject in unimaginable ways each time a new person affirms knowing or caring enough to share the information (*lashon ha-ra* and *ona’at devarim* for Tosafot and *Chafetz Chayim).* Even when things are universally known, the more something is put online, the harder it is to erase it from the Web, the more likely it is to appear on Google searches, etc. Thus, according to Poskim such as Rav Avraham Shapira and Rav Dov Lior, the act of emphasizing this information may be problematic even if we assume that it is almost always permissible to pass on universally-known information. While earlier Poskim raise these issues, the problems are incalculably more severe in our world of social media. Thus, care should be taken to not misuse this tool, which too easily becomes a weapon.

Furthermore, as we have discussed, even in cases when there are technical dispensations available, the overriding principle of “*Ve’ahavta le-rei’akha kamokha”* should enjoin us to be careful about how we treat the reputations of others.

For those who are not convinced about the damage that can be done and how long it can last, a particularly chilling article by Helen Andrews records several anecdotes that illustrate how the digital age has magnified the problems we have discussed.[[3]](#footnote-3)

1. It is worth noting that some have dissented from the view of the above Poskim.Rav Gil Student, for example, has argued that the dispensation of “in front of three” is only due to presumed consent, and it is limited to cases in which the sinner acts in public, which implicitly grants consent for his or her actions to be made known.As he writes:

   I suggest that the leniency of publicized information (*nisparsem ha-davar*) only applies to an act committed in front of others. By sinning in public, the actor is declaring that he does not care whether other people know of his infractions. He does not consider discussion of his actions insulting. He gives permission, thereby removing the prohibition of *lashon ha-ra*. However, when information about a private act is publicized, the prohibition still applies, albeit under the category of *apei telasa*.

   See <https://www.torahmusings.com/2012/04/lashon-ha-ra-and-political-campaigns/>. [↑](#footnote-ref-1)
2. The *Chatam Sofer* (*Chiddushei Chatam Sofer, Bava Batra* 39b, s.v. *Kol*) argues that Tosafot’s position may hang on the order of the statements in the Talmud, of which there are different versions. [↑](#footnote-ref-2)
3. Available at: <https://www.firstthings.com/article/2019/01/shame-storm>.See also David French’s reaction to this article: <https://www.nationalreview.com/2018/12/kyler-murray-helen-andrews-shame-mob-america-intolerance/amp/?__twitter_impression=true&fbclid=IwAR2CuoqEHfGs5xXuv3GR8JEe9-yCsFNz1bofgFEqdKMvOw8_NIALG3mHQdg>. [↑](#footnote-ref-3)