YESHIVAT HAR ETZION

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**Halakha in the Age of Social Media**

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**Shiur #18**

**When Is It Permitted to Share Negative Information?**

**Part I**

**When It Is Permitted to Share *Lashon Ha-ra* or Secrets**

In the last few *shiurim*, we have discussed cases in which sharing confidential information or spreading potentially harmful information may be permitted on the grounds that it is already public. One perspective we explored was that these prohibitions are intended to prevent damage to the subjects. Once the information in question has become public, perhaps universally so, no further damage can be done, thus permitting its further proliferation. However, there are cases in which there is a need to share information even when it **will damage the subject.** Specifically, revealing information about a subject in cases in which withholding the said information will damage **other people** may be allowed even though it entails hurting the original subject. The assumption in Halakhais that there are cases in which it is nevertheless permitted to share such information. In this *shiur*, we will explore the nature of this dispensation.

**The Given: It Is Permitted**

The fact that there are circumstances in which one is allowed to share secrets or what would be gossip in order to protect people is a given in halakhic discourse. The *Chafetz Chayim* (*Hilkhot Lashon ha-ra,* Chapter 10; *Hilkhot Rekhilut,* Chapter 9) mentions several of the proofs (see the footnotes throughout the chapters). For example, the laws of giving testimony prove that there are at least some cases in which it is permitted to share negative information. After all, it a mitzva for witnesses to an attempted crime to warn the potential criminal, and if the criminal fails to heed their warning, to later testify about the crime. If their testimony is accepted by the court, the criminal can potentially be subjected to punishment. Were it not for the category of *eidut,* legally admissible testimony, that same information would be forbidden gossip. This is clear from the following passage in the Talmud:

**The Holy One, Blessed be He, hates three** people: **One who says one** statement **with his mouth and** means **another in his heart,** i.e., a hypocrite; **one who knows testimony about another** person **and does not testify on his behalf; and one who observes a licentious matter** performed **by another** person **and testifies against him alone.** His testimony is meaningless, as he is the only witness; consequently, he merely gives the individual a bad reputation.

The Gemara comments: This is **like** that incident **where Tuveya sinned** with immorality, **and Zigud came alone to testify about him before Rav Pappa.** Rav Pappa instructed that **Zigud be lashed.** Zigud **said to him: Tuveya sinned and Zigud is lashed,** an objection that became a popular saying. **He said to him: Yes, as it is written: “One witness shall not rise up against a man”** ([**Deuteronomy 19:15**](https://www.sefaria.org.il/Deuteronomy.19.15)), **and you testified against him alone. You have merely given him a bad reputation.** (*Pesachim* 113b, Koren translation)

In this passage, Zigud is lashed for attempting to offer testimony when it could not be accepted, as Torah law requires at least two witnesses. As he testifies alone, what he says is not admissible. Rav Pappa feels that without Zigud’s statement counting as testimony, it is mere gossip, as he is relating something criminal, and therefore negative, about Tuveya. The implication, however, is that despite the fact that the content of testimony may be identical to that of forbidden gossip, the context can make it permitted or even obligatory.

Secondly, as we have explored in previous weeks, a central passage about the parameters of the laws of *lashon ha-ra* is from the Talmud’s discussion about *mecha’a* (*Bava Batra* 39a-b)*,* a protest issued to prevent an illegal squatter from gaining squatter’s rights. As many Rishonim note, were it not for the fact that the owner has a legitimate reason to issue a complaint and challenge, it would have forbidden to make such allegations against the current resident of the property. However, the Talmud takes it as a given that the owner has the right to defend himself or herself from being cheated out of his or her own property, even if it entails accusing the squatter of wrongdoing. Despite the fact that similar statements in other contexts might be deemed *lashon ha-ra,* in this case it is permitted.

This is true not only here, but in all cases in which a plaintiff takes a defendant to court. By making claims against the defendant, the plaintiff is often accusing the defendant of a crime, or perhaps negligence, something which reflects negatively on the defendant. Nevertheless, to stand up for one’s rights is obviously permitted.

Additionally, there are many instances throughout the Talmud in which it is simply assumed that negative information has been shared. For example, the Talmud writes the following about a scholar who was dogged by rumors of impropriety:

**There was a certain Torah scholar who gained a bad reputation** due to rumors about his conduct. **Rav Yehuda said: What should be done? To excommunicate him** is not an option. **The Sages need him,** as he is a great Torah authority. **Not to excommunicate him** is also not an option, as then **the name of Heaven would be desecrated.**

Rav Yehuda **said to Rabba bar bar Ḥana:** Have **you heard anything with regard to this** issue? **He said to him: Rabbi Yoḥanan said as follows: What is** the meaning of that **which is written: “For the priest’s lips should keep knowledge, and they should seek Torah at his mouth; for he is a messenger [*malakh*] of the Lord of hosts”** ([**Malachi 2:7**](https://www.sefaria.org.il/Malachi.2.7))? This verse teaches: **If the teacher is similar to an angel [*malakh*] of the Lord,** then **seek Torah from his mouth,** but if he is **not** pure and upright, then **do not seek Torah from his mouth;** even if he is knowledgeable about Torah, do not learn from him. Based on this statement, **Rav Yehuda ostracized** that Torah scholar. (*Moed Katan* 17a, Koren translation)

In the passage, the existence of rumors is a given. While one could argue that the Gemara is not condoning such rumors, but simply recording the proper reaction to them, this would seem odd. The Gemara seems to take these rumors as a legitimate source of information, to the extent that Rav Yehuda acts on this basis to excommunicate the subject. The fact that the Gemara gives credence to these persistent rumors is more easily understood if it is legitimate to spread them to begin with.

**It Is Permitted to Listen to Such Information**

In two anecdotes, the Gemara entitles and obligates people to listen and take precautions in light of what should ostensibly be defined as *lashon ha-ra.* The first part of the passage is framed around the story of the leader of the Jews after the Destruction of the First Temple.[[1]](#footnote-1) The Babylonians appoint a governor, Gedalya ben Achikam. Gedalya is warned by some of his men that the rebels led by Yishmael ben Netanya are planning on assassinating him. Gedalya disregards the warnings and is indeed assassinated and his men killed. Commenting on this passage, the Talmud writes as follows:

One taught: That was the pit which Ishmael the son of Nethania had filled with slain bodies, as it is written, “Now the pit wherein Ishmael cast all the dead bodies of the men whom he had slain by the hand of Gedaliah.” But was it Gedaliah that killed them? Was it not in fact Ishmael that killed them? — But owing to the fact that he should have taken note of the advice of Johanan the son of Kareah and did not do so Scripture regards him as though he had killed them. Raba observed: As to slander, though one should not believe it one should nevertheless take note of it. (*Niddah* 61b, Soncino Translation)

The Talmud chastises Gedalya for failing to at least take precautions, even if he was correct in not blindly accepting the reports.

The Talmud presents a second story to the same effect.

There were certain Galileans about whom a rumour was spread that they killed a person. They came to R. Tarfon and said to him, 'Will the Master hide us?' 'How', he replied, 'should I act? Should I not hide you, they would see you. Should I hide you, I would be acting contrary to the statement of the Rabbis, "As to slander, though one should not believe it, one should take note of it". Go you and hide yourselves'. (*Niddah* 61b, Soncino Translation)

What emerges from the above is that there must be limits to the prohibition against *lashon ha-ra,* however it is understood. The question we now turn to is why these limits exist, what their parameters are, and what justifies them. We will begin this week by setting out two central models.[[2]](#footnote-2) While these two models may often overlap in their practical applications, there seem to be potential differences between them. Furthermore, the very act of framing shapes the directions Poskim take when they make halakhic decisions.

**The “Permitted Gossip” Model**

The *Chafetz Chayim* devotes two chapters to outlining when it is permitted to share such information. His approach is best characterized as the “permitted gossip” model. He refers to cases where is it permitted to spread negative informationas *lashon ha-ra le-to’elet,* beneficial evil speech. It may be permitted, but it is still framed as gossip. It is fundamentally a **dispensation to engage in forbidden activit**y. This framing seems to lead to the strict parameters he establishes to qualify *lashon ha-ra* as *le-to’elet*. In general, the *Chafetz Chayim* is very demanding about the conditions that must be met.

I would propose that this is driven by his framing. By referring to these cases as *lashon ha-ra,* albeit of a permitted variety, he assumes that the given is that such information should be forbidden. Thus, he needs to justify it, to carve out space within a broader forbidden category. The tendency of such an approach is to err on the side of “caution,” to avoid saying anything which may fail to fulfill all the necessary conditions to permit the *lashon ha-ra.*

For the moment, I will assume that whatever the *Chafetz Chayim* writes about gossip (his understanding of *lashon ha-ra)* would be true for breaching confidentiality, though there are some who dispute that. Rav Elchanan Wasserman (*Kovetz* *He’arot* 70) argues that this permission for *to’elet* holds true for all interpersonal prohibitions, further making it logical to extend it to the prohibition against sharing secrets.

**The Mitzva Approach**

However, many other halakhic authorities seem to frame the issue differently. They assume that any time one is required to speak *lashon ha-ra* to protect someone, it is an obligation deriving from *“Lo ta’amod al dam rei’ekha,”* the prohibition to stand idly by when one’s fellow’s blood is being spilled. They presentthe two options not as forbidden *lashon ha-ra* or an exception, but as *lashon ha-ra* or obligation. This framing prevents there from being a safe option. If one chooses to speak, this may be a violation of *lashon ha-ra.* If one chooses not to speak, this may be a dereliction of responsibility towards a potential victim. This approach, I believe, leads Poskim to be more likely to rule that one should share negative information when potential harm can be averted. As noted above, in many if not most cases, this approach may generate the same conclusion as that of the *Chafetz Chayim.* However, as will see, this is not always the case.

The source most often quoted by Poskim who seems to endorse this framing is *Pitchei Teshuva* of Rav Yisrael Isserlein.[[3]](#footnote-3) He writes as follows:

I have seen [it fitting] to address what all the ethical writings have made so much noise about in the world, about the sin of *lashon ha-ra*. I will make noise in the world about the opposite — a much greater and more common sin. Specifically, [I am referring to] holding back from speaking when it is needed to save the oppressed from his oppressor.

By way of parable: one who sees a highwayman about to ambush his friend in the desert to kill him, or one who sees an intruder breaking into his friend’s house or store at night, is it possible that the observer would refrain from letting his friend know to be careful because [he was worried about violating the prohibition of] *lashon ha-ra*?! His sin would be too great to bear, for he violates “*Lo ta’amod al dam rei’ekha*”! The same is true about money, which is included in the obligation of returning lost objects…

As long as all of his intention is not to harm the subject but for the benefit of his friend, for the betterment of the group and to protect them, then he fulfills through this a great deed which is invaluable! (*Pitchei Teshuva,* OC 156)

This perspective is endorsed by many, such as the *Sefer Charedim* (24)*,* Rav Eliezer Waldenberg )*Responsa Tzitz Eliezer* 15:3 and 16:4) ,Rav Ovadya Yosef (Responsa *Yechaveh Daat* 4:60) and others. While many of these Poskim do assume that this perspective is identical to that of the *Chafetz Chayim,* I believe that there are significant differences between the positions, in addition to the subtler differences that emerge simply by dint of the framing.

Indeed, this framing seems to emerge from the *pasuk* itself. The verse (*Vayikra* 19:16) which prohibits *lashon ha-ra* is the same one that sets out the prohibition of standing idly by when one sees another in danger. Many commentaries (*Ha’amek Davar, Or Ha-chayim* and others) suggest that the juxtaposition is meant to ensure that people don’t refrain from helping others in danger out of a concern that they may violate *rekhilut.* Rather, in the same breath as it prohibits gossip, the Torah makes it clear that not everything that is negative is *lashon ha-ra.* The *Or Ha-chayim* even notes that it is this implication that is lost on Gedalya, whom, as noted above, the Talmud holds responsible for the death of his men for his refusal to consider seriously critical “gossip.”

**The Application for Breaching Confidentiality**

The latter framing, at the very least, should carry over to the prohibition against breaching confidentiality, especially as many Poskim derive both prohibitions from the same verse, which as we noted, may be the source for this concept. This is indeed the majority position expressed by most Poskim. As we noted in *shiur* 11,[[4]](#footnote-4) this position is explicitly taken by the Rashba (*Responsa* *Rashba* 1:557) in his discussion of the *cherem* against reading others’ mail.

Rabbeinu Gershom did not make his decrees so that people might violate biblical or rabbinic Halakha because of them. Just the opposite, they were instituted only to ensure compliance with our Torah and to ensure that Jewish people act in a correct and modest manner.

While we noted that not all Poskim accept this in all cases, when it comes to actual danger, this seems to be the consensus view of virtually all Poskim.

Dovid Lichtenstein summarizes some of these positions, and then outlines the way in which modern communication technology has introduced new applications for this principle:

Accordingly, Rav Moshe Sternbuch (Teshuvos Ve’hanhagos, 1:869) ruled that if a doctor determined that his patient is physically unfit to drive — such as in the case of an ophthalmologist who diagnoses his patient with a visual impairment that compromises his ability to drive safely — he can and must inform the relevant government authorities. Although medical information is confidential, the doctor must break his trust of confidentiality for the sake of public safety. Rav Ovadia Yosef (Yechaveh Da’as, 4:60) issued a similar ruling concerning a patient with epilepsy. If the doctor determines that this condition makes it unsafe for the patient to drive, he must notify the authorities.

Another fascinating — albeit tragic — modern-day application of this ruling is the controversy that arose in the wake of the devastating shooting attack at the Inland Regional Center in San Bernardino, California in December, 2015. The perpetrators — Syed Farook and Tashfeen Malik —were found and killed by police in a shootout that same day, and two months later, on February 9th, the FBI announced that it had recovered Syed’s iPhone, but was unable to unlock the device in order to find clues of the shooter’s possible accomplices and other important contacts. This information, the FBI claimed, was vital to the Bureau’s ongoing investigation into the terrorists’ motives and modes of operation. The FBI asked that Apple disable the phone’s security system to enable them to access Mr. Farook’s information, but the company refused, arguing that it needed to strictly uphold its commitments not to compromise its customers’ security. The FBI then appealed to a federal judge, and a court order was issued ordering Apple to comply with the FBI’s demands by February 26th. The brief legal battle came to an anticlimactic end on March 28th, when the Department of Justice announced that it succeeded in unlocking the device.

It stands to reason that given the international threat of Islamic terrorism, and the vital importance of intelligence information in identifying and capturing potential attackers and their accomplices, accessing the information on a terrorist’s device would certainly appear to fall under the category of public safety, which, as noted, overrides the prohibition against invading privacy.[[5]](#footnote-5)

Similar dynamics would permit sharing with the authorities inflammatory remarks which either explicitly or implicitly threaten violence, or telling parents or school authorities that a child seems to be suffering from depression or to be involved in illegal or self-destructive activity. However, most of these applications seem to belong to the more classic definition of *lashon ha-ra.* Benign information would probably not be permitted based on this leniency, as by definition, it is benign. At the margins, perhaps we could find some cases that are necessary to share for dating or employment that are not negative, just relevant.

At any rate, what is clear is that most Poskim assume that when actual danger is involved, it is obvious that information must be shared due to “*Lo ta’amod.”* However, cases which do not rise to that level are a bit trickier. For this reason, we must return to the detailed conditions presented by the *Chafetz Chayim* which must be met to permit *lashon ha-ra le-to’elet.*

1. See *Yirmeyahu*, Chapters 40-41. [↑](#footnote-ref-1)
2. Rabbi Daniel Feldman notes these two models in his book, *False Facts and True Rumors: Lashon Hara in Contemporary Culture* (YU Press/ Maggid, 2015). We will take a different approach. [↑](#footnote-ref-2)
3. This is not to be confused with the commentary by the same name that appears in the other sections of *Shulchan Arukh,* written by Rav Avraham Eisenstadt. [↑](#footnote-ref-3)
4. Available at: <https://www.etzion.org.il/en/shiur-11-privacy-oneself-curiosity%E2%80%99s-sake>. [↑](#footnote-ref-4)
5. Available at: <https://www.yutorah.org/lectures/lecture.cfm/906213/mr-dovid-lichtenstein/facebook-cambridge-analytica-and-the-right-to-privacy-a-halachic-overview/>. [↑](#footnote-ref-5)