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ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**Shiur #19:**

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

**Part II**

***To’elet***

As we noted in our [previous *shiur*](https://etzion.org.il/en/shiur-18-when-it-permitted-share-negative-information-part-i), there are two central framings for when and why it is permitted to relay negative information that would otherwise be *lashon ha-ra* for benefit (*to’elet*).

One is endorsed by the *Chafetz Chayim* in the tenth chapter of *Hilkhot Lashon Ha-ra* and the ninth chapter of *Hilkhot Rechilut*: to conceive of a category of *lashon ha-ra le-to’elet,* beneficial gossip. The implication of this framing is that the prohibition is in effect, just suspended. Thus, there are many qualifications that must be met to justify this suspension.

The other is to recognize that there are countervalues that override the concern of *lashon ha-ra* and actually transform what could have been forbidden gossip into a positive fulfillment of the commandment to protect others.

This time, we will explore the detailed guidelines of the *Chafetz Chayim* and where the alternate approaches may differ.

**The Seven Conditions of the *Chafetz Chayim***

The *Chafetz Chayim* outlines seven conditions that must be met to define negative information as *lashon ha-ra le-to’elet* and thereby make its transmission permitted/ obligatory.

1. The speaker of the information must have first-hand knowledge of the event being discussed. This entails either seeing it oneself, or, if the speaker originally heard it from a third party, the speaker must verify the authenticity of the information before further sharing it.
2. The speaker must reflect on the “crime” under discussion to determine that it is actually a violation of Halakha*.*
3. Before resorting to *lashon ha-ra,* the speaker should attempt to solve the problem by privately rebuking the sinner. If the sinner can be convinced to repent, the speaker will not have to resort to gossip. It is only if this approach does not work that the speaker may use the strategy of publicizing the information.
4. The speaker can only relate the information accurately, without exaggeration or any other distortion.
5. The speaker must have pure intentions, namely sharing the information to protect the potential victims, not to enjoy harming the subject of the *lashon ha-ra.*
6. Related to condition #3, the speaker should only solve the problem using *lashon ha-ra* if there is no other way to accomplish the goal. If, however, the goal can be achieved by using another method, that method should be used. (I am unsure as to whether all other methods would be preferable to *lashon ha-ra.* Presumably, the *Chafetz Chayim* intends to limit this rule to cases in which the alternative would be preferable to *lashon ha-ra.*)
7. The *lashon ha-ra* should not cause damage to the subject which would be unwarranted based on Jewish law; meaning, if the consequences would be greater than those dictated by Halakha*,* the *lashon ha-ra le-to’elet* should not be shared.

What is clear from this perspective is the following:

1. The *Chafetz Chayim* views *lashon ha-ra le-to’elet* as fundamentally forbidden with a dispensation. Hence, the requirements to carve out this allowance are quite demanding.
2. The *Chafetz Chayim* seems wary of the notion that sharing negative information can be a positive thing. While he admits that this situation is tenable, his tendency is to avoid sharing negative information as much as possible.

**The Countervalue Perspective**

As we have noted, there are Poskim who frame this category differently, namely by holding that sometimes there is a mitzva, not just begrudging permission, to share negative information. Let us recall the conclusion of the *Pitchei Teshuva* (*OC* 156) we explored last week:

As long as all of his intention is not to harm him but for the benefit of the second person and the betterment of the group and to protect them, then he fulfills through this a great deed which is invaluable!

A similar perspective may emerge from the following passage in the Talmud:

One exposes the hypocrites due to the desecration of [God’s] name, as it is stated: “When a righteous man turns from his righteousness and commits iniquity, I will lay a stumbling block before him” ([Ezekiel 3:20](https://www.sefaria.org.il/Ezekiel.3.20)). (*Yoma* 86b, Koren translation, without elucidation)

In this passage, the Gemara seems to capture a sentiment articulated by U.S. Supreme Court Justice Louis Brandeis in a celebrated statement:

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.[[1]](#footnote-1)

While the *Chafetz Chayim* does not explicitly reject this, one would find it hard to imagine that the *Chafetz Chayim* would articulate the positive value of spreading negative information, though the passage from *Yoma* could indeed be construed as a celebration of the power of transparency. The *Chafetz Chayim,* however, subsumes it under the category of *to’elet.* Benjamin Brown summarizes it thusly:

With regard to permission given to publicly disclose hypocrites, the Hafetz Hayim stipulates that the permit is only given to prevent damage. Therefore, it cannot be done if the damage has already occurred. Thus, for example, a person is allowed to warn his friend against entering a business relationship with a particular person under the following conditions: “They only said (Yoma 86b) that it is a commandment to publicly disclose the hypocrites in order to warn another person not to get involved with him a priori so as not to suffer loss, or even if he is already involved with him, and he knows the nature of the person that he is telling about, only so he will consider his words and protect himself, but not to cause him actual damage.’’ Similarly, the Hafetz Hayim stipulates that the permit applies only to a hypocrite who is known to habitually cheat, but not to one who might have done so only once.[[2]](#footnote-2)

Thus, the *Chafetz Chayim* sees this as simply another instance of *to’elet.*

Others, however, see this as a more expansive statement. For example, the anonymous work of *mussar* (Jewish ethics) *Orchot Tzaddikim* (2) explains this line as follows:

Therefore, those who are modest in their dress and speak gently and conduct themselves as pious and just in order that others should believe them and depend upon their works, and flatter those who should not be flattered, and make secret schemes and do not worry about fulfilling the commandments except when they are in the public eye and not when they are alone, and thus deceive the people — these are profaners of God, Blessed be He, more than all others — for they cause people to disbelieve the good teachers and prophets, for these latter are then suspected by people who say, "Perhaps these men are like those who deceived us." When anyone recognizes a false and lying prophet, he should spread this abroad and let everyone know, as our Sages said: "We must publicly expose those who are flatterers" (*Yoma* 86b).[[3]](#footnote-3)

**Implications of the Two Perspectives**

To illustrate the practical implications that emerge from these two perspectives, we will present a couple of examples:

1. **Spreading information when one is unsure of the truth of the statement**

The first condition of the *Chafetz Chayim* is that one must either have first-hand knowledge of the information or verify it. Thus, even if there is a potential victim who could be protected by sharing doubtful information, a straightforward application of the *Chafetz Chayim*’srules would forbid sharing this information.

However, as several Acharonimhave noted, this seems to be in tension with an explicit position of the Gemara. As noted last week, one of the classic sources for the idea of *to’elet* is the Gemara (*Nida* 61b) which holds Gedalya responsible for the death of his men due to not taking the rumors that there was an assassination plot seriously enough. The straightforward explanation of this passage is that to protect oneself, one is allowed to take unverified rumors seriously, a conclusion with the *Chafetz Chayim* accepts (*Hilkhot Lashon Ha-ra* 6:2, 10). The *Chafetz Chayim*’srules would imply that one should not share similarly dubious information to protect others, due to the prohibition of *lashon ha-ra;* but as the Gemara blames Gedalya for the death of his men, it would seem that it would be permitted to share such *lashon ha-ra* even though its veracity is in doubt. The *Ma’adanei Yom Tov,* for example, concludes in accordance with this implication, explaining the logic as follows:

Implicitly, it would seem that just as one must take precautions if damage might come to him, the same applies if damage might come to others, for why would it be different? Certainly, a person must be concerned for the damage of others just as he is concerned about damage to himself, and the great rule in the Torah is “Love your fellow as yourself.” (*Ma’adanei Yom Tov*, *Rosh, Nida* 61b, n. 6)

One could have argued that an exception may be carved out for actual cases of *pikuach nefesh,* protection of life, as that overrides all *mitzvot* in the Torah with the exception of the three cardinal sins: murder, idolatry and forbidden sexual relationships (see, for example, *Sanhedrin* 74a-b and *YD* 157).

However, Rav Shlomo Zalman Kook, father of the famed Rav Avraham Yitzchak Ha-Kohen Kook, criticizes the simple application of the *Chafetz Chayim’s* rules even in cases where the potential harm is only monetary.

In my humble opinion, the opposite approach is the reasonable one. Since there is logic to explain why it should be permitted *a priori*, of course he is obligated to tell him, as this is included in the obligation of returning lost objects (*hashavat aveida*)![[4]](#footnote-4)

In other words, he follows a *Pitchei Teshuva-*like perspective, according to which we don’t start with the assumption that all negative information is prohibited as *lashon ha-ra.* Rather, we recognize that sometimes spreading information is the best way to fulfill a mitzva, and thus we must do so even if we cannot check all the boxes of the *Chafetz Chayim.*

While most modern Acharonimare not as explicit as Rav Shlomo Kook or the *Ma’adanei Yom Tov,* many of their halakhic rulings tacitly accept this approach. For example, in a responsum by Rav Moshe Sternbuch (*Responsa* *Teshuvot Ve-hanhagot* 1:869), when he is asked whether someone is permitted to remain silent if he knows of potential danger to others, he argues that it is forbidden to be silent and refrains from even mentioning the prohibition of *lashon ha-ra* as a consideration. While, in other responsa, Rav Sternbuch does quote the *Chafetz Chayim*’srules, it may be that he uses it for simplicity; or he may generally agree that they are accurate guidelines, even he does not feel bound to their strict application.

The *Chafetz Chayim* does attempt to reinterpret this passage to negate the above challenge. He argues, for example, that while one may pass on information of this sort, the speaker must be sure that the listener will not accept the information, but will rather take precautions in light of it. As this is the minimal violation of *lashon ha-ra* that is necessary, this is all that is permitted. [[5]](#footnote-5) He also finds several creative ways to minimize the circumstances in which people are allowed to keep their ears open for this kind of information, allowing it only when the listener ensures the speaker has proper intent.[[6]](#footnote-6) When these conditions are not met, *Chafetz Chayim* explains that he is willing to risk the safety of the potential victim rather than allow the violation of *lashon ha-ra,* arguing that the alleged perpetrator’s right to not be suspected outweighs those of the potential victim. [[7]](#footnote-7)

To justify this claim, he adduces the argument used by the Talmud for why murder is one of the cardinal sins (*Sanhedrin* 74a). When faced with the choice of murdering or being murdered, the Talmud argues “Who says your blood is redder than his?” Therefore, one has no right to take an innocent life to save one’s own.

The *Chafetz Chayim* strikingly adopts this same line of reasoning here: Who says that the potential victim’s safety is more important than the right of the potential aggressor not to be subject to *lashon ha-ra* or perhaps even *hotza’at shem ra*? Rav Shlomo Rosner, in his *Ali Ve’er,* points out that this argument fails if the alleged damage to the potential victim far surpasses the possible damage caused by putting the alleged perpetrator under suspicion. As we have outlined above, this is an outgrowth of the *Chafetz Chayim*’sapproach to this law, which is not fully accepted by other authorities.

1. **Pure Intentions**

A straightforward application of the *Chafetz Chayim*’sfifth rule, that one must only engage in *lashon ha-ra le-to’elet* for the proper reasons, would dictate that if someone is in danger, but the speaker of *lashon ha-ra* holds a grudge against the potential aggressor and would enjoy saving the victim at the expense of the would-be criminal, it would be prohibited to share the information.

The *Chafetz Chayim* notes that whether this is true depends on a dispute among the Poskim in a similar case. *Shulcḥan Arukh CM* 421:13 rules that one may use force to protect a victim who is being physically assaulted. *Sefer Me’irot Enayim* (ibid. 28) rules that the protector must be the type of person who would normally save others; the victim many not be saved out of a vendetta towards the attacker. *Taz* (ibid.) argues that this is irrelevant; the rescuer has a responsibility to protect the victim, regardless of whether his intentions are impure. The *Chafetz Chayim* (note to *Hilkhot Rekhilut* 9:10) rules in principle like *Sefer Me’irot Enayim,* but being unable to accept the implications, he rules that one must simply force oneself to act with pure intentions.

However, if one actually accepts this argument and takes it to its logical conclusion, this solution falls short, as in a case where the protector is unable to do so, it would be required to stand by and watch the victim being brutalized.[[8]](#footnote-8) It is worth mentioning that Jewish law affirms that people may be expected to control their emotions. *Sefer Ha-chinnukh* (416), commenting on the prohibition to desire or covet, points out that this indicates that God expects people to be able to control their emotions. Still, this ideal is not always reached, and relying on people to change their natural inclinations may have dangerous consequences.

It is obvious that such an eventuality does not exist from the perspective of the *Pitchei Teshuva.* If one frames his approach to *lashon ha-ra* in these cases with the many obligations that demand, rather than merely allow, sharing information, there would be no need to defend why it is permitted and mandatory to protect the potential victim in the above case.

**Expanding *To’elet***

Several modern rabbis have attempted to offer expanded understandings of *to’elet* to provide a space for allowing the flow of information for more long-term goals, such as providing the openness necessary for a healthy democratic society. Rav Yuval Cherlow, for example, argues for such a model.[[9]](#footnote-9) Rav Azriel Ariel[[10]](#footnote-10) tries to use the model of testimony to justify enlightening the public as to sins of public officials that would shed light on their worthiness to be in public office. While their arguments may have merit (though I have doubts concerning the arguments they make), they are unlikely to fit the model of *to’elet* as strictly presented by the *Chafetz Chayim*. Benjamin Brown notes:

Even if each of these is a ‘‘benefit,’’ they relate to long-term outcomes on the general societal level. In contrast, the considerations of the Hafetz Hayim were short-term concerns relating to the level of the individual (except for issues relating to the denunciation of heretics and evil people). Consider the fact that the Hafetz Hayim, in raising the possibility of permitting libel in the case of one who stole from or damaged another in the hope that it would pressure him to give back the stolen object or compensate the damage, rejects this possibility on the basis of his own reasoning, contending that this hope is ‘‘very distant,’’ particularly in comparison to the more immediate damage that might be caused by the libel. If this ‘‘benefit’’ is considered ‘‘very distant’’ in his eyes, then how much more so would he find the ‘‘benefits’’ contained in the above rationales, which are less imminent and more general, to be distant.[[11]](#footnote-11)

**Implications**

While in many (if not most) cases, the two models would be in agreement, there are differences. For an average question about whether or not one should gossip about his or her friend, I assume most Poskim would take the principles of the *Chafetz Chayim* as good guidelines, if not strict Halakha*.*

However, some of the more complicated cases which are unique to the age of social media may depend on the posture one takes to above framings. For example, the kinds of goals that the #MeToo movement are trying to accomplish probably do not fall within the parameters of *to’elet* as understood by *Chafetz Chayim.* Furthermore, the nature of the movement is that it often shares information (even if not about specific people) without verifying it, often when no attempt has been made to accomplish the same goals through other methods, such as approaching the accused perpetrators and trying to get them to repent. This notion sounds absurd and anathema to the ethos of the movement.

Even within the more expansive model, one must weigh the concerns of the *Chafetz Chayim* to avoid false accusations or unwarranted damage. However, within this model, there is at least more room to talk about the greater communal benefits that are being sought. I am not qualified to weigh in on these, but it is clear that the above framing question will be critical to shaping a halakhic perspective on the issue.

An issue that has recently been hotly debated among the Poskim, to which we will return next week, is the question of social-media shaming as a way of dealing with recalcitrant husbands who refuse to grant *gittin* (bills of divorces) to their wives, leaving the latter as modern *agunot* (chained women). The way the Poskim have approached this issue, especially in light of a recent ruling by an Israeli rabbinical court encouraging this method as a legitimate means to force a husband to follow his duty, sheds light on the way the Poskim are thinking about these questions in the digital age.

There is much more to discuss about *to’elet,* but for now we have sufficed with the general principles to highlight the questions they raise when social media is brought into the mix.

**Other Issues to Discuss**

After we have discussed the contemporary issue, we will return to the severity of the prohibition to embarrass people publicly. If, at the end of the day, we determine that specific gossip is not legitimate, the publicity of social media exacerbates the gravity of wrongly humiliating the subject of the *lashon ha-ra,* especially considering the harshness with which the Poskim have treated public embarrassment in the era before it was truly global.

Furthermore, we will have to discuss the ways in which these principles apply when information, secret or negative, is being used against people, but without human beings becoming privy to any of it. In many cases, the information is being shared by computers and smartphones directly into computer programs that utilize it to make decisions about targeted advertising or other goals. Our challenge will be to explore whether the principles we have developed can speak to these contemporary applications, which are not discussed in classic halakhic sources for obvious reasons.

1. Louis D. Brandeis, Other People’s Money and How the Bankers Use It, Frederick A. Stokes Company (New York: 1914), p. 92. Originally published in *Harper’s Weekly*. Also available at: <http://www.law.louisville.edu/library/collections/brandeis/node/196>. [↑](#footnote-ref-1)
2. Benjamin Brown, “From Principles to Rules and from Musar to Halakhah: The Hafetz Hayim’s Rulings on Libel and Gossip,” *Dinei Yisrael* 25 (2008). [↑](#footnote-ref-2)
3. Translation from: https://www.sefaria.org.il/Yoma.86b.17?lang=bi&p2=Orchot\_Tzadikim.2.42&lang2=bi&w2=all&lang3=en. [↑](#footnote-ref-3)
4. This passage is recorded in Rav Avraham Kook’s *Mitzvat Re’iya*, 104. [↑](#footnote-ref-4)
5. See the notes to 6:10, especially *Be‘er Mayim Chayim* 30. See, however the notes of *Ali Ve’er* of Rav Shlomo Rosner. [↑](#footnote-ref-5)
6. *Hilkhot Lashon Ha-ra* 6:2. [↑](#footnote-ref-6)
7. However, the *Chafetz Chayim* seems to have no exception to his principle. See also Rav Meir Menachem Maggid in *Kol Torah* 55 (Tishrei 5664), pp. 55-57, who analyzes and endorses this assumption of the *Chafetz Chayim*, showing that the *Chafetz Chayim* has an expansive understanding of what one is permitted to do when the potential harm may come to that individual, highlighting the novelty of his forbidding one to allow others to avail themselves of similar information. [↑](#footnote-ref-7)
8. See *Ali Ve’er* to *Hilkhot Rekhilut* 9:3. [↑](#footnote-ref-8)
9. *Bein Ish Ve-ishto: Dinei Lashon Ha-ra, Techumin* 27. [↑](#footnote-ref-9)
10. Available here: <http://www.yeshiva.org.il/midrash/shiur.asp?id=1200>. [↑](#footnote-ref-10)
11. See Brown above. [↑](#footnote-ref-11)