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ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #20: The Role of *Hatra’a* (Warning)**

The first *mishna* in Sanhedrin cites a *machloket* between R. Meir and the *Chakhamim* regarding whether litigation of a *motzi shem ra* case, in which a man accuses his wife of adultery, requires 23 judges or merely three. The ensuing *gemara* (8a) offers several reasons for the dispute, ultimately presenting two opinions that suggest that R. Meir and the *Chakhamim* were really debating issues relating to *hatra’a*, the warning issued to one about to commit an *aveira*. The situation that R. Meir and the *Chakhamim* were discussing concerned a scenario in which an imperfect warning was delivered. If that warning is deemed halakhically legitimate, the proceedings could lead to capital punishment (if the woman were found guilty), and 23 judges should therefore be necessary. If, on the other hand, the imperfect warning is not valid, no capital punishment can be administered, and three judges would thus suffice. In this *shiur*, we will explore these two suggestions to the *machloket* and how they impact our broader understanding of the *halakha* of *hatra’a*.

R. Pappa claims that the alleged adulterous woman in this case was the wife of a learned person (*eishet chaver*), who thus presumably understands the *halakhot* relating to adultery. Since she was not properly warned, R. Meir claims that she cannot receive *mitat beit din* and only three judges are necessary. The *Chakhamim* respond that an educated person CAN be punished even without proper warning, as the entire purpose of a warning is to inform the perpetrator that he is about to commit a crime and thereby to assure that the act is not *shogeg* (unintentional). Educated people are aware of their actions, their illegality, and their consequences even without a *hatra’a*. Since "*lo niten hatra’a ela le-havchin bein* *shogeg le-meizid*," *hatra’a* only serves to distinguish between intentional and unintentional actions, no *hatra’a* is necessary for an educated woman. She can thus be put to death even in its absence, and 23 judges are thus required.

It seems that R. Meir disagreed with the *Chakhamim's* explanation of the "practical" function of *hatra’a*. *Hatra’a* plays an additional role BEYOND determining intent, and it is thus universally required, even for an educated person.

Indications that *hatra’a* plays more than a pragmatic function emerge from the very fact that the *gemara* (40b) hunts for *pesukim* to serve as the source for the need for *hatra’a*. If *hatra’a* is purely pragmatic, as we require a method of determining intent, why do we need a source at all? Its requirement should be self-evident and self-mandated! In fact, Tosafot (40b) assume that a *pasuk* is necessary only to mandate *hatra’a* in a non-obvious situation – an educated "*chaver*" (according to R. Meir, who requires it in THAT case (according to R. Pappa's analysis), or even according to the *Chakhamim*, if their *machloket* with R. Meir involves different unrelated issues). Tosafot sensed that:

1. Basic *hatra’a* should not require a *pasuk*
2. The mandate to “warn” a *chaver* is a NOVEL concept, requiring a *PASUK* and potentially demanding a rethinking of *hatra’a's* role.

A potential additional function for *hatra’a* may be derived from an interesting comment of a *beraita* in *Sanhedrin* (40b), which demands that a perpetrator “license himself” for the death penalty before he is administered capital punishment. This "self-licensing” is framed within the description of *hatra’a*; namely, one of the basic prerequisites of *hatra’a* is that the violator license himself for death. Perhaps, the role of *hatra’a* is to intensify the severity of the crime. Not all capital offenses warrant capital punishment, or even corporal punishment; only aggravated offenses are punishable. An act performed in DIRECT DEFIANCE OF A WARNING is a more SEVERE CRIME, and therefore punishable. The warning is not merely INFORMATIVE - informing the perpetrator of its illegality and helping us to determine his intent. Rather, the warning creates an atmosphere that exaggerates the nature of the crime.

If this is true, it would be reasonable to extend *hatra’a* to ALL scenarios, even if the violator is educated. Without *hatra’a*, the offense is deemed “minor,” or at least not “major” enough or defiant enough to be punished for. Similarly, this would explain the *gemara*'s need to locate a source for *hatra’a*, as it is viewed not only as practical, but procedural and legal as well.

A comment of the Rambam strengthens the sense that *hatra’a* possesses an additional function. The same *beraita* that describes the parameters of *hatra’a* requires the violator to "accept" the *hatra’a*. Presumably, his “acceptance” is necessary to indicate his understanding of the terms. If he does not outright acknowledge or accept the *hatra’a* perhaps he didn’t hear or fully understand it. Yet the Rambam – based on this clause – demands that the violator respond to the warning by declaring "on the condition that I will be punished, I am persisting in my act." Why must his declaration be so strident if the warning is only intended to be informative and his response indicative of understanding? It seems that *hatra’a* plays this second function as well – to create an aggravated and defiant crime. Only by directly rebuffing the *hatra’a* and flouting the efforts to halt his crime has the person rendered his act an aggravated offense.

Having established a possible second function for *hatra’a* we can return to the original gemara in *Sanhedrin* (8a). The second scenario suggested by the *gemara* to explain the *machloket* between R. Meir and the *Chakhamim* about *hatra’a* may also yield the conclusion that *hatra’a* (at least according to some) possesses more than a functional role. Abbaye claims that the *Tannaim* were discussing a case in which a proper warning WAS issued, but the specific type of death penalty that would be administered was not specified. The *Chakhamim* maintain that this general warning is sufficient to yield a capital punishment (thus requiring 23 judges), R. Meir disagrees, claiming that a warning must stipulate the EXACT form of death penalty. This odd demand also reflects a more formal role for *hatra’a*. If the warning were merely meant to inform the violator and inform us of his intent, it would be strange to require such specificity. Wouldn’t the specter of death be sufficient to establish serious intent? What difference should it make if he were informed of one penalty or another? If, however, the function of *hatra’a* is to create a defiant and aggravated assault, procedure may require that he be “sentenced” by the “warners;” only by defying that SPECIFIC death sentence warning, he can be punished.

The question regarding the level of specificity required in *hatra’a* is addressed by *Rishonim* in other contexts. For example, in two locations *Tosafot* require the warning to specify the precise *issur* being violated and even, according to some readings, the *pasuk* upon which the violation is based. By contrast, other opinions claim that as long as the warning stated the illegal nature of the act, no specific *aveira* or *pasuk* must be mentioned (strikingly, some attribute this opinion to the Rambam). Again, the positions that require a formal warning (by demanding attribution of the specific *issur*) may indicate that the warning is intended to create a context in which the crime is an aggravated offense. One who not only hears a warning but is told of the particular *issur* and its related *pasuk* and still commits a crime can be punished for his defiant offense.

Perhaps the most extreme position that reflects a formal element to the warning is staked by one view in Tosafot in *Bava Kama* (2a). They claim that according to R. Eliezer, warning a Shabbat desecrator requires informing him of the *av* *melakha* that he is committing, and not the *tolada*. Only 39 forbidden actions are top-level "*avot*," while most activities are derivative *toladot*. According to the opinion in Tosafot the warning should not mention the particular act, but the parent category to which the act belongs or is subsumed under. In effect, R. Eliezer has thus made the warning LESS informative. The violator is squeezing juice from a fruit on Shabbat, yet he must be warned that he violating the *av* *melakha* of "*dosh*," thrashing wheat kernels! This would certainly demonstrate that the warning is meant to create a defiant act. Only by defying a parent-level warning is the act deemed severe enough to be legally punishable.