YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**Shiur #21:**

**Social-Media Shaming -**

**The Case of *Agunot***

**Reconstituting Community**

[Last week](https://www.etzion.org.il/en/shiur-20-shaming-halakha-general-overview), we discussed the many types of shaming that the Jewish community has used throughout history to punish sinners and pressure them to repent. One factor that enabled these methods to be effective was the closeness of the community. Jews usually lived in tight-knit communities, sometimes by choice, often not. Before the modern period, people had to live in a religious community, and the only way out was to convert. In that context, shaming and social pressure were quite effective.

However, in the modern period, this is no longer the case. People may live wherever they want and need not identify with any community. Thus, methods like excommunication became weak, as people pressured by methods like it can simply leave the community.

In our *shiurim* on the nature of *mara de-atra* [(#6](https://www.etzion.org.il/en/shiur-06-mara-de-atra-age-social-media-part-i-local-rabbi-globalized-world) and [#7](https://www.etzion.org.il/en/shiur-07-mara-de-atra-part-ii-recreation-mara-de-atra)), we noted the effect globalization has had on geographic models of halakhic authority, basically eviscerating them. However, we further noted that modern methods of communication also have enabled the recreation of community along ideological lines.

When dealing with issues of public shaming, a similar phenomenon has happened. Social media has made it nearly impossible to escape a concerted effort to follow someone. Helen Andrews, a Robert Novak Journalism Fellow, recently described her decades-long attempt to escape a viral video of an ex-boyfriend accusing her of being a sadist and the effects it had on her life:

Moving to the other side of the world did not diminish the video’s place in my life as much as I thought it would. It was still the first result when you Googled my name, which presumably is one reason I couldn’t find a job for the first eighteen months…. when I moved back to Washington, D.C., and started meeting some of the younger writers in town, it took them less than a week to find the clip and ask me about it. Most of them had been in high school when it happened.[[1]](#footnote-1)

Thus, the interconnected world has recreated a world in which social shaming can be effective, in which information can be weaponized. A superficial understanding might have suggested that we can take advantage of this reality to invoke *cherem-*like punishments (or *Harchakot* of Rabbeinu Tam, or other similar mechanism) in cases where a *beit din* would have invoked these methods. However, there are several salient differences that may affect how this should be applied in this global community:

1. Social-media shaming is effective because it goes viral. This requires handing the tools over to the laity, rather than leaving it in the hands of judges.
2. The lasting power on the internet is basically eternal. While in the past, public pressure was rolled back after the sinner had repented, it is nearly impossible to counter social-media shaming once it has begun.
3. As we saw in the words of Rav Michoel Zylberman last week, certain leniencies related to *Harchakot* of Rabbeinu Tam derive from the fact that they are, in theory, escapable. The fact that the recalcitrant husband can leave the community means that the pressure exerted is not defined as coercion from a halakhic perspective. Thus, the *get* can be considered to have been given of the husband’s free will. If, as Andrews indicates, this is not the reality of social-media shaming, this might require an assessment of whether social-media versions of *Harchakot* of Rabbeinu Tam would share the leniencies of the originals.

Poskim are also concerned about the conditions the *Chafetz Chayim* propounds for justifying *lashon ha-ra.* Especially considering the potential damage that social-media shaming can cause, exploring other options first becomes critical. More importantly, if one accepts the *Chafetz Chayim*’s claim that one must not engage in *lashon ha-ra le-to’elet (*which the above cases are at least related to) if the resulting harm would be greater than that which Halakhawould formally apply to the sinner, it would be forbidden to do so. Considering the lasting harm a campaign of shaming can cause, this is something that must be considered. This framing will help us understand the debate that arose after a recent ruling of a *beit din* in Israel.

***Harchakot* of Rabbeinu Tam on Social Media**

As we noted last week, there have been several celebrated cases in America where social-media shaming was used to pressure a recalcitrant husband to grant a *get.[[2]](#footnote-2)*

In Israel, a public discussion arose after a *beit din* officially endorsed it. There was a physics lecturer living in Israel, Dr. Oded Guez, who refused to grant his wife a *get* foryears. He had been called to several hearing in *batei din,* all of which had been unsuccessful. In 2016, one of the courts of the Chief Rabbinate formally endorsed invoking social-media shaming as part of a version of *Harchakot* of Rabbeinu Tam. The sources for this court ruling and the subsequent rabbinic responses are taken from the article we referenced last week: “Shaming in Judaism: Past, Present, Future,”by Tsuriel Rashi and Hananel Rosenberg, published in *Journal of Religion & Society*, Volume 19 (2017).

It is incumbent on every Jewish man and woman and everyone associated with them not to have any dealings with him, whether in business or monetary matters, not to provide him hospitality, feed him or give him to drink, not to visit him when he is sick, and not to seat him in the synagogue, and all the more so not to call him up to the Torah, and not to let him say *kaddish* [prayer for the departed], and all the more so not to lead the prayer service, not to ask how he is, not to give him any form of respect or honor until such time as he relents from being stiff necked and listens to the words of the teachers, and grants a divorce in Jewish law to his wife, and to free her from her marital chains.

As Rashi and Rosenberg record:

The rabbinical court did not limit itself to this declaration; it further supported the application of his spouse to publicize his photograph together with the rabbinical court ruling on social media, thereby contravening the original prohibition regarding publicizing Guez’s name and picture.

They quote Pinchas Tannenbaum, spokesman for the chief rabbi:

The decision was taken with much pain, but there was no other choice. The rabbinical court does not publish advertisements and does not know the word “shaming”; however, in this case the rabbinical judges felt that publicity on social media would be a more effective tool. The wife claimed that from her acquaintance with her husband this was the right tool, and who should know better than her (Malek-Buda).

Further, they note:

It transpires that this was not the first time that the rabbinical court was aware of the great power of social media. The director of the *Yad La’Isha* organization that assists “chained women,” clarified that this was a “phenomenon that started in the rabbinical courts in the last year or two,” and she recounted another case of a well-known businessman who fled abroad and left his wife chained to extort money from her family. She noted that the moment the rabbinical court permitted publication of his photograph on social media, intensive negotiations came to a successful conclusion within just a few days (Malek-Buda).

Despite the fact that this method had been in use in the United States, as well as in Israel, it was this case that brought it into public debate in Israel.

**Reservations**

**A Dangerous Tool in the Hands of the Laity**

Rav David Stav, the chief rabbi of Shoham and chairman of the Tzohar rabbinical organization, is quite hesitant to accept the conclusion of the court. Rashi and Rosenberg summarize the core of his hesitation, which we noted above: social-media shaming may make weaponizing information possible again, but only by granting the power to the laity, and thus removing most of the restraint the rabbinical courts may have held:

Social media reconstitutes the effectiveness of rabbinical courts’ social punishment, but in doing so grants access to such a strong tool to individuals who may not be bound by the seriousness of a rabbinic court, as well as to religious court judges who might be too hasty.

While Rav Stav says he would act if a court were to issue a formal ruling, he outlines the specific concerns that must be taken into account first:

1. Embarrassing people publicly is a grave sin. Thus, any court which decides to utilize such a dangerous tool must justify that decision fully.
2. Due to this, Rav Stav thinks that it might even be better for the court to utilize its power to imprison the husband. This method avoids embarrassment (and, I would assume, remains fully in the hands of the court to reverse if and when the husband relents).
3. Setting a precedent of legitimating social-media shaming may be dangerous, as it may be used by other courts when not legitimate, or by individuals without rabbinic sanction.

As mentioned above, Rav Stav does not forbid it; he just expresses his concerns. As he puts it, “I warn against releasing the brakes suddenly, and from here if someone does something we do not like, it is not a reason to embarrass him in public.”

Rav Chaim Navon puts the concern more succinctly:

Once, when communities were communities, this is what excommunication looked like: effective social ostracism. Rabbinical courts made measured use of it against various scoundrels. The weakening of the communities alongside social mobility decreased the effectiveness of this tool. For these reasons, someone ostracized or excommunicated simply showed contempt for the rabbinical court, or at the most moved somewhere else and started over again. Social media in fact have restored the effectiveness of excommunication, and have returned it to what it was meant to be.

Rashi and Rosenberg go on to explain:

However, exactly for this reason, Rabbi Navon stipulates the border between shaming sponsored by the rabbinical court and the personal shaming of Internet surfers, which he considers “*lynchtranet* of someone just because I don’t like him, or I suspect him, or I don’t like his opinions, or he said something bad — that is a disgrace. Something completely different is to cooperate with a ruling of the rabbinical court, which checked out matters scrupulously, before it determined on such a step” (Ezra).

**The Positive**

Implicit in the arguments of Rav Stav and Rav Navon is that there is a fundamental difference between the courts or leadership and the laity in terms of their responsibility to achieving justice. Thus, as the classic models of social shaming were in the hands of the leaders, and social-media shaming is not, they are hesitant to use these modern equivalents, despite their effectiveness.

However, Rav Asher Weiss argues that there are many obligations which primarily devolve on specific groups of leaders (political, judicial or religious), but secondarily devolve on all people. Among those, he counts the commandment to ensure the execution of justice.

He bases this on a comment of Rashi. In the middle of discussion of the parameters of “*Uviarta ha-ra mi-kirbekha,”* “And you shall get rid of evil from your midst” (*Devarim* 17:7, *Chullin* 138b-139a) a verse used to describe the goals of the court, Rashi (139a, *s.v. Uviarta*) extends this beyond the court. Specifically, he writes that this same obligation mandates that anyone who finds someone liable to the death penalty must bring him to court to face justice. Thus, Rav Weiss argues, while the obligation to execute justice is primarily focused on the courts, the average person also has a mitzva to be involved.

Though he does not invoke the above argument explicitly, Rav Yuval Cherlow, an Israeli *rosh yeshiva*, seems to take an approach like this to explain his more positive approach to the ruling of the *beit din* and the acceptability of involving the laity in the process of shaming as a tool to rectify an injustice. While Rav Weiss makes this argument at a fundamental level, Rav Cherlow focuses on the pragmatic aspect and the way social media has made this a practical necessity. As Rosenberg and Rashi write:

In his opinion, the ethical decision to use social media to write or share an embarrassing post is given to each person, and not just to religious institutions. Rabbi Cherlow emphasizes that in the age of social media the border between the individual and social institutions has been blurred, and sometimes the power of the individual to correct social wrongs is greater than that of traditional institutions, which accordingly obliges the individual to be part in this objective of fixing the injustice, and that it is the duty of the rabbis to lay down Jewish ethical rules and make them available to everyone.

Additionally, he focuses on the *Pitchei Teshuva’*s framing of the issue: not just the potential prohibitions involved, but the dangers in not acting and the potential *mitzvot* one will be derelict in fulfilling.

According to Rabbi Cherlow, the starting point for Jewish ethics concerning shaming via social media is not what is “permitted,” but rather what is “obligatory”: Jewish ethics holds that the concept of “the public’s right to know” is a distorted one. The public does not have a right to know everything about people’s private lives. Jewish ethics does recognize “the public’s right to know,” namely, those things that the public must know — it is an obligation to publicize them. It is not always easy to differentiate between the two, yet it is important that this be a guiding light for the one publicizing.

Rav Cherlow does not deny the potential dangers involved, and thus warns anyone using these tools to be careful, as public humiliation can literally cause danger to human life, as we will explore in coming *shiurim*. Whether as formal halakhic rules based on an expanded notion of *to’elet* (a position we alluded to in previous *shiurim*), or as good advice, he presents a version of the *Chafetz Chayim*’sconditions for *to’elet* that shed light on the concerns one must take into account when using these dangerous tools:

* **Truth**: The shaming writer must write the truth, the whole relevant truth and nothing but the relevant truth. It is forbidden for a person to write what that individual does not have direct knowledge of (one may write, for example, “I assume”), and one must avoid manipulation and must distinguish between facts and commentary. This halakhic principle is based on the Torah prescription, “Keep your distance from a false matter” (*Shemot* 23:7). This is the only thing from which the Torah explicitly commands us to distance ourselves.
* **Necessity**: If there are other ways to solve the problem with equal effectiveness, one must take that path and not defame in public; on the other hand, if there is a real necessity to publicize, then one is forbidden to remain silent, as the Torah has commanded us, “*Lo ta’amod al dam rei’ekha*” and “*Uviarta ha-ra mi-kirbekha*.”
* **Proportionality**: The fact that it is permitted, and perhaps even an obligation, to publicize matters, does not relieve the publicizer of doing so only in the required proportion. Facts which are not necessary, even if they are true, which may harm someone who does not deserve to be harmed, must not be publicized.
* **Caution**: One must be cautious about causing greater harm by publicization and causing much greater harm to the wrongdoer than is due.

Rav Cherlow adds another point that he says is not a halakhic, but rather an ethical, condition, since alongside the explicit publicization of issues, it is right and proper to leave open the opportunity for the person being shamed to correct the wrong.

While Rav Cherlow uses the basic structure of the *Chafetz Chayim,* his language points in the direction of the *Pitchei Teshuva.* Rashi and Rosenberg note that he focuses not on permitted vs. forbidden, but on forbidden vs. obligatory. Rav Cherlow’s summary of his position is as follows:

On the one hand, without dissemination of the required information a tool in this fight has been lost, but, on the other hand, there are many opportunities for manipulation and using the reader’s good intentions for base purposes. Accordingly, it is worth using this tool as seldom as possible…

And even so, according to the questions in the Babylonian Talmud concerning slander, several principles can be stipulated for sharing the dissemination of shaming.

Firstly, the reader of shaming must internalize that what he reads is not a fact but a story or narrative of someone who is writing him something, of which it is reasonable to assume that part is correct and part unclear.

Secondly, the shaming reader must make an effort to hear the position of the other party, the wrongdoer, based on the injunction to rabbinical court judges, “Hear out your fellows and judge them righteously.” Any reading of shaming-type publications is a quasi-judgmental exercise, and requires making an effort to hear what can be known from both sides.

Thirdly, the shaming reader must assess the necessity of disseminating these matters. If the things you pass on are not helpful, it is prohibited to convey them; if what you publicized is necessary to deal with wrongdoing, as it appears as far as possible, you are obliged to pass it on, stating: “Be advised that I am conveying information that I do not know to be correct, but it is important to pass it on, decide for yourself” or similar.

This basic analysis supports some of our central theses in the past several *shiurim*: namely, that the more expansive approaches to when publicizing negative information can or must be used stem from those who follow the *Pitchei Teshuva.* They frame the question not as forbidden *lashon ha-ra* versus permitted *lashon ha-ra*; rather, they see positive obligations pushing one to publicize as strongly as the prohibitions of *lashon ha-ra* push one to be silent. However, as we noted, practically, even such Poskim will find inspiration in the limitations of the *Chafetz Chayim,* as they are helpful to navigate and balance the complex halakhic issues involved in these kinds of questions.

**There Is No Escape**

We noted that Rav Michoel Zylberman explains that the classic *Harchakot* of Rabbeinu Tam were not considered coercive from the vantage point of Halakha*.* This was because the husband could always leave the community, and thus his choice to remain and grant the *get* was considered to be of his own volition. All the rabbis discussed here assume that the modern equivalents would not be more problematic at this level. Rav Zylberman notes, however, that one could make an argument that it would, though he does not actually endorse this position:

Arguably, this reason may apply in fewer situations in our more mobile, contemporary society with enhanced communication abilities.

In fact, ORA, the Organization for the Resolution of Agunot, claims that their use of social media is intended to prevent the escape of the husband:

We want their names and faces to be known throughout the United States and worldwide, so they can’t escape or hide in another community, that his back will be against the wall… We aim to make them so famous, they can’t slink away, change their names and continue their abuses toward their families.[[3]](#footnote-3)

Still, the vast majority of *Poskim* have not taken the view that this invalidates *gittin.*

**Conclusion**

The analysis of the benefits and dangers of using social-media shaming to accomplish important goals sheds light on the unique ways in which social media forces us to rethink how we apply *to’elet* and related categories. Additionally, as we have seen in other areas, social media affects the ways in which the laity relates to rabbinic authorities, changing their relationship. The fact that social media has recreated the ability to forge global communities not run by traditional rabbinic authorities affects the exact way in which classic halakhic mechanisms may be applied.

For a full analysis of the ways in which these mechanisms have actually played out in recent cases, see: *A Socio-Legal Investigation of 'Get' Jewish Divorce Refusal in New York and Toronto: Agunot Unstitching the Ties that Bind,* by Yael C.B. Machtinger, available at: <https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/34525/Machtinger_Yael_CB_2017_PhD.pdf?sequence=2&isAllowed=y>

1. https://www.firstthings.com/article/2019/01/shame-storm. [↑](#footnote-ref-1)
2. For a throughout analysis of these, see Machtinger below. [↑](#footnote-ref-2)
3. Quote taken from Machtinger below. [↑](#footnote-ref-3)