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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 #28:**

**Fake News**

**Part II**

**Introduction**

[Last week](https://www.etzion.org.il/en/shiur-27-fake-news-part-i) we discussed the general attitude of Halakha towards truth and falsehood and how that sheds light on a culture in which truth has become devalued and difficult to ascertain due to the prevalence of fake news. We now move to specific violations which occur when the information being shared targets clearly-defined victims.

***Lashon Ha-ra***

Sometimes fake news may consist of information that is technically true. However, focusing on and sharing the information disproportionally, presenting it as if this detail tells the whole story, may also be “fake,” even if technically true. We developed this idea in our *shiurim* on *lashon ha-ra,* noting Rav Daniel Feldman’s arguments that due to psychological heuristics such as the angel and devil effect and other forms of confirmation bias, even true information can be essentially false, if the picture it paints is unfair. Harping on the minor indiscretions of an opponent to promote an agenda and divert criticism away from those within one’s ideological camp seems to run afoul of this.

Even information which it might be necessary to share under the broad category of *to’elet* and related principles is often presented in problematic ways. As we have discussed, the *Chafetz Chayim* requires that the information be verified independently and be shared without exaggeration, for constructive rather than personal reasons (i.e. not as part of a vendetta or agenda), only when the goal could not have been achieved through other means, and without anonymity. Many instances of fake news violate many, if not all, of the above conditions. Fake news tends to be shared specifically to support an agenda and vilify an opponent, is often conspiratorial and sensationalist, and is shared due to animosity, rather than any sense of righting a wrong. While sometimes the information is shared under people’s actual names, it is often shared under false online personas. Whichever framing one accepts to define the parameters of when negative information may be shared, fake news does not seem to pass the test.

***Hotza’at Shem Ra***

An even more egregious problem, however, is when the libelous information is indeed false. This category is referred to by the Rambam and the *Chafetz Chayim* as *hotza’at shem ra* (though as we noted in our previous *shiurim*, the taxonomy for the various prohibitions which fall under *lashon ha-ra* is debated.) This phrase first emerges from the Torah’s discussion of a husband who falsely accuses his new wife of not being a virgin:

A man marries a woman and cohabits with her. Then he takes an aversion to her and makes up charges against her and defames her, saying, “I married this woman; but when I approached her, I found that she was not a virgin.” In such a case, the girl’s father and mother shall produce the evidence of the girl’s virginity before the elders of the town at the gate. And the girl’s father shall say to the elders, “I gave this man my daughter to wife, but he has taken an aversion to her; so he has made up charges, saying, ‘I did not find your daughter a virgin.’ But here is the evidence of my daughter’s virginity!” And they shall spread out the cloth before the elders of the town. The elders of that town shall then take the man and flog him, and they shall fine him a hundred [shekels of] silver and give it to the girl’s father; for the man has defamed (*ki hotzi shem ra*) a virgin in Israel. Moreover, she shall remain his wife; he shall never have the right to divorce her. (*Devarim* 22:13-19, JPS translation)

While the technical punishments discussed in this passagerefer only the specific case of a husband’s slander of his bride, the Rambam’s definition follows from this case.

The Yerushalmi (*Bava Kama* 8:7) propounds that the sin of falsely speaking negatively about others (assuming again the Rambam’s definition of *hotza’at shem ra,* rather than following those who maintain that *hotza’at shem ra* includes even true gossip) is sui generis: one can never gain forgiveness. The *Penei Moshe* (s.v. *Ein lo mechila olamit*) understands this to mean that the victim need not forgive the perpetrator. While the Bavli (*Yoma* 87b) rules that generally one need only ask for forgiveness three times, after which the victim must forgive the sinner (with the exception of one’s teacher who can withhold forgiveness), this does not apply to *hotza’at shem ra.* The Rema (*OC* 606:1) cites this. The *Taz* (ad loc. 3) cites the view of the Mordekhai (*Yoma* 723) that this means that the victim need not forgive the perpetrator, and withholding this forgiveness is not considered cruel, though normally failing to forgive does qualify as undue cruelty. However, he assumes that if one chooses to forgive the crime, it is forgiven. (See also *Peri Chadash* 1.)

However, the *Magen Avraham* (5), *Mishna Berura* (11), *Bach, Eliya Rabba* (5),and *Shulchan Arukh Ha-rav* (4) cite the *Yam Shel Shelomo* (*Bava Kama* 8:3) to argue that it is a *middat chasidut,* a pious activity, to forgive the sin. The *Terumat Ha-deshen* (*Pesakim* 212) argues that the reason for this *halakha* is that once the libelous information has reached an audience, even if one repents, the audience may never hear the retraction. The damage is therefore permanent. The apology is thus insufficient to reverse the sin, allowing the victim to withhold forgiveness.

The *Levush (OC* 606:1) expands on this. Noting, as we have explored, that humiliation is akin to murder, he contends that as the lasting damage will potentially cause the embarrassment to continue, one cannot be blamed for not forgiving his or her daily murder! Thus, he argues that the victim need not forgive the crime and may hold a grudge, though that is normally prohibited as well. He does suggest that the perpetrator must do everything in his or her power to get the victim to forgive him or her, getting help from a thousand friends if necessary; but he acknowledges that even then, the victim may rightfully withhold forgiveness.

The *Arukh Ha-shulchan* (ad loc. 2) notes that the victim need not forgive the one who committed *hotza’at shem ra,* but it is nevertheless pious to do so. Still, he suggests a caveat. Building on the Talmudic dictum, “Your friend has a friend, and your friend's friend has a friend” (*Arakhin* 16a),all things said publicly (in front of three) may be assumed to spread (as discussed in [*Shiur* #17](https://www.etzion.org.il/en/shiur-17-lashon-ha-ra-digital-age-part-ii-lashon-ha-ra-front-three)); this provides an out. If, after spreading libel, one **publicizes** an apology and a retraction, one **may assume** that the correction will reach the original audience. If so, the victim must forgive the sinner.

However, the majority of Poskim seem to reject this, acknowledging that it is nearly impossible for the retraction to reach the same number of people as the original gossip. Gossip is juicier than retractions. It is for this reason that mistakes that are made on the first page of a newspaper receive corrections and retractions on page six. It is also why unsubstantiated or disproven rumors live on for years, as anyone who pays attention to political campaigns knows too well. In fact, this is one of the central dangers of fake news.

The scourge of fake news has become noteworthy specifically in the context of social media, with politicians and ethicists challenging companies like Facebook to prevent their platforms from being used for the dissemination of fake news; it is clear that the problems which may have always existed have now been exacerbated. As we discussed in our *shiurim* on the topic, the unique staying power and reach that shaming has in the age of social media has made *Chazal*’s warnings all the more pertinent. The same can be said of *hotza’at shem ra,* which combines the problems of *lashon ha-ra, sheker* and public humiliation, as noted by the *Levush* above. As bad as public shaming is when there is truth to the accusations, it is worse when the content is vicious lies.

Rav Daniel Feldman (*False Facts and True Rumors,* pp. 194-195) notes that these central insights of *Chazal* are captured well by Daniel Solove in *The Future of Reputation:*

In the past, oral gossip could tarnish a reputation, but it would fade from memories over time. People could move elsewhere and start anew. The printed word, however, was different. As Judge Benjamin Cardozo wrote in 1931: “What gives the sting to writing is its permanence in form. The spoken word dissolves, but the written one abides and perpetuates the scandal.” In the past, people could even escape printed words because most publications would get buried away in the dusty corners of libraries. The information would be hard to retrieve, and a sleuth would have to devote a lot of time to dig it up. The Internet, however, makes gossip a permanent reputational stain, one that never fades. It is available around the world, and with Google it can be readily found in less than a second…

In the past, rumors and falsehoods would readily spread around a small village, but the Internet lacks the village’s corrective of familiarity. In the village, people had a long history together and knew the whole story about an individual. However, now someone reading an online report about some faraway stranger rarely knows the whole story; the reader has only fragments of information, and when little is invested in a personal relationship, even information that is incomplete and of dubious veracity, may be enough to precipitate ridicule, shunning and reproach.

However, Solove, citing Judge Richard Posner, also suggests that there is truth to the *Arukh Ha-shulchan*’sperspective:

The rapid information-spreading power of the Internet can be a virtue too. Judge Richard Posner points out: “The blogosphere as a whole has a better error-correction machinery than the conventional media do. The rapidity with which vast masses of information are pooled and sifted leaves the conventional media in the dust. Not only are there millions of blogs, and thousands of bloggers who specialize, but, what is more, readers post comments that augment the blogs, and the information in those comments, as in the blogs themselves, zips around blogland at the speed of electronic transmission.” Posner is certainly right—information does speed around the Internet at a breakneck pace. Errors can get corrected quickly. The best thing to do when faced with a malicious rumor is to spread correct information as rapidly as possible. (*The Future of Reputation: Gossip, Rumor, and Privacy on the Internet* [Caravan Books, 2007], pp. 34, 37)

Furthermore, as Rav Feldman and Solove write, this only refers to fact-checking. When the information is technically true, but unwarranted (either it is unnecessary halakhically or it is exaggerated and thus false from a halakhic, if not technical, perspective), this qualification will not provide any solace:

This works well when we clearly know the truth about something or someone. But what about when we don’t? And what happens when facts are posted online that while true, are also of a private nature? With false information, the record can eventually be set straight. But with true information, there’s no way to put the secret back in the bag. (Solove, pp. 37-38)

Rav Feldman (pp. 198-199) goes on to note that social media has further encouraged the already negative potential of this kind of information to create dangerous group polarization. Furthermore, as we have discussed, many Poskim assume that data shared anonymously is more problematic halakhically, as it is easier to share information without concern for consequences or veracity. In general discourse, this problem is referred to as the “online disinhibition effect.” Being invisible allows people to engage in activity they would generally relate to as immoral.

It must be noted that I make no claim as to whether the Yerushalmi follows the Rambam’s taxonomy. It is possible that, according to the Yerushalmi, *lashon ha-ra* has a unique status, for some of the reasons discussed above, such as the inability to undo the damage that has been done. While this would expand the cases to which this stringency is applied, it would in no way mitigate the severity of libelous gossip. In fact, if all the above stringencies apply even to true information, a fortiori we can derive how terrible and unforgivable it would be to spread lies about others.

**Brief Note about *Hotza’at Shem Ra* about the Dead**

It is worth noting that the Mordekhai and many of the commentaries cited above discuss a *cherem* that was instituted against those who committed *hotza’at shem ra* on the dead, despite the fact that the Talmud (*Berakhot* 19a) writes that speaking about the dead is like speaking about a rock — i.e. it is meaningless. While fascinating, we will not discuss that extensively here.

Let us note, however, that in order to define the parameters of this decree, it is important to know whether the Mordekhai, as noted in our discussion of the Yerushalmi, understands *hotza’at shem ra* as being limited to false information or not. If, like other Ashkenazic Rishonim, such as Rashi and *Sefer Chassidim* (cited in our *shiurim* on *lashon ha-ra*), he understands the phrase to mean true gossip, then it would be forbidden to speak negatively about the dead even when the information is true. If, however, he accepts the Rambam’s taxonomy, it would be permitted to share true gossip about the dead. My tendency is to accept the stricter read, as it is more likely that the Mordekhai would have been influenced by the definitions prevalent in Ashkenaz than those of the Rambam. Even if he was not, it is possible that in this passage he is not being overly precise in his terminology.

However, two recent writers, Professor Nahum Rakover[[1]](#footnote-1) and Rav Dr. Zev Eleff,[[2]](#footnote-2) accepting the definitions of Rambam, deduce that the *cherem* was limited to false information but indeed permitted true gossip. These two positions are the subject of discussion in a responsum by Rav Binyamin Zilber (*Responsa* *Az Nidberu* 14:68), with the questioner suggesting the lenient position and Rav Zilber accepting the stricter view I advanced above.

**Accepting the Information[[3]](#footnote-3)**

Central to the issue of fake news is not just those who speak and write it, but those who accept it. In Halakha, it is prohibited to accept *lashon ha-ra:*

**And Rav Sheshet** further **said, citing Rabbi Elazar ben Azarya: Anyone who speaks slander, and anyone who accepts** and believes the **slander** he hears, **and anyone who testifies falsely about another, it is fitting to throw him to the dogs, as it is stated:** “And you shall not eat any flesh that is torn of beasts in the field, **you shall cast it to the dogs”** ([Exodus 22:30](https://www.sefaria.org/Exodus.22.30)), **and afterward it is written: “You shall not utter [*tisa*] a false report;** put not your hand with the wicked to be an unrighteous witness” ([Exodus 23:1](https://www.sefaria.org/Exodus.23.1)). Uttering rumors is here equated to delivering false testimony. Furthermore, **read into** the verse as though it stated: **Do not cause** a false report **to be accepted [*tasi*],** i.e., do not lead others to accept your false reports. (*Pesachim* 118a, Koren translation)

The Rambam (*Hilkhot Sanhedrin* 21:7) seems to accept this as a biblical prohibition. Rabbeinu Yona writes that the prohibition is to "establish in your mind that the information is true and to look down on the one whom it was said about." (*Sha’arei Teshuva* 3:213). Rav Josh Flug summarizes an alternative formulation by Rav Moshe Sternbuch (*Responsa Teshuvot Ve-hanhagot* 1:555):

We are not angels and when we hear something and it sounds like it is true, human nature is to accept it as truth. Therefore, he suggests that the prohibition is to change one's perspective on a person based on what one heard.

The exact parameters of when one is allowed to accept *lashon ha-ra* hangs on the Gemara’s debate about whether or not King David accepted a false report.

In *II Shemuel* 2 (Chapters 9, 16, 19) we are told about David’s attempt to protect the family of Yehonatan, the son of Shaul, who had been his loyal friend. David learns that Yehonatan has a crippled son, Mefivoshet, and grants him the estate of Shaul and provides for him from his own estate. During the rebellion of David’s son Avshalom, Tziva, a servant of Mefivoshet, lies to David and tells him that Mefivoshet supports the rebellion and hopes that David will lose the monarchy. As punishment, David promises to confiscate the property of Mefivoshet and grant it to Tziva. Mefivoshet eventually clarifies that this is a lie, and offers to split the estate, though Mefivoshet tells David he does not care and professes his loyalty to David.

Rav claims that David violates a prohibition for accepting the slanderous report by Tziva.

Shemuel, on the other hand, argues that David is justified in accepting the report, though it turned out to he is mistaken. David sees Mefivoshet in a state of mourning when David returns from fleeing Avshalom, and he thinks that Mefivoshet is mourning because David has **returned,** when in fact he has been mourning because David has been chased away and has not yet finished his mourning when David returns. His loyalty is bolstered by his rejection of the estate. Thus, Shemuel argues that fundamentally David is justified in accepting the report because it seems that Mefivoshet is indeed upset about David’s success, though it turns out the opposite is the case.

The *Semag* (Negative #10) rules in accordance with Shemuel, arguing that it is permitted to accept *lashon ha-ra* when one sees reason to believe it is true.

The irony of this is that this story proves that even when one can justify believing a story, one should be wary because it could be that the story is more complicated. This supports the claim of the *Chafetz Chayim* (*Hilkhot Lashon Ha-ra, Beer Mayim Chayim 7*:26) that one must have many reasons to believe the information before accepting it.

This should serve as a warning when it comes to news in the age of social media; much care must be taken to ascertain the veracity of information before accepting it. Even when it may be justified to accept it, there may still be reason to take extra care before coming to conclusions.

**Judging Favorably**

As Rav Flug notes, conceptually, the prohibition of accepting *lashon ha-ra* is related to the obligation to judge favorably, which we discussed in [*Shiur* #8](https://www.etzion.org.il/en/shiur-08-judging-favorably). The *Chafetz Chayim* (*Hilkhot Lashon Ha-ra* 6:7-8) states, however, that there is a difference. For example, someone can present a story as positive, while the listener will take it negatively, thus failing to judge favorably though no *lashon ha-ra* has been spoken. On the other hand, while there are cases that lean towards a negative interpretation which one need not judge favorably, the prohibition of accepting *lashon ha-ra* demands higher standards. For the unique ways in which social media has shaped how and when one must judge favorably, see *Shiur* #8.

**Conclusion**

From all we have seen, it seems that Halakha gives us good reason to be alarmed at the culture of fake news, which challenges the values of truth, entailing violations of *lashon ha-ra* and *hotza’at shem ra* and a failure to judge favorably. As the prohibitions of accepting *lashon ha-ra* indicate, there is not only an obligation upon those sharing the information to use discretion; the moral and halakhic onus lies equally on the shoulders of the consumers of that media to be discerning. We may hope that this will lead to a more civil culture which values truth and avoids needless gossip and libel.

1. *Al Lashon Ha-ra ve-al Anisha Aleha Ba-mishpat Ha-Ivri,* Sinai 22, reprinted here <http://www.daat.ac.il/daat/kitveyet/sinay/allashon1-4.htm>. [↑](#footnote-ref-1)
2. *Beit Yitzchak* 42 (Yeshiva University, 2011). [↑](#footnote-ref-2)
3. I draw here on Rav Feldman’s work, as well as a *shiur* on rabbanan.org by Rav Josh Flug. [↑](#footnote-ref-3)