YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**This shiur is dedicated *le-zekher nishmot***

**Amelia Ray and Morris Ray
by their children Patti Ray and Allen Ray**

**on the occasion of their twelfth *yahrtzeits***

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**Shiur #20:**

**Shaming in Halakha - A General Overview**

**Introduction**

In the past several *shiurim,* we have discussed the factors which permit spreading *lashon ha-ra* or revealing secrets. Beyond the issues of *to’elet* and “*Lo ta’amod al dam rei’ekha” (*the prohibition against standing idly by while one’s fellow’s blood is shed), there are many other data points that must be taken into account when discussing when Halakhaallows or even mandates weaponizing information to accomplish a goal. The unique ways in which this is manifested in the world of social media (and mass communication more generally) have come to the fore as social-media shaming has become a key method used to force recalcitrant husbands to grant their wives *gittin* (halakhic bills of divorce).

While the term *aguna* originally referred to a woman’s whose husband was missing (as we noted in [*shiur* #5](https://www.etzion.org.il/en/shiur05-videoteleconference-get)), often in modern times it refers to a woman whose husband refuses to grant her a divorce (*me’ukevet get*)*.* As, in Halakha,a husband must give a *get* to his wife of his own free will, its withholdingcan be used as a weapon — out of spite, as a last-ditch attempt to keep the marriage from ending, or as a bargaining chip in divorce settlements or child custody. One of the tools that has been used to encourage a recalcitrant husband (*sarvan get*) to grant a *get,* once a *beit din (*Jewish court) has determined that he is obligated to do so, is shaming. Social media has been added to the toolbox to shame the husband, including in some contemporary celebrated cases.[[1]](#footnote-1) In Israel, many rabbis recently weighed in after a *beit din* formally endorsed this approach as part of their ruling. The arguments presented highlight the complexities that arise in trying to apply the principles we have seen in the last few weeks.

Most of the analysis that we will present on this topic comes from the excellent article, “Shaming in Judaism: Past, Present, Future,”by Tsuriel Rashi and Hananel Rosenberg, published in *Journal of Religion & Society*, Volume 19 (2017).

**Embarrassing in Public**

After exploring this topic, we will return to the prohibition of embarrassing people publicly. While we will focus on cases in which it is legitimate not only to share what would be *lashon ha-ra,* but to do so publicly, we must keep in mind what is at stake. Embarrassing anyone, especially publicly, is considered a grave sin in Halakha*.* Many Poskim even think it is a cardinal sin!Even more so, as we will see, the staying power and reach of social-media shaming, and the subsequent damage it can inflict on the subject of the shaming, are beyond what could have been imagined before the advent of social media.

As we have now spent several *shiurim* exploring the question of when it is legitimate to spread negative information, we will continue exploring those principles. However, if one decides incorrectly and uses these tools when they are not legitimate, the costs are significant. That must be kept in mind throughout our study, even if we only return to the details in future *shiurim*.

**Weaponizing Information**

Tsuriel Rashi and Hananel Rosenberg outline several instances in which Halakha legitimates weaponizing information:

1. **Excommunication (*Cherem)***

They are various stages of excommunication imposed by the Jewish court to punish certain kinds of infractions, many outlined in the third chapter of *Moed Katan.* *Shulchan Arukh,* for example, provides the following example of a person who refuses to appear before a Jewish court after being summoned numerous times:

In which manner is a defendant summoned to appear in Court? The [members of the] court send their messenger to him in order that he may come on the appointed day to court. [If] he does not appear [on the appointed day], they summon him a second time; [if] he does not appear [after the second summons], they summon him a third time; [if] he [still] does not appear, they wait for him all day, and if he does not appear, they place him under sentence of separation on the morrow.(*CM* 11:1)

What does excommunication consist of? The Rambam summarizes the terms of *niddui* (separation) as follows:

What regulations should one under sentence of separation follow himself, and how should others act toward him? One under sentence of separation is forbidden to shave and wash, as one in mourning, all the days of his separation. He must not be counted in among three to bless God after meals, or among ten in any religious service which requires ten adults, and no one is permitted to sit within four cubits of him. Nevertheless, he may give instruction to others and others may instruct him, and others may hire him and he may hire others. If his demise occurs while under sentence of separation, the tribunal has a stone sent which is deposited on his coffin, as if saying that he is being stoned because he had to be separated from the community. Needless to say that no mourning is permitted for him, and that his hearse is not followed. (Hilkhot Talmud Torah 7:4)

In general, *cherem* was used as rarely as possible. When it was used, however, it was declared publicly, often in synagogue with the Torah scrolls*.* Rashi and Rosenberg refer to this as “shaming as communal pressure.”

A lower level of excommunication was introduced by Rabbeinu Tam (*Sefer Ha-yashar* 24) to be used against *get* refusers. The reason that a lower level must be used is that, as we noted above, a Jewish divorce cannot be coerced. The husband must give the *get* of his own free will.

Rav Michoel Zylberman, the Associate Director of the Beth Din of America, summarizes the basic halakhic approaches to the use of this method. (I have bolded a particularly striking line.)

The package of communal measures that a *beit din* may impose is referred to as *harchakot d’Rabbenu Tam*, literally the distancing methods of Rabbenu Tam (1100-1171). Rabbenu Tam, in his work *Sefer Hayashar* (24), writes that in a situation where a husband refused to comply with the ruling of a *beit din* to give his wife a *get*, the members of his community were proscribed from speaking with him, doing business with him, hosting him, providing him with food and drink, escorting him and visiting him when he is sick. [*Rema* (*Even Haezer* 154:21) adds to this list not burying the individual and not performing *brit mila* for his son.]

Rabbenu Tam reasons that such social pressures are permissible because they fall short of physical or financial coercion; these methods serve to not provide benefits that the husband is not objectively entitled to rather than remove something that he already has (either money or physical health) (see Responsa Binyamin Zev 88 – 16th century). Another version reasons that the husband could always move to a different community or a different country where he would not necessarily be subject to the same sanctions (R’ Joseph Colon ben Solomon Trabott, 1420-1480, Mahari”k 135, citing Rabbenu Tam). **Arguably, this reason may apply in fewer situations in our more mobile, contemporary society with enhanced communication abilities.**

While some authorities opposed applying *harchakot d’Rabbenu Tam* absent a *beit din* ruling allowing for coercive measures (see for example *Chazon Ish Even Haezer* 108:12), both Rabbi Ovadia Yosef (*Yabia Omer* 7 *Even Haezer* 23) and Rabbi Eliezer Waldenberg (*Tzitz Eliezer* 17:51) advocated withholding communal honors from a husband who refused to comply with the ruling of a *beit din* to give his wife a *get*. In the particular case referenced in Rabbi Yosef’s responsum, the *Beit Din Hagadol* (Supreme Court of Appeals) declared that the synagogues in the husband’s neighborhood should not allow him to enter or give him an *aliya,* and that his neighbors should not inquire as to his welfare until he complies with the *beit din*’s directive.[[2]](#footnote-2)

As we will see, Rav Zylberman’s expresses some hesitation because the purpose of this mechanism, namely to pressure the husband without formally coercing him, may not apply in the modern world. If what defines this mechanism as not (fully) coercive is the ability of the husband to escape to another place, in an era of mass communication, the husband may not be able to escape, making this mechanism harder to justify.

Rav Zylberman notes that in Israel, the courts have allowed for several punishments that are in the spirit of these *Harchakot:*

The State of Israel, in a law emended in 1996, provides for removing some privileges from a recalcitrant party when instructed to do so by a beit din. This law allows for preventing the non-compliant spouse from leaving the country, receiving an Israeli passport, receiving or renewing a driver’s license, and opening or withdrawing funds from a bank account. This law has engendered discussion in the rabbinic literature as to whether it is more sweeping than what would be allowed as part of harchakot d’Rabbenu Tam (see, for example, R. Yosef Goldberg, Get Meuseh, appendix 5-6). If an Israeli beit din ruled that actual coercion is appropriate, the recalcitrant party may be jailed for not complying with a beit din’s ruling. In a 2008 ruling, the Beit Din Hagadol ruled that a husband incarcerated for refusing to comply with a beit din ruling to give his wife a get (in which the beit din ruled that he could be forced to do so) could be denied mehadrin food, in the spirit of harchakot d’Rabbenu Tam.

Rav Zylberman closes his piece by noting that while *batei din* outside of Israel are not granted these coercive powers, they will often use some form of shaming to pressure the husband to grant the *get.*

**An Important Note**

It is worth noting that all these methods are last resorts. Many mechanisms exist to minimize or prevent such cases. For example, the Beth Din of America has its halakhic prenuptial agreement. Basic information can be found here: <https://theprenup.org/>.

In Israel, the version used is called the *heskem le-kavod hadadi,* agreement of mutual respect. Basic information can be found here: <https://iyim.org.il/prenup/>.

Dr. Rachel Levmore describes why this was deemed necessary despite the coercive powers available to the secular courts and *batei din* in Israel in her article, “Get-Refusal and the Agreement for Mutual Respect: Israel Today,” *Hakira* 9 (2010).

In places like New York and Canada, there are certain *get* laws in place that are supposed to minimize the number of cases of *get* refusal. While they may reduce the prevalence of the phenomenon, they have not eliminated it. Rav Mordechai Ochs of the Toronto Beit Din, for example, estimates that the law decreased the number of cases of *get* refusal by 85%, which, while impressive, does still leave some cases unresolved.[[3]](#footnote-3)

Thus, despite all the worthwhile and necessary attempts to minimize *get* refusal, it still happens. It in such cases, or in cases in which none of the above mechanisms have been used or are relevant, *batei din* turn to the possibility of using the various forms of shaming to pressure the husband to free his wife.

For a summary of these different methods and the opposition that has been raised to some of them, see: <https://www.yutorah.org/lectures/lecture.cfm/913304/rabbi-mordechai-torczyner/prenuptial-agreements-the-rca-edition-and-the-agreement-for-mutual-respect/>.

1. **Public Shaming**

Many records exist of Jewish communities using public shaming as a way of punishing sinners and warning members of the community to avoid following similar sinful paths. As Rashi and Rosenberg write:

Jewish communities in the Middle Ages also made use of shaming as a punishment for criminals and sinners. So, for example, those who departed from the straight and narrow of communal norms and were caught in the sin of adultery, drunkenness, theft, or contempt of the communal court were publicly chastised. We find such an instance in the writings of Rabbi Moshe Mintz, the son of Rabbi Isaac HaLevi Mintz (1415–1485), one of the most important rabbis in the Rhineland, who obliged his community to denounce one of its members who had reneged on a monetary undertaking to a fellow Jew in the synagogue toward the end of the prayer service (Responsa Maharam Mintz 101). The objective of public criticism of the sinner is both to punish him and to warn the public that he is not trustworthy. Similar practices were effected through placing the names of members of the community who had sinned on the synagogue notice board.

Rashi and Rosenberg refer to this category as “shaming as punishment.”

1. ***Ikuv Tefilla (*Delaying Prayer)**

A custom that existed in the medieval and modern period in Europe was the delaying of prayer or the Torah reading. A person who felt he or she had been wronged, had the right, at certain parts of the prayer service, to demand that his or her claim be heard before the prayers would continue. In *Shulchan Arukh,* OC 54:3, Rav Yosef Karo states the fundamental law about interrupting between *Yishtabach*, the final blessing of the Songs of Praise, and *Yotzer (Or)*, the initial blessing before the recitation of *Shema*.

One who speaks between *Yishtabach* and *Yotzer,* it is a sin in his hand, and he would be required to return from the battlefield [due to fear that his sin may lead to his death] (see *Devarim* 20:9, BT *Sota* 44b). However, there are those who say that it is permitted to interrupt at that point for communal needs or to bestow charity upon those who come to seek alms.

The Rema adds his gloss:

From this stems the custom in many places to say a blessing for the sick **or for a claimant to ask for judgement between *Yishtabach* and *Yotzer*,** because these are instances of [interruptions for] the purpose of a mitzva.

Rashi and Rosenberg refer to this as “shaming as a tool for the individual to correct an injustice.”

1. ***Pashkevillim***

Anyone who has walked through Me’a She’arim in Jerusalem has seen countless signs decrying immoral or anti-halakhic activities. These posters are referred to as *pashkevillim.* Rashi and Rosenberg explain the etymology as follows:

The Yiddish word “*pashkevil*” derives from the name of a citizen of Rome by the name of Pasquino, who used to hang satires and critical comments about the pope on the pedestal of a headless statue. His name was eventually given to the statue and then to the square where the statue stood (Piazza Pasquinate); the initiative taken by one individual evolved into a common practice whereby citizens hung anonymous vilifying signs around the city. The phenomenon spread throughout Western Europe during the sixteenth century as this channel began to accompany religious and social struggles.

This phenomenon of “shaming as exposure and public criticism,” they argue, derives from the Talmudic passage we presented as a possible source for a halakhic value of transparency, “*Mefarsemin et ha-chanifim mipenei chillul ha-shem,”* “We publicize the hypocrites [to prevent] the desecration of [God’s name].” However, they assume, it is used primarily when leaders do not want to impose the harsher kinds of humiliation such as excommunication.

**In the Spirit of the *Pitchei Teshuva***

While we might be able to defend each of these mechanism from the perspective of the *Chafetz Chayim’s* model of *lashon ha-ra le-to’elet,* I think the prevalence of public shaming as a tool in the Jewish community points to an implicit acceptance of either the expanded model of *to’elet* we alluded to in our previous *shiur*, or, more likely, the alternate model we presented from the *Pitchei Teshuva.* If one conceptualizes *lashon ha-ra* and the prohibitions against embarrassing people as *halakhot* and values that must be weighed against obligations such as rebuking sinners and protecting the innocent, one is more likely to utilize the above methods. From this perspective, some of the modern movements of using social-media shaming to solve social ills may find precedent in these methods.

Of course, that does not mean at all that one has free licence to humiliate someone on the assumption that shaming is always the best course of action. Rashi and Rosenberg write in the epilogue to their article:

Throughout history, shaming has been considered a legitimate tool to publicly criticize someone who deserves it. To strike a balance between slander and damage to a person’s good name and the need to publicly rebuke those who are guilty, the public has followed the religious leadership that has defined the limits of action.

**Challenges Remaining to be Addressed**

Rashi and Rosenberg’s epilogue notes one of the unique challenges that Poskim face when applying these principles in the age of social media. Namely, while the above methods were used by rabbinical courts, or at least rabbinic authorities, social-media shaming is in the hands of the laity. Even when the court sanctions this activity, controlling its extent is difficult.

Furthermore, as we will discuss, while in traditional cases, the court could end the excommunication when the person listened to the court, it is very hard to erase records of shaming carried out through any form of mass or social media, making it more dangerous to use these methods.

Finally, as Rav Zylberman notes, the fact that the shamed person may not be able to escape from his humiliation may affect the way Halakha views the legitimacy of such methods.

These and other points will be discussed next week when we explore the specific arguments presented in Israel after a rabbinic court officially endorsed the use of social-media shaming to pressure a husband into granting his wife a *get.*

1. <http://www.timesofisrael.com/new-technology-may-be-key-to-set-chained-women-free/?fb_comment_id=237114606451224_774713>. [↑](#footnote-ref-1)
2. <https://www.jewishlinknj.com/index.php?option=com_content&view=article&id=9230:communal-pressure-in-the-get-process-harchakot-drabbenu-tam&catid=156:features&Itemid=585>. [↑](#footnote-ref-2)
3. See John Syrtash, “Celebrating the Success of Canada's ‘Get’ Legislation and its Possible Impact on Israel,”paper delivered at the Conference on Resolving Get Refusal in Civil Laws and the Corresponding Halachic Approaches (Bar Ilan University, September 13, 2005). [↑](#footnote-ref-3)