

*Let Them Talk: The Mitzvah to Speak Lashon Hara*

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JSafe: The Jewish Institute Supporting an Abuse Free Environment

[www.JSafe.org](http://www.JSafe.org)

January 19, 2006

The prohibition of *Lashon Hara* (slander, gossip, tale-bearing) is often used as a tool to silence abuse victims and their advocates from speaking out against abusers. “You are not allowed to say negative things,” they are told. “There’s no proof!” “There are no witnesses.” “You can’t make this public.” “Keep the secret! Remain silent!” And so women, girls, boys, and men are silenced and are often unable to get the help that they need or appeal for the support that they deserve. By invoking *lashon hara* improperly, the community to which they turn not only revictimizes them, but enables their abusers to continue abusing them and, potentially, others as well.

These attitudes are articulated by many: rabbis, friends, neighbors. They find expression in many places, including the following rabbinic legal responsum. The rabbi is asked whether one should report to the legal authorities a father who one suspects of sexually molesting his daughter or a teacher who one suspects of sexually molesting his student. In response, he warns that, unless there are two valid witnesses who actually saw the assault, it is forbidden for anyone to speak about it at all, even the victim. He forbids others who may have learned of the molestation through hearsay or circumstantial evidence from saying anything, categorizing their comments as *motzi shem ra*—slander, distortions, and lies. In his opinion, the daughter’s disclosure is unacceptable: she is a minor, a female and a relative. The mother’s testimony is unacceptable: she is a relative and a female. The doctor’s opinion is unacceptable; based on his examination of the child, he can only testify that she had been abused, not who abused her. Furthermore, the rabbi asserts, there is a *hazakah* (a legal presumption of human behavior) that a father does not molest his daughter, and, unless proven otherwise, this presumption overrides any concerns that may be raised. There being no acceptable or legally obtained evidence to support the accusation, any mention of it at all is prohibited.<sup>1</sup>

This responsum is unacceptable. Is it really prohibited for victims of abuse—whether child or adult, woman or man—to speak of the mistreatment and exploitation that they suffered? Is this really what Jewish law expects when it comes to protecting individual innocents and society as a whole from real and potential perpetrators? What are the laws of *lashon hara*? How do they apply to cases of domestic violence and child abuse? What do the sources really say? May a survivor speak out? May others repeat the allegations they heard?

### **The Prohibition**

“You shall not go up and down as a slanderer among your people; nor you shall stand by the blood of your friend; I am the Lord” (Lev. 19:16) is the basis of the biblical prohibitions proscribing *lashon hara* (talk that is damaging to another’s reputation and is

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<sup>1</sup> *Teshuvot Mishneh Halakhot*, XIV, no. 58.

true), *motzi shem ra* (talk that is damaging and is false) and *rekhilut* (tale bearing). These prohibitions include not only speaking derogatorily, but listening to deprecating speech as well. The great works of *Shemirat HaLashon* and *Hafetz Hayyim*, authored by the revered sage Rabbi Yisrael Meir ha-Kohen Kagan (1838-1933) are the essential works in this area, and no discussion of *lashon hara* can begin or proceed without them. (For the purpose of this article, unless otherwise noted, the term *lashon hara* will be used to refer to all derogatory speech, including *motzi shem ra* and *rekhilut* as well.)

While these prohibitions are serious and consequential, they are not absolute. There are times when one *must* share disparaging and critical information with others. There is a duty, for example, to testify in a court of law and to reveal information about another's illicit behavior.<sup>2</sup>

What situations require disclosure? What are the conditions under which disclosure may take place?

At first glance, unless the speech fulfills all of the conditions necessary to be accepted as legal testimony, i.e., the statement of two valid witnesses, male, religiously observant and unrelated to each other or the subject of their testimony, any disclosure should be prohibited. The Talmud, *Pesahim* 113b, relates that one of three persons that “the Holy One, blessed be He, hates” is “one who sees something indecent in his neighbor and testifies against him as the sole witness.” Because a Jewish court requires two witnesses, the testimony of a single witness is invalid and ineffective. There being no possible appropriate and legal consequence to this revelation, the witness has succeeded in doing nothing more than defaming a person's character. The Talmud relates:

As it once happened that Tuviah sinned and Zigud alone came and testified against him before R. Papa, [whereupon] [R. Papa] had Zigud punished. ‘Tuviah sinned and Zigud is punished!’ exclaimed [Zigud], ‘Even so,’ said [R. Papa] to him, ‘for it is written, “One witness shall not rise up against a man, (Deut. 19:15)” whereas you have testified against him alone: you merely bring him into ill repute.’ R. Samuel son of R. Isaac said in Rav's name: Yet he (the single witness) may hate [the sinner].

The prohibition against *lashon hara* does not only pertain when one's intentions are negative, i.e., the discrediting of another's reputation—to shame him or degrade him; they apply even when one's intentions are neutral or one's statements are merely in jest.<sup>3</sup>

### **The Obligation to Speak**

There are times when a person is obligated to speak out, even when he is the sole informant and even though the information is disparaging. Specifically, if a person's intent in sharing the negative information is for a *to'etet*, a positive, constructive, and

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<sup>2</sup> See Lev. 5:1.

<sup>3</sup> *Hil. Lashon Hara, kelal 4, Be'er Mayyim Hayyim*, no. 1 citing *Hil. De'ot* 7:5.

beneficial purpose, the prohibition against *lashon hara* does not apply.<sup>4</sup> *Motzi shem ra*, spouting lies and spreading disinformation, is always prohibited. And if the *lashon hara* serves as a warning against the possibility of future harm, such communication is not only permissible, but, under certain conditions it is compulsory. This applies even when one is the sole source of the information; the prohibition represented by Zigud's testimony in *Pesahim* 113b applies only in a court setting.<sup>5</sup> Although Hafetz Hayyim disagrees with this distinction and maintains that solitary testimony is prohibited both in a court and outside of a court,<sup>6</sup> even he agrees that where there is a *to'elet*, such speech is permitted.

Rabbi Eliyahu ben Hayyim (Ra'anah) even allows seeking derogatory information about someone and permits the soliciting of witnesses of a possible transgression. Although Rosh<sup>7</sup> bans such a public appeal unless two witnesses have already come forward against the alleged sinner—after all, “fishing” publicly for evidence against someone is itself damaging to that person's reputation—Ra'anah explains that that applies only when there are no reasonable suspicions against the individual at all. But, when one is certain that a sin has been committed and that there exist witnesses who have not come forward, he may go public with an appeal for their testimony and a court may even threaten those reluctant witnesses with contempt if they do not appear.<sup>8</sup>

Commentators maintain that the distinction between derogatory speech that is solely detrimental and derogatory speech that serves a helpful purpose derives from the biblical verse itself. They point to the juxtaposition of the two clauses of the verse, “You shall not go up and down as a slanderer among your people” and “nor you shall stand by the blood of your neighbor” (Lev. 19:16) and note that although there is a prohibition of defamation (clause 1), that prohibition is overridden by the obligation to save another or to testify in his behalf (clause 2).<sup>9</sup> Thus, the verse should be read, “You shall not go up and down as a slanderer among your people; but, nevertheless, you shall not stand by the blood of your neighbor (and you must speak out in order to prevent harm).” This obligation includes protection not only from physical harm, but protection from monetary and spiritual harm as well.<sup>10</sup>

Rambam codifies this reading as a matter of law:

Anyone who can save another and does not save him violates, “You shall not stand on the blood of your neighbor.” Therefore, one who sees his

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<sup>4</sup> See *Hil. Lashon Hara*, kelal 10 and *Hil. Rekhilut*, kelal 9.

<sup>5</sup> *Semag*, prohibition 213; *Sefer Hareidim* 24:30.

<sup>6</sup> *Be'er Mayyim Hayyim*, *Hil. Lashon Hara*, kelal 3:1.

<sup>7</sup> *Teshuvot haRosh* 7:7.

<sup>8</sup> *Teshuvot Ra'anah* I:111 quoting *Teshuvot haRashba* II:229.

<sup>9</sup> See *Ha'amek Davar*; *Ha'amek She'eilah*, *Parashat Vayikra* 68:2; *Or haHayyim*; *Meshekh Hokhmah*.

<sup>10</sup> Rashbam to *Baba Batra* 39b, s.v., *u-man de'amar*; *Sefer HaMitzvot*, neg., 297; *Hinukh*, *mitzvah* 237; *Teshuvot Mishkenot Ya'akov*, *Hoshen Mishpat* 12.

friend drowning in the sea or being attacked by robbers and is able to save him; or if he hears that others are conspiring to harm him and have set a trap, and he does not reveal this information to him, he violates that which is said in the Torah, “You shall not stand on the blood of your neighbor.”<sup>11</sup>

*To'elet* is a factor in permitting not only otherwise forbidden speech, but it is a consideration in all interpersonal (*bein adam le-haveiro*) prohibitions as well. R. Elhanan Wasserman writes:

All interpersonal injunctions are prohibited only [when the act is performed in a] destructive and deleterious manner, for no positive benefit. For example, the prohibition of “Do not hate your brother” prohibits only *sinat hinam* (wanton hatred), i.e., when he did not see him commit an illicit act. But if he witnessed an illicit act, it is permissible to hate him... So too regarding the prohibition of physical assault; Rambam wrote that this applies only if he strikes another in an aggressive manner... So too regarding the prohibition “You shall not go as a tale bearer”—one is permitted to speak *lashon hara* concerning those involved in disputes in order to quell the argument... Thus, all of this indicates that all these prohibitions are permitted for the purpose of *to'elet*.<sup>12</sup>

Nevertheless, there is widespread misunderstanding of the laws of *lashon hara* and many invoke this prohibition as an excuse for not sharing information, even when that information would be beneficial to another person. R. Yisrael Isser, author of *Pit'hei Teshuvah*, cautions against being overly righteous by being reluctant to share helpful, but derogatory information:

The *Magen Avraham* and the *mussar* books (ethical treatises) write at length concerning the prohibition of *lashon hara*. I have found it appropriate to write about the other side. There is a sin even greater than [speaking *lashon hara*], and one which is more widespread, i.e., the sin of refraining from informing another about a situation in which one can save him from being victimized—all out of concern for *lashon hara*... One who behaves in this manner, his sin is too great to bear and he violates, “You shall not stand by the blood of your brother.”<sup>13</sup>

R. Yisrael Isser emphasizes that this obligation to speak out applies not only when a person is in physical danger, but also when he is subject to potential financial or personal harm. In addition, R. Yisrael Isser maintains that while only the speaker knows

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<sup>11</sup> *Hil. Rotzei'ah* 1:14. See also *Tur* and *Shulhan Arukh, Hoshen Mishpat* 426:1.

<sup>12</sup> *Kovetz He'arot, Yevamot* no. 70. In applying this ruling, R. Ovadia Yosef, *Teshuvot Yehaveh Da'at*, IV, no. 7, obligates a physician to report to the Department of Motor Vehicles a patient afflicted with epilepsy in order to have that patient's license suspended. He rules that this obligation to prevent harm not only overrides the prohibition of speaking negatively about another, but even supersedes the doctor-patient privilege of confidentiality.

<sup>13</sup> *Orah Hayyim*, no. 156

whether his motives for speaking out are pure or are tainted, “if his intentions are good, i.e, for the purpose of warning his fellow and saving him from ‘the snare of the fowler,’ it is a great *mitzvah* [to share information] and a blessing will come upon him.”<sup>14</sup>

### **The Listener**

Although the Torah also prohibits listening to *lashon hara*, one may not lightly dismiss or ignore derogatory information that he hears about another person. While he should not accept unquestioningly a negative report as definitive, he should, nevertheless, consider that it might be true and proceed suspiciously and cautiously (*derekh hashash be'alma*), in light of the information he received.<sup>15</sup> Gedaliah ben Ahikam, the assassinated governor of the Jews following the destruction of the First Temple, did not pay attention to such a report and, as a result, he was held liable for the deaths of eighty men.<sup>16</sup> The Talmud explains that “owing to the fact that [Gedaliah] should have taken note of the advice of Yohanan the son of Kareah (who told him that Shimon b. Netaniah wanted to kill him) and did not do so, Scripture regards him as though [Gedaliah himself] had killed them himself.”<sup>17</sup>

### **The Abused: Obligatory Lashon Hara**

Often, a person who has been the victim of abuse or violence wants to share this information with others. Sometimes it is with a friend or family member. Sometimes it is with a police officer<sup>18</sup> or therapist or lawyer or advocate. Sometimes it is for the purpose of seeking legal or psychological help, sometimes it may be to warn potential victims of harm or danger, and sometimes it may be just to unburden herself.<sup>19</sup> At times there may be a productive outcome. At times there may seem to be no real effect at all.

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<sup>14</sup> See also *Hafetz Hayyim, Issurei Rekhilut, kelal 9*.

<sup>15</sup> *Nidah 61a*,

Said Rava, “As to slander, though one should not believe it, one should nevertheless take note of it.” There were certain Galileans who were rumored to have killed a person. They came to R. Tarfon and said to him, “Will the Master hide us?” He replied, “How should I act? Should I not hide you, [the avengers of the blood] would see you [and kill you]. Should I hide you, I would be acting contrary to the statement of the Rabbis, ‘As to slander, though one should not believe it, one should take note of it.’ Go you and hide yourselves.”

See *Hafetz Hayyim, Hil. Issurei Lashon Hara 6:10*.

<sup>16</sup> See Jeremiah 39.

<sup>17</sup> *Nidah 61a*.

<sup>18</sup> Issues of *mesirah* and *arka'ot* are beyond the scope of this paper. Nevertheless, there is ample precedent in Jewish law to allow a victim to report her abuser to civil authorities.

<sup>19</sup> Because the overwhelming majority of subjects of violence and abuse are female, we will refer to victims in the feminine. It must be noted, however, that men and boys are also victims of domestic violence and child abuse as well, and that their ability to deal with abuse is much harder and more complicated for a variety of sociological reasons.

*Minhat Hinukh* appears to prohibit such complaints. He writes that the victim of an interpersonal (*bein adam le-haveiro*) transgression may not publicly embarrass his offender. In fact, he is obligated to forgive him!<sup>20</sup> This ruling contradicts accepted Jewish law which dictates that forgiveness must be earned by reparation, repentance, and conciliation. The righting of wrongs and the exacting of justice are prerequisites for achieving forgiveness.<sup>21</sup> Thus, Rema rules explicitly that an injured party may withhold forgiveness if he does so with the intention of benefiting the offender.<sup>22</sup> Such benefit may include enabling the aggressor to achieve a state of humility or helping him to see his evil ways.<sup>23</sup> Other commentators add that one may even withhold forgiveness for one's own personal benefit as well.<sup>24</sup>

At first glance it appears that Hafetz Hayyim also forbids a victim to speak out, One should be exceedingly careful not to permit himself to tell others how he had a certain interaction others who stole from him or cheated him in a certain way, or who cursed him or pained him or embarrassed him. Even if he knows that he is not lying [about the events], his intention in telling serves no positive purpose in that it does not cause the perpetrators to distance themselves from their evil ways. His sole intention is to degrade them in the eyes of others by publicizing that they encroached on his property or his dignity.<sup>25</sup>

However, even Hafetz Hayyim not only permits a victim to speak out, but at times he *requires* a victim to speak, specifically, if her aim in speaking out is not to exact revenge but is to achieve a positive objective (*to'elet*). Examples of positive intent include:

- protecting others from harm;<sup>26</sup>
- preventing others from learning inappropriate behavior;<sup>27</sup>
- shaming the subject into repenting;<sup>28</sup>
- clearing one's own reputation;<sup>29</sup>

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<sup>20</sup> *Minhat Hinukh, mitzvah* 240.

<sup>21</sup> Mishnah, *Yoma* 85b,

For transgressions as between people and God the Day of Atonement procures atonement, but for transgressions as between one person and another, the Day of Atonement does not procure any atonement, until [the perpetrator] has appeased the victim.

<sup>22</sup> *Shulhan Arukh, Orah Hayyim* 606:1.

<sup>23</sup> *Magen Avraham, Taz, Mishneh Brurah*.

<sup>24</sup> *Yoma* 87a. See my "Forgiving the Unforgivable? Jewish Insights into Repentance and Forgiveness" in "Forgiveness and Abuse: Jewish and Christian Reflections," Marie Fortune, Joretta L. Marshall, eds. (New York: Haworth Pastoral Press, 2002), pp. 7-24.

<sup>25</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal* 10: 11.

<sup>26</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal* 10:4.

<sup>27</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal* 4:10.

<sup>28</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal* 10:31.

<sup>29</sup> See *Berakhot* 5b, where Rav Huna speaks *lashon hara* in order to clear his name:

- asking for advice;<sup>30</sup> and
- for one's own psychological benefit. Hafetz Hayyim locates this *to'elet* in the verse, "Anxiety in the heart of a man weighs him down; but a good word makes him glad" (Prov. 12:25), i.e., sharing burdens with others is therapeutic.<sup>31</sup>

Hafetz Hayyim lists seven qualifications which must be fulfilled when *lashon hara* is spoken for a *to'elet*. The following are those conditions with explanations as to how they relate to abuse victims:<sup>32</sup>

1. One has first hand knowledge of the problem and is not merely repeating hearsay, or he has verified the information. Certainly a victim has first hand knowledge of the abuse. How certain others must be before they repeat the allegations will be discussed later.
2. Careful consideration and judgment should be given to determine whether or not the act is actually a prohibited one. Every act of abuse is prohibited.<sup>33</sup>
3. One should first rebuke the transgressor in a private, calm, and appropriate manner in order to motivate him to change his ways. Only if one is

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Once, four hundred jars of wine belonging to R. Huna turned sour. Rav Yehudah, the brother of R. Sala the Pious, and the other scholars (some say: R. Adda b. Ahavah and the other scholars) went in to visit him and said to him: The master ought to examine his actions." (They considered this a punishment in response to some sin.) He said to them, "Am I suspect in your eyes?" They replied, "Is the Holy One, blessed be He, suspect of punishing without justice?" He said to them, "If somebody has heard of anything against me, let him speak out." They replied, "We have heard that the master does not give his tenant his [lawful share in the] vine twigs." He replied, "Does he leave me any? He steals them all!" They said to him: "That is exactly what the proverb says, 'If you steal from a thief you also have a taste of it!'" He said to them, "I pledge myself to give it to him [in the future]." Some report that thereupon the vinegar became wine again; others that the vinegar went up so high that it was sold for the same price as wine.

<sup>30</sup> Hafetz Hayyim, *Hil. Lashon Hara*, kelal 10:31.

<sup>31</sup> Ketubot 69a. Hafetz Hayyim, *Hil. Lashon Hara*, kelal 10:13.

<sup>32</sup> Hafetz Hayyim, *Hil. Lashon Hara*, kelal 10; see also Hafetz Hayyim, *Hil. Rekhilut*, kelal 9.

<sup>33</sup> The details of this statement are beyond the scope of this paper, and will be dealt with elsewhere. See, for example, *Sanhedrin* 56a:

Resh Lakish said: One who lifts his hand against his neighbor, even if he did not smite him, is called a wicked man as it is written, "And he said unto the wicked man, 'Why would you smite your fellow?'" (Ex. 2:13) "Why *did* you smite?" is not said, but 'Why *would* you smite,' showing that though he had not yet hit him, he was termed a wicked man. Ze'iri said in R. Hanina's name: He is called a sinner, for it is written, "But if not, I will take it by force;" (I Samuel 2:16)<sup>33</sup> and it is further written, "And the sin of the young men was very great before the Lord." (2:17)

unsuccessful in achieving his ends in a private manner may she then publicize the misdeed. Private confrontation may be difficult for a victim who cannot bring herself emotionally or psychologically to confront her abuser. It may also be physically dangerous for her to do so.<sup>34</sup>

4. One should not exaggerate.
5. One's intention should be for a *to'elet* (constructive purpose) and not for any personal gain or benefit. In addition, one should not be motivated by hatred for the subject of the report.
6. One should try to achieve the constructive result without speaking *lashon hara*, if possible.
7. One should not cause more harm to the subject than he would otherwise deserve by law.

### Condition Five: Motivation

The fifth condition, i.e., that one's intention is only for *to'elet* (positive, constructive and beneficial purpose) and be free of all personal animosity, is a difficult, if not impossible, condition to fulfill. One's intention is not always neat and unadulterated. When a person has been victimized by another—physically, emotionally, financially or sexually—feelings of anger and resentment, and even revenge and hatred, are normal. In responding to such personal violation, even if one speaks *lashon hara* for a *to'elet*, it is possible that her speech will be tinged with other feelings as well. May she still speak out?

Hafetz Hayyim rules that even if one's intent is for a *to'elet*, if it is tinged with any animosity, it is forbidden.<sup>35</sup> He bases this judgment on a decision recorded in *Shulhan Arukh, Hoshen Mishpat* 421:13 where we learn that one who sees a person being beaten is permitted to use physical force, if necessary, to strike the attacker. This is permitted for two reasons: 1) in order to help the victim and 2) in order to prevent the attacker from sinning (*la'afrishei mei-issura*), the striking of another being a sinful act. *Me'irat Einayim*, no. 28, (*Sema*) comments that this permission is not granted if the intervener is motivated out of hatred for the attacker. In such circumstances, he explains, the intervener's motivation is personal and is not for the purpose of performing the *mitzvah* of "Do not stand by the blood of your neighbor." Thus, the intervener himself would be guilty of sinfully raising his hand against another. *Turei Zahav (Taz)* disagrees. He maintains that motivation is irrelevant, pointing out that, in the end, a *mitzvah* was performed and the victim was helped. To *Taz*, improper motivation is not a disqualification.

At first glance, this difference of opinion applies to our question as well: *Sema* would disqualify any *lashon hara* that is tinged with personal bitterness; *Taz* would accept it as long as a *to'elet* was served. However, Hafetz Hayyim rejects this assertion and maintains that even according to the more permissive *Taz*, derogatory speech that is combined with personal bitterness is prohibited. According to Hafetz Hayyim, no

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<sup>34</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal* 10:8.

<sup>35</sup> *Be'er Mayyim Hayyim, Hil. Rekhilut, kelal* 9, no. 28, *hagah*"h.



*mitzvah*-outcome was achieved because the speech, in and of itself, was prohibited *lashon hara*. Tinged with hatred or animosity, none of the conditions that are necessary in order to permit derogatory reports (not to exaggerate, not to prejudge, not to exaggerate or affect disproportionate consequences) could be met.

However, it is possible to apply *Taz*'s position to *lashon hara* as well. Consider: One is permitted to strike another, even if motivated by hatred, because we are concerned with the end, not the means. Striking another in order to prevent him from sinning is a permissible activity; striking him out of hatred is a prohibited activity. According to *Taz*, the outcome of stopping a prohibited attack justifies even the sinful blows of the intercessor. Similarly, even if we presume that the lack of compliance with the conditions permitting derogatory speech makes the *lashon hara* prohibited, the beneficial outcome should permit the otherwise prohibited speech.

Although, in general, we do not permit the commission of a sin by one person in order to save another person from committing a different sin,<sup>36</sup> *pikuah nefesh*, saving someone's life and, according to *Taz*, protecting him from harm, permit such violation, with limited exceptions.

Some point to a parallel to this argument—permitting the commission of a sin in order to save another person—from the laws of Shabbat.<sup>37</sup>

The Talmud, *Menahot* 64a, discusses the case of a person who:

...had not heard that a child had fallen into the sea and he spread a net [on the Sabbath in order] to catch fish and he caught fish; he is guilty [violating the Sabbath]. If he spread the net to catch fish and he caught fish and also the child, Rabbah says, He is not liable; but Rava says, He is liable. 'Rabbah says, He is not liable' because we decide the matter by his actual deed. 'Rava says, He is liable' because we decide the matter by his intention.

The consensus of legal decisors follows the opinion of Rabbah which marginalizes intention and prioritizes outcome. Since, in this case, the fisherman succeeded in saving the child, he is exempt from liability for violating the Sabbath restrictions on trapping. So too, even in a case of animosity, the *to'elet* result should permit even an enemy to speak *lashon ha-ra*.

Furthermore, even though hatred can overshadow and distort one's judgment, as our Sages observed, "*sinah mekalkalet et ha-shurah* (hatred breaks all boundaries and compromises propriety)," nevertheless, people are able to overcome the biases and influences of personal feelings for the sake of a greater good. In fact, Jewish law accepts the testimony of an adversary against his enemy. The Mishnah, *Sanhedrin* 27b, records the following dispute:

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<sup>36</sup> *Shabbat* 4a.

<sup>37</sup> See Gershon Robinson, *Sefer Tokhahat Hayyim Be-inyan Lashon Hara Le-to'elet* (B'nei Brak, 5757), pp. 31-33.

A friend or an enemy [is ineligible to serve as a witness]. By “friend,” one’s groomsman is meant; by “enemy,” any person who, by reason of enmity, has not spoken to another for three days is meant. To this the Rabbis replied: Jews, as a rule, are not to be suspected on such grounds.

Despite the prohibition, “You shall not hate your brother in your heart” (Lev. 19:17) Jews are human; they still have enemies. What the Mishnah means is that, unless proven otherwise, Jews are not suspected of allowing their hatred to taint their testimony. Although all agree that an enemy may not serve as a judge, a task which requires one to make assessments based on a high level of unadulterated objectivity, all agree that an enemy is received as a witness.<sup>38</sup> *Netivot Mishpat* 33:1 explains that although a judge may be unable to bring himself to find in favor or to acquit an enemy, a witness merely reports what he heard or what he saw, and is not suspected of misrepresentation. One speaking *lashon hara* for a *to’elet* is not asked to pass judgment; he is most comparable to a witness who is sharing an experience he had or information to which he is privy.

Not all enemies are valid witnesses. A witness who has declared publicly his intention to harm the subject of his testimony is disqualified.<sup>39</sup> Maharshal posits that the testimony of an enemy who has not spoken to the other person for three days is acceptable; the testimony of a *sonai gamur*, an unmitigated enemy who is “like a pursuer (*rodef*) and one who seeks revenge” is not.<sup>40</sup> In fact, “whenever you might suspect that [the witness] is acting for his own personal benefit, the witness is invalidated.”<sup>41</sup>

However, others accept the testimony of all enemies. Maharit points to the acceptability of a husband’s testimony against a man who committed adultery with his wife.<sup>42</sup> He observes that despite the fact that there is no greater enemy than this—“For jealousy is the rage of a man; and he will not spare in the day of vengeance” (Proverbs 6:34)—the husband is a valid witness.<sup>43</sup>

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<sup>38</sup> *Hil. Eidut* 15:13; *Hoshen Mishpat* 33:1.

<sup>39</sup> *Pithei Teshuvah*, *Hoshen Mishpat* 33, no. 2 cites a number of sources including *Teshuvot Ha-Geonim*, *Shaarei Zedek*, *helek* 4, *sha’ar* 7, no. 42. See also *Teshuvot Tashbetz Katan*, no. 569.

<sup>40</sup> Maharshal, *Responsa* 33,

<sup>41</sup> See also *Hil. Eidut* 16:4. Maharshal’s argument disqualifying an enemy is based on the rhetorical comment of the Talmud, *Makkot* 6a, that seeks to find reasons to acquit an accused and prevent him from receiving the death penalty: “let the very presence of the murdered man himself [at the murder] save [the murderer from the death penalty]?” In other words, all who see a crime as it is being committed are considered witnesses. The presence of any invalid witness invalidates the entire group. Therefore, the presence of the victim, who is an invalid witness because he certainly hates his murderer, undermines the legitimate testimony required to put his murderer to death. See *Tosafot*, s.v. *ela mei-attah harog yazil*.

<sup>42</sup> *Teshuvot* Maharit, II, *Hoshen Mishpat* no. 80 based on *Sanhedrin* 10a.

<sup>43</sup> See also *Tumim*, no. 2.

Even though personal animosity may limit one's ability to fulfill the requirements necessary to speak *lashon hara* properly, nevertheless, those personal feelings neither disqualify nor exempt a person from speaking out when necessary. Hafetz Hayyim, ignoring his previous decision, emphasizes that concern over the negative impact of personal feelings on a statement do not exempt anyone from fulfilling the mandate of "Do not stand by the blood of your neighbor." The prerequisite conditions essential for permitting negative speech are there not to disqualify a person from speaking, but, rather, to require her to overcome personal feelings and act solely for the purpose of *to'elet*.<sup>44</sup>

There are many reasons why victims of abuse may want to speak out, and despite the objections of some, there are many justifications which enable them to do so.

### **Others: Obligatory Lashon Hara**

One who knows that a person is potentially dangerous or hears a derogatory report about him has an obligation to share that information with others if it will contribute to their protection. Rabbeinu Yonah writes:<sup>45</sup>

And know that in interpersonal matters like theft and robbery and physical harm and shame and verbal abuse, one may tell these matters to others; even a lone witness who observes these matters may inform, in order to help the victim and to seek truth... However, he should first rebuke the offender.

The warning, "Do not stand by the blood of your neighbor" (Lev. 19:16) that requires of a victim to save others from harm, obligates anyone who witnesses abuse, or who has personal knowledge of an abuser who may pose a threat, to warn others about him. Even one who has no independent knowledge of the abuse, and is only permitted to "suspect" its veracity, has an obligation to protect others from possible harm.<sup>46</sup>

Those who repeat the reports of abuse are bound by the same seven qualifications listed above:<sup>47</sup>

1. If one does not have first hand knowledge of the problem and is repeating hearsay, he must verify the information and know that it is true.
2. One should not immediately accept another's characterization of an act as prohibited. Careful consideration and judgment should be given to personally determine whether or not the act is a prohibited one.
3. One should first rebuke the transgressor, if possible, in a calm and appropriate manner in order to motivate him to change his ways. Only if one is unsuccessful, may he publicize the misbehavior.
4. One should not exaggerate.

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<sup>44</sup> *Be'er Mayyim Hayyim, Hafetz Hayyim, Hil. Issueri Rekhilut , kelal 9, no. 3.*

<sup>45</sup> *Sha'arei Teshuvah, sha'ar shelishi, no. 221.*

<sup>46</sup> *Be'er Mayyim Hayyim, Hil. Issurei Rekhilut kelal 9, no 9.*

<sup>47</sup> *Hafetz Hayyim, Hil. Lashon Hara, kelal 10; see also Hafetz Hayyim, Hil. Rekhilut, kelal 9.*

5. One's intention should be for a *to'ellet* and not for any personal gain or benefit. In addition, one should not be motivated by any latent hatred for the subject of the report.
6. One should try to achieve the constructive result without speaking *lashon hara*, if possible.
7. One should not cause more harm to the subject than he would otherwise deserve by law.

Yet another qualification must be met: when repeating the allegations, he should not give the impression that he has personal knowledge of the situation, but should introduce his comments with, "I heard it said about so and so..."<sup>48</sup>

### **Condition One: Verification**

How definitively must one be certain of the truth of an allegation in order to repeat it? Jewish law recognizes that those who hear allegations against abusers may not themselves be qualified as judges or investigators. Their abilities and opportunities to substantiate the accusations are limited. These limitations, however, do not exempt them from acting responsibly.

Certainly, extreme care must be taken. The consequences of accepting and acting on false allegations, violations of the biblical prohibitions of *lashon hara*, *halbanat penei havero ba-rabbim* (public humiliation) and *ona'at devarim* (verbal and emotional harassment),<sup>49</sup> can be devastating on many levels: they can destroy the reputation of the

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<sup>48</sup> *Hafetz Hayyim, Hil. Issurei Rekhilut, Tziyyurim* 3:11.

<sup>49</sup> See *Bava Mezi'a* 58b:

Our Rabbis taught: "You shall not wrong one another (Lev.25:17)," Scripture refers to verbal wrongs. You say [that this refers to] "verbal wrongs," but perhaps that is not so, and it refers to monetary wrongs? When it is said, "And if thou sell anything unto thy neighbor, or acquire anything from your neighbor [you shall not wrong one another] (Lev.25:14)," [that refers to] monetary wrongs. To what then does, "You shall not wrong one another" apply. To verbal wrongs. E.g., If a man is a penitent, one must not say to him, 'Remember your former deeds.' If he is the son of proselytes he must not be taunted with, 'Remember the deeds of your ancestors. If he is a proselyte and comes to study the Torah, one must not say to him, 'Shall the mouth that ate unclean and forbidden food, abominable and creeping things, come to study the Torah which was uttered by the mouth of God!' If he is visited by suffering, afflicted with disease, or has buried his children, one must not speak to him as his companions spoke to Job... If donkey drivers sought grain from a person, he must not say to them, 'Go to so and so who sells grain,' surely knowing that he has never sold any... R. Yohanan said on the authority of R. Shimon b. Yohai: Verbal wrong is more heinous than monetary wrong, because of [verbal wrong] it is written, "and you shall fear your God," but not of the [monetary wrong]. R. Eleazar said: The one affects his [the victim's] person, the other [only] his money. R. Samuel b. Nahmani said: For the former restoration is possible, but not for the latter.

falsely accused, causing significant personal, professional, economic, and spiritual harm to him and his family; they can compromise the trust and safety of a community through the fear that anyone's reputation can be easily damaged; and they undermine the values of fairness and justice. In fact, according to one Talmudic opinion, it was the acceptance of false and unsubstantiated reports that ultimately divided David's kingdom and led the Jewish people to idolatry and into exile.<sup>50</sup>

One who hears allegations that someone has abused another has an obligation to verify them—both in order to help the victim and in order to protect others from potential abuse. While it is appropriate, as well as emotionally and therapeutically beneficial, to the victim for supporters to believe her revelations without passing judgment on them or her and without doubting their truthfulness, a higher standard must be met if they are to repeat those allegations to others. To the best of their ability and without compromising the safety and integrity of the alleged victim, they should examine the claims and the circumstances surrounding them. As best they can, they must assess the credibility of the claim and investigate if the alleged victim has any malicious motivations to malign the alleged perpetrator. After all, the alleged abuser has the right to be protected from false accusations.

However, when an alleged perpetrator is potentially dangerous to the physical, economic or spiritual well-being of others, one need not meet the standards of a court of law in order to act. “Kosher” testimony is not required. In fact, there is a *takanat kadmonim* (ancient enactment) which allows a court to accept the testimony of otherwise disqualified witnesses in places and circumstances in which kosher witnesses are not regularly found, like places where men do not frequent, or to matters to which men generally do not pay attention. He states explicitly:

Even an individual woman or a relative or a child is believed concerning matters of striking (physical abuse) or shaming a scholar or other improper behavior, for it is not the practice to invite men to witness an event, nor is there time to do so (Maharik, *shoresh* 189; *Kol Bo*, no. 116). This applies when the alleger claims to be certain of her testimony (Maharik, *shoresh* 23).<sup>51</sup>

And a court may place someone in *niddui* (excommunicative ban) based solely on allegations brought by those who are normally unqualified to testify, i.e., women and children.<sup>52</sup>

Personal, first-hand knowledge is unnecessary in order to repeat allegations. Credible, persistent rumors and circumstantial evidence are sufficient in order to speak out against supposed abusers. The Talmud, *Megillah* 25b, records that it is permissible to shame publicly a person about whom there are rumors that he is an adulterer and refer to him as “*gimel shin*”; the two Hebrew letters are an acronym for *gala shaita* (adulterer,

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<sup>50</sup> *Shabbat* 56b.

<sup>51</sup> Rema, *Hoshen Mishpat* 35:14.

<sup>52</sup> Rema, *Yoreh De'ah* 334:43 quoting Maharik, *shoresh* 120.

madman).<sup>53</sup> A rumor that a certain disciple revealed a matter that had been declared a secret twenty-two years earlier was enough to ban him from entering the *Bet Midrash* (Study Hall).<sup>54</sup> Rumors of impropriety, even though they were not confirmed by legal testimony, were sufficient to enable a court to remove an agent acting on its behalf.<sup>55</sup> A reasonable presumption ('*amatla*) was enough to dismiss a community functionary, such as the administrator of the *Hevra Kaddisha*.<sup>56</sup> Even a court, usually constrained by a high standard of testimony which must be met before it passes judgment or metes out punishment, is authorized to administer lashes to a person who is the subject of persistent rumors of impropriety.<sup>57</sup> And a court may place someone in *niddui* (excommunicative ban) determined solely by '*omed ha-da'at* (deduction based on an assessment of the merits).<sup>58</sup>

*Devarim ha-nikkarim* (self-evident conditions) may also be sufficient. The Talmudic Sage Samuel asserts that King David saw *devarim ha-nikkarim* (self-evident conditions) concerning Mephiboshet and his activities which allowed David to punish him (II Samuel 19). Considering that when, after the suppression of the Absalom uprising, Mephiboshet appeared before the King "he had neither dressed his feet, nor trimmed his beard, nor washed his clothes" (19:24), David assumed that it was because Mephiboshet regretted David's return to Jerusalem. David also construed some of Mephiboshet's later remarks as confirming those suspicions.<sup>59</sup> Thus, according to Samuel, one may act on circumstantial evidence that gives strong and conclusive support to an allegation; it is not considered *lashon hara*.<sup>60</sup>

Even persistent rumors (*kala de-lo pasik*) alone may be proof enough. The Talmud applies this to the case of a rabbi, an individual who must be a moral exemplar for his community. When a rabbi's integrity is called into question by persistent rumors, he can no longer function in a rabbinic capacity. Thus, *Mo'ed Katan* 17a,

There was once a certain rabbi about whom rumors of impropriety were being circulated. Said Rav Yehudah, "How is one to act? To put the

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<sup>53</sup> Rashi s.v. *desani shomanei*.

<sup>54</sup> *Sanhedrin* 31a.

<sup>55</sup> *Teshuvot Ritva*, no. 206 quoted by *Bet Yosef, Hosen Mishpat* 290.

<sup>56</sup> *Teshuvot Ramatz, Orah Hayyim* no. 15 quoted in *Piskei Din Rabbaniyim, helek 5*, p. 27.

<sup>57</sup> *Kiddushin* 81a; *Hil. Sanhedrin* 24:5. Ritva to *Kiddushin* 81a,

A person whose reputation is bad concerning [accused of] inappropriate sexual activity and the like, and there is circumstantial evidence (*raglayim la-davar*) or persistent rumors (*kola de-lo pasik*), is lashed with lashes of rebellion because he violated that which is written, concerning the sons of Eli, "No, my sons; it is not a good report what I hear" (I Samuel 2:24).

<sup>58</sup> *Rema, Yoreh De'ah* 334:43 quoting Maharik, *shoresh* 120.

<sup>59</sup> See Rashi, s.v., *devarim ha-nikarim haza beih*. See *Tosafot Yesheinim* to *Yoma* 22b and *Sefat Emet* to *Shabbat* 56a for a different explanation.

<sup>60</sup> *Shabbat* 56a-b; *Hafetz Hayyim, Hil. Lashon Hara, kelal 7:10-11; Shulhan Arukh ha-Rav, Orah Hayyim* 156:10.

*shammeta* (excommunicative ban) on him [we cannot], as the Rabbis have need of him [as an able teacher]. Not to put the *shammeta* on him [we cannot tolerate] as the Name of Heaven is being profaned.” Said he to Rabbah b. Bar Hana, “Have you heard a teaching on that point?” He replied, “Thus said R. Yohanan: What means the text, ‘For the priest’s lips should keep knowledge and they should seek the law at his mouth; for he is an angel of the Lord of Hosts (Malakhi 2:7)’? [It means, that] if a rabbi is like an angel of the Lord of Hosts, they should seek the law at his mouth; but if not, they should not seek the law at his mouth.” [Thereupon] Rav Yehudah pronounced the *shammeta* on him.<sup>61</sup>

Even if a certain individual performs invaluable service for the community and is deemed “indispensable” by some, he may not continue in his position if his character or behavior is not above reproach. And only “if a rabbi is like an angel of the Lord of Hosts, should they seek the law at his mouth” because the teaching of Torah is more than just an intellectual experience, the passing on of information and insights into the text. Torah is also a spiritual and moral encounter. No matter how brilliant and insightful, if the rabbi is not a moral exemplar and spiritual role model, his Torah is deficient and one should not learn from him.<sup>62</sup>

However, *Shulhan Arukh, Orach Hayyim* 53:25 rules, “A (*hazzan*) is not removed from his position based on rumors alone... But, if witnesses come [to testify] against him in this matter, or in similar matters, [then you may] remove him.” Testimony, and not rumors, is required to remove a religious functionary. But, this statement is not absolute; many read this ruling very narrowly and do ascribe significance and consequence to rumors. They narrow *Shulhan Arukh’s* restrictive position to a situation in which the rumors against the *hazzan* did not originate with reliable sources and in which, despite

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<sup>61</sup> See *Yoreh De’ah* 246:8.

<sup>62</sup> See, however, *Hagigah* 15b:

But how did R. Meir learn Torah at the mouth of Aher (even after his teacher, R. Elisha b. Avuya, became an apostate)? ...Resh Lakish answered: “R. Meir found a verse and expounded it [as follows]: ‘Incline your ear, and hear the words of the wise, and apply your heart unto my knowledge (Prov. 22:17).’ It does not say, ‘unto their knowledge,’ but ‘unto my knowledge.’ (Thus R. Meir could learn knowledge from Aher, provided he did not imitate his deeds.)” R. Hanina said, “[He decided it] from here, ‘Hearken, O daughter, and consider, and incline your ear; forget also your own people, and thy father’s house, etc.’ (Ps. 45:11, i.e., listen to the words of the wise, but forget their actions, if they are wicked.)” The verses (the one just quoted and the verse in Malakhi 2:7) contradict one another! There is no contradiction: in the one case Scripture refers to an adult (who can discriminate and avoid the teacher’s wrongdoing; thus, the last two verses permit him to learn even from a heretic); in the other to a child. When R. Dimi came [to Babylonia] he said: “In the West (Israel) they say: “R. Meir ate the date and threw the kernel away.”

the rumors, no one calls for his dismissal.<sup>63</sup> However, if the rumors are persistent and appear to be reliable, especially if members of the community call for his dismissal, a *hazzan* should be removed from his position.

The credibility afforded to a rumor is based on the premise that its very existence indicates that the person who is the subject of that rumor must necessarily be guilty, to one degree or another, of the misconduct of which he is accused:

A person does not incur suspicion unless he has done the thing [suspected]; and if he has not done it wholly, he has done it partly; and if he has not done it partly, he has a mind to do it; and if he has not had a mind to do it, he has seen others doing it and enjoyed [the sight of it].<sup>64</sup>

Now, experience teaches us that not every rumor is true and not every subject of every rumor, even if it is pervasive, is always guilty. The Talmud points to the claim against Moses—he was accused of adultery—which was clearly a false accusation promulgated by those who were jealous of him and his position. The Talmud therefore limits the presumption that “where there’s smoke there’s fire” to situations in which those who started the rumors are not enemies of the subject and have no personal agenda to unjustly disparage him.<sup>65</sup>

### **What is a *Kala de-lo Pasik*, Persistent Rumor?**

What is the definition of a persistent rumor which may be acted upon? The Talmud states that these are rumors that continue for more than a day and a half without interruption, assuming that the rumors were not initiated by enemies of the subject. Furthermore, if people are cowed into silence through fear and intimidation, intermittent rumors are also considered *kola de-lo pasik*.<sup>66</sup>

Hafetz Hayyim reads these sources narrowly, significantly limiting the license to act upon recurring rumors. He rules that permission to act on rumors is granted only when there is a presumed certainty that the rumors are factual and when the responder is motivated by both a need to prevent the desecration of God’s Name and to protect others from harm. Furthermore, he explains that if unrelenting rumors are to permit *lashon hara*, they must be about a number of sins that the subject commits, not just one, even if it is recurring. And, he must be violating those sins presently, not just in the past.<sup>67</sup> Further, he cites *Shulhan Arukh, Even ha-Ezer* 178:20, which discredits the claim of a

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<sup>63</sup> *Mishneh Berurah*, no. 78, quoting *Yam Shel Shelomo, Hullin*, no. 52; *Bi’ur Halakhah* s.v. *im ba’u alav eidim* quoting *Bi’ur haGr”a* who cites *Gittin* 89a and *Ketubot* 36b and *Teshuvot Hatam Sofer*, no. 11; *Hafetz Hayyim, Issurei Rekhilut, he’arot ve-hashmatot, kelal 7* quoting *Magen Avraham* 53:7, *Mahzitz haShekel, Pri Megadim*, no. 29.

<sup>64</sup> *Mo’ed Katan* 18b.

<sup>65</sup> *Mo’ed Katan* 18b.

<sup>66</sup> *Mo’ed Katan* 18b.

<sup>67</sup> *Be’er Mayyim Hayyim, Hil. Lashon Hara, kelal 7*, no. 3. Note that Rashi describes the disparaging reports as pertaining to events that are presently occurring.



married woman who asserts that she is being sexually harassed by a certain man, an accusation which he denies.

Nonetheless, even *Shulhan Arukh* agrees that an unsubstantiated accusation is ineffective, but only with regard to punishing the would-be abuser for unacceptable behavior. However, where an accusation leads to concerns about potential future victimization, the court does have the obligation, and the authority, to protect the woman from the possibility of abuse. Based solely on her say-so, and despite his refutation, the court can issue what is currently known as an “order of protection” by decreeing that he cannot speak with her or live near her. In addition, if in the court’s estimation the man is *muchzak* (i.e., they have a strong and compelling presumption of the man’s character and behavior) as suspect in matters of sexual impropriety, they can chastise him and threaten him that if he continues this immoral behavior they will banish him from the community. Hafetz Hayyim notes that the certainty of “*muhzak*” is stronger and more definitive than persistent rumors.

Another ruling introduces further restrictions on the license to act on persistent rumors. Not only must we take note of the recurrence of the rumor, its source, the number of transgressions perpetrated and the ongoing nature and currency of the violations, but permission to publicize disparaging rumors also depends on the nature of the violations suspected. *Shulhan Arukh, Yoreh De’ah* 334:42 rules that unless a sage or a scholar commits a sin that is as egregious as that of Jeroboam ben Navat, who erected golden calves in order to maintain the independence of his kingdom,<sup>68</sup> any admonishment or punishment must be private. This discretion is not meant to serve as a “cover up,” but is, rather, to protect the dignity of the rabbinate and the Torah it represents. If a rabbi’s transgressions are private in nature and have not impacted on the safety or well-being of another, such discretion serves a greater good. The reputation of the rabbinate and the dignity of Torah are maintained, protected from the misdeeds of one individual. If, however, the rabbi’s sins are more egregious and there are rumors that he is involved with heretical works or that he “drinks to the accompaniment of musical instruments,” i.e., he engages in licentious behavior,<sup>69</sup> or if his colleagues are embarrassed by his behavior and he thereby desecrates God’s Name, he should be publicly excommunicated. In fact, “Wherever there is desecration of God’s Name, honor is not extended, even to a rabbi.”<sup>70</sup>

### **Repeating Public Information**

Rabbah son of R. Huna said that repeating information that is already known by three people is not prohibited as *lashon hara*. This is because “your friend has a friend, and your friend's friend has a friend.”<sup>71</sup> In other words, when three people know something, we assume that everyone knows it; repeating it does not add greater negative impact on the subject’s reputation. Rambam codifies this in *De’ot* 7:5, stipulating that

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<sup>68</sup> See I Kings 22:26.

<sup>69</sup> See *Sotah* 48a.

<sup>70</sup> *Berakhot* 19b.

<sup>71</sup> *Arakhin* 16a.

the speaker should not intend, by its publicity, to spread the word further than it is already. Hafetz Hayyim, however, reads this as a narrower, less encompassing leniency.<sup>72</sup> Adopting the position of *Tosafot*,<sup>73</sup> Hafetz Hayyim maintains that only a statement that can be interpreted in two ways, both positively and negatively, may be repeated. *Tosafot* assumed that if the original speaker was willing to allow the subject of his comment to learn about what he said, he must have intended his statement to be understood in a positive light. Repeating clearly negative information is prohibited, even if others know about it. Further, Hafetz Hayyim adds that the information known by others may be shared:

- only if it incidentally arises in a conversation,
- only if the repeater heard it directly as part of the original group of three,
- only if the statement was not heard originally by people who are not circumspect about repeating *lashon hara*—because then the “friend has a friend” exemption does not apply,
- only to those who will not immediately accept the aspersion as truthful, and
- only locally and not in other places, because the network of gossips is local. (This last restriction may be moot today. Modern means of communication like the telephone and internet widen the circle and influence of gossips.)

He suggests that any leniency in this matter has been rejected by the decisors of Jewish law:

After all is said and done, behold, my brother, how carefully a person must distance himself from this leniency, which has practically no place in reality. And further, after adding up all of the details, investigation is required to determine whether the law even follows this opinion.<sup>74</sup>

Accordingly, just because others are talking about it, one does not have license to repeat it—that is, unless, there are other reasons, like *to'elet*, as has been discussed above.

### **Lashon Hara Permitted Regarding Those Who Are Not “Your People”**

An abuser may not be protected by the laws of *lashon hara* altogether. “You shall not go up and down as a slanderer among your people; nor you shall stand by the blood of your friend; I am the Lord” (Lev. 19:16). Jews are enjoined from speaking *lashon hara* about “your people.” Those who are not considered “your people” are not protected by this injunction, and none of the qualifications and conditions discussed above applies.

Who is “your people” and who is not? Who is “in” and who is “out” of the community? Here, as in other interpersonal and communal obligations, only those who

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<sup>72</sup> Hafetz Hayyim, *Hil. Lashon Hara*, *kelal 2:2*.

<sup>73</sup> *Tosafot*, *Arakhin 16a*, s.v. *kol milta de-itamra*.

<sup>74</sup> Hafetz Hayyim, *Hil. Lashon Hara*, *kelal 2:10*.

conduct themselves in ethical and socially responsible ways are considered part of the community. The Talmud, quoting the verse, “You shall not curse a prince among your people” (Exodus 22:27), extends the protection of the verse to only a leader who “acts like your people.”<sup>75</sup> Those who engage in antisocial or heretical behavior have written themselves out of the community and have no claim on its protection and should not expect its privileges as expressed in numerous interpersonal obligations. Thus, a heretic or morally corrupt human being who has removed himself from the spiritual or social community has no claim on communal charity or aid and is not protected against such violations as *lashon hara*. In fact, it is a *mitzvah* (obligation) to speak out against such a person. Thus, Hafetz Hayyim writes, concerning warning potential marriage partners about the inappropriateness of a particular match:

If a person knows that the [potential] father-in-law’s household is morally corrupt (in matters of indecent sexual *peritzut*), he must disclose that information [to the prospective groom]. ([And in the case of the groom,] if he knows that the groom holds heretical ideals, it is certainly a *mitzvah* to reveal it [to the potential father-in-law]), **and there is no need [to fulfill] any of the conditions stipulated above.**<sup>76</sup> Even if he has no personal knowledge [of the vice], [knowing about it only by] hearing it from others, he must divulge it, being careful that [the formulation of his statement] does not imply that he has personal knowledge. He should simply state, “I have heard thus, and even though at present one should not absolutely believe it, nevertheless one must be concerned about it and investigate [the allegations].”<sup>77</sup>

Elsewhere, Hafetz Hayyim explains that even if the perpetrator is aware of his own wrongdoing—he specifically mentions engaging in forbidden sexual relations and eating non-kosher food—and his transgression is widely known by others, if he is an otherwise decent individual, he must be judged favorably, rebuked sensitively and privately, and presumed to have repented.<sup>78</sup> If the transgressor rejects this rebuke, the one aware of the transgression must inform communal authorities who must then rebuke him privately as well. In these cases, the sinner is still considered “one of your people.”<sup>79</sup> However, if the sinner is unrepentant and is unremitting in his activities, deliberately and continuously violating the same transgression, it is permissible to speak out against him publicly. Further, although in general we are obliged to judge everyone sympathetically, giving them the benefit of the doubt, this person is to be judged critically and harshly. His character and history necessitate no less. Hafetz Hayyim adds:

And thus said our Sages, “A person shall not torment his comrade” (Lev. 25:17), [refers] to your comrade who shares Torah and observance—he

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<sup>75</sup> See, for example, *Yevamot* 22b and *Bava Kama* 92b.

<sup>76</sup> See, however, *Hafetz Hayyim, Hil. Issurei Lashon Hara* 8:5-6. However, due to the extreme consequences and influences of such behavior, Hafetz Hayyim modified his position and allows for immediate reaction even without absolute verification.

<sup>77</sup> *Hafetz Hayyim, Hil. Issurei Rekhilut, Tziyyurim* 3:11.

<sup>78</sup> *Hafetz Hayyim, Hil. Issurei Lashon Hara, kelal* 4:4.

<sup>79</sup> *Hafetz Hayyim, Hil. Issurei Lashon Hara, kelal* 4:5.

should not be verbally harassed. But about one who does not obey the Word of God, it is permitted to disgrace him because of his behavior and to expose his abominations and to pour ignominy upon him. Further, [the Sages] said, “One should expose hypocrites to prevent the desecration of the Name.”<sup>80</sup> How much more so does this apply when a person was rebuked but fails to repent, that it is permissible to reveal his sins to the larger public until he repents... but one must be careful to fulfill certain conditions...<sup>81</sup>

Those conditions are:<sup>82</sup>

1. Personal knowledge of the ignominy, unless, based upon persistent rumors of impropriety, the subject has a widely accepted reputation as a wicked person.
2. One has carefully evaluated whether in fact a sin has been committed.
3. One does not exaggerate the transgression.
4. One is motivated for a *to'elet*, i.e., protecting others from his harm or influence, and not for any personal gain or out of any personal animosity.
5. One should be willing to make these statements publicly, unless he cannot do so for fear of revenge.

An abuser is excluded as one of “your people” by the very nature of his sin: one who illicitly and maliciously raises his hand against another person is designated as a wicked person<sup>83</sup> and many acts of abuse fall are included in the category of those who are subject to *niddui* (banishment from the community), including one who calls another a slave (verbal and emotional abuse) and one who maintains dangerous objects or situations on his property and refuses to remove them.<sup>84</sup> And certainly, an unrepentant and unremitting abuser is also not of “your people,” as cited above. The prohibitions of speaking, listening to or repeating *lashon hara* do not apply. No social obligation or protection applies to anyone who does not abide by accepted and appropriate societal norms.<sup>85</sup>

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<sup>80</sup> *Yoma* 86b

<sup>81</sup> *Hafetz Hayyim, Hil. Issurei Lashon Hara, kelal 4:7. See Teshuvot Radakh, no. 7.*

<sup>82</sup> *Be'er Mayyim Hayyim, Hil. Lashon Hara, kelal 4:32.*

<sup>83</sup> *Sanhedrin* 56a:

Resh Lakish said: One who lifts his hand against his neighbor, even if he did not smite him, is called a wicked man as it is written, “And he said unto the wicked man, ‘Why would you smite your fellow?’” (Ex. 2:13) “Why *did* you smite?” is not said, but “Why *would* you smite,” showing that though he had not yet smitten him, he was termed a wicked man. Ze'iri said in R. Hanina's name: He is called a sinner, for it is written, “But if not, I will take it by force;” (I Samuel 2:16)<sup>83</sup> and it is further written, “And the sin of the young men was very great before the Lord.” (2:17)

<sup>84</sup> *Hil. Talmud Torah* 3:16; *Yoreh De'ah* 334:43.

<sup>85</sup> *Sema to Hoshen Mishpat* 228:4.

## Exposing Wrongdoing

In addition, there is a further obligation to expose wrongdoing. “One should expose hypocrites to prevent the desecration of the Name, as it is said: ‘Again, when a righteous man doth turn from righteousness and commit iniquity, I will lay a stumbling-block before him’ (Ez. 3:20).”<sup>86</sup> This is done so that others will not learn from his acts. It is also done in order to justify the ways of Heaven, i.e., if he is perceived as righteous and is nevertheless punished, people may question the fairness or strength of divine justice. Thus, the hypocrite needs to be exposed so that others will understand that when he is punished, he deserves it.<sup>87</sup> Rabbeinu Yonah writes that it is a *mitzvah* to publicize the wrongdoings of a person who is perpetually on a bad path and publicly scorn him so that the public will learn to be repulsed by evil deeds.<sup>88</sup> He further rules that in the area of interpersonal matters, “in matters like theft, robbery, torts, pain, humiliation and verbal harassment, even an individual who observes the harm shall tell about it, in order to help the one who was harmed and [in order] to further truth.”<sup>89</sup> Mahari Weil offers one caveat: if the publicity of the details of a case will harm innocent victims, that part of the investigation should remain private.<sup>90</sup>

## Lashon Hara about the Dead

Is it permissible for victims of a perpetrator who has since died to speak *lashon hara* about him?

The Talmud indicates that there is no prohibition of speaking *lashon hara* about the dead, either because the dead do not know what is being said about them or because they do not care what is being said about them.<sup>91</sup> However, because their legacies are at stake, as well as the reputations and well-being of their surviving families, and because they cannot defend themselves, *Shulhan Arukh, Orach Hayyim* 606:3 cites a *takanat kadmonim* (ancient enactment) that prohibits “speaking ill of the dead.”<sup>92</sup> Hafetz Hayyim rules:

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<sup>86</sup> *Yoma* 86a. See *Hil De’ot* 6:8.

<sup>87</sup> *Midrash Tehilim* (Buber), *mizmor* 52:3.

<sup>88</sup> *Sha’arei Teshuvah, sha’ar* 3, no. 218. See *Nimukei Yosef* to *Bava Mezi’a*, p. 32b; Rema, *Hoshen Mishpat* 228:1.

<sup>89</sup> *Sha’arei Teshuvah, sha’ar* 3, no. 218, no. 221.

<sup>90</sup> *Teshuvot Mahari Weil*, no. 173.

<sup>91</sup> *Berakhot* 19a :

Rabbi Yizhak said: If one makes remarks about the dead, it is like making remarks about a stone. Some say [the reason is that] they do not know, others that they know but do not care. Can that be so? Has not R. Papa said: A certain man made derogatory remarks about Mar Samuel and a log fell from the roof and broke his skull? A Rabbinical student is different, because the Holy One, blessed be He, avenges his insult.

<sup>92</sup> See *Mordekhai* to *Bava Kama*, nos. 82 and 106.

And know also that even to disparage and curse the dead is also forbidden. The decisors of Jewish law have written that there is an ancient enactment and *herem* (ban) against speaking ill of and defaming the dead. This applies even if the subject is an *am ha-aretz* (boor), and even more so if he is a Torah scholar. Certainly, one who disparages [a scholar] commits a criminal act and should be excommunicated for this, as is ruled in *Yoreh De'ah* 243:7. The prohibition of disparaging a Torah scholar applies even if he is disparaging him personally, and certainly if he is disparaging his teachings.

However, despite this enactment, there are times when one is permitted to speak ill of the dead. It is important to note that this prohibition is not derived from the Torah verse banning *lashon hara*; it stems from a rabbinic decree and is, thus, no more stringent than the laws of *lashon hara* themselves. Since *lashon hara* which is otherwise biblically prohibited is allowed if there is a *to'elet*, so too *lashon hara* about the deceased is permitted if there is a *to'elet*. While the nature of the *to'elet* may change—after all, the deceased is no longer a threat to anyone else's safety—there may be any number of beneficial purposes in sharing this information including: preventing others from learning inappropriate behavior, condemning such behavior, clearing one's own reputation, seeking advice, support, and help, one's own psychological benefit, and validating the abusive experience of others who may have felt that they, and no one else, was this man's victim.

Furthermore, the restriction on speaking ill of the dead may be based on the assumption that death was a *kapparah*, i.e., it was an atonement for sins. This atonement, however, is predicated on his having repented before his death,<sup>93</sup> and that repentance requires both restitution for the harm caused and reconciliation with the victim.<sup>94</sup> If the perpetrator had not reconciled with his victim, no atonement was achieved. And of such an unrepentant sinner the verse teaches, "The memory of the just is blessed; but the name of the wicked shall rot" (Proverbs 10:7).<sup>95</sup>

In addition, Jewish law does not recognize the concept of statute of limitations in these matters.<sup>96</sup>

### **When All is Said...**

*Lashon hara* is a tool of abuse, both when derogatory speech defames innocent people, destroying their reputations, and when warnings to refrain from derogatory speech are used to silence victims of abuse who cry out for help. As careful as we must be not to speak, listen to, or repeat, disparaging information when it is forbidden, we must not allow the threat of speaking *lashon hara* to silence the cry of innocent victims. We must carefully heed the words of *Pithei Teshuvah* cited above:

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<sup>93</sup> *Yoma* 85b; See *Sha'arei Teshuvah* 4:20.

<sup>94</sup> See *Bava Mezi'a* 62b.

<sup>95</sup> See *Yoma* 38b.

<sup>96</sup> See *Sanhedrin* 31a and *Hoshen Mishpat* 98:1.

There is a sin even greater than [speaking *lashon hara*], and one which is more widespread, i.e., the sin of refraining from informing another about a situation in which one can save him from being victimized—all out of concern for *lashon hara*... One who behaves in this manner, his sin is too great to bear and he violates, “You shall not stand by the blood of your brother.”<sup>97</sup>

Victims of abuse need to speak out, for all kinds of personal reasons, in order to help themselves. Their supporters need to speak out in order to help them. And the community needs to speak out in order to hold the perpetrators responsible and in order to protect other innocents from potential harm. All must be diligent in meeting the conditions required for such speech, including knowledge of or verification of the facts, proper motivation, the curbing of personal animosities, no exaggeration, and the like. Allowances must be made for persistent rumors and circumstantial evidence when their credibility meet *halakhic* standards. And each of us needs to recommit ourselves to protecting the physical and spiritual welfare of women, children, and men; safeguarding the integrity of the social fabric of the Jewish community; and securing the honor of Torah and God’s very Name.

According to rabbinic tradition, it is the capacity of speech that distinguishes humans from the animals and from all other parts of Creation. The Torah demands of us to use that divine gift of speech wisely and carefully in order to protect the human-ness of victims of abuse, as well as the humane-ness of every member of our society.

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<sup>97</sup> *Orah Hayyim*, no. 156