

TALMUD TORAH 6:12

by Rabbi Yitzchak Etshalom

*Intro1: Within the Halakhic system, there are two types of social exclusion: *Nidui* (ostracism) and *Herem* (excommunication). The practices which apply to someone under one of these bans are presented in TT 7:4-5] Intro2: Any court-based punishment has a requirement of testimony. The witnesses must not only testify that the perpetrator committed the transgression, they must also testify that he was warned immediately prior to the transgression (the witnesses themselves may do the "warning"). This warning must include the transgression and its penal consequences. The perpetrator must verbally acknowledge this warning in order to be liable for the punishment. This warning is known as *Hatra'ah*.]*

12. Even though someone who degrades *Talmidei Hakhamim* has no share in *Olam haBa* (the hereafter), if witnesses testified that someone degraded [a scholar] - even if only verbally, he is liable for *Nidui* and the *Beit-Din* (court) declares the *Nidui* publicly and they fine him a litra of gold *B'khol maqom* (anywhere) which is given to the *Hakham*.

Someone who verbally degrades a *Hakham*, even posthumously, the *Beit-Din* puts him in *Nidui*, which they lift when he does *Teshuvah* (repentance).

However, if the *Hakham* was alive, they do not lift the *Nidui* until he appeases the [offended scholar] on whose account he was placed in *Nidui*.

Similarly, the *Hakham* may himself declare *Nidui* to protect his honor - against a commoner who abused him - without witnesses or *Hatra'ah*. And, [in such a case], we do not lift the ban until he appeases the [offended] *Hakham*.

If the *Hakham* dies (pursuant to the offense), three people lift the *Nidui*. If the *Hakham* wishes to forgive [the offender] and not to declare *Nidui*, he has that right.

Q1: "Even though someone..." - why this preface? What does his losing his share in Olam Haba have to do with *Nidui*?

RD([Rick Dinitz](#)): We might think that losing one's share in Olam Haba is sufficient punishment for degrading a Talmid Hakham. Apparently it is not. Since the offense is two-fold, the punishment must also have two components. For insulting the Torah (which the scholar represents) one loses one's share in Olam Haba. Nidui is the punishment for insulting the scholar as a person. Because the Talmid Hakham embodies the community's respect for Torah, the community ostracizes a person

who denigrates this value.

A second interpretation: Respect for the Torah is basic to the health of the community. The community must isolate itself from the influence of anyone who threatens that foundation by insulting the Torah. So "even though" Hashem punishes the offender, the community still enforces Nidui in self-defense.

A third interpretation is more of a stretch, but I'll voice it anyway. Perhaps Nidui is an incentive to do Teshuvah while the opportunity still exists. If we consider Nidui as a preview of the ostracism one would suffer by being excluded from Olam Haba, the Menudeh should be eager to correct the offense (and presumably reclaim some place in Olam Haba). In this reading, "Even though someone ...has no share in Olam Haba," we must still help that person toward Teshuvah, in this case by enforcing Nidui.

HH (Harald Helfgot): We could think that since he is already punished by losing his share in Olam Haba, he does not need further (earthly) punishment.

Q2: "...even if only verbally..." Why would I think that verbal disgrace is less of an affront?

HH: We have learned that people honor a Hakham especially through deeds (standing up, serving etc.) In the same way, an affront through deeds is especially serious.

YE (Yitz Etshalom): The Halakha of degrading a scholar is a convergence of two areas of Halakha - respect for scholars and the ramifications of damage done to another person. In the "world" of damages, there are five types of payments due in cases of assault - damage, loss of work, pain, medical expenses and shame (Mishna Bava Kamma 8:1). There are, of course, cases where not all five payments apply. It is even possible to "only" shame someone and be liable for that payment. However, the Gemara in Bava Kamma (91a) rules that *Biy'sho bid'varim patur mik'lum* - (if he shamed him with words he is exempt from any payment). Therefore, in the world of "damages" alone, there is no legal consequence to verbal shaming. (see MT Hovel uMaziq 3:5) This is why R has to point out that in our case, verbal shaming does have legal ramifications.

It is appropriate to quote three Halakhot from MT Hovel uMaziq which impact directly upon our Halakha:

3:5 - If someone verbally shamed his fellow - or spit on his clothes - he is exempt from financial liability. The court, however, has the right (and responsibility) to establish laws in this regard in any place and at any time as they see fit. If he shamed a *Talmid Hakham*, even verbally, we fine him...and we have a tradition that this fine is collected in any place, in Eretz Yisrael or outside of the Land.

3:6 - We always have cases in Spain, concerning *Talmidei Hakhamim* who forgave this amount - and this is proper for them. Sometimes, they would sue and reach an accommodation. Nevertheless, the judges would say to the offender: "You are obligated to pay one litra of gold".

3:7 - Even though someone who verbally shames a "regular person" is not financially liable, it is a terrible sin. The only person who curses and reviles people is an evil fool. The early sages said: anyone who verbally embarrasses an upright citizen in Israel (i.e. among the Jewish people) has no share in the hereafter.

Q3: What is the implication of the phrase *B'khol maqom* (anywhere)?

HH: Wherever the offender may be, i.e., immediately.

YE: The term, in reference to Beit-Din, means "not exclusively in Israel." The reason for this distinction is that a Beit-Din which does not include *S'mukhin* (members who received direct *Semikha* - transmission of authority - in an unbroken chain going back to Moshe Rabbenu) may not rule on fines (*Q'nasot*). Since *Semikha* can only take place in Eretz Yisrael, R is teaching that this particular fine (for shaming a Talmid Hakham) may be administered anywhere - meaning, in a "regular" Beit-Din, even without *S'mukhin*. See MT Sanhedrin Chapter 4 for a detailed description and presentation of *Semikha*.

Q4: If the Hakham is dead when [his memory is] offended - we lift the ban when the offender has done *Teshuvah*. Three questions:

(a) How do we know that he has done Teshuvah?

YE: Someone who degrades people in general, and scholars in particular, typically has an attitude towards learning and towards fellows which is reflected in many other areas of his behavior. The true test of Teshuva (MT Teshuva 2:1) is to be in that same situation again and not fail - but even a smaller change will probably be sensed by those around him.

(b) What does this *Teshuvah* accomplish vis-a-vis the Hakham?

(c) Why is this different from the later clause in which, if he offended the Hakham while alive but the Hakham subsequently died prior to appeasement, he needs three people to lift the ban?

HH: A dead Hakham can't actually be offended -- only his memory is tarnished.

JS (Jeffrey A. Supowitz): The distinction between the living and the deceased Hakham is interesting. Traditionally under American (and probably English) common law, there was no such thing as slander against the deceased since they could not suffer damages. I think this is probably a matter in which Teshuvah is effective because it is really an aveirah between man and God. We know Teshuvah is ineffective for an offense between men without the forgiveness of the aggrieved party. There should be no offense so heinous that forgiveness is not possible, which in this case must come from God.

Q5: Why do we allow a *Hakham* to act on his own behalf - and to effect that which usually needs a court?

YE: ([Jeffrey A. Supowit](#)) If he was offended in private (without witnesses), he must bring this to the attention of the court and the people by personally ostracizing the offender. Evidently, we are referring to a great scholar whose integrity - as well as knowledge - is beyond reproach or challenge. This is borne out in the comment of REMA (R. Moshe Isserles); Yoreh Deah 243:8, that "today" (16th century) scholars may not ostracize on their own. See Pitchei Teshuva there (#7) for more details.

Q6: R repeats the law that we do not lift the ban until the *Hakham* is appeased. Why mention it twice?

RD: The first mention is when a Beit-Din has declared Nidui after hearing evidence from witnesses. The same court that imposed Nidui uses appeasement of the Hakham as a criterion for lifting Nidui.

The context for the second mention is when a Hakham declares Nidui unilaterally. We might think that the Menudeh could come to a Beit-Din for redress (claiming that the Hakham denied the Menudeh due process, and that the declaration should be overturned on that technicality). This repetition emphasizes that the declaration of the Hakham stands, and the court does not reverse it until the same criterion is satisfied -- the Menudeh rights the offense against the Hakham.

HH: The first mention pertains to a Nidui imposed by a Beit-Din. The second pertains to a Nidui imposed by the Hakham himself.

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