

TALMUD TORAH 7:13

by Rabbi Yitzchak Etshalom

13. If Nidui was declared in [the Menudeh's] presence, it can only be lifted in his presence. If Nidui was declared out of his presence, it can be lifted in his presence or out of his presence.

There is [no time] between Nidui and lifting the ban; rather we declare Nidui and lift it immediately when the Menudeh repairs his behavior. If the Beit-Din saw fit to leave him under Nidui for several years, they do so - according to his wickedness.

Similarly, the Beit-Din may, if it saw fit, ban someone from the outset and ban anyone who eats with him, drinks with him or stands within his 4 Amot, in order to afflict him and to build a fence around the Torah in order that sinners should not violate it.

Even though a Hakham may declare Nidui to protect his honor, it is not praiseworthy for a Talmid Hakham to behave this way; rather, he should close his ears from the words of commoners and pay no attention to them, in the manner that Sh'lomo said in his wisdom: Do not give heed to everything that people say (Qohelet [Ecclesiastes] 7:21). This was the way of the Hasidim Rishonim (early pious ones) - hearing their shame without responding; not only that, they would pardon the shamer and forgive him. The great sages took pride in their pleasant deeds, saying that they had never banned or ostracized anyone to protect their own honor. This is the way of Talmidei Hakhamim which is appropriate to emulate.

When does this apply? when he disgraced or shamed him privately. However, if someone disgraced or shamed a Talmid Hakham publicly, he is not allowed to forgive [the violation of] his honor and, if he did forgive, he is punished, as this is a disgrace of the Torah. Rather, he should seek vengeance and enmity like a snake until [the shamer] requests his forgiveness - then he should forgive him.

Q1: Why does the ban need to be lifted in the presence of the Menudeh - and that, only if it was declared in his presence?

YE (Yitz Etshalom): The source for this Halakha is in the Gemara (Nedarim 7b) - and the Rishonim there suggest several reasons:

ROSH (s.v. Nidahu): Since the Menudeh was disgraced by having the ban declared in his presence, he needs to "appeased" by having it lifted in his presence.

Tosafot (s.v. Nidahu) cites this reason and adds another - that when a matter has been declared in the presence of a certain number, it can only be retracted in front of that number (similar to RABD's

gloss on TT 7:7) - in the same way, since the Nidui was declared in his presence, it is "stronger" and cannot be lifted without his presence.

RAN (s.v. Nidahu) cites this second reason and adds another: Since the Menudeh was banned with his knowledge and in his presence, he will expect that it will be lifted in his presence. If not, (and he is unaware of it) and people start interacting with him as if there is no Nidui, he will come to suspect them of violating the Nidui. Of course, to solve this, he only needs to be notified.

Q2: What is the value of Nidui if it can be lifted immediately?

YE: The source for this statement is also in Nedarim 7b. Tosafot actually limits its application to the specific case mentioned there; i.e. banning someone who mentions God's Name in vain. Since this particular Nidui is only geared to atonement and to make sure that he doesn't continue to misuse God's Name, a momentary Nidui is sufficient.

However, RIF (in Mo'ed Kattan 9b in RIF pages), ROSH, RAN and, of course, Rambam, disagree and extend this rule to all cases of Nidui - rejecting the opinion presented in Mo'ed Kattan that Nidui has a minimum of 30 days.

Rabbi Soloveitchik zt"l explains that besides being limited by certain restrictions, someone who is banned is also defined as a "Menudeh" - a personal-status statement. Although the length of Nidui makes a difference in light of the restrictions (it's much more painful to have people avoiding you, not doing business etc. for thirty days than for an hour), the reality of "being a Menudeh" is as painful and "effective" regardless of the length of time involved in the Nidui.

It stands to reason that process of Nidui, not necessarily the results, have their own effect of demonstrating the distaste which the court (representing both Torah and the community) feel for the offender and his offensive behavior. Once he demonstrates regret and a commitment to avoid such behavior in the future, we may welcome him back immediately.

Q3: How does the ban which includes banning others who interact with the Menudeh effectively "afflict" him?

YE: Pretty simple - other people will think twice before sitting with him, doing business with him etc. if they may be risking their own social acceptance.

Q4: In general, why does the Beit-Din have so much latitude here?

YE: We are accustomed to thinking of the Beit-Din, besides the legislative component, in a "pure" executive mode - implementing the rules of the Torah. However, this is not necessarily the case. In many areas, the Beit-Din has great discretion to decree, punish, ban etc. as they see fit for the good of the community and the protection/promotion of Torah. See MT Mamrim Ch. 1 & 2.

The Beit-Din is responsible for maintaining the law of the Torah and for protecting it (as we are told at the beginning of Avot: Build a fence around the Torah). As such, they need to have the discretion

to punish, ban etc. as is called for by the circumstances in question.

Q5: Regarding the behavior of the Hasidim Rishonim; would they forgive the shamer immediately - or be ready to forgive him when he asked their pardon?

YE: The Gemara in Megilla (28a) records that R. Nehuniah b. haKaneh never "brought his fellow's curse to bed" - which is illustrated by Mar Zutra's custom of saying, as he would get into bed at night: "I forgive anyone who hurt me (today)". This indicates that at least for some of the "early pious ones", forgiveness is internal, independent of the regret and request for forgiveness on the part of the offender.

This raises a related question: If Mar Zutra forgives Ploni for offending him - is Ploni still held culpable? The offended person has forgiven him - on the other hand, Ploni has done nothing to demonstrate regret or contrition for his behavior.

It doesn't seem reasonable that Mar Zutra's forgiveness is "powerful" enough to relieve Ploni of responsibility - yet, if that's the case, Mar Zutra's forgiveness seems totally ineffective.

One response may be that there are two different effects of an offense. In external relationship between Mar Zutra and Ploni, a "damage-debt" has been generated; to wit, Ploni owes Mar Zutra (payment and) an apology. In addition, Mar Zutra feels anger and resentment - and hurt - towards Ploni. The only matter which is totally in Mar Zutra's control is his own feelings - and this is what he is able to forgive without any movement from Ploni. From the perspective of the external relationship, however, Ploni still must repair the damage he has caused. This perspective is also born out by the wording of R. Nehuniah b. HaKaneh - "my fellow's curse never came to my bed".

Q6: How can Rambam encourage "enmity" and "vengeance" against anyone? Even if the shamer is deserving, isn't that a dastardly character trait, unworthy of encouraging in anyone?

YE: The source for this is in the Gemara (Yoma 22b-23a): "R. Yohanan said in the name of R. Shim'on b. Yehotzadak: Any Talmid Hakham who is not vengeful and does not bear a grudge [against those who have hurt him] like a snake is not a [legitimate] Talmid Hakham."

The Gemara goes on to challenge this teaching, first by raising the violations of "You shall not take vengeance or bear a grudge against any of your people" (Vayyiqra [Leviticus] 19:18) - this is refuted by assigning it to monetary vengeance (i.e. - not lending someone else an item because they didn't lend you one the day before).

The Gemara then challenges from another angle; "Those who are shamed and do not shame [in return], hear their disgrace and do not respond [in kind]...are like the glory of the sun..." This is supported by Rava's statement that anyone who is forgiving is forgiven by God. The resolution is that if the offender asked forgiveness, then all of these "lofty" approaches apply. If, on the other hand, he does not ask forgiveness, the Talmid Hakham should be "vengeful...like a snake".

Since Rambam already decided in favor of Mar Zutra's unqualified forgiveness (see above Q5), he has to provide another solution to this conflict. As the Kessef Mishneh explains, Rambam therefore distinguishes between private and public shame.

The Kessef Mishneh goes on to cite RIVASH (in the name of RABD), that even though a Hakham may forgive offenses - this is only true with regards to offenses which are a lack of honor (like not standing in his presence etc.) - however, if he was shamed, this is indirectly the shame of the Torah and he is not allowed to forgive in this case.

This is also reflected in the words of R. Yohanan - "...he isn't a Talmid Hakham..." - meaning, a real Talmid Hakham would be so offended and hurt - and indignant - over the disgrace of the Torah, that he would feel this sort of enmity. How could someone be as "wedded" to Torah as a Talmid Hakham, yet passively stand by while the Torah is disgraced? This must reflect a weak attachment and regard for the Torah on the part of the "Talmid Hakham" in question. Rambam is reflecting what a Talmid Hakham "should" feel as a result of his strong attachment to Torah.

When he is slighted in private, he may regard that as a personal attack, for which he can - and should - be forgiving. However, when he is publicly shamed, this is also an attack on Torah, which he does not have the right to forgo.

Q7: How will this sort of behavior on the part of the Talmid Hakham encourage the shamer to ask his pardon? Won't it just increase the enmity?

YE: Maybe it won't help in that regard - and maybe that isn't the most important consideration.

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