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DISCUSSING AND REPORTING ABUSE – A HALAKHIC PERSPECTIVE*

INTRODUCTION

Each year more and more cases of physical, sexual, and emotional abuse in the general population, the Jewish world, and more specifically, in religious communities come to light. It seems that not a week goes by without hearing of another case of a parent, a relative, teacher, spiritual leader, employee or employer, or some other member of the community causing harm of some sort to others, especially to women and children.

Of particular concern is the apparent phenomenon, confirmed by rabbis, professionals, and law enforcement officials, of individuals and communities purposely not reporting or taking active steps to stop, and to prevent such abuse. Those who work within social services and law enforcement often express their amazement that the religious community appears to express more concern for the welfare of the abusers than the victims; a true *hillul Hashem*.

Why are so many victims, family members, neighbors, educators, and religious leaders hesitant to take sufficient measures to stop and prevent abuse? Families and professionals are often not properly trained to recognize different forms of abuse, and at times, do not view certain actions and behavioral patterns as abusive. Furthermore, victims of abuse are often inclined to remain silent, due to embarrassment, concern that they

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will not be believed, and fear of the potential impact on one's personal life, family, and/or community. Other factors, including individual and communal cognitive dissonance regarding offenders (especially clergy), as well as the emphasis on *tsni'ut* (modesty) in religious communities, which often prevents victims from accurately describing their experiences, also impede properly reporting abuse.

In addition, some feel bound and prevented by religious tradition and halakha from discussing, or reporting abuse, and therefore do not feel empowered to take the proper measures to stop and to prevent future incidents. In this article,¹ we will focus on two central halakhic reasons why religious individuals and communities are hesitant to report abuse, *leshon ha-ra* and *mesira*, and demonstrate that these concerns should not stand in the way of taking the proper actions to protect victims and prevent further abuse. Furthermore, we will present halakhic sources which demand and obligate us to stop and prevent sexual, physical, and emotional abuse.

GOSSIP MONGERING – THE FEAR OF SPEAKING ILL OF OTHERS

The first step to preventing further abuse is reporting inappropriate behavior to family members, teachers, principals, local religious leadership, social services, and law enforcement officials. Rabbis, teachers, parents, employers, and lay leadership must raise awareness, create an environment in which victims, as well as those who witness or even hear about potential abuse, feel comfortable relating and reporting incidents of abuse, and ensure that people, especially children, do not keep their experiences a secret. Beyond these broader educational and communal goals, a clear message must be sent to the religious community regarding whether reporting incidents of physical, sexual, or psychological abuse constitutes a form of *rekhilut* (gossip mongering) or *leshon ha-ra* (derogatory speech).

¹ Much has been written on this topic in recent years. See, for example, Steven H. Resnicoff, "Jewish Law and the Tragedy of Sexual Abuse of Children: The Dilemma within the Orthodox Jewish Community," *Rutgers Journal of Law and Religion* 13:2 (2012), 281-362, R. Gedalia Dov Schwartz, "The Abused child – Halakhic Insights," *Ten Da'at*, 2:3 (Spring 1988) 11-12, *Kuntras Dam Re'ekha* (634-666), Yeshurun, v. 15 5765 (2005), and *Breaking the Silence: Sexual Abuse in the Jewish Community*, Edited by David Mandel and David Pelcovitz, Chapters 6-7, which includes important chapters written by R. Mark Dratch and R. Dovid Cohen.

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Although the well-known prohibitions² known as *leshon hara*, *rekhillut*, and *motsi shem ra* (defamation)³ are perceived by many as some of the most difficult commandments to observe, the communal ethic of not speaking ill of another person, and so much more so of not relating information which may somehow defame others, runs deep in religious education and practice.⁴ Unfortunately, this seemingly admirable educational success may actually allow abuse to persist. Secrecy enables physical, sexual, and emotional abuse to continue, and even empowers the perpetrators.

² These prohibitions emerge from a number of biblical sources, including “you shall not go about as a talebearer (*rakbil*) among your people” (Lev. 19:16), “Thou shalt not bear a false report” (Ex. 23:1), as well as the commandment to take heed concerning the *tsara’at* affliction and to remember that which God did to Miriam (Deut. 24:8-9), and the well-known verse “Who is the man who desires life, who loves days to see goodness? Guard your tongue from evil and your lips from speaking deceitfully” (Ps. 34:13-14). The Talmud also emphasizes the severity of this sin, stating that one who speaks *leshon ha-ra* will not merit the Divine presence (*Sota* 42a), and that “Anyone who speaks slander, and anyone who accepts and believes the slander he hears, and anyone who testifies falsely about another, it is fitting to throw him to the dogs” (*Pesahim* 118a).

³ Although the precise definition of these categories in beyond the scope of this article, it is worth noting that the Rambam (*Hilkhot De’ot* 7:1-2) appears to identify four separate categories. He writes: “A person who collects gossip from a colleague violates a prohibition as it states: ‘Do not go around gossiping among your people’ (Lev. 19:16) ... Who is a gossiper? One who collects information and [then] goes from person to person, saying: ‘This is what so and so said;’ ‘This is what I heard about so and so.’ Even if the statements are true, they bring about the destruction of the world. There is a much more serious sin than [gossip], which is also included in this prohibition: *leshon ha-ra*, i.e., relating deprecating facts about another person, even if they are true. One who says false [deprecating facts about another] is referred to as *motsi shem ra* (defamation of character). Rather, one who speaks *leshon ha-ra* is someone who sits and relates: ‘This is what so and so has done;’ ‘His parents were such and such;’ ‘This is what I have heard about him,’ telling uncomplimentary things. Concerning this [transgression], the verse states: “‘May God cut off all guileful lips, the tongues which speak proud things...’” (Ps. 12:14).” According to the Rambam, there are four categories: one who relate to people what has been said about them (*rekhillut*), one who speaks disparagingly about another, even if he speaks the truth (*leshon ha-ra*), slander (*motsi shem ra*), and being a habitual gossiper (*ba’al leshon ha-ra*).

⁴ Although the *Tur* and *Shulhan Arukh* do not dedicate even a single chapter to this issue, the biblical prohibitions mentioned above, and undoubtedly the works of R. Israel Meir Kagan (1838-1933), *Hafets Haim* (pub. 1873) and *Shemirat Ha-Leshon* (pub. 1876), which focused on these prohibitions, had a deep and lasting impact. Interestingly, Prof. Benjamin Brown (“From Principles to Rules and from Musar to Halakhah: The Hafets Haim’s Rulings on Libel and Gossip,” *Dine Israel* 25, 2008, 171-256) argues that the Hafets Haim transformed what was essentially an ethical norm or a halakhic imperative, or as he describes it, “the halakhization of *musar*.” While this issue is far beyond the scope of this article, the Hafets Haim undoubtedly expanded the scope and deepened the severity, and awareness of the laws of *leshon ha-ra*.

Therefore, an individual's hesitance, and a community's unwillingness to discuss cases of abuse not only hinders the prevention of such behavior, but even creates an environment in which offenders fearlessly target their prey.

To what extent is the concern for *leshon ha-ra* and slander an obstacle in the prevention of abuse?

A number of Rishonim write that one may speak *leshon ha-ra* in order to prevent potential damage or injury. For example, the *Sefer Ha-Hinukh* writes:

We were commanded to refrain from gossip, as it says "you shall not go about as a talebearer," and the matter is that if we hear a person speak poorly of his friend we should not go to him and tell him that '*peloni* said such and such," *unless our intention is to remove the threat of damage and resolve a conflict.*⁵

Similarly, Rabbenu Yona writes:

Know that incidents between man and his neighbor, such as those involving theft, robbery, damage, and the causing of pain, shaming and wrongdoing with words, may be revealed to others. Even a solitary observer should relate what he has seen, so as to assist him who has been wronged and to be jealous for the truth.⁶

Rambam also appears to accept this principle. He writes:

Whenever a person can save another person's life, but he fails to do so, he transgresses a negative commandment, as it states: "Thou shall not stand idly by the blood of thy neighbor" (Lev.19:16). Similarly, this commandment applies when a person sees a colleague drowning at sea or being attacked by robbers or a wild animal, and he can save him himself or can hire others to save him. *Similarly, it applies when he hears gentiles or informants conspiring to harm a colleague or planning a snare for him, and he does not inform him and notify him of the danger.*⁷

These Rishonim clearly believe that the prohibition of *leshon ha-ra* is set aside in order to prevent damage and harm to another.

Interestingly, some even note that the juxtaposition of the two parts of the verse may indicate this principle as well. The verse says, "Thou shalt

⁵ *Sefer Ha-Hinukh* 236.

⁶ *Shaarei Teshuva*, 3:221.

⁷ *Hilkhot Rotse'ah U-Shemirat Nefesh* 1:14.

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not go about as a talebearer among thy people; neither shalt thou stand idly by the blood of thy neighbor: I am the Lord” (Lev. 19:16). While the Rambam appears to explain that the conclusion of the verse comes to emphasize the severity of *leshon ha-ra*,⁸ some commentators suggest that the second half of the verse qualifies the first half. For example, R. Hezekiah b. Manoah (13th century, France), known as the Hizkuni, explains that “[the verse says] ‘and you shall not go about as a talebearer’, but if you hear a conspiracy to kill your friend, ‘neither shall though stand idly’ rather you should tell him of the conspiracy.” Similarly, R. Chaim ibn Attar (1696 – 1743), in his commentary to the Torah, Or Ha-Haim, writes:

Neither shall thou stand – the commandment not to gossip is on the condition that he will not stand idly by the blood of you neighbor, so if he saw one group that wished to murder he must tell the person in order to save his liked, and he should not say ‘this is gossip,’ and if he does not tell, he violates that commandment of “neither shalt though stand idly” ...

This sentiment is echoed by R. Naftali Tzvi Yehuda Berlin, the Netsiv, as well.⁹ He writes, “Included in the juxtaposition of these prohibitions is that even that we are warned ‘not to go about as a talebearer,’ still, ‘do not stand idly by the blood of your neighbor’ – in other words, if he knows that a person wishes to ruin the life of another, he is obligated to inform him and it is prohibited to ‘stand by idly on the blood of your neighbor.’”

R. Yisrael Isser Isserlin (1827-1889), in his *Pithei Teshuva*,¹⁰ relates to the dangers of being overly strict regarding *leshon ha-ra*. He writes:

I want to note here that while all the books of *musar* are greatly concerned about the sin of *leshon ha-ra*, I am greatly concerned about the opposite problem. *I want to protest about the even greater and more common sin of refraining from speaking negatively when it is necessary to save someone from being harmed.* For example, if you saw a person waiting in ambush to kill someone or breaking into someone’s house or store at night. Is it conceivable that you would refrain from notifying the intended victim to protect himself from the assailant - because of the

⁸ *Hilkhot De’ot* 7:1. “[Gossiping] is a severe sin and can cause the death of many Jews, therefore, [the warning]: “Do not stand still over your neighbor’s blood” is placed next to it in the Torah [*ibid.*].”

⁹ *Ha’amek Davar*, Lev. 19:16.

¹⁰ *Pithei Teshuva*, *Orah Haim* 156. This commentary was not authored by R. Avraham Tzvi Hirsch Eisenstadt (1813-1868), who wrote the *Pithei Teshuva* on the other three parts of the *Shulhan Arukh*.

prohibition of speaking *leshon ha-ra*? By not saying anything you commit the unbearable sin of transgressing the prohibition of “Thou shalt not go about as a talebearer among thy people; neither shalt thou stand idly by the blood of thy neighbor: I am the Lord” (Lev. 19:16). By not speaking up, you violate the mitsva of returning that which is lost to its owner (Deut. 22:2) ... The general principle is that these are matters which depend upon the speaker’s motivation. If the informant’s intent in relating to these matters is entirely to cause harm, that is *leshon ha-ra*. However if his intent is to bring about benefit to the other person and to save him and to protect him – then it is a great mitsva... Unfortunately, I have seen many times where someone witnesses another person trying to cause harm to someone – and he suppresses the information and says, “Why should I get involved in a matter which isn’t my business... However one needs to be very careful about these and similar matters. Our Sages have said – when the permissibility depends on motivation - it says, “And you should be afraid of your God.

In this very powerful passage, R. Isserlin argues that one should always be concerned about the impact of *not* telling or relating the *leshon ha-ra*.¹¹

In the late nineteenth century, R. Israel Meir Kagan (1838-1933) published two books on the topic of *leshon ha-ra*, *Hafets Haim* (pub. 1873) and *Shemirat Ha-Lashon* (pub. 1876). While many note his overall stringency regarding the laws of *leshon ha-ra*, he explicitly permits

¹¹ This sentiment is also expressed by R. Moshe Sternbuch (b. 1926). In a responsum (*Teshuvot Ve-Hanhagot* 1:558) simply titled “Sometimes it is Permitted to Speak *Leshon Ha-ra*,” he writes:

We have merited [to have] the wonderful *sefer* of the Hafetz Haim z”l on the laws of *leshon ha-ra*... and within the book *Hafets Haim* it appears that at times there is no prohibition to speak *leshon ha-ra*, rather there is a mitzvah to speak [*leshon ha-ra*], such as when one misleads his neighbor in business transactions, or one who borrowed money but did not repay, or regarding marriage arrangements (*shiddukhim*) when a match which is not proper is offered and may lead to harm, and he refrains from telling him as he does not wish to speak poorly or to cause damage, he violates “thou shalt not stand idly by the blood of thy neighbor” ... and it turns out that he is using the commandments of our Lord, blessed be He, in order to injure his friend when he was never commanded to do so ... as well as the commandment of “and you shall love thy neighbor as thyself”... and I have warned about this many times, and therefore one should be careful to learn the laws of *leshon ha-ra* well and to know when it is prohibited and when it is permitted as sometimes there is an obligation to tell, under certain conditions, as the Hafetz Haim himself explained.

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discussing another person's negative behavior as long as seven conditions are met.¹² He enumerates these seven rules:

- 1) One must see the act oneself and not merely hear it from others, unless one clarified afterwards that it was true.¹³
- 2) One must be very careful to not immediately decide that the matter was theft, robbery or damage and suchlike, but carefully examine the matter to see whether it comes under these categories.¹⁴
- 3) One must first gently rebuke the wrongdoer as this might help and make him change his ways. If he does not listen, one can then tell the public his wrongdoing against his fellow.¹⁵
- 4) One may not exaggerate the wrongdoing.
- 5) One's intent must be for benefit ... and not to enjoy disparaging the person or because of prior hatred.¹⁶
- 6) If one can bring about the benefit somehow without speaking *leshon ha-ra* about the person, one may not speak about him.¹⁷
- 7) One may not cause more damage than halakha demands to the person through one's story than would have been caused if one testified against him in *bet din*.¹⁸

¹² Hafets Haim, *Hilkhot Leshon Ha-ra*, 10:2.

¹³ It is extremely uncommon to witness abuse, especially sexual abuse. Usually a person notices or learns of warning signs which raise suspicions, which must be reported. Attempting to clarify, investigate or seek further proof often hinder a proper investigation, and delays intervening and saving a victim. The Hafets Haim himself explains elsewhere (*Hilkhot Rekhilut* 9, *Be'er Mayim Haim* 9) that even if he did not personally witness the crime, he may relate what he has heard, as long as he explicitly states that he is telling what he heard, and not what he saw.

¹⁴ See above. Furthermore, only professionals should investigate allegations of abuse. Those who are not properly trained are often unable to determine whether or not abuse has occurred, and their well meaning actions may interfere with a proper investigation.

¹⁵ The Hafets Haim (*ibid.* 7) asserts that there is no need to rebuke the perpetrator if he will clearly not accept the rebuke. Painful experience and extensive research have demonstrated that professional intervention is a necessary prerequisite for preventing repeat offenses, and therefore even if an offender acknowledges his actions, without professional intervention sexual abusers are likely to continue their behavior of abuse, and therefore "gently rebuking the wrongdoer" is utterly ineffective.

¹⁶ In this context we should note that questioning motivations often silences victims. Furthermore, our primary responsibility is to protect the victim, and therefore motivation should not be a concern when initially responding to reports of abuse.

¹⁷ As mentioned above, there is generally no way to ensure to end abuse without professional intervention.

¹⁸ The Hafets Haim (*ibid.* *Be'er Mayim Haim* 12) emphasizes that while this rule may apply to preventing financial loss, the Rema (*Hoshen Mishpat* 388:8) and Shakh (*ibid.* 45, citing the Maharam of Rothenberg) clearly rule that this does not apply in cases of physical abuse. This would obviously apply to sexual and even emotional abuse as well.

Although these conditions require further study and analysis,¹⁹ they should not prevent one from relating or even informing on one who commits sexual abuse.

The Hafets Haim himself explicitly relates to a number of cases in which he asserts that one may relate a person's wrongdoing in order to bring a positive result, *le-to'elet*. For example, regarding information which may help a person who has been injured or has sustained financial damage, he writes:

If someone saw someone harming a person by stealing from him or damaging his property, whether the robbed or harmed person knows it or not, or that he shamed him or distressed him or embarrassed him. If one clearly knows that he did not return the stolen item and did not pay him his damage and did not ask forgiveness for his wrongdoing, even one saw this oneself, one may relate the incident to people in order to assist the injured party and to disparage evil deeds before people.

Similarly, regarding future damage or abuse, he writes:

Another case where *rekbilut* does not apply is if one heard Reuven say: "If I meet Shimon in so and so place I will hit him or insult him," or if one heard that Reuven wants to cause him monetary harm. If Reuven is known to have done to do such things many times to other people, or if one sees according to circumstance that Reuven is not exaggerating and will certainly carry out his threat, *one must reveal the matter to Shimon so that he can perhaps avoid the damage or embarrassment.*

The Hafets Haim clearly rules that in order to assist an injured party, and certainly to prevent future damages or injury, one must reveal whatever information is needed.

Halakhic authorities, in many situations and contexts, permit revealing private information in order to prevent damage or injury. For example, R. Ovadia Yosef²⁰ permits a doctor to inform the Bureau of Motor Vehicles that a person, for medical reasons, may endanger other drivers. Posekim also discuss revealing information about a potential marriage

¹⁹ See, for example, Yosef Zvi Rimon, "*Leshon Ha-ra Le-To'elet*" *Meisharim* 6 (5772), and Daniel Feldman, *False Facts and True Rumors: Leshon Ha-ra in Contemporary Culture* (Maggid Books, 2015), Section Two.

²⁰ *Yehave Da'at* 4:50. R. Yitzchak Yaakov Weiss (*Minhat Yitsbak* 8:148) also permits informing the authorities of a reckless driver.

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partner.²¹ Furthermore, Rabbinic authorities discuss whether one may reveal private information about others in the context of therapy,²² or when speaking with one's spouse,²³ family members, or close friends.²⁴ Although these questions are beyond the scope of this article, there is no doubt that one, especially a victim, may relate something as severe as sexual, physical, or emotional abuse, as this is considered to be *le-to'elet*, for a host of reasons.

Regarding sexual abuse, experience has taught us that perpetrators are likely to repeat their behavior, and there is most often no other means of prevention aside from the intervention of social services and/or law enforcement authorities. Therefore, since the purpose of relating information relating to sexual abuse is constructive, there is absolutely no prohibition of *leshon ha-ra*. Both survivors and those who witnessed, heard about or suspect abuse must speak out in order to protect themselves, and others, from future abuse.

MOSER – INFORMING ON JEWS TO NON-JEWISH AUTHORITIES

A times, it may be proper, of if not legally obligatory, to report cases of abuse to the authorities. Aside from the broader concern of speaking negatively about other Jews, one of the most often cited reasons for not informing on sexual offenders is the prohibition of “*moser*” (reporting or turning over a fellow Jew to secular authorities). As we shall see, the Talmud prohibits informing on a Jew to non-Jews or to secular authorities. This prohibition is deeply rooted in Jewish law, and even more so in religious communal consciousness. Is reporting those who commit sexual,

²¹ Many *teshuvot* have been written on this topic. For a few examples, see *Iggerot Moshe*, EH 3:27, 4:73:2 and OH 5:118, *Tsits Eliezer* 16:4, *Shevet Ha-Levi* 4:162 and 6:205.

²² See *Yoma* 75a, which based on the verse from Proverbs (12:25) advises, “one who finds a worry in his heart should discuss the matter with others.” See, for example, R. Nachum Rabinowitz, *Si'ah Nahum* 91, and R. Yitzchak Zilberstein, *Assia* XI nos. 2-3, 26-32.

²³ While the Hafets Haim (*Hilkhot Leshon Ha-Ra* 8:10; see also *Teshuvot Ve-Hanhagot* 4:312) warn that a husband should not relate “all which happened to him with *ploni* and *ploni* in the beit midrash or in the market,” other Aharonim are more lenient. See, for example, R. Mordekhai Gross, *Om Ani Homa* 2:87, who relates that R. Shlomo Zalman Auerbach and the Hazon Ish ruled leniently. See also R. Yuval Cherlow, *Bein Ish Le-Isho*, *Tebumin* 27 (2007), 168-179.

²⁴ See Cherlow, *ibid.* See also R. Yuval Cherlow, *Reshut Hadibur*, (Maggid, 2016), 162-163.

physical or emotional abuse a violation of the Talmudic prohibition of *moser*?

Generally, Jewish law does not condone preventative punishment. A criminal must be forewarned of the severity and consequences of his crime and *beit din* must be presented with sufficient proof before they will consider implementing any form of punishment. There are, however, a number of exceptions. For example, that Torah permits a person to use lethal means to prevent a *rodef* (pursuer) from killing another person.²⁵ The *beraita* enumerates four other cases in which the general standards of punishment are suspended, and a *beit din* may kill a person in order that the Jewish people should “listen and fear.”²⁶ These include a *mesit* (one who incites others to worship idolatry),²⁷ the *zaken mamre* (rebellious elder),²⁸ *eidim zomemim* (collusive witnesses),²⁹ and a *ben sorer u-moreh* (“rebellious son”).³⁰ At times, a king, or even a *beit din*, may mete out a disproportionate punishment in order to correct a societal problem.³¹

Regarding informing on a Jew to the non-Jewish authorities, the Talmud³² relates:

There was a certain man who desired to show another individual's straw to the gentile authorities, who would seize it. He came before Rav, who said to him: Do not show it and do not show it, i.e., you are absolutely prohibited from showing it. The man said to him: I will show it and I will show it, i.e., I will certainly show it. *Rav Kahana was sitting before Rav, and, hearing the man's disrespectful response, he dislodged the man's neck from him, i.e., he broke his neck and killed him.* Seeing Rav Kahana's action, Rav read the following verse about him: “Your sons have fainted, they lie at the head of all the streets, as an antelope in a net” (Isaiah 51:20). Just as with regard to this antelope, once it falls into the net, the hunter does not have mercy upon it, so too with regard to the money of a Jew, once it falls into the hand of gentiles, they do not have mercy upon him.

The passage not only stresses the severity of informing, but also implies that one who intends on revealing another Jew's property to secular

²⁵ *Sanhedrin* 74b.

²⁶ *Sanhedrin* 89a.

²⁷ Deut. 13:11-12.

²⁸ Ibid. 17:12-13.

²⁹ Ibid. 19:17-20.

³⁰ Ibid. 21:20-21.

³¹ See Rambam, *Hilkhot Rotse'ah* 2:2-4.

³² *Bava Kama* 117a.

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authorities may even be killed! That said, we should also note that the gemara appears to be aware of the consequences of Rav Kahana's actions, and therefore Rav told R. Kahana to "get up and ascend to Erets Yisrael to study there under Rabbi Yohanan, and accept upon yourself that you will not raise any difficulties to the statements of R. Yohanan for seven years."

The Rishonim disagree as to why one may take a person's life simply because he intends to cause another person financial loss. Rosh³³ explains:

One who runs to inform so that a neighbor's money is given to a bandit is compared by the rabbis to one who is running after a person to kill him ... once [the money of a Jew] falls into the hands of a non-Jew he will not have mercy on him, and he will take a little today, and tomorrow he will take all of it, and eventually he will offer his life and they will [threaten] to kill him until he confesses, as he may have more money, and he is [therefore] considered to be a *rodef* and one may save the life [of the Jew] with the life [of the pursuer] ... And therefore it is customary in all Diaspora communities to seek a method of punishment for an established informer who has handed over a Jewish person or his money to bandits three times as a protective measure (*migdar milta*).³⁴

Similarly, Rambam³⁵ rules that an informant is viewed like a pursuer:

It is permissible to kill a *moser* in any country, even in the present age, when the court no longer metes out capital punishment. It is permitted to kill him before he informs. When he says: "I will inform on so and so and endanger his person and/or his property" - even property of minimal value - he has made it permissible for others to kill him. He should be warned and told: "Do not inform." If he says brazenly, "No. I will inform about him," it is a mitzvah to kill him, and whoever kills him receives merit. If the *moser* carried out his threat and informed on a fellow Jew, it appears to me that it is forbidden to kill him, unless he has made it an established pattern to inform. In such an instance, he should be killed, lest he inform on others.

Furthermore, the Rambam relates:

In the cities of the west, the common practice is to kill the *moserim* who have made an established pattern of informing with regard to people's

³³ Rosh, Responsa 17:1. See also Rashba, Responsa 1:181.

³⁴ *Hilkhot Rotse'ah U-Shemirat Nefesh*, 1:14.

³⁵ Rambam, *Hilkhot Hovel U-Mazik* 8:10-11.

property, and to hand the *moseirim* over to gentiles to punish them, beat them and imprison them, according to their wicked ways. Similarly, one who causes difficulty and irritation to the community may be handed over to the gentiles to be beaten, imprisoned and fined. It is, however, forbidden to hand over to gentile a person for causing irritation to one individual.

Rambam clearly believes that the *moseir*, and all who cause “difficulty and irritation” to the community must be stopped, at all costs.³⁶

The *Shulhan Arukh*³⁷ cites this law and emphasizes the prohibition of informing on a fellow Jew regarding his money or physical security, and discusses the informer’s personal liability, as well as the measure which a community may adopt in order to stop the informer. A full treatment of the laws of informing is beyond the scope, and focus of this article.

Contemporary authorities disagree as to whether this prohibition should be applicable nowadays, in countries with fair judicial systems which are not motivated by anti-Semitism. Broadly speaking, while some authorities maintain that informing is still equally prohibited, others insist that the entire prohibition is no longer relevant, and some distinguish between different scenarios and circumstances.³⁸

DOES THE PROHIBITION OF MOSER PREVENT REPORTING SEXUAL ABUSE?

The prohibition application of informing, if there is one nowadays, generally applies to those who violate the law in a manner which does not endanger others, including cases of income tax violations, zoning violators, and other forms of cheating. However, as we shall demonstrate,

³⁶ Interesting, Mordekhai ben Hillel Ha-Kohen (c. 1250–1298) offers a different explanation (*Bava Kama* 117). He writes:

Even though as a general rule we do no lower [into a pit] those who cause damage, or thieves, [an informer] is different since he causes benefit to the non-Jew and a loss to the Jew, one who accustoms himself to hand [Jewish] money over to non-Jews is repulsive and he is worse than those who cause damage to peoples’ property.

The Mordekhai apparently believes that this behavior is simply so offensive that it is worthy of extreme punishment.

³⁷ *Shulhan Arukh, Hoshen Mishpat* 388.

³⁸ Michael J. Broyde, “Informing on Others to a Just Government: A Jewish Law View,” *The Journal of Halacha and Contemporary Society* 41:5 (2002), 5-49, summarizes the views of 20th century halakhic authorities.

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there is absolutely no prohibition, and one is obligated to report those who pose a physical, or even emotional threat, to individuals or to the broader community. This includes, of course, those likely to commit murder, armed robbers, and sexual predators, as those who commit medical malpractice, and even those who may drive in a manner which endangers innocent bystanders.

There are a number of reasons why one should not be concerned with the prohibition of “informing” would not apply in these cases.

First, a number of authorities insist that there is no prohibition of informing to a “just” government, which does not single out or oppress Jews. R. Yechiel Michel Epstein (1829-1908), for example, in his *Arukh Ha-Shulhan*,³⁹ writes:

As is widely known, in times of old in places far away, no person had any assurance in the safety of his life or money because of the pirates and bandits, even if they took upon themselves the form of government. It is known that this is true nowadays in some places in Africa where the government itself is grounded in theft and robbery. One should remind people of the kingdoms in Europe and particularly our ruler the Czar and his predecessors, and the kings of England, who spread their influence over many lands in order that people should have confidence in the security of their body and money. The wealthy do not have to hide themselves so that others will not loot or kill them. *On all of this [the presence of looting and killing] hinges the rules of informing [moser] and slandering [malshin] in the talmud and later authorities, as I will explain infra: These rules apply only to one who informs on another to bandits and so endangers that person's money and life, as these bandits chase after the person's body and money, and thus one may use deadly force to save oneself*

Although some commentators questioned R. Epstein's sincerity, as he includes the Czar among those who offer safety and security, he still appears to maintain that the basic principles of *moser* are not applicable in our times.

A number of contemporary authorities accept this reasoning. For example, R. Eliezer Yehuda Waldenberg (1916-2006),⁴⁰ former head of the Rabbinical Court in Jerusalem, writes:

Even in the understanding of the secular court system it appears that there is a difference between primitive and enlightened governments as is

³⁹ *Arukh Ha-Shulhan*, *Hosben Mishpat*, 388:7.

⁴⁰ *Tsits Eliezer*, 19:52.

noted by the *Arukh Ha-Shulhan* in *Hoshen Mishpat* 388:7 where it states that “every issue related to informing found in the Talmud and posekim deals with those far away places where no one was secure in his money or body because of the bandits and pirates, even those who had authority, as we know nowadays in places like Africa” such is not the case in Europe, as the *Arukh Ha-Shulhan* notes ... *I write this as a notation of general importance in the matter of the laws of informing.*

R. Gedalia Schwartz, former Rabbinic head (Av Beit Din) of the Beit Din of America, explicitly invokes this reasoning, regarding “a child who is in imminent danger of further bodily harm or of serious mental trauma” and rules that “the proper authorities must be notified in order to protect the victim.”⁴¹

Beyond the general question whether the prohibition of *moser* applies in modern, Western countries lies the primary and central reason: *the prohibition of moser simply does not apply when informing on a person who is causing harm or injury to others.*⁴² As mentioned before, the Torah demands that we are not to “stand idly by while your brother’s blood is at stake” (Lev.19:16).” Although the *Shulhan Arukh* writes that *mesira* would still apply when an individual, and not a community, is injured, the Rema (ibid. 388:9) writes that this only applies to verbal abuse. R. Yehoshua Falk (Sema ibid. 30) emphasizes that this only applies if the offender cause “discomfort (*tsa’ar*), but if he caused a financial loss, and so much more so if he afflicted him physically (*be-makot ve-onshei ha-guf*) it is permitted.” The Shakh⁴³ adds that one must report, and even testify in secular court against one who is “*ragil lehakot*” (a repeat physical abuser). Furthermore, it is well established that one who molests an individual is capable, and even likely to abuse others as well, and therefore the relating to incidents as specific and individual, and assuming that rebuking the perpetrator will correct his behavior, is most often not applicable.

Furthermore, a sexual molester may often be regarded as a pursuer (*rodef*). The Talmud teaches that “one who pursues another to kill him” must be stopped, if necessary, by lethal force.⁴⁴ This applies to rape as well.⁴⁵ The general prohibition of informing the authorities does not stand in the way of the obligation to prevent a person from pursuing another in order to commit rape, or even other forms of sexual or physical abuse.

⁴¹ Schwartz, ibid.

⁴² *Shulhan Arukh, Hoshen Mishpat* 399:12. See, for example, *Iggerot Moshe*, HM 4:8, and R. Dovid Cohen, ibid.

⁴³ Ibid. 399:45.

⁴⁴ *Sanbedrin* 73a. See also Rambam, *Hilkhot Rotze’ah U-Shmirat Nefesh*, 1:8.

⁴⁵ See Rambam, ibid. 1:10.

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In addition to the above reasons, some add that the prohibition of *moser* does not apply when informing is obligated by the law,⁴⁶ even if the punishment administered by the secular authorities is more severe than the punishment prescribed by the Torah,⁴⁷ especially when the person will not be executed.⁴⁸

There is one, final reason worth noting. Some fear that taking action to prevent sexual abuse may cause a *hillul Hashem*, a desecration of God's name. Regardless of whether or not this should, at times, be a consideration, it should be understood that in this context, communal silence regarding physical and sexual abuse is itself a grave desecration of God's name, and brings shame upon the entire community. In addition to the obvious injustice caused to the survivors, and to others who may fall victim to abuse due to communal silence, this phenomenon causes many to lose trust in the community, its leadership, and ultimately in God.⁴⁹ Modern society understands that there are sexual offenders in all societies, and a healthy and morally upright community takes pride in revealing sexual abuse and protecting its members from further injury.

RECENT RABBINIC RESPONSES TO QUESTIONS REGARDING SEXUAL ABUSE

In recent years, halakhic authorities, as well as rabbinic organizations, have publicly supported reporting physical abusers and sexual offenders to the secular authorities. For example, the journal *Yeshurun*⁵⁰ published halakhic responsa of R. Shalom Yosef Elyashiv,⁵¹ R. Moshe Halberstam, R. Zalman

⁴⁶ The Talmud (*Bava Metsia* 83b – 84a) relates that R. Elazar the son of R. Shimon arrested thieves, who were presumably executed by the authorities. Ritva (cited in *Shita Mekubetset* 83b s.v. *amar lahem*) explains since he was acting in accordance with the decree, and law of the king, it was permitted to arrest, and even punish those who violated the law.

⁴⁷ See Rashba, Responsa 5:238, and Rosh, Responsa 21:8-9. See R. Herschel Schachter, “*Dina De’malchusa Dina: Secular Law As a Religious Obligation*,” *Journal of Halacha & Contemporary Society* 1:103 (1981), 118.

⁴⁸ *Panim Me’irot* 2:155.

⁴⁹ See R. Dovid Cohen, *ibid*.

⁵⁰ *Yeshurun* 15 (2005).

⁵¹ R. Elyashiv writes, “Thus, all this [i.e. the argument above] only permits informing the authorities in a situation in which it is clear that [the person in question] did in fact do this deed (*yado ma’al*) and in this case there is in fact an aspect of *tikun olam* (fixing or maintaining the world). However, with regard to the question of whether to permit [reporting] where there is not even *raglayim le-davar* (lit. “legs to the matters,” i.e. reasonable cause to suspect wrongdoing) but merely some vague

Nechemia Goldberg, R. Asher Zelig Weiss, and R. Yehuda Silman.⁵² Similarly, Rabbi Dr. Abraham S. Abraham, in his *Nishmat Avraham*,⁵³ relates that he discussed with leading Israeli halakhic authorities whether he must report a case of severe child abuse to the authorities. He reports the R. Shlomo Zalman Auerbach, R. Shalom Yosef Elyashiv, and R. Eliezer Waldenberg⁵⁴ agreed that the doctor must report this case to the authorities. R. Elyashiv added that even if the child will be removed from his family and placed with a non-Jewish family, he must still report the abuse to the authorities. Other prominent Modern Orthodox American rabbinic authorities, including R. Herschel Schachter⁵⁵ and R. Gedalia Dov Schwartz⁵⁶ also demand that those suspected of physical or sexual abuse be reported to the police.

In addition to the rulings of specific halakhic authorities, the Rabbinical Council of America (RCA) published a statement which asserts that “any individual with firsthand knowledge or reasonable basis to suspect child abuse has a religious obligation to promptly notify the secular law enforcement of that information.”⁵⁷ Although the Agudas Yisrael also

suspicion (*dimyon*, lit. imagining), not only is there no *tikun olam* but rather there is destruction of the world in this case as it is possible that because of some student’s grudge against a teacher, a student may [falsely] accuse the teacher or because of some baseless suspicion (*dimyon shav*) a person could be placed in a situation in which he is better off dead, though he is innocent of wrongdoing and I see no place to permit this.”

⁵² All five Sages ruled that fundamentally one may report to the authorities. Some (R. Elyashiv and R. Weiss) expressed concern that one should not report unless there is reasonable suspicion, in order to avoid falsely accusing someone. Others (R. Goldberg and R. Silman) raised the possibility of first consulting with a halakhic authority in order to determine that there is sufficient reason to suspect abuse.

⁵³ *Nishmat Avraham*, v.4, *Hoshen Mishpat* 388:1.

⁵⁴ *Tsits Eliezer* *ibid.* R. Waldenberg rules that a doctor who observes that a child has been beaten, as well as child care professionals who are aware that a child has been sexually abused must report these cases to the authorities.

⁵⁵ See http://www.torahweb.org/audio/rsch_120306.html and http://www.torahweb.org/torah/special/2007/rsch_mesirah.html.

⁵⁶ *Ten Da’at* 2:3 (Spring 1988). He writes, “However, if in the teacher’s judgment the child is in imminent danger of further bodily harm or of serious mental trauma, then, in fulfillment of the halakha “Do not stand by the blood of your neighbor” (*Vayikra* 19:16), the proper authorities must be notified in order to protect the victim. Under these circumstances of life-saving measures of the fear of *mesira* does not apply just as it would not apply when calling to police to restrain any other violent act, regardless of the person. The above halakha, as well as the obligation of *pikuah nefesh*, demand such immediate action.

⁵⁷ <http://www.rabbis.org/news/article.cfm?id=105491>. They conclude: “The Rabbinical Council of America maintains that reporting acts or suspicions of child abuse is not *mesira* (see footnotes below) and commits itself and its members to reporting acts or suspicions of child abuse as required by civil law.”

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ruled that authorities may be contacted in order to prevent further abuse, they apparently demand that a halakhic authority be consulted in order to determine that there are indeed sufficient grounds to warrant turning to the authorities.⁵⁸ Many have criticized this position, including a group of prominent rabbis, many from the “haredi” community, who in response to the position of the Agudas Yisrael proclaimed:

The Torah’s statement in Leviticus 19:16, ‘Do not stand by while your neighbor’s blood is shed,’ obligates every member of the community to do all in one’s power to prevent harm to others. In conclusion, every individual with firsthand knowledge or reasonable cause for suspicion of child abuse has a Torah obligation to promptly notify the proper civil authorities.⁵⁹

More recently, over 300 Orthodox rabbis published an additional statement which

condemn[s] attempts to ignore allegations of child sexual abuse. These efforts are harmful, contrary to Jewish law, and immoral. The reporting of reasonable suspicions of all forms of child abuse and neglect directly and promptly to the civil authorities is a requirement of Jewish law. There is no need for people acting responsibly to seek rabbinic approval prior to reporting.⁶⁰

Indeed, the overwhelming consensus of Rabbinic opinions rule that when necessary, one must not hesitate and one must inform the authorities, in

⁵⁸ See Resnicoff, *ibid*.

⁵⁹ In 2015, 107 well known Orthodox rabbis signed a “*kol koreh*” (http://issuu.com/jewishpress.com/docs/kol_koreh/) which declares: “We, the undersigned, affirm that any individual with firsthand knowledge or reasonable basis to suspect child abuse has a religious obligation to promptly notify the secular law enforcement of that information. These individuals have the experience, expertise and training to thoroughly and responsibly investigate the matter. Furthermore, those deemed “mandated reporters” under secular law must obey their State’s reporting requirements. Lives can be ruined or ended by unreported child abuse, as we are too often tragically reminded. The Torah’s statement in Leviticus 19:16, “Do not stand by while your neighbor’s blood is shed,” obligates every member of the community to do all in one’s power to prevent harm to others. In conclusion, every individual with firsthand knowledge or reasonable cause for suspicion of child abuse has a Torah obligation to promptly notify the proper civil authorities.” This statement apparently contradicts a statement from the Agudas Yisrael, which insists that one “should present the facts of the case to a rabbi who is expert in halakha and who also has experience in the area of abuse and molestation – someone who is fully sensitive both to the gravity of the halachic considerations and the urgent need to protect children” (<http://www.vosizneias.com/87952/2011/07/22/new-york-agdath-israel-clarifies-its-stand-on-reporting-suspicions-of-child-abuse-to-police/>).

⁶⁰ https://drive.google.com/file/d/0Bz4A_l7qN61RX1lIwa3p2RUK2TXc/view.

order to prevent further abuse. Furthermore, rabbis are most often not trained or experienced in these matters, and all too often cases of physical and sexual abuse were not reported due to rabbinic intervention. As the rabbinic statement above concludes, “*There is no need for people acting responsibly to seek rabbinic approval prior to reporting.*”

CONCLUSION

R. Moshe Chaim Luzzatto (1707 – 1746), in the introduction to his *Mesilat Yesharim* (Path of the Upright), writes:

I have written this work not to teach men what they do not know, but to remind them of what they already know and is very evident to them, for you will find in most of my words only things which most people know, and concerning which they entertain no doubts. But to the extent that they are well known and their truths revealed to all, so is forgetfulness in relation to them extremely prevalent.

At times, even the most obvious truths must be repeated, in order to remind a person to take them to heart.

Unfortunately, despite the explicit rulings of great halakhic authorities, a number of rabbinic proclamations, and scholarly halakhic articles, it appears that it is still necessary to offer a lengthy halakhic justification for that which should be obvious: The Torah’s command not to “stand idly by the blood of your neighbor” dictates that the prohibitions of *leshon ha-ra*, and even informing, which are so deeply entrenched in the Jewish consciousness formed over thousands of years of exile, must be set aside in order to stop and prevent further abuse.⁶¹

⁶¹ Of course, this does not mean that we are careless in risking the livelihood and reputation of good, upstanding people. The collateral damage caused by relating sexual abuse, including the impact on the survivor, his or her family, educational institutions, and more specifically innocent people, should always be weighed. The point of this article, and of the halakhic ruling cited within, is to dispel the apparently held view that relating sexual abuse to one’s family, teachers, therapists, employers, and eventually to secular authorities is prohibited due to the restrictions of *leshon ha-ra* and *mesira*.