**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Ayal Ben Iris Teshurah**

**Shiur #18: The Disqualification of a Sinner from Serving as an *Eid***

The *gemara* in *Sanhedrin* (27a) introduces a law that disqualifies a “*rasha*” from offering testimony. Rava limits this disqualification to those who have violated Halakha for “indulgent” pleasurable interests. Since such people have displayed general lack of discipline, we can expect them to be vulnerable to bribery and possible falsification, and they therefore cannot be trusted as witnesses. Abbaye, however, greatly extends this category to include **any**sinner, even one who has transgressed “on principle,” because he rejects religion or its values (*le-hakhis*). Abbaye bases this ruling on a verse in *Shemot* (23:1) that instructs us not to participate (legally) with a *rasha.*

One way in which to understand this extension is to assume that **anyone**who violates Halakha – either for personal gratification or out of rebelliousness – is suspected of lying in litigational settings. Were it not for the verse that he quotes, Abbaye might have agreed with Rava and only suspected those who demonstrate weakness and indulge in sin; we would not suspect rebels, who are often principled and would be unlikely to lie. The *pasuk*, however, compels Abbaye to extend suspicion even to principled transgressors.

Alternatively, the *pasuk* may not be extendingsuspicion, but rather developing a new CATEGORY. Ample precedent exists to invalidate witnesses based on formal designation, even if they are not suspected of lying. For example, relatives cannot testify even if they are beyond suspicion. The *gemara* in *Rosh Hashana* writes that even Moshe and Aharon would be disqualified to testify about their relatives, even though we would never suspect them of lying. Perhaps the *pasuk* about *rasha* introduces a formal disqualification of those who have sinned on principle. Although they may not be suspected of lying in the same fashion as an indulgent sinner, they are nevertheless formally invalidated as witnesses, because they are designated as ‘*rasha*.’

This second position is adopted by the Nimukei Yosef (5b in the pagination of the Rif in *Sanhedrin*), who clearly distinguishes between an indulgent sinner and a principled sinner. Even though Abaye disqualifies each their invalidations are based on totally different factors. In fact, he claims that a principled *le-hakhis* sinner may be qualified to testify in non-monetary situations. It is conceivable that a person can testify about *issurim* (such as the status of meat or of a *mikva*) even though he does not possess the formal status of an *eid*, as long as he is trustworthy. For example, a woman can testify about *issurim* even though she is formally precluded from the status of *eid* and cannot testify about financial issues. Since she is not suspected of lying, she can testify in situations that do not require actual formal *eid* status. Similarly, a *le-hakhis rasha* is beyond suspicion, but FORMALLY precluded from MONETARY testimony. However, he COULD testify regarding *issur* issues since we do not require a halakhically valid *eid.*

The Ketzot Ha-Choshen (52:1) agrees with this position and extends the concept to two fascinating halakhic implications. First, he claims that since a *le*-*hakhis* *rasha* is not suspected of lying but is only formally invalidated, his testimony is only invalid from the moment he committed the sin. Past and even concurrent testimonies are unaffected by his disqualification. For example, if witnesses affix their names to a contractual loan that entails usury, they violate a *mitzva* and are disqualified from any **future**testimonies. However, the contract itself is valid, since at the stage at which they signed it, the witnesses were not yet defined as *resha’im*. By contrast, if witnesses are discovered to be *zommemim* (false witnesses), all testimonies are disqualified, even those delivered simultaneous to the testimony regarding which they are disclosed as *zommemim*. Of course, earlier testimonies are not discarded, since at earlier stages they had not yet been proven to be deceivers.

A second application of the Ketzot concerns a contract signed by a *rasha* but dated prior to his halakhic infraction. This contract should theoretically be valid, since it was signed by a “not yet” *rasha*. Since the *le-hakhis* *rasha* is not suspected of lying, we can trust him that the contract’s date has not been altered to reflect a pre-*rasha* state, which in turn allows the *shetar* to be accepted by the court. The same policy would not apply to a contract signed by a thief and dated prior to his becoming a thief. Since he is currently a thief, he is suspected of signing a contract as a thief and altering the date of the *shetar* to suggest that it was signed in his pre-thief phase.

These two applications are based on the Ketzot viewing the disqualification of *le-hakhis* *rasha* as formal, rather than empirical. The *le-hakhis* *rasha* is not suspected of lying, but is rather formally disqualified from testifying.

It appears that the Rambam, who severely qualifies the scope of Abbaye’s rule, may also embrace the concept of a formal disqualification. In the tenth chapter of *Hilkhot Eidut*, the Rambam rules that only sins that are punished with *malkot* disqualify a *le-hakhis* principled sinner, citing a verse that describes a *malkot* recipient as a *rasha*. Evidently, the disqualification is not based on suspicion of lying, as *malkot* should not be a precondition for such suspicions; ANY sin may indicate halakhic carelessness and suggest future falsification. It therefore seems that the Rambam maintained that the formal status of *rasha* is what disqualifies a principled sinner, and onlythe punishment of *malkot* conveys this status as sinner. The fact that the Rambam cites an independent *pasuk* that designates a *malkot* recipient as a *rasha* cements the notion that the **status** of the sinner – and not his reliability – is what determines his disqualification.

An interesting extension of the Rambam’s theory may emerge from a debate in the *gemara* in *Sanhedrin* (26b) about someone who is suspected of a sexual transgression. The Ba’al Ha-Ma’or interprets this *gemara* as referring to someone who has not been verified as a violator but about whom rumors have spread. R. Nachman maintains that since he has not **actually** violated any prohibition, he should not be disqualified as an *eid*. However, R. Sheshet disqualifies this person since he receives *malkot* (based on a *gemara* that sanctions *malkot* even for unsubstantiated rumors; see *Kiddushin* 81a). Evidently, at least according to R. Sheshet, the phenomenon of *malkot* *per* se renders the person a *rasha* and disqualifies him formally. Even without verified sins, a person is defined as a *rasha* by receiving *malkot*. This is an extreme position that is clearly rejected by R. Nachman, who may have claimed that a person is only defined as a *rasha* when it is proven that he has committed sins. However, R. Sheshet’s position, similar to that of the Rambam, is clearly that a *rasha* is formally disqualified and that *malkot* is necessary to assign that status.

The Chavot Yair (a 17th century German *posek*) poses an interesting question that relates to the two ways in which the *le-hakhis* *rasha*’s disqualification can be viewed. Can a person who is disqualified as a *le-hakhis* *rasha* offer true testimony in a city in which the *beit din* does not identify him as a *rasha* and will therefore accept his testimony? If the only concern is that he may lie, he should presumably be allowed to testify as long as he personally assures that he is testifying truthfully. (Typically, this scenario would not emerge, since any *beit din* that identifies him as a *rasha* would question his reliability and deny him the opportunity to testify, even if he personally intends to offer true testimony.) Of course, if the *le-hakhis* *rasha* is formally precluded from testifying, he cannot facilitate the processing of his halakhically invalid testimony even if he knows it to be true. This is a unique application of the question of whether a *le*-*hakhis* *rasha* is formally disqualified or merely suspected of falsifying.

A related but even more extreme question was posited by the Gevurot Ari (an 18th century Lithuanian author best known for his *sefer Sha’agat Aryeh*), who discusses a situation in which a *rasha* testifies alongside valid *eidim*. If a disqualified witness – for example, a relative – joins others in testimony, the entire group of witnesses is discarded. This principle – known as *nimtza echad* *meihem karov o pasul* – applies to typical disqualified witnesses. Does the same apply to a *le-hakhis* *rasha*?If a *rasha* *le-hakhis* were to join a group of *eidim*,would his membership dismantle the entire *eidut*? The Gevurot Ari links this issue to our basic question. If a *rasha* *le-hakhis* witness is formally disqualified, his participation should spoil the entire group of witnesses he has joined. Alternatively, at least according to the Gevurot Ari, if he is only disqualified because of concerns of reliability, he is not considered an invalid *eid* and would not ruin the overall group of witnesses he has joined.

This application is perhaps more extreme than that of the Chavot Yair. It is one thing to suggest that in the absence of a formal disqualification, a *rasha* may testify if he knows he isn’t lying (assuming an unknowing *beit din* will grant him an opportunity). It is quite another thing to suggest that he will not ruin the group of witnesses he has joined. After all, even though the REASON for his disqualification is PSYCHOLOGICAL rather than FORMAL, he is still considered a *PASUL EID* whose presence within a general group of witnesses should lead to the dissolution of that group.

Although the evidence we have brought suggesting that a *rasha* *le-hakhis* is formally disqualified is quite compelling, an interesting *gemara* implies that he is in fact only disqualified because we question his reliability. The *gemara* in *Sanhedrin* (27a) cites a *machloket* between R. Meir and R. Yossi regarding *eidim* *zommemim* who have been caught lying about monetary cases. Would they be disqualified from testifying in capital cases, or would we presume that they would be hesitant to lie about more severe cases, which could yield the death penalty? R. Meir argues that if they were caught lying about monetary cases, we suspect them of escalating to lie even about capital cases. R. Yossi argues against the concept of escalation and limits their disqualification to monetary situations.

The *gemara* (Sanhedrin 27a) suggests that Abbaye’s position disqualifying a *le-hakhis* sinner from testifying is based on R. Meir’s logic. Just as R. Meir was concerned that witnesses would escalate their lies even in more severe cases, Abbaye was similarly concerned with a sinner escalating and lying. Even though he has not been caught lying, we worry that his infraction indicates inferior moral character and increases the chances of future false testimony. This association between Abbaye and R. Meir indicates that Abbaye’s disqualification of a *le-hakhis* sinner from testifying is not based on his formal status as a *rasha*, but rather on the concern that he will escalate into a liar.