

Mitzvos In the Future

This week's essay will discuss a fascinating *Sugya* related to the rapidly approaching fast of Yom Kippur, yet a fundamental topic in and of itself.

Preparation is an intrinsic part of every Mitzva. For example, building a Sukka and obtaining an Esrog before Sukkos or ensuring that one has Tefillin available for the following day are obligations that apply even before the Mitzva has begun. However, there are times when a person cannot perform a Mitzva due to *Pikuach Nefesh* concerns, not due to lack of – or despite adequate – preparation. In these circumstances, Halacha dictates that observance of the Mitzva is suspended to save a life.

Sometimes, with appropriate preparation – either before the *Zman* of the Mitzva or before Shabbos, a person can ensure that he will not come to a situation of *Pikuach Nefesh*, or at least that he will not be required to be *Mechalel Shabbos* because of it. In the past, we have clarified if and to what extent a person is obligated to make proactive efforts to avoid situations of *Pikuach Nefesh* on Shabbos.¹

This question comes up in many common situations, such as when a pregnant woman is nearing her due date. Is she obligated to find a place to stay near the hospital over Shabbos so that she will not need to travel (which would be *Chilul Shabbos*) if she goes into labor? A more drastic version of this question would be if performing a specific action would preclude someone from keeping a Mitzva in the future. For example, may a patient schedule an elective operation close to Yom Kippur that would lead to his inability to fast due to *Pikuach Nefesh* concerns.

There is extensive discussion in the Poskim about the degree of obligation to avoid entering a state of *Pikuach Nefesh*. The *Chasam Sofer* famously discussed whether a doctor who is a Kohen can ascertain whether a patient has died, which would require him to become *Tamei*. The underlying assumption is that this involves *Pikuach Nefesh*, as there is a concern of burying someone alive without the doctor's decision. The questioner felt that the Kohen should therefore be permitted to perform this task.

The *Chasam Sofer* replied (Y.D. 338):

It is true that if a situation of Pikuach Nefesh was in front of us, and a Kohen or Yisrael is before us, we would say [that] whoever is zealous and swift [in hurrying to save a life] is praiseworthy; we would not differentiate between a Kohen and a Yisrael. But that a Kohen [should] forgo his Kedushas Kehuna such that if a situation of Pikuach Nefesh arises he would intervene and nobody else [would]...

¹ See Vayeishev, Miketz, and Vayechi 5782

Are we not obligated to prepare everything necessary before Shabbos for a Yoledes, Choleh, or Mila so that we do not need to desecrate Shabbos?

Seemingly, the *Chasam Sofer's* comparison is not absolute; there is certainly more reason to be stringent with the Kohen than with the *Yoledes*. The *Kohen* is "preparing" (in the *Chasam Sofer's* words) to become *Tamei* for a case of *Pikuach Nefesh*, whereas the *Yoledes* is simply going about her everyday life. Presumably, he intends that if *she* must refrain from desecrating Shabbos, certainly the Kohen must refrain from *actively placing himself in a situation* in which he will need to desecrate his *Kedushas Kehuna*.

HaGaon Rav Asher Weiss shlit"á (Minchas Asher, Shemos 38) establishes an important concept regarding someone who is unable to perform a Mitzva. He cites the *Tzlach* in *Maseches Pesachim* (3b) who maintains that a person who is distant from Yerushalayim (and thus exempt from Korban Pesach) is not required to travel to be closer to Yerushalayim so as to assume the obligation. The *Minchas Chinuch* (Mitzva 5) disagrees; a person must do everything in his power to fulfill the Mitzvos at their correct time. Therefore, if he did not bother to come to Yerushalayim before Pesach he has been *Mevatel* a Mitzva.

Rav Asher takes an intermediate position based on an important insight he discusses in several of his Sefarim. He contends that each Mitzva consists of two components: the "*Ikar haMitzva*" – the principal element of the Mitzva – and the "*Ratzon haTorah*" – the will of the Torah. The *Ikar haMitzva* is the obligation that rests upon a person that applies throughout the time during which he is required to perform it. For example, the obligation to take a Lulav on Sukkos applies throughout Sukkos. But there is an additional component, namely, the will of the Torah that the Mitzva be fulfilled. Even if a person cannot physically perform the Mitzva due to an unavoidable circumstance (*Ones*) that exempts him, he has not fulfilled the will of the Torah to take a Lulav. This is why a person must obtain a Lulav before Sukkos. This obligation is not part of the Mitzva itself; if he does not obtain a Lulav, it will not be considered a *Bitul* of a *Mitzvas Asei* but an *Ones*. However, he will not have fulfilled the *Ratzon haTorah* component of the Mitzva.

In light of this discussion, we can examine a fascinating *Machlokes Acharonim* regarding *Tzom Gedalya* and Yom Kippur. A person who must limit fasting to once every ten days due to a medical condition must choose between *Tzom Gedalya* and Yom Kippur as fasting on both days would endanger him. *Tzom Gedalya* is only a *d'Rabbanan* whereas Yom Kippur is *d'Oraisa*, thus, we would have assumed that he should refrain from fasting on *Tzom Gedalya* so that he will be able fast on Yom Kippur.

However, the *Aishel Avraham* on the *Shulchan Aruch* (602) states otherwise based on a fundamental principle:

With regard to Tzom Gedalya, where there is a concern that by fasting, [he will be unable to fast] on Yom Kippur, Chaza"l say [see Ran, Nedarim 15b s.v. "u'llnyan"]

we uproot a Mitzva d'Oraisa passively ("Shev v'Al Ta'aseh) due to a Takana d'Rabbanan. Therefore, he should fast, and if he cannot fast afterward on the holy Yom Kippur, he will be considered Anus and [it is] permissible, especially if Pikuach Nefesh is Hutra (Isurim are completely waived in the face of danger to life). Although it will then be a "Kum va'Aseh" (an active violation of Yom Kippur), we see in other cases, such as traveling by ship [Shabbos 19a] or going into a desert by caravan (O.C. 248:4) that despite [the fact that a person] caused a situation of Pikuach Nefesh, nevertheless, the desecration of Shabbos [is permitted]. How much more so [is this true] when the cause is a fast that is Divrei Kabbala, and one should not actively nullify the Mitzva against the words of Chaza"l. Especially as Tzom Gedalya precedes Yom Kippur by more than three days, and one may set out in a caravan three days before Shabbos as mentioned above. If, however, because of Tzom Gedalya there will be a risk to one of his limbs, we can say it is more lenient.

Let us elucidate the *Aishel Avraham's* arguments:

- 1) The patient must fast on *Tzom Gedalya* even though it will prevent him from fasting on Yom Kippur, because one should fulfill a *d'Rabbanan* even at the expense of uprooting a *d'Oraisa*, provided that this is done passively and not actively.²
- 2) He will be considered *Anus* on Yom Kippur due to *Pikuach Nefesh* and therefore not culpable, especially if *Pikuach Nefesh* on Yom Kippur is *Hutra*, meaning it is as if there is no *Aveira* at all.
- 3) Despite this, the *Aishel Avraham* notes that on Yom Kippur itself uprooting the *d'Oraisa* will be *Kum va'Aseh* – an active violation of Halacha – because he will need to eat or drink. Therefore, he invokes the *Sugya* of embarking on a journey by ship or through a desert, particularly when it is within three days of Shabbos.

The *Sugya* of boarding a ship before Shabbos is complex; we will discuss it and its relevance to our case in a future essay. At any rate, the *Aishel Avraham* is clear; a person must fulfill a Mitzva that stands before him presently, even if it is "only" a *d'Rabbanan*, and he does not need to take into account the ramifications of doing so on his ability to perform future Mitzvos that he is not currently obligated to fulfill.

However, the *Aishel Avraham's* arguments still seem unclear. He would certainly not permit performing an action that is neither a Mitzva nor vital if it would prevent him from fasting on Yom Kippur. It would be akin to permitting a person to swallow a sleeping pill on Erev Pesach to fall asleep and fail to fulfill the Mitzva of eating Matza – an absurd notion! If so, why should the fact that he will fulfill a *Mitzva d'Rabbanan* make any difference? At the end of the day, this will lead to the *Bitul* of a *Mitzva d'Oraisa*!

² [Editor's note: The act that will cause him to be unable to fast on Yom Kippur is the passive act of not eating on *Tzom Gedalya*. Alternatively, fasting on *Tzom Gedalya* – even if it is considered an active deed – is not a direct or active violation of Yom Kippur.]

Apparently, the *Aishel Avraham* holds that a current Mitzva obligation takes precedence over any future obligations that will arise because at this time he is fulfilling his *Chiyuv Mitzva*.

The *Sdei Chemed* discusses this question at length, citing many Poskim. His conclusion is similar to that of the *Aishel Avraham* – first and foremost, a person must fulfill the Mitzva in front of him; only afterward should he consider whether he will be able to fulfill the next Mitzva (in this case, Yom Kippur).

However, many other Poskim disagree, such as Rabbi Ben Tzion Abba Shaul zt"l (*Or l'Tzion* 4). He first cites an argument in support of the *Aishel Avraham* and *Sdei Chemed*, namely, "Who says the patient will be alive the following week? It is thus not correct for him to make calculations with that in mind." However, Rabbi Abba Shaul proves that this is incorrect. The Gemara in *Maseches Sukka* (25) states that the source for the principle "*haOsek b'Mitzva Patur min haMitzva – One who is involved in one Mitzva is exempt from another*" is the episode recorded in the Torah of those who were *Tamei Meis* (due to burying a *Meis Mitzva*) a few days before Pesach such that they could not become pure in time to offer the *Korban Pesach*. The Gemara derives from this episode that one who is involved in one Mitzva (burying a *Meis Mitzva*) is exempt from another Mitzva (*Korban Pesach*). Rabbi Abba Shaul asked how the Gemara can adduce proof from this case: In that case, a week had passed between caring for the dead body and the time for the *Korban Pesach*. Perhaps, they performed the first Mitzva because "Who says we will be alive in a week?" However, in other cases where there is no interval between the two Mitzvos, there would be no concern of dying in the interim, and one Mitzva would not exempt another. We must say that they were required to consider the ramifications of performing the first Mitzva and in that light determine whether it would be correct to perform it in light of the future Mitzva that they would not be able to fulfill. Rabbi Abba Shaul therefore concluded that one should set aside *Tzom Gedalya* in order to fast on Yom Kippur.

What do we do in practice? Of course, we cannot resolve a *Machlokes haPoskim*, but Rav Nisim Karelitz zt"l points out an important practical consideration in his *Sefer Chut Shani*. He contends that a person whose health does not permit him to fast on both days despite the seven-day interval should be considered a *Choleh sheEin Bo Sakana*. Since a *Choleh sheEin Bo Sakana* is exempt from fasting on Tzom Gedalya, the Halacha is clear – he must eat on Tzom Gedalya and fast on Yom Kippur.

In a future essay, we will revisit the complex *Sugya* of boarding a ship on Erev Shabbos or even on Shabbos itself in light of the *Chilul Shabbos* that will be necessary. We will see that there are ramifications of this *Sugya* for several cases similar to the ones that we have discussed. Primarily, we will examine whether there is a difference between actions performed before Shabbos (or before the time that the Mitzva obligation begins) that create a *Pikuach Nefesh* situation and actions performed *within the time frame* of the Mitzva obligation (e.g. after Shabbos has begun).