YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur #12: *Pikuach Nefesh* Performed with a *Shinnui* (2):**

**Torah Prohibitions and Rabbinic Prohibitions**

**Introduction – Presenting the Questions**

In the previous *shiur*, we dealt extensively with the disagreement among the *Rishonim* and *poskim* regarding prohibited labors that must be performed on Shabbat for the sake of *pikuach nefesh*, regarding whether or not they should be performed with a *shinnui,* i.e.,in an unconventional manner. This question is of great practical relevance for those involved in medicine and security, and it arises in a variety of situations.

It is clear that a member of the security forces who encounters a terrorist should not use his weapon in an unconventional manner, but should act in the fastest and best way to neutralize the danger. Likewise, an emergency responder who arrives at the scene of a road accident should offer the victims assistance in the fastest and best way possible.

However, a very significant portion of medical and security work involves actions that do not have immediate urgency, and thus the question arises as to whether it is necessary to perform non-urgent prohibited labors with a *shinnui*. Here are several examples:

1. A doctor on duty makes a routine visit to a ward in the hospital, and records the details of each of the patients. Registration and follow-up are important, but a delay of a few minutes to perform the required actions in an unconventional manner will certainly not harm them. Is it necessary to write with a *shinnui*? And what is the law when the writing is done digitally, which according to most *poskim* involves a Rabbinic prohibition and not a Torah prohibition?

2. A soldier manning a military operations room on Shabbat is required to make many phone calls. It is obvious that non-operational calls should not be made on Shabbat, but even among the operational calls, some are necessary for routine procedures – not for the purpose of managing an emergency. Here, too, it is commonly assumed that telephone calls on Shabbat are prohibited on Shabbat only by Rabbinic law. Should they be made with a *shinnui*?

3. The IDF operates diverse observation measures for the purpose of defense and intelligence gathering, and most of the measures are electronically activated. Is a soldier who is involved in such activity on Shabbat required to carry out all the collection and scanning operations in an unconventional manner? Is there a difference between measures whose operation involves a Torah prohibition, such as those that have incandescent bulbs, and other measures?

4. A soldier who is required to patrol in a vehicle outside of an *eiruv* on Shabbat, and wishes to get out of the vehicle for rest and reinvigoration – must he remove his personal weapon and other such items from the vehicle in an unconventional manner, or do we say that since this action is necessary for the effectiveness of the mission, it may be done as usual? Here, too, one must ask whether there is room to distinguish between removing those things from the vehicle into an area that is regarded as a public domain by Torah law, versus removing them into a *carmelit*.

As mentioned, the examples are many and varied, and they all seem to depend on the fundamental dispute we discussed in the previous *shiur*.

The main argument that I would like to propose below is that in this context, a distinction must be made between Torah prohibitions and Rabbinic prohibitions.[[1]](#footnote-1) In our electronic and computerized world, there are many actions that can be done without violating Torah prohibitions (on the assumption that the use of electricity on Shabbat is not prohibited by the Torah, which bears further discussion but not in this forum), and therefore, if there is room for leniency with respect to Rabbinic prohibitions, this may greatly help those engaged in the saving of lives.

**The Issue of “*Chiltit*”**

In the previous *shiur*, we mentioned two explicit Talmudic passages that require prohibited labors performed for the sake of *pikuach nefesh* to be done with a *shinnui*: one with respect to a birthing woman, and the other with respect to items needed for circumcision on Shabbat. Tractate *Shabbat* has a third passage dealing with this issue, though the *Rishonim* disagree about how to understand it.

The Mishna in *Shabbat* (found on page 140a) states that it is forbidden to soak *chiltit*, a medicinal plant, in tepid water on Shabbat. The Gemara asks about the nature of the prohibition, and concludes that it is a Rabbinic prohibition against acting on Shabbat in the same manner as one does during the week (*uvdin de-chol*). Later in the passage, it becomes clear that the water in which the *chiltit* is soaked may be used to treat various illnesses, and a question arises with regard to one who began treatment with *chiltit*-water during the week, and wishes to continue treatment on Shabbat. The Gemara answers:

He may soak [it] in cold water and place it in the sun… here, since he had drunk [it] on Thursday and Friday, if he would not drink it on Shabbat, he would be endangered. (*Shabbat* 140a)

That is to say, even though the prohibition to soak *chiltit* in tepid water on Shabbat is only a Rabbinic prohibition, the Gemara requires a *shinnui*: the *chiltit* should be put in cold water, which may then be placed in the sun to warm it up.

The *Rishonim* disagree about the illness in question. According to the simple understanding of the Gemara, if the patient does not drink the *chiltit* water, he will be in real danger. The Ritva cites this reading in the name of "there are those who explain," it is indicated in the *Tur* (*Orach Chaim* 321), and is also how the *Magen Avraham* (321, no. 27) and the *Mishna Berura* (318, no. 75) understood the *Shulchan Arukh* (321:18). In contrast, the wording of the Rambam (*Hilkhot Shabbat* 22:7) implies that drinking *chiltit* water is a preventive treatment, and that we are dealing with a person whose life is not in danger. Thus also write the Ramban (*Ketubot* 60a, s.v. *ve-Rabbeinu Tam katav*), the Rashba (*Avodat ha-Kodesh, beit mo'ed, sha'ar* 1), and the Ritva.

This dispute between the *Rishonim* is very significant for the matter under discussion. If the Talmudic passage is dealing with a sick person whose life is not in danger, or with preventive treatment, then it is not at all relevant to our topic, and it is easy to understand why the Sages required that the forbidden labors be done in an unconventional manner. But if we explain that the Gemara is dealing with a sick person whose life is in danger, then we learn from here that even in the case of a light Rabbinic prohibition, based on *uvdin de-chol*, the prohibited action must still be performed with a *shinnui*. This position is explained by the Ritva:

Since it suffices for him in this manner, whatever is possible to change, we change it. (*Chiddushei ha-Ritva*, *Shabbat* 140a, s.v. *aval*)

According to some commentators, then, this passage is another source for the obligation to use a *shinnui* when performing a prohibited labor for the sake of *pikuach nefesh* –not only in the case of a Torah prohibition, but even in the case of a Rabbinic prohibition.

***Poskim* who Require a *Shinnui* Even in the Case of a Rabbinic Prohibition**

In the previous *shiur*, we saw that the Rema (*Orach Chaim* 328:12) states that a prohibited labor that is needed for *pikuach nefesh* should be performed with a *shinnui*, without differentiating between Torah prohibitions and Rabbinic prohibitions. Neither does the passage dealing with a birthing mother make such a distinction. The *Rishonim* there relate to Torah prohibitions (carrying from a private domain to a public domain), but they do not differentiate explicitly.

An action that is prohibited by Rabbinic law and performed with a *shinnui* is called a "*shevut de-shevut,*" an action that has two reasons making it prohibited only by Rabbinic law. Such a prohibition is regarded as less severe, and it is permitted for the sake of a *mitzva*, in a situation of great need, and for a sick person (*Shulchan Arukh Orach Chaim* 307:5). It may therefore be that, when possible without delaying the rescue, it is preferable to transgress the Rabbinic prohibition in a manner of *shevut de-shevut*, i.e., to do it with a *shinnui*.

Indeed, many *poskim* assume that the Rema's ruling is valid even with respect to Rabbinic prohibitions. Thus, for example, writes *Shemirat Shabbat Ke-hilkhata*:

Anything that is needed by a dangerously sick person, whether it concerns his treatment or it concerns his nutrition or other needs – if withholding it from the patient will not worsen his situation or reduce his chances of overcoming his illness, we desecrate Shabbat for his sake only with Rabbinic prohibitions, and here too, when possible, this should only be done with a *shinnui.*

When it is necessary to call a doctor to summon him, or to ask him for treatment instructions, one should, if possible, pick up the phone in a manner different from the way he usually does this on weekdays… At the end of the conversation… even when it is permissible to return the receiver to its cradle, one should do so with his elbow. (*Shemirat Shabbat Ke-hilkhata*, chap. 32, pars. 24, 40, 42)

Rabbi Neuwirth does not cite a source for these rulings, but refers the reader to the *Shulchan Arukh's* ruling (*Orach Chaim* 328:17) regarding a sick person whose life is not in danger, for whom Rabbinic prohibitions may be performed with a *shinnui*; in his opinion, the same rule applies to these cases. This comparison is debatable, however, for while the *Shulchan Arukh* does rule that for a sick person whose life is not in danger, one may transgress a Rabbinic prohibition only with a *shinnui*, here we are dealing with a dangerously sick person. Furthermore, the *Shulchan Arukh* himself rules that when there is danger to a particular organ, but not to the entire body, one may transgress a Rabbinic prohibition in the normal manner, without a *shinnui*! Rabbi Neuwirth relates to this as well (*Shemirat Shabbat Ke-hilkhata*, chap. 33, note 21), and cites the book *Da'at Torah*[[2]](#footnote-2) as saying that even in such a case, one should not be lenient if it is possible to provide assistance in a permitted manner – that is, with a *shinnui*.

It turns out that, according to Rabbi Neuwirth, the instruction to seek the most lenient prohibition – in our case, a Rabbinic prohibition performed with a *shinnui* – is a comprehensive guideline, and should be applied even to a dangerously sick person, both one whose organ is in danger and one whose life is in danger. As stated, this expansion is not explicit in the words of the Rema, but a source can be found for it in the way some *Rishonim* understood the Talmudic discussion of *chiltit.*

***Poskim* who Distinguish Between Torah Prohibitions and Rabbinic Prohibitions**

**1. A review of the opinions**

In the book *Torat ha-Yoledet* (chap. 42, note 2), Rabbi Y. Zilberstein cites the book *Pikuach Nefesh[[3]](#footnote-3)* (no. 4, letter 3, par. 16), which takes a position different from that of Rabbi Neuwirth. He assumes, without offering a source, that the obligation to use a *shinnui* when performing a prohibited labor for a birthing woman applies only to Torah prohibitions. Based on this, Rabbi Zilberstein grapples with the question of whether removing a child from the womb involves a Torah prohibition that requires a *shinnui*, or a Rabbinic prohibition that may be transgressed in the usual manner.

The book *Torat Refael*, written by Rabbi Refael Shapiro of Volozhin, is more explicit:

Regarding danger, the rule that wherever it is possible to change, we change, only applies in a case where without the change, there would be a Torah prohibition. But where without the change it is only a Rabbinic prohibition, we do not find that one must change… This is explicit in the words of the Ramban. (*Torat Refael*, nos. 36-37)

Rabbi Shapiro refers to the words of the Ramban in *Torat ha-Adam* and in his novellae to tractate *Avoda Zara* (28b, s.v. *u-mashma nami*), butI was unable to find a clear proof there. Perhaps he is referring to the very distinction between a sick person whose life is not in danger, regarding whom the Ramban explicitly says that a Rabbinic prohibition may be transgressed but only with a *shinnui*, and a sick person whose life is in danger, regarding whom there is no unequivocal ruling, but only a general requirement that the action be performed with a *shinnui.*

Rabbi Yosef Shalom Elyashiv cites the *Torat Refael* and rules:

In a case of danger, where it is necessary to perform a labor prohibited by Torah law, but it can be performed, without delay or postponement, with a *shinnui* – it must be performed with a *shinnui*. But a labor that is prohibited only by Rabbinic law does not require a *shinnui.* (*Kovetz Teshuvot*, part II, no. 26, letter 3)

Rabbi Elyashiv is referring to the *Shulchan Arukh's* ruling regarding the desecration of Shabbat in a case of danger to an organ, and it seems that he means to say, as we said above: For the sake of a sick person who is not in danger, a Rabbinic prohibition may only be transgressed with a *shinnui*; in a case of danger to an organ, and all the more so in the case of danger to life, a Rabbinic prohibition may be transgressed even without a *shinnui*.

We see then that Rabbi Neuwirth's ruling was certainly not unanimously accepted, and the basis of the dispute must be clarified.

**2. The rationale behind the distinction**

In the previous *shiur*, we saw that the Rema's ruling regarding a *shinnui* in a situation of *pikuach nefesh* is based on the law of "we feed him the less forbidden food first." The *Acharonim* examined the question of whether this law applies even to Rabbinic prohibitions. Rabbi Zilberstein (*Torat ha-Yoledet*, chap. 33, note 1) proves from the *Mishna Berura* (278, no. 1) that indeed it does apply: Even among Rabbinic prohibitions, we find more severe prohibitions (e.g., a prohibited labor performed not for the purpose for which it was performed in the *Mishkan*) and less severe prohibitions (handling *muktzeh*, and asking a non-Jew to perform a prohibited labor, which involves no action); in a situation of *pikuach nefesh*,preference should be given to the lightest prohibition.

This accords with a more general principle that even with respect to Rabbinic prohibitions, one must seek out permitted solutions. A prominent expression of this is found in a different context in the *Tosafot* (*Shabbat* 94a, s.v. *gadol kevod ha-beriyot*). There it is explained that even though it is permitted to transgress Rabbinic prohibitions for the purpose of taking care of a corpse, based on the principle of human dignity, wherever it is possible to reduce the level of the prohibition, it is obligatory to do so. Therefore, the *Tosafot* explain, even though it is permitted to remove a corpse from a private domain to a *carmelit*, it should be done by way of a loaf of bread or an infant,[[4]](#footnote-4) that is to say, in a way that reduces the prohibition of *muktzeh*.

As stated, according to this, Rabbi Neuwirth is correct in his ruling that in a situation of *pikuach nefesh*, the prohibited labor should be performed with a *shinnui* even if it involves only a Rabbinic prohibition.

The position of those who disagree with Rabbi Neuwirth may be based on an important and fundamental distinction[[5]](#footnote-5) between Torah prohibitions, which are defined as "prohibitions inherent in the object [*cheftza*]," and Rabbinic prohibitions, which are defined as "prohibitions imposed on the person [*gavra*]." A person who transgresses a Torah prohibition of Shabbat causes "Shabbat desecration," and even though in a situation of *pikuach nefesh* that is a great *mitzva*, nevertheless, Shabbat has been desecrated. Therefore, it is preferable to perform the prohibited labor with a *shinnui*, and thus avoid Shabbat desecration.

On the other hand, the violation of a Rabbinic prohibition of Shabbat does not impair the sanctity of the day; rather, it constitutes a personal transgression of disobeying the words of the Sages. In a situation of *pikuach nefesh,* when Shabbat may be set aside, performing the prohibited act does not involve any rebellion against the words of the Sages: the prohibition is void in its very essence, and therefore the action need not be performed with a *shinnui.*

This distinction can be supported by the words of the Ramban in *Torat ha-Adam*:

To perform the prohibited labor with a *shinnui –* so as not to desecrate the Shabbat. (*Torat ha-Adam*, ibid.)

The Ramban emphasizes the dimension of Shabbat desecration, and as mentioned, it may be suggested that such desecration exists in the case of a Torah prohibition, but not in a case of a Rabbinic prohibition.

When I proposed this idea to my revered teacher, Rabbi Aharon Lichtenstein *zt”l*, he was inclined to agree with it and to accept this fundamental distinction between Torah and Rabbinic prohibitions.

**Danger Before Us?**

In the responsum mentioned above, Rabbi Elyashiv incorporates another consideration into the discussion:

If so, it may be argued that even though we maintain that Shabbat may be desecrated even for an uncertain danger in the future – in such a case, if it is possible to perform the prohibited labor in an unconventional manner, one should do so by virtue of the law according to all opinions, and not only because that is the custom as the Rema wrote. For as of yet there is no danger, but we are afraid about the future, and so when it is possible to do it in an unconventional manner, and he will receive the matter without delay, one should be stringent according to all opinions. (*Kovetz Teshuvot*, ibid.)

This distinction corresponds to a concept discussed in previous *shiurim*: the higher the level of *pikuach nefesh*, the less we have to seek out permitted solutions. In the case of a future danger, even if we define it as a situation of *pikuach nefesh*, it is appropriate to seek a way to perform the prohibited labor in a permitted manner, even in the case of a Rabbinic prohibition.

Rabbi Avraham Avidan, who at the time served as the deputy chief rabbi of the IDF, said the following in the name of Rabbi Elyashiv:

And I also heard from Rabbi Y. Sh. Elyashiv, *shelita*, that wherever in the majority of cases there is no danger, but nevertheless we desecrate the Shabbat [due to that danger] because in matters of *pikuach nefesh*, we do not follow the majority – in such a case, a *shinnui* is required according to all opinions. (*Masa ba-Har¸* p. 365)

If so, when we come to decide in practice on the need for a *shinnui* in a situation of *pikuach nefesh*, we need to consider this point as well.

**Trouble and Effort for Those Involved in *Pikuach Nefesh***

In addition to all that has been said thus far, there is room for another type of consideration. The previous *shiur* mentioned a responsum of Rabbi Sh. Z. Auerbach in which he dealt with the dispute between the Mabit and the *Bi'ur Halakha* regarding the Rambam’s view on the matter of "feeding him the least forbidden food first." The background of this responsum is Rabbi Auerbach's exceedingly novel position, according to which a person is not obligated to radically disrupt his life in order to avoid Shabbat desecration for the sake of *pikuach nefesh*. Therefore, if a person prepared hot water on Friday for his enjoyment on Shabbat, and over the course of Shabbat, he learns about a dangerously sick person in his vicinity who needs hot water, he is not obligated to forgo his own enjoyment of Shabbat, and he can heat up water for the sake of the patient, based on *pikuach nefesh.* At first glance, this novel position seems far-fetched, and indeed many have expressed reservations about it. In that responsum, Rabbi Auerbach tries to justify and explain his position.

Regarding our matter, Rabbi Auerbach writes:

Even though the laws of Shabbat are like mountains hanging by a hair, and the issue that we are discussing is exceedingly serious, nevertheless, it seems to me that regarding *pikuach nefesh*, since the Torah states: "He shall live by them" and not die by them, therefore, even if [the Shabbat prohibitions] are only set aside [and not permitted], it is considered as absolutely permitted. Just as on weekdays one is not obligated to lose money or exert oneself greatly, if it is possible to cook for the sick person of his own, so too on Shabbat…

One should not trouble or burden a person who comes to save a Jewish life, with multiple searches or financial loss. It is true that the Rema writes in sec. 328 that if it is possible to perform the treatment without delay with a *shinnui*, he should do so… But even according to the Rema, it seems that all this is only in a case where there is little difference between doing it in the usual way and doing it by way of a non-Jew or with a *shinnui*; but if because of this, he will have to trouble himself a lot or trouble others, by waking them from their sleep or preventing them from eating and drinking or the like, in such a case it seems that there is great concern about a mishap… or he will refrain [from helping] on this account, and [the sick person] will come to danger. (*Responsa Minchat Shlomo*, part I, no. 7)

Rabbi Auerbach presents the novel argument that even if we say that the obligation to perform the prohibited labor with a *shinnui* is based on the understanding that the Shabbat prohibitions are only set aside in a situation of *pikuach nefesh*, and we must not overburden those involved in *pikuach nefesh*, because after all, they are involved in saving lives. Without a doubt, performing each and every action with a *shinnui*, and especially when we are dealing with a medical team or security force on a long shift, which is carried out almost every Shabbat and not as a one-time assignment, is a huge hassle, and according to Rabbi Auerbach, such a burden cannot be placed on them.

Of course, it is difficult to define unequivocally and comprehensively what is considered great trouble and what is deemed little trouble, and it is clear that each case must be considered separately.[[6]](#footnote-6) As a general rule, it can be argued that a person who must do some prohibited action on Shabbat on a one-time basis should do it with a *shinnui*, whereas a medical or security provider who is called to action every Shabbat, may operate in his usual manner.

Another, more "operational," aspect to this argument was raised by Rabbi Nahum Rabinovitch:

Actions on Shabbat that are permitted for security purposes in a security operation – should not be performed with a *shinnui*, as I have already written several times, because instead of concentrating on his security work, he will constantly busy himself with making changes, and his reactions will also be slower, and it is also possible that he will come to greater prohibitions because of this. (*Melumadei Milchama*, no. 57,[[7]](#footnote-7) a responsum about using communication devices in the IDF on Shabbat, letter 6)

Rabbi Rabinovitch brings us back to what was said at the beginning, and clarifies: Excessive preoccupation with the subject of "*shinnui*" (just like the effort to find a non-Jew) distracts a person from the rescue task itself, and in the end is liable, God forbid, to exact a toll of human life.

**Summary in Practice**

In my humble opinion, the practical conclusions that emerge from what has been presented are as follows:

1. The very obligation to use a *shinnui* in a situation of *pikuach nefesh* is a subject of disagreement among the *Rishonim*, and the plain understanding of the Rambam and the *Shulchan Arukh* is that prohibited labors may be performed in such a situation in the usual manner.

2. Nevertheless, when it comes to actions that are not part of the actual rescue operation and contribute to it only indirectly, there is good reason to require a *shinnui*, especially when it comes to Torah prohibitions.

3. As a rule, actions that involve transgression of Rabbinic prohibitions may be performed in the usual manner, but if there is no rush at all, and we are dealing with a one-time operation, there is room for stringency and requiring a *shinnui* even in the case of a Rabbinic prohibition.

4. Security and medical personnel, who work long shifts and are required to perform many and prolonged actions for the purpose of *pikuach nefesh*, may do them in the usual manner, so as not to impair the activity and come to danger.

This is how the guidelines are formulated in the book *Torat ha-Machaneh* from the Beit Midrash of the Military Rabbinate:

As for the manner of conduct during an operational activity, a distinction must be made between clear situations of danger, in which the rescue operations must be carried out as usual on a weekday, and situations of uncertain danger, or concern about future danger, in which it is appropriate to try to avoid performing prohibited actions (especially actions prohibited by Torah law), and to perform them in a manner different from the way he performs them on a weekday (such as activating night vision and filling out a log during a routine observation, and all the more so with respect to actions that are not directly connected to the rescue itself, such as formal reporting by way of communication devices or documenting such a report in the operations log, which should not be carried out at all unless there is operational justification for it).

Apart from this, when determining the manner of performing prohibited actions, one must take into account that a change from the usual ways of doing things detracts from the ability to react automatically, just as a change in the order of actions may lead to forgetting one of them, and that preoccupation with halakhic questions and ways to reduce the prohibition is liable to disturb the soldier's state of mind to the point of impairing his operational capacity. (*Torat Ha-machaneh*, vol. II [Shabbat], 36, 1)

(Translated by David Strauss)

1. This argument was already presented in my article, "*Issurei de-Rabbanan ve-Shinnui be-Tzahal u-be-Veit Cholim*,” *Techumin* 33, but I have included some additional points here. [↑](#footnote-ref-1)
2. Authored by Rabbi Sholom HaKohen Schwadron, the Maharsham of Berezhany, one of the leading halakhic authorities in Galicia at the end of the nineteenth century. His grandson, who is named after him, Rabbi Sholom Mordechai HaKohen Schwadron, the Maggid of Jerusalem, published many of his books. [↑](#footnote-ref-2)
3. Authored by Rabbi Eliyahu Meir Feivelsohn, who studied in the yeshiva of Volozhin, served as the rabbi of the city Kupishok in Lithuania, and died in 5688. [↑](#footnote-ref-3)
4. See *Shabbat* 43a. [↑](#footnote-ref-4)
5. See, for example, *Netivot ha-Mishpat* (*Bei'urim*), sec. 234, no. 3. [↑](#footnote-ref-5)
6. Rabbi Zilberstein (*Torat* *ha-Yoledet*, chapter 42, note 1) suggests an interesting guideline for defining “great trouble”: The Rambam (*Hilkhot Bi'at Mikdash* 4:14) rules that since ritual impurity is "set aside" with respect to communal sacrifices, we should search for pure priests, and he seems to imply that we need only to search for pure priests located in Jerusalem. We see then that looking for pure priests outside Jerusalem falls into the category of "great trouble" or "exceptional effort," and this is unnecessary, whereas looking for pure priests in the city is considered a reasonable trouble. [↑](#footnote-ref-6)
7. P. 179 in the 5764 edition; sec. 56, p. 175 in the 5754 edition. [↑](#footnote-ref-7)