YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

***Shiur* #36:**

**7 October 2023**

**War in Azza**

On October the 7th 2023, on the morning of Simchat Torah, the notorious terrorist group Hamas carried out a massacre which took the lives of approximately 1200 men women and children. The attack began with a bombardment of rockets on Israeli cities with the intention of diverting attention from the real goal of this attack.

Although the majority of those murdered where Israeli Jews, Arab Israelis were also among the victims, as well as foreigners from Nepal and Thailand. In a planned attack, the terrorists broke down the fences surrounding the Azza strip and entered many of the surrounding Israeli towns and kibbutzim. They committed unspeakable horrors towards their victims, including rape and sexual abuse. Bodies of all ages were found mutilated and burnt.

They attacked Israeli military bases, murdered soldiers in cold blood, and went on to a music festival which was taking place close by. The participants of the festival were slaughtered with grenades and mass shooting. Hundreds were taken captive, including Holocaust survivors as well as young children and babies, and dragged into Azza. The Israeli army was unprepared and had no earlier intelligence of Hamas’s plans. However, the few soldiers together with the civilian tactical teams of these towns responded heroically and fought bravely against the massive waves of terrorists.

Many have compared this terrible event to the Yom Kippur war which occurred 50 years earlier, both in the surprise of the attack as well as the courageous response of the Israeli people.

All in all, the blood bath of that day is thought to be the most horrific pogrom of Jews since the Holocaust.

These terrible events occurred after a dramatic year of division and disunity in the Israeli people as a result of the government’s attempt to change the Israeli judicial system. Some claim that the enemy used this to their advantage, hoping that Israelis would refuse to fight. However, the opposite occurred. The Israeli nation united as one, coming together on all fronts and standing proudly and courageously against its enemies.

Immediately following the attack, thousands of Israeli reservists were called up in preparation for war. The Israeli government declared its intention to destroy the Hamas government and to free its captives.

Entire communities and towns in the north of Israel were evacuated as there was grave concern that the Hezbollah terrorists in Lebanon, another proxy of Iran, were preparing to attack.

For weeks, Israeli soldiers were posted on the country’s borders waiting for the order to attack.

Finally, the IDF attacked Hamas, which has embedded itself within hospitals and schools and elsewhere among the civilian population. This murderous bunch of killers had dug hundreds of kilometers of tunnels bellow the Azza strip, forcing the Israeli army to create new methods of fighting below the surface. As a result of their leaders’ refusal to return the captives, as well as their threat to continue their barbaric attacks against the Israeli people, thousands of Arabs who live in the strip were killed.

Skirmish attacks of Hezbollah on the Israeli borders have led to attacks and strikes on both sides.

The rebellious proxy of Iran in Yemen, the Huttim, joined the war and fired missiles on Israel.

In the following months, two hostage deals were made; as of this writing, over a hundred captives have returned home. The Israeli army lost hundreds of soldiers and thousands have been injured.

Following a successful hit on Iranian military personnel stationed in Syria, Iran (who stands behind this entire war) attacked the State of Israel by firing hundreds of missiles. In a joint effort with its allies – the USA and United Kingdom – the IDF managed to avert and block the Iranian missiles.

Unfortunately, war, death, and hostage-taking are not new to the Jewish people or to the state of Israel. However, the circumstances of these historic events created unique dilemmas and challenges.

**Identifying the Dead**

In the days following the massacre, the Israeli police were given the gruesome task of identifying the dead. Bodies were scattered all over the area, many of them burnt and unrecognizable.

According to Halakha, is it permissible to perform this task on Shabbat? In *shiur* 11 we examined the special *heter* given to the Israeli army to gather bodies on Shabbat and Yom Tov. In that situation, *poskim* permitted the mission because they feared the consequences of the scattered bodies on the soldiers’ morale. However, in our situation the question was whether the technicians and lab operators should continue working on Shabbat to identify the already gathered bodies.

The Chief Rabbi of the Israeli police, Rami Berachyau, wrote the following to the men and women of the Israeli police:

We find ourselves in the midst of a terrible war in which we have witnessed the murder of our citizens at the hands of the Hamas terrorists.

Unfortunately, even now 20 days after the beginning of the war, there are still many missing, and their families are demanding to know what happened to their loved ones and to bring them to a Jewish burial.

The mental burden on the families is heavy,; moreover, the situation in which tens of bodies are not identified has grave consequences on the country’s ability to fight the enemy as well as Israel’s national inner strength in this time of emergency.

Time is against us because as the hours and days pass by, there is a chance we will not be able to identify the bodies. If we come to a situation in which we will not be able to identify all the bodies, this would be a great tragedy for the families.

I have consulted with great Torah sages and have decided to continue the work on Shabbat … especially as most of the work involves working on a computer, which according to most rabbinic authorities is a Rabbinic prohibition.

This order to work on Shabbat, was mostly based upon the emotional stress of the families and the fact that the entire nation’s morale was affected. However, this letter was followed by another letter that gave new reasons for the halakhic *heter*:

The Chief Rabbi of the IDF decided that the identifying process must be continued without delay. The reasons for this are:

1. The army forces which are waiting for these results can be diverted to other important missions.
2. The government’s desire to quickly establish the number of captives, as this would help the negotiations for their release.

**Marriage During War**

Many couples whose weddings were planned for the weeks following Simchat Torah of 2023 were forced to postpone. The Mishna in *Sota* (8:7) which states that at time of mandatory war (*milchemet mitzva*) “all must leave to fight, even a groom from his room and a bride from her *chuppa*,” became a surreal description of the times.

However, as the days went by, many couples decided to get married spontaneously. Marriages started taking place on army bases. Pictures of couples under a *chuppa* dressed in full military gear became more and more common.

Some questioned whether this what the right thing to do. The dilemma is part of a larger ongoing question: Should life during war and times of tragedy which affect the entire nation continue as normal?

On one hand, one should sympathize with the pain of the people, and on the other, building new Jewish families may be the ultimate response to those who wish to destroy us.

Although this is not a classic halakhic question, I wish to mention some thoughts on the subject.

*Hakol Yotzin*

As mentioned, the Mishna in *Sota* chose a powerful phrase to describe the extreme measures one must take to protect the Jewish people. The words are taken from a verse in *Yoel* (2:16) describing the devasting effects of a plague that would descend upon the people and the necessity of the entire people gathering to pray. The Rambam adopts the Mishna’s statement with these words in his book of law as well (*Hilkhot Melakhim* 7:4). It seems that the Biblical phrase is a clear statement against celebrating weddings at times of war and catastrophe.

*Divorce Before Battle*

The Rambam rules that a soldier must not show signs of fear in time of battle:

Once a soldier enters the throes of battle, he should rely on the Hope of Israel and their Savior in times of need. He should realize that he is fighting for the sake of the oneness of God's Name. Therefore, he should place his soul in his hand and not show fright or fear. (*Hilkhot Melakhim* 7:15)

This idea is mentioned in the Torah explicitly:

When you go out to war against your enemies, and you see horse and chariot, a people more numerous than you, you shall not be afraid of them, for the Lord, your God is with you, who brought you up out of the land of Egypt. (*Devarim* 20:1-3)

However, the Rambam adds the following:

He should not worry about his wife or children. On the contrary, he should wipe their memory from his heart, removing all thoughts from his mind except the war.

…In contrast, anyone who fights with his entire heart, without fear, with the intention of sanctifying God's name alone, can be assured that he will find no harm, nor will bad overtake him. He will be granted a proper family in Israel and gather merit for himself and his children forever.

What is the source of this extreme ruling? Some have suggested[[1]](#footnote-1) that the Rambam based his words on the following Gemara, which states that in order to avoid leaving women as *agunot*, the soldiers of David Hamelekh’s army would divorce their wives before battle:

Anyone who goes to a war waged by the royal house of David writes a conditional bill of divorce to his wife. (*Ketubot* 9b)

Perhaps it was the Rambam’s understanding that war is a contradiction par excellence to home and family; they cannot live side by side with one another. The Gemara’s suggestion is not just advice; rather, it is a statement that a soldier in battle is required to separate himself from his personal self, which includes family life.

*Marital Relationships During Difficult Times*

The Gemara in *Taanit* rules that couples are prohibited from marital relations during times of famine. This is derived from the verses emphasizing that Yosef and his wife had their two children **before** the famine arrived in Egypt. Furthermore, the Gemara rules that at difficult times, when the people are suffering pain and loss, one must refrain from pleasures and should join the community in its sorrow and pain. This can be learned from Moshe our great leader who at time of war empathized with the people:

When the community is immersed in suffering, a person may not say: I will go to my home and I will eat and drink, and peace be upon you, my soul…Rather, a person should be distressed together with the community. As we found with Moses our teacher that he was distressed together with the community, as it is stated during the war with Amalek: “But Moses’ hands were heavy; and they took a stone, and put it under him, and he sat upon it” (*Shemot* 17:12). But didn’t Moses have one pillow or one cushion to sit upon; why was he forced to sit on a rock? Rather, Moses said as follows: Since the Jewish people are immersed in suffering, I too will be with them in suffering, as much as I am able, although I am not participating in the fighting. (*Taanit* 11a)

Is this Gemara presenting a halakhic ruling or offering advice? Which types of sorrow is the Gemara referring to?

*Tosafot* (s.v. *assur*) question how Yocheved (Moshe’s mother) could have been born, according to tradition, during the time of the great famine that brought Yaakov’s family to Egypt. They explain that our Gemara is not necessarily a halakhic ruling that one must follow, but rather describes an act of piety.

The parallel passage in the *Yerushalmi* (*Taanit* 1:6) mentions other types of tragedies and disasters as well as famine. The example of the Gemara there is that Noach and his wife refrained from relations during the great flood.

Rav Yosef Karo (OC 240:12) rules that during times of famine, couples (who have had children) should refrain from relations. The Rema notes that this is true in similar tragic times.

However, Rav Eliezer Waldenberg rules that this prohibition does not apply during war and is not even considered an act of piety.[[2]](#footnote-2)

Although his conclusion seems to clearly reject the Gemara as a reason to postpone weddings during war, it is interesting that refraining from marital relations is the example the Gemara chooses of empathizing with the suffering of the community.

On the other hand – returning to Yocheved, mentioned earlier – the *midrash*[[3]](#footnote-3) suggests that her husband Amram needed encouragement to have children during the terrible times of slavery in Egypt, and that it was correct to do so. It seems that there were those who were so filled with despair during these times that they refrained from bringing children into the world. (Similar dilemmas occurred during the Holocaust.) Our Rabbis praise the mothers who bravely defied their oppressors by falling pregnant and delivering babies:

Rav Avira taught: In the merit of the righteous women that were in that generation, the Jewish people were redeemed from Egypt… They would take what they prepared to their husbands, to the field, and would bathe their husbands and anoint them with oil and feed them the fish and give them to drink and bond with them between the sheepfolds… And when these women would become pregnant, they would come back to their homes, and when the time for them to give birth would arrive, they would go and give birth in the field. (*Sota* 11a)

This *midrash* intuits that at times of great peril, the correct response is to build and create more Jewish families!

And finally, I suggest the following thought. When rabbis are faced with halakhic challenges that are complex and do not have clear rulings in our sources, they sometimes suggest that we follow the common practice of the people. The are two reasons behind this suggestion.

1. The people’s custom is probably a true reflection of the ruling which was given in the past, thus it is an indication of the correct *psak*.
2. The people of Israel are an essential part of the halakhic process. *Torah she-ba’al peh* is the Torah which is practiced by *Am Yisrael*. The customs practiced by the people sometimes determine the accepted ruling.

It seems to me that although there are sources which seem to imply that one should postpone weddings during war, the natural response de facto of our brave men and women soldiers to the tragic events of October the 7th can serve as direction to the correct answer to our troubling dilemma.

1. See Rav Yehuda Zoldan, *Shevut Yehuda Ve-Yisrael*, Jerusalem, 2007, p.324-326. [↑](#footnote-ref-1)
2. *Tzitz Eliezer* vol. 13, 21. For a summary of this discussion, see Rav Shmuel David, *Techumin* 12, 222-228. [↑](#footnote-ref-2)
3. See Rashi on *Shemot* 2:1. [↑](#footnote-ref-3)