

HEMDAT YAMIM

PARASHAT EIKEV

22 AV 5768

This week.....

- **Wonders and Miracles “Until This Day”- A Glimpse from the Parasha**
- **Forming a Separate Minyan to Accommodate Another Mourner - Ask the Rabbi**
- **The Role of Torah in the Building of Middot, Yisurin to Go Beyond One’s Natural Limitations- from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **Workers Who Missed Work Due to Illness – part I (Harav Akiva Kahana)- from the world of Jewish Jurisprudence**

Hemdat Yamim of this week is dedicated in memory of **Yitzchak Eizik Ben Yehuda Leib a”h**, whose Yahrzeit is the 29th of Av as well as

R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

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Wonders and Miracles “Until This Day”

Harav Yosef Carmel

In the course of his long speech, Moshe urged all generations to contemplate Hashem’s mercy upon His nation through such miracles as the splitting of the sea. The *pasuk* says: “... which He did to the army of Egypt, to the horses and chariots, over whom He swept the waters of *Yam Suf* when they were chasing after you, and Hashem destroyed them until this day” (Devarim 11:4). It is difficult to understand the final phrase, “until this day,” which usually means until the time the matter was written. Since it is referring to the death of the Egyptians, it seems irrelevant to say they are still destroyed. Would we think they were since reincarnated?

The early commentators suggested different explanations for this phrase. Ibn Ezra relates the phrase to the descendants of those killed 40 years earlier, who did not restore past Egyptian glory. The Ramban expands this, saying that the name of those who had the gall to chase after those redeemed by Hashem was permanently destroyed. The Ramban, though, does not see the scriptural basis for these ideas. He suggests that the lasting destruction refers to the previously legendary Egyptian fleet of horses and chariots, which never recovered. This is a sign of the lowliness of Egyptian society after 40 years of potential recovery time.

The Meshech Chochma paves a different “path through the sea.” He says that Moshe was combating those who said that the splitting of the sea was an event that was reconcilable with nature by means of ebbs and flows. Moshe sent Bnei Yisrael to check if in the course of the subsequent 40 years, the phenomenon had occurred and reported that the event was unique “until this day.” This proved that the event was a Divine miracle.

This point reminds us of a major philosophical debate. How should one relate to an apparently unexplainable miracle? One approach is that a miracle is a Divine divergence from the laws of nature and that it is inappropriate to look for a natural explanation. Another understanding is that the unusual events were prepared from the time of creation to occur as a built-in exception. A third approach is that there are physical explanations for miracles based on natural forces. For example, a volcanic eruption could have caused a thick veil of ashes that could have blackened Egypt. For it to have come at the time Moshe said it would made it a miracle. According to the final approach, we would not care if tides and winds could split the sea. Each approach will read our *p’sukim* differently.

Let us remember that we believe in the Creator’s Divine Providence in all of the miracles that have occurred to our nation in our times – according to whatever approach above one takes. We recall the rule that “whoever does not believe in miracles in the Middle East is not a realist.”

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Question: I have noticed recently that when there are more than one *chiyuv* (mourner or *yahrtzeit*), a second *minyan* forms in a side room. Is this desirable/proper?

Answer: It is often difficult and unwise to argue with *chiyuvim* because their demands usually stem from a sincere desire to fully honor their parents. Putting things in perspective helps develop a healthy halachic outlook, which can help where a binding ruling is not appropriate.

The Rama (YD 376:4) rules that it is proper for sons of the deceased to bring them merit by saying *Kaddish* and being *chazan* for 11 months after death. Yet, mourners do not have an absolute need or right to be *chazan*. The Shulchan Aruch (OC 53:20) says that a congregation may choose another *chazan* over a mourner if they so desire. A mourner's absolute right applies only to the *Kaddeishim* designed for them (Mishna Berura 53:60). However, the congregation should allow a mourner to be *chazan* under normal circumstances (he is a fluent *chazan* and positive person).

Those who cannot be *chazan* were allotted *Kaddeishim* to bring merit to their parents. Halacha prefers that only one mourner recites each *Kaddish*. *Acharonim* arrived at detailed rules of *kedimut* (prioritization) to deal with cases of many mourners. Over the last few hundred years, to ward off quarreling, the *minhag* has spread widely from Sephardim to Ashkenazim to allow multiple people to say *Kaddish* together, presently limiting the rules of *kedimut* to choice of *chazan*.

Going through sources on *kedimut* (see Maamar Kaddishin- Biur Halacha 132; Geshet Hachayim 30:10) one will not find the solution of splitting *minyanim*. Nevertheless, some people came up with the idea, which is still too limited a practice to have spawned significant literature. The main source that condones it is the Afarkasta D'ania (20th century). His main concern with the practice is its impact on the halachic concept of *b'rov am hadrat melech* (the King is better honored in large gatherings). He demonstrates, though, that it is not an absolute rule and can be outweighed by other factors. He assumes a mourner has an obligation to be a *chazan*, just that he is not always capable of doing so, and feels this is grounds for splitting *minyanim*. It is, though, difficult to assume that *Chazal* created such an obligation that is so frequently incapable of being fulfilled and that, despite this, the *poskim* before him did not feel a need to solve the problem. Rather, the *mitzva* is to follow the halachic rules, which give guidelines of how to deal with "too many" *chiyuvim*.

We can identify six areas in which a separate *minyan* can be regrettable (depending on the case): 1) *b'rov am*; 2) moving people from their *makom kavu'a*; 3) people *davening* not in a shul; 4) the cohesiveness of a community and its *tefilla*; 4) small groups do not always have nine people answering everything that needs a *minyan*; 5) *tircha d'tzibbura* with an increased need to wait for a *minyan* at certain places. These may explain why the classical *poskim* did not propose the simple solution, which has been developing in a grass-roots manner.

There seem to be two sociological reasons for the change. One is the "*shtiebelization*" of our communities. Consistent *davening* in one's shul has given way to finding the best fit for each circumstance. So why shouldn't helping a mourner suffice to ignore the above issues, about which people are anyway lax? Secondly, once one sees a friend make his own *minyan* (and who wants to make a fight and stop him), others feel their parents deserves no less, causing a snowball affect. If the trend picks up steam, it will indeed cause fights (which we do not condone) to stop it. It is best if people consider that their parent will have no less merit by having a son who follows the age-old rules of *kedimut* and preserves the integrity of communal *tefilla*. This should slow the trend.

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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

1. The Role of Torah in the Building of Middot (based on Berachot 1:30)

Gemara: If a person sees *yisurin* (torment) coming upon him, he should search his actions... If he searches and does not find, he should attribute it to *bitul Torah*... If he tried to attribute it to *bitul Torah* and did not find, it is known that it is *yisurin* of love.

Ein Ayah: Even though *bitul Torah* is a great sin, the idea is that the obligation of being dedicated to Torah study cannot really be quantified for every person. After all, everyone has permission to engage in business and acquire possessions even beyond his basic needs, and this is not *bitul Torah*. However, there are people who have *middot* (characteristics) that, according to the level of each one's soul, he should fix and they can be fixed only through Torah. After all, the Torah prepares a person to be righteous and straight. According to the extent that he is obligated according to the nature of his soul to improve his *middot*, it is incumbent upon him to spend time studying Torah so that it will improve him.

If he was negligent in this regard, then there is no choice but to bring on *yisurin* that improve *middot*. This is why he should attribute the matter to *bitul Torah* because according to the level of his *middot*, it is proper that he should hold on more to Torah, so that his *middot* will be fixed and he will not need *yisurin*.

That is why if he tried to attribute it to *bitul Torah* and did not find, it must be *yisurin* of love. In other words, it is to sweeten his *middot* in a manner that he is not able to do without *yisurin* and to thereby merit the highest level of *sheleimut* (completeness). This can only be because of Hashem's love for him to elevate him beyond his nature with which he was originally created.

2. Yisurin to Go Beyond One's Natural Limitations (based on Berachot 1:32)

Gemara: Rabbi Shimon Bar Yochai said: Hashem gave three good gifts to Israel, and all of them were given only by means of *yisurin* (torment or toil). These are they: Torah, *Eretz Yisrael*, and *olam haba* (the world to come).

Ein Ayah: There are levels that are within the nature of man to be able to attain according to the root of his creation as a human being. Since these are in line with his nature, there is no need for *yisurin* in order to merit them. However, in order to merit that which is outside and indeed above nature, the physical powers are not ready for them except by means of *yisurin*.

An illustration of this is prophecy, which when it took effect, caused a person's limbs "to fall apart," as the Rambam says (Yesodei Hatorah 7:2) and as the *p'sukim* in Daniel (10:8) and elsewhere indicate. All of this is because prophecy is a high level that is beyond nature, and the natural body does not accept it without *yisurin*, which weaken and "break" his strength.

Thus, all three of these levels are above nature. A person is composed of intellect, body, and soul. In all of these realms, a person can be on the level of nature, but he can also elevate himself above nature in the three. Hashem prepared Israel that they should be able to go beyond the element of nature. From the perspective of intellect, He gave them the Torah to elevate and complete the intellect above the natural. From the perspective of the physical, *Eretz Yisrael* is a physical land, yet it has a special sanctity that is beyond nature. The world to come is where a person's soul merits to reach a level that is higher than nature [allows for]. Therefore, all of these things were given only by means of *yisurin*.

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P'ninat Mishpat

Workers Who Missed Work Due to Illness – part I (Harav Akiva Kahana)

(based on Halacha Psuka, vol. 42)

The *gemara* (Kiddushin 17a) deals with the matter of an *eved ivri* (Jewish servant who serves for six years) who was sick for a significant period. Does he have to make up the time he missed or does the time missed count toward the six years? The *gemara* distinguishes between two cases. If the worker missed a minority of the period (under three years) he does not have to make up the time, and the owner loses. However, if he was sick for a majority of the time, the *eved* must complete the time he missed. Tosafot (ad loc.) brings an opinion that the ruling is the same for a regular worker who was obligated to work for a certain period of time and missed time due to illness. Thus, if the time missed was a minority of the employment period, he receives payment in full. Tosafot, though, asks from a *gemara* (Bava Metzia 77a) that says that if a worker was unable to complete his job, he receives pay only for the time he actually worked. Tosafot concludes that a regular worker gets paid for the time he worked only. An *eved ivri* is different because the master acquires semi-ownership of the body of the *eved* and, therefore, he shares in the loss. In summary, then, there is a *machloket Rishonim* if a worker who missed time due to illness gets paid for the time he missed.

The Tashbetz explains the first opinion cited in Tosafot in the following manner. Someone who acquires an *eved ivri* for a matter of years knows that during that time, the *eved* will miss some time due to illness. If he anyway makes no stipulation as to recovering that loss, he accepts the almost inevitability as his loss. In the same way, one who hires a worker for a long period of time can assume that the worker will miss time for illness, and if he does not stipulate, he has to pay in full. Based on this approach, the question from the *gemara* in Bava Metzia is not difficult. There it is talking about one who hires a worker for a matter of days. In such a case, he does not need to expect that specifically at that time, the worker will get sick, and his lack of stipulation does not infer acceptance of the obligation to pay for times when he did not work.

Even according to the Tashbetz, there is a gray area, when the employment period is longer than a few days but shorter than years. When would we say that the period is long enough to require the employer to stipulate or lose, and what is considered a short employment where he has to pay only for the time he worked? One can draw the line at a year, which is the cutoff point according to Israeli law. The Rosh (cited by the Rama, CM 333:5) has another compromise position, that an employer can take off for time missed, but if the worker returned to the job without the employer informing him that he would reduce his salary, he relinquished his rights to do so. The Shach (333:25) argues and says that silence on the matter is not deemed as relinquishing of rights.

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