

# Balancing Risk and Reward: A Halakhic Perspective on Societal Restrictions and COVID-19

With the spectre of COVID-19 bearing down upon humankind, people are wondering how to properly relate to this unseen danger. Many claim that the virus does not endanger the lives of most people, and therefore conclude that the international response is overblown. Indeed, this was the initial response of the UK,<sup>1</sup> essentially relying on this fact in its response to the virus. Others insist that even if the virus is deadly for only a minority of people, combatting it through extreme measures is worth the enormous economic and social cost those measures will inevitably demand.

As Jews, we ask ourselves another, more fundamental question - how would God want us to relate to this pandemic? How must we, as those who use the halakhic process to live God's will on Earth, personally act during this time?

## The prohibition of endangering oneself

The Torah writes<sup>2</sup> "When you build a new house, you should put up a fence around your roof, and make sure that you don't bring blood into your home, for a person could fall." From here, the Rambam<sup>3</sup> learns that there are two mitzvot d'oraita to prevent dangerous situations. The Rabbeinu Bechayah<sup>4</sup> understands that this applies to one's person as well.

The Gemara<sup>5</sup> finds a source for protecting oneself from danger in another two pesukim: "But beware and watch yourself very well..."<sup>6</sup> and "And you shall watch yourselves very well..."<sup>7</sup> <sup>8</sup>. The Rambam<sup>9</sup> and the Shulkhan Arukh<sup>10</sup> both identify these pesukim, as well as those previously cited, as the source for the mitzvot to prevent oneself or others from coming to harm.

In Massechet Hullin<sup>11</sup> the Gemara puts forward an important halakhic concept regarding

dangerous situations. Whilst halakhic decision making mostly follows the majority of cases, when it comes to situations which may be dangerous, we err on the side of caution and take even a minority of cases into account - *chamirah sakantah m'issurah*. The Marahitz Chayut<sup>12</sup> underscores that this concern for the minority of potentially dangerous cases is Torah law. The logic for this is simple, says the Chatam Sofer<sup>13</sup>. He writes that the Halacha is a virtual system of rules which are overlaid on our life from above, through the Torah. When it comes to those halakhot, the self-same Torah which presented them also laid out a set of rules to apply them to one's life. Therefore if the rules don't apply, there is no reason for concern. If, for example, a drop of milk falls into a pot where there is more than sixty times its volume, it is *batel* and is permitted to eat - there is simply no issur. However, when it comes to the objective world, where dangerous situations can lead to death, one must be concerned even about the minority of cases.

The question we need to ask ourselves, therefore, is what constitutes a dangerous situation?

## Dangerous situations - towards a definition

Rashi<sup>14</sup>, commenting on the Gemara we quoted previously about *chamirah sakantah m'issurah*, writes simply that one must be concerned about the minority of cases. The Maharitz Chayut attempts to quantify the *level* of doubt about which one must be concerned. He compares the principle of *chamirah sakantah* to a situation of life-threatening danger on Shabbat. There the Torah allows one to violate shabbat for even a very slim chance that one's life is in danger. If we apply his understanding to our issue, it appears that one needs to be concerned about minuscule amounts of danger. The Maharitz Chayut seems

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to be establishing an upper limit on our understanding of what level of danger will be considered *assur*. If something is objectively dangerous - in a way that one would need to violate Shabbat to be saved from such a situation - it seems that it would be forbidden to put oneself into such a circumstance.

To put a sharper point on this limit, we can turn to the Sefer HaChinuch<sup>15</sup>. He writes that one must be concerned about things that are *normally* dangerous. Since God has placed us in a world that works according to natural processes, we must take those processes into account and refrain from doing anything which would be *normally* dangerous. For this purpose, it seems that we could utilise statistical probabilities to decide whether or not a particular action is prohibited.

### **Can someone put themselves into a dangerous situation?**

If we have determined that a situation is dangerous, or *potentially* dangerous, is there any situation where one is allowed to purposefully place themselves in such a circumstance?

Through an analysis of two stories in the Gemara<sup>16</sup>, we can make an immediate distinction here between those instances where something is *objectively* dangerous and where someone has a *subjective* fear of said situation. In the first story, we meet Rav and Shmuel and learn about their reticence to pass underneath a particular wall in Neharde'a - which had been standing until that point for thirteen years - for fear that it would collapse on them. R' Ada bar Ahava enters the scene and walks under the wall without a second thought. Rav and Shmuel walk with him, trusting in R' Ada's merits that the wall will not fall on them. In the second story, brought immediately after the first, we learn about Rav Huna's wine, which was trapped in a dilapidated house. Rav Huna, knowing of R' Ada's merits, tricks R' Ada into walking into the house with him, allowing him to retrieve his wine. Immediately after they leave the house, it collapses. Needless to say, R' Ada is nonplussed. The Gemara explains R' Ada's anger - one must never place themselves in danger and rely on a miracle.

If we compare these two stories, we can see a few immediate differences between them which can explain R' Ada's seemingly opposite behaviour. In the first story, the wall that Rav and Shmuel were afraid of had been standing for thirteen years. To that point, it had shown itself not to be dangerous. Nevertheless, Rav and Shmuel were presumably concerned about the *beraita* in Masechet Rosh HaShana<sup>17</sup>: "three things cause the sins of a man to weighed: a dilapidated wall...". R' Ada, who was unafraid, had no problem passing under the wall. In the second story, however, the building was *objectively* dangerous. R' Ada did not want to rely on a miracle, and thus was upset when his merits were used to protect him from a situation that he never should have been in in the first place.

We can conclude, therefore, that the difference between these two cases was both R' Ada's feeling of security in a subjectively dangerous situation, as well as the fact that some situations are objectively dangerous. One may put themselves in a subjectively dangerous situation if they are not afraid; if the situation is objectively dangerous, one must refrain from being there in the first place.

R' Nahum Rabinovitch<sup>18</sup> makes a similar point in his analysis of a Gemara in Bava Metziah<sup>19</sup>. There the Gemara learns that one must pay his worker on time, because amongst other reasons, he is risking his life doing dangerous work for his pay. R' Rabinovitch points out that none of the *poskim* write that it is *assur* for such a worker to be in that situation in the first place. Rather, he writes that it is dependent on the worker's subjective assessment of the situation - if he feels that it's an acceptable risk and that he is not in real danger, it is permissible to for him to work in such circumstances. It's important to add that it seems that the case in the Gemara is not talking about an objectively dangerous profession<sup>20</sup>. The examples in the Gemara are of those where the work is potentially dangerous, but if done in a safe manner need not be life-threatening. In such a case, one may rely on his subjective assessment of the situational danger.

But what about when the danger is objectively present? The Gemara in Bava Kama<sup>21</sup> discusses a case where there is a plague in one's city, and

writes that one should remain in one's home. The Maharshah<sup>22</sup> challenges this conclusion, and based on many other sources, writes that if one believes that it will save his life to run away from the plague, this is what he should do. He continues, however, that if one has the ability to help and save lives, and instead chooses to run away, he is "removing himself from the community and will not merit to see the redemption". In other words, it seems that the Maharshah is allowing a person, on the basis of this Gemara, to *remain* in an objectively dangerous place, even though he could potentially save himself, in order to help other people. This seems to be our first clear indication that one may put oneself into an *objectively* dangerous situation.

We find another potential source for this position in the Gemara in Brachot<sup>23</sup>. There the Gemara tells us that one who was in a dangerous situation and was able to extract himself from it must publicly thank God. Some of the examples of dangerous situations that the Gemara provides are ones in which a person places themselves there of their own free will - traveling on the ocean or over desert. If it were forbidden to place oneself in danger, how could one find themselves in such a position in the first place?

We can conclude thus far that a person can definitely evaluate a subjectively dangerous situation for themselves and conclude whether or not it's worth the risk to enter into such circumstances. When it comes to more clear cut danger, we can say that one may be able to remain in such a situation if one finds oneself there already and there's good reason to stay. It may even be allowed to place oneself in such situations - we'll explore this concept more fully in a later section.

### **"God protects the foolish" - What does this mean and when can we rely on it?**

The Gemara in Masechet Yevamot<sup>24</sup> writes that one should not perform a circumcision on a cloudy day. However, since it has already become common practice to do this - דשו ביה רבנים, one is allowed to perform a circumcision and rely on heavenly protection - שומר פתאים ה' "God

protects the foolish". The Ritba<sup>25</sup> there writes that one need not rely on this dispensation of שומר פתאים ה', and may refrain from performing a circumcision on such a day. The Shulkhan Arukh, however, does not bring the discussion at all, ruling that one must perform the circumcision on the eighth day, regardless of weather conditions.

The commentators grappled with the parameters of this dispensation - when do we say *shomer pitayim Hashem*, and when not?

Regarding the issue of an *isha katlanit*, a woman who has been widowed twice, the Gemara<sup>26</sup> writes that she should not marry a third person<sup>27</sup>. The Terumat Hadeshen<sup>28</sup> writes that since today no one is careful about this - דשו ביה רבנים, one may rely on the principle of *shomer pitayim Hashem* and marry a woman as the third husband. The Shulkhan Arukh, however, does not rely on *shomer pitayim*, and instead rules that she is forbidden to marry after being widowed twice.

The Chida<sup>29</sup> raises that question of a contradiction in the Shulkhan Arukh - in *hilkhot Milah* he has no problem relying on the dispensation of *shomer pitayim*, but regarding the *isha katlanit*, he rules that one must be strict and doesn't rely on *shomer pitayim*. He arrives at the conclusion that we can only apply the principle of *shomer pitayim* when the Sages applied in the Gemara. Over and above that, we are not allowed to apply this principle out of our own judgement. This is the opinion of the Chelkat Ya'akov<sup>30</sup> as well, although he extends the dispensation to the words of the Rishonim as well.

Discussing another Gemara<sup>31</sup> regarding when women may use barrier birth control, the Binyan Tzion brings to light a distinction which may be useful in understanding when a person can put themselves in a dangerous situation, and help us explain the Gemara which allows people to go on dangerous trips. He writes that there is a difference between a situation which is *currently* dangerous, which one would need to stay away from, and a situation which could *potentially* be dangerous, which one would not necessarily need to be concerned about. In such cases where the danger is unclear to begin with, one may rely on *shomer pitayim*. This is the reason that one

may go on a trip which will potentially be life-threatening, like going on a boat or crossing the desert - at the moment, there is no danger to his life, and therefore it is permitted. The Achiezer<sup>32</sup> takes this principle a step further, and writes that the potential danger must be extremely unlikely in order to rely on *shomer p'tayim*.

If we apply this principle to COVID-19, it seems that one would not be allowed to rely on *shomer p'tayim* and continue to go about one's daily life as normal. The virus absolutely poses a danger which is real and present, at least for some, and therefore is more similar to a situation which is currently dangerous, rather than one which could potentially be so, a point we'll explore more fully in the next section.

### Communal Danger

In dealing with the aspects of running a country, the *poskim* of the nascent state of Israel wrote about "פיקוח נפש ציבורי" - communal danger" and how it differs from the danger which any one person may be exposed to.

The Gemara in Masechet Shabbat<sup>33</sup> writes in the name of Shmuel that one may extinguish a burning coal in a public area. The Ramban<sup>34</sup> explains that this is because Shmuel understands that any potential danger in a public area is like a danger to life and thus necessitates violation of Shabbat to avoid said danger. It seems from this Gemara that there is a *qualitative* difference between danger to an individual and danger to a collective.

Discussing the ability of Jewish army to go to war for financial or territorial gain (מלחמת רשות), R Yisraeli<sup>35</sup> explains the distinction between the public and private realm regarding danger to life. He writes that when viewing a group of people together, one ceases to see individual persons; instead, the public becomes a single, collective body. In order to understand how this collective works, one must apply statistical probabilities. Since in any given public, a certain number of people will be harmed by hunger or financial destitution in such a way that it will threaten their lives, such wars become a matter of life or death. R' Shlomo Zalman Auerbach<sup>36</sup> similarly uses statistical probabilities to large groups to apply the principle of *pikuach nefesh* on a communal

level. R' Goren<sup>37</sup> goes a step further, writing that, dealing with the Jewish state, one could look at population-level concerns when creating policy on issues like autopsies for medical research.

We can apply the above reasoning to our predicament. Even though any particular person might not be at risk of death from COVID-19, given the way that the disease spreads throughout a population<sup>38</sup>, anyone - even a person who will never develop symptoms - can be a node in a network of infection. At a population-level, this will certainly result in many deaths<sup>39</sup>, and therefore is certainly a matter of communal danger, and each person must do their utmost to prevent the spread of the disease.

### Towards a halakhic response to COVID-19

We saw that there are biblical prohibitions involved in endangering one's life, or the life of another. Whilst it is true that the exact definition of a dangerous situation changes according to many different factors, including a person's personal feeling of security, there also seem to be minimal objective boundaries. If we take the Maharitz Chayut's opinion as our guideline, one is not allowed to knowingly place oneself in a situation where one would be required to violate Shabbat if they were in a similar situation.

Would displaying a cavalier attitude towards COVID-19 qualify as knowingly placing oneself in an objectively dangerous situation? The answer would depend on what sector of the population one was a part of (young, old), if one had any other factors which negatively impacted their health apart from the coronavirus, and other factors affecting one's response to illness in general. In other words, it's difficult to put too fine a point on the circumstances of any individual person.

Further, it's important to point out that those things which are potentially dangerous but are nonetheless allowed - like crossing a desert or going on a ship - are things which would permanently change the way that society worked. Without the ability to travel long distances, trade would be impossible; without the ability to place oneself in a potentially dangerous situation like

roofing, the physical structure of our societies would be vastly altered. However, when it comes to the COVID-19 restrictions, we're talking about temporary restrictions which are in place to protect lives at the current moment, and therefore those dispensations for dangerous situations are not applicable.

As we saw, however, individual circumstance does not come into play when discussing a case of communal danger. We must remember that the Biblical imperatives to keep out of harm don't only apply to an individual. As we learnt above, one must do what they can to prevent *others* from coming to harm. As in any society where there are those who are sick, old, or otherwise infirm, the question becomes broader than simply the level of danger to oneself.

Distinct from the common flu, the COVID-19 virus is ruthless, and can spread amongst a given population in a very short amount of time. One of the only things which can slow the spread of the virus, thus alleviating pressure on a potentially overworked healthcare system, is social distancing. Indeed, in countries where extreme social distancing practices were been put in place in a timely fashion, the death rate for the disease is .9%.<sup>40</sup> In those countries where early and stringent measures were not put in place, the death rate can reach up to 4%.<sup>41</sup> Those percentage points literally represent thousands, if not millions of lives. Even if one doesn't feel sick, one can still spread the disease without knowing it, potential endangering many people.<sup>42</sup> As the Torah<sup>43</sup> instructs us, "You shall not stand by your fellow's blood"; endangering others by not following best practices is an absolute violation of this *mitzvah*.

### **Health workers - Potential vs Certain Life-Threatening Danger**

Regarding health workers, the picture looks a bit different. As we saw above, it is *mutar* for a person to put themselves in danger for sustenance; all the more so to save lives. Indeed, the Imrei Esh<sup>44</sup> writes that one may place themselves into danger equivalent to that of a war (roughly one in six in his opinion). The Noda Beyhuda<sup>45</sup> writes that one may place themselves in danger for profit, and definitely for sustenance.

When it comes to saving lives, there seems to be no doubt. This is the conclusion arrived at by R Zilberstein<sup>46</sup>, who allows a demolitions expert to defuse explosives, even though there is a significant risk to his life.

Though there is no absolute obligation to risk one's life for another, there does seem to be a strong preference amongst the *poskim* for one to remain in potentially life threatening situation in order to save lives. The Gemara<sup>47</sup> relates the opinion of R' Akiva that one's own life comes before the life another. Based on this Gemara, the Chavot Yair<sup>48</sup> explains that this is the case only with regards to a certainty that it's one life or the other. However, with regards to a situation where there's only a potential danger - *ספק פיקוח נפש* - one *must* try and help the other. As we saw above, this is the opinion of the Maharshal as well.

The Rambam<sup>49</sup> writes "that anyone who can save a life and doesn't, violates the Biblical injunction of 'Don't stand over your brother's blood'". He writes that this is the case *even* when there is a certain amount of danger inherent in the situation, such as when there are bandits, or the person is drowning. Based on a teshuva of the Radbaz on this Rambam, R' Ovadia<sup>50</sup> writes that one is *obligated* to put oneself in a potentially dangerous situation to save the life of another where there is a greater chance that the person will be saved than that the rescuer will die.

Even were we to determine that it is objectively dangerous to be infected by COVID-19 for a given individual, if that person were able to be of help in some way to others who were sick, that person should absolutely continue to help unless his or her own life was in immediate danger, and even then, there are those who would allow this, and may even require it.<sup>51</sup> In the words of the Maharshal, one who does not help the community in its time of need "removes himself from the community, and will not merit to see the redemption". When it comes specifically to doctors and nurses, R Eliezer Melamed<sup>52</sup> is of the opinion that they *must* continue to treat patients with infectious diseases. He argues that, in part, this is because otherwise such patients would be left to die, an untenable option. Indeed he relates that great rabbanim themselves would lead

teams of people during the Cholera outbreak in the 19<sup>th</sup> century.

Those on the front-lines of the fight against the virus, the doctors, nurses, and other medical workers in the hospitals, as well as those caring for sick individuals in the home, should continue their holy work.

### **Final thoughts**

Just like it is forbidden to eat non-Kosher, or to violate Shabbat, it is forbidden from the Torah to be cavalier about COVID-19. Instead, one must exercise the utmost caution, listen to the most updated guidelines from one's local health organisation, and do their best to stay safe and keep others safe.

As we struggle with this virus and its immediate ramifications for our lives, we can internalise a renewed sense of the sanctity of human life and the incredible way we are all interconnected. May we all merit to see a speedy recovery for humanity.

<sup>1</sup> <https://www.theguardian.com/commentisfree/2020/mar/15/epidemiologist-britain-herd-immunity-coronavirus-covid-19>

<sup>2</sup> Devarim 22:8

<sup>3</sup> Sefer HaMitzvot, Lo ta'aseh 298, Aseh 184

<sup>4</sup> Rabbeinu Bechayah, Devarim 22:8

<sup>5</sup> Berachot 32:2

<sup>6</sup> Devarim 4:9

<sup>7</sup> Devarim 4:15

<sup>8</sup> It is worth noting that in their original context, neither of these verses are referring to one's physical welfare. Many achronim have attempted to answer this question - see for example *אמת ליעקב, דברים אחדים* and *הערות גרי"ש אלישיב על ברכות לבב*.

<sup>9</sup> Rotzeach V'Shmirat HaNefesh II:4

<sup>10</sup> Choshen Mishpat 427:8

<sup>11</sup> 9ב

<sup>12</sup> Hulin 9ב

<sup>13</sup> Hulin 9ב

<sup>14</sup> Hulin 9ב s.v. "ואין דרכן לכסות"

<sup>15</sup> Mitzvah 546

<sup>16</sup> Ta'anit 20ב

<sup>17</sup> 16ב

<sup>18</sup> Siach Nachum YD 89

<sup>19</sup> 111ב

<sup>20</sup> See Igrot Moshe, CM I:104, where it seems that R Feinstein arrived at a similar conclusion.

<sup>21</sup> 60ב

<sup>22</sup> Yam Shel Shelomo, Bava Kama 6, 26

<sup>23</sup> 54ב

<sup>24</sup> 71ב - 72א

<sup>25</sup> ibid

<sup>26</sup> Yevamot 64ב

<sup>27</sup> See the Rambam's opinion on an *Isha Katlanit*, Shut HaRambam 218

<sup>28</sup> Siman 211

<sup>29</sup> Chayim Sha'al I:59

<sup>30</sup> Shut Chelkat Ya'akov, YD 39

<sup>31</sup> Yevamot 12ב

<sup>32</sup> Chelek 1, Even HaEzer 23

<sup>33</sup> 42ב

<sup>34</sup> ibid

<sup>35</sup> Amud HaYimini pg 214-215

<sup>36</sup> Asia 53-54, pg 100

<sup>37</sup> Torah HaRefua, pg 80

<sup>38</sup> <https://www.washingtonpost.com/graphics/2020/world/corona-simulator/>

<sup>39</sup> <https://medium.com/@tomaspueyo/coronavirus-act-today-or-people-will-die-f4d3d9cd99ca>

<sup>40</sup> <https://medium.com/@tomaspueyo/coronavirus-act-today-or-people-will-die-f4d3d9cd99ca>

<sup>41</sup> ibid

<sup>42</sup> <https://www.usatoday.com/story/sports/nba/jazz/2020/03/12/rudy-gobert-apologizes-being-careless-coronavirus-outbreak/5035579002/>

<sup>43</sup> Vayikra 19:16

<sup>44</sup> YD 52

<sup>45</sup> Tenyana YD 10

<sup>46</sup> Shiurei Torah L'Rofim 2:113

<sup>47</sup> Bava Metziah 62a

<sup>48</sup> Siman 146

<sup>49</sup> Hilchot Rotzeach V'Shmirat HaNefesh I:14

<sup>50</sup> Yechaveh Da'at 5:84

<sup>51</sup> For a further discussion of putting oneself in potential danger to save another person, see *Milumidei Milchama* pg 5-7.

<sup>52</sup> <https://ph.yhb.org.il/08-11-05/>