



Pikuach Nefesh vs. Shmiras haMitzvos

“Therefore say: Behold, I give him My covenant of peace. And it shall be for him and his offspring after him a covenant of eternal priesthood, because he took vengeance for his G-d, and he atoned for the Children of Israel.” (Bamidbar 25:12-13)

According to *Pirkey d'Rebbi Eliezer* (47), Eliyahu haNavi is Pinchas and therefore was subject to the restrictions of *Kehuna* and would have been forbidden to become *Tamei Meis* (to defile himself by contact with a corpse). The *Rishonim* (*Bava Metzia* 114b) raise the issue that Eliyahu seemingly disregarded these laws of ritual impurity when he lay on top of the dead son of the widow and miraculously revived him (*Sefer Melachim I*, 17). How was it permitted for him to touch a dead person? Wouldn't this have rendered him impure and be a violation of the prohibition on *Kohanim* to become *Tamei Meis*?

The *Tosfos haRosh* (ibid.) answers that this act of Eliyahu was instructed by Hashem (*“Al Pi haDibbur”*) as a *“Hora'as Sha'ah”* (a one-time ruling). The *Radva"z* (*Shu"t* 2203) explains that the purpose of this *Hora'as Sha'ah* was to avoid a *Chillul Hashem*. The widow told Eliyahu that her son had died because *“you have come to me, to reveal my sin”* (ibid. 17:18). Ostensibly, she meant that she was considered a sinner when contrasted with Eliyahu's impeccable behavior and had therefore been punished with the death of her son. However, her words could be interpreted as saying that people would claim that Eliyahu had *“come to her”* (in a physical sense) and her son had died due to that sin. Therefore, Eliyahu was permitted to revive her son and thus make a *Kiddush Hashem* (since the miraculous revival would quell those rumors), as the widow declared immediately afterwards, *“now I know that you are a G-dly man”*.

The *Radva"z* also cites the answer of *Rabbenu Peretz* who suggests that the child had not actually died, but was deathly ill. It was therefore permitted for Eliyahu to touch him. This is even hinted at by the words of Eliyahu's prayer for the child, *“Please return the soul of the boy, so that he shall not die”*.

A third answer is offered by *Rabbenu Bachaye* (in our Parsha) who proposes that the widow and her son were in fact not Jewish! The law is that the corpse of a non-Jew does not transmit impurity to somebody who merely stands over it (unlike



that of a Jewish person) unless he actually touches it (*Yevamos* 61a). Therefore, it is possible that Eliyahu merely stood over the dead child without actually touching him, thus avoiding impurity. (The *Radva"z* dismisses this proposal for multiple reasons, including that according to *Chaza"l*, the child was none other than the prophet *Yonah ben Amitai!*).

However, the most famous answer is that of *Tosfos (ibid.)* that it was permitted for Eliyahu to touch the dead child because it was *Pikuach Nefesh!* Eliyahu was certain that he would revive the child, he was therefore permitted to touch the corpse in order to save the boy's life.

These words of *Tosfos* are truly fascinating, for they imply that there is a concept of *Pikuach Nefesh* when reviving a dead person! In fact, were it not for this answer of *Tosfos*, one might have thought that the concept of saving lives is applicable only to the living. On the other hand, revival does not create a new human being but returns a person to his previous status of living and perhaps it can also be considered an act of "saving life".

Obviously, this particular discussion (the case of Eliyahu haNavi) does not have many direct practical ramifications as we no longer have prophets who are able to revive the dead. However, the *Netziv's* comments on this *Tosfos* open up a fundamental discussion about the topic of *Pikuach Nefesh* which may well have practical Halachic ramifications.

The Gemara in *Yoma* (85b) records several opinions as to the source of the law that *Pikuach Nefesh* overrides all of the prohibitions in the Torah. *Rabbi Shimon ben Menasia* derives it from the words "and the Children of Israel shall observe the *Shabbos*". This teaches us the rule that "one should desecrate one *Shabbos* (to save somebody's life) in order to observe many other *Shabbosos*". One may violate one of the laws of the Torah in order to save somebody's life and afford him the opportunity to perform other Mitzvos.

The Gemara also cites the opinion of *Shmuel* who derived this law from the Posuk of "v'Chai Bahem" – "and you shall live with them". According to *Shmuel*, these



words teach us that the Mitzvos in the Torah should not be the cause of a person's death, therefore, in a situation of *Pikuach Nefesh*, they may be overridden¹.

The *Netziv* (in *Ha'amek Sha'ala*) contends that the question of whether resuscitating the dead is part of the Mitzva of *Pikuach Nefesh* very much depends on the source of the Mitzva. If it is derived from the law of "*one should desecrate one Shabbos in order that he observe many other Shabbosos*" then that should equally apply to reviving the dead who will also be able to observe other Shabbosos (and other Mitzvos) once they are brought back to life. However, if the source of the Mitzva is "*v'Chai Bahem*", then it cannot apply to dead people, for only the living can be instructed not to give up their lives for the sake of Mitzvos.

We have previously discussed the concept of "*v'Chai Bahem*"². We explained that human life and the Mitzvos are equally holy and precious. Therefore, fulfilling the Mitzvos and preserving human life can never contradict each other, as they are completely complementary ideals. The idea of risking or sacrificing human life due to a Mitzva is anathema. However, this is only relevant to somebody who is alive. Once a person has died, violating a law of the Torah in order to revive him would seem to be a contradiction in terms.

The *Netziv* goes on to explain a seeming oddity in the answer of *Tosfos*. *Tosfos* explained that Eliyahu was permitted to revive the son of the widow because "**he was certain that he would revive him and it was Pikuach Nefesh**". Why did Eliyahu need to be certain that he would be successful – the Halacha is that one may transgress a sin even in a case of *Safeik Pikuach Nefesh* (when it isn't certain to be successful)?

The answer, says the *Netziv*, is that this is only true if the obligation to save a person's life comes from "*v'Chai Bahem*". Then one may disregard any Mitzvah in the Torah even if there is only a chance of saving a life. However, according to Rabbi Shimon ben Menasia, the Mitzvah to save the child was based on the obligation to "*desecrate one Shabbos in order that he observe many other Shabbosos*". Therefore, it was only permitted to transgress a sin if it was certain to be successful and thus afford him the chance to observe more Shabbosos (and Mitzvos). If Eliyahu had not

¹ The Gemara appears to conclude that Shmuel's source is the correct one, and the others cited by the Gemara are refuted. However, as we will soon see, the source of *Rabbi Shimon ben Menasia* is also cited *l'Halachah*.

² See our essays on Parshas [Vaeira](#) and [Acharei Mos](#), for example. The archive of all essays can be found at <https://www.medicalhalacha.org/torah-archive>.



been certain that this would be the result, he would not have had permission to transgress the prohibition to become *Tamei*.

There are a number of other distinctions in the Halachos of *Pikuach Nefesh* between the law of "*v'Chai Bahem*" and that of "*desecrate one Shabbos in order that he observe many other Shabbosos*". We will discuss two of them in this essay³.

Saving a Fetus

Do we desecrate Shabbos in order to save the life of a fetus? The Halacha is that one may kill a fetus if it is endangering the life of its mother and that one is not considered a murderer for doing so (*Sanhedrin* 59a) as it is not considered a "*complete Nefesh*". On the other hand, it is certainly considered to be alive, and unjustified abortion is a grave sin.

Would we desecrate Shabbos if the fetus's life was in danger (and the mother's was not)? The *Ran* in *Maseches Yoma* (3b) cites the *Baha"g* who rules that we would desecrate Shabbos because of the law of "*desecrate one Shabbos in order that he observe many other Shabbosos*". This law applies equally to a fetus as it does for a person who has already been born.

The *Ran* clearly only permitted the desecration of Shabbos for the sake of a fetus because of its future – the possibility for it to observe many other Shabbosos. The Mitzva of *v'Chai Bahem* would not have been sufficient, because that Mitzva only applies to a "*Nefesh*".

Spiritual Danger

Do we desecrate Shabbos in order to save somebody who is in danger spiritually? The *Shulchan Aruch* (*O.C.* 306:14) rules that if somebody hears that his daughter has been abducted and will be forcibly converted, he may travel even more than three *Parsaos* (which would be an *Issur d'Oraysa* according to one opinion in the *Talmud Yerushalmi*) to try to save her. It seems that according to the *Mechaber* one does desecrate Shabbos to save a person who is in spiritual danger.

³ See *Minchas Asher al haTorah* (*Shemos* 60) for an extensive discussion of this topic.



In fact, the *Mechaber* discusses this matter at length in *Beis Yosef*. He first cites the *Rashba* (*Shu"t* 7:267) who did not permit the father to desecrate Shabbos in this instance, as a person is not permitted to sin in order to prevent somebody else from sinning (*Shabbos* 4a) even if his sin will be small in comparison to the grievous sin that the other person will commit if he does not intervene. However, the *Beis Yosef* concludes that according to *Tosfos* the father is obligated to desecrate Shabbos, even if it means performing one of the actual forbidden *Melachos* of Shabbos. We are concerned that his daughter will convert to another religion **and will desecrate Shabbos her entire life**. Therefore, even desecrating Shabbos *me'd'Oraysa* is considered a "small" violation and we coerce the father to attempt to rescue her.

The *Beis Yosef* is hinting at the law of "*desecrate one Shabbos in order that he observe many other Shabbosos*". (The *Magen Avraham s.k.* 29 *ibid.* writes this clearly). This law obligates us to desecrate Shabbos to save a person both from physical and spiritual danger, as the goal is that the person who is saved will ultimately have the chance to fulfill the Mitzvos again. The law of *v'Chai Bahem*, by contrast, would only apply to somebody in physical danger, as its mandate is not to afford a person the chance to fulfill more Mitzvos but only to save his physical life.