

Parschas Masei 5771

REFUGE: RESCUE OR RETRIBUTION?

One of the topics dealt with extensively in this week's *parshah* concerns the laws and procedures surrounding a case of accidental murder (*Bamidbar* 35:9-34). In short, an individual who has committed accidental murder stands at the mercy of the victim's relative, known as the *go'el hadam* (avenger of blood). The murderer is therefore bidden to flee to an *ihr miklat* (city of refuge), where he is protected from his pursuer. This *ihr miklat* becomes the accidental murderer's new home – he may not leave until the death of the *Kohein Gadol* (High Priest) (*ibid.* v. 28).

While at first glance, the imposition of mandatory exile on the murderer appears to serve his own interests (in that it affords him protection), R' Tzvi Pesach Frank (*Har Tzvi, Nezikin*) wondered if this is the ultimate goal and essence of his exile. Perhaps the principal purpose of the *ihr miklat* is as a punitive measure; in other words, for the carelessness which caused a person's demise, the accidental murderer receives a sentence – not of execution, but of exile. R' Tzvi Pesach brings support for this idea from the following Mishnah in Makkos (2:6):

משנגמר דינו מת פתח גדול, הרי זה אינו גולה.

“If the *Kohein Gadol* dies after the (accidental) murderer is sentenced to exile (but before the actual sentence is carried out), he is spared from exile (and need not reside in an *ihr miklat*).”

As mentioned before, an accidental murderer who has been confined to an *ihr miklat* must remain there until the death of the *Kohein Gadol*. What happens in the (somewhat unusual) circumstance where the *Kohein Gadol* died in

between the conviction of an accidental murderer and the actual implementation of the exile? According to the Mishnah, once the sentence has been passed down, it is considered (to some extent) “time served,” and the convict is subject to the emancipation of all current *ihr miklat* residents afforded by the *Kohein Gadol's* demise.

Now, if the primary function of the *ihr miklat* was to provide protection for the murderer, the Mishnah would be difficult to understand. Why should the *Kohein Gadol's* death in this instance free the murderer from staying in the *ihr miklat*? He received not one moment of protection from the *go'el hadam*, as he never even stepped foot in the actual *ihr miklat*! However, if we consider the other position – that exile is a *punishment* – the law of the Mishnah may be much more palatable. Exile is a punishment which possesses an inherent time-limit: the duration of the life of the *Kohein Gadol*. Like any other instance, the murderer is eligible for the exemption provided by the *Kohein Gadol's* death; he just happened to be “lucky enough” that the *Kohein Gadol* exited this world before the murderer entered the confines of the city.

While the proof seems solid, it may be possible to reconcile the law of the Mishnah even with the contrary position (that exile is imposed primarily for protective purposes), as we shall see below.

BEFORE HIS TIME

In truth, this particular institution – the release of the residents of the *ihr miklat* at the *Kohein Gadol's* death – deserves some examination. What could be the connection between these seemingly disparate factors? The Chida provides an illuminating answer, in a statement laden with Kabbalistic and deep philosophic undertones. He states that

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relatives to arrange Torah study on behalf of her neshamah.

– with the passing of the *Kohein Gadol* – a lot more takes place “behind the scenes.” As the *neshamah* (soul) of the *Kohein Gadol* ascends to its resting place, it is joined by the “bereft souls,” which include the victim of the accidental murder. With the arrival of the victim’s *neshamah* to its proper station, the *go’el hadam* is assuaged, and the murderer may leave the *ihr miklat* (*D’vash L’fi*).


The Chida’s esoteric comments may best be understood by drawing upon the novel opinion of the Ohr Hachaim (*Bereishis 37:22*) regarding untimely death. Generally speaking, an individual’s lifespan is Divinely ordained; he does not leave this world until the proscribed moment. However, this system may be limited to those who are taken from this world in the “standard” manner – that is, at the hands of the *Malach Hamaves* (Angel of Death). However, as a creature imbued with free choice, a person may alter the pre-ordained system. An individual who commits murder has effectively “cheated” the *Malach Hamaves*, and has ended a life “before its time” (*cf. Zohar, Vayigash, 210b*).

According to the *sefer Imrei Shamai*, the above discussion forms the basis for the Chida’s explanation. The “bereft souls” of which the Chida spoke refer to these very unfortunates: murder victims whose lives were terminated before their predetermined time. Although their lives have ended, their souls are still unable to ascend until that time arrives. They exist in a state of temporary limbo, yearning desperately to reach their final resting place above.

Included in this unfortunate group are the souls of the victims of accidental murder. What the Chida was stating was that these souls do receive a reprieve – when the *Kohein Gadol* passes on. This accounts for the law freeing the residents of the *ihr miklat* at this time. As the *Kohein Gadol*’s soul ascends, it is accompanied by the “bereft souls,” who reach their resting place, as well. In some fashion, the *go’el hadam* is likewise affected by this state of affairs; once his relative’s soul has attained peace, the *go’el hadam*’s passion is extinguished. No longer fearing his pursuit, the accidental murderer is safe to leave the confines of the *ihr miklat*, and return to his home.

R’ Tzvi Pesach Frank had contended that the murderer’s

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exile serves primarily as a punishment, rather than protection. He derived this point from the Mishnah above, wherein a murderer can win exemption from an *ihr miklat* even without stepping foot inside – were the *Kohein Gadol* to die after his conviction (but before his exile began). Obviously – R’ Frank maintained – the purpose of the exile is not to afford protection; in this instance, he apparently received no protection, but is still free to leave. However, based on the words of the Chida, the matter may be seen in a totally different light. It may very well be that the primary function of the *ihr miklat* is to provide protection after all. In this particular instance, the murderer does not *require* any protection, despite his avoidance of the *ihr miklat*. With the death of the *Kohein Gadol*, the victim’s soul receives solace, and so the *go’el hadam* no longer presents a danger.