YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

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**Shiur #10: The *Halakha* of *Yeihareg Ve-Al Ya'avor***

The preservation of life overrides almost all *aveirot*. When faced with a life-threatening situation, almost any *aveira* must be performed to preserve life, based on the principle of *ve-chai ba-hem* – Torah is meant to support and embrace life. The exceptions are the three cardinal *aveirot* of *avoda zara*, *giluy arayot*, and *shefichut* *damim* (idolatry, sexual violation, and murder). These are never overridden; they must be upheld even at the cost of life. In this *shiur*, we will explore the nature of these three *aveirot* and the principle of *yeihareg ve-al ya’avor*, which mandates that a Jew sacrifice his life rather than violate these commandments.

The obvious approach is to suggest that these three *aveirot* are unique and possess an element that prevents the override of *pikuach nefesh*. This unique quality may be the sheer severity of these *aveirot chamurot*. These three *aveirot* represent such fundamental aspects of religion that they are considered most severe and are not cancelled for the sake of preservation of life.

However, some *Rishonim* (see the Ran, *Sanhedrin* 74, and the Re’ah quoted by the Ritva, *Pesachim* 25) claim that murder and sexual misconduct are not inherently more severe; instead, they are treated differently because they cause a negative impact upon another person, a *pegam*. Murder obviously affects the victim and sexual misconduct creates non-pedigreed children (and sometimes even has a negative effect on the pedigree of the woman). The reason these *aveirot* are not overridden for *pikuach nefesh* is not necessarily because they are more severe than other sins, but because they aren’t purely personal; they negatively affect other people.

In fact, some have suggested that **any** *aveira* of *bein adam la-chaveiro* that negatively affects others is not cancelled for *pikuach nefesh*. Thus, for example, when faced with a threat to life, a person may not steal from another person. *Pikuach nefesh* allows committing a **personal** *aveira* to preserve life, but it does not sanction damaging a different person to rescue your life.

Although these two models present different reasoning, they share a common logic: For some reason, these *aveirot* – whether because of their inherent severity or because of their negative impact on others – are not overridden for life preservation.

The Rambam (*Hilkhot Yesodei Ha-Torah*,ch. 5) takes a different approach. All *aveirot –* **including these three** –are suspended for *pikuach nefesh*. However, a separate *mitzva* of *kiddush Hashem*, to sanctify the name of God, determines that life must be surrendered rather than violating these *aveirot* and defiling the presence of God in our world. *Pikuach nefesh* does, in fact, override these *aveirot*, but a separate *mitzva* to be *mekadesh shem shamayim* (and avoid a *chillul Hashem*) dictates that the *aveira* must not be performed, even at the cost of life.

These different models of understanding *yeihareg ve-al ya’avor* yield some interesting potential *nafka minot*. Chief among them is the question of punishing someone who fails in a *yeihareg ve-al ya’avor* situation. If a person does not sacrifice his life, but instead violates one of these *avierot* to preserve his life, is he punished for that *aveira*?

The Rambam is adamant that he is not punished. This reflects his position that the *aveira* itself was cancelled due to the *mitzva* of *ve-chai ba-hem*, as well as the coerced (*ones*) nature of the *aveira* performance. Since the *aveira* has been cancelled, the person cannot be held accountable for violating *avoda zara* or murder. He **has** failed to fulfill the *mitzva* of *kiddush Hashem* and has violated the name of HKB”H, but he has not performed the *aveira* itself.

This position formed the foundation of the Rambam’s position articulated in his letter known as *Iggeret Ha-Shemad*. Many Jews had been coerced to convert to Islam in the 12th century. Although he does not defend the actions of these Jews, the Rambam defends their inclusion in the Jewish community, asserting that since they were coerced, they were not in violation of *avoda* *zara*, even though they failed to be *mekadesh shem shamayim*.

By contrast, the Ran in *Sanhedrin* (61), citing Rabbenu Dovid, writes that violation of these three *aveirot* - even to preserve life - would be punishable, since these three *aveirot* are not overridden by *pikuach nefesh*. Since these three *aveirot* are more severe, they are binding even in life-threatening circumstances, and their violation is punishable by *beit din*.

A second question pertains to a gentile’s obligation regarding *yeihareg ve-al* *ya’avor*, as gentiles are also prohibited from violating these three *aveirot*. This question is raised by the *gemara* in *Sanhedrin* (74b). Abaye claims that non-Jews are not obligated to give up their lives to avoid these violations. After all, their list of commandments tops off at seven. If we obligate them for an additional and autonomous commandment to sanctify the name of God, the list would swell to eight *mitzvot*. Clearly, Abaye’s view parallels that of the Rambam; *yeihareg ve-al ya’avor* constitutes a separate *mitzva*, which therefore cannot be applied to gentiles, whose obligations are limited to seven. By contrast, Rava replies “*inhu ve-chol abizraihu*” – gentiles are obligated in all seven *mitzvot* as well as the subsidiary components of those *mitzvot*, such as *yeihareg ve-al ya’avor*. Evidently, Rava maintains that these *aveirot* inherently prevent the override of *pikuach nefesh*. Since the mandate to surrender life rather than violate these *aveirot* is not a separate *mitzva* of *kiddush Hashem*, but rather an inherent parameter of these *aveirot*, the rule applies to gentiles as well. Part and parcel of these three *aveirot* is the responsibility not to breach them even at the cost of life. That is not a separate *mitzva*, which would swell the list to seven, but rather an internal qualifier of the *aveira*.

A third question surrounds the scope of *yeihareg ve-al ya’avor*. Does it apply to any connected *aveira* or only to the *aveira* itself? The Ramban (both in his *Milchamot Hashem* as well as in *Sefer Torat Ha-Adam*, *Sha’ar Ha-Sakana*) claims that only primary *aveirot* that carry *karet* or capital punishment would generate *yeihareg ve-al ya’avor* rules. Thus, for example, marriage between a *kohen gadol* and a widow – although forbidden – would not trigger *yeihareg ve-al ya’avor*, as it is not liable for the death penalty. Other *Rishonim* (cited by the Ritva in *Pesachim*) claim that **any** *aveira* subsumed within these three categories would mandate *yeihareg ve-al ya’avor*.

Presumably, this debate stems from the same fundamental question. The Ramban claims that *yeihareg ve-al ya’avor* is rooted in the severity of these three *aveirot*. It therefore only kicks in when the *aveirot* are so severe that they carry a death sentence. By contrast, the Rambam – who claims that *yeihareg ve-al ya’avor* is a separate *mitzva* to sanctify *Hashem*’s name – might apply the principle to any *aveira* related to these three areas. The three halakhic areas preserve the Divine Presence in our world. Violation of any element constitutes a desecration. In fact, the Rambam does not quote any qualifiers and would seem to apply *yeihareg ve-al* *ya’avor* more broadly than the Ramban applies it.

Finally, this question may impact the nature of *yeihareg ve-al ya’avor* if the coercion is not ideological. If a gentile coerces these *aveirot* out of personal vindictiveness and not as a manner of challenging Jewish religion, does *yeihareg ve-al ya’avor* still apply? The Ba’al Ha-Ma’or in *Sanhedrin* (74) rules that it would not. Evidently, he agrees with the Rambam that *yeihareg ve-al ya’avor* does not represent the inherent binding nature of these severe *aveirot*. If it did, the motivation of the coercer would not affect the application of *yeihareg ve-al* *ya’avor*. Evidently, a separate *mitzva* of *kiddush* *Hashem* mandates *yeihareg ve-al* *ya’avor*, **and** this *mitzva* only applies in a context of a religious faceoff. If the coercer has purely private motivations, no scenario of *kiddush* *Hashem* exists.

Most *Rishonim* disagree with the Ba’al Ha-Ma’or and apply *yeihareg ve-al ya’avor* for these three *aveirot* even in a context of *hana’at atzman*, where the coercer has purely personal motivations. They may still agree with the Rambam that *yeihareg ve-al* *ya’avor* entails a *mitzva* of *kiddush* *Hashem*, but they may maintain that *kiddush* *Hashem* is unrelated to the **motivation** of the coercer. Even if he is pursuing personal agendas, the *aveira* will affect the presence of the *Shekhina* in our world, and life must be surrendered to preserve that presence. Alternatively, these *Rishonim* may fundamentally disagree with the Rambam and claim that *yeihareg ve-al* *ya’avor* is based on the inherent severity of these *aveirot*, which demands that be preserved even at point of death. Accordingly, they should not be violated even in a situation of personal interest, *hana’at atzman*.

Among those who disagree with the Ba’al Ha-Ma’or, the Ramban applies *yeihareg ve-al ya’avor* even to cases of *hana’at atzman*. This is consistent with his earlier stated position that *yeihareg* *ve-al ya’avor* is based upon the severe nature of these *aveirot*.