

Question:

While This question does not relate directly to issues of war it is certainly an issue that is always part of wars. How should negotiations for the release of captives and hostages be carried out according to halacha? Has the principle of "at any price", raised by some family members of captives, have validity in halacha?

Answer:

The answer to your question is somewhat complex and requires the consideration of several factors.

- A. The principle of "at any price" is, as you noted, raised by family members of the Hostages held by Hamas. We must recognize that they are in a very stressful emotional state, for which we must give them the utmost support and help. Yet, it is unconceivable that this support can dictate government policy on the matter.
- B. Rightfully or incorrectly, the government of Israel does not act necessarily by halachic values. Making clear halachic declarations may cause unnecessary tensions. We must recognize the authority of the government especially when we are not asked to actively transgress Torah values.
- C. The halacha itself is not absolute and clear on this issue, therefore differing views have where to base themselves halachically.

The Mishna Gitin (ch.4 mishna 6, Page 45a in the Gemara) states:



"The captives are not redeemed for more than their actual value, for the betterment of the world"

In this halachic statement the Mishna teaches that, in spite of the great importance given in halacha to the redemption of captives, there are limitations on fulfilling this mitzvah.

The Mishna's statement raises some questions that need clarification.

1. What does "betterment of the world", in this context, mean?
2. "captives are not redeemed" Does that apply to all people and circumstances?
3. To understand what "more than their actual value" is, we must determine, what does "actual value" mean?

The Gemara suggest two possible understandings of "betterment of the world". One, so as not to strain the public into poverty by paying excessive sums of money. The second, to discourage more hostage situations due to the potential profit of such acts.

The early halachic authorities differ on how to rule in reference to these two explanations. Some prefer the first understanding, that the issue is public ability to contend with the high ransom. Others claim there is no conclusion and both reasonings need to be considered, while a third group is of the opinion that it is the attempt to discourage more such acts that is halachically valid. The Rambam writes, "We do not redeem captives for more than their worth for the benefit of the world at large, i.e., so that enemies will not pursue people to hold them captive". (Hilchot Matnot Aniyim ch 8 law 12) This is also the ruling found in Shulchan Aruch (Tzedaka 252 section 4)



As to the question of who is or is not included in the Mishna's restriction we find that the Shulchan Aruch rules, "One may redeem himself with whatever (sum) he desires". According to some opinions this can be extended to his wife as well, using the principle of, "ishto kegufo", his wife is like he himself. On the other hand, some authorities oppose the idea of a person redeeming himself at any price. The Nimukei Yosef writes, "the Gemara explains that he may not be redeemed even from his own property for more than his actual value". This view can also be found in the Meiri.

Another exception suggested by some, is the redemption of a great scholar. This opinion is based on the story of Rabbi Yehoshua ben Chananya who redeemed Rabbi Yishmael ben Elisha, as a small boy, recognizing his great potential, for a great sum of money. (Gitin 58a)

In reference to the aforementioned story the Tosafot suggest that Rabbi Yehoshua acted as he did because the child was in danger of death. His explanation would seem to indicate that in a situation with a risk to the captive's life we can pay more than his actual value. The Ramban rejects this possibility, pointing out that according to the Gemara Bava Batra (8b) captivity by definition entails a threat of death.

Rav Goren, though he opposed excessive ransoms to release captive soldiers, suggested that we could argue that a soldier sent to battle by the public may deserve that the public pay, even excessive sums, for his release.

Finally, we must define "actual value". There seem to be three opinions on how to determine the actual value. One view, is to assess the "value" of the captive according to how much would be obtained if he/she were sold as a slave. A second approach is that we determine the value according to the norm of



ransom paid for captives. The third view suggests we measure each person subjectively, according to his capabilities, knowledge and social status.

In light of all the above we can conclude that generally speaking the halachic approach is to refrain from paying excessive prices for the release of captives. That said, we can find several positions in Halachic sources that open the possibility to making exceptions that allow high ransoms. It seems obvious that those exceptions must be within the realm that does not risk substantially the security and well-being of the public.

We conclude this response and the series with a prayer, may we merit a redemption of all Am Yisrael and the return, in good health, of all the captives to their homes and families.

Sources:

Mishna Gitin Chapter 4 mishna 6 (45a in the Gemara)

Gemara 45a and Ramban and Meiri there.

Gitin 58a

Bava Batra 8a

Rambam Hilchot Matanot Aniyim chapter 8 halachot 10-12.

Rambam Hilchot Ishut chapter 14 halacha 19.

Shulchan Aruch Yoreh Deiah 252 sections 1-4.

For further reading:



Rav Goren, Torat Hamedina – Pidyon Shevuyim Temurat Shichrur Mechablim.
(pp 424-436)

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