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HOW TO SAVE LIVES DURING A THREE-DAY YOM TOV

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Pikuach nefesh (=lifesaving) pushes aside almost all prohibitions, including those of Shabbat and Yom Tov.

There are at least four ways that social isolation can create *pikuach nefesh* situations during the upcoming three-day yom tov.

- 1) People at high risk of death from COVID-19 may risk infection in order to spend time with family or friends
- 2) People may risk infecting others in order to spend time with family or friends
- 3) People may become directly suicidal or develop very severe mental illness, such as clinical depression
- 4) People may become ill and unable to care for themselves

Halakhah should be decided in the ways that IN PRACTICE minimizes the overall risk to life posed by these factors.

As secondary factors, poskim must take into account at least three other values:

- a) Minimizing the number of UNNECESSARY violations of Shabbat and Yom Tov
- b) Preserving an immediate Yom Tov and Shabbat atmosphere of simchah and kedushah
- c) Preventing long-term damage to the Yom Tov and Shabbat atmosphere of our community

Halakhic decisions can be made “wholesale” or “retail.” Some issues are best decided on a communal level. For example, following the lead of the RCBC, the Boston Orthodox rabbinate and many others forbade all public ritual. These are examples of effective “wholesale” psakim. Poskim may similarly choose to issue across-the-board leniencies where any limitations or restrictions will inevitably cause people to act in ways that risk lives.

However, this does not mean that all of halakhah is presumptively suspended during the current crisis. For example: **based on *pikuach nefesh*, one may violate even Biblical prohibitions to fulfill the desires of a *choleh sheyesh bo sakkanah* (=deathly ill person).** The reason for this is that we assume that anything which soothes the mind of a deathly ill patient may contribute to their longevity. **However, not everyone who is in danger is a *choleh*.**

For example, if I see someone walking obliviously toward a railroad crossing, I cannot feed them a cheeseburger just because they ask for one.

Another important distinction is that preventive measures do not ALWAYS rise to the level of *pikuach nefesh*. Halakhah does not ban all risk in life, nor require us to spend all our efforts and make all our choices with only longevity in mind. This is true both individually and communally. *Psak* regarding preventive measures depends on the extent of risk, the reasonableness of the contention that violating the prohibition will lower that risk, and the degree of prohibition.

These distinctions are key to the conversation regarding electronic communication during the upcoming yom tov.

One question is whether soothing the minds of those statistically at-risk for Covid-19 makes them less likely to catch the disease, or more likely to survive if they catch it. Such people are not yet *cholim*, and so there is no presumption that one can do whatever they ask, or that any degree of psychological comfort justifies every degree of halakhic violation. Indeed, some people may be negatively affected by being treated as if they are already sick. Moreover, breaking Shabbat or yom tov can itself be a trauma for some people who are deeply committed to observance.

Another question is whether these leniencies relate to preventive measures that rise to the level of *pikuach nefesh*. The psakim banning minyan do not permit driving on Shabbat to buy hand sanitizer, nor do they permit online *lashon hora* in order to discourage people from meeting friends to gossip.

In light of the above, if giving blanket permission to ZOOM seders on Yom Tov is the best way to prevent people from endangering themselves or others, then poskim should permit them *even if many specific ZOOM seders may have no such effect*. Similarly, poskim should give blanket permission for check-in phone calls on Shabbat and yom tov if that is the best way to ensure that suicidal individuals receive competent help or to ensure that dangerously ill people obtain proper medical care.

But overly broad leniencies can be unnecessary or counterproductive. Because such *psakim* must be judged by their real-world outcomes, a ruling that isn't followed is a failure even if you think people *should* follow it. Effective psak

cannot make psychological demands that people will not meet, or be based on minority halakhic positions that are nonstarters in the relevant community, even if you think those minority positions are objectively correct. For example: electronic communication requires the parties at both ends to be willing to engage in it. Ruling that people living alone can videoconference into family seders, or call friends, will not help unless their family and friends cooperate. Since families and friendships often cross communal boundaries, these kinds of leniencies can work only if they are broadly accepted.

A similar consideration applies to the *pikuach nefesh* concerns of suicide and mental disorders. The people at greatest psychological risk will often refuse to acknowledge that risk, certainly not prophylactically. They may also be stubbornly resistant to unfamiliar leniencies, and unlikely to take advantage of religiously uncomfortable options such as ZOOM sedarim. It doesn't matter whether we think they should; what matters is whether they will. In these and other cases, a **broadly accepted narrow ruling is therefore much more effective than a narrowly accepted broad ruling.**

Conversely, we must be equally wary of excessively limiting a ruling. For example, requiring medical certification of a suicide risk in order to permit videoconferencing on yom tov runs the risk that the leniency will be dramatically underused. Even people who voluntarily go to therapists, and have access to adequate mental health care, may be unwilling to disclose their mental health challenges to others, and again, videoconferencing requires both sides to participate.

Finding the delicate, lifesaving middle ground between excessive leniency and excessive stringency is extraordinarily hard when dealing with diverse communities. Poskim therefore try very hard to make "retail" rather than "wholesale" decisions. A standard halakhic tactic for accomplishing this is to publish a relatively stringent standard together with a note that anyone with a case anywhere approaching that standard should ask their local Orthodox rabbi. This tactic works well when everyone in the audience has a relationship with a rabbi to whom they are comfortable asking such questions. However, the flood of inquiries opened by the institution of Yoatzot Halakhah suggests that this is not true within every community. Because the downside – death – of people choosing not to ask and "just be machmir" is so great in the present circumstances, I think it would be better to publish a relatively or even maximally lenient standard and offer people the ability to make decisions themselves. That standard must be formulated practically and concretely. At the same time, it should **strongly encourage** people to consult with competent halakhic authorities, especially when a decision must be accepted by multiple people in order to be implemented.

When all is said and done, competent halakhic authorities will not all give the same answers, for many legitimate reasons. For example, they may start from different halakhic positions about technology on yom tov and Shabbat, or about whether a high standard that is nonetheless short of *pikuach nefesh* can justify certain leniencies. **My point here is to emphasize that competence in this matter requires deep understanding of the psychological stakes and communal realities; willingness to make difficult halakhic decisions in situations of *safeik pikuach nefesh*; and the ability to handle the ambiguities of situations which are not obviously *pikuach nefesh*.**

Practically speaking, I think it is very unlikely that across-the-board leniencies for electronic communication on yom tov will gain the support they need to be effective in most of our communities. I therefore don't see much benefit in arguing for or against them. Instead, I believe that **our entire community must brainstorm other tactics to diminish each of the four *pikuach nefesh* risks we began with.** Some of these, such as the risk that people living alone will fall ill, would not anyway be helped much by ZOOM seders.

Here are some sample ideas:

- 1) Everyone living alone, but especially the elderly, will have a pre-arranged check-in time each day, say by a knock at the window. If they don't respond, someone should call them a short time later, and if they still don't respond, call 911.
- 2) Everyone living alone will have a way to call friends or family, and ideally random community members, in a way that ensures their call will be picked up. They will be strongly encouraged to make such calls if there is even a small chance that doing so will increase their safety. Protocols for answering these calls will include being supportive of the person for making them.

I am confident that many communities are already arranging similar approaches, in consultation with competent halakhic authorities. **We urgently need to arrange the sharing of best practices as widely as possible.**

This process will require rabbis and laity thinking together seriously about halakhah in immediate and practical terms, and may therefore become a small positive outcome of this terribly difficult situation.

Wishing us all joy, health, sanity, and a chag kasher vesameiach!

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