

CENTER FOR MODERN TORAH LEADERSHIP



WHAT IS PARSHAT SOTAH FOR?

By Rabbi Aryeh Klapper

The Problem

The Sotah ritual appears deeply misogynistic. It seems that a husband can by fiat restrict his wife's social interactions, and if she disobeys, he can force her to undergo a humiliating ordeal in order to prove her innocence of adultery. Why would God include this in the Torah?

Standard Explanations

Medieval commentators offer several rationales, including:

- The ritual provides certainty about wives' faithfulness
- It saves marriages that would otherwise fail due to suspicion
- The threat of the ritual deters potential adulteresses

These explanations assume that the ritual was meant to be actually performed. The rationales are teleological; they are retroengineered from the effects of the ritual.

Rav Yosef Dov Soloveitchik (= The Rav) argued in *The Halakhic Mind* that we should limit the enterprise of *taamei hamitzvot* (finding rationales for commandments) to identifying the *effects* of commandments, not their *purposes*, since we can't know God's mind. In his famous example, one can say that the mitzvah of shofar on Rosh HaShanah has the effect of stimulating repentance, because it does, but not that this is the reason or even a reason that G-d instituted it. The Rav called this “the method of reconstruction”. (He argues that this is the method of the Rambam in the Mishneh Torah but not in the Guide.)

However, this approach faces significant challenges.

1. **Cultural dependency:** Effects change across cultures.

For example: A shofar might not inspire repentance in a culture where rams' horns are only blown on celebratory occasions.

Or: Mishnah Sotah 9:9 teaches that the Sotah-water ritual was discontinued even before the Temple's destruction because “adulterers became numerous”. In other words, it wasn't an effective deterrent in that culture.

2. **Circularity:** Previous rabbis may have interpreted the laws specifically to produce certain effects, meaning that the “effect” actually determined the law.

For example: The word “*ternah*” in Tanakh often refers to celebratory or militarily inspirational sounds. Yet with regard to Rosh HaShanah, all positions about the

obligatory *ternah* assume that it mimics weeping. It therefore seems that the “effect” of inspiring repentance determined the halakhah regarding the sound rather than the other way around.

3. **Non-practiced mitzvot:** How can we know the effects of rituals that aren't performed?

We can perhaps resolve the first issue by leaning into the historical contingency and agreeing that mitzvot have different effects in different contexts, and that all of them are worthy of study. But I don't know how a pure effects-based model resolves the second and third questions.

If we are willing to say that the primary effects of the law are presumptively its purposes, we can resolve the second question as well. I have written many times that membership in the sets of *chukim* and *mishpatim* respectively, in the sense of “not/having a humanly comprehensible purpose”, is socially and historically contingent; a *mishpat* can be *chokified* and vice versa. I similarly have no objection to a claim that mitzvot within the “*mishpatim*” category can change rationales over time, and that the law at each time should be interpreted in a manner consistent with legal precedent and the most compelling current rationale.

This creates space to talk about the purposes of mitzvot at a time when they cannot be practiced. In one sense, we can say that their purpose becomes *derosh vekabel sakhar* = “Interpret and be rewarded”. But then we have to ask whether saying that entails *chokification* of the object of study, or of the study itself, or both. In what sense can a mitzvah have a purpose if it is not intended to be practiced?

Derosh vekabel sakhar mode is a per se problem for the method of reconstruction, because the effects of nonpracticed mitzvot can be known only via imagination. (In the case of mitzvot never intended to be practiced, according to the positions acknowledging that such mitzvot exist, it may be nonsense to speak of effects.) But if we cannot allow such imagination, and effects are the only way to speak of reasons, we would have to *chokify* vast swathes of Torah.

An alternative is that *derosh vekabel sakhar* mode affords us the luxury of speculating about what the effects of the mitzvah would be in different cultures, and even of imagining how we might seek to interpret the halakhah differently in each culture. This speculative process may unearth effects of the law that are

significant in all societies but that would otherwise have been overlooked.

Mishnah Sotah 9:9 informs us that the “bitter waters” of the Sotah ritual were removed from halakhic practice even before the Temple was destroyed “once adulterers became numerous”. In other words: that society thought of the ritual as intended to deter. Once it ceased to be an effective deterrent, therefore, it was mothballed. The Sotah ritual is therefore in *derosh vekabel sakhar mode*¹ currently, although it would be a mistake to limit the laws of Sotah to the ritual.

Were the Sotah ritual to be revived in our day, I’m fairly certain that it would not be a source of renewed marital harmony. Rather, most of us would see the husband’s initial *kinui*, in which he warns his wife not to be secluded with a specific man, as an inappropriate attempt to control her social life. We would see his demand for proof of his wife’s innocence as another inappropriate form of control rooted in paranoia. In short, we would strongly advise the wife to leave him as soon as possible. What then would the purpose of the ritual be?

Let me introduce three pieces of evidence for your consideration:

- 1) The concerns I raised above are not exclusively modern. Rashi emphasizes that *kinui* goes beyond the boundaries established by *hilkhot yichud* to forbid ordinary social life, to the point that, if the *kinui* is done privately (whether private *kinui* is legally effective is debated in the Talmud), her friends will be angered by her sudden unsociability.
- 2) A feature of the Biblical account of the ritual, amplified by the Mishnah and by halakhah generally, is that the wife is immediately removed from the physical access and control of the husband.

From a halakhic standpoint, this is accomplished by immediately making the husband and wife sexually forbidden to each other. The anonymous Mishnah even requires chaperones whenever they are together. From a narrative standpoint, the Torah and Mishnah emphasize that the husband disappears from the situation immediately after making his claim that his wife defied his *kinui* and should be made to drink. He plays no role in the subsequent ritual at all at any stage. Rather, the wife is constantly in the care of the kohanim (and care is also taken lest they molest her).

¹ The only recollections of a Sotah ritual I’ve found that present themselves as factual are the story of Shemayah and Avtalyon, which the gemara suggests might have been a simulacrum; and the plaque donated by Queen Hilni to the Temple ostensibly for scribes to copy Parshat Sotah from before erasing the copy into the water.

Here I need to acknowledge not yet having read Dr. Ishay Rosen-Zvi’s “הטקס שלא היה” = *The Rite that Never Was*. Based on secondhand reports,

- 3) The general halakhic principle at the time of the Talmud was that only husbands could initiate divorce. If a wife was judged likely guilty of adultery, the courts could force the husband to initiate divorce, but he would not have to pay his wife a ketubah. The courts would only both compel divorce and payment of a ketubah if the wife had been severely wronged, or if the husband developed a condition that reasonable women find intolerable. There are circumstances in which the husband’s initiation of the Sotah process yields the halakhic result that he is compelled to divorce his wife and to pay her ketubah.

In other words, a previously underplayed effect of the Sotah process is that it enables women to get free of controlling husbands without becoming impoverished.

This effect seems to me to occur in all societies. However, it is certainly possible to make halakhic choices that make this outcome more accessible and reliable to women who find themselves chained in marriage to a coercively controlling husband.

It is also true that while the water-ritual is defunct, the Sotah process retains some real-world implications. These are variants of the standard case in which a husband declares certainty that his wife an adulteress but has no proof – in such a case she is immediately forbidden to him, and he is therefore obligated to divorce her, but she receives her ketubah. Teshuvot on such cases tend to assume that the “right” outcome is to undo the prohibition and therefore go to great intellectual effort to accomplish that and “save” the marriage; I suggest that in some/many/most such cases divorce would be a better outcome, and halakhic efforts should be focused on enabling wives to achieve that outcome.

In broad terms: I hope to have shown that one important effect of the Sotah law is that it allows women a way to escape marriage with a coercively controlling husband without risking poverty. I contend that we can and should consider this a primary purpose of the law. Therefore, to the extent consistent with halakhic integrity, we should interpret the law of suspected adultery in the ways most likely to produce this effect.

Shabbat shalom!

we agree that the Rabbinic conversation about the Sotah is not based on traditions about actual implementation events. However, we interpret the *derosh vekabel sakhar* conversation very differently.

I also need to express my deep gratitude to the members of the weekly CMTL zoom shiur on Sotah this year. Recordings of that shiur are in the Taking Responsibility for Torah podcast library.

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