

פרשת כי-תצא

OVERVIEW

The Sidrah contains a large amount of laws regulating the social and family life of the Jewish nation. Among them are the rights of the first-born, compensation for injuries sustained or inflicted, conditions for conversion, divorce, levirate marriage, a. o., concluding with a reference to Amalek's dastardly attack against Israel's rear.

COMMENTARY

The Jewish Marriage

The institutions of the state and its policies are subjects discussed in the previous Sidrah. Our Sidrah deals with family life in its various aspects, its social and moral issues. The Jewish state considers the responsibilities of the head of the family to be more important than those of the ordinary citizen. For the family is the most important ingredient within the Jewish society.

At various places we have stressed the vital significance of the Jewish marriage in the, eyes of the Torah law. Our Sidrah illustrates the import of this fundamental institution by way of laws and thoughts that we shall briefly summarize in the following:

The legal clauses and terminology of the documents that accompany the marriage ceremony give it the aspect of a contract commonly associated with business transactions. Yet there is a vast difference: contracts regulating business and social relationships are the result of mutual agreements reflecting the wishes and purposes of the partners. The Jewish marriage contract contains a series of rights and duties that are independent of the partners' will. The marriage can only take place within the framework of the established conditions.

Marriage serves a double purpose: the intimate bond between husband and wife, and children. The spouse is to be the true companion the "alter ego" of two people who complement each other's physical and psychological disposition. The marital bond will be a lasting union only when its purpose lies beyond the immediate self-interest of the partners. It is the sanctification of the Jewish marriage in the service of G-d that brings permanence and genuine happiness to the union. Thus the talmudic saying: "He who is not married lives without joy and blessing; he who is not married cannot be considered a complete human being".

One is generally inclined to ascribe to the wife the decisive role in the marriage. It is true that the harmony of family life often depends on the patient guidance and warmhearted attitude of the wife and mother. "As the wife, so the husband" is an old Jewish saying. Her task is to maintain and secure the domestic peace, guide the children's first steps and "surround her husband as with a wall".

Jewish teaching considers children to be the most precious fruit of the human existence. To this day the child assumes a unique position in the human society. No effort is spared to guarantee the defenseless child the full protection of the law.

The Right of-the first-born

The continuity of family tradition is of the most urgent importance in order to safeguard the faithful transmission of the testimony from Sinai. On numerous occasions the Torah emphasizes the role of the husband whose main task is the spiritual guidance and moral training of those for whom he is responsible. This function is made easier because usually the husband-

father controls the finances required to accomplish this task. He pays the tuition, hires private tutors, acquires the necessary learning material and in general coordinates and supervises the various phases of family life. The death of the head of a household is not necessarily the cause for a sudden interruption in the educational process. In taking his father's place, the oldest son is entitled to a double share of the inheritance. (Thus, if three sons survive the father, the oldest receives half of the inheritance with one quarter going to each of the other sons.) The first-born's preferred financial position is not a form of reward but a way to enable the son to continue and complete his late father's efforts.

#### The delinquent-Son

With strange logic the Talmud accompanies this law in following comment: "The punishment of the delinquent son is not a consequence of the crimes he committed. It is to save him from further depravity which is bound to be the result of his conduct." It is obvious that we deal here with a borderline case that is all but improbable. Indeed, according to talmudic sources (Sanhedrin 71) this problem is a purely academic one, as in practice no individual will ever fit all the criteria stated in the law. The parents must state that nothing had been neglected in the course of the son's education; that they acted in complete harmony in presenting to their children a model marriage; that they discharged their task as educators to the very best of their ability.

Which father, which mother can say with a clear conscience "it is not our fault, we have lived up fully to our responsibility". The fact is that the parental attitude, the example they set for their children by their conduct, their relationship with each other and with their children is the major factor in the effective and successful educational process. He is wise who looks for the causes of a failed education, not to the negative

traits of a child but to the errors committed by the parents along the pedagogical road.

#### Protecting the women and the Weak

A fair amount of laws is devoted to safeguarding the honor of (unmarried) girls and women. It is difficult to find another legislation to match the blunt language employed by the biblical text in tackling this delicate topic involving human passion and lust. The Torah law extends its authority and intervention to the most intimate areas of sexual conduct while ever mindful of its desire to rehabilitate the guilty by legitimizing his vile act and returning him to full membership in the human society. This explains why we find in these chapters a recommendation to regulate the relationship through marriage although the chances for a successful union may appear to be slim.

It shall be noted that such recommendations never apply to cases where the non-Jewish perpetrator wishes to legalize the act by a so-called "mixed marriage". Jewish tradition opposes any attempt to allow or coax an individual to adopt Judaism as a convenient solution to a compromising situation. We know of conversions to the Jewish religion only as an act of pure idealism and conviction. Qualified rabbinical authorities will never grant the benefit of conversion to an applicant whose motives are questionable.

Our Sidrah lists a large number of social measures such as the protection of fugitive slaves (23:17), prohibition of interest (23:20), promoting the welfare of an impoverished debtor (24:6), just treatment of the hired laborer (24:14), a. o.

#### The Bird's Nest

The Mishna states: "he who extols the greatness of Divine mercy because it extends even to the bird's nest - this person must be silenced". This seems strange: what other reason but G-d's infinite mercy could

there be for the extraordinary protective measure on behalf of a tiny living creature? The Mishna, however, looks at this law as a matter of profound philosophical importance. If mercy were the main motivation for this law it would be far more logical to prohibit the appropriation of the young bird or eggs rather than tie it to the required sending away of the mother bird. There is also the question why this law concerns itself with the young birds and ignores the young of the cow or of the hen (although there is indeed an analogous ruling in Vayikra 22:26-28).

The Creator endowed human beings with the right to use plants and certain groups of animals for their sustenance. Respect for motherhood, a function common to both man and animal, is incumbent upon man. Thus it is not compassion for the mother bird but our awareness of her dignity while she performs her maternal functions. Experience teaches that, in contrast to humans, the maternal instinct in animals is limited in that in most cases the mother leaves her young after a relatively brief period of time and frequently even rejects them shortly after the birth. If the mother bird allows herself to be sent away from the nest without attempting to return to it, she demonstrates that her maternal functions have ended which guaranteed her protection and that of her brood. If she shows signs of wanting to return to the nest, the Torah forbids any human interference.

#### Divorce

"Undying love" is a touching expression often heard during the early stages of a marriage. Just as often harsh reality intrudes and the sad drama of divorce ensues. This happens after as a consequence of a relationship that lacked an essential ingredient: mutual understanding. The Jewish law provides for the partners to end their union in a ceremony that must be attended by qualified witnesses and performed in accordance with the Torah-

prescribed rules. The initiative is taken by the husband except in the rare case when grave reasons impel the courts to take direct action.

#### The Levirate Marriage

We deal here with the marriage of a surviving brother to the childless widow of his deceased brother. As the very meaning of a marriage is based on the creation of a new family, the sudden collapse of this edifice caused by the husband's death is less tragic if there are children who will continue the father's work of building a Jewish home. However, if the widow is childless, it is only normal to allow her to resume the task of reconstructing her family life by leaning on the person who most likely shares the ideals of her husband. Thus the new marriage, contracted with the intention of perpetuating the memory of the deceased, is in fact a continuation of the late husband's marriage whose moral and spiritual influence will live on through the offspring resulting from it.

There are cases when it is impossible for a levirate marriage to take place. For example, when two brothers married two sisters; The result would be that the surviving brother would be married to two sisters, an inconceivable situation. Or when the surviving brother is very old while the widow is quite young. In such situations the Torah commands "Halitzah", a drastic solution which has become the universally applied rule.

During the "Halitzah" ceremony the widow performs the symbolic act of taking off her brother-in-law's shoe (using a specially designed "halitzah shoe"), spitting before him and declaring, "so it shall be done to the man who does not want to build his brother's house.... his name shall be called in Israel "the house of him whose shoe was removed" (25: 9-10). The widow does not actually accuse the brother- in-law of any wrongdoing; he may, in fact, be very

willing, even eager, to contract a marriage with her. The text refers to a man who out of egoism and indifference would refuse to perform

an act of loving kindness on behalf of and in memory of his deceased brother. It is important to note that for many centuries "halitzah" has taken the place of the levirate marriage which is no longer feasible because of the prevailing monogamy (in most cases the surviving brother is already married). An additional deterrent is the fear that the motives of the brother-in-law, especially when he is a younger man, may not be entirely altruistic.

#### Remembering Amalek

It is Amalek's brutally antisocial behavior, the naked abuse of power, the baseless hatred of Israel, which motivates the Torah's

decree to blot out Amalek completely from the memory of nations. Israel is to realize the contrast between its own national mission and a people that preferred a sneak attack from the rear to open confrontation and measured its power in terms of its armed might and sought glory by trampling on the unarmed and weak. It is this spirit of ruthlessness and brutality that we must oppose at all times on all fronts.

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