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A VORT FROM THE ROSH YESHIVA מורינו הרה"ג ר' אברהם גורביץ שליט"א

פרשת משפטים

ואלה המשפטים אשר תשים לפניהם. (שמות כא, א)

And these are the ordinances that you shall place before them. (Shemos 21:1)

This week's *Sidrah* discusses Hashem's command to Moshe to teach Klal Yisroel civil law. Moshe taught the ordinances concerning various damages and how to apply justice in monetary disputes that may arise.

The Midrash (*Midrash Rabbah*) infers from the phrase - *אשר תשים לפניהם*, *that you shall place before them*, that the set of laws detailed in our *parshah* is intended for the general populace. However, there is also another set of rules referred to as *מִשְׁפָּטֶיךָ לְמֶלֶךְ תֵּן וְיִצְדָּקְתָּךְ לְבֵן מֶלֶךְ*, *Your judgements to the king give, and Your righteousness to the son of the king (Tehillim 33:15)*. This additional form of judgement is similar to that of Hashem, Who is described as *הַיֹּצֵר יַחַד לִבָּם הַמְבִּין אֶל כָּל מַעֲשֵׂיהֶם*, *He Who fashions together their hearts, Who comprehends all their deeds (ibid. 33:15)*. When administering judgement, Hashem takes a person's specific circumstances into account.

The Rosh Yeshivah *shlita*, citing R' Leib *zatzal* (Meorei Sheorim), explains the Midrash. The Beis Din, unable to fully comprehend everyone's circumstances, operates under general guidelines of judgment that are not tailored to the individual situations of wrongdoers. In contrast, Hashem evaluates each case individually, considering the offender's unique challenges, thoughts, desires, and capabilities. This approach to justice was also extended to the Jewish kings, who, appointed by Hashem and receiving special *siyata dishmaya*, possessed the unique authority to issue special rulings in specific situations.

With this concept, R' Leib explained a troubling account concerning Dovid HaMelech. In Sefer Shmuel (II Chap. 12), we learn how the prophet Noston rebuked Dovid. Noston presented Dovid with a "case" of a heartless and greedy rich man who victimised a helpless poor man. In this parable, there were two men in one city: one was rich, and the other was poor. The rich man owned many sheep and cattle, while the poor man had only one small ewe that he raised. This ewe had grown up with him and his children; it ate from his bread, drank from his cup, and lay in his bosom – it had become like a daughter to him. When a wayfarer came to visit the rich man, he was unwilling to take from his own sheep or cattle to prepare a meal for his guest. Instead, he took the poor man's ewe. Upon hearing about this terrible crime, Dovid became very indignant. He condemned the rich man's behaviour and declared a harsh sentence, stating, "This man deserves to die! He must also pay fourfold for the ewe because he has committed this deed and showed no pity!"

The Meforshim explain that paying fourfold for the ewe is understandable, as this is the punishment prescribed by the Torah for stealing and then slaughtering a sheep. However, they question where the Torah references the death penalty for theft. Additionally, Dovid provided a reason for the punishment: *על אשר לא חמל*, meaning "because he had no pity." This prompts the question: where

is this *aveirah* and its consequence mentioned? (Moreover, there is a general principle known as קָם לִיה בְּדָרְבָא מִיְנִיה - one who is sentenced to death does not pay. Therefore, how is it possible to have a double punishment of death and financial restitution in this case.)

R' Leib explained that Dovid was “judging the case” based on both types of punishment. According to the *mishpotim* outlined in the Torah, which do not take personal circumstances into account, the rich man must pay the fourfold fine for stealing the ewe. However, there exists another level of authority applicable to the Jewish king, who can impose sentences not only corresponding to the act but also based on the sinner’s motive. Dovid HaMelech was able to judge the rich man for his cruelty towards the poor man and penalise him with death for his merciless crime, which was tantamount to murder.

We observe that the concept of punishment is based on motive rather than just the action itself in various contexts. R' Elyah Lopian, in Lev Eliyohu, elaborates on this theme by examining the *berachos* that Yakov Avinu gave to his children. The *possuk* (*Bereishis* 49:3-4) states: וְאֹבְדָן בְּכָרִי אֶתְהָ וְכוּ', יֵתֵר. *Reuvain, you are my firstborn... foremost in rank and foremost in power. Water-like impetuosity – you cannot be foremost, because you mounted your father’s bed.* Rashi explains that Yakov was rebuking Reuvain, emphasising that although he was the firstborn and should have been superior to his brothers in terms of *kehunah* and *malchus*, he forfeited these privileges. But how did he lose this position? It was due to his פָּחַז, *impetuosity*, and hasty recklessness during the incident with Bilhah. Because of this character trait, he did not deserve the abundant advantages that were meant for him.

It is noteworthy that Reuvain lost his leadership status, not merely because of the act he committed but because of the motives that drove him to do so - his hastiness and recklessness. This principle is further illustrated in the case of Shimon and Levi, who were held accountable for their fury and rage, which led them to kill the people of Shechem.

The Rosh Yeshiva highlights that the above applies concerning the reward for performing *mitzvos*: reward is not solely based on the action itself; rather, a person’s motives and feelings play a significant role. This concept is illustrated by the Avnei Miluim (71:4) who clarifies when the reward promised by the Torah for *tzedakah* applies. The *possuk* states: וְתָתֵן לוֹ וְלֹא יֵרַע לְבַבְךָ בְּתִתֵּנָהּ לוֹ, כִּי בְגִלְלֵה דְדָבָר ה' אֱלֹהֶיךָ בְּכֹל מַעֲשֶׂיךָ וּבְכֹל מְשַׁלַּח יָדְךָ יִדְרָךְ, *You shall surely give him, and let your heart not feel bad when you give him, for in return for this matter, Hashem, your G-d, will bless you in all your deeds and your every undertaking (Devorim 15:10).* Citing the Sefer Halkarim, the Avnei Miluim explains that the incentive assured by Hashem refers not to the act of giving itself but to the joy and kind-heartedness with which one contributes to those in need.

The alternative form of judgement determined by Hashem, and by extension, the Jewish king, emphasises the significance of one’s motives and emotions. Even if a person’s actions do not warrant severe consequences, their flawed characteristics and inner drives can lead to a harsher and more substantial sentence. Additionally, we must recognise the value of the heart and soul we invest in our Torah and *mitzvos*, as this dedication can elevate our performance and result in profound goodness.

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