

Treatment of "Aids" Patients

In formulating a position on the treatment of patients with Acquired Immune Deficiency Syndrome (AIDS) from a traditional Jewish point of view, we must examine the fact that a large number of persons suffering from this disease are male homosexuals, and that homosexuality is a practice which is severely prohibited for both Jews (Leviticus 18:22) and non-Jews (*Sanhedrin* 58a re Genesis 2:24). In addition, intravenous drug abuse, another known factor in this disease, is prohibited as an act of willful self-destruction (Deuteronomy 4:15; *Baba Kama* 91b). The question that arises, then, is this: is a patient suffering from a disease resulting from sinful activity to be treated differently from any other patient?

A strong argument may be constructed that no distinction should be made; our sages taught that all suffering is the result of sin, except in the case of the greatest saints (*Berakhot* 5a; *Baba Batra* 17a). Moreover, even in the case of one suffering from *neg' a tzara' at* (mistakenly translated as "leprosy," this scripturally described disease is not the same as what we call leprosy, i.e., Hansen's disease; see Baruch A. Levine, *JPS Torah Commentary*, Leviticus, Chapter 13, p. 75; Julius Preuss, *Biblical and Talmudic Medicine*, tr. Fred Rosner, Chapter 12, p. 323 ff.), which our sages judged was the result of a number of anti-social vices (Tosefta *Nega'im* 6:7; *Arakhin* 15b), the community is to quarantine the patients for their own sake, but is also instructed to pray for their recovery (*Mo'ed Katan* 5a). In a parallel passage, the Talmud (*Sotah* 32b) extends this rule to include sufferers from any other disease or misfortune as well (see also Maimonides, *Laws of Tzara' at* 10:8; Shulhan Arukh, *Yoreh De'ah* 335:8). Of course, prayer for the patient is just part of the general attention he or she is to receive from us (*Nedarim* 39b-40a). This applies to both Jewish and non-Jewish patients (*Gittin* 61a; Maimonides, *Laws of Idolatry* 10:2).

A problem does arise from the Talmudic ruling that one who is a "provocative sinner" (*mumar lehakh'is*) is not to be helped but actually hindered (*moridin velo ma'alim*; *Avodah Zarah* 26b; for a historical analysis of this term, see Avraham

Schwartz, *Otzar Yisrael*). Both RaShI (*ad locum*) and Maimonides (*Laws of Murderers* 10:12) interpret this to refer to one who habitually and willfully sins. On the other hand, one who only occasionally sins out of lust or appetite (*mumar lete'avon*) is considered one whose life and property are to be protected and carefully treated (see *Avodah Zarah* 26b, Tosafot, s.v. *ani*; cf. Maimonides' commentary on Mishnah *Nedarim* 4:4 on Deuteronomy 22:2).

Under this most stringent of interpretations, we are required to ask whether a homosexual is a "provocative sinner" or merely a "lustful sinner." Considering the frequently habitual character of male homosexual activity, it appears to be "provocative" as defined by RaShI and Maimonides (see Rabbi Joseph Karo, *Kesef Mishneh ad locum* on Maim., *loc. cit.*). One could interpret the compulsive behavior of many homosexuals as lustful rather than provocative, but no support for this interpretation is found in the other medieval authorities. One must also ask whether intravenous drug abusers are "provocative sinners." Drug addiction is both habitual and compulsive, and its categorization is perhaps more problematic (see D. Novak, *Halakhah in a Theological Dimension*, Brown Judaic Studies Series, no. 68, 1985: "Alcohol and Drug Abuse in the Perspective of Jewish Tradition", p. 72ff).

Nevertheless, the application of such harsh judgement is severely limited; homosexuals and drug abusers, even if deemed "provocative sinners," would be exempted from the punishment which Jewish law prescribes. Medieval authorities emphasize that these punishments were for the purpose of discouraging flagrant and habitual violation of the law (see Tosafot Rabbenu Samson of Sens on *Avodah Zarah* 26b, ed. Blau, p. 82, and *Nimukei Yosef, ad locum*, ed. Blau [New York, 1969], p. 203, quoting *Tosafot haRosh*, s.v. *ro'eh*). In fact, it is clear that by the Middle Ages these punishments were only applied to informers who endangered the entire Jewish community (see, e.g., Rabbenu Asher, *Responsa Rosh*, 17.1)—in other words, for self-defense only (see *Sanhedrin* 72a).

Thus, the enforcement of this specific rabbinic injunction depends on what the authorities of the age judge its consequences to be. One of the greatest authorities of our own age, Rabbi Abraham Karelitz (*Hazon Ish*, d. 1953), argued that this law only applied in those ages when Divine Providence was so evidently manifest that it was equally certain to all that the direct consequences of gross immorality would be social and even physical catastrophe. In an age when such is not the case, and when the Jewish masses are weak in their faith, such severe measures will have the opposite effect from what the Talmudic rabbis intended—turning more people away from the Torah. As this sage said so beautifully and succinctly, "all of our effort is to be constructive" ("*kol atzmenu letakken*", *Hazon Ish: Yoreh De'ah*, sec. 2, p. 7d; cf. *Gittin* 33a, Tosafot, s.v. *ve'afka'inu*).

We do not know which punishment God metes out for any given sin, but we do know that God has commanded us to treat the sick and save the lives of the ill.

The religious prohibitions against drug abuse and homosexuality have no bearing on our duties under Jewish law and tradition to heal the sick. Moreover, we must bear in mind that having AIDS is not, in itself, proof of homosexuality or drug abuse; an increasing number of AIDS patients did not fall victim to this scourge through participation in prohibited activities.

There is strong support in classical Jewish sources to obligate health care personnel to treat highly contagious patients even when there is some measure of risk. (See Rabbi Joseph Karo, *Kesef Mishneh* on Maimonides, *Laws of Murderers* 1:14 and Rabbi Joseph Karo, *Bet Yosef* on Tur, *Yoreh De' ah* 336; Rabbi Solomon Luria, *Yam shel Shlomo*, *Baba Kama* 6:26. Also, see Shulhan Arukh, *Yoreh De' ah* 336:1 and Rabbi Naftali Tzvi Judah Berlin, *Ha'Ameq Sh'elah* on *She'iltot deRav Ahai Gaon*, Shelah, end, on Jerusalem Talmud, *Terumat*, Chapter 8, end, 46b. cf. Rabbi David Ibn Abi Zimra, *Responso haRaDBaZ*, Part 3, no. 986; Rabbi Joshua Falk, *Sefer Me'irat Einayim* on Shulhan Arukh, *Hoshen Mishpat* 426, Subparagraph 2.) Rabbi Joshua Ben Levi is singled out by the Talmud (*Ketubot* 77b) for special praise because he ministered to those suffering from an infectious and potentially fatal disease.

Further, we believe that thoughtful adherents of Halakhah must reject both the reactionary position, which brands homosexual sufferers as not worthy of attention, and the ultra-liberal position, which accepts these prohibited practices as morally acceptable. Whether or not the patient is a sinner has no bearing on his entitlement to treatment. By the same token, treatment and compassion for the ill does not mean that we condone or accept prohibited behavior.

In conclusion, we must remember that Judaism teaches compassion to all who are suffering illness, whether their illness is the result of prohibited practices like intravenous drug abuse and homosexuality or the result of permitted practices like blood transfusions and heterosexual relations between spouses. For those who suffer, our hearts and minds must be fully engaged in their care—through prayer, through acts of kindness to the victims and their families, and through all the medical skills at our command. Every possible effort should be made to alleviate their pain and anguish.

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