

On the Status of Missing Persons

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This paper was adopted unanimously in 1987. The names of voting members are unavailable.

שאלה

What is the status of missing persons according to Jewish law?

תשובה

Adam, the name of a film broadcast by NBC on October 10, 1983, told the true story of John and Renee Walsh, whose young son disappeared very suddenly in a shopping center. The publicity generated by the Walshes helped the public become aware of the tragedy of missing children. Since then, salt boxes, milk cartons, and even shopping bags have displayed on them pictures and short biographies of missing children, hoping that one of the millions of consumers will identify the faces on the boxes, and help reunite the missing children with their parents. Here in New York, the parents of Etan Patz have generated a fair amount of publicity about the tragic disappearance of their son some years ago. To date, he has not been found.

Let us assume that the parents of such children would have turned to our Committee requesting some guidelines as to their children's status. In Adam's case, for example, the answer could have been unequivocal, for he was eventually found murdered; but, in Etan's case, we are faced with a most distressful and tragic issue: Is he to be presumed dead? Are his parents to observe *shivah*?

Missing Persons in the Halakha

Much halakhic literature exists on the status of people who have disappeared, particularly in reference to the problem of the *agunah*.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

Some cases have also been discussed by the CJLS and specifically by Rabbi Edward Gershfield, whose תשובה, בענין עגונה, תשובה was unanimously adopted in 1963. In all those instances, the missing individual is assumed to be dead – for example, when a person was killed (or drowned) on a trip; when a soldier was killed in action; and more recently, when an individual was killed in the Holocaust. Even if the body is found, it must be identified beyond any doubt. Thus, rules of identification were established¹, and such guiding principles as תרי רובי (a double majority) and אבר זכרו (without a trace) were applied.²

Missing Children are Different

Contrary to the precedents of missing persons who are presumed dead, with which our halakhic literature deals, the missing children of our days are *not* determined to be dead. In addition, even the contemporary principles established by Rabbi Feurwerger are of no help in determining the status of missing children. These principles are: a) If he were alive he would return to his home, b) If he were alive he would let his relatives know; and c) If he were alive, we would hear of it. The author of *Ezrat Nashim*³ claims for example that,

החשש שבוי אינו עוד בעולם, והאדם יכול להיות שבוי רק ע"י מלחמה או כלוי במאסר ע"י מעשה תועבה וגם מהם יודעים.

Doubtful captivity is no longer possible. A person can only be a captive through war or imprisoned for some terrible deed, and even such cases would be known.

Furthermore, he claimed that such modern devices as the postal service, airplanes, telegrams, radio, the Red Cross and identity cards, make it impossible for anyone to be missing for long without being able to make known his whereabouts.

However, the tragic cases of our missing children demonstrate that even all these modern means of identification and communication, coupled with the work of police authorities, cannot establish beyond a doubt that the missing children are dead. Moreover, the Walshes were horrified to learn that law enforcement authorities, locally and nationally, had few or no mechanisms for finding missing children. Today, as we occasionally read in the newspapers, many of these children are kidnapped, sometimes by a parent, and then disappear without leaving a trace.

Perhaps they are Alive

Regardless of the extremely painful tragedy involved, we cannot assume that a missing child is dead, even if he/she is missing for a long period of time. (ספק חיים [perhaps he is alive] is always there). We thus cannot permit parents to observe mourning rites until death has been absolutely determined. Parents should also not give up hope of finding their missing children, particularly when they did not disappear in circumstances of war or in an accident. Such children, upon maturing, may trace their parents, following the often mentioned instinct of children to search for their unknown families.

The issue of missing children is compounded when dealing with missing married adults, since in their case halakhah does not only have set guidelines regarding mourning practices, but also must determine their spouse's marital status. I personally know of such cases in my native Argentina during the seven-year military dictatorship when thousands of adults, including many Jews, were among the ranks of the *desaparecidos*. No one could ascertain their death, and therefore no rabbi could have released, for example, a wife from her *agunah* status. Only after the overthrow of the dictatorship were some of the missing persons found, the remains of others identified, and still others determined to be dead, either through written records or through the testimony of witnesses.

In the case of missing adults, we should rely on the statement made by the *Shakh* in his commentary to the *Yoreh De'ah*, no. 397:

שכל עדות שאינה מספקת להשיא אשתו אין נוהגין אבלות על ידה שמא יבוא
להתיר אשתו.

That if the testimony is not adequate to allow his wife to remarry, the mourning ritual is not permitted, lest it be misinterpreted, and she will mistakenly be permitted to remarry.

CONCLUSION

In the cases of missing children, parents are not permitted to observe the mourning rites until the death of the child has been absolutely determined.

In the cases of missing adults, spouses are not permitted to observe the mourning rites until death of the missing spouse has been absolutely determined.

NOTES

1. *Even Haezer* 17:3-35.
2. For a lengthy and detailed discussion of these principles, see Feuerwerger, *Sefer Ezrat Nashim, Sefer Bet, Ezra Shlishit and Revi'it*.
3. See particularly *Ezra Revi'it* no. 28.