

Can a **כהן** visit **צדיקים** **קבר**?

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I. Introduction. The very first פסוק in פרשת אמור includes the prohibition of a **כהן** to become טמא through contact with a dead body. Unlike many of the other מצוות associated with כהנים, the prohibition to become טמא is codified by the (יורה דעה סימן ש"ע סעיף א') שולחן ערוך, and is strictly adhered to by religiously observant כהנים even in our times. Many questions arise regarding the permissibility of כהנים placing themselves in various circumstances where the danger of טומאת מת lurks. One issue that provides for a fascinating area of study in both an aggadic and halachic context is the question of the טומאה status of **קברי צדיקים**. Is there a halachic dispensation that allows for כהנים to visit the graves of the righteous? In this essay, we will analyze the sources that point in both directions on this issue and attempt to arrive at a definitive halachic conclusion. It should be noted that a significant majority of the sources discussed in this essay were culled from a ספר written by הרב עובדיה יוסף שליט"א (שו"ת יחיה דעת חלק ד' סימן נח) on this topic. The ספר has also proven to be a valuable resource in the preparation of this article.

II. The Problem. While a cursory reading of חומש and שולחן ערוך seem to indicate that there are no exceptions to the prohibition for a **כהן** to become טמא, there are a number of sources that seem to conflict on the topic of a **כהן** becoming טמא to a **קבר צדיקים**:

A. Sources suggesting a lenient ruling.

1. The מדרש (משלי פרשה ט') records an episode that occurred immediately after ר' עקיבא's brutal murder with iron combs. אליהו came to bury ר' עקיבא, as ר' יהושע, one of ר' עקיבא's prime students, followed along. Somewhere along the way ר' יהושע asked אליהו how it is permissible for him to carry ר' עקיבא's body, if in fact אליהו is a **כהן**. אליהו responded that there is no problem of טומאה with תלמידי חכמים or with their students.

2. The גמרא מסכת כתובות דף קג: tells us that when רבי died, קדושה was taken from the world (בטלה קדושה). Many ראשונים assume that the reference to קדושה in this context is to קדושת כהונה, as many כהנים were personally involved in the burial of רבי יהודה הנשיא. At a minimum the גמרא seems to suggest that there is no prohibition for a **כהן** to become טמא to a נשיא. Perhaps, though, the same would be true for any צדיק.

B. Sources suggesting a stringent ruling.

1. The גמרא סוכה (דף כה: :) states that the people who initially approached משה רבינו about the possibility of making up for a פסח that was missed due to טומאת מת, were the people who were carrying the ארון of יוסף. It is abundantly clear to us that יוסף הצדיק was in fact a צדיק. This גמרא seems to suggest that even the corpse of a צדיק can transmit טומאה.

2. The (דף נה.) tells us that רבי בנאה marked off the graves of the אבות. The רשב"ם, רשב"א, ריטב"א, נימוקי יוסף, and ר"ף (בתשובה סימן שי"ג) all explain that רבי בנאה marked off the graves to alert כהנים to the presence of טומאה in those areas so that they may avoid treading on those areas.

3. The (דף לט.) records a conversation that took place between a heretic and ר' אבהו. The heretic asked ר' אבהו how God was מטהר himself after burying משה רבינו, because the פסוק indicates that God is a כהן. ר' (ויקחו לי תרומה) responded that instead of using water, God purified Himself by immersing in fire. תוספות wonders why the heretic did not ask how God was allowed to bury משה in the first place if He is a כהן. תוספות explains that since the Jews are considered children of God (בנים למקום) there is no problem with God becoming טמא through contact with a Jewish body. This גמרא indicates that even though משה רבינו was both a חכם and תלמיד חכם his body was מטמא.

III. The approaches to reconciling the sources.

A. The literal approach. A group of ראשונים and אחרונים seem to take the מדרש very literally, and rule that a כהן is permitted to come in contact with the body of a צדיק. ר' יעקב עמדין in his comments to בבא מציעא פה: writes that the purpose of marking the locations of the graves in the מערת המכפלה could not have been for טומאה because in any case קברי צדיקים do not transmit טומאה. Rather, the graves were marked so that Jews in future generations should be able to locate a proper place for תפילה, as davening at קברי צדיקים is assumed to aid in effective prayer (see regarding the prayer of כלב: סוטה לד:). Similarly, רמב"ן (ליבמות) אליהו הנביא, in a slightly different context, believes that the statements of רמב"ן regarding laws of טומאת כהנים, as they are expressed in זו"ל may be taken as halachically relevant. Furthermore, ספר החינוך (מצוה רס"ג) uses the concept that קברי צדיקים are not מטמא to support his view of the reason for טומאת מת in the first place, possibly suggesting that this concept is meant to be taken literally. In terms of the numerous sources previously mentioned to indicate that a כהן may not become טמא to a צדיק, one may distinguish between getting involved in the burial of the צדיק on the day of his funeral, and generally going to grave of the righteous. שו"ת בתי כהונה (חלק א' סימן כג) explains that the only time we find any special leniency associated with the corpses of צדיקים are on the day of רבי's burial, and the day of רבי עקיבא's burial. On all other occasions, even this group of ראשונים would agree that the graves of the righteous are off limits for כהנים.

1. An additional source that may support this literal approach is the comment of רבינו חיים כהן (כתובות דף קג:) cited in רבינו חיים כהן. רבינו חיים כהן was reported to have said that had he been in the same city when רבינו תם died, he would have allowed himself to become טמא by attending רבינו תם's funeral. It should be noted, though, that many commentators (פירוש החרדים על הירושלמי ברכות פרק ג') associate this statement of רבינו חיים כהן with the dispensation for a כהן to become טמא to a נשיא (see below III C) and extend the dispensation to the הדור as well (בית יוסף יורה דעה סימן שע"ד ועיין בטור שם בשם מהרי"ק ואגודה).

B. The non literal approach to the מדרש. Both (בבא מציעא דף קיד:) and the תוספות (ש"ת כלל ל' אות א') maintain that the prohibition for a כהן to become טמא applies to the graves of the righteous as well. These ראשונים address the מדרש regarding carrying the body of ר' עקיבא אליהו by assuming that the response of ר' יהושע to אליהו הנביא's question was aimed at preventing further questioning, rather than expressing a true הלכה. The real reason אליהו was permitted to become טמא is that ר' עקיבא had the status of a מת מצוה because people would not bury him out of fear of facing repercussions from the government. Furthermore, תוספות point out, there are many statements of הז"ל that indicate that אליהו was not a כהן, but was from the tribe of בנימין.

1. The רמב"ן (יבמות סא.) strongly disagrees with the approach of תוספות on the grounds that it is not acceptable for a תלמיד חכם, especially of the stature of ר' עקיבא, to falsify the הלכה in order to save the trouble of further conversation. One who hears these statements is likely to take them literally and may issue an erroneous halachic ruling based on them. For אליהו to fabricate the הלכה would be a blatant violation of לא תתן מכשול.

C. The approach to marginalize the halachic significance of the מדרש. The ספר האשכול (חלק ב' עמוד קע"ד) writes that we cannot take מדרשים literally nor can we arrive at any halachic conclusions based on the aggadic comments of the מדרש. In terms of the comment of רבי יהודה הנשיא about גמרא כתובות דף קג:, it could easily be argued that there is a special leniency to allow a כהן to become טמא to a נשיא who dies, and this dispensation does not apply to other חכמים. In fact, the שולחן ערוך (יורה דעה סימן שע"ד סעיף י') rules that a כהן is permitted to become טמא by exposing himself to contact with the body of a נשיא. The logic for this leniency is that the position of the נשיא is considered to be so exalted that he is always considered to be a מת מצוה, as there are never a sufficient amount of people to pay him the proper respect.

IV. Do these conclusions provide us with a definitive answer?

A. Even if we are to assume that the prohibition to become טמא to a dead body applies equally to the corpses of צדיקים, there may be an additional factor to tip the scales to the side of leniency on this question. The רמב"ם (הלכות נזירות פרק ה' הלכה יז) writes that once a כהן has become טמא to a dead body, there is no further prohibition to come into contact with the body. Thus, nowadays when we are all assumed to be טמא anyway, there would be no further prohibition of coming into contact with dead bodies (כך הבין שו"ת רע"א תנינא סימן יח בדעת הראב"ד). However, this statement of the רמב"ם may not be relied upon to allow כהנים to visit cemeteries for the following reasons:

1. A significant majority of the ראשונים (i.e. רב"ש, רבינו תם, רמב"ם, רמב"ם amongst others) seem to disagree with the רמב"ם, and maintain that even after becoming טמא למת the כהן and נזיר would still be prohibited to have contact with the מת. Rav Yechezkel Landau (דגול מרבבה יורה דעה סימן שעב) explains that even the רמב"ם never meant to say that it was permissible for a כהן who is already טמא to come in contact with a dead body, but that one would not

receive lashes for this prohibition the way he would for most biblical prohibitions.

a. The מהרי"ץ חיות (שו"ת סימן כג) questions this assertion based on a comment of the סמ"ג (ראב"ד) (who agrees with the סמ"ג). The סמ"ג writes that in our times one who is already למת does not receive lashes for further contact with a מת. It seems unnecessary to tell us that one does not receive lashes in our times, as we no longer have the ability to administer the punishment of lashes (a בית דין comprised of people who have סמיכה is necessary for that). Rather, the intention must be to inform us that it is perfectly permissible.

i. Rav Ovadia Yosef rejects this argument of the מהרי"ץ חיות because there may be a practical ramification even in our times to the knowledge that one is not liable for lashes for committing a certain sin. The שולחן ערוך (חושן משפט סימן ל"ד סעיף ב') rules that one who commits a sin for which he receives lashes is disqualified from testifying in a Jewish court. A lesser sin would not disqualify one from testifying. As such it is important to know which prohibitions involve lashes even if we would not actually administer the punishment in our times.

ii. Furthermore, it could be argued that having a בית דין of סמוכים, and by extension, lashes, are not completely out of our reach, even בזמן הזה. The רמב"ם (הלכות סנהדרין פרק ד' הלכה י"א) writes that if all of the rabbis in Israel would agree to issue סמיכה to an individual, they may do so (even in the absence of an unbroken chain of מוסמכים), and that individual can then issue סמיכה to others. In fact, when מהרי בירב re-instituted סמיכה five hundred years ago, he did so with the intent to start punishing people with lashes again. (For a full treatment of this most fascinating historical and halachic episode see Rav Yechiel Michel Tukitchinsky's עיר הקדש והמקדש חלק ד' פרק ט"ז.)

V. Conclusion. Although the issue of קברי צדיקים not being viewed as a source of טומאה is a fascinating study in the interface between הלכה and אגדה, it can be safely assumed that a כהן may not rely on this concept to go visit the graves of צדיקים. Although he may have the best of intentions in trying to come closer to God through meaningful prayer at the graves of the righteous, part of the challenge of כהונה is to adhere to the will of God, even if on the surface it seems to create distance between himself and God.