

Cremation and Jewish Law

Jewish law ("Halachah") is unequivocal that the dead must be buried in the earth.¹

As a deterrent measure², cremated remains are not interred in a Jewish cemetery.³ Furthermore, we are told that many of the traditional laws of mourning are not observed after the passing of an individual whose body was cremated.⁴ *Kaddish*, however, is recited for such individuals, and it is certainly appropriate to give charity and do *mitzvot* in memory of their souls⁵.

Responsibility for the deceased's proper burial lies with the next of kin.⁶ While ordinarily Jewish law requires the deceased's children to go to great lengths to respect the departed's wishes,⁷ if someone requests to be cremated or buried in a manner which is not in accordance with Jewish tradition, we nevertheless provide him/her with a Jewish burial.⁸ It is believed that since the soul has now arrived to the World of Truth it surely sees the value of a proper Jewish burial, and thus administering a traditional Jewish burial is actually granting what the person truly wishes at the moment. Furthermore, if anyone, all the more so your father and mother, asks you to damage or hurt their body, you are not allowed to do so. For our bodies do not belong to us, they belong to G-d.

¹ Code of Jewish Law, Yoreh Deah 348:3; 362:1.

² The rabbinic responsibility to institute ordinances to deter people from violating Biblical commands is referenced in Mishna, Avot 1:1; Talmud Yevamot 21a, based on Leviticus 18:30.

³ Melamed L'hoil Vol 2 #114 (Responsa of Rabbi David Hoffman, 1843-1921, noted German authority on Jewish law.) Whether or not there is an obligation to bury the ashes elsewhere, in order to prevent further disgrace, is the subject of dispute between halachic authorities.

⁴ This is based on the principle (quoted in the Code of Jewish Law, Yoreh De'ah 345:5) that we do not mourn after individuals who have "strayed from the ways of the community" (Responsa Minchat Elazar vol. 2 ch. 34)

⁵ Chatam Sofer Responsa (by Rabbi Moses Sofer, 1762-1839, famed rabbi of Pressburg, Slovakia), vol. 3 (Even Ha'ezer 1) ch. 69.)

⁶ Code of Jewish Law Yoreh Deah 348:2.

⁷ e.g. Code of Jewish Law Yoreh Deah 349:2.

⁸ Code of Jewish Law Yoreh Deah 348:3 (See Jerusalem Talmud Ketubot 11:1).

These rules do not apply to an individual who was cremated against his will

It is important to note that according to Jewish law, a person is only held accountable for his/her actions when they are done willingly, and with full understanding of their implications.⁹

Therefore, all the above does not apply to an individual who was cremated against his will. After the Holocaust, many conscientious Jewish people gathered ashes from the extermination camp crematoria and respectfully buried them in Jewish cemeteries. There have been many instances throughout Jewish history where many died al m'kaddishei haShem by being burned at the stake.

Furthermore, an individual who was raised in a non-religious atmosphere and was never accorded a proper Jewish education cannot be held responsible for his or her lack of observance.¹⁰ This general rule applies to individuals who choose to be cremated because their education and upbringing did not equip them with the knowledge necessary to make an informed choice in this area. This assumption impacts some of the legal results presented above.

The Biblical Commandment

Man's soul comes from Above, "He breathed into his nostrils the soul of life,"¹¹ and when its earthly mission has been accomplished it rises back to G-d, returning to its source.

The body, on the other hand, was taken from the ground -- "the L-rd G-d formed man of dust from the ground"¹² -- and must therefore return to the earth. This is expressed in the words that G-d tells Adam, the first man,¹³ "For dust you are, and to dust you will return."

This concept is reiterated in Deuteronomy,¹⁴ where we are commanded to bury the dead: "You shall bury him on that day." The Jerusalem Talmud¹⁵ explains that this

⁹ Talmud Nedarim 27a; Bava Kamma 28b; Avodah Zarah 54a; deduced from Deuteronomy 22:26.

¹⁰ Talmud Shabbat 68b; Maimonides, Laws of Mamrim 3:3.

¹¹ Genesis 2:7.

¹² Genesis 2:7.

¹³ Genesis 3:19. This is also the reason why Jewish law advocates the use of a wooden casket which will fully disintegrate.

¹⁴ 21:23.

requires us to bury the body in its entirety, not after it has been diminished through cremation or in any other manner: "You must bury him in entirety, not partially. From this verse we extrapolate that the command was not fulfilled if the person was partially buried."

Cremating a body destroys most of the body, making burial of the flesh impossible, and in this way violates the biblical command.

Any violation of the human body is considered to be a violation of G-d Himself

This is also one of the reasons why Jewish law does not permit autopsies¹⁶ other than in the most extenuating of circumstances.

Utmost respect for the sanctity of the human body is also the overriding concern which encompasses the process of preparing the deceased for burial. According to traditional Jewish sources, the merit of making possible the proper burial of a Jewish corpse is beyond measure. Even the Kohain Gadol (High Priest), who was even prohibited from attending the funerals of his next of kin, was required to personally bury a *meis mitzvah*, an abandoned Jewish body which had no one to attend to its proper burial.¹⁷

No lengthy explanation is necessary to conclude that there can be no greater violation of our legal and moral responsibilities to the body's Owner than to cremate.

¹⁵ Nazir 7:1.

¹⁶ The Talmud (Bava Batra 115a) relates: It once happened that a person sold his deceased father's estate, and then died himself. The other family members claimed that he was a minor at the time of death and was therefore unauthorized to sell the property. The rabbis did not allow them, however, to medically examine the body to determine his age. "You are not permitted to dishonor him," Rabbi Akiba said. From here we infer that it is forbidden to modify the body of the deceased in any manner even if it would lead to tangible results.

The Talmud (Chullin 11b) also discusses the possibility of performing an autopsy on a murder victim to ascertain the state of the victim's health at the time of the murder. The result of this autopsy could have possibly affected the murderer's punishment. The Talmud objects on grounds of disrespect toward the dead and concludes that only in the theoretical event that the autopsy would actually serve to save the murderer (considering the premium Jewish law places on saving lives) would it be allowed.

See also Noda B'Yehudah Y.D. 210; Chasam Sofer Y.D. 336.

¹⁷ Maimonides, Laws of Mourning 3:6.

Cremation, Messiah and Resurrection

Two of the most fundamental tenets of the Jewish faith are the belief in the ultimate redemption of the Jewish people -- and of all of mankind -- through a righteous messiah,¹⁸ and the concept of the resurrection of the dead, an awaited time when all souls will return to their bodies.¹⁹

These beliefs are so central to the Jewish worldview that Maimonides considers them to be two of the thirteen principles of the Jewish faith.²⁰

Cremation is an implied statement of rejection of the concept of resurrection

Cremation is an implied statement of rejection of the concept of resurrection. It is in effect a declaration that once the soul has departed the body, the lifeless body has served its purpose and now has no further value.²¹

Our Sages teach that those who deny the notion of the resurrection will not merit to be resurrected²² within their own bodies, rather their souls will be enclothed in different bodies when that awaited day arrives.

Based on this idea, many authorities conclude that a person who chooses cremation is subject to this consequence as well.²³

(However, this applies only to such instances where the cremation was done at the behest of the deceased; only in such instances can it be said that the person rejected the notion of the resurrection, etc. Not too long ago six million of our people were denied proper burial, most of them cremated. Without a doubt these kaddoshim (holy martyrs) will be at the forefront of those who will return during the Messianic Redemption.)

¹⁸ Maimonides, Laws of Kings 11:1, based on Deuteronomy 30:3-5; *ibid.* 19:8; Numbers 24:17-18; and, to quote Maimonides, "from the words of the Prophets it is unnecessary to bring proof, for all their books are filled with this concept."

¹⁹ The Talmud, Sanhedrin 90b-91b, brings multiple scriptural proofs for the resurrection.

²⁰ Introduction to his commentary on "Chapter *Chelek*" in tractate Sanhedrin.

²¹ *Achiezer* Vol. 3 #72 (Responsa of Rabbi Chaim Ozer Grodzinski, early 20th century Lithuanian rabbi); *Beit Yitzchok*, Yoreh Deah Vol.2 #155.

²² Mishna, tractate Sanhedrin 10:1.

²³ see *Minchat Elazar* responsa cited above in footnote 3.

Additional Prohibition and Concepts

- A. We are commanded in the Torah²⁴ not to follow the practices of the non-Jews. Cremating the dead was (and, in fact, still is) a ritual observed by many pagan cultures, and thus is also a violation of this biblical prohibition.²⁵
- B. According to Kabbalah (Jewish mysticism), the soul does not depart the body immediately after death.²⁶ Such an abrupt departure would be intensely painful for the soul. The gradual decomposition of the body allows the soul the time to slowly depart the body and acclimate itself to its new heavenly abode.²⁷ The instant destruction of the body caused by cremation deprives the soul of this much-needed adjustment period.

Throughout our history, a traditional Jewish burial was always considered a highest priority

- C. Throughout our history, a traditional Jewish burial, known as *Kever Yisrael*, was always considered a highest priority. During times when many of their non-Jewish co-citizens regularly cremated their dead, the Jews were distinguishable by their commitment to bury their dead with dignity. This fact was already noted by Tacitus, the famed 1st century Roman historian.²⁸ Understanding the great importance of this mitzvah, the Israeli army is known to take great risks, venturing behind enemy lines to bring back to Israel the bodies of their fallen comrades.

It is safe to assume that the deceased's soul is certain to evoke heavenly mercy and blessings upon those individuals who ensured that its body was accorded its final proper respects.

To sum up:

Cremation

- ❖ is a transgression of a Biblical law to bury our dead,

²⁴ Leviticus 18:3.

²⁵ See S'dei Chemed encyclopedia, "Mourning" entry.

²⁶ Zohar I 122b.

²⁷ Jerusalem Talmud Mo'ed Kattan 3:5.

²⁸ Hist. 5:5.

- ❖ demonstrates a rejection of G-d's supreme "ownership" over all of Creation,
- ❖ violates our legal responsibility to return what was loaned to us (our bodies) in as wholesome a state as possible,

- ❖ constitutes a rejection of the Jewish belief of *tzelem Elokim* (created in G-d's image),

- ❖ constitutes a rejection of the Jewish belief in resurrection of the dead,

- ❖ (if done voluntarily, knowing fully the responsibilities) will cause the body not to be included among the Jewish People when the time of resurrection arrives,

- ❖ violates the biblical prohibition of following heathen practices, upends the soul's natural separation and acclimation process, thus causing it additional untold pain,

- ❖ deviates from Jewish history and our forebears' and contemporaries' selfless and heroic efforts to properly bury our dead, and

- ❖ declares, in effect, that once the soul has departed the body, the lifeless body has no further value.

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