

HALOCHOSCOPE

TOI

As *Yom Kippur* approaches, it is customary to beg forgiveness from those whom one has slighted. Someone was placed under a ban of excommunication by all the rabbis of a certain city. The ban was mainly to prevent other Jews in that city from associating with him. Now as *Yom Kippur* approaches, another person with whom he had dealt earlier than the act which precipitated the ban, wishes to appease him and beg forgiveness. Is this permitted or required, or is it a violation of the binding ban?

The issues:

- (A) Asking *Mechila*, forgiveness, on *Erev Yom Kippur*
- (B) Bans of excommunication
- (C) Including the sinful in our *Tefilos* on *Yom Kippur*
- (A) Asking *Mechila* on *Erev Yom Kippur*

The Talmud says that while *Yom Kippur* has the power to atone for sins committed by man against Hashem, it has no power to atone for those committed by man against his fellow. However, if one begs forgiveness of his fellow and appeases him, then *Yom Kippur* will atone for the elements of sinning against Hashem that were involved. Every sin between man and his fellow includes a sin against Hashem, at least, a violation of the Mitzvah *Ve'ahavta Le'raiacha Kamocha*. Many commentaries maintain that the entire atonement of *Yom Kippur* depends on gaining forgiveness from one's fellows. If he does not gain this forgiveness, even the sins between man and Hashem are not atoned.

Therefore, one must ask forgiveness from anyone whom he has offended in the past, before *Yom Kippur*. When asked, the person who was slighted must forgive. Being able to forgive is considered a central trait of a Jew, and one who withholds forgiveness unfairly is responsible for any results of it.

The procedure would be to try to beg forgiveness as soon as possible after the incident. It may not be delayed past *Yom Kippur*. One should, ideally, go in person, but if this proves too difficult, or might not succeed, he may use an intermediary. If the party refuses to forgive the offending party takes three "witnesses" and tries again. He does so three times, and if the offended party still refuses, takes a *Minyan* (quorum of ten) and declares in their presence that he tried three times to beg forgiveness and was turned down, and that there is nothing more he can do about it. Henceforth, it is the liability of the offended party. If he

wishes to, he may continue asking for forgiveness. If the offended party was an elder, teacher or parent, he is obliged to ask as many times as it takes until he is forgiven.

If the person offended knows that the offending party will not come to him to appease him, he should still go and make himself available to the offender. If he feels that he will actually be harmed by forgiving the sinner, whether financially or otherwise, he may withhold the forgiveness. Similarly, if the sin includes an outstanding debt, he may withhold forgiveness until it is paid. Certain types of sin do not deserve to be forgiven, such as slander. The consequences of the slander would be that others will have already accepted the slander as fact. They will not necessarily hear about the retraction and the forgiveness and appeasement. Since the damage is not undone by begging forgiveness alone, one is not obliged to grant it until all the harm is undone. Nonetheless, it is the way of the pious to forgive even under these circumstances. If the offended party is aware that the offender will not repent and reform his ways, but will continue to perpetrate the acts for which he begs forgiveness, it is improper to forgive him.

When asking for forgiveness, one should mention the sin. However, if this will embarrass the victim, he should not mention it. Some maintain that one can not ask forgiveness for something done without the knowledge of the party that was violated. Therefore, it would be necessary to acquaint him with the circumstances of the sin. Others, however, maintain that this would cause him unnecessary pain. Therefore, it is better to withhold this information.

It is customary for everyone to pronounce on Erev Yom Kippur before beginning the services, that he forgives everybody who caused him distress. [See Yuma 85b 87a-b, Poskim. Tur Shulchan Aruch Orach Chaim 606:1-2, commentaries.]

(B) Excommunication

Niduy, or excommunication, was practiced in the times of the *Nevi'im*, the Talmud, and until relatively recent times. In recent times this practice is seen to be counterproductive, and is considered ill-advised. Some attribute this to abuse of the ban for less serious reasons. Others say that it is losing its potency due to the spread of insolence against the rabbinical authorities. In addition, there were situations where the gentile government was called in by the subject of the ban, and took measures against the community or rabbis. However, on rare occasions some form of a ban is enforced. Usually, the rabbis are careful not to use the legal term for the ban, and are specific about how it is to be implemented. In some cases it is done to scare the community into keeping their distance from the subject. He might be considered a harmful influence, or it might be considered the best form of pressure to get him to comply with a ruling. It is also possible that the

crime committed was such that it can not possibly be left unanswered. In such cases, the duration of the ban might depend on how serious the crime or sin was, and on the chances of its repetition. The rabbis might have to react more strongly than they would otherwise to assert their authority.

The idea of a *Cherem* or *Niduy* comes from the *Navi*. It has quasi-Scriptural status. The *Bais Din*, Rabbinical tribunal, has the authority to enforce a ban of any kind. This could include an oath of some kind, that would be binding on all those who are subject to this authority. By being part of any community, one is bound by communal agreements, and by those imposed by its elders. In addition, an individual Rabbi, if he is of note, may impose bans on those who he feels in a position to do so. The Talmud discusses three levels of ban. A *Nezifa*, spurning, applies when one has incurred the wrath of a sage and the sage has declared him to be a *Chatzuf*, insolent. The subject must then withdraw from public and practice humility in various forms. Nowadays a *Nezifa* only applies for one day. A *Niduy* is a stronger form, and applies for seven days, unless specified otherwise. If one committed one of twenty four sins, *Bais Din* should impose a *Niduy*. This is a ban of excommunication, forbidding others to have close contact with him and obliging him to act as one in mourning. It may be imposed with or without a time limit, and conditions may be attached, and it can be in effect even after death. The common condition is to maintain it until the person comes to the *Bais Din* to profess his regret and repentance. If the *Niduy* does not have the desired effect, they may impose a *Cherem*, which is most serious.

In our case, the injustice was done to him before he was placed in his ban. Does this mean that the person is obliged to ask his forgiveness, despite the ban on communicating with him? One could argue that he has forfeited his right to appeasement. It is also likely that the ban itself was issued with this kind of communication in mind. I.e., that anyone who had reason to communicate with him due to prior dealings, should cut off that communication. As for the risk of jeopardizing his own judgment, if he fails to appease the person on the basis of Rabbinical decree, he is at no fault. His judgment will be, if anything, safer, now that he is following the instructions of the rabbis. The Poskim discuss a situation similar to ours. One of the optional restrictions that may be imposed is that a *Mohel* may not circumcise the child of the person in *Niduy*. If a child was born before the *Niduy* took effect, the Poskim ponder the permissibility to circumcise him. [See Moed Katan 14b-17a Nedarim 8a Sanhedrin 68b Brochos 19a, Poskim. Tur, Sh. Ar. Yoreh Deah 334, (esp. 48, Taz 23, 1, Ar. Hash. 42).]

(C) Including sinners

Before beginning *Kol Nidrei*, it is customary to recite a line saying, "The

heavenly tribunal and the earthly tribunal [we] permit praying with the sinful.” This institution is based on two Talmudic passages. In one, the Talmud concludes that when Jewish people fast, the righteous do not find a favorable judgment unless they unite with the rest of the people, including the sinful. This is derived from a verse discussing judgment, where unity is alluded to. In the other passage this is derived from the composition of the *Ketoress* incense. One ingredient was foul smelling, yet included with the sweet smelling ones. Prayer is alluded to by the *Ketoress* offerings. One interpretation of this is that the foul ingredient, while not being able to impart a pleasant smell itself, contained a component that could enhance the other, sweet ingredients. Thus, the blend would be vastly improved due to the presence of the foul ingredient. In the same way, the wicked have qualities that, in a congregation, enhance the group.

In one view this is a warning to the sinful present. They should realize that the only reason they are not banished is due to this dictum, and not that their sinful ways are being overlooked. They should still repent. Others maintain that for this purpose only the Chazan would say it, and not the others with him, nor the entire congregation. Rather, it is a way of lifting a ban that the congregation might have imposed on including these sinners. Hashem is “included” in lifting the ban. Others consider it similar to a *Hataras Nedarim*, requiring a Bais Din of three, to permit them to pray with the congregation. Some take it a step further. They consider it a lifting of a Niduy, to permit the subjects to be included for the services. In any event, the words seem to be said by the entire community, and to permit even the most serious sinners to join the congregation. This would seem to resolve our issue. However, it would only apply after Kol Nidrei, when it is usually too late to ask and grant forgiveness. Some congregations actually have the practice to audibly grant forgiveness to everyone at this point. [See Menachos 27a Krisos 6b, Tur Sh. Ar. O.C. 619:1, commentaries. Match Efrayim 10, Elef Lamatch 13, Ktzei Hamatch. Nitei Gavriel, Teshuvos 7.]

In our particular case, this should not apply. The perpetrator was placed in the ban for committing a terrible profanity in a previous year, in shul, before the *Aron Hakodesh*, on Yom Kippur. He did it specifically to spite the orthodox community of which he was once a part. The reaction was intended to keep him away from other community members in just such circumstances, presumably, including a ban for Yom Kippur services. Therefore, in conclusion, it would appear that there is no reason to go to him for forgiveness, and indeed it would not be permitted.