

HALOCHOSCOPE

This week's question:

May one listen to or play music during the Sefira mourning period therapeutically?

The issues:

- A) The *Sefira* mourning period
- B) The *Minhag* of restrictions during this period
- C) Music as therapy and for mood-changing

A) The *Sefira* Mourning Period

Two thousand years ago, between *Pesach* and *Shavuot*, twenty-four thousand disciples of Rabi Akiva died. These were the standard-bearers of the Oral Torah. Their deaths threatened the continuity of the transmission of the Oral Torah. Indeed, with their passing much of this was lost. Thus besides the terrible human losses, there was a communal spiritual loss for all time. To commemorate the calamity, we observe this period as a time of mourning. This was clearly a time of Divine Judgment. Mourning is meant to arouse reflection on the loss and repentance. It is not considered a full fledged mourning period, but some practices are observed, as will be discussed in the next section.

The deaths did not occur throughout the period. Traditionally, they occurred for thirty-three days, though the exact days are a matter of debate. Therefore, the mourning period is also a matter of debate. All agree that one need observe no more than thirty-three days. The variation is in how these days are counted, from the beginning until day thirty-three, or from *Rosh Chodesh Iyar* to close to the end. There are some other slight variations, and there is a practice among some sects to observe the entire period. In addition, some poskim suggest that for certain practices one should observe the entire period, but not for others. [See Yevamos 62b, Poskim. Tur, Sh. Ar. OC 293; commentaries.]

B) '*Minhag*' and the restrictions during this period

While '*de-oraisa*' and '*de-rabanan*' are well understood, '*minhag*' has often been misunderstood. It is thought of as a custom-like observance with lenient implications, relative to 'real' *halacha*. Both presumptions are only partially true. The term '*nehagin*' is used in two situations: where there are various ways to perform something, and it has become the norm to do it one way; where there are two *halachic* opinions. An example of the former is found in *Ruth*, where the type of *kinyan*, acquisition, is described as what had been done in Israel before. In the latter case, they might be ruling on a Scriptural situation. The prevailing practice favors one view. This *minhag* is no custom. It represents the decisions of the main bodies of Rabbinic leadership, that has been followed by many communities. No decisive conclusion was made, and each community chose its path. The result is the *minhag*. This is so strong that it weighs more than the majority of recorded opinions as a deciding factor. Once a practice is adopted by the people, it can even possibly affect the decision in *halacha*, if it depends on a 'norm'. [See Yevamos 102a,

Yerushalmi. Shach YD 65:7. Magen Avraham OC 690:22. Eshel Avraham OC 58:1:(b).]

Minhag hamakom refers to something not followed everywhere, but in certain locations. Anyone in that location is compelled to follow their *minhag* despite his own preferences, or his own *minhag* from back home. This involves a sub-division of the Scriptural *mitzvah*, *lo sisgodedu*, translated to mean 'do not break away from the greater group to make small groups'. This can also lead to strife. Members of the majority feel that the minority has a low opinion of them. [See Psachim 51b, Yevamos 13b, Chulin 18b, Poskim.]

Sometimes someone chooses to follow a certain *halachic* practice that is not required, but has basis. He has committed himself to this *minhag*, and it has the stringency of a *neder*, oath or vow, that has Scriptural force. He might choose it (initially) voluntarily because he feels this is the true interpretation of the law, or because he likes doing it like this. Some practices become binding on descendants, or on future residents of a community. This is based on the verse 'do not forsake the Torah of your mother!' (*Mishlei* 1.) Some practices are initiated with no credible basis in *halacha*. They are nonetheless not discouraged where that might lead to laxity in true *halacha*. [See Psachim 50b, 51a, Poskim. Tur Sh. Ar. YD 214:2, Pischei Teshuva 2. Pri Chadash OC 468.]

Another kind of *minhag* is instituted by Rabbinical authorities with a good reason, but is not considered fully *halacha*. It might be to commemorate something, or to prevent something after an incident. An example of this type of *minhag* is the mourning practice during *Sefira*. There is no Talmudic record of these practices. There is also no evidence that they were not practiced. This leads to the belief that either they were taken for granted as *minhagim* at the time, but were never considered *halachically* binding, or that they were only initiated later. It is assumed that they were formally adopted during the *Gaonic* period, at a time when an institution could still be adopted by the entire Jewish People. Evidently, they all subscribed to the rulings of a single supreme Rabbinic authority. This was the period between the end of the recording of the Talmud and the times of the writing of the great commentaries, such as *Rashi*.

Initially there were two main practices: not to marry, which was universally accepted; and not to have haircuts, which was initially only adopted by certain communities, but has become universally accepted. As a *minhag*, as opposed to a full forced Rabbinic ordinance, it was accepted out of choice. In one respect, it has the force of a ban or oath, which has Scriptural ramifications. In other respects, having been accepted voluntarily by the masses of Jews, it is relaxed under certain circumstances. The rule of *ada'ata dehachi lo kiblu*, they never meant to adopt it with this in mind, is invoked. When and how this leniency is applied is a matter of great controversy.

In discussing holding weddings during this period, the poskim mention engagement parties, which are permitted. However, they point out that one may not dance. The term used for dancing is *rikudim umecholos*. The term *mecholos* is used by the Torah in describing the frivolous festivities with the golden calf. It is translated by some as dancing in a circle, and by others as a type of instrument. [See Targumin Ki Sisa 32:19, Shir Hashirim 7:1, commentaries.] No music and dancing is allowed, despite the gathering being a *mitzvah*. All the more so, say the poskim, is it forbidden to make *rikudim umecholos* where the gathering is not a *mitzvah*. It has become accepted that all music should be avoided. Some poskim include vocal music, but most poskim forbid only instrumental

music. Most poskim consider recorded or broadcast music the same as live music.

The background for this extension of the ban is debated. There is a Talmudic precedent for public mourning in the institutions for mourning the destruction of the Temple. During the 'three weeks' and the 'nine days' or the week of *Tisha B'av* the public observes practices that apply to a mourner during the first thirty days. For the *Sefira* period, did they adopt the less restrictive practices that apply during the first year of mourning? Is this why weddings are universally forbidden, while haircuts, which are permitted during the year of mourning in a limited way, were not universally accepted? If so, what is the status of music for a mourner? Or is it possible that each practice was adopted independently as seen fit? Thus, initially only weddings were restricted, even though they involve a *mitzvah*. Then haircuts were forbidden in some communities. Then music was forbidden. With the advent of recorded and broadcast music, the general prevailing practice is to forbid it as well, despite the lack of active participation. If this was indeed the sequence, is there room to say that the restrictions are dependent on how strictly the masses of observant Jewry wish to adopt it? Is there something that the people would not have had in mind when adopting it? If so, certain exceptions could apply. One could not compare the *minhagim* of *Sefira* to regular mourning laws.

The consensus is that the basis for the ban on regular music is that it must be more stringent than engagement party music. How it came about is debated. There are basically two approaches. One approach considers listening to music an additional *minhag* that grew out of the earlier ban at a later time. Once forbidden, it applied at all gatherings, even for *mitzvos*, like engagements. The other approach maintains that it is included in the original ban on weddings. Many sources indicate that music is needed at a wedding in order to liven it up and bring joy to the couple. In situations where mourning should be practiced, even though the actual wedding might be permitted, the music is restricted. When weddings were originally banned, music was also banned, as part of the ban on joy and merrymaking. [See OC 493, M.A. 1, Ar. Hash. 2, commentaries. Igros Moshe OC I:166, III:87, YD III:137. Minchas Yitzchok I:111. Tzutz Eliezer XIV:33:2-3.]

C) Therapeutic music

The Talmud discusses music in various contexts. Music means sounds that evoke unusual feelings. The music discussed here refers to joyous sounds. (While mourners refrain from enjoying 'music', the Talmud refers to flutes played at funerals to arouse sad feelings.) The early poskim do not specify music as a restriction for a mourner, presumably because it was usually played at events that were out of bounds for him anyhow. Nowadays, music is played at home and in many other venues.


Unrestrained frivolity is forbidden as it leads to sin. In addition, as a memorial to the destruction of the Temple (and its music), the Talmud outlines a restriction on music, based on two verses. The restriction applies to singing and instruments. One could divide the restrictions on music into categories: instrumental, with or without voice at festive gatherings or at regular times (such as mealtimes, bedtimes or waking up times); instrumental music all the time; voice music at festive gatherings or regular times; voice music all the time. We follow the opinion that the restriction only applies to festive gatherings or regular times. Non-frivolous music, such as for a *mitzvah* gathering, is permitted. The Talmud also discusses singing while working. Singing to increase strength, enthusiasm,


inspiration and productivity is permitted, but singing for fun is forbidden.

This all refers to music accompanying something, with the listener participating in some way. Listening to music for its own sake, such as a concert, is not discussed. (It might have been unknown). There is also reference to music to dispel sadness. Serach played for Yaakov Avinu, when the news of Yosef being alive was relayed to him. (Perhaps this would be considered a source for a mourner refraining from music.) David played music to dispel Shaul's negative moods. We find that Elisha needed music to cheer him and to bring upon him *Shechina*, which cannot come to rest in sadness. Obviously, a mourner has a *mitzvah* to feel sad about his loss, as we all should feel during *Sefira*. Some people are sad or unhappy for other reasons, and use music to calm them down. Our question is, is it forbidden to a mourner, and if so, was it also adopted with the other restrictions for *Sefira*? [See Shabbos 30b, commentaries. Refs to section B.]

Perhaps a comparison may be drawn to other restrictions when mourning. One may not bathe, but washing away dirt is permitted. During *Sefira*, one may trim the parts of the beard that interfere with his eating. Perhaps we could say that dance music is forbidden, but not music for removing a bad mood. However, the other activities are easy to control, so one does not step over the bounds of the necessary. If one listens to calming music, he might begin enjoying it as well. Therefore, a mourner should not listen at all. During *Sefira*, in the absence of a clear indication on whether this was included, we could say that this was never intended when the restriction was adopted. Accordingly, playing or listening to calming music that will not arouse the urge to dance would be fine. However, it would be considered praiseworthy to refrain if possible.

On the Parsha ... If you find My statutes disgusting, [you are disgusted with others who perform mitzvos. Rashi], and if you find My legal laws revolting [you find the Torah scholars revolting. Rashi]... [26:15] Revulsion is worse than disgust. It means that one feels like vomiting over it. The Torah describes how far one can sink. If he finds the logical laws revolting, he must find wisdom itself revolting. He will find scholarship and scholars revolting. [Gur Aryeh] It is more shocking because one could understand why people do not accept statutes, but why reject logical laws? [See Ramban] At the end of the *tochacha* the Torah repeats the reason for all the curses: *Because they were disgusted by My legal laws and because they were revolted by My statutes.* [26:43] Why does the Torah reverse the two? After years of exile, the people will still be considered sinful. However, they will have changed their level of rejection. Now they will be revolted by statutes, which is more understandable, particularly after living in a gentile country. They will now appreciate scholarship a little more, not being revolted by it, but only disgusted. Perhaps, they will begin to recognize the scholars once they have lost them. The inactivity of the Sanhedrin for all those ears will start to sober them up. With the passage of time, we appreciate more and more the loss of the disciples of Rabi Akiva. This might be why the mourning practices did not begin right away, and why they are expanded in later generations.

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z"l, on the 25th of Iyyar. 

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