

HALOCHOSCOPE

This week's question:

Is there any leniency for pregnant and nursing mothers when Tisha b'Av falls on Shabbos and is pushed off to Sunday?

The issues:

A) The *inuyim*, self afflictions of Tisha b'Av

A) *Ubrah*, *yoledess*, *umaineckess*, women who are exempted from fasting due to pregnancy and childbirth

B) Tisha b'av *nidcheh*, observed on the following day

A) *The inuyim of Tisha b'Av*

Two words are used to describe the fasts: *taanis* and *tzom*. *Tzom* is used by the Navi to describe the fasts commemorating the *Churban*, destruction. It means, literally, fasting, or abstaining from eating and drinking. *Taanis* is more general. It means self-affliction. This term is used by the Torah in the *mitzvah* of *Yom Kippur*. Refraining from food and drink is included, but, as we shall explain, in slightly different amounts.

In the context of *Yom Kippur*, the Talmud discusses the meaning of *inuy*, self-affliction. The obvious meaning would be to actively afflict oneself by sitting in the heat or in the cold. [Beating the chest is symbolic, and has little to do with *inuy*.] However, the choice of language indicates a passive form of *inuy*. Furthermore, the context of the *mitzvah* indicates that the type of *inuy* carries a penalty in other situations. That is, it indicates refraining from an action that could otherwise be considered a violation of some other restriction. The Talmud further derives from the terminology '*veha'avadti es hanefesh*', [Hashem] will destroy the soul, of one who [violates *Yom Kippur* by] not practicing self-affliction, that the *inuy* has to do with what is needed to sustain life. Accordingly, the Talmud says that the *inuy* intended is to refrain from eating and drinking.

The Talmud adds another four *inuyim*: refraining from washing the skin, from rubbing and smearing the skin, from marital relations and from wearing shoes. Only eating and drinking can be considered *inuy* of *avaiadas nefesh*. Therefore, they are the only *inuyim* that carry the penalty. Nonetheless, the others are punishable with a lower level of penalty, *makas mardus*, lashes given for rebelling against the rulings of the Rabbis.

There is a debate on where the additional *inuyim* are indicated by the Torah. There are two primary views on the sources: One view maintains that they are indicated by the use of the term *shvus*, usually denoting a cessation ruled by Rabbinical decree. Some say that this means that they are only forbidden Rabbinically. Others maintain that they are forbidden in a Scriptural framework, but that the Torah left it to the Rabbis to make the determinations. The other view derives it from five mentions of the word *inuy*. One is used for eating and drinking, since both are considered the same *inuy*. Sources are then

produced to show why these additional things are considered *imuy* and fit the category. Some of these additional sources are from other books of *Tanach*, leading some to say that they are not true Scriptural ideas, but linked by *asmachta*.

On *Yom Kippur*, when the *mitzvah* is specifically *imuy nefesh*, self-affliction, the minimum amounts forbidden to eat and drink are those that provide *yishuv nefesh*, the opposite of *avaidas nefesh*, loss of soul. This is the amount equivalent to a juicy date for solids, and a cheek-full for liquids. This depends on each person's cheek size. Less than this amount is still forbidden, without penalty, but the Talmud debates whether this is Scriptural. For the other fasts, where *tzom* is the Prophetic terminology, eating and drinking *per se* are forbidden. For solids, this is an olive size, and for liquids, a *revi'is*, about 3 to 4 ounces, depending on the opinions of various poskim. [See Yuma 73b-74b 76a-77b, Poskim, Chinuch 313, Tur Sh Ar OC 554 611-615, commentaries.]

B) Pregnant and nursing mothers

A *choleh*, sick person, is exempt from fasting. There are varying levels of illness and varying levels of fasts. *Yom Kippur* is a Scripturally mandated fast. The other fasts were initially Prophetically mandated, which places them on a quasi-Scriptural level when compared to Rabbinical ordinances. However, this was later Prophetically suspended. Nowadays, the other fasts are considered Rabbinically mandated. Of those, *Tisha b'Av* is considered the most stringent. Since it commemorates the day of the *churban*, all the stringencies of *Yom Kippur* apply, but on a Rabbinical level. The other three fasts are not observed on the same level. Eating and drinking are forbidden, but the other forms of self-affliction are not observed.

A dangerously ill person may not further endanger his life. Only three *mitzvos* override a threat to life: idolatry, adultery and bloodshed. To avoid committing any of these one must, if necessary give up his life. *Kiddush Hashem* sanctifying the Name of G-d, also requires the ultimate sacrifice. The details of this *mitzvah* are beyond the scope of this discussion. Thus, to avoid violating *Yom Kippur*, it is not necessary to risk one's life. A pregnant woman can sometimes be in a state of craving that is very dangerous. If all other methods to calm the craving fail, she may eat.

A lesser level of illness might make a person so weak that if he is denied nutrition, he will become more seriously ill. In such instances, a doctor and a *Rav* will determine whether he needs to eat on *Yom Kippur*. Depending on the circumstances, the patient's feelings and opinions will also be taken into consideration. Similar consideration must be given to healthy people who become weakened and ill or dehydrated.

A woman who gives birth is considered ill by definition. For the first three days, or 72 hours, she is considered dangerously ill. Until seven full days have passed after the birth, she is considered ill to a lesser degree. If she feels weak and needs to eat, her feelings are considered enough to permit it. For the remainder of the thirty days after birth, she is still considered frail. However, on *Yom Kippur*, she must fast anyhow, unless she becomes ill enough to be exempt.

Thus far, we have discussed the Scriptural level of stringency. For *Tisha b'Av*, the same basic rules apply, with one or two leniencies. On *Yom Kippur*, if one needs to eat

for basic hydration and nutrition, but not due to imminent danger to life, there is a procedure to follow. Scripturally, one is liable for punishment for violating a *mitzvah*. This punishment does not apply to eating on *Yom Kippur* unless a minimum amount is consumed, as mentioned in last section. The ill person should eat small amounts spread apart enough to avoid the punishable level. On *Tisha b'Av*, any amount is not punishable, since it is not a Scriptural fast. Therefore, according to many poskim, he may eat normally. Furthermore, an expert medical opinion is not necessary. According to most poskim, a woman within thirty days of childbirth is exempt from fasting *Tisha b'Av*. There is no need to evaluate her. The same applies to an invalid, even if he is not in danger. As this is considered Rabbinical, the Rabbis never imposed the fast in cases of sickness.

However, the poskim cite a *minhag*, prevailing practice that seems to have been adopted voluntarily. More than seven days after childbirth, a woman fasts, unless she is in great pain that leads her to be concerned for life-threatening danger. If she feels a little ill, she should also not practice stringency. More recent poskim have ruled that this *minhag* no longer applies. After thirty days, the standard is that pregnant and nursing women fast if they feel strong enough. However, many factors are considered, including weakness in the early months of pregnancy, tendency to miscarry, dependency of the baby on mother's milk, and any other minor conditions that could become aggravated.

[The rules for the other fasts are sometimes applied to a delayed *Tish b'Av*.] The other three fasts are less stringent. They do not begin in the evening, but at dawn. Some leniencies are applied to pregnant and nursing mothers as well. This is due, in part, to the initial consensus to adopt them nowadays. It is assumed that the intent was never to pose hardship on pregnant and nursing mothers. Therefore, if they are able to, they should fast. If they are unable to, they should eat. Three considerations apply. First, while nursing, the mother is in a weakened state herself. Second, the baby is at risk if the mother is either weak or has not eaten or drunk enough to provide milk. Third, the mother is always considered traumatized after childbirth. This trauma can last up to two years, or 24 months from the birth. Therefore, if a mother feels pain, she may eat. Even with no pain, she was really excluded from the initial adoption. Many try to fast anyhow.

The first two considerations must be taken into account by a mother. The second one, which puts the baby at risk, applies even if the mother feels strong enough to fast. Only if there is another way to provide for the baby, may she act stringently herself. Babies are always, by definition, treated as *cholim*. The third consideration is the subject of Talmudic debate in a separate context. Some say that only if she is nursing does her body take so long to recover from the trauma. Once she stops nursing, her body is no longer weakened. In this view, the trauma is not the issue. Rather, nursing affects her system, both hormonally and physically. The other view maintains that the issue is the trauma. This causes her physical and hormonal changes that weaken her system. The debate does not pertain directly to fasting, but to other *halachic* issues. In those issues, we follow the view that whether or not she continues nursing, her body is traumatized for 24 months.

The poskim debate whether we may apply this ruling to fasting as well. While there are stringent rulings, all agree that if the mother feels weak, she may consider herself ill.

For the three fasts in question, any ill person need not fast. Illness includes any systemic illness, infection, fever, or physical pain affecting the entire body. The lowest level of illness is *ke'ativ ainayim*, localized eye pain, often defined as migraine. Some say this is not enough to exempt one from fasting the three fasts, but is enough to exempt one from *Taanis Ester*, fasted before *Purim*. [See Yuma 73b-74b 79a-81a 82a-83a Nidah 9a, Poskim. Tur BY Sh Ar OC 550:1 (Daas Torah Shaar Hatziyun 2-3) 554:5-6 (Ar Hash 8. BHL. Kaf Hachaim 28) 617 618 YD 189:33, commentaries. Chut Shani, Shabbos 4 p. 260. Avnei Nezer OC:540. Toras Hayoledess 48:1-6, references in footnotes.]

C) *Tisha b'Av nidcheh*

Fasting, by definition, is inuy. On Shabbos, there is a mitzvah of oneg, which might be Scriptural or Prophetic. These are mutually exclusive, unless fasting relieves one's distress in specific situations. Oneg Shabbos takes precedence, except for Yom Kippur. Since it is Scriptural, it is always observed on the tenth of Tishrei. Other communal fasts are rescheduled. Except for Taanis Ester, they are moved to the following day. One does not advance pur'anus, punishment. Taanis Ester is not a mourning fast, and is moved back to the closest Thursday. Now that we have a fixed calendar, which can be manipulated to accommodate fasts, Asara b'Teves is the only fast that can fall on Friday. [In one view, if it fell on Shabbos, it would be observed, based on a pasuk.] according to a minority view, a community in distress may procalim a fast on Shabbos. Many poskim maintain that this is an erroneous text.

The Talmud says that certain families had a private Yomtov on the 10th of Av. If Tisha b'Av was rescheduled to this day, they did not complete their fast. The poskim say that accordingly, if a bris milah falls on this Sunday, the father, mohel and sandek may break their fast. It is their private Yomtov. They wait until the early time for mincha, and they may then wash their hands and eat. Some poskim cite a minhag nowadays to rule stringently. Others say the stringent minhag only applies in limited communities. This does not apply when the fast is on time. Based on this distinction between the 9th and the 10th, the poskim apply leniencies for invalids. It appears that they consider this fast similar to the other three fasts. Accordingly, leniencies may be applied, by modern standards, to many pregnant and nursing mothers, depending on their situations. Those who break their fasts would need to hear or say havdalah on beverages other than wine. [See Shabbos 117b-119b Eruvin 40b-41b Taanis 30b, Poskim. Tur Sh Ar OC 242 249 288 554:6 (MA9, MB14) 559:9 (Shaar Hatziyun 39. Ar Hash 8. RAE), commentaries.]

In conclusion, under Rabbinic guidance, it is possible that they may eat.

On the parsha ... Food, you can buy from them – and you will eat ...[2:6] Why add “and you will eat” [see commentaries]? The next *pasuk* says that there was nothing lacking. There was no real need for food. To placate Edom, they would buy just enough for a minimum *shiur achila*, a *kezayis*, so that they could say they purchased it and ate it.

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