

# HALOCHOSCOPE

This week's question:

Someone intended to observe the *minhagei availus*, mourning practices of the *Sefiras HaOmer* period for the 'first half', from *Chol Hamoed Pesach* until *Lag BaOmer*. He would normally shave *Chol Hamoed* due to his work, but refrains from doing so during this period. By mistake, he shaved on *Chol Hamoed Pesach*, then remembered that he was observing this half. Is he now obliged to observe the second half, from *Rosh Chodesh Iyar* until *Shavuot*? Or may he resume shaving after *Lag BaOmer*?

The issues [excerpted partially from *Halochoscope* XI:40]:

- A) The customs during the *Sefiras HaOmer* period
  - B) The nature of this type of 'mourning'
  - C) One who mistakenly shaved
- A) The customs of mourning during the *Sefiras Ha'omer* period

Between *Pesach* and *Shavuot*, twenty-four thousand disciples of Rabi Akiya died. Their deaths threatened the continuity of the transmission of the Oral Torah. To commemorate the calamity, we observe this period as a time of mourning. This was a time of Divine Judgment. Mourning is meant to arouse reflection on the loss and repentance.

Traditionally, the deaths occurred for thirty-three days, though the exact days are a matter of debate. One need observe no more than thirty-three days. How these days are counted, from the beginning until day thirty-three, or from *Rosh Chodesh Iyar* to close to the end, is also debated. 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.

Additional reasons for the restrictions are offered. The massacres by the crusaders took place, primarily, during this period. In addition, it is evident from some of the liturgical poems composed for the *Shabossos* of this period that other calamities befell us during this period. It is thus observed as a time of Judgment and repentance.

The term used by the poskim for the practices during this period is '*minhag*', or custom. '*Minhag*' is thought of as a 'stringent' custom-like observance, relative to 'real' *halacha*. Both presumptions are only partially true. '*Nohagin*' is used in two situations: (i) where there are various ways to perform something, and it has become the norm to do it one way; (ii) where there are two *halachic* opinions. These might be ruling on a Scriptural situation. The prevailing practice favors one view. It represents the unrecorded decisions of Rabbinic leadership, followed by many communities. With no decisive conclusion, each community chose this path. The result is the *minhag*. This 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'.

*Minhag hamakom* refers to *halacha* followed in a location. Anyone in the location is compelled to follow the *minhag*, despite his own preferences or *minhag* from back home. This is 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.

One might voluntarily follow a *halachic* practice. He commitment has the stringency of a *neder*, oath or vow, with Scriptural force. 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 not discouraged where that might lead to laxity in true *halacha*.

Another kind of *minhag*, instituted by Rabbinical authorities, is not considered *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, nor is there 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, following the recording of the Talmud. At this time the entire Jewry subscribed to the rulings of a single supreme Rabbinic authority. However, a written record dating from this period, a *Gaonic* responsum, refers to the practices having begun at the time the deaths occurred.

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 became universally accepted, possibly as a result of later calamities. The *minhag* (unlike a full forced Rabbinic ordinance) 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.

The practices during *Sefiras HaOmer* are a model for the debate. As mentioned, there are varying ways to configure the 33 days. The poskim discuss a binding *minhag hamakom*, and thereby *lo sisgodedu*, on the choice of configuration. One binding *minhag* is that *Ashkenazim* allow haircutting and weddings on *Lag BaOmer*, but *Sepharadim* wait until the 34<sup>th</sup>, except when it falls on *Erev Shabbos*. Regarding the configurations of 33 days, if the community does not have a fixed *minhag* or there is doubt about it, one may choose whichever way to go, and even change from year to year.

Under certain circumstances, one may shave on *Chol Hamoed*. The poskim debate whether one may enjoy music on *Chol Hamoed Pesach*, and presumably, the same would apply to other mourning practices. According to the lenient view, one who has a dispensation to shave on *Chol Hamoed* could do so on both *Sukos* and *Pesach*. Our questioner prefers stringency during *Sefiras HaOmer*. By mistake, he shaved during *Chol Hamoed*. After realizing his mistake, he refrained for the remainder of the first half. Must he consider it as though he did not truly observe the first half, and after *Lag BaOmer* continue to observe the mourning practices as though he chose the second half? [See *Psachim* 50b

51a-b Yevamos 13b 62b 102a (Yerushalmi) Chulin 18b, Poskim. Tur Sh Ar OC 58:1 (Eshel Avraham b) 468 (Pri Chadash) 493:1-3 (PMG MZ2. Ar. Hash. Chok Yaakov. Shaar Hatziyun 4, Dirshu 11. Kaf Hachayim 9.) 690:MA22, YD 65:Shach7 214:2 Pischei Teshuva 2, commentaries Minchas Yitzchok I:111. Yechaveh Da'as III:30.]

### B) The nature of the 'mourning'

It appears to be a form of public mourning, but the limited practices lead to some debate on the nature of the mourning. The basis for mourning the loss of a sage is the verse instructing the people to mourn the deaths of the sons of Aharon. It is called a conflagration to compare it to the burning of the temple, and calls for public mourning.

Mourning practices fall into various categories. All of them are linked to Scriptural references, though they are mainly Rabbinic in origin. The saddened mourner wishes to reflect on his loss. The Torah gives guidelines on what is acceptable and required. The mourner feels that a part of himself (by relationship) has died. All Jews should feel this blood relationship to Torah scholars. Some practices are in honor of the departed. The mourner should not act as though everything is fine, when the departed soul is unable to enjoy himself. Some practices apply to others who are connected to the mourner, in honor of the mourner himself. This is indicated at the death of Nadav and Avihu. Since Aharon was bereaved, the people, who are all connected to him, had to mourn in sympathy. Some practices are connected to the concept of Divine Judgment. The relatives of the departed are being judged, and should act accordingly. Excessive joy is inappropriate. Mourning is Scripturally contrasted to a *chag*, holiday. It has some practices that apply on a *Yomtov*, including refraining from work. We refrain from pride and humble ourselves. In summary, mourning practices are due to grief, respect, humility and Judgment.

Refraining from haircutting and wearing freshly laundered clothes seem to be a grief based practice. The same would apply to the restrictions on joy through Torah study. The restrictions on certain foods at some times of mourning is clearly related to fasting and repentance due to Judgment. Refraining from holding weddings seems to be a practice based on respect. Taking time off work also seems to be in respect of the departed.

All types of mourning would be appropriate here. However, it appears that the Rabbis commemorate the loss with specific practices, rather than to declare a mourning period. This is probably due to the festive nature of the period in Scriptural terms. To show respect to the scholars who passed away, we do not hold weddings. To show our grief we do not cut hair. To recognize the Judgment, we do not engage in excessive joy. Some maintain that at this time it is important to engage in friendly acts, to counteract the Judgment visited on the disciples of Rabi Akiva for their lack of mutual respect. In addition, one should humble himself, possibly indicated by the lack of grooming with a haircut.

The practices during *Sefiras HaOmer* seem not to be as stringent as regular mourning laws. One source considers this period a type of '*Chol Hamoed*' between *Pesach* and *Shavuot*. It would be problematic to consider this a real mourning period. Some equate it with *shloshim*, the secondary mourning period, or the year when mourning a parent. It cannot be considered like a proper *shloshim*, for if that were the case, laundering and traveling for business, along with certain other stringencies would apply. Some consider it an *availus yeshana*, old mourning, with many leniencies. It seems to be most like a

*yahrzeit* observance. This includes restrictions on weddings, (even for those not fasting) and customary practices of the year of mourning, but is not a real mourning period. The poskim debate whether restrictions on other parties apply, and whether they apply after the first *yahrzeit*. By appearances, this period seems to have been treated as a *yahrzeit* for the disciples of Rabi Akiva. Therefore, weddings were restricted first, and then haircutting. A *yahrzeit* is considered a day of Judgment for the relatives. [See Ramban Emor 23:36. Tur Sh Ar OC 493, commentaries. Yeshuos Yaakov 2. Yechaveh Daas III:30.]

### C) Mistakenly shaving

Accordingly, one who mistakenly shaved would be viewed like one who mistakenly violated a *yahrzeit* observance. If one forgot to say kaddish or study Torah for a *yahrzeit*, the poskim say he makes it up next day, within three days or within the week. However, that refers to memorializing. The morning practices here are somewhat like a *neder*.

Many people adopt a personal fast to be observed on the day of the *yahrzeit*. This is considered a *neder*. Once one began the practice in the first year, he is bound by it for future *yahrzeits*. If one broke a fast by mistake, the possible consequences are: if he undertook to fast 'a day', began fasting, and ate by mistake, he need not finish the fast, but must fast another day. If he undertook to fast 'tomorrow', and ate the next day, some say he must still complete the fast, but must also make it up by fasting another day. If he undertook to fast on 'day x', or if he ate on an established fast, or if he was fasting over a bad dream, or if it was for a *yahrzeit*, he must stop eating and finish the fast. He need not fast another day. If a *yahrzeit* falls on *Shabbos*, the prevailing practice is to skip fasting that year. The basis of these rulings is that the *yahrzeit* fast is always observed on a specific day. A fast has two aspects: the self-affliction (fast day); and the prohibition on eating. Eating spoils the fast-day aspect, but he is still forbidden to continue eating.

Accordingly, shaving on *Chol Hamoed* should not permit him to continue shaving and to switch to observing the second half once he has committed himself to observe the first half. However, there is an indication that the *minhag* is to observe any 33 days. By shaving he lost one of those days. Although a *yahrzeit* is not pushed off, here there are many alternative days to observe. The existence of multiple configurations of the 33 days, and the flexibility in *minhagim*, indicate that the dates are somewhat interchangeable. Therefore, it would appear that he should observe the first half, but observe one day of the second half to satisfy his 33 days. [Some say that one cannot borrow a day and pay it back with another, formulating a *minhag* of his own that does not exist. However, that refers to planning it this way. In our case, he already shaved.] [See Shavuos 20a, Poskim. Tur Sh Ar OC 568:1, commentaries. Igros Moshe OC:II:95. Kol Bo Yahrzeit 2:8:21.]

In conclusion, he should observe the first half plus one day from the second half.

*On the parsha ... [The kohen may defile] only for his [deceased] wife who is close to him, his mother, father ... [21:2].* Why is a wife closer than parents? Mourning or defiling is for the loss of a part of oneself. A wife is literally part of her husband. Similarly, one cleaves to Hashem by cleaving to a Torah scholar. Thus everyone mourns the loss of a Torah scholar [see *Kli Yakar*].

Sponsored in memory of R Shimon ben R Eliezer Blumenthal, zt"l, whose *yahrzeit* is the 25<sup>th</sup> of Iyyar. ה

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