

Smoking in Jewish Law

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Although limited research exists on the prevalence of smoking in Orthodox and ultra-Orthodox Jewish populations (one 2012 study [1] showed that prevalence among ultra-Orthodox Israeli men is 12.8%), the halachic permissibility of smoking has been subject to discussion and controversy since the 1980s.

Smoking: A Possible Danger?

Decades ago, before rabbinic authorities knew of the extreme dangers entailed in smoking, it was believed that smoking was not prohibited according to Jewish law. These early rabbinic authorities base their ruling on two Talmudic principles: that one should not enforce a restrictive decree on a population unless the majority of people can follow it (Baba Kamma 79b), and that it is better for people to commit an inadvertent sin than an intentional one if they will not keep the decree anyway (Shabbath 148b). However, both arguments are not applicable when a person's life is at stake (pikuach nefesh), which is the case with smoking.

The late Rabbi Moshe Feinstein was one of these authorities who thought that Jewish law does not forbid smoking. Although he strongly discouraged people from smoking (and did ban smoking in a public area), he resisted issuing a general ban on smoking. He based his ruling on the principle that "Shomer peta'im Hashem": G-d protects the simple (Tehillim 116:6). In an event where an activity presents a possible danger, and most people are willing to take that risk of danger in order to engage in the act, "G-d protects the simple," and Rabbanim should not ban that activity. Smoking, Rabbi Feinstein concluded, is such an act that fulfils both conditions.

In 1977, Rabbi J. David Bleich agreed with Rabbi Feinstein that smoking involved a certain degree of danger, but could not be banned because many people were willing to accept the risks. Rabbi Bleich thus compared smoking to driving in a car or crossing the street. Quoting Rabbi Yaakov Etlinger, Rabbi Bleich also differentiated between an act that must be banned if it will incur immediate danger and one that does not need to be banned if it only might incur future danger (Binyan Zion #137, as cited in [2]). Cigarette smoking, he said, fell into the latter category. Later, Rabbis Shlomo Zalman Auerbach and Ovadia Yosef agreed with the reasoning provided by Rabbis Feinstein and Bleich, and they believed smoking to be permissible.

But over the past 30-odd years since Rabbi Feinstein wrote his ruling, the two conditions, that the activity presents a probable danger and that most people are willing to accept the risks inherent in smoking, did not seem to apply anymore. Smoking has since been proven to present a definite danger, and efforts undertaken by numerous anti-smoking associations and campaigns have resulted

in a decline of smokers and/or a wariness to smoke because of the risks involved.

Smoking: A Definite Danger

Later studies brought to light the fact that smoking has been shown to be the direct and inevitable cause of many health problems. Time and time again, it has been proven that tobacco smoke causes heart disease, chronic bronchitis, shortened life expectancy, stroke, lung cancer, age-related macular degeneration, diabetes, tuberculosis, colorectal cancer, liver cancer, cleft palate, rheumatoid arthritis, impaired immune function, and other types of cancers and fatal illnesses [3]. This month, the U.S. Surgeon General just issued the 32nd edition of the "Surgeon General's Report on Smoking and Health," in which he bemoaned that "smoking remains the leading preventable cause of premature disease and death in the United States" [2]. According to the Centers for Disease Control and Prevention, smoking causes one in five deaths in America [3]. Additionally, an overwhelming amount of research has demonstrated that even being exposed to second-hand smoke is directly linked to the same diseases. These "passive" smokers are at significant risk of contracting the same diseases as these "active" smokers themselves, and approximately 53,000 nonsmokers die annually simply from being around smokers, making "passive smoking" the top third leading preventable cause of death in the United States [4].

Assistant Dean of Albert Einstein College of Medicine and prolific medical ethics author Dr. Fred Rosner stated that tobacco was first suggested to cause cancer in the early 1970s, but today "there is no longer any doubt that cigarette smoking is a hazard to health" [5]. The director of the CDC, Dr. Thomas R. Frieden, stated that "tobacco is in a league of its own in terms of the sheer numbers and varieties of ways it kills and maims people" [3].

The upsurge of strong research revealing the harmful effects of smoking has led contemporary rabbinic leaders to prohibit smoking in Jewish law and hence overwrite the lenient smoking declarations of earlier authorities, which were based on the fact that there was insufficient evidence linking smoking to definite health dangers.

For example, Rabbi Moshe Tendler declared that, based on the overwhelming array of scientific evidence, smoking is a definite cause of danger, so "Shomer peta'im Hashem" does not apply. In the 2005 Proposal on Smoking delivered by the Rabbinical Council of America, Rabbis Saul J. Berman, Reuven Bulka, Daniel Landes, and Jeffrey R. Woolf concluded that: "...based upon present research and the stated argument of Rabbi Moshe Feinstein, the smoking of cigarettes constitutes a blatant violation of the Torah's commandment against inflicting harm on oneself and hence is absolutely prohibited according to Jewish law" [6].

Smoking in the Presence of Others:

According to a foundational Jewish law, as seen in Baba Kamma 91a, individuals are not allowed to harm others. The Shulchan Aruch in Choshen Mishpat 420:1 states that Judaism forbids a man to injure his friend. In this case, contemporary rabbanim have declared that smoking around other people falls into this category of “harming others.” The RCA rabbinic authorities, for example, wrote that “it is clear that the infliction of injury on another party, by means of tobacco smoke, constitutes assault” [6]. The deleterious nature of tobacco smoke violates the commandment not to cause injury to a fellow Jew; thus, smoking around others is prohibited.

According to Rabbi Menachem Slae, other additional commandments are violated when one smokes cigarettes in the presence of others, including the prohibition against murder and against placing a stumbling block in front of a person [7, as cited in 6]. In fact, Rabbi Slae lists a total of thirty-four other commandments, both positive and negative, that are desecrated by smoking in the presence of others.

Indeed, it is interesting to note that although Rabbi Moshe Feinstein z”tl does not prohibit the act of private smoking in the 1980s, he does prohibit smoking in close proximity to non-smokers because he admitted that “...smokers actually commit assault” to the people inhaling their smoke. Rabbi Feinstein even permits someone to sue a smoker for damages if he or she is harmed by second-hand smoke. Even temporary exposure to secondhand smoke (SHS), otherwise known as environmental tobacco smoke (ETS), he reasoned, has immediate negative effects on one’s health [11].

Smoking in private:

Although it has thus been concluded that smoking in the presence of others is considered to be a violation of causing injury to another, what about smoking in private, when no one other than the smoker is being harmed?

R’ Moses Maimonides, the Rambam, places great importance in not transgressing the positive commandment of taking care of one’s life (Devarim 4:9, 4:15). In Devarim 4:9, the Torah commands us to “Rak hishamer lecha u’shmor nafshotecha me’od”—just watch yourself and guard your life very well. Six pasukim later, it repeats “Ve’nishmartem me’od le’ nafshoteichem,”—just guard your lives very well (Devarim 4:15). Both statements instruct a person to safeguard his or her life very well and thus forbid intentionally placing oneself in danger. In fact, the Rambam writes that the sin of injuring one’s fellow is equal in weight to the aveira of injuring oneself (Hovel u’Mazik, V:1). He bases this on the discussion in Baba Kamma (90b) and its elaboration in Choshen Mishpat 420:2 and Aruch Hashulchan. Additionally, in his famous work Mishneh Torah, he lists an array of sins that all fall under the category of harming one’s life or body. Many authors cite his famous words: “Many things are forbidden by the Sages because they are dangerous to life. If one disregards any of these and says, ‘If I want to put myself in danger, what concern is it to others?’...disciplinary flogging is inflicted upon him.” Based on his statements, one may deduce that smoking—which consists of a definite danger—is clearly prohibited under this commandment. Even private smoking,

which is hinted to by Rambam’s specific scenario of “If I want to put myself in danger, what concern is it to others?” is forbidden.

The Rashba (Responsa I:616) and the Rosh (VIII:13) also agree with the Rambam. The Ramo, too, states in Yoreh Deah 116:5 that “one should avoid all things that might lead to danger because a danger to life is stricter than a prohibition” and that one should be more concerned about a danger to his or her life than transgressing a certain prohibition. The Ramo adds that it is forbidden to rely on miracles when one engages in a dangerous or life-threatening activity, including smoking.

Thus, even smoking in private is banned in Jewish law. Rabbi Hayyim David HaLevi (the Sephardic Chief Rabbi of Tel Aviv in 1976) and Rabbi Eliezer Waldenberg have both published declarations based on this Rambam, the former of which was publicized widely and was included in the 12/11/1976 edition of the New York Times.

Conclusions:

In his 1973 article, Rabbi Nathan Drazin asks the question, “Why... have the great halachic authorities of our generation been silent concerning the prohibitions of Jewish law in regard to cigarette smoking?” Rabbi Drazin calls the use of drugs and cigarette smoking “evil practices” that are “certainly forbidden by Jewish law” [8, as seen in 5].

“The fact that so many Jewish people smoke,” wrote Dr. Rosner in 1981, “is no justification for this dangerous and life-threatening practice. If many Jews commit a transgression, others should certainly not follow; rather they should try to teach the sinners to repent from their evil ways.” Dr. Rosner urged “physicians and Rabbis... themselves” to quit or avoid smoking “in order to practice what they preach and teach by example” [5].

Going forward, leaders both in the medical and rabbinic world have urged Orthodox and ultra-Orthodox authorities to publicize the prohibition of smoking to their community members. According to certain Rabbinic rulings, preventing the spread of SHS “is not simply the responsibility of the smoker and the non-smoker, but rather that of the community generally, and especially that of the court (Bet din).” The Rambam (in his Hilchot Rotzeah U’Shmirat Nefesh) writes that anyone who engages in a self-harming act should be inflicted with lashes (specifically, stripes of rebelliousness) [6].

Already, many efforts are being made to reduce the incidence of smoking. The Rabbis who authored the 2005 Proposal on Smoking recommended that smoking should be banned from all community facilities and functions, including at the synagogue, day schools, mikvaot, and community events. Also, they encourage Rabbis who themselves smoke to immediately quit smoking and educate their congregations on the dangers of smoking, as well as its halachic prohibition. The authors noted that famous rabbanim who themselves smoked centuries earlier “would not have sanctioned this conduct” if they had known about the contemporary research correlating smoking with all these negative health effects[6].

Physicians counseling Orthodox and ultra-Orthodox patients to

quit smoking have also been urged to keep in mind the halachic discussion of smoking in Jewish law and the earlier (now obsolete) declarations permitting it in the 1980s [9]. I suggest that publicizing these recent halachic rulings will gradually stem the prevalence of smoking in Orthodox and ultra-Orthodox circles, even though it has been both scientifically and rabbinically stated that the “craving to smoke” remains one of the most difficult obstacles to smoking abstinence.

In a 2005 study on smoking abstinence, several researchers found that Orthodox Jewish smokers had less of a craving to smoke on the Sabbath as opposed to a regular weekday[10]. This was because they knew that the smoking element of “lighting a fire” was definitely forbidden on the Sabbath. Based on this study, I propose that once the halachic rulings of our Sages become mainstream in the Jewish world, it will be easier to abstain from habitual daily smoking as well.

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