

The Physically and Mentally Disabled Insights Based on the Teachings of Rav Moshe Feinstein

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Introduction

Practical and ethical questions regarding the disabled and their interaction within Jewish society have not received much attention from halachic authorities. Yet, these questions have considerable humane, legal, ethical, and financial implications.

Jewish law (halacha) recognizes that some Jews have physical and emotional limitations which prevent them from observing all biblical and rabbinic precepts. Jewish law exempts the disabled from any guilt they might feel because of their inability to perform certain commandments, thus affirming that the basic worth and spirituality of the disabled is not diminished in any way. Halacha

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urges them to achieve their fullest potential as Jews, while exhorting society to assist them in making their religious observance possible.¹

But the resources of society are not limitless, and the limited resources of the Jewish community are insufficient to permit duplication of facilities to provide universal access to the handicapped and disabled. Recommendations concerning societal obligations to the handicapped must of necessity recognize their limitations. Cooperative efforts involving several communities should be encouraged so that facilities such as schools and mikvehs will be available even if the facility is located at a considerable distance from the handicapped person's home.

The resolution of conflicts between the needs of the individual and the obligations of society is the responsibility of Torah leadership which must mediate the balancing of these two forces. Allocation of charitable funds in Judaism is considered to be the proper role of the local *Bet Din*.² Funds needed for the proper care of the disabled may require the attention of a national organization to properly allocate the scarce funds of the Jewish community.

The societal obligation to care for the mentally disabled is sensitively depicted by Rabbi Moshe Sofer with reference to an eighteen year old woman: "Neither her sustenance nor medical care is the sole responsibility of her father. She should be considered as one of the poor whose care is the obligation of the community."³

Different disabilities and varying degrees of disability can affect the halachic status considerably. For example, while a modification or dispensation of a halachic obligation may be offered to a person with one type of disability, no such dispensation may be offered for a person with another disability. The individual attention of a recognized rabbinic decisor (*posek*) is required to "grade" the degree of disability as to its halachic import.

1. Feinstein, M. *Am Hatorah*, second edition, part 2, pp 10-12; *P'ri Megadim* 343, *Aishel Abraham*, states that a deaf mute and a minor have some intellect and must be educated to their fullest potential.

2. *Shulchan Aruch*, *Yoreh Deah* 256:3.

3. Sofer, M. *Responsa Chatam Sofer*, *Yoreh Deah* #76.

We have examined the unique problems of the Orthodox disabled as they attempt to fulfill their obligations under Jewish law. In this essay, we explore some of the many ethical and practical questions concerning the disabled in relation to the Sabbath and Jewish holidays, marriage and procreation, prayers and other legal obligations. In all cases, however, final decisions must be made by a competent halachic authority.

Celebrating the Sabbath and Jewish Holidays

A disabled person has the same halachic status with regard to the Sabbath and *Yom Tov* (Jewish holiday) as any other person and is bound by the same regulations. Thus, a disabled person may not desecrate the Sabbath and must fast on Yom Kippur — unless there is a possible danger to life, in which case all biblical and rabbinic rules and regulations save three are waived. However, there are special rules that apply to the disabled.

Orthopedics

A disabled person who cannot walk unaided may go through a public thoroughfare on the Sabbath using a wheelchair, cane, crutches, or walker⁴ even in the absence of an *eruv*. Jewish law considers these mechanical aides that substitute for body parts as part of the person. But if an aide is used only to provide additional stability for someone who can walk without assistance, it is then considered as if the person were carrying the mechanical aide and its use would be prohibited on the Sabbath.

It is not permissible, in the absence of an *eruv*, to ask another Jew to push the wheelchair on the Sabbath. However, a non-Jew may provide assistance if there is considerable distress to the disabled person in not going to the synagogue on the Sabbath or *Yom Tov*. It is permissible for a *talit* to be carried on the seat or in the back pouch in the wheelchair because the *talit* is considered to be subsidiary to the wheelchair. The situation is similar to carrying a child who is holding a stone on the Sabbath.

4. Feinstein, M. Responsa *Iggerot Moshe, Orach Chayim*, Part 4 #90.

On the Sabbath, a disabled person may wear leg braces because they are considered an article of clothing.⁵ Other prostheses, such as artificial limbs, may also be put on, taken off, and worn — even though a public thoroughfare — because these devices are considered part of the person's body.

Mechanized wheelchairs and electronic devices pose serious halachic problems if used on the Sabbath or *Yom Tov*. Starting an electrical motor on the Sabbath is prohibited. Even if a non-Jew turns on the motor, others may think that a Jew started the motor. The use of an electric wheelchair in public on the Sabbath and *Yom Tov* should, therefore, be avoided. A new indirect (*Gramma*) switch being developed in Israel may permit the use of an electric wheelchair on the Sabbath, when no other means of locomotion is possible.

For medical purposes, one may wear an electronic device on the Sabbath, such as an electronic back brace for the treatment of scoliosis, or an electronic nerve-stimulating device for the control of severe pain. Such devices are considered halachically as items of clothing, because they serve the physical needs of the individual and are worn on the body and not carried in hand or pocket so there is no prohibition of carrying involved.⁶ It is assumed that electric signal lights are disconnected and that no heating elements are involved.

Passing through automatic doors on the Sabbath poses a halachic problem, even if there is no other accessible entrance. The disabled person should wait until a non-Jew passes through the doors; he can then pass through without activating the electronic mechanism himself. Similarly, a regular elevator may not be used on the Sabbath by a disabled person unless a non-Jew happens to use it for his own purpose.⁷ However, elevators with "weighing platforms" that adjust the current to the load may not be used on the Sabbath.

5. *Shulchan Aruch, Orach Chayim* 301:16.

6. Feinstein, M. *Responsa Iggerot Moshe, Orach Chayim*, Part 4 #81.

7. *Ibid. Orach Chayim*, Part 2 #80.

It is prohibited for a disabled person to be driven to the synagogue on the Sabbath even if he cannot get there any other way.

Vision

A blind person must light Sabbath candles on Friday night, as long as there is no danger to the person or to anyone else. A blind person may be accompanied by his guide dog into the synagogue.⁸ Since the dog is enabling its master to fulfill the commandment of public praying, it is not a desecration of the synagogue. A blind person may use a cane on the Sabbath to walk in a public thoroughfare because the cane is considered as an article of clothing, if he cannot walk without the cane.⁹

A blind or partially-sighted person may carry braille or large print prayer books, bibles, and other Hebrew books on the Sabbath only within an *eruv*. A blind or visually-impaired person may not use a tape recorder or radio on the Sabbath even if it is turned on before the Sabbath because it violates the rabbinic edict of creating a sound or causing a sound to be heard (השמעת קול).¹⁰ It is especially meritorious (*chesed*) under the general law of visiting the sick to help him overcome his loneliness and seclusion by visiting him on the Sabbath so that the absence of the auditory stimuli from the radio or tapes not cause him to become depressed.

A blind person is required to say the blessings and prayers for the sanctification of the New Moon (*Kidush Levanah*).¹¹ For the lighting of the Chanukah *menorah*, it is preferable when possible for others to recite the blessing for him.¹² A blind person cannot perform the search for unleavened bread (*chometz*) prior to Passover; another member of the family should do so.

8. Ibid. *Orach Chayim*, Part 1 #45.

9. *Magen Avraham*, *Shulchan Aruch*, *Orach Chayim* 301:18 and personal communication from Rav Moshe Feinstein.

10. Feinstein, M. Respōnsa *Iggerot Moshe*, *Orach Chayim*, Part 3 #55 and Part 4 #84.

11. *Mishnah Berurah*, *Orach Chayim* 420:1.

12. Ibid 675:9 and *Aruch Hashulchan* 675:5.

Different rules apply for those who are partially-sighted but not blind. A partially-sighted person may use a cane on the Sabbath only if he uses it during the week as well, and if it is essential to his safety. A partially-sighted person may not carry eyeglasses in his pocket on the street on the Sabbath. If the person needs special glasses for reading only, he should wear bifocals. A partially-sighted person may not use electronic magnification on the Sabbath to improve reading or to make reading possible, unless it is left on continuously from before the Sabbath.¹³

Hearing

On the Sabbath, a hearing-impaired person may wear a hearing aid because it is considered an article of clothing, but he may not adjust the volume. If the hearing aid is built into his glasses, he can wear it or its battery in a public thoroughfare on the Sabbath. But a hearing aid may not be carried in one's pocket, because that would not be considered part of the person's body or clothing.¹⁴ However, a battery pack may be designed as part of a belt to permit Sabbath use. The halachic principle involved is as described above — namely, the item is worn and not carried, and serves the physical needs of the individual.¹⁵

It is permissible to use a microphone to enable a hearing-impaired person to hear the cantor and the reading of the Torah on weekdays, but not on the Sabbath or *Yom Tov* even for hearing the blowing of the ram's horn (*shofar*) on Rosh Hashanah.¹⁶ However, a microphone may be used to enable a hearing-impaired person to hear the reading of the *Megillah* on Purim.¹⁷ A deaf or hearing-impaired person may also fulfill the requirement of hearing the Torah and *Megillah* readings by reading these himself.¹⁸

13. Feinstein, M. Oral Communication.

14. Ibid. Responsa *Iggerot Moshe, Orach Chayim*, part 4 #85.

15. Ibid. Part 4 #81.

16. Ibid. Part 4 #83.

17. Ibid. Part 2 #108.

18. *Mishnah Berurah* 689:5.

Persons with other disabilities such as mental retardation, learning disabilities, epilepsy, or other acute or chronic illness or conditions must fulfill all biblical and rabbinic rules and precepts to their fullest potential.

Marriage and Procreation

A disabled person has the same rights, privileges and obligations applicable to all Jews regarding ritual family purity, marriage, and procreation. In regard to family purity laws, there must be a special sensitivity regarding women who are orthopedically disabled. Special provisions should be made to assist them in and out of the mikveh. Husbands may accompany their wives into the ritualarium (mikveh)¹⁹ and special access should be provided, such as a ramp, lift, or pulley system. If a mikveh shower is not accessible, a disabled woman may forgo this final shower since she bathed at home. The pre-mikveh examination can be assisted by another woman if the disabled woman cannot physically examine herself or, if blind, others can view the examination (*bedikah*) cloth.²⁰

Disabled persons have all the obligations incumbent upon other Jews, including the obligation to procreate, unless the disability makes child care impossible.²¹ The use of birth control by or sterilization of sexually active mentally retarded or mentally ill adults should not be routinely condoned.²² Expert rabbinic consultation is critical in evaluating individual cases.

Abortion is not permissible, even when a disabled woman will be unable to care for her child.²³ Society must assume the care of the child. Adoption by a Jewish couple is preferable to institutional care.

If a disabled couple cannot have children, adoption is

19. *Shulchan Aruch, Yoreh Deah* 195:16 and gloss of *Ramo* there; see also *Responsa Noda Biyehuda*, 2nd edition, *Yoreh Deah* #122.

20. *Shulchan Aruch, Yoreh Deah* 196:7.

21. Feinstein, M. Personal Communication.

22. Feinstein, M. *Responsa Iggerot Moshe, Orach Chayim*, Part 2 #88.

23. *Ibid. Choshen Mishpat*, Part 2 #69

recommended. Studies have shown that despite physical, emotional, or psychological disabilities in the parents, adopted children placed among such parents suffer no ill effects. But adopting in Judaism does pose some halachic problems. Some stem from the lack of knowledge of the genealogy of the biological parents; others, because legal adoption does not alter the fact that strangers (the adopted children) are comprising a family unit. However, the prohibition of being secluded with a member of the opposite sex does not apply as long as both parents are alive and the child was adopted when very young.²⁴

For more detailed questions regarding marriage and procreation, a competent rabbinic authority should be consulted.

Prayers and Other Legal Obligations

Within their limitations, disabled men are obligated to pray three times daily, and, if possible, to attend synagogue services in order to pray with a quorum of ten men (*minyan*). A disabled man is obligated to wear a prayer shawl (*talit*) and to don phylacteries (*tefillin*) on weekdays.

A man whose left arm is atrophied or paralyzed should still don phylacteries on that arm. However, a man whose left arm is missing should don *tefillin* on his right arm.²⁵

A person with an indwelling urinary catheter should recite prayers and blessings after first covering the catheter and, if possible, the collecting bag. This rule also applies to a colostomy stoma and bag. It is assumed that there is adequate odor control.²⁶

A disabled person who attains the age of thirteen should be helped to participate in a *Bar Mitzva* ceremony. A boy should be called up to read the Torah portion of the week and, if he is able, to recite the appropriate blessings. If necessary, a Torah scroll should be brought to the home and a *minyan* assembled for the Torah readings. A girl at age twelve years should be acknowledged at an appropriate home celebration.

24. Ibid. *Even Haezer*, Part 4 #64:2.

25. Ibid. *Orach Chayim*, Part 1 #8 and 9.

26. Ibid. Part 1 #27.

Miscellaneous Halachic Rulings

1. A disabled person, if not mentally disabled, is counted as part of a *minyan*.
2. A disabled person may testify as a witness in a legal proceeding.
3. A disabled person must fast on Yom Kippur, eat matzah on Passover, hear the blowing of the *shofar* on Rosh Hashanah, and perform all commandments incumbent upon a Jewish adult, as his disability allows.
4. A wheelchair-bound person may observe the laws of mourning from the wheelchair during the week of *shivah*.
5. A wheelchair-bound person may put on his *talit* and *tefillin* and even recite the *Amidah* prayer from the wheelchair.²⁷
6. A blind person may pray and recite blessings from memory.
7. A partially-sighted or blind man may grasp the arm of his wife prior to her going to mikveh in order to help him cross the street. Similarly, she may use sign language on the hand of her deaf and blind husband.²⁸
8. A partially-sighted (but not totally blind) person may serve as a witness for the signing of a marriage contract or bill of divorce or other legal proceeding.
9. A partially-sighted person may read from the Torah for others, lead prayer services, and serve as a cantor.
10. For a deaf person who is about to be married, one may dispense with the reading of the marriage contract (*ketubah*) or one can use sign language as a substitute for reading it.²⁹
11. Deaf-mute persons are absolved from fulfilling commandments incumbent upon a Jewish adult.
12. All disabled people must observe all dietary laws, even when confined to hospitals, nursing homes, and institutions. These laws, however, apply only to oral

27. *Shulchan Aruch, Orach Chayim* 94:6.

28. *Shulchan Aruch, Yoreh Deah* 195:15.

29. Feinstein, M. Responsa *Iggerot Moshe, Even Haezer*, Part 1 #87.

feedings, not nasogastric, intravenous, or gastrostomy feedings.³⁰

Individual, Family and Societal Obligations to the Disabled

Individuals, family, and society are obligated to assist the disabled, wherever possible, in leading as full and productive a life as possible.

Home care of the disabled is preferred to institutional care, even if this increases the financial and psychological strain on the family. In many institutions, the mortality rate far exceeds that of home-care patients so that institutionalization is often a life or death decision. Community leaders must come to the aid of families burdened with a disabled member to make home care feasible. The stress on the other family members may be so severe, in the absence of such help, that there is no choice other than institutional care.

Individuals should help disabled persons get to the synagogue and to put on *talit* and *tefillin*. The disabled should be helped to recite blessings and to perform mitzvot, within their limitations.

Society should treat disabled persons as full members of the community, with no discrimination. Within the financial resources available, society should provide appropriate facilities and services for the disabled. Access to services and other religious functions should be provided to the disabled, within the financial capabilities of a synagogue or Jewish community center, by constructing ramps and even a Sabbath elevator. The mikveh should be made accessible, so the disabled woman can enjoy normal marital relations.

Synagogues, schools, and libraries should provide reading materials in large print or braille for the blind or visually-impaired and sign language interpreters for the deaf or hearing-impaired. Private education should be provided for disabled children who are physically unable to attend school. Special schools should be available for disabled children with special needs.

It is recognized that these considerations on behalf of the disabled obviously require significant expenditures which may not be possible in smaller communities.

30. Ibid. *Orach Chayim*, Part 2 #88 and *Yoreh Deah*, Part 2 #59.