

The Patient and the Caretaker: On Sukkot and Compassion

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The Mishnah (*Sukkah* 25a) rules that “*cholin u-meshamsheihen peturim min ha-Sukkah*,” the sick and their caregivers are exempt from the *mitzvah* of Sukkah. The Gemara (26a) goes on to clarify that this leniency applies not only to one who finds himself in a serious condition, but even to one experiencing mere discomfort in his eyes or head. Furthermore, the Gemara (*ibid.*) introduces as well the category of the *mitzta’er*, one who is exempted from the *mitzvah* of Sukkah due to some physical discomfort resulting from conditions in the Sukkah. Nevertheless, only the *mitzta’er* himself is exempted, not his caregivers.

Intriguingly, the Gemara offers no reason for these exemptions. Despite the Gemara’s silence on this issue, the commentators are nearly⁵⁶ unanimous regarding the cases of the *choleh* and *mitzta’er*: both are exempted on the basis of the principle, “*teshvu ke’ein taduru*,” which teaches that one is only required to sit in the Sukkah in the way that one sits in his home.⁵⁷ Just as the *choleh* and *mitzta’er* would go elsewhere if they were uncomfortable at home,⁵⁸ so too they are not obligated to sit in the Sukkah. The exemption of *meshamshei choleh*, however, seems far less clear. What is the basis of this *petur*?

One view indicates that *meshamshin* are in fact a subset of the *mitzta’er* category. One who is paid to care for the ill is psychologically distracted by his professional responsibility toward the

⁵⁶ Rav Elchanan Wasserman (*Kovetz Shiurim* 2:46:1) suggests that according to some Geonim, a *choleh* is *patur* because he is involved in healing himself, and is therefore exempted on the basis of the rule *osek be-mitzvah patur min ha-mitzvah*. According to this view, the *choleh* would be exempt not only from Sukkah but from all *mitzvot*. This position, however innovative, remains outside the mainstream understanding of our *sugya*.

⁵⁷ Tosafot, *Sukkah* 26a (s.v. *holchei*) invokes *teshvu ke’ein taduru* in relation to *mitzta’er*. Ritva (25a s.v. *cholin*), Rabbenu Manoach, *Hilchot Sukkah* 6:2, and *Mishnah Berurah* (O.C. 640 *se’if katan* 6) do the same for the *choleh*. Meiri (25a s.v. *cholim*) and Bartenura (*Mishnah, Sukkah* 2:4 s.v. *cholin*) apply *teshvu ke’ein taduru* to both *choleh* and *mitzta’er*.

⁵⁸ See *Mishnah Berurah* (O.C. 640 *se’if katan* 9) who asserts that the *choleh* is only exempted if he is more comfortable in his home than in the Sukkah. This is also implicit in Ritva (25a s.v. *cholin*). *Edut le-Yaakov* (*siman* 2 s.v. *hinei*), however, maintains that the *choleh* is exempt whether or not he is more comfortable in his home.

choleh and is therefore considered a *mitzta'er* (*Shvut Yaakov* 3:47,⁵⁹ quoted in *Sha'arei Teshuvah* O.C. 640:3). This approach, however, seems difficult, as not all caretakers would seem to fall under this category. It would seem more reasonable to judge each assistant on a case-by-case basis. Moreover, this view, at least as presented by the *Shvut Ya'akov*, would not account for the exemption of a voluntary caregiver.

A second, more prevalent approach is to subsume *meshamshin* under the rubric of *osek be-mitzvah patur min ha-mitzvah*, “one who is involved in one *mitzvah* is exempted from another *mitzvah*.” Indeed, this interpretation is offered by a number of prominent *acharonim*: the *Levush* (O.C. 640:3), *Shulchan Aruch HaRav* (ibid. 640:7) and *Mishnah Berurah* (ibid. *se'if katan* 7).

However, this perspective encounters difficulties of its own. The face reading of the Gemara would seem to indicate that the exemption of *meshamshei cholin* applies whether or not the assistant is compensated for his services. It is not clear, however, that one who is being paid would fall under the rubric of *osek be-mitzvat bikkur cholim*. Apparently, the Gemara may extend the *petur* of *meshamshin* beyond the scope of *osek be-mitzvah*.

Furthermore, if *meshamshin* fall under the rubric of *osek be-mitzvah*, we should similarly exempt them from many other *mitzvot*, at least those that conflict with caregiving. For example, a caregiver should be exempted from *tefilla*, as praying severely limits the assistant's ability to care for the sick. Indeed, Rav Elchanan Wasserman (*Kovetz Shiurim* 2:46:1) quotes a Geonic responsum which rules that *meshamshei choleh* are exempted from *tefilla*! This conclusion, however, seems difficult to swallow. The Mishnah and Gemara limit their discussion to the exemption from *Sukkah*, seemingly implying that the *petur* does not extend to other areas of *halakha*.

Based on some of these objections and others, *Aruch LaNer* (26a s.v. *be-Gemara choleh*), *Aruch Hashulchan* (O.C. 640:3-4) and Rav Yosef Engel (*Gilyonei HaShas Sukkah*, 26a s.v. *ela*) offer a third interpretation: the basis for the *petur meshamshin* is the very same principle that exempts the *choleh*, namely *teshvu ke'ein taduru*. In the words of the *Aruch HaShulchan*:

*It would appear to me that everything falls under the category of sitting [in the Sukkah] as one lives. Just as one whose house is difficult for his health leaves his home, so too [he may leave his] Sukkah. And just as caretakers leave their homes and sit next to the sick, so too [they may leave their] Sukkah.*⁶⁰

ונ"ל דזהו הכל בכלל תשבו כעין תדורו
דכשם שהאדם שדירתו קשתה לו
לבריאותו יצא מדירתו כמו כן בסוכה
וכמו שמשמשי החולה עוזבים ביתם
ויושבים אצל החולה כמו כן בסוכה.

⁵⁹ 3:51 in the most recent edition.

⁶⁰ In addition to the various cases described above, there may be another interesting *nafka minah*, halakhic implication, of the various approaches to the *petur meshamshin*. The Meiri (26a s.v. *Chachmei*) quotes the Chachmei Lunel, who maintain that the *meshamshin* are only exempted at moments when they actually care for the *choleh*. The Beit Yosef (O.C. 640) quotes this position in the name of the Orchot Chaim, and in *Shulchan Aruch* (O.C. 640:3) quotes his view as a “*yesh mi she'omer*” without a dissenting opinion. The Meiri himself disagrees, claiming that *meshamshin* are exempted even when they are not providing actual services, because they never know when they will be called upon to assist the *choleh*. It is possible that his approach is contingent upon the various understandings of the *petur meshamshin*. If the exemption is based upon *osek be-mitzvah* we might limit the exemption to those times in which he is actually preoccupied in the performance of the *mitzvah*. However, one who

In light of the above approaches to the exemption of the *meshamshin*, let us now consider a perplexing passage in the Tosafot HaRosh (ad. loc.):

Both the sick and his caretakers are exempt. Even though he is able to sleep without his caretaker, in order to give him psychological comfort they were lenient to allow the caretaker to sleep [near] him.

חולה הוא ומשמשו פטור. אף על
גב דאיפשר לו לישן בלא
משמשו הקילו לנחת רוח לר
להיות משמשו ישן עמו.

At first glance the Rosh's words are astounding. The term "*hikilu*," "they were lenient," written in the plural, seems to indicate that it was the rabbis who were lenient rather than the Torah itself. This, however, is quite difficult. Our *sugya* addresses an exemption from a Biblical commandment. It is the Torah that must exempt the *meshamshin*, not the rabbis! Furthermore, the term "they were lenient" implies that we are bending over backward to make the *choleh* as comfortable as possible. This attempt at leniency, while noble, seems misplaced. Either it is important for the patient's needs that the *meshamesh* sleep nearby, in which case the caretaker should be exempted, or it is not important that the assistant be present, in which case he should be obligated. What room is there for leniency?

It seems that Tosafot HaRosh is hinting to a novel and critical thesis. Let us assume for the sake of argument that Tosafot HaRosh follows the view that the exemption of *meshamshin* is based on *teshvu ke'ein taduru*, which, as we argued above, seems to be the simplest understanding. If so, we must determine just how expansively we are to define this category. What degree of discomfort qualifies for *mitzta'er* or *choleh*? What if some in this situation would leave their homes while others would not? The outer limits of *teshvu ke'ein taduru* leave much room for interpretation.

It is perhaps to this question that the Rosh addresses himself. What is the status of *meshamshei choleh*? Their presence next to the *choleh* is not crucial; it is only slightly beneficial. Do they fall under the exemption of *teshvu ke'ein taduru* or not? Due to this ambiguity, the Rosh implies the following *chiddush*: in such borderline cases, **Chazal were offered a certain degree of latitude in determining whether certain individuals are obligated or exempted**. This is known as *mesaruha ha-katuv la-Chachamim*. In other words, with regard to certain *mitzvot* Chazal were empowered to "fill in the blanks" and determine whether or not a Biblical law applies in a particular circumstance.⁶¹ The Rosh claims that one such circumstance is *meshamshei choleh*. Chazal themselves decided to rule leniently and exempt the caretaker, in order to ensure the psychological comfort of the *choleh*. If this reading is correct, the Rosh's comments would appear to offer a remarkable window into the rabbis' far-reaching compassion and consideration for the needs of the sick.

adopts the *teshvu ke'ein taduru* approach might be more inclined toward the position of the Meiri, extending the exemption even beyond the time when services are actually rendered.

⁶¹ For example, the Gemara invokes this concept in relation to *chol hamo'ed* (*Chagiga* 18a) and *bechor* (*Bechorot* 26b). Other famous cases in which the *rishonim* invoke this concept include the *inuyim* (aside from eating and drinking) on Yom Kippur (*Ran 1a be'alfas*) and the 39 *melachot* (*Yereim, Mitzvah* 274). Fascinatingly, the Rosh himself (*Sukkah* 3:14) invokes *mesaruha ha-katuv la-Chachamim* in connection with various disqualifications of the four species.

Our reading of the Rosh, however, leaves one stone unturned. After all, is it a mere coincidence that *Chazal* exercised this right specifically in the case of Sukkah? It would seem likely that this leniency reflects the specific nature of the *mitzvah* to dwell in the Sukkah.

The Ritva (28b s.v. *ha'eizrach*) poses a simple question: Why does the Torah instruct that every “*eizrach*,” citizen, must sit in the Sukkah (Vayikra 23:42)? Why doesn't the Torah invoke the more common term “*ish*,” “man?” The Ritva answers:

I heard in the name of our great rabbi Nachmanides, may he rest in peace, that it comes to teach us that one is not obligated in Sukkah unless he is like a refreshed citizen, which excludes travelers, guards of fruit [orchards], one who is uncomfortable, and similar cases. And whenever we invoke “teshvu ke'ein taduru” we derive it from here, for this verse reveals to us that when it says “you shall sit” it does not mean any sitting, rather [it means] sitting as one would dwell...

שמעתי בשם רבינו הגדול הרמב"ן
ז"ל שבא לומר שלא יתחייב בסוכה
אלא מי שהוא כאזרח רענן פרט
להולכי דרכים ושומרי פירות
ומצטער וכיוצא בהן, וכל מאי
דאמרינן בכל דוכתא תשבו כעין
תדורו מהכא נפקא לן, דהאי קרא גלי
לן דמאי דכתיב תשבו אינה ישיבה כל
דהוא אלא ישיבה כעין דירה...

Ritva sets forth a foundational principle: only the “*eizrach ra'anan*,” one who truly enjoys his stay in the Sukkah, is obligated in this *mitzvah*.

Why should this be? The purpose of Sukkah is not merely to recall that Hashem protected us during our journey in the desert; it is also to remember that Hashem ensured our comfort throughout that time. He not only warded off our enemies and gave us *man* to eat; he ensured we would be comfortable and could enjoy the taste of any food we preferred.

The Midrash (*Shir HaShirim Rabba* 4:11, quoted by Rashi Devarim 8:4) portrays the *ananei ha-kavod* as having cleaned and pressed the Jews' clothing so that *Klal Yisrael* would enjoy comfortable clothing throughout their sojourn. We know that according to one prominent view (Rabbi Akiva, *Sukkah* 11b; Rashi Vayikra 23:42) the Sukkot in which we sit commemorate the *ananei ha-kavod*. This Midrash therefore confirms that the Sukkot represent not only Hashem's protection but also his love and compassion. It is for this reason that this Midrash appears specifically in *Shir HaShirim*.

In light of Ritva's comment we may return to Tosafot HaRosh. Perhaps the Rosh is not merely suggesting that *Chazal* were lenient with regard to the *meshamshin*. He is claiming that unless one can be completely comfortable in the Sukkah there is no obligation, for the symbolism of the Sukkah has been lost. Therefore *Chazal* bent over backward to excuse the caregiver from this obligation, in order to afford “*nachat ruach*” for the patient.

The exemption of *meshamshei cholin*, then, at least according to the interpretation of Tosafot HaRosh, reflects fundamental principles concerning both the Torah's treatment of the sick and the symbolism of the Sukkah. *Chazal*'s compassion for the physical and especially the psychological needs of the sick led them to utilize their unique interpretive powers to rule leniently with regard to the caretakers of the ill. Furthermore, that sensitivity reflects on the purpose of the *mitzvah* to dwell in the Sukkah: we are only required to dwell in the Sukkah as an “*eizrach ra'anan*.” The Sukkah symbolizes not only God's protection of the Jews in a vulnerable

state but also, as an outgrowth of His love and compassion, his means of ensuring that *klal yisrael's* journey would be as comfortable as possible. Ultimately, both points underscore the same fundamental theme: the care and compassion for the vulnerable that is so central to Jewish living and tradition. This Sukkot, may we successfully integrate that compassion into our personal lives, thereby emulating the remarkable standard set by *Hakadosh Baruch Hu* and *Chazal*.

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