

# Tishah B'Av: Mourning and *Mo'ed*

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## Understanding the Day

It is clear that there are many layers within Tishah B'Av. It is a day that is, at once, marked as a “*mo'ed*”, or festival, labeled now and destined for the future to contain a joyous character; and at the same time it is observed as the saddest day on the Jewish calendar, with fasting and crying dominating the day. However, this complexity is found even before one contrasts the day's present with its future – attempting to understand the occasion as it takes one down a path of competing characterizations.

The question begins with the undeniable observation that Tishah B'Av is treated with a severity that transcends even other fast days of the year, including those fast days that are also dedicated to marking the destruction of the Beit HaMikdash. While a standard fast day (other than Yom HaKippurim) is usually observed during the daytime hours, and requires only the avoidance of food and drink, Tishah B'Av is a 25 hour ordeal, mandating the abstention from the five areas of physical benefit prohibited on Yom HaKippurim (eating and drinking, bathing, anointing with oils, wearing of shoes, and marital relations), in addition to other mournful practices.

The Talmud<sup>13</sup> provides the first step in understanding this distinction when it notes that Tishah B'Av is unique because it is a time of “multiplied tragedies”.

As noted by *Tosafot*,<sup>14</sup> this phrase cannot simply mean that many bad things happened on that day; other days, such as the 17th of Tammuz, also hosted multiple calamities. Rather, the *Tosafot* suggest two alternative understandings: a) The distinction is not quantitative, but qualitative; the severity of the destruction of the Beit HaMikdash simply transcends that of other tragedies. B) While other days hosted multiple tragedies, Tishah B'Av is unique in that the same disaster happened twice.

While these approaches help to explain the basis for treating Tishah B'Av with greater severity, we are still left to understand the process and the framework by which Tishah B'Av is distinguished from other fast days. Upon consideration, it emerges that this contrast can happen through one of two perspectives: either the intensification of Tishah B'Av, or the de-intensification of the other fast days.

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<sup>14</sup> *ibid.* s.v. *ho'il*.

The latter approach is expressed by the Ramban.<sup>15</sup> He discusses the passage in the Talmud which seeks to contextualize the promise of Zechariah<sup>16</sup> that the fast days which address the destruction of the Beit HaMikdash would ultimately be observed as festivals. Three categories emerge from that passage: a) in a time of "shalom", these days will be considered festivals; b) in a time characterized as "*shmad*", or destructive persecution, they will retain their character as fast days; c) in an era that is neither shalom nor *shmad*, the days will be optional fast days. However, this last category does not apply to Tishah B'Av; because of its aforementioned severity, it is either a fast day or a festival, but never a day of optional observance.

Accordingly, posits the Ramban, this passage accounts for the distinction in severity. As we are no longer enduring active *shmad*, in his formulation, the fast days are of optional status. Were this not to be the case, they too would be observed as 24 hour fasts, with all five prohibited benefits; this is the biblical model of a fast day. However, since the Jewish people are observing these days voluntarily, they are given the discretion to modify them to more manageable models, and thus observe them in the more lenient format, fasting only during the daytime hours, and then only abstaining from food and drink.<sup>17</sup> Tishah B'Av, however, has no optional category, and thus maintains its default, intense nature<sup>18</sup>.

Many, including the Netziv,<sup>19</sup> disputed this analysis, and asserted that the other fast days were always at their current level of intensity (arguing that the Bible contains more than one model of a fast day)<sup>20</sup> and that Tishah B'Av is not the default but rather the result of intensification.<sup>21</sup>

If one assumed that this is indeed the case, another question still remains: what is the nature of this intensification? Once again, at least two possibilities emerge. One possibility, favored by the Netziv, who cites the Behag, takes note of the fact that many of the added elements on Tishah B'Av are common to another area of Jewish law, namely the observance of *aveilut*. As such, it seems that Tishah B'Av is characterized as a fast day that is merged with practices of mourning, in that it is the "yahrtzeit" of the Beit HaMikdash, and the stringencies flow from this hybrid nature.

Alternatively, it can be noted that many of the additional elements of Tishah B'Av are common to yet another observance, namely, Yom HaKippurim; indeed, the *Sefer HaChinukh*<sup>22</sup> groups the two together. Accordingly, it might be suggested that Tishah B'Av derives its severity from being an enhanced fast day, a day that is not merely a commemoration but one that has its basic

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<sup>15</sup> In his *Torat haAdam*, cited in Ran to *Rosh HaShanah*, 4b in pages of the Rif, s.v. *v'd'amrinan*.

<sup>16</sup> Zechariah 8:19.

<sup>17</sup> See *Responsa Ketav Sofer*, O.C. 100, and *Responsa Teshuvot VeHanhagot*, IV, 121.

<sup>18</sup> The assumption that the contemporary status of the other three fast days is of a lesser obligation than it had been originally is endorsed by *Responsa Mishkenot Ya'akov*, O.C. 149; however, note the language of the Rambam in *Hilkhot Ta'anuyot* 5;2-4. See also R. Shmuel David, in the journal *Barkai*, III, p. 86-93; *Responsa Chemdah Genuzah*, I, 22; and *Ginzei Chaim*, O.C. 551:1:1.

<sup>19</sup> *He'amek She'alah* #158.

<sup>20</sup> Another major point of contention is the assumption that the status of *shmad* is no longer applicable; see *Responsa Minchat Elazar*, IV, 5.

<sup>21</sup> See also *Torah Temimah*, Vayikra 18, #14, and compare Ritva, *Ta'anit* 30b with *Be'ur HaGra*, O.C. 686.

<sup>22</sup> *Mitzvah* 313.

character - at this point, a negative one - inherent in the day itself. Such a formulation would emerge from the recognition of Tishah B'Av as a "day prepared for disasters", a date colored by tragedy from the time of the acceptance of the report of the *meraglim*, when G-d declared He would establish "crying for the generations" on the day the nation cried without justification.<sup>23</sup> This inherent negativity creates a sort of "inverted festival", similar in strength to the biblical festivals but possessing (currently) an opposite character.

As R. Eliyahu Levine<sup>24</sup> notes, it is possible to locate these two approaches in the aforementioned explanations of *Tosafot* for Tishah B'Av's severity. The notion that the "multiplicity" refers to the intense tragedy of the Beit HaMikdash implies that the focus is on our current state of mourning for that loss. Alternatively, the suggestion that the severity comes from the same event repeating itself presents the issue as the creation of a pattern, suggesting that the day has some inherent aspect that results in negative events, even the same event, occurring repeatedly.<sup>25</sup>

## Some Possible Implications of the Question

Once these two possible intensifiers have been identified, they can be perceived as underpinning a number of discussions regarding the laws and concepts of Tishah B'Av.

One such area is the situation that occurs when, as it is this year, the 9th of Av falls on Shabbat. In that circumstance, the fast is observed on Sunday. This practice necessitates a conceptual question: is Tishah B'Av actually moved, uprooted in totality from its eponymous date and relocated to the 10th of Av? If Tishah B'Av is an observance of mourning, it may be portable; indeed, the practice of *shivah* is routinely delayed when it would otherwise begin on a festival. Or, perhaps we should maintain that this is impossible in the case of Tishah B'Av; the occasion is inextricably linked to the date, and cannot be moved. Nonetheless, fasting is prohibited on

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<sup>23</sup> *Ta'anit* 29a.

<sup>24</sup> *Divrei Shirah: Bein HaMeitzarim* #6.

<sup>25</sup> Another interesting application of these two possibilities can be found in R. Nachum Eisenstein's work *Avnei Shoham* (pp. 142-145) addressing the passage in the Talmud (*Megillah* 5a) which relates that Rebbe wanted to "uproot" Tishah B'Av. The *Tosafot*, astonished that Rebbe would wish to ignore such a crucial day, offer two alternative suggestions: either he wished to modify and de-intensify the day, thus equating it to other fast days; or he wanted to move it to the 10<sup>th</sup> of Av, thus sharing the view of R. Yochanan (*Ta'anit* 29a) that the 10<sup>th</sup> is a more appropriate date, as most of the Beit HaMikdash burned on that day. As the *Turei Even* and the Vilna Gaon note, this second suggestion is particularly difficult to reconcile with the original Talmudic passage, which itself challenges the viability of Rebbe's position, and softens it with a different suggestion: the context was a year when Tishah B'Av fell out on Shabbat, and thus was pushed off to Sunday, and the proposal was that once it cannot be observed on its appropriate day, let it be left out completely that year. It thus emerges that according to *Tosafot*, Rebbe wanted the day to always be observed on the 10<sup>th</sup>, but when that indeed happened because the 9<sup>th</sup> was on Shabbat, he wanted it cancelled completely! *Avnei Shoham* addresses this apparent contradiction by suggesting that Rebbe and his colleagues argued as to the driving force of the added intensity of Tishah B'Av. Rebbe felt it was *aveilut*; thus, the 10<sup>th</sup> was a more appropriate choice, as that was the day of the most loss. His colleagues, by contrast, focused on the importance of the calendaric date, the ongoing inherent negativity of the 9<sup>th</sup> of Av. Thus, *Tosafot's* suggestions may be read as follows: Rebbe was arguing that, in his view, the 10<sup>th</sup> should always be the date of the observance, to properly host the *aveilut*. If it is instead to be the 9<sup>th</sup>, two conclusions can be drawn: a) Tishah B'Av should be no more intense than other commemorative fast days; and b) the observance is not portable – if it cannot take place on the actual calendaric date, there is no option of moving it to a different day.

Shabbat, and therefore will not happen on that day, with a fast scheduled for the following day as a replacement.<sup>26</sup>

This analytical question affects a number of included issues:

A) While fasting is prohibited, there are some observances that are compatible with Shabbat, i.e. those that are categorized as non-public mourning. Whether or not these are in effect on Shabbat that is the 9th of Av is the topic of debate among the early authorities, with Rabbenu Yitzchak taking a stringent position and the Maharam Rotenberg and the Rosh maintaining a lenient one.<sup>27</sup>

Similarly, Torah study is prohibited on Tishah B'Av, with an extension into the prior afternoon. There are a number of views as to the required practice when Tishah B'Av is on Shabbat, including: the suspension of the prohibition on Shabbat itself; the application of the prohibition on that day; and the treatment of Shabbat as *Erev Tishah B'Av* for this purpose.<sup>28</sup>

B) There is a discussion, as well, concerning a minor who attains adulthood on the 10th of Av in such a year. Apparently, the first day of his obligation in *mitzvot* is a fast day. However, technically speaking, a case can be made that the fast day is only a replacement for the fast necessitated by the occasion of the previous day; as this new *bar* or *bat mitzvah* was not yet obligated at that point, he or she is similarly exempt from making up the responsibility the next day.<sup>29</sup>

C) This question also impacts the observance of the days prior to Tishah B'Av. The entire three week period between the 17th of Tammuz and Tishah B'Av has a status reflective of sadness and mourning; however, particular intensity is given to the week in which *Tishah B'Av* takes place, known as "*Shavuah SheChal Bo*". When Tishah B'Av is on *Shabbat*, there are two completely opposite ways to understand how this concept should be observed. Either it is assumed that Shabbat, actually, is Tishah B'Av, rendering the entire previous week *Shavuah SheChal Bo* (the longest possible observance); or it is understood that Tishah B'Av has actually been moved to Sunday, which would eliminate the status of *Shavuah SheChal Bo* that year, as there are no days in that week prior to Tishah B'Av.<sup>30</sup>

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<sup>26</sup> See the discussions in *Responsa Emek HaTeshuvah*, III, 43; *Responsa Chukei Chaim*, I, 43; and *Responsa Divrei Shlomo* (R. Shlomo Schneider), II, 72.

<sup>27</sup> See *Tur* O.C. 554, and the debate between the *Shulchan Arukh* and the Rama in 554:19. See also R. Yitzchak Hutner's comments in *Sefer Zikaron LeMaran Ba'al HaPachad Yitzchak*, #24.

<sup>28</sup> See *Magen Avraham* O.C. 553:7 and *Taz* #2, and *Responsa Chatam Sofer* O.C. 156; *Responsa Ketav Sofer* O.C. 101; *Responsa Siach Yitzchak* #250; *Responsa Divrei Yisrael*, II, *likutei teshuvot* 17; *Responsa Shevet HaLevi* VI, 70; and *Responsa Divrei Yatziv* YD 241. See also *Responsa Maharam Lublin* 99; *Responsa Megeed Yehudah*, Y.D. 36:8; the journal *Ohr Torah* (*Kol Aryeh*, III, 106); *Responsa Minchat David* II, 90; IV, 47 and 48; and *Responsa VaYevarekh David* 77, as well as more generally, *Responsa Even Pinah* I, 46 and 47, and *Responsa Shema Yisrael*, 82.

<sup>29</sup> See *Responsa Rashba* I, 520; *Responsa Maharsham* III, 363; *Responsa Machaneh Chaim*, 33; *Responsa Yad Sofer*, 7 (and see also #54); *Responsa LeHorot Natan* V, 33-36; *Responsa Hittorerut Teshuvah* III, 353; *Responsa Moznei Tzedek*, I, 55 and 57; *Responsa Shevet HaLevi* IV 72:2; *Responsa Avnei Nezer*, O.C. 426; *Da'at Torah*, 252; *Responsa Afarkasta D'Anyah*, II, 83.

<sup>30</sup> See the debate brought in the *Tur*, O.C. 551 and *Beit Yosef*. s.v. *V'im chal Tishah B'Av*; see also *Responsa Mevaser Tov*, II, 132, *Responsa Rivvevot Ephraim* II, 155:11; *Responsa Kinyan Torah BeHalakhah* III, 71; *Responsa Even Pinah*,

# Differences Between the *Aveilut* & *Yom HaKippurim* Models

The question of whether the additional elements of Tishah B'Av are more comparable to aspects of *aveilut* or of Yom HaKippurim is also relevant because there are subtle differences in application between the two. One such difference regards the prohibition of bathing. The *Minchat Chinukh*<sup>31</sup> notes that a mourner may bathe in cold water,<sup>32</sup> while this is prohibited on Tishah B'Av, due to an equation to the rules of Yom HaKippurim.<sup>33</sup> Another difference may be found in relation to the prohibition of anointing with oils, which appears to be the subject of a debate between the Talmud Yerushalmi,<sup>34</sup> which allows the usage of oils to remove a blemish, and the Talmud Bavli,<sup>35</sup> which does not acknowledge any such exemption when considering differences between Yom HaKippurim and Tishah B'Av. As R. Chanoch Eigish explains in his *Sefer Marcheshet*,<sup>36</sup> the Bavli seems to be understanding the additional aspects of Tishah B'Av to derive from an equation to Yom HaKippurim, while the Yerushalmi sees them as emanating from *aveilut*.

## Should *Tishah B'Av* be shorter, or longer?

Further relevance may be found in two questions, opposite in nature, regarding the length of Tishah B'Av. The first, which involved the premise that *Tishah B'Av* should be foreshortened, is posed in a question to R. Hai Gaon. In the practice of personal *aveilut*, there is a concept known as “*miktzat ha-yom ke-kulo*” (“a portion of the day is considered as the whole day”) which results, for example, in the last day of *shivah* ending immediately after the morning has begun. Why, then, should the same not apply to the public mourning of Tishah B'Av, allowing Tishah B'Av to end in the morning, rather than after dark so many hours later? R. Hai Gaon offered three possible answers: a) since Tishah B'Av should have actually extended into the 10<sup>th</sup> of Av, when the Beit HaMikdash continued to burn, it already benefits from shortening; b) the observances of Tishah B'Av do not emanate from *aveilut*, but rather from the laws of the fast day; c) shortening the day would be appropriate only for some elements of Tishah B'Av and not for others, and it would be unfeasible to have *Tishah B'Av* partially end early and partially continue. Rav Soloveitchik<sup>37</sup> observed that these three responses reflect three possibilities in how to understand the additional elements of Tishah B'Av: a) they derive from *aveilut* (and thus *miktzat*

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I, 48; *Responsa LeHorot Natan* V:33 and 35; *Repsonsa Divrei Pinchas* 2; *Responsa Perach Shoshanah*, 90 (and see that author's article in the journal *HaDarom*, XXVII., pp. 67-69).

<sup>31</sup> 313:11.

<sup>32</sup> *Moed Katan* 15b; Y.D. 381:1.

<sup>33</sup> Note the different approach of the Brisker Rav in *Chiddushei Maran Riz HaLevi, Hilkhos Taaniyot*, p. 20; see also *Tiferet Torah*, #15, and *Masa Yad*, III, p. 179-180.

<sup>34</sup> *Yoma* 8:1.

<sup>35</sup> *Pesachim* 53b

<sup>36</sup> Vol. I, 42:10.

<sup>37</sup> Cited in the journal *Mesorah*, vol. 6.

*hayom* should have theoretically applied); b) they derive from something other than *aveilut* (and thus *miktzat hayom* is not applicable<sup>38</sup>); and c) there is a combination of influences involved.

The opposite possibility, that Tishah B'Av should be lengthened, may emerge from a different discussion. The Talmud (*Pesachim* 54b) debates the status of “*bein hashemashot*” of Tishah B'Av. In the case of Shabbat and biblically mandated festivals, the day begins the previous night; and since the twilight period is of indeterminate status, it is considered night as a stringency appropriate to biblical law. In the case of Tishah B'Av, it is less obvious that this should be the case, as Tishah B'Av is not commanded by the Torah, and one might be justified in assuming the lenient approach should be taken and twilight should not be included in Tishah B'Av. Nonetheless, the practice, as codified by the Rambam,<sup>39</sup> is to take the stringent position and include *bein hashemashot* as a part of *Tishah B'Av*.

One possible explanation is to view Tishah B'Av, since it sourced in Scripture (albeit post-Pentateuchal) and thus termed “*Divrei Kaballah*”, as comparable to Torah law in terms of severity.<sup>40</sup> Others, however, assume the inclusion of the twilight period is for the purposes of “*Tosefet*”, the extending of the day applicable to Shabbat and festivals.<sup>41</sup>

It emerges, then, that there is a dispute as to whether the concept of *tosefet* is relevant to Tishah B'Av. This would seem to revolve around the question of whether the dominant model is a “Yom HaKippurim model” or an “*aveilut* model”. If the latter is the case, *aveilut* is not subject to expansion; quite the opposite, it is generally minimized, as seen above in regards to *miktzat hayom ke-kulo*. However, if Yom HaKippurim is the model, then *tosefet* is appropriate; in fact, the basic concept of *tosefet* is derived in the context of Yom HaKippurim.<sup>42</sup>

A similar question can be asked regarding the obligation to train a minor, not yet responsible for *mitzvot*, in the observance of Tishah B'Av. On the one hand, practices of *aveilut* are generally not subject to the imperative of *chinukh* (training). Alternatively, if Tishah B'Av is to be compared to Yom HaKippurim, that day is included within *chinukh*, with the *Mishnah*<sup>43</sup> recommending that minors begin fasting a year or two prior to obligation.<sup>44</sup>

## The *Kri'at HaTorah* of Tishah B'Av

Another arena in which to study the nature of Tishah B'Av may be that of the Torah reading for the day. On a regular fast day, the Torah is read both in the morning and afternoon, and both times the reading is “*Vayichal*” (*Shemot* 32:11-14 and 34:1-10). On Tishah B'Av, however, *Vayichal* is read in the afternoon, but the morning reading is “*Ki Tolid Banim*” (*Devarim* 4:25-

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<sup>38</sup> The contemporary practice of applying *miktzat hayom* only to *aveilut* is the subject of a longer discussion outside the scope of this treatment.

<sup>39</sup> *Hilkhot Ta'aniyot* 7:2.

<sup>40</sup> Per the general approach of the *Turei Even*, *Megillah* 5b, s.v. *Chizkiyah*. See *Maggid Mishnah* and *Responsa Chazon Nachum* (*Tosefet Shvi'it*, 67).

<sup>41</sup> See *Sefat Emet* to *Pesachim* and *Responsa Shem MiShimon*, O.C. 24.

<sup>42</sup> *Rosh HaShanah* 9a.

<sup>43</sup> *Yoma* 81b.

<sup>44</sup> See *Responsa Mevasser Tov*, II, 132.

40). R. Ya'akov Betzalel Zolty, in his *Mishnat Ya'avetz*,<sup>45</sup> poses the question of how to understand the morning reading. On the one hand, it may be that it is a standard fast day Torah reading, despite the fact that the selection is different. Alternatively, perhaps the Torah reading is not because of the fast day, but is rather in honor of the “festival” of Tishah B'Av; just as every festival includes a Torah reading relevant to its theme, perhaps Tishah B'Av does as well.<sup>46</sup>

As a practical application of the question, R. Zolty invokes a similar question posed by R. Akiva Eiger<sup>47</sup> regarding the afternoon reading on Yom HaKippurim, when *Vayichal* is again replaced with another selection. In that discussion, it is assumed that if the reading is characterized as an aspect of the fast, then one who is not fasting, e.g., one who is ill, would not be entitled to receive an *aliyah*. However, if the reading is in honor of the festival, even one who is not fasting may participate. However, this ramification is disputed, as there are a number of authorities who ruled that an *aliyah* may be given regardless, even to one who is not fasting.<sup>48</sup>

## Conclusion

It emerges from the above that the intensity of Tishah B'Av may be drawn from at least two possible sources (or a combination of both): either the grafting of *aveilut* onto a fast day, or the fact that the day is a “*mo'ed*”, a “festival” of inherent significance, which infuses the day with additional weight. There is, at present, an irony in that term, as *mo'ed* is a word usually connotative of joy and celebration. However, the irony is temporary: the day is destined to transform into one that does full justice to the definition. That reality, though, is contingent on the first possibility: allowing the mourning to be given its full expression is the very act that will activate the festive nature of the day: “All who mourn for Jerusalem, will merit and see in its comfort.”<sup>49</sup> Through our efforts to properly understand and internalize the concepts of the day as practiced currently, we hope to soon realize the prophet's promise that this day too “shall become times of joy and gladness, and cheerful feasts to the house of *Yehudah*”.

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<sup>45</sup> O.C. 49.

<sup>46</sup> See also *Birkat Kohen al haTorah* (#142). Regarding the Torah reading on the fast days in general, see *Responsa Imrei Avraham*, I, 22.

<sup>47</sup> *Responsa* I, 25; see also *Marcheshet*, I, 14; *Responsa Divrei Yisrael* II, *likkutei teshuvot* 105; *Responsa Shavei Tziyon*, 21; and the journal *Mesorah*, VII, pp. 19-21 and p. 24.

<sup>48</sup> See *Responsa Chatam Sofer* O.C. 157; *Minhag Yisrael Torah* 135:4; *Responsa Maharil Diskin, kuntres acharon* 5:7; *Responsa Divrei Shlomo* (Schneider) I, 50; *Responsa Even Pinah* I, 50; *Responsa Divrei Yatziv* O.C. 246; *Responsa Minchat Aharon*, I, 227, and *Keter Ephraim*, 29. See also *Responsa Minchat David*, I:64:94, regarding one who is wearing leather shoes on Yom HaKippurim.

<sup>49</sup> *Ta'anit* 30b.