

Insights of the Rav into the *Inuyim* of Tisha B'Av¹

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The Nature of the Five *Inuyim* on Tisha B'Av

The Gemara, in discussing the laws of erev Tisha B'Av, states:

Another beraisa states: Regarding anything related to Tisha B'Av, one may not eat meat, drink wine or bathe. Regarding anything not related to Tisha B'Av, one may eat meat, drink wine but one may not bathe. R. Yishmael son of R. Yosi said in the name of his father: Any time when it is permissible to eat meat, it is permissible to bathe.

Ta'anis 30a

תניא אידיך כל שהוא משום תשעה באב
אסור לאכול בשר ואסור לשתות יין
ואסור לרחוץ כל שאינו משום תשעה
באב מותר לאכול בשר ולשתות יין
ואסור לרחוץ. ר' ישמעאל בר' יוסי
אומר משום אביו כל שעה שמותר
לאכול בשר מותר לרחוץ.
תענית ל.

On a simple level, the Rav (Rabbi Yosef Dov Soloveitchik) suggested the following approach to understanding the dispute between the *Tanna Kamma* (first opinion) and R. Yishmael b. R. Yosi: the *Tanna Kamma* is of the opinion that the prohibition against bathing on a fast is not limited to the act of bathing, but rather to the enjoyment and benefit one receives on the fast because of one's bathing. For this reason, it is prohibited to bathe even before the fast, if one will benefit from it on the fast itself. This rule is not limited to Tisha B'Av, but rather to all fasts.² As the language of the beraisa implies, the prohibition against bathing before a fast applies to fasts related to Tisha B'Av and to those that don't relate to Tisha B'Av. On the other hand, R. Yishmael b. R. Yosi distinguishes between Tisha B'Av and other fasts in that on Tisha B'Av, there is a prohibition against benefitting from a bath that one took previously, whereas on other fasts it is the act of bathing that is prohibited. [Rashi's version of the Gemara is that according to R. Yishmael b. R. Yosi, any time it is permissible to eat (not just when it is permissible to eat meat), it is permissible to bathe. Accordingly, R. Yishmael b. R. Yosi is of the opinion that even on Tisha B'Av, the prohibition is only against the act of bathing and one may bathe before Tisha B'Av.]

¹ Adapted from R. Eliakim Koenigsberg, *Shiurei Harav Al Inyanei Tisha B'Av* (Hebrew) pp. 34-37, 50-52.

² While common practice is to permit bathing on the "minor" public fast days, the Ramban, *Toras Ha'adam* (pg. 244) notes that in principle, all of the prohibited activities that apply on Tisha B'Av apply to the other fasts as well. The only reason why we are more lenient on the "minor" fast days is because the Gemara, *Rosh Hashanah* 18b, states that the other fasts are optional in nature and while we accepted upon ourselves to observe them, we only accepted the prohibition against eating and drinking. See also, Rambam, *Hilchos Ta'anios* 5:5 and 5:10.

However the Ra'avad, in his comments on the *Ba'al Hamaor* to *Maseches Ta'anis* (3b in the pages of the Rif no. 3), suggests that the beraisa is not referring to what one may do before the fasts, but rather what one may do if one accepted the fast early. The Rif and R. Hai Gaon dispute whether one can accept a fast before the actual time.³ The Ra'avad's opinion is that one can accept the fasts earlier. The Ramban disagrees with the Ra'avad and explains that the beraisa is dealing with the prohibition against bathing before Tisha B'Av.⁴ The Ramban seems to be consistent with his opinion (*Milchamos Hashem* to *Ta'anis* 3b) that the concept of accepting days early only applies to *kedushas hayom* (the sanctity of the day) and not to the acceptance of fasts.⁵

The Rav explained that according to the Ra'avad, the dispute between the *Tanna Kamma* and R. Yishmael b. R. Yosi must be understood differently. It is clear that the five *inuyim* (afflictions) of Tisha B'Av are a function of the laws of *aveilus* (mourning), as evidenced by the language of the Gemara (*Ta'anis* 30a): "All mitzvos that apply to a mourner apply on Tisha B'Av." However on Yom Kippur there is no mourning, and nevertheless, the five *inuyim* apply. The *inuyim* are a function of the fast day. As such, one must explore whether the *inuyim* of Tisha B'Av are also a function of it being a fast day or only because it is a day of mourning.⁶ The Ra'avad seems to see

³ The Rif (3b) attempts to prove his position that one can accept a fast early from a comment in *Eruvin* 40b, regarding the possibility of reciting *Shehechyanu* over a cup of wine on Yom Kippur: "How could one do this? By reciting the beracha and then drinking? Once one recites *Shehechyanu*, one has accepted [Yom Kippur] and it is prohibited to drink." The *Ba'al Hamaor* (3a) rejects this proof and contends that the reason it is prohibited to drink is a technicality in the rules of *berachos* in that drinking after the recitation of *Shehechyanu* gives the impression that the beracha was said in vain. Furthermore, one can argue that the Rif's proof only applies to the early acceptance of Yom Kippur, not other fasts. In fact, the Ramban, *Milchamos Hashem* ad loc., and in *Toras Ha'adam* (pg. 249) writes that accepting a fast early only applies on Yom Kippur, not other fasts "because one can add onto a holy day with part of an ordinary day ... the same way we add to Shabbos and Yom Tov, and adding additional time to the *inuyim* of Yom Kippur is a biblical requirement." The Netziv explains in *Ha'amek Davar* to *Emor* 23:32, that the Ramban is of the opinion that *tosefes*, the ability to add to a day, is a function of the sanctity of the day. *Inui* on Yom Kippur is part of the sanctity of the day of Yom Kippur, and therefore, *tosefes* is applicable.

⁴ See the Ramban's comments in *Toras Ha'adam* (pg. 247) that according to the *Tanna Kamma* "it is prohibited to bathe even though Tisha B'Av has not begun because bathing provides benefit at a later time and it appears as though one bathed for the purpose of receiving benefit on Tisha B'Av and this is why it is prohibited." It seems that the Ramban is not dealing specifically with someone who accepted the fast early. Although the Ramban writes "Since he accepted upon himself some aspects of mourning, he may not bathe," the Rav said that the Ramban certainly did not mean to say that the prohibition against bathing takes effect because of his acceptance. Rather, the prohibition is automatic once one finishes the *seudah hamafsekes* (the final meal before Tisha B'Av). [See the comments of the Vilna Gaon to *Shulchan Aruch, Orach Chaim* 553:5, who also assumes that according to the Ramban, the prohibition begins after the *seudah hamafsekes*.] One can add that the Ramban did not explain the dispute exactly as our original presentation because the Ramban implies that the *Tanna Kamma* only prohibits bathing before Tisha B'Av, not other fasts, and his version of the *Tanna Kammai's* statement is "Regarding anything not related to Tisha B'Av, one may eat meat, drink wine and one may bathe," which differs from our version.

⁵ It seems that the Ra'avad is of the opinion that the concept of *tosefes* not only applies to the sanctity of the day, but also to the fast itself. The Rambam has a different approach and he assumes that *tosefes* only applies to a fast. For this reason, he only mentions the concept of *tosefes* in the laws of Yom Kippur (*Hilchos Shevisas Asor* 1:6) and in his *Commentary on the Mishna* (end of *Ta'anis*) regarding Tisha B'Av. The Netziv, *ibid*, addresses this issue.

⁶ From the fact that the beraisa includes eating and drinking among the other *inuyim* (according to Rashi's text), it is clear that the beraisa is not limited to prohibitions relating to mourning because there is no prohibition for a mourner to eat or drink. It is possible to suggest that just as eating and drinking are fast day related prohibitions, so too, the other *inuyim* mentioned in the beraisa are a function of the fast day. However, according to the text found in

this as the point of contention in the beraisa. The *Tanna Kamma* is of the opinion that the five *inuyim* are also a function of Tisha B'Av as a fast day, and therefore the concept of accepting Tisha B'Av early is relevant (just as it is relevant on Yom Kippur). However, R. Yishmael b. R. Yosi is of the opinion that the *inuyim* of Tisha B'Av are only a function of Tisha B'Av as a day of mourning, and therefore one cannot accept the fast early.

One could prove that the five *inuyim* of Tisha B'Av are also a function of the fast day from the fact that a mourner is only prohibited from bathing his whole body in cold water or part of his body in warm water (*Moed Katan* 15b and *Shulchan Aruch, Yoreh Deah* no 381), but on Yom Kippur and Tisha B'Av, it is prohibited to wash even part of one's body in cold water. It is clear that the prohibition against bathing on Tisha B'Av is not just a function of mourning but also a function of Tisha B'Av as a fast day.⁷

The Rav noted that we find support for the idea that the *inuyim* of Tisha B'Av are both a function of mourning and a fast day from the prohibition against wearing shoes on Tisha B'Av. While a mourner may not wear (leather) shoes, the Rambam (*Hilchos Avel* 5:6) writes that one who is walking on the road may wear shoes. The Rambam (*Hilchos Shevisas Asor* 3:7) does not present this leniency regarding Yom Kippur, implying that it is prohibited. The Rambam (*Hilchos Ta'anis* 5:10) also writes that the prohibition against wearing shoes on Tisha B'Av is equivalent to the prohibition on Yom Kippur. It would seem that the rules regarding wearing shoes on Tisha B'Av are stricter than the rules for a mourner. The reason seems to be that the prohibition against wearing shoes on Tisha B'Av is not only a function of mourning, but also a function of Tisha B'Av as a fast day.⁸

We find this idea in a responsum of R. Hai Gaon⁹, where he discusses why we don't apply *miktzas hayom k'kulo*—the principle that allows one to treat a portion of the day as if the day is complete—to the prohibition against wearing shoes and the other *inuyim* of Tisha B'Av. He writes that the *inuyim* are not only a function of mourning (where the *miktzas hayom k'kulo* principle is relevant), but also a function of a fast day (where *miktzas hayom k'kulo* is not relevant).¹⁰

Since the idea that the *inuyim* of Tisha B'Av are also a function of Tisha B'Av as a fast day is very compelling, the Rav suggested that perhaps even R. Yishmael b. R. Yosi agrees to this idea. R. Yishmael b. R. Yosi's disagreement with the *Tanna Kamma* is based on the fact that he is of the

the Rosh, the beraisa does not discuss eating and drinking, and it is therefore logical to assume that the other *inuyim* are a function of mourning and for this very reason, the beraisa specifically only mentioned prohibited activities that are a function of mourning.

⁷ The *Minchas Chinuch* (mitzvah no. 313) and the Brisker Rav (*Chiddushim to Hilchos Ta'anios*) also make this point.

⁸ The Rav mentioned this idea in his *Shiurim L'zecher Abba Mari* (Vol. I, pg. 89), but there, he explained it in a different manner, that the mourning of Tisha B'Av generates the prohibitions of the fast day. See also, Rosh, *Ta'anis* 1:19, who follows the opinion of the Yerushalmi, *Ta'anis* 1:6, that on Tisha B'Av, one may wear shoes if one is walking on the road. According to the Rosh, there is no proof from the specifics of the prohibition against wearing shoes that the prohibition on Tisha B'Av is a function of a fast day.

⁹ Cited in *Otzar Hageonim to Ta'anis* pg. 47.

¹⁰ Regarding the prohibition against anointing on Tisha B'Av, see *Marcheshes* 1:42, who suggests the issue is contingent on a dispute between the Bavli and Yerushalmi with a practical application regarding anointing that is not for the purpose of enjoyment. See notes 11 and 12.

opinion that acceptance of the fast early is only relevant to aspects of the fast that constitute a fulfillment of the fast, not to the prohibitions of the fast. The prohibition against bathing is simply a prohibition, and refraining from bathing does not constitute a fulfillment of the fast. By contrast, refraining from eating and drinking are the primary components of the fast, and to refrain from eating and drinking constitutes a fulfillment of the fast. Therefore, one can accept upon oneself to refrain from eating and drinking before the fast starts.

The Rav added that this idea that refraining from eating and drinking represents the primary component of the fast is relevant to another halacha as well. According to the *Shulchan Aruch*, *Orach Chaim* 566:6, one who is not fasting may not receive an *aliyah* on a fast day. What if someone refrained from eating and drinking, but did not observe the other *inuyim*? The Rav suggested that since refraining from eating and drinking is the primary component of the fast, this individual is considered to be observing the fast and may receive an *aliyah*.

Bathing and Anointing on Tisha B'Av

There are two statements in the Gemara that teach us about the prohibition against bathing for mourners and on fast days:

Rafram bar Papa said in the name of R. Chisda: Anything that is prohibited because of mourning, such as Tisha B'Av and a mourner, there is a prohibition against [bathing] in warm water or cold water. Anything that is prohibited because of enjoyment, such as a public fast day, warm water is prohibited and cold water is permissible.

Ta'anis 13a

אמר רפרם בר פפא אמר רב
חסדא כל שהוא משום אבל כגון
תשעה באב ואבל אסור בין
בחמין בין בצונן, כל שהוא
משום תענוג כגון תענית ציבור
בחמין אסור בצונן מותר.
תענית יג.

R. Elazar said: It is prohibited to place one's finger in water on Tisha B'Av just as it is prohibited to place one's finger in water on Yom Kippur.

Pesachim 54b

א"ר אלעזר אסור לו לאדם שיושיט
אצבעו במים בתשעה באב כדרך שאסור
להושיט אצבעו במים ביום כ"ג.
פסחים נד:

From these two statements we see that there are three distinct categories. On public fast days, there is a prohibition against washing one's whole body in warm water. A mourner may not wash part of his body in warm water or all of his body in cold water. On Tisha B'Av and Yom Kippur, it is prohibited even to place one's finger in water.

The Rav explained the distinction as follows: On public fast days, the reason for the prohibition is to minimize enjoyment. The prohibition against bathing for a mourner is so that the mourner should have a dishonorable appearance, what is known as *nivul*. The prohibition against washing one's finger on Tisha B'Av and Yom Kippur is a specific prohibition not to wash at all.

However, one must consider why the Rambam seems to take a different approach regarding the prohibition against *sicha*, anointing. The Rambam (*Hilchos Shevisas Asor* 3:9) rules that anointing is prohibited on Yom Kippur, even if it is not for enjoyment. However, he rules (*Hilchos Ta'anios* 5:10) that on Tisha B'Av, it is permissible to anoint oneself if it is not for the purpose of enjoyment, such as one who applies deodorant to conceal an unpleasant odor. Why is

the prohibition against anointing on Tisha B'Av modeled after the laws of mourning, when the prohibition against bathing on Tisha B'Av seems to be based on the laws of Yom Kippur?¹¹

The Rav suggested that the *inuyim* of Tisha B'Av are modeled after the laws of mourning in quality, and after the laws of Yom Kippur in quantity. He explained that the *inuyim* of Yom Kippur are action-oriented prohibitions. This is implied in the language of the Rambam:

We have a tradition that it is prohibited to bathe or anoint on [Yom Kippur] ... There is a mitzvah to refrain from all these just as one refrains from eating and drinking.

Rambam, Hilchos Shevisas Asor 1:5

וכן למדנו מפי השמועה שאסור לרחוץ
בו או לסוך בו ... ומצוה לשבות מכל
אלו כדרך ששובת מאכילה ושתייה.
רמב"ם הל' שבייתת עשור א:ה

The *inuyim* of Yom Kippur are part of the obligation to refrain from certain activities. By contrast, on Tisha B'Av this is not the case. Rather, the prohibitions against bathing and anointing are prohibitions against enjoyment, similar to the prohibitions for a mourner. One must act in a way that leaves one in a state of *nivul*, and as such, one cannot engage in activities that bring one enjoyment.

Nevertheless, although the nature of the *inuyim* on Yom Kippur and Tisha B'Av are qualitatively different, they both share the same measurements for determining the parameters of the *inuyim*. Anointing and bathing on Tisha B'Av are prohibited to the same degree that they are prohibited on Yom Kippur as long as those specific parameters serve to enhance the *nivul* caused to the individual. For this reason, the Rambam distinguishes between anointing that is not for the purpose of enjoyment and bathing that is not for the purpose of enjoyment. The two ideas are fundamentally different. If one were to refrain from anointing not for the purpose of enjoyment, it would not enhance the *nivul* to the individual because *nivul* is a function of appearance, not smell. As such, the prohibition against anointing should follow the same parameters as the laws of mourning and should only be prohibited when done for enjoyment. However, if someone refrains from washing even a small part of one's body, it would cause *nivul* and would therefore be an appropriate form of mourning. While the rabbis did not prohibit a mourner from washing a small portion of his body, on Tisha B'Av, the quantity of the *inuyim* is derived from Yom Kippur. The prohibition against washing a small part of one's body is not a qualitative detail, but rather a quantitative measurement. Since washing with this amount of water is prohibited on Yom Kippur, on Tisha B'Av it is also prohibited at this quantity because refraining from washing in this manner enhances the *nivul* of the individual.¹²

Netilas Yadayim on Tisha B'Av

There is a dispute among the Rishonim regarding *netilas yadayim* on Yom Kippur and Tisha B'Av when one wakes up in the morning. Tosafos, *Yoma* 77b, quote Rabbeinu Tam that just as it

¹¹ The Talmud Yerushalmi, *Yoma* 8:1, actually states that on Tisha B'Av, the only type of anointing that is prohibited is anointing that provides enjoyment, whereas on Yom Kippur, all types of anointing are prohibited. However, one must still understand the reason for the distinction.

¹² See *Marcheshes* 1:42 (10), who suggests that perhaps anointing that is not for the purpose of enjoyment is not prohibited because of *inui*, but rather because we treat anointing like drinking, and this association is only made on Yom Kippur which is a biblically ordained fast, not Tisha B'Av, which is rabbinic in nature.

is permissible to wash one's hands if they have dirt on them, it is also permissible to wash one's hands for the purpose of being able to recite the morning prayers. *Shulchan Aruch, Orach Chaim* 554:10, follows Rabbeinu Tam's ruling. However, the Rambam, *Hilchos Tefillah* 7:8, writes that on Yom Kippur and Tisha B'Av, when there is a prohibition against washing, one does not recite the beracha on *netilas yadayim*.

The Rav suggested that Rabbeinu Tam is of the opinion that any type of bathing (or washing) that is for a specific purpose is not considered bathing for the purpose of enjoyment and is permitted.¹³ For this reason, it is permissible to wash dirt off of one's hands, and to immerse in a mikveh for the purpose of fulfilling a mitzvah. Likewise, it is permissible to perform *netilas yadayim*. However, the Rambam is of the opinion that even bathing (or washing) that is not for the purpose of enjoyment is prohibited on Yom Kippur and Tisha B'Av, as we find that it is even prohibited to place one's finger in water. According to the Rambam, the leniencies to wash dirt off of one's hands or to immerse in a mikveh are specific exceptions to the rule and we cannot derive anything from these leniencies.¹⁴

¹³ It seems that the prohibition to place one's finger in water on Yom Kippur and Tisha B'Av is not because bathing is prohibited even when there is no derivation of enjoyment. Rather it is because any type of bathing or washing that doesn't have a specific (non-bathing) purpose is considered bathing for the purpose of enjoyment. The practical difference is that it would not only be permissible to wash off dirt, it would also be permissible to wash for sanitary purposes. This, in fact, is the opinion of Rabbeinu Manoach, *Hilchos Shevisas Asor* 3:9. See *Magen Avraham* 614:1, and *Taz* 613:1, who dispute what the opinion of *Shulchan Aruch* is on this matter.

¹⁴ This is also how the Rav understood Rashi's position in his comments to *Berachos* 16b, s.v. *Rachatz*. Rashi explains that Rabban Gamliel bathed the night after his wife was buried because he was an *istanis* (very sensitive person). It seems from his comments that if she would not have been buried until the next day, he would not have bathed. The Rav, in his *shiurim* on the laws of mourning, inferred two ideas from Rashi's comments. First, Rashi agrees with the opinion of the Ramban that the laws of mourning apply before the burial. Second, the leniency for an *istanis* is a special leniency that only applies after the burial. See also, the comments of the Rosh ad loc., (no. 15) who quotes Rabbeinu Chananel that an *istanis* is someone in a dangerous situation "and since it is for medical purposes, they permitted it for him in a pressing situation." Rabbi Mordechai Willig, in *Am Mordechai, Berachos* no. 13, notes that from the fact that Rabbeinu Chananel only permits an *istanis* to bathe in a situation of danger, we see that *istanis* is a leniency that is only applied in special situations.