

Halacha Highlight

Including someone deaf or mute in a *minyan*

Shulchan Aruch Siman 55 Seif 9

ח"ד המדבר ואינו שומע או שומע ואינו מדבר וכו'

Someone deaf who speaks but cannot hear or hears but cannot speak etc.

Shulchan Aruch (סעי' ח') rules that someone who is deaf or mute is considered to have the necessary faculties to allow him to be counted in a *minyan*. However, someone who is deaf and mute is considered to be lacking the necessary faculties to be counted towards a *minyan*. Mishnah Berurah (סעי' ל"ח) cites Taz who maintains that someone who is deaf cannot be counted as part of the *minyan* since he does not know when to answer אמן. Most *Poskim* disagree and maintain that as long as he could observe others and from their behavior knows when to respond אמן he could be counted in a *minyan*. Precedent for this is the Gemara Sukkah (51b) that describes the enormity of the Bais HaKnesses in Alexandria and it relates that it was so large that they had to wave kerchiefs to alert people when to respond אמן.

Poskim emphasize that the disqualification of one who is deaf and mute is not a function of intelligence. Even if one who is deaf and mute studies and becomes an outstanding Torah scholar who can read and write and express himself in this manner, he, nevertheless, does not count as a member of the *minyan* (שו"ת צמח צדק הקדמון סי' ע"ג). Even if a person lived many years of his life with the ability to hear and speak and lost those faculties due to an illness or trauma, if there is no cure for his condition he may no longer be counted in a *minyan* (פסקי תשובות אות י"ד).

In the event that someone who is deaf and mute is taught to produce audible sounds that although somewhat slurred can be understood even by others outside of his immediate family, he is considered one who has the faculty of speech and counts towards a *Minyan* (שו"ת מנחת שלמה ח"א סי' ל"ד). Someone who would not be able to hear the *shaliach tzibbur* but wears a hearing aid and as a result can hear to be able to answer the *shaliach tzibbur* may also be counted for a *minyan* (תפילה כהלכתה פ"ח הע"י פ"א בשם הגרש"ז"א).

Stories to Share

The Nature of Da'as

שי"ע סי' נ"ה, ט': "לעולם הוא קטן עד שיביא שתי שערות אמר שיהיה בן י"ג ויום אחד..."

A certain *sofer* had a brilliant son who was exceedingly mature. When the child was eleven his father taught him the complex laws of *safrus*. By twelve the young man had a beautiful script and wondered if he could write his own *parshios*. Although, as we find on today's *amud*, a young man may not even be counted to a *minyan* unless he is at least thirteen, this man wondered why his son was not an exception to the rule.

"After all," he reasoned, "The boy is much smarter and wiser than any thirteen year old. Why isn't he a full bar *da'as* according to *halachah*?"

When this question reached Rav Shlomo Zalman Auerbach, zt"l, the *gadol* explained the depth of the matter. "It is surely surprising that all the *halachos* of the Torah only apply to a boy of thirteen years, not younger. This demonstrates that the concept of *da'as* is not what we might have thought. Even the Vilna Gaon who left his teachers—*gedolei hador* themselves—at a young age because they had nothing more to teach him, would not be an exception to this rule. If he himself had written *parshios* before thirteen years old, they would not have had the holiness of *tefillin*—they would be considered as if they had been written by an average child who lacks understanding. This, despite the Vilna Gaon's certain knowledge of the *halachos* and even the deeper mysteries of *tefillin* at that tender age.

Overview

Siman 55 Seif 5:

If a child does not have "two hairs" he is considered a minor even if he is old enough to be an adult until he has lived the majority of his life at which time we categorize him as a *saris*. If he shows signs of being a *saris* earlier he is considered an adult at that time. We do not search for hairs; rather once a child reaches the age of adulthood (13 yrs. old) we presume that he is an adult and that he has already produced "two hairs."

- ❖ The two hairs can be anywhere on the body, even in one's beard. (M.B. 25)
- ❖ The majority of his life is one day after his 35th birthday. (M.B. 27)
- ❖ Even a single symptom of being a *saris* is sufficient if he hasn't produced two hairs. (M.B. 29)
- ❖ Symptoms of a *saris* categorize someone as an adult if he is 30 days beyond his 20th birthday and has yet to produce the necessary two hairs. Before someone reaches 20 he is still considered a minor even if he has symptoms of being a *saris*. *Pri Megadim* rules that someone who has symptoms of being a *saris* may be counted in a *minyan* even before he reaches the age of 20. (M.B. 30)
- ❖ We only assume a boy who is 13 to be an adult for Rabbinic matters but this presumption does not apply for Biblical matters. (M.B. 31)

Siman 55 Seif 6:

If one of the ten began to *daven* by himself and can no longer answer or if someone is sleeping he still counts towards the *minyan*.

- ❖ There is a disagreement whether it is considered a *minyan* if more than one person is unable to answer. A *minyan* should not include more than one person who is sleeping. (M.B. 32)
- ❖ This leniency does not apply to every matter that requires a *minyan*. (M.B. 33)
- ❖ Taz disagrees with Shulchan Aruch's ruling regarding one who is sleeping and maintains that the sleeping person must at least be only dozing. (M.B. 34)

Siman 55 Seif 7:

When someone *davens* to himself it is appropriate that the others should wait to say *kaddish* so that he will be able to answer as well.

Siman 55 Seif 8:

Someone who speaks but cannot hear or hears but cannot speak is considered to have his faculties and is counted in the *minyan* but someone who cannot hear and speak is categorized together with one who is insane and a child [and does not count towards the *minyan*.]

- ❖ Later *Poskim* disagree whether someone who is deaf may be included in the *minyan*. (M.B. 38)

Siman 55 Seif 9:

Someone remains a minor until he produces "two hairs" after his thirteenth birthday and in a leap year it will take thirteen months.

- ❖ The presumption that a 13 year old is an adult is a mere presumption and may not be relied upon for Biblical matters. (M.B. 40)
- ❖ A father is believed to confirm that his son is 13 and an orphan must behave stringently that he is an adult from the time that he has "two hairs." (M.B. 41)
- ❖ As soon as the child enters the day of his 13th birthday he is considered an adult. If he was born during *bein hashemashos* he must act stringently regarding Biblical matters on the earlier day.

He concluded, "Only from age twelve does the child's individual understanding play a role in determining whether an oath he made is valid. If he is judged to be sufficiently mature and had consecrated something, everyone is obligated in *me'ilah* if they used it. That is the only difference. These *halachos* are based on the deepest secrets of Torah which we cannot possibly fathom..."

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