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TALMUDIC METHODOLOGY

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**The Issur of Bathing on Yom Kippur**

Among the five activities prohibited on Yom Kippur is the performance of rechitza - bathing or washing one's body. This article will explore several details of this issur with the aim of determining its definition.

The gemara in Yoma analyzes the Biblical source of the five activities which are prohibited during Yom Kippur. As the gemara notes (74b), the Torah does not specifically delineate any particular experience. Rather, it states several times that a person should "deprive himself" (inuy). One could entertain the possibility (as the gemara itself does) that this calls for us to do something like stand upright the whole day, or sit in the hot sun. Rejecting this option, the gemara employs various methods (analogous pesukim throughout Tanakh which make mention of these experiences which are pleasurable) to determine that the Torah was actually referring to the following five activities: eating and drinking, bathing, applying lotions, wearing leather shoes, and engaging in sexual activity.

The gemara is aware that precisely five activities are forbidden because of the five instances in which the Torah refers to Yom Kippur as the "tenth day" or as a "Shabbat Shabbaton." What is not clear, however, is the exact nature of these issurim once we translate the Torah's general prescription of "inuy" into five specific forbidden activities. Does the Torah actually prohibit five ACTIVITIES - one of bathing, one of eating, etc.? One might answer yes, these are FORMAL PROHIBITIONS akin to various issurim in other areas of halakha. For example, just as the formal act of eating bassar be-chalav (meat and milk) is banned, so too is the formal act of eating on Yom Kippur. And just as sexual interaction is forbidden in the case of erva (forbidden relationships), similarly it is also assur on Yom Kippur. But instead of formulating them as distinct and individual issurim, the Torah groups them under the general heading of

"inuy" in order to convey the message that the spirit of the day is to be marked by deprivation and refraining from physical pleasure.

Possibly, though, the lack of specificity - the fact that all these activities were subordinated in the Torah to the broad directive of inuy - reflects a fundamental definition. Accordingly, one might suggest that the principal issur is not defined by any particular action. Instead, the issur is one of receiving pleasure. Though theoretically we could have banned all types of pleasure, the gemara endeavors to define particular ones. What remains, however, is not an issur to bathe (in a formal sense) but rather an issur to derive PLEASURE FROM BATHING. The issur isn't to eat but to derive PLEASURE FROM FOOD. Instead of the actions themselves being the core of the issur, the pleasure which these activities precipitate is forbidden.

Though this question is a general one pertaining to all five activities, this article will examine the ramifications of this issue upon the scope and definition of the issur rechitza. If, then, we seek to determine whether it is the ACT of bathing which is forbidden or rather the PLEASURE which it produces, we would be interested in two types of cases - instances in which the pleasure of bathing is experienced without performing an act of bathing and instances in which the act of bathing is performed without any distinct pleasure. We will begin with the former category.

The gemara (78a) asserts that one may not sit on wet clay on Yom Kippur because the cooling relief one receives is akin to bathing. The gemara cites a machloket between Abaye and R. Yehoshua ben Levi regarding this wet clay. According to R. Yehoshua Ben Levi, any wet clay is forbidden, whereas according to Abaye only clay saturated enough to cause another object to become wet (tofei'ach al menat le-hatfi'ach) is assur. Evidently, according to Abaye, only by dampening your body do you violate the issur - only then have you engaged in an ACT of bathing. If your body never becomes moist, you cannot be considered as having bathed. Conversely, according to R. Yehoshua Ben Levi, the issur does not relate to BATHING but rather consists of deriving pleasure from the cooling effect of water. Hence one may not even touch or sit on cold and moist clay - even if his own body is not moistened from it. Either way, we find here an issur without an act of bathing.

A second instance in which one experiences a cooling effect but does not actually bathe is mentioned in the Behag (cited in the Rosh to Ta'anit (4:38) and the Torat Ha-adam of the Ramban). The Behag writes that one may not bathe close to sunset before erev Tisha Be-av because the after-effects of rechitza will be experienced during Tisha Be-av itself. After quoting the Behag, the Rosh disputes this position. One

can only question what the halakha might be regarding erev Yom Kippur. Since he is not actively bathing during Yom Kippur he cannot be viewed as violating a formal issur of WASHING or BATHING. However, he does continue to receive the long-term cooling effects of the water. In this case as well, someone derives benefit from bathing without actually bathing. Fittingly enough, the Minchat Chinukh (313) differentiates between Tisha Be-av and Yom Kippur in which this chumra (stringency) of bathing in the hours before sunset does not apply. The Minchat Chinukh writes that although on Tisha Be-av the pleasure of bathing is forbidden, on Yom Kippur we have a gezeirat ha-katuv (an explicit verse) forbidding washing and one need not prohibit long-term effects. In many ways the Minchat Chinukh might be addressing this very point; on Yom Kippur, despite the ambiguous Biblical source which lacks any outright mention of the experience of bathing, the issur is still defined as a formal act of bathing and unless the bathing is performed on Yom Kippur proper, no issur has been violated.

## **SUMMARY:**

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We have so far examined two instances in which an act of bathing does not occur but bathing-related pleasure is nonetheless received. The prohibition of these activities would indicate that the issur is not a FORMAL one but rather one relating to the ta'anug (pleasure) of bathing.

Let us now examine reverse cases - where an act of bathing occurs but no pleasure is received. Two cases come to mind. The gemara (77b) informs us of the permissibility of washing hands which have been sullied. On first glance one might have suspected that this question as well is dependent upon the exact nature of the issur. If the issur is defined as one of pleasure, then clearly, this type of washing is exempt since pleasure is not the principal intention. If, however, the issur is one of bathing, we prohibit categorically all forms of washing. In fact the Rabbeinu Chananel permits washing of hands and feet only; apparently, full bathing EVEN OF A DIRTY BODY is still forbidden. Even though pleasure is not the stated goal, an act of bathing still occurs and this represents a violation of the issur.

Upon closer inspection, however, we may still reconcile this exemption (even in its fullest sense - washing an entire soiled body) with the notion of a formal issur to bathe. Even if the issur relates to the action and not to the pleasure, not all acts of bathing are alike and not all were necessarily forbidden. In this instance, where the bathing is clearly designated for a certain purpose, it is defined as CLEANSING and not bathing and is therefore permitted. Any washing which is clearly oriented toward a different objective is permissible. What would happen, though, in a case where the

bathing or washing is effectively the very same identical act as standard washing but pleasure is not the central purpose?

The Ittur rules that one may wash hands when waking up on the morning of Yom Kippur because of the mitzva of "netilat yadayim." Similarly, the Shiblei Ha-leket (siman 319) rules that one may wash in the morning (interestingly enough, only AFTER relieving oneself). This permissibility is based upon the gemara in Yoma (88) which allows someone who is obligated to immerse himself (e.g., a nidda) to go to the mikva on Yom Kippur. Again, even if the issur is defined as a formal act of bathing, netilat yadayim in the morning and immersing in a mikva are CATEGORICALLY different from washing since they are performed under the rubric of SPECIFIC MITZVOT. Just as cleansing a dirty body is not considered bathing, washing for a distinct mitzva is not considered bathing. What about, however, one who carefully relieves himself without touching concealed body parts. In this case, though the intended purpose is not one of pleasure (but rather to achieve an elevated state of purity), there is no specific mitzvah involved. Though one might be preparing for tefilla or berakhot and not receiving pleasure, no PARTICULAR mitzva has been performed. We might rule that on Yom Kippur when washing is forbidden, such preparatory washing should be banned and we should forgo these higher levels of purity and continue our prayer without washing. (In fact by permitting netilat yadayim only in the morning the Ittur and Shiblei Ha-leket are tacitly endorsing this suggestion). If indeed we were to permit this hand-washing (as Tosafot Yeshanim and the Ran do in Yoma 77b), it might indicate that the issur is one of pleasure. As long as this pleasure isn't the principal motive, even if the act itself is not categorized as a mitzva, the bathing is permitted.

## **METHODOLOGICAL POINTS:**

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1. Once again when deliberating whether a halakha is defined as "x" or "y" attempt to isolate cases where "x" applies and not "y" and cases where "y" applies and not "x." Cases of bathing without pleasure and cases of pleasure without bathing are particularly useful for our discussion.
2. Pay close attention to the source of a halakha to determine its nature. If the Torah does not actually specify certain actions but rather refers to the experiential aspect - how does that affect the nature of the issur? When the gemara ultimately translates the Torah's ban into real actions - does it transform these issurim into actions or retain them as experiences but merely narrow the field of experiences?

3. Notice Rishonim who reinterpret halakhot. If Rabbeinu Chananel transforms the gemara's heter of bathing a soiled body as one of washing dirty hands, does this reflect his unease about allowing bathing of an entire body?

**AFTERWORD:**

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1. See the Ran who allows washing hands after lightly relieving oneself. Notice his proofs. Can we draw a distinction based upon the points made in the article? See specially Tosafot in Beitza (18b) quoting Rabbeinu Tam who distinguishes between tevila for a mitzva and other tevilot.

2. How do these questions affect the scope of the issur? Are all forms of bathing forbidden or only luxurious bathing in hot water? Compare Ta'anit (13a) (which discusses aveilut) and Pesachim (54b) which addresses Yom Kippur.

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