

## CCAR RESPONSA

### Disabled Persons\*

5752.5

*She'elah*

What are the obligations of the community, and specifically of congregations, toward physically and mentally disabled persons? (CCAR Committee on Justice and Peace)

*Teshuvah*

Jewish tradition speaks repeatedly of the role that elderly, deaf, blind, mentally and physically handicapped persons play in the ritual and ceremonial realm, but there is little discussion of the community's obligation toward such persons. What follows is a brief overview of the relevant attitudes found in the biblical and rabbinic sources, and the Reform perspectives we might bring to them.

#### 1. Blind Persons.

We are obligated to treat a blind person (*ivver*) with special consideration. For example, the Torah prohibits putting a stumbling block before the blind and warns, "Cursed be the one who causes the blind to wander out of the way."<sup>1</sup>

However, tradition saw the blind as lacking certain legal and ritual capacities.<sup>2</sup> and a talmudic passage, contains different opinions about issues affecting the sightless. What is remarkable about it is that, at its end, a blind Torah scholar's reaction to the discussion becomes "the last word" on the matter.

R. Joseph [who was blind] stated: Formerly I used to say: "If someone would tell me that the halakhah is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a feast for our Rabbis, because though I am not obligated I still perform commandments. " But I have heard the statement of R. Hanina, who said that greater is the reward of those who are commanded to do [mitzvot] than of those who without being commanded [but merely do them of their own free will]. If someone would tell me that the halakhah is [after all] not in accordance with R. Judah, I would make a feast for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me."<sup>3</sup>

In general, the halakhah goes with R. Hanina and obligates the blind to observe all the commandments, though there were numerous discussions about it.<sup>4</sup> Thus, while the *Shulchan Arukh* rules that the blind may not say the blessing over the *havdalah* candles, other authorities permit them to recite all the benedictions for the ceremony.<sup>5</sup> Further, the blind are obligated to wear *tzitzit*, even though the wording of Numbers 15:39 would seem to demand eyesight for the fulfillment of this mitzvah.<sup>6</sup> We also learn that two blind rabbis recited the Pesach *Haggadah* for themselves as well as others.<sup>7</sup>

#### 2. Deaf Persons

The deaf person (*cheresh*) is dealt with in the Mishnah:

We have learnt: "Wherever the Sages speak of *cheresh*, [it means] one who can neither hear nor speak." This [would imply] that he who can speak but not hear, or hear but not speak is obligated [to do all mitzvot]. We have [thus] learnt what our Rabbis taught: One who can speak but not hear is termed *cheresh*: one who can hear but not speak is termed *illeim* [mute]; both are deemed sensible in all that relates to them.

This passage is contradictory in that it offers two definitions of the word *cheresh*, one who is a deaf-mute and one who is simply deaf.

Said Ravina, and according to others, Rava: [Our *mishnah*] is defective and should read thus: All are bound to appear [at the Temple] and to rejoice (Deuteronomy 16:14), except a *cheresh* that can speak but not hear, [or] hear but not speak, who is exempt from appearing [at the Temple]; but though he is exempt from appearing, he is obligated to rejoice. One, however, that can neither hear nor speak (as well as a *shoteh* [simpleton]) and a minor are exempt from rejoicing, since they are exempt from all the precepts stated in the Torah.<sup>8</sup>

In our day, R. Eliezer Waldenberg holds that anyone who can hear anything at all, including using a hearing aid and that anyone who can speak is considered *pikui'ach* (as if without disability) and therefore obligated regarding all mitzvot, except those that require hearing. They are married *d'oraita* (based on Torah law directly) and require biblically ordained divorce.<sup>9</sup> Under this very limited definition of *cheresh*, most people with hearing and speaking disabilities will be considered as having no handicap.

Similarly, R. David Bleich maintains that the ability to speak, no matter how acquired and even if the speech acquired is imperfect, is sufficient to establish full competence in all areas of halakhah.<sup>10</sup> However, he notes that the status of a normal person who subsequently becomes a deaf-mute is the subject of controversy among halakhic authorities. Some consider them to be like congenital deaf-mutes, while others hold that such persons are not to be regarded as legally incompetent.<sup>11</sup>

The development of schools for the deaf was one of the greatest factors in liberalizing halakhic thinking regarding deaf and mute persons. R. Isaac Herzog, chief rabbi of Israel until 1959, ruled that, "those [rabbis] who remain in the ivory tower and say the schools [for the deaf] are not good enough do not realize the techniques that have been developed in the schools.' He goes on to describe the techniques used in the schools and suggests that once they are known, one's point of view must change. You have got to do so and then remove all limitations that still exist surrounding the technically deaf-mute."<sup>12</sup>

### 3. Otherwise Physically Disabled Persons.

Little systematic consideration is found in rabbinic sources regarding their needs. Such handicapped persons are permitted to recite the Megillah while standing or sitting. We find a discussion about prostheses worn on Shabbat, and such exceptional circumstances as a woman's ability to perform *chalitzah* (the removal of a shoe from her brother-in-law who refuses to marry her)<sup>13</sup> when her hand was amputated. The Sages generally attempted to include handicapped or disfigured individuals in public ceremonies, except when their participation would cause people to gawk at them rather than concentrate on worship.<sup>14</sup>

### 4. Mentally Disabled Persons.

The word *shoteh* ("simpleton," "imbecile" or "idiot") has generally been taken to refer to a mentally disabled individual. However, close examination of the use of the word in the Mishnah and Talmud reveals that there are two basic kinds of *shotim*:

(1) the mentally ill and the retarded (little distinction is made between the two), and

(2) the morally deficient who do not act in accordance with the communal ethos, though having the intelligence to do so.

Tradition identified particular types of behavior as falling in category (1) of the definition: One that goes out alone at night, spends the night in a cemetery, tears his garments, or always loses things.<sup>15</sup> Clearly, these activities were meant to characterize the mentally ill rather than the retarded.

In our day, R. Moshe Feinstein differentiated between a *peti* (the mentally retarded whom the community must provide with an education once s/he has reached the understanding of a six-year-old) and the *shoteh*. He urged the welcoming of the *peti* to synagogue worship once s/he has reached majority (12 or 13 years of age) and would count such a person in a *minyan*. On the other hand, he would not include *ashoteh* who might be diagnosed as severely mentally ill and truly unaware of, or unable to relate to a worship service. Even so, such persons should be encouraged to join as much as possible in the life of the community, to the degree that they can do so without being disruptive to others or are themselves unhappy.<sup>16</sup>

## 5. Reform Perspectives.

We should be sensitive to the fact that disabled persons, particularly the deaf, have traditionally been regarded in light of what they can *not* do, rather than considering positively the unique capabilities they have. We should encourage the inclusion of all disabled persons in our congregations and, where indicated, encourage the formation of special support groups.

Our *she'elah* asks whether the community or congregation has an express "obligation" in this respect. The answer is yes with regard to the principle. We deal here with a mitzvah and include it under the obligations we have with regard to our fellow human beings (*mitzvot bein adam l'chaveiro*), and the important part such *mitzvot* play in Reform Jewish life and theology.<sup>17</sup>

Of course, their application must be considered in the context of the congregation's and rabbi's resources. We cannot obligate any rabbi or congregation to provide special services to all disabled persons who come within their purview, but the obligation to be of whatever service possible has the status of a mitzvah. Without stating what is or what is not possible in a particular community, the following opportunities may serve as examples:

When we include the disabled in our *minyanim*, we must attempt to include them fully and facilitate their participation in the spiritual life of the community. For instance, large-print and Braille prayer books and texts, hearing aids, sign-language interpreters, wheelchair access to all parts of the synagogue building and sanctuary, fall under the rubric of mitzvah and present the community with challenges and opportunities. New technologies will facilitate in-home electronic participation in services and classes. Sometimes, aesthetics and mitzvah may seem to clash: a ramp for wheel chair access to the pulpit may present a visual distraction, but it will also be inspiring for the congregation to know that its religious obligations toward the handicapped have been fulfilled. And obviously, where new buildings are constructed the needs of the disabled must be taken into consideration in the planning. As Reform Jews, we should allow for a creative interpretation of the mitzvot that would help to incorporate disabled persons into the congregation in every respect.<sup>18</sup>

In addition to providing physical facilities, we must provide the handicapped with the education that they will need to participate fully, or as fully as they can, in the life of the congregation. Where necessary, several congregations in the city should combine their resources to make this possible.

The aim of inclusion of the disabled is their complete participation in Jewish life. Therefore, we would, for instance, permit a blind student to read the Torah portion from a Braille Bible, if not from the Torah scroll itself though this would not constitute a halakhically sanctioned reading, since it may not be done from memory.<sup>19</sup> We see the mitzvah of including the deaf as overriding the traditional prohibition.

A deaf bar/bat mitzvah student, depending on his/her capacity, could read from the Torah, or write a speech and have someone else deliver it, or deliver it in sign language him/herself and have an interpreter speak it to the congregation.<sup>20</sup>

Mentally disabled persons could be encouraged to do as much as possible.

Many of these issues are not only similar to, but directly concern, elderly individuals. Indeed, hearing, visual, mental and physical disabilities often come as part of the aging process. Just as the Jewish community has gone out of its way to provide proper facilities for the aged, so should it make adequate resources available for the mentally and physically disabled of all ages. The fate of the tablets of the Decalogue describes our obligation: "The tablets and the broken fragments of the tablets were deposited in the Ark."<sup>21</sup> There was no separate ark for the broken tablets: they were kept together with the whole ones.

In sum, our worth as human beings is based not on what we can do but on the fact that we are created in God's image.<sup>22</sup> We should aim for the maximum inclusion of the disabled in the life of our communities.

### Notes

\*One might well consult *Who Makes People Different*, Carl Astor, United Synagogue of America: New York, 1985, for an even more in-depth analysis of this topic.

1. Leviticus 19:14 and Deuteronomy 27:18.
2. For example, BT Gittin 2:5, 22b prohibits a blind person from delivering a get (the religious divorce document). M Terumot 1:6 does not allow a blind person to separate terumah (a special donation to priests and sanctuary). M Megillah 3:6 and BT Megillah 24a teach that a person blind from birth may not recite the Shema and its blessings for the congregation since s/he would not have experienced the light mentioned in the morning prayer, but this is overruled by the Gemara.
3. BT Baba Kamma 86b.
4. Tosafot (medieval talmudic comments, a genre begun by Rashi's descendants) on BT Baba Kamma 87a. Others argue that even if the law does not require the blind to observe the commandments, their own desire to observe them becomes, in effect, an obligation to do so. See Chiddushey HaRashba, BT Baba Kamma 87a. However, Rambam disqualifies blind persons from serving as witnesses (Yad, Hilkhot Edut, 9:12; Sh. A., HM 35:12; Resp. Tashbetz, v.3, # 6. See also R. Asher b. Yechiel, Resp. Ha-Rosh 4:21, R. Shelomo Luria, Yam shel Shelomo, Baba Kamma 8:20, Meiri to BT Baba Kamma 87a and Mishnah Berurah to Sh. A., OH 53, 41. Others argue that even if the law does not require the blind to observe the commandments, their own desire to observe them becomes, in effect, an obligation to do so. See Chiddushey HaRashba, Baba Kamma 87a. However, Rambam disqualifies blind persons from serving as witnesses (Yad, Hilkhot Edut, 9:12; Sh. A., HM 35:12; Resp. Tashbetz, v.3, #6.
5. The reason for denying them the privilege arises from the argument that, in order to say a blessing over light, one must be able to enjoy its benefits.
6. Numbers Rabbah, Sh'lach Lecha 17:5, BT Menachot 43a-b, and Sh. A., OH 17:1.
7. R. Sheshet and the above-cited R. Joseph; BT. Pesachim 116b.
8. BT Hagiga 2a; he cited passage is from M. Terumot 1:2.
9. Resp. Tzitz Eliezer, 15, # 46, p. 120 ff.
10. "Survey of Recent Halakhic Periodical Literature: Status of the Deaf-Mute in Jewish Law", Tradition, 16 (5): 79-84, Fall, 1977, p. 80.
11. Ibid. Note that Bach, Sh. A., YD 1; Shakh, Sh. A., YD1:22; and Divrei Chaim, II, EH, # 72, take the former position, and Rambam and Bertinoro (in their commentaries on M Terumot 1:2) adopt the latter.
12. Jerome D. Schein and Lester J. Waldman, eds. *The Deaf Jew in the Modern World* (New York, 1986), p 17.
13. BT. Shabbat 65b and Yevamot 105a. The latter tractate is devoted to this biblically ordained ceremony, which obtained when a married man died before he could sire a child. His brother was then obligated to marry the widow in order to "build up a name" for his deceased

brother. In modern Israel, the brother is no longer permitted to marry his sister-in-law, but the ceremony of chalitzah is still necessary in order to release her so that she can marry again.

14. See, e.g., the question of whether a priest whose hands are discolored may lift them in blessing the congregation; BT Megillah 24b.
15. BT. Hagiga 3b-4a. The discussion revolves around the question whether any one of these acts is enough to characterize one as a shoteh. Sh. A., Yoreh De'ah 1:5, deems one of these actions sufficient.
16. "The Difference Between 'Shoteh' and 'Peti' and the Obligation of Keeping Commandments and Learning Torah in Relation to a 'Peti,'" Behavioral Sciences and Mental Health, Paul Kahn, special issue editor (New York: Sepher Hermon Press, 1984), p.229.
17. See Gates of Mitzvah, Simeon J. Maslin, editor (New York: CCAR, 1979), pp. 97-115 for a discussion of the role of mitzvot in Reform Judaism
18. Rabbi Joseph Glaser recounts an example of such creativity: a deaf, and basically speechless, boy calligraphed his Torah portion, incorporating its theme (the burning bush) into the artwork (personal communication, 1991).
19. BT. Gittin 60b, Rambam, Hilkhhot Tefillah 12:8, Sh. A., OH 53:14 and YD 139:3, cited in J. David Bleich, Contemporary Halakhic Problems, Volume II (New York, 1983), p. 30. Though the Shulchan Arukh rules that a blind person may not be called to the Torah, since one is not permitted to read it from memory (OH 139:3), this ruling is challenged by a number of authorities who hold that the obligation of the one called up to read the Torah portion personally no longer applies (Maharil, quoted by Isserles ad loc.; Mordechai Yaffe, Levush, OH 141:3; Bayit Chadash to Tur, OH 141; Magen Avraham, OH 139, n. 4; Turei Zahav, Orach Chayim 141, # 3; Mishnah Berurah, OH 139, # 12). The Conservative Movement issued a responsum in 1964 regarding a blind man's wish to read the Torah for the congregation on Shabbat using Braille. The responsum, signed by Ben Zion Bokser, then Chairman of the Committee on Jewish Law and Standards, states, "We would not regard it appropriate for a person to read the Torah from Braille. Such reading would have the same status as reading from the printed text of Humash, which is not regarded as valid." However, a blind man may bless the reading of the Torah when it is read on his behalf by a reader. The bar mitzvah may, according to some authorities, recite the haftarah from memory or from a Braille text, while others require that a sighted reader repeat the haftarah prior to the final blessings over the reading by the Bar mitzvah.

Mark Washofsky notes: "R. Binyamin Slonick, a student of R. Moshe Isserles in the 16th century, in Resp. Mas'at Benyamin, # 62, addresses the question whether a blind person may be called to the Torah. In doing so, he remarks that he himself has become blind in his old age and that those such as R. Yosef Karo (Beit Yosef, OH 141) who prohibit this practice would 'expel me from God's portion, the Torah of Truth and eternal life.' His language testifies not only to his ultimate halakhic conclusion that the blind are in fact permitted to be called to the Torah, but also to his fervent wish that the law not be otherwise. His is not an attitude of resignation, a passive readiness to accept whatever lot assigned to him by the Torah; he actively desires that halakhah not exclude him from a ritual which has long been a source of much satisfaction to him." ("Some Notes on the Rights of the Disabled"; unpublished paper, 1991)

20. Such a student might be reminded of Moses' speech impediment, which did not hinder him from becoming Judaism's greatest leader. He or she might also want to read Les Gruber's article, "Moses: His Speech Impediment and Behavior Therapy," Journal of Psychology and Judaism 10:5-13 (Spring/Summer, 1986), pp. 5-13. He takes Moses' description of himself as k'vad peh u- khevad lashon (Exodus 4:10) to mean that he stuttered and that the Torah account accurately describes the sort of therapy stutterers use today to overcome their disability.
21. Numbers Rabbah, Bamidbar 4:20.
22. M Sanhedrin 4:5, BT Sanhedrin 37a.

If needed, please consult [Abbreviations used in CCAR Responsa](#).