

HALOCHOSCOPE



The authorities might compel one to violate a *mitzvah*, using force or the threat of legal action. This would make the person *annus*, under compulsion, and would free him of liability for the sin. In the cases of the three cardinal sins, idolatry, adultery and bloodshed, one may not give in to force, but should go as far as giving up his life rather than sin. In all other cases, one need not accept death or corporal punishment. The punishment might be monetary. Normally, one should spend all of his money to avoid violating a negative *mitzvah*. He should spend up to a fifth to fulfill a positive *mitzvah*.

There is also a concept of *chilul Hashem*, desecrating the Name of G-d. If Jews do not follow the laws of the land, it will bring shame to G-d's Name. Mostly, this concept adds requirements over and above the regular *halacha*. For example, a Jew might be permitted to do something that non-Jews consider wrong. *Chilul Hashem* would then forbid it. On rare occasions it is also invoked to override some other concepts. In our case, it might be necessary to rely on a lenient view to ensure that Judaism does not appear to break the law. It might be necessary to follow the law, as an *annus*, without putting up resistance based on Judaism. This does not always apply. For example, if a country grants freedom of religion, certain laws might be relaxed for Jews. However, something required of the entire population, like a census, could not be overlooked for a segment thereof. It is more likely that the law would accommodate Jews to be able to comply in a way acceptable to them. [See Yevamos 46a Nedarim 28a Gitin 9b-10b 36b Baba Kama 113b Baba Metzia 73a Bab Basra 54b-55a etc., Poskim. Tur Sh Ar YD 165 EH 28 CM 3:4 26 68:1 74:7 162:1 207:15 236:9 259:7 356:7 369, commentaries. ShT Chasam Sofer OC 208 YD 314 CM 44, Dvar Avraham I:1.]

In conclusion, a census can involve the issues of counting Jews and *ayin hara*. However, it can be completed by carefully avoiding direct counting. If there are legal consequences to failing to complete it, one should complete it.

Voting in a communal organization can be done by show of hands. If it is too close, or if a secret ballot is needed, the ballots may be counted, but care should be taken when mentioning the result. It should not appear as a number.

On the Parsha ... *In this desert your corpses shall fall, and all of your pekudim and all of your numbers from twenty years and older, those who caused complaint against Me ... [14:29] All those counted for any quorum that you were counted for ... shall die. Who are they – those twenty and over ... [Rashi] Why were these the only ones to die? Because they were counted, and counting leads to harm. When they were originally counted it was with a purpose, to determine who and what was to be inherited in Eretz Yisroel. Now that they were not entering, it turned out to be a purposeless counting. [Chasam Sofer, see Tzitz Eliezer VII:3. Shaar Yosef.] If they were banned from entering Israel, they would need to die in the Wilderness anyhow! Where was the plague? 'Pekudim' symbolizes Hashem's protection. [Ramban, Bamidbar] Hashem told them that had they not been counted, He could not have condemned them to death in the Midbar. The counting made them vulnerable to this decree. In addition, there was no increase in their numbers in the counting at the end of the forty years. No gain is also a loss.*

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Devorah Chana.

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This week's and last week's questions:

Are there halachic issues with completing a census? Specifically, may one count the number of children or of family members?

How should a Jewish organization conduct a vote, and how should it be counted?

The issues:

A) Counting Jews

B) Ayin hara, the 'evil eye'

C) Toeless, do benefits play a role

D) Dina demalchusa, following regulations and laws of the government

A) Counting Jews

In the last issue we discussed the prohibition against counting Jews. In summary, some poskim maintain that it applies only in specific situations. There are varying opinions on whether the *mitzvah* is considered Scriptural, Rabbinical, or neither. Some maintain that it does not apply when counting for a *mitzvah* purpose, and some include any purpose seen as a need. Some maintain that it only applies when counting orally and by number. Some maintain that as long as the 'heads' are not counted, the prohibition does not apply. Some maintain that the issue is really one of avoiding the punishment, or harm and danger. This might only apply when there is already some form of guilt hanging over the Jewish people. There could be other limitations to the application of this *mitzvah*.

Others maintain that this applies whenever any Jews are counted, including a single family, a *minyán*, a vote, or any other 'need'. It applies when writing lists with numbers. Other representations might help when counting for a *mitzvah*. A permissible method might be to write the list, then to have it copied and to count the names on the copy.

All agree that counting with no purpose is forbidden. Census counting has a purpose. It can be done somewhat indirectly, by first listing before counting. The way it is done, asking for a number first and then for the names, can pose a problem, though the Jewish family is simply complying with the law. Historically, Jewish communities had to submit records to the authorities. They tried to avoid counting their people by number.

B) Ayin Hara

The Torah says that if counting is not done appropriately, there could be a plague. Most commentaries say this is caused by *ayin hara*, literally, an evil eye. There are two types of evil eye: either one does not want others to do good, or one begrudges others their successes. The former does not apply here. The latter concerns us here. When blessings are kept hidden, there is less chance that others will have an *ayin hara*.

The commentaries discuss three ways that *ayin hara* causes its harm. The Talmud discusses a prayer that one should recite before counting, weighing or measuring his crops, but not afterwards. The reason for this is: 'blessing can only be found in something

hidden from the eye'. Blessing is defined as increase, or the expansion of something out of its boundaries. By counting the item, one quantifies it. It could no longer expand naturally without an open miracle. Hashem runs the world according to the laws of nature. If, however, one does not count it, it can increase undetected. Thus, though counting Jews could reduce their numbers, the absence of an expected increase over time is a loss.

The Talmud also warns against looking over at a field full of crops. Apart from the privacy issues, one should not inject *ayin hara*. One way to explain this is that when one is jealous of his fellow Heavenly Judgment is aroused. Jealousy implies both that the jealous person wishes he had the item, and that he feels that the other does not deserve it. In Heaven, whether he is deserving would otherwise not be discussed. Now that it has been raised, it must be debated, raising the possibility of an unfavorable Judgment. The *ayin hara* will have ruined the success. Another way is, when someone expresses surprise about another's success, the surprise is reflected in Heaven. A third meaning is that one looks at the other with venom, plotting, wishing him failure, and finding fault.

The third way to understand *ayin hara* is that eyes have unseen physical power to damage. Looking at something with wonder, anger or jealousy has this destructive effect.

The *halachic* implications of *ayin hara* apply to the laws of damages between neighbors, and to showing or concealing one's blessings. One might want to make sure that he, his children, or his possessions do not stand out too much. This way they will not attract jealousy. We do not call two brothers to the Torah consecutively. This arouses *ayin hara*. The poskim are careful to point out here that there is no real *halachic* objection. Rather, one must always avoid danger, based on Scriptural *mitzvos*. When talking about one's children, one tries not to give a number.

In some circumstances, disclosure of blessings is unavoidable. Similarly, one might wish to highlight a praiseworthy attribute in someone else. There is an old *minhag* to add a phrase, '*bli ayin hara*, (or *umberufen!*) with no intent for the evil eye', when saying something of this nature. The descendants of Joseph are protected from *ayin hara*. Some attribute this to their mother Rachel, whose righteous deeds are rewarded by this immunity. Some attribute it to Joseph himself, who is thus rewarded for resisting temptation when he was coveted due to his good looks. Indeed, there are some remedies reputed to ward off *ayin hara*. These are generally in the realm of an amulet type item. They have *kabalistic* undertones, and some try to connect to the protective powers of the Matriarch Rachel. The Talmud suggests that one verbally invoke the powers of Joseph, at the same time as holding ones thumbs in the fists of the opposite hands. [This is suggested for one fearful of *ayin hara*, rather than one who says or does things to attract it!] The Talmud [Yerushalmi] mentions the term '*abasakta*' or '*abasaktana*'. This is derived from a Greek term meaning 'not under a spell'. It is used by the admirer, to show that he is not jealous. On the contrary, he means to invoke more blessing. The admired, by using it personally on his own blessings, wishes to ask the listener not to have the *ayin hara*. Clearly, saying something helps to protect. These are the probable sources for the *minhag*. Naturally, if one uses a boastful tone of voice, this will not have the desired effect.

There is some discussion about those who are less particular about *ayin hara*. This is based on a concept that certain spiritual harmful forces have no power over those who ignore them. Perhaps this is also a source for saying *bli ayin hara*. [See Mikaitz 42:1 5

Vayechi 48:16 49:22 Ki Sisa 30:12 34:3 Balak 24:2-6 Devarim 1:10-11 Shmuel I:18:9, commentaries. Brochos 20a 31b 55b Yerushalmi 10:1 Psachim 110b Baba Metzia 48a 84b 107b Baba Basra 2b etc. 60a 118a-b, Avos 2:16, commentaries, Poskim. Tur Sh Ar OC 141:6 230:2 CM 154:4 7, commentaries. Sefer Haitim 174, Itim Lebina 35.]

C) *Toeless*

We have already touched on the issue of permissibility in the case of need. This really needs some explanation. If it is forbidden and harmful to count Jews, how could there be a dispensation when there is a need? The poskim debate the answer. In one view, the prohibition only applies when counting for no purpose. For example, King David counted the people just to know how many people were under his rule. If there is any constructive purpose in the counting, the prohibition does not come into question. The other view is that the prohibition always applies. However, if there is an urgent need, one can do something to avoid the consequences. In this view, the need should be for a *mitzvah*. Thus, the *mitzvah* to count negates the prohibition. Even if there is no direct *mitzvah* to count, but one needs to count in order to fulfill a *mitzvah*, it could not have been forbidden. Nonetheless, the harmful effects can still happen. Therefore, it is necessary to take measures to protect those counted. This would be to use one of the permissible methods mentioned, such as counting thumbs, using a *pasuk* or using lists.

The difference between these two views applies when a constructive purpose in the counting it does not involve a *mitzvah*. The first view permits it. The second view forbids it. Census numbers are used to determine regional issues based on population. These might be for security, monetary or political. The names are used for historical records. All of this qualifies as need, but is not a *mitzvah*. [See references to section A, last issue.]

D) *Dina demalchusa*

The legal system of the secular authorities of the land are binding on Jews. This can mean that one might have rights in Jewish courts, but loses these rights due to the secular courts' legal system. There is a misconception that this means that the law of the land overrides Torah law. This not the case. It does not undermine any *mitzvah*. It is a *halachic* legal obligation, and applies to monetary matters, and those that pertain to the king and the government. If the law required one to do *melacha* on *Shabbos*, *dina demalchusa* would not permit it. The misconception arises from popular usage and from some apparent references in *sefarim*. These were inserted as a form of self-censorship during periods of government and cultural hostility to *halacha*.

Some explain it as a matter of complying with the conditions set down by the owner of the land, in order to be allowed to live there. Thus, both parties in a dispute waive their rights and accept *dina demalchusa*. This can affect ownership and theft. Others maintain that following all such laws could lead to losing all concept of Jewish law. Rather, it applies to laws that affect government policy. Some limit it to land law. The land belongs to the king, in a sense. He can legislate how it is administered and judged. Yet others give various sources based on Torah concepts, such as the powers of a king, the *Noachide mitzvah* to set up a legal system, or the power of a court to seize property. Most consider *dina demalchusa* a Scriptural concept, but a minority consider it Rabbinical.

Based on the idea that government has the authority to legislate on matters that affect governing, the census is under the legal category of *dina demalchusa*.