

Too Early To Count?

There is a well-known *Machlokes Rishonim* as to whether the Mitzva of *Sefiras haOmer* is *d'Oraisa* or *d'Rabbanan* today, hinging on whether *Sefira* is dependent on the harvesting of the *Korban haOmer* that can no longer be performed. The *Rambam* holds that *Sefiras haOmer* is *mid'Oraisa*.¹ However, there is some debate about the opinion of the *Sefer haChinuch*. According to the *Minchas Chinuch* (Mitzva 306), the *Chinuch* holds that it is a Mitzva *d'Rabbanan*. According to the *Biur Halacha* (Siman 489), the *Chinuch* concurs with the *Rambam* (as he usually does). The majority of the other *Rishonim* hold that the Mitzva is *d'Rabbanan*.

The *Biur Halacha* (*ibid.*) summarizes:

Indeed, the opinion of the Tur, Shulchan Aruch, and several Poskim is that [counting the Omer today] is only a Zecher l'Mikdash, [commemorating the time] when the Omer was brought. This is also the general view of the Poskim in this Siman. But truthfully, the Rambam is not alone in this view. Rabbenu Yeshaya also concurs (see Shibolei haLeket at the beginning of Siman 234), as does Rabbenu Binyamin (see there at the end of the Siman), and the Ra'avya as cited in the Or Zarua (329). It [also] seems [that] the Or Zarua agrees with him.

The *Biur Halacha* also cites the views of R' Yehudai Gaon, R' Amram Gaon, and the *Ritz Ge'us*, who also seem to agree with the *Rambam*, and concludes:

Considering the above, there is significant support for our custom to wait until after nightfall to count, since it is a Torah obligation according to several authorities. I later found something similar in the Elya Raba, although he does not cite all the great authorities mentioned.

In other words, since *Sefiras haOmer* should only be fulfilled at night, and it is a Mitzva *d'Oraisa* according to many Poskim, we should be stringent and not count *Sefira* during *Bein haShemashos* when it is questionable whether night has begun. (Only according to those who hold that it is a *d'Rabbanan* can one be lenient during *Bein haShemashos* based on the rule of *Safek d'Rabbanan l'Kula*.)

All of this applies in ordinary circumstances. However, there are situations where this practice poses a problem. For example, people regularly daven Ma'ariv before nightfall in nursing homes due to various logistical issues related to the routine of the elderly residents.

¹ [Editor's note: See *Hilchos T'midin uMusafin* 7:22 and *Kesef Mishna* there.]

Although efforts are sometimes made to adjust the times so that they can Daven later, this is not always feasible. Often, they finish Ma'ariv before nightfall. In these cases, it is not always practical to instruct them to wait until nightfall or to delay Ma'ariv with a Shiur or other activity. In a regular Minyan, it may be possible to skip *Sefiras haOmer* and advise people to count later at home; however, in a nursing home, there is a significant risk that many individuals may forget to count altogether.

The question is especially pertinent to the Chazan, as (many in) the *Tzibur* may be fulfilling their obligation through his counting utilizing the mechanism of "*Shome'a k'Oneh*". The *Biur Halacha* rules that a person should ideally count *Sefira* himself, though *Bedieved* he can fulfill his obligation through *Shome'a k'Oneh*. (This is a *Machlokes Acharonim*; The *Levush* and *Chok Yaakov* disagree with the *Pri Chadash* as to whether *Shome'a k'Oneh* is effective for *Sefiras haOmer*. In nursing homes, many fulfill the Mitzva by listening to the Chazan. Therefore, even if the Chazan will remember to count again later at night, he must count during Ma'ariv to be *Motzi* those who are relying on him.

The *Shulchan Aruch* rules (489:3):

One who davens with the congregation while it is still day counts with them without a Bracha, and if he remembers at night, he counts [again] with a Bracha.

There are two main interpretations of this Halacha:

- Some (the *Levush* and others) contend that it refers to davening Ma'ariv even from as early as *Plag haMincha*. Since the *Tzibur* has already davened Ma'ariv, we may consider it as if night has fallen, since, after all, the Mitzva today is only a *Zecher*.
- Others (including the *Taz* and *Gra*) say it refers only to *Bein haShemashos*. Since *Sefiras haOmer* is only a *Mitzva d'Rabbanan*, one may be lenient during *Bein haShemashos*.

Therefore, if it is already after *Shekia* and a person is concerned he will forget to count later that evening, the *Mishna Berura* (16) offers a solution: Count during *Bein haShemashos* without a Bracha, and make a condition: "If I remember to count later, I do not intend to fulfill my obligation now." Then, later that night, if he remembers to count again, he should do so with a Bracha. However, a *Chazan* who cannot delay the *Tzibur* until nightfall should count during *Bein haShemashos* with a Bracha and repeat the count later at night without a Bracha.

If it is still before *Shekia*, may one rely on the lenient opinions that interpret the *Shulchan Aruch* as referring to *Plag haMincha*? R' Shmuel Vosner zt"l discusses this question (*Shevet haLevi* 9:123):

In Siman 489:3, the Poskim disagree as to whether the Shulchan Aruch's words "while it is still day" refer to Bein haShemashos or to Plag haMincha, as the Biur Halacha

discusses. The truth is that the Rashba (Shu"t 1:235) is clearly displeased with the practice [of counting after Plag haMincha], however, he also explains that those who are lenient rely on the fact that after Plag haMincha it can be considered night for certain purposes (such as Ma'ariv). See Orach Chaim 692:4 regarding reading the Megila where the Terumas haDeshen – the "Avi haPoskim" – permitted early reading since Plag haMincha is considered nightfall, and Siman 672 regarding Neros Chanuka, even though that case is quite similar to Sefiras haOmer as he lights two candles [representing] the second night when it is still day one. All of this demonstrates that there was such a custom in cases of pressing need. Fundamentally, in all these cases it is considered the next day after Plag haMincha as explained in the Rashba, Brachos 51b (see further below, Siman 144). Indeed, one may recite Havdala on wine on Shabbos before nightfall even though it is still Shabbos. Therefore, one who permits it for frail, elderly people – even with a Bracha – should not be questioned, as there is no greater case of necessity. Although this is not the ideal approach of Talmidei Chachamim, one should not protest it. It is good to count again later without a Bracha, and, if they forget, Hashem will not withhold their reward, especially since the counting today is only a Zecher l'Mikdash.

In contrast, R' Elyashiv zt"l (Kovetz Teshuvos 3:84) seems to disallow counting before *Sh'kia*. However, it is unclear whether he also meant to rule strictly in pressing cases (such as in nursing homes) or only in the specific case he was addressing. Further clarification of his opinion is necessary.