באו עשרה לקדיש

טו. אם קראו תהלים כשהיו פחות מעשרה, ואחר שסיימו אמירתם באו לשם אנשים נוספים והשלימו לעשרה, הנכון שיאמרו תחילה עוד כמה פסוקים, ואחר כך יאמרו קדיש "יהא שלמא". **וכן** הדין אם היו לומדים תורה שבעל פה בהיותם פחות מעשרה, ואחר שסיימו הלימוד היו שם עשרה, יאמרו תחילה המשנה "רבי חנניא בן עקשיא אומר רצה הקב"ה לזכות את ישראל..." (אבות ו, יא), **ואחר כך יאמרו קדיש דרבנן.** [ראה משנ"ב סי' נה סק"ב, עוד יוסף חי ויקהל ה"ו, כה"ח סי' נה ס"ק ה וס"ק מא, וסי' רלד סק"ב]

Day 55

When the Tenth Man Arrives

Forming a minyan after Torah study

15) If a group of men, nine or less, were reciting *Tehillim* together, and when they finished they called in others so that they could recite kaddish, they should recite a few more verses after the minyan is completed and then begin the kaddish of *Yehe shelama*.

If such a group was studying a subject of the Oral Torah and then they called in others so that they could recite kaddish, they should first recite the Mishnah of Ribbi Hananya ben Akashya: "...רבי חֲנַנְיָה בֶּן עֲקַשְׁיָה אוֹמֵר רָצָה הקב"ה לְזַכּוֹת אֶת יִשְׂרָאֵל" (*Makkot* 3:11), and then recite the kaddish of *Al Yisrael*.[319]

319. A halakhic debate

The *Ture Zahav* (55:3) ruled that if less than ten men were studying Torah together and a tenth man arrived after they finished, they may now recite kaddish for the Torah that they learned. This ruling is in contrast to the stringent opinion of the *Levush*, which is based on the Rama's instructions to wait before reciting *Ashre* for *minha* until there are ten men present. The *Ture Zahav* countered that the Rama did not mean to suggest that the kaddish cannot be recited unless there were ten men present when they recited *Ashre*. The Rama's point was that there should be no interruption of time between reciting *Ashre* and the kaddish following it.

The *Magen Avraham* (69:4; 234:1) disagreed, ruling that there must be ten men present during the Torah study in order to validate the kaddish. He explained that the purpose of the kaddish is to affirm the sanctification of Hashem's Name through the Torah study, based on the verse: "I will be sanctified *among* the people of Yisrael." Therefore, it is necessary for ten men to be present while the study is taking place.

In practice

The *Mishna Berura* (54:9) and Harav Yosef Hayim (*Od Yosef Hai parashat Vayak'hel* halakha 6) cited this debate and added that the *Aharonim* have concluded that the proper course to take is to recite another *mizmor* of *Tehillim* or at least a few verses after the tenth man arrives before reciting the kaddish. The *Arukh Hashulhan* (55:5) demonstrated support from Rambam for the position of the *Magen Avraham*. The *Halakha Berura* (page 136) concurred with this conclusion.

Do all ten have to join the learning?

The *Mishna Berura* (54:9) states that once the tenth man arrives, it is sufficient for two or three of the ten men now present to recite verses before reciting the kaddish. Earlier (54:7), it states that it is sufficient for one person to recite the verses. This is likewise the decision of the responsa *Minhat Yitzhak* (Vol. VIII, #51), adding that the wording, "they should recite" used by the *Mishna Berura* (55:2) is careless – it is enough for one person to recite the verses. In fact, this is clearly the intent of the *Mishna Berura* (581:4) where it cites the *Eliya Rabba* saying that "they" must recite three verses, while the *Eliya Rabba* actually states clearly that only the cantor recites three verses after the tenth man arrives.

ואפילו מי שלא אמר הפסוקים או שלא למד, רשאי לומר הקדיש. [משנ"ב סי' נד סוף ס"ק ט]

טז. וכן אם בתפלת שחרית לא היה מנין בבית הכנסת כשהגיעו ל"הודו", והמשיכו עד "ברוך שאמר", (וכמו שכתבנו לעיל בסימן נ' בדיני הודו הלכה א), ואז נכנסו מתפללים נוספים ונשלם המנין, יאמרו תחילה המשנה דרבי חנניא בן עקשיא, ואז יאמרו הקדיש, שצריך שיהיו עשרה בשעת הלימוד. [ראה כה"ח סי' נה ס"ק ה]

יז. אם בתחילת תפלת המנחה לא היו עשרה בבית הכנסת, כשהתחילו לומר פרשת התמיד והקטורת, שעדיין לא באו העשרה כולם. צריך להמתין עד שיהיו עשרה, ואז יאמרו "אשרי", כדי שיאמרו קדיש על מזמור זה. לפיכך צריכין להזהר שלא יתחילו לומר "אשרי" במנחה אלא עד שיהיו שם עשרה. [עוד יוסף חי ויקהל ה"ו. עפ"ד הרמ"א סי' רלד]

ואם אמרו "אשרי" בלא מנין, ואחר כך באו ונשלם המנין, יאמרו מזמור אחר כדי לומר עליו קדיש. [עוד יוסף חי ויקהל ה"ו, משנ"ב סי' רלד סק"ה, כה"ח סי' נה ס"ק מא]. והמנהג לומר אחר שהיו שם עשרה, הפסוקים (תהלים קמא, ב; ה, ג): "תכון תפלתי קטורת לפניך משאת כפי מנחת ערב. הקשיבה לקול שועי מלכי ואלהי כי אליך אתפלל". [כה"ח סי' רלד סוף סק"ב]

The person reciting the kaddish does not have to be the one who recites the verses or Torah passage himself. Anyone who is present can recite them.

Kaddish before *Barukh she'amar*

16) If a minyan was not present when the congregation reached *Hodu* in *shaḥarit*, but by the time they reached *Barukh she'amar* a minyan was present, they should recite the Mishnah of Ribbi Ḥananya ben Akashya and then recite the kaddish of *Al Yisrael*. Following the principle explained in the previous halakha, it is necessary to recite a passage of Aggadah once ten people are present in order to recite the kaddish. See above in *Siman* 50:1.

Waiting for a minyan for *minḥa*

17) If a minyan was not present when the congregation began *minḥa*, they should pause before reciting the *mizmor* of *Ashre* and wait until a minyan is present. In this way, the kaddish will be connected to the *mizmor*.[320]

If the congregation went ahead and recited *Ashre* before the tenth man arrived, they should recite another *mizmor* before reciting kaddish. The custom is to recite the two verses of: תִּכּוֹן תְּפִלָּתִי קְטֹרֶת לְפָנֶיךָ מַשְׂאַת כַּפַּי מִנְחַת עָרֶב. הַקְשִׁיבָה לְקוֹל שַׁוְעִי מַלְכִּי וֵאלֹהַי כִּי אֵלֶיךָ אֶתְפַּלָּל before the kaddish.[321]

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320. This is the ruling of the *Od Yosef Ḥai* (*parashat Vayak'hel* halakha 6). Apparently, his source is the Rama's gloss (*O.Ḥ.* 234:1) stating that the congregation should not recite *Ashre* for *minḥa* until a minyan has arrived so that the kaddish will be connected to *Ashre*. This is the correct formula even according to the *Ture Zahav*. Although it might not be necessary for there to be ten people while the *mizmor* is recited, all *Poskim* agreed that the congregation should not allow time to lapse between *Ashre* and the half-kaddish. This was explained in the footnote to halakha 15.

321. As explained above, we always try to satisfy the opinion of the *Magen Avraham* to recite a *mizmor* after the tenth person arrives. The *Kaf Haḥayim* Sofer (234:2) testified that the common custom when a congregation needs to wait for a tenth man for *minḥa* is to

יח. אמרו פסוקי דזמרה בפחות מעשרה, ואחר שסיימו אמירתם נשלמו שם עשרה, רשאים לומר הקדיש שקודם "ברכו". והוא הדין שאם לא היו שם עשרה בתפלת ערבית כשאמרו קריאת שמע וברכותיה, ושוב אחר שסיימו הברכות קריאת שמע, נשלמו לשם עשרה, רשאים לומר הקדיש שקודם העמידה. [ראה משנ"ב סוף ס"ק ג בשם הפמ"ג]

הראוים להצטרף למנין

יט. כאמור (בהלכה א) שדוקא זכרים בני חורין גדולים שהביאו שתי שערות ראוים להצטרף למנין. [ש"ע ס"א]. אבל נשים ועבדים וקטנים אין מצטרפים למנין. [ראה ש"ע ס"ד]. והוא הדין שטומטום ואנדרוגינוס, וחצי עבד וחצי בן חורין, אינן מצטרפים. [משנ"ב ס"ק ג, כה"ח ס"ק טו]

Kaddish before *Shema* or *Amida*

18) If a congregation recited *Pesuke dezimra* of *shaḥarit*, and the tenth man arrived only after they finished that section of the prayers, the cantor may immediately recite the half-kaddish that precedes the blessings of the *Shema*. Likewise, if a congregation began the *arvit* prayer before there was a minyan, and the tenth man arrived only when they were up to the *Amida*, the cantor may recite the half-kaddish.

Day 56

Who Counts in a Minyan

Adult free Jews

19) As mentioned above in halakha 1, a minyan consists of ten adult Jewish men. Women, male slaves belonging to Jews, and children cannot count as members of a minyan.[322] A neuter who has no external genital organs, an androgyn who has both male and female external genital organs,[323] or someone who is half the slave of a Jew and half a free man,[324] cannot count as members of a minyan, either.

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recite the two verses of *Tikon tefillati*...upon the tenth man's arrival and then proceed with kaddish. This seems to run counter to the *Mishna Berura* (55:2, and repeated in 53:11, 54:9, and 581:4), who ruled that the kaddish should be proceeded by a *mizmor* or by at least three verses. The *Od Yosef Ḥai* (*parashat Vayak'hel* halakha 6) also cited the ruling of the *Magen Avraham* to recite a *mizmor* before kaddish. *Tikon tefillati* consists of only two verses, however.

Nevertheless, there is justification for the common custom. After all, the *Ture Zahav* (55:3) ruled that the kaddish is valid even if no verses at all are recited to precede it. This matter needs more research.

322. The *Mordekhi* (*Berakhot* #173) cited Rabbenu Simḥa ruling that a woman or a slave who belongs to a Jew can count as the tenth member of a minyan for the prayers or for a *zimun* of ten people. The *Bet Yosef* asserted that this ruling corresponds to that of Rabbenu Tam, who stated that the halakha follows the opinion of Ribbi Yehoshua ben Levi that a slave belonging to Jews can count as the tenth man of a minyan. See below in the following halakha and the footnote there. Apparently, Rabbenu Simḥa added that a woman can also count since women and slaves have equal status regarding the fulfillment of mitzvot. Nevertheless, Rabbenu Tam never permitted this leniency to be put into practice, and so we certainly cannot do so. Therefore, we never count a woman as the tenth member of a minyan. This is likewise the ruling of the *Shulḥan Arukh* (55:4).

323. These individuals cannot count as members of a minyan. We cannot argue that they should be counted on the basis of a compound doubt – perhaps the person is in fact a male, and even if the person is a female, the halakha might follow the opinion of Rabbenu Tam that a woman can count as the tenth member. It is definite that such intersex persons do not have the status of a male.

324. The *Yeshu'ot Yaakov* argued that a half-slave does count as a member of a minyan since the halakha