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פטור ומותר

When one participates passively in the מלאכה of הוצאה, why is there no איסור of ולפני עור לא תתן מכשול?

The רישא of the משנה teaches that when the עני or the בעל הבית perform the entire act of הוצאה, the other party is פטור. The גמרא writes בבא דרישא פטור ומותר – when the רישא says פטור, it does not merely mean that one is exempt from a קרבן חטאת, but rather, that the act is completely permissible. This teaches that one may participate passively in the מלאכה of הוצאה, i.e. one may allow someone else to transfer an object from, or into, his hand.

תוספות (in ד"ה בבא) asks: The איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל prohibits one from assisting any person who is committing an עבירה. If so, even passive participation in the מלאכה of הוצאה should be prohibited, due to the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל?

When the עבריין could have done the עבירה by himself

Initially, תוספות notes that there is no איסור מן התורה to help an עבריין who could do the עבירה without assistance. In our case too, there would be no איסור מן התורה to passively participate in the מלאכה of הוצאה when the עבריין is quite capable of doing the entire הוצאה without assistance[1].

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[1] The דברות משה notes that this is all good and well when the עני performs הכנסה and transfers an item into the hand of the בעל הבית, in which case the item presumably belongs to the עני. However, when the עני performs הוצאה and transfers an item from the hand of the בעל הבית, the item presumably belongs to the בעל הבית. In that case, the עני is not capable of doing the הוצאה without the help of the בעל הבית, as he requires the בעל הבית's permission. If so, how could תוספות say that the עבריין is capable of doing the entire הוצאה without assistance?

The דברות משה answers that תוספות refers to case where the עני performs הוצאה with a הפקר item in the hand of the בעל הבית, which is why the עני does not require permission from the בעל הבית to take it. [This is obviously a highly unusual case, and thus, somewhat of a forced explanation for תוספות.]

Perhaps, we might also answer that the איסור מן התורה of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל applies only when the עבריין could not have **physically** done the עבירה without assistance. However, when he is physically able to do it himself, granting permission does not constitute assistance, as the עבריין is capable of performing the עבירה even without permission (i.e. by stealing it).

The דברות משה contends that this is true only if the בעל הבית knows that the עני is the type of person to take the item even without permission. However, if the בעל הבית thinks that the עני will not take the item without permission, then by granting permission, he is helping the עני do something that he would not otherwise do, and the איסור מן התורה of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל would still apply.

[Perhaps this might be subject to a well-known מחלוקת (see הגריפ"פ ל"ת נ"ג) regarding the exact character of the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל – whether the איסור is deed-oriented (פעולה) or result-oriented (תוצאה). If it is deed-oriented, there is room to say that one transgresses the איסור merely when he **believes** that he an indispensable help to sinner, even if that is not

Nevertheless, תוספות explains that this answer is inadequate, for it is אסור מדרבנן to help a sinner who is able to do the עבירה himself. Rather, חייב להפרישו – one is obligated to prevent the sinner from doing the עבירה. In If so, there **is** an איסור to passively participate in the מלאכה of הוצאה – even when the sinner could have done the entire act of הוצאה without help!

Before proceeding further, it is important to note that תוספות learns that חייב להפרישו מאיסור is not an obligation מן התורה, but it is an obligation מדרבנן. Both sides of this statement need to be examined.

Why חייב להפרישו מאיסור is not a תורה obligation

One of the מצות in תורה is הוֹכֵחַ תּוֹכִיחַ אֶת עֲמִיתֶךָ – to rebuke a sinner. If one must rebuke a sinner for doing an איסור, then providing assistance should certainly be forbidden, even when the עבריין can perform the entire איסור himself! Why does תוספות say that there is only אסור מדרבנן[2]?

Furthermore[3], there is a very well-known principle that כל ישראל ערבים זה לזה; one must guarantee that every other ישראל will keep the תורה properly, and if necessary, prevent them from performing an איסור[4]. In fact, many אחרונים and ראשונים hold that if one does not try to prevent another from performing an איסור, it is as if he himself performed the איסור[5].

If so, providing assistance should certainly be forbidden מדאורייתא, even when the עבריין can perform the entire איסור himself! This is in fact the opinion of several ראשונים[6]! Why does תוספות say that this is only אסור מדרבנן?

(a) The משנה ברורה answers[7] that the חיוב מדאורייתא of preventing someone from sinning only applies when it is within his power to do so[8]. In our case however, the one performing the הוצאה or הכנסה is unstoppable, and there is therefore no איסור דאורייתא to participate passively.

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really the case. However, if the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל is result-oriented, then one transgresses only if he was an indispensable help to the sinner in **actual fact**.

To apply this in our case, where the בעל הבית assumes that the עני will not take the item without permission: If the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל is deed-oriented, there is room to say that the בעל הבית transgresses merely when he **believes** the עני would not take the item without permission, even if his premise is false, and the עני is prepared to take the item without permission as well. However, if the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל is result-oriented, then the בעל הבית transgresses only if the עני would indeed not take the item without permission.

In truth, this point is somewhat irrelevant, because it only concerns whether the בעל הבית **actually** violated the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל. However, in our גמרא, we are discussing whether the בעל הבית may allow the עני to take the item from his hand **in the first instance**. Since the בעל הבית **believes** that the עני will not do the מלאכה without permission, he must **assume** that granting permission will constitute an איסור דאורייתא, even if this is not really the case.]

[2] The מהר"ץ חיות and others ask this question.

[3] Some ראשונים (such as רבנו יונה) maintain that the principle of כל ישראל ערבים זה לזה is a derivative of the מצוה of הוֹכֵחַ תּוֹכִיחַ אֶת עֲמִיתֶךָ, and not an independent principle. According to them, these two questions are essentially one and the same.

[4] See שאגת אריה סי' נ"ח.

[5] See מאירי שבת נ"ד עמוד ב'; see also שו"ת גנת ורדים או"ח כלל ג' סי' ט"ו.

[6] For example, see ריטב"א and תר"י to מסכת ע"ז דף ו' עמוד ב'. See also שאג"א סי' נח and שערי ציון סי' שמ"ז ס"ק ח'.

[7] See שערי ציון סי' שמ"ז ס"ק ח'.

[8] This matter is actually a מחלוקת הראשונים – the הגהות מיימוניות (in הל' דעות פ"ו ה"ז) agrees with this, whereas the יראים (in סי' רכ"ג) holds that although the דין of ערבות does not apply to a sinner who is unstoppable, nevertheless, the מצוה of הוֹכֵחַ תּוֹכִיחַ still applies. The Alter Rebbe (in סי' תר"ח) paskens like the יראים.

It should be noted that the language of תוספות does not seem to support this approach, for they state that it is forbidden to participate passively in the מלאכה of הוצאה since חייב להפרישו מאיסור – he is obligated to prevent the sinner from doing the עבירה. The wording indicates that they refer to a case where one could have indeed prevented the sinner from doing the עבירה.

(b) It is implicit in the גמרא further down the עמוד, as well as explicit in רש"י, that the משנה discusses a person who performs the מלאכה inadvertently (בשוגג). There is a מחלוקת whether the חיוב of ערבות and the מצוה of הוֹכֵחַ תּוֹכִיחַ אֶת עֲמִיתֶךָ apply when the sinner is a שוגג. Some אחרונים suggest that it is quite possible that תוספות holds that these do not apply to a שוגג.

The nature of the obligation of להפרישו מאיסור

תוספות learns that חייב להפרישו מאיסור is מדרבנן. What exactly is the nature of this דין?

The ב"ח[9] answers that this דין is an extension of the איסור of וְלִפְנֵי עִוֵּר לֹא תִתֵּן מִכְשֹׁל. Although the תורה only forbids one from providing indispensable assistance to the sinner, the חכמים extended this איסור not only to a case where his assistance is unnecessary, but even to a case where he is not helping at all, and they require of him to do all within his power to prevent the עבירה from occurring.

The approach of תוספות

At this point, let us return to the question of תוספות: Since it is forbidden to assist a person who commits an עבירה, why is it permissible to passively participate in the מלאכה of הוצאה?

תוספות answers that when our משנה permits passive participation, the משנה refers to a case where the one who actively performs the הוצאה is a נכרי. There is no איסור for the ישראל to passively participate in the הוצאה of the נכרי, as long as the object belongs to the נכרי. [If the object belongs to the ישראל, the בעל הבית may not allow the נכרי to take it from his hand, for there is the concern of נראה כשלוחו – that the נכרי looks like the ישראל's agent to violate שבת.]

Accordingly, "העני חייב ובעל הבית פטור" means[10]: If the עני is a ישראל – he is חייב; if the עני is a נכרי – it is מותר לכתחילה for the ב"בעה to help him. Similarly, "בעל הבית חייב והעני פטור" means: If the ב"בעה is a ישראל – he is חייב; if the ב"בעה is a נכרי – it is מותר לכתחילה for the עני to help him.

The approach of the ראשונים

The תוספות הרא"ש and the תוספות ישנים propose an answer that seems much more straightforward. They explain that when the גמרא says בבא דרישא פטור ומותר, it means that passive participation in the מלאכה of הוצאה is מותר from the perspective of הלכות שבת. Practically speaking however, it is still forbidden due to the איסור of ולפני עור. Nevertheless, the משנה does not mention it, because it is preoccupied only with הלכות שבת.

רבי עקיבא איגר goes further and explains a practical נפקא מינה between one who transgresses an איסור of הלכות שבת as opposed to the איסור of ולפני עור. It is well known that desecrating שבת publicly is דרבנן

[This מחלוקת may be depend on the exact character of the מצוה of הוֹכֵחַ תּוֹכִיחַ אֶת עֲמִיתֶךָ – whether the main purpose is to prevent one from sinning, or to uphold the honour of ה'. If it is the former, then there is no point in rebuking someone who absolutely will not listen. However, if it is the latter, then one must rebuke even one who will not listen.]

[9] See יו"ד סימן ש"ג.

[10] This is how the מהר"ם explains תוספות. See another explanation in the ר"ן.

akin to transgressing the entire תורה, and renders one who does so a מומר לכל התורה כולה. [Conversely, one who desecrates שבת only in private, or who violates other single עבירות even publicly, is not regarded as a מומר לכל התורה כולה.] Many אחרונים maintain that one is considered a מומר לכל התורה כולה even if he publicly transgresses an איסור דרבנן of שבת. Accordingly, if passive participation in the מלאכה of הוצאה is prohibited due to הלכות שבת, then one who performs this prohibited act would be rendered a מומר לכל התורה כולה. However, if this act is permissible from the perspective of הלכות שבת, and only forbidden on account of the איסור of עור ולפני, then one who performs this prohibited act would not be rendered a מומר לכל התורה כולה.

Why תוספות disagrees with this approach

Why doesn't תוספות agree with this seemingly more straightforward solution? The פני יהושע explains that the continuation of the גמרא does not support the answer of the other ראשונים. For, the גמרא asks that since פטור in the רישא means מותר, why did שמואל say that there are **only** three cases in שבת where פטור means מותר – when our משנה is a fourth case!

Now, according to the other ראשונים, the גמרא could have easily answered that בבא דרישא פטור ומותר means that passive participation in the מלאכה of הוצאה is מותר from the perspective of הלכות שבת. However, at the end of the day, it is still forbidden to participate passively in the מלאכה of הוצאה due to the איסור of עור ולפני, which is why שמואל could not list our משנה as a case where פטור means מותר. Since the גמרא does not adopt such an approach, בבא דרישא פטור ומותר must mean that passive participation in the מלאכה of הוצאה is **completely** מותר – even from the perspective of עור ולפני – which is why שמואל should have listed our משנה as a case where פטור means מותר.

[The other ראשונים can be defended by invoking the above-mentioned distinction of רבי עקיבא איגר – that one's status as a מומר לכל התורה כולה depends on whether his passive participation in the מלאכה of הוצאה is prohibited due to הלכות שבת, or due to the איסור of עור ולפני. Accordingly, it is not enough for the גמרא to establish that passive participation is forbidden. Rather, the גמרא must also clarify why it is forbidden. In other words, it is vital to explain that passive participation is forbidden only on account of עור ולפני, and not on account of הלכות שבת. Since שמואל is focused exclusively on הלכות שבת and not on the דינים of עור ולפני, he should have listed our משנה as one of the cases in שבת where פטור means מותר, to indicate that passive participation is permitted from the perspective of הלכות שבת, even if it practically remains forbidden on account of עור ולפני.]

Another way of explaining the מחלוקת between תוספות and the other ראשונים is based on the well-known חקירה regarding the איסור of עור ולפני:

- It is an איסור כללי – The איסור of עור ולפני is a general and independent איסור that applies to all עבירות **equally,** irrespective of the severity of the specific עבירה being transgressed.
- It is an איסור כללי – The איסור of עור ולפני applies to each עבירה according to its severity, whereby the assisting person is viewed as a partner in the implementation of that specific עבירה.

Perhaps תוספות holds that the איסור of עור ולפני is an איסור פרטי. Accordingly, it would be inaccurate to suggest that assisting in the מלאכה of הוצאה is מותר from the perspective of הלכות שבת, for by transgressing the איסור of עור ולפני, one is also guilty of partnering in the איסור of שבת. Conversely, the other ראשונים possibly hold that the איסור of עור ולפני is an איסור כללי. Accordingly, passive participation in the מלאכה of הוצאה is מותר from the perspective of הלכות שבת, and the transgression of עור ולפני is independent of הלכות שבת.