

in the Laws of Knowledge. And he ought not deviate from the common practice, for this thing [intercourse] is really only for procreation. [Maimonides, *Mishneh Torah*, Issurei Bi'ah 21 : 9]

Maimonides rules that the frequency and manner of sexual relations is left up to a man's taste and desires (barring the spilling of seed). One is free to do as he pleases, kiss whatever part of the body he wishes to kiss, and perform intercourse in "a natural or unnatural manner." That is the law. However, Maimonides expresses his discomfort with the latitude allowed by the Halakhah in his counsel to those who wish to follow the pious way: let them not deviate from the common practices which are those related to the procreative side of sex: emphasizing intercourse, minimizing sexual play for pleasure, and, presumably, conducting intercourse in the traditional "missionary" position.

The Halakhah is concerned with the concrete aspects of sexuality: establishing a marital relationship, the frequency of sexual relations, the times of abstention (*niddah*), and of course, more than anything else, with procreation. The Halakhah confines the sexual drive of a man by harnessing it to the sexual rhythms and needs of his wife. Sexual abstention is mandated by the cycle of menstruation. Sexual activity is directed to fulfilling the *mitzvah* of *onah*: meeting and responding to the sexual needs of the woman. The "quiet," introverted sexuality of the woman circumscribes the active, extroverted sexuality of the man. It becomes the center and the regulating mechanism of the intimate marital relationship.

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NIDDAH

Laws of the Menstruant

LIKE many other cultures, both in the ancient Near East and in the world at large, Judaism contains a taboo on contact with a menstruating woman. Undoubtedly the taboo is so common since many cultures share the same basic psychological components: fear of bleeding, discomfort with genital discharge, and bewilderment especially on the part of men, at the mysterious cycle of bleeding and its connection to conception and birth. Despite the lack of understanding of the precise physiology of menstruation and conception, many societies came to associate menstruation with death because the lack of menstruation meant conception and life.¹

In Jewish law the menstruant woman has a defined status: she is a *niddah*, one who is "ostracized" or "excluded." The actual laws which define this status are very complex and they rest on the foundation of the two different contexts in which the menstruant woman figures in biblical law: the laws of purity and impurity, and the sexual prohibitions. The laws of purity and impurity include many instances of contamination besides the case of the *niddah*, such as contact with a corpse, leprosy, seminal discharge, contact with certain insects, and more. All these laws have the same intent: to exclude an impure person (or object) from the divine residence in the Temple. The destructions of the two Temples, first in 586 B.C.E. and again in 70 C.E., removed the concrete locus and justification of the laws of impurity. This historical change made way for the ascendancy of the second context and meaning of the laws of *niddah* in the Bible: the sexual prohibitions.

After the destruction of the First Temple, an evolution in the laws of *niddah* had already begun to take place. The justification for these laws was shifted from the realm of purity laws to the arena of sexual taboos. This transformation became even more pronounced in the mishnaic and talmudic literature which developed after the destruction of the Second Temple. The transformation also meant a shift from the sphere of public, cultic life to the sphere of family life.

Following this transformation the impurity of a *niddah* retained its legal significance for her intimate relationship with her husband, but lost its importance in the arena of the woman's contact with other members of her family and with strangers. However, while the Halakhah requires segregation of the *niddah* only in her own home and mostly "in the bedroom," many communities preserved a significant measure of segregation in public life as well. Customs of segregation and exclusion prevailed particularly in the realm of the synagogue worship, perhaps because the synagogue was perceived as a symbolic substitute for the Temple.

The laws of *niddah* include innumerable strictures and precautions. Questions about possible violations of these regulations and their exacting details are very prominent in the halakhic literature. The impact of the laws of *niddah* on people's lives was profound since they imposed a set pattern of sexual activity, mandating periods of abstention and physical distancing between husband and wife. Furthermore, by virtue of the fact that purification and resumption of sex normally coincided with ovulation, the laws of *niddah* favored procreation.

The specific laws concerning the *niddah* are derived, as we have said, from the laws of impurity which appear in Leviticus, a book primarily focused on the canons of worship and ritual. The laws of purity were a cornerstone of the ritual practice of the Temple (and local temples prior to the centralization of the cult in Jerusalem). Purity should be understood as a state which permits a person (or object) to approach the place of divine presence such as the Temple. Impurity is a state, caused by numerous factors (listed in Leviticus 11-15), which bars a person from approaching or touching anything connected with God's residence.²

The laws of *niddah* are introduced in the context of laws pertaining to bodily excretions which cause a state of impurity. Chapter 15 of Leviticus opens the list of such conditions with the case of a man who has a genital discharge presumably due to some illness. Further on in the chapter we learn that healthy emissions also cause a state of impurity, although of shorter duration.

¹⁶When a man has an emission of semen, he shall bathe his whole body in water and remain unclean until evening. ¹⁷All cloth or leather on which semen falls shall be washed in water and remain unclean until evening. ¹⁸And if a man has carnal relations with a woman, they shall bathe in water and remain unclean until evening. [Lev. 15 : 16-18]

In the case of a man a genital discharge can be a healthy discharge of semen (either in intercourse or other ejaculation) or an unhealthy one (*zav*). The healthy seminal discharge causes impurity (or uncleanness—the words are used interchangeably here) which lasts for the duration of the day and which requires washing. An unhealthy discharge causes a state of impurity which lasts for seven days following the cessation of the discharge and the ritual bathing (Lev. 15 : 13). In both cases whatever object is touched by the discharge becomes impure as well, but in the case of an unhealthy discharge the state of impurity is "contagious": anyone or anything which the person with the discharge touches becomes impure as well. Finally, whereas the healthy discharge required only bathing for purification, after an unhealthy discharge one must offer sacrifice at the Temple in order to regain the normal state of purity. Essentially, the treatment of an unhealthy discharge (*zav*) amounts to a system of isolation of victims of venereal disease.

The laws regarding female discharges are analogous though there are some differences in detail. A woman may have a normal discharge of blood when she menstruates (*niddah*), or she may have an abnormal, or unhealthy, discharge of blood (*zavah*). Parallel to the distinction between the laws of impurity for a man with a healthy seminal discharge and one with an unhealthy discharge are the differences in the impurity incurred by the *niddah* and the *zavah*:

¹⁸When a woman has a discharge, her discharge being blood from her body, she shall remain in her impurity seven days; whoever touches her shall be unclean until evening. ²⁰Anything that she lies on during her impurity shall be unclean; and anything that she sits on shall be unclean.

²¹Anyone who touches her bedding shall wash his clothes, bathe in water, and remain unclean until evening; ²²and anyone who touches any object on which she has sat shall wash his clothes, bathe in water, and remain unclean until evening. ²³Be it the bedding or be it the object on which she has sat, on touching it he shall be unclean until evening. ²⁴And if a man lies with her, her impurity is communicated to him; he shall be unclean seven days, and any bedding on which he lies shall become unclean.

²⁵When a woman has had a discharge of blood for many days, not at the time of her impurity, or when she has a discharge beyond her period of impurity, she shall be unclean, as though at the time of her impurity, as long as her discharge lasts: she shall be unclean. ²⁶Any bedding on which she lies while her discharge lasts shall be for her like bedding during her impurity; and any object on which she sits shall become unclean, as it does during her impurity: ²⁷whoever touches them shall be unclean; he shall wash his clothes, bathe in water, and remain unclean until evening.

²⁸When she becomes clean of her discharge, she shall count off seven days, and after that she shall be clean. ²⁹On the eighth day she shall take two turtledoves or two pigeons, and bring them to the priest at the entrance of the Tent of Meeting. ³⁰The priest shall offer the one as a sin offering and the other as a burnt offering; and the priest shall make expiation on her behalf, for her unclean discharge, before the LORD.

³¹You shall put the Israelites on guard against their uncleanness, lest they die through their uncleanness by defiling My Tabernacle which is among them.

³²Such is the ritual concerning him who has a discharge and him who has an emission of semen and becomes unclean thereby, ³³and concerning her who is in menstrual infirmity: anyone, that is, male or female, who has a discharge, and also the man who lies with an unclean woman. [Lev. 15 : 19-33]

The text of Leviticus 15 is burdened with detail so that it seems rather confusing at first. The following systematization should help clarify this legislation.

1. For both a man and a woman there are two kinds of discharges which cause impurity: a normal discharge and an abnormal one. For a man the discharge in question is a seminal discharge; for a woman it is a flow of blood.

2. A normal discharge causes a shorter period of impurity than an abnormal one. A normal menstrual period is presumed to last seven days.

3. The person suffering the discharge carries the "highest" degree of impurity, which we shall call "primary impurity."

4. The impure person communicates his or her impurity to other persons or objects, who then may be said to carry a "secondary impurity."

5. A person who touches an impure object (carrying "secondary impurity") contracts impurity as well if the object was touched by a man with an unhealthy discharge or a woman with either a healthy or unhealthy discharge. This may be called a "tertiary impurity."

6. A special case is that of contact through intercourse. In such intimate contact between a man and a woman each one necessarily contracts impurity of the primary level. In addition, a man who has intercourse with a menstruating woman touches the blood itself and therefore becomes impure for the same duration as the *niddah* herself. Communication of impurity through intercourse is discussed in the text only in reference to normal discharges. Presumably intercourse was avoided during an abnormal discharge because of fear of contagion. If one had intercourse inadvertently during a period of abnormal discharge, one observed a period of segregation, offered a sacrifice in atonement, and hoped for the best.

A special case of impurity for a woman is after giving birth. A woman who has given birth is also a *niddah*, but the period of her impurity depends on the gender of her offspring. Leviticus 12 : 1-8 legislates that a woman who gives birth to a son is a *niddah* for seven days, like the menstruant woman. Yet she waits an additional thirty-three days of purification before she may bring a sacrifice to the Temple and regain her purity. For the birth of a girl, the mother is a *niddah* for fourteen days and then must wait an additional sixty-six days before she is purified. In all, after the birth of a son a woman is impure for forty days, after the birth of a daughter for double the time. The reason for the lengthy postpar-

tum period of impurity is biological: bleeding often continues for four to six weeks after giving birth. But the reason for the doubling of the impure period after the birth of a girl is unclear. Perhaps it reflects, as has been suggested by some,³ the disappointment with the birth of a girl, but this would necessitate seeing the state of impurity as partially punitive, which does not seem to fit the intentions of Leviticus. One conjecture is that underlying this legislation is the sense that the birth of a female, who will one day herself menstruate and give birth, is seen as "doubly bloody" and doubly impure.

The *niddah* going through her normal menstruation is impure only for seven days. After the seven days she bathes herself, washes her clothes, and regains her purity. The importance of establishing a standard period defined as "normal menstrual bleeding" is understood if we realize that prolonged bleeding, even if it comes when menstruation is due, is considered abnormal bleeding. With such a standard established, the distinction between normal menstruation and the abnormal bleeding of a *zavah* can easily be applied by referring to the length of the bleeding period. But in regard to timing, the distinction is more difficult to maintain. Any alteration in the regular cycle of menstruation could be considered abnormal. Therefore even in cases of a mere delay in menstruation, where there is no disease or abnormality, the woman would consider herself *zavah*. Once the pattern has been upset, there would be difficulty in reestablishing what is the normal monthly menstruation and what is abnormal bleeding. In addition, it was necessary to distinguish between uterine blood which caused impurity (whether for the *niddah* or the *zavah*) and bleeding originating in the bladder or vaginal walls which, like external bleeding from a wound, did not cause impurity (Niddah 17b).⁴

While the Levitical text makes a seemingly clear-cut distinction between a woman with normal menstrual bleeding and another with abnormal blood flow, further considerations in the Mishnah and Talmud reveal the difficulty in maintaining the distinction. The Talmud reports of the special skill and expertise which some rabbis developed in "examining blood" and deciding whether it is

normal or abnormal, and whether it causes impurity or not. Yet the Talmud also reflects the gradual disappearance of this expertise (Niddah 20a-b). The custom of relying on expert examination was gradually abandoned and was replaced by combining the strictures of both sets of laws: the rules for the impurity of the *zavah* and the *niddah*. Women, according to Niddah 66a, turned to themselves: they relied on their own strictness rather than on the examination of bloodstains by an expert rabbi:

Rabbi Zera stated: The daughters of Israel have imposed upon themselves the restriction that even where they observe only a drop of blood the size of a mustard seed, they wait on account of it seven clean days. [Niddah 66a]

Thus postbiblical Halakhah imposed a much stricter code on the *niddah*. Whereas in biblical law the *niddah* was impure for a maximum of seven days, in rabbinic legislation she was impure for up to fourteen days: a maximum of seven of menses, and a subsequent period of seven "white days," free of bleeding.

Having clarified the legislation in Leviticus 15 concerning the *niddah* and the *zavah*, and having shown that the distinction between the two states was abandoned in practice in the talmudic period, we now turn to the central issue in the laws of *niddah*: the prohibition on sexual relations. In Leviticus 15 this issue is dealt with rather briefly. A man who has intercourse with a *niddah* contracts the same impurity ("primary impurity") which affects the woman. He "shall be unclean for seven days and any bed that he lies on shall be unclean" (verse 24). In Leviticus 18, however, sex with a *niddah* appears as a taboo, listed among the sexual transgressions: "You shall not approach and uncover the nakedness of a woman in her menstrual impurity (*be-niddat tum'atah*)." (Leviticus 18 : 19, see also Leviticus 20 : 18)

In Leviticus 15 intercourse with a *niddah* is treated as a special instance of contact with an impure person and communication of impurity. There is no particular gravity attached to it, let alone indication that it is considered an offense or a sin. This "neutral" treatment fits with the general tone of Leviticus 15, where impurity is an objective, if undesirable, state which one should seek to