

# Mourning for a Newborn

RABBI ISIDORO AIZENBERG

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## שאלה

What mourning laws may be observed for a child who died before it was 30 days old?

## תשובה

In Maurice Lamm's *The Jewish Way in Death and Mourning*, we find the following statement: "A life duration of more than 30 days establishes the human being as a viable person. If a child dies before that time, he is considered not to have lived at all, and no mourning practices are observed, even though the child may have been normal, but was killed accidentally. Any human being who has lived beyond this minimum span must be mourned."<sup>1</sup> Lamm later adds: "the meal is also not served for those mourning the loss of infants who have not survived thirty days."<sup>2</sup> Rabbi Isaac Klein, in *A Guide to Jewish Religious Practice*, refers only to one mourning practice regarding new born infants. Citing the *Shulhan Arukh, Yoreh De'ah*,<sup>3</sup> he states that *keriah* is not necessary after the death of a child less than thirty days old.

Both Rabbi Lamm's and Rabbi Klein's conclusions do not, however, reflect the entire spectrum of mourning practices to be observed for a child who dies before 30 days of age. For example, they both fail to quote the whole paragraph from *Yoreh De'ah*: "For a child regarding whom we do not know for certain that its months (of pregnancy) were complete, who died within thirty (days of birth) or even on the thirtieth day, we do not rend [my emphasis]." Therefore, it is only when we are uncertain whether the baby who died was nine full months at birth that we take a more lenient view, and do not rend. On the other hand, as the *Shakh* adds to this citation from the *Yoreh De'ah*: "When we know for

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certain *that its months were complete*, we must rend garments and observe mourning rites” [emphasis added]. Rabbi Lamm’s and Rabbi Klein’s statements thus omit the fact that “the life duration of more than 30 days establishes the human being as a viable person” *only* when it was born prematurely.

This line of argument is developed by our sages as well. “R. Shimon ben Gamliel said: Any human being (born prematurely) who lives thirty days is not a נפל.”<sup>4</sup> The implication is that if it was born after full gestation and died within thirty days, it is certainly not a נפל, and mourning must ensue. The matter is illustrated in the same text<sup>5</sup> in the cases of R. Dimi ben Joseph’s grandson and the son of R. Kahana. Both children died within 30 days of their birth, and the fathers sat and mourned. When questioned about their practice, the fathers responded that they were certain that their dead children’s months of pregnancy were complete.

In a further case, the mishnah in *Niddah*, 44b, states that “a boy one day old counts to his father, to his mother and to all his relatives כחתן כשלם,” that is, as a fully grown man. The Gemara later goes on to explain that this one day old baby is counted by his immediate relatives to be fully grown in regard to the laws of mourning, in a case where it is established that the months of the baby’s gestation were fully completed.<sup>6</sup> The *Tosafot*<sup>7</sup> on the same pages adds:

ואם כן שמעינהו דרבנן דלאו בלי תלוי אלא בחדשי ההריון<sup>8</sup>

Therefore we understand that the rabbis do not tie this to 30 days but to the months of pregnancy.

Though *keriah*, *shivah*, and *shloshim* are observed for a full-term baby that died within 30 days after its birth, no other public rites are practiced; that is, no eulogy is offered,<sup>9</sup> and the infant is “carried out in one’s arms to the cemetery and not in a coffin.”<sup>10</sup> (In the United States, however, the law requires that everyone be buried in a coffin). Rabbi Dov Zlotnick suggests that the statement in *Niddah* 44b<sup>11</sup> to the effect that a one day old child counts as a grown person “to his father, mother and all his relatives” indicates that “it is only the family and not the public who should participate in the rites.”<sup>12</sup> The *Piskei HaRosh*<sup>13</sup> adds that the mourners in such a case should also partake in the mourners meal upon their return from the cemetery.

Regarding the reciting of צידוק הדין and *kaddish* over a child less than 30 days old, a variety of opinions exist among the authorities. R. Yosef Caro, later supported by the *Shakh*, indicates that they should be recited for an infant who died after 30 days of age, while the Rema adds that

“we do not follow this practice unless the infant is twelve months old.” The *Ikrei HaDat*, on the other hand, cites the custom of reciting these prayers even over a child who died within 30 days after birth. The Kol Bo Aveilut quotes a number of other authorities and customs stating that no *kaddish* is recited until after the deceased is 13 years old.<sup>14</sup>

## CONCLUSION

In light of the above we conclude: When a full-grown, full-term baby dies within 30 days after birth, there is *aninut*, *keriah*, *burial*, *shivah* and *shloshim*; no eulogy is delivered and the burial is performed by the immediate family members. If the parents wish, they may recite the *kaddish* for 30 days, as custom prescribes for relatives other than parents.

If the baby was born prematurely, the above customs should be practiced only if it died more than 30 days after its birth.<sup>15</sup>

If the baby was born prematurely and died before the 30 days are over, the baby should be treated as a fetus. In this case there is burial but no other mourning rituals are practiced.<sup>16</sup>

In all of the cases cited, should parents ask the rabbi if they may recite *kaddish*, they should be permitted to do so. At the time of bereavement, the *kaddish* is a declaration which symbolically expresses the acceptance of a seemingly undeserved loss as being the just – if not always understood – act of an all-wise God. If reciting it affords parents a measure of psychological healing, and helps them adjust to tragedy, then I cannot see any valid halakhic reason to deny their wish.

## NOTES

1. p. 83.
2. p.181.
3. 340:30.
4. *Shabbat* 135b.
5. 135b.
6. *Niddah*, 44b.
7. s.v. “ha”.
8. See also Maimonides, פירוש המשניות, מסכת נידה, “תינוקת בת יום”  
“According to the sages it does not depend on 30 days, but on a full term pregnancy.”
9. *Yoreh De’ah* 344:4.
10. *Yoreh De’ah* 353:4 and *Mo’ed Katan* 24:a-b.
11. Repeated in *Semaḥot* 3:1.

12. *Tractate Mourning*, p. 186.
13. *Mo'ed Katan*, Ch. 3, no. 84.
14. The *Kol Bo Al Aveilut*, no. 4, paragraphs 6 and 8.
15. See *Berakhot* 49a and Rashi on the same point.
16. See my paper entitled *Treatment of the Loss of a Fetus through Miscarriage*.