

HALOCHOSCOPE

This week's and next week's question:

An *Ashkenazic* Jew has been put on a gluten-free, vegan diet by his doctor, due to serious health concerns. On *Pesach*, he will need to eat vegetable proteins, which are usually *kitniyos*, legume-type grains. These are restricted for *Ashkenazic* Jews. Does he have a dispensation due to his health? Should he keep his food and utensils separate from those of the rest of the household? Does he need a *hataras nedarim*, absolvment of a vow?

The issues in this issue:

- A) *Kitniyos* on *Pesach***
- B) The nature of this '*gezaira*'**

Next week:

- C) *Minhag makom*, digressing from conventional local practices**
- D) *Balua*, absorbed flavor of *kitniyos***
- E) *Choleh, mazik*, health issues**

A) *Kitniyos*, the source and the practice [excerpted from Halochoscope VI:9]

Kitniyos means legumes. In the context of *Pesach*, it refers to bread-like-products made of bean or similar products. On *Pesach*, only leaven produced by the five bread/cereal grains is forbidden. They are: wheat, barley, rye, oats and spelt. These are *machmitz*, leaven. The Talmud discusses rice and millet and similar grains, which appear to leaven. The Talmud concludes that they do not truly leaven in the same way that cereal grains do. They swell to produce a similar effect. Therefore, bread or cakes made of these other products are not *chametz* and are not forbidden on *Pesach*.

What is known as *gezairas kitniyos*, literally, the decree to restrict the use of *kitniyos*, is generally attributed to the period of the Rishonim, the poskim living from about the times of Rashi, until about the time of the Spanish Expulsion. In its most basic form, it is a *takanah*, institution, implemented by some leaders and adopted by their communities, that eventually spread and caught on in the *Ashkenazic* world. The initial idea was to prevent some sort of confusion. *Kitniyos* are used in much the same ways as flour or grain products. If it were permitted, people would confuse the two and use flour or grains for the same purposes.

According to one interpretation, there is a possible reference to a practice like it in Talmudic times. Flour would be added to stew to thicken it. On *Pesach*, this is forbidden. A boiling stew will immediately kill the yeast. However, sometimes the stew will not be boiling, or the flour will not get hot enough before turning to *chameitz*.

The Talmud discusses *kimcha de'avishuna*, roasted flour. This has had its leavening power killed by the heat. One reference seems to forbid it conclusively for use as a thickening agent. Elsewhere in the Talmud, there is a discussion about *asisi*, also a sub-

stance added to thicken a stew. The discussion is whether it should be discouraged for use on *Pesach*. The consensus seems to be that it should not be banned totally. In some homes, the kitchen personnel might not be so learned. Or they might not be so careful. Evidently, there is an issue with using *asisi*, but it might not always arise. Either this is a substance that can sometimes become *chameitz* if the correct procedure is not followed. Or it is a neutral substance that can be confused with something else, that could or does become *chameitz*. In either case, the unlearned could make a serious error. Should its use be discouraged? If it can actually become *chameitz*, it is unlikely that the Talmud shows a consensus not to ban it. Therefore, it must be something that is not *chameitz* itself, but that should be discouraged because of its association.

One view interprets *asisi* as the same as *kimcha de'avishuna*. This would mean that there are two different views laid out by the Talmud in different passages. In one text, it is banned outright, and in the other, it is only discouraged, if at all. Another view maintains that the Talmud is unlikely to take such a light view in this passage, possibly even permitting it, and at best discouraging its use, while in another passage ruling so strictly as to ban it outright. Therefore, this view interprets *asisi* to mean a flour made of lentils. This would be akin to using split peas to thicken a stew. Lentils are technically considered a grain food. Since it is similar to regular flour, and it has the same use, should it be forbidden? The principle would be that it is really permissible. However, in a home where the kitchen personnel is ignorant of the distinctions between *asisi* and flour, it could cause confusion. Therefore, its use should be discouraged everywhere, but not banned. This would be a Talmudic reference to something similar to *gezairas kitniyos*.

It is important to note that the statements on *asisi* do not forbid it outright. It is discouraged. Thus, if it is a forerunner of *gezairass kitniyos*, it is not a true ban. It is recommended. This would mean that people should adopt it voluntarily. Furthermore, it cannot be considered forbidden if it was used already, *bidi'aved*. The recommended restriction is on its use in the first place, as an ideal. It is even apparent in the Talmudic discussion that the recommendation applies, primarily, to those who know that their kitchen personnel are not learned. It should not apply to the educated cooks. Nonetheless, the framework seems to have existed to institute a recommendation, that could turn into a *minhag*.

A second reason is given for the *gezaira* of *kitniyos*. This was raised at the same time period that the first, more common reason was suggested. Besides actual confusion between *kitniyos* and bread grains separately, there is a presence of some bread grains commonly mixed in with *kitniyos* products. This relates to agricultural practices. The harvesting of the separate types of grains, grown by the same farmers, meant that the same containers were used. They would not be cleaned out thoroughly enough to ensure no *chameitz* cross-contamination. In addition, crop rotation was very common. Sometimes, this was done with knowledge of the benefits, while at others, it made economic sense. Therefore, while harvesting the wheat one year, some stalks would fall down. They would lie there until the *kitniyos* was planted the following year, and grow in the middle of the *kitniyos* field. The entire harvest would then be contaminated with some *chameitz* grains. It is now understandable why the issue was raised in certain regions, while in other regions it never arose.

This second reason is not an issue of *asi le'ichlufi*, confusion. It is an issue of *chashash*, concern for true *chameitz*. Most poskim agree that a *gezairah* would not have been instituted for this reason alone. Care could be taken to supervise the production of these items, just as it is on other foodstuffs used for *Pesach*. Indeed, those who eat *kitniyos* on *Pesach* do take the necessary precautions to ensure that they are not contaminated with *chameitz* products. Rather, in conjunction with the *asi le'ichlufi* issue, the second reason of *chashash* just made it more reasonable to restrict *kitniyos*.

A third reason is that in certain regions a grain that was almost identical to an inferior type of wheat was easily confused with it. The wheat would be *chametz*. Due to the confusion, the other grain had to be forbidden. With it all grains were forbidden.

B) The nature of this 'gezaira'

It is very rare to find a universally accepted prohibition instituted after the Talmudic era. The last of the Talmudic sages, Ravina and Rav Ashi, are considered *sof hora'ah*, the last in any position to institute decrees that are binding on the entire Klal Yisroel. After this time, individual rabbis, teachers, academies, and *batei din* may decree temporary, or even long term injunctions. These are binding on their own following. Or they must be supported by a large inclusive group of rabbis. In that case, they could be imposed on a group as well. An individual rabbi has the authority to make a ruling that is binding on his community. A new rabbi who takes over may change that ruling in accordance with his own teachings. A community may undertake a binding practice. This cannot be changed by a later generation. In many such cases, the severity of an ordinance is that of a *neder*, binding self-imposed vow. Normally, such vows must be personally adopted or accepted by the person making them. In some cases, a *bais din* is in a position to impose or place such vows, in the shape of a *cherem*, a public ban or injunction.

There is no information to indicate that the so called *gezaira* to restrict *kitniyos* was even implemented as a true *gezaira* or *cherem*. The sources that we have available are about different Rishonim either practicing it or not practicing it. As an institutionalized *minhag*, it met with much opposition. Many Rishonim resisted it, and communities refused to adopt it. First, it evolved after the sealing of the Talmud, as mentioned. If there was a similar practice in Talmudic times, it was not to restrict, but to discourage. Second, the concerns for it are debatable. Third, at least one of the concerns can be handled. Fourth, it places hardship on the people. There are enough restrictions on the regular food on *Pesach*. Restricting *kitniyos* makes it harder. Finally, and most prominently, it restricts a food that is explicitly permitted by the Talmud. Rice is an example of *kitniyos*. The Talmud specifically permits it, because it does not leaven. [One view dissents, but we do not follow that view.] It seems wrong to forbid it.

For these reasons, *gezairas kitniyos* was not adopted by all communities. Nowadays, the split is roughly along the line between *Ashkenazic* and *Sepharadic* communities. The lands governed by the Islamic rulers during the period under discussion were relatively free to communicate with one another. The Islamic rulers considered themselves enlightened, by comparison to the Church. They did not, as a rule, restrict the passage of information. Those ruled by the Church and its adherents were often at war with one another. In addition, the Church was not enlightened, was very jealous and paranoid, and commu-

nication was difficult. Scholarly exchange was often outlawed. Accordingly, *Sepharadic* communities kept strong ties to Bavel and its leadership. They relied heavily on *mesora*, traditions, in the hands of the scholars of Bavel, dating back to the original exile. The Italian and Northern European communities under imperial rule had rely on one another (when they could communicate) and themselves, and their own analysis of the Talmudic sources. In addition, they had practices that were not recorded in the Babylonian Talmud, which have a basis nonetheless. These might be recorded in extra-Talmudic texts or are asserted to be reliable by early *Ashkenazic* poskim – *Torah Sheb'al Peh*, oral tradition. In the days when this trend was set, the Gaonic period following the sealing of the Talmud, most communities fell into one of these types.

Gezairas kitniyos is a little different. Perhaps due to the various concerns and causes, its spread seems to blur the boundaries somewhat. Thus, certain *Sepharadic* communities have some form of the *gezaira*. They restrict certain of the foods, but permit others. Some have strong traditions to permit certain *kitniyos* type foods, while others seem to have left it to individuals to adopt, similar to the concept of discouragement.

The status of the practice, as a *halachic* institution, is debated. Some maintain that it appears to have been instituted by a large group of rabbis, and was approved of by many communities in Germany and Poland. These communities did have contact and their rabbis and leadership were usually drawn from the same *yeshivos* or academies. Thus, the disciples of the originators of the *gezaira* spread it to their following. Accordingly, it had the severity of something instituted by a *bais din* of an earlier period. This may never be disbanded unless a later *bais din* is greater than the earlier one, both in knowledge and in numbers of members and their disciples. This is extremely unlikely. Others consider it a practice adopted independently by communities that simply spread by itself.

Either way, it is a *minhag makom*, communal practice. This involves the Scriptural laws of *neder*. The poskim add, it involves the *mitzvah* to follow the rabbis, known as *lo sasur*, do not digress from the rulings of your rabbis even when they appear incorrect, also a Scriptural *mitzvah*. It also involves *lo sisgodedu*, do not make factions. One may not observe different *halachic* practices than his community, because it causes strife. [See Psachim 39b 40b Rashi, Tosafos. Gitin 36b, Tosafos, Poskim. Tur Sh Ar OC 453:1, Rema, commentaries (SA Harav 3-5. Kaf Hachaim 10-16 40). Chayei Adam 127:1. Sdei Chemed, Chametz Umatza 6:10.] *to be continued ...*

On the parsha .. To distinguish between the clean and the unclean and between the living beings that may be eaten and those that may not be eaten. [11:47] It is not enough to study about them, but you should know, and recognize and be expert in them [Rashi]. Because all of the species are types of animal, one must be well-versed in their names and the differences between them [see *Gur Aryeh*]. The Torah gives specific signs for *behaima tehora*: split hooves and chewing the cud. What else is there to know? It could refer to the bird species. Or the concern might be that the unlearned will permit forbidden things that are **similar** to permissible things.

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