

# HALOCHOSCOPE

**This week's and last 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 *hataras nedarim*, absolvment of a vow.**

**The issues in last issue:**

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

**This week:**

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

**C) *Minhag makom*** [excerpted from Halochoscope VI:9]

A person living in any given community has no right to change his *minhag* to follow that of a different community. His original *minhag* is like a *neder*, a ban or vow that is absolutely binding. This applies to any *minhag* based on *halacha*, such as following one view as opposed to another. The only time one could follow the *minhag* of a different community is when he moves permanently to the new community. If one is visiting another community, observing their *minhag* while there also has its restrictions. Even when planning an extended stay, one is still bound by the stringencies of his hometown *minhag*. However, he must also follow the stringencies of the practices observed locally. If following his hometown *minhag* causes strife with the host community, special guidelines apply on how to proceed.

If a community has adopted a practice that appears unnecessarily stringent, a visitor, visiting rabbi, or in modern times, any *rav* or *posek* told about their *minhag* may not rule leniently in their presence. In modern times, this means that he may not send them a lenient ruling to abolish their unnecessarily strict *minhag*. Much of the Talmudic source material for this debate is borne out of the discussion regarding working on *Erev Pesach*. This was treated differently by different communities.

Rema, the main decider of *halachic minhag* for Ashkenazic Jewry, was especially careful not to discredit a *minhag*. He expounds on this in regard to the *minhag* to bang and make noise when Haman's name is read in the Megillah. This bizarre practice raises many *halachic* eyebrows, yet is defended by Rema purely on the assumption that it must have been founded by great men, and has been practiced by great communities.

Some of the most marked differences between communities appear with regard to

post-Talmudic decrees and institutions. The best known are *cherem Rabeinu Gershom*, injunction forbidding polygamy, and *gezairas kitniyos*. Both of these were not accepted as binding outside *Ashkenazic* lands. Some say that part of the motivation to ban polygamy came from the fact that the Church had already banned it. So as to avoid giving the Church an excuse to condemn the Jews for still practicing it, it was banned. Actually, it was banned for a limited time, but the ban was automatically renewed. In Islamic countries it was never banned, and is still practiced by Muslims. These communities saw no reason to ban something explicitly permitted by the Torah. Thus, while it is not recommended except in special cases, *Sepharadim* allow polygamy in their own countries. We have already listed the objections to *gezairas kitniyos*. It seems that this practice began in a much later period. The fact that Jews were more dispersed is another reason that *Sepharadim* felt that there was no reason for them to adopt this *minhag*. Thus, even if it spread by itself, their rabbis seem to have rejected it. In reality, the extent of the *gezaira* is relative. In some *Ashkenazic* communities less is restricted under the *kitniyos* category than in others. And in some *Sepharadic* communities, some *kitniyos* is also restricted.

Accordingly, an *Ashkenazic* Jew who does not live permanently in a *Sepharadic* community must follow the *gezairas kitniyos*. Nowadays, communities have moved to new territories. In most cases, the Jews come to the new town from various different communities. The question arises: which *minhag* must they follow? May they adopt their own *minhagim*? It is generally agreed that a group of people moving together transplant their old *minhag*. It is further agreed that in a large town, different *shuls* can be considered different communities. Thus, in general, one is bound by the *shul* where he grew up. He must follow their *minhagim*. If he makes a permanent change to a different *shul*, such as a *Sepharadic shul* in our case, the question arises whether he needs a *hataras nedarim*. On the one hand, he has relocated. On the other hand, he still lives with the same original people. Assuming that one can annul his original *minhag*, he could become a *Sepharadi*!

However, there are two objections. An individual who moves to a community where there are multiple *minhagim* might be compelled to observe his hometown *minhag* anyhow. First, he might be considered a disciple of the *rav* at home. He may not simply contradict his *rav's* rulings, unless there is a *halachic* reason to do so. If there was a single *minhag makom* in the new location, he would be *halachically* bound by that. Since there is none, he must follow his *rav*. [His old *rav* could instruct him to take the *Sepharadic rav* as his new *rav*!] Second, one must also follow the rulings or instructions of his father, unless the father instructs him to violate *halacha*. In this instance, the father has effectively taught him to observe *Ashkenazic minhagim*. Since these are not against *halacha*, he must follow them. Therefore, one may not make a change of status based on choice alone. It may only be made for *halachic* reasons, either due to *minhag makom*, or a ruling by a *rav* based on some other circumstances.

#### **D) Balua of kitniyos**

When the Torah forbids a food, the flavor of the food is also forbidden. The details of how strict this is are beyond the scope of this discussion. The basic idea is that if the forbidden food is cooked together with permissible food, it is considered as though there is a mixture of the two. The forbidden food must be *batel*, neutralized by being over-

whelmed by the permissible food. If there is no actual forbidden food, but its flavor is present, this is also considered a mixture. This is true even if there was never any actual food in the mixture, but the isolated flavor. This is possible when a forbidden food is cooked in a pot. The walls absorb its flavor. If the pot is then washed but not purged, and a permissible food is cooked in it, the permissible food is considered a mixture.

There are various ways something is *batel*. If the two items are indistinguishable from one another, by taste or looks, a simple majority of the kosher food works. This would apply if the two were not cooked together, but were mixed up in a dry form. There is some debate whether it can also apply Scripturally or even Rabbinically, if they are cooked together. The more common type of *bitul* is by overcoming the flavor with a competing kosher flavor. If the two foods are different, it is assumed that the flavor is neutralized when the kosher food is sixty times the non-kosher food. For some forbidden foods, even this is insufficient. One of these happens to be *chameitz*. If it is mixed in non-*chameitz* food before *Pesach* it can be *bateil*. If they are mixed on *Pesach*, the entire mixture is forbidden, even with a minute *chameitz* component.

The terms for *bitul* apply after the fact. If the mixture was already made, by mistake, one relies on *bitul*. One may not intentionally mix the two foods in a proportion that one knows will result in the *bitul* of the forbidden ingredient. If this was done with intent, it is forbidden to the person who did it. An example of forbidden foods is a *neder*, food that an individual undertook to ban on himself. If this is mixed into other food, that person may not eat the mixture. In this case, even *bitul* does not help. This is because of the rule called *davar sheyaish lo matirin*, something that has an alternative way to become permissible. One could absolve himself of his *neder*, and the original food would become permitted. Therefore, he may not rely on *bitul*. It could also apply to utensils used with the banned food. This would depend on the language he used when he made his *neder*.

A *minhag* might be based on *neder*, but there is no recourse, under normal circumstances, to absolve the *minhag*. Therefore, the poskim permit the food with simple majority *bitul*, provided that visible *kitniyos* particles are removed. Furthermore, *gezairas kitniyos* in particular has in-built leniencies. In addition, other leniencies were allowed by the rabbis under careful control. These include: no ban on possessing it during *Pesach*, as opposed to actual *chametz*; permitting benefit from *kitniyos* and its products; permit food that had it mixed in unintentionally during cooking, even without *bitul*; permitting oil of *kitniyos* for lighting, even on a table with food. The drips from the lamp do not forbid the food. Needless to say, mixing it intentionally is not permitted. If it was intentionally mixed, the person who mixed it may not derive benefit from his actions. However, it is unclear whether this applies to a simple majority or even to an overwhelming one.

#### **E) *Choleh, mazik lo***

Other dispensations in-built into the *gezaira* of *kitniyos* include extreme hardship, where one is unable to procure other food. It is also permitted for a *choleh*, one who is ill, even if he is not in danger. It is suggested by some poskim that the *choleh* should treat the *kitniyos* like flour. He should scald them in hot water before cooking them. Doing this for flour would kill the yeast. Presumably, the reason to do this for *kitniyos* is an extra precaution due to the confusion concern. Some poskim recommend using *mai pairos*,

fruit juice, rather than water when cooking *kitniyos*. Fruit juice does not react with wheat in the same way that water does. The poskim discuss whether it can cause leavening. Thus, using *mai pairos* is a similar precaution to scalding it. It is also preferable to use beans rather than rice, since they are less similar to wheat.

The poskim permit a *choleh* to eat *kitniyos* if he cannot eat wheat *matzo*. Apparently, the availability of potatoes was not considered reason enough to restrict him from eating *kitniyos*. In this and similar situations, the poskim make a point of advising the onlookers that this is a special case. It is clear that despite the dispensation, one should try hard to maintain the *gezaira* as much as possible.

In our case, the patient is not chronically ill. However, his doctors have determined that his history of dangerous illness is attributed to his diet. Non-gluten foods other than potatoes are very difficult to come by. Proteins of vegetable origin are mainly found in the grains and in the legumes. [By the way, he should be careful how he verbalizes his mention of his diet, so that it does not become a real *neder* or *shavua*. Although he is forced to abide by it for health reasons, one should always avoid using terminology of *neder* or *shavua*.] He falls into the category of *mazik lo*, the products that he would need to eat other than *kitniyos* are harmful for him. Therefore, he is forbidden to eat them anyhow due to the health risk. He cannot subsist on water and fresh fruit and vegetables (that are not considered *kitniyos*) for the entire *Yomtov*. He will be jeopardizing his health in other ways. Therefore, he has little choice but to eat *kitniyos*.

Though he is not a *bona fide choleh*, he has the dispensation. The reason he is not a *choleh* right now is due to his strict observance of the diet. A dispensation for a *choleh* should also apply as a preventive dispensation, to prevent *sakanah* or *hezek*. In addition, the hardship dispensation should apply here. Perhaps the basic reason for the dispensations is based on the rules of *neder*. Especially in the case of a communally adopted *chumra*, the principle *daas* is invoked. This means that the ban is based on full knowledge of the consequences at the time it was adopted. If circumstances arise in which it is clear that the intent was never to apply the *chumra*, a dispensation automatically applies. This is known as *adaata dehachi lo kibluhu*, they never adopted it with this in mind. One who is instructed by his doctors to avoid gluten and animal products is certainly in the same category as the others given dispensations. [See references to last issue.]

In conclusion, the patient may use *kitniyos*. Although the *halachic* rationale for the *minhag* is *neder*, this is not the type that one can absolve. Rather, the *neder* does apply in this case. He should try to use bean products, but for starches he may use grains if he needs to. He should use separate utensils. However, if he used the utensils of the rest of the household by mistake, they are not forbidden to the other members of the family. [Others observing *kitniyos* restrictions may cook for him. See Kaf Hachaim 453:16.]

**Sponsored by a friend in honor of Shmuel Binyamin and Yael, a very special couple and very dear soul searchers. Thank you for your friendship. Lenny and Erel.**

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