

**YESHIVAT HAR ETZION
VIRTUAL BEIT MIDRASH PROJECT (VBM)**

**TALMUDIC METHODOLOGY
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IS MILA A ZMAN GRAMA?

The past two weeks we have read parshiot Lekh Lekha and Vayera each of which addresses, to some degree, the mitzva of berit mila. As the pesukim indicate (va-yamol Avraham et Yitzchak beno ka'asher tziva oto Elokim - Bereishit 21:4) the chiyuv applies principally to the father and not to the mother. The source for her petur will form the subject of this week's shiur.

The gemara in Kiddushin (29a) confirms that women are excused from performing the mila upon their male sons from the pasuk "ka'asher tziva oto Elokim - oto ve-lo ota". This raises the immediate question of necessity; why must the gemara provide a specific source to exclude women from mila if they are excluded based upon the universal principle of "mitzvot aseh she-hazman grama"! Seemingly mila fits the classic mold of zman grama on two fronts - it can only be performed after eight days and must be executed during the daytime. This question is first posed by Tosafot and subsequently by the Ramban.

The possible solutions to this problem revolve around the two general assumptions which underlie this very question:

- 1) Women are excused from **ALL** zman grama w/o exception.
- 2) Mila is zman grama.

Each of these assumptions can be, and has been, examined by the Rishonim in resolving the aforementioned question. Tosafot chose to reject the second assumption while the Ramban operated upon the first. We will begin with Tosafot and those who adopted their strategy.

To determine mila's identity as zman grama two issues have to be examined. First of all, the exact time in which mila must be fulfilled has to be investigated. Tosafot

approached this issue from a purely technical standpoint. According to one in Yevamot (72a) night mila is valid after the eighth day (if the mila had to be delayed); thus mila cannot be said to be zman grama because of the night limitation. In terms of the eighth day this doesn't dominate the 'chov' as in most zman grama but rather marks the moment when the chov will first materialize or actualize. Once the eighth day arrives the chov proceeds without disruption. The eighth day doesn't regulate the chov; rather the mila is meaningless until that date arrives (similar to the situation with pidyon ha-ben which cannot be performed until the 30th day, but after the 30th can be performed on any day). Tosafot effectively liberates mila from any governing time constraints; the eighth day merely signals the arrival of the mitzva while the night according to one position is valid for post-eighth day milot. It is not zman grama!!!

The potential flaws in Tosafot's approach are self-evident and others struck different courses. Tosafot Rid for example redefined the texture of mila itself, providing a mitzva which at its root has no time factor. To him the mitzva upon the father is not to cut the orla but rather to assure that mila will occur. His direct involvement isn't necessary provided that he organizes and supervises the mila assuring that it will occur. This organization and planning (contacting the mohel, purchasing mila apparatus when necessary) can be done during night and day and similarly may be initiated well before the eighth day. In fact, then, the actual mitzva of mila - organizing and assuring its ultimate performance - has nothing to do with the eighth day. To liberate mila from time constraints the Rid formulated the definition of mila in a non-conventional matter. This particular question - whether mila is the actual cutting or the preparations which facilitate the cutting, sparked the famous controversy whether ideally a father should perform his son's mila rather than delegating it to another. Presumably, to the Rid, hiring a mohel would be no less ideal than personally executing the mila. See also Maharach Or Zarua Siman 11 and Shakh Choshen Mishpat Siman 382:3.

Whereas Tosafot and Tosafot Rid each modified the actual mitzva of mila so that it wouldn't be considered zman grama, the Turei Even in Chagiga (16a) disqualifies mila from a purely 'zman' perspective. When it comes to tefillin the time is a definitive and absolute regulator. When night falls the mitzva is entirely canceled. That tomorrow presents the mitzva anew is inconsequential since tomorrow's mitzva is independent of today's. After Sukkot passes the mitzva of lulav for 5755 is liquidated; 5756 offers an independent mitzva. These mitzvot are clearly functions of time - a factor which exerts complete control. However, in the case of mila, which is a one-time mitzva - by its very nature it isn't eradicated at nightfall but merely suspended until tomorrow when the same mitzva presents itself. The mitzva, in fact, NEVER ceases to exist but is temporarily suspended. Temporary suspension does not a zman grama make. Absolute cancellation is necessary for a mitzva to qualify as zman grama. I highly recommend reading the Turei Even inside to those who have one available. It is as incisive as it is imaginative. Notice that his principal statement is made regarding semikha on korbanot which is also a one-time mitzva; the same however is easily extrapolated to mila.

SUMMARY:

The first three positions all contest mila's definition of zman grama. Tosafot does so on technical grounds while the Rid recasts the very structure of the mitzva. The Turei Even in Chagiga demands that we consider more closely the role which time plays in regulating the mitzva. According to all three, a separate pasuk is necessary to exclude women from mila since it ISN'T ZMAN GRAMA.

What is clear from the Ramban is that he charts a different path. Mila is definitely zman grama but conceivably could be a zman grama for which women would be chayav were it not for a special pasuk. What is less clear in the Ramban is what exactly is this extenuating circumstance. There seems to be several layers to this Ramban, each of which accommodates a different explanation. We will explore three. (I will transliterate the lashon and provide interpretation but highly suggest taking a personal glance).

"Salka da'atach amina ki patri nashim mi-mitzvot ase'i she-hazman grama hani mili be-mitzvot gufaihu kegon tefillin de-mahatam gamrinan aval mitzvot mila, de-leacharini vehi lo shayakha bei, aimar techayav midi de-havi abeit din she-chayavin le-molon, kaw mashma lan."

(English - I would have maintained that women are excused from zman grama only regarding mitzvot of the self - such as tefillin which is the source of the petur. But mila which is performed on another and has no pertinence to her, I might suggest she would be chayav, just like Beit Din which must circumcise children whose father was derelict - for this reason the pasuk teaches me that women are patur.)

This ambiguous and multifaceted Ramban allows several meanings. The simplest approach is that mila, which is a mitzva performed upon the other, is categorically different from tefillin which is reflexive. Since tefillin is the template which the gemara (34a) employs to derive the general category of the "petur" for zman grama, only mitzvot similar to tefillin can be included in this category. This reflects halakhic protocol. Similarity to the model or paradigm, (even when the similarity is technical in nature) is oftentimes a necessary condition to be subsumed within a 'limud'. In our case women aren't excluded from all zman grama- only those which conform to the pattern of tefillin - the primary zman grama from which women are excluded.

However the phrase 'Vehi lo shayacha bei' (there is no pertinence for her) seems to be superfluous in light of this suggestion. This added phrase might intimate a different reading. One must pose a fundamental question regarding mila. Whose mitzva is it? After all, once a child reaches the age of 13 if he hasn't been circumcised he must perform it on his own; clearly then the boy himself has a mitzva. What then is the status of the parent? Does a parent acquire a second, independent mitzva to circumcise their young child. Or do we say that the mitzva is always the son's but until he is of age the parent oversees and supervises the mitzva - but it is always the mitzva of the son. This question is first posed by the Minchat Chinukh in section 2. If we maintain that the parent is merely facilitating the son's mitzva then zman grama ceases to be a factor. The son (who is the principal in this mitzva) cannot be excused because of zman grama (he is a male!!). Once his chiyuv exists, the parent (at this preliminary stage of the gemara even the mother) is responsible to supervise that chiyuv. Can a mother excuse herself from being

mechanekh her son in sukka or lulav because they are zman grama. Of course not, since the son has the chiyuv in the mitzva and she has to help him realize his chiyuv. What concerns us is not the physical dimension of the mitzva (on whose body is the mila performed) but the conceptual definition of the mitzva. By informing us that she has no RELEVANCE to mila the Ramban might be emphasizing that it can only be the son's mitzva which she would supervise and hence she isn't excluded because of zman grama.

To be sure, the Ramban doesn't stop there. Why does he compare the potential chiyuv for women to that of Beit Din. What does this analogy suggest? This invites yet a third reading of the Ramban. As we know, Beit Din must step in to circumcise boys whose fathers neglected to circumcise (see gemara 29a). Obviously Beit Din refers not to the court per se but to the overall community whose representative is Beit Din (for elaboration on this theme see Kovetz Chidushei Torah "Kevi'at mo'adim al pi ha-re'iya ve-al pi cheshbon). This communal mila mitzva is a classic chovat tzibbur. Who performs a chovat tzibbur? Very often a communal-wide obligation is performed by a representative who has the greatest bearing or relevance to the mitzva. For example the communal responsibility to wage war or build a Beit Hamikdash would be performed by the king on behalf of the nation. The responsibility to gather testimony and set the new moon by Beit Din on behalf of the nation. Who has greatest relevance to the communal responsibility to circumcise this child neglected by his father? NONE OTHER THAN HIS MOTHER!!! The Ramban might be asserting that while women are certainly patur from their personal mitzva of mila because of zman grama, a communal mitzva which they might discharge on behalf of the community would not be subject to the zman grama exclusion (the tzibbur has no zman grama petur). For this reason the Torah includes an extra pasuk to exclude them even from this charge.

SUMMARY:

The Ramban apparently accepts mila as a zman grama but demonstrates that we still might obligate women since it's an atypical - one not subject to the exclusion of zman grama. Why it is atypical is not entirely clear and quite possibly the Ramban embraced multiple arguments.

Methodological Issues:

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- 1) A question generally adopts numerous assumptions; isolate the assumptions and reject them in turn, to arrive at multiple answers. Remember, any conclusion based on two premises taken together, can be negated by rejecting EITHER assumption.
 - 2) Fundamental questions about the texture of a mitzva are critical towards determining the mitzva's membership in a particular category. Whether mila belongs in the category of zman grama depends upon pivotal issues such as: Whose mitzva is it? What is the act of the mitzva? etc.
 - 3) Conversely, a precise definition of the halakhic category will enable examination of its scope. Part of determining the scope of zman grama and whether it includes mila

required a precise definition of zman grama. What happens when the day generates a mitzva (mila) which then cycles continuously (Tosafot). What happens if the time-cycle doesn't cancel but merely suspends the mitzva (Turei Even).

To sum up 2) & 3): To determine whether mila is zman grama we have to know more about mila and more about zman grama.

FURTHER RESEARCH:

- 1) Are women chayav in chinukh of their children - see Sukka (2b), Eirubin (82a) and Tosafot.
- 2) Are women chayav in chovat tzibbur which is zman grama - see Chinukh 95 regarding binyan Beit Hamikdash.
- 3) Whose mitzva is pidyon ha-ben- father's or son's - see Rivash 131, responsa of Rashba 2:321, Chatam Sofer Yoreh Dea 295.

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