

**YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

TALMUDIC METHODOLOGY

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This week's *shiurim* are dedicated in memory of Rhona Albert z"l
by Jose and Fay Poliak

THE COMMUNAL MITZVA OF *MILA*

The *gemara* in *Kiddushin* (30a) delineates the various levels of the obligation of *brit mila*. The primary obligation devolves upon the father. If he fails to execute the *mila*, *Beit Din* must attend to the *mila*. The *gemara* derives this from a *pasuk* in *Lekh Lekha*, which commands, "*Himol LAKHEM kol zakhar*," assigning public responsibility to attend to uncircumcised males.

When the Rambam describes the mitzva in *Hilkhos Mila perek I*, he assigns the "backup mitzva" to *BEIT DIN*, just as the *gemara* does. However, in his commentary to the *mishna* (*Shabbat* 19:6), the Rambam writes that if a father neglects to perform *mila* upon his son, "WHOEVER sees the boy and does not perform *mila* has violated the *mitzva asei*." Apparently, the secondary mitzva does not apply to *Beit Din* as a socio-judicial body, but rather obligates EVERY INDIVIDUAL Jew. Logistically, *Beit Din* may MANAGE the mitzva and decide WHO executes the *mila*; in addition to their function in maintaining order, *Beit Din* also supervises and authorizes *mila* and in this way provides "quality control." However, the mitzva applies to INDIVIDUALS, and not to *Beit Din* as a distinct social entity.

Interestingly, in the third *perek* of *Hilkhos Mila*, in describing the allocation of *berakhot*, the Rambam claims (in passing) that the father possesses a unique commandment, BEYOND THE RESPONSIBILITY OF EVERY JEW to circumcise any *arel*. This language seems more consistent with the definition emerging from the aforementioned commentary to the Mishna. Additionally, the Rambam claims that those who possess the opportunity to perform *mila* upon an uncircumcised male and neglect to, have violated the *mitzvat asei* (as derived from the *pasuk* of "*Himol lakhem kol zakhar*"). If the MITZVA applied to *Beit Din* as a public body, it would be difficult to

envision the violation of a mitzva if *mila* is not performed. An *issur* obtains to individuals, not to public entities. This re-enforces the position that the Rambam defined the mitzva as pertaining each individual Jew and not *Beit Din* per-se.

To summarize, two very different models emerge from the respective comments of the Rambam. His comments in the *Mishna Torah* indicate an obligation for *Beit Din*, while his comments to the Mishna indicate an obligation upon each individual, perhaps managed by *Beit Din*. The simple reading of the *pasuk* DOES suggest an obligation upon individuals, since the mitzva is derived from the term "*himol lakhem*" effectively asserting that YOU (in plural) should circumcise all males.

This question may impact several details surrounding the performance of this type of *mila*. For example, is there a hierarchy of WHO performs the *mila*? If the mitzva applies to every Jew, no hierarchy should exist. Indeed, when he formulates the "public" mitzva, the Rambam writes that WHOEVER "sees" the child must perform *mila*. However, if the mitzva is imposed upon *Beit Din*, it should be performed specifically by someone acting as their agent.

A related issue emerges as well – who should recite the *berakha* of "*Le-hakhniso bi-vrito shel Avraham Avinu*," the second *berakha* of *mila*, which is typically recited by the father? If the "public" performs the *mila*, who should recite the *berakha*? The Ra'avya (*Shabbat* 279) claims that the city leader or *shaliach* of *Beit Din* should recite the *berakha*. Presumably, he viewed the mitzva as that of the *Beit Din*. Technically, ANYONE can perform the actual *mila*, since the action will be viewed as being performed in the agency of *Beit Din*, but the *berakha* must be recited by a formal member or representative of *Beit Din*. (The Ra'avad, in his comments to the Rambam in *Hilkhos Mila perek* 3, insinuates this as well.) The Rambam cites a position (which he does not appear to accept) that ANYONE may recite the *berakha*, perhaps confirming that he views the mitzva as applicable to ANYONE and merely managed by *Beit Din*.

This analysis is partially dependent upon the nature of this *berakha*. If it conforms to the patterns of a *birkhat ha-mitzva*, the manner in which the *berakha* is designated is significant. Presumably, the one reciting the *berakha* should be the ADDRESS of the mitzva. If, however, the *berakha* is a *birkhat ha-shevach*, the manner in which the *berakha* is recited in the absence of the father is less indicative of the status of the one reciting it.

Perhaps the nature of who is obligated affects the actual structure of the mitzva. The Rambam (*Hilkhot Mila*, both in *perek 1* and *perek 3*) articulates the mitzva as follows: "*Beit Din* is obligated to disallow *areilim* (uncircumcised people) among our nation." It seems that the Rambam is describing a distinct mitzva, one that is not identical to the standard mitzva of *mila* that a father is commanded. Typically, *mitzvot* involve ACTS, and the standard mitzva of *mila* indeed consists of performing the act of cutting the foreskin. *Beit Din*, from the Rambam's description it appears by contrast, is not commanded to perform an act per se, but rather to prevent *areilut*. The state of *areilut* is considered *ma'us* (unappealing) and has significant halakhic ramifications as well; it prevents eating the *korban Pesach* and *teruma* and bans entry into the *Mikdash*. *Beit Din* as a body charged with monitoring and preserving the integrity of Jewish society, may be charged with preventing *areilut*.

If this is indeed the structure of the *Beit Din* mitzva, it may change the application of their mitzva as well. For example, the Rambam includes an obligation to circumcise non-circumcised slaves as part of the *Beit Din* mitzva. The circumcision of slaves is certainly not part of a personal mitzva to circumcise a child or even to circumcise oneself. Evidently, the mitzva of *Beit Din* is not oriented toward the ACT of *mila*, but rather toward the prevention of societal *areilut*. Hence, they have the responsibility to circumcise both Jews as well as Jewish-held slaves.

If this is true, perhaps *Beit Din's* obligation would extend to the scenario of a cosmetically reversed circumcision. This situation – known in the *gemara* as "*mashuch*" – involves someone who literally "stretched" the foreskin to its original state, rendering himself an *arel*. Usually, one who has performed *mila* is under no halakhic obligation to repeat *mila* if he has reversed it through *mashuch*. Would *Beit Din* be obligated to attend to a "*mashuch*" and repeat the circumcision? Some (see the Tzafnat Pa'aneiach in his comments to the Rambam, *Hilkhot Mila perek 1*) claim that they would, as the mitzva is articulated as "preventing *areilut*" and not as performing circumcision. In fact, the verse that obligates *Beit Din* is written in a fashion that would support this unique definition of the mitzva; "*Himol lakhem kol zakhar*" implies a command to cause a state of *mila*, rather than to perform an act of *mila*.

Returning to the original query, if the mitzva is DEFINED differently (as preventing *areilut* and not as performing *mila*), it is likely that the mitzva applies to *Beit*

Din and not to every Jew. If it were true the secondary mitzva of *mila* is extended to every Jew, we would anticipate that it would be structured in the same fashion as the base mitzva. However, if the mitzva devolves upon *Beit Din*, it could logically be viewed as a different category of mitzva. Unlike the father, who is obligated to perform an ACT, *Beit Din* – in their role as judicial and religious supervisors of the community – must eliminate *areilut*.

Finally, this question as to whether it is *Beit Din* that is obligated or whether the obligation applies to EVERY Jew and is possibly managed by *Beit Din* may affect an interesting question. Is a MOTHER obligated to circumcise her son in her husband's absence? Presumably, she is exempt, because the mitzva of *mila* is defined as a *zeman gerama* from which women are excluded. Moreover, the Torah expresses the mitzva in male terminology – "*ka'asher tziva OTO (him) Elokim*" – leading the *gemara* to interpret, "*Oto ve-lo ota*," "He [the father] and not her [the mother]." Thus, there are two reasons to exempt a mother from performing *mila* upon her son.

However, several *Rishonim* describe an "obligation" upon the mother. The Maharach Ohr Zarua (R. Chayim, the son of the Ohr Zarua *siman* 11) claims that the mother is obligated. His comments are based loosely upon a comment of Rashi in *Yevamot* (71b) that implies that if a mother has not circumcised her son, she cannot partake of a *korban Pesach*. This may indeed imply that she is obligated. Alternatively, one could argue that the mother is actually excluded from the PERSONAL obligation to administer *mila* to a child, but is obligated to perform the communal mitzva. Perhaps she possesses an obligation similar to that of others, or perhaps her obligation supersedes that of others because she has greater access to the child. Either way, she may be AT LEAST as obligated as others. This position was stated by the *Sefer Ha-Makneh* (by R. Pinchas Ha-Levi Horowitz, the Rebbe of the Chatam Sofer, 17th century), and it may explain the odd position of Rashi in *Yevamot*.

Presumably, the female application of the mitzva would be more logical if the mitzva applies to every Jew. If the mitzva were directed at *Beit Din*, it would be more difficult to apply this mitzva specifically to the mother.