

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

TALMUDIC METHODOLOGY
By: Rav Moshe Taragin

The Yeshiva and the VBM wish a very warm mazal tov to Rav Moshe and Atara Taragin on the birth of their son, Noam Avraham! Rav Taragin has been part of the VBM since its very inception, having authored the Talmudic Methodology series for the past several years, as well as the Gemara Bava Kama series. May you both raise your son to Torah, chuppa and ma'asim tovim!

**WHOSE MITZVA IS IT TO PERFORM MILA ON THE
EIGHTH DAY?**

The mishna in Kiddushin (29a) lists five mitzvot which a father must perform for his son. Among the list appears the mitzva of Mila on the eighth day. The gemara derives the devolution of this chiyuv upon the father from a pasuk in Va'yeira. A debate emerges as to how exactly a father must execute this mitzva. Is it enough to hire a 'mohel,' or should he ideally perform the mila – if possible. Independent of that issue a second question emerges regarding the performance of his son's mila. Do we view the mitzva as 'his' mitzva? Or do we effectively see the mitzva as the son's mitzva which, however, at the age of 8 days he is incapable of performing; hence we designate the father to execute the son's mitzva on the latter's behalf. The father however is not fulfilling his own mitzva but rather the mitzva of his son to be circumcised. After all once the son becomes 13 he himself is responsible to perform mila if it hasn't been already performed. Doesn't this indicate that mila is the son's mitzva which he cannot execute until he is 13 and which is transferred to his father beforehand? Or do we recognize two separate mitzvot: the father's independent mitzva to circumcise his son, and the son's mitzva after 13 to perform mila if his father neglected to do so. This question will be examined in the context of this shiur.

We will begin by studying the mekor or source for the father's obligation for his son's mila. The Bavli in Kiddushin derives it from the verse in Bereishit (21;4) "And Avraham circumcised Yitzchak at 8 days old as he was commanded

by G-d." This pasuk would suggest little as to whose mitzva this really is. The Yerushalmi in Kiddushin (9;7) infers the father's mitzva from a pasuk in Vayikra (12;3) "On the eighth day the foreskin shall be circumcised." Might this pasuk be more indicative of a mitzva upon the parent since it is ensconced in Parashat Tazria among the various korbanot offered by the post-partum mother ? If the mila is listed among the korbanot are we to assume that the basic mitzva belongs to the parent? A third source is mentioned by the Rambam in his Sefer Ha-mitzvot (positive commandment #215). He cites the pasuk in Bereishit (17;10) "This is the covenant which you should preserve between myself, yourself and your children afterwards: circumcise all males." This presentation might imply that the mila is the father's mitzva and the means by which he preserves HIS covenant with Hashem.

None of these pesukim is conclusive regarding our question. However they should certainly be inspected in light of our issue.

A second text which ought to be investigated is the language of the mishna itself. The mishna employs a very intriguing and even confusing syntax to describe the father's performance of mila (and the other four mitzvot). The mishna refers to "the mitzvot of the child upon the father" (mitzvot ha-ben al ha-av). The simple or intuitive reading of this phrase suggests mitzvot that the CHILD must perform for his father. After some clarification, the gemara confirms that this refers to mitzvot/tasks which the father must perform for his son. Why then did the mishna present such a confusing syntax allowing a misunderstanding? In fact the parallel section in the Mekhilta reverses the syntax and lists "the mitzvot of the father to the son." This parallel - and more logical syntax - merely highlights our earlier question: why did the mishna cite mila among the mitzvot of the son for the father? Might the mishna have been indicating that mila (and possibly its colleagues) are really the mitzvot belonging to the son but executed by the father?

A third inspection might be to examine how many mitzvot amongst the list of 613, mila occupies. If indeed we recognize two separate mitzvot - one belonging to the father beginning from the eighth day and one mitzva of the child starting at age 13 should there not be a distinct listing within the 613 mitzvot? None of the Rishonim however, actually divide mila into two separate mitzvot within 613 (though some divide between the mitzva to circumcise sons and the mitzva to circumcise servants.) Does this indicate the presence of only one mitzva belonging to the son and executed by the father as his agent? Or

might we accede to the concept of two mitzvot but claim that these separate mitzvot are collapsed into one item within the list of 613. This question reflects a broader issue relating to the counting strategy employed by Rishonim in assembling the list of 613 mitzvot.

So far we have examined formal issues - from which pasuk we derive mila, the syntax of the mishna and the listing of the 613 mitzvot. Let us turn our attention to more practical halakhic ramifications of this question. In chapter 2 the Minchat Chinukh poses the following question: Would the father retain an obligation to circumcise his son after the latter passes the age of 13 and achieves his 'own' chiyuv? This all depends upon the nature of the father's initial duty. If the father's duty was independent there is no reason why this duty should cease just because his son has reached the age at which he is responsible to perform his own mila. If, however, the father was entrusted with performing his son's mitzva on his son's behalf because his son was too young, we would imagine that this responsibility to act on his son's behalf terminates at the point at which his son can perform his own chiyuv.

What would happen if someone circumcises the child without the father's permission? The gemara in Chulin prescribes a monetary fine for someone who steals another's mitzva. Would this interloper be considered someone who stole the father's mitzva and would he be required to pay this fine? Ostensibly this question should revolve around our earlier one; do we view mila as the father's mitzva or merely the one he executes on behalf of his son?

The Ran writes a responsa (#52) in which he discusses the problem of conducting a mila on a ta'anit. If no one can drink the wine the berakha of ha-gefen would become a berakha le-vatala. One solution he raises suggests having the baby taste the wine and thereby avoid this predicament (In fact the Remah Yoreh De'ah 165 cites a minhag to give a drop of wine to the baby even when a brit occurs on a non-ta'anit). Alternatively this drinking might not be sufficient since the baby has not reached the age of chinukh. At one point, the questioner suggested that since mila is the mitzva of the baby, his drinking should be sufficient. To this the Ran responds that 'it is clear that the obligation is not the baby's but the father's.'; hence the drinking of the baby cannot suffice. This language and ruling indicate the independent nature of the father's chiyuv to circumcise his son. The Tashbatz in volume III chapter 65 argues and seems to indicate that the baby's drinking suffices since it is his mitzva.

The Remah cites a halakha regarding a child who – rachmana litzlan - dies prior to his mila. The Ohr Zarua cites an opinion in the name of Rabenu Hai Ga'on that this mila is only a minhag but not considered halakhic, since the baby is no longer capable of experiencing the covenant which is so central to mila. If we view the mila as the father's obligation to his son would we disqualify this type of mila as non-halakhic simply because the baby cannot participate in the 'brit?' Indeed there might be other reasons to view this type of brit as only minhag and not halakha but the inability of the baby to 'perform' the mitzva might not have been so consequential. Similar issues arise in many Acharonim regarding a brit performed upon a mentally handicapped child or upon a blind child. In each case the baby might be excused from mitzot, and therefore, if the father is merely an agent for his son, no mitzva exists, and any mila must be viewed as purely minhag.

The gemara in Kiddushin (29a) excludes a mother from performing the mila of her son. The Torah describes Avraham as performing mila to Yitzchak just as God had commanded HIM - HIM and not her. Most Rishonim question the need for this exclusion since mila is a zeman gerama from which women are generally excluded. Why then did the gemara base her exclusion upon a special pasuk? Tosafot deliberate as to whether mila is a classic zeman gerama. The Ramban takes a different approach. Without a pasuk we might have included a woman (even though mila appears to be zeman gerama) since it isn't Her mitzva but rather the mitzva she performs to her son. Zeman gerama only excludes women from their own mitzvot but presumably not from mitzvot of others which they perform. Would a woman be excluded from training her son in the mitzva of succa because it is a zeman gerama? If mila is indeed the son's mitzva which the parent performs we cannot exclude a mother simply because of zeman gerama. Therefore, the gemara searches for an alternate pasuk.

See the Chatam Sofer in responsa Yoreh De'ah 295 who states clearly that the mitzva of a father is completely independent of his son's mitzva.