

Halachic Aspects of Family Planning

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In order to be certain that our Journal falls well within the parameters of the halacha, it was decided from the outset that all articles published herein would receive the scrutiny of Gedolei Yisroel.

In a discussion last year with one of the outstanding Roshei Yeshiva regarding certain articles for inclusion in the Journal, we were strongly urged by him to print an article on M'niat HaHerayon (Birth Control). Not only did this Godol request this article, but he also specifically requested that it include all Heterim available. His feeling was that it is important for people to have knowledge, so that they will be able to approach their Rov for advice.

The Editor

Introduction

The halacha forbids public lectures on matters of *Gilui Arayot*, for fear that some of those attending such *Drashot* will misunderstand the fine points of the law and do forbidden acts thinking that they are permissible.¹ Many years ago, Rabbi

1. Chagiga 11b.

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Feinstein ruled in a responsum² that the issue of family planning is included under the broad heading of *Arayot*, and therefore may not be treated in journals available to the public.

Nevertheless, over the past twenty years this topic has been dealt with at length in both public forums and popular journals. Its treatment, unfortunately, has been less than satisfactory, with presentations often being incomplete and inaccurate. Several Gedolim felt that a new halachic paper on this subject in English would be appropriate, and it is upon their insistence that this paper is being written.

The halachic issue involved in family planning touch on many areas; this paper will introduce the reader to these various areas, without attempting to exhaust the halachic discussion involved.

It should be stressed that this essay is not intended to be a source of practical halacha; each family situation is different, and questions must be referred to a qualified Rabbinic authority.

Pirayah V'rivyah

With the words "*Pru U'rvu*," the Torah charges every Jewish male to be fruitful and multiply. The exact number of children one must have in order to fulfill the mitzvah is debated among the Tannaim, with the accepted view being that of Bais Hillel, who require at least one son and one daughter.³ According to the Talmud Yerushalmi, Bais Hillel actually agrees with Bais Shammai, that even one who has two sons has fulfilled his obligation. The mitzvah, says the Yerushalmi, consists of having either two sons or a son and a daughter. The Talmud Bavli, however, clearly disagrees, and its opinion is accepted by the *Shulchan Aruch*, which lists a son and a daughter as the minimum requirement.⁴

But it is not sufficient to have given birth to these two children. They themselves must be capable of having offspring.⁵

2. *Igrot Moshe*, Even Hoezer Vol. 1, pg. 163.

3. *Yevamot* 61b.

4. *Shulchan Aruch*, Even Hoezer (1, 5). See, however, *Avnei Nezer* (Even Hoezer, 1 and Choshen Mishpat, 127) who tends to accept the opinion of the *Yerushalmi*, based on a passage in the *Zohar*.

5. *Even Hoezer* (1, 5).

Therefore, if they should die before having had children of their own, it will turn out retroactively that their father has not fulfilled his obligation of *P'ru U'rvu*⁶.

Underlying the mitzvah is the idea that every male Jew should participate, at least partially, in the perpetuation of Klal Yisroel.⁷ This, however, was not always the rationale. Until *Mattan Torah*, *P'ru U'rvu* was required of all nations.⁸ At that time, the nature of the mitzvah clearly was to personally participate in the perpetuation of the human race.⁹ Since *Ma'amad Har Sinai*, the

6. Yevamot 62a.

7. The Talmud (ibid.) states that a convert who has had non-Jewish children before converting, has thereby fulfilled the mitzvah of *Piryah V'rivyah*. When the Rambam quotes this statement of Rabbi Yochanan (Ishus 15, 6) he qualifies the halacha: The convert only has fulfilled his mitzvah provided the children convert as well. The *Magid Mishna* points out that this condition is obvious since today, after *Mattan Torah*, the mitzvah no longer is to perpetuate the human race, but rather to perpetuate Klal Yisroel.

It is with this understanding of the mitzvah in mind that several contemporary *Gedolim* have pointed out that in our particular generation, with such a large portion of the Jewish people having been annihilated during the war years, it is more important than ever for couples to have larger families, in order to help perpetuate Klal Yisroel. (See *Chelkat Ya'akov* Vol. 3, no. 62.)

8. *Mishneh Lamelech* (Melachim 10,7). This is not in accordance with the opinion of Maharsha (Sanhedrin 59B) that both before and after *Mattan Torah*, this mitzvah did not apply to other nations. See *Avnei Nezer* (Even Hoezer, 79) for a discussion of this point.

9. According to the *Bach* (beginning of *Hilchot Sukkah*), whenever the Torah commands us to perform a mitzvah and explicitly gives the reason, we can only fulfill it if the performance of the act of the mitzvah (*ma'aseh hamitzvah*) is accompanied by *Kavana* (intention) for the reason given. According to Rabbi Hersch Melech Shapiro of Dinov (*Derech Pikudecha* pg. 39), the mitzvah of *Piryah V'rivyah* is one such mitzvah, as the Torah explicitly spells out its reason (Bereishis 1:28): the preservation of mankind.

One could argue with Rav Hersch Melékh's analysis, based on the Gemara mentioned above: Until *Mattan Torah*, one can argue, the mitzvah applied to all nations, and the nature of the mitzvah was indeed to preserve mankind. But after *Mattan Torah*, the nature of the mitzvah shifted. When G-d commanded the Jewish men that "they must all return to their wives" (Devorim 5, 27), no reason was mentioned. It can be argued that this verse, which cites no reason, is the basis of our observation of the mitzvah today, and the reason given in Breishis - the perpetuation of mankind - is no longer the true rationale of the mitzvah. Therefore, the mitzvah of *Piryah V'rivyah* would not fall into the category of mitzvot described by the *Bach*, where the reason for the mitzvah is specified.

nature of the mitzvah has changed: it now applies only to the Jewish people and consists of perpetuating Klal Yisroel.

If one is physically unable to have children, some *Poskim* feel that the act of adopting a boy and a girl and raising them as Jews can serve as a secondary form of fulfilling the mitzvah.¹⁰ This view is based upon the Talmudic statement that "the Torah considers one who raises another's child as if he himself had given birth to that child."¹¹ The Talmud obviously does not mean to say that a non-Jewish child can become a Kohen, Levi or Yisroel in this manner; the remark is limited, rather, to the mitzvah of *Piryah V'rivyah*.

The mitzvah of *Pru U'rvu* is considered by the Talmud to be more important than most other mitzvot. Thus, although one is not allowed to sell a Sefer Torah, if it will enable someone to marry and start a family, the sale is permitted.¹² Likewise, although ordinarily a Kohen living in Israel may not set foot outside the land, (the Rabbis having declared *Chutz Lo'oretz* to be a place of *Tumah*,) nevertheless, for the purpose of marrying and raising a family he may leave.¹³ Furthermore, *Pru U'rvu* is one of the rare instances in the Talmud where the Rabbis actually advocate the commission of a minor sin in order to gain the ability to observe a very great mitzvah. Tosafot labels *Pru U'rvu* as a "*Mitzvah Rabbah*"¹⁴ because it involves the perpetuation of Klal Yisroel.

A couple who decide not to have children are in clear violation of this most fundamental biblical mitzvah. Moreover, if a wife refuses to have any children, her husband has the right, and even the obligation, to divorce her, and he need not pay her *Kesuba*.¹⁵ Since having children is considered one of the essential components of a marriage - "*Ein Isha Ella L'Bonim*"¹⁶ the wife, with her

10. *Chochmat Shlomo* (of R. Shlomo Kluger) to Even Hoezer (1, 1).

11. Sanhedrin 19b.

12. Megillah 27a.

13. Avodah Zarah 13a.

14. Gittin 41b, and Tosafot.

15. See K'subos 72a regarding the wife who does not keep her *nedarim*, and *Rosh, ibid.*

16. *Lev Aryeh* (Grossnass), Vol. 1, #30 in the name of R. Boruch Ber Leibowitz.

refusal, is therefore at fault for the breaking up of conjugal life,¹⁷ and consequently forfeits her monetary privileges.

The same idea is the basis of another mishna. If a man marries, and later discovers that his wife is an *Eilonis* (unable ever to bear children), the marriage is considered to have been based on error, and is null and void with no *Get* required.¹⁸ Thus, the inability of the wife to have children is considered a great enough blemish to annul the entire marriage.

Putting Off The Mitzvah

The more common situation confronting us today is not so much the case of a couple desiring not to have any children at all, but rather that of the couple who haven't yet completed their schooling, or are financially insecure and therefore are interested in postponing the starting of a family. What is the halacha's opinion on putting off the fulfillment of a mitzvah for a year or two? Obviously, with respect to mitzvot like *Tefillin* and *Lulav* which have prescribed times, the person who waits until an entire day passes has irretrievably lost his opportunity to perform the particular mitzvah. But regarding *Piryah V'rivyah*, where the Torah does not stipulate any time, one might think that the couple who have their children a year or two later fulfill the same mitzvah as if they had begun their family at the start of their marriage.

There is a rule governing the performance of all mitzvot that, as a biblically-derived recommended enhancement of the mitzvah, one should zealously perform the mitzvah at the earliest opportunity. This is known as the *Hiddur Mitzvah D'oraiso* of *Zrizim Makdimin L'Mitzvot*.¹⁹ Were this the only issue involved in delaying the raising of a family, there might be ample ground to allow postponement, based on the consideration of inconvenience. Because of pressing circumstances we often postpone a *Bris* or a *Pidyon HaBen* to a later hour in the day,²⁰ foregoing this *Hiddur Mitzvah D'oraiso* of *Zrizim Makdimin*.

17. Taanit 31a.

18. Yevamot 2b and Tosafot.

19. Pesachim 4a.

20. We are assuming that just as a *bris* done on the eighth day is a more enhanced

It should be noted, though, that once the designated day for the mitzvah has passed, with no secondary time having been set by the Torah, many *Poskim* rule that it is implicit in the obligation of the mitzvah that it be taken care of as soon as possible. This is no longer merely a *Hiddur Mitzvah*, but rather an essential condition of the biblical command.

A case illustrating this point is recorded in the responsa of Rabbi Yechezkel Landau, the *Nodah B'Yehudah*. In Rabbi Landau's time, first-born Jews used to avoid fasting on Erev Pesach by attending a *Seudah* of a *Bris*. Even if no baby were born a week before Yom Tov, the last boy born during that season of the year whose *Bris* had to be delayed, would have his *Bris* held over until Erev Pesach for the benefit of the first born.

The *Nodah B'Yehudah*²¹ opposed this practice. He pointed out that when the *Bris* cannot be performed on the eighth day proper for medical reasons and must be delayed, one may not postpone it for an additional day unnecessarily. Such a *Bris* must be performed on the earliest possible day.

A possible source for the *Nodah B'Yehudah's* opinion can be seen from the Gemara in *Makkos* (13b): If a person unintentionally violates a commandment whose intentional transgression carries the punishment of "*Kareth*," he is required to

mitzvah than the *bris* which is postponed, so too the *pidyon haben* done on the thirty-first day constitutes a more enhanced mitzvah. This is clearly the opinion of the *Geonim* (quoted by Ramban to Bechoros 63a) that if the *pidyon haben* is done after the thirty-first day, the father must add one-fifth extra. They obviously feel that just as there is a special mitzvah of having the *Bris* on the eighth day (*bizmano*), so too there is a special mitzvah of having the *pidyon haben* on the thirty-first day. Other *Poskim* disagree and feel that the mitzvah of *pidyon haben* is really the same, whether done on the thirty-first day or afterwards, the only difference being that *Zrizim Makdimin L'mitzvot* dictates that it be done on the earliest possible day. (See *Imrei Yosher*, Vol. 2, no. 132.) This question is a most relevant one in the instance of a baby born on a Thursday, whose *pidyon haben* should take place on Shabbos. Do we allow a *pidyon haben* on Shabbos? If the thirty-first day is the proper time of the mitzvah (similar to a *milah bizmanah*, whose time is the eighth day), then it should be permitted to do the *pidyon* even on Shabbos. See *Orach Chaim* (339,4); *Yoreh Deah* (305, 11) and *Likutei Pinchos* (Schwartz).

21. *Yoreh Deah*, Vol. II, no. 166.

bring a special sin offering (*Korban Chatos*) to the Temple. The Talmud derives from a verse that this special sacrifice is not brought by one who unintentionally failed to circumcise himself, although the sin of not observing *Bris Milah* is punishable by *Kareth*. The difficulty in understanding this Talmudic passage is obvious: If we are discussing the bringing of a *Korban Chatos*, clearly the one bringing it is alive, for no *Chatos* may be brought on behalf of a dead person. In that case, how can we say that, by mistake, this person has not fulfilled the mitzvah of *Bris Milah*? As long as he is alive, he can always rectify the situation by having the *Bris* performed upon himself! The simple reading of this Gemara has led several *Rishonim*²² to conclude that if one delays the performance of the *Bris Milah*, even if only for a short period of time, and even though he ultimately does fulfill the mitzvah later on in life, the mere postponement constitutes an act of *Bitul HaMitzvah*.

If we accept this premise, we might then logically extend it to apply to all mitzvot with no biblically-specified time of performance. It would be self-understood that the proper time for the performance of a mitzvah is the earliest available opportunity, and one who delays doing a mitzvah, but ultimately does perform it, has been both *m'vatel* and *m'kayem* the mitzvah. Hence it should follow that if one postpones having a family after already having had the opportunity, even if he were later to fulfill the mitzvah, the delay itself would constitute a *Bitul HaMitzvah*.

However, one could still argue that there is a major point of distinction between these cases. In the situation of *Bris Milah*, there originally was a set time for the mitzvah. Having failed to do the mitzvah at the proper time, we are obligated to make it up at the earliest opportunity. But in the case of *Piryah V'rivyah*, there never was a fixed time for the mitzvah. Perhaps in such a case the only problem involved in postponing the mitzvah would be that of *Zrizim Makdimin L'Mitzvot*.

22. See Rambam and Ravad, *Hilchot Milah*, (I, 2).

Chazon Ish

Nevertheless, a further complication arises from the Chazon Ish's interpretation of a Gemara in *Moed Katan* (7b). The Gemara there derives from a verse that the mitzvah of *Re'iyas Negaim* (showing suspected cases of *Zora'as* to a Kohen) may be postponed in certain special cases. The mitzvah of *Re'iyas Negaim* is similar to that of *Piryah V'rivyah* in that both have no biblically-set time for their performance. The implication of this Gemara is clear: if not for the special verse, we would not have allowed the postponing of the mitzvah. The Chazon Ish writes²³ that he is unsure just what violation such a delay would have constituted. Does the Gemara mean to say that whereas in other mitzvot we insist that *Zrizim Makdimin L'Mitzvot*, here, with respect to *Re'iyas Negaim*, the Torah never required *Zrizus* even as a *Hiddur L'chatchilah*? Or perhaps the Gemara meant something more significant - that whenever the Torah requires us to do a mitzvah, but mentions no specific time, it is understood that the proper time for the mitzvah is the earliest opportunity, and only with respect to *Re'iyas Negaim* has the Torah made an exception.

The Chazon Ish prefers the second interpretation. According to his opinion, then, a young married man would not be allowed to postpone the raising of a family, as such a delay would constitute a *bitul* of the mitzvah.

Maharam Schick

Another major objection is raised by the Maharam Schick. Biblically, he writes²⁴, a person need not fear that he will die before he has a chance to do the mitzvot required of him. But rabbinically it is ruled that such a fear is in place when a long time interval is involved. This is the rabbinic principle that "*Chashinon L'miso L'zman Merubah*."²⁵ A married person who delays having his

23. Commentary to the end of *Negaim*.

24. Responsa, *Even Hoezer*, no. 1.

25. The Torah allows one to wait until the next Yom Tov to bring the previous Yom Tov's sacrifices to the Temple, and no fear is expressed that the individual may not live that long. But rabbinically we do not allow postponement for seven days or more, as this is considered "*zman merubah*."

family for a year or two would clearly violate this principle; he must take into account the chance that he may die in the interim and forever forfeit his opportunity to fulfill the mitzvah.

But whatever the source of the prohibition be, whether biblical according to the Chazon Ish or rabbinic according to the Maharam Schick, the halacha is stated quite clearly, in both the Rambam²⁶ and *Shulchan Aruch*:²⁷ Postponing the mitzvah of *Piryah V'rivyah* is not allowed.

Spacing

If the couple's first pregnancy resulted in a set of twins, a boy and a girl, then the husband has fulfilled his mitzvah of *Piryah V'rivyah*. However, if only one child is born first, the question now becomes whether the same two considerations mentioned previously (of the Chazon Ish and the Maharam Schick) still apply to prohibit any delay in having the next child.

Of course, if it is medically feared that the wife may become ill if she has the second child too soon after the first, there is no question that one is permitted to postpone fulfilling the mitzvah. It is a generally-accepted rule²⁸ that one is not obligated to do any mitzvah that will be hazardous to his health.

However, if the wife is perfectly healthy, and the couple is interested in delaying having their next child for non-health reasons, what could possibly be a reason to negate the two considerations mentioned above?

In the collection of Responsa entitled *Bnai Bonim*,²⁹ Rav Yosef Henkin is quoted as having allowed a wait of even four years or more between children. According to the suggestion of his grandson, Rabbi Herzel Henkin, the reason for this lenient decision runs as follows: In the Talmud we find³⁰ that a woman may nurse

26. *Ishus* (15, 1).

27. *Even Ho'ezer* (76, 6).

28. See *Sha'arei Teshuva* to Orach Chaim, chap. 640, end of section 5, *Igrot Moshe* Orach Chaim, vol. I, no. 172.

29. Jerusalem, 1981, no. 30.

30. *Ksubos* (60a).

her child for up to four or even five years. In Talmudic times a nursing mother would be unable to conceive. Why didn't the Rabbis forbid this practice of nursing for such an extended period of time on the grounds that it prevents the husband from fulfilling his mitzvah of *Piryah V'rivyah* earlier? Obviously, the answer must be that since the extra-long period of nursing is beneficial to the baby, we do not insist upon rushing to do *our* mitzvot at the expense of well-being of the child. So, today as well, if the mother is interested in delaying having her next child so that she will be able to take better care of her first child, and devote more attention to him, then the situation might be comparable to a mother nursing her baby for four years in Talmudic times. If, however, the mother plans to go to work, or to school during the free time, and is not delaying having her second child for the benefit of the first child, then Rabbi Henkin sees no justification for allowing the husband to delay the fulfillment of his mitzvah.

Others claim that the practice in Lithuania before the war was to allow for a pause of up to two years between the birth of one child and the conception of the next.³¹ The rationale for this time period seems to be based on the following reasoning: the Talmud tells us³² that a nursing mother does not fully regain her strength until a full two years after having given birth. Therefore the nursing mother has a partial status of a *Choleh She'ein Bo Sakonah* - a sick person whose life is not in danger. Whereas with respect to more serious rabbinic laws we are not lenient on her behalf, and therefore require the nursing mother to fast on Tisha B'av and other serious fast days, regarding less serious rabbinical laws we assign this woman the status of a *Cholah*, and allow her to eat on Shiva Asar B'Tamuz and other minor fast days.³³

The Talmud in another concept awards the same status to all mothers who have given birth within the last two years, whether they are nursing or not.³⁴ According to the Maharsham, quoted by

31. Quoted in *Igrot Moshe*, Even Ho'ezer vol. I, beginning of no. 64.

32. Niddah (9a).

33. Taanis (14a); *Orach Chaim* (550, 1; and 554,5).

34. Niddah (9a). See *Igrot Moshe*, Yoreh Deah, vol. III, pg. 287, that this is no

Chief Rabbi Ovadia Yosef in his responsa,³⁵ this is also true, regarding the woman's status as a semi-*Cholah*. Hence, he rules, any woman who has given birth need not fast on minor fast days for two years, even if she is not nursing. This ruling affirms that a woman is a partial-*Cholah* for two years after childbirth.

Chaishinon L'misoh MideRabbanan

Let us return now to the aforementioned principle *Chaishinon L'misoh MideRabbanan*: the Rabbis ruled that a person must fulfill a mitzvah at the earliest opportunity for fear that he might die unexpectedly and be unable to perform it at a later date. Assuming that the only problem involved in postponing having a family is the issue of *Chaishinon*, as presented by the Maharam Schick, one might argue that if we were to divide all rabbinic laws into two general groups of (a) the more serious laws and (b) the lighter ones, then this principle of *Chaishinon L'misoh MideRabbanan* would belong to the second category. The fact that we allow a Yeshiva student to postpone his marriage in order to advance in his Torah studies,³⁶ although this means foregoing the rabbinic

longer true today. Obviously Rabbi Feinstein would also not accept the lenient view of Maharsham regarding fasting on *Shiva Asar Be'Tamuz*.

35. *Yechaveh Da'as*, vol. I, #35.

36. *Kiddushin* (29b). According to the Chazon Ish, that postponing any mitzvah constitutes an act of *bitul hamitzva*, we must understand why the yeshiva student is allowed to delay getting married in order to advance in his Torah studies.

Perhaps the idea behind this is, that since the whole mitzvah of *piryah v'rivyah* is for the purpose of perpetuating klal yisroel, the ultimate purpose of which is *masores ha-Torah*, passing Torah from one generation to the next, and his learning is also for the purpose of perpetuating Torah for klal yisroel, it may be permissible to delay marriage on that ground. Indeed the gemara tells us (*Sanhedrin* 19b) that one who teaches someone else's child Torah is considered as if he fathered him. In his writings, the Chofetz Chaim urged childless couples to support yeshivot, in order to have this partial fulfillment of the mitzvah of *piryah v'rivyah*. And in fact, in a certain sense, those who teach others Torah or support yeshivot have fulfilled this mitzvah of perpetuation of *masores ha-Torah* in a much greater fashion than others who merely biologically give birth to a son and a daughter. In the words of the prophet Yeshaya, 56:4,5, "So speaks

principle of *Chaishinon L'Misoh*, would seem to indicate that the principle is of a less serious nature.

By combining the two assumptions — (a) postponement of the fulfillment of the mitzvah is a rabbinic law of a lesser degree, and

Hashem to the childless who ... support Torah: 'And I shall give them in my home a ... name which shall be greater than sons and daughters.' "

If the yeshiva student feels that by marrying early his ability to transmit Torah to future generations will be weakened, then in his situation the mitzvah of *piryah v'rivyah* would dictate postponing marriage for the sake of learning Torah.

According to the *Bais Shmuel* (beginning of Even Hoezer) this is the reason for the delay of this mitzva from the age of 13, the usual age when one becomes obligated to fulfill all other mitzvot, until the age of 18. If young boys would be obligated to marry at 13, their ability to transmit Torah to future generation would be hampered, and the entire goal of this mitzva would be undone. We wait until the age of 18, at which time we assume the young man has already had a chance to become sufficiently oriented in Torah learning.

In connection with this point, it is interesting to note that although the mishna in *Avot* (סוף פרק ה') requires that a man marry at 18, the gemara in *Kiddushin* mentions the age of 20 (29b). The *רש"י* (כתובות נ.) suggests that perhaps this discrepancy reflects a fundamental dispute the *Tannaim* had as to how long it might take one to develop an approach to Torah learning. In *Chulin* 24a, the gemara quotes a controversy among the *Tannaim* regarding this point, whether three years or five years might be required. Since the mishna in *Avot* recommends that boys only begin study of Talmud at age of 15, then it should take either until 18 or 20 to pick up the *derech halimud*, depending on the views of the individual *Tannaim*.

A completely different approach to this problem is presented by the N'ziv (in his commentary to the *Sheiltot*, 5:4) and after him by Rabbi Elchanan Wasserman (*Kovetz Shiurim* II, no. 19). Both understand that it is permitted for the *talmid chacham* to postpone any mitzva, not just *piryah v'rivyah*, if he feels that observing the mitzva sooner would interfere with his learning. The gemara in *Moed Katan* 9a derives from a *posuk* that one should interrupt his Torah studies only to perform a mitzva which cannot be taken care of by others. Regarding such mitzvot that can be attended to by others, the *talmid chacham* is instructed not to interrupt his Torah studies.

Here, although the mitzva of *piryah v'rivyah* cannot be performed for him by anyone else, nevertheless the ability to delay the mitzva until a later time puts it into the same category as a mitzva which the *talmid chacham* need not do now, and which may be taken care of by others; and the halacha says that in such a case, the *talmid chacham* need not interrupt his learning, and may rely on his intention to perform the mitzva later, just as in the other case he may rely on others to do the mitzva.

(b) all new mothers within two years of childbirth, whether they are nursing or not, have the status of *Cholah* with respect to this lesser category of rabbinic laws — we may conclude that if a woman chooses to postpone having her next children for two years, feeling that she would like to first regain her full strength, she may do so.

However, if we assume, as the Chazon Ish does, that postponing the fulfillment of any mitzvah is regarded biblically as an act of *Bitul Hamitzvah*, (nullifying the mitzvah) even if one ultimately does fulfill the mitzvah, then this explanation for allowing the two-year delay would not be valid.

Despite the two views outlined above, which allow spacing at either two or four year intervals, Rabbi Moshe Feinstein, in a responsum,³⁷ vehemently opposes the practice. He denies that it was ever the common practice in Lithuania to allow up to a two-year pause.

Al Tanach Yodecha

It is now several years into their marriage, and our couple has already been blessed with a son and a daughter. What now? The Talmud tells us³⁸ in the name of Rabbi Yehoshua that even after one has fulfilled the biblical obligation of *Pru U'rvu*, he is still required to continue to have children in his later years. This idea is derived from the words of Koheles (11:6) *בבוקר זרע את זרעך* וְלָעֶרֶב אַל תִּנַּח יָדְךָ, *loerev al tanach Yodecho* - 'In the morning you should plant your seed and in the evening, as well, you should continue to do the same.' The consensus among the *Poskim* is that this law of Rabbi Yehoshua is not biblical in nature, but only rabbinic.³⁹

According to the *Aruch HaShulchon*,⁴⁰ the Rambam's view is that *לערב אל תנח ירך* does not constitute an *independent* rabbinic mitzvah, but is rather a *Hiddur Mitzvah Min Hamuvchar* (a very

37. see above, note 31.

38. Yevamot (62b).

39. See *S'dei Chemed*. 141 חלק ה עמוד.

40. Even Hoezer (1, 8).

desirable enhancement) of *Piryah V'rivyah*. Hence it follows, as the Ramban has pointed out,⁴¹ that although one who violates any rabbinic law is considered wicked (a *Rosho*) and may be referred to by other people as such⁴², one who refuses to observe this ruling of Rabbi Yehoshua regarding *Lo'erev al tanach yodecha* would not be considered a sinner. And although Beth Din could force someone to get married even if he did not want to, Beth Din would not force one to observe this mitzvah of having more children than the minimal two. This principle of Rabbi Yeshoshua is a statement of the proper mode of behavior (*derech erez*) rather than an official rabbinic enactment (*takkanah*).

In fact, the Talmud relates that when the Romans intensified their religious persecutions against the Jewish people, there was a popular feeling among the pious Jews that it would be proper for our nation to refrain from having families. Why bring more Jews into this world just to be persecuted and prevented from observing the laws of the Torah? But the Rabbis felt that it would be much too difficult to impose such a rabbinic prohibition on all the Jewish people, and therefore they refrained from instituting this *Gezaira* (decree).

Exactly what were the Rabbis thinking of forbidding? According to Tosafot,⁴⁴ they never had any thoughts of doing away with the biblical mitzvah of *Piryah V'rivyah*. Although the Rabbis do have the authority to require of us that we not perform biblical mitzvot,⁴⁵ nevertheless, any rabbinic decree aimed at completely abolishing and negating an explicit mitzvah in the Torah is beyond the scope of their authority.⁴⁶ Therefore, Tosafot explains, the discussion in the Talmud revolved about instituting a *Gezaira* that no one should have more than a son and a daughter. In other words, the Rabbis considered this mitzvah of *Lo'Erev al Tanach Yodecha*.

41. Rif, Yevamot (62b).

42. Shabbos (40a).

43. Bava Bathra (60b).

44. ibid. starting "din". See *P'nai Shlomo*.

45. Yevamot (90b).

46. See *Taz*, Orach Chaim end of פ"קצ"ח

Other *Rishonim*⁴⁷ disagree with Tosafot and interpret the Gemara according to its literal meaning: The Rabbis were actually contemplating enacting a *Gezaira* to completely abolish the mitzvah of *Piryah V'rivyah*.

In actuality, however, the Rabbis never did enact this decree. As previously mentioned, they felt it would be practically impossible for the masses to observe such a strict prohibition. "It is preferable for the people to violate the laws unintentionally rather than knowingly and on purpose." Based on the terminology used by the Gemara, there is a minority opinion quoted in *Shulchan Aruch*⁴⁸ that runs as follows: Since refraining from having a family is the more proper thing to do, therefore, any individual who chooses to do so by never marrying at all or by not having more than the bare minimum of one son and one daughter (depending upon the two interpretations mentioned above), should not be faulted, since he is really acting in the more proper fashion. And certainly the Beth Din may not force that individual into observing the mitzvah which he refuses to fulfill.

This opinion of the Mordechai has only been accepted by the *Shulchan Aruch* with respect to the inability of the Beth Din to enforce the observance of the mitzvah. However, it is assumed by the majority of the *Poskim* that since the Rabbis have in fact not enacted any prohibition against raising a family, large or small, both of the basic mitzvot, *Piryah V'rivyah* of biblical origin, and *Lo'Erev al tanach yodecha* of rabbinic origin, still remain in full force, and must be totally and properly observed by all Jewish men.

Postponing Lo'Erev

Our young married couple, who has already had a boy and a girl, would now like to know if they must have the rest of their family at the earliest opportunity, or whether they may postpone fulfillment of the mitzvah of *Lo'Erev al tanach yodecha*.

47. See *Biur Hagra* to *Even Ho'ezer*, Chap. 1, section 10.

48. *Even Ho'ezer* (1,3) in *Ramo*.

In response to this question, the *Birkai Yosef*⁴⁹ cites a clear implication from the Rambam that, in this mitzvah, *temporary* postponement is allowed provided that the couple does not plan to completely discontinue having children.

Hastening the Coming of Moshiach

According to one opinion in the Talmud,⁵⁰ the reason for the mitzvah of *Piryah V'rivyah* is to hasten the coming of Moshiach: "The son of David will not come until all of the souls in heaven (in the '*Guf*') have been born." Every time another child is born to Klal Yisroel, the coming of Moshiach is thereby hastened.

Although this opinion has not been accepted insofar as it explains the nature of the mitzvah of *Piryah V'rivyah*, the other two premises upon which it is based are indeed accepted: a) Every individual has an obligation to do whatever is in his power to hasten the coming of Moshiach and b) the birth of each new child into Klal Yisroel is considered another step towards the coming of Moshiach.

Having Children

The Talmud stresses the importance of the mitzvah of rejoicing at a Jewish wedding. If one rejoices properly, it is considered as if he had rebuilt part of the ruins of the destroyed city of Jerusalem. But what is the connection between the two?

When a young couple gets married, we assume that they will soon be having children. Every new child born into the Jewish people hastens the coming of Moshiach. The halacha tells us that there is a special mitzvah to celebrate upon the occasion of the building of the Temple.⁵² Even in advance of the actual building, on the occasion of a significant historical event which will lead up

49. Even Ho'ezer, chap. 1.

50. Yevamot (62a).

51. Brochos (6b).

52. Ramban to Bamidbar, end of *Parshas Noso*. See *Or Hamizrach* 5734, "Regarding Megillat Ta'anit."

to *binyon habayis*, it is also proper to celebrate the *aschalta d'geula*⁵³ (beginning of the Redemption).

It is for this reason that every Jewish wedding is considered, in a sense, an *Aschalta D'Geulah*, for we know that the young couple will soon be having children, and will thus hasten the coming of Moshiach and the rebuilding of the Temple.

Based upon the combination of these ideas, some *Poskim*⁵⁴ have pointed out that even one who has already fulfilled his basic mitzvah of *Piryah V'rivyah* should still try to raise a larger family for the sake of hastening the coming of Moshiach. This, too, is our responsibility and obligation.

Sirus

Our couple has already been blessed with a number of children and now decide that they would not like to have any more. What may they do to prevent having additional children?

The common American practices of "tying the tubes" of a woman or performing a vasectomy on the man are biblically forbidden.⁵⁵ A Jew may not surgically sterilize any human, animal, or even insect.⁵⁶ Not only is this prohibited when the actual operation is performed by a Jewish doctor, but also when a non-Jew is engaged to do the act of sterilization. The Talmud states⁵⁷ that if a Jewish person brings an animal to a non-Jewish veterinarian to be sterilized, the Rabbis penalize the violator and force him to sell his animal to someone else so that he does not benefit from his sin. Both the Gemara and the *Shulchan Aruch*

53. Commentary of *Nesivos* to Megillat Esther (9-19); *Sfas Emes*, Chanukah 5644; Or *Hamizrach*, mentioned in note 52.

54. *Mishneh Halachot* (R. Menashe Klein), vol. 5, no. 210.

55. Shabbos (110b).

56. Rabbeinu Gershom to Bava Bathra (80a).

57. Bava Metzia (90b).

58. The Gemara in Bava Metzia tries to determine exactly what prohibition has been violated in this situation. One opinion suggests that just as *Amirah L'nochri* (asking a non-Jew to perform a prohibited act for a Jew) was forbidden by the Rabbis on Shabbos, Yom Tov, and Cholo Shel Mo'ed, it was similarly proscribed for all Torah prohibitions. According to Ravad, Hilchot Kilayim (1:3) one would also not be allowed to ask a non-Jew to plant *kilayim* for him in his

rule⁵⁹ that it is forbidden to engage a non-Jew to perform any act of sterilization.

The Torah verse⁶⁰ forbidding sterilizing animals speaks specifically about male animals. Although the *Sifro* there comments that this prohibition does not apply to female animals, the Rambam states⁶¹ clearly that the *Sifro* only excluded the sterilization of female animals from the *punishment* of *malkot* (lashes) but that the *act* itself is nevertheless prohibited. According to the Vilna Gaon,⁶² this prohibition, applying even to female animals, is biblical in nature.

When the sterilization is effected through the taking of medication, orally or by injection, the Rambam and the *Shulchan Aruch* distinguish between a male and a female animal. To cause a

field, or according to Tosafot Rosh Hashanah 24b, have a non-Jew make a sculpture of a human figure.

The other view in the Talmud is that the Rabbinic edict forbidding *Amirah L'nochri* is limited to Shabbos, Yom Tov, and Cholo Shel Mo'ed, but the Torah law forbidding *Sirus*—castration of animals—applies even to non-Jews in accordance with the view of the *Tanna* Rabbi Chiya. Therefore, a Jew asking the non-Jew to perform the act of sterilization for him constitutes a violation of *Lifnai Eveir*, inasmuch as the Jew abets the non-Jew in the commission of a sin.

The Rambam has a unique opinion on this matter. He explicitly allows having a non-Jew plant *Kilayim* in one's field. This obviously indicates that *Amirah L'nochri* is only forbidden in the areas of Shabbos, Yom Tov, and Chol Ha-Moed. At the same time, the Rambam seems to assume that asking a non-Jew to castrate an animal may possibly constitute a biblical violation. According to the Rambam, the Gemara in Bava Metziah drew a comparison between the two prohibitions of *Sirus* (castrating animals) and *chasimah* (the law forbidding one to muzzle an animal while it threshes grain). In both instances the Torah forbids the *result* brought about (*Issur Chalot*) and not merely the actual act itself (*Issur P'eulah*). (See *Beis Efraim*, Orach Chaim no. 56, *Tshvos Zofnas Paneach*, N.Y., no. 131 and 233). Because of this distinction, even *Gromo* (indirectly bringing about the result) would also be forbidden in these two cases. It is for this reason that the Talmud raises the possibility that even asking a non-Jew to muzzle one's animal and thresh with it for him, or to castrate one's animal, may also be *Gram-Sirus* and *Gram-Chasimah* which would be biblically forbidden.

59. Even Ho'ezer (5:14).

60. Vayikra (22, 24).

61. *Issurei Biah*, (16, 11).

62. Even Ho'ezer end of chap. 5, nos. 25 and 28.

male to become sterile is forbidden even by non-surgical methods, while such methods are permissible with a female. However, the permissibility of sterilizing a woman through medication is explained by the Talmud⁶³ to apply only in such a case where the husband will not be prevented thereby from fulfilling his mitzvah of *Piryah V'rivyah*. Even in that case, the *Acharonim* debate the nature of this permissibility. Most feel⁶⁴ that non-surgical forms of sterilization are not forbidden for women. Some, however, rule that there still exists a rabbinic prohibition which may only be lifted if the woman is known to suffer unusual pain at childbirth. According to this view, this *Heter* (lenient ruling) is similar to the law allowing violation of rabbinic prohibitions on Shabbos for the sake of a sick person (*Choleh She'ein bo Sakona*) even though there is clearly no danger of life or limb. "In a situation of pain (*tza'ar*) the Rabbis did not insist upon the observance of their prohibitions."⁶⁵

The Talmud relates⁶⁶ that the wife of Rabbi Chiya suffered unusual pain during childbirth. She drank a special potion of herbs to make herself sterile, without the previous consent of her husband. The Chasam Sofer⁶⁷ points out that such action would only be allowed in Talmudic times, when her husband would have the option of marrying another wife if he desired more children. The wife's causing herself to be sterile did not interfere with his ability to fulfill his mitzvah. Today, however, since we no longer allow polygamy or divorce without the wife's consent, it is understood that when a couple marries, the wife obligates herself to assist her husband in fulfilling both his mitzvot of *Piryah V'rivyah* and *Lo'Erev al tanach yodecha*.⁶⁸ She may therefore not

63. Shabbos (111a).

64. See *Otzar Haposkim* to Even Ho'ezer in note 77.

65. Ksubos (60a).

66. Yevamot (65b).

67. Quoted by *Pischei Teshuvah* to Even Ho'ezer (5, 11; and 232). See also *Avnei Nezer*, Choshen Mishpot, no. 127. where the same distinction is made.

68. See *Lev Avraham* (#99) where this point of the Chasam Sofer is explained at length. See also *Avnei Nezer*, Even Ho'ezer, no. 79 where he assumes that even during Talmudic times the same was true.

cause herself to become sterile or practice any form of contraception without the consent of her husband.⁶⁹

Temporary Sirus

Modern medicine has developed an oral medication to be taken by the man which causes temporary sterility. Since causing sterility in the male is forbidden even by "drinking a potion," would causing temporary sterility also be included under this prohibition? Dayan Ehrenberg has written a lengthy responsum,⁷⁰ concluding with a lenient decision. Rabbi Moshe Feinstein assumes⁷¹ that causing sterility is only forbidden when the potion the male drinks affects the reproductive organ directly. But to cause even permanent sterility by affecting other parts of the body would not be prohibited.

Other contemporary *Poskim* question the validity of both of these lenient decisions.

Chavoloh

It should be borne in mind that the case specifically mentioned in the Talmud allowing non-surgical sterilization of a woman was in a situation where this was medically recommended. Rabbi Chiya's wife suffered great pain during childbirth. However, if the non-surgical sterilization is done for non-medical considerations, some *Poskim*⁷² have pointed out that this would constitute a separate violation of *Chavoloh* — one is not allowed to mutilate his own body.⁷³ Even the slight act of self-mutilization involved in donating blood to the Red Cross is a serious question dealt with by contemporary *Poskim*.⁷⁴

69. Regarding temporary use of contraceptives by the wife, without the permission of her husband, see *Chavazelet Hasharon*, Even Ho'ezer pgs. 229-231.

70. *D'var Yehoshua*, vol. III, Even Ho'ezer, no. 7.

71. Even Ho'ezer vol. III no. 15. See Chazon Ish, *Nashim* 12.

72. See *Torat Chesed*, Even Ho'ezer, no. 44, section 41.

73. Bava Kamma (91b).

74. See *Igrot Moshe*, Choshen Mishpot, no. 103; *Pischei Teshuvah* to Yoreh Deah chap. 157, section 15.

Hashchosas Zera And Contraceptives

The Halacha forbids *Hozoas Zera L'vatola* — the needless emission of semen. Not only does this prohibition apply when no cohabitation takes place at all, but even when a man has had relations with his wife and interrupts the act in middle so that the emission of the semen will not take place in the vagina.⁷⁵

It is generally accepted that both of these forms of *Hashchosas Zera* (the wasting of semen) are biblically prohibited,⁷⁶ notwithstanding a strong minority opinion⁷⁷ that this law is only rabbinic in origin. Even in situations of danger to the life of the woman should she become pregnant, the accepted view among the Tannaim is to forbid coitus interruptus.⁷⁸

This does not mean that *Tashmish* (intercourse) is allowed only when there exists a possibility of its leading to pregnancy. Tosafot⁷⁹ points out that even when a woman is pregnant or is too young or too old to conceive, her husband is permitted to have normal relations with her. The *Igrot Moshe*⁸⁰ points out that even if a woman has had a hysterectomy, her husband may still continue to live with her. Whenever *Tashmish* is performed in a normal fashion, even though it is clear that no pregnancy can

75. Yevamot (34b). There is, however, a difference between the two examples of "השחתת זרע". In the case of masturbation, the violation is more severe, and is considered a form of "niuf." In the second case of coitus interruptus, however, the violation is less severe, and consists only of wasting the seed. (In the first case there is really a double violation — א) niuf, and ב) השחתת זרע). The difference would be in a case where the doctors insist on making sperm tests, to see how to enable the husband to become fertile. We would only allow the second form, for in this type of situation the seed is not being wasted at all; this test will lead to the possibility of having children. The *Poskim* have very detailed guidelines regarding these cases. See אה"ע"ח כ"ג כר"ז: and *Igrot Moshe* אה"ע"ח א, and others in אג"ר.

76. *Igrot Moshe*, Even Ho'ezer.

77. See *Otzar Haposkim* to Even Ho'ezer chap. 23; *Torat Chesed* no. 43; *Chavatzelet Hasharon* (pg. 230) quoting *Ezer Mikodesh* (to chap. 23); *Mishneh Halachot* vol. 5, pg. 315.

78. See *Igrot Moshe*, Even Ho'ezer Vol. I, pg. 155.

79. Yevamot (12b) beginning "shalosh".

80. Even Ho'ezer, vol. I, no. 66.

possibly result, this does not constitute "wasting of the husband's seed".

The hysterectomy case is a most significant one. We consider the act one of *Tashmish kiderech kol ho'oretz*, marital relations performed in a normal fashion, even though the semen cannot possibly enter the woman's womb for she has no womb to speak of. Based on this case, many *Poskim* have concluded that women who so choose may insert a cloth (*Moch*) in their body before *Tashmish* to prevent pregnancy. If the *moch* is inserted deeply enough so that it doesn't interfere with the act of *Tashmish*,⁸¹ and, in the words of Maharshal,⁸² "the bodies derive pleasure one from the other," this too is considered *Tashmish kiderech kol ho'oretz*, and would therefore not constitute a violation of *Hashchosas Zera*.

One could still argue the point and distinguish very simply between the cases: Only in the situation of the pregnant wife and the woman too young or too old to have children, etc., where the *Tashmish* on its own will not lead to pregnancy, is it considered *Tashmish Kiderech Kol Ho'oretz*. But when the woman inserts a *moch* and the obstruction blocking the semen from entering the cervical canal is an unnatural one, perhaps then relations would not constitute *Tashmish kiderech kol ho'oretz*, and would therefore be forbidden?

This point of distinction, however, does not seem to be valid. We know that even if a woman caused herself to become sterile by drinking a potion of herbs, she may continue to be with her husband. Clearly then, even an intentional and unnatural induced inability to become pregnant would not automatically label the *Tashmish* as *Hashchosas Zera*.⁸³

It is based on this line of reasoning that Maharshal,⁸² Rabbi Shneur Zalman of Lublin,⁸³ and many other great *Poskim* ruled that use of a *moch* during *Tashmish* to prevent pregnancy is allowed.

81. *Igrot Moshe*, Even Ho'ezer vol. I, no. p. 163.

82. *Yam Shel Shlomo*, Yevamot, chap. 1, section 8.

83. See *Torat Chesed* (pgs. 116d-117a).

In the words of the Chazon Ish,⁸⁴ "Use of a *Moch* during *Tashmish* is allowed for all women (even when pregnancy would pose no danger to their lives) ... This was the decision of our great teachers who attained divine inspiration, Maharshal of blessed memory ...

The issue of the use of the *moch* is based on an interpretation of the Gemara in Yevamot (12b): in three special cases, when there exists a possibility that pregnancy may occur and cause danger to the life of the mother, Rabbi Meir allows the woman to use a *Moch*. The contemporaries of Rabbi Meir disagree and argue that "heaven will have mercy" and that "G-d will protect the foolish people who do not look after themselves."⁸⁵

According to Rashi, the Rabbis (whose opinion was accepted in their argument with Rabbi Meir) forbid the use of a *moch*, even though the woman's life is in danger. Other *Rishonim* ask how this can possibly be the view of the Rabbis? Do we not know that even in a doubtful case of danger to human life (*safek sakanat nefashot*) we are allowed to violate almost all Torah laws?

Rashi obviously holds that use of a *Moch* during *Tashmish* is forbidden under normal circumstances. In these three situations the Rabbis disagree with Rabbi Meir, disregarding the possible danger to life. Since the threat to life is not even considered a 50/50 possibility,⁸⁶ and the general attitude of people is not to worry about the danger involved in these special situations,⁸⁷ therefore the Rabbis did not consider these cases as constituting *sofek sakana* to permit the violation of any prohibitions.

Were the danger more obvious (50/50 or a greater probability) or were it the general reaction of people to be concerned even about a minimal threat to life, then even the Rabbis would agree

84. Even Ho'ezzer, chap. 37.

85. Tehillim 116, 6.

86. See *Ahiezer* vol. I, no. 23; *Zemach Zedek* quoted there; *Torat Chesed*, no. 44; *Avnei Nezer*, Even Ho'ezzer, vol. I, no. 81. It is surprising that Rabbi Moshe Feinstein (*Igrot Moshe* Even Ho'ezzer, vol. I, no. 64) rejects this widely-accepted opinion. See also next note.

87. *Mishneh Halachot*, vol. 5, pg. 314. See also *Pe'er Hador* (biography of Chazon Ish) vol. 3, pg. 184, that this was also the view of the Chofetz Chaim and the Chazon Ish.

with Rabbi Meir in permitting the use of a *moch* during *Tashmish*.

Most other *Rishonim*⁸⁸ disagree with Rashi's understanding of Rabbi Meir. They feel that Rabbi Meir not only allows the use of a *moch*, but *requires* it. Since Rabbi Meir considers this a situation of *sofek sakana*, he rules that one is *not allowed* to be stringent. If the doctors assess someone's condition as dangerous and think that he must eat on Yom Kippur, that person is *not allowed* to fast.⁸⁹

It is a bit unclear exactly how much of Rashi's interpretation of the Gemara is rejected by the other *Rishonim*. The Maharshal (and his group of *Poskim*) understand that the other *Rishonim* hold that use of a *moch* during *Tashmish* is always allowed, and in this case of the far-fetched *sofek sakanah*, Rabbi Meir and the *Chachomim* only disagree as to whether the *moch* is obligatory.

Rabbi Chaim Ozer Grodzensky⁹⁰ (and his group of *Poskim*) understand that the other *Rishonim* also agree with Rashi that use of a *moch* during *Tashmish* would normally be forbidden, for since it does partially interfere with the *Tashmish*, this would not be considered *kiderech kol ho'oretz* and would therefore constitute *hashchosas zera*. Only in the situation where the wife's life is in danger did the other *Rishonim* mean to say that there is no violation of *hashchosas zera*. In this situation, it is most natural for the husband to do something to protect his wife from any possible danger resulting from the *Tashmish*, and therefore use of the *moch* is considered *kiderech kol ho'oretz*.

Even the Chazon Ish, who assumed the Maharshal's view to be more correct, in practical application only allowed use of the *moch* during *Tashmish* in the case of *sakana*.⁹¹ "And even if we

88. Quoted by Shitta Mekubetzet to Ksubos (39a).

89. *Be'er Heitev* to Orach Chaim chap. 618, section 3; *Torat Chesed* pg. 112c. See, however, *Avnei Nezer*, Choshen Mishpat, no. 193, who questions this premise.

90. *Ahiezer* vol. I, no. 23; vol. III, no. 24, 5.

91. According to the *Pischai Tshuva*, (Even Hoezer 23:2) two great *Poskim*, Rabbi Akiva Eiger and the Chasam Sofer, forbid the use of any *moch* during *tashmish* even when the woman's life would be endangered in the event of a pregnancy. The overwhelming majority of the later *Poskim* have not accepted this view, and have attempted to explain away the two responsa as being misunderstood by the *Pischai Tshuva*:

should choose to be more strict regarding all healthy women, and forbid the use of a *moch* during *Tashmish* just as we forbid its use after *Tashmish*, still in a situation of hazard we should allow the use of the *moch* only during *Tashmish* and not after." And thus he concluded his *Psak*: (ruling) "According to the Din it would appear that in an instance of hazard to the woman's life, we may allow the use of a *moch* during *Tashmish*.⁹²

The case dealt with by Rabbi Akiva Eiger in his responsum did not really concern a woman whose life was in danger, but rather one who would suffer extreme pain during childbirth. Rabbi Akiva Eiger apparently felt that with respect to our issue, this woman should be treated the same as any other normal healthy woman and, therefore, not be permitted to use a *moch*. But in the event that there would be a real threat to a woman's life if a pregnancy were to result, even Rabbi Akiva Eiger would allow use of the *moch* during *tashmish*. (*Igrot Moshe*, Even Hoezer, Vol. I, no. 64.)

The Chasam Sofer, in his responsum, dealt with a case where the husband had not yet fulfilled his mitzva of *piryah v'rivyah*, and the doctors forbade this woman from every having normal relations (non-contraceptive). If one were to follow the logic of R. Chaim Ozer, that only in an instance of *sakana* is the *tashmish* with a *moch* still considered *kederech kol ho-oretz*, then in this case, where the husband has no children and his wife is medically unable ever to bear him any children, since the halacha would require the husband to divorce his wife and marry another woman who would be able to bear children, we no longer have the right to declare this as *תשמיש בדרך כל הארץ*. See p.230 *הבצלת השרון חלק אבן עזר*. But in a case where the husband does have some children, and the halacha would not require him to divorce his wife (even if he had not yet fulfilled *pirya v'rivya* (See *כ"ו אבני ס"ק קנר העור* (נור אה"ע ס' א פתחי תשובה אבן העזר קנר ס"ק כ"ו אבני ס"ק קנר) or in a situation where the doctor temporarily forbid her from becoming pregnant, then even the Chasam Sofer would probably have allowed use of the *moch* during *tashmish*.

See however *הבצלת השרון* volume 3 p. 101 that Rabbi Babbad himself feared to issue a *psak* against the simple reading of the decision of the Chasam Sofer, although he was really convinced that the Chasam Sofer would have agreed to allow use of the *moch* in his special case.

92. Rabbeinu Tam disagrees with Rashi's interpretation of the gemara. He understood that the *moch* spoken of was to be used *after* *tashmish*, to wipe away all the semen and thereby prevent pregnancy. Since according to Rabbeinu Tam all women may do this (even if pregnancy would not pose a danger to their lives), and this type of *moch* is sufficient to prevent pregnancy, Rabbi Meir would never allow the woman whose life is in danger to use a *moch* during *tashmish*, as this would be a violation of *hashchosas zera*. We only allow violation of Torah laws in a situation of *sakanas nefashos*, if the goal of saving the life can not be accomplished in a permissible fashion. (See *Ahiezer* Vol. 1, no. 23.)

Nowadays, instead of a *moch*, a diaphragm is used. The diaphragm is placed in front of the cervical opening and prevents the sperm from entering. Since the diaphragm interferes virtually not at all with *Tashmish*, it might follow that its use should be allowed even according to Rabbi Chaim Ozer and his group of *Poskim*. This case should certainly be considered *Tashmish kiderech kol horetz*. Such indeed was the view of Maharsham.⁹³

It should be noted, however, that use of a diaphragm may cause a new problem in *Hilchot Niddah*: The inexperienced woman may scratch her body either with her fingernails or with the plastic disc, and may later be unable to ascertain whether the blood before her is *dam makoh*, from a cut, or *dam niddah*. In such instances, a competent Rabbi must be consulted.⁹⁴

Even Maharsham however, practically speaking, *halacha l'maaseh*, only allowed use of the diaphragm in a situation where the woman's life would be placed in danger in the event of pregnancy.

What about use of a condom? Is this considered a normal act of *Tashmish* since "both bodies derive pleasure one from the other,"⁹² or, since the semen does not even enter the vaginal area at

The majority of the *Rishonim* disagree with Rabbeinu Tam, and interpret the gemara as Rashi, that the *moch* spoken of is used *during* *tashmish*. Exactly what aspect of Rabbeinu Tam's *p'shat* do they reject?

Most *Poskim* assume that the other *Rishonim* felt that the medical facts were not correct. The use of the *moch* after *tashmish* would not suffice to protect the woman's life. The use of the *moch* during *tashmish* would be much safer. But even according to the other *Rishonim*, use of a *moch* after *tashmish* would be allowed by all women, even where pregnancy would pose no danger to her life. (*Toras Chesed*, no. 42; *Avnei Nezer*, *Even Hoezer* no. 79 and 81).

The Chazon Ish disagrees and is of the opinion that, although Rabbeinu Tam felt use of a *moch* during *tashmish* was forbidden even in the situation where pregnancy would pose a danger to the woman's life, and use of a *moch* after *tashmish* is always allowed, the other *Rishonim* held just the opposite — that use of a *moch* after *tashmish* is always forbidden, even in the situation of danger to life. This controversy has practical relevance today regarding use of a douche after coitus.

93. Responsa vol. I no. 58

94. See "*Halochos of Nid'ah*," Shimon Eider, pg. 122, quoting Rabbi Moshe Feinstein.

all, this certainly is not *Tashmish kidarko* and therefore a violation of *hashchosas zera?* Rabbi Chaim Ozer is quoted⁹⁵ as having assumed that even this case is considered *kiderech kol ho'oretz*. But the overwhelming majority of *Poskim*⁹⁶ following him have not accepted his view. According to the majority opinion, even if the woman's life would be endangered in the event of pregnancy, we would not allow the husband to use a condom.

In reality, even the lenient view of Rabbi Chaim Ozer has probably been quoted out of context. In his responsum,⁹⁷ he deals with a special case where the woman's life would be in danger if she were to become pregnant again. According to his opinion (as explained above), use of a diaphragm during *Tashmish* in such circumstances is considered *kiderech kol ho'oretz*. To this Rav Chaim Ozer adds that even use of a condom under such circumstances would also be considered *kiderech kol ho'oretz*. However, if the woman is perfectly healthy, Rabbi Chaim Ozer would most probably agree that a condom would not be allowed. If, according to Rav Chaim Ozer, use of a diaphragm is not *kiderech kol ho'oretz* (if the wife is healthy), even though the sperm enters the vagina since it is artificially blocked from passing through the cervical canal, certainly he would agree that use of a condom, which artificially prevents the sperm from even entering the vagina, would not be considered *kiderech kol ho'oretz*.

According to Rabbi Menachem Manesh Babbad of Tarnapol⁹⁸ and Rabbi Meir Arik⁹⁹ and many other *Poskim*, spermicidal jellies or foam sprays do not constitute a violation of *hashchosas zera*. The act of *Tashmish* is completely normal *kiderech kol ho'oretz*.¹⁰⁰ According to *Igrot Moshe*,¹⁰¹ the same is true of the use of the Pill.

95. *Igrot Moshe*, Even Ho'ezer, vol. I, end of responsum 63.

96. See *Dover Meisharim* (by Chebiner Rov), vol. I, end of no. 20. Even Maharsham, who was known to be most lenient in his decisions, did not accept this point of view. See also *Igrot Moshe* in note 95.

97. *Ahiezzer* vol. III, no. 24,5.

98. *Chavazelet HaSharon*, p. 231.

99. Vol. I, no. 131. See also *Igrot Moshe* Even Ho'ezer, vol. I, no. 62.

100. The opposing minority opinion is recorded in *Mishneh Halachot*, vol. 5, pgs. 287, and 316-317.

There is no problem of *hashchosas zera* since the *Tashmish* is not affected in the least.

Use of the Pill, however, poses two additional halachic problems:¹⁰¹ 1) staining will often result from the change of hormone levels in the woman's body. This will cause the woman to become a *Niddah*. Although the bleeding does not relate to a normal menstrual cycle, the halacha still considers this to be a regular *din* of *Niddah*, and 2) use of the pill has been ascertained to be dangerous. It should therefore be forbidden on the basis of *V'nishmartem me'od l'nafshoseichem*, the biblical command enjoining us to protect our health.¹⁰²

As medical science improves the Pill, the above hazards may disappear or diminish; thus in the future, these considerations may become minor in arriving at a halachic determination of the permissibility of this form of contraception.¹⁰³

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101. Even Ho'ezer vol. I, no. 65.

102. Devorim (4,15). See Brochos (32b).

103. "Update on Oral Contraceptives", by E. Conneil M.D., in *Current Problems in Obstetrics and Gynecology* Vol. II no. 8, April 1979. p. 28.

"The oral contraceptive is the most effective method of birth control ever developed. It does not satisfy all the criteria of the "ideal contraceptive" but it comes closer to it than any other technique in the history of mankind. Its use is accompanied by the development of a number of side effects, both major and minor. The precise incidence of each of these is still a matter of debate, but it appears that earlier estimates may perhaps have been too high. In addition, as more and more woman move to the lower-dose preparations, even these new estimates may again prove to be too high. Continued study has also pointed out many ancillary beneficial side effects of the pill."