

## REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

*Immanuel Jakobovits*

### ALIYAH AGAINST PARENTS' WISHES

A lengthy responsum by Rabbi Saul Israeli appears in the Almanac *Shanah be-Shanah* 5725 (published by Heikhal Shelomo, Jerusalem) on a topical and often delicate subject in reply to an enquiry by Mr. S. Z. Shragai, Head of the Immigration Department of the Jewish Agency. May leaders of religious Zionist youth movements encourage members to settle in Israel against the wishes of their parents?

In principle, the duty to honor parents, i.e., to carry out their instructions, is, of course, contingent on such instructions not conflicting with any religious precept, for "all [parents and children alike] are obliged to honor God," so that the honor due to parents is subordinate to the overriding honor due to God and His law (based on Lev. 19:2; see Rashi; and *Bava Metzi'a* 32a). Accordingly, a child must not listen to his father if asked to transgress any commandment, whether Biblical or even rabbinic (Maimonides, *Hil. Mamrim*, 6:12), since the latter too is ultimately sanctioned in the Torah (*Keseph Mishneh, a.l.*). And to live in the Holy Land is definitely a religious precept — of Biblical status according to Nachmanides (Additions to *Sepher ha-Mitzvoth*, no. 4) as well as following some interpretations of Mai-

monides, or of rabbinical status according to others.

But a different conclusion seems to be indicated by a story in the Talmud of one sage blessing another on leaving the Holy Land to meet his mother (*Kiddushin* 31b), evidently proving that the duty to honor parents is at least equally important as the law on living in the Land of Israel (*Ha-Makneh, a.l.*). This also appears borne out by the Biblical account of Jacob leaving the Land at the behest of his parents (Gen. 28:1-7).

These apparent anomalies may be explained by a general qualification of the precept to live in the Land. As the author elaborated elsewhere (*Sepher Eretz Nachalah*, p. 34, quoting Solomon Duran [RaSHBaSH] and other supporting authorities), one is not obliged to settle in the Land if one cannot find a livelihood there, for without food and shelter there can be no real "settlement" at all. The precept therefore presupposes a comfortable existence and excludes a life involving undue hardship. Hence, the wishes of parents, whilst they do not in themselves override or set aside the precept, may be an impediment to its fulfillment insofar as the separation from parents and the inability to assist them in times of need would be a cause of distress and thus vitiate the conditions under which the Torah commands one to settle in

the Land.

Moreover, we may here apply the general rule that "one who is engaged with one precept (i.e., honoring parents) is exempt from another (i.e., settling in the Land)," since the latter is not tied to any particular time (which would nullify the exemption).

Naturally, if the parents themselves are in a position, and therefore under an obligation, to go on *Aliyah*, there is no excuse for their child not to go, since he can then fulfill both precepts. It is only in such circumstances that a person may ignore his parents' wishes in settling in the Land. The author finds support for this assumption in a ruling by R. Moses di Trani (responsa *MaBIT*, no. 139) requiring a questioner who had vowed to go on *Aliyah* not to listen to his parents if they object for the reason that "he and they are obliged to live in the Land of Israel, and he incurs no guilt for not heeding his parents, since they too are able to settle in the Land with him, so that both precepts are fulfilled." But where there are sufficient grounds to excuse the parents from going to the Land, even Trani would agree to exempt their son from this duty on account of his existing obligation to his parents.

In view of these considerations, the author urges youth leaders to refrain from directing their charges toward *Aliyah* in opposition to the wishes and needs of their parents. But this opinion is concerned only with the *mitzvah* of living in the Holy Land *per se*. It does not take into account Israel's present exigencies crying out for immigrants

to strengthen the defensive and the religious potential of the country; these are additional considerations which require separate treatment.

Nor does the author maintain his opinion unless it is actually in the interest of the parents to keep their son with them, but not if their opposition is dictated by their concern for his career or interests. The matter may then be compared to the rulings in the *Shulchan Arukh* permitting a son to marry the woman of his choice against the objections of his parents (*Yoreh De'ah*, 240:25, gloss).

The author concludes, therefore, that only if the son would in any event not live close to his parents, or if they neither require nor expect his assistance, is he exempt from abiding by their wishes not to go on *Aliyah*; in that case it is clearly a *mitzvah* for him to settle in Israel and for his leaders to encourage him to perform this great precept.

The same question is also discussed by Rabbi Israel Shezipansky in another article contributed to *Shanah be-Shanah* under the title "The Land of Israel in the Responsa Literature." This author's conclusions, and the sources he uses, differ somewhat from those of Rabbi Israeli.

In his *Sepher Sha'arei Zedek* (*Mishpetei Ha-Aretz*, 11:5), the author of the *Chayei Adam* seeks to prove that a father's objection to *Aliyah* must be heeded by his son on the basis of the following *Midrash*: "Abraham was afraid that by leaving his native country for the Land of Canaan he would cause a *Chillul Ha-Shem*; for people would say 'He left his father in his

## Review of Recent Halakhic Periodical Literature

old age.' So God told him: 'Go you, I will free you from the duty to honor parents, but I do not release anyone else from his duty' " (*Bere-shit Rabbah*, 39:7).

This conclusion, however, plainly contradicts earlier rulings. Thus R. Meir of Rotenburg (*responsa*, ed. Berlin, 1891, no. 79) expressly stated that the opposition of parents to settling in the Holy Land should be disregarded since the duty to honor God by fulfilling this precept has priority over the duty to honor parents. The author cites various other opinions too, including that of Trani (quoted above with a qualification dismissed in this article), to support the view that the obligation to live in the Land is not compromised by the objection of parents. This verdict also appears indicated by Maimonides' limitation of the right to leave the Land for the purpose of studying Torah or marrying (*Hil. Melakhim*, 5:9) and his omission of any reference to honoring parents in this category.

The author therefore rejects the reasoning of the *Chayei Adam*, arguing that the *Midrash* quoted is inconclusive since the Land was not yet given to Abraham, so that the need for a special divine command to him to disregard the honor due to his father in leaving for the Land cannot be taken as a precedent for later generations when the Land became sanctified as the possession of Israel (see also *Zohar*, and *Meshekh Chokhmah*, on *Lekh Lekha*, beginning).

### ORAL CONTRACEPTIVES

The discovery (or rediscovery)

in recent years of hormone preparations highly effective as contraceptive agents, and now widely used by millions of women, has presented an altogether new challenge to the Halakhic attitude on birth-control. Hitherto the general consensus of the innumerable rabbinic responsa on the subject published during the past two hundred years or so has been to permit contraceptive precautions only for most urgent medical reasons, and then only on the submission of every individual case to competent rabbinic judgment.<sup>1</sup>

In our times, however, birth-control is far less a medical than a social practice — and problem. But so long as only physical or chemical preventives used vaginally were available, the exponents of Jewish law felt constrained almost completely to disregard any indication other than some threat, whether more or less remote, to the mother's life feared to result from a pregnancy. This extremely limited scope of rabbinic verdicts on contraception has inevitably led to an immense widening of the gap between Jewish law and practice. Indeed, it has resulted in virtually ignoring one of the most acute socio-moral questions of our age, at least to the extent of failing to relate Jewish teachings to the relevant facts and pressures as they exist. But given the restrictive religious attitude as evolved in recent centuries on the basis of some rather scant and arguable earlier sources (including none in the principal codes of Jewish law), there was little else to do or

1. See this Department in *TRADITION*, Spring 1961, p. 224 ff.

write about.

The availability now of "the pill" may well open the way to an entirely new appraisal of birth-control in the light of Jewish law. To any student of the *Halakhah*, oral contraceptives are very familiar through their frequent mention, as "the potion of roots" or "the cup of sterility", in the ancient and medieval classics of Jewish law. While the composition and existence of any such potion designed to produce temporary sterility (or, in different dosages, to promote fertility, just as our modern hormones do) remained unknown, the law on its use was often stated in clear and simple enough terms. The Talmud formulates it thus: "A man is not permitted to drink a cup of roots to render him sterile, but a woman may drink such a potion so that she will not bear children" (*Tosephta, Yevamot*, 8:2). The *Shulchan Arukh* codifies the law in almost identical terms, adding only that the administration of such an oral sterilizing agent to males, while an offense, is not culpable, in contrast to sterilization by other (i.e., surgical) means (*Even Ha-Ezer*, 5:12). The obvious reason for this leniency is that this method involves no direct impairment of the reproductive organs (*Be'er Ha-Golah, a.l.*). This liberal ruling on the female use of the potion is qualified — by but one commentator — only by limiting the sanction to women who fear the pain of further births (Solomon Luria, *Yam shel Shelomo, Yevamot*, 6:44), a rather immaterial qualification.

Naturally, a sweeping sanction such as this cannot suffice, by itself,

to determine the Jewish religious attitude to so complex a matter as birth-control, even if restricted to oral contraceptives. To define such an attitude, one must also take into account numerous broader considerations on procreation and marital duties in general, as reflected in various Aggadic as well as Halakhic statements. After all, the identification of the Talmudic potion with the modern pill, while probably quite sound in a narrow legal sense, is hardly tenable from a practical point of view. In the past the sanction was no doubt mainly of theoretical value, or at best to be applied in very rare cases, whereas now it would radically change the entire pattern of family life and demographic trends. The spirit as well as the letter of the law must be most carefully investigated before such a far-reaching innovation can be authentically evaluated in the light of Jewish teachings.

The first tokens of such an investigation are so far very meagre indeed. The only responsa on the subject that had appeared until lately dealt not with whether, and under what conditions, it was intrinsically permissible to use oral contraceptives, but with their side effects in tending to cause irregular bleeding; in view of this, women were cautioned against their use to prevent any complications in observing the purity laws (R. Moses Feinstein, responsa *Igerot Mosheh*, vol. iv, *Even Ha-Ezer*, no. 17). But with the constant improvement of these pills, and adjustments in their dosage, this problem can now be eliminated in most cases. The only other previous reference in recent

## Review of Recent Halakhic Periodical Literature

responsa to "the potion of sterility" is a suggestion that this may be legally identical with spermicidal jellies (*Igerot Mosheh, Even Ha-Ezer*, nos. 62, 63). But this identification or analogy seems hardly tenable; for there is a great difference between the indirect action of taking an oral contraceptive to suspend ovulation and the direct action of administering a spermicide to vitiate the potency of the sperm and impede its progress to unite with the ovum. Nor is this isolated opinion shared by other authorities who, while they prefer such jellies to any physical impediment (such as a diaphragm), do not place them in the same lenient category as oral contraceptives (see, e.g., R. Menachem Mannes, responsa *Chavatzet Ha-Sharon*, note following *Even Ha-Ezer* part; and R. Mordecai L. Winkler, responsa *Levushei Mordekhai, Even Ha-Ezer*, no. 27; but cf. also R. Joseph J. Z. Horowitz, in *Rosenheim Festschrift*, 1931, p. 110 f. [Hebrew part]).

The Halakhic attitude to oral contraceptives as such is now the subject of an article entitled "Contraception by Pills" by Rabbi Samuel Hibner in the current issue of *Ha-Darom* (*Tishri* 5725). But unfortunately the article is disappointing on the question it purports to discuss. The bulk of it is simply a review of the much debated arguments on conventional birth-control methods, based on the various interpretations of the famous talmudic passage dealing with the right of women endangered by a pregnancy to use a tampon as a precaution against conception (*Yevamot* 12b).

Only at the very end of this lengthy, and rather irrelevant, review does the author make a passing reference to the theme of his article, and then only in the most general terms. Recognizing the legal difference between tampons (which some authorities condemn, even in cases of danger, if inserted before intercourse) and pills, he prefers the latter for two reasons: (1) The tampon interferes with the natural act, whereas the pill does not; and (2) by inserting the tampon, one directly acts to destroy the seed, while the pill works indirectly. The author adds that this explains the legal distinction between direct sterilization and the use of "the cup of sterility" as made in the *Shulchan Arukh* (see above), but he does not state that this "cup" is, in fact, the equivalent of today's pill and therefore to be adjudged as such in the *Halakhah*. He merely concludes that he is inclined to permit its use to a woman who is warned by doctors not to become pregnant if this may prove dangerous to her, but he also warns that the existing pills, because they cause staining, should not be taken "as their advantage would be outweighed by their disadvantage" over other methods.

The whole subject, with its many ramifications, is clearly in need of a very wide-ranging re-examination.

---

A far more enlightening treatment of the subject is contained in an article on "Hormone Medications for Women and Religio-Halakhic Problems" contributed to the latest number of *No'am* (vol. 8, Jerusalem, 5725) by Dr. Jacob Levy who has written extensively

on the Jewish attitude to birth-control since the early 1930's (see, e.g., his "Der Geburtenrueckgang— ein juedisches Problem," in *Jeschurun*, vol. 17 [1930]; and "Menstrual Changes through Drugs," in *Nachalath Z'vi* [Frankfurt], vol. 8 [1938]). Though writing as a physician and not as a rabbi, Dr. Levy provides much valuable material, including some rabbinic sources, to determine the Halakhic directives on this important and complex subject.

Thus the article discusses the latest data on the administration of female sex hormones to correct irregularities in the menstrual cycle as an aid to women whose menstruation and purification period would otherwise interfere with their wedding (delaying the consummation of the marriage) or render their marriage sterile by restricting conjugal relations to their infertile period.

Above all, such hormones could be used as a preferable substitute for other contraceptive devices which, Dr. Levy claims, are often medically as well as halakhically objectionable. He too identifies the law on these pills with that on "the cup of sterility" mentioned in the Talmud and the codes, but he warns against their indiscriminate use and sale, recommending them only for pressing health reasons and advocating their availability at drug stores only on doctors' prescriptions.

Dr. Levy emphasizes particularly the demographic consideration in favor of large Jewish families, citing figures to show the "terrifying decline" of the natural increase

among Jews in Israel. While the Jewish birthrate fell from 32.96 births per thousand people in 1950 to 22.21 in 1961, the Arab birthrate in Israel rose from 48.8 per thousand in 1954 to 52.2 in 1960!

#### KASHERING PYREX

A question debated occasionally in several recent responsa works is thoroughly discussed by Rabbi Simon Ephrati in the same issue of *No'am*: May Pyrex glass dishes, used for cooking directly on the fire, be converted from meat to dairy use (or *vice versa*) by simple rinsing and immersion in cold water?

Contrary to widespread opinions, even ordinary glass vessels cannot always be *kashered* in this way. Their treatment is already a matter of dispute in the *Shulchan Arukh*: While R. Joseph Karo holds that such vessels, even if used for hot food or drink, do not require any *kashering* other than immersion in cold water since they do not absorb any food particles in their walls (*Orach Chayyim*, 451:26), R. Moses Isserles endorses the stringent view that glassware cannot be *kashered* even by immersion in boiling water or by any other method (*ib.*, gloss). This is based on the view, first cited in *Hagahot Maimuni* (quoted in *Bet Yoseph, Orach Chayyim*, 451), that glass cups which may have bread crumbs soaked in their contents (though only cold) cannot be converted for *Pesach* use by pouring boiling water over them, since glass — made originally of sand — must be regarded like earthenware which is too porous to be *kashered* and

## *Review of Recent Halakhic Periodical Literature*

hence treated in the Torah as beyond repair if *trephah* (Lev. 6:21; 15:12). Karo, on the other hand, follows the view, first expressed in *Avot d'Rabbi Nathan* (41:6), which distinguishes between earthenware and glass, the latter being regarded as too smooth-surfaced for any particles to be absorbed in its pores (*Bet Yoseph, ib.*).

However, the sources on which Karo bases his ruling suggest that the distinction between glass and earthenware applies only if used cold but not if used for cooking (a similarly qualified distinction is made between the heart and other meat [*Yoreh De'ah, 72*]). Hence, even Karo would hold his lenient opinion respecting glass only when used for preserving cold food or for hot food poured from another vessel; but had it then been possible to use glass on a flame for cooking

purposes, he too would have agreed that it could not be *kashered*. It is clear, therefore, that Pyrex dishes, once they are used on the fire, have the same status as pottery or chinaware which cannot be converted from *trephah* to *kosher*, or from ordinary to *Pesach* use.

At the same time, the author points out that even utensils which can be *kashered* by immersion in boiling water (such as single-piece metal or wooden vessels) must not be so treated to convert them directly from meat to dairy use (or *vice versa*) (cf. *Yoreh De'ah, 89:4*, gloss). The only way to effect such a change is to *kasher* these vessels for *Pesach* use (or, if they had accidentally become *trephah*, for ordinary *kosher* use); after such *kashering* they may then be used for either meat or dairy purposes irrespective of their previous use.