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KITNIOT: A BALANCED HALACHIC APPROACH **Eve of Pesach 5771 (2011)**

Introduction

¹In recent years we have been witness to changes regarding the Ashkenazi custom of refraining from consuming *kitniot* (legumes) on Pesach. Upon entering a supermarket on Pesach one is confronted by a wide variety of products labeled "*kitniot*" or "kosher only for those who eat *kitniot*", and in numerous cases there is either no "non-*kitniot*" alternative, or the alternative is significantly more expensive than the same product with *kitniot*. This situation causes a financial loss (and "the Tora is concerned about the money of the Jewish People"), and for many people it diminishes from the joy of the holiday. Additionally this is a "stringency that leads to leniency", for it causes some people to be too lenient. Unnecessary strictness in relation to the prohibition of *kitniot*, in itself a stringency, is illogical and recalls the words of Rav Yaakov Emden z"l regarding *kitniot*; "In truth the mind cannot comprehend the stringencies which are created on a daily basis". We also often see that strictness regarding the custom of *kitniot* – surprisingly, often the main topic that rabbis are asked about vis-à-vis the laws of Pesach - comes at the expense of other, far more serious, "stringencies", such as eating only "*shmura matza*" for all of Pesach, the prohibition of "*matza ashira*" ("egg *matza*") for Ashkenazim and the question of excluding actual *chametz* items from the "sale of *chametz*". It is not our intention to write a comprehensive article on the subject of *kitniot*, about which much has already been written, but rather to clarify the *Halacha* according to Ashkenazi custom which prohibits the consumption of *kitniot* on Pesach. We will also discuss the commonly accepted stringency of refraining from "*kitniot* oils" on Pesach (even though according to some of the later authorities these are not included in the prohibition, as will be discussed below).

¹ This article is an English translation of the original Hebrew *teshuva*, which has extensive footnotes analyzing the Halachic sources and arguments. Anyone who is capable of studying the original is encouraged to do so. The *teshuva* was reviewed and approved by my Rav, HaGaon R. Yehoshua Reich *shlit"a*. Thanks to my son R. Zion, as well as my colleagues Rav David Fink *shlit"a*, Rav Chanan Morrison *shlit"a* and Rav David Sperling *shlit"a* for helpful discussions and references. Thanks also to my son R. Eliyahu for help with editing.

Halachic Background

According to the Gemara there is no possibility of *kitniot* becoming *chametz*; this can only occur in the five species of grains; "Mishna – These are the species with which a one fulfills the *mitzva* [of eating *matza*] on Pesach; wheat, barley, spelt, rye, and oats... Gemara – It was taught, these [species] yes, rice and millet not. Whence are these words? R. Shimon ben Lakish said... the verse states 'Don't eat *chametz* with it [the Pesach offering], for seven days eat *matza* with it.' Foods that can become *chametz* can be used to fulfill the *mitzva* of *matza*. This excludes those [rice and millet] that cannot become *chametz*, only putrid. Our Mishna is not based on the opinion of R. Yochanan ben Nuri, as it is taught, R. Yochanan ben Nuri says, 'Rice is a type of grain and one is liable to be excised for eating its *chametz*.'" Regarding R. Yochanan b. Nuri's opinion that rice is a type of *chametz*, the Gemara declares, "No one worries about R. Yochanan b. Nuri's opinion, as it was taught, 'R. Yochanan b. Nuri said, 'rice is a type of *chametz* and one is liable to be excised for eating its *chametz* and one fulfills the *mitzva* [of *matza*] with it on Pesach.'" This opinion, that legumes cannot become *chametz*, was codified as the Halacha.

The first source to mention the custom of refraining from *kitniot* is a note of R. Peretz to the *Sefer Mitzvot HaKatan* from the 13th century. He explains that the reason for the decree is "because *kitniot* are cooked in a pot, and grains are also cooked in a pot, if we allow *kitniot*, perhaps someone will confuse them... Additionally there are places where they bake them [*kitniot*] into bread like the five species [of grain], which could also be confused." In other words, the first reason for the prohibition is the risk of confusing between a cooked dish of *kitniot* and one of grain, or between legume flour and grain flour, which can become *chametz*. Regarding the authority of the custom, he writes, "It is very difficult to permit something that has been customarily prohibited from the time of ancient authorities."

The *Bet Yosef* (after referring to the prohibition of *kitniot* as a "foolish custom") adds an additional explanation for it: "Sometimes there is grain mixed in [with the *kitniot*] and it is not possible to properly clean them." The *Biur Halacha* adds a third reason, which is similar to the first: "There are types of wheat... that resemble seeds, and therefore all types of seeds were prohibited."

In the *Shulchan Aruch* the law is codified: "...but not with rice or other legumes, and they can't become *chametz*, and it is permitted to cook with them". Regarding this the Rema adds, "A note: and some prohibit, and the Ashkenazi custom is to be stringent, and one should not change this. However it is obvious that they cannot prohibit after the fact if they fall into food, and it is permissible

to light with oils made from them... and one can leave types of *kitniot* in one's house."

The Rema here defines the Ashkenazi custom regarding *kitniot* on Pesach and codifies that:

1. It is prohibited for Ashkenazim to eat *kitniot* on Pesach and this custom should not be changed.

2. *Kitniot* are annulled (*batelim*) in a mixture and it is therefore permitted to consume a mixture containing *kitniot* (see below regarding the amount in which they are nullified).

3. One may light a lamp with *kitniot* oil, for there is no prohibition against benefiting from *kitniot*, only against eating them. From here it also seems that it is prohibited to consume the oil produced from them (see below).

4. There is no prohibition against "owning" or "possessing" *kitniot* as there is with *chametz*, and it is therefore permissible to have them in one's house on Pesach.

Regarding all of the above it is incumbent upon us to clarify two major issues: the question of whether there is room to be more lenient with oil produced from *kitniot* than with *kitniot* themselves, and the matter of the annulment of *kitniot* in a mixture. However, let us first clarify the definition of *kitniot* and what is included within the decree.

The Definition of *Kitniot*

There is no clear definition of *kitniot* in Halachic literature; however based upon the sources discussed above we are able to cull some indications. From the Gemara we learn that rice and millet are similar to grains but "instead of becoming *chametz* they become putrid." According to the comments of R. Peretz on the *Sefer Mitzvot HaKatan*, they are foods from which cooked dishes or bread can be prepared (in other words, they are ground into a type of flour that can be used for a type bread or cake). Based upon the *Bet Yosef* we see that *kitniot* are foods that grains of wheat or other grains can be mixed into, and that it is difficult to clean them properly. The *Biur Halacha* defines them as types of seeds that can be confused with wheat. Later-day authorities offer an additional definition, saying that the prohibition applies to species that grow "in pods similar to the growth of legumes."

It is clear, however, that we are not accustomed to be stringent with every type of food that fits into one of the abovementioned definitions, as the *Igrot Moshe* writes: "This is not the matter at all, that everything from which flour is produced is prohibited according to this custom, for nothing has more flour made from it than potatoes, not only in this country [the United States], but also in Europe... and no one was ever concerned that it is prohibited. And regarding

the argument that types of grains may come to be mixed in with them, which was mentioned in the *Tur*, it is also not a general rule that every food that might have wheat or barely mixed in is prohibited." As we shall see below, among the later-day authorities there are those who state that since there is not a clear definition of what constitutes *kitniot*, only those types that were included in the original custom are prohibited, and one should not prohibit additional types.

***Kitniot* Oils**

Regarding oils from *kitniot*, the *Chayeh Adam* infers from the words of the Rema above that "it is permissible to light with oils produced from them," that while it is permitted to benefit from the oil, it is forbidden to consume it. However not all authorities agree with this inference, and the *Sefer Marcheshet* writes that the Rema was referring to oils made from *kitniot* that had not been properly checked for grain content before Pesach. He adds that the oil is also considered "a mere derivative", which is not prohibited within the confines of a custom. His conclusion is that all *kitniot* oils produced before Pesach that have rabbinical supervision for Pesach are permitted.

Even if we argue that this is not the custom and that Ashkenazim do not consume *kitniot* oils on Pesach, we have found later-day authorities who were lenient regarding certain oils in cases where there was an additional factor for leniency. For example, Rav Kook z"l, in a famous *teshuva*, permitted sesame oil that was produced without coming into contact with water, and wrote very strongly against the opinion of those who prohibited it (the Hasidic Rabbinical Court of Jerusalem), claiming that since the oil was produced with a new production method, it was not included in the prior custom and was thus permissible. He added that the existing custom of refraining from *kitniot*, which began as a mere stringency, is sufficient as is, and it would be unfortunate to expand it, especially if this would cause financial loss.

Rav Moshe Feinstein z"l in a discussion in *Igrot Moshe*, states that peanuts are not included within the custom, and that one should not add new items to the prohibition of *kitniot*, since it is a custom that is based upon weak reasons. Therefore, he concludes, it is legitimate to give peanut oil "kosher for Pesach" certification.

Similarly we can discuss the case of the soybean, which is also a new type of food and was not included in the original prohibition of *kitniot*. Thus there are authorities who permit soy oil, also – similarly to Rav Kook's position above – citing the fact that it is produced without coming in contact with water. So too we can permit canola oil, which is also produced from a new and inedible source.

In light of all of the above we can state that it is permissible to rely upon the lenient positions as regards types of oils where there is an additional lenient factor, such as peanut, soy, canola and cottonseed (which is also not produced from a food item). Even though we find authorities who prohibit these various oils, one need not be stringent, as the author of the *Ohr HaChaim* states, "We hold that in all doubts regarding rabbinic decrees, and even more so when it comes to customs, that one should be lenient." It is sufficient for us to be stringent about peanuts and soybeans themselves - we can be lenient regarding their oils.

The Annulment of *Kitniot*

When it comes to the annulment of *kitniot* in a mixture, we've seen the Rema's statement that "It is obvious that if they fall into a cooked food it does not become prohibited." The greatest among the later authorities rule definitively that we do not require that the *kitniot* constitute less than a sixtieth of the mixture, and that they are annulled if the majority (more than 50%) of the mixture is composed of other foods. The *Chok Yaacov* states, "From the language of the Rav [Rema] it can be inferred that even if [the *kitniot*] are more than a sixtieth, it is still permissible to eat the mixture, and this is the understanding of the later authorities, since in any event this [prohibition of *kitniot*] is a stringency and a mere safeguard [from actual prohibition]... nonetheless we do require a majority [of other food matter], for if not, it is not called a mixture and it is like eating a dish of *kitniot*."

Surprisingly, in his work *Beer Yitzchak*, Rav Yitzchak Elhanan Specter z"l adds that according to some authorities it is permissible to purposely add *kitniot* to a mixture on Pesach in order to annul them. We, however, do not accept this opinion, since the Rema spoke of *kitniot* "falling" into the other food, clearly permitting consumption of the mixture only after the fact. The *Beer Yitzchak* does state, however, that the prohibition against purposely annulling *kitniot* is only applicable on Pesach itself, not so before the holiday, when *kitniot* are still allowed and it is still permissible to mix them into other foods. He also rules that any mixture containing less than 50% *kitniot* ingredients is always permissible, and one need not worry that the *kitniot* will constitute an "ingredient made for taste" (*asui l'ta'ama*) or "an ingredient that is a solidifying agent" (*davar hama'amid*), ingredients that are not normally annulled in a mixture. We can therefore state unequivocally that many food items stamped as "*kitniot*" or "only for those who consume *kitniot*" are entirely permitted to Ashkenazim, since the *kitniot* ingredients constitute less than 50% of the total.

Practical Conclusions

Based upon the above we can conclude:

1: The custom of refraining from *kitniot* is still binding upon all Ashkenazim, including those who live in Israel.

2: Some of the oils designated as "*kitniot*" or "only for those who eat *kitniot*" are permissible also to Ashkenazim (even according to the position which prohibits *kitniot* oil), such as peanut, soy, canola and cottonseed oils.

3: Some of the products that are labeled "for those who eat *kitniot* only" are permissible according to all opinions, since the ratio of *kitniot* ingredients is less than 50%, and they are therefore annulled in the majority of non-*kitniot* ingredients. Additionally the *kitniot* ingredients are often oils such as soybean, that were never included in the prohibition, or derivatives of these oils. Only those foods in which the *kitniot* ingredients constitute the majority are prohibited. Therefore, many dairy products, "kosher for Pesach" cookies, chocolates and more, which are labeled "*kitniot*" or "only for those who eat *kitniot*" or "for those who eat *liftit*" (*liftit* and lecithin are both types of canola) are completely permissible for Ashkenazim.

4: Quinoa, which is a very new food (other than for native South Americans), is permissible.

5: There is no problem for an Ashkenazi to be a guest of a Sephardi on Pesach and to eat food prepared in vessels that were used to cook *kitniot*, even within 24 hours of the meal. This is true since if the *kitniot* themselves can be annulled in a mixture of a majority of other ingredients, their taste is certainly annulled. Moreover, even if the food contains a *kitniot* ingredient, as long as it is not the majority and is not recognizable as a separate element of the dish, it is also permitted.

6: Those people who have thus far been careful not to purchase any food item labeled "for those who eat *kitniot* only", because they believed that this was in fact the *Halacha*, are not considered to have accepted this as their custom; it is at best a "mistaken custom" and they are not required to perform "vow annulment" in order to eat such items.

7: It is a *mitzva* to publicize this decision, which is based upon the traditional Halachic methodology of the great authorities throughout the generations, and not upon looking for unnecessary stringencies.

In Conclusion

Well known are the words of Rebbe Simcha Bunim of Pryshischa z"l, "All of the stringencies [*chumrot*] that *Am Yisrael* observe on Pesach are ornaments of holiness." Moreover Rebbe Pinchas of Koritz z"l said regarding our Master the Baal Shem Tov z"l, "he couldn't stand any stringencies, other than in matters

pertaining to Pesach and Shabbat." Nonetheless, regarding the very same Rebbe Pinchas we read, "the Rav was strict not to observe any excess stringencies, for these bring one to exile, G-d forbid, for the stringencies are from the side of strict judgment... only on Pesach should one follow all of the stringencies mentioned in the *Shulchan Aruch*, but stringencies that are not mentioned in the *Shulchan Aruch*, he did not want to observe even on Pesach."