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

Introduction

In 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).

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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 shl"a. Thanks to my son R. Zion, as well as my colleagues Rav David Fink shl"a, Rav Chanan Morrison shl"a and Rav David Sperling shl"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] is 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" (lifitit 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."