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Kitniyot in Halachic Literature, Past and Present

Rabbi Alfred S. Cohen

There is no Jew who is unaware of the issue of eating *chametz* on Pesach. For millenia, the strictures and minutiae of the Passover laws have been assiduously studied by Jews throughout this world, and it is fascinating to witness the many accretions in law and customs which have developed in tandem with *hilchot Pesach*. A major concern in many Jewish homes at Pesach time is *kitniyot*, a topic within the halachot of Pesach which has had an unusual history and aroused a surprisingly wide range of opinions. In this paper, we will seek to find the basis for the *dinim* of *kitniyot* and the framework within which the rules of *kitniyot* apply.

What are *kitniyot*? What do they have to do with *chametz*? Why should they be forbidden on Pesach? We will see that these elementary questions lead to a variety of complex answers.

What are *kitniyot*? Nowhere do the halachic decisors list the specific items in this group. *Kitniyot* is generally understood to mean rice, peas, beans, and the entire family of legumes, although as we shall note later, there was some question about this. The truly pertinent question to be answered is why should rice or beans be forbidden at all on Pesach.

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In the Torah, we learn that it is forbidden to eat any *chametz* or any leavened food.¹ *Chametz* occurs when flour and water mix, initiating a fermentation process. Already in the Mishnah, there is some discussion as to when and how *chametz* is produced. The Mishnaic ruling² is that *chametz* can only be made from certain grains, and the Mishna enumerates them: Wheat, barley, rye, spelt and oats. In the discussion which ensues in the Gemara, this ruling is accepted and explained. Because these are the only grains which can ever become *chametz*, they are the only ones which may be used in making matzoh.

Millet and rice are not included in this listing, explains the Gemara, because they never ferment, they only spoil טרחתן לריב (in the presence of water). However, there is a disclaimer to this view, for Rabbi Yohanan ben Nuri counters that rice could become *chametz*, "and anyone who lets it become *chametz* is liable for *karat* (death penalty)."

Thus we see that at a very early point in halachic development, there already existed some disagreement about the properties of rice as a *chametz*-producing agent. However, Rabbi Yohanan ben Nuri's argument was not accepted, because later the Gemara records a tale by Rav Huna, relating that at the Seder, he used to see Rabba eat two dishes.

What were these two dishes? Rav Huna said, "Beets and rice" ... Rav Ashi said, "From this story we can readily see that Rabba was not concerned about the dictum of Rabbi Yohanan ben Nuri to the effect that rice can become *chametz*."³

This, then, became the accepted conclusion of the Gemara, that rice cannot become *chametz*. Accepting this, the *Baale Tosafot* explain "because it does not ferment but rather begins to spoil."⁴

The lone dissenting voice of Rabbi Yohanan ben Nuri is

1. שמות י"ג, א.
2. פסחים ל"ה.
3. שם קל"ד.
4. שם ד"ה לית דרש.

apparently disregarded by Rambam:⁵

אין אסור משום חמץ בפסח אלא חמשת מיני דגן בלבד. והם שני מיני חטים שהן החטה והכוסמת, ושלושה מיני השעורים שהן השעורה ושכולת ושעל והשיפון. אבל הקטניות בנות אורז ודוחן ופולים וערשמים וכיוצא בהן אין בהן משום חמץ אלא אפילו לש קמח אורז וכיוצא בו ברווחתו ונסדו בכגורים עד שנתפח כמו בצק שהחמיץ הררי זה מותר באכילה שאין זה חמץ אלא טרחתו.

On Pesach there is no prohibition regarding *chametz* except with respect to five types of grain only. These are two types of wheat ... And three types of barley ... but *kitniyot* such as rice ... and the like have no such prohibition of *chametz*. Even if a person were to knead rice flour or the like with hot water and cover it with a cloth until it rises like dough which fermented, it is still permissible to eat it, for this is not fermentation but decomposition.

It is not until about 700 years ago that serious disagreement is evident on the question of *kitniyot*. In his halachic compendium, the *Smak* notes that "since the times of the *Geonim*, we do not eat *kitniyot* during Pesach."⁶

5. חמץ וקצת פירק ד' הלכות א'. This might not be a totally accepted *psak*. It is only a glimmer, for we cannot know for sure, historically, what the actual truth is. The law as enumerated by Rambam above is numbered paragraph 1; the next law, #2, deals with the question of adding juice to flour instead of water, and here Rambam rules that it is permissible. However, the Ravad challenges his ruling: "this is not so simple, and not everyone agrees because even though it is not *chametz* and one is not liable for the death penalty for causing it to ferment, still it is *chametz nuskaha* and is forbidden."

The standard editions of the *Yad* have this comment cited with regard to law #2; however, the *Chayei Adam* writes that he saw it with the comment attached to law #1 – which would mean that Rambam's contemporary did not agree with him on the crucial issue of whether rice would be permitted on Pesach.

6. ד"ב ב'.

ועל הקטניות כגון פוייש ורייש וערשם וכיוצא בהם רבונונו
נהגים בהם איסור שלא לאכלם בפסח כלל.

and concerning *kitniyot* such as ... lentils and the like, our Rabbis customarily consider them forbidden to eat at all on Pesach.

Although Rambam and *Smak* and many others employ the term *kitniyot*, it is not absolutely certain what they had in mind by this term. The *Shaare Teshuva*⁷ considers the question of whether a coffee bean is included in the beans which are proscribed, and Rabbi David HaLevi (*Taz*) also found that he could not define the exact parameters of the term.⁸

In *Iggerot Moshe*, Rabbi Moshe Feinstein writes that there are many places where people consider peanuts as *kitniyot*, and these people should continue their custom. However, if a person lives in a place which has no established *minhag*, (custom) it is not necessary for him to refrain from eating peanuts.⁹

The very existence of an enactment (*gezera*) restricting the use of *kitniyot* strikes one as anomalous. If the Gemara considered and then rejected the possibility that rice and related foodstuffs could become *chametz*, if the Rabbis of the Talmud used to eat rice on Pesach, how are later Rabbis permitted to rule that rice may not be eaten?

Indeed, the custom of *kitniyot* was apparently not readily accepted by many decisors, and it evoked the opposition of many. In a responsum attributed to the Rosh¹⁰ (although there are many who doubt that the Rosh is the authentic author of this book), he writes:

This seems to us very strange, since the Gemara specifically considers it permissible. And I do not

7. ארי"ח תני"ג אות א'.

8. ט"ז שם אות א'.

9. אגרות משה ארי"ח חלק ג' סי' ס"ג.

10. שו"ת בשמ"ח ראש סי' שמ"ח.

know of any Beth Din in any place that made a regulation regarding it.

The author of *Smak*, tells about Rabbi Yehiel of Paris who used to eat white beans on Pesach.¹¹ Rabbi Yehiel was the leading Tosafist of his day, and his practice therefore was an expression of his disdain for an enactment which he could not countenance. The *Bet Yosef* similarly concludes that "it is an excessive restriction and people do not follow it."¹²

A number of theories have been advanced in response to this puzzling phenomenon: The *Smak* offers the reasoning that:

Since grain is cooked in a pot and *kitniyot* are cooked in a pot (similar to grain) ... and also people make bread out of it, (therefore the Rabbis restricted its use) lest they accidentally mix them up.¹³

On the other hand, *Hagahot Maimonit*¹⁴ and *Tur*¹⁵ consider that the prohibition arose from the common custom of adding some grain flour to the rice flour to give it better consistency. Obviously, such a blend of flours, even if predominantly rice flour, would be considered *chametz*, and therefore the custom arose not to use rice and other *kitniyot* at all.¹⁵ Other reasons for the custom are also offered, but they need not concern us here.

Despite the fact that leading Rabbis made light of any *issur* of *kitniyot*, others considered it a serious prohibition and applied it strictly. The *Maharil*¹⁶ writes that "one who violates this restriction is liable to the death penalty and has transgressed the prohibition

11. הגרות סמ"ק סי' רכ"ב.

12. חתם סופר ארי"ח קכ"ב. שו"ת צמח צדק ארי"ח נ"ו ארי"ח תמ"ג.

12a. סמ"ק שם.

13. שם.

14. שם.

15. Those Sephardic Jews who do eat rice during Pesach take special precautions to assure that no admixture of any foreign substance is in the rice. They inspect each kernel and also rinse the rice three times. (*Hida* notes that even so, many Sephardim do not eat rice and even those that do, often do not rely on the women to check the kernels but do so themselves. This is reported by R. Ovadia Yosef in his *Haggada* — (מצרכי מו"ן —

הלכות פסח סי' כ"ח.)

of 'do not deviate from the matters which they (the Rabbis) teach you.'" Writing in the *Shulchan Aruch*, Rabbi Yosef Karo rules that "... rice or other types of *kitniyot* do not become *chametz*, and it is permissible to cook them,"¹⁷ but the gloss of R. Moshe Isserles¹⁸ immediately takes exception: "But there are those who forbid it, and the custom in Ashkenaz is to be strict, and one ought not to change." Later, the Vilna Gaon¹⁹ concurs with this, as do *Shulchan Aruch HaRav*²⁰ and *Aruch Hashulchan*.²¹

Based on their respective halachic decisors, then, the Ashkenazic and Sephardic communities have developed quite different traditions connected with the observance of Pesach. We will discuss later what happens when these two cultured norms collide.

Exceptions

Given that avoiding *kitniyot* was accepted as the Ashkenazic tradition, howsoever dubious its origin, what is the scope of this *issur*? Does it imply that, as far as we are concerned, *kitniyot* should be regarded in the same way as *chametz*; if not, to what extent is it different?

The *Mishnah Brurah*²² writes that a sick person who needs *kitniyot* may eat them. This is so, he rules, even if it is not a sickness which endangers life.

ופשרט ... לחולה אף שאין בו סכנה דמותר לבשל לו אם צריך לזה.

This *psak* of the *Mishnah Brurah* has direct application to the question of medicine, especially the way in which medicine is formulated today. Most medications come in the form of pill, tablet, or capsule, wherein the active drug is mixed with a starch as a binder. Often the starch employed is corn starch, which is *kitniyot*. Does the above-stated rule of the *Mishnah Brurah* imply that such a pill can be taken by a sick person on Pesach? We

17. אורח חיים סי' א. א.

18. שם.

19. אות ג.

20. סק"ה.

21. סק"ד.

22. אורח חיים סי' א. אות ז.

cannot jump to conclusions, because one could well argue that the sick person needs the *drug*, the active ingredient, and *not* the *kitniyot* starch, which is simply an inert binder which makes it easier to ingest the medicine, but does not affect a healing process. Therefore, if the *kitniyot* starch is the major ingredient, a Rabbi would have to study the question of whether that medicine could be taken. A further factor to be considered is the amount of *kitniyot* contained therein. If there is more medicine than starch, then the starch is considered halachically void and there would be no question that the tablet could be taken. As we shall see, this consideration affects many other aspects of the halacha.

A general principle of Jewish law is that if a forbidden ingredient (יבש) falls into a kosher food (יבש) but constitutes less than half of the total mixture, one is permitted to use it (*batei berov*). However, for Pesach the ruling is in the reverse — "Even one part out of a thousand does not become *batei*." But this strict principle is operative *only* with respect to *chametz* on Pesach and definitely not to *kitniyot*. Ramo rules that if "rice or other *kitniyot* fell into the food it is permitted to eat it."²³

With this in mind, we should take another look at the furor which in the past few years has arisen concerning chocolate and candy manufactured in Israel under the supervision of the Rabbinate. Many candies contain corn syrup as the sweetener: Should this be considered a problem for Ashkenazic Jews? Based on the principle that if *kitniyot* are less than half of the total the food may be eaten, many people see no reason why such candy should be avoided. However, it is necessary to ascertain what percentage of each individual type of candy is *kitniyot* — if more than half, Ashkenazic Jews would not eat it.

The difference between candy and medicine is obvious. If *kitniyot* is a major ingredient in medicine, a Rabbi might still rule that the patient should take it during Pesach. It would depend on the severity of the condition for which the medicine is prescribed. However, no such leniency exists with respect to candy.

23. שם

Just as the *issur* of *kitniyot* is not equal in force to the *issur* of *chametz*, it differs also as to the time of its application. *Chametz* which was in the possession of a Jew during Pesach is forever forbidden, but Ramo writes that "it is permitted to keep all kinds of *kitniyot* of a Jew after Pesach."²⁴

With respect to the time when the *issur* of *kitniyot* begins, there is a little discussion. The first Lubavitcher Rebbe, writing in his *Shulchan Aruch HaRav*²⁵, theorizes that even if we accept the *issur* of *kitniyot* as a proper prohibition, certainly it cannot be stricter than the actual laws of *chametz* and matzoh. Therefore, if one were to be careful to treat the *kitniyot* just as one would treat regular flour and, observing all the rigors of the law, produce a matzoh using *kitniyot* flour (rather than grain flour), why should it be forbidden on Pesach? He holds that it is permitted, and the *Pri Megadim* further allows one to eat it on the day before Pesach (*erev* Pesach, when one is not permitted to eat either *chametz* or any matzoh which can be used at the Seder. Since a rice matzoh cannot be used for the Seder, not being one of the five grains, then it should be permissible to eat it on that day). However, *Shoel U'mashiv* disagrees with this theory.²⁶ Some students of halacha would like to claim that the *Pri Megadim*²⁷ also approved *kitniyot* (as such, and not made as a matzoh is made) for *erev* Pesach, for he saw the *issur* of *kitniyot* as applying only to the holiday of Pesach and not to the day preceding it. However, a careful reading of the *Pri Megadim* will not support such an interpretation.

In *Siddur Pesach KeHilchata*²⁸ Rabbi Grossman, after citing the *Avnei Nezer* and *Kaf HaChaim*, writes that he heard from Rav Weisz that our custom is not to eat any *kitniyot* whatsoever, even on *erev* Pesach.

Other exceptions further hedge the scope of the *kitniyot* restriction.

In time of great need, when a person does not have

24. שם

25. אריה בניג אורח ה'

26. מדרורא קמא חלק ראשון קע"ה

27. אריה א"א תמ"ד

28. See sub-heading there.

what to eat without great penury, it is permitted to cook *kitniyot*.^{28a}

Halachic history indicates that this lenient clause was accepted and acted upon over the years. The *Nishmat Adam*²⁹ writes that at the time of a dreadful famine in 1771 in Fiorda, a Beth Din was convened and ruled that the prohibition of *kitniyot* would be waived for that year. Also, in 1810, the province of Westphalia experienced famine, and the Rabbis similarly allowed the residents to eat *kitniyot*. The *Minchat Kernaot* writes³⁰

... and for three years now, our Rabbi, the great Rabbi Leib, has permitted *kitniyot* during Pesach, a time of very high prices, it being a time of destruction and famine.

The *Mishnah Brurah*³¹ concurs with this practice, and indicates that in time of great need, it is permitted to use *kitniyot* for Pesach, although he does advise singeing them in a lot of water (so that the *kitniyot* will never be able to ferment) in accordance with the views of the *Hatham Sofer*. And there were years when the Rabbis of Eretz Yisrael allowed the people to eat *kitniyot*, due to the difficult economic situation.^{31a}

Derivatives

Is it only the item of *kitniyot* itself which is forbidden, or does the *issur* apply also to its extract or derivative?

I have been told by people who were living there, about the great brouhaha which ensued upon the announcement by the then Chief Rabbi of Israel, Rav Kook z'l, that corn oil could be used for Pesach. Corn is *kitniyot*, and this ruling permitted extract of *kitniyot* to be used. They remember vividly the signs posted on all the walls by his opposition, warning the people that under no circumstances should they rely on this *heter*.

28a. חיי אדם הלכות פסח

29. סי' כ'

30. שו"ת מהר"ץ חיות נדפס תר"ט

31. אות ד'

31a. המועדים בהלכה רס"ב

The question applies not only to the oil, but to any derivative of a *kitniyot* product. Concerning Israeli candy, which was previously discussed, we should note that in the event corn extracts do *not* fall within the definition of the *kitniyot issur*, there would be no question regarding their permissibility on Pesach, regardless of the percentage of corn syrup in the mixture.

The Rav Kook controversy was just another chapter in the longstanding debate regarding the status of *kitniyot* derivatives. As early a decisor as the *Trumat Hadeshen*³² forbids their use; *Melamed Le-ho'ij*³³ also discusses it.

In his gloss to *Shulchan Aruch*, Ramo holds that although we do not use *kitniyot* on Pesach, yet "it is permissible to use the oil of *kitniyot* to kindle a light."³⁴ This statement leaves the clear implication that *kitniyot* derivatives may be used for some beneficial or practical purpose, but cannot be consumed.^{34a} Not all decisors have accepted that implication. In *Sridei Esh* we find a listing of the major authorities on either side of the question of permissibility of peanut oil for Passover.³⁵ Those forbidding its use for Ashkenazim are the *Avnei Nezer* and *Minchat Eleazar*,³⁶ while included in the camp of those permitting it are the Kovner Rov³⁷ (if it is made before Pesach), the MaHarsham, *Melamed Le-ho'il*, and Rabbi Samson Raphael Hirsch.³⁸ Rav Moshe Feinstein rules that those who do observe the prohibition of *kitniyot* with respect to peanuts should also refrain from using peanut oil. However, if it is the person's custom to eat peanuts, he may also use peanut oil.^{38a}

There has even been some discussion concerning cottonseed

32. ק"ג.

33. חלק יעקב סי' צ"ז. מקראי קודש ב: שרי חמץ ומצה פ"ו, פ"ח.

34. ת"ג אות א.

34a. One wonders why the Ramo found it necessary to add that one may keep *kitniyot* in the house during Pesach. If he permits use of *kitniyot* for oil, does that not automatically presuppose that it is permissible to keep the *kitniyot* in the house?

35. חלק ב' סי' ל"דב.

36. א"ח שע"ג - הקל"ג.

37. באר יצחק א"ח חשונה י"א.

38. מלמד להועיל א"ח פ"ו, פ"ח.

38a. אגרות משה א"ח חלק ג' סי' ס"ד.

oil, which some persons were concerned might be considered part of the *kitniyot* ban. But Rav Chaim Solovitchek is cited as having allowed it^{38b}; it is also reported that in Jerusalem in 1927 the Rabbis, under the leadership of R. Zvi Pesach Frank, did permit cottonseed oil for Pesach.^{38c}

Kitniyot further differs from *chametz* in that one may derive benefit from it on Pesach, as noted above. *Chametz* may not be owned or used by a Jew in any shape or form on Pesach, but that is not true of *kitniyot*.³⁹ A person may feed it to his animals, for example, and as mentioned, may use its oil to illuminate his house. Virtually all halachic decisors concur that *kitniyot* are forbidden only for consumption but other uses are permitted, although the *Maharil* notes that some exceptionally pious persons would not use *kitniyot* oil even for lighting on Pesach.⁴⁰ However, the normative ruling is that *kitniyot* are only restricted as human food on Pesach and may even be in the possession of a Jew throughout the holiday without qualm.

Children

It is interesting to find among the responsa of the Chief Sephardic Rabbi of Israel, Rabbi Ovadia Yosef, a *psak* addressed specifically to Ashkenazic Jews.⁴¹ At the end of a long treatise on *kitniyot* and why Sephardim do eat them, Rabbi Yosef appends a message "to our brothers, the Ashkenazim". Rabbi Yosef probes the issue of giving *kitniyot* to a youngster — is it also forbidden for a child to eat *kitniyot* as it is for an adult? He refers to the controversy between the Rambam and Rashba whether one is permitted to feed a child food which is rabbinically but not biblically forbidden. He proves that the *Shulchan Aruch* rules, in agreement with Rambam, that it is forbidden. Nevertheless,

צבי פסח פרנק. מקראי קודש חלק ב' דף ר"ז.

38b. שם סי' ט.

38c. א"ח ת"ג סי' א.

40. ת"ג סי' ט. א. תרומת הרש"ן, who relates that the custom was not to derive any pleasure from any derivative of *kitniyot*.

41. חזון דעת חלק א' שאלה ט'.

kitniyot are not within the category of food even rabbinically forbidden, he maintains. It is only a *chumra*, a stringency which the community adopted, and therefore Rabbi Yosef advocates allowing children to eat items with *kitniyot* in them. Although many people might not wish to avail themselves of this opinion in ordinary circumstances, yet in the case of medicine for a child, it can be considered as a further factor for allowing a child to take even that medicine which is primarily made from *kitniyot*. He also advises that it is not necessary to be overly strict with children regarding candy which may contain some *kitniyot*.

Marriage

A situation which did not arise with great frequency in the past is now raising a question in many a household. Since the Sephardic and Ashkenazic communities, so long separated by distance, economics, and politics, now live in close proximity to one another, it was inevitable that more "intermarriage" should occur. Which customs do the newly-married young people follow? R. Moshe Feinstein rules⁴² that a woman upon marriage should assume all of the customs which her husband accepts, both those which are more strict and more lenient than those she previously observed. Although *Siddur-Pesach KeHilchato*⁴³ basically agrees with the *psak* of R. Moshe, yet without further elaboration, he adds⁴⁴

ספרדיה הנשואה לאשכנזי נהוגה כבעלה ואסורה בקטניות,
ואם אין בעלה מקפיד על כך אינה צריכה לנהוג איסור בזה.

A Sephardic woman who is married to an Ashkenazi follows the customs of her husband and is forbidden to eat *kitniyot*. But if her husband does not care about it, then she need not accept this stricture...

Furthermore, he adds

וכן זהו אשכנזי הנשואה לספרדי יכולה לנהוג בהיות קטניות
אם זהו רצון בעלה.

42. אגרות משה א"י ח קנ"ח.

43. פרק ט"ז אות י"ג.

Also an Ashkenazic woman married to a Sephardi is allowed to follow her husband's custom and be lenient about *kitniyot* if that is the wish of her husband.

Without explaining how he comes to this conclusion, Rabbi Grossman apparently feels that the operative factor in the "clash" of conflicting cultures is the reaction of the husband. It would be interesting to understand why — but he does not elaborate.

A somewhat different picture emerges from the writing of Rabbi Ovadia Yosef.⁴⁴ He rules that even a wife who abstains from *kitniyot* is permitted to prepare foods containing *kitniyot* for her husband and other members of the family. To some extent, Rabbi Yosef seems to leave the option of whether to eat *kitniyot* or not in the hands of the woman involved, not her husband.

As for Ashkenazic relatives or friends who happen to be eating at the house of a Sephardi on Pesach, Rav Yosef rules that if the food is not *kitniyot*, there is no need to inquire if the pots in which the food was prepared were used for *kitniyot* within the past 24 hours.⁴⁵

The topic of *kitniyot* is an absorbing study of the complexity of Jewish law. An investigation of the origins, implications, and scope of the halacha lead one to many intriguing insights into the development of normative Jewish practice.

Particularly in our time, when the Jewish people seem to be coming together "from the four corners of the earth," an appreciation for the rationale underlying divergent customs will have a salutary effect in bringing us together and will hopefully foster greater respect for our own traditions as well as for those of our brethren from other lands.

44. ויבט אומר, הל'ו, הנדה של פסח also, an exhaustive overview of the halachot involved in the customs of an Ashkenazi woman married to a Sephardic man. Among others, he cites the "ראש" (אור ד' נ"ד) who went so far as to consider her possible need to continue Sephardic customs even after the death of her spouse.

45. דם דף נ"ה.