

## FURTHER IYUN

### *The Status of Kohanim Today*

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When was the last time you attended a *pidyon haben* (redemption of a firstborn)?<sup>1</sup> Perhaps it was recently. However, when was the last time you participated in a *pidyon haben* that ended with the *Kohen* returning the money to the father? Probably never. Nevertheless, some halachic authorities<sup>2</sup> not only mention, but even praise the custom that the *Kohen* return the money at the end of the *pidyon*. What is the logic behind this custom, and why is it unheard of today?

The answer to this lies in a fundamental disagreement regarding the status of *Kohanim* in the present day. This issue has halachic ramifications in all four parts of the *Shulchan Aruch*: *Birkat Kohanim* in *Orach Chaim*, *pidyon haben* and *tumat Kohen* in *Yoreh De'ah*, marriage of *Kohanim* with women forbidden to *Kohanim* in *Even Ha'ezer*, and once again *pidyon haben* in *Choshen Mishpat* (since keeping the money might be stealing). In this article we will explore the discussion among the *Acharonim* on the topic



and the different halachic opinions that they take.

#### **Introduction**

In the time of the *Beit HaMikdash*, the *Sanhedrin* would sit and hear testimony about all *Kohanim* who came to

work there. Those who had witnesses that they were descendants of *Kohanim* who had previously worked in the *Beit HaMikdash* or were members of the *Sanhedrin* (only those with a clearly defined lineage were able to sit on the *Sanhedrin*) were permitted to work, since they were considered *Kohanim* with definite lineage.<sup>3</sup>

However, after returning from the Babylonian exile, some of the families of *Kohanim* were unable to prove their lineage, as described in the book of *Ezra*:<sup>4</sup> “And of the children of the *Kohanim*, the children of Hobaiah, the children of Hakkoz, the children of Barzillai who took a wife of the daughters of Barzillai the Gileadite and was called by their name. They searched for their genealogical records, but they were not found, and they were disqualified from the

1. See *Shemot* 13:2; *Bamidbar* 18:16; *Shulchan Aruch*, *Yoreh De'ah* 305.

2. *Responsa Ya'avetz* 1:155.

3. *Mishna*, *Middot* 5:4; *Rambam*, *Biat Mikdash* 6:11 and *Issurei Biah* 20:2. See further in the *Rambam*, *Issurei Biah* chapter 20, for other ways to become a *Kohen* with definite lineage.

4. *Ezra* 2:61–63.

priesthood.” The result of this disqualification was that they were banned from some of the birth rights of the *Kohanim*, as the *pasuk* continues: “And Hattirshatha<sup>5</sup> said to them that they should not eat of the most holy sacrifices (*kodesh hakodadshim*) until a *Kohen* will arise with the *Urim* and the *Tumim*.”<sup>6</sup>

### What Was Prohibited?

The Gemara<sup>7</sup> discusses the exact parameters of the prohibition against eating *kodesh hakodadshim*. Two options are discussed:

1. They were only banned from eating the holy sacrifices that were brought to the *Beit HaMikdash*, but they were still permitted to eat any kind of *teruma* (tithes).
2. They were disqualified from eating anything that was a *Kohen's* birthright according to the Torah. Only *teruma derabanan*<sup>8</sup> (rabbinically-mandated tithes) was still permitted to them due to the fact that they were *Kohanim* by virtue of a presumptive status (*chazaka*)<sup>9</sup> rather than an established lineage.

The **Rambam**<sup>10</sup> rules like the second option, that *Kohanim* who don't have a definite lineage are permitted to eat only *teruma* and *challa* of

a rabbinic nature. What does this mean for *Kohanim* in our time?

### Who is Included in the Prohibition?

Some *Rishonim*<sup>11</sup> understood that the Gemara was only referring to those specific *Kohanim* at the time of Ezra who couldn't find their lineage records. Since their presumptive status had been weakened,<sup>12</sup> they were disqualified from some of their rights. However, *Kohanim* today whose presumptive status has not been weakened retain their original status and are considered fully legitimate *Kohanim*.<sup>13</sup>

On the other hand, the **Rambam**<sup>14</sup> states that the restrictions mentioned in the Gemara apply to all *Kohanim* today, since they cannot bring witnesses that they are from a definite lineage. The simple reading of the Rambam is that *Kohanim* in contemporary times possess a lower status, and are therefore permitted to eat only *teruma derabanan*.

### The Three Schools of Thought

There are three schools of thought regarding the status of *Kohanim* today: (a) They are fully legitimate even on a Torah level; (b) They are legitimate only on a rabbinic level; and (c)

5. Nechemiah son of Chachaliah, see Rashi there and the other commentators.

6. I.e., until the time of the final redemption (Rashi, *ibid.*). This is likewise the understanding of Rambam, *Melachim* 12:3 and *Me'iri*, *Kiddushin* 69b.

7. *Kiddushin* 69b; *Ketubot* 24b.

8. This includes all fruits and vegetables that grow in the Diaspora, as well as fruits and vegetables that grow in Eretz Yisrael aside from olives, grapes and the five species of grain (Rashi, *Kiddushin* 69b). They were also allowed to eat *challa derabanan* (Rambam, *Issurei Biah* 20:3).

9. They were used to eating *teruma derabanan* even while in Babylon (Gemara, *ibid.*).

10. Rambam, *Issurei Biah* 20:1–3.

11. Brought down in the *Me'iri*, *Kiddushin* 69b in the name of “the great commentators.” The *Yam shel Shlomo*, *Ketubot* 2:40, writes similarly.

12. Either because they couldn't find their records, or because they were called on the name of Barzillai the Gileadite (as mentioned in the *pasuk*), who was not a *Kohen*.

13. Since presumptive status is a biblical principle, see *Chullin* 10b. See as well *Kiddushin* 80a: “The court stones or burns on the basis of presumptive status,” which is the ruling of the Rambam, *Issurei Biah* 1:20, as well.

14. *Ibid.*, and this is also the understanding of the *Me'iri*, *ibid.*

They are considered as a *safek Kohen* (a *Kohen* of doubtful status) and might not be legitimate even on a rabbinic level. We will explore briefly each of the three opinions.

### Opinion A – *Kohanim* Are Legitimate on a Torah Level

Many of the *Acharonim*<sup>15</sup> are of the opinion that today's *Kohanim* are legitimate on a Torah level. They explain like the *Rishonim* mentioned above<sup>16</sup> that the Gemara is only referring to the *Kohanim* in the time of Ezra whose presumptive status had been weakened. In order to be aligned with the Rambam who rules that all *Kohanim* today are prohibited from eating biblical *teruma* and *challa*, they explain that this is due to a special rabbinic decree that originated for one of two reasons: (1) Due to the severity of a non-*Kohen* eating *teruma deoraita*, they were extra stringent;<sup>17</sup>

and (2) One who is observed eating *teruma deoraita* is considered to be a *Kohen* with a fully confirmed lineage.<sup>18</sup> The Sages established a higher standard regarding matters of marriage<sup>19</sup> and didn't want to allow *Kohanim* today to reach this status without more evidence.

### Opinion B – *Kohanim* Are Legitimate Only on a Rabbinic Level

On the other hand, many *Acharonim*<sup>20</sup> hold based on the Gemara and the simple reading of the Rambam<sup>21</sup> that the status of *Kohanim* in contemporary times is valid only on a rabbinic level.<sup>22</sup> The main difference between the two schools of thought comes to the fore in the case of a marriage between a *Kohen* and a woman who is forbidden to him,<sup>23</sup> as well as a *Kohen* functioning as a *Kohen* in a Torah level ceremony.<sup>24</sup>

15. E.g., *Kiryat Sefer* on the Rambam, *Issurei Biah* chapter 20; Responsa Maharit 1:149; commentary of the *Chatam Sofer* on *Ketubot* 25b.

16. Footnote 11.

17. *Kiryat Sefer*, *ibid*. According to this, one can say that *Kohanim* in our days are not permitted to work in the *Beit HaMikdash*, as is mentioned in the Responsa of the Rambam, *siman* 440 (Blau Edition) and in the *Me'iri*, *ibid*.

18. Rambam, *Issurei Biah* 20:4.

19. *Ketubot* 13a.

20. Responsa Maharashdam, E.H. 235; Responsa *Shvut Yaakov* 1:93; Responsa *Beit Efrayim*, o.c. 6, among others.

21. Mentioned above in footnote 14. Some of the *Acharonim* also added the Responsa of the Rivash, *siman* 94, to this list, but see Responsa Maharit quoted above, who disagrees with their assumption.

22. Even though the Rambam (*ibid*) defines all *Kohanim* today to be *kohanei chazaka* (*Kohanim* of presumptive status), and *chazaka* is effective on a Torah level (see footnote 13), these *Acharonim* will probably explain that the Rambam referred to a quasi-*chazaka* and not the regular one. The regular *chazaka* is based on a known fact (such as the knowledge that there is a *nega* (affliction of leprosy) in the house – see *Chullin* 10b) and the assumption that reality has not changed (namely, that the *nega* is still there even though the *Kohen* left the house; sometimes the *chazaka* means that reality has changed but as late as possible). However, in our case we have no knowledge that this person was a *Kohen* in the past, nor that his forefathers were definite *Kohanim*. We are only assuming that throughout the generations this family was able to preserve their lineage, and that they are really *Kohanim*. The *Acharonim* that hold like opinion B will differentiate between the regular *chazaka*, which is on a Torah level, and this quasi-*chazaka*, which is on a *derabanan* level. On the other hand, those who hold like opinion A will say that there is no difference between the two *chazakot*, and that part of the *chiddush* of the Rambam is that they are both effective on a Torah level.

23. Since there is room to be more lenient if we regard the *Kohen* only on a rabbinical level. Responsa Maharshadam *ibid*., Responsa *Shvut Yaakov*, *ibid*.

24. Such as a *pidyon haben*. At the end of the article we will discuss some ramifications regarding *pidyon haben*. Even though theoretically eating biblical *teruma* and also serving in the *Beit HaMikdash* (may it be rebuilt in our days) could have also been halachic ramifications, we already mentioned above that the first opinion also agrees that these activities are prohibited due to a rabbinic decree.

## Opinion C – *Kohanim* Are of a Doubtful Status

The third opinion<sup>25</sup> does not necessarily disagree with the explanation given by the first two opinions of the Gemara.<sup>26</sup> Rather, it claims that whichever way you explain the Gemara, today's *Kohanim* are on an even lower level than *derabanan* – they are *safek Kohanim*. The reason is that over the countless generations and difficulties of the exile, many *Kohanim* married women who were forbidden to them and any record of it was lost, thus resulting in the fact that all *Kohanim* are of doubtful status. According to this opinion, our present-day *Kohanim* are prohibited from eating even *teruma* or *challa derabanan*. This is the ruling of the **Rema** regarding *challa derabanan*.<sup>27</sup>

### *Shavyei Anafshei*

There are many proofs for each opinion, and many discussions about those proofs. We will suffice with discussing one issue: *shavyei anafshei chaticha de'isura*, literally meaning – he has rendered it for himself as a forbidden object. This halachic rule means that a person has the ability to impose a prohibition upon himself where something would otherwise be permitted, and is then compelled to act as if it were actually halachically forbidden. For instance, if a person claims that he married a certain woman, although we have no witnesses and the woman

denies the marriage, he is nevertheless prohibited to marry her relatives.<sup>28</sup>

### Does *Shavyei* Apply in the Case of *Kohanim*?

The **Responsa Maharit**<sup>29</sup> claims that even according to the second opinion that *Kohanim* only have rabbinic legitimacy, there is no room to be lenient when it comes to permitting a *Kohen* to marry a woman who is forbidden to him (or when it comes to a question of *tumat Kohen*) due to this rule. By acting as a *Kohen* until today, this person renders all women who are forbidden to *Kohanim* forbidden to him as well. Changing his mind now and claiming that he in fact is not a *Kohen* does not help because these women are already forbidden to him.

However, the **Responsa Shvut Yaakov**<sup>30</sup> disagrees. He claims that that the rule of *shavyei anafshei* does not apply here, but is only effective when the person is convinced that the item or person is actually forbidden to him.<sup>31</sup> Any particular *Kohen* cannot claim definitively that he is a *Kohen*; rather, he is simply behaving as did his forefathers.

### Proof for and Against the Use of *Shavyei*

The *Shvut Yaakov* brings proof for his claim. The **Gemara** in *Ketubot*<sup>32</sup> states that a person is trustworthy to claim that his newlywed wife was

25. *Yam shel Shlomo*, *Bava Kamma* 5:35; *Magen Avraham*, o.c. 457:9.

26. Since the *Yam shel Shlomo* holds like the third opinion as well as the first one, as mentioned in footnote 11.

27. *Shulchan Aruch*, o.c. 457:2 and y.d. 322:5, see also the *Shach* and the *Taz* there.

28. Mishna, *Kiddushin* 3:10.

29. *Ibid.*

30. *Ibid.*

31. The *Shvut Yaakov* limits this claim to a case where the prohibition is on a rabbinic level (such as the marriage of a *chalutza* and a *Kohen*), but similar logic can be applied to all cases that are uncertain. The proof that the *Shvut Yaakov* brings (see below) is valid for both claims, depending on which explanation we choose for the Gemara (see footnote 37).

32. 9a.

disloyal to him in the period between the engagement<sup>33</sup> and the wedding. The Gemara understands that this is due to the rule of *shavyei* (since there are no witnesses).<sup>34</sup> The question though is that this rule was already taught in the Mishna,<sup>35</sup> so why it is necessary for it to be taught again? The Gemara answers that here the case is different. We could have claimed that the newly-wed husband is not experienced in these matters,<sup>36</sup> and he is therefore not certain of his claim. Therefore, the Gemara must state explicitly that even in such a case the woman is forbidden to him.

Two explanations are given for the Gemara's answer:<sup>37</sup> (a) The initial assumption that the husband is not experienced enough was incorrect; and (b) Even though the husband is in fact uncertain, his claim is indeed sufficient to invoke the rule of *shavyei*; therefore, his wife is forbidden to him.

The *Shvut Yaakov* explains that according to either one of these options, he can prove his claim. According to the first approach, it is quite simple. The conclusion of the Gemara is that in order to apply the rule of *shavyei*, one must be certain of his claim,<sup>38</sup> which contemporary *Kohanim* cannot be. However, even according to the second explanation that *shavyei* applies even

though the husband is indeed uncertain, one can argue that this applies *shavyei* only where there is a Torah prohibition, as due to the severity of a Torah violation, we are cautious. Perhaps it happens to be that this person is certain,<sup>39</sup> and therefore *shavyei* applies. But regarding a rabbinic prohibition, we aren't so anxious to assume that he might in fact be certain.<sup>40</sup>

Accordingly, we see from this Gemara that the rule of *shavyei* will apply only to a definite claim (at least when it is a rabbinic decree prohibition, and maybe even when it is a Torah violation), and since no *Kohen* cannot claim for certain that he is in fact a *Kohen*, the rule of *shavyei* does not apply.

However, the **Responsa Zichron Yosef**<sup>41</sup> disagrees with the proof of the *Shvut Yaakov*. Regarding the second explanation, he says that there is no logic to differentiate between Torah and rabbinic prohibitions. The same way we are concerned that perhaps the person is certain regarding a Torah violation (and therefore *shavyei* applies), we should be cautious about a rabbinic decree as well.

As to the first explanation, he claims that indeed it seems from the Gemara that an uncertain claim does not cause a *shavyei* prohibition.

33. The halachic engagement – *kiddushin* – and not what we generally call an engagement today.

34. Rashi there.

35. Footnote 28.

36. I.e., he is incapable of distinguishing between a virgin and a non-virgin.

37. Rav Shlomo Zalmen Klayman, *shlita* (the Rosh Yeshiva of this author), explains that these two explanations of how to explain the Gemara may actually be the subject of a dispute between Tosafot (2a, s.v. *she'im haya lo*, holding like the first) and Rashi (9a, s.v. *aval hacha*, holding like the second).

38. See footnote 31.

39. It makes no difference why the husband is certain, whether it is because somehow he in fact knows, or because he does not really know but thinks he knows. Either way, the moment that he is certain of his claim, the rule of *shavyei* applies.

40. We explained the *Shvut Yaakov* according to the understanding of the *Zichron Yosef* (see below). However, it is not quite clear that this is the correct explanation. Another possible explanation is that regarding a Torah prohibition, even when a person is uncertain, since his doubt concerns a Torah violation, his will is to ban it. But when he is in doubt regarding a rabbinic violation, even though he claims that it is forbidden to him, he does not want to inflict an actual prohibition upon himself. According to this explanation, the claim of the *Zichron Yosef* against the *Shvut Yaakov* (see below) doesn't begin.

41. E.H. 3.

However, how would we explain the Rambam<sup>42</sup> who rules that a person who claims to be a *Kohen* is forbidden from marrying women who are prohibited to *Kohanim*?

There are two possible ways to explain the Rambam: Firstly, we can understand this through the rule of *shavyei*,<sup>43</sup> and derive that *shavyei* applies even to *Kohanim*. According to this, the *Kohen* does, in fact, believe his father and forefathers that they were able to preserve the family lineage, and he therefore is certain of his claim. If he did not really believe them, he would not do the different things that only *Kohanim* are permitted to do – such as *pidyon haben* and *Birkat Kohanim*.<sup>44</sup>

The other way to explain the Rambam is that *Kohanim* today are fully legitimate *Kohanim* (opinion A) and therefore it is not a matter of *shavyei*. Rather, because he has presumptive status, he is forbidden from marrying these women. Either way, this contradicts at least one of the claims of the *Shvut Yaakov*: Either the one that *Kohanim* today are only on a rabbinic level (opinion B), or that *shavyei* does not apply in the situation of the *Kohanim*.<sup>45</sup>

### ***Pidyon Haben***

Let's return to the topic of *pidyon haben*. As mentioned at the beginning of the article, there

are some counterintuitive customs regarding this mitzva. **Rav Yaakov Emden**<sup>46</sup> states the following: (a) The *Kohen* should return the money at the end of the ceremony; (b) A father should perform a *pidyon haben* with each and every *Kohen* that he meets during his lifetime; and (c) Firstborns of a mother who is a daughter of a *Kohen* or a *Levi* (who are exempt from doing a *pidyon*) should be redeemed. Not only are these rulings difficult to understand, but some of them are also in contradiction with the ruling of the *Shulchan Aruch*!<sup>47</sup> What is the basis for Rav Emden's opinions?

The conceptual basis for Rav Emden's opinion is that he does not hold like opinion A<sup>48</sup> (that *Kohanim* in the present day are legitimate on a Torah level) and he therefore posits that they are not qualified to perform a *pidyon haben*, which is a Torah obligation. However, since there is no better solution, we still redeem the firstborn using a *Kohen*, but in case he is not a *Kohen*, he should return the money. Also, to play the odds, the father should redeem his son from each and every *Kohen* he meets.

On the other hand, the *Chatam Sofer*<sup>49</sup> and the *Aruch HaShulchan*<sup>50</sup> were unwilling to accept the opinion of Rav Emden, and clearly

42. Rambam, *Issurei Biah* 20:13.

43. This is the explanation of the *Magid Mishneh* there. However, the *Lechem Mishneh* there disagrees with him.

44. See *Ketubot* 24b and Rashi there.

45. Perhaps we could have argued on behalf of the *Shvut Yaakov* that he only claimed that *shavyei* does not apply to *Kohanim* when it comes to a rabbinic violation (see footnote 30), but regarding Torah prohibitions – such as what the Rambam mentions – he agrees that *shavyei* applies. And perhaps the *Zichron Yosef* is relying on his claim that there is no difference between a Torah prohibition and a rabbinic one (as mentioned above). See, however, footnote 40.

46. Responsa *She'ilat Ya'avetz* 1:155.

47. See *Shulchan Aruch*, y.d. 322:8,18.

48. It is not quite clear from his responsa with which of the two remaining opinions he agrees. However, perhaps the fact that he says that the father should redeem his firstborn from every *Kohen* that he meets (in hope that he might come across a real *Kohen*) implies that he holds like opinion C.

49. Responsa *Chatam Sofer* 2:291.

50. y.d. 305:65.

hold like opinion A, namely, that the *Kohen* is a full *Kohen* by Torah law.

The *Gilyon Maharsha* seems to take the middle ground. On the one hand, he disagrees with the logic of Rav Emden. He claims<sup>51</sup> that even if the *Kohen* is not in fact a *Kohen* (and therefore he might have obtained the money unjustly, which could be stealing), the father gave him the money in order to fulfill the mitzva of redeeming his firstborn, and therefore there is no way that he actually wants the money back – so there is no issue of stealing. On the other hand, he is willing to consider the doubtful status of contemporary *Kohanim* and to combine it with other doubts that may arise in any halachic question.<sup>52</sup> So it seems that he is not in total agreement with Rav Emden, but neither with the *Aruch HaShulchan*.<sup>53</sup>

In summary: There are three different schools of thought regarding the status of present-day *Kohanim*: legitimate on a Torah level, a rabbinic level, or perhaps not legitimate at all due to doubts regarding their lineage. We surveyed a lengthy discussion regarding the rule of *shavyei anafshei* and whether it applies in the case of *Kohanim*. We concluded with halachic ramifications concerning the mitzva of *pidyon haben* that are based upon the three opinions.

It is hard to determine the final halachic ruling in this matter, and as **Rav Vozner**<sup>54</sup> puts it: May Hashem enlighten our eyes.

Perhaps the only solution is to pray for the coming of *Mashiach*, and as the **Rambam**<sup>55</sup> states:

During the days of King *Mashiach*, when he will be secure in his monarchy, and all of Israel will gather about him, everyone's genealogy will be clarified by him by means of the *ruach hakodesh* that will rest upon him, as it says, "And he shall sit as a purifier and refiner..." (*Malachi* 3:3). The sons of Levi will be the first to be purified, and he will say: "This one has the pedigree of a *Kohen*, and this one has the pedigree of a *Levi*." He will reject those who have no lineage and make them Israelites, as it says, "And Hattirshatha said to them...until a *Kohen* will arise with the *Urim* and the *Tumim*" (*Ezra* 2:63). You have now learned that those with a pedigree will be confirmed, and lineage will be made known, by means of the *ruach hakodesh*.<sup>56</sup>

51. *Gilyon Maharsha*, y.d. 305:8.

52. *Gilyon Maharsha*, y.d. 372:1.

53. The *Aruch HaShulchan* there clearly states that one cannot consider this doubt at all.

54. Conclusion of Responsa *Shevet HaLevi* 3:160, after a long discussion on the topic.

55. Rambam, *Melachim* 12:3.

56. Taken from the translation of Reuven Brauner, 2012, with slight changes.