

# PIDYON HABEN AND CAESAREAN SECTIONS

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

## שאלה

May a first-born male child born by Caesarean section have a פדיון הבן?

## תשובה

In very ancient times, the first-born son in every Israelite family was vested with special responsibilities. From the day of his birth he was consecrated to the vocation of assisting the priests in the conduct of worship.

Later when a Tabernacle was built in the wilderness this vocation of the first-born was transferred to the Levites, a priestly tribe. The Torah then decreed that every father release his firstborn son from the duties incumbent upon all firstborn sons by redeeming him from a Kohen. The ancient obligations of the firstborn son thus continues to be recalled.<sup>1</sup>

Rabbi Gary Atkins of Temple Beth El in Lancaster, Pennsylvania has asked whether a first-born male child born by Caesarean section may have a פדיון הבן. His opinion is that in Talmudic times Caesarean sections were a rare event whereas today they constitute thirty percent of all births. The sources are as follows:

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<sup>1</sup> J. Harlow, *A Rabbi's Manual* (New York: Rabbinical Assembly, 1965), p. 14.

1. אי זהו בכור לנחלה ולכהן המפלת שפיר מלא מים מלא דם מלא גניני המפלת כמיין דגים וחגבים, שקצים ורמשים והמפלת ליום ארבעים הבא אחריהם בכור לנחלה ולכהן. יוצא דופן והבא אחרי שניהן בכור לא לנחלה ולא לכהן. ר' שמעון אומר: הראשון לנחלה והשני לחמש סלעים.

Which is a first born both [in respect] of inheritance and of redemption from a priest? If [a woman] discharges a sac full of water or full of blood or an abortion consisting of a bag full of a many-colored substance. If [a woman] discharges something like fish or locusts or reptiles, or creeping things or if she discharges on the fortieth day [of conception]. [The infant] which follows after [these discharges] is a first-born [in respect] of inheritance and redemption from a priest. Neither a fetus extracted by means of the Caesarean section nor the infant which follows is either a first-born for inheritance or a first-born to be redeemed from a priest. R. Shimeon however says: the first is a first-born of inheritance and the second is a first-born as regards the redemption with five selas (Mishnah Bekhorot 8:2).

2. ראשון לנחלה לא, "וילדו לו" [דברים כא:טו]. בעינין לחמש סלעים נמי לא, "פטר רחם" [שמות יג:ב]. בעינין שני לנחלה לא, "ראשית אונו" [דברים כא:יז]. בעינין לחמש סלעים נמי לא, קסבר בכור לדבר אחד לא הוי בכור. ר' שמעון אומר: הראשון לנחלה והשני לחמש סלעים ר, שמעון לטעמיה דאמר "תלד" [ויקרא יב:ה] לרבות יוצא דופן והשני לחמש סלעים, קסבר בכור לדבר אחד הוי בכור.

The first is not a first-born of inheritance because the condition required by Scripture is: *and they have borne him*. It is also not a first-born [as regards redemption] with five selas because the condition required [by Scripture] is: *openeth the womb*. The second offspring is not a first-born of inheritance because the condition required [by Scripture] is: *the first-fruits of his strength*. He is also not a first-born as regards redemption with five selas because [the Tanna in the Mishnah] holds: A first-born in one respect only [i.e. as regards the womb alone] is not considered a [legal] first-born. "R. Simeon however says: the first is a first-born for inheritance and the second is a first-born as regards redemption with five selas." R. Simeon here follows his line of reasoning elsewhere when he said: [Scripture says], *but if she bear*, intimating the inclusion of a fetus extracted by means of the Caesarean section. And the second is a first-born as regards redemption with five selas because he holds: A first-born in one respect only is considered a [legal] first-born (B. Bekhorot 47b).

3. וידבר ה' אל משה וגו' קדש לי כל בכור זו אחת משלש עשרה מדות

רש"י: לטעמיה דאמר במס' נדה פ' יוצא דופן [דף מ. ג.] ואם נקבה תלד לרבות יוצא דופן והוי לידה מעליא ויושבת עליו ימי טומאה<sup>2</sup> וטהרה הלכך גבי וילדו לו נמי לידה מעליא חשיב ליה דגמרינן מהתם.

שהתורה נדרשת בהם מכלל שהוא צריך לפרטו ופרט שהוא צריך לכללו קדש לי כל בכור פטר כל רחם וגו' כלל אחד זכרים ואחד נקבות במשמע כל הבכור אשר יולד וגו' פרט יצאי נקבות ממשמע אני אקרא את הכלל מה ת"ל את הפרט שאם אני קורא את הכלל אבל לא את הפרט שומע אני כל שיוולד ראשון בין זכר בין נקבה יהיה בכור ת"ל כל הבכור וגו' הזכר זכרים אבל לא נקבות אני אקרא את הפרט מה ת"ל את הכלל אם קורא אני את הפרט ולא את הכלל שומע אני כל זכר שיוולד בין שהוא פותח רחם ובין שאינו פותח רחם יהיה בכור ת"ל קדש לי כל בכור עד שיהא זכר ופותח רחם לקיים מה שנא' כל פטר רחם לי וכל מקנך תזכר (מכילתא בא פ' ט"ז).

“And the Lord spoke unto Moses,” etc. “Sanctify unto Me all the first-born.” This is one of the rules for interpreting the Torah. There are instances in which not only does the general term need its specific term, but the specific term also needs its general term. “Sanctify unto Me all the first-born, whatsoever openeth the womb,” etc., is the general term, including in its meaning both males and females. “All the firstling males that are born of thy herd and of thy flock thou shalt sanctify unto the Lord thy God” (Deut. 15:19), is a specific term, the meaning of which excludes females. Now, once I read the general statement, what need is there of making the specific statement? Because if I read merely the general statement without the specific, I might understand it to mean that whatsoever is born first, whether male or female, is to be considered a “first-born.” Scripture therefore says: “All the firstling males that are born of thy herd and of thy flock,” etc. – males but not females. Then, let me read only the specific statement. What need is there of making the general statement? Because if I read only the specific statement without the general statement, I might understand it to mean that as long as it is the first male offspring whether it is the one that first opened the womb or not, it is to be considered a “first-born.” Therefore, Scripture says: “Sanctify unto Me all the first-born, whatsoever openeth the womb” – it must be both a male and first to open the womb. This confirms what has been said: “All that openeth the womb is Mine; and every firstling among thy cattle, whether ox or sheep, that is male” (Ex. 34:19).<sup>3</sup>

4. יוצא דופן והבא אחריו שניהן אינן בכורים הראשון לפי שלא נולד ונאמר 'וילדו לו בנים' והשני שהרי קדמו אחר.

Neither the child that emerged from the mother's side nor the child that came after such a child is a first-born – the former because he was not *born*, and it is written *And they have borne him children* (Deut. 21:15), and the latter, because he was preceded by another child (M.T. Laws of Inheritance 2:11).

<sup>3</sup> Mekilta de-Rabbi Ishmael [Masekhet d'Pisha, Bo 17], Jacob Z. Lauterback, trans. (Philadelphia: Jewish Publication Society, 1933), pp. 128-129.

5. יוצא דופן והנולד אחריו כדרכו שניהם פטורין הראשון מפני שלא יצא מהרחם ושני מפני שקדמו אחר (שלחן ערוך יורה דעה סימן ש"ה סעיף כד).

One born by Caesarean section and one born in the normal fashion afterwards are both exempt; the first because it did not exit the womb, the second because it was preceded by another (Shulhan Arukh Y.D. 305:24).

### **Conclusion**

In light of the above mentioned sources, it is clear that פדיון הבן is a limited institution. It applies specifically to an obligation that falls upon first-born male children born through the birth canal only. The traditional ritual for פדיון הבן would not be appropriate for any other child because the blessing involved can only be recited where there is an obligation to redeem. In this case לא זוהי משנה ממקומה<sup>4</sup>.

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<sup>4</sup> The conclusion of this paper neither mandates nor precludes the development of an alternative ceremony for first born boys by Caesarean section.