

CONVERSION TO JUDAISM WITHOUT CIRCUMCISION DUE TO MEDICAL COMPLICATIONS

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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 male non-Jew convert to Judaism without ברית מילה and only טבילה, ritual immersion, if serious, possibly life threatening medical conditions prohibit circumcision?

תשובה

The great nineteenth century German פוסק, Rabbi David Zvi Hoffmann, who very often (for an Orthodox rabbi of his era) tended to be lenient in his views (as a matter of fact, specifically so in a number of areas of conversion law and for which he was criticized by many of his Orthodox colleagues for those views), states succinctly in his *ס' פ"ד ב, יר"ד* (חלק ב), מלמד להרעיל (חלק ב, יר"ד ס' פ"ד) in one terse sentence that such a conversion cannot take place under those circumstances (where circumcision is impossible).

The late nineteenth and early twentieth century halakhic authority, Rabbi Isaac Jacob Rabinovitch (known as the Ponivicher lluy) in his work *זכר יצחק* discusses this issue philosophically as well as practically. The basis for the requirement of a potential male proselyte needing both ritual circumcision *and* ritual immersion, in that order, is the following statement, in *Yevamot* 46a:

Our Rabbis taught if a proselyte was circumcised, but had not performed the prescribed ritual immersion, Rabbi Eliezer says "Behold he is a proper proselyte – for we so find that our forefathers were cir-

cumcised and had not performed ritual immersion.” If one performed the prescribed immersion, but had *not* been circumcised, Rabbi Joshua says, “Behold he is a proper proselyte for so we find that the mothers of the Jewish people (the matriarchs) have performed ritual immersion but had not been circumcised.” However, the Sages, of blessed memory, say, “Whether he has performed immersion but has not been circumcised, or whether he had been circumcised but had not performed the prescribed ritual immersion, he is *not* a proper convert unless he had been circumcised *and* has also performed the prescribed immersion,” *in that order!* [All emphases added.]

Nevertheless, the Talmud continues (Yevamot 46b) “all agree that ritual immersion without circumcision is effective, and they only differ regarding circumcision without immersion!” אלא בטבל ולא מל כולי עלמא לא פליגי דמהני כי פליגי במל ולא טבל.

The question that is raised in the Talmud in Yevamot 46a-b, is whether this fact (that a convert could immerse and not be circumcised) can be learned from the matriarchs or women of Israel, when only immersion took place and obviously no circumcision is involved. The objection is made that one is, thereby, trying to learn the possible (our case involving a man) from the impossible (women being physically unable to be circumcised under any circumstances) and therefore, learning about male circumcision from women (and thus an inappropriate derivation).

The responsum of Rabbi Rabinovitch then returns to the issue of a non-Jew who has lost his membrum, where circumcision *would* be impossible, and that our case should be considered similar to women converts whose “purification” takes place with just one of these requirements, namely immersion, only.

A challenge is raised, however, that the case of someone who could not be circumcised because of life-threatening conditions stated above is not comparable to our case, since the term “impossible to circumcise” would apply, for example, if one did not have a sexual organ or it had been cut off. However, in our case we are dealing with a situation where a potential convert cannot be circumcised *now*, and possibly *now only*, rather than dealing with the situation where there was no physical organ to circumcise at all. Therefore, one could draw the conclusion that with a potential convert who is ill, who could possibly be healed in the future, conversion, without circumcision at the present time would, therefore, be forbidden by Jewish law and postponed until the possible improvement of the medical condition.

The Tosafot in Yevamot 47b (ד”ה מטביליץ) as well as הנמוק”י והריטב”א all write that if a pregnant woman converts and has a male embryo in utero at the time, that son is born as a Jewish male convert and does *not require* ritual immersion (and only normal circumcision). Normally circumcision precedes immersion for a convert. This case is different, however, inasmuch as this embryo was immersed with its mother in utero and the child was not fit for a circumcision (as if it were a woman) since it was in utero. From this case we have learned that since it was impossible *now* to circumcise this child, the immersion alone satisfied the needs of conversion *without* circumcision at the time the embryo was in utero, inasmuch as *at that moment* the child was unable to be circumcised as it was in the mother’s womb. That case would be somewhat similar to our question where the potential convert could not be circumcised *now* because of *present* medical conditions, or theoretically could be circumcised at a later time. That logic can lead one to think that a potential convert who could not be circumcised *now* could possibly be converted without circumcision and immersion alone would suffice.

The Talmud, however, then states in the name of Rabbi Hiyya ben Abba in the name

of Rabbi Jochanan, that a man can *never* become a proselyte unless he has been *both* circumcised and also performed the prescribed ritual of immersion. It goes on to explain that this is a matter of dispute between an individual rabbi and a majority, with the halakhah following the majority (with the majority holding that both circumcision and immersion are required). The Talmud then clarifies that the majority is the view of Rabbi Jose. Before it was thought “if a convert came on his own and stated ‘I have been circumcised but have not performed ritual immersion,’ he is permitted to perform ritual immersion and the proper performance of the previous circumcision does not matter and is not investigated!” This is a view of Rabbi Judah. Rabbi Jose said “he is not allowed immersion” (because *both* circumcision and immersion are required). If the validity of the circumcision is in doubt in this case, the latter must not be allowed immersion unless some act of circumcision, even a token circumcision is done again, but carried out specifically for the purpose of ברית מילה (and not medical reasons) and prior to ritual immersion.

It is, therefore, assumed that Rabbi Jose’s view as followed by a majority of the Rabbis, is that circumcision forms a principal and necessary part of the conversion, in addition to immersion.

Rabbah stated that it once occurred at the court of Rabbi Hiyya, that there came before them a convert who had been circumcised but had not performed ritual immersion. The rabbi told him “wait here until tomorrow and we shall arrange for your immersion.” From this incident three rulings may be deduced: It may be deduced that the initiation of a convert requires the presence of three men (a בית דין), and that a man is not a proper proselyte unless he has been circumcised *and* has also performed the prescribed immersion! Finally, it may also be deduced that the immersion of a convert may not take place during the night time hours (inasmuch as he had to wait until the next day)!

The responsum of Rabbi Isaac Jacob Rabinovitch views the debate as revolving around the question as to whether or not circumcision acts as a type of “purification ceremony,” or if it is the prohibition of permitting an *uncircumcised person* to “enter the Jewish people” that mandates circumcision. If the issue is one of purification, then theoretically under certain extenuating circumstances, circumcision could even be done at a later time, such as after immersion since one could always become “purified” at some later point (as per the רמב”ן). If the issue is one of not permitting someone to join the Jewish people who is uncircumcised, then someone who could not be medically circumcised could never enter the Jewish people!

ההתוספות והרא”ה ס”ל דמלבד דין הטהרה ע”י מעשה המילה דין הערלות בעצמה מעכבת להיעשותו לנכנס תחת כנפי השכינה ולזה כתבו (בריתב”א שם יבמות מב:) “דהוי כטובל ושרץ בידו!” וא”כ כמו שערל אסור בפסח כן נמי אי אפשר לו להיות ישראל כל שיש עליו ערלה, לזה בעי מילה תחילה!

The שו”ת חלק ב’ סי’ ק”ב in שרידי אש (Rabbi Yechiel Yaakov Weinberg) deals with this issue in response to a question posed to him. He states that he found that very little had been written in the sources, specifically, about a case of one unable to be circumcised for conversion to Judaism because of medical dangers. He immediately rejects from a long list of sources any similarity to a case where a man may already be circumcised and only require דם הטפת, or a case where a man has lost his private membrum – in both of those cases ritual immersion would suffice, since a full circumcision could not physically be done under any circumstances! He feels that the discussion revolving around the issue of an injured individual in the sense of lacking a penis, and not revolving around the issue of illness, points to the fact that the Rabbis of old did not compare the two circumstances or conditions. He further points out

that according to the Yerushalmi (יבמות פ' מערל) that if a person immerses oneself first *before* circumcision, the immersion *does not count* as if he were “someone who immersed himself with an unclean object in his hands,” thus exiting the מקוה still unclean. In such a case one would have to go to the מקוה again. Even according to the view of the Ramban where בדיעבד he accepts immersion before circumcision; nevertheless, he also states that it is impossible to become Jewish as a male with immersion only. The שרידי אש concurs with the Ramban that circumcision is a non-negotiable requirement in becoming Jewish!

The sources make clear reference to the fact that someone born Jewish who is unable to be circumcised for medical reasons, nevertheless is part of the Jewish people and is “part and parcel” of the Jewish folk and fold. Here, in our case, the *very act of becoming Jewish is precluded* for medical reasons!

The שרידי אש concludes that a potential convert should not be converted where circumcision is impossible for medical reasons. Furthermore, he states that if the potential convert wishes to “take the chance” to undergo circumcision against medical advice, one should not accept him because there is a defaming of God’s name if one were to die under circumstances such as these due to circumcision:

ובהא סליקנא, שאין להתיר בשו"א גירות בטבילה לחוד במי שהמילה סכנה היא לו. ולא עוד, אלא אפילו אם יתרצה להכניס את עצמו לסכנה ולמול, אין לקבלו, לפי שיש בזה חילול השם וסכנה לכלל ישראל אם ח"ו ימות מחמת מילה. ואף שמרן הגאון חתם סופר בתשובותיו יור"ד סי' רמ"ה כתב, שמי שמתו אחיו מחמת מילה רוצה לימול את עצמו רשאי לסכן בנפשו – זה דווקא בישראל. שיש מצוה במילתו, ושומר מצוה לא ידע דבר רע'. אבל נכרי, שאין מצוה כלל במילתו, שהרי אינו מחוייב להתגייר, ודאי שאסור לסכנו במילה.

The end of the matter is: one should not permit in any fashion whatsoever, conversion with immersion alone in the case of one where circumcision is a danger to him! Furthermore, even if the individual wishes to possibly endanger himself and undergo this circumcision, one should not accept him as a convert because there is a desecration of God’s name in this matter, and a danger to all of Israel should he die because of the circumcision. Even though our master and teacher, the Hatam Sofer, wrote in his responsum section Yoreh De’ah, ch. 245, that one whose brothers died because of circumcision, who wishes to be circumcised is permitted to do so and endanger himself that ruling applied only to a Jew [wanting to be circumcised], in which case it is a mitzvah to circumcise him, since “a person who observes a commandment should know no evil” (Eccles. 8:5); however, in the case of a non-Jew where there is no mitzvah whatsoever in his circumcision in that he is not obligated to convert, it is definitely forbidden to endanger him through circumcision.

Rabbi Kook, of blessed memory, in his work דעת כהן states that one cannot become Jewish without מילה ברית, and the advice given to the potential convert should be to keep the seven Noahide Laws and be counted among the אומות העולם.

The words of Rabbi Kook are clear:

וקם דינא דאינו גר עד שימול ויטבול, ודוקא מילה ואחר כך טבילה.... וכל זה שלא מל אי אפשר כלל לטפל בדבר להחשיבו כגר, להשיאו בת ישראל...

הא פשיטא לן שאין לנו לקבלו, ולהשיאו בת ישראל, עד שיכנס לקדושת ישראל כדברי תורה ככל גירי הצדק, במילה וטבילה וקבלת מצוות.

The law is that one does not become a convert until he has been both circumcised and immersed – specifically with circumcision preceding immersion.... As long as he is not circumcised, it is impossible to consider him a convert, or to marry a Jewish woman, until he enters the Jewish people according to the laws of the Torah, like all converts with ritual circumcision, ritual immersion, the acceptance of the mitzvot.

Conclusions

1. Under normal circumstances Jewish law mandates for men who convert to Judaism both circumcision (or *ברית דם הטפת דם* if already medically circumcised) and ritual immersion in a proper *מקוה*, in that order.

2. Secondly, if a man had a serious medical threat to life or health which could possibly be resolved at a later time in one's life, or after some type of treatment, then the conversion is postponed for him until that time or circumstance is reached.

Parenthetically, I would add, that based on the views of stringency of Rabbi Hoffman and the *הכמים* (the majority) in the Talmud, Rabbi Kook, the *אש שרידי אש* as well as a statement conveyed to me by our late professor of codes and rabbinics, Rabbi Dr. Boaz Cohen, of blessed memory, of the Jewish Theological Seminary, in a public lecture on *ברית מילה* given in 1968 that "one cannot convert without circumcision" and the fact that the Ponivicher does not decide the issue of whether *מילה* for a *גר* is *טהרה* (and one should be *מיקל*) or *איסור ערלה* (and one should be *מהמיר*) that such a conversion must be postponed until possible resolution of the medical problems at hand.¹

3. If a man has a serious medical threat to life or health which cannot later be resolved in his life, than he should be advised that acceptance into the Jewish faith through Halakhic conversion is impossible for him, and that he be encouraged to follow the seven Noahide Laws and be considered among the "righteous gentiles" of the world.

¹ I recently found the following article in the *Jerusalem Post* Overseas Edition:

"A new technique for removing the foreskin using a laser has prompted a debate on whether it is halakhically permissible for use in circumcisions on babies suffering from hemophilia.

"A doctor and rabbi discuss this issue in a recent issue of *Harefuah*, the journal of the Israel Medical Association. The authors note that according to the Sages, the *ברית מילה* should not be performed if it could endanger life, as in families suffering from blood-clotting disorders.

"A 12-year-old boy who was diagnosed in Russia with hemophilia arrived in Israel with his parents, who asked that he undergo the procedure using its new ND-Yag laser. Laser surgery involves very little bleeding.

"The authors queried rabbinical arbiters, who hesitated over the problem because the use of lasers as a bloodless alternative to customary circumcision devices could create public pressure for using it on healthy babies.

"The authors concluded that 'apparently, Jewish law allows the use of lasers for circumcision in special cases in which conventional techniques would endanger life. . . [b]ut its use on a daily, ordinary basis remains an open question.'"

It is evident to me that this new laser *מילה* may in the near future, at least partially change the conclusion of this paper for those individuals unable to undergo a regular circumcision for medical reasons, but able to undergo a laser circumcision. The conclusions reached above remain the same for those unable to undergo laser circumcision should that eventually be fully acceptable in Jewish law.