

Tubal Ligation and Jewish Law: An Overview

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Medical science has in recent years made available many procedures designed to cure illness and enhance life. However, these often include areas with distinct halachic ramifications. One of the increasingly popular operations is tubal ligation, or as it is often known, "tying the tubes". This particular procedure involves cauterizing, severing, tying, or other manipulation of the woman's fallopian tubes in order to prevent pregnancy. Tubal ligation is becoming a frequent means of birth control. Aside from general questions regarding the permissibility of birth control in Jewish law, which topic we are not discussing here, tubal ligation raises its own major question — the permissibility of castration - sterilization for women. The Hebrew term for this is סירוס-*Sirus*, and will be used throughout this paper. Our study is not meant to offer *Piskei Halacha*, which should when necessary be sought from a *Rav*. Rather, it will offer some guidance in exploring the general subject area.

The primary source for the ban on castration or sterilization in males is biblical:

That which has its stones bruised, crushed, torn or cut you shall not offer unto the Lord, nor shall you do thusly in your land... because their corruption is in them, there is blemish in them.¹

1. ויקרא כ"ב: כ"ד-כ"ה.

Although the specific scriptural reference is to sacrificial animals, the Oral Law understands this verse as referring to an expanded ban on castration for all animals²(not merely sacrificial ones), even outside "the land" (*Eretz Yisrael*),³ and for humans as well (as we will shortly see).⁴

The *Sefer HaChinuch* explains the reasoning behind this commandment.

The Al-mighty created a complete world. . . and He blessed all life to "be fruitful and multiply". Also He commanded human males to do this in order to perpetuate the species. Therefore, one who destroys the reproductive organs shows that he wishes to end the work of the Creator and destroy His good world.⁵

The primary Talmudic source for the *issur sirus* on humans is from *Shabbat* 110b. The section deals with the permissibility of using a drug on Shabbat which renders a man impotent (כוס של עיקרון), an early male oral contraceptive.⁶ The Gemara continues:

But is this permitted? Has it not been taught, How do we know *sirus* in a male is forbidden? From the verse 'Nor shall you do thusly in your land'—the words of R.Hanina... This is only if (castration) is intended; but here it happens by itself (and should be permitted on Shabbat)...

The discussion continues until it concludes with the assumption that the earlier reference is to a woman, who is not obliged to "be fruitful and multiply" (פרו ורבו).⁷ According, however, to R. Yohanan Ben Beroka, who holds that women are

2. ח"כ על הסמך ובארצכם לא תעשו. Since it is a common practice to spay animals, which is forbidden, this poses a problem for a Jewish veterinarian. See פתחי תשובה אות י"א. It is even *assur* for a Jew to have his animal sterilized by a non-Jew. אבן העזר יב. אבן.

3. שם י"ל תעשו.

4. קדושין כ"ה: בכורות ל"ט: וחוספתא יבמות י"ד.

5. ספר החינוך רצ"א:א.

6. רש"י בגמי.

7. בראשית א"כ"ב: ט"א.

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indeed included in the obligation to “be fruitful and multiply,” the reference would be to a barren or older woman who could not conceive. Within this context, it should be pointed out that the dispute over whether women are commanded *pru u’rvu* is found elsewhere in the Talmud⁸ and the issue plays a part in the subsequent halachic discussion.

The Talmud, thus, clearly states that *sirus* of a male is absolutely forbidden by the Torah. It is, however, inconclusive as to whether this applies to a female as well.

The second rabbinic source is recorded in *Torat Kohanim*, the halachic Midrash on Leviticus.

How do we know that *sirus* applies to women? From the verse “Because their corruption is in them, there is blemish in them”. R. Yehuda says, “In them” – that women are not included in *sirus*.⁹

We see, then, from this selection that the *Tannaim* dispute over the ban on *sirus* being applicable to females.

The Malbim on our verse in Leviticus¹⁰ attempts to resolve these two sources by aligning them: The *Tanna Kamma* holds as does R. Yohanan Ben Beroka that women are commanded *pru u’rvu* and therefore are included in the ban on *sirus*. R. Yehuda holds that women are not commanded *pru u’rvu* and thus are not included in the ban on *sirus*. This approach finds its way into later halachic literature.¹¹

A third rabbinic source is found in the *Tosefta*. It mentions the above dispute with a small but important difference in terminology.

One who castrates a human or animal... adults or minors, male or female is *chayav* (liable). R. Yehuda says that one who castrates males is *chayav* but one who castrates females is *patur* (not liable).¹²

The *Tanna Kamma* in *Torat Kohanim* merely mentions sterilization as forbidden for women while here he indicates the possibility of a penalty. R. Yehuda in *Torat Kohanim* simply excludes females from the ban on *sirus*. Here, he holds that females may not be penalized but he does not explicitly say they are excluded from the ban.

This dispute, its interpretations, the attempts to reconcile it with the above-mentioned Talmudic passage and the attempts to define *patur* form the core material on the subject.

There are two relevant Tosafot texts on the matter.¹³ Both seem to follow R. Yehuda’s opinion as expressed in the *Torat Kohanim*, though it is not cited as such. Both texts contain the words “*Sirus* does not apply to women”. The first mentions the opinion in the Gemara that women are not mandated to “be fruitful and multiply”, and therefore, uprooting the procreative function in women would be permitted. The second uses identical reasoning in permitting tampering with procreative organs after *sirus* since *sirus* itself is not forbidden to women. Many *Rishonim* in their comments to the Gemara follow this thinking and concur that the ban on *sirus* simply does not apply to women. These include Ramban¹⁴ and Rashba.¹⁵

The codes, however, still reflect uncertainty. Rambam writes:

It is forbidden to destroy male reproductive organs. . . whether human or animal. . . . and those who do are biblically liable to flogging (*malkot*). . . . and one who

8. יבמות ס"ה:.. וטען מי: קרושין ליב.

9. תרי"ב על ויקרא כ"ב:כ"ד:כ"ה. The *Tanna Kamma*'s understanding of the verse is, of course, an inclusive one. According to R. Yehuda, the terminology is in the masculine gender and therefore, the verse can only apply to males. See רבנן ט' י"ז ד"ה דענן על ליקוט שמעוני - אמור ד"ב ס"ק ל"ב בסוף הלל על תרי"ב ג"א מלבי"ם שם קכ"ג.

10. The Malbim also gives another interpretation that the dispute in *Torat Kohanim* is not over human *sirus* but over whether *sirus* would invalidate female animals for sacrifice. According to the *Tanna Kamma* it would, while according to R. Yehuda, it would not.

12. וספחא מכות ד'.

13. שבת ק"י: חוסי ד"ה והתניא. שם ק"יא. חוסי ד"ה בזקנה.

14. רמב"ן שם ד"ה הא דאמרנין. אפ"ה באשה שדי שאין בה דין סירוס.

15. רש"י שם ד"ה בזקנה י"ג משום סירוס נמי ליבא רבאשה ליבא משום סירוס דאדם הוא. אסר רמב"א.

castrates human or animal females is *patur*.¹⁶

What does the term *patur* mean here? Is female *sirus* according to Rambam forbidden or allowed? The *Magid Mishneh*¹⁷ attempts to answer this:

In *Torat Kohanim*, R. Yehuda holds that *sirus* does not apply to females, and thus it is brought in the Talmud (our selection from *Shabbat* 110-b); and *Rabenu* (Rambam) explains this to mean that there is no penalty for female *sirus* but there is an *issur* since he did not write that it is permitted (*mutar*) to castrate females... thus *Rabenu* wrote *patur*.

Actually, Rambam's terminology seems to reflect R. Yehuda in the *Tosefta* rather than R. Yehuda in the *Torat Kohanim*, since the term *patur* had its origin there. In *Torat Kohanim* R. Yehuda more explicitly excludes females from the ban on *sirus*.

In any case the *Magid Mishneh* understands Rambam to say that *sirus* is forbidden to females but there is no penalty of *malkot*. This is inferred from Rambam's earlier comment spelling out *malkot* for castration of males. The *Magid Mishneh* uses this as the way of reconciling the Gemara in *Shabbat* (which is vague) with R. Yehuda's opinion. The linguistic proof offered is that the word *mutar* - explicitly permitted - is not used. Therefore, it must be forbidden. Neither Rambam nor his commentaries¹⁸ note whether the nature of the prohibition is biblical or rabbinic.

The *Bet Yosef*¹⁹ and *Shulchan Aruch*²⁰ follow the approach of the *Magid Mishneh* stating that *sirus* is not allowed but also not punishable.²¹ This approach posits a more lenient approach to *kos shel ikrin* (sterilization by ingesting a substance) and a more stringent one for *sirus b'yadayim* (physical sterilization). Still, we

16. משנה תורה איסורי ביאה טי'תתייבא. Note that the *Sefer Hachinuch* 291:2 uses the exact same language regarding *sirus* of women.

17. מגיד משנה שם טיק י"א.

18. בי"ח ד"ה ואשה.

19. שם ד"ה ואפילו.

20. אה"ע ה' י"א.

21. לשון הש"ע: "והמסרס את הנקבות בין באדם בין בשאר מינים פטור אבל אסור".

are not told what type of *issur* this is. Is it biblical or rabbinic? Exactly how stringent is this and how would it affect a practical application of the question?

The Vilna Gaon²² suggests that the ban is biblically based, from an all-inclusive reading of Leviticus 22:25. In this the Gaon clearly follows the *Tanna Kamma* of *Torat Kohanim* and *Tosefta* espousing the same view. Thus we now have one major view that *sirus* for women is biblically forbidden.

On the other hand, the *Turei Zahav*²³ says quite the opposite. Following the many *Rishonim* on the Gemara as well as R. Yehuda in *Torat Kohanim* he states that there is no *issur sirus* for women. Aside from the other sources, the *Turei Zahav* offers a biological reason.

There is no *issur* to destroy female reproductive organs for they are not outside the body as are male organs. Therefore, there is no real ban on castration by hand (*b'yadayim*) even with an actual act.

Because male and female genitals are simply different, says the *Turei Zahav*, the conceptual act of castration does not apply to women. As a result, his understanding of Rambam's use of *patur* would mean "permitted."

A number of responsa refer to the question of *sirus*. These include more stringent approaches as well as lenient ones.

The most detailed as well as most negative approach comes from R. Moshe Feinstein, who deals with the issue four separate times. His earliest response²⁴ (dated 1956) takes up the case of a woman suffering from both physical and psychological illness, and her doctor's wish to perform a tubal ligation. R. Feinstein takes the position that *sirus* is biblically forbidden, citing the opinion of the Vilna Gaon. He believes that even those holding *sirus* as only rabbinically forbidden would agree in this case that no *heter* exists since the dangers (in R. Feinstein's opinion) are not that great.²⁵ He

22. באור הגר"א, שם טיק ב"ה.

23. טורי זהב שם טיק י'.

24. אגרות משה אה"ע א' סימן י"ג.

25. discusses the permissibility of *sirus* for health reasons.

does, however, permit use of alternate means of birth control to prevent conception.

His second selection²⁶ (dated 1963) deals with a mentally ill woman who was to be institutionalized. Part of her illness involved an inability to control her sexual appetite, and sterilization was requested to control conception and birth. Here, R. Feinstein cites his previously mentioned position of a biblical ban on *sirus* based on the Gaon's opinion. However, R. Feinstein moves away from this approach and proceeds to quote those who hold *sirus* as only rabbinically forbidden (they are not mentioned by name). He finally permits tubal ligation in this case for the woman's benefit. He calls it *איסורא ווטא*, a minor prohibition, because it is not punishable (following the *Shulchan Aruch* and the *Magid Mishneh* on the Rambam). Interestingly, he advises that the operation be done by a non-Jewish surgeon. This seems to side with one opinion in the Gemara²⁷ which holds that non-Jews are also forbidden from causing castration by virtue of the Noahide laws.

In a *tshuva* dated 1968²⁸ R. Feinstein deals with a woman who had given birth to deformed children and wished to have no more. He offers here a detailed discussion of whether *sirus* is forbidden biblically or rabbinically. He concludes that either way, the ban is too stringent to breach here and does not permit ligation. He does permit use of a *moch* (a contraceptive mentioned in the Talmud, analogous to a diaphragm) for a limited period of time in the hope that the deforming malady will disappear. R. Feinstein reasons that there is no immediate danger to the mother's life itself and therefore no grounds to permit sterilization.

His fourth response²⁹ (dated 1972) deals with the case of a woman who had given birth to blind children. R. Feinstein again reiterates his position forbidding sterilization. He holds here that there is no guarantee future children will be born blind, relying on

the assumption of *rov* - that most children are born healthy. Again, he states that when there is no overriding danger to the mother's life or health, ligation is not permitted.

R. Yechiel Yaakov Weinberg writes of a case similar to R. Feinstein's second one - that of a mentally deranged woman who required sterilization for her own protection.³⁰ While his final answer is similar to R. Feinstein's - to permit it - his theoretical framework is different. He refers to *sirus* as *איסורא בעלמא* and cites only the lenient approaches mentioned above, including the *Bach*. His language regarding the general severity of *sirus* is much less strict than R. Feinstein's, but also less detailed.

R. Weinberg echoes this lenient approach in another *tshuva*,³¹ on the question of whether a weak woman may use a *moch* or diaphragm before intercourse to prevent conception. His responsum centers on the question of whether a woman is liable for *hashchatat zera* (destruction of male seed) through use of a *moch* and when it might not be permitted. But twice in this responsum he writes,

Even though a woman is not commanded regarding *sirus* she is forbidden to destroy seed... Destruction of seed is not like *kos shel ikrin* or *sirus* which are allowed for women...

Another lenient position is offered by the *Chatam Sofer*³² who also holds *sirus* does not apply to women, following the aforementioned *Rishonim* and Rav Yehuda. His reasoning, too, is based on the biological differences between men and women. However, he inserts a new dimension by redefining the biblical verse upon which the entire issue is based - *לא תעשו* - *ar* referring to women's sterilizing men. Thus, according to this view, a woman may not castrate a man but she would be permitted to undergo *sirus* herself. The *Chatam Sofer* offers a proof from the verse *ולא תקיפו*³³ which is interpreted similarly: a woman may not shave a man's *payot* but she may shave her own. In both cases, the ban on the act

26. אינימ אויח ב' פ"ח.

27. סנהדרין נ"ז: ד' מצוות נעטלו בני נח ... ר' חידקא אומר אף על הטרוסין.

ועיין גם בימי צ"ו ושיע' אה"ע ביניד.

28. אינימ אה"ע ג' י"ב.

29. שם י"ג.

30. שו"ת ירידא אש ג'י"א.

31. שם י"ד.

32. שו"ת חתם סופר חלק ה' (ח"מ) קמ"ה.

33. ויקרא י"ט:י"ז.

applies only if the male is the recipient of the act.³⁴

R. Ovadiah Yosef makes a passing reference to the question in a *tshuva* regarding the issue of a nursing mother who becomes pregnant and wishes to take a drug to abort the fetus. He writes,

Regarding *sirus b'yadayim* (as opposed to oral sterilization) there is an *issur* applicable to a woman as is written in *Even HaEzer*.³⁵

He does not give further details of the *issur*.

R. Yitzchak Weisz³⁶ responds to a query whether a Jewish doctor may sterilize a non-Jew. He concludes this is forbidden, as the ban on castration applies to non-Jews as well as Jews. One of his sources is the commandment of *pru u'rvu* which he interprets as applicable to non-Jews in a general way. In reference to our question, R. Weisz writes, that since women are not included in the commandment of *pru urvu*, they are also not included in the ban on *sirus*. This assumes that the issue of *sirus* is tied to the *mitzva* of having children.³⁷ In other words, a male (Jewish or not) is commanded to have children and would be forbidden to destroy the organs facilitating that process.³⁸ A female is not included in this and would be allowed to tamper with those organs.³⁹

R. Weisz's next response⁴⁰ touches on the issue of temporary

sirus - rendering a person sterile for a limited period.⁴¹ He continues his previous logic, stating that *sirus* for a woman is less of a problem than for a man, and is inclined to permit temporary *sirus* for therapeutic reasons. A point worth pondering is whether genuinely temporary ligation might be more permissible under this reasoning. Gynecologists say that while 60 to 70 percent of tubal ligation can be reversed, women do not undergo the operation with intent to reconnect the tubes. What if medical science were to advance the procedure to the point where it could be fully reversible? Would this affect the halacha?

There are variations on the surgical technique preventing conception in the female. Surgeons sometimes use a ring to close the fallopian tubes without directly severing them, but having the same contraceptive effect. Little has been written on the subject from a halachic perspective, but it is possible that the difference in procedure may have halachic implications. Perhaps the ring is more acceptable because it does not sever or directly destroy the tubes. This area must await further study by *poskim*.

Summary:

1. *Sirus* had its roots in Leviticus 22:24-25. Our question centers on whether the Torah's prohibition of sterilization applies to women or not.
2. The Talmud in *Shabbat 110b* amplifies the ban for men and mentions the dispute as to whether women are obligated to have children. This affects the issue of sterilization if the two are connected.
3. The *Tanna Kamma* in the *Torat Kohanim* and *Tosefta* holds *sirus* to be biblically forbidden for men and women. This view is based on an inclusive reading of the verse in Leviticus and is followed by the Vilan Gaon.
4. R. Yehuda in the *Tosefta* holds *sirus* to be *patur*, non-

34. Also see *אוצר הוסקוס על אביע רק כביר* brought down in ארזים see ארזים which uses the same approach and the same proof from *ש"ע יורה דעה קס"א*. לא תקיפו. He suspects, though, that while the *sirus* ban does not apply to human females, it may still apply to female animals. Some authorities hold that the prohibition of *sirus* applies only to the doer, not to the recipient of the act. See *אוצר הוסקוס חלק א' דף רמו, אות ס"ג*.

35. *שו"ת יביע אומר חלק ד' אביע סימן א'*. In this particular case, R. Yosef allows use of the drug because abortion by oral means is only a rabbinic prohibition and the welfare of the nursing baby takes precedence.

36. *שו"ת מנחת יצחק ח' סי' י"ב*.

37. Whether or not a sterile man would be allowed to get married is discussed by *מחתי תשובה אבן העזר ה' אות ט'*.

38. Would there be a difference in the halacha if the man had already fathered children? See *אוצר הוסקוס חלק א' דף רמו אות ס"ו*.

39. But see *מנחת חינוך רצ"ג* which does not accept the premise that *sirus* and *pru u'rvu* are connected. Also see *סימן כ"ו* and our earlier reference to *ויקרא ביבב"ה* ח"א.

40. *שו"ת מנחת יצחק ח' סי' י"ג*.

41. *אוצר הוסקוס ח"א דף רמו אות ט"ז*. In particular on the question of a man who wants to do this so that he will be free to engage in Torah study.

punishable. This is the view of the Rambam as well. The *Magid Mishneh* and *Shulchan Aruch* understand this to mean a non-punishable offense.

5. R. Yehuda in *Torat Kohanim* holds *sirus* simply does not apply to women. This is also the view of most *Rishonim* on *Shabbat* 110b and the *Turei Zahav*. Reasons include the biological differences between men and women, the resulting differences in sterilization procedure, and the fact of the biblical source-text being in the masculine.

6. Among *poskim* there is a wide divergence of views ranging from the detailed strictness of R. Moshe Feinstein to the varying lenient approaches of R. Yechiel Yaakov Weinberg, the *Chatam Sofer* and R. Yitzchak Weisz.