

שְׁלֹא רָאָה שָׁעָה אֶחָת בְּכַשְׁרוּתוֹ. מִנָּא יִדְעִינָן? אָמַר אַבְיִי: כָּל הַמְטִיל מִים וְאִינוֹ עוֹשֶׂה בִּפְהָא.

מִמָּאי הוֹאֵי דְאָפִיָּה אִימִיָּה בְּטִיְהִירָא וְשִׁכְרָא מְרָקָא. אָמַר רַב יוֹסֵף: הֵינּוּ דְשִׁמְעֵנָא לְאִמֵּי דְאָמַר "כָּל שְׂמִמְעֵי אִמּוֹ לְקוּי" וְלֹא יִדְעֵנָא מָאי נִיהוּ.

וְלִיְחוּשׁ שְׂמָא הִבְרִיא בִּינְתִים? בֵּין דְתַחֲלֵתָּ וְסוֹפּוֹ לְקוּי – לֹא חִיִּישִׁינָן.

מְתִיב רַב מַרִּי, רַבִּי חֲנִינָא בֶן אֲנְטִיגוֹנוֹס אוֹמַר: בּוֹדְקִין אוֹתוֹ שְׁלֹשׁ פְּעָמִים בְּתוֹךְ שְׁמוֹנִים יוֹם!

לְחַד אֲבַר חִיִּישִׁינָן, לְכוּלִּיָּה גּוֹפָא לֹא חִיִּישִׁינָן.

"רַבִּי אֶלְיָעֶזֶר אוֹמַר לֹא כִי" וְכוּ'. וְרַמְיָנָהוּ: בֶּן עֶשְׂרִים שָׁנָה וְלֹא הִבִּיא שְׁתֵּי שְׁעָרוֹת – יִבְיֵאוּ רְאִיָּה שְׁהוּא בֶּן עֶשְׂרִים, וְהוּא הִסְרִים, לֹא חוֹלֵץ וְלֹא מִיַּיבֵּם. בֵּת עֶשְׂרִים וְלֹא הִבִּיאָה שְׁתֵּי שְׁעָרוֹת – יִבְיֵאוּ רְאִיָּה שְׁהִיא בֵּת עֶשְׂרִים, וְהִיא הָאִילּוּנִית, לֹא חוֹלֵצֶת וְלֹא מְתִיבֶמֶת, דְּבָרֵי בֵּית הַלֵּל. וּבֵית שְׂמָאי אוֹמְרִים: זֶה וְזֶה בְּנֵי שְׂמֹנֶה עֶשְׂרֵה.

who never saw a single hour of life in a state of fitness, as he was born infertile. The Gemara asks: How do we know that one was born this way and was never capable of having children? Abaye said: Anyone who passes water and does not form an arch with his urine, but rather his urine dribbles out downward, never had sexual capacity.

Incidentally, the Gemara inquires: From what does this defect arise? What is its cause? The Gemara answers: It results from his mother baking bread at noon and drinking strong beer [*shikhra marka*]¹ while pregnant. The excessive heating of the mother's body causes her child to be born with defective reproductive organs. Rav Yosef said: This is the meaning of that which I heard Rabbi Ami say: Anyone who is impaired from his mother's womb,^N and at the time I did not know what he was referring to. Now I understand that he was speaking about a man who was infertile from birth.

The Gemara asks: Let us be concerned that perhaps he was cured for some period in the meantime, without our having known about it, in which case he would have had an hour of fitness at some point. The Gemara answers: Since both his beginning and his end are impaired, i.e., he was born with a defect and he presently suffers from the same condition, we are not concerned about such a possibility.

Rav Mari raised an objection from the following mishna (*Bekhorot* 38b): Rabbi Hanina ben Antigonus says: One examines a firstborn animal that developed a blemish in its eye three times within eighty days^H to see whether the defect is permanent. This shows that no presumptions are made in such a case; rather, there is concern that the animal may have been cured in the meantime, even if it had the defect at the beginning and at the end of the period.

The Gemara answers: With respect to a blemish affecting a single organ, e.g., an eye, we are concerned that the blemish might have passed and then later redeveloped, but with regard to a defect affecting the entire body, we are not concerned about such a possibility. A eunuch is not impaired in a single organ; rather, he has a defect that affects his entire body. Consequently, there is no concern that, though he was born with the defect and presently suffers from it, he might have regained his potency for some time in the middle.

It is taught in the mishna that Rabbi Eliezer says: No; rather, a eunuch by natural causes performs *halitza*, whereas a eunuch caused by man does not perform *halitza*. The Gemara raises a contradiction from the following mishna (*Nidda* 47b): If a twenty-year-old man has not grown two pubic hairs, a sign of sexual maturity, the relatives of the widow who wish to exempt her from *halitza* and levirate marriage must bring proof that he is twenty years old, and he, having been established as a sexually underdeveloped man, does not perform *halitza*^N or levirate marriage with his *yevama*. If a twenty-year-old woman has not grown two pubic hairs, the relatives of her deceased husband's brother must bring proof that she is twenty years old, and she, having been established as a sexually underdeveloped woman, does not perform *halitza* or enter into levirate marriage with her *yavam*.^H This is the statement of Beit Hillel. And Beit Shammai say: With regard to both this and that, males and females, the relevant age is eighteen years old, not twenty.^B

LANGUAGE

Strong beer [*shikhra marka*] – שִׁכְרָא מְרָקָא: The early authorities are divided as to whether this term denotes a strong alcoholic beverage, a mixed alcoholic beverage (Rashi), or an alcoholic beverage that is fermenting (*Arukh*). They further discuss the etymology of the word, some asserting that it comes from the Latin *meracum*, meaning unmixed wine, and others claiming that it is derived from the Hebrew root *m-r-k*, meaning clear or pure.

NOTES

כָּל – Anyone who is impaired from his mother's womb – שְׂמִמְעֵי אִמּוֹ לְקוּי: This definition is not entirely precise, as it leaves unanswered a question raised in the Jerusalem Talmud: What about a child who was a eunuch caused by man while still in his mother's womb? It is concluded in the Jerusalem Talmud that the *halakha* is stringent in that case, as both possible stringencies are applied: The stringency of one who is a eunuch caused by man, i.e., that he may not enter into the congregation, and the stringencies of a naturally infertile man, i.e., that he is ineligible for both *halitza* and levirate marriage.

And he, as a sexually underdeveloped man, does not perform *halitza* – הוּא הִסְרִים לֹא חוֹלֵץ: In the Jerusalem Talmud it is stated that the mishna's distinction between a eunuch caused by man and a eunuch by natural causes is merely the opinion of the Sages mentioned there. However, according to others, both types of eunuchs may neither perform *halitza* nor enter into levirate marriage.

HALAKHA

The examination of a firstborn – בְּדִיקַת בְּכוֹר: One of the blemishes that disqualify a firstborn animal is permanent blindness, which is established after the animal has been observed for eighty days and remained unable to see. The animal must be examined on three occasions: On the twenty-seventh day from when the problem was first detected, on the fifty-fourth day, and on the eightieth day, in accordance with the opinion of Rabbi Hanina ben Antigonus (Rambam *Sefer Avoda, Hilkhot Issurei Mizbe'ah* 2:12).

A twenty-year-old who has not grown two pubic hairs – בֶּן עֶשְׂרִים וְלֹא הִבִּיא שְׁתֵּי שְׁעָרוֹת: A male or a female who has not grown two pubic hairs is considered a minor. If a male or female reaches the age of twenty and shows signs of sexual underdevelopment, he or she is considered a sexually underdeveloped man or a sexually underdeveloped woman, respectively, even if he or she later grows two hairs. This ruling is in accordance with the opinion of Beit Hillel in the mishna.

The Rema, based on the Rivash, says that nowadays there are no experts in the examination of eunuchs, and therefore even if a male showed signs of sexual underdevelopment, he is considered as one whose status as a eunuch is in doubt (Rambam *Sefer Nashim, Hilkhot Ishut* 2:4; *Shulhan Arukh, Even HaEzer* 155:12, 172:6).

BACKGROUND

An eighteen year old, a twenty year old – בֶּן שְׂמוֹנֶה עֶשְׂרֵה – בֶּן עֶשְׂרִים: The medical phenomenon of late adolescence, both in males and in females, is caused by a low level of secretion of the appropriate sex hormones, which prevents secondary sexual characteristics such as pubic hair from developing at the usual time.

Sometimes this delay is only temporary. In such cases, several years later the level of glandular secretion rises to the normal level, and the boy or girl reaches full maturity. However, if this does not occur before a certain age, which based on modern medical knowledge is nineteen, then by the twentieth year normal sexual development is no longer possible, and a fixed state of eunuchism sets in.

BACKGROUND

Alexandria of Egypt – אֶלֶכְסַנְדְּרִיָּא שֶׁל מִצְרַיִם: Since there were other cities named Alexandria, such as the one in Syria, known as Alexandretta, the Sages sometimes referred to the Egyptian city as Alexandria of Egypt.

Alexandria, the capital of Egypt during the Ptolemaic dynasty and under the Romans, was the world's leading cultural and scientific center and remained so for many generations. Alexandria hosted a great medical center in which many experiments were conducted, and its physicians were famous and praised the world over. The Sages of the Talmud were familiar with the doctors of Alexandria and held them in high esteem, often lauding their medical successes.



Location of Alexandria

NOTES

One who ate forbidden fats between the age of twelve years – אֶכֶל חֵלֶב, מִבֵּן שְׁתַּיִם עֲשָׂרָה: Rashi explains that although this teaching is stated in the masculine, it is in fact referring to females, which is why the decisive age is twelve years and one day, and not thirteen. The Ramban suggests that this is not necessarily the case and that it might be referring to both males and females. This is because there is an opinion that a certain period of time before puberty is also considered part of adulthood. The Rashba and others reject the Ramban's opinion, arguing that despite the slight linguistic difficulty, it is nevertheless preferable to establish Rav's opinion in accordance with the opinion that has been accepted as the *halakha*, and consequently, they accept Rashi's interpretation. Some of the later authorities point out that similar discrepancies, where the Gemara is not particular about gender-based details, are found elsewhere as well.

Passes from minority to adulthood – מִקְטַנּוּתָהּ יֵצֵתָה לְבָגֵר: With regard to a minor girl, and to a certain extent in the case of a stubborn and rebellious son as well, there is a period of time between minority, which ends with the appearance of two pubic hairs, and full maturity, marked by an abundance of hair around the sexual organs. This period is called young womanhood or youth. Special *halakhot* apply only to this period, which lasts for roughly six months. However, since the period of young womanhood depends on the signs of maturity, this period never applies to a sexually underdeveloped woman at all.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: הַזֶּכֶר כְּדָבָרֵי בֵּית הַלֵּל, וְנִקְבָּה כְּדָבָרֵי בֵּית שַׁמַּי, מִפְּנֵי שֶׁהָאִשָּׁה מַמְהֵרָת לְבֹא לְפָנֵי הָאִישׁ.

The mishna continues: Rabbi Eliezer says that for a male the *halakha* is in accordance with the statement of Beit Hillel, and for a female the *halakha* is in accordance with the statement of Beit Shammai, because a woman reaches maturity more quickly than does a man, and therefore, if she fails to develop the signs of maturity by the age of eighteen it is assumed that she is a sexually underdeveloped woman. In any case, it is clear from this mishna that even Rabbi Eliezer agrees that one who lacks sexual capacity from birth may neither perform *halitza* nor enter into levirate marriage.

אָמַר רַמִּי בַר דִּיקוּלֵי אָמַר שְׁמוּאֵל: חֹזֵר בּוֹ רַבִּי אֱלִיעֶזֶר. אֵיבְעִינָא לְהוֹ: מַהִי הַדֵּר בֵּיהּ? תָּא שְׁמַע, דְּתַנְיָא: רַבִּי אֱלִיעֶזֶר אוֹמֵר: קָרִים חֲמָה חוּלְץִין וְחוּלְצִין לְאִשְׁתּוֹ, שְׂבָן בְּמִינָן מִתְרַפְּאִין בְּאֶלְכְסַנְדְּרִיָּא שֶׁל מִצְרַיִם.

Rami bar Dikulei said that Shmuel said: Rabbi Eliezer retracted his opinion. A dilemma was raised before the Sages: Which statement did he retract? Did he retract what he said here in the mishna, that a eunuch by natural causes performs *halitza* with his *yevama* and his brothers perform *halitza* with his wife? Alternatively, perhaps the mishna here reflects his final view, after he retracted what he said in the other mishna. The Gemara suggests: Come and hear a resolution to this question, as it is taught in a *baraita* that Rabbi Eliezer says: A eunuch by natural causes performs *halitza* with his *yevama* and his brothers perform *halitza* with his wife, as such type of men are cured in Alexandria of Egypt.^B This additional source and its reasoning suggest that Rabbi Eliezer did not retract what he said in the mishna here. Rather, he retracted his statement with regard to the dispute between Beit Hillel and Beit Shammai in the other mishna.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: לְעוֹלָם לֹא הִדֵּר בֵּיהּ, וְכִי תֵּנּוּ הֵיאָ – לְעוֹנְשִׁין.

Rabbi Elazar says: Actually, he did not retract anything at all. And when we learned Rabbi Eliezer's ruling in that mishna with regard to the age of a sexually underdeveloped individual, that ruling was stated with regard to punishments, i.e., the age at which such an individual is considered an adult so that he is liable to receive punishment, and not with regard to *halitza* or levirate marriage.

אֵיתָמַר: אֶכֶל חֵלֶב, מִבֵּן שְׁתַּיִם עֲשָׂרָה [יּוֹם אֶחָד] עַד בֶּן שְׁמֹנֶה עֲשָׂרָה, וְנוֹלְדוֹ בּוֹ סִימְנֵי קָרִים, וְלֵאחֵר מְכָאן הֵבִיא שְׁתֵּי שְׁעֵרוֹת. רַב אָמַר: נַעֲשֶׂה קָרִים לְמַפְרַע, וְשְׁמוּאֵל אָמַר: קָטָן הָיָה בְּאוֹתָהּ שְׁעָה.

And it was stated that the *amora'im* disagreed on this issue: With regard to one who ate forbidden fats or performed any other transgression for which one is liable to receive lashes or *karet*, when he was between the age of twelve years^N and one day and the age of eighteen years, and he developed the signs of one who was a eunuch by natural causes, as explained below, and afterward he grew two pubic hairs, Rav said: He is retroactively considered a eunuch by natural causes.^H In other words, these hairs are not viewed as a sign of maturity. Rather, he lacked sexual capacity from the outset, which means he became an adult at the standard age of thirteen and is held liable for his actions from that point in time. And Shmuel said: No, he was a minor at the time he committed his offense, as the two hairs are a sign of his maturity, albeit delayed.

מִתְקִיף לָהּ רַב יוֹסֵף: לְרַב, אֵילוּמִית לְרַבִּי מֵאִיר יְהֵא לָהּ קָנָם!

Rav Yosef strongly objects to this: If so, according to Rav, a sexually underdeveloped woman according to Rabbi Meir should be entitled to the fine paid by a rapist. Rabbi Meir maintains that a rapist is liable to be fined only if he raped a young woman between the ages of twelve and twelve and a half, but not if he raped a minor. And furthermore, a sexually underdeveloped woman is not entitled to the fine because she is considered a minor, as she never showed the signs of maturity. But according to Rav she should retroactively be viewed as an adult and would therefore be entitled to the fine.

אָמַר יְלִיָּה אֲבִי: מִקְטַנּוּתָהּ יֵצֵתָה לְבָגֵר.

Abaye said to him: A sexually underdeveloped woman passes directly from minority to full adulthood.^N In other words, she is first considered a minor and then immediately an adult, without passing through the intermediate stage of young womanhood, and an adult woman is not entitled to the rapist's fine.

HALAKHA

He is retroactively considered a eunuch by natural causes – נַעֲשֶׂה קָרִים לְמַפְרַע: The same *halakha* applies to a sexually underdeveloped woman. Therefore, any girl who has not grown two pubic hairs and has not given birth is regarded as a minor and may refuse her husband. However, once she reaches the age of twenty and displays the signs of a sexually underdeveloped woman, she is considered an adult retroactively from the age of twelve years and one day (Rema), as the *halakha* is ruled in accordance with the opinion of Rav, against that of Shmuel, in matters of ritual law (*Shulhan Arukh, Even HaEzer* 155:12).

אמר ליה: כל כי הני מילי מעלייתא
 ותאמרו משמאי. דתנאי: אין הפרים
 נידון כבן סורר ומורה, לפי שאין בן
 סורר ומורה נידון אלא בתמימת זקן
 התחתון; ואין אילומית נידונית כנערה
 המאורסה, שמקטנותה יצתה לבגר.

אמר רבי אבהו: סימני סרים ואילומית
 ובן שמונה אין עושין בהן מעשה עד
 שיהו בן עשרים.

ובן שמונה מי קחיי? והתנאי: בן שמונה –
 הרי הוא כבאבן, ואסור לטלטלו, אבל
 אמו שוחה עליו ומנקתו

Greatly impressed with this answer, Rav Yosef said to Abaye: Would that all such excellent matters^N be stated in my name. As it is taught in a *baraita*: A sexually underdeveloped man is not judged as a stubborn and rebellious son,^{HB} as a boy is judged as a stubborn and rebellious son only when he has the mark of his lower beard, i.e., when his pubic hair begins to grow in. At that point he has reached the age of maturity but is not yet a fully developed man, a stage that parallels young womanhood for women. A sexually underdeveloped man never passes through this intermediate stage between minority and full adulthood. And similarly, a sexually underdeveloped woman who was betrothed and raped is not judged in accordance with the laws governing a betrothed young woman (see Deuteronomy 22:23–27), as she passes directly from minority to full adulthood without the intermediate stage of young womanhood.^H Therefore, the *baraita* fully corroborates Abaye's view.

Rabbi Abbahu said: If one has the signs of a sexually underdeveloped man; or the signs of a sexually underdeveloped woman;^H or the signs of a child born during the eighth month^N of pregnancy, whose survival is uncertain; no action is taken in their regard, i.e., the sexually underdeveloped male or female is not treated as an adult and the child born during the eighth month is not deemed viable, until they are twenty years old.

The Gemara asks: Can a child born during the eighth month^H of pregnancy survive? But isn't it taught in a *baraita*: A child born during the eighth month is like a stone with regard to the *halakhot* of set-aside [*muktze*] on Shabbat, and therefore it is prohibited to move him on Shabbat, as it may be presumed that he is not viable at all. However, his mother may bend over him and nurse him,

A stubborn and rebellious son – בן סורר ומורה: A boy can be judged as a stubborn and rebellious son only if he transgresses after he has reached the age of thirteen years and a day and has grown two pubic hairs, but before his member is entirely surrounded with hair. Before that he is a minor, and afterward he is an adult and therefore can no longer be judged as a stubborn and rebellious son (Rambam *Sefer Shofetim, Hilkhot Mamrim* 7:5).

A sexually underdeveloped woman passes into adulthood – אילומית יצתה לבגר – A sexually underdeveloped woman does not go through the stage of young womanhood. Rather, she is considered an adult as soon as she is no longer a minor (Rambam *Sefer Nashim, Hilkhot Ishut* 2:5).

The signs of a sexually underdeveloped man or a sexually underdeveloped woman – סימני סרים ואילומית: If a young woman reaches the age of twelve years and one day without growing two pubic hairs, even if she shows the signs of a sexually underdeveloped woman, she is considered a minor until she turns twenty. The same applies to a thirteen-year-old boy who has not grown two pubic hairs and demonstrates the signs of a sexually underdeveloped man. The *halakha* is in accordance with the opinion of Rabbi Abbahu (Rambam *Sefer Nashim, Hilkhot Ishut* 2:3, 11; *Shulhan Arukh, Even HaEzer* 155:12; 172:6).

Born during the eighth month – בן שמונה: If a baby was born during the eighth month, or if a doubt exists as to whether he was born during the seventh or during the eighth month, and his hair and nails are not fully developed, he may not be moved on Shabbat. However, his mother may bend over him and nurse him if she suffers due to her milk.

Some later authorities (*Mishna Berura*), based on *Tosafot on Shabbat* 135a, maintain that nowadays no one has sufficient expertise with regard to the matter, and therefore all babies may be moved, as they are all considered as possibly having been born during the ninth month (Rambam *Sefer Zemanim, Hilkhot Sabbath* 25:6; *Shulhan Arukh, Orah Hayyim* 330:8).

NOTES

All such excellent matters – כל כי הני מילי מעלייתא – The standard version of the text appears incomplete. According to the Ritva's version, Abaye said to Rav Yosef: They say in your name that a sexually underdeveloped woman passes directly from minority to full adulthood. This version is convincing, as it is well known that Rav Yosef became ill and forgot much of his learning, and his disciple Abaye had to remind him of matters, including teachings that Rav Yosef himself had taught. Rav Yosef's reply also fits in well with this version.

The signs of a... child born during the eighth month – סימני סרים ואילומית: There are many explanations with regard to Rabbi Abbahu's statement about a baby born during the eighth month. According to Rashi, this *halakha* is similar to the previous two: He is not removed from the category of a possible stillborn until the age of twenty. However, other early authorities are puzzled by the logic of such a *halakha*. If this child, who was suspected of not being viable, grows up and reaches adulthood, it is clear that he is not stillborn. Why, then, should uncertainty remain for

so many years (see Ramban and Rashba)? Rabbeinu Hananel and the *ge'onim*, as well as the Ra'avad, understand that owing to the child's unusual weakness, even if he grows two hairs at the proper time, he is not considered an adult until he reaches the age of twenty.

The Ramban cites an opinion that Rabbi Abbahu's statement with regard to a baby born during the eighth month is totally unrelated to the teachings concerning sexually underdeveloped people. He merely means to say that also in the case of a child born during the eighth month, no immediate action is taken. Rather, one waits until the matter is clarified, in accordance with either the requirements of Rabban Shimon ben Gamliel or those of Rabbi Yehuda HaNasi. The Ramban himself accepts the following explanation: If a boy born during the eighth month fails to grow two hairs at the age of thirteen, even if he shows signs of sexual incapacity he is not treated as a eunuch until he is twenty, as he might be a late developer due to his weak constitution. He adduces support for his opinion from the Jerusalem Talmud (see Razah and *Keren Ora*).

BACKGROUND

A stubborn and rebellious son – בן סורר ומורה: The Torah (Deuteronomy 21:18–21) and the Mishna (*Sanhedrin*, chapter 8) describe the punishment administered to a son between the ages of thirteen and thirteen and three months who steals money from his parents to eat a gluttonous meal of meat and wine in the company of worthless men. If his parents bring him to court for this act, he is exhorted to desist and is punished with

lashes. If he repeats the same misdeed and is again brought to court by his parents within this same three-month period, he is liable to receive the death penalty. Nevertheless, the halakhic limitations surrounding such a case are so severe that some of the Sages said that the execution of a stubborn and rebellious son never actually took place.

HALAKHA

The signs prove – סימני מוכיחין עליו: A boy born during his mother's eighth month of pregnancy may not be circumcised on Shabbat unless his hair and nails are fully developed, in accordance with the opinion of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel, and following the opinion of Rava Tosfa'a (Rambam *Sefer Ahava, Hilkhhot Mila* 1:13; *Shulhan Arukh, Yoreh De'a* 266:11).

A woman whose husband went overseas – אשה שהלך: If a woman whose husband is overseas gives birth a full twelve months after his departure, the child is a *mamzer*. The *Halakhot Gedolot* maintains that he is not a definite *mamzer*, as the husband might have returned secretly (*Be'er HaGola*; see *Perisha* and *Taz*). A child born within twelve months of the husband's departure is considered fit, in accordance with the opinion of Rava Tosfa'a (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 15:19; *Shulhan Arukh, Even HaEzer* 4:14).

Any...child who stays alive for thirty days – כל ששהה יום: If a man died, leaving a pregnant wife, and she bore a live child, she is exempt from levirate marriage. By rabbinic law the baby does not exempt the mother unless it is known that the baby was carried to full term. If there is no proof in this regard, a child that survives thirty days exempts his mother and her rival wives from *halitza* and levirate marriage, even if he dies afterward (*Shulhan Arukh, Even HaEzer* 156:4).

BACKGROUND

The signs prove – סימני מוכיחין עליו: Fetal development is not uniform. Some fetuses develop so quickly that in the seventh month they already have fully developed bodies. Similarly, there are fetuses that develop more slowly. One measure of development is the growth of fingernails past the fingertips. Another measure is the growth of hair such as eyelashes and eyebrows.

Delayed for the twelve months of the year – אישתיה עד תריסר ירחי שתא: In general it is very difficult to determine the precise length of a pregnancy, both due to the uncertainty as to when it began and because for various reasons one cannot rely on the testimony of the woman involved. Nevertheless, it is clear that many women, approximately 10 percent of all childbearing women, give birth significantly later than after the usual nine months. Though rare, doctors allow for the possibility of a pregnancy continuing for forty-eight weeks, i.e., around eleven months, and there are extremely rare cases of pregnancies lasting even longer than this.

Though the courts in certain countries have officially recognized pregnancies as having continued for even longer than eleven months, their rulings are not based on reliable scientific evidence.

מפני הסכנה. הא במאי עסקינן – בשגמרו סימניו. דתנא: איזהו בן שמונה – כל שלא בלו לו חדשיו. רבי אומר: סימני מוכיחין עליו: שערו וצפרניו שלא גמרו. טעמא – דלא גמרו, הא גמרו – אמרינן: האי בר שבועה הוא, ואישתהויי הוא דאישתיה,

אלא הא דעבד רבא תוספאה עובדא באשה שהלך בעלה למדינת הים, ואישתיה עד תריסר ירחי שתא, ואכשריה, כמאן – כרבי דאמר משתיהא.

בין דאיכא רבן שמעון בן גמליאל, דאמר משתיה – כרבי עבד. דתנא רבן שמעון בן גמליאל אומר: כל ששהה שלשים יום באדם אינו נפל.

due to the danger,ⁿ both to the baby, who might in fact be viable, as well as to the mother, who might suffer fatal complications if she has to retain all her milk. The Gemara answers: **With what are we dealing here?** We are dealing with a case where his signs of viability are fully developed, and he has the appearance of a viable child. **As it is taught in a baraita: Who is a baby born during the eighth month?** It is anyone whose months of gestation have not been completed, i.e., a baby that was born prematurely. **Rabbi Yehuda HaNasi says:** The signs that prove^{HB} that the child falls into this category are that his hair and nails are not fully developed. Now, the reason is that they are not fully developed; but if his hair and nails are fully developed, we say that this fetus was fit to be born after seven months but for some reason was delayed in its mother's womb.

But if so, with regard to the action taken by Rava Tosfa'a concerning a woman whose husband went overseas^H and her baby was delayed in her womb for the twelve months of the year^B following her husband's departure, and Rava Tosfa'a rendered the child fit, arguing that the husband is presumed to be the father and the child is not a *mamzer*, according to whose opinion did he issue this ruling? It must have been in accordance with the opinion of Rabbi Yehuda HaNasi, who says that a baby can be delayed for an extended period of time in its mother's womb even after it is fully developed and ready to be born. But how could Rava Tosfa'a have ruled in accordance with the minority opinion of Rabbi Yehuda HaNasi, against the majority opinion of his colleagues?

The Gemara answers: **Since there is also Rabban Shimon ben Gamliel,^N who says that a baby can be delayed in its mother's womb, Rava Tosfa'a in fact acted in accordance with the majority,** as Rabbi Yehuda HaNasi's opinion is not that of a lone dissenting scholar. **As it is taught in a baraita that Rabban Shimon ben Gamliel says: Any human child who stays alive for thirty days^H is not a stillborn.** Even if the child was not carried for a full nine months, once he has survived for thirty days he is no longer treated like an infant whose viability is in doubt. The reason is that he is presumed to be a child that was fit to be born after seven months but for some reason was delayed in its mother's womb and not born immediately upon reaching full development.

NOTES

Due to the danger – מפני הסכנה: According to Rashi, this refers both to the danger posed to the mother due to excess milk, as well as the danger to the baby. Some early authorities (Meiri; Rabbi Avraham min HaHar) maintain that the Gemara is speaking only of the danger to the mother, as Rashi himself explains in tractate *Shabbat*, since if the child was thought to be potentially viable it would be treated as an invalid, not as a stone.

Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel – רבי ורבן שמעון בן גמליאל: The early authorities (see *Tosafot*) discuss Rabban Shimon ben Gamliel's opinion and compare it to that of Rabbi Yehuda HaNasi, as well as to the opinion of the Rabbis who disagree with them both. Most early authorities distinguish between the opinions of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel. According to Rabbi Yehuda HaNasi, the physical signs are the decisive factor; a child that lacks these signs is not removed from the category of a possible stillborn for

an extended period of time, which according to some is twenty years. According to Rabban Shimon ben Gamliel, on the other hand, even if the child's hair and nails are incompletely formed, once he has survived for thirty days he is no longer classified as stillborn. See the comments of *Tosafot*, the Ramban, and the Rashba with regard to the relationship between this issue and the *halakha* that is in accordance with Rabbi Abbahu. According to a different approach, even Rabban Shimon ben Gamliel agrees that a baby who does not show the proper physical signs is not considered fully viable. Therefore, in a case where he was definitely born in the eighth month and did not develop these signs, if he survives thirty days he is no longer treated as a possible stillborn, but he is not seen as viable in all regards until he reaches the age of twenty. According to this approach there is no contradiction between ruling in accordance with the opinion of Rabban Shimon ben Gamliel and ruling in accordance with the opinion of Rabbi Abbahu (*Tosafot Had Mikamma'ei*; Meiri).

A eunuch by natural causes – סְרִים חֲמָה: A boy who has reached the age of thirteen and has not grown two pubic hairs is considered a minor until he is twenty, even if he shows the signs of a eunuch from birth. According to the Rambam the relevant age is twenty years less thirty days, while Ra'avad maintains that it is nineteen and thirty days (Rambam *Sefer Nashim, Hilkhot Ishut* 2:11).

The signs of a eunuch by natural causes – סִימְנֵי חֲמָה: The signs of a eunuch by natural causes are as follows: The first sign is that he lacks a beard; this is understood in several ways. The other signs of a eunuch are: His hair is defective and unlike that of others; his skin is smooth; he urinates without forming an arch; his semen dissipates; his urine does not ferment; when he bathes in the winter his skin does not give off steam; and his voice is defective, so that it is unclear whether he is a man or a woman. The Vilna Gaon, based on the Rambam and the *Tur*, adds that his urine does not raise foam (Rambam *Sefer Nashim, Hilkhot Ishut* 2:13; *Shulḥan Arukh, Even HaEzer* 172:5).

And has not yet grown two pubic hairs – וְלֹא הִבְיָאָה שְׁתֵּי שְׁעָרוֹת: A girl who has not grown two pubic hairs at the proper time remains a minor until her twentieth year, even if she already demonstrates the signs of a sexually underdeveloped woman. If she reaches the age of twenty and shows signs of sexual underdevelopment, she is from that time on regarded as an adult (Rambam *Sefer Nashim, Hilkhot Ishut* 2:4; *Shulḥan Arukh, Even HaEzer* 155:12; 172:6).

The signs of a sexually underdeveloped woman – סִימְנֵי אֵילוּנִית: The signs of a sexually underdeveloped woman are as follows: She lacks breasts; she experiences pain during intercourse; her lower abdomen is not formed like that of other women; she has a deep voice, so that it is unclear whether she is a man or a woman. It appears that all these signs are required (*Kesef Mishne*). Some (Rema, based on *Tur*) rule that one of these signs is sufficient for her to be deemed a sexually underdeveloped woman (Rambam *Sefer Nashim, Hilkhot Ishut* 2:6; *Shulḥan Arukh, Even HaEzer* 172:4).

Unless all these signs are present – עַד שִׁיְהוּ בִּוּלָם: One who has grown two hairs in his beard is not considered lacking in sexual capacity unless he displays all the other signs of this. However, if he lacks two hairs, he is regarded as a eunuch, even if only one other sign is present, in accordance with the opinion of Rabbi Yoḥanan. Some (*Beit Shmuel*, based on *Tosafot* and Ra'avad) claim that the absence of two hairs is a definitive sign of sexual impotence, even if none of the other signs are present (*Shulḥan Arukh, Even HaEzer* 172:5; and in the comment of Rema).

NOTES

Whose semen dissipates [doḥa] – שִׁשְׁבֵּבֶת זְרָעוֹ דוֹחָה: Some commentaries read *dihā*, meaning that the color of his semen differs from that of other men.

Unless all these signs are present – עַד שִׁיְהוּ בִּוּלָם: According to the opinion that all these signs must be present, the various Sages do not disagree with each other; rather, they are adding to one another's observations. In other words, they are all describing the same physical state, each one stressing a particular detail that he feels is important and easy to determine. With regard to a sexually underdeveloped woman, some commentaries maintain that since there is no disagreement on the matter, one sign is enough (*Yam shel Shlomo*), while other argue the opposite: Since there is no single prominent sign, she must show all the listed signs in order to be considered sexually underdeveloped (see HALAKHA).

The Sages taught: Who is considered a eunuch by natural causes?⁸ It is anyone who is twenty years old and has not yet grown two pubic hairs.⁹ And even if he grows pubic hairs afterward, he is still considered a eunuch by natural causes with regard to all his matters. And his signs are as follows: Whoever does not have a beard, and his hair is defective, unlike that of ordinary individuals, and his skin is smooth, i.e., hairless. **Rabban Shimon ben Gamliel says in the name of Rabbi Yehuda ben Ya'ir:** It is anyone whose urine does not raise foam.

And some say: It is anyone who urinates without forming an arch. **And some say:** It is anyone whose semen dissipates¹⁰ and fails to congeal in the proper manner. **And some say:** Anyone whose urine does not ferment. **Others say:** It is anyone who bathes in the rainy season and his flesh does not give off steam. **Rabbi Shimon ben Elazar says:** It is anyone whose voice is defective, so that it is not evident from it whether he is a man or a woman.¹¹

And who is a sexually underdeveloped woman [aylonit]?¹² It is anyone who is twenty years old and has not yet grown two pubic hairs.¹³ And even if she grows pubic hairs afterward, she is still considered a sexually underdeveloped woman with regard to all her matters. **And her signs are as follows:** A sexually underdeveloped woman is anyone who does not have breasts and experiences pain during intercourse. **Rabban Shimon ben Gamliel says:** It is anyone whose lower abdomen is not formed like that of other women, as she lacks the cushion of flesh that is usually situated above a woman's genitals. **Rabbi Shimon ben Elazar says:** It is anyone whose voice is deep, so that it is not evident from it whether she is a woman or a man.¹⁴

It was stated that *amora'im* disagreed over the signs of a eunuch. **Rav Huna said** that one is not categorized as a eunuch unless all these signs are present;¹⁵ **Rabbi Yoḥanan said:** He is categorized as such even if only one of them is present. The Gemara comments: In a case when he has grown two hairs in his beard, everyone agrees that he is not considered sexually impotent unless all the signs are present. When they disagree, it is with regard to a case when he has not grown two hairs.

BACKGROUND

תנו רבנן: איזהו סְרִים חֲמָה – כל שהוא בן עשרים ולא הביא שתי שערות, ואפילו הביא לאחר מכן הוא בְּסָרִים לְכָל דְּבָרָיו. ואלו הן סימניו: כל שאין לו זקן, ושערו לקוי, ובשרו מחליק. רבן שמעון בן גמליאל אומר משום רבי יהודה בן יאיר: כל שאין מימיו מעלין רתיחות.

ויש אומרים: כל המטיל מים ואין עושה ביפה. ויש אומרים: כל ששכבת זרעו דוחה. ויש אומרים: כל שאין מימיו רגליו מחמיצין. אחרים אומרים: כל שרוחץ בימות הגשמים ואין בשרו מעלה הבל. רבי שמעון בן אלעזר אומר: כל שקולו לקוי, ואין ניכר בין איש לאשה.

ואיזו היא אילונית? כל שהיא בת עשרים ולא הביאה שתי שערות. ואפילו הביאה לאחר מכן – הרי היא באילונית לכל דבריה. ואלו הן סימניה: כל שאין לה דדים, ומתקשה בשעת תשמיש. רבן שמעון בן גמליאל אומר: כל שאין לה שיפולי מעים בנשים. רבי שמעון בן אלעזר אומר: כל שקולה עבה, ואינה ניכרת בין אשה לאיש.

איתמר, סימני סְרִים, רב הונא אומר: עד שיהיו כולם. רבי יוחנן אומר: אפילו באחד מהן. היבא דהביא שתי שערות בזקן – כולו עלמא לא פליגי דעד שיהו כולם, כי פליגי – בשלא הביא.

The signs of a eunuch by natural causes [*seris hamma*] – סִימְנֵי חֲמָה: The term *seris hamma* seems to describe different kinds of defects. Consequently, the signs of a eunuch mentioned here might not necessarily all be present in one individual, as they might be associated with different kinds of defects. In one kind of eunuchism, hypogonadotropic hypogonadism, the hormones that cause production of testosterone and sperm are low. In such cases the physique and the voice may be feminized, and there is also a decreased amount of pubic and facial hair. There are various possible causes for this phenomenon, most of which are genetic. Another cause of eunuchism is hypergonadotrophic hypogonadism, where the testicles are unable to respond to the hormones sent to them and thus do not produce adequate amounts of testosterone and sperm. The most common condition causing this is Klinefelter syndrome, characterized by the presence of an extra female chromosome and resulting in a genetic makeup of xxy. In addition to the outward signs, eunuchism may be accompanied by various health problems, including obesity, excess fat in the blood, and diabetes, among others. Apparently the accompanying signs

mentioned here, such as those involving urination (see 80a), are linked to these illnesses.

A sexually underdeveloped woman [aylonit] – אֵילוּנִית: From the description provided here, it seems that *aylonit* is a general term for a woman with a basic defect in her reproductive system. From a medical standpoint there are several conditions that would fall into this category. Some of the descriptions of a sexually underdeveloped woman found here are typical of an enzymatic birth defect, which ultimately may cause several hormonal issues. One of these is an oversecretion of male hormones. This causes various changes in the woman's external sex organs and a general resemblance to a male, which the Gemara describes as follows: It is not evident whether she is a woman or a man. On the other hand, a sexually underdeveloped woman can also be a woman who suffers from Turner syndrome, due to a missing X chromosome. These women have non-functioning ovaries and no menstrual cycle, and often possess high waist-to-hip ratios. They may also have a short stature, low hairline, low-set ears, and webbed necks, as well as cognitive defects.

אָלָא הָא דְאָמַר וְלֵהוּ רַבָּה בַּר אַבּוּה לְרַבָּנָן: עֵינֵינוּ בֵּיהּ בְּרַב נַחְמָן, אִי בְּשָׂרוֹ מֵעֵלָה הֶבֶל – אֵיתִיב לֵיהּ בְּרַת – כְּמֵאן, כְּרַב הוּנָא?! לָא, רַב נַחְמָן סִיבֵי דִיקְנָא הוּיָא לֵיהּ.

The Gemara asks: **But if so, with regard to that which Rabba bar Avuh said to the Sages: Examine Rav Nahman when he bathes and if his flesh gives off steam I will give him my daughter for a wife, in accordance with whose opinion did he issue these instructions? Is it not in accordance with the opinion of Rav Huna, who maintains that all the signs must be present, as presumably he could see that Rav Nahman did not have a beard? The Gemara answers: No, Rav Nahman had wisps of a beard, and therefore Rabba bar Avuh wanted to know whether he displayed the other signs of sexual incapacity.**

”הַסְרִים לֹא חוֹלֵץ וְלֹא מֵיבֵם וְכֵן אִילּוּנִית” וְכוּ, קִתְּנֵי סְרִים דּוּמְיָא דְאִילּוּנִית, מָה אִילּוּנִית בִּידֵי שְׂמִים – אִף סְרִים בִּידֵי שְׂמִים, וְסִתְמָא כְּרַבֵּי עֲקִיבָא, דְאָמַר: בִּידֵי אָדָם – אִין, בִּידֵי שְׂמִים – לָא.

§ It is taught in the mishna that a sexually underdeveloped man does not perform *halitza* or enter into levirate marriage with his *yevama*, and similarly, a sexually underdeveloped woman does not perform *halitza* or enter into levirate marriage with her *yavam*. The Gemara comments that the *tanna* teaches the case of a sexually underdeveloped man similarly to that of a sexually underdeveloped woman, from which it can be inferred: **Just as in the case of a sexually underdeveloped woman, her disability is by the hand of Heaven, so too, in the case of a sexually underdeveloped man, his disability must be by the hand of Heaven. And this unattributed view in the mishna is in accordance with the opinion of Rabbi Akiva, who said: With regard to one whose incapacity was brought about by the hands of man, yes, he is considered like any other man and performs *halitza*, whereas one who suffers his condition by the hand of Heaven does not do so.**

”הַסְרִים שְׁחֵלֵץ לִיבְמַתּוֹ לֹא פְסָלָהּ” כּוּ: טַעְמָא דְבַעֲלָהּ הוּא, הָא אַחַר – לָא.

§ It is further taught in the mishna that if a eunuch performed *halitza* with his *yevama*, he has not thereby disqualified her from marrying into the priesthood, but if he had intercourse with her, he has disqualified her. The Gemara infers from this wording that the reason for her disqualification is that he, the *yavam*, had intercourse with her, as she had intercourse with her *yavam* outside the framework of permitted levirate marriage. **But if a different individual had relations with her she would not be disqualified.**

Perek VIII
Daf 81 Amud a

HALAKHA

A widow waiting for her *yavam* who engaged in an act of licentious relations – שׁוֹמֵרֵת יָבָם שְׂוִינָתָהּ – If a woman waiting for her *yavam* to enter into levirate marriage with her had intercourse with another man, she is not forbidden to her *yavam* if he is an ordinary Israelite, against the opinion of Rav Hamnuna. According to the Rema, she is prohibited to the other man in any event, as a penalty (*Shulhan Arukh, Even HaEzer* 159:3).

לֵימָא תִּיהוּ תִּיּוּבָתָא דְרַב הַמְּנוּנָא, דְאָמַר: שׁוֹמֵרֵת יָבָם שְׂוִינָתָהּ פְּסוּלָה לִיבְמָה! לָא, הוּא הֲדִין אֶפְּלִיּוֹ לְאַחַר נַמְי, וְאִינְדִּי דְתַנָּא רִישָׁא בְּדִידֵיהּ תַּנָּא נַמְי סִיפָא בְּדִידֵיהּ.

Shall we say that this is a conclusive refutation^N of the opinion of Rav Hamnuna, who said: A widow waiting for her *yavam*, who engaged in an act of licentious relations,^H is disqualified from entering into levirate marriage with her *yavam*, like an ordinary married woman who committed adultery? The Gemara rejects this argument: **No, this presents no difficulty for Rav Hamnuna, as it is possible that the same is true even in a case where she had relations with a different man, that she too would be disqualified from marrying into the priesthood. But since the *tanna* taught the first clause with regard to the *yavam* himself, he also taught the latter clause with regard to the *yavam* himself, even though the same *halakha* applies if she cohabitated with another.**

NOTES

לֵימָא תִּיהוּ – תִּיּוּבָתָא: The phrase shall we say generally indicates that the proposed suggestion or difficulty will ultimately be dismissed by the Gemara. In this case, however, the *halakha* is not ruled in accordance with Rav Hamnuna's opinion, and it is therefore unclear why the Gemara goes to such lengths to explain the mishna in accordance with his opinion. While it is true that the Gemara occasionally defends an entirely rejected view, it is uncommon. The Ritva asserts that there is a reason for this inquiry, as the ruling of the mishna is in accordance with the opinion of Rabbi Akiva, and Rav Hamnuna's opinion must be accepted in order to reach Rabbi Akiva's conclu-

sion. This is because it may be argued that a woman awaiting levirate marriage who married or had relations with another man before *halitza* has transgressed a prohibition. According to Rabbi Akiva, who equates those who have transgressed standard negative prohibitions with those liable to receive *karet* with regard to the validity of their marriage, she is considered a harlot even in that case. However, ultimately, the *halakha* is not ruled in accordance with the opinion of Rabbi Akiva. Therefore, a woman awaiting levirate marriage is not considered like a married or a betrothed woman, and having relations with another man does not disqualify her from marrying her *yavam*.