

## Creating a Community Eruv that Satisfies Lubavitch and Sephardic Shiurim

### Introduction

In a well known comedy routine Bill Cosby reenacts Hashem instructing Noah to build the ark. Hashem instructs Noah to build the ark three hundred cubits (Amot) long, fifty cubits wide and thirty cubits high. At this point Cosby portrays an incredulous Noah asking God “What’s a Cubit”? Bill Cosby likely did not realize it, but he raised an issue that is vigorously debated among Poskim regarding which a significant difference exists between Sephardic and Ashkenazic traditions. This has important ramifications for building a community Eruvin. Eruv creators should bear the Sephardic standard in mind to insure that the Eruv satisfies Sephardic<sup>1</sup> as well as Ashkenazic customs. This has specific application in regards to a recurring issue in most Eruvin, gaps of up to ten Amot. The question becomes, as Bill Cosby said “What’s a cubit (Amah)”, how much of a gap in terms of feet and inches may be tolerated.

### Gaps of ten Amot

Unlike the making of an Eruv in the Jewish State where we are at home and government authorities are supportive, outside of Eretz Yisrael, especially in smaller Jewish communities, Eruvin must be made in the least intrusive manner as possible. Every effort should be made to use existing structures such as utility poles (especially those with a wire running on top of the pole), steep slopes and fences<sup>2</sup>. In such situations, gaps will often exist when seeking to transfer from fences to poles to steep slopes etc. The Halacha tolerates a gap of up to ten Amot/cubits in such circumstances (see Mishnah Eruvin 1:1, Shulchan Aruch Orah Chaim 362:9 and Aruch Hashulchan O.H. 362:30 and 36 and 363:45<sup>3</sup>).

Another measurement of major importance is the Tefach (handbreath). Walls are required to be at least ten Tefachim high to be used as part of an Eruv (Mishnah, Eruvin 1:9 and Shulchan Aruch O.C. 345:2). Thus, when constructing an Eruv one must specifically define two essential measurements - ten Amot and ten Tefachim (there are six Tefachim in an Amah).

What’s a Cubit? What’s a Tefach? – Chazon Ish, Rav Moshe Feinstein and Rav Avraham Haim Na’eh

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<sup>1</sup> Regarding whether Sephardim may use citywide Eruvin, see Rav Ovadia Yosef’s lengthy discussion in Teshuvot Yabia Omer 9:O.H. 33 where he rules that a Sephardic Jew may rely on a conventional citywide Eruv that consists primarily of Tzurat HaPetah but that a blessing should be bestowed upon one who adopts the strict opinion. He permits, though, one who wishes to follow the strict opinion to ask another who follows the lenient opinion to carry for him.

<sup>2</sup> Golf course fences are often ideal for utilizing for Eruvin since they usually extend for many miles. Many communities, including Englewood, Tenaflly, West Hartford and West Orange make extensive use of golf course fences. Rav Zvi Lieberman of London, England told me that unlike in the United States, British law requires railroad companies to construct fences alongside the tracks. He told me this is very helpful in creating community Eruvin in England. Security fences in Jewish communities in Yehuda and Shomeron as well as army camps dramatically simplify the creation of Eruvin in those communities.

<sup>3</sup> See though, Mishnah Berurah 362:59, 363:23 and 111. Rav Mordechai Willig, whose standards are followed in many citywide Eruvin nationwide rules in accordance with the Aruch HaShulchan. There is no reason to my knowledge why Sephardim cannot rely on this as well.

Twentieth century Poskim intensely debate the equivalent of an Amah and a Tefah in contemporary terms. The very wide range of opinions on this matter is summarized in the Encyclopedia Talmudit (the entry “Amah”), the three primary opinions are that of the Hazon Ish, Rav Moshe Feinstein and Rav Avraham Chaim Na’eh. The Hazon Ish and Rav Na’eh were contemporaries living in Eretz Yisrael<sup>4</sup> and engaged in vigorous debate about this topic from 5703/1943 until 5713/1953 the year in which both of these sages passed to the next world. Rav Moshe Feinstein issued his ruling on this issue in 1956 when he lived in the United States independent of and without relating to the debate between the Chazon Ish and Rav Na’eh<sup>5</sup>.

Their opinions are as follows: According to Rav Moshe Feinstein (Teshuvot Igrot Moshe O.H. 1:136), the Amah is 21.25 inches (53.98 centimeters) and the Tefah is 3.54 inches (9.00 centimeters). According to Rav Avraham Chaim Na’eh (in his famous work on the topic of Shiurim, Shiurei Torah 3:25), the Amah is 18.90 inches (48 centimeters) and the Tefach is 3.15 inches (8 centimeters). According to the Chazon Ish (Chazon Ish to O.C. number 39), the Amah is 24 inches (60.96 centimeters), the Tefach is 4 inches (10.16 centimeters).

#### Whose Opinion is Followed – Sepharadim and Ashkenazim

Ashkenazim and Sephardic Posekim resolve this issue differently. In Eretz Yisrael (as reported in “The Laws of an Eruv” page 264 and Techumin 32:413) the custom among Ashkenazic authorities is to apply the stringencies resulting both from the Hazon Ish and Rav Avraham Haim Na’eh’s opinion. Thus, they will require a fence to be 40 inches high but would not permit a gap greater than fifteen feet and nine inches. In the United States, both Rav Herschel Schachter and Rav Mordechai Willig follow Rav Moshe’s ruling<sup>6</sup> in Teshuvot Igrot Moshe and they require a fence to be thirty six inches high<sup>7</sup> and permit a gap of up to seventeen feet and eight and a half inches. The Laws of an Eruv (p.264) reports that “many Posekim” in the United States<sup>8</sup> adopt a similar approach.

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<sup>4</sup> The Hazon Ish lived in Bnei Brak while Rav Na’eh lived in Yerushalayim.

<sup>5</sup> In Teshuvot Igrot Moshe Yoreh Dei’ah 3:66:1 where Rav Moshe expresses astonishment at the existence of this debate which is based on analysis of the Gemara and its commentaries. Rav Moshe explained that the issue needs to be resolved simply by engaging in empirical measurement of an Etzba (finger; there are four Etzba’ot in a Tefah and six Tefahim in an Amah) and multiplying by four and then six in order to arrive at a definition of a Tefach and an Amah in terms of feet and inches.

<sup>6</sup> It makes sense for them to follow Rav Moshe’s ruling not only because he was the leading Halachic authority in the United States but also since his ruling is the result of empirical evidence gleaned from measuring the finger sizes of average individuals who reside in this country. In addition, the Aruch HaShulchan (O.C. 358:3) and Rav Yaakov Kaminetzky (cited in The Laws of an Eruv p. 262) present an almost identical ruling to that of Rav Moshe.

<sup>7</sup> Rav Shimon Eider cites in his Halachos of the Eruv that Rav Moshe told him to require a fence used in an Eruv to be at least forty inches high.

<sup>8</sup> See, however, Rav Feivel Cohen of Flatbush who writes (Milu’im to Badei haShulchan Hilchot Niddah; published at the end of Badei haShulchan to Hilchot Basar V’Halav) “It appears that the custom is to accommodate the strict results of both the Chazon Ish and Rav Avraham Chaim Na’eh”. Rav Moshe Faskowitz told me that when he created the Eruv in Canarsie, Brooklyn many years ago he accommodated the stringent results of both the Chazon Ish and Rav Avraham Chaim Na’eh’s rulings. Rav Faskowitz informed me that the Poseik for this Eruv was Rav Gavriel Zinner, the renown author of the multivolume Neta’ei Gavriel.

Sepharadim, however, follow the opinion of Rav Avraham Chaim Na'eh (Rav Avraham HaDa'yah cited by Rav Avraham Haim Na'eh in the introduction to his work Shiur Mikveh and Yalkut Yosef in many places including O.C. 550 where he rules that it is sufficient for Hadasim and Aravot to be three Tefachim long according to the size of Rav Avraham Chaim Na'eh<sup>9</sup>).

#### Creating an Eruv Acceptable for Sephardic Jews

There is no problem for Sepharadim to rely on Eruvin created by Ashkenazic Rabbanim in Eretz Yisrael since they accommodate the opinion of Rav Na'eh when it results in a strict effect. Thus, it is not surprising to find numerous places in Yalkut Yosef (such as O.H. 584, Hanhagot Rosh HaShanah number 2) where reliance on the community Eruv is permitted without any provisos that the Eruv conform to Sephardic standards. Rav Ovadiah Yosef finds it acceptable for Sepharadim to rely upon Eruvin built according to Ashkenazic specifications without adjustments to accommodate Sepharadim.

However, this might not apply to Eruvin created in the United States under the auspices of Ashkenazic Rabbanim. Since many of the Eruvin in our country do not accommodate the stringent result of Rav Na'eh's measurements it would seem improper for a Sephardic Jew to rely upon such Eruvin, unless the Eruv conforms to Rav Na'eh's measurements (i.e. all gaps do not exceed 15 feet and nine inches).

Thus, any community that has a functioning Sephardic Kehillah should endeavor to comply with Rav Na'eh's measurements and insure that gaps do not exceed 15 feet and nine inches. As the Rav HaMachshir of the Englewood Eruv (which has a Sephardic Minyan at a local Ashkenazic synagogue) I insure that the Eruv conforms not only to Rav Moshe's measurements but also that of Rav Avraham Haim Na'eh. Rav Michael Taubes, Rav HaMachshir of the Teaneck Eruv similarly informs me that he takes the necessary steps to insure that there are no gaps wider than fifteen feet and nine inches in the Eruv.

Other reasons to accommodate Rav Na'eh's stringent result include the fact that Chabad affiliated Jews follow the opinion of Rav Avraham Chaim Na'eh. Thus if an Eruv includes a Chabad community, it behooves the broader community leaders to insure that there should be no gaps in the Eruv wider than fifteen feet and nine inches. Another reason to adopt this standard, is the Shiur of the Haddasim that are mostly sold in the United States. The only two options that are sold in this country are the Hadassim that conform to Rav Na'eh's opinion (they are Meshulash – all three leaves are on the same level – on a majority of the rows of three Tefachim, at least 9.45 inches, of the Hadassim) and those that conform to the Shiur of the Chazon Ish, at least 12 inches. Many if not most of the members of many Orthodox synagogues nationwide rely upon Rav Na'eh's view in a lenient direction regarding fulfillment of the Torah obligation to take Hadasim on the first day of Sukkot<sup>10</sup>.

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<sup>9</sup> Yalkut Yosef notes that some rule strictly in accordance with the Chazon Ish but he adds that according to baseline Halacha this is not necessary.

<sup>10</sup> During the past fifteen years I have visited the Lulav and Etrog sale at a large Orthodox synagogue in Teaneck, New Jersey and only Hadassim that conform to Rav Na'eh's opinion are available for purchase.

Thus, if all or most of a community relies upon Rav Na'eh's opinion in a lenient direction regarding fulfillment of a Torah obligation, then it seems logical that Rav Na'eh's opinion should be accommodated in a strict direction regarding the community Eruvin, even in a completely Ashkenazic community.

I presented these arguments to Rav Mordechai Willig and he responded that he makes every effort that the Riverdale Eruv (the Eruv he supervises) satisfies Rav Na'eh's opinion when it results in a stringent direction. Rav Willig, though, proceeded to defend those communities whose Eruv does not satisfy Rav Na'eh's point of view but only that of Rav Moshe. He argues that since the situation involves two converging rabbinic laws (Trei Derabanan), there is room to adopt the lenient approach. The first is that the prohibition to carry in an area which is suitable for an Eruv (consisting significantly of Tzurot haPetah such as almost all citywide Eruvin today) constitute only a rabbinic prohibition<sup>11</sup> and the second is that a gap of more than ten Amot (but there is "Omeid Merubah Al HaParutz" a majority of that side of the Eruv is enclosed) constitutes only a rabbinic prohibition (Rav Haim Ozer Grodzinsky, Teshuvot Ahiezer 4:8; the Hazon Ish, cited ad. loc. and O.H. 107:5-7; and Rav Moshe Feinstein Teshuvot Igrot Moshe O.H. 2:90<sup>12</sup>).

#### Conclusion

Ashkenazic Eruv planners should bear in mind Sephardic and Lubavitch Pesak Halacha and accommodate Rav Na'eh's opinion when it results in stringency<sup>13</sup>. This is especially the case since there are compelling reasons that even Ashkenzim should now be sure to accommodate the opinion of Rav Na'eh<sup>14</sup>. If this is impossible to achieve or if no effort was made to confirm to Rav Na'eh's approach, a Sephardic Jew may nonetheless utilize the Eruv.

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<sup>11</sup> For a discussion of what areas in which it is prohibited to carry only on a rabbinic level, see Gray Matter 1:168-180.

<sup>12</sup> See, though, Teshuvot Mishkenot Yaakov O.H. 121 who asserts that a breach of more than ten Amot constitutes a Torah level disqualification.

<sup>13</sup> May one rely on Rav Na'eh's opinion in a lenient direction (such as relying on a wall that is only thirty two inches high) in a difficult situation? Rav Willig felt this to be permissible in case of great need and Rav Schachter ruled that it is not permissible even in case of great need, since he felt it is inappropriate to rule leniently against Rav Moshe, the most prominent Poseik of the United States, especially since very often Rav Moshe adopted a lenient approach. This question depends to a certain extent whether one applies the Gemara's principle of Halacha K'Divrei haMeikeil B'Eruvin (the Halacha follows the lenient opinion regarding an Eruv; Eruvin 46a) to all aspects of Eruvin (Rosh Eruvin 2:4 and Biur HaGra O.H. 358:5) or only to Eruv Chatzeirot (Teshuvot HaRashba 5:202, Ritva Eruvin 80b and Teshuvot Igrot Moshe 2:202).

<sup>14</sup> Rav Yehezkeil Feiglin authored an essay that appears in Techumin 32:413-421 in which he argues that archaeological and other scientific evidence supports the opinion of Rav Avraham Chaim Na'eh.