



There's a... Chair in the Mikva?! – Part 1

Women with disabilities that do not allow them to stand unsupported, including women who are wheelchair-bound, often face significant challenges in performing the Mitzva of *Tevila*. Aside from the practical difficulties that must be overcome in order to immerse in the *Mikva*, there are also serious Halachic problems to consider, as this essay will explore. Part 2 of this series will clarify the methods by which *Mikvaos* can be made accessible in accordance with Halacha.

The *Shulchan Aruch* (Y.D. 198:31) rules:

One may not immerse in vessels. Therefore, if there is mud in the place in which she immerses, she should not stand [while immersing] on top of wooden vessels that can contract Tuma from their outside, nor on planks that are susceptible to Tumas Midras (Tuma transmitted by an impure person (such as a Nida or Zav) sitting, standing, or lying on the item), and not on any vessel that is susceptible to Tumas Midras. This is a decree on account of baths formed of vessels. If she violated [this restriction] and immersed, her Tevila is not considered [effective].

The prohibition to immerse “*Al Gabei Keilim*” – on top of vessels – is based on the comments of the *Toras Kohanim* on the verse, “*Ach Ma’ayan u’Vor Mikvei Mayim – Only a spring, a pit, a pool of water*” (*Vayikra* 11:36). *Chazal* expound: “*Just as a spring is mainly in the ground, so too a pool must be mainly in the ground.*” The *Isur d’Oraisa* derived from this *Pasuk* is to immerse in vessels, even if they were filled with water valid for immersion. *Chazal* also forbade immersion on top of vessels, even when not standing inside them, if the vessels can contract *Tuma*. This is because people may not distinguish between immersion within a vessel and immersion on top of a vessel. However, immersion on top of a vessel that does not contract *Tuma* is permissible.

There is a *Machlokes Rishonim* as to the parameters of this *Isur*, as we will discuss.

The *Shulchan Aruch’s* ruling is based on the *Ra’avad* (*Ba’alei Nefesh, Sha’ar haTevila*), as clarified by the *Beis Yosef*. The *Beis Yosef* explains that according to the conclusion of the *Gemara* in *Maseches Nida* (66b) there are two reasons for the *Issur*:

The first is *Gezeiras Merchatzaos*, in other words, the concern that people will think that one can immerse in a utensil that is susceptible to *Tuma*.¹ The second is the

¹ [Editor’s Note: *Rashi ibid.* explains that since it was common to sit on ledges made from earth in baths, one might think that it is permitted to immerse in earthenware vessels if women were allowed to

concern that a woman who is standing on vessels while immersing will be afraid of falling and will therefore not immerse properly.

In a case where *Gezeiras Merchatzaos* applies, the *Tevila* is invalid even *Bedi'eved*. However, if *Gezeiras Merchatzaos* is not applicable, such as if she stands on a vessel that is not of a sufficient size to contract *Tuma*, and the only concern is that she may be afraid of falling, *Chazal* did not disqualify her *Tevila Bedi'eved* if it was clear that she immersed properly (see *Taz ibid.* 31).

The *Rosh* has a more stringent view. Whereas the *Ra'avad* validates immersion while standing on earthenware vessels, since they do not contract *Tumas Midras*, the *Rosh* invalidates it even *Bedi'eved*. However, the *Tur's* understanding is that the *Rosh* would validate the *Tevila Bedi'eved*.²

The *Rambam* (*Hilchos Mikvaos* 1) rules that it is forbidden to immerse while standing on earthenware vessels or a basket because the person may be afraid of falling. Elsewhere (*ibid.* 9) he rules simply that a person should not immerse on top of vessels. The *Poskim* assert that this second ruling forbids immersing while standing on any vessel, even those that would not cause a woman to be afraid of falling. However, they disagree about the reason for this ruling.

According to the *Beis Yosef*, the *Rambam* distinguishes between two scenarios. If all of the water passes over the vessel and the vessel has a receptacle ("*Beis Kibul*"), the water would be invalidated.³ *Chazal* therefore decreed that one may not immerse while standing on any vessel, even if it does not have a receptacle. However, if all of the water does not pass over the vessel, *Chazal* did not forbid immersion because the water's status of "*Mei Ma'ayan*" is not nullified. If the vessel has no receptacle, there would be no issue. Likewise, if a vessel that has a receptacle is placed in a position in which the water only passes outside it (for instance, if it was upside down), there is no concern of *Gezeiras Merchatzaos*. Therefore, it is only forbidden to immerse while standing on such a vessel due to the concern that the woman immersing will be afraid of falling and will not immerse properly.

The *Beis Yosef* suggests another explanation of the *Rambam's* position. The *Isur* only applies to vessels that do not have a *Beis Kibul*, due to the concern that people will immerse while standing on vessels that do have *Beis Kibul*. But if a vessel with a *Beis Kibul* is placed upside down there is more room to be lenient than with a vessel that does not have a *Beis Kibul* at all. While people may not properly distinguish between vessels that do not have a *Beis Kibul* and those that do, the difference between a vessel placed in its normal upright position and one placed upside down is obvious, and they

immerse in *Merchatzaos* (baths). This decree extended to immersion while standing on top of any vessel that is susceptible to *Tuma*.]

² See the *Beis Yosef* (*ibid.*) and the *Gra* (31) who concurs.

³ [Editor's Note: Water that is in a container is considered *Mayim She'uvim*, not *Mei Ma'ayan*, and is invalid for *Tevila*.

would not come to err. Therefore, it is only forbidden for a person to immerse while standing on an inverted vessel because of the concern that he may be afraid of falling and will not immerse properly.

The *Shulchan Aruch* rules like the *Ra'avad*⁴ that a person should not stand upon anything that is susceptible to *Tuma* while immersing, and, if one did so, the immersion is invalid and must be repeated.

In spite of the above, there used to be a widespread custom to fasten wooden planks to *Mikvaos*, either as steps or as flooring to reduce the *Mikva's* depth or to protect those immersing from the mud floor. Many *Poskim* were astonished by this practice in light of the *Halachos* delineated above and attempted to justify it in several ways:

1. The *Issur* of attaching steps described by the *Ra'avad* and *Rashba* only applies to a ladder that was assembled for use outside of the *Mikva* and therefore attained the Halachic status of a *Kli* before it was affixed in the *Mikva*. However, if it was originally assembled for the purpose of affixing it in the *Mikva*, it does not have a status of *Kli* and is considered part of the structure of the *Mikva*, even before it is placed in the *Mikva*, and does not contract *Tuma*. (See the *Shach* *ibid.* 45 and *Sidrei Tahara*⁵ *ibid.* 63 citing the *Maharam Padua*.)
2. There is a distinction between steps that are designed to be leaned upon that are susceptible to *Tumas Midras* and would invalidate a *Tevila* and steps that are intended only to be stepped upon, which are not susceptible to *Tumas Midras* (see the *Shach* *ibid.* and the *Shu"t Sh'eiris Yosef*⁶ 60).
3. The *Taz* (*ibid.* 31) disagrees with these answers and contends that the *Halacha* does not follow the *Ra'avad* and the *Shulchan Aruch*, but rather it follows the *Rosh* and *Rash* who hold that the reason for the *Issur* is not *Gezeiras Merchatzaos* but other issues that do not apply to planks of wood.

Regarding *Tevila* while seated in a chair, the *Chid"ra* wrote in *Birkei Yosef* (*Shiyurei Bracha* 7):

Regarding a twelve-year-old girl who immersed for Dam Besulim. Since the Mikva was deep, they took a four-legged chair and placed it in the Mikva so that she should stand on top of it for the immersion.. One should rebuke the women so that they do not do this again. However, with regard to our case, since she has already

⁴ The *Rashba* and *Rabenu Yerucham* also concur with the *Ra'avad*.

⁵ R' Elchanan Ashkenazi (1713-1780), Rabbi of Danzig, Poland

⁶ R' Yosef Reizin (d. 1885), Rabbi of Telz and Slonim

immersed, there is [room to] be lenient Bedi'eved and she does not need to immerse again. Shu"t Zera Avraham⁷ (Y.D. 20).

The *Birkei Yosef* implies in his response that the reason to be lenient *Bedi'eved* is due to a combination of factors. First, the *Rambam* and *Rosh* argued with the *Ra'avad* and held that *Gezeiras Merchatzaos* is not the reason for the *Issur*. The single reason to forbid *Tevila* while standing on vessels is the concern that she will be afraid and not immerse properly. Therefore, if the chair was secure so that it would not move during the *Tevila*, there would no longer be reason for concern that she would not immerse properly and one could be lenient *Bedi'eved*. A second factor in this case was that the girl had not yet reached menarche.

In any case, *mei'Ikar haDin*, and certainly according to the *Shulchan Aruch*, *Tevila* on top of a chair is invalid. This is also stated by the *Noda b'Yehuda* (*Tinyana* Y.D. 138):

Regarding the very deep Mikva in which women were afraid to immerse [so] they took a chair and stood it in the Mikva and tied it with ropes so that they could stand on the chair when they would immerse: It was correct to rebuke them. Though there was room to find a leniency based on one argument advanced by the Beis Yosef to explain the opinion of the Rambam ...and the Taz (198) relied upon that argument to permit the use of planks. Nonetheless, we should not add to the leniency invoked for the planks, for in the case of the planks there are several arguments to permit. However, with regard to [standing on] the stool while immersing which is explicitly prohibited by the Mishna in the fifth chapter of Mikvaos, we cannot rely on a peripheral argument to permit it. He should reprimand [those in question] and instruct that the chair be immediately removed from the Mikva.

Certainly, *Mikvaos* should be designed so that the *Tevilos* conducted there satisfy all opinions. However, the case of a woman with a disability is clearly a *Sha'as haDechak* as there is no alternative but to rely on [valid] leniencies in order to accomplish *Tevila*. It is therefore important to clarify how to ensure that the *Mikvaos* are accessible in the best possible manner. The second part of this series will address this issue.

We will conclude with a brief discussion of another solution that may be relevant in some cases: May the friends of the woman immersing hold her hand to assist her in getting in and out of the *Mikva* and during the *Tevila*?

The *Shulchan Aruch* (*ibid.* 28) rules:

Her friend should not hold her hand during the Tevila, unless [she holds it] loosely so that the water accesses the place where her hand grasps. If she washed her

⁷ R' Avraham Yitzchaki (1661-1729), *Rishon l'Tzion* (Yerushalayim) 1715-1722.

hands first, it is permissible, for the liquid on her hands connects to the water of the Mikva.

This *Halacha* is based upon the *Mishna* in *Mikvaos* (8:5):

If a person held on to another man or to vessels and immersed them, they remain impure; but if he had washed his hand before in the water, they become Tahor. R' Shimon says he should hold them loosely so that water may enter into them.

The *Rishonim* disagree as to the explanation of the *Mishna*. According to the *Rambam*, the opinion of the *Tana Kama* (which is the *Halacha*) is that if one grasps a person and immerses them, the *Tevila* is invalid because of *Chatzitza*, even if he did not hold him tightly. The *Tevila* is only valid if he wet his hands beforehand (and then it is valid even if he holds the person tightly).

According to the *Rashba*, if a person wets his hands beforehand, he may immerse somebody even when holding tightly. If he holds loosely, the *Tevila* is valid even if he hadn't wet his hands first. The *Shulchan Aruch* rules like the *Rashba*, but the *Poskim* contend that one should be concerned for the opinion of the *Rambam* and should not hold the person even loosely without wetting his hands beforehand.

Therefore, if a woman holds her friend tightly during *Tevila* it is invalid unless she wet her hands prior to entering the water. According to the *Shach* (*ibid.* 36), we should not permit things that have been customarily considered forbidden, and since *Chazal* only relied *Bedi'eved* on wetting hands prior to the *Tevila*, one should only be lenient if the woman cannot stand without assistance. However, the *Poskim* also note that the *Shulchan Aruch* implies that it is permissible *l'Chatchila* (*Sidrei Tahara* 57 and *Taz* 27). In spite of this, we are not lenient unless there is no other choice.

The manner of wetting the hands is subject to dispute. It is accepted *l'Halacha* that the supporting woman should stand in the water and wet her hands. With one hand, she should hold the woman doing the *Tevila* outside of the water, and then she should stretch out her other hand below the water and remove her upper hand.

l'Chatchila, she should hold the woman doing the *Tevila* with a medium-strength hold, but if there is no other way, she can hold her tightly and loosen her hold at the moment of *Tevila* itself. *Bedi'eved*, if she only washed her hands with tap water and the woman who did *Tevila* has already gone home, there is room to be lenient.

Someone who is disabled but is able to go into the *Mikva* on her own if she holds on to the railing should ideally let go of the rail while immersing. If she is unable to do so, she should hold the railing as lightly as possible during *Tevila*.