



## There's a... Chair in the Mikva?! (Part 2)

In last week's essay, we discussed the Halachic challenges faced by women with disabilities related to immersion in a *Mikva*. Aside from the practical challenges of entering and exiting the *Mikva* using a chair or other assistive device, there is also a potential issue of "*Tevila Al Gabei Keilim*" – immersing while standing atop vessels – which is disqualified by *Chaza"l* (*Shulchan Aruch, Y.D. 198:31*). At the conclusion of the essay, we described how she may immerse with the aid of another woman. However, this is not always a viable option and many contemporary Rabbanim have consulted and collaborated with engineers to develop a better solution.

To briefly review the relevant Halachos, immersing in a vessel that can contract *Tuma* is invalid *Min haTorah*, even if it is filled with water that is kosher for immersion. The *Chachamim* further forbade immersion in a vessel even if it is placed inside a kosher *Mikva*. The Gemara in *Nida* (66b) clarifies that the basis for this stringency is "*Gezeiras Merchatza'os*" – the concern that permitting immersion in vessels within a *Mikva* would lead people to immerse in freestanding vessels (i.e., that were not in a *Mikva*), which, as stated, is invalid *Min haTorah*. The Gemara also mentions another possible issue – "*Bi'asusa*" (fear) – which is the concern that a woman standing atop a vessel would be afraid of falling and will therefore not immerse properly.

There is a *Machlokes Rishonim* as to which of the reasons is upheld in Halacha. According to the *Ra'avad*, both reasons are considered, thus, even in cases where there is no concern of *Bi'asusa*, the immersion is still invalid due to *Gezeiras Merchatza'os*. However, in a case where the only concern is *Bi'asusa* and there is no concern of *Gezeiras Merchatza'os* (such as where the vessel is not of the size to contract *Tuma*), the immersion would be valid *Bedieved* (see the *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 *Bedieved*. However, the *Tur's* understanding is that the *Rosh* would validate the *Tevila Bedieved*.<sup>1</sup>

Last week's essay also offered several interpretations of the Rambam's position and also discussed the justification for the *Minhag* recorded by the Poskim to fasten wooden steps in the *Mikva*, namely:

1. Given that the steps were formed from the outset with the intention that they be affixed to the *Mikva*, they are considered part of its structure and do not contract *Tuma*.

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<sup>1</sup> See the *Beis Yosef (ibid.)* and the *Gra* (31) who concurs.

2. There is a distinction between steps that were designed to sit or lean upon that can contract *Tumas Midras* and the steps in question that were designed only to be stood upon and do not contract *Tumas Midras*.
3. According to the *Taz* (*ibid.* 31), the Halacha is not in accordance with the *Shulchan Aruch* who rules like the *Ra'avad* but like the *Rosh* and *Rash* who hold that the basis for the *Isur* of *Tevila Al Gabei Keilim* is not *Gezeiras Merchatza'os*. Their reasons do not apply to wooden steps.

The *Rash* states that if a vessel is not affixed to the *Mikva*, there is no *Isur* in immersing while standing on it, even if it is capable of contracting *Tuma*. The *Chazon Ish* contends (*Mikvaos*, *Tinyana* 129:7) that the *Ra'avad* must also agree to this distinction, else how is it permissible to immerse one vessel within another?<sup>2</sup> Moreover, the *Rosh* states (*Mikvaos* 5) that *Tevila Al Gabei Keilim* is only forbidden when the vessel in question is not entirely surrounded by the water of the *Mikva*.

In light of the above, an apparatus that cannot contract *Tuma* would be kosher according to the *Ra'avad*. If it is not affixed to the *Mikva*, it would be kosher according to the *Rosh* as well. If it is surrounded by water on all sides, that would be another reason to say that it would be kosher according to the *Rosh*.

To fulfill all of these requirements (thus taking into account all of the views in the *Rishonim*), Rav Shmuel Eliezer Stern (*Emek Halacha*, *Asya* 1) proposed an ingenious suggestion. He contended that if one would interpose an item that does not contract *Tuma* (such as a stone) between the person immersing and the vessel, the *Tevila* would be valid.

Rav Stern uses this idea to answer a question posed by R' Akiva Eger. The *Shulchan Aruch* (201:7) rules that if one takes a large barrel and perforates it so that the water in it would not be considered "*Mayim She'uvim*" (drawn water which is invalid for a *Mikva*) and then affixes the barrel to the *Mikva*, a *Tevila* while standing on the barrel is valid. R' Akiva Eger asks that since the barrel can still contract *Tuma* after being perforated, it should disqualify the *Tevila*. Rav Stern answered that the *Shulchan Aruch* was discussing a case in which an item that could not contract *Tuma* was interposed between the person immersing and the barrel, thus making it a valid *Tevila*. (The *Shulchan Aruch* did not emphasize this because the emphasis was on the fact that the perforation avoids the issue of *Mayim She'uvim*.) Rav Stern supports his contention from the *Levush* (198:31), and notes that the *Imrei Eish*<sup>3</sup> also made this conclusion (*Y.D.* 78).

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<sup>2</sup> [Editor's note: Although the *Ra'avad* holds that *Tevila Al Gabei Keilim* is invalid due to both *Gezeiras Merchatza'os* and concerns of *Bi'asusa*, since the Halacha allows immersing one utensil inside another, the *Ra'avad* must hold that if the utensil is not affixed to the *Mikva*, *Gezeiras Merchatza'os* must not apply.]

<sup>3</sup> R' Meir Eisenstadt, *Av Beis Din* of Ungvar (1786-1852)

Another basis for leniency can be found in R' Akiva Eger's *Teshuva* (*Shu"t Mahadura Kama Siman 40*) addressing a great debate regarding immersing in a river. The custom at the time was to perforate a barrel, float it on the river, and the women would get inside it and immerse. R' Akiva Eger ruled that although the barrel could contract *Tumas Midras* (since it was designated for humans to sit inside it), which according to the *Ra'avad* should be a reason to disqualify the *Tevila* due to *Gezeiras Merchatza'os*, it could nevertheless be permitted. He reasoned:

*I have an argument for leniency. One could say that it is only when [the vessel] is permanently attached to the ground [of the floor of the Mikva] that it could be said to be comparable to Merchatza'os. But in this case where it isn't affixed to the floor, but it is [floating] on the water, one could say that it isn't comparable to Merchatza'os. See the Beis Yosef ... who cites the Rashba – and concludes that if it was affixed to the floor, one should not immerse in it lest one come to immerse in Merchatza'os. And since many Poskim do not hold like the Ra'avad in this regard, and it could be argued that the Ra'avad would agree in a case like this, one may rely on this reasoning to be lenient.*

If so, if one makes use of a device or apparatus that cannot contract *Tuma*, or one inserts an item that does not contract *Tuma* into the vessel in the *Mikva*, or if the vessel in question is not affixed to the floor of the *Mikva*, and certainly if it floats in the *Mikva* and is surrounded by water on all sides, it would pass Halachic muster.

The Poskim consider the option of a mechanical arm attached to the ceiling of the *Mikva* that holds a chair on which the person sits to be lowered into the *Mikva* for *Tevila*. The chair on the end of the arm would need to be perforated so that it would not be considered a vessel and not able to contract *Tuma*. However, this alone is not sufficient since the *Tevila* is invalid if the supporting item can contract *Tumas Midras* according to the *Ra'avad*. In this case, the chair is designed to fully support the weight of the person immersing, thus it can certainly contract *Tumas Midras*. Therefore, it is imperative that the chair be made of a material that cannot contract *Tuma*. Today, the suggestion would be to use plastic since it is synthetic and not made of a natural material that can contract *Tuma* according to the majority of Poskim.

Once the seat (and the area on which the feet rest) are made of a material that cannot contract *Tuma*, it does not matter that the mechanical arm and its hardware are made of materials that do contract *Tuma* as they are *Bateil* to the seat.

As stated above (and discussed at length in our previous essay), the main basis for permitting wooden beams in the *Mikva* is that they are attached and therefore *Bateil*. In this case, the mechanical arm moves (by design) and is not entirely *Kavua* (fixed). Rav Stern compared it to the case discussed by the Poskim of a barrel attached to a spring by a chain. The Poskim argue whether the barrel could be compared to the

wooden beams that are permanently attached in the *Mikva* and are therefore *Bateil*. He argues that even those who hold that the barrel on a chain is not considered *Kavua* would agree in the case of the mechanical arm since it is more *Kavua* than the barrel on a chain. (It is likely that the same would apply to a mechanical arm that is set in a fixed track.)

This takes care of the concern of *Gezeiras Merchatza'os*. However, regarding *Bi'asusa* we should point out that immersing without the aid of the mechanical arm (such as while being held or supported by another woman) is far more frightening and is more likely to cause her not to immerse properly. By contrast, this apparatus is built according to comprehensive safety standards and is operated by a trained attendant. The woman is also fastened in the chair with a safety belt and can thus immerse with peace of mind.

