

Immersing in a Mikvah While Wearing a Chest Binder

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She'eilah

Is it permitted for a trans person experiencing dysphoria to tovel (immerse in a mikveh/ritual bath) while wearing a chest binder?¹ Does this constitute a *hatzitzah* that invalidates the *tevilah*, or not?

Teshuva

Introduction: Setting the Stakes

Before beginning to attempt an answer, I want to briefly explore some of the halakhic issues at stake in this question. To begin with the clearest risk: if we are inappropriately lenient in the matter of *hatzitzot* and permit something that separates one's body from the water while immersing, we run the risk of invalidating an immersion entirely. The consequences of the immersion being invalid vary depending on the reason for *tevilah* itself: if the *tevilah* is happening for the purposes of niddah, this could leave a couple inadvertently in violation of the laws of niddah, and if the *tevilah* is happening for the sake of conversion, this could leave someone believing they have fully converted when, in fact, they have not. These are both serious concerns that should not be taken lightly.

In addition to these concerns, the experience of *tevilah* symbolically and theologically draws its significance for many people from the power of the experience of being fully exposed and surrounded by water. Rabbeinu Tam² discusses saying a *berakhah* naked in the water as a moment of embracing our bodies as fully human—the Torah was not given to ministering angels, but to humans with bodies, just as they are. Proposing covering a substantial area of the body during *tevilah* risks undermining the power of this moment and the logic of what *tevilah* is all about.

¹ A chest binder is a garment designed to flatten the chest to conceal or minimize the appearance of breasts. They are worn by some trans men, non-binary trans people, or cis-men experiencing gynecomastia. Binders can only be worn for limited hours in the day, and certainly must be removed while sleeping to avoid serious injury to the ribcage or lungs.

² Mahzor Vitri Siman 474

These concerns are clear and compelling reasons for defaulting to stringency in this matter, but I want to argue that there are also risks involved in doing so. The first issue relates to enabling and encouraging mikveh usage: an unnecessary stringency around *tevilah* that makes it unpleasant, distressing, or embarrassing risks becoming a *humra d'ati lidei kulah*—a stringency that will generate a leniency—if it leads people to stopping use of the mikveh altogether. Given the immense barriers already in the way of trans people trying to use the mikveh³, it is important not to apply unnecessary stringencies that risk dissuading mikveh use further.⁴

An additional concern is that *tevilah* in a circumstance that risks embarrassment is prohibited *lekhathilah*. In the Gemara Rav Shmuel bar Rav Yitzhak prohibits doing *tevilah* in a port for this reason.⁵ While Rashi understands this as an issue of ships stirring up dirt in the water, Rabbeinu Hananel, Tosafot, and Rambam all see the issue as the risk of being seen by others in such a way that risks embarrassment. Because this person will be fearful of embarrassment from being seen, they might rush through their immersion and do it improperly; therefore, it is inappropriate *lekhathilah* to tovel in a place that triggers anxiety or worry, and creates the need to rush. The Shulchan Arukh codifies this prohibition.⁶ While a garment is a different question than the location of *tevilah* for a number of reasons, I believe a comparable concern applies here: for an individual with severe dysphoria, *tevilah* without a binder runs the risk of being done improperly because of the way intense dysphoria may trigger distraction and a need to rush. It is therefore possible that if a binder does not constitute a *hatzitzah*, it may instead be problematic to immerse without a binder if you regularly wear one.

Lastly, as we learn in Mishlei: “the Torah is pleasant, and all of her ways are peace.”⁷ While there are certainly times that Torah requires us to do things that are difficult—and sometimes even things that require great sacrifice—our daily paths of walking with Torah should not require suffering. If and when they do, this may not on its own be a reason for leniency, but it should be a sign to us that perhaps the matter has not been fully understood. Though someone who wears a binder puts up with the experience of not binding on a daily basis, it is an entirely different thing for this to be forced by the demands

³ For more on the barriers to mikveh access facing trans people see Lara Haft “Gender Inclusive Mikvaot”.

⁴ Rabbi Ovadia Yosef cites this concern as a factor in permitting *tevilah* with nail polish, Taharat HaBayit, Helek 3, Dinei Hatzitzah 24, footnote 27.

⁵ BT Niddah 66b

⁶ Shulhan Arukh Yoreh Deah 198:34

⁷ Mishlei 3:17

of a mitzvah, and for this dysphoria to be linked so intimately with the bodily experiences of a life of Torah. Reish Lakish teaches that one who comes to purify themselves is assisted by G-d.⁸ In our case we have a person literally coming to purify themselves and encountering a painful barrier. Like G-d does for all of us, we should try to smooth the path towards *tahara*.

Section 1: Background on Hatzitzah

First, a brief background on the laws of *hatzitzah* will establish the vocabulary that we will use for the rest of this teshuvah. As a starting definition, a *hatzitzah* is an “interposition”—any object on or attached to the body at the time of immersion that forms a barrier between the body and water and is therefore invalidates the immersion, which would require the person to immerse again after having removed this object.

The concept of *hatzitzah* first appears in the Mishnah, primarily in Mikvaot Chapter Nine. The Mishnah gives no background explanation for the concept of *hatzitzah*, or from where this requirement is derived. The earliest source for the concept of *hatzitzah* appears in the Sifra, in a midrash on a *pasuk* about the requirement to immerse in a mikveh after contact with *tumah* (impurity):

ויקרא כ"ב:

נִפֶּשׁ אֲשֶׁר תִּגַּע בּוֹ וְטִמְאָה עַד הָעֶרְבַּ וְלֹא יֵאָכֵל מִן הַקֹּדְשִׁים כִּי אִם רְחֵץ בְּשָׂרוֹ בַּמַּיִם.

ספרא אמור פרשה ד פרק ד

"כי אם רחץ בשרו במים"--יכול יהא מרחיץ אבר אבר? תלמוד לומר "ובא השמש וטהר". מה ביאת שמשו--כולו כאחת, אף במים--כולו כאחת.

The *pasuk* here merely specifies that the entire body has to be washed in water, but leaves open whether this must happen all at once, or whether it can be done “limb by limb”. The Sifra responds with an analogy: just as a *tevul yom*⁹ becomes *tahor* in a single moment with

⁸ BT Yoma 38b

⁹ A *tevul yom* is a person who has immersed in the mikveh at the end of a period of impurity, but the sun has not yet set, leaving them in a minor, partial state of impurity between the immersion and sunset. At the moment of sunset they become fully *tahor*, and the purifying effects of their immersion “kick in” in a single moment.

the setting of the sun, so too anyone immersing in the mikveh must become *tahor* in a single moment, with immersion of the entire body at the same time.

While the word "*hatzitzah*" itself is not mentioned in the Sifra, the requirement to immerse the entire body all at once sets up the idea that just as having one body part out of the water might be problematic, so too having one part of the body covered up in the water might be similarly problematic. This is made explicit in a parallel midrash in Masechet Eiruvin:

ויקרא טו:טז

וְאִישׁ כִּי־תִצָּא מִמֶּנּוּ שִׁכְבַּת־זָרַע וְרַחֵץ בַּמַּיִם אֶת־כָּל־בְּשָׁרוֹ וְטָמֵא עַד־הָעֶרְבֹה:

בבלי ערובין ד:

חציצין דאורייתא נינהו דכתיב "ורחץ את כל בשרו" שלא יהא דבר חוצץ בין בשרו למים

Here, we learn from the word "all" that truly all of the body must be in the water, and there cannot be any object that is "*hotzetz*," that is to say, blocking contact between the water and any part of the body. The Beit Yosef¹⁰ connects these two midrashim: the idea that a *hatzitzah* entirely invalidates immersion can be derived from the Sifra. If it was possible to immerse one limb at a time, it should be possible to immerse with a *hatzitzah* on one part of the body and then re-immerses just that body part afterwards. However, because the whole body must be immersed at once, a *hatzitzah* blocking even part of the body will invalidate the entire immersion.

Now that the concept of *hatzitzah* has been established, what kinds of objects on the body can constitute a *hatzitzah*? The core principle for this appears in the Gemara in Eiruvim 4b and Niddah 67b.

נדה סז:

אמר ר' יצחק דבר תורה רובו המקפיד עליו חוצץ רובו ואינו מקפיד עליו אינו חוצץ וגזרו על רובו שאינו מקפיד משום רובו המקפיד וגזרו על מיעוטו המקפיד משום רובו המקפיד. ולגזור נמי על מיעוטו שאינו מקפיד משום מיעוטו המקפיד היא גופה גזרה ואנן ניקום ונגזור גזרה לגזרה.

¹⁰ Beit Yosef, Yoreh Deah 198:1

Rabbi Yitzchak states that there are two requirements for something to be considered a *hatzitzah* on a Torah level: it must cover a majority of the body¹¹ and the person must be *makpid* about it. This term "*makpid*" will prove difficult to define precisely, but for now it can be defined as caring about removing the object from the body. However, on a *derabanan* level, a *hatzitzah* only needs to satisfy one of these requirements: either it covers a majority of the body, or the person in question is *makpid* about the object. However, if the person is not *makpid* and the object only covers a minority of the body, then this is not a *hatzitzah* and does not pose a problem for *tevilah*. This statement of Rabbi Yitzchak is taken to be normative by all *poskim*, and is brought in the Shulhan Arukh.¹²

The core issues therefore when assessing a question of what constitutes *hatzitzah* will be determining *hakpadah* (caring about removing the object) and whether or not the object covers the majority of the body. "Majority" is usually fairly easy to assess, but "*hakpadah*" is somewhat trickier. The definition provided by the Raavad is the one most widely used:

בעלי הנפש שער הטבילה סימן ב

ואי קשיא לך חוטי צמר וחוטי פשתן ורצועה שבראשי הבנות¹³ אמאי חוצצין הלא מיעוטו שאינו מקפיד הוא. לא, מקפדת היא, דלא תימא כל שאינו מקפיד עליו בשעת הטבילה, אלא אם תקפיד עליו שעה אחת דבר המקפיד עליו הוא שאי אפשר שלא תעביר אותם מעל ראשה בשעה שחופפת את ראשה, וכן הטבעת שבידה אי אפשר שלא תעבירו בשעת הלישה או בשעה שהיא אופה או מבשלת.

The Raavad notices that the Mishnah in Mikvaot states that hair ribbons are *hatzitzot*. If *hakpadah* means that the person immersing must care about and want to remove the object in question during the *tevilah*, it is not clear why hair ribbons should be considered *hatzitzot*: they are a minority of the body and many people would not care at all about immersing with their hair ribbons on. Rather, the Raavad argues that this case teaches us that *hakpadah* does not mean that a person cares specifically at the time of immersion, but rather that there are times in the course of their life when they would care about this item being on their body. For example, in the case of hair ribbons, people tend to remove them

¹¹ There is extensive *makhloket* in the Rishonim whether the body and hair are reckoned together when calculating majority, or as separate units. For the purpose of this teshuvah this debate is not relevant, but it may be important to note if attempting to apply the reasoning of this teshuvah to other contexts.

¹² Shulhan Arukh Yoreh Deah 198:1.

¹³ משנה מקוואות ט:א
אלו חוצצין באדם: חוטי צמר וחוטי פשתן והרצועות שבראשי הבנות.

while shampooing the hair, or in the case of a ring, while kneading dough. This means that you are considered *makpid* on an object if there is ever a time when you deliberately remove it, even if at the time of immersion you don't mind it being there. The Shulchan Arukh uses this explanation in his own definition of *hatzitzah*.¹⁴

Because almost everything will we attach to our bodies or wear be removed from the body at some point or another, this definition has the risk of completely making it the case that almost everything would be considered a *hatzitzah*, but The Zikhron Yosef¹⁵ provides some helpful clarification and limiting principles:

שו"ת זכרון יוסף יורה דעה סימן י

כתבו הפוסקים והטור וש"ע ריש סימן קצ"ח אם דרך בני אדם להקפיד עליו לפעמי' ולא כתבו שדרך בני אדם להקפיד עליו בשום פעם משום דבעינן דעכ"פ מקפידין עליו לעיתים מזומנות גם עכשיו וכן משמע ממה שכתב הש"ך שם סעיף קטן ב' רוב הפעמים כו' דמשמע דעכ"פ פעמים הרבה קצת מקפדת ולא אם אינה מקפדת רק פעם אחת לזמן מרובה. ומ"ש שם בש"ע אפילו אינה מקפדת עליו עתה כו' אין פירושו שמקפדת עליו לבסוף לזמן רחוק אלא דפירושו שאינה מקפדת עליו עתה בשעת הטבילה מ"מ מצויר שמקפד' עליו בימים שקודם ושלאחר הטבילה כגון טבעת מהודק באצבעה לענין לישת עיסה וז"פ ואמת לפענ"ד:

According to the Zikhron Yosef, *hakpadah* only exists if someone cares about removing the object at distinct, regular intervals. For instance, if someone kneads bread regularly, and they remove their ring to do so, they would be considered *makpid* on that ring. However, if someone only removes their ring for an activity they do infrequently and unpredictably, they would not be considered *makpid*. *Hakpadah*, therefore, means that you care about removing something from your body at regular times, even if those times do not fall at the moment of *tevilah* itself.

Despite all of this, *tevilah* in clothing is permitted under certain circumstances. In Mesekhet Beitza,¹⁶ Rav permits a woman who only has one change of clothing to immerse with her clothes on Yom Tov for the sake of *niddah*, thus rendering herself and her clothing ritually

¹⁴ Shulhan Arukh Yoreh Deah 198:1

¹⁵ R. Joseph (Moshe) ben R. Menahem Mendel Steinhardt, Germany, 1700-1776

¹⁶ BT Beitza 18a

pure¹⁷ simultaneously, despite the fact that one is generally not allowed to tovel clothing or other man-made items on Yom Tov. In this case, because she is tovelling for niddah, it doesn't look to an outside observer as if she is toveling her clothing, but rather tovelling for her own sake, and just happens to be wearing clothes to do it. This baraita assumes that *tevilah* while wearing clothing is totally valid, because it assumes that *tevilah* with clothing on would appear like a totally normal immersion for the sake of niddah. The Sefer HaEshkol¹⁸ clarifies that this is referring specifically to loose clothing that lets the water in. Tight clothing, however, would constitute a *hatzitzah* because water will not be able to easily pass through it and therefore not all of the body will have direct contact with the water. The Minhag Yitzhak¹⁹ rules explicitly that bathing suits are considered tight clothing in this respect, and that it is not possible to tovel in a bathing suit for this reason. Most poskim follow this position.²⁰ It therefore seems that even if the fabric is water permeable—as in the case of a bathing suit—an article of clothing that is pressed tightly against the body would create a *hatzitzah* because the water does not directly contact the body underneath the garment, but instead absorbs through the garment towards the body.²¹

Given the above understanding of how we define *hatzitzah*, it would seem difficult to permit *tevilah* with a binder. While a binder does not cover a majority of the body, it seems that people who wear binders are *makpid*: even if at the time of *tevilah* they would rather be wearing the binder, they must, for their health and wellbeing, take off the binder on a daily basis. Binders are tight-fitting, and therefore even if water-permeable (and they are

¹⁷ This Gemara is assuming a context where the system of tumah and taharah is still fully active, and therefore one would have to consider the taharah of clothing and other objects as well as their body. In our time there is no need to tovel clothing after menstruation.

¹⁸ Siman 63 Amud 153

¹⁹ Rabbi Yitzhak Yaakov Weiss, Yerushalayim, 1902-1989

²⁰ Rabbi Moshe Feinstein in one teshuvah (Even HaEzer Helek 4, Siman 23) seems to argue that bathing suits are not *hatzitzot*, but this is in a context where he is making an after-the-fact *limmud zechut* (attempt to justify something). Rav Ovadia in Taharat HaBayit (Helek 3, Page 178) argues that you can't infer from this that Rav Moshe would actually have permitted *tevilah* in bathing suits.

²¹ Rabbi Eliezer Melamed (Peninei Halakhah Taharat HaMishpacha 5:2) permits *tevilah* with a bathing suit if the wearer lifts each section from the body one at a time to allow the water to fully penetrate and "join" with the water in the rest of the mikveh. Someone who wishes to permit immersion with a binder could take this approach, but I would hesitate to recommend this on its own as a reason to permit. Firstly, this might prove logistically difficult to do with many binders given the fit and make of the fabric, and if we held that a binder would otherwise constitute a *hatzitzah* doing this improperly could risk invalidating the immersion. Secondly, the dysphoria produced by this process might not successfully mitigate the concerns laid out above about requiring *tevilah* without a binder.

often not!), they are too tight to allow the water to freely flow around the body. Based on this, it may seem inevitable that a binder would constitute a *hatzitzah* on a derabanan level, and would therefore invalidate any *tevilah*, requiring a second *tevilah* to be done without the binder. Before delving into why it is not necessarily the case that a binder is a *hatzitzah*, I want to clarify the methodology I will be using for the rest of the teshuvah.

Section 2: My Approach

Many attempts to create halakhic leniencies for queer people turn to concepts like *pikuah nefesh* (saving a life), or to arguments that holding onto a traditional halakhic prohibition will cause unbearable suffering, and therefore we are justified in waiving the prohibition. While it is true that these are important concepts that do and should play an important role in halakhic jurisprudence, I believe that in this case, and in many of the cases where they are employed regarding queer people, they are both unhelpful and harmful.

Firstly, using arguments based in *pikuah nefesh* or preventing suffering positions the lives of queer people as permanently *bediavad*—after-the-fact, non-ideal. It implies that queer and trans people cannot live their lives as embodiments of Torah and mitzvot, but rather in a state of perpetually waived mitzvot, a permanent exception rather than instantiation of Torah. I don't believe that the lives of queer people are *bediavad*, and therefore, we must find halakhic language that does not talk about us as such.

Secondly, any *heter* (permission) that comes through an argument grounded in *pikuah nefesh* or other kinds of suffering forces the person to measure their own suffering in order to “qualify” for the exception. This can lead to people being strict on themselves out of an imposter syndrome of whether or not they are suffering enough, or a sense of guilt over relying on a leniency they may not feel they fully “deserve.” Even if people decide that they are “suffering enough” to deserve the leniency offered, the very act of having to weigh your own suffering in this way is painful, and makes it tremendously difficult to navigate halakhic guidance.

Finally, I would like to argue that the tool of *pikuah nefesh* is often not a very good way of understanding what is really going on in many of the circumstances where it is brought. In our question, for instance, if I were to try to address it using these tools, I would have to claim that requiring *tevilah* without a binder would risk lives or lead to real medical danger. While this may be true for some individual people, for most trans people, *tevilah* without a binder would not be life-threatening or even medically risky, and imposing this halakhic language on this situation would obscure the real stakes and the real underlying halakhic questions. Turning to halakhah should help us better understand ourselves and our circumstances, and give us language to see ourselves and our lives through the lens of

Torah—using halakhic language that does not accurately capture the situation prevents halakhah from serving this goal, and instead treats halakhah as something merely to be gotten around and subverted, at the expense of its ability to serve as a vital language for understanding our lives and our world.

Additionally, treating halakhah as a barrier to be circumvented prevents our lives and questions from helping us better understand Torah and halakhah. By turning to the halakhic tradition with new questions and situations, Torah is deepened and enriched, as it has been deepened and enriched for generations through the questions and lives of the Jewish people. By approaching all questions related to queerness as requiring halakhic override rather than careful halakhic application, we deprive Torah of the insights that can arise when we take the time to actually investigate the underlying halakhic questions through the lens of queer experience. We have an obligation to be part of the process of *yagdil Torah v'ya'adir*—magnifying and beautifying Torah—by leaving behind a Torah that is deeper, richer and more expansive through having genuinely encountered the questions that arise from our lives. In this case, we have an opportunity to come to a deeper understanding of the laws of *hatzitzah*, and we would miss this opportunity if we approached the question by trying to avoid them rather than to understand and apply them.

Out of commitment to the wellbeing of queer people and to the ongoing vitality and relevance of Torah, I will not be addressing this question by treating it as a situation of *pikuah nefesh*, alleviating suffering, or accommodating medical requirements. Instead, I will turn to halakhic discourse within the topic of *hatzitzah* itself and attempt to discern if there are pathways for thinking about this case that would speak to the experiences of wearing a binder and the particular difficulties this can pose while going to the mikveh.

Section 3: “The Way He Grows”

To begin investigating the ways in which a binder may not be a *hatzitzah*, we have to first address the halakhic status of the body parts it covers. The Mishnah in Mikvaot²² asserts that internal parts of the body (*beit hastarim*) and wrinkles (*beit hakematim*) don't require direct contact with the water during *tevilah*.²³ Because the specific parts of the body that are concealed or wrinkled change dramatically depending on the position of the body, it

²² Mishnah Mikvaot 8:5

²³ In the Gemara, Rabbi Yitzchak establishes that while internal parts of the body don't need contact with the water, they also must be free from *hatzitzot* that would theoretically prevent contact with water. See Kiddushin 25a and Niddah 66b.

becomes essential to determine what position one should immerse in. Reish Lakish draws on a Mishnah from Negaim to give us a definition:

בבלי נדה סז.

אמר ריש לקיש האשה לא תטבול אלא דרך גדילתה כדתנן: האיש נראה כעוֹדֵר ומוֹסֵק זיתים, אשה נראת כאורגת וכמניקה את בנה.

A woman must immerse “the way she grows”—in a natural body position. As support for this he cites a Mishnah from Masechet Negaim that dictates the positions men and women should be in when a Cohen inspects the body for *tzaraat*:²⁴

משנה נגעים ב:ד

כיצד ראית הנגע. האיש נראה כעוֹדֵר, וכמוֹסֵק זיתים. האשה כְּעוֹרֶכֶת וכְּמַנִּיקָה אֶת בְּנָהּ, כְּאוֹרֶגֶת בְּעוֹמְדִין לְשָׁחִי לַיָּד הַיְמָנִית. רַבִּי יְהוּדָה אוֹמֵר, אִף כְּטוֹוֶה בְּפִשְׁתָּן לְשִׁמְאֵלִית. כְּשֵׁם שֶׁנֶּרְאָה לִנְגְעוֹ, כֵּן הוּא נֶרְאָה לְתַגְלַחְתּוֹ.

Men must position themselves as if they are hoeing, or picking olives. Women must be positioned as if they are laying out dough, nursing, and weaving with the right arm raised. These positions ensure that the legs are spread, and the arms and breasts are raised in a way that mimics that normal labor that people engage in. Just as the arms and legs shouldn't be pressed together, they also shouldn't be raised or spread wider than they normally would be in the course of daily life, because this can create its own issues with wrinkling and concealing parts of the body that would normally be exposed. Furthermore, parts of the body that remain concealed in wrinkles and folds even during the most strenuous daily activities simply don't need to be exposed in order for *tevilah* to be valid—they are *beit hakematim* and don't require direct contact with water.

The Beit Yosef helpfully draws out the implications of the gendered distinction here:

ב"י יו"ד קצח:לה (א)

האיש שדרכו למסוק זיתים כל מה שדרכו ליגלות בשעה שמוסק לאו בית הסתרים הוא אבל האשה שאין דרכה למסוק אלא לארוג מה שדרכו ליגלות בשעת אריגה לאו בית הסתרים ומה שאין דרכו ליגלות בשעת אריגה הוי בית הסתרים דאף ע"ג דלגבי האיש לא הוי בית הסתרים לגבי אשה הוי בית הסתרים כיון דאין דרכה ליגלות בעת מלאכתה

²⁴ Tzaraat is a skin disorder that conveys ritual impurity and must be “diagnosed” by a Kohen.

These are not just different ways of saying the same thing about both men and women, but are substantially different positions that expose and conceal different areas of the body. The exact same parts of the armpit on both men and women have different halakhic statuses, not because their anatomy is different but because of the different ways that they use and position their bodies throughout the day, as mediated by gendered labor norms.

If cis men and women can create differing standards of *beit hakematim* by following predictable gendered norms in how they position and use their bodies, trans men as a class should also be able to create normative understandings of their bodies in this way, and our norms about which body parts must be exposed to the water should shift accordingly. It seems to me that when we are talking about gendered norms as it relates to bodily positions in daily life, that trans men may be considered a class unto themselves, at least as it relates to the chest.

Therefore, for trans men, the entire underside of the breast²⁵ and the chest that it is pressed against should be considered *beit hakematim*, because in the course of daily life and labor with a binder on, these folds of skin are always pressed together and never separated. While a cis woman's breast would need to be slightly raised during her *tevilah* because her breasts get raised from her chest in the course of daily life, there is no need for a trans man to expose the underside of his breast and chest wall at all because this is a "permanent fold" in the skin. Because even *beit hakematim* cannot have any external *hatzitzot*, the underside of the breast and chest wall it is pressed against would have to be clean and free from any *hatzitzot*, but the fact that the breast and chest wall are pressed together by a binder in the mikveh would not itself pose a problem.

However, the issue of the rest of the binder—the parts covering the back, shoulders, and the front of the chest—remains. Even if the underside of the breasts does not need exposure to the water, these other parts do not seem to be plausibly included in *beit hastarim* or *beit hakematim*. To address this we will turn to interrogating our understanding of *hakpadah*.

Section 4: Interrogating Hakpadah

As discussed above, the standard understanding of *hakpadah* seems to preclude the possibility of *tevilah* with a binder on. However, the subsequent literature applies the concept of *hakpadah* with significantly more subtlety and flexibility. Taking these

²⁵ While this is not the terminology many trans men would use to describe their bodies, I have chosen to use technical anatomical language here for the sake of clarity. Outside of this paragraph I don't have need for this degree of anatomical specificity, so this language will be confined to this section of the teshuvah.

approaches' later applications into account, we can find precedent for an understanding of *hakpadah* that does not inevitably declare an object a *hatzitzah* merely because it is regularly removed.

Whose *Hakpadah* Matters?

Up until now, we have discussed *hakpadah* as if it is merely a matter of individual feelings and behaviors. However, *hakpadah* takes into account the ways that people in general are assumed to relate to the things on their bodies. This assumption is actually baked into the discourse around *hakpadah* in the Mishnah: the Mishnah is focused on naming which objects are *hatzitzot* and which are not, but if everything was solely dependent on an individual's *hakpadah*, there would be no purpose in listing out *hatzitzot* in general.

This underlying assumption is made most clear in the following mishnah from Masechet Mikvaot:

משנה מקואות ט'

(א) אלו חוצצין באדם... קלקי הלב והזקן, ובית הסתרים באשה...

(ג) אלו שאין חוצצין, קלקי הראש, ובית השחי, ובית הסתרים באיש. רבי אליעזר אומר, אחד האיש ואחד האשה, כל המקפיד עליו, חוצץ. ושאין מקפיד עליו, אין חוצץ.

The Tanna Kamma in our mishnah names areas of the body where matted hair constitutes a *hatzitzah*: the chest and heart, and the genital area for women, and areas where matted hair is not a *hatzitzah*: the head, the armpit, and the genital area for men. Rabbi Eliezer rejects this gendered distinction and says that all that matters is *hakpadah*. The Rashba fleshes out the implications of this *mahloket* in the Torat HaBayit:

תורת הבית הארוך בית ז שער ז

אלמא לרבנן בין מקפדת בין אינה מקפדת חוצצין. וי"ל דלרבנן כיון דדרכן של נשים נשואות להקפיד אפילו אינה מקפדת בטלה דעתה.

According to the Rashba, it is not that the Tanna Kamma thinks *hakpadah* does not matter at all, but rather that the Tanna Kamma prioritizes collective *hakpadah* over individual *hakpadah*—an individual who breaks the norm and does not care about something that people generally care about has their perspective nullified, and they are considered to be *makpid* even if on an individual level they are not personally *makpid*. The Rashba also clarifies that we pasken like the Tanna Kamma here. While the Beit Yosef claims that it is

possible that the Rambam disagrees with this,²⁶ the Beit Yosef himself paskens like the Rashba: that even if a particular individual is not *makpid*, the attitudes of people in general override this, and something can be considered not to be a *hatzitzah* only in a case where people in general are not *makpid*.²⁷ Therefore, in any particular assessment of *hakpadah* we must take into account not just an individual's *hakpadah*, but whether people in general would be *makpid*.

However, already in the Mishnah above we see that this issue is not as simple as looking at what all people think—the Tanna Kamma explicitly distinguishes by gender in deciding which people's *hakpadah* influences our decisions. The assumption here is that people's *hakpadah* is so deeply shaped by their gendered socialization that it would be impossible to impose identical standards of "general *hakpadah*" on men and women, at least in some cases.

We find that other social categories also shape what is constituted as *hakpadah*. In Masekhet Zevahim, we distinguish based on profession as well:

גמרא זבחים צ"ח:

דם על בגדו חוצץ ואם טבח הוא אינו חוצץ רבב על בגדו חוצץ ואם מוכר רבב הוא אינו חוצץ

A butcher is compared not to the general population or even only to other men, but specifically to other butchers when assessing when they will be *makpid* regarding blood on their clothing; similarly, a grease-seller is compared to other grease-sellers. Because each of these sub-populations is assumed to be accustomed to having stains on their clothing that the general population is not accustomed to, these stains are not *hotzetz* even though they would be for most people. The Rambam²⁸ expands this to other similar cases—and sets the stage for further expansion—by appending "and anything like this." Therefore, it seems that according to the Rambam, any subset of the population with distinct attitudes regarding *hakpadah* would be assessed independently. The Rashba in Torat HaBayit

²⁶ See Rambam Hilkhhot Mikvaot 2:15, and Beit Yosef YD 198:1.

²⁷ On the reverse issue—people in general are not *makpid*, but this individual is, see Beit Yosef YD 198:1.

²⁸ Mishneh Torah, Hilkhhot Mikvaot 3:7

applies this reasoning to women who work as dyers, and says that dye stains on their hands²⁹ are not *hatzitzot* for *tevilah*.³⁰

There are limits to how finely we can slice the population in regards to *hakpadah*. The Gan HaMelekh³¹ extrapolates from the ruling above regarding butchers, dyers, and grease-sellers, and argues that even though the Shulhan Arukh³² states that any tight-fitting ring constitutes a *hatzitzah*, this is only for people who have professions that require the removal of their ring, but people with professions that require less messy work and therefore do not require removing rings are not *makpid*, and therefore even a tight ring is not *hotzetz*.³³ The Shiurei Taharah³⁴ argues that this idea could entirely eliminate the idea of defining *hakpadah* by general human norms by endlessly subdividing the population into more and more specific subclasses.³⁵ Instead he distinguishes between the Gemara's example of butchers and grease-sellers and the Gan HaMelekh's cases:

סדרי טהרה - שיורי טהרה סימן קצח

מכל מקום אין להקל, כיון דבשלחן ערוך כאן ובאורח חיים כתב סתם דטבעת מהודק חוצץ, ולא מפליג מידי, משמע שאין לחלק בזה, ולא דמי למוכרי רבב והצובעים שכל אותו אומנות ידוע בכך, מה שאין כן כאן יש לומר דלא פלוג.

He limits the subdividing into distinct classes of *hakpadah* only to distinct and recognizable identities that are widely known for having a distinct norm of *hakpadah* in a specific area.

The Badei HaShulkhan³⁶ provides a helpful principle for thinking about this:

²⁹ It is perhaps significant that the original case here deals with *hatzitzot* on clothing rather than on the body itself, but multiple medieval poskim, including the Rashba and Rosh freely extrapolate from this to cases of *hatzitzot* directly on the body, such as this case with dye on the hands of dyers. I have not found any source that objects to the Rashba and Rosh on the grounds that this logic can only apply to clothing and not to bodies.

³⁰ Torat HaBayit Shaar 7 Bayit 7. See Shulhan Arukh Yoreh Deah 198:17

³¹ Rabbi Avraham Mordekhai HaLevi, Egypt, 1650-1712.

³² Shulhan Arukh Yoreh Deah 198:23

³³ Siman 123

³⁴ Rabbi Elhanan Ashkenazi, Poland, 1713-1780.

³⁵ Siman 198 Seif Katan 44

³⁶ Rabbi Shraga Feivel Cohen, United States, 1937-2022

בדי השלחן קצח ס"ק י

כיון שדבר רב בני אדם להקפיד עליו, חוצץ - והני מילי כשהיא משונה בדעתה משאר בני אדם בענין זו אבל אם נמצא אצלה סיבה מיוחדת שלא תהא מקפדת עליו וכגון שהיא מבעלי מלאכת בצביעה וידיה צבועות לא הוי חציצה אף שרוב בני אדם מקפידים על זה כיון שאף הם לא היו מקפידים עליו אם היו מבעלי אומנות זו.

The purpose of comparing people to a broader population is to eliminate differences that are just due to individual eccentricity, the kind of things that would make general rules completely impossible to apply. However, if there are clear, identifiable reasons for a difference, not due to individual oddities or idiosyncrasies but due to belonging to a particular class that itself follows predictable patterns, this should be taken into account when considering *hakpadah*. He gives the following standard for how to determine this: if anybody came to belong to that sub-population and it is clear that they would also come to feel the same way, it is worth taking into account.

Adding all this together, it seems clear to me that the relevant comparison population for trans men who experience chest-dysphoria is other trans men who experience chest-dysphoria. This is a sub-category grounded primarily in gender, which as we saw was the earliest and most obvious way of dividing people when assessing *hakpadah*, and as the Shiyurei Taharah and Badei HaShulkhan describe, and this is a clearly defined and recognizable sub-population that has a clear reason for having different patterns of *hakpadah* than the population at large. Because of this, arguments that re-consider *hakpadah* only need to address the way trans men with chest dysphoria experience *hakpadah*, even if this may be quite different from how the population at large does. However, any argument about *hakpadah* does have to reflect the feelings of a sizable portion of trans men and not just an eccentric minority.

Anything for Beauty

I will now turn to examining three distinct reasons why a binder may not be a *hakpadah*: use for beauty, becoming an integrated part of the body, and being removed only in order to be put on again.

The idea that any object that is used for beauty is not a *hatzitzah* comes up first in the Gemara regarding *hilkhot lulav*.³⁷ One is not allowed to take a lulav while holding it via another object that forms a *hatzitzah* between their hands and the lulav. Rava clarifies that

³⁷ BT Sukkah 37a

this does not apply to decorative hand-pieces for holding the lulav, because decorative handles are for the sake of beautification and thus are not considered to be a *hatzitzah*.

The application of this aspect of *hatzitzah* to the human body and the laws of *tevilah* first emerged in the Middle Ages, applied by the Rashba to the case of makeup. He offers two reasons for why he thinks makeup does not constitute a *hatzitzah*:

תורת הבית הארוך בית ז שער ז

נשים שצובעות ידיהן לנוי מסתברא שאינו חוצץ דנוי הוא להן ואינן מקפידות להסירן אדרבה רוצות הן בקיומו ועוד דליכא אלא חזותא בעלמא.

Firstly, he brings Rava's language from Sukkah into our case: because makeup is put on deliberately for the sake of beauty and "desire to keep it on," it is like the handle on the lulav and is therefore not a *hatzitzah*. Additionally, makeup does not have any real substance and is only color. The Shulhan Arukh³⁸ brings this ruling without clarifying which reason he sees as central. The question emerging from this is: are these independent conditions, such that anything that is either used for beauty or is insubstantial could be permitted? Alternatively, are these linked conditions, such that something that is used for beauty is not permitted unless it is also insubstantial?

The Prisha³⁹ argues that *both* beauty *and* lack of substance are required to make makeup not a *hatzitzah*:

פרישה יו"ד קצח ס"ק חי

צבע שצובעות הנשים על פניהם כו' אינו חוצץ אין להקשות מ"ש מכחול שחוצץ לעין שכתב לעיל דחוצץ אע"ג שג"כ מתכשיטי הנשים היו לכחול סביב העין וכדאמרין לא כחל ולא שרק כו' די"ל משום דכחול יש בו ממש לחצוץ משא"כ צבע שאינו אלא חזותא בעלמא ואפ"ה נקט דוקא שצובעות הנשים דא"כ הו' חוצץ בכל דהו כיון דמקפדת עליו. גם י"ל דלא כתב רבינו דכחול חוצץ אלא בכחול שבפניה שנעשה לכחול בו העין לא ליפות בו הפנים וק"ל:

³⁸ Shulhan Arukh Yoreh Deah 198:17

³⁹ Rabbi Yehoshua ben Avraham HaKohen Falk, Poland, 1555-1614

The Prisha compares the makeup mentioned here to *k'hol*, a sort of eye makeup or ointment, that the Shulhan Arukh discusses earlier.⁴⁰ In that case, *k'hol* is not considered a *hatzitzah* if it is in the eye, but is a *hatzitzah* when outside of the eye. If *k'hol* could be a *hatzitzah* when out of the eye despite being used for beauty, why wouldn't all makeup be a *hatzitzah* as well? He distinguishes between the two cases by arguing that *k'hol*, unlike other makeup, has substance and thickness, which renders it a *hatzitzah* despite the fact that it is being applied for the sake of beauty. Thus, the Prisha offers the understanding that something used for beauty is not automatically exempted from being a *hatzitzah* for this reason alone—it needs both to be used for beauty and also lack substance.

However, there is significant disagreement with the Prisha's approach. The Binat Adam⁴¹ argues that meeting one of the two conditions the Rashba mentions (lack of substance and use for beauty) would be enough to permit an object and not render it a *hatzitzah*:

בינת אדם שער בית הנשים סימן יב(כא)

והנה בודאי מדבריהם [של הרשב"א והרא"ש] מוכח דמה שכתב טעם שני שאין ממשו של צבע אלא מראיתו הוא רק לסניף דהאמת כך הוא אבל באמת אף על גב שיהיה צבע שיש בו ממש אם עשוי לנוי אינו חוצץ דמאי שנא לנוי או מי שמלאכתו בכך שכתב להדיא ראייה מדם שבבגד טבח ורוב והוא מזבחים צ"ח והתם מיירי שיש בו ממש ואפילו הכי אינו חוצץ משום דאינו מקפיד בכך ומה שכתב לנוי בודאי אינו מקפיד ואדרבה מחדשות תמיד אלא על כרחך דאינו אלא לסניף ועוד דהוצרך לטעם זה בצבע שעל רוב שיער דברובו אף על פי שאין מקפיד חוצץ ולכן הוצרך לכתוב משום שאין בו אלא חזותא נמצא דלנוי אם חופה רוב שיער או הגוף דוקא חזותא אינו חוצץ אבל אם אינו רק על מיעוט הגוף אף שיש בו ממש אינו חוצץ ובחזותא אף על פי שאינו לנוי יש לומר נמי דאינו חוצץ וכמו שכתב ה"ט"ז ס"ק י"ב כדמוכח מרשב"א שכתב ועוד כיון דאינו אלא מראיתו של צבע ואינו דומה לדיו שיש בו ממש.

The Binat Adam argues that the Rashba only mentions the second reason—that the makeup has no real substance—as a secondary argument that is not strictly necessary for his position. Additionally, he argues that the Rashba brings this a second reason (lack of substance) to address a case where the dye covers a majority of the hair, and would therefore be a *hatzitzah* by reason of majority even if the person in question was not *makpid*. In order to address this case as well, the Rashba mentions that hair dye lacks substance and is therefore permitted, even if it covers a majority of the hair. Therefore,

⁴⁰ Shulhan Arukh Yoreh Deah 198:8

⁴¹ Rabbi Avraham Danzig, Poland, 1748-1820

according to the Binat Adam, you cannot infer from the Rashba that both use for beauty and lack of substance are required.

The Keren l'David⁴² follows the Binat Adam and brings in an additional argument to permit women to tovel with nail polish on, despite the fact that it has some thickness and substance to it.

קרן לדוד חאו"ח סימן מה

אין ספק דהא דכי הרשב"א והרא"ש דכל שהוא לנאותו ועושהו בכונה דאינו חוצץ היינו אפילו ביש בו ממש דהא אפילו מיעוט שאינו מקפיד קיי"ל דאינו חוצץ מכשי"כ כשהוא לנוי וליפות דעדיף מאינו מקפיד דאדרבה הוא מקפיד להיפוך שיהא עליו וכן מבואר ג"כ בסוכה דף לו. דכל לנאותו אינו חוצץ...ואי משום קושיית הב"ח והפרישה מכחול העין בזה כמש"ש הפרישה בה"י ב"י דהא שכי הטוב שכחול שחוצץ לעין חוצץ היינו מפני שנעשה לכחול בו את העין ואינו לנוי רק להעין לא להפנים איי"ש...לפי מה דמוכח מדברי הרשב"א והפוסקים הנ"ל כל שהוא לנוי אינו חוצץ אפי' אם יש בו ממש, וא"כ הה"ד האי צבע שנוהגות הנשים לצבוע על ציפורני ידיהם לנוי אין בו משום חציצה...

Firstly, he argues that using something for beauty is an even more lenient case than regular lack of *hakupadah*: the absence of *hakupadah* simply means you don't care to take something off, whereas using it for beauty means you have an ongoing preference to keep it on. Expanding on the Rashba's language of "wanting to keep it on" he uses the phrase "*makpid* to keep it on"—inverting our understanding of *hakupadah*, and arguing that not only is the woman in this question not *makpid*, she is the opposite of *makpid*. If this is so, using something for beauty would be sufficient to permit one to tovel while adorned in some way with an object that covers a minority of the body.

He also responds to the Prisha's concern, brought above, about the k'hol that is considered a *hatzitzah* when outside of the eye despite being used for beauty. Kohl outside the eye is not a problem according to the Keren l'David because k'hol is only used for beauty directly on the eye—spillover outside of it is not deliberately done for beauty and therefore is *hotzetz* because people would be *makpid* on this. Given all of this, he argues that it is clear that nail polish does not constitute a *hatzitzah* despite its thickness and substance, because it covers a minority of the body and is something people apply for the sake of beauty. We now have a set of opinions that permit *tevilah* with objects on the body that are used for beauty, regardless of whether they have thickness and substance.

⁴² Rabbi Eliezer David Greenwald, Romania, 1867-1928

Rabbi Ovadia Yosef follows the Keren l'David here and permits *tevilah* with nail polish on.⁴³ However, he strongly encourages women not to do this for several reasons: firstly, it is not the prevailing custom and is instead catering to what he sees as a modern and frivolous trend, and additionally, it is rejecting the longstanding rabbinic requirement to trim the fingernails prior to *tevilah* in order to eliminate concern of dirt underneath the nails being a *hatzitzah*. Nonetheless, he permits in the case of a woman who does not wish to remove her nail polish and where there is a concern that she might stop going to the mikveh entirely if forced to.

While the language of “beauty” does not really capture the dysphoria that drives many trans people to wear binders, I still think this concept is applicable to our case. Beauty can mean not just something that is merely fun and decorative, but also capture much deeper needs in how we present, express, and care for our own bodies. Someone whose attitude towards their beauty products is one of being constantly *makpid* to keep them on is someone for whom this is more than fun—it is a core part of who they are, both to others and to themselves. As I understand it, the permission to tovel with products on the body that aid in beauty is acknowledging that there is a difference between entering the mikveh unadorned and stripped down to your core self, and entering the mikveh feeling unrecognizable from your normal self. The former is an admirable goal that should push us to make ourselves simple and unadorned in the mikveh, whereas the latter is a misunderstanding of the purpose of the laws of *hatzitzah*.

This is similar to how binders work—on some level they are for appearance, but they are also significant for one’s identity and self-recognition. A person who binds regularly has an active and ongoing preference for keeping their binder on, and goes out of their way to put it back on regularly—they are “*makpid* to keep it on”, just as the women described by the Rashba and Keren l'David are.⁴⁴ For this reason, I suggest it is possible to extend the arguments of the Binat Adam and Keren l'David to binders, and to permit *tevilah* while wearing a binder.

⁴³ Taharat HaBayit, Helek 3, Dinei Hatzitzah 24, footnote 27

⁴⁴ In the case of nail polish two other factors may be at play for the Keren l'David. Firstly, that there is significant labor involved in removing and replacing it. Secondly, there may be a desire for women to feel their most beautiful when returning home from the mikveh, a time when sexual intimacy is traditionally anticipated by both partners. Therefore this may be less about feeling beautiful while in the mikveh than about feeling beautiful while returning, due to the unlikelihood of her re-doing her nail polish before returning home. In these ways the language about “beauty” on its own may not be entirely applicable to the case of a binder. However, the turn in the Keren l'David from a narrow focus on beauty to the language of “*makpid* to keep it on” captures the relationship many trans men have to binders, and de-centers the concerns that might apply more narrowly to a beauty product like nail polish.

Rav Ovadia's hesitations to permit *tevilah* with nail polish *lekhathila* here seem to me to be driven by an assumption that the use of nail polish itself is just a frivolous modern preference. An approach that takes seriously trans experiences of the self cannot dismiss binding in this way. Additionally, he doesn't see any strong reason why doing *tevilah* with nail polish might be preferable, except for in the case of the woman who will not go to the mikveh at all if forced to remove it. In contrast, as I discussed above, there is a precedent for prohibiting immersion under circumstances where people are experiencing fear of exposure and the accompanying distraction. Given the very real risk of that in our case, and the accompanying risk of improper *tevilah*, I think that Rav Ovadia's concerns with permitting nail polish *lekhathila* do not need to apply to our case of permitting binders *lekhathila*.

Part of the Body

This exploration also invites questions about what constitutes real, substantive parts of our bodies. Where do our bodies end and our adornments begin? A binder is often experienced not as a foreign object stuck to the body but as part of the body itself—the surface of the binder can feel more like the “real” surface of the chest than the unbound chest does. This idea that a foreign object to the wearer, even one that can be removed, can integrate with the body arises in a few teshuvot addressing the issue of temporary false teeth and fillings.

The *Gidulei Tahara*⁴⁵ argues that a removable fake tooth is not a *hatzitzah* because it functions as just one of a person's other teeth:

גידולי טהרה כב

יש לחלק עוד בין טבעת וּשן דהא תנן פרק י"ז דפרה⁴⁶ האזוב הקצר מספקו בכוש וטובל בו משום דכיון דחיבורו כגופיה הוא כדאמרין בסוכה (לז) וכן מצינו במסכת כלים כעין זה בכמה מקומות וא"כ שן זה שהיא משתמשת בו כאחד משאר שיניה נעשה כחלק מגופה ואינו חוצץ ול"ד לטבעת ושער דינים שנוכרו בפוסקים.

⁴⁵ Rabbi Menahem Mendel Kargoi, Germany, 1772-1842

⁴⁶ This citation should be Parah 14:1

He compares this to a case brought in a Mishnah in Masechet Parah⁴⁷ where the palm frond being used to sprinkle the *mei hatat* (water from the Red Heifer that purifies from death-impurity) is too short to reach the water in the bottom of its vessel. There the Mishnah permits tying a spindle to the end of the palm frond in order to have it reach. In Masechet Sukkah⁴⁸ the palm with the spindle is compared to a lulav which must be “taken” on its own without a *hatzitzah* in between the hands and the lulav—if this is the case, why can the palm frond here be held via the spindle? The sugya rejects this comparison on the grounds that because the spindle is firmly attached to the palm frond, it becomes *k’gufei* — part of its body. The Gidulei Tahara extrapolates from this that a false tooth, because it integrates into the mouth and functions like a tooth like any other, is also not a *hatzitzah*, even if it is sometimes removed in order to clean the gums and prevent damage. This is distinct from a ring, or other things on the body that are *hatzitzot*, because they don’t become part of the body in the same way—even if you wear it all the time it remains a foreign object because it doesn’t take on the function of a limb.

The MiBeit Meir⁴⁹ makes a similar argument about wooden teeth:

שו"ת מבית מאיר ח"ד סימן ג (עמוד לג)

דכל חציצה שדנין בה משום הקפדה אינה רק בדבר המוטל על הגוף לאין צורך אבל דבר שהאדם מתקן בגופו המשמש לו כאחד מאברי גופו אינו שייך להדפקה דחשיב כגופו כיון דמשמש לו לגופו וא"כ בשן תותבת אפ"י לא נעשה לנוי אך דנפל אחד משיניו ועושה שן תותבת במקומו והוא אוכל ולועס בו כהשן הקודם נעשה כהשן הטבעי הקודם...

Here he argues that the discourse around *hakpadah* is really only about items that are on the body without need. My understanding is that he means things that are on the body and are not there to serve as *part of the body* themselves. However, something that is attached to the body in order to function as part of the body itself does not even enter in the question of *hakpadah*. Just as we wouldn’t ask whether natural teeth are a *hatzitzah* on the underlying gum, so too the question of *hakpadah* simply doesn’t arise for something that becomes an integrated part of the body, even if it is removed with some regularity.

We can compare this to a binder, which for many people comes to feel like their “real” chest, with the “skin” (fabric) of the binder feeling and appearing much more like the real surface of the chest, in a way that the fabric of a normal shirt does not. Even though it

⁴⁷ Mishnah Parah 14:1

⁴⁸ BT Sukkah 37a

⁴⁹ Rabbi Meir ben Avraham Stalevitz, Belarus, 1879-1949

doesn't perform a "function" in the way that a tooth does, it does become integrated into the wearer's mental map of their own body in the same way. Just as a false tooth becomes a seamless part of the body as experienced by the wearer, a binder becomes an integrated part of the body's perception of itself, and the body can feel more like an unencumbered, integrated self with a binder than without it. Following the arguments of the Gidulei Taharah and the MiBeit Meir, the question of *hakpadah* is not an issue for a binder since it is not experienced as external to the body in the same way that other articles of clothing are.

Resting in Order to Walk

Thus far, we have re-examined *hakpadah* from two angles: things that are used for beauty, and things that become integrated into the body. While both of these approaches speak to the experience of binding in certain ways, they have certain weaknesses as well. The sources on integration into the body focus on functionality. While I have tried to make the case that this is as much about "mental mapping" as it is functionality, a binder does not fully fit this concept because it does not take on the function of a body part in the full way that a false tooth does. These sources also seem to speak about something that may be removed much more rarely or briefly than a binder is removed, and don't address how the reasons behind this removal might affect the ultimate ruling. Our argument is thus far grounded in making the case that if an object is on the body for a particular reason (beauty or functionality), the fact that it is removed no longer matters for *hakpadah*. In contrast, in this section I want to look explicitly at the issue of removal—how do the motivations for removing something from the body shape the question of *hakpadah*?

The Shoel u'Meishiv⁵⁰ addresses a case of a woman who wears a glass eye after having her own eye removed. The glass eye in question is easily removed by her, without causing pain, and nonetheless the Shoel u'Meishiv argues that the eye does not constitute a *hatzitzah*:

שׁוֹיֵת שׁוֹאֵל וּמְשִׁיב מֵהַדוֹרָה תְּנִינָא חֲלֵק גַּ סִּימָן קַח

...נראה לפענ"ד דכאן לא שייך זאת דחציצה לא שייך רק כשמקפדת להסיר מפני שרע לה
ונגאי בדבר אבל כאן שעושיית לנוי ובאמת כל ענין הזכוכית שתתראה כבעלת עין וא"כ אדרבא
אינה מקפדת ע"ז ושפיר דמי ואף שלפעמים מסירה זאת היינו כדי שלא יתקלקל והוה כלפוש
ע"מ לכתף...

⁵⁰ Rabbi Yosef Saul Nathanson, Poland, 1808-1875

He first argues that because she puts in the eye for beauty and actively wants it there it is not a *hatzitzah*, reflecting arguments we have already seen regarding makeup and false teeth. However, he adds an additional argument, addressing the reasons why she deliberately removes her eye on a regular basis. This regular removal would seem to constitute *hakpadah* because there are times when it seems that she does not want the eye to be in her socket. However, the Shoel u'Meishiv argues otherwise, employing a metaphor from Hilkhoh Hotza'ah (carrying on Shabbat).

To briefly summarize the relevant laws regarding *hotza'ah*: You are considered to have transferred an object from one domain to another (or over four *amot* within a public domain or *karmelit*⁵¹) if you stop and stand still while carrying it. However, Chazal distinguish between two kinds of stopping: stopping to rest, and stopping to adjust. Stopping to rest constitutes a full stop, and you are liable for *hotza'ah* at that point. However, stopping to adjust is not considered a proper stop, because you are stopping just in order to enable yourself to continue going forward. The Shoel u'Meishiv uses the metaphor "stopping to rest in order to adjust" to capture the dynamic behind the woman in question removing her glass eye. Just as stopping to adjust isn't considered a proper stop because its purpose is to enable you to continue moving forward and not truly for the sake of stopping, taking the eye out to clean it and prevent damage is not really being *makpid* on the eye, because you are taking it out only to enable yourself to put it back in later.

He acknowledges that taking the eye out is in some sense "resting", but he argues that this rest is really a rest for the sake of adjustment, and therefore for the sake of putting the eye back in. This removal, therefore, is not like other cases of *hakpadah*: the woman in question doesn't at any point want to go eyeless. Rather, in order to wear her glass eye the rest of the time, there are periods when she has to remove it, but her intentions are always focused on the ability to eventually replace the eye.

This is very similar to how many people who wear binders experience removing their binder: the removal isn't because they actively want the binder off at a particular moment, but because removing a binder regularly is essential to being able to wear it consistently. Removing the binder is a "rest" in order to keep going, not a rest for its own sake. In this way, according to the Shoel u'Meishiv, people who wear binders regularly are not necessarily considered *makpid* about them.

⁵¹ A *karmelit* is a space that is treated as a *reshut harabim* (public domain) on a rabbinic level.

The Igrot Moshe⁵² rejects the Shoel u'Meishiv's analogy to *hotza'ah*, however, and argues for a different distinction to be made between the reasons you might remove an object from the body:

שו"ת אגרות משה יורה דעה חלק א סימן קד

לא מובן הדמיון והשייכות לשם. דהנחה לחשיבות המלאכה היא להשאיר כאן החפץ אפילו שהוא רק לרגע, ושלא לצורך הולכת החפץ כמו בעומד לפוש שעל הזמן שרוצה לפוש הרי משאיר כאן החפץ שטעון אבל בעומד לכתף הרי עמידתו הוא אדרבה שלא להשאירו אף לרגע דהוא כדי שלא יפול החפץ ולא ישאר שם. ומתוס' שבת דף ח' ד"ה לא משמע דהוא מטעם דכן הוא דרך הולכת חפצים כבדים ולכן לא שייך להתחשב להנחה שהוא ההיפוך ממה שעושה. אבל הכא אין שייכות לשני הטעמים דכיון דאינה יכולה להניחו שם לעולם בשביל הקלקול איך יתחשב אינה מקפדת, וכ"ש כשיש לחוש לקלקול הגוף כשישאר שם תמיד שודאי נחשב מקפיד....וכן הוא בעין תותב שאם תצטרך להסירו משום צער גופה או משום שע"י סתימה זמן רב יש לחוש לקלקול בגוף שא"כ רצונה שיהיה גלוי לפעמים יחצוץ ואם אין לה צער ואין לחוש לקלקול הגוף אלא שהעין יתקלקל ותצטרך להחליפו בחדש או לתקנו שיהיה טוב לסתום ביותר לא יחצוץ.

Rav Moshe first argues that the Shoel u'Meishiv's comparison doesn't work: regarding *hotza'ah*, what matters is whether you have the intention to leave an object in a particular place, even for a moment. If your intention is to rest, no matter how briefly, you have decided to stop walking and to "set" the object in the place you stand. Stopping to adjust is different because you never at any point decide you want to stop or set the object down—your only goal remains moving forward. "Stopping to adjust" is really just to say that sometimes pausing is part of moving forward, and not a deviation from it. In contrast, Rav Moshe argues that because the glass eye cannot remain in place forever, taking it out cannot be considered an aspect of continuing to wear it—rather it is a break just like stopping and standing to rest in an ordinary sense.⁵³

⁵² Rabbi Moshe Feinstein, Belarus/America, 1895-1986

⁵³ Rav Moshe here seems to miss that the Shoel u'Meishiv is not comparing removing the eye to "stopping to adjust" but rather says that removing the eye is "stopping to rest in order to adjust"—he concedes that this more resembles "stopping to rest" but nonetheless he wants to argue that this rest actually serves the broader purpose of moving forward, and is therefore more in the category of adjusting than true resting. It is possible that Rav Moshe is acknowledging this subtlety of the metaphor, but nonetheless feels that describing a deliberate break as not being rest is simply a step too far, and risks eliminating the category of resting altogether.

Instead, Rav Moshe argues that there is a distinction to be made based on whether you are removing the object for the sake of protecting the object, or for the sake of your own body and its health. If you remove the glass eye to clean the eye and protect it from damage, this is not reflective of a real desire to remove the eye, and the person doing so is not considered *makpid*. However, if you have to remove the glass eye in order to prevent damage or pain in the eye socket, then this is unavoidably going to create an actual desire and need to have the eye socket exposed—and at this point it is impossible to claim that this is not a *hatzitzah*.⁵⁴

If we were to follow Rav Moshe's logic here, it would be difficult to argue that a binder is not a *hatzitzah*. While preventing a binder from stretching out too much may be a component of why people take it off, the primary reason is to prevent injury to the body, which according to Rav Moshe would be comparable to "stopping to rest" and therefore render the binder a *hatzitzah*.

However, the *Gidulei Tahara*⁵⁵ makes exactly the opposite argument from Rav Moshe based on a Mishnah from *Mikvaot*:

גידולי טהרה כב

עוד נ"ל לחלק עפ"מ דאמרינן בשלהי מקוואות הכרים הכסתות צריך שיבואו בהם המים לפי שלפעמים מוציאים מה שבתוכן אבל התפילין והקמיע אי"ח וכתב התי"ט בשם המר"ם אע"ג בתפילין נמי פותחין אותן לפעמים לבדוק ל"ד לכרים וכסתות דהתם מוציאים מה שבתוכן לצורך עצמן לתקן אותם משא"כ בתפילין. וה"ה בנדון דידן דבשלמא טבעת היא מסירה בשעת לישה לצורך הטבעת שלא יתלכלך כמ"ש הפוסקים אבל הסרת שן זה אינה לצורך השן אלא בשביל לנקות את החניכים וגם עיקר הסרה היא ע"מ להחזיר ודמי לתפילין.

The Mishnah in *Mikvaot*⁵⁶ requires pillows and cushions to be opened up when they are toveled, but permits the *tevilah* of tefillin and amulets when closed.⁵⁷ The *Tosafot Yom Tov*⁵⁸ explains that this is because the inside of pillows and cushions is sometimes removed

⁵⁴ Practically speaking, Rav Moshe does in fact permit immersion with a glass eye, for different reasons than the *Shoel u'Meishiv*.

⁵⁵ Rabbi Menahem Mendel Kargoi, Germany, 1772-1842

⁵⁶ Mishnah *Mikvaot* 10:2

⁵⁷ Here we are discussing the *tevilah* of objects in a context where *tumah* and *taharah* are fully operative categories and apply to objects as well as to people.

⁵⁸ Mishnah *Mikvaot* 10:2 "והתפלה"

for the sake of re-filling them to make them the proper size and shape, whereas Tefillin only ever have the covering removed for the *klaf* inside to be checked, after which the covering is immediately replaced. Because there is no intrinsic need or desire to ever remove the boxes of the Tefillin from the *klaf* inside, the outside boxes do not create a *hatzitzah* and the tefillin can be *toveled* whole. The *Gidulei Tahara* compares this to a woman who must remove her fake tooth for the sake of cleaning her gums and preventing infection—the tooth, like the outside of the tefillin, is removed just to protect and check the “inside”—here meaning the gums underneath. Therefore because the covering is only removed to protect what lies underneath it, and not for its own sake, the covering does not constitute a *hatzitzah*, just as the boxes of tefillin do not constitute a *hatzitzah*. He also makes an argument very similar to that of the *Shoel u’Meishiv*, that the tooth is only taken out in order to enable it to be put back in, just like the inside of the tefillin is only taken out in order to be put back in. Following his argument here, that removing an object purely for the sake of the body underneath makes it *less* likely to be a *hatzitzah*, it seems that a binder, which is removed primarily for the physical health of the chest, ribs, and lungs would not constitute a *hatzitzah*.

Additionally, Rabbi Ovadia Yosef⁵⁹ in the *Taharat HaBayit* and the *Mishneh Halakhot*⁶⁰ both follow the *Shoel u’Meishiv* and permit immersion with a glass eye. Rav Ovadia writes:

טהרת הבית חלק ג דיני חציצה הערה ח

ולי נראה שיש להקל לה לטבול עם העין תותבת אף לכתחילה כיון שהיא רוצה שתשאר שם ולא תהיה נראית בעלת מום.

For Rav Ovadia, the fact that the woman’s attitude towards her glass eye is one of constantly wanting it there, this cannot be considered *hakpadah*, even if she is forced, for whatever reason, to remove it somewhat regularly. He uses the powerful language of “she does not want to appear disfigured” to express this desire, and while this statement should be interrogated from a disability perspective, it is also resonant of the ways that dysphoria can make someone feel compelled to wear a binder—without it, their body is strange, wrong, or not theirs. Even though there are times they have to remove the binder for their own health, just as there are times this woman must remove her eye for her own health,

⁵⁹ Rabbi Ovadia Yosef, Iraq/Israel, 1920-2013

⁶⁰ Rabbi Menashe Klein, Ukraine/America, 1924-2011

this attitude of not wanting to feel alienated from your own body creates a relationship with the eye that renders it no longer a *hatzitzah*.⁶¹

Summary and Conclusion

We have now seen several reasons why a binder does not constitute a *hatzitzah*: it is used for “beauty,” it becomes an integrated part of a person’s mental map of their body, and it is removed solely for the sake of being able to put it back on again. Additionally, the folds of skin between the breast and chest when pressed together by a binder should be understood as *beit hakematim* — a part of the body that does not require direct contact with the water.

We began by exploring the stakes of the question at hand. On the one hand, we have the risk of an invalid immersion, as well as the loss of the experience of full nudity in the mikveh. Regarding the risk of an invalid immersion, I have presented several arguments that a chest binder is not a *hatzitzah*, which I believe mitigates this concern. It is also important to note that even if these arguments are rejected and you consider someone who wears a binder to be *makpid*, it still does not cover a majority of the body and is therefore only a *hatzitzah* on a d'rabbanan level. While this is not, on its own, a reason for leniency, it does lower the stakes of the question at hand— because the prohibition at stake is *de'rabanana*, there is no risk here of an immersion that is invalid on a *d'oraita* level. Regarding the loss of the experience of true nudity in the mikveh, I believe many of the arguments about *hakpadah* address this issue—if the experience of the body with a binder feels more true and real to the wearer, you might be better equipped to experience the mikveh as a moment of accepting and embracing the body than if you are experiencing dysphoria and alienation.

Any concerns must be weighed against the risk of discouraging mikveh use entirely, the prohibition on *tevilah* in a context that is anxiety-provoking and distracting, and the principle that mitzvot should not for the most part be sources of pain and suffering. As I argued above, if a binder is not a *hatzitzah*, which I have made the case that it is not, there are real downsides to requiring trans men to immerse without one. Based on these arguments, I believe the risk of prohibiting a binder in these cases is greater than the risks of permitting.

⁶¹ This language of “a disfigured person” potentially explains why his approach to the glass eye is so distinct from his approach to nail polish. Whereas nail polish is something he permits *bediavad* and reluctantly, he seems to take no issue at all with immersion with a glass eye. The difference here seems to lie in how you feel without it—disfigured and unrecognizable, or merely less than maximally beautiful.

One major question remains: To whom does this rule apply? Rather than focusing on how much discomfort one would feel immersing without a binder, I would instead suggest that you ask honestly if the texts and attitudes above match the way you relate to your body and binder. Does it feel like an essential part of your self-recognition and presentation? Does it feel like your mental map of yourself always includes a binder, and is disturbed not by the presence of a binder, but rather by its absence? When you do take your binder off, is your main goal to be able to wear it safely again at a later point? If these feel like accurate descriptions of your relationship to your binder, then the logic of this teshuvah applies to you. On the other hand, if this is not how you relate to your binder, it will be difficult to impossible *not* to see it as a *hatzitzah* that would invalidate an immersion. The important point here is that the relevant question is not the amount of discomfort you might feel when immersing without a binder, but rather whether your attitudes towards your binder render it a *hatzitzah* or not.⁶²

Conclusion: Someone who wears a binder as often as possible in the course of their daily life, experiences their body as more whole and integrated while wearing it, and takes it off just to ensure they can safely wear it again in the future, is permitted to immerse while wearing a binder. They should remove the binder for *hafifah* (pre-immersion bathing and preparation) and ensure the area covered by the binder is clean and free from any other *hatzitzot*. Afterwards they can wear the binder as normal during immersion.⁶³

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⁶² It is likely that there is a correlation between these attitudes and discomfort and distress that would be when doing *tevilah* without a binder. An important note is that someone whose dysphoria is mainly centered around being seen by a *balanit* ("mikveh lady") or other immersion supervisor might not fit into these approaches but still find immersion quite difficult without a binder. In that case it is probably preferable to explore the halakhic possibilities of *tevilah* without an immersion supervisor, which is an important topic that is beyond the scope of this teshuvah. The other possible approach is to follow the method recommended by Rabbi Eliezer Melamed for immersion with bathing suits (see footnote 20). Someone who wishes to immerse with a binder in a more *mahmir* manner could immerse with a binder and additionally follow Rabbi Melamed's approach to *tevilah* with a bathing suit.

⁶³ I believe a similar set of arguments could be well applied to tucking—I eagerly await someone spelling this argument out carefully and I hope that this teshuvah can provide much of the relevant groundwork.

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