

Are Trans Women Obligated in *Niddah*? How Can That Obligation be Fulfilled?

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She'eilah

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Teshuva

I'm writing this teshuvah because I haven't been able to find any literature addressing niddah for trans women created *by* trans women ourselves. For many, the assumption that halakha shares the contemporary, cissexist understanding of gender bound strictly by biological characteristics has prevented investigation into this important question. To take seriously our commitments to the principle that people truly are the gender they say they are and therefore, trans women are women, it is essential that we undertake the work of uprooting these unproven assumptions from within our halakha. It is also essential that we make this area of halakha clear and accessible to a community that has been excluded from it for generations.

This teshuvah would have been impossible without the amazing insight and support of my xevruta, José "Akiba" Portuondo-Dember, the feedback of everyone in the Teshuvah Writing Collective, the support of my co-rosh yeshiva and sister Binya Kóatz, and every other friend and teacher whose love and wisdom allowed me to reach this moment.

Regarding the status of nonbinary people or trans feminine people who feel the conclusions or frame of reference of this teshuvah do not apply to them with regard to these laws, I must leave it to someone with the the wisdom and experience of those lived experiences to explain niddah in those contexts. I write this teshuvah addressed to trans women, not because we are the only people that might need this information, but because this writing springs directly from my own personal experience as a trans woman. Naming that fact explicitly, I hope, will help to show that because of my own unique and particular experience—and the inherent limitations it presents—this teshuvah cannot possibly fully address all identities and circumstances that might be implicated by it.

In this teshuvah I will be using gendered language when discussing the subject of niddah. Most halakhic literature assumes this subject to be a woman. I will be using that same language, not because of a shared assumption regarding the genders of people who menstruate, but rather because I am exploring the particular applications of this halakha to

women. People of all other genders who menstruate will bless us with clarity on other gendered and ungendered aspects of this area of law, I am absolutely sure. With these pieces of framing clarified, I can move on to the substance of the issue.

The first assumption that we need to deal with is that niddah is only of concern to bodies which are or were capable of menstruation. This is not the case, and the source for undermining this is simple: the Torahic genesis of niddah itself. In Vayikra 15:19 we read:

וְאִשָּׁה כִּי־תִהְיֶה זָבָה דָּם יִהְיֶה זָבָה בְּבִשְׂרָהּ

And if a woman has an emission, and her emission in her flesh is blood.

We have immediate proof that trans women are implicated in the halakha of niddah. Trans women are women. Obviously then we are included in this verse which introduces laws of niddah. Much of the halakhic literature discussing niddah up until now has taken for granted the idea that Torah must be referring to the category of "women" in the same way that our current, cissexist society does. That assumption has no basis within the textual tradition. We have no reason to assume that the categories of women and menstruator are collinear.

We instead can uphold what I believe to be a fundamental value of the trans community, which is believing people are who or what they say they are, and treating them accordingly¹. This foundation of respect for self-definition is one of the most fundamental shifts that centering the trans perspective in halakha will yield. With that resolved, the much lengthier and more practical question is: are there any circumstances in which trans women might be required to observe the laws of niddah?

When I first started writing this paper, I wasn't sure I would find any compelling examples of times when niddah status is unlinked from perceptible or assumed bleeding. It's so hard to imagine the two as operating independently because they are so linked in popular halakhic culture and imagination. However, once I started diving into the literature I found an abundance of examples that hint that the possibility that niddah exists in a metaphysical sense beyond blood.

¹ I also believe this value has a halakhic basis, as it is written in Proverbs 14:10,

לֵב יוֹדֵעַ מֵרַת נַפְשׁוֹ וּבִשְׂמֵחָתוֹ לֹא־יִתְעַרֵּב זָר

A heart knows its own bitterness, and no outsider can share its joy

As my beloved xevruta Binya Kóatz taught me, the Torah is teaching us here that a person's gender is their joy, and only they can truly know it.

We can start by looking at the words of the Rambam in Issurei Biah, Chapter 6:

כל שבעת הימים שנקבעה לה וסת בתחלתן הן הנקראין ימי נדתה. בין ראתה בהן דם בין לא ראתה בהן דם. ומפני מה נקראין ימי נדה מפני שהן ראויין לנדה. וכל דם שתראה בהם דם נדה יחשב וכל אחד עשר יום שאחר השבעה הן הנקראין ימי זיבתה. בין ראתה בהן דם בין לא ראתה. ולמה נקראין ימי זיבה מפני שהן ראויין לזיבה. וכל דם שתראה בהן דם זיבה יחשב. והזהר בשני שמות אלו שהן ימי נדתה וימי זיבתה כל ימי האשה מיום שיקבע לה וסת עד שתמות או עד שיעקר הוסת ליום אחר תספור לעולם שבעה מתחלת יום הוסת ואחריהן אחד עשר [ואחריהן] שבעה ואחריהן אחד עשר. ותזהר במנין כדי שתדע בעת שתראה דם אם בימי נדה ראתה או בימי זיבה. שכל ימיה של אשה כך הן שבעה ימי נדה ואחד עשר ימי זיבה. אלא אם כן הפסיקה הלדה כמו שיתבאר:

For all of the seven days that are established as her cycle, from the outset they are called days of niddah for her. Whether she sees blood in them, or whether she does not see blood in them. And why are they called days of niddah? Because they are fitting for niddah. And any blood she might see in those days is to be considered blood of niddah. And regarding the eleven days that follow the seven, they are declared the days of her zivah. Whether she sees blood in them, or whether she does not. And why are they declared days of zivah? Because they have been proven as zivah. And any blood that is seen during them is to be considered blood of zivah. And be precise regarding the two names, these are the days of her niddah and these are the days of her zivah. All the days of the woman from the day that her cycle is established until the she will die or until the day that her cycle is uprooted; For the day after she will always count seven days from the beginning of the day of her cycle, and after those, eleven [days]; [and after those], seven [days] and after those, eleven [days]. And let her be precise in the counting, that she may know in the time in which she sees blood, if it is in the days of niddah that she saw it or in the days of zivah. For all of the days of a woman are like this. There are seven days of niddah and eleven days of zivah. Except in the case where giving birth has interrupted, as will be elucidated later.

This take of the Rambam's is singular amongst the Rishonim and it reveals a fascinating understanding of niddah by one of the most influential halakhic thinkers in our tradition. The phrase "whether she sees blood in them, or whether she does not see blood in them" clues us into Rambam's reading of the yamei niddah as a metaphysical state which affects the quality of whatever blood might appear during the cycle of seven days of niddah and eleven days of zivah, regardless of where those days fall. Most of us think of niddah and zivah as being instigated by blood appearing but Rambam is establishing a super-biological factor here: specifically his innovative claim is that the potentiality of these statuses come and go on a schedule that is independent from an individual's actual menstrual cycle. The

potential for niddah, it seems, is much more complicated than the presence or absence of blood.

Far from being a radical departure from the viewpoint of the Rabbis of the Gemara, I believe he is in fact tapping into a crucial element of their interpretation of the law: that the niddah state is an emergent quality which comes and goes according to many more factors than just bleeding. It isn't fully untethered from biological signs, but the determination of niddah status is deeply influenced by completely non-biological elements. Here, that's the passage of time. In our next examples it will include social factors. The Rabbis and Maimonides are choosing to interpret the biblical niddah, which is much more narrow, in an expansive and flexible way that creates abundant space for trans women to find ourselves in it.

The repeating seven and eleven day cycle is the jumping off point of my exploration of niddah obligations. Now that we've detached niddah cycles from bleeding, they become potentially accessible for trans women.² In what ways can this cycle also be active for us? Rambam himself is unfortunately unclear on this point. So then we have to refine our question in order to explore by what mechanisms this cycle might act. Does it exist only because of the possibility of menstruation, operating as a shorthand for menstruation itself? Where can we find the cases in which a trans woman might be considered niddah according to the plain reading of the text? I've collected some more sources that can hopefully shed some light on this.

Niddah 10b

תנו רבנן חזקה בנות ישראל עד שלא הגיעו לפרקן הרי הן בחזקת טהרה ואין הנשים בודקות אותן משהגיעו לפרקן הרי הן בחזקת טומאה ונשים בודקות אותן

It was taught in a baraita: There is a legal status regarding the daughters of Ysrael that until they reach their maturity they have a presumption of purity and women do not examine them. Once they have arrived at their maturity, behold they have a presumption of impurity and women examine them.

The Mishnah's reading on the beginnings of niddah here can inform us about its underpinnings. Whenever women reach womanhood, they enter into a category of presumptive tumah with regards to objects or people to which that ritual impurity might be transmitted. They enter into this category because of the very fact of their womanhood, as

² Note, this detachment of niddah from bleeding can be accomplished in completely different ways than the ones I use here. For instance, see Jericho Vincent's teshuva "Genderqueer Torah on Niddah" for a beautiful and quite distinct solution to this problem utilizing the halakha of the zav and community precedent.

understood and enforced by the Rabbis. This xazaka certainly applies to trans women as well for the same reasons we established above regarding halakhic womanhood.

One might argue that this xazaka only exists because of the possibility of menstruation often emerging at this time in someone's life. However, the Rabbis chose to make the basis of the legal presumption according to their standards of puberty. For them, a girl's puberty is marked by reaching the age of twelve and having two pubic hairs. The reason the age is lower than boys' maturation at the age of thirteen is because they felt that women naturally mature faster than men. This xazaka of tumah is rooted primarily in rabbinic social models and only *secondarily* coincides with a hazy margin around the possibility of menstruation. While we might guess at its basis in the potential for menstruation, the fact stands that according to the most direct sense of this text, trans women would acquire this xazaka of tumah on the arrival of their own maturity. In other words this presumptive status might have some biological parameters but it is also deeply based on a rabbinic construction of womanhood that is not primarily located in bleeding.

To look at another revealing exception in the halakha, we turn to Niddah 65b and the relevant Shulkhan Arukh:

Niddah 65b

רב ושמואל דאמרי תרוייהו הלכה בועל בעילת מצוה ופורש

Rav and Shmuel, both of them say that the halakha is this: he has the intercourse of mitzvah and therefore they separate

Shulkhan Arukh, Yoreh Deah 193:1

הכונס את הבתולה בועל בעילת מצוה וגומר ביאתו ופורש...ואפילו בדקה ולא מצאה דם טמאה שמא ראתה טיפת דם כחרדל וחיפהו שכבת זרע

One who marries a betulah, has the intercourse of a mitzvah, finishes and separates...And it is the case even if she examines herself and doesn't find blood, she is tamei. Perhaps she looked but a drop of blood as small as a mustard seed was concealed by the emission of seed.

Our gemara from Niddah 65b is speaking about Rav and Shmuel's opinion regarding niddah practices and the assumptions one can make about blood on the wedding night. They are commenting on a mishnah which is addressing this issue for brides who are minors or young women. The mishnah assumes that we have no concern about blood of niddah for minors, but Rav and Shmuel expand this concern about niddah on the wedding night to

include cases where actual menstruation is impossible. Rav and Shmuel (if we read them like the Rosh)³ are taking us from a paradigm of the mishnah, where wedding night niddah is rooted in bleeding, to one where niddah status transcends the limitations of menstruation entirely.

This is an enormously significant opinion for trans women since we are similar in that for us menstruation is also a physical impossibility. This expansion of concern about niddah comes because of the unique nature of wedding night sex, commonly called *beilat mitzvah*. It is the social and spiritual context of this sex that produces the niddah status and not any reasonable assumptions about biological processes.

The Shulkhan Arukh doubles down on this proposition by codifying an innovation the Rashba makes in his commentary holding that the bride is niddah even in the seemingly definitive absence of blood, even at a time when there was no reasonable possibility of menstrual blood to begin with⁴. Shulkhan Arukh's explanation invokes the possibility of blood by assumption but the fact remains that it is the imaginations of halakhic decision makers and specific social moment that the intercourse occurs that is responsible for the niddah status rather than any tangible evidence of what the Torah would call an emission of blood.

It is precisely these kinds of edge cases that expose most clearly the essence of niddah: that it is a kind of spiritual state that occurs for women depending partially on their bodily experiences but is also enormously dependent on their social, spiritual and cultural experiences. Maimonides illustrates this succinctly in his opinion regarding the various kinds of blood and their inherent statuses.

Rambam Issurei Biah, 6:1

דָּם הַנְּדָה וְדָם הַזָּבָה וְדָם הַקֵּשִׁי וְדָם יוֹלְדֵת וְדָם טְהוֹר שֶׁל יוֹלְדֵת כְּלוּ דָם אֶחָד הוּא וּמִן הַמְקוֹר הוּא בָּא. וּמַעֲיָן אֶחָד הוּא. וּבְזִמְנֵים בְּלִבָּד הוּא שְׁשִׁיתָנָה דִּינֹו וְתִהְיֶה רוֹאָה דָּם זֶה טְהוֹרָה. זֶה נְדָה. זֶה זָבָה:

Blood of niddah, blood of zivah, blood of labor, blood of birth and blood after birth, these are all one blood and all come from one source, and are of the same nature. It is only the times which change their status and results in them being seen as blood of t'hora, or blood of niddah, or blood of zavah.

³ Rosh on Niddah 10:1

⁴ Teshuvot Ha'Rashba 7:161

דכולי עלמא אשה טהורה שתולה במכתה ואף על פי שהבועל את הבתולה ואפ"י קטנה חששו להחמיר בדמיה דאסיקנא התם בכולהו בועל בעילת מצוה ופורש ואף על פי שאין לך מכה גדולה מזו התם משום דאיכא למיחש לשמואל דאמר יכולני לבעול כמה בתולות בלא דם אבל כאן דאיכא מכה ממש תלינן. ועוד דבבתולה יש להחמיר לפי שאינה אלא שעה אחת ופעם אחת אבל כאן אם תחוש אף אתה אוסרה על בעלה

What factor can explain how the times affect the purity status of blood? At the simplest level it seems like the times are affected by their proximity or distance from each other. But as we saw in our previous text, when push comes to shove, the situations, relationships and roles of those involved occasionally trump time to or from the last bleeding, or even the absence of any blood at all. There is a force at work, not explicitly named in rabbinic literature, independent of biology, that affects the coming and going of niddah status: this unnamed force is the collective construction of Jewish gender. I would suggest here that a valid alternative understanding of zman in this Rambam in the light of what our texts have shown us so far would be “situations” or “contexts” rather than “times”. It is the situations that women find themselves in that determine their niddah status, and many of these situations are clearly applicable to trans women.

Because the Rabbis and the Rishonim didn't lay out a complete theory of their social and non-biological bases for niddah, we're left to figure out on our own a way to definitively prove that a trans woman is niddah at any given time. However, we are also left without confidence that she is not! Given this uncomfortable position, there are a few tactics we might take. For our first option, we can locate occasions when trans women are most likely in the status of safek niddah (uncertain niddah) and shape our practices based on that. I'm using safek niddah here in a more flexible and literal sense than the narrow, technical sense that it is used in halakhic discussions where the assumed subjects are cis women practicing niddah. Anytime there is a doubt for a woman as to whether she is niddah or zavah, she needs to count seven spotless days on account of that doubt. And she immerses on the night before the eighth day.

Rambam Issurei Biah, 6:23

כָּל אִשָּׁה שֶׁהִיא סָפֵק נִדָּה סָפֵק זָבָה צְרִיכָה לִישֵׁב שִׁבְעַת יָמִים נְקִיִּים מִסָּפֵק וְטוֹבֵלָת בְּלִיל שְׁמִינִי:

Anytime there is a doubt for a woman as to whether she is niddah or zavah, she needs to count seven spotless days on account of that doubt. And she immerses on the night before the eighth day.

Now we know how to respond to safek niddah, we need to establish when a trans woman is in that status. Let's start by assuming that, if we hold like the Rambam, trans women do participate in the seven and eleven day cycle that we discussed earlier. I think this is reasonable since we know that this cycle of yamei niddah operates at least partially independent of bleeding and we know from our other exceptional cases that it is certainly possible for trans women to actualize this potential niddah status in some situations. We might think that Maimonides intended this rule to apply only after a *veset* (cycle or habit)

has been established by the usual halakhic mechanism of repeating three times, since he does begin the halakha with “for all seven days that are established as her cycle”. However, he gives us a clear contradiction in Issurei Biah Chapter 11, Halakha 2:

וְטַרַח גְּדוּל יֵשׁ בְּמִנְיַן הַיָּמִים וּפְעָמִים רַבּוֹת יָבוֹאוּ לַיָּדֵי סֹפֵק. שְׂאֵפְלוּ רְאֵתָהּ הַבַּת דָּם בְּיוֹם הַלֵּדָה מֵאוֹתוֹ הַיּוֹם מִתְחִילִין לִמְנוֹת לָהּ יָמֵי נִדָּה וַיְמִי זִיבָה כְּמוֹ שֶׁבְּאַרְנֹנֹ. וְלִפְיֶכָךְ לֹא תִטְמָא הַבַּת בְּזִיבָה אֶלָּא בַת עֲשָׂרָה יָמִים שְׂאֵם רְאֵתָהּ בְּיוֹם שֶׁנּוֹלְדָה הִרִי זוֹ נִדָּה שֶׁבַע יָמִים וְשִׁלְשֵׁת יָמִים סְמוּךְ לְנִדָּתָהּ הִרִי עֲשָׂרָה יָמִים. הִנֵּה לְמִדַּת שְׂמִתְחִלַּת רְאִיָּה מִתְחִלַּת לִמְנוֹת יָמֵי נִדָּה וַיְמִי זִיבָה כָּל יָמֶיהָ וְאַפְלוּ רְאֵתָהּ וְהִיא קִטְנָה:

It is very difficult to count the days. Many times doubts will arise. For even if a woman saw bleeding on the day of her birth, she must begin to count the days of niddah and the days of zivah, as we explained. Therefore a girl cannot become impure with zivah until she is ten days old. For if she saw bleeding on the day that she was born, she would be a niddah for seven days. Then to be a zavah, she would have to see bleeding on the three days after the days of niddah. Therefore, ten days. We learned that from the initial sighting she begins counting the days of niddah and the days of zivah all the days of her life. Even if she sees bleeding when she is a minor.

We see then that the counting of this cycle begins whenever a girl or woman first “sees”, regardless of her age. Rambam later walks this back as impractical, but it still is clearly a logical extension of his understanding of niddah. Because of the assumptions being made about this child’s gender at birth, before we know if they’ll ever menstruate, before any particularly important social context, they are still presumed to be subject to the niddah cycle. Then, if they do in fact bleed at this time when any menstrual bleeding would be a definite impossibility, that blood still actualizes the niddah status. If this is true in the case of an infant whose gender is being assigned at birth, a gender assignment that we know to be fallible, how much more so would these things be true for a trans woman whose gender is certain? And so we know that trans women do experience the niddah cycle and can actualize niddah status. We then have to wonder, when does a trans woman first “see”?

We could start counting from the equivalent of puberty, whatever that may be.⁵ This is following the example of the xazaka set on maturity that we looked at earlier. While that status is regarding only ritual impurity relative to susceptible objects and people, I think that given that we’re navigating gaps the Rabbis left unattended, this transition in status makes an excellent marker for when a trans woman would first be definitively susceptible to the qualities of niddah. That means it is the first time that we can say a reasonable safek

⁵ I say equivalent because the milestone I’m referencing is the attainment of womanhood, which will by its nature be different for each individual.

exists regarding her niddah status and an excellent marker for the beginning of her niddah cycle.

For some trans women this milestone does coincide with puberty. For others it is later in life, maybe when she starts hormones, or the first time she uses she/her pronouns, or just when she finally admits to herself that she is, in fact, a trans woman. Because we are leaving behind the easy, flawed default measurements of gender assigned at birth, there is no marking of womanhood that can universally apply to every possible case. We all, in collaboration with our communities, will have to decide for ourselves when our “time has arrived” in the language of the Mishna. I would say this is the first time she can be said to be safek niddah.

Following this first sighting and its accompanying xazaka, she should observe seven clean days and immerse on the evening preceding the eighth day. If she wants to observe but hasn't kept track, she can use the Hebrew date of her “maturity” as a marker for the monthly cycle. The monthly cycle here persists because it is clear that the cycle of niddah repeats, according to our Rambam, but the underlying mechanism of that repetition is obscured. The Xavat Daat⁶ held that this cycle repeats according to the rhythm of a woman's own cycle rather than immediately repeating rotations of 7 and 11 days. Given that and the opinion of Shulkhan Arukh⁷ that for women without an established cycle, this repetition would be 30 days, I think the monthly cycle is the most elegant solution to this issue. So, a trans woman would begin her niddah cycle when she reaches womanhood or on the Hebrew calendar date of that day in whatever month she is beginning in and then repeat her observance of seven clean days with immersion on that same date each Hebrew month.

Another tactic could be for trans women to create a ritual to mark our first time bleeding as women. Something like a hatafat dam niddah, to intentionally inaugurate the cycle by choice. This would fulfill the criteria listed by Rambam regarding initiating cycle counting

⁶ חוות דעת ביאורים סימן קפג, “The Rabbis have an established practice that during the seven days of nidda the bleeding finishes and then doesn't return until 18 days.” And the Rambam writes explicitly about the issue of days of Niddah, (in Pereq 8, Mishneh Torah, Forbidden Intercourse, Halakha 9) “a woman may establish a fixed “veset” in her “days of nidda” when she has not menstruated.” And see in his explanations that the Rambam considers that this is [from] a ceased flow, as it says in the [discussion] (ibid. 11:1) that [a woman] fixes her veset during her “days of nidda.” And the RABaD writes [this] explicitly in Sefer Ba'alei Ha'nefesh (ibid., halakha 7) and the Ramban in Xiddushim L'Nidda (ט, נ ד"ה לומר) that even during “days of ziva,” veset is established from a ceased flow. And it is necessary to say, like the Rambam, that only on those days that are not according to the calculation, veset is fixed; as if you do not say so, you do not find that a veset is fixed at thirty days and not during the days of the month whether it appears or whether skips, because this second appearance is necessary in the case of ziva.”

⁷ שולחן ערוך, יורה דעה קפט

when a girl or woman sees blood for the first time. We know from our examples that there are cases in which blood that is certainly not from menstruation can trigger niddah status. This ritual serves as a way to make certain the doubt we have regarding this status. While there are details to be worked out about what blood could reasonably fulfill this requirement, whether it would need to be below the waist and so on, I think this option is a strong one for marking the time to begin counting a niddah cycle. There is a lot to be explored about the practicalities and halakha of a ritual like this that goes beyond the scope of this teshuvah and which I hope one day someone will elucidate for us. Again, following this ritual, she would count monthly according to the Rambam's cycle, seven bloodless days and immerse.

Finally, we could take the approach of Lexi Kohanski in her shita, *Be Whole: A Halakhic Approach to Gender and Transition*, who contends that in fact transition is a fulfillment of a mitzvah 'aseh for trans people. If you hold by this approach then niddah could be another element of transition, albeit one for asserting a uniquely Jewish experience of womanhood. In this case, the decisions regarding the mikveh and cycle timing would be much more flexible although still obligatory. Gendered mitzvot can be powerful affirmations of identity and I believe that given the flexibility of niddah already proven here, it is perfectly acceptable as a technique of Jewish transition. However, the author of that shita may have views of her own on the matter, and this is just my own extrapolation of her work.

Undoubtedly, and thankfully, many others will come after me with other ideas about when to initiate the cycle, what mechanisms are best for setting its repetition interval, and all kinds of other issues I haven't thought of. However, I think I have been able to set down a simple and compelling case for niddah for trans women that, God willing, will serve as a foundation for our practice. My goal in writing this teshuvah was only to provide deep halakhic support to trans women who want to have a niddah practice. Much more work remains to be done on the applications of this framework and I can't wait to benefit from the wisdom of those who do that work.