

Mikveh During Aveilut

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This week's teshuva looks at the question of whether a woman who is sitting shiva and also in niddah may use the mikveh. Although marital sex is forbidden during shiva, using the mikveh will make it possible for her husband to hug her and give her comforting touch. Can the mourner's need for this form of comfort permit using a mikveh, a type of bathing normally prohibited during mourning?

Issues explored in the teshuva include:

- *Are rulings always to be understood as absolute or can they allow for exceptions?*
- *What weight do we give to emotional needs in determining psak?*
- *Can halakha distinguish between comforting touch and sexual touch?*
- *Does returning from the mikveh have to be associated with sex?*

QUESTION: I am currently sitting *shiva* for my mother *a"h*. I am also currently in *niddah* and my *mikveh* night would be tomorrow night. I know that during *shiva* I'm not allowed to have sex with my husband but I wanted to know if I could go to the *mikveh* so that we can hug and touch, at least in a non-sexual way. I could really use a hug from my husband and his reassuring touch during this time. Would we also be allowed to sleep in the same bed?

ANSWER: In my previous [teshuva](#), I addressed the question of whether the *harchakot* apply during *aveilut* when sex is forbidden. The conclusion of that analysis was that supportive, non-intimate touch was permissible and advised. Also, sharing a bed, provided the couple is wearing nightclothes, would be appropriate if necessary for emotional support.

In this *teshuva*, I will address the second part of the question: is a woman sitting *shiva* allowed to use the *mikveh* in general, and if not, would the need for emotional support provide a special basis for allowing that?

The Gemara does not directly address the case of a mourner immersing in a *mikveh*. A mourner may not bathe (Moed Katan 15b, Taanit 13a-b, Berakhot 16b), but it is not immediately obvious whether immersing in a *mikveh* falls under that prohibition. Regarding Tisha b'Av and Yom Kippur, days when it is forbidden to bathe, the Gemara quotes a *braitta* stating that a person who has an obligation to immerse in a *mikveh* may do so

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(Beitzah 18b, Yoma 88a, and see also Ta'anit 13a). Many *Rishonim* rule against this and state that a man or woman who is *tamei*, ritually impure, is forbidden to immerse on Yom Kippur or Tisha b'Av. Their argument is as follows: the permission to immerse on Yom Kippur is based on the principle *tvilah bi'zmanah mitzvah* — immersing immediately on the day when one becomes obligated is a *mitzvah*. However, we rule that *tvilah bi'zmanah* is not a *mitzvah*, or that even if it were a *mitzvah* at the time of the Gemara, it is no longer a *mitzvah* today (see Tosafot Beitzah 18b, s.v. *Kol*; Ramban, Torat Ha'adam, *Inyan Aveilut*, s.v., *bi'Richitza Keitzad*, and Tur and Beit Yosef YD 197 and 381, and OH 545 and 613).

Shulchan Arukh rules in accordance with these *Rishonim* and states the one may *not* go to the *mikveh* on Yom Kippur (OH 613:12) or on Tisha b'Av (OH 554:8). Shulchan Arukh rules similarly regarding *aveilut*, where he applies this ruling to the case of *niddah* (YD 381:5):

נדה שנזדמנה זמן טבילתה בימי אבלה, אינה טובלת

A woman in *niddah* whose time of immersion falls out during her *aveilut* may not immerse.

Based on this, one would conclude that it is always forbidden for a woman to go to the *mikveh* during *aveilut*. The matter is not so simple though. Rema extended this prohibition and ruled that a woman in *aveilut* who was ending her menstrual period was not allowed to wash herself, even for the purpose of beginning to count her seven white days (YD 382:5). Masait Binyamin (no. 5) and Taz (YD 381:2) reject this. They point out that bathing is only forbidden during *aveilut* when it is done for pleasure; a person is permitted to wash in order to remove dirt from his or her body (YD 381:1). There is no basis, they state, to forbid washing that is not done for pleasure, and is done only to prepare a woman for her *niddah* counting. If so, then using the *mikveh* should likewise not be forbidden since it is not done for pleasure, but they explain that use of a *mikveh* is forbidden for another reason: it serves no purpose. In Taz's words:

דהוא תימה דהא לאו רחיצה של תענוג היא ואמאי אסורה והא דאסור רחיצה של טבילה היינו שהיא ללא צורך כיון שאסורה בתשמיש

It is astounding [that Rema forbids a woman to wash herself prior to her seven white days]; it is not bathing for pleasure, so why is it forbidden? Immersion is only considered a forbidden form of bathing when it serves no purpose since she is forbidden to have sex [during her *aveilut*].

Not only is bathing for pleasure forbidden, but so is bathing that serves no purpose. During *aveilut*, and on Tisha b'Av and Yom Kippur, sex is prohibited, and using the *mikveh* on those days is an act of purposeless bathing, and thus forbidden. This framing is widely accepted by *poskim*.

If the reason that a woman may not immerse during her *aveilut* is because it is a form of bathing that serves no function, then the following questions present themselves:

- Is using a *mikveh* always forbidden, or would it be permitted if it serves a legitimate purpose?
- Would allowing husband and wife to touch during *shiva* be considered a legitimate purpose?
- Is there a concern that going to the *mikveh* may be seen by the wife or the husband as a prelude to sex and be too risky to allow during *shiva* for that reason?

We will examine a number of *teshuvot* regarding similar cases to answer these questions.

Is the rule that women may not use the *mikveh* during *aveilut* absolute and without exception? Maharik (R. Yosef Colon, 1420-1480, Italy) indicates that it is. He states that he never knew of a case where a woman immersed in a *mikveh* during her *aveilut* — ומעולם לא ראיתי לטבול בימי אבלות (Shoresh #35:3, quoted in Beit Yosef OH 545 and 613). This speaks strongly to the sense that, at least in Maharik's experience, no exceptions were made. In contrast, Binyamin Ze'ev (R. Binyamin b. Matityahu, 1475-1545, Greece-Turkey) (Teshuva #148) rules against those — like the Shulkhan Arukh — who forbid a woman to immerse during *shiva*. He states that going to the *mikveh* at this time serves a purpose as it will allow husband and wife to resume marital relations as soon as *aveilut* terminates¹. For Binyamin Ze'ev, a woman may always use the *mikveh* during *shiva*.

Shulkhan Arukh, as we have seen, arrives at the opposite conclusion than Binyamin Ze'ev and states that a woman may not immerse during this time. The question remains whether Shulkhan Arukh forbids *mikveh* use in all circumstances, or whether he would permit it cases when it serves a legitimate purpose.

This question is taken up by Pri Megadim (R. Yosef Teomim, 1727-1792, Galicia) and by R. Chayim Luria (1864-1941, Lodz). Pri Megadim asks whether a woman in *niddah* may go to the *mikveh* the night before her final day of *shiva* to allow her to have sex with her husband after *shiva* ends the next morning (Shut Megidot, 93). He initially argues that such an immersion should be permitted, but he then states: “Nevertheless it would seem that we do not make distinctions (לא פליגי)” and points to the unqualified ruling of the Shulkhan Arukh that *tevilah* during *aveilut* is forbidden.

Pri Megadim then addresses another case: what if this woman who is sitting *shiva* and in *niddah* needs to attend to her sick husband? We rule that a woman in *niddah* may attend to her husband when he is ill even if it involves non-sexual touch (see YD 195:15). The necessity to care for her husband while he is ill is an exception to the usual *harchakot* that apply during *niddah*. Pri Megadim asks whether in this case we can allow a woman sitting *shiva* to go to the *mikveh* so that she may avoid being in *niddah* while attending to her ill husband. Here Pri Megadim states that “יראה להתיר” “it seems that one should permit it,” but he ends his discussion by commenting, “This requires greater investigation.” It is not clear why Pri Megadim considers the case involving the sick husband as more justified than the previous case. It may be because he sees this as a greater need, or it may be because this *tevilah* serves a purpose during *aveilut*, in contrast to the first case about immersing during *aveilut* in order to allow the couple to have sex after *aveilut*. Regardless, he is inclined to allow this last case, albeit with some hesitation. For Pri Megadim it seems that the restriction against immersing is not absolute and can allow for exceptions in certain cases of serious need.

R. Chayim Luria also addresses the case of the husband who is ill (Meishiv Halakha #125). In his *teshuva*, he does not consider the possibility that the ruling of Shulkhan Arukh should be taken as a categorical prohibition, and states that the only time when immersion is forbidden is because it serves no purpose. He concludes that immersion to attend to a sick husband serves a valid purpose as it alleviates the need to make an exception to

¹ His primary emphasis is that because it serves the purpose of enabling husband and wife to resume marital relations sooner rather than later, *mikveh* use for a woman who is in *niddah* is always considered a *mitzvah*, and hence permitted based on the principle of *tevilah bi'zmanah mitzvah*. He also indicates that because this bathing is not being done for pleasure, it is not the type of bathing prohibited to a mourner- דדוקא רחיצה דתענוג ושל הנאה הוא דאסור הא רחיצה דמצוה שרי.

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the restrictions of *harchakot*, and is thus permitted. He notes that he consulted great rabbis and they concurred with his opinion.

In the case of a husband who is ill, a woman may immerse during *shiva* according to R. Chayim Luria, and this is also how Pri Megadim is inclined to rule. In such a case, the immersion is not done for pleasure and is done for a legitimate purpose; it is thus not a forbidden form of bathing during *shiva*.²

Where does this leave us? May our case be considered an equally legitimate purpose and also permissible during *aveilut*?

Some would reject this suggestion and assert that any form of touch that is not purely casual is forbidden or, at least, inappropriate during *aveilut*. This is not our position. As we established in our earlier *teshuva*, many *Rishonim* state that even sexual touch — חיבוק ונישוק — is permitted during *aveilut*, and although Rema rules that חיבוק ונישוק is inappropriate ("יש להחמיר"), a distinction needs to be made between sexual touch on one side, and comforting, supportive touch on the other. The former is inappropriate during *aveilut*, the latter is permitted.

If supportive and comforting touch is indeed appropriate during *aveilut*, does it create sufficient warrant to permit the woman to go to the *mikveh*?

Many would argue that it does not and that this presents a lesser need than attending to a sick husband. As we have seen, in the case of a sick husband, immersing allows us to avoid making an exception to the restrictions of *harchakot*. Avoiding such exceptions — it can be argued — is a truly pressing need, whereas husband and wife's need for emotional support through touch is less so.

The opposite argument could be made as well: the case of a sick husband does not actually require exceptions to the rules of *harchakot* to be made. The wife could simply choose not to assist her husband in ways that require her to touch him. Going to the *mikveh* for this woman is about enabling her to assist her husband in all ways, including washing him, helping him get up, lie down and the like, and to do so in the best possible *halakhic* fashion. It would seem to me that if attending to those physical needs provides sufficient justification for immersing during *aveilut*, the same would be true regarding attending to one's serious emotional needs. It is important to remember that the argument is not that certain needs override or allow an exception to the restriction against immersing, rather that when they are present the immersing is not a forbidden form of bathing, since it is neither for pleasure nor without purpose.

Following Pri Megadim and R. Chayim Luria, if the woman is in emotional distress and is feeling a great need for physical contact with her husband to provide her necessary emotional support, she is permitted to use the *mikveh* during her *aveilut*.

²It should be noted that one of the rabbis whom R. Luria consulted concluded that immersion was permissible only for the following reason: it is better to allow a one-time exception to the prohibition of bathing when in *shiva* than to allow ongoing exceptions to the restrictions of *harchakot*. According to this line of reasoning, the permissive ruling in the case of the husband who is ill would not be applicable to other cases. As we have seen, this was not the approach of R. Luria himself, nor that of Pri Megadim. For them the question is: is the bathing being done with a legitimate or sufficiently justifiable purpose? If so, it is not a form of bathing that is prohibited during *aveilut*.

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I do not think that this ruling should be extended beyond cases of emotional distress. First, remember that Pri Megadim expressed hesitation in his ruling to permit *tevillah* under special circumstances. Second, only cases of emotional distress are sufficiently weighty to be equated to cases of attending to the physical needs of a sick person.

Most significantly, is the simple fact that if every mourner who needed emotional support were permitted to use the *mikveh*, we could not explain why Shulkhan Arukh rules in such a blanket way that a woman may not use the *mikveh* at this time. Binyamin Ze'ev argued that there was always a need to go to the *mikveh* during *shiva* and thus it was never forbidden, but this is not the position of Shulkhan Arukh. It is clear that for Shulkhan Arukh the standard case of a mourner does not provide sufficient justification for using a *mikveh*. However, in cases where the mourner is in emotional distress and feeling a great need for the comfort and support that her husband's touch can provide, it would be permissible.

One final issue needs to be addressed: the concern that going to the *mikveh* might lead to the couple having sex. The permissive rulings in the case of a sick husband are not relevant to this issue, because it is not realistic that the couple would be having sex while the husband is sick. Moreover, in our case, where the woman is going to the *mikveh* specifically in order to allow the couple to touch and share a bed, there might be a reasonable risk that such touch, following the wife's return from the *mikveh*, might lead to them having sex.

This concern was first raised by Binyamin Ze'ev, who permits a wife to use the *mikveh* during *aveilut*, not only under circumstances where sex is possible but also where she is doing so specifically to enable her and her husband to have sex as early as possible when the *shiva* terminates. Binyamin Ze'ev spells out the possible risk:

והכא נמי נימא הכא דהיכא דשרינן לה לטבול והיא מוכנת לו דהא טהורה היא ניוחש שמא יצרו יתגבר עליו ויבא עליה
בימי אבילותה

Here too, must we be concerned that when we permit her to immerse and she is [now] available to him, as she is now ritually pure, that desire will overtake him and he will have sex with her during her period of *aveilut*?

Binyamin Ze'ev rejects this concern:

דהכא לא חיישינן משום דאבילות חמיר להון והורגל עמה כ"כ זמן וראויה היא לו אחר ימי אבילותה כל זמן שירצה
ופשיטא דלא יעבור

We are not concerned about this in this case. Since *aveilut* is a weighty matter for them, and they have been living together (literally, "he is accustomed to her") already for some time, and she will be permitted to him after her *aveilut* whenever he (*sic.*) wants, it is obvious that he (*sic.*) will not transgress.

In a similar case of immersing during *aveilut* to allow the couple to resume marital relations as early as possible, Pri Megadim expressed no concern that this would lead to the couple having sex; he just ignored the problem. By ignoring the problem Pri Megadim is implicitly stating that he does not acknowledge that such a risk exists. Consider: when the woman is not in *niddah*, the couple is permitted to touch and possibly share a bed during *aveilut* (see my earlier [teshuva](#)), and yet we are not concerned that this will lead to sex. Why should going to the *mikveh* change any of this? Although returning from the *mikveh* is often associated with the couple having sex

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that night, it need not be. Many forms of touch and physical intimacy become permitted when the wife is no longer in *niddah*, and *mikveh* use can be seen through a wider lens than just that of permitting sexual intercourse.

This point emerges clearly from the rulings of a number of *poskim* regarding cases other than *aveilut* where sex is forbidden. These *poskim* rule that although sex is forbidden in the cases under discussion, the wife should immerse so that the couple may engage in sexual touch, which would be permitted in those circumstances.

Even haShoham (#21, quoted in Pitchei Teshuva YD 183:22) allows a woman to use the *mikveh* on a woman's *onat ha'veset*, the time she is expecting her period. The *halakha* is that on the night that a woman is expecting her period, she and her husband may not have intercourse, although they may engage in sexual touch. He rules that although intercourse is forbidden that night, she should use the *mikveh* so that she and her husband can engage in sexual touch, which is also part of the *mitzvah* of marital sex. Maharm MiLublin #53, quoted in Shakh YD 197:3, rules similarly in an analogous case.

In those cases the woman is going to the *mikveh* specifically to enable the couple to engage in sexual touch, and yet these *poskim* raise no concerns that this will lead to the couple violating the restrictions against sexual intercourse.

IN CONCLUSION: In the case of a woman who is sitting *shiva* and in *niddah*, she may use the *mikveh* if she is experiencing emotional distress and feels a great need for her husband's touch to provide her with emotional support. The immersion is neither done for pleasure nor is it done without purpose, and as such is not a form of bathing prohibited to a mourner. There is no need to be concerned that the use of the *mikveh* will lead the couple to violate restriction against sex during *aveilut*. They can be trusted to engage in permissible touch and to abide the relevant restrictions fully.