

## Public Displays of Affection

Rabbi Dov Linzer

The Norman and Tova Bulow Rosh HaYeshiva Chair, Yeshivat Chovevei Torah Rabbinical School

**QUESTION:** I am a *kallah* teacher and was asked if I have any *halakhic* or rabbinic sources about public displays of affection—from simply holding hands to hugging and kissing in public. The woman also considered that the guidelines might be different in front of intimate family rather than in a large public space, such as at a wedding, etc. The husband is leaning towards a more stringent approach, but she wants "to do the right thing, not just the stricter thing." She wants real answers rooted in sources that she can rely on.

**ANSWER:** There are two issues here: one is the *halakhic* and Torah values and the other is the pastoral—helping this woman and her husband arrive at a decision that works for them as a couple. I will first address the *halakhic* and values issue, and return to the pastoral one at the end.

Is it forbidden for husband and wife to be visibly affectionate in public? The Gemara does not address this issue directly, however, Rema (Shulkhan Arukh, Even Ha'Ezer 21:5) rules as follows:

יש אומרים דאין לנהוג אפילו עם אשתו בדברים של חיבה, כגון לעיין ברישיה אם יש לו כינים, בפני אחרים

There are those who say that one should not act in public even with his own wife in ways of affection, such as to inspect her hair to see if it has lice.

Rema seems to be issuing a blanket restriction on public acts of affection, and would include such acts as even inspecting someone's hair for lice. Presumably this is because it requires standing very close to a person, touching his or her hair, and looking closely at his or her head, for a protracted period of time. When not done by a doctor or nurse, this is an act that would usually only be done by someone very close to the person—a parent or a spouse—and that would define it as an intimate act. The logical conclusion would be that any intimate or affectionate act, even of a non-romantic and non-sexual nature, would be forbidden in public between husband and wife.

This is not necessarily the case. Rema's ruling follows the Nimukei Yosef's comments on an *aggadata* in Baba Batra (58a). The Gemara states:

ר' בנאה הוה קא מציין מערתא, כי מטא למערתא דאברהם, אשכחיה לאליעזר עבד אברהם דקאי קמי בבא. א"ל: מאי קא עביד אברהם? א"ל: גאני בכנפה דשרה וקא מעיינא ליה ברישיה. א"ל, זיל אימא ליה: בנאה קאי אבבא. א"ל: ליעול, מידע ידיע דיצר בהאי עלמא ליכא. עייל, עיין ונפק

Rav Bana'ah used to mark out caves [where there were dead bodies]. When he came to the cave of Abraham, he found Eliezer the servant of Avraham standing at the entrance. He said to him: What is Avraham doing? He replied: He is sleeping in the arms of Sarah, and she is looking fondly at his head. He said: Go and tell him that Bana'ah is standing at the entrance. Said Avraham to him: Let him enter; it is well known that there is no passion in this world. So he went in, surveyed the cave, and came out again.

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It seems from this story that it would have been inappropriate, under normal circumstances, for Rav Bana'ah to enter into a room where a husband was lying down in his wife's arms. Commenting on this Nimmukei Yosef states:

שמעינן מהגדה זו דרך ארץ שאינו ראוי להתנהג עם אשתו בכיוצא בדברים הללו בפני אחרים

We see from this story that it is not appropriate for a person to act with his wife in such ways in the presence of others.

We might have concluded that the problem would be for a stranger to intrude on the intimacy between husband and wife—that is, the problem would have been for Rav Bana'ah to enter unannounced—but Nimmukei Yosef concludes that the issue is how a husband and wife should or should not act in the presence of others. Intimacy is a close, private sharing between two individuals, and just as it would be violated by the arrival of an unannounced stranger, it would also be violated were the couple to freely display it in the presence of a stranger. The affectionate or even sexual feeling could still be present, but the intimate nature of the act would be lost.<sup>1</sup>

When intimate acts are done in public, it violates not only the intimate nature of the act, but also the non-intimate, non-erotic nature of the public space. I believe this is a value that we can all identify with, especially in a society in which so much that has been or should be private is now on public display.

However, we must focus on determining how weighty this issue is and its scope. Regarding the weight of this restriction, we note that the Gemara never stated that such a practice was forbidden, and Nimmukei Yosef himself merely states that to act in such a way is not *derekh erez*, appropriate or in keeping with norms of common mores. Along these lines, Rema states that “one should not”—he does not say that “one may not” or that “one is forbidden,” and he seems to be referring only to what is proper behavior (see similarly, *Benei Banim* 1:37:1). In addition, this is all based on the single comment of one *Rishon*. Hence Rema only states that “there are those who say,” and does not present this as a clearly mandated rule.

That being said, we should strive to act in an ideal manner, not just according to the minimum *halakhic* requirements. The core question then is that of scope: what is an act of intimacy that should not take place in public?

Based on the Gemara, the intimate act between Avraham and Sarah seems to be that of Avraham lying in Sarah's lap; the act of inspecting for lice that Rema refers to should itself not be a problem. This is an act that might be somewhat intimate, but it certainly isn't sexual in nature. Drisha (EH 21, no. 2) makes this point and states that Rema's ruling is based on Teshuvat haRashba (1:1188) who assumes that the intimate act between Avraham and Sarah was not the lying in the lap but the checking for lice. It is for this reason, says Drisha, that Rema rules that even a non-overtly sexual act cannot be done in public.

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<sup>1</sup> Somewhat related to this is the discussion in Gemara Ketuvot (72a) regarding *das yehudis* and behaviors that would be inappropriate for married women in that society to engage in because they might lead to the unwanted gaze or attention of other men, and this could be seen as an invasion of the intimacy held between husband and wife.

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However, Drisha does not point out that Rashba's ruling is not relevant for this case. Rashba never writes that acts of affection between husband and wife cannot be done in public. Rashba was making a different point, namely, that acts of intimacy that are forbidden between husband and wife when she is *niddah*, what we refer to as the *harchakot*, include many acts which we would never consider intimate or problematic in other contexts. As an example of this, Rashba notes that passing objects may not be done between husband and wife when the wife is in *niddah* although it may be done between a man and a woman who are not married. Similarly, states Rashba, checking for lice in another person's hair is not a problem under other contexts; it is only an issue when the woman is in *niddah*. This first point to be made is that Rashba never forbids public acts of affection. More to the point, Rashba specifically states that lice-checking is in the same category as passing objects—acts that are only a problem between husband and wife when she is in *niddah* and not in other contexts. Given that husband and wife can pass objects to one another in public when the wife is not in *niddah* (see Igrot Moshe YD 2:77), and given that in general Rashba puts lice-checking in the same category as passing objects, it would stand to reason that lice-checking and other acts that are not of a sexual nature are also permitted in public between husband and wife when she is not in *niddah*.<sup>2</sup>

Nevertheless, Taz (EH 21, no. 1) defends Rema's position and states that there are two problems with public acts of affection. One, is that some acts, particularly sexual ones, are inherently private and should not be done in public because of a concern of *tzniut*. The prime example of this is the act of sexual intercourse, but extends to lying in a spouse's lap, which he describes as *מעין תשמיש*, similar to or connected to sexual intercourse.

The second problem is that one should not act in a way that provokes sexual thoughts in others—a concern of *hirhurim*. This would include a larger range of acts, even those that are not related to sexual intercourse and are not overtly sexual in nature. Checking another person's hair for lice would normally not fall in this category either. However, when done by husband and wife it will cause people to think of more intimate acts between the couple and lead to improper sexual thoughts. Taz's approach is cited by Beit Shmuel (EH 21, no. 3) and adopted by a number of *poskim*.

As a matter of *psak*, I am inclined against following Taz's approach to forbid even non-private non-intimate acts out of fear of other's sexual thoughts. In addition to the weak textual foundation for this position as discussed above, it also puts the burden of responsibility on the wrong party. Although we are all responsible to create a respectful and non-eroticized public space (see Shabbat 62b), the responsibility to avoid seeing things that might provoke sexual thoughts falls primarily on the one doing the looking, not on the one being looked at.<sup>3</sup>

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<sup>2</sup> Rashba does read the story in Baba Batra to be saying that the problem with Rav Bana'ah entering was not that Avraham was lying in Sarah's lap but that she was checking his head for lice. Presumably, Drisha understands that Rema took from this *teshuva* of Rashba the principle that checking for lice is an intimate act, something that another person - such as Rav Bana'ah - shouldn't see. The problem with this logic is (1) Rashba never states that there is any problem with husband and wife showing public displays of affection, presumably because (2) one could read the Gemara that the problem is that Rav Bana'ah shouldn't interrupt even a semi-intimate moment between husband and wife. Once it is acknowledged that this act falls into the category of non-sexual acts, which are not prohibited when the woman is not in *niddah*, it is a leap for Rema to be stating that these types of acts cannot be done in public.

<sup>3</sup> I have written about this at length elsewhere, but suffice it to say that all the contemporary discourse around *tzniut* as the primary responsibility of the woman is a departure from the Gemara whose primary concern is not how a woman is dressed but whether a man is looking at her (or at anything) sexually (see Berakhot 24a and Avoda Zara 20a-b). Given that the Gemara is concerned with men's - and not women's - sexual thoughts, the primary responsibility is on the men not to look sexually at women, and not on women to cover up all parts of their body. Later *poskim* extend the responsibility to women on the basis of *lifnei iver*, but to make this primarily the woman's obligation is to reverse the priorities in the Gemara, and to define the man as an *iver* in this regard is to see him as a slave to his own urges and to alleviate from him any responsibility to control these urges and desires.

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Thus, if the act is not inherently sexual, the concern that holding hands or even a kiss on the lips would lead another person to have improper sexual thoughts should not be the concern of the couple. If a person is having these improper thoughts, he can always look away.

It is not easy to define the line between sexual acts and acts of affection regarding this concern of *tzniut* and the public space. Certainly anything in the category colloquially referred to as “making out” would be of a sexual nature and something not to be done in public. Holding hands and a quick kiss on the lips are certainly not a problem in my mind. As to everything else, it is a matter that depends on context, circumstances, and the norms of one’s community and of society. A person should use his or her best judgment in the matter.

I believe that this ruling is correct even according to the Taz’s position that another person’s sexual thoughts is the couple’s responsibility. Taz applies this to checking for lice, but this would not hold true for us. What will reasonably provoke another’s sexual thoughts changes based on the time and the society. Given that today we are bombarded with provocative images on a constant basis—from ads to magazine covers to television, the movies and the internet—it is safe to say that acts such as hand-holding or non-sexual kissing will not reasonably cause someone else to have improper sexual thoughts.

In general, the entire category of *hirhurim* is highly contextual. For example, according to the Gemara (Avoda Zara 20b) while a man cannot look at animals mating because it will cause him to have sexual thoughts, a man who works in animal husbandry—and who is inured to these scenes—is allowed to directly manipulate the animal’s genitals in the process of having them copulate. (For more on habituation and *hirhurim*, even in matters relating to touch between the sexes, see Berakhot (20a), Ketuvot (17a), Ritvah Kiddushin (82a), s.v. *hakol li’shem Shamayim*, Yam Shel Shlomo Kiddushin 4:25), and Bnei Banim 1:37). Most public acts of affection, such as hand-holding and quick kissing do not evoke sexual thoughts in others and would be permissible even according to Taz’s approach.

Two final matters must be addressed:

### *Public and semi-private spaces*

The nature of the space may make for higher or lower standards of what is appropriate. For Rav Henkin (Benei Banim 1:37:1), the key concern is the other’s sexual thoughts. Thus, for him, the more private the act, the more it is sexually suggestive. A parallel concern in line with our earlier discussion would be the violating of the intimacy of the couple, a concern which would be greater in a more private setting. Following this emphasis, Rav Henkin rules that lying in a spouse’s lap is only a problem in a private, bedroom space since it is only there where it is suggestive of sex; this would not be a problem in public.

One could argue the reverse. If the key concern is violating the nature of the public space, then a public space would be more of a problem than a semi-private one. In contrast, when one is at home there should be greater latitude. Following this, it should be more acceptable for a person to lie in his or her spouse’s lap on a couch in their living room in the presence of family members than to do so in a coffee store or a library. I am inclined to the latter position and would be more permissive in a semi-private space when not dealing with acts of a very intimate or sexually suggestive nature. In the end, each case would need to be assessed based on the circumstances.

### *Niddah status*

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Some have argued that if we allow public displays of affection when the woman is not in *niddah* then it will announce to the world when she is in *niddah*, and this will be a violation of *tzniut* and privacy. This is not a concern. This was not the issue for Rema and it has no basis in *halakha*. In fact, Rav Moshe Feinstein in a *teshuva* directly rejects this concern. Rav Moshe was asked whether a couple could be permitted to pass their baby to one another in public when the wife was in *niddah* on the basis of *kavod ha'briyot*, since not passing would announce to everyone that she is in *niddah*. He responds that there is no *kavod ha'briyot* or *tzniut* issue in this case. Since a woman is often in *niddah*, there is no need for this to be hidden from others (Igrot Moshe YD 2:77). A similar point is made by Rav Yehudah Herzl Henkin (Benei Banim 1:37:1) who notes that in the Gemara a woman would wear special clothes when she was in *niddah* so it was quite clear to all when she was in *niddah*. There is clearly no need to engage in *harchakot* in public at all times to prevent people from knowing when a woman is or is not in *niddah*.

### IN CONCLUSION:

- It should first be noted that all of this is a matter of *derekh erez* and not strict *halakha*.
- Acts that are particularly private and sexual in nature—acts that Taz refers to as similar to or connect to the act of sex—should not be done in public. The key concern is that when such acts are done in public, it violates both the intimate nature of the act and the non-sexual non-erotic nature of the public space.
- Other acts of affection, including a quick kiss on the lips and the like, may be done in a public space. It goes without saying that acts which regularly take place between friends and between parents and children—such as giving a kiss on the cheek or hand-holding—are certainly permitted.
- A person should use his or her best judgment regarding what type of acts fall into the first category and what type fall into the second. Similarly, a person should use his or her best judgment regarding how the nature of the space—fully public, or semi-private, as well as other relevant factors—may play a role in defining the nature of the act.
- We need not be concerned with another person's sexual response to acts which are not overtly sexual in nature, in particular given the more provocative stimuli that we are regularly exposed to.
- We need not be concerned that what we do or don't do in public might reflect on whether the woman is in *niddah* or not.

Finally, to return to the pastoral matter, from what you write, it seems that this woman is taking a responsible and balanced approach to *halakha*—not unnecessarily strict and not unwarrantedly lenient. This is a commendable path and particularly in matters such as this where unnecessary restrictions can negatively impact the dynamics and the quality of their relationship. If she feels that her husband is not showing affection when she expects it, it could lead to her feeling unloved or unwanted. Stringencies in ritual matters should not lead to leniencies in our religious obligations toward other people. We must be at least as strict in matters of *shalom bayit*, the well-being of the marriage, as we are in other areas of *halakha*.

It is not as clear where the husband stands in this matter. It may be that he is on the same page as his wife but has been taught a standard that is stricter than necessary. If so, reviewing these sources with him may suffice to

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get husband and wife in sync. But it is also possible that he feels, in general, that there is religious value in adopting more restrictive practices even when it comes at the expense of others, and it is further possible that there are other issues below the surface that have nothing to do with *halakha*. Something may be going on for him emotionally, or in the marriage, that makes him resistant to publicly demonstrating his affection for his wife. You should devote time to work with the couple and to help them uncover and discuss these issues so that true *shalom bayit* can be achieved.