



# Beit Hillel

Attentive Spiritual Leadership

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**Rabbi Shlomo Hecht**

We are pleased to bring you the latest "Beit Hillel" publication and update you with our current activities.

Beit Hillel continues with its ongoing unique and historical partnership between men and women in our Batei Hamidrash. We have always believed that women should be involved in all areas of Halacha as equals, judged only by their

capability to analyze Halachic, not their gender.

Within Beit Hillel, we do not always agree on all issues. Sometimes there are several opinions which result in conflicting conclusions. We make room for these approaches, which usually fall within the range of sensitive and enlightened Modern Orthodox ruling. An example of such a topic is brought in this issue in a detailed debate between Rabbanit Dr. Michal Tikochinsky and Rabbi Dr. Chaim Borganski on the subject of women converts performing the last stage of their conversion – immersion in the Mikve water in front of women instead of men.

Another subject that is part of an ongoing discussion in Beit Hillel, is the Halachic status of people with disabilities in different public, Halachic occasions. In this publication, we discuss the ability of children with mental disorders to participate in a Bar Mitzvah ceremony in shul. We shall continue to discuss the Halachic status of people with disabilities in the congregation in the coming year, in an effort to find solutions to some of the challenges with which the families of such people contend.

In the past year Beit Hillel has undergone several internal changes. I have had the privilege of being appointed the executive director of Beit Hillel, replacing Rabbi Ronen

## *The Beit Hillel Israeli Shabbat*

Over 50,000 participated in the Beit Hillel Israeli Shabbat!

Joint Shabbat meals shared between religious and secular took place in over 70,000 homes, in over 70 cities throughout the country.

Over 50 public Kabbalat Shabbat were conducted in the larger cities.

Approximately 1000 people joined together at the central Kabbalat Shabbat by a beach in Tel Aviv.

A panel of leading religious and secular figures was conducted at the International Synagogue in Tel Aviv.

Religious and secular Kibbutzim and Moshavim hosted each other throughout the land for Shabbat meals, festivities and discussions.

The President of Israel, Reuven Rivlin gave his blessing to the events: "I wish to extend my blessings to those who are opening their doors and their hearts, to those who host and those who agree to be hosted, all working towards the goal of making Shabbat belong to all".

## *Strategic Planning Meeting*

On Thursday, 7th of Av, July 23, 2015 the members of Bet Hillel met for a strategic planning meeting. The objective of the meeting was to discuss and formulate the visions and goals of the Bet Hillel movement, in light of its experiences and the lessons learnt in the first few years of the organization's existence. The executive committee initiated the meeting, hoping that the outcome would shape the path of the organization for the coming years.

Neuwirth, one of the founders of Beit Hillel, who managed for three demanding, yet satisfying years. I thank him on behalf of Beit Hillel members, friends and the board, and I hope to be able to continue to lead Beit Hillel to the place it strives to be: the center of Israeli Society and the Torah world.

Beit Hillel is a leader in realizing the potential of women in rabbinical teaching and Halachic ruling, and leads Modern Orthodox Halachic and Ideological thinking in Israel. We are approaching the New Year with ambitions of becoming the main hub for Women in Torah initiatives and for Modern Orthodox activities in Israel.

We believe that Beit Hillel is one of the most important Halacha and Ideology groups in Jewish society today. Our members are involved in real life activities and incorporate informed and sensible Halachic ruling into the frameworks of contemporary business, and agricultural and cultural spheres.

We invite you to assist us with these goals, and together we shall drive Jewish life in Israel to new territory, far beyond what has been previously dreamt.

## *Ethiopian Jewry Conference*

On the 24th of Tevet, January 15th, Bet Hillel held a meeting that dealt with the unique place of Ethiopian tradition in today's Judaism. During the meeting, the rabbis of Bet Hillel met Kessim, spiritual leaders of the Ethiopian community, in order to understand the difficulties emerging from the encounter of the Ethiopian halakhic tradition with Israel's religious establishment. The various Kessim and rabbis speaking at the meeting discussed the suspicious regard of rabbinic authorities to the Jewish status of Ethiopians, the importance of teaching the Ethiopian tradition and lore in Israeli schools and Yeshivot, and the important role of the Kessim in imparting Ethiopian tradition to the youth in order to retain their identity. Beit Hillel member, Rabbi Dr. Shalom Sharon, who initiated the meeting, and the author of a book on the topic, urged the religious community to find ways to use halakhic tools in order to bridge the differences between Ethiopian halakhic traditions and the mainstream practices. Rabbi Ronen Neuwirth, and Rabbi Meir Nehorai, concluded by emphasizing the importance of the conversation itself and the listening this meeting initiated, and urged further discussion to alleviate the challenges the Ethiopian community face.

## *Management Team Changes*

After a period of 3 years of service, the founding executive director of Beit Hillel, Rav Ronen Neuwirth, decided to step down from his position for a professional sabbatical.

Beit Hillel recognizes with deep gratitude and respect, the remarkable success and untiring work of Rav Ronen who will continue to be active and represent the organization in Israel and abroad.

Rav Shlomo Hecht was recently appointed as the new executive director of Beit Hillel.

Rav Shlomo Hecht, a community rabbi in Petach Tikvah, an Economist and a software engineer. He spent 3 years in San Diego, CA as a Rabbi there.

In the past few months, Beit Hillel started a strategic plan process for phase II of the organizational development.

Beit Hillel subjected itself to internal examination in light of lessons learnt in the first few years, and the changing nature of the organization as a result of its rapid growth and public exposure.

Consequently, the large management group was replaced by a more accountable, small management committee, most of whose members were appointed by vote, with a few remaining from the previous group to retain continuity and experience.

In the coming months, Rav Shlomo will be accompanying Beit Hillel through the process of redefining its strategic goals and leading through the process of successfully maintaining achievements while undergoing inner management restructure.

# The New Sabra: Dignified on the Outside; Tender Within

Rav Yitzhak Ajzner



At the annual Beit Hillel Shabbaton, held in late December 2014, we had the privilege of the company of two sets of parents from last summer's tragic kidnapping and subsequent murder of three youths, both families closely affiliated with Beit Hillel. Rabbanit Rachel Sprecher Fraenkel is one of the Rabbaniyot of Beit Hillel; and Ofir Shaer, the husband of Bat-Galim, is Beit Hillel's accountant. Bat-Galim

addressed us, and explained the necessary balance between dignity and feeling; between staunch discipline and dedication to a calling on one hand, and allowing oneself to suffer agonizing, traumatic emotion on the other.

The narrative in Breishit retells a remarkable seven times that Yosef, who clearly had many crises to endure, was reduced to tears; who knows how many more times he cried that are not reported? He was the viceroy of the empire of Egypt, one of the most powerful men in the world, yet he frequently surrenders to his emotions. Far from this being a contradiction, the Torah legitimizes the necessity to give expression to one's feelings, to break down, to cry, even, perhaps especially, for the greatest of leaders. Being humane is not a weakness; on the contrary, it is a pre-requisite of a wholesome individual.

Nevertheless, the story reflects a continuing tension between Yosef's irrepressible urge to weep and his determination to perform his historical task. He is clearly in turmoil as he presses ahead through his critical mission, but the public show of his inner feelings would betray his goals. Time after time, he turns aside, and lets nobody see his inner turbulence. Only once his goals are achieved, we are told that "Yosef could no longer control himself", and he allows himself to be overcome by the wellsprings of his heart, and he sobs for all to see. He displays the ultimate balance of allowing a place for his emotions, while remaining master of timing the appropriate moment.

During the unbearable 18 days of searching for the three sons, the mothers – Bat-Galim, Rachel and Iris Yifrach – keenly recognized that their unendurable circumstances were simultaneously a unique and singular opportunity to serve the Jewish people. In an unprecedented display of dignity and humility they tirelessly held a solid, optimistic and glowing disposition, made no demands, blamed no one, and constantly beckoned all sectors of the nation to pull together, remain united in prayer and fused in action. Secular, religious and Haredi gathered together in an unprecedented manner to pray and to search, to reach out and to lend support. The result of this bonding was a profound effect on the national psyche and are still vividly felt, many months later.

But don't be fooled, Bat-Galim told us. At night, when the lights were dimmed, when the cameras were turned away, there was no shining countenance, no steely glow of determination in their eyes: "And [Yosef] quitted to his room, and wept there".

Not only did they show restraint, they were also impelled to project strength. "In the first days, I held back the tears in public for Gilad; I thought he would see me on TV, and I had to ensure that he would remain strong," Bat-Galim recalls. But then she observed the healing effect the mothers' dignity had on the whole country, so she persisted to control her public face, to strengthen the entire nation. "But that doesn't mean it wasn't hurting inside. The pain was very real; and it was immense."

The new Sabra: dignified on the outside; tender within.

The gap between the resilient image broadcasted and the inner storm was illustrated by a story Bat-Galim told, with a twinkle in her eye, of how her daughter's teacher had recently called to report that although Bat-Galim's daughter was a fine student and excelled in her studies that the teacher was concerned. "I think," she pondered "that something might be bothering her."

A year later, the mothers still continue to inspire with messages of unity and optimism. "But we're not really strong," Bat-Galim confesses. "There is no such thing as strength when losing a child. It hurts everybody with the same severity, whether you are a leader or a simple mother."

Drawing strength and comfort from her tireless and intense public work since involuntarily receiving celebrity status, Bat-Galim reminds us of a most vital message: there are thousands of bereaved families suffering on a daily basis. "As I am now a familiar face, people reach out to support me; strangers still show up at my door with plates of cookies, exactly when I feel I am plummeting to despair, but we all need to embrace all those anonymous families who have experienced loss; they are in endless and eternal pain."

Proud of these Beit Hillel families, and inspired by their example, Beit Hillel, too, continues to strive to remain dedicated and focused on providing a caring and enlightened religious leadership to our people. In this publication we again address issues of major social and spiritual concern to a wide range of our society:

- **Rabbanit Dr. Michal Tikochinsky** explores a revolutionary approach to solve the sensitive issue of the presence of male dayanim during the immersion of female converts, a topic which emerged to the public discourse recently amidst revelations of abuse in mikva'ot. See her article "Men immerse men, and women immerse women," as well as an important dissenting view from **Rav Dr. Chaim Burgansky**.

- Our **Beit Midrash for Halacha** reaches out to the families of the cognitively challenged, with one article discussing community Bar Mitzvah celebrations for children with cognitive disabilities; and another article exploring marriage for those with Intellectual Development Disorder.

Our prayer is that this publication is not only instructive, but helpful in advancing the important issues it addresses, toward a gentler and noble society; one of dignity and tenderness.

**Rav Yitzhak Ajzner**, a member of Beit Hillel's Beit Midrash for Halacha and Beit Midrash for Hashkafa, heads the Beit Hillel Media Response Team. He spent 10 years as an educator in Israel in various positions, ranging from a school principal to a teacher at the Hesder Yeshiva in Ma'ale Adumim. He also served as a community rabbi.



Bat-Galim and Ofir Shaer

From Inside Beit Hillel

# Modesty, Dignity and Conversion: The Role of Beit Din in the Immersion of a Woman

Rabbanit Dr. Michal Tikochinsky

Head, Beit Midrash for Women's Leadership, Beit Morasha



This article originally appeared in Hebrew in the Beit Morasha journal, "Akdamut" (21st issue), and appears here, in abridged form, with permission.

## Introduction

At which point during the conversion process is the involvement of a beit din

required? Does it need to be present at each stage of conversion, or does it merely need to fill a role at the end of the conversion? There are other possible intermediate variations on the role of the beit din. Regarding the issue at hand, the important question is whether the presence of a beit din is required during the tevilah for conversion.

The conversion process is comprised of brit milah, accepting the yoke of mitzvot, and tevilah for the purpose of conversion. The decision to convert is on two levels: the first is the personal and emotional journey, the search for the Divine Presence and a change in lifestyle. The second is a national and public one, since conversion entails not just changing one's personal lifestyle, but changing one's religion and identity; it is the act of joining another nation. Rabbi Yehuda had good reason to exclaim: "a convert that converts privately is no convert" (Beraita, Yevamot 47a).

Rabbi Yochanan took this one step further, declaring that "a convert needs three [dayyanim]" (Yevamot 46b). These two sources make it clear that a beit din must be involved in the conversion process to give a convert the Jewish people's seal of approval. Yet the beraita and R. Yonatan's statement do not explicitly state at which point during the conversion process the involvement of a beit din is required. Does it need to be present at each stage of conversion, or does it merely need to fill a role at the end of the conversion? There are other possible intermediate variations on the role of the beit din. Regarding the issue at hand, the important question is whether the presence of a beit din is required during the tevilah for conversion.

Jewish tradition provides two contrasting responses to this question, in two separate cases. The first case (Yevamot 45b) concerns a non-Jew that had a [non-Jewish] woman immerse in order to have relations with her, i.e. to marry her. This tevilah was done to purify the woman, who was niddah, and it contained the motif of accepting responsibility for mitzvot immediately and without prior preparation. In his reaction to this case, R. Yosef said that he could make the woman and her daughter legitimate Jews. The Gemara explains that R. Yosef's claim was based on Rav Assi, who said that a woman who immersed because of menstruation has automatically performed the tevilah for conversion. There was no need for a beit din to be present at a ceremonial tevilah, he says – we suffice with knowing that the woman immersed for the sake of observing a mitzvah, which in

itself attests to her will to observe the mitzvot (see also a parallel case recorded in the Yerushalmi, Kiddushin, 3:12). According to this source, there is no obligation to immerse in the presence of a beit din, and the mere knowledge that a woman had immersed with the intent of accepting the yoke of the mitzvot is sufficient.

The second case is a beraita that reads as follows:

"Our rabbis taught us: ... and two (in the Gemara: "R. Yohanan said that three had taught") Torah scholars must stand by his side and acquaint him with some of the minor commandments and with some of the major ones. When he comes up after his tevilah, he is deemed to be an Jew in all respects. In the case of a female convert, women make her sit in the water up to her neck, while two learned men stand outside and give her instruction in some of the minor commandments and some of the major ones..." (Yevamot 47b).

This beraita describes a tevilah at which a beit din is present and observing the tevilah. Still, even in this case, it seems to us that the main role of the beit din in this scenario is to inform the convert of the mitzvot and ensure that this element of the tevilah – the values imparted during the process – is present. The beraita also clearly distinguishes between a man's tevilah for conversion and a woman's tevilah for conversion. When describing a woman's conversion, the Torah scholars stand outside (We shall discuss this concept later in the article).

## The necessity of Beit Din in the conversion process

First, we should discuss the prerequisite of a beit din standing at the side of a convert in light of the two opposing cases mentioned above. The Geonim believed that there is a contradiction between these two cases, so they ruled based on one of them. Consequently, sources from the Gaonic era tell us of a dispute between those who followed the opinion of Rav Asi – that a beit din is not needed, and those that followed Rav Yonatan – that it is.

The Rishonim, however, tried to reconcile the two sources, and their opinions varied on how to reconcile them. The Rif believed that a tevilah for taharah after menstruation can only be recognized as a replacement for tevilah for conversion after the fact (bedi'eved). Those wishing to convert must commit to doing so before a beit din. Therefore, if certain people in the community act as converts, we should not question this, and they are considered Jews. However, if one of them wishes to marry a Jew, that person will need to undergo a complete conversion process, including tevilah, before a beit din (Yevamot, Dapei HaRif 15a – 16a).

Subsequently, Rambam posited that Rav Yosef did not intend to replace the tevilah for conversion with one for taharah, sufficing with the knowledge that it had occurred. In his view, the tevilah was just another proof that this woman observes a Jewish lifestyle, and as a result, we would treat that woman as a Jew, until she wished to marry (Rambam, Halachot Lsurei Bi'ah 3:9).

Ramban and Ba'alei Hatos'fot disagreed with the opinion held by Rambam and the Rif, saying that although it would be preferable for tevilah for conversion to be done before a beit din (only for the sake of the mitzvah), after the fact, if it is known that a tevilah had indeed taken place, there is no need for another special tevilah for conversion. The convert

is considered to a Jew for all practical purposes, including marriage (Tos'fot, Kiddushin 62b, s.v. "ger").

The Tur ruled, based on the opinions of Ba'alei Hatos'fot and his father, the Rosh, and this is also the ruling in the Shulchan Aruch (Tur and Shulchan Aruch, Yoreh De'ah, Siman 268). This means that although l'chatchila, a convert is immersed in the presence of a beit din, if he or she had already immersed without the presence of a beit din, we can suffice with knowing in retrospect that a tevilah had been done for all practical purposes. (Here, this b'di'avad ruling is unlike that of Rambam and the Rif, who do not permit marriage with someone who converted under such circumstances). According to the Tur and the Shulchan Aruch, the community will know about the tevilah if one or two people were present there (this isn't eye-witness testimony, but rather a matter of trust, and for this, women are relied upon. See also the opinions of Mordechai and the Bach).

This ruling determines that the essence of the beit din's presence is quite different from what the Rif and Rambam perceive it to be, since even if l'chatchila, the presence of a beit din is necessary, the Rif believes that without the presence of a beit din, it is as if no tevilah had taken place at all. This means that part of the act of tevilah is the actual presence of dayyanim. However, according to the Ba'alei Hatos'fot's opinion, which was accepted as halacha, the beit din is present for the sole purpose of verifying that an tevilah had occurred, or verifying its intent – that tevilah was done in order to accept the mitzvot. **According to this explanation, the beit din need not see the tevilah – it merely needs to know about it.**

This is also true for males who convert. However, in the case of female converts, the text states that the dayyanim "stand outside", meaning that they do not see her immerse. In fact, the Or Zaru'a explicitly states: "women make her sit in the water up to her neck, while two learned men **stand outside**. **This means that they [the men] do not see her, and rely on the sight of women to verify the tevilah**" (Or Zaru'a, Chelek 1, Hilchot Yibum V'kiddushin, page 598. Special thanks to Rabbi Eitan Tucker for this reference).

This teaches us how to perform this procedure. In this tevilah, women are the ones meant to replace the beit din. Another important halachic source is in Tractate Gerim: "A man immerses other men, and a woman immerses other women" (Gerim 1:4). According to this source, it is clear that the beit din can suffice with merely **knowing** that tevilah had taken place through an emissary of the court, and that emissary can be a woman. This is also what appears in R. Chaim Kanievsky's commentary on the halachah in Hilchot Gerim. He believed and argued that this is the meaning of the concept "they stand outside," which appears in the beraita. He says the following:

A woman immerses other women. This means that the men should not see her while she is immersing. This is also the meaning of the concept in Yevamot 47b – "two Torah scholars are standing outside". This means that only women see her immerse. But Rambam wrote... and seemingly, Rambam follows his own reasoning... we say 'didn't she immerse for Nidda?' and 'didn't he immerse for an emission?'... which is evidence that they had properly converted.

However, according to the Ba'alei Hatos'fot and other Rishonim, the acceptance of the mitzvot requires three [dayyanim], although the actual tevilah does not require three [dayyanim], so we can certainly say that in the case of a woman, at whom men cannot gaze, it is permissible that she immerse herself before other women... and thus, [the dayyanim] stand outside and inform her of several major mitzvot and several minor mitzvot, and hear her when she says that she accepts them.

(Commentary on Tractate Gerim)

R. Kanievsky's approach is corroborated by a statement by the Rosh: "since everyone knows that she immersed, it is as if they had actually stood there" [Rosh's commentary to Yevamot, 4:31]. In other words, there are certain cases in which the beit din is present on a spiritual level, but they aren't required to physically stand there to fulfill the requirement that they be present. Naturally, the presence of female emissaries of the beit din is another way of fulfilling the requirement of the physical presence of the beit din, according to all opinions (see Mishpatei Uzi'el, Chelek 1, Yoreh De'ah, Siman 13).

R. Waldenberg (the author of Tzitz Eliezer) relates that at the second conference of dayyanim on the subject of the presence of a beit din during the tevilah of female converts, R. Uziel proposed the solution of women immersing other women as emissaries of the court. He reported a personal conversation he had with R. Uziel:

"Once, when I spoke with him [R. Uziel] on this subject, he agreed with me that this is the best approach to use, in Israel as well, and therefore, one standard, uniform practice should be put in place."

(Minutes of the conference, Tishrei 5714. I have the complete minutes of the conference, and I thank Dr. Netanel Fisher for having found it in the National Archives).

There were certain rabbis who were opposed to this practice, including R. Ovadiah Yosef, but firstly, there is a clear tendency not to support those that rule that we should make the conversion process more difficult. Second, the issue of tzni'ut, modesty, is increasingly gaining ground. Women increasingly prefer to be examined by a female doctor, not a male one, and they would like the option of tevilah alone, and not in the presence of a balanit in the room that invades their privacy. Third, there is much more general and halachic awareness of the value of human dignity.

These trends demonstrate that our society should revert to the practice proposed in this article, namely, that women should immerse women, while a panel of dayyanim ensures the convert accepts the yoke of the mitzvot immediately before immersing. This is completely lechatchila, and not bedi'avad.

**I should mention here that my discomfort at the thought of a woman immersing in front of dayyanim is not based on a survey of female converts. It goes without saying that I don't ask these converts about this; their dignity and modesty have already been violated more than necessary. My reaction is based on a basic question I ask myself: could I see myself in a mikvah, covered only in a robe (even if it is closed), with three men standing over me?**

**The answer is an overwhelming no, based on my understanding, as a simple Jewish woman, of the concept of modesty. The fact that most converts remain silent only demonstrates, to some degree, how fearful and apprehensive they are, and how much they truly desire to receive the Jewish people's unquestioned seal of approval. Our role, as rabbanim and rabbaniyot, is to act according to the halacha. If there is a way for women to be immersed by other women, I can't see any reason to allow men to assume this role.**

**Rabbanit Dr. Michal Tikochinsky**, is the head of the Beit Midrash for Women's Leadership at Beit Morasha, teaching Talmud and Halacha, and holds a doctorate in Talmud from Bar Ilan University. A popular public speaker, she has published many articles on Jewish scholarship, Biblical commentary, and Halacha.

*There are certain cases in which the beit din is present on a spiritual level, but they aren't required to physically stand there*

# Lest We Pour the Convert Out with the Bathwater: The Risks of Attempting to Improve an Imperfect Status Quo

Rav Dr. Chaim Borganski

Rav, Mitzpe Hoshaya; Lecturer, Talmud Department, Bar Ilan University



**SUMMARY:** Lately, a debate has resurfaced over the presence of a beit din during the ritual immersion of female converts. There were media reports on the case of dayyanim who mistakenly entered a mikveh while a female convert was undressed (it is well known that ritual immersion occurs

only when the convert is wearing a closed and completely opaque robe), as well as cases in which the rabbis who formed a beit din harassed a convert during immersion.

These are not the only cases that undermine the "old order" of ritual immersion for conversion. Many consider the apex of the process, when a woman immerses herself in full view of a group of men, as humiliating, inappropriate and immodest, even though none of the dayyanim actually see any part of the immersing convert's body, which is completely covered by an opaque robe. The dayyanim enter the immersion room only after the convert is immersed in the water up to her neck, and they leave the room before the convert leaves the mikveh.

Rabbanit Dr. Michal Tikochinsky published a detailed and lengthy article on this topic, and since my conclusion differs from hers, I'd like to summarize how I view this issue.

Sources in Mishnaic texts present varying opinions over whether the act of conversion is a formal legal act, which must be performed before a beit din, or an act that does not require the presence of a beit din. In the halachic domain, this debate was settled in favor of the first opinion, which was influenced, to a great extent, by a pronouncement made by Rabbi Yochanan: "The immersion of a convert requires the presence of three men; for the Torah uses the word 'mishpat.'" Consequently, a convert who had converted in private is not considered a convert. Another discussion going back to Mishnaic and Talmudic sources concerns the question of whether a beit din must also be present when the immersion occurs. Rabbi Yochanan contends that a beit din indeed must be present when a convert is immersing himself or herself, while other amoraim state that the immersion need not take place in front of three dayyanim, at least if we follow the simple interpretation of the text.

This debate continued among the rishonim. One group of poskim argued that the presence of three men (which constitute a beit din) is a prerequisite for a kosher immersion, while another group claim that while a beit din is required l'chatchila (before the fact), an immersion is considered acceptable b'diavad (after the fact), even if there was no beit din present. A small group of poskim contends that there is no need for a beit din during immersion, even l'chatchila.

Indeed, the Shulchan Aruch rules that a beit din is required l'chatchila, though if the immersion occurred without their presence, it is considered acceptable b'diavad:

Three people stand behind him and inform him of a few of the lighter and a few of the more serious mitzvot a second time and he stands in the water. If the convert is a woman, women sit her down in the water up to her neck and the dayyanim remain outside and inform her of a few of the lighter and more serious mitzvot while she sits in the water and afterwards she submerges in front of them and they turn their faces and leave in order that they do not see her while she is getting out of the water.

All of the elements of conversion – whether informing him of the mitzvot in order to accept them, or for milah / tevilah – need to be done before three who are kosher to judge, and during the day. However, this is limited to l'chatchila circumstances. If, b'diavad, his milah or tevilah was in front of only two dayanim, or relatives, or at night, even if he did not immerse for the sake of conversion, but a man who immersed because of a seminal emission or a woman who immersed on account of her menstruation, this is a convert and is permitted to a marry a Jew – except for kabbalat ohl mitzvot, which must take place in front of three dayanim and during the day. But according to the Rif (Rabbi Yitzchak Alfasi) and the Rambam (Maimonides), even if someone immersed or was circumcised, b'diavad, in front of two or at night, this blocks [the conversion] and he is forbidden to a marry a Jew. But if he married a Jewish woman and he had a child with her, we do not invalidate that child.

Since the immersion of a convert needs a beit din of three, they do not immerse him on either Shabbat or Yom Tov (holidays), and not at night. But if he immersed, he is a convert (Yoreh De'ah, chapter 268, paragraphs 2-4)

Several elements are left vague in the Shulchan Aruch, but the general picture seems clear: the Shulchan Aruch contends that converts, both men and women, should be immersed l'chatchila before a beit din, and this is why they do not immerse at night or on Shabbat, like any other matters that require a beit din. The immersion will be recognized b'diavad even if it didn't occur before three men. In other words, a female convert who immersed privately would be considered a kosher convert, b'diavad. The Shulchan Aruch also references the more stringent approach, which does not recognize immersion without a beit din even b'diavad, though the Shulchan Aruch does not rule according to this opinion.

In recent generations, we find several halachic references to the immersion of women. These generally relate to special cases, such as a question directed to the Rishon Letzion, Rabbi Ben Tzion Meir Hai Uzi'el on the immersion of women in Salonika, Greece. The mikveh used by these women was built into a women's bathhouse, and this made it impossible for dayyanim to enter the mikveh and view the immersion of a female convert without passing by women who were bathing. Another question dealt with by several poskim concerned the ritual immersion of female converts in London, where the three dayyanim would wait outside of the immersion room. In both cases, the answers presented by the respondents make it clear that l'chatchila, we must insist on the presence of a beit din in the immersion room, though we can accept an immersion b'diavad, or under pressing circumstances, even if a beit din was not present.

This is seemingly the approach taken by other responsa on the same issue; the vast majority of poskim side with the opinion of the Shulchan Aruch in its simplest interpretation: a *beit din* in the immersion room is required *l'chatchila* (this requirement is sometimes expressed very resolutely, while at other times, a more moderate tone is taken), and an immersion without a *beit din* is accepted *b'diavad*.

Still, on a policy level, if we were to systematically remove the *beit din* from the immersion room and find an alternative to their presence there, even if this method would be acceptable *b'diavad*, we would cause an upheaval in the general order of the halacha, since the heter *b'diavad*, or the heter for immersion *b'sha'at ha'dechak*, would eventually become the accepted norm for our conversions.

**This is a good place to make a few observations:**

First, any change in accepted immersion processes, which had received the blessing of the entire domain of *pesika* as the proper way, *l'chatchila*, to perform a conversion, must be accepted by a very large percentage of *poskim* and conversion authorities. If this process becomes merely "sectorial," we could expose our conversion process to collective defamation. Therefore, the question we must ask ourselves is whether we should expose female converts to the possibility that the validity of their conversions would be widely questioned (even if, as we mentioned before, there is no halachic justification for this, *b'diavad*), for the sole purpose of preventing a few moments of discomfort, as disturbing or humiliating as it may be? In my view, we should take into account our accountability towards these converts, who wish to join the Jewish people using the tried and true method, without any shortcuts and without leaving any room to question their Jewishness. This is our most important task, even if this means causing discomfort.

Second, I don't feel that the problem, in this case, is chiefly about modesty. These converts are completely covered, only their heads can be seen above the water, and to be honest, they generally dress far less modestly, especially when they are bathing or swimming. The main problem is the position they are in: these women stand on a low surface, in an immersion pool, with three men hovering overhead and overseeing their entry into Judaism. Even if this pool were empty, and the women were to stand there when they were dry, they would find this situation somewhat difficult and disturbing.

I imagine that even male converts can feel some discomfort in such a situation, though with female converts, there is the added element of the sense of control felt by the men

overseeing the conversion. Anyone who looks at Hila Karabelnikov-Paz' painting from the movie *And Sarah Would Convert the Women* notices that the painting does not describe an immodest setting, but rather, a situation of control, in which a man assumes a patronizing position over a woman. I'm not saying that there isn't a problem here (even though some female converts find it much harder to face a *beit din* when doing so for the first time, when they are tested on their knowledge of Judaism, and by the way – there's no halachic problem with this test being administered by women!). I am saying that the problem is somewhere else, and that it isn't part of the more general "discourse on modesty."

Therefore, we are facing a certain tension between the need to alleviate the hardship faced by some female converts when immersing and the need to convert them properly, *l'chatchila*, so that no one could challenge this conversion in the future. Any local change in the halachic conversion process would be no less than "throwing out the convert with the bathwater." We are therefore seeking out solutions that make it possible for women to immerse with a minimal presence of men, and in a way that minimizes the discomfort.

Some suggestions proposed changing the structure of the immersion room: if the room were very large, the *dayyanim* that enter for a moment, when the woman immerses, could stand at a distance of several meters from the immersion pool, and the general atmosphere would be less unsettling. Others proposed an immersion pool that is not below the level of the floor, but rather on a raised surface, so that the *dayyanim*, standing at a distance from the convert, would not hover over the woman.

**There are certainly other solutions that can be quickly implemented, which include involving women in the entire conversion process, besides the actual moment of immersion that three male *dayyanim* would observe. The general rule to follow would be that any solution that does not lead the public and the halachic authorities to question the complete validity of the process can and should be implemented, but a halachic revolution should only be instituted when it is accepted by nearly everyone.**

Rav Dr. Haim Borgansky is the Rabbi of Moshav Mitzpe Hoshaya in the Galilee, a lecturer for Talmud at Bar Ilan University. He is a member of the Beit Hillel Beit Midrash for Halacha.

*The need to convert them properly, l'chatchila, so that no one could challenge this conversion in the future.*



# Women as Poskot Halacha

Beit Midrash for Halacha

Rav Dr. Amit Kula, Rosh Beit Midrash

Contributing members: Rav Avraham Walfish, Rabbanit Ora Krauss, Rav David Brofsky, Rav Chaim Borgansky, Rav Yehoshua Grunstein, Rav Yitzhak Aizner, Rabbanit Yardenia Cope-Yosef, Rav Meir Nehorai, Rabbanit Noa Lau, Rabbanit Anat Novoselsky, Rav Ronen Neuwirth

May women teach Jewish law, according to Halachah? May they make rulings on the laws of Shabbat and prayer? May they issue a heter? An issur? Would it be possible for women to teach other women halachot pertaining to women – like mar'ot and other issues tied to taharat hamishpacha?

Transmitting information to those who wish to know the word of God, which is halachah, is a core part of p'sak halachah. Accordingly, anyone who had studied halachah and knows it well may pass it on. This includes learned women who are Torah scholars and have been trained to pasken. Even when p'sak halachah requires making a judgment call and a ruling in uncertain equivocal circumstances, poskim throughout the generations determined that women are qualified to pasken (see Ba'alei HaTosafot, Sefer Hachinuch, and Birkei Yosef), as have chief rabbis of the State of Israel throughout history (like Rav Yitzhak Halevi Herzog and Rav Eliyahu Bakshi-Doron).

Nowadays, when the value of Torah learning is transmitted to women as well as men, this ruling carries special importance. Today, since we can now find women fervently studying Shas and poskim, while receiving masoret from Torah scholars, they may certainly pasken. This statement is particularly important when it comes to laws uniquely pertaining to women. By involving women well-versed in halachah, we can break down the barriers obstructing women who hesitate to ask questions, and consequently are often left in a state of doubt, causing them to either follow unneeded stringencies or actually transgress halachah (Si'ah Nahum). If women can pasken in laws pertaining to women's matters, more women will observe the halachah, and to a greater extent – even those communities that perhaps would abandon halachah if women were not available to instruct it would now be engaged.

## ELABORATION AND SOURCES

### 1. Good advice, and studying Torah

There is seemingly no reason for a woman who knows halachah not to pasken. What rationale is there that would justify the prevention of a positive outcome? The mitzvah of loving one's fellow man as much as oneself requires us to give good advice as well.<sup>1</sup> By sharing knowledge, and by sharing Torah knowledge in particular, we are performing a great act of kindness.<sup>2</sup>

One could claim that only those who were commanded to study Torah may pasken, as well, it should be noted that no sources say this explicitly. The Talmud (BT Kiddushin, 29b) states that women are exempt from studying Torah, and others aren't commanded to teach them,<sup>3</sup> therefore one may posit that women may not have an obligation to pasken. Or perhaps they may not even be allowed to pasken. The Shulchan Aruch summarizes the status of women with regard to Torah study:

A woman who studied Torah receives a reward, but not the same reward as a man [who studied], because she was not one who was commanded and performed [the commandments].<sup>4</sup>

However, when the matter at hand is practical laws which are part of everyday life the poskim do obligate women to study. After all, if women weren't to study, how would they perform those halachot? At any rate, a woman is obligated to study laws concerning women.<sup>5</sup> This obligation is considered a genuine mitzvah,<sup>6</sup> as the poskim<sup>7</sup> state in an elucidation on the obligation to bless the Torah.<sup>8</sup> Thus, when it comes to halachot concerning women, men and women share the same obligation to study Torah,<sup>9</sup> and consequently, there is no reason to prevent women from instructing others on halachah.

In recent generations, halachic sages have expanded the range of subjects that they felt women and girls should or must study to include areas beyond those tied to the fulfillment of their halachic obligation to observe mitzvot (see appendix). Therefore, women who have also studied other subjects in the Torah and are well versed in these fields can indeed pasken. However, not all kinds of Torah instruction are limited to transmitting information. There are types of p'sika that require making judgment calls and difficult decisions.<sup>10</sup> The next section will discuss an unequivocal heter voiced by both the Rishonim and Acharonim, which permits women to pasken any area of Torah.

### 2. Paskening<sup>11</sup>

The question of whether a woman may serve as a dayyan is similar, yet distinct from the issue of Torah instruction. Dayyanot are public servants, and their role carries authority,<sup>12</sup> so the poskim held varying opinions over whether a woman may serve as a dayyanit. The Rishonim discussed this question in the context of the prophetess Devorah:<sup>13</sup>

Now Devorah was a woman prophetess, the wife of Lapidot; **she judged Israel at that time.** And she sat under the palm tree of Devorah, between Ramah and Beth-el, in the mountain of Ephraim; **and the children of Israel came up to her for judgment.**<sup>14</sup>

Given this precedent, some Ba'alei HaTosafot believed that a woman is allowed to judge. According to other opinions, Devorah's position was the exception rather than the rule.<sup>15</sup> One of the commentaries of the Tosafot says:

[And Devorah] did not judge, she would only teach laws.<sup>16</sup>

We can therefore deduce that a woman may teach halachah (see Choshen Mishpat), just as Devorah had done, even if she can't serve as a dayyanit. This can also be deduced from Sefer Hachinuch, which discusses the prohibition of instructing Torah when one is inebriated:

Anyone, a Kohen, a Levite or an Israelite, who paskens when inebriated, has violated a prohibition, regardless of [whether this] person had become intoxicated from wine or from other types of spirits. This prohibition applies to men at all times and in all places, and it also applies to wise women who are fit to pasken. Any great sage whose p'sakim are relied upon by other people may not teach his pupils while inebriated, since his teaching is likened to p'sikah, as we mentioned earlier.<sup>17</sup>

HaChida, following these Rishonim, ruled as follows: "Even if a woman may not serve as a Dayyanit, a wise woman may, in any case, pasken."<sup>18</sup> This is how the chief rabbis of Israel ruled as well.<sup>19</sup> In an open letter on teaching women Torah, Rav Yitzhak Nissim wrote:

... and during the generation of the Rishonim, many girls studied Torah. Some were great Torah sages indeed, and some had even published chidushim and halachic rulings. Some of the literature written by the Rishonim and the Acharonim contains chidushim, including solutions to halachic questions, referring back to the women who proposed those chidushim and solutions.<sup>20</sup>

Rav Yitzhak Halevi Herzog also states that this halachah is accepted:

... since it is accepted that a woman is fit to pasken ... this includes all halachic matters, simple or difficult, D'Oraita or D'Rabbanan. And if she is fit to pasken, we cannot determine that a woman's opinion is feeble ... in any case, if [a woman] is fit to pasken, this teaches us that she can think as clearly as a male.<sup>21</sup>

In the summary of his response on communal authority for women and converts, Rav Bakshi-Doron states:

From all we have heard, it seems to me that a woman and a convert may serve as leaders, and they may even serve as the leaders of their generation ... a woman and a convert may be poskei halachah and they may teach Torah and psakim. [These are] roles whose authority is determined through the abilities of the candidates, and this authority is derived from their abilities...<sup>22</sup>

### 3. Paskening Halachot Pertaining to Women

If women may pasken on all matters, we also need to have women pasken for other women. The possibility of a woman giving halachic advice opens new, and even exclusive channels for p'sika. This is how T. Ganzel describes the advantages of turning to a female halachic advisor:

The field of halachah that lends itself most naturally to paskening by women is the laws of taharat hamishpacha. First, the halachot in this field are primarily addressed to women. It is the women who understand these matters first hand. They are more experienced...and moreover, this area of halachah calls for a certain measure of modesty, and this is why women prefer to consult with other women on such matters... sometimes, it is the openness of a woman-to-woman encounter that enables this dialog... a woman advisor is also more available to other women, or to couples who find it impossible to contact a rabbi to discuss these issues, yet are prepared – sometimes enthusiastically so – to get halachic advice from a woman.<sup>23</sup>

Chances are that a woman who contacts a female halachic advisor can expect to meet someone who understands precisely what she is asking, and that this encounter will be more open. This option would consequently increase the number of women seeking advice, since many women don't feel comfortable asking rabbis about women's issues, and some take on extra stringencies, or leniencies, without a halachic base. This is why female halachic advisors are so crucial. Rav N. Rabinovich also considers availability for clarifying a halachic decision an argument in favor of training female halachic advisors.<sup>24</sup>

In our day, many women do not contact rabbis regarding mar'ot fearing they would transgress the prohibition of lo titganeh (not appearing disgraced to their husbands), and this leads to many pitfalls.

Rav Rabinovich summarizes as follows:

I have great esteem for rabbis who have created educational settings for female halachic advisors and instructed those women in common halachot, while teaching them to identify subjects requiring further consultation with a Torah scholar.<sup>25</sup> These rabbis have delegated these women with the authority to pasken for other women, thus solving many problems. Since they have been given this authority, these advisors no longer need to fear that they would violate the honor of other Torah sages by paskening, just as any instructor of halachah that has become accepted by the community is allowed to pasken after securing permission from his rabbis.

### 4. The Halachic Horizons of Women Issuing P'sakim

In addition to the need of clarifying the halachah in principle, we must also assess the standards women must achieve to be qualified to pasken. In other words, what determines if a scholarly man or woman may pasken? The Talmud, in its treatment of this matter, presents us with dilemma:

...R. Abbahu declared that R. Huna said in the name of Rav, What is the meaning of that which is written: "For she has cast down many wounded; all her slain are a mighty host?" "For she has cast down many wounded" — this refers to a disciple who has not attained the qualification

to pasken, yet decides them nevertheless; "all her slain are a mighty host" — this refers to a disciple who has attained the qualification to pasken, but does not do so.

Thus one who is unqualified to pasken, yet does so, anyway, disrupts the natural order of the world, while those who are qualified but miss the opportunity to pasken are also contributing to the world's destruction.

By bringing women into the fold of Torah and halachah scholars, as well as involving them in p'sika, we open a window to new challenges and horizons. The number and quality of Halachic experts will increase. We must also take care to preserve the standard of quality needed for p'sika, and to ensure unity in the halachic world, so that the Torah does not become confused. For this to happen, we'll need to expand the Torah education provided to female halachic instructors, nurture communication and consultation channels with others in the world of Torah instruction, and introduce some type of certification testing.

Rav Yosef Cohen, the son of Rav Yehoshua Falk (the author of Sefer Hadrisha Al Hatur), offers us words of advice to guide us on our path:

My mother, Bila, of blessed memory ... she should be honored, and this book should mention some of the things she did which we should keep in mind as we educate future generations, so that all Jewish women can learn from her actions and act accordingly ... [my mother] held the key to the women's section of the synagogue. She was the first to arrive, and she would remain at the synagogue several hours after everyone else had left ... she would concern herself with studying the daily section of the weekly Torah portion, with Rashi's commentary, as well as other commentaries ... always, when they would grace the Shabbat table with divrei Torah, my mother would muster her courage, like any man, and participate in the volley of divrei Torah herself. She would sometimes invent a tender pshat as sweet as honey, and she was especially knowledgeable on matters of women and hilchot niddah, almost as much as any halachic instructor... and so, she would constantly consecrate her heart and soul to learn the inner workings of the Torah.

## APPENDIX

### The Status of Teaching Women Torah in the Modern Day

We should take note of the breadth and intensity of the change that has occurred in the past several generations in how halachah relates to teaching women Torah. While early poskim express reservations over teaching women Torah, many more recent poskei hador maintain that today, as part of the social and cultural change transpiring around the world, and in order to cope with its reservations, we are encouraged, and even required, to teach girls and women Torah:

... and there is no basis today for the fear of violating a prohibition of teaching one's daughter Torah.<sup>26</sup> Many great Torah sages have agreed that educational institutions for women should teach girls other Torah subjects (beyond those pertaining to halachot that they must observe) ... and this is a good thing... they should continue doing so...<sup>27</sup>

In modern times, when [women] study general subjects so fervently, as is necessary, why should we limit their knowledge of Torah?<sup>28</sup>

We should, and we must provide our daughters with intensive education that includes sources from the Oral Torah. This isn't just an optional step.<sup>29</sup>

A tradition recounted from a discussion with Rav Soloveichik emphasizes the important of teaching women Torah, and the change that has occurred in our generation:

*Mentally handicapped boys challenge us to take initiatives to create a reality in which celebrating their Bar Mitzvah will be considered normal and commonplace for both their families and their communities*

Even if teaching women the Oral Torah was once forbidden, today, when women are on par with men both in the academic world and in matters of determining policy, and when women won't agree to follow the strictures of the Torah if they don't understand these matters themselves, by learning the sources in the Gemara and the Pentateuch, we must permit them to study the Oral Torah... The rabbi [Rav Soloveichik] explained that complex problems arise in our technical world and if our daughters don't study the fundamentals of the Torah, from the Pentateuch and the Gemara, including the commentaries of the Rishonim, our genuine Judaism may, God forbid, cease to exist. It's now time for "women to come and hear", and then, we'll witness the realization of the end of the verse in parashat

Vayakhel: "and they will observe to do all of the words of this Torah".<sup>30</sup>

Rav Y. H. Henkin was committed to this position:

... and women who are well-versed in secular subjects yet ignorant of Judaism reduce the words of the Torah to rubbish, feeling that the words of our Torah are trivial, God forbid, when compared to other types of knowledge. Therefore, the time has come to expand their knowledge of Torah, to the extent that halachah permits it... and those zealots who would prohibit them from studying the Oral Torah are contributing to ignorance, in my view, and their zeal is devotion to nonsense, since it causes Jewish women to run astray, rachamanah litzlan.<sup>31</sup>

<sup>1</sup> Shulchan Aruch, Hoshen Mishpat, chapter 97, paragraph 1, and quotations from the Vilna Gaon, chapter 4 – Ahavat Heseid (Ha'etz Haim), part 3, paragraph 7.

<sup>2</sup> Babylonian Talmud, Sanhedrin 91b: "One who prevents a student from learning halachah is likened to one who robbed the student of the inheritance of his forefathers." See also Ahavat Heseid, part 3, chapter 8: "Torah matters, i.e. the Torah that we teach others is an act of kindness... and as we read in BT Sukkah 49: What is the meaning of 'she opened her mouth with wisdom, and had the teachings of kindness on her tongue?' .... Torah that is taught is the Torah of kindness."

<sup>3</sup> BT Kiddushin 29b also states the following: "one whom others are commanded to teach is commanded to teach oneself; and the one whom others are not commanded to teach, is not commanded to teach oneself. How then do we know that others are not commanded to teach her? — Because it is written: 'And you shall teach them your sons' — but not your daughters." See also Maimonides' commentary in footnote 12.

<sup>4</sup> Shulchan Aruch, Yoreh De'ah, 246:6.

<sup>5</sup> Ibid, 241.

<sup>6</sup> There were, however, those who doubted the definitiveness of this commandment. See the Birchei Yosef on Orach Chaim, 47:7.

<sup>7</sup> Beit Yosef, in the name of the Samak, 47:14. Pri Megadim, as related in Be'ur Halachah, chapter 47, writes that women, therefore, may fulfill men's obligation to say this brachah.

<sup>8</sup> Shulchan Aruch, Orach Chaim, 47:14: "Women make the blessing over the Torah".

<sup>9</sup> However, see Beit Levi Responsa, part 1, which distinguishes between a woman's obligation to study Torah, which is a prerequisite, and is less binding than the obligation to perform the mitzvot, and men's obligation to study Torah, which is, in itself, the final goal of the mitzvah. See also Tzitz Eliezer Responsa, 9:3.

<sup>10</sup> See the example in BT Sanhedrin, chapter 5, and its implications for training candidates for rabbinical ordination. See also Dibrot Moshe, Shabbat, chapter 10, pp. 123-140 on the meaning and validity of p'sika.

<sup>11</sup> After writing this document, we discovered a comprehensive article entitled "Orthodox Women Rabbis? Tentative Thoughts that Distinguish Between the Timely and the Timeless" [Brody, Michael J. and Brody, Shlomo D]. The article deals with similar topics.

<sup>12</sup> The main dispute is between Maimonides, who prohibits women from serving as dayyanot, and several of the Ba'alei Hatosot, who allow this under certain conditions. See also the conclusion reached by the Shulchan Aruch in Choshen Mishpat, 7. Much has been written about this halachah. For example, see "Women and the Seat of Judgment" by Aliza Beck (2002), an analysis of the sources of this halachah and an assessment based on p'sika throughout history. See also a recent article published by Idit Bar Tov in Ma She'elatech Esther Vate'as (5774), entitled "May a woman serve as a dayyanit?" (pp. 37-65).

<sup>13</sup> See, for example, the sentence in Tosafot to BT Niddah 50a, s.v. "Anyone who is qualified to judge": "for there are women qualified to judge, as we find with regard to Devorah: '... she judged Israel at that time.' Meiri, in his comments to BT Kiddushin 35, states that this is the position of Ba'alei Hatosafot. This is also the opinion taken by the Ritva in his commentary to BT Kiddushin 35.

<sup>14</sup> Judges 4: 5,6.

<sup>15</sup> Since here, a "judge" signifies a "leader", not a "judge" (in the classic sense), according to the commentary of Rashba to BT Shevuot 30a, the Ran on

the Rif's commentary to BT Shevuot 13a. According to others (Tosafot, BT Yevamot 45b: "Whoever had not immersed..."), Devorah was a prophetess, and we cannot deduce from Devorah a precedent, because as a prophetess — she had heard the word of God." ; or perhaps that those who were judged, or the entire public, accepted her as a dayyanit (Rashba to BT Shevuot 30a and the Ran on the Rif's commentary to BT Gittin 49b). Ba'alei Hatosafot added that it was because she was a prophetess (BT Gittin 48b: "and not before common men..."; BT Bava Kama 15a: "Which shall place..."; BT Shevuot 29b: "The oath of testimony...". See also Aruch L'Ner to BT Niddah 50a: "And the Ran offered a solution...".

<sup>16</sup> BT Niddah 50a: "All who are qualified ..." see also parallels in BT Gittin and BT Shevuot; see also the Mordechai to BT Yevamot, chapter 36. In BT Yevamot, the text reads: "she teaches them, so they may judge..." Rosh to BT Shevuot, 3:2

takes a similar tone. This means that Devorah did not make the final ruling, though she knew what the judgment should be. Therefore, the dayyanim sat in front of her, she told them the judgment, and they would repeat her words. The ruling was determined by what these dayyanim repeated. This is similar to what the Talmud says about a Cohen whose decides the purity of blemishes (from tzara'at).

<sup>17</sup> Mitzvah 152.

<sup>18</sup> As he wrote in his book, Birkei Yosef (Part two) on Choshen Mishpat, 7:12. He was quoted in Pitchei Teshuva, Choshen Mishpat, 7:5. However, in my humble opinion, the excerpt in Sha'arei Teshuva (Orach Chaim 461:100:17 — or 461:10:5 in today's version) referenced by Pitchei Teshuva, which implies a dispute with Chida, also referenced by Rav Shlomo Riskin in the article mentioned in the next footnote (others referenced it as well), believing that a woman cannot be permitted to instruct halachah, can't be considered evidence of a dispute, in any way. In the case referenced there, the woman in question isn't a scholar. The author of Sha'arei Teshuvah rules out the interpretation that the posek had ostensibly absolved himself of responsibility by delegating the authority for instruction to members of his

family. Similarly, when Magen Avraham (in his commentary to Orach Chaim, 263:12) mentions the chiddush made by Bila, who was married to the man who stated "there is no wisdom in women", Rav Shem Tov Gagig, in his book Keter Shem Tov, part one (1998) p. 177, says: "this is the case for women in general, but it is not the case for learned women, and we see this from the case of the daughters of Tzelofhad." Therefore, no one had explicitly and methodically disputed what Birkei Yosef said.

<sup>19</sup> This is what we find in Yafeh Lalev, part 7 on Choshen Mishpat, chapter 2, in the book's second commentary on the midrash that related that Miriam had instructed the women: "... she would teach the halachot, both prohibitions and leniencies, because she was a learned woman, according to all opinions." The same is referenced in Halacha Pesukah (5746), 7:9, p. 95; see also Steinberg, Rav M., Hilchot Nashim (5741) 21:2, p. 118; this is also the direction Rav Riskin takes in his article, "Women as instructors of halachah", in Ayin Tova, Du Si'ah Vepulum Betarbut Yisrael (5759), pp. 698-704; likewise, Rav D. Sperber published an article on whether a woman can become a poseket on the "Kolech" website (published in 5769). Rav. A. Hamami also rules this way in the Minchat Avraham on Choshen Mishpat, chapter 29, p. 305: "we are constantly dealing with this thought. A learned woman whose G-d-fearing nature overshadows her wisdom, upon whom our rabbis will bear testimony, and give her the authority so that she is qualified to pasken — this woman is permitted, l'chatchila, to instruct halachah, whether she had learned it from a book, or inferred it from a precedent, and her words are no different than those of a man. And the prophetesses Miriam, Devorah, and Chuldah... and Bruriah, Eshet HaPrisha, Mirkada will all bear testimony to this... and may the Rock of Israel save us from our errors, and show us great things from His Torah, amen, may it be His will..."

<sup>20</sup> Published in Akdamot, volume 13 (5763), pp. 55-56, by Yael Levin, who added a historical and analytical introduction to this discussion.

<sup>21</sup> Techukeh Leyisrael Al Pi Hatorah, volume 1 (5749), p. 109. His answer relies on what was written in Pitchei Teshuva, which was referenced earlier, in footnote 18.

<sup>22</sup> Sefer Binyan Av, part one, response 65 (p. 287).

<sup>23</sup> Rabbanit T. Ganzel, HaPosek, HaRav V'haYoetzet Halachah (the posek, the rabbi, and the halachic advisor), Rabbanut Ha'etgar, (2011), pp. 619, 622, 633. This is also the opinion of Rabbanit M. Piotrkovsky, as expressed in her book, Mehalechet Kedarka (2014): "The importance of this initiative [training female halachic advisors on the laws of niddah] is unequalled, as it lets every woman ... discuss intimate halachic issues with women, and not men [...] and they become set on the path of the halachah." This claim is well substantiated by the practical description in pages 76—78 of the book. It seems that any posek dealing with these issues senses how difficult it is for some women to approach a rabbi directly to discuss them. To learn more about the reality of female halachic advisors, see Tova Ganzel and Deena Rachel Zimmerman, "Women as Halachic Professionals: The Role of Yo'atzot Halacha", Nashim 22, (2011) pp. 162-171.

<sup>24</sup> Si'ah Nahum, chapter 60.

<sup>25</sup> BT Sotah, 22b.

<sup>26</sup> For the letter that Rav Yisrael Meir Hacohen of Radin (the Chafetz Chaim) wrote on the institution of the "Beis Ya'akov" schools for girls in 5693, see Chafetz Chaim Upo'alo, part 3, p. 1113. His opinion corresponds to a comment he made in Likutei Halachot to BT Sotah, part 3, which distinguishes between the earlier generations, when teaching Torah to girls was forbidden, and later generations, when Torah study became a way of saving these girls from the danger of veering

off of the path of God. The Chafetz Chaim's statements formed the basis for Haredi schools and the various Torah subjects taught in them. See, for example, the response given by Rav Aharon Wolkin, one of the great poskim from Agudat Yisrael, who lived during the first half of the 20th century, in his book *Zekan Aharon* (ed., 2) on Yoreh De'ah, chapter 66. He was convinced that a donation earmarked for Torah study could be given to a Beis Ya'akov school for girls, since "the Beis Ya'akov is certainly no less holy than a Talmud Torah, since this is the very essence of Torah study." Rav Wolkin found that the value of these institutions is expressed in the Torah study within them, and in the Jewish spirit that envelops them and guards them against

the scourges of society and the spirit of apostasy. In a similar vein, Rav Zalman Sorotzkin, who headed Agudat Yisrael's panel of Torah sages, wrote his responsa in his book, *Moznayim Lemishpat*, chapter 42: "Not only are we allowed to teach Torah and reverence of God to girls, in our day and age – we are totally compelled to do so." We should mention here that not all of the rabbis of this sector of society agreed with his heter, or agreed that it was a mitzvah. See Shevet Halevi, part 6, chapter 103; *Divrei Yetziv Yoreh Da'at* 139, and the dispute and rebuke in *Tzitz Eli'ezer*, part 10, chapter 8.

<sup>27</sup> Rav M. M. Schneerson, the last Chabad Rebbe, *Shulchan Menachem*, 4:75. The traditional Chabad viewpoint encourages teaching Torah to women, and this includes the Oral Law and the Talmud. For more on this, see: Handelman, Susan, "Women and the study of Torah in the thought of the Lubavitcher Rebbe: Jewish Legal Writings by Women (1998) 143-178."

<sup>28</sup> Rav H.D. Halevi, *Aseh Lecha Rav*, part 2, chapter 52. Rav M. Malka, who was part of the Chief Rabbinate, references this book in his responsa on Yoreh Deah (*Mikveh Mayim*, part 3, paragraph 21): "In modern times, when women play

such a large role in our way of life, are found in great numbers at our universities, manage offices and run businesses, they also have a role to play in the leadership of the country and in politics ... there certainly ... is no prohibition on teaching women the Oral Law... Not only that, it is our duty to give them ample Torah study, to the best of our ability. Reality has shown that every woman who has studied Torah and halachah in a religious school is scrupulous about, and committed to, educating her daughters in Judaism, and she also guides her husband down the correct path, maintains taharat hamishpacha, and preserves a kosher kitchen. Should we then, fearing that women may misinterpret Torah, forego all of the positive effects of this study? Likewise, the Rishon Letzion, Rav M. Elyahu, writes, in the *Ma'amar Mordechai Responsa* on Yoreh De'ah, chapter 11: "the Acharonim already wrote that in our modern day, a woman may study Torah, both written and oral ... a teacher is allowed to teach them... and the reason for this is that in the modern era, women are not holed up in their homes, as they had been in the past, and it would be better for them to study holy matters than to read misinterpretations and forbidden texts."

<sup>29</sup> Rav A. Lichtenstein, *Ba'ayot Yesod B'Chinucha Shel Ha'isha, Ha'isha V'chinucha* (5740), p. 158. At the end of the text, Rav Lichtenstein states: "we should improve girls' Torah study, both qualitatively and quantitatively, while instructing them in all of the subjects of the Torah ... I have no qualms with teaching girls Gemara ... this should even be made an essential part of studies at school – as a veritable course. This is how I educate my daughter, and this is how my wife was educated. To me, this seems to be the best way for the girls of our generation."

<sup>30</sup> Rabbi M. Mazeson of Passaic, NJ, *Chinuch Habanot, Hadarom* (journal), pp. 66-67 (Elul 5758), pp. 65-66.

<sup>31</sup> *Bnei Achim*, part 3, the end of chapter 12 (p. 48).

## A Community Bar-Mitzvah Celebration for a Child with Cognitive Disabilities<sup>1</sup>

*Rav Zvi Koren, Rav Dov Berkowitz, Rabbanit Rachel Levmore, Rav Shmuel David, Rav Amit Kula, Rav Yitzhak Ajzner, Rav Ronen Neuwirth, Rav Aviad Sanders, Rabbanit Ora Krauss, Rav David Brofsky, Rabbanit Batya Krauss, Rabbanit Nechama Barash, Rav Daniel Wolf, Rabbanit Michal Tikochinsky, Rabbanit Karen Miller Jackson, Rav Moshe Speter, Rav Yoav Shternberg, Rav Shmuel Klitzner, Rav Meir Nehorai*

### 1. The Bar Mitzvah

"At age 13 he is obligated to keep the commandments."

Bar-Mitzvah age is the time when, according to tradition, a boy becomes a man and an adult, and becomes responsible for the rest of the people of Israel. Ancient traditions relate that this is the time that boys would be brought forth to receive a blessing from the elders, who would pray that the boy would grow to become a Torah-observant individual who keeps God's commandments.

Various communities designed this coming-of-age ceremony in a way that expressed this set of values. The climax of the ceremony is when the boy is called up to the Torah, an act that symbolizes entry into adulthood. From then on, he also participates in communal prayer and becomes responsible for the preserving the Torah's continuity and passing on its teachings on to a new generation.

Bar Mitzvah ceremonies are very exciting for families and communities, and this excitement encourages the boy to accept the yoke of Torah and the mitzvot. The community is blessed through its children, and expresses its values by welcoming this new member into its fold.

Can a mentally handicapped child go through this teaching process as well? Will he also be given an aliyah, to bless God and to declare "He who chose us among all nations and gave us His Torah?" Can his family feel that the education the boy received over 13 years bore fruit, as their child joins the community as an adult? 2 The document will use the halacha and the spirit of the halacha to try to respond to these questions.

### 2. What does the Lord your God ask of you?

Part of the Mitzvah of improving the world around us,

with which we are charged as Jews, is to right wrongs and welcome new friends to rest under the wings of the Shechinah. This issue was addressed in our article, "Torah and Halacha's approach to mentally handicapped individuals in light of ethical and scientific developments."<sup>3</sup> Mentally handicapped boys challenge us to take initiatives to create a reality in which celebrating their Bar Mitzvah will be considered normal and commonplace for both their families and their communities.

The first step is to adopt a fundamental approach that clearly states that these boys have the right to celebrate their Bar Mitzvahs in our communities, and that they'll celebrate as part of us. We should be as stringent as possible in keeping the commandment of "loving your fellow man as yourself" by including these boys as members of the community, like any other individual. In certain cases, when the boy's condition does not allow him to celebrate his Bar Mitzvah like the other boys, we need to follow the biblical principle of "the law will cut through the mountain," meaning that we'll have to find a customized and meaningful solution for him. We need to custom-tailor a Bar Mitzvah package to every boy, whatever his condition. It should suit his abilities, so that he and his families can celebrate his Bar Mitzvah in a dignified and meaningful way.

We must internalize the approach that handling a challenge presents us with an opportunity, not a problem. It's an opportunity for us to do Tikkun for the individual, the boy with the disability; the family, that wages a daily struggle for the boy to function as best he can; and the community, which can seize the opportunity to enrich its world by identifying and including others, and in so doing, advance the tikkun of society at large.

With this kind of approach towards the boy and his family, they can truly rejoice at his Bar Mitzvah, and the entire community can take another step towards God, and His mitzvot.

### The role of the congregation and its spiritual leadership (Ravs, teachers and other leaders of the congregation)

The congregation and its spiritual leadership play a key role in this issue:

1. Every human being was created in God's image. Spiritual leadership should teach this Torah value and stress

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its importance. It is in those very places where a gap exists between a theoretical ethical concept and its practical implementation that it behooves the community to teach and be inclusive of people with disabilities.

2. The approach taken by a disabled child's close family can have either a positive or a negative effect on the child's development. Spiritual leadership and the congregation should support the family and encourage it to take a positive approach to including the child to the best of its ability.

3. The active and positive participation of a spiritual leader in the integration of an individual with mental disabilities may determine the boy's religious future and his connection to Jewish tradition and practices. "As in water, face answers to face, so is the heart of a man to a man." (Proverbs 29:19)

4. Children with mental disabilities are developing to a more advanced level than ever before. Beside the new tools that science provides us with, the family's perseverance has the greatest impact. It is inspirational in how well it empowers the children and their capabilities. These families are coping with existing accepted boundaries in care facilities, educational facilities, and even the communities themselves, and at times, they feel isolated. A supportive community guided by a spiritual leader can help these families along this process, extricate them from their sense of isolation and encourage society at large to be more inclusive.

5. Another matter that facing spiritual leaders is clarifying halachic issues on the status of mentally disabled boys and the prospects for integrating them in a Torah-observant community. The more Torah scholars dedicate themselves to studying this topic and dealing with it in practice, the more knowledge we'll have as a society, which can lead to a halachic ruling based on a firm understanding of this new reality, with all of its human sensitivities.

At the same time, it's worth developing alternatives for cases in which, for various reasons, a boy can't celebrate his Bar Mitzvah the way most do. These should be meaningful ceremonies that are adapted to the child's abilities and dignify him and his family. A meeting with the boy's family before the time of his Bar Mitzvah may help set the correct expectations and determine what is possible. We can honor the Bar Mitzvah boy by letting him hold the Torah scroll, or read a verse from the Torah portion – in other words, by doing whatever he is capable of doing. The ceremony can be postponed to adjust to the boy's level of development, and there is no obligation to have it when he's exactly 13 years old.<sup>4</sup> The family can choose a day of the week to plan a get-together with family and friends. The basic goal is to set a time for the boy to meaningfully mark his acceptance of the mitzvot.<sup>5</sup>

#### Clarifying Halachah: a Bar Mitzvah celebration for a boy with developmental mental disabilities

**Question:** May a boy with mental-developmental disabilities celebrate his Bar Mitzvah by getting an aliya or by reading from the Torah, and does the community fulfill its halachic obligation when he does so? If the community does not fulfill its obligation, can he get an aliya anyway? Is there any value in that?

**Answer:** A Bar Mitzvah celebration is considered a Jewish rite of acceptance within the congregation. It is socially and emotionally meaningful for a teenage boy and his family. Mentally-developmentally disabled boys and their families often feel bewildered as the boy draws closer to Bar Mitzvah-age, because they don't know if the boy is fit to join those who get aliyas, and they don't know how the community will respond to this challenge.

In the next few paragraphs, we'll present a halachic clarification on this matter, but first, we'll present its conclusion:

A mentally-developmentally disabled boy that can learn to read the Torah and its blessings, and has a rudimentary understanding of the meaning of the mitzvah, is obligated to keep the mitzvot, and may be called up to the Torah and fulfill the community's obligations. Even children who don't fulfill these criteria can be called to the Torah, or to recite maftir, and the blessings.

In order to commit to keeping the Torah commandments, one must have knowledge. This is why the Torah exempted "those who lack knowledge", i.e. the katan - the minor - and the shoteh - a psychotic person.<sup>6</sup> Who is considered a shoteh? The accepted position of the poskim is that a shoteh is an adult who suffers from a mental illness that clouds his cognitive functions. So, what happens with someone with a mental-developmental disorder? Some would see him as a shoteh that is exempted from the mitzvot, while others categorize them as "peti" (simple-minded). Is a peti required to keep the mitzvot? Here, too, the Ravnit authorities are divided. According to Rambam and the Chatam Sofer, it's a matter of ability, so boys should be assessed on a case-per-case basis.

Later Ravnit authorities coalesced around a position that differentiated between various types of peti. You don't need to have the knowledge level of an average adult to be obligated to keep the mitzvot; "knowledge possessed by children" is sufficient. By passing comprehension tests or demonstrating the ability to learn, the child can be classified as one of those required to keep the mitzvot. If he "knows that the Holy One Blessed be He gave us the Torah and that we are keeping His commandments," he's considered obligated, so automatically, the community can fulfill their obligations through him. Another possible thought is that even those who see the peti as a fool are referring to the lowest level of peti, namely, that the individual's cognition is severely impaired, as elucidated by Maimonides:

Those who are 'severely peti' do not recognize things that contradict each other, and would not understand matters as any other would.

It would therefore follow that mentally-developmentally disabled boys that can learn to read from the Torah can understand the meaning of observing the mitzvot, on a basic level, and can clearly read properly. These boys should be allowed to get an aliya and fulfill the obligation of the congregation. However, even if a boy has a more severe disability, which precludes him from fulfilling the requirement of the congregation, there is great value in including him in the observance of the mitzvot and in communal activities. A congregation is also responsible for creating a warm and open environment, and extending an outstretched hand to these boys and adults, inviting them to be a part of the synagogue and the activities of the congregation.

As for reading from the Torah, the Talmud states that if a minor knows whom he is blessing, even though he isn't required to observe the mitzvot, he may be called up to the Torah, and he may read and say the blessing. Although the poskim placed certain limitations on this halacha, everyone agrees that it is permissible for a minor to get an aliya for maftir on an ordinary Shabbat, in which the maftir reading repeats the last verses of the weekly portion. Therefore, even mentally-developmentally disabled children, who may or may not be considered obligated to fulfill the mitzvot, can get an aliya for maftir, and make the appropriate blessing.

#### Conclusions:

In our contemporary reality, where disabled individuals are integrated within the community, it is imperative for spiritual leadership and members of the congregation to take action to integrate these individuals as much as possible in their communities. A Bar Mitzvah in the community is one event that we must pay attention to. The halachah allows boys to celebrate their Bar Mitzvah in the community, in accordance with their skills and abilities, and consequently, communities should help these boys' families make the best of the options they have available for their child's Bar Mitzvah, and bring about a change in the congregation, wherever needed. If we take more action in this regard, our society will be more civilized and more deserving of redemption, as we merit to play a role in the materialization of the prophet Isaiah's prophecy:

Strengthen weak hands, and make firm tottering knees. Say to the hasty of heart, "Be strong, do not fear; behold our God, [with] vengeance He shall

come, the recompense of God, that shall come and save you.

Once this is accomplished, we'll merit seeing the entire prophecy materialize:

Then the eyes of the blind shall be opened, and the ears of the deaf shall be unstopped..

ה. אַז תִּפְתָּחַנָּה עֵינֵי עִוְרִים וְאָזְנֵי חֲרָשִׁים תִּפְתָּחַנָּה

And the redeemed of Zion shall return, and they shall come to Zion with song, with joy of days of yore shall be upon their heads; they shall achieve gladness and joy, and sadness and sighing shall flee.

Expounding upon the Clarification of the Halachah and its Sources (halachic anchors for the ruling given in the previous section)

### 1. The Condition of Knowledge

To be held responsible for observing mitzvot, the Torah requires an individual to have da'at (intelligence or knowledge).<sup>7</sup> Minors are not the only ones exempt from observing mitzvot – adults “lacking knowledge” are, too. One such adult is the shoteh (psychotic). The Talmud<sup>8</sup> lists several signs<sup>9</sup> that can indicate an individual's “lack of knowledge” – like going outside at night alone, sleeping in a cemetery, tearing clothes that are worn, and losing whatever one is given.<sup>10</sup> Are these the only characteristic behaviors, or are they just examples of an individual's mental weakness? The rishonim held varying opinions,<sup>11</sup> and this debate also affects how we clarify the halachah. Who falls under the category of shoteh? Rav Chaim Soloveichik<sup>12</sup> postulates that the shoteh includes not only those suffering from a mental illness that impairs their judgment,<sup>13</sup> but also those with a mental-developmental disability, though most achronim dispute this view and feel that the Talmudic shoteh only refers to those suffering from a mental illness. In their view, the status of a mentally-developmentally disabled individual is covered by a term coined by Maimonides: peti (simple-mindedness).<sup>14</sup>

### 2. Peti (simple-mindedness)

In Hilchot Edut (the laws of testimony), chapter 9, halachah 10, Maimonides writes:

People who are very feeble-witted, who do not understand that matters contradict each other and are incapable of comprehending a concept as it would be comprehended by people at large are considered among those mentally unstable. This also applies to the people who are continually unsettled, tumultuous, and deranged. This matter is dependent on the judgment of the judge. It is impossible to describe the mental and emotional states of people in a text.

Sefer Me'irat Einayim (Choshen Mishpat, topic 35, subtopic 21) distinguishes between those with mental-developmental disabilities and the shoteh (who suffers from mental illness), in terms of the requirement of “knowledge” for observing the mitzvot and masei kinyan (transactions involving the legal transfer of ownership):

How do a peti and a shoteh differ? The mind of a shoteh is completely deranged and impaired with regard to a specific thing, while a peti isn't completely deranged in any particular subject. However, the peti is inferior to the shoteh in one respect, because for all other matters, the shoteh is as intelligent as everyone else, while the peti, whose mind is incomplete, does not understand anything the way others do...

Maimonides identifies the peti as a shoteh.<sup>15</sup> However, several poskim limit the scope of this definition. Rav Joseph Trani (the Maharit<sup>16</sup>) states that Maimonides was only referring to those whose intelligence is very limited and have no cognitive ability, based on Maimonides' words: “very feeble-witted.” Furthermore, he qualifies that Maimonides' ruling only applies to the laws of testimony, whereas in the case of ownership and acquisition, and even with regard to marriage and divorce, if a matter is explained to a peti and he understands it, he is considered to be of sound mind.

Following the lead of Maimonides, the Chatam Sofer<sup>17</sup> rules

that a lack of intelligence, even if no “insanity or psychosis” is noted, disqualifies someone from bearing testimony or participating in any other Torah rulings. The precedent he presents is the Talmudic case of a deaf person. Although a deaf person isn't a shoteh, he is considered to be lacking in intelligence.

And therefore, when we can note even the slightest clear thought, even if it is partial, they [peti'im] are considered of sound mind and are not shotim... any peti with clear thoughts, even if it is partial, is regarded as a person of sound mind.

Thus, the Chatam Sofer's position is that when assessing a group of mentally-developmentally disabled individuals, we should distinguish between those considered to be “lacking intelligence”, who would have the halachic status of shoteh, and those in which a spark of wisdom or sound mind is noted – those people are considered to be of sound mind.

### 3. Intelligence Testing

A widespread position held by the achronim is that the “intelligence” necessary for legal acts and becoming accountable for the observance of Torah law is da'at pa'utot (“the intelligence of toddlers”). Onat Pa'utot – the season of childhood – is a halachic concept that states that even children can make a purchase, as long as the child has “some capacity to discern.”<sup>18</sup> However, most cases brought to a beit din may not be initiated by a child, since the Torah requires the individual to be an adult, and any provisions allowing a child to transfer ownership are due to the Ravnin decree of k'dei chayav (purchasing items required for the child's basic sustenance).<sup>19</sup> This level of intelligence may seem to be enough for certain other cases brought to the beit din as well, according to positions taken by several Ravnin sages, as attested to in a Talmudic passage.<sup>20</sup>

Although the opinions in the Talmud differ<sup>21</sup> with regard to the scope of “the childhood period” (which ranges from age 6 to 10), we conclude that the relevant criterion is the level of intelligence, and not the biological age, as the Talmud states: “each individual according to his winters.”<sup>22</sup>

Can this standard be converted into a modern set of criteria? Some would argue that the required intelligence could be measured by an IQ test, so the requirement to have the intelligence level of a child is equivalent to the average IQ of an eight-year-old child.<sup>23</sup> Others disqualify this suggestion, believing that a test of “intelligence” should measure an individual's ability to learn. In the preface to their book, Professor Reuven Feuerstein and Rav Rafi Feuerstein ponder why the Chatam Sofer suffices with “some measure of having a sound mind” to consider a peti to be of sound mind.

How is the Chatam Sofer's position psychologically logical? Why is “some measure of a sound mind” enough? ... Why should a bit of skill be an indicative measure for the wider cognitive abilities of a human being?

This question is answered by Feuerstein's theory of structural cognitive modifiability. This theory assumes that our cognitive abilities aren't inherent – they are acquired. Therefore, the essence of “intelligence” is “learning,” since there is no intelligence if no learning process is underway. But we can restate the sentence in reverse: if one has intelligence, a learning process must be underway. And if there is a learning process, a boy can't be a peti, since a peti is one who can't learn. Someone who can't learn can't think as well, and would lack “intelligence.” However, someone who has proven his ability to learn by having even the tiniest island of knowledge in a sea of ignorance is considered to be like an island that has dried up the ocean. Therefore, the status of having a sound mind should not be determined through IQ tests, but rather on the basis of learning ability tests. This view is hinted at by the Talmud.<sup>24</sup>

And in my view, one can conclude that an individual with a cognitive impairment, who has exhibited the intelligence of children and passed the age of accepting the mitzvot, is like an adult for all matters of Torah judgments and acts of ownership.<sup>25</sup> This is what Rav P. Scheinberg writes in an important article published on this topic.<sup>26</sup>

It may seem that a mentally retarded individual that is over 13 years old and has the intelligence level of a

including disabled individuals in religious life has religious value.

Most Halachic approaches conclude that if someone has IDD yet understands what marriage and marital relations are and can learn and understand the ways of the world, that person's marriage ceremony is considered valid.

child is considered an adult, and is held responsible for the observance of the mitzvot like any other adult. The child therefore fulfills two conditions – he must be old enough, and he must have adult knowledge – and he isn't considered a shoteh because he has achieved general knowledge.

Other poskim hold this position as well.<sup>27</sup> Rav Shlomo Zalman Auerbach concurs (Minchat Shlomo, part 1, chapter 34), though he supports exempting these individuals from receiving punishment.

All seem to believe that he understands and has intelligence, like children do, and that he knows that the Holy One Blessed Be He gave us the Torah, and that we are keeping His commandments, and this qualifies him as one who has the intelligence to observe the mitzvot. Once he reaches age 13, he is considered an adult... With regard to [liability for] punishment, his status is considered "the mercy of the Almighty on a child", so for this purpose, a mentally retarded individual is considered a child, even though he is, in truth, an adult.

#### 4. The Value of the Observance of Mitzvot by One that Lacks Intelligence

Is there any value in the observance of mitzvot by someone who isn't obligated to do so? Is there any religious or halachic value in including a child in the observance of mitzvot if he hasn't reached gil hachinuch, "the age of education," or if he isn't considered "intelligent" according to halachah?

The achronim discussed the issue of whether a minor that became an adult during the counting of the omer should continue counting with a bracha. Rav Moshe Schick (the "Maharam"), in his response to Orach Chaim (p. 269), justifies the position of continuing to count with a bracha:

I feel that this [also applies to] a minor, if he has intelligence, but the Torah did not command him [to keep the mitzvot] until he reaches age 13. The Torah knew that not every minor's mind is strong enough by the time he reaches 13, yet it is still a mitzvah akin to a mitzvah performed by one who isn't commanded to do it. Likewise, we find that the Torah is considerate of the poor in its commandment to bring a variable sin offering. However, this mitzvah is not that strong, like a person who is commanded and performs the commandment. Yet a poor person is commanded to bring a variable sin offering. So, too, a minor is commanded [to count the Omer].

What we can understand from the Maraham is that someone who observes a mitzvah even though he wasn't commanded to do so still carries the status of one who observed a mitzvah. There is an inherent value in him observing that mitzvah, even if it won't be considered a mitzvah in the full sense of the word (e.g. he won't be able to fulfill the obligation of the congregation). This view is hinted at by the Vilna Gaon, in his commentary on the Orach Chaim (124:6):

A man should teach his sons to answer "amen", since a child is promised a place in the world to come once he answers "amen".

Even though this child hasn't yet reached the age of education, there is value in his response of "amen." Rav

Haim Pinhas Scheinberg also takes this view. He writes the following:

And here we see that several achronim hold that psychotics, minors and the deaf are considered liable for the performance of mitzvot. They are indeed liable, but because "their mouth hurts him" (i.e. there is something preventing them from performing the mitzvah), they are considered exempt.<sup>28</sup>

Even if there is no halachic obligation to do so, including disabled individuals in religious life has religious value. It goes without saying that families who want to include their son in their set of values and in a sanctified way of life are also fulfilling a humanitarian and spiritual value.

Anyone who can influence, break down barriers and draw others closer must take part in this task. In his response, Rav Feinstein writes (Igrot Moshe, Yoreh Da'at, part four, chapter 29):

When they come into the synagogue, it is clear that they must be warmly welcomed, even if they aren't intelligent enough to learn. Even responding "amen" is a mitzvah, and they should observe whatever they can. Even walking to the synagogue and kissing the sefer torah is a mitzvah, which they should do for their own sakes and for the sake of honoring their families.

#### 5. The halachah and being called up to the Torah

Here, we should review the rules of being called up to the Torah.

According to the Talmud,<sup>29</sup> a minor may read from the Torah<sup>30</sup> even though he isn't obligated to observe mitzvot. This is the ruling of the Shulchan Aruch, with one condition: the minor must be aware whom he is blessing.<sup>31</sup> The Shulchan Aruch (paragraph 9) explains that "[... a minor should] have at least some understanding that the bracha is meant for God."

The poskim attached several caveats to this halacha. Some, who base their opinion on the kabbalah, say that a minor should be called up for shevi'i, the seventh aliyah.<sup>32</sup> Non-kabbalist sages determined that minors may join the group of those called to the Torah, but they may not be the majority group,<sup>33</sup> so although minors can't be called up for all seven aliyahs, the minority of those called up may be minors.<sup>34</sup> This is why minors can only be called up on a Shabbat, and not on any other day.<sup>35</sup> A minor may not read from the Torah while adults are called up to say the blessing<sup>36</sup> (unless the congregation has no other choice).<sup>37</sup>

All agree that a minor may be called up for maftir<sup>38</sup> without hesitation.<sup>39</sup> Some congregations place limits on calling up a minor,<sup>40</sup> but in times of need, this is certainly permissible, since this is the ruling of halacha.<sup>41</sup> We should also mention the opinion of the Bayit Chadash, who holds that a minor who is called up to the Torah does not read from the Torah, but he can make the blessing, and this is permissible even if the minor does not know whom he is blessing.<sup>42</sup>

Consequently, even for those who doubt whether a boy with a mental-developmental disability is obligated to observe the mitzvot, he may be called up to the Torah, read the maftir aliyah, and make a blessing, just as any minor could. According to the Bayit Chadash, even a child with severe mental disabilities can make the blessing, without reading from the Torah.

We wish to thank everyone, both within and outside of Beit Hillel, who helped write and enrich this document by contributing their knowledge and experience.

<sup>1</sup> This category includes those classified as "mentally retarded", "people suffering from Down's Syndrome", and certain autistic individuals. It is impossible to have a clear written definition, as explained later in this document. The document will also provide several parameters used to define the group.

<sup>2</sup> God-willing, future documents will discuss the situation of mentally disabled young women and Bat Mitzvahs.

<sup>3</sup> Published in the month of Sivan, 5774, in Beit Hillel's seventh digest.

<sup>4</sup> This is Rabi Yoel Katan's suggestion. This is also commensurate with halachic concerns raised by Rav Bakshi-Doron. See also: Binyan Av, Responsa 6, page 46.

<sup>5</sup> Thank you to Rav Beni Lau, who shared his experience with us. Some of his suggestions are included in the document.

<sup>6</sup> The word "fool" is used in this document to link the halachic discussion with

concepts appearing in the Talmud. Although we tried to be careful not to use offensive terms, we could not find a way to review the halachah without using these terms. We certainly do not intend to offend anyone, and this should be apparent in the spirit and conclusions of this article.

<sup>7</sup> The Encyclopedia of the Talmud, volume 17, p. 538

<sup>8</sup> Tractate Chagiga 3:2 – 4:1. According to Rashi, the intent of these criteria is to determine who is "exempt from observing the mitzvot and receiving punishment, whose property is not considered property, and whose wares are not considered wares."

<sup>9</sup> The Talmud determines that anyone who exhibits any of these signs is only considered a shoteh if he performs these behaviors as a shoteh: "He does them in the way of a psychotic..."

<sup>10</sup> A dispute among Talmudic sages appears in the Talmud. The dispute is over whether only one sign is required, or all of the signs. The poskim disagree over this issue.

<sup>11</sup> Their opinions are recorded in the Beit Yosef (Even Ha'ezar, chapter 121)

<sup>12</sup> This appears in Otzar Haposkim, in the notes on p. 22 of the second part of the book.

<sup>13</sup> As Rav Menachem Mendel Farbstein clarifies in his article, "The Laws of Intelligence, Medicine and Halachah – practical applications [2006]", p. 91, not every mental illness impairs judgment.

<sup>14</sup> See Rav Farbstein, *Mishpetei Hada'at*, p. 67.

<sup>15</sup> This is also the view adopted by the acronym, namely, that a peti is like a shoteh. For an example of this, see *Responsa Divrei Malchiel*, part one, chapter 86.

<sup>16</sup> *Responsa*, part 2, *Even Ha'ezer*, chapter 15.

<sup>17</sup> *Responsa* of the Chatam Sofer, part four, *Even Ha'ezer*, chapter 2. The Chatam Sofer takes a position similar to the Maharit's, as mentioned above.

<sup>18</sup> As stated in the *Mishnah*, Tractate *Gittin*, 5:7, and explained by Rashi in his commentary on Tractate *Yevamot*, chapter 105: "A child performs *chalitzah*".

<sup>19</sup> See the *Talmud*, Tractate *Gittin*, 59:1.

<sup>20</sup> According to Tractate *Yevamot*, one of the tannaim states that a female minor may perform *chalitzah* (which is *din torah*), if the child is within the "period of childhood". See the *Kovetz He'arot*, chapter 61, paragraph 6: "There are two laws regarding minors: 1) A minor who hasn't achieved knowledge is considered a *shoteh*; 2) A sound-minded minor that isn't perceived by others in that way. In either case, the action of a minor is not considered legally binding, and this is a *gzerat hakatuv*, that since [the Torah] states 'a man, and not a minor', the act of a minor can't affect a transfer of ownership or a marriage contract. Since we find that our sages ruled that a sale made by a minor is considered a sale, i.e., they ruled that there are cases where the purchase made by a minor is valid, since in these cases, *halacha* doesn't require the presence of an adult. In any case, the minor must have knowledge and must not be considered a "psychotic", and to do this, he must have "the knowledge of children". Rabba inferred from this that the limited knowledge of children is sufficient for *din torah* (*halachic issues*) as well, as in the case of a young girl performing *chalitzah* once she has the knowledge of children. These is what is meant by "a *pleasure* where the Torah doesn't require an adult to be the executor of a legal action."

The position taken by Rav Wasserman was used as an anchor for leniencies in this area. Some members of the *beit midrash* were skeptical about separating the age requirement (age 13) from the requirement to possess a level of knowledge. Even Rav Bakshi-Doron hesitates to accept this distinction, and his ruling, which appears in his *responsa* on *Binyan Av* (*responsas* 4 and 6), is that a boy with mental-developmental disabilities may not fulfill the obligations of the congregation. However, since several important contemporary *poskim* agree to this distinction, this has remained the position of *Beit Hillel's halachic beit midrash*.

<sup>21</sup> Tractate *Gittin* 52:1 – "Rabbi Yehudah ... about 6 or 7 [years old]. Rabbi Kahana said: 7 or 8 years old. In a *Beraita* it was taught: 9-10 years old."

<sup>22</sup> The *poskim* feel that the child should be subjected to a test of knowledge. This is the ruling of the *Shulchan Aruch* [*Choshen Mishpat* 235:1]: "A minor under the age of six cannot purchase anything for others. From age six and onwards, if the minor understands negotiation, meaning that he was tested and found to be knowledgeable of this, or if the minor is over ten years old and isn't a *shoteh*, his transactions are valid, what he sells is sold, and his gifts have validity."

<sup>23</sup> According to the accepted distribution in the research literature, the children referred to are high-functioning children with mild retardation. The determination of the age of eight as a legal age is, however, an average of the positions cited in the *Talmud*. One other element that should be taken into consideration is the debate between the *rishonim* on the requirement for a minor to be "clever". According to Maimonides, this requirement applies until the minor has reached the age of puberty (*Mishna Torah*, *Hilchot Mechira*, 29:6: "until he has grown"). According to the *Rosh*, this requirement applies until the minor is 10 (from the statement in *Choshen Mishpat*, verse 235: "... if the minor is over ten years old and isn't a *shoteh*, his transactions are valid", and this is how the *Ramah* ruled, in paragraph 1 of his ruling). Rav Meir Halevi Abulafia's "average method" determines that at age 10, a normal boy possesses mental prowess.

<sup>24</sup> An issue is recounted in Tractate *Bava Batra* 155b: once, a dispute broke out between the relatives of someone with low intelligence and customers who had bought property from him, and the case was brought to Raba for a ruling. The relatives wanted to prove that the sale was invalid because the individual had low intelligence, while the customers wanted to prove that he had normal intelligence, so that the sale would be upheld. When the seller told Raba something sensible, Raba ruled that he was intelligent, and that the sale was valid. When the seller's relatives claimed that the seller was simply repeating what the customers had told him to say, and that he had not thought it up himself, Raba replied, "[but] he understands [that which] is explained; [and] since he understands when explained, he possesses intelligence."

<sup>25</sup> See *Sefer Ra'aviya*, *Bi'urei Sugiyot* 921 and the *Responsa* of the Maharshal, paragraph 65, and more.

<sup>26</sup> *Moriah* 129, 130 (1982), p. 51, paragraph 66.

<sup>27</sup> *Igrot Moshe*, *Yoreh Da'at* (4:29): "However, someone who has a child's level

of intelligence is certainly required to keep all of the *mitzvot*". The opinion of the Maharit, who follows Maimonides' opinion, appears in the *Tzitz Eliezer Responsa* (part 14, paragraph 69). His ruling was: "regarding the issue we are discussing... she knew how to pray and had gone to the synagogue on every *Shabbat* and holiday, she can at most be considered one of the most feeble-minded. Therefore, she is definitely held liable to observe *mitzvot*. See also the position of Rav Z. N. Goldberg (*Techumim*, volume 7, p. 240): "Accordingly, we should discuss whether a *peti* is required to observe *mitzvot*. It seems that if he understands a *mitzvah*, he is obligated to perform it, just like anyone of sound mind. He has the status of a *shoteh* for any other *mitzvah*. This should be reviewed further."

<sup>28</sup> See Rav Moshe Feinstein in *Igrot Moshe*, *Yoreh Da'at* (4:29). He, too, raises this possibility.

<sup>29</sup> Tractate *Megillah* (23b).

<sup>30</sup> This comment appears in texts written by several *poskim*, with regard to women.

<sup>31</sup> *Orach Chaim*, 282:3. This condition is mentioned in the Babylonian *Talmud* (Tractate *Brachot* 48a; *Erchin* 3a) with regard to counting a minor in a *zimmun*. Sources from *Eretz Yisrael* also mention this condition with regard to calling up minors to the Torah. In Tractate *Brachot* 82, *halacha* 2, different language is used: "a small child may be one of those called up to the Torah). However, I found text that more closely resembles the *Bereishit Rabbah* (91:3). The end of the first part of *Or Zaru'ah* mentions this *midrash* as well.

<sup>32</sup> The commentary of the Ben Ish Chai on *parashat Toldot*, year 2, letter *ט\**, and in other places.

<sup>33</sup> The Jerusalem *Talmud* uses the term *se'if*, and the Babylonian *Talmud* specifies "counted in a *minyana*", but not every *minyana*. See *Responsa* of the Ribash, p. 321.

<sup>34</sup> R. Nissim, and the same is explained by the Ribash, mentioned in the previous comment, quoted by the Rama, p. 292 paragraph 3.

<sup>35</sup> See the *Mishnah Brurah*, chapter 100, paragraph 11, which brings down an opinion in the name of the *Magen Avraham* and the *Olat Hashabat*. *Sefardic poskim* are generally more lenient in this matter. See examples in *Yalkut Yosef* (on the reading of the Torah), p. 235 paragraph 32, and the comment on paragraph 37, *ibid*.

<sup>36</sup> *Eliyahu Rabbah*, page 225, paragraph 3, *Magen Avraham*, chapter 100, paragraph 6. *Pri Megadim* contests this ruling since the *Talmud* states that a minor may be called up to the Torah and may read from it. The *Sha'ar Hatziun* states that the intent of the *Magen Avraham* was that a minor can't read the entire Torah portion, just as seven minors are not called up to the Torah on one *Shabbat*. We can infer from him that a minority of minors can read from the Torah, even if an adult is called up, just as a minority of minors can be called up to the Torah. However, this possibility should still be assessed in light of the tradition of not calling up minors for any *aliyah* except *maftir*. This is confirmed by the *Eliyahu Rabbah*, which implies that a minor can't fulfill the general obligation of the congregation.

<sup>37</sup> *Mishna Berurah*, chapter 100, paragraph 13. See also *Sha'ar Hatziun*, chapter 100, paragraph 16, where the author even contests the ruling that disqualifies the option of calling up minors for all of the *aliyot*.

<sup>38</sup> There are those that specified that he can only be called up for *maftir*, this is reviewed in *Aruch Hashulchan*, paragraph 10.

<sup>39</sup> The *rishonim* disputed whether a minor can be called up for a *maftir* reading that does not repeat the last verses of the weekly reading (such as additions read on holidays and the four *parshiot*). The *Mordechai*, speaking on behalf of Rabbi *Eliezer*, (*Megillah* 809) writes that a minor may be called up (i.e. has not decreased the number of those called up by virtue of being called up), and the opinion of *Rabbeinu Tam*, referenced in *Hamanhig Shabbat*, chapter 34, and the *Ribash* commentary referenced above, states that the congregation does not fulfill its obligation. This is how the *Beit Yosef* understood this debate (chapter 292), and R. Moshe *Isserles* ruled that a minor can even read the *maftirs* of these special occasions. However, the *achronim* disputed this ruling and prohibited minors not only from reading these *maftirs*, but also from reading the four *parshiot*, and certainly from being called up to read *parashat zachor*, which is a positive commandment from the Torah. See also the *Mishnah Berurah*, chapter 100, paragraph 23. The *Tzitz Eliezer Responsa* elaborated on this subject (part 7, chapter 1).

<sup>40</sup> This contrasts with the condition stipulated by the *Shulchan Aruch* – "[the boy must] know whom he is blessing", which is the age of approximately 6 (*Yalkut Yosef*, chapter 135, paragraph 33), however, see also the *Mishnah Berurah* (the end of chapter 100, paragraph 33) which clarifies the *halachah* in the sentence that begins with "or in the four *parshiot*". This reinforces the requirement that the one reading should be able to read every word of the written text. Based on these sources, various congregations had the custom of not calling up a minor to the Torah at any time before the week of his *Bar Mitzvah*. See also the *Tzitz Eliezer* source referenced in the previous comment, and other sources.

<sup>41</sup> See a justification in a similar context, brought down in the *Yalkut Eliezer*, chapter 135, paragraph 34.

<sup>42</sup> *Bayit Chadash*, *Tur* on *Orach Chaim*, chapter 695, in the sentence starting with "the Maharshal wrote".

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NPO # 58-0559441

[office@beithillel.org.il](mailto:office@beithillel.org.il) | P.O. Box 520, Ra'anana, Israel 4310401

Shlomo Hecht | Executive Director | [shlomo.hecht@gmail.com](mailto:shlomo.hecht@gmail.com) | +972-54-493-5795 | Fax: +972-3-767-9401