



Women in Scrubs – Room for Slack?

"You shall make them linen breeches to cover their nakedness; they shall extend from the hips to the thighs. They shall be worn by Aharon and his sons when they enter the Tent of Meeting or when they approach the altar to serve in holiness, and they should not bear a sin and die." (Shemos 28:42-43)

The detailed description of the attire of the Kohanim in this *Parsha* relates to a common question of practical Halacha: May women wear scrub pants in hospital departments where it is mandatory or does that violate "*Lo Yihye Kli Gever Al Isha*" (the prohibition for a woman to wear male attire) (*Devarim* 22:5)?

The Mishna in *Kiddushin* (36a) rules that women may not perform the *Avoda* in the Beis haMikdash¹. The Gemara derives this ruling from *Pesukim*, but *Tosfos* (*ibid.* 36b) ask why women could not simply be disqualified because they are "*Mechusar Begadim*" (lacking the *Bigdei Kehuna*²) which disqualifies the *Avoda* (*Zevachim* 17b)?

Tosfos offer two answers to this question: If women were eligible to serve in the Beis haMikdash, they would be permitted to don the *Bigdei Kehuna* (even though they are not explicitly commanded to wear them), and would not be *Mechusar Begadim*. For this reason, the Gemara needed to find a source that explicitly disqualifies them from performing the *Avoda*. Alternatively, since women were not commanded to wear *Bigdei Kehuna*, they would not be considered *Mechusar Begadim* if they were to perform the *Avoda* without them.

According to the first answer, if women are eligible to perform the *Avoda* they would be able to don *Bigdei Kehuna* which include a shirt, pants, hat and belt. This raises an obvious question: Are these not male garments that women may not wear due to the prohibition of *Lo Yihye Kli Gever Al Isha*?

Rav Yosef Engel *zt"l* discusses this question in *Gilyonei haShas* (*Kiddushin* *ibid.*). He cites the Gemara in *Nedarim* (49b) which relates that *R' Yehuda's* wife made a coat that she would share with him as they were exceedingly poor. The *Maharsha* (*ad. loc.*) asks how this was allowed, for if it was a woman's coat, *R' Yehuda* should not have been permitted to wear it and if it was a man's coat, it should have been

¹ Aside from the *Korban Mincha* brought by a *Sotah* or female *Nazir* which they wave (*Tenufa*).

² As women were not commanded to don *Bigdei Kehuna*



prohibited to his wife. He answers that it was *neither a man's nor a woman's coat and could therefore be worn by either*.

According to the *Maharsha*, any garment that is not gender-specific (i.e. intended to be worn only by one gender and not the other) may be worn by either men or women. Rav Yosef Engel therefore contended that the same would be true of *Bigdei Kehuna*. If women were eligible to perform the *Avoda*, the *Bigdei Kehuna* would not be considered gender-specific attire and could be worn by anybody.

Rav Yosef Engel's proof from these words of the *Maharsha* is surprising. Although the *Maharsha* does propose the notion of unisex attire, he only applies it to a type of garment that is worn by both men and women (as in a coat). But the *Bigdei Kehuna* include garments which are essentially male garb (such as pants) – how can we be certain that the *Maharsha* would agree that even they can be rendered non-specific?

It appears that, according to Rav Yosef Engel, if an item of clothing is primarily worn by one of the genders but a certain type of this item is designed for both genders, it may be worn by men or women. Therefore, it would theoretically have been permitted for a woman to wear the pants of the *Bigdei Kehuna* even though pants in general are clearly male attire.

This ruling may be extremely relevant to the question of hospital scrubs for women. In operating theatres and procedural units, the staff is required to wear scrubs – including pants³, and without them, they may not even enter these areas of the hospital. In general, it is forbidden for women to wear pants for, as stated, they are considered male attire. However, according to Rav Yosef Engel, it may be permitted for a woman to wear hospital scrubs as they are clearly standardized attire and intended for either gender, unlike regular pants.

There is a similar discussion regarding hospital patient attire that includes pants for both men and women. Aside from the inherent *Tznius* concerns of women wearing pants, it may also be prohibited due to the fact that pants are male attire. The *Avnei Yashfei*⁴ (6:118) argued that if the pants provided to hospital patients have different styles for men and women, women would be permitted to wear them⁵.

³ There are a small number of hospitals that permit women to wear certain skirts in these areas.

⁴ R' Yisrael Pesach Feinhandler (1945-2011), Rav of Kehilas Avnei Yashfei in Yerushalayim

⁵ This would not apply to hospital scrubs where there is no distinction between those used by the men and the women. Therefore, if not for the ruling of Rav Yosef Engel, they would certainly be prohibited.



Others disagreed given that pants are inherently male attire and a pattern or color that distinguishes certain pants as being for women does not render them female attire. (See *Shu"t Minchas Yitzchak* 2:108).

There are, however, other reasons to permit female patients, nurses, or doctors to wear pants. The *Bach* (Y.D. 182, based on *Tosfos* in *Nazir* 59a) famously rules that it is permitted for a woman to wear male attire if she is doing so to protect herself from the cold and not in order to look like a man. Moreover, even if she is attempting to look like a man, it is only prohibited if she makes use of male jewelry or accessories, and not if she merely dons clothes worn by men. (According to the *Bach*, there is a simple answer as to how *R' Yehuda's* wife was permitted to share a coat with him, as she was not attempting to appear like a man and also did not don male accessories.)

However, Rav Ovadia Yosef *zt"l* (*Yabia Omer* 6, Y.D. 14) argues that the Halacha does not follow the *Bach*, as the *Maharsha* (who sought a different explanation of the conduct of the wife of *R' Yehuda*) and other *Meforshim* who follow his approach, clearly did not agree.

Nevertheless, the *Taz* (Y.D. 182:4) rules that one may be lenient if the intent of wearing clothes of the opposite gender is solely to protect from discomfort. The *Shach* (*ibid.* based on the *Bach's* view) adds that if the rest of a person's attire clearly comport with their actual gender, it is also permitted. Many later *Acharonim* cite the rulings of the *Taz* and *Shach* in this matter (see *Yabia Omer ibid.*) and although the matter remains in dispute and women should refrain from wearing pants in general, there is certainly room to be lenient in the case of hospital scrubs where there is a medical need⁶.

An additional factor to consider is that some Poskim hold that nowadays a woman wearing pants is no longer a violation of *Lo Yihye Kli Gever Al Isha* as pants have become common apparel for women in the wider world. Though this is not the practice of women who observe the laws of *Tznius* (as pants display the contours of the body), the parameters of *Lo Yihye Kli Gever Al Isha* are not determined by *Tznius* concerns, but rather by the customary dress in contemporary society.

⁶ The fact that a dress or skirt would be equally effective in terms of infection control (and therefore, there is no true "medical need" for the pants) is irrelevant. Our argument is that she has been directed to wear pants for medical reasons and not out of choice. Therefore, if the *Bach* and *Taz* were lenient regarding wearing men's clothes to protect from the cold, they would certainly rule leniently here too.



This ruling is based on the explanation of the *Prisha* (*ibid.* 5) of a ruling of the *Rambam* (cited by the *Tur*) that in places where it is customary for men to shave their armpits or pubic hair, one does not transgress *Lo Yilbash*⁷ for doing so. The *Prisha* (in one explanation) explains that the *Rambam* is referring to a place where it is the custom of non-Jewish men to do so, thus establishing the community standard. Since it is not only women who shave these areas of the body in that community, it is no longer considered *Lo Yilbash* for men.

The *Rashba* (*Shu"t* 4:90) appears to disagree with the *Prisha*. He rules that if men (sinfully) perform acts that have previously only been practiced by women – even if they continue to do so for an extended period, these practices don't become permitted to them, for these acts are inherently a female activity. Furthermore, if we were to permit them, people would benefit from acting sinfully – "*Chotei Niskar*" (as by performing these acts over an extended period they have rendered them a "male activity" and therefore permitted).

Perhaps the *Rashba* would still agree that there is no issue of *Lo Yihye Kli Gever Al Isha* for a woman to wear pants nowadays. His contention that one cannot change the status of activities that are inherently related to a single gender, is only true of activities such as shaving armpit or pubic hair, but items of clothing are not inherently related to one gender or another – that would seem to depend entirely on the time and place. (*Yabia Omer* *ibid.* makes a similar argument – see the *Acharonim* that he cites in this regard.)

As for the second contention of the *Rashba* ("*Chotei Niskar*"), this does not contradict the ruling of the *Prisha* who was clearly discussing a case where the custom changed due to the practice of *non-Jews*. Since a non-Jew has committed no sin (by shaving armpit or pubic hair), there would be no issue of *Chotei Niskar*. The *Rashba*, by contrast, was discussing a case where the custom had been changed by Jews acting sinfully.

However, it seems likely that the *Rashba* would dispute the entire premise of the *Prisha* that the parameters of the Halacha can be changed by the conduct of non-Jews. And where Jews have changed their conduct, there is a concern of *Chotei Niskar*.

In any event, it would seem that the ruling of the *Prisha* cannot be relied upon on its own but can possibly be added to our other reasons to be lenient in this issue.

⁷ The Posuk *Lo Yihye Kli Gever al Isha* (*Devarim* 22:5) that prohibits women from wearing men's clothing concludes "*v'Lo Yilbash Gever Simlas Isha*" prohibiting men from wearing women's clothing or grooming themselves in a female manner (e.g. shaving armpit or pubic hair).



Certainly, if a female doctor or nurse must wear scrub pants, she should choose a loose-fitting pair, and, if possible, wear a skirt on top (which would certainly be permitted even according to the *Poskim* who generally discourage women from wearing pants underneath a skirt). As mentioned in footnote 3, there are institutions that permit scrub skirts or dresses to be worn instead of pants, and, if all else is equal, it would be proper to choose to work in such an institution.