In 2007, a fierce debate raged in Israel following a ruling given by Rabbi Sherman that retroactively annulled a woman’s conversion. The justification for the annulment was the dayanim’s skepticism as to the woman’s sincerity in accepting the mitzvot. In the wake of these events and the public discourse that they aroused, Akdamot journal of Jewish thought (issue 21, 2007) published three articles by the heads of the Batei Midrash at Beit Morasha, Rabbi Dr. Yehudah Brandes, Rabbi Dr. Benny Lau, and my own article, reprinted here. The three articles reflected upon the issue of conversion from various perspectives.

My article, "A Woman Oversees the Immersion of a Woman", considers the current system in which male dayanim are present at the ritual immersion of female converts. Alongside the Halakhic writing and the scholarly research that preparation of this paper entailed, I conducted a comprehensive survey of the conversion system for women, and of the current practices in various places. Beyond the problem of men’s presence at women’s immersions, I discovered a number of additional disturbing practices, which are noted in the footnotes of the article.

The publication of this article constituted a significant breakthrough, and gave a muted community a voice: it spoke for female converts, who were afraid to voice their grievances, from concern that such challenges might adversely affect the Beit Din’s decisions in their cases. In the seven years since the publication of this article and to a large extent, due to the awareness that it created, the public discourse on the issue of women’s immersion for conversion has continually expanded. The public has become aware of a practice that is an affront to human dignity and female modesty. Given the fact that the article presents a viable Halakhic alternative, the continued practice of male dayanim overseeing the immersions of female converts is disturbing indeed.

Over the years, I have received a plethora of responses to this article, including personal testimonies of immodest behavior on the part of the dayanim, additional sources to back up the interpretation that I offered, and letters of support from dayanim and MKs. A recent art exhibit in Tel Aviv displayed artistic renderings on the topic of women’s immersion, with the goal of raising awareness of the issue among the general public. The exhibit catalogue contained a summary of my article. A number of dayanim have raised the topic
and the article for discussion in their internal Beit Din forums, and a number of dayanim conferences have been held to discuss the article and the options that exist for altering the current practice.

I recently wrote a teshuva that considers the scholarly basis that permits women to serve as representatives (or “messengers”) of the Beit Din. This teshuva augments the article on women’s immersion, as well as raising the issues of women as witnesses and as dayanot. It is included in this collection.

In our generation, faced with the challenges of resolving tensions between ethics and Halakha, the Beit Midrash has become a laboratory for processing ideas and reexamining our sources with an eye that is both critical and loyal, and with a commitment to our joint responsibility for all the Jewish People. The examination of these issues through in-depth Beit Midrash study has proven an effective and essential tool in bringing these issues to the forefront of public discourse and effecting real change.

I am grateful to all those who have supported and encouraged me throughout the process of writing and publication of these essays, including the publication of this collection. In particular, I am indebted to Rabbi Dr. Yehudah Brandes, Head of the Beit Midrash at Beit Morasha; Dr. Chayuta Deutsch, editor of Akdamot; Sivya and Nahum Twersky, who initiated and supported the publication of this collection in the memory of their mothers, Mildred Twersky, Bluma Levovitz and Eleanor Klugmann Levovitz; the translators, Ms. Naomi Voss, Ms. Debbie Zimmerman and Ms. Gila Weinberg. And of course, to Beit Morasha of Jerusalem, my intellectual home in recent years: an institution that responds with sensitivity and commitment to the critical issues that face the Jewish People today. May we merit the wisdom to learn, to teach, and to cherish all the words of Hashem’s Torah, with love.

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"A Woman Oversees the Immersion of a Woman"

Immersion of Female Conversion Candidates in the Presence of a Beit Din

Michal Tikochinsky

Introduction

The following description details the last step in the conversion process, the immersion in a mikveh (ritual bath). It is taken from the website of Itim – the Jewish Life Information Center.

"After the mikveh attendants help you check that there is indeed nothing on your body that will interfere with the tevilah (ritual immersion), you will remove your towel and descend the stairs into the mikveh. You will then stand in the center of the pool and immerse your entire body, including your head, in the water. After the initial immersion, a female convert must come out of the water and don a long, dark, wide robe, which, on one hand, will allow water to penetrate, but which will on the other hand, ensure that she is modestly covered. Male converts remain in the water unclothed also for the subsequent immersions.

Three men, who constitute a Beit Din for the purpose of tevilah, will then enter the area of the mikveh. These men will usually not be the same Dayanim whom

1 My thanks to my colleagues, the heads of the Beit Midrash at Beit Morasha, Rabbi Yehudah Brandes and Rabbi Benny Lau, and also to Rabbi David Bass, for their helpful comments.
2 http://www.itim.org.il
3 Bold face type indicates emphasis of the author, unless otherwise indicated.
you met when you were tested by the bet din. You are now ready to complete the conversion process. The Dayanim will speak to you briefly, while you are still in the water, and ask you a few questions about Judaism, similar to ones you were asked in the Bet Din. These moments are apt to be both moving and unnerving. ...The point of these questions is not to reassess your eligibility, but rather to bridge the time between the final decision of the Bet Din regarding your conversion to your acceptance of the mitzvot and the completion of the conversion process. After you answer their questions, the members of the Bet Din will bless you and ask you to repeat after them Shema Yisrael, and the same declaration accepting upon yourself the mitzvot which you said in the Bet Din.

After accepting upon yourself the mitzvot, you will recite the bracha on the tevilah: Blessed are You, O Lord, King of the universe, who sanctified us in His commandments and commanded us about tevilah.

Baruch atah Adonai, eloheinu melech ha’Olam, asher kiddishanu beMitzvotav v’Zivanu al haTevilah.¹

Immediately after the bracha, you will immerse yourself fully in the presence of the Beit Din. The Beit Din will bless you and announce your new Hebrew name: “And his/her name shall be called in Israel, [insert the Hebrew name] the son/daughter of our forefather Avraham.”

This description portrays the situation today. Just as men who choose to join the Jewish People immerse in a mikveh before a Beit Din, so do female conversion candidates immerse before a three-member Beit Din. The dialogue between the conversion candidate and the Beit Din during the immersion ceremony covers the acceptance of the obligation to observe the commandments. To maintain standards of modesty to the degree possible under the circumstances, the female conversion candidate immerses while wearing a robe. The members of the Beit Din enter the mikveh chamber only after the female conversion candidate is already standing in the water.

The way the ritual is conducted from this point on depends on the sensitivities of the members of the Beit Din. I heard from one of the Dayanim that his custom is to stand with the Beit Din at the entrance of the mikveh chamber in such a way that the attendant stands between him and the female conversion candidate. The conversation between them is brief, the woman immerses, and the rabbis exit immediately. In contrast with this, I heard a different and troubling description from the female administrator of a large conversion program, who informed me that most female converts find the experience traumatic.

¹ It seems that this is a mistake in the description that is quoted here from the Itim website. The blessing of the convert occurs only after his/her immersion and not before it. “Because beforehand the person is not yet fit.” see Pesahim 7b.
Female converts who mentor conversion candidates describe a situation that is uncomfortable and embarrassing. The rabbis stand at the edge of the pool, directly above the woman who is immersing. While the wet robe adheres to her figure, she is expected to respond to the rabbis’ questions. In some cases, the woman converting is married and was living as an observant Jew, unaware that she was required to formally convert. In this situation, the woman must deal with the additional shock of having to uncover her hair before men. All of these examples describe an experience which is the opposite of what it was meant to be: a holy and sanctified moment.

It is not my intention in this paper to besmirch those rabbis who perform their task faithfully. However, it does seem that any intelligent person would be perturbed by the concept of a woman immersing in a mikveh before men, even if she is covered from head to toe. The requirement that men enter the mikveh chamber to witness the immersion of a female convert is by definition immodest conduct. The idea that a woman be required to go through this immodest ritual so that she may then live as a faithful and modest Jewish woman, is paradoxical indeed. I would like to examine the necessity of this position and to weigh alternative positions according to the halakha.

**Halakhic Background**

The conversion proceedings are possibly the most dramatic of all Jewish legal events. At the end of the conversion process a person changes irrevocably. The convert changes from a gentile to a Jew in every sense of the word. This process has implications on two planes. First, the convert is personally responsible to observe the commandments. Second, the convert has now joined Klal Yisrael and has become a member of the Jewish community.

The laws of conversion mandate the physical acts of immersion and circumcision on one hand, and the spiritual act of accepting the commandments on the other. These activities must be accompanied by the acknowledgement and

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5 One of the judges in the conversion court told me about an incident regarding a Haredi woman from Kfar Habad. This woman had made Aliya along with her mother twenty years ago. Now there suddenly arose a suspicion in the Interior Ministry that the papers submitted by her mother in order to prove her Jewishness under the Law of Return were fake. In great embarrassment and confusion, she rushed to the Beit Din in order to convert and remove any doubt. She was accepted to the conversion program, the Beit Din heard her willingness to accept the mitzvot, and sent her to immerse. When she heard that there would be men in the mikveh chamber, she became even more embarrassed and agitated. She was confused: what should she do with her wig? After thinking about it for a short time, the Beit Din instructed her to remove her wig.

6 The female converts noted that the immersion ceremony was often conducted like an assembly line, without sensitivity to the personal significance of this momentous final stage of the conversion process.

7 Women go through the same exact process, with the exception of circumcision.

8 See Rambam, Mishneh Torah, The Laws of Issur Bi’ah, 13, 1 – 5, which also describes the development of the laws of conversion.
recognition of the Beit Din in order for Jewish status to be conferred. A Beraita quoted in the Babylonian Talmud is the source for the requirement that the conversion be officially validated by a Beit Din:

The Rabbis taught in a Beraita: “And judge righteously between a man and his brother or his convert” [Deuteronomy 1:16]. From here Rabbi Yehuda said: a convert who converted in court is a convert. In private [literally: between him and himself], he is not a convert.9

According to this interpretation, one might liken conversion proceedings to other serious legal proceedings which involve monetary compensation, such as theft or bodily harm10, which must be adjudicated before a certified Beit Din of three rabbis. The Talmud derives this same law from a different proof-text:

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: To become a convert requires the presence of three men. What is the reason? The word “judgment” [Numbers 15:16] is written in regard to him.11

The need for certification of the conversion proceedings by a Beit Din can be derived from these sources. However the precise role of the Beit Din in conversion proceedings is not specified in these sources. From a different sugya (Talmudic discussion) one may conclude that the rule requiring a Beit Din for conversion does not require that the Beit Din be present at the actual immersion, but rather that the Beit Din verify that the immersion did indeed take place, or perhaps that the Beit Din is required to verify that the immersion ceremony included the acceptance of a halakhic lifestyle.

The slave of Rabbi Chiya bar Ami had a certain non Jewish woman immerse in a mikveh for the sake of taking her as a wife, i.e. in order to purify her from her niddah state, so that he could cohabit with her. Rav Yosef said: I am able to find legal grounds to declare both her and her daughter fit.12 Her I am able to declare fit in accordance with a ruling of Rav Assi. For Rav Assi once said in regard to a similar situation: Did she not immerse herself for purification from her niddah state? …


10 This is the interpretation of Tosafot in Yevamot 46b, s.v. mishpat. However, if we say that ‘mishpat’ refers to normal monetary cases, one judge would be sufficient (he must be a judge with expertise). See the Mordekhai in Yevamot 42a, 33, where he wrote in the name of Rabbi Yehuda Bar Yom Tov that one judge is also valid for monetary proceedings and therefore for conversion proceedings as well. D’Oraita, one does not need a Beit Din of three, and one rabbi is also considered a Beit Din. A woman cannot replace the Beit Din, even a Beit Din of one, because she is not a kosher witness.

11 Yevamot 47a.

12 Rashi, Yevamot 45b, s.v. “Kilna LeAkhshuri Ba”, explains the reason for this. One can consider her a complete convert even if she did not immerse for the purpose of conversion. Her immersion for the purpose of purification from her niddah state can take the place of the immersion for conversion purposes because an idolatress does not usually immerse for purification from her niddah state.
There was a certain person who was commonly called “son of an Aramean woman” [i.e. idolatress]. Rav Assi said: The title is unjustified. Did [the woman] not immerse herself for purification from her niddah state?

There was a certain person who was commonly called “son of an Aramean man” [i.e. idolater]. Rabbi Yehoshua ben Levi said: The title is unjustified. Did [his father] not immerse himself for purification from his seminal contamination?[13]

It is sufficient for Rav Yosef that the above mentioned slave, who is his candidate for conversion, immersed in a mikveh in order to purify herself from her niddah state. In the parallel case, Rabbi Yehoshua ben Levi is willing to acknowledge that his candidate for conversion does not require immersion in a mikveh because he must certainly have immersed for purification from his seminal contamination. Both Rabbis consider an additional immersion in front of a Beit Din to be redundant. From this sugya we can conclude that the knowledge that the maidservant immersed herself for purification from her niddah state, or the knowledge that a manservant immersed himself for purification from his seminal contamination, should be sufficient for the Beit Din. It is obvious that the members of the Beit Din where not present at the time that the maidservant immersed herself for purification from her niddah status. From here we may conclude that immersion in a mikveh does not have to take place in the presence of a Beit Din.[14]

A supporting argument for this principle can be found in the Jerusalem Talmud, Tractate Kiddushin. There we learn that immersion for purification from a seminal contamination can take the place of immersion for the purpose of conversion; this teaches us that while immersion in a mikveh is required, the testimony of the Beit Din about the immersion is not necessary. It is sufficient if it is clear that an immersion for the sake of conversion did take place:

Bar Kapra taught: A male convert who circumcises, but does not immerse – this is valid, for there is no convert that did not immerse for purification from his seminal contamination. But there is a question: Can [the purification] of a lesser impurity come in the place of [the purification] of a severe impurity? Rabbi Yossi from the house of Rabbi Bon said: Because both are for the sake of [becoming a part of] the holy nation of Israel, one can come in the place of the other.[15]

The opposing position, that the Beit Din must be present at the time of immersion, is based on a beraita which describes the manner of immersing:

13 Yevamot 45b.
14 See Gad Eldad, ‘Conversion requires intention?’, Techumim, pg. 287, and see also footnote 6 in that article.
15 Talmud Yerushalmi, Kiddushin 3:12 (64,4)
Two torah scholars stand over him and inform him of some minor mitzvot and some major mitzvot. Once he has immersed himself completely and come up from the mikveh, he is treated like a Jew in every respect. If the convert is a woman, women position her in the water until her neck and two torah scholars stand outside for her, and inform her of some of the minor mitzvot and some of the major mitzvot.¹⁶

In the ensuing discussion, the Talmud points out that this beraita does not accord with the interpretation of Rabbi Yochanan, who interprets the word “judgment” to imply the requirement for a three-person Beit Din. The Talmud resolves the contradiction by showing that Rabbi Yochanan is correcting the beraita, changing the language to “three torah scholars”.¹⁷

This appears to be the sole source-text that defines the Sages’ position on the precise role of the Beit Din in the conversion proceedings. We might say that in a sense the Beit Din simply represents Klal Yisrael. Therefore all the Beit Din must do is evaluate the intentions of the candidate and his/her desire to be included among the Jewish People, to ensure that in the process of conversion the candidate will accept upon him/herself the yoke of the commandments, and to accept his/her conversion.¹⁸ This view is also found in the Smag. He claims that the main reason the Beit Din informs the convert about the mitzvot is to be assured that the conversion candidate wants to convert and wants to accept the commandments, and that this desire is based on familiarity with the whole set of obligations that will become incumbent on the candidate after s/he converts.

In any case, we enumerate for the convert some of the punishments. This is to prevent the situation of the convert saying later on: if I had only known this, I would not have converted.¹⁹

It appears that the presence of the Beit Din at the immersion ceremony is not required in order to validate the acceptance of the mitzvot by the convert. However, from this source in the Babylonian Talmud one could conclude that the acceptance of the mitzvot must occur at the time of immersion.²⁰ The primary sources do not clearly specify the degree of coordination required between the events of immersion and of acceptance of the mitzvot. It is unclear whether these two events must occur simultaneously for the conversion to be declared valid. The relation between this question and the sugya regarding a

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16 Yevamot 47b.
17 “Thus said Rabbi Yochanan to the Tana, we learn three”. We could say that this is the disagreement between the Rishonim. See Rabbi Moshe Feinstein, Iggrot Moshe, Yoreh Deah, Part 2, Section 127, s.v. “VeKhen Muchrach MeHa”.
18 This is also the view of Rabbi Yisraeli, in his responsa, Havat Binyamin, volume II, section 67, paragraph 9-12.
19 Sefer Mitzvot Gadol, Negative Commandments, section 16
20 See Rashi, Yevamot 47b, s.v. “Umodi’im oto mikzat mitzvot’
person who has already immersed for the purpose of ritual purity not being required to immerse again for conversion, is likewise unclear.

The Rishonim and the Poskim disagree on the question of how to integrate these different sugyot, and on the role of the Beit Din in the various stages of the conversion process, as we shall see below.

In any case, we must consider two issues: First, we must understand the status and role of the Beit Din in the conversion process in general, and particularly regarding the presence of the Beit Din at the immersion, which is the final act of the conversion process. Secondly, we must consider how the role of the Beit Din is to be carried out when the conversion candidate is female. It is important to note at this point that the beraita we quoted makes it clear that the location of the Beit Din during a woman's immersion was different. It is clear that the place where the judges stand during the immersion ceremony of the female convert is different than the place where they stand during the ceremony of the male convert, and that a female attendant immerses the female convert. It seems that that the need to be mindful of the modesty of the woman immersing was obvious to the Tana'im. What remains unclear is the precise location of the scholars, and the meaning of the term "outside" in indicating their location.21

**Poskim positions on immersion before a Beit Din and on the role of the Beit Din**

The Geonim interpret the sugya as representing differing opinions. When considering a female conversion candidate, Rabbi Assi considers her immersion for the purpose of purification from her niddah status to be a sufficient replacement for the required immersion for the purpose of conversion. This opinion differs from the opinion of Rabbi Yochanan that a conversion requires three judges. The Bahag ruled on this issue in favor of Rabbi Yochanan's opinion: in all conversion cases, the convert must immerse for the purpose of conversion, even thought we know that she previously immersed for the purpose of purification from her niddah status.

In our times it is not sufficient that he immersed for the purpose of purification from his seminal contamination. He must immerse for the purpose of conversion.

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21 The halakhic consideration of female modesty is clearly present in the early sources. Therefore, in my opinion, it is not appropriate to compare this issue with other issues where the halakha specifically disregards the issue of female modesty, such as the case of the Sotah (Sotah 1:5); (even there, see Rambam, Mishneh Torah, Hilkhot Sota, 3:11 where he does not rule "if her clothes are torn, they are torn"); and the examination of lesions (Nega'im 2:4; Rambam, Mishneh Torah, Hilkhot Tumat Tzara'at, 9:12). In this case it is clear that one of the considerations in the sugya is respect for the modesty of the female candidate.
We accept the ruling (ibid. 47b): To become a convert requires the presence of three. The word “judgment” is written in regard to him.  

However in Halakhot Ketu’ot we find the opposite opinion, which states that we rule according to Rabbi Assi: a woman who already immersed for the purpose of purification from her niddah status is not required to immerse again for the purpose of conversion.

In the case of the son of an Aramean woman, Rabbi Yehoshua ben Levi said: but he has already immersed for the purpose of purification from his seminal contamination. The halakha is that a conversion candidate that already immersed for the purpose of purification from his seminal contamination or for the purpose of purification from her niddah status, this immersion can be counted for the purpose of conversion.  

The Rishonim did not view the positions of Rabbi Assi and of Rabbi Yochanan to be contradictory; they interpreted the relationship between these two opinions differently, and reached more complex halakhic conclusions, as we shall see below.

1. First approach: Immersion before of a Beit Din as a prerequisite for conversion

According to a number of major Poskim, the presence of the Beit Din at the immersion ceremony is an essential requirement. Their presence is not only required to verify that the immersion did take place. It is not sufficient that we know that the conversion candidate previously immersed in a situation that demonstrates their commitment to halakha and desire to be a part of the Jewish nation. According to this position, the presence of the Beit Din at the immersion ceremony is an integral part of the conversion process, defined as: “Immersion before a Beit Din”. Therefore the immersion cannot be carried out without the presence of the Beit Din. This is the position of the Rif, the Rambam, and possibly the Ramban as well, as will be explained below.

The Rif describes the apparent contradiction between the sugyot mentioned above, and in his typical fashion, resolves the contradictions between them.  

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23 Ginzei Ketem, section 5, Jerusalem: 1935, pg 156. The method of the Geonim is to acknowledge the contradiction between the sugyot and then to specify the correct ruling. This is different than the method of the Rishonim, who try to resolve the contradiction and, if possible, propose a harmonious solution. See A. Fuchs, ‘Al Derekh HaHakhra’a’ in Sugiyot BeMekkikar HaTalmud, Jerusalem: 2001, pg 100.

24 This is similar to the role of the Beit Din in all matters of marriage and Halitza, where their presence is required for the ceremony to be valid.

25 Rif, Yevamot 15a -16a in the pages of the Rif
Rabbi Assi said: who has not immersed for the purpose of purification from her niddah status? Regarding the man that was called “son of an Aramean woman” – Rabbi Yehoshua ben Levi said: did he not immerse for the purpose of purification from his seminal contamination? Just the way it sounds, that is the way we rule.

If you will raise the problem of Rabbi Yochanan, who said: “conversion requires three. Why? Because of the word “judgment” is written in regard to him.” Do we accept his ruling? This is not a problem. The opinion of Rabbi Assi and the opinion of Rabbi Yehoshua ben Levi deal with the BeDe’avad [post factum] case. We do not invalidate the son’s Jewishness, because the father immersed for the purpose of purification from his seminal contamination. If he was not a convert, he would not have immersed for the purpose of purification from his seminal contamination.

The opinion of Rabbi Yochanan is for the Le’Hatkhila [ideal] case. We do not consider him converted, and we do not marry him to a daughter of Israel until he has immersed in front of a three-member Beit Din.

According to the Rif, immersion for the purpose of purification from niddah status or for the purpose of purification from seminal contamination is evidence of keeping an observant Jewish lifestyle. Thus the Rif maintains that an immersion that counts for conversion has already taken place. However, the acceptance of this immersion applies only BeDe’avad. Le’Hatkhila, we require an immersion in front of a Beit Din. From this we derive the practical ruling that we do not marry such a convert to a Jew because that would constitute a Le’Hatkhila acceptance of his conversion. According to the law, marriage of the convert would require an immersion before a Beit Din.²⁶

Further on, the Rif rules in accordance with Rabbi Yehuda, that one must convert in the presence of a Beit Din:

… Our rabbis taught: “Judge righteously between a man and his brother or his convert”. From here Rabbi Yehuda said: a convert who converted in court is a convert. In private [literally: between him and himself], he is not a convert.

²⁶ See the opinion of Nimukei Yosef, 15, 2 in Daperi HaRif, s.v. “Me Lo Tavil LeKeryo”. He raises a problem: it seems that we can learn from the sugya on page 46b that was cited here, that even though he did not immerse in front of a Beit Din, his immersion is considered sufficient. He explains in the name of others, that if he accepted upon himself the yoke of mitzvot in front of a Beit Din, and he notified them that he will immerse, and he immerses not in front of them, in the BeDe’avad case his conversion is valid. The Nimukei Yosef himself does not accept this explanation, and is even more strict than the Rif, and he claims that if he did not immerse in front of a three-member Beit Din, it is as though he did not undergo circumcision.
The Rif quotes the Talmud regarding the immersion ceremony in front of a Beit Din in the Talmud’s exact words, and rules the same way.

_Our Rabbis taught: …Two torah scholars stand over him and inform him of some minor mitzvot and some major mitzvot. Once he has immersed himself completely and come up from the mikveh, he is treated like a Jew in every respect. If the convert is a woman, women position her in the water up to her neck and two torah scholars stand outside for her, and inform her of some of the minor mitzvot and some of the major mitzvot._

We can thus conclude from the Rif’s language that an immersion that was preformed specifically in the context of living an observant Jewish lifestyle, that did not take place in the presence of a Beit Din, is considered sufficient in order to give the convert the status of a Jew for his own personal needs, and in order to declare his children Jewish. However, we do not marry him to another Jew Le’Hatkhila. For that purpose he must immerse before a Beit Din.

The Rambam continues in the direction of the Rif’s position. He specifies that the immersion must occur before a three-member Beit Din. The Rambam further rules that even BeDe’avad, an immersion is not valid unless it took place in the presence of a Beit Din. Later on, the Rambam rules just as the Rif, that a woman who is known to observe Jewish law, and is accustomed to immerse for the purpose of purification from her niddah status, is accepted as a convert. However, she must undergo an additional immersion before a Beit Din to be married to a Jew.

The Ramban takes the same approach. He explains that Le’Hatkhila, immersion before a three-member Beit Din is required. BeDe’avad the convert is accepted if s/he has accepted the yoke of the mitzvot in the presence of a Beit Din, but did not immerse before a Beit Din. However because, Le’Hatkhila, this is not a proper conversion, one is not eligible to be married in a Jewish ceremony until one immerses before a Beit Din.

Further on in the same text, however, the Ramban raises a difficulty with this interpretation, and points out that the sugya which demonstrates that the niddah immersion can be accepted for the purpose of conversion, does not lend itself to the interpretation that this immersion simply bears witness to the woman’s

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28 Ibid, halakha 7.
29 Ibid, halacha 9.
30 The interpretation of the Rif and the Rambam of the sugya in Yevamot 45b, which grants legitimacy to the acceptance for conversion of the immersion done for the purpose of purification from niddah status, or done for the purpose of purification from seminal contamination, employs a exclusive interpretation of the words “Yachilna Le’Achsurei ba u’beBarta”. This means that although we consider her and her offspring kosher Jews, we do not Le’Hatkhila marry her to another Jew.
31 Hidushei HaRamban, Yevamot 45b.
own commitment to conversion and to observing the commandments; for if this were the purpose, it would be possible to note her observance of Shabbat or any other commandment. The fact that immersion is the commandment that is noted proves that the sugya wished to recognize alternative immersion options. In his own words:

The Sephardic Rambam of blessed memory, wrote thus: “a female convert who we have seen consistently practicing the Jewish way of life, for example: who practices niddah immersion, and takes tithes from her bread dough; and similarly a male convert who maintains a Jewish lifestyle, who practices seminal immersion, and obeys all the commandments; these are considered a Ger-Tzedek (true convert), even though there are no people who witnessed their conversion.

Nevertheless, if they wish to marry a Jew, we do not perform the marriage until they bring witnesses, or they immerse before us, for their legal status has been defined as gentile.”

And these are surprising words. For if this were the case, he ought to have referred to [the convert’s] observance of Shabbat, and not his observance of seminal immersion; For it is easier to know if he kept the Shabbat, or was accustomed to practice mitzvot, than if he immersed, since there are many who never immerse for seminal impurity. Furthermore, when they say: “that gentile woman immersed for the purpose of marital relations”, the implication is that her immersion was for marital relations only, and even so she is considered Jewish, based on the fact that she immersed for niddah. [Similarly,] in the Jerusalem Talmud, Tractate Kiddushin, “HaOmer” chapter, it says: “But Rabbi Yehoshua ben Levi ruled like the teaching of Bar Kapra: A male convert who circumcises himself, but does not immerse – this is valid, for there is no convert that has not immerse for purification from his seminal contamination. Yet how can [the purification] of a lesser impurity come in the place of [the purification] of a severe impurity? Rabbi Yossi from the house of Bon said: Since both immersions are for the purpose of [being a part of] the holy nation of Israel, the [seminal immersion] is accepted.” This is a support for our position.

The Ramban quotes the Rambam and explains that his words are actually an interpretation of the language of the Talmud, “for who has not practiced seminal immersion?” merely as proof of living an observant Jewish lifestyle, which can serve to validate the man as a convert in the sense that his children are considered Jews; however it is not sufficient proof of his Jewishness to actively remove him from the category of a gentile, and therefore he must immerse again in order to marry a Jew. The Ramban disagrees. He claims that if the goal was to prove that the convert conducted a Jewish lifestyle as proof of conversion, we could have used more common examples, such as Shabbat
observance. Seminal immersion is not a common practice even among mitzva observers. Therefore, the Ramban concludes that the Talmud meant to show that the immersions themselves, the seminal immersion and the niddah immersion, are not evidence of something else, but are themselves sufficient as conversion immersions, although they did not take place in the presence of a Beit Din. The Ramban find support for this interpretation in the Jerusalem Talmud as well.

From the Ramban’s concluding words, it is clear that he withdrew his support from the more limited interpretation of the immersion (proof of a religious lifestyle) and maintained that if we know that the woman immersed for niddah, her immersion has value beyond merely proving that she observes the commandments; that it is a valid conversion, and even permits her to marry, for this is the main purpose of the niddah immersion. The Acharonim did not understand the Ramban in this way: they concluded that the halakhic-interpretive position of the Ramban was identical to that of the Rif and the Rambam;\(^{32}\) The Gra, however (Beur HaGra, Shulkhan Arukh, Yoreh Deah, section 278, letter 23) notes that the Ramban disagrees with the Rambam.

In summary, we see that according to the position of the Rif and the Rambam, if the convert immersed, but not before a Beit Din, and he accepted observance of the mitzvot before a Beit Din, we cannot invalidate his conversion. His status is that of a Jew, and his offspring are not suspect, however we do not marry him Le’Hatkhila to a Jew. The Ramban, on the other hand, seems to rule that such an immersion allows one to marry the convert to a Jew. At the other extreme we have the stringent position of the Nimukei Yosef,\(^{33}\) that immersion that did not take place in the presence of a Beit Din is completely invalid, even post facto, for any purpose.

2. Second Approach: Immersion before a Beit Din is not required for conversion

There is an entire school of Rishonim who rule differently than the Rif and the Rambam as explained above. This group considers an immersion that occurred without the presence of a Beit Din sufficient for conversion as long as it is certain that the immersion did take place, and if the convert has accepted the obligation of mitzvot in the presence of a Beit Din in a separate ceremony. This approach considers immersion a required step in the conversion process, however the role of the Beit Din in the immersion ceremony is merely functional. In other words, the Beit Din must ascertain that the immersion did indeed take place,

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\(^{32}\) See for example Beit Yosef, Yoreh Deah, 168:3a, s.v. “V’Kol Inyanav sham b’sof devarav”, and see also responsa Miskpetei Uziel, Yoreh Deah, volume I, section 13.

\(^{33}\) Ibid, comment 26
and possibly that the immersion was done in the spirit of acceptance of the mitzvot. In practice, this means that according to this position, the absence of a Beit Din at the immersion ceremony does not invalidate the conversion, and the presence of a Beit Din is not an integral part of the immersion stage. It is not an inseparable part of the proceedings.

Thus for example, Tosafot rules that if a person accepted the mitzvot and immersed, even without the presence of a Beit Din, the conversion is valid.34

It appears that for the acceptance of mitzvot, [a Beit Din of] three is required, however for immersion one is enough, if [the convert] already accepted the mitzvot.

Tosafot uses the sugya in Yevamot as a proof-text, citing the ruling that immersion for the purpose of purification from seminal emissions is sufficient for conversion, and the fact that this immersion was surely not done in the presence of three judges. Like the Rif, Tosafot also find it difficult to understand the ruling of Rabbi Yochanan. However Tosafot explain the contradiction in a different manner, as follows:

We must say that [the requirement to immerse before] three is a mitzva, but not a prerequisite; or we could say that the reason for the requirement of three judges is to ensure acceptance of the mitzvot…"

According to Tosafot, we see that the presence of a Beit Din at the immersion ceremony is not a prerequisite in the conversion proceedings, and the conversion is valid if all other requirements are met. Alternatively, Tosafot rules that the presence of the Beit Din is required for the acceptance of the mitzvot.35 It is unclear if the presence of the Beit Din is required at the time of acceptance of the mitzvot, or is merely circumstantial and can be forgone in some cases.

The Rosh36, too, clearly rules that the immersion may be done without the presence of a Beit Din, and that the presence of the Beit Din is not required. The main issue is to ascertain that the immersion did indeed take place. “Since it is known to everyone that she did indeed immerse – it is as if they were standing there”. Likewise, the Mordekhai37 states specifically that the presence of the Beit Din is required only Le’Hatkhila, but BeDe’avad it is sufficient that mitzvot were accepted before a Beit Din.

34 Tosafot, Kiddushin 62b, s.v. ‘Ger’.
35 According to this position the word “judgment” refers only to the acceptance of the mitzvot. See responsa Igrot Moshe, Yoreh Deah, 2:127, s.v. “V’Yesh Gam Ta’am” which explains that there is a certain logic in the claim that the requirement for a Beit Din ensures that the proceedings take place in an orderly fashion, to give credence to the proceedings and to give instruction. It is not meant to give eye-witness testimony about any particular event.
36 Rosh, Yevamot, ch. 4, sec. 31.
37 Mordekhai, Yevamot 42a, letter 33.
In the footsteps of Tosafot and the Rosh, The Tur\(^{38}\) rules that BeDe’avad the immersion is not required to take place before a Beit Din. He in fact suspends all the legal requirements of standard halakhic legal proceedings; thus the immersion need not take place during daylight and it can take place before two people rather than three.

Note, however, that although the Tur does not require the presence of a Beit Din in the BeDe’avad case, he still requires that two people to witness the immersion ceremony. The Shulkan Arukh\(^{39}\) rules the same way. It is possible that they still insist on a proper legal witnessing of the immersion. Given the assumption that women are not considered kosher witnesses, we have the same problem that occurs when a Beit Din must witness the woman’s immersion.

However, It is possible that we are dealing here with a case of Ne’emanut B’Issurim (trustworthiness in case of prohibited acts), rather than the strict rules of testimony that apply to capital or monetary cases. Indeed, the HaGahot HaMordekhai\(^{40}\) comments that the two witnesses can be relatives, implying that there is no need for court-worthy testimony; it is enough that we know that the immersion took place. The Shach held that an immersion done in front of one person\(^{41}\) is sufficient. The Bach\(^{42}\) continues this line of reasoning in his comments on the Tur, and goes even farther, saying: “regarding what our Rabbi wrote, that [the convert] was circumcised and immersed in front of two people, having two people is not a prerequisite, it could even be one woman, and this would be kosher BeDe’avad. We learn this from the incident mentioned in Perek HaKholetz where it says: who has not immersed for the purpose of purification from her niddah status?”

**Summary of the different approaches and the problems they raise**

In summary, there are two central approaches to the question of whether the presence of a Beit Din is required for the immersion ceremony.\(^{43}\) The first position considers the presence of a Beit Din to be a requirement for conversion. The second position claims that the presence of a Beit Din is not necessarily required; according to this view an immersion that was not done in the presence of a Beit Din is acceptable BeDe’avad, and does not imply any defect in the conversion proceedings; however this applies only to BeDe’avad situations,

\(^{38}\) Tur, Yoreh Deah, sec. 268.  
\(^{39}\) Shulkan Arukh, Yoreh Deah, 268:3. The Rama agrees with him, as does the Pitkhei T’Shuvah, who limits this law to the requirement that the conversion of a minor child must occur before a Beit Din.  
\(^{40}\) Ibid  
\(^{41}\) Shach, ibid; see also the opinion of Tosafot (footnote 33).  
\(^{42}\) Bach, Yoreh Deah, 268, s.v. “V’Khol Inyanav” .  
\(^{43}\) There is a similar debate about the requirement for the presence of a Beit Din at the circumcision of a male convert. See Arukh HaShulchan, Yoreh Deah 268:3, who summarizes the different approaches to this issue.
and not *Le’Hatkhila*. In any case, we can definitely conclude that according to this position, the presence of the *Beit Din* is not a priori essential, not being an integral part of the proceedings, but rather circumstantial and testamentary.

Therefore, in my opinion, it is time to revisit the debate regarding the requirement in our day for the presence of a *Beit Din* at the immersion ceremony of a female convert. Perhaps it may be possible to discover a fitting substitute for the presence of a *Beit Din*. It is certainly crystal clear that the current situation is unseemly, both for the *Dayanim*, who must enter a women’s bathhouse, and for the female converts, whose modesty and self respect are compromised by immersing before a *Beit Din*.

Let us reexamine the immersion procedure for female converts in our source-texts. The *Beraita* itself clearly distinguished between the cases of female and male converts; for female converts, the rabbis are located outside, and it is the role of women to assist the female convert in entering the *mikveh* up to her neck. This distinction in the *Beraita* is very understandable and ought to be interpreted in the context of changing realities, using it to define the *Halakhic* guidelines in each given situation in our day. We must consider the precise meaning of “outside”, assuming that the term would have different applications at a riverside as opposed to in a bathhouse.

Note that the commentators mentioned above did not distinguish between male and female converts, but rather discussed the issue of immersion in general, ruling that *Le’Hatkhila* a *Beit Din* is required to be present. The *Poskim* and commentators did not feel the need to raise the question of the sensitivity necessitated by a woman’s immersion, and did not discuss it. Thus we receive the impression that a *Beit Din* must be present at the immersion ceremony of a female convert, and the text implies that the women attendants who place the female convert in the water up to her neck serve as a human partition between the woman and the judges. To the best of my knowledge, this level of modesty is not always observed, nor do the *Batei Din* receive any clear guidelines in the matter.

Surprisingly, it appears that an early text exists that does refer to the issue of modesty in the immersion of a female convert: “A man immerses a fellow man, and a woman immerses a fellow woman, but not a man.” (Tractate *Gerim*, 1:4). This source-text might have been utilized in the analyses of the later *Poskim*, yet it was always omitted. It is curious that this source-text was not mentioned in the debate of the *Rishonim* on this issue. In fact, all of the commentators...
use only the direct quote from the Beraita “women position her … two torah scholars stand outside…”. There is no reference at all to any realistic description from the period of the commentators themselves, which could illuminate how this ritual was actually carried out, and how we ought to interpret the term “outside” today. Also, we find no discussion of the division of labor between the male Torah scholars and the females who position the convert in the water.

In all likelihood, in Medieval Christian Europe and in other Jewish communities of that period, conversions were not a common occurrence. It would seem that the Rishonim were not faced with the practical application of the laws of conversion. It seems to me that since the commentators did not have to deal with immersion of female converts but only with the role of the Beit Din in the conversion process, this source was not discussed. The conspicuous absence of this text supports the claim that the topic was not in fact debated until a later era; therefore it would be difficult to infer any clear cut response to the issue of female immersion for conversion from the Rishonim.

Similarly, the Shulkhan Arukh and the Tur list these laws next to the laws regarding slaves, another topic whose practical relevance decreased with time. In Arukh HaShulkhan, we find the laws of conversion under a telling title: “Laws of Converts in Ancient Times; in our country we are forbidden to accept converts by law of the land.”

From various testimonies, and from the few later responsa that deal with this issue, it is clearly inferred that there were places where it was not customary for a Beit Din to be present at the immersion of female converts.

**Immersion of a female convert before a Beit Din**

The question of the location of the Beit Din for the immersion of female converts has only arisen in contemporary responsa. Rabbi Uziel writes of the following case:

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45 Arukh HaShulkhan, Yoreh Deah, 268. Actually he does try to explain the Beraita. It is clear from his words that this is not a reality that is familiar to him.

46 For example, the ruling of Rabbi Ovadia Yosef is based on the reality that he met with upon arriving in Egypt. There the judges did not enter the immersion chamber when a female convert was immersing. It is not clear to what extent the custom of female converts immersing before a Beit Din was common in various places, and how exactly it was carried out. Thus also the Minkhat Yitzkhak (part 4, section 34) and Igrot Moshe (Yoreh Deah, part 2, section 127) in their responsa deal with the custom that arose in England (London and Manchester) concerning the immersion of a woman: the judges were not present in the same room as the immersion but rather in a different room.

47 Responsa Mishpatei Uziel, Yoreh Deah, volume 1, section 13.
When I was serving the Jewish community of Salonika I was asked if I would approve the immersion of a female convert that was not done in the presence of a Beit Din. The mikveh was located in the gentiles’ bathhouse and there were always gentile female bathers there. It would be a great dishonor for the Beit Din to enter there, and it would appear inappropriate to the public. Therefore they turned to me to rule that in the future female converts may immerse without a Beit Din present. I acceded to their request, which I found to be required and necessary, and I committed to investigate the issue, with Heaven’s help.

In his attempt to find a way to permit immersion without the presence of a Beit Din, Rabbi Uziel surveys the various halakhic positions, and even attempts to derive from the Rif that the entire reason for the presence of the Beit Din at an immersion is only to verify that the immersion is accompanied by a commitment to the commandments. Therefore, there is in fact no need for the actual immersion to take place before a Beit Din.

And I still maintain that even according to the Rif and the Rambam, the role of the Beit Din in the immersion of a convert is to ensure acceptance of the mitzvot, for there is no logic in saying that the Beit Din must go and stand at the immersion just in order to see it; rather, since the convert’s commitment to accept the yoke of the commandments ought to take place before a Beit Din, and since immersion without acceptance of the mitzvot is meaningless in the context of conversion, therefore the immersion and the acceptance of mitzvot should occur simultaneously before a Beit Din; however if the acceptance of the mitzvot were to precede the immersion, and then the convert were to immerse before two witnesses, he would be considered a complete convert, even Le’Khathila to be accepted among the Jewish People...

Thus Rabbi Uziel concludes that even according to the Rambam and the Rif, if the issue of acceptance of the mitzvot is resolved, the conversion is valid even without the presence of a Beit Din. He explains the Ramban’s position in a different manner: since in an immersion without a Beit Din one cannot verify that the convert was committed to the mitzvot at that time, and thus there is a

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48 I am grateful to Dr. Gila Hadar who shared with me the conclusions of her research, that there was no clear tradition for conversion in Salonika either. She claims that the law against conversions did not permit any conversions, including conversion to Judaism, and there were cases in which Rabbi Yaakov Meir, who preceded Rabbi Uziel in the role of Rabbi of Salonika (and later as Rishon LeZion), cooperated with the Greek Metropolitan in an attempt to convince a Jewish girl not to convert and marry a Christian. These efforts were successful, and an additional five girls who were considering conversion renounced their intentions, mainly due to the obstacles placed in their paths by the Greek Metropolitan, who transferred the girls to the Chief Rabbi. An additional historical explanation of the fact that the problem arose only in the days of Rabbi Uziel was the fact that the bathhouse was originally located in the Jewish quarter, in the Jewish Square of Salonika, however following a large fire many Christians moved into this area, after which the problem of immersion in a bathhouse that was shared by Jews and Christians arose.
chance that the convert would later reconsider the conversion; therefore, the Beit Din must be present at the immersion.

We must say that in his opinion, we ought to be concerned lest [the convert] changed his mind, [in which case] his immersion without the Beit Din was not for the purpose of conversion through acceptance of all the commandments.

This proves that in Rabbi Uziel’s view, the presence of the Beit Din is not an integral part of the immersion ceremony according to any of the positions. He rules that one can rely on the lenient BeDe’avad opinions, and adopt them Le’Hatkhila in all cases of female conversion:

And in any case, in my humble opinion in this case we may rely on the opinions of Maran (Rabbi Yosef Karo), the Rema, and the Mordekhai, in order not to "lock the door in the face of converts".49

He explains his ruling as follows:

Since the bathhouse where the mikveh is located is always populated by bathing women, the presence of the Beit Din alongside the immersing convert would invite disparaging comments from the other women and from the community; and since according to the law and according to the rules of common decency no man, and certainly not a Rabbi, is permitted to enter a women’s bathhouse when they are bathing; for as we know, even in the case of the female convert herself, women attendants station her in the water up to her neck, and the judges stand outside, and inform her of some of the minor mitzvot and some of the major mitzvot while she is in the water, after which she immerses before them, and then they turn away their faces and go out so as not to see her when she comes out of the water (Yoreh Deah 268:2). Thus clearly the judges are not permitted to look at her either before the immersion or after it, when she is not properly dressed; whereas when they enter a bathhouse that is occupied by other women who are bathing or even getting dressed, it is impossible to avoid such a thing occurring unintentionally. Therefore, given that the immersion of a female convert in the presence of a Beit Din has become an impossibility, in such a case it is likely that all opinions would permit the immersion without the presence of a Beit Din, even for the purpose of marriage to a Jew.

Rabbi Uziel then ruled that three Jewish women must appear before the Beit Din together with the female convert, and hear her commit to observing the commandments. Then, the Beit Din must instruct the women to attend the convert at the mikveh and witness her immersion as representatives (shlichot) of the Beit Din, and these women were to remind the convert of her commitment

49 The source of this phrase is at the end of Tosafot, Yevamot 46b, s.v. “Mishpat”
to the *mitzvot* when she immersed. In this way, the presence of the women replaces the presence of the *Beit Din*, making it as though the *Beit Din* was actually present.

In order broaden the basis for this, I rule that the female convert stand together with three Jewish women before the *Beit Din*, while the *Beit Din* informs her of some of the minor *mitzvot* and some of the major *mitzvot* and their associated punishments according to the law; and following her acceptance of the commandments, she will be instructed to immediately go with the accompanying women to immerse before them as representatives of the *Beit Din* with the intention of accepting Judaism and all its commandments, and the women are to tell her as much at the time of her immersion. In this way, it is my humble opinion that her immersion will be kosher *Le’Khathila* according to all opinions.

Rabbi Samuel Salant\(^50\) also instructed in his responsa to be lenient under extenuating circumstances, “for there is no permission for men to enter the bathhouse”. He ruled as follows:

The rabbis should stand outside the bathhouse, and the worthy women should enter… who will oversee the immersion of the converting woman according to Torah law; and they will know that the three Torah Scholars are standing nearby, close enough to enter, and are aware of their actions; and after the immersion the three [women] are to inform the scholars that she has immersed according to Torah law.

The *Minkhat Yitzkhak*\(^51\) also maintains that Jewish women can be relied upon as representatives of the *Beit Din* in this context. He further develops the *halakhic* basis for the women’s legal reliability as witness, based on the rule that “one witness is reliable in matters of legal prohibition” (*ed echad ne’eman be’issurim*),\(^52\) and since it is "*beyada*" - meaning that the situation can be rectified, it is permitted.\(^53\) This is certainly the case when the *Beit Din* is standing outside and if the women were to refrain from immersing the convert, it would very likely be discovered:

Regarding the reliability of the women, the honorable rabbi ruled, because the matter could easily be discovered, and he brought support from the words of the Novik (Even Ezer 55), and this is to be considered also because of [the added reason of] "*beyada"...and the *Beit Din* hears the sound of her immersion, and how the attendant woman is instructing her to immerse completely, and

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\(^{50}\) *Torat Rabeinu Shmuel Salant*, published by Rabbi Nissan Aharon Tokchinzky, Jerusalem : 1968, Volume I (*Orakh Khayim, Yoreh Deah*) section 29, page 185.

\(^{51}\) *Responsa Minkhat Yitzkhak*, volume 4, section 34.

\(^{52}\) See my article "*Ed Echad Ne’eman B’Issurim*", or "*Al Kozo Shel Daled*", Granot, 3 page 41-59.

\(^{53}\) One of the requirements for trustworthiness of one witness is that he has the ability to correct the forbidden situation. This is true in our case: the immersion is a possible act and therefore they are trustworthy to report it. See more in my article mentioned above.
she says out loud to the Beit Din that the convert has immersed properly, and she is now under the water, and the Beit Din could go in and see if she was telling the truth...therefore we can say that it is considered as if the Beit Din had knowledge without seeing...and with this we fulfill the requirement of the Poskim (in Yoreh Deah 268) that the immersion of a convert requires witnesses, even if we say that BeDe’avad the presence of the Beit Din is not required...for a convert is not a reliable witness, even though it is “Beyado”, and this is obvious...

All of this applies if we are in doubt about the actual immersion, however in a case where the Beit Din is standing outside, and they know that she has gone under the water to immerse, and the attendant has been instructed to see that she immerses properly, this is considered as a woman standing over her, just like “Beyada”, and she is reliable as stated above...and in addition, a Jewish woman who was appointed by the Beit Din to oversee [the immersion] is dependable because of “beyada” and also because of the assumption that an emissary always fulfills her mission; and if we add this to all of the above, we can possibly say that the Beit Din has knowledge without seeing.

At the end of his ruling, the Minkhat Yitzkhak states that Le’Hatkhila she should immerse in a robe, following the ruling of Rabbi Ovadia Yosef which will be brought below. However, he notes that immersion in a robe is also actually only valid BeDe’avad. Therefore she should immerse again without clothes after the Beit Din has left, in the presence of a Jewish woman.

The question then arises, why ought we to prefer the BeDe’avad case of immersing in a robe to the BeDe’avad case of immersing without the presence of a Beit Din? And how can we justify preferring these scenarios over a Le’Hatkhila immersion in front of women who are emissaries of the Beit Din?

Rabbi Moshe Feinstein discusses a question that was sent to him from London regarding the immersion of a woman in front of the Beit Din, in which he rules that the Beit Din’s presence is an integral part of the legal proceedings, and therefore he does not permit immersion without the presence of a Beit Din. However, he acknowledges the difference between the approach that sees the presence of the Beit Din at the immersion ceremony as part of the legal proceedings, and the approach that considers the purpose of the Beit Din’s presence merely to ascertain that the immersion has taken place. It is clear from his words that if one were to say that there was no need for the Beit Din to witness the immersion, then since this is an immodest situation, it would certainly be prohibited.

54 Shulkhan Arukh, Yoreh Deah, 198:46, whose language implies that the immersion is valid only BeDe’avad.
55 Responsa Igrot Moshe, Yoreh Deah, volume 2, section 127.
But this cannot be, for if it were not a prerequisite that the Beit Din [attend the immersion], they would not have been required to see the immersion of a female convert, as this is in any case immodest behavior…

In any case, Rabbi Moshe Feinstein continues, if it is necessary to immerse in front of a Beit Din, then all the various kinds of covering are an impediment, as the Beit Din must witness the immersion.\(^{56}\) It is clear that he felt that the presence of a Beit Din at the immersion of a female convert constitutes a tremendous leniency in Jewish standards of modesty. If this is the case, why are we stringent in following the opinions of the Rambam and the Rif regarding conversion, and lenient in the laws of modesty? And why do we not rely upon the Rosh, the Tur, Tosafot and the Shulchan Arukh and rule more stringently regarding modesty; particularly when it would be possible to be stringent about both issues by appointing women as the representatives of the Beit Din?

Rabbi Ovadia Yosef was asked a similar question.\(^{57}\) The question dealt with the accepted custom in Egypt, where female converts immersed before a female attendant, and the judges did not stand in the mikveh chamber but rather in an adjacent room outside it, and from there they would inform the convert of some major and some minor mitzvot. Rabbi Ovadia notes that the reason for this leniency is the claim that today the mikveh water is clear, and therefore it would be inconceivable that the Beit Din would stand directly in the mikveh chamber, as the woman’s body could be seen even when in the water. Rabbi Ovadia tended towards a more stringent approach, yet was balked by the fact that the Shulchan Arukh rules like Tosafot and the Rosh, as opposed to the Rif and the Rambam. He therefore brings proofs from many sources against the ruling of the Shulchan Arukh, including a ruling of the Chief Rabbi of Egypt, who recommended overcoming the difficulty of the clear water by covering the surface of the water with a piece of cloth such that only the head of the immersing woman would come through the fabric. Rabbi Ovadia notes that this custom did not become widespread, and that the custom of the Egyptian Batei Din was not to enter the mikveh chamber.

And although there were a few modern people, who think highly of themselves, who opposed this with all their might, claiming that it is not seemly and proper for the members of the Beit Din to enter the women’s bathhouse at all, when there is a woman in the mikveh. And they only think it is permissible for a licentious doctor to examine women, even when they are naked, to treat

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\(^{56}\) It would appear that the ruling of Rabbi Moshe Feinstein tends towards the more stringent approach in the context of his battle against the Conservative movement and their conversions. See on this matter responsa Igrot Moshe, Yoreh Deah, volume I, section 160; also, in the above ruling the discussion centers around the immersion being witnessed by a gentle woman attendant, who is not legally considered a reliable witness.

\(^{57}\) Rabbi Ovadia Yosef, Respona Yabia Omer, volume I, Yoreh Deah, section 19.
some malady, but not modest Torah scholars. This is the “Torah” of these moderns, the opposite of our Holy Torah, which distinguishes in the opposite manner in the law of Yichud between trustworthy people and licentious people. They try to twist honest ways, and we will not permit our perfect Torah to be like one of their trivial discussions.

Thank G-d, I succeeded in convincing the Chief Rabbi, appointed by the King, who conceded that this was indeed the custom in Kushta, the capital city of Turkey. He ordered the Shamash of the Beit Din to obey my instructions, and to fulfill my directions in this matter, and I have established this custom as of today, 18 Cheshvan of 1948.

Note that in this case Rabbi Ovadia deviates from his principle of ruling in accordance with Rabbi Yosef Karo. Rabbi Ovadia also opposes the lenient opinion of Rabbi Uziel. In his opinion, Rabbi Uziel’s approach is based on the BeDe’avad case specified by a minority of Poskim, and that he incorrectly designates this lenient approach as the Le’Hatkhila ruling.

And especially today, in our weak generation, when most converts are not sincere, but are only converting for the purpose of marriage and such things, and we should stop being lenient in the matter of conversion, [behaving as though] we are obligated to accept them when they come to use to convert, from a number of proper and sufficient reasons, as I have written in a different responsa with God’s help. But to add more leniencies, such as immersion not before a Beit Din, so as to avoid “locking the door in the face of converts”? God forbid! On the contrary, if only the door were locked in their faces!!

In his personal memoirs Rabbi Ovadia relates that the subject of immersion was one of the reasons that led the heads of the Egyptian Jewish community to dismiss him from his position in the Egyptian rabbinate.

58 Rabbi Ovadia here implies that there are leniencies for trustworthy people and Torah scholars that are not applicable for licentious people. However, the leniency in the laws of yichud that he alludes to in his responsa is not unique to Rabbis or judges. It applies to all Jews that are not suspected homosexuals, and permits yichud of one man with another. See Kiddushin 82a. There are in fact no leniencies in the laws of modesty that distinguish between Torah scholars and others.

59 See Rabbi Benny Lau, “Ma’amado Shel HaRav Yosef Karo B’Psikato shel HaRav Ovadya Yosef”, annual publication “HaMishpat Ha’Ivri” 23 (2004-5) pg 73-125. It is possible that he ruled in this way because he had come across a previous ruling of the Nahar Mizrayim who established this law for the people of Egypt, and in Israel he would not have rule thus, because in his opinion in Israel Rabbi Yosef Karo is the halakhic authority.

60 Rabbi Ovadia’s practical suggestion is that women immerse while a piece of cloth is stretched over the surface of the water and hides their bodies, and only their heads are sticking out, so that the Beit Din can see that the woman is there, and that she immerses and dunks her head under the water.

61 Rabbi Benny Lau drew my attention to the fact that this ruling was issued less than three months after he arrived in Egypt. The following is an excerpt from his notebook:

On the 25th of Heshvan, delegates of the religious community came before the President of the community: Aharon Shivka, Yom Tov Tantaui, the seminary directors, and Yosef Wahava, with a request to postpone the resignation because there is no Torah scholar or proper religious leader
Conclusion

Respect for the dignity and modesty of women who wish to join the Jewish People is a value of moment when considering this complex issue. Who will stand up for these forlorn individuals, who wait in line with the hope of receiving the stamp of approval of the Jewish People? Who will make their voices heard? It behooves us to treat with the utmost respect a woman whose only wish is to be a daughter of the Jewish People and to be gathered under the wings of the Shekhina.

Therefore, it is incumbent upon us to reconsider the possibility of instituting the practice of using trustworthy, female emissaries of the Beit Din, who are specially appointed for this purpose, to supervise the immersion of female converts, while the members of the Beit Din stand outside, such that the women attendants serve as their “extended arm” and the judges can hear the immersion happening as specified by the law. In this way there will be no need to rely on various coverings which are valid only in BeDe’avad, and we will be spared the embarrassment that is incurred by a Beit Din entering women’s bathhouse and watching women immerse. The women, a well, would be spared a procedure that leaves a painful impression on many female converts. This approach is truly Le’Hatkhila,62 and we may even claim that it fulfills the requirements of the more stringent ruling. In any case, it certainly stands on firm ground, based on the positions of Tosafot and the Rosh, who states, “it is as if they were standing there”.

62 In this way we need not rely upon the BeDe’avad opinion of Tosafot and his party, and we can state that this is an immersion before a Beit Din Le’Hatkhila.
At the very least, there is another possibility, which is to have the women attendants form an actual physical barrier between the immersing convert and the members of the Beit Din, so that the judges may observe the immersion from afar. Alternatively, a semi-transparent screen might be erected, to give the robed female convert a sense of privacy, and yet will permit the judges to see a blurred image of the immersion. Creative solutions such as these would not require any extreme changes in position; merely a higher level of attention and sensitivity.

The adoption of any of these solutions would honor the Beit Din, the convert, and the Torah.

63 In any case, a clear ruling in this matter would be of great value, in preventing the dishonor and disrespect towards the Beit Din as evinced in criminal court ruling 1319/01, the State of Israel vs. Einhorn and others, where one of the women claimed that the judges behaved immodestly during her immersion.
Question:
In the article you wrote about the ritual immersion of women for conversion ("A woman immerses the woman," Akdamot 28) you mentioned the possibility that women could function as a messenger (shaliakh) of a beit din (rabbinic court). They would be present when a woman immersed herself for her conversion and they would replace the beit din, the three men who are customarily used today. What is the status of messengers of the beit din and how can women function as messengers of beit din?

Answer:
In recent years a number of great rabbis have raised the possibility that women should be present at the immersion of other women for their conversion, as designated messengers of the beit din. These rabbis include Rabbi Uziel, Rabbi Shmuel Salant and Rabbi Waldenberg. Rabbi Waldenberg went so far as to suggest that this should be standard practice and should not be relegated to special circumstances or BeDea’vad (post facto) situations. He explained that in Israel today the presence of a beit din in a woman’s mikveh (ritual bathhouse) is met with disapproval, and so “we must take the situation of our present time into account.” (Protocols of the 2nd Conference of Dayanim, Tishrei, 5714)

If this is the case, then the basis of the suggestion of these Torah giants should be examined and the nature of the proposal to appoint women as messengers of beit din must be clarified. The first mishnah in Tractate Sanhedrin enumerates the various compositions of batei din necessary for different areas of judgment. It differentiates between courts that deal with monetary issues and courts that judge capital offenses, as well as between courts that deal with monetary issues and courts that impose punitive damages. According to the mishnah there are also frameworks that deal with communal matters, such as those that determine the new moon and the leap year, amongst other things. (Sanhedrin 1,1)

Within this context the mishnah determines that “monetary judgments- (are judged) by three; theft and damages- by three.” According to some opinions when a beit din of three is mentioned it refers to judges that are experts and have semikha. (Sanhedrin 3, 1) At a certain point the practice of semikha ceased and it became impossible to assemble the proper configuration necessary to judge these various matters. Yet the Talmud explains that if there were no courts that dealt with cases of admissions and loans, even without the necessary expertise
and \textit{semikha}, society would break down. People would stop lending money and all doors would be closed to those in need of loans. And so it was determined that in certain matters we say, “we are performing their \textit{shlikhut},” i.e. we are acting as messengers of the \textit{beit din} that had \textit{semikha}. Therefore in many cases our \textit{batei din} are only empowered to act because they are considered messengers of \textit{beit din}. (\textit{Tur} Shulhan Arukh, Hoshen Mishpat, Siman 1)

In a number of places the Talmud discusses ways to limit the scope of the authority of these messengers. It prohibits them from imposing fines or judging matters that are not widespread or common since the entire institution was set up in order to ensure that society would not grind to a halt and it was never intended to give \textit{semikha} to people who were not worthy. (\textit{Bava Kama} 84b) Rabbi Waldenberg explains in his responsa that the messengers of \textit{beit din} are not actually considered messengers; the earlier generations did not give them the authority to judge these matters. Rather, in a more general way the Torah decreed that the laws of the courts would be “for your generations” and so judges are considered to be the messengers of their predecessors so that we can continue to uphold the laws of the Torah in every generation. (Responsa \textit{Tzitz Eliezer}, 15, 69) This explanation bases the entire idea of a messenger of the court on the principle of “\textit{tikkun olam}” (proper functioning of the world). (See Responsa \textit{Divrei Yatziv}, Hoshen Mishpat, 2) Conversion is also one of these cases where the Torah has given permission for judges to act without \textit{semikha} for the sake of \textit{tikkun olam}. (see \textit{Rashba Yevamot} 47, “dilma” and other \textit{Rishonim})

As a general rule women are not qualified to be judges; because they are not allowed to testify they are not a part of the rabbinic court system in any way. (\textit{Sanhedrin} 3, 9) However, in monetary cases people who are not usually considered fit to testify are allowed to testify if the litigants allow it. And so in such cases even laymen or relatives who would normally be disqualified may sit in judgment. Women are also included within this category. Therefore it can be concluded that women can be a part of a \textit{beit din} in certain cases outside of the customary channels. (\textit{Sefer Hakhinukh}, Mitzvah 77, and \textit{Minkhat Hinukh} there)

In our case, where there is “no other way” and it is improper for women to immerse themselves in front of men, women can be recognized as messengers of the \textit{beit din}, similar to the way that a \textit{beit din} of today is recognized. In this way they can fulfill the role of their predecessors and perpetuate the laws of the Torah for generations to come. This solution is particularly suited to the laws of conversion which the \textit{Rishonim} agreed should be observed in every generation in accordance with the Torah law “in your generations.” The words of the \textit{Tosafot} on this matter are particularly fitting:

“And so we must say that we are acting as their messengers... Harav Netanel also said that concerning the convert it says ‘in your generations,’ meaning this applies in every aspect even though they are not experts, because now against our will there are no experts because there is no one with \textit{semikha}, and ‘in your generations’ means for all generations.” (\textit{Tosafot}, Kiddushin 62a)