

To the editor:

Too often in halakhic debate on controversial issues, the facts of the masoret are distorted l'shem shomayyim in support of what are perceived as necessary positions. Formulations that grate on modern sensitivities are buried, and contrary precedents ignored. \_'s response to \_ regarding the propriety of women wearing tefillin clearly had no such intent, but I fear that some of the secondary sources which influenced him were not so innocent. As a result, his article was unintentionally but nonetheless seriously misleading and inaccurate.

Torah Judaism's major advantage in our ongoing battle with anti-halakhic groups is our superior knowledge and intellectual honesty in dealing with traditional texts. Our authority comes from our fidelity to those texts; we should not sacrifice it for short term gains on narrow issues. I'd like, therefore, to briefly try to set the halakhic record straight.

Among rishonim, Rabbeinu Tam, Sefer HaChinukh, Meiri, Rashba, Ritva, Agudah, Shibbolei HaLekket, Orchot Chaim, various collections of Tosafot, and Nimmukei Yosef all hold lehalakhah that Michal wore tefillin with Chazal's approval. Nimmukei Yosef adds that his position was the consensus in Sefarad and supported by Ramban (Ramban's position cannot be demonstrated directly from his chiddushim). This position is also supported by the straightforward reading of Rashi and Rambam. There is no suggestion in the rishonim that Michal was exceptional in this regard.

The position that women may not wear tefillin is held by Maharam as cited by his student Kol Bo (Orchot Chaim also cites Maharam but disagrees) and Maharam's student Tashbatz (not the sefardic rishon R. Shlomo ben Tzemakh Duran). Hagahot Maimuniot cites anonymously a position that women may not wear tefillin because "seyar b'ishah ervah", an argument that presumably would be limited to tefillin shel rosh.

Thus the vast majority of rishonim permit women to wear tefillin. The Mechaber follows their view (despite citing Maharam in Beit Yosef, he makes no mention of a restriction on women in Shulkhan Arukh; standard halakhic methodology takes this as conclusive evidence that he disagrees with Maharam), but the Rema disagrees. Rema presumably follows his and Beit Yosef's explanation that Maharam took into account the position of Pesikta (cited by Tosafot; the same position is cited in the Yerushalmi) as against that of the Bavli. (This seems offhand, however, somewhat peculiar, as generally the authority of the Bavli is unchallenged in halakhah. It becomes curiously yet if one accepts the Vilna Gaon's emendation of the Yerushalmi, in which case the Yerushalmi merely records a disagreement on this issue rather than taking a definitive stringent stance. It seems possible, although there's no real evidence either way, that Maharam accepted the Bavli's permitting women to wear tefillin in Talmudic times, but believed that the women of his time were unable or unwilling to maintain a guf naki.)

I know of no authorities after the Rema who clearly permit women to wear tefillin (which by no means implies that there aren't any), but it is important to note that few follow Rema's rationale for objecting to the practice. Rather, they follow Maharshah, who suggested that Michal was exceptional and that women should therefore be discouraged from wearing tefillin even though there is no technical halakhic prohibition. Maharshah's position is prefaced by the words "nonetheless, *nowadays* we should object", and his formulation of the guf naki issue in terms of general cleanliness certainly leaves room for discussion of whether he would object to women wearing tefillin in our day, in which the availability of running water has raised standards of personal cleanliness to levels unheard of in premodern society. Furthermore, he presumably would permit women as exceptional as Michal to wear tefillin in all societies.

Arukh haShulkhan's suggestion that the guf naki issue prevents women from wearing tefillin because they are pattur, and not because they are less careful than men in keeping a guf naki, is interesting but difficult to connect with Maharam's language. (Ritva's explanation of the rejected position that women may not wear tefillin may accord with Arukh HaShulkhan). The Maharam's formulation (which is echoed in the "hava aminot" of many other rishonim; mention should also be made of Ramban's explanation that this position is a function of "nashim daatan kallot") is that women "are less careful in guf naki" or "do not know to be careful with regard to guf naki".

None of this is intended to suggest any conclusions halakhah l'maseh, which would clearly depend on derekh hapsak (the relative weight given a consensus of rishonim versus a consensus of acharonim, and the willingness to recognize change in social reality as a factor in pesak) and an evaluation of the communal situation (would permitting women to wear tefillin be a damaging confession of halakhic mutability, or a way to avoid estranging committed women from halakhah). However, there certainly is room to question (at least theoretically) whether a women's vow to wear tefillin is ipso facto invalid because contra-halakhic, and a responsible poseik who permitted women to wear tefillin, particularly in private on a case by case basis, could not be dismissed out of hand.