Transgender and Halakha: 
Does Jewish Tradition Recognize a Difference Between Gender and Sex?  
Rabbi Dov Linzer

1. Questions Received from a Transgender Woman

- Do I need to put on tfilin/tzitzit?
- After my SRS will I be allowed to marry a guy, and be his wife?
- How do I get my new female name to be attached to me according to halakha for thilim purposes etc.?
- Am I obligated according to halacha to go to mikveh before being together with my future husband?
- Is my status recognized as a default reality or as a pikuach nefesh reality?
- Do I sit on the side of the women in an Orthodox synagogue?
- Are my children to be called ben or bat my old name or new name? I already have children. And so I won’t be preserving any sperm. But I was wondering if like when they get called to the Torah for instance, will my children be called let’s say Pinchas ben Chava?
- Before surgery would I be limited to no yichud with either sex?
- Am I allowed to do ngiah touching other women or men?
- Do I have to respect my Chareidi parents that don’t want to know about me? In other words, am I allowed to cut off contact from them if they insist on hurting me?
- If there are laws of modesty? Would I have to adhere to the strict laws of modesty that women adhere to? Or is it possibly different? Because well technically halacha is still not fully recognizing me as female.

The Androgynous

2. Mishnah Bikkurim, ch. 4

(1) An androgynous is halakhically similar to men in some, and to women in other ways, in some ways to both, and in some ways to neither.

(2) Rabbi Meir Says: androgynous is a creature / category of its own, and the Rabbis could not decide whether he is a man or she is a women. However a tumtum is not so, as at times he is fully male, and at times she is fully female.
"He (an androgy nous whose halakhic status is that of doubtful male/female) wraps himself like men" – and the prohibition for a woman to wear a man’s clothing does not apply, and if he wraps himself like a woman that would be a violation of a man wearing women’s clothing...

"And he cuts his hair like men" – here, too, this constitutes a form of male appearance, and thus he falls under the prohibition of destroying the corners of his beard and not cutting off his sideburns, for they are all interdependent...

"He does not seclude himself with women"... for if all seclusion were prohibited, he would not be able to survive, rather it is definitely permissible for him to seclude himself with men, and so Rambam rules. The reason for this is, since he cannot marry a man, men separate from him, and certainly when they see that he marries a woman and does not seclude himself from women, he is presumed to be a male from their perspective...

In our opinion, the rulings are split. If the characteristics of a female are in the majority to the point where he appears to all as a woman, although he remains forbidden to be married by a man, he (she) may not be in seclusion with any person, and this is correct, for whoever has any maleness may not be in seclusion with a woman at all, since they can be easily seduced. But a normal androgy nous, who appears to people as a man, can be in seclusion with them, but not with women, as we wrote.
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he does from connecting to a woman, then his femaleness is complete and his maleness is lacking...

**Male and Female Souls**

5. **Bereishit Rabbah 8:1**

And God said: Let us make Adam in our image, in our shape: R’ Yirmiyah ben Elazar said, when God created the first human, he was created as an androgynous; thus is it written, "male and female did He create them." R’ Shmuel bar Nachman said, when God created the first human he created him with two faces, one on each side, and He split him along the middle, forming two backs.

6. **Vilna Gaon, comments of Sifra DiTzniuta (38b)**

And the essence of the matter is that male and female each include male and female

7. **Zohar 1:49b**

Rabbi Shimon opened, the verse states, "And he went on his journeys from Negev to Beit El, unto the place that his tent was originally, between Beit El and Hai." “He went on his journeys” – it should say “his journey” (sing). What is the meaning of “his journeys”? This teaches that there were two journeys, one of his own and one of the Shekhina. For every human being should manifest as male and female to fortify faith. And in this way the Shekhina will not depart from him, forever.

You might say, “If one sets out on the road and is no longer male and female, Shekhina separates from him.” Come and see: Whoever sets out on the road should offer his prayer to the blessed Holy One to draw upon himself Shekhina of his Lord before he leaves, while still male and female. Once he has offered his prayer and Shekhina rests upon him, he can leave, for Shekhina has coupled with him so that who will be male and female: male and female in town, male and female in the countryside, as it is written, “Righteousness goes before him, and he sets out on his way (Psalms 85:14).

Come and see – every time a person is delayed on the way, he must guard his actions in order that the supernal coupling does not depart from him and he will be found...
lacking, without male and female. In town he must, when his female is with him; certainly here where the supernal coupling is joined with him. Moreover, this supernal coupling protects him on the way and does not separate from him until he returns to his house.

8. Sha’ar Hagilgulim, Chapter 9

Sometimes a man may reincarnate into the body of a woman because of a sin, such as homosexuality or something similar. This woman who has received the soul of a man will not be able to conceive and become pregnant...

[It might be possible for her to give birth to daughters.]

However, she cannot give birth to sons for two reasons. The first is [as follows:] There is a verse that says, "...If a woman puts forth seed, and a male child is born" (Lev. 12:2). In this case, the woman is a male, just like her husband, and she cannot give birth to boys, but only to girls.

9. Maggid Meisharim 8:3

I have already revealed to you last Shabbat concerning your first two wives. Now I have come to reveal to you the secret of your third wife.

You should know that this woman was in the past, a proper male Torah scholar. However, he was stingy with his money and would not give charity. He was also stingy with his wisdom and would not teach others. He was therefore punished that his soul migrated into a woman, measure for measure...

Therefore, his soul was incarnated into a female, who is constantly receiving and needs someone to bequeath to her. Therefore you see, that she does abundant charity and loves you very much because you work to spread Torah and toil in writing books to teach others...because these things bring about the rectification of her soul, she therefore loves you...

It is because she has the soul of a male that you have not had children from her,
because a male and another male cannot produce offspring. If you shall point out that she has children from her first husband, this is because the first husband has the spark of a female soul within him...

A Man's Desire to be a Woman

10. Even Bohan, Kalonymus ben Kalonymus

..."Woe to him who has male sons / Upon them a heavy yoke has been placed / restrictions and constraints... Strong statutes and awesome commandments / six hundred and thirteen / Who is spared? Upon them a heavy yoke has been placed / restrictions and constraints...

Oh, but had the artisan who made me created me instead - a fair woman. Today I would be wise and insightful. We would weave, my friends and I / and in the moonlight spin our yarn / and tell our stories to one another / from dusk till midnight / we'd tell of the events of our day, silly things / matters of no consequence. As I would grow very wise from the spinning / and I would say, "Happy is she who know how to work with combed flax and weave it into fine white linen." And at times, in the way of women, I would lie down on the kitchen floor, between the ovens, turn the coals, and taste the different dishes. On holidays I would put on my best jewelry...

And when I was ready and the time was right / an excellent youth (husband) would be my fortune. He would love me, place me on a pedestal / dress me in jewels of gold / earrings, bracelets, necklaces. And on the appointed day, in the season of joy when brides are wed, for the welcoming of the bride and the week for the son, he would increase my delight and gladness.

The law and morality he would not abandon, and my [sexual] pleasure he would not diminish / every Shabbath, and each new moon / his head would rest upon my breast. The three husbandly duties he would fulfill / rations, raiment, and regular intimacy. And three wifely duties would I also fulfill, [watching for menstrual] blood, [Sabbath candle] lights, and bread... On these we shall not add in number and counting / for one should not ask regarding them: these women, for what sake do they merit?

Father in heaven / who did miracles for our ancestors / with fire and water / You changed the fire of Chaldees so it would not burn hot / You changed Dina in the womb of her mother to a girl...
Gender Versus Sex

11. Dor Tahapuchot, pp. 69-81, selections

Behold, in regards to the obligation of mitzvoth, at first glance it would seem that changes to the body that a person performs on his body through surgical means, would not change for greater or lesser his obligation in the mitzvoh of the Torah. This is because we should not give consideration to the body of a person when it comes to his obligation in mitzvoh, for what truly matters for this issue is a person’s soul which was hewn from God’s Throne of Glory, as it says, “And he breathed into nostrils the soul of life and the human because a living soul.” It is stated similarly in Niddah (31a), that God places in the human the spirit and the soul.

Therefore, a person’s soul does not change through surgery. The external alterations to the body do not create change for the body is simply the clothing of the soul...

Since as we have explained that a person’s essence is not the body, it follows that it is the soul that is commanded in the mitzvot and not the body. This is also stated in Zohar p. 233b, “… That appearance of the body of people that is present in this world, just like that does it exist above, and at the time when the soul is prepared to enter the world, that soul with exactly that form/appearance that exists in this world, so it exists above before the blessed Holy One, and God says to it that it should observe the commandments of the Torah and not transgress its obligations.”...

/ You changed the staff to a snake before a million eyes / You changed (Moses’) hand to (leprous) white / and the sea to dry land. Who would then turn me from a man to woman? Were I only to have merited this / being so graced by goodness … What shall I say? why cry or be bitter? If my father in heaven has decreed upon me / and has maimed me with an immutable deformity / then I do not wish to remove it. the sorrow of the impossible / is a human pain that nothing will cure / and for which no comfort can be found. So, I will bear and suffer / until I die and wither in the ground. Since I have learned from our tradition / that we bless both, the good and the bitter / I will bless in a voice / hushed and weak / Blessed are you God / who has not made me a woman.

Translated by Rabbi Steve Greenberg (emendations by Rabbi Dov Linzer)
It is now clear that a woman’s obligation in mitzvot and her exemption from time-caused mitzvot, flows from the source of her soul which is in the upper realms. These [religious] matters are not inscribed in the body, rather, the soul is the source of obligation in the mitzvot of the Torah...

However, [based on the Talmudic passages cited] it has been explained that it’s possible that a man would have the soul of a woman, certainly, in such a case we would not say that this man’s obligation in mitzvot is that of a woman because he has the soul of a woman. Rather, he is obligated in mitzvot as a man...

We see that Rabbi Yitzhak Palagi in his work, Yafeh La’lev 1:38:2, where he cites Rema. Rabbi Palagi states, “Do not bring proof from Michal, daughter of Saul, who laid tefillin... One could say that Michal was a wise woman and knew of herself that she had the soul of a man and that’s why Michal didn’t birth a child.” And Kaf Ha’hayim cites this and it seems that he agrees with the Yafeh La’lev. Initially, one might have thought based on these words that we rule according to a person’s soul and not their body... However, it seems that this does not contradict what we said... Obviously, their intention is not that Michal was exempt from mitzvot incumbent upon women and certainly she fulfilled all of those. Rather, in addition to these obligations, she also laid tefillin knowing that her soul was male.

It is clear that the obligation in mitzvot is not dependent on the gender of a person’s soul but on their body. We should not give consideration to a person’s behaviors and movements and thus determine that he has the soul of a woman... This is, on the face of it, against what we wrote at the beginning that, fundamentally, we rule based on a person’s soul.

Halakhic Issues

12. Rema, Shulhan Arukh, Orah Hayim 696:8

As to the custom to wear masks on Purim, and a man wears a woman’s clothing and a woman a man’s clothing – there is no prohibition that is being transgressed in this case, since their only intent is for the sake of joy. The same is true in regards to wearing a Rabbinic form of shatnez. And some say that this is forbidden, but the practice is like the first opinion.
Regarding wearing masks – as it is the practice for young men and women, young and old, to do so on Purim.

Behold, I have seen that a permissive ruling has already been given by my beloved friend... Rabbi Elyakim Sigal...

... Rather, they most certainly must have had a proof and basis that this was fully permissible, and that in such dressing up there is not even the slightest concern of a transgression...

Now since the other Tosafists justified a certain related practice on the principle that “God knows what is in our hearts,” and he also wrote that it is only forbidden (for a man to wear a woman’s clothing) when it is done as a way of beautifying oneself, and another Tosafot wrote that it is only forbidden when it is for the sake of beauty and adornment, as a woman would wear it, and only then does the prohibition of “A man shall not wear” apply – from this we can see that when done in a different way, it is permissible.

It also seems this way from Smag, Negative Prohibitions 60, regarding the prohibition of “A man shall not wear a woman’s clothing,” namely, that these prohibitions are dependent on a person’s intent. For we explain the verses according to the Tana who reads them according to their simple meaning, namely, that a man shall not wear clothing that is distinctive for a woman, like a veil or the like, in order to sit among women and for the purposes of licentious behavior (lit., adultery). And the same would be true for a woman wearing men’s clothing to sit among men... From this we see that Smag also is of the opinion that one does not transgress unless he is intending for licentious purposes... So we see that it is not forbidden unless one is wearing these garments to beautify himself...

14. Selected translation of Dor Tahafuchot, Translation by Rabbi Jeff Fox

A summary of the practical laws

Obligation in Commandments

If a man underwent a sex-change operation and changed himself to be a woman - there are some poskim according to whom it appears from their words that the establishment of the sex of a person, for the purposes of mitzvah obligation, is dependent upon their external appearance. Therefore, through the [surgical]...
transformation of a man to a woman, she acquires the legal status of a woman. Through this she is uprooted from the mitzvot in which she had been obligated when she was a woman.

However, practically speaking, sex-change operations do not change a person's legal status. A man's current form / presentation as a woman does not change his obligation in mitzvot. Because, for the purposes of obligation in mitzvot, a person’s soul and the form of his original creation establishes the nature of his obligation. Therefore, these surgical procedures do not cause a change regarding the status of this individual. And all the more so based on what has been made clear that the fabrication of the organs has no significance and they are simply “fictional.” And certainly there has been no fundamental change, rather just an external and cosmetic change has taken place - which does impact their Jewish legal status.

And regarding all of this, so too is the law if a woman tried to change to be a man...

However, in the eyes of certain Jewish legal matters we do not determine on the basis of the form of the person's original creation, rather we relate to them based on their current form / presentation. For example, regarding the prohibition of wearing the clothing of the opposite sex, or a woman's hair and voice, or touch, or being alone - since these prohibitions emerge from a concern that a person will sin [sexually]; and since based on their current form / presentation there is a concern for sin therefore we do not rely [leniently] on the form of their original creation.

Dress and Head covering (page π, page 4)
E) If a woman changed herself to a man, some say that this man must still dress as a woman since from a Jewish legal perspective she is still a woman. And if they were to wear men's clothing they would violate the prohibition of wearing the garments of the opposite sex.

However, according to the law, the matter is clear that this man must dress as a man and he may not dress as a woman. For if he were to dress as a woman he would become “regular” with woman and this would lead to sin.

And so too is the law regarding a man who changed himself to be a woman, that this woman must wear female clothing and not male clothing.

And a divorcee or a widow who changed herself to be a man need not cover his hair.

Receiving an aliya to the Torah: (page π, page 5)
A woman who changed herself to a man, and this man is now coming closer to Jewish life and comes to pray in the shul, is permitted to be called up to the Torah for an aliya. And this should all be done within the discretion of the local rabbi. However, a man who changed himself to a woman, this woman is coming close to Jewish life and comes the pray in the shul it is clear that this woman may not be called up to the Torah for an aliya even though from creation he was a man.