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## The Exclusion of Women in Jewish Law, its Influence on the Image of Women in Zionist Ideology and the Legal and the Social Status of Women in Contemporary Israeli State

My intention in this article is to discuss the exclusion of women in Judaism, the image of women in the Talmud and Jewish law. I would like to show how the concept of women as an inferior creature prevented her from taking part in the Jewish rituals, practice and learning. In this context a question is raised: “in what way can Jewish women be considered as Jews at all”? What is the destined role of women in Jewish traditional society?

The second step is to examine the Zionist concept of the “new woman” in the light of the notion of “creating a new nation and a new man”. How does this idea contradict the Jewish-traditional image of women and in what way does it actually correspond the traditional image?

The final step is to examine the social, judicial and political status of women in Israel today, and to examine in what way the actual status of women in Israel is contradicting basic assumptions of the democratic and modern state.

### The Status of Women in Jewish Law

Exclusion from active participation in the community is a central element of women’s status in Jewish law. It seems that the main purpose of the *Halakhah* legislators regarding the female sex, as embodied in the *Talmud* and the *Mishnah*, is how to exclude women from the public sphere. The philosopher Yeshayahu Leibowitz wrote that the historical Jewish people is defined by Judaism, which is not a collection of ideas but a definite way of life, as embodied in *Halakhah*. “Judaism is the religion of the people of Israel, in its actual manifestation as *Torah* and *mitzvot* (i.e. precepts, commandments)”.<sup>1</sup> If being

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<sup>1</sup> Yeshayahu Leibowitz, *Judaism, the Jewish People and the State of Israel*, Schocken, Tel Aviv 1979, pp. 235–236 (Hebrew).



a Jew means to follow a strict way of life, which is constructed, from 613 *mitzvot*, and in the light of the fact that women are free from following the most important of them<sup>2</sup>, then how women can be defined as Jewish? If women are excluded from the heart and soul of Jewish law is it not, perhaps, so that men only are considered as real Jews? Rachel Adler expresses it clearly when she writes that: women “are viewed in Jewish law and practice as peripheral Jews. The category in which women are generally placed includes women, children and Canaanite slaves... members of this category have been »excused« from most of the positive symbols which, for the male Jew, hallow time, hallow his physical being, and form both his myth and his philosophy”.<sup>3</sup>

Saul Berman tries to vindicate that fact. He argues that the motive for treating women in such a way in Jewish law is not the result of a chauvinist or misogynist attitude, but from a deep will to protect the family institution. The motive behind women’s exemption is using exclusion as a tool “to achieve a particular social goal; namely to assure that no legal obligation would interfere with the selection by Jewish women of a role which was centered almost exclusively in the home”. The role of mothers – wives – housekeepers – is exclusively that of women for the “maintenance of strong family units as the central means of the preserving of the Jewish community both physically and spiritually”.<sup>4</sup> However, that explanation is incorrect, or at least incomplete. Excluding women from the public sphere is, more than anything else, an expression of men’s interest to control women, to govern them. It is argued that the distinction between men and women must be kept because it is a part of divine order that draws its origins from God’s creation.<sup>5</sup> Furthermore, in contrast to what Berman claims, the Talmud is saturated with misogynic and chauvinist remarks that some of them will be mentioned later.<sup>6</sup>

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<sup>2</sup> See: Ruhama Weiss-Goldmann, *I want to bind you in phylacteries*, in: Ariel Yoel et al. (eds.), *Blessed Him for Having Made Me a Woman?* Yediot Ahronot, Tel-Aviv 1999, pp. 105–120 (Hebrew).

<sup>3</sup> Rachel Adler, *The Jew Who wasn’t There: Halakhah and the Jewish Woman*, in: Susan Heschel (ed.), *On Being a Jewish Feminist*, Schocken, New York 1983, p. 13.

<sup>4</sup> Saul Berman, *The Status of Women in Halakhic Judaism*, in: Elizabeth Koltun (ed.), *The Jewish Women: New Perspectives*, Schocken, New York 1976, p. 123.

<sup>5</sup> Yael Azmon, *Introduction: Judaism and the Distancing of Women from Public Activity*, in: idem, *A View into the Lives of Women in Jewish Societies – Collected Essays*, The Zalman Shazar Center for Jewish History, Jerusalem 1995, p. 22 (Hebrew).

<sup>6</sup> Rachel Elior gives exhaustive list of the despising attitude of the Jewish law towards women. Those remarks determine, as a matter of fact, the attitude of the Jewish society over centuries to its mothers, wives, sisters and daughters. During long years it shaped the image of women in the eyes of the Jewish community, which was male only. According to those citations one can grasp the contempt, underestimation, exclusion, discrimination, fear and disgust that, as Elior makes clear, say more about the conscience and deeds of the hater than on the subject of hate. Rachel Elior, *The Presence and Absence of Women in Hebrew, in the Jewish Religion and in the Israeli Reality*, in: Yael Azmon (ed.), *Will You Listen to My Voice? Representation of Women in Israeli Culture*, The Van Leer Jerusalem Institute / Hakibbutz Hameuchad, Tel-Aviv 2001, pp. 45–46 (Hebrew); Boyarin claims that the *Talmud* tradition is not misogynic, but it is andro-centric, which means that men are no doubt in the centre. See: Daniel Boyarin, *Carnal Israel. Reading Sex in Talmudic Culture*, Berkeley 1993.



In Jewish written tradition, which is sacred and was written and studied exclusively by men, there is an enormous number of laws concerning women that, as a matter of fact, exclude them from participating in public Jewish religious life, and keep them out of society closed at home, following the widely known guiding statement “All glorious is the King’s daughter within the palace” (Psalms 45:14).

In addition, many regulations were composed, of course by men only, in order to define the specific and limited role of women. Their place is at home, in the private sphere; their fate is to give birth to children<sup>7</sup>, and their role in life is to be spouses bear and bring up children and domestics, while in the public sphere women are totally mute. This phenomenon is clearly reflected in four major fields:

1. Participating in rituals. Women are relieved of numerous affirmative precepts as is written in the *Mishnah*: “All affirmative precepts limited as to time, men are liable and women are exempt” (*Mishnah Kiddushin* 1:7 29a). If we examine those precepts, we can see that they are of the kind of which participation in them means going out of home; like public prayers and visiting the synagogue during Shabbat.<sup>8</sup> The *minyan* – the basic unit of the Jewish community – exclude them, implying that the community is presumed to be the Jewish males. But women are also deprived of the right to practice religious precepts that can be done at home, in the private sphere, and are highly important in defining a man as a Jew. Berman makes it clear that women are “deprived of opportunities for positive religious identification. This concern goes beyond just the demand for public equality... The focus is more significantly on the absence of even private religious symbols, which serve for men to affirm the ongoing equality of their covenant with God. The fact that Jewish women are relieved of the obligations of putting on *tallith* and *tefillin* (*phylacteries*), of praying at fixed times of the day [...] and they have been traditionally discouraged from voluntarily performing these acts, has left them largely devoid of an actively symbolic means of affirming their identities as observant Jews”.<sup>9</sup>

2. A woman’s testimony is inadmissible in a Jewish court, all the more so judges. All the roles in court are reserved for men alone (*Sh’vuot* 30a, *Rosh Hashanah* 22a). For this reason, women cannot take part in the public activity of making justice. It is understandable in light of the conception that “women are light minded” (*Shabbat* 33b);

3. Studying the *Torah* was prohibited. As a matter of fact, there were different attitudes concerning *Talmud Torah* for women (of course only at home and not in schools), but the position that prevailed was one of complete prohibition.<sup>10</sup> Similarly to the attitude of Rabbi Eliezer who said that “he who teaches his daughter the *Torah* teaches her nonsense”

<sup>7</sup> Elior, op. cit., pp. 53–54. Elior shows how in Jewish tradition infertile woman who is married for ten years should be divorced.

<sup>8</sup> Tal Ilan, *A Window into the Public Realm: Jewish Women in the Second Temple Period*, in: Yael Azmon (ed.), *A View...*, pp. 47–48 (Hebrew).

<sup>9</sup> Berman, op. cit., p. 115.

<sup>10</sup> Ibid, pp. 119–120.



(*Mishnah, Sota* 3:4). It is obvious that, if women couldn't study there was hardly much chance for of them to become teachers (*Mishnah, Kiddushin*, 4:13). The common view towards women's studies can be summed up by the statement: "better to burn the sayings of the *Torah* then give them to women" (*Sota* 93:4);

4. The disadvantaged position of women in areas of marital law. At the traditional wedding ceremony women are completely silent, during the ceremony they are actually bought by a bridegroom. Before marriage, women are the possession of their fathers and after marriage of their husbands.<sup>11</sup> The peak of women's discriminated condition is the status of *agunah*. *Agunah* is a woman whose husband leaves her and disappears without giving her a divorce, so according to the Jewish law she is bound to him and not allowed to marry another. Berman says that concerning the status of women, "the feeling of being a second-class citizen of the Jewish people is almost unavoidable when the awareness exists that men are almost never subject to the same fate, that a variety of legal devices exist to assure that they will be free to remarry no matter what the circumstances of the termination of a prior marriage, and despite the will of the first partner".<sup>12</sup>

Thus, in compliance with Jewish law, women had no right to be rabbis, witness in Jewish courts, judges and leaders of religious service. Women's religious potential is exhausted in enabling their husbands and children to fulfill *mitzvot*, which, actually, means to be a Jew. No wonder, therefore, that for centuries till today Jewish men, still recite each morning, from the age of *Bar-mitzvah* – (13), the same blessing thanking God "for not having made me a woman" (*Tosefta Berakhot* 7:18).<sup>13</sup>

A male is associated with culture, creation, spirituality, and a woman is trapped in her body, and her physicality. She is not allowed to learn, to teach, to write, to speak in public, to take an active part in religious rituals in the synagogue, she is defined only in terms of fertility.<sup>14</sup> Adler sums it clearly: "A woman's whole life revolved around physical objects and physical experiences – cooking, cleaning, childbearing [...] without any independent spiritual life to counterbalance the materialism of her existence, the mind of the average woman was devoted to physical considerations [...] it was, thus, natural that Jewish men should have come to identify women with physicality and men with spirituality".<sup>15</sup>

### **Women in Zionist Ideology and in the Israeli Society prior to independence**

Women who were a part of the Zionist movement expected to gain a full partnership and equality. Those hopes were as an anti-thesis to Jewish tradition as well as to the

<sup>11</sup> See: Elijor, op. cit., pp. 51–52.

<sup>12</sup> Berman, op. cit., pp. 115–116.

<sup>13</sup> Ibid., p. 116.

<sup>14</sup> Elijor, op. cit., pp. 55–59.

<sup>15</sup> Adler, op. cit., p. 15.

Haskalah (the Jewish enlightenment) that opened European culture to women, but kept them in a passive position.<sup>16</sup> Even though Zionism was a revolutionary movement, there were no revolutionary changes in the status of women. The widespread myth is still believed that women of the first and the second Aliyah (the Jewish immigration to Palestine) were equal in status and roles to men and that they were free women who *lived full and fulfilled lives*. But this view is only a myth. The current researchers show clearly how hard, unequal, disappointing and frustrating lives they led.<sup>17</sup>

Rachel Elbaum-Dror reveals in a convincing way how the ideal image of women in the early Zionist utopias was one-sided, anti-feminist and reflects a very traditional view of women.<sup>18</sup> It is important to examine the utopian texts, because they reflect the aspirations and yearnings of men, Zionist writers and ideologists, who hadn't as yet faced the obstacles of reality. What role did they intend for women in the future Zionist society? Elbaum-Dror presents a very interesting fact that no matter what the differences were between the utopian writers, whether he was liberal or socialist, religious or secular, there are only minor variances in the images of women that were depicted.<sup>19</sup> Firstly, they criticized deeply the emancipated, liberated and independent Jewish woman and portrayed her as the representative of materialist capitalism in its most vulgar form. Incredibly, they criticized not the traditional Jewish women, as it would have been expected of a revolutionary ideologist, but, on the contrary, the modern educated Jewish women. The enlightened woman was a threat to man, and opposed the stereotypical concept of an obedient creature. The anti-thesis for that woman is the "national woman" who rejects the comfort life in the Diaspora, and who even says, in one of the texts; "the women's aspiration for equality originating in her unhappiness inside the family, can a PhD be a consolation for family happiness"?<sup>20</sup> The ideal Zionist woman is beautiful, delicate and spiritual, she is feminine and soft, and the centre of her life is her house and children, whom she educates in a Hebrew cultural atmosphere. The utopias draw the future Jewish state as liberal, in which women are given equal rights, but it is only the facade, only a veil behind which women relinquish their rights in public activity and prefer the private sphere of house and children. Hence, the outside frame is liberal and progressive, but the internal structure is still traditional and patriarchal.<sup>21</sup> The central

<sup>16</sup> Azmon, op. cit., p. 31.

<sup>17</sup> See: Yossi Ben-Artzi, *Between Farmer and Laborer: Women in Early Jewish Settlements in Palestine (1882–1914)*, in: Yael Azmon (ed.), *A View into the Lives of Women in Jewish Societies – Collected Essays*, The Zalman Shazar Center for Jewish History, Jerusalem 1995, pp. 309–324 (Hebrew); Deborah Berenstein, *Voices from the Hard Core: Stories of Young Women from the Second Aliyah*, in: Yael Azmon (ed.), *Will You Listen to My Voice? Representation of Women in Israeli Culture*, The Van Leer Jerusalem Institute / Hakibbutz Hameuchad, Tel-Aviv 2001, pp. 116–133 (Hebrew).

<sup>18</sup> Rachel Elbaum-Dror, *The ideal Zionist Woman*, in: Yael Azmon (ed.), *Will You Listen to My Voice? Representation of Women in Israeli Culture*, The Van Leer Jerusalem Institute / Hakibbutz Hameuchad, Tel-Aviv 2001, pp. 95–115 (Hebrew).

<sup>19</sup> Ibid, p. 95.

<sup>20</sup> Ibid, p. 98.

<sup>21</sup> Ibid, pp. 98–99.



component of ideal Zionist woman's image is motherhood. Women themselves accept their fate to marry and give birth to children. The woman's role as an educator was minimized because education, as a tool for socialization of a "new Jew", was too important an issue to be left in her hands. Children's education is a profession and should be done by professionals. Still only male children are entitled to education. Equal opportunities are stopped at the doorway of gender.<sup>22</sup> Girls' education denied them the knowledge which is necessary for fulfilling the public and professional role that imparts prestige and social power. All in all, women's role in utopian Zionism was more or less the same as in the Jewish tradition and religion. I repeat for emphasis: "All glorious is the King's daughter within the palace" (Psalms 45:14). The different Zionist utopias offered radical changes in all spheres of life; national, social, cultural, political and economical, while keeping the gender relations as they had been, offering no change in women's status and social role. As a matter of fact, women were excluded from the national and social revolution they had described.<sup>23</sup> In short, though Zionism was a revolutionary movement, it wasn't so for women.

In the pre-state reality women tried to resist those stereotypes and images, nevertheless, in reality the practical Zionist pioneer, as the theoretical Zionist, preferred a traditional woman. The institutes of the pre-state had a formal structure of democracy, freedom and equality for all. For example, women had the right to vote in the Zionist institutes already in 1899, but that fact made little impact on the actual situation. Women didn't take part in leadership, and concerning education; they were two different paths in education for boys and girls, where girls learned more practical than theoretical studies.<sup>24</sup>

Deborah Berenstein examines a representative case of a woman, Sara Malkin, who decided to come to Palestine as a pioneer and who wanted to work in agriculture and cultivate the land. It is shown how Malkin and her friends were isolated, how the male workers couldn't understand their will, underestimate their abilities, laughed at their efforts, and were blind to their frustration.<sup>25</sup> They were never accepted as equal, and as capable to cultivate the land. Mostly they were sent to work in the kitchen, to do the traditional women's works at the house, services and taking care of children.<sup>26</sup> They not only suffered from the hard work, the climate, the dull routine and separation from their home, but they also faced distrust, discrimination and contempt. They suffered from deep feelings of disappointment and failure. Some of them left Palestine; some committed suicide or died of hard work and diseases.<sup>27</sup> Some of the ways to struggle with that situation were; to be the supportive woman who takes care of men and their needs, like kitchen

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<sup>22</sup> Ibid, pp. 101-105.

<sup>23</sup> Ibid, p. 114.

<sup>24</sup> Ibid, pp. 99-100, p. 105.

<sup>25</sup> Berenstein, op. cit., p. 11.

<sup>26</sup> Ben-Artzi, op. cit., 318-319.

<sup>27</sup> Berenstein, op. cit., p. 127.



work; to find their way in more feminine occupations as teachers and nurses; escaping isolation by forming a separate female groups with mutual support and help.<sup>28</sup> However, examining women's contribution to the nation building process, it is clear that, in various roles and occupations, they played crucial part in establishing the pre-state society and the very state of Israel.<sup>29</sup>

### Women in Israel

The founders of the state of Israel intended its crystallization to follow on from propagating liberal and democratic values. The idea of gender equality was stated clearly in 1948, in the Declaration of Independence: "The state of Israel will maintain equal social and political rights for all citizens, irrespective of religion, race, or sex". It was reiterated in 1949 in the "basic guidelines" of the first government; "complete and absolute equality of women will be upheld – equality in rights and duties".<sup>30</sup>

In the light of those declarations, and the fact that Israel is, in one way or another, a part of the western-democratic world, it might be supposed that Israeli women face the same problems as women in other western countries; namely: being half of the population, living like a minority group. Indeed, in Israel, the legislation in matters of women's equality is very progressive, but reality is quite different. In practice, women are represented in a meager way, in politics, academic life, business, and other public spheres. Furthermore, the whole sphere of private life, of laws concerning marriage and divorce, the legislator authorizes not the civil court, but the rabbinical one, the court, which gives a ruling only according to Jewish Law, the *Halakhah*. Hence, the exclusion of women in Israeli public life is complete only in the frame of the religious establishment, but is evident in governmental frames as well. I would like to examine briefly the actual situation of women in Israel concerning representation, and then describe the special status of Israeli women in the rabbinical court.

In modern Israeli society the principle of distancing women from public activity still functions. As has been mentioned, the legislation in Israel is very progressive. For example, the "Equal opportunities for Employment Law" (1988) provides for prohibition of discrimination on the ground of sex, marital status, parenthood or sexual orientation in employment, the "Sexual Harassment Law" (1988) makes sexual harassment a criminal and civil offence. There is also a high court litigation concerning, for example, "Right of Retirement" (1990) – enabling women to retire at the same age as men; "Rights of Women in the IDF" (1995) – grants women the right to volunteer for pilot-training courses in the Israeli Air Force; "Directorships of Government Boards" (1994) – guarantees

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<sup>28</sup> Ibid, pp. 128–131.

<sup>29</sup> Ben-Artzi, op. cit., pp. 321–322.

<sup>30</sup> See: *Women in Israel: Data and Information-2002*, The Israel Women's network: Information and Policy Research Center, Ramat-Gan 2002.



a ruling mandate in the appointment of women to boards of directors of government companies.<sup>31</sup>

However, examining the actual state of women an entirely different picture comes to the fore, and I'll mention a few figures to underline the actual situation. In the 16<sup>th</sup> Knesset (the Israeli parliament) from 120 members only 18, (15%), are women (according to the last election on the 28<sup>th</sup> of January 2003). This is the highest figure of women in the Knesset since the first one. For comparison, in the Swedish parliament women account for 45% of all deputies, in Germany 32.2% and in Britain 17.9%. (In the government of Ariel Sharon there are 3 women ministers, out of 23).

Among students at the universities 57% are women, among those who have Bachelor of Arts women make 59.3%, Master of Arts 54.8%, PhD 47.3%, but if we examine the rate of women in the academic staff one can see that 43.6% of the lecturers are women, and only 10.2% are professors.<sup>32</sup> It is clear that in Academia women's representation is pyramidal, with many at the bottom of the ladder, and few at the top.

Concerning employment, in 2002 68% of women were working, most of them in lower paid types of jobs and in part-time positions. Women on average earn as much as 40% less than men. In 2000 out of the total number of women employed 4.1% held the position of manager, while in the case of men the percentage was almost 10. Among managers 26% are women (2000). In the governmental ministries women are the majority in the low rank, but only a few are in the high rank (71% of women are in the lowest rank and 0.7% in the highest).<sup>33</sup>

From those figures it may be concluded that women in Israel suffer low representation in politics, business and academy, lower than in other western countries.<sup>34</sup>

However, the exceptional character of the Israeli example lies in the religious frames. Although The Israeli parliament legislated a law concerning equal rights for women already in 1951, it had left the whole sphere of marriage and divorce in the hand of the *Halakhah*. The "Women's Equal Rights Law" states that: "A man and a woman shall have equal status with regards to any legal proceeding; any provision of law which discriminates against women as women, shall be of no effect". However, it continues: "This law shall not affect any legal prohibition and permission relating to marriage and divorce".<sup>35</sup> Furthermore, "The Rabbinical Courts Law" (1953) gives the rabbinical courts the exclusive authority concerning marriage and divorce.<sup>36</sup> That law compels the religious Jewish law in matters of marriage and divorce on all the Jews in Israel, no matter whether they are

<sup>31</sup> Ibid, pp. 1-4.

<sup>32</sup> Ibid, pp. 54-60.

<sup>33</sup> Ibid, pp. 66, 96-107.

<sup>34</sup> One sphere in which women become more and more influential is in the arts; literature, cinema and theater, but in that paper I won't deal with that aspect. See: Y. Azmon, pp. 35-26, Lily Rattok (ed.), *The Other Voice: Women's Fiction in Hebrew*, Hakkibutz Hameuchad, Tel-Aviv 1994 (Hebrew); Orli Lubin, *Women in Israeli Cinema*, in: Yael Azmon (ed.), *A View...*, pp. 349-373 (Hebrew).

<sup>35</sup> *Women in Israel*, p. 1.

<sup>36</sup> Ibid, p. 11.



religious or not. As a consequence, civil marriage is not a legal possibility in modern-day Israel. Such matters as divorce, alimonies and custody of children, are adjudicated only in the rabbinical courts. This irrefutable fact opens a huge field for discrimination of women that does not go hand in hand with the democratic value of the equality of all citizens. As we have seen, the *Halakhah* excludes women from all public spheres; hence they are assigned to play very definite and limited role. Moreover it has been seen that women in Jewish law are not considered to be judicially mature, but are included in one group with children and slaves whose testimony is inadmissible. If women cannot be witnesses then they are ruled out as judges, advocates, or commentators of Jewish law. As a result, women in the rabbinical courts are the weaker side in divorce, and they don't have an alternative court. The exclusiveness of the rabbinical courts causes legal discrimination of women, and it can be demonstrated in various examples, for instance, as we have seen, a man can get the permission to marry another woman in case his wife refuses to divorce him, while a woman cannot have that permission under any circumstances, so she is threatened with being reduced to the state of *agunah*. So according to the *Halakhah* she is bound to her disappeared husband and not allowed to marry another one. What is more, in compliance with Jewish law, married men can have children with another woman while married woman cannot. If a married woman gives birth to a child from another man than her husband, that child has the legal status of *mamzer*, a bastard, and it is not allowed to marry a Jew for ten generations onwards.<sup>37</sup> There are thousands of *Agunot* in Israel, and many other women who have been blackmailed and who have had to buy their divorce.<sup>38</sup> In so far as the rabbinical courts in Israel will have the exclusive authority in these matters women will be discriminated far beyond their peers in the western world.

In conclusion, we can see how the ancient religious Jewish laws are still valid and relevant in modern Israel, in a way that makes the absolute legal equality (not mentioned every day reality) of women in Israel impossible. As long as this is the case, the Israeli society will continue to find itself in the abnormal situation of conflict between religion and democracy.

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<sup>37</sup> Ibid, pp. 11–12.

<sup>38</sup> Ibid, p. 13.