

The Status of Women in the Thought of Rabbi Professor Eliezer Berkovits ז"ל

"There is no halakhah of the ivory tower. The attitude to human needs is decisive. Without understanding, without sympathy and compassion, one cannot be an authentic halakhist."
(Crisis and Faith p.98)

Publications on women's issues:

- תנאי בשואין ובגט (Conditionality in Marriage and Divorce). Jerusalem: *Mosad Harav Kook*, 1966.
- Crisis and Faith. "Chapter 7. The Status of Women within Judaism", New York: Sanhedrin, 1976.
- Not in Heaven: The Nature and Function of Halakha. "Chapter 1. The Halakhic Conscience and the Status of the Woman, Chapter 4. Marriage and Divorce Laws." New York: Ktav, 1983.
- "מעמד האשה ביהדות – הבט הלכתי- חברתי" ("The Status of Women in Judaism: A Socio-Halakhic Overview") *Hagot 5 Misrad Hahinuch*, 1983, pp. 27-34.
- "התחייבות עצמית של נשים במצות עשה שהזמן גרמא" ("The Self-Obligation of Women in Positive Time Caused Commandments"), *Sinai* 100, 1987, pp. 187-194.
- Jewish Women in Time and Torah. Hoboken, NJ: Ktav, 1990.

Letter to the Editor Jerusalem Post 1985(?):

WOMEN'S PRAYER GROUPS

To the Editor of *The Jerusalem Post*
Sir, – I read with interest your article of September 11, "Orthodox women fume at rabbis." One may no longer remain silent. I have read carefully the responsum of the five talmudists at Yeshiva University, forbidding prayer services by women. I wish to state unequivocally that their so-called "T'shuva" has nothing to do with Halacha.

People will have to realize that knowledge and understanding are not identical. One may know a lot and understand very little.

There may be a great deal of Orthodoxy around. Unfortunately, there is only very little halachic Judaism.

May God grant to the women of Women's Tefilla Network strength and courage to continue their efforts to the best of their abilities.

Rabbi ELIEZER BERKOVITS
Jerusalem.

The Challenge of Women's Status

1) מעמד האשה ביהדות – הבט הלכתי- חברתי pp.27-28

אני חושב שהגיע הזמן להורות על האמת ולהתוודות, שבשטח המשפטי-הילכתי וגם בשטח החברתי-סוציולוגי שורר אי-שוויון המורר לרעת האשה.

מעניין הוא, שחז"ל בעצמם היו מודעים למצב זה. בכדי לבסס את דברי, אצטט מה'ספרי' על הפסוק: "ותקרבנה בנות צלפחד... ותעמדנה לפני משה" (במדבר כ"ז, א') – אומר ה'ספרי: "כיוון ששמעו בנות צלפחד שהארץ מתחלקת לשבטים, לזכרים ולא לנקבות, נתקבצו כולם זו על זו ליתול עצה. אמרו: לא כרחמי בשר ודם רחמי המקום. בשר ודם רחמיו על הזכרים יותר מן הנקבות. אבל מי שאמר והיה העולם, אינו כן – רחמיו על הזכרים ועל הנקבות, רחמיו על הכל".¹ שומעים אנו מעין ביקורת, שחז"ל בעצמם מתחו, על דיני חלוקת הארץ. לכאורה הדבר פשוט מאוד. מכיוון שאני מאמין בקב"ה, ומכיוון שאני מאמין שהקב"ה רחמיו על כל מעשיו – מטעם זה כל הפליה אסורה עלי. אני מחויב לדבוק במעשיו.

2) Crisis and Faith pp.120-121:

In addition to the legal status of the woman, a new concern that agitates many of us today is the religious status of the woman in the daily life of the Jewish community. This is truly a contemporary problem, resulting from radically changed intellectual, social, and economic conditions. The concern deals with what should be the place of the contemporary Torah-observant woman, who adheres to the rules of the *halakhah*, in the religious life of the community. Many of these women are well educated at colleges and universities, and have a broad, and often highly specialized, secular education. Is it conceivable that they should continue to be excluded from any serious study of Torah and Talmud, and of the other disciplines in the study of Judaism, as they were in the past? What is bound to be the quality of Jewish life, in the homes and the communities, if intelligent, mentally alert women, otherwise fully involved in the moral, political, social and economic issues of the day should be—as a matter of religious principle—relegated to the status of the *ignoramus* within the realm where they ought to have their spiritual and religious roots, the realm of Judaism? Is the Jewish woman of today, who intellectually, socially, and, often professionally too, is indeed the equal of her husband, to remain only a passive participant in the daily religious life of the community, often only the spectator to Judaism which, apparently, is essentially a male concern and responsibility?

Once again, we have reached a juncture at which the comprehensive ethos of the Torah itself strains against its formulation in specific laws. It is, however, the very essence of the *halakhah* to be responsive to such a strain, and by its resolution to bring about an even richer realization of the Torah itself. Not only is the status of the woman at stake, but the status of Judaism itself. For if in its application it could not do full justice to the Jewish woman in her present state as she is longing for participation in the drama of Jewish realization in accordance with her capacity and spiritual need, its form of such application becomes itself highly questionable. Those who understand the true nature and function of *halakhah*, and are committed to halakhic Judaism, cannot accept such a suggestion. With unreserved openness and sensitivity to the genuineness of the problem, with faith in the vitality of the *halakhah*, with humility and yet with intellectual courage, the necessary halakhic work will be accomplished that will define the status of the woman anew, justly and meaningfully.



3) Torah Tolerated: Jewish Women in Time and Torah p.33

In the case of slavery, Judaism was confronted with the same problem that Maimonides discusses with regard to animal sacrifices. International historical experience in this matter is more than sufficient to prove that a biblical command to forbid slavery would not have been understood and would certainly not have been accepted. On the contrary, it would have led to an active rejection of the ideas of respect for human dignity and equality of status before God. The method used was guided by the ideal, which was applied effectively to the time-conditioned situation.

This, indeed, is the essential nature of Halakhah: It recognizes the continually changing human condition. Its task is not to change the law as man and conditions change. That would not be Torah-guidance. Halakhah affirms the law, but—recognizing the ultimate authority of the word of God as revealed in the Torah—applies it in a manner that enables the meaning and purpose of the law to guide man and society in the context of the aimed-at integration of Torah and life. Judaism commits the Jew to the ever-enduring vital partnership with God. The result is *Torat Hayyim*, a living Torah.

TORAH-TOLERATED, NOT TORAH-TAUGHT

Undoubtedly, the basic views and values that originally determined the status of women in Jewish society were not derived from the Torah, even though many of them were later given midrashic justification. They were Torah-tolerated because they could not be abolished with an act of Torah legislation. They had to be tolerated, but certain changes and differences were present which indicated that an entirely different system of values and teachings also existed.

WOMAN AS A PERSON

4) Jewish Women in Time and Torah p. 41

“For thou art a holy nation to the Eternal One, your God.” Rabbi Elazar explained: “Men as well as women.” (Yerushalmi, Kid-dushin 1, 7)

TORAH IDEALS AND TEACHING

The examples discussed in the previous chapter are an indication that the aspect of the wife’s duties that brought her status closest to that of a servant was gradually disregarded. The more positive and appreciative opinions and practices undoubtedly indicate that woman’s status gradually changed to something far different from the more primitive position granted her in the original man-made and man-dominated society. We are no longer dealing with an early, unavoidably Torah-tolerated status, but with a transformation to a Torah-directed, Torah-required status based on Torah teaching. The teaching represents a radical rejection of the original male-determined and male-dominated position of women.

5) Jewish Women in Time and Torah p.59-60

It is our task to eliminate whatever remains from the Torah-tolerated, impersonal phase and to establish woman's status completely on the Torah-taught and prescribed personal level. It is obvious that the talmudic opinions regarding the inadequate intelligence of women no longer have any validity. The view that a woman's knowledge extends only to the spindle might have applied in a society which provided women with only a limited education, but it does not hold today.¹ It is true that the statement was supported by a verse in the Bible. When the Tabernacle was being built in the wilderness, "every woman, wise at heart, was weaving with her hands, etc."² Indeed, that was the only significant contribution to the building of the Tabernacle that women were able to make at the time. But certainly the Bible did not state that women in all generations to come would remain incapable of acquiring other knowledge and other abilities. The rabbinic view was a completely time-conditioned, midrashic interpretation. It tells us what Rabbi Eliezer thought about women, but we know now, from actual experience, that the intelligence of women is not below that of their male counterparts. In fact, today's women study and learn and acquire expertise in many of the intellectual and academic disciplines. Rabbi Eliezer's statement that one should not teach Torah to one's daughter because she will craftily misuse her knowledge has lost all its meaning.

6) *Talmud Torah*- חברתי- הבט הלכתי- הברתי p. 33

בימינו אלה, הנשים מקבלות חינוך נרחב והשכלה כללית. הרבה מהן ממשיכות את לימודיהן באוניברסיטאות. הרבה מהן רוכשות מקצוע ואף פעילות בענייני ציבור. האם נשים כאלה זקוקות לתלמוד תורה בכדי להבין ערמוניות?! רבי אליעזר צדק בזמנו, אבל היום אין לדברים מקום ותוקף. אני מודע לכל הפלפולים בעניין הזה במאמץ למצוא היתרים, אולם אין צורך למצוא היתרים. מה שרבי אליעזר אמר אינו שייך עוד לזמננו.

7) *New Customs*- Jewish Women in Time and Torah p.77

A more serious aspect of the issue with which we are dealing is the allegation that women's services represent the introduction of a new *minhag* (custom) into the prayer order of the Jewish people. The question is of a twofold nature. First of all, is this new custom contrary to what has been followed in the Jewish communities? Secondly, do we have the right to establish new *minhagim* (customs) that were unknown in the generations before us? The response to the first question is relatively easy, on the basis of the generally accepted halakhic principle that *lo ra'inu eino rayah*, i.e., not having seen a certain halakhic practice is no proof that what was not done should not be done now either. It is clear that the fact that women in previous generations did not organize "communal" services for themselves is no proof that such services must not be introduced at all. May we say that whatever has not yet been done in matters of the fulfillment of *mitzvot* must never be done?



8) Jewish Women in Time and Torah p.78- 79

This, indeed, is the norm. In all the other cases which are quoted to show that *lo ra'inyu* is *ra'aya* (proof), there are always two opinions, one for the practice, the other against it. In all these cases the nonpractice is a rejection of an opposing ruling. Where, however, there is no opposing ruling the nonpractice of an activity does not establish it as a *minhag* that must not be changed. In such cases the principle remains valid that *lo ra'inyu eino ra'aya*, that the nonpractice is itself no proof that a *minhag* exists that must not be changed. In former times women generally did not go to the synagogue. Shall we therefore say that women should not change the custom and should not go to synagogue services? In the time of the Magen Avraham women did not listen to the reading of the Torah. During the Torah reading, writes the Magen Avraham, women would leave the synagogue.⁹ Shall we now argue that because it was not customary for women to attend the Torah reading, it is now not permitted for them to violate the *minhag* and listen to the Torah reading! The same applies to women's services. Their nonexistence was not due to any rejection of an existing demand for such services. The situation was entirely different from what it is today. We never saw such services before because women did not have the kind of education and participation in the life of the community that they have today. No one called for such services because no one felt the need for them. The nonpractice of women's services was not a *minhag*, and to introduce them in our times is not violating an established custom.

9) p.83

The reason for the exclusion of women from the *tefillah be-tzibbur* (communal prayer) can only be that the rabbis would not allow men and women to pray together. If that is so, one might give serious consideration to the halakhic possibility of a female minyan, i.e., of allowing the recitation of *Kedushah* and *Barchu* at women's prayers services in the presence of a minimum of ten women.

10) *Kol Ishah* -Jewish Women in Time and Torah p.62

There is only one explanation: On the impersonal level of exclusion from society, woman's character appears foremost in her sensuality. Thus, every contact with her has an element of sexual seduction. All this no longer has any validity in an age when, on the basis of Torah ideals, woman has been acknowledged in her personal humanity and has been integrated into the comprehensive structure of human existence. Nowadays, the singing of a woman is not fundamentally different from what the original Halakhah termed "her regular voice." A woman's voice, even when she is singing, is nothing unusual today, and it is no more distracting during the *Shema* prayer than that of a man singing. Only in specific amorous situations as in the Song of Songs, may it have a sensual quality.

11) *Tefillin* - Jewish Women in Time and Torah p.74

In talmudic sources the question of bodily hygiene does not enter into consideration. On the contrary, according to the Babylonian Talmud, which has been accepted as the valid law, the daughter of King Saul did practice the mitzvah of *tefillin*, and so too may all women. The opinion that nevertheless women should not be allowed to put on *tefillin* because of their hygienic carelessness with their bodies is a later post-talmudic development. The authors who accepted this idea obviously were doing so on the basis of their own experience: such were the women they knew, the women of their time. Let us state unequivocally that nowadays such an evaluation of female behavior would be utterly unjustified and a serious insult to womankind. In matters of bodily hygiene, women are at least as reliable as men. We may completely disregard the opinion of the Rema in this matter and follow such authorities as Rashi, Rabbenu Tam, Rambam, and Rashba, who make no distinction between the commandment of *tefillin* and the other *mizvot aseh she-ha-zeman geramah*. The *Hagahot Maimoniyot* (i.e., the commentary on the work of Maimonides) quotes the *Sar M'kuzi* that women may make the *berakhah* on *lulav* and *tefillin* and all similar mitzvot.⁷ Women today may well be guided by these authorities.

12) *Witnesses*- חברתי - הבט הלכתי- ביהדות - מעמד האשה ביהדות - p.33: - Jewish Women in Time and Torah pp.65-66

דבר שני הוא עניין עדותה של אשה. בגמרא נלמד מגזירה שוה שאשה פסולה לעדות. לכך ניתנו במקורות שני טעמים: אחד, שאין הן נאמנות לעניין עדות. שני, משום ש"כל כבודה בת מלך פנימה" ולכן, לא לפי כבודה להופיע בבית-דין.¹⁹ לדעתי, לטעמים אלה אין שום שחר היום. לומר היום שלאשה אין נאמנות אבל לגברים יש — זה פשוט אינו נכון, זה חילול השם, חילול התורה. לומר ש"משום כל כבודה בת מלך פנימה" היא פסולה לעדות? אם כן, חובה על כל אלה שמאמינים שהאשה פסולה לעדות מטעם זה, להתנהג עם נשיהם וגם עם בנותיהם באופן הזה — "כל כבודה בת מלך פנימה". דהיינו, להתיר להן לצאת מן הבית פעם אחת או פעמיים בחודש. אף אדם אינו נוהג כך, והנשים שלנו עוסקות בכל מיני עבודות בחוץ.

יש תקדים לשינוי בעניין זה. הזכרתי את הדין שלפיו אשה נאמנה כשהיא מעידה במקרה של עגונה. מה פירוש הדבר "משום עיגון"? חכמים עמדו בפני בעיה: כיצד לנהוג לגבי אשה זו שבעלה נעלם. מכיוון שהדבר היה חשוב מאוד מצאו פתרון. אני טוען שעכשיו יש לנו טעם לא פחות מכריע, לא פחות חשוב — כבודן של כל הנשים. נימוק זה אינו נופל בחשיבותו מהדין של עגונה.

Certain halakhic rules regarding the function of women in public life also require revision. According to Halakhah, a woman is not admitted as a witness. We saw, at least in one case, that an exception was made in order to protect a wife against becoming an *agunah*. We also noted Maimonides' explanation that all the exceptions in this case (i.e., one witness, etc.; see above) could be made because the purpose of the law about witnesses was to establish the truth. In the case in which the exceptions were allowed, it was reasonable to assume that an otherwise not accepted testimony was reliable. We must ask ourselves whether it is reasonable to believe that today a woman's testimony would still be less reliable than a man's? We have determined that the statement that the words of women are not reliable no longer has any truth value. Today's women have a comprehensive education, including thorough Torah study, are active professionally, and are acknowledged in their own personalities: they are clearly no less trustworthy than men.



13) Jewish Women in Time and Torah p.87: - Grace after Meals

However, it would seem to us that today we have every right to follow those halakhic authorities (see above) according to whom the duty of women to say grace after the meal is as biblical as that of men. The social status of women has changed fundamentally. There is no doubt today that women are part of the Jewish people no less than men. The covenant was concluded with the Jewish people, and the land and the Torah were given to all of the Jewish people.

14) Jewish Women in Time and Torah p.90-92: - Zimun

Most revealing is a passage in Tosafot.²⁶ Assuming that women's obligation to say grace after meals is biblical, why should they not be able to perform the mitzvah even for men? The generally accepted principle is that anyone who is obligated to do a mitzvah can perform it for another person who is equally obligated. Explains Tosafot: "A man who does it for another man is different; he is more important [than a woman], or else, because for many, the matter would appear as degrading." Tosafot's words clarify the true reason for the opinions quoted above. Undoubtedly, the reasons given are not based on the talmudic sources. They originate in the social status of the women of those days. The woman here is still in what we have called her nonpersonal status, lacking the recognition of her personal humanity and dignity. The resulting time-conditioned opinions are forced upon the original talmudic texts. Undoubtedly, the halakhic authorities who utilized these ideas to oppose the participation of women in *Birkhat ha-Mazon* together with men were right in their own time. But nowadays, it would be absurd to say that the awareness of their presence because of the *zimun* formula might lead to *peritzut* or that they must not be included in *zimun* together with men because the association with them is improper or because men are in higher esteem than women. None of this need concern us.

Only one difficulty still requires our attention. Following the statement that the wife may say *Birkhat ha-Mazon* for her husband, it is said that "condemnation is due the man whose wife says the blessing on his behalf." Does this mean that the wife of an ignorant Jew who cannot say grace is not permitted to help him? Or that people who are dining together with family and friends, and wish to honor the hostess or another woman in their company are not allowed to do so? The condemnation due

a husband whose wife says the blessing for him refers to a specific situation. Explains Rashi, he deserves condemnation either because he did not learn or because if he did learn, he "insults his God by appointing a representative [to say grace for him]." The first reason applies where the wife always performs the mitzvah for her husband. Then, indeed, the husband deserves severe criticism for not wanting to learn how to say the *berakhah*. As for Rashi's second reason, today we would have to say that not allowing the wife to say the blessing after the meal because as a woman she is unworthy of doing so would not be an insult to the Creator, but to the woman whom He created. *Summing up our discussion:*

1. Women have every right, and maybe even the duty, to join together among themselves for *zimun*.
2. We ought to follow the ruling of the Rosh that women fulfill their duty for *zimun* when they take their meals together with men. As the Rosh formulates it, since they do say *zimun* among themselves, there is all the more reason for them to fulfill it through the *zimun* of men.
3. There is every justification for the opinion of Rabbi Judah ha-Kohen, who ruled that even only one woman was to be included in *zimun* and counted to make up the required number of three.
4. We might also accept the opinions of the Rabad, the Ran, and the Rashba that women's obligation to say *Birkat ha-Mazon* is biblical, especially since this is also the teaching of the Jerusalem Talmud. Since this is so, women may well act on behalf of others, female or male.



15) Megillah and Kiddush- Jewish Women in Time and Torah p.98-100

There is another attempt to disqualify women from reading the Megillah for men by the Magen Avraham. On the opinion quoted in the *Shulhan Arukh* as "some say" (see above), the Magen Avraham comments: "One may not compare the reading of the Megillah to the lighting of the Hanukkah candles, which women perform also on behalf of men. The reading of the Megillah is different. It is like the reading of the Torah, which should not be done by women because of the dignity of the assembled congregation. And since women should not do it in public, neither should they do it for individual men. For we should not distinguish."⁴¹ Of all this there is not even a hint in the talmudic sources. There is little doubt that time-conditioned attitudes and opinions regarding women were forced upon the clear teachings of the Talmud and upon the original meaning of authentic Halakhah. It was all justified at that time. It was the time-conditioned truth. However, in our day it is essential that we return to the original talmudic sources without forced explanations and rely, in matters of halakhic practice, on Rashi, the Rambam, and the Ran.

Only one more point remains that still may require clarification. The *Divrei Hamudot* remarks that even though women may recite the *Kiddush* for men, a husband whose wife does it for him will be in the category of which the Talmud says: "may a curse descend on the man whose wife says the blessing on his behalf." This is indeed surprising. The Talmud quotes that *baraita* in order to prove that women may do mitzvot which are obligatory for them for all who are under the same obligation. How is it possible, then, to say that a curse will descend upon all who permit a mitzvah to be done by a woman on their behalf? Is it inconceivable that an *am ha-aretz* (ignorant Jew) may occasionally be in need of some help in saying the *Kiddush* or the *Birkat ha-Mazon*? It would seem that a man is exposed to such severe criticism only in the case of his wife saying the *berakhah* for him. But it applies if it is done as a continuous practice; i.e., the husband not only does not know how to say the *berakhah* but does not intend to learn it.

...

But there is no reason whatsoever why in our days husband and wife may not alternate from Shabbat to Shabbat in the saying of the *Kiddush*. It would be our expression of respect for the wife and mother.



16) Conclusion- Jewish Women in Time and Torah p.128

We have found that there have been two phases in the status of women in Jewish tradition. The nonpersonal one, essentially determined by the social and economic conditions of an early society, was not much different from what could be observed in the non-Jewish cultures of the time. It was a condition tolerated by the Torah, but not instituted by Torah teaching and Torah values.

The second phase, which we called the personal status of the woman, acknowledged the value and dignity of the female personality. It was taught and demanded by Torah ideals. It even led to halakhic innovations out of concern for the rights and welfare of women. Unfortunately, the second phase did not follow upon the first in historical development. Moreover, the personal status did not arise as a historical reality, especially in the area of religious ritual, after the overcoming of the mores deriving from the conditions that had determined women's nonpersonal status. The two value systems existed side by side for many centuries, and to some extent even into our own time, without adequate realization that Torah teachings were not being given adequate realization in the daily life of the people.

17) Jewish Women in Time and Torah p.131

If Rashi
says that it was not proper to sit together with women to say grace, or the *Shulhan Arukh* rules, with reference to the menstrual period, that women do not take sufficient care to keep their bodies clean, these were indeed the conditions at those times. Because the mores of the nonpersonal phase persisted, it was indeed difficult to accept the idea that women could read the Megillah for men or were important enough to say grace, for this would have meant that men could fulfill their duties in cooperation with such incomplete personalities.

At the same time we ought to understand that these and all similar rulings are not based on the plain and clear meaning of the classical halakhic text. In fact, they are often deviations from it, creating exceptions to normally valid principles. Often we are confronted not with original halakhic principles, but with rulings imposed upon Halakhah by the prevailing time-dependent culture that made it necessary to respect the existing male-female relationship.



18) Jewish Women in Time and Torah p.132

The most deplorable aspect of the present-day situation in matters of Halakhah and religious ritual is the fact that even though the personal status of women has been fully achieved in the social sphere, little attention has been given to the halakhic consequences. Many of the rulings discussed above, which in effect impose the surviving mores of the nonpersonal stage upon the Halakhah, have remained untouched. Unfortunately, ignoring current developments in this way reflects a nonhalakhic attitude. Instead of examining the basis of certain *takkanot* (rules and regulations) to see whether they still have meaning and purpose, the rabbinical establishment is afraid of any change and anything new. In certain areas, of course, life itself has taken over.

We noted that Maimonides, on the basis of a source in the Talmud, ruled that a husband should not allow his wife to leave their home more than once or twice a month. I strongly doubt that this law is still observed in religious circles. Are there still any families whose daughters behave in accordance with the biblical teaching that “the honor of a king’s daughter is inside a corner of her house”? But let us also realize that the contemporary practice is not a violation of the teaching of Maimonides. The Rambam was right. In the time of the Talmud and, obviously, in his own day too, such was proper behavior for Jewish women. It would be completely meaningless today.

19) Jewish Women in Time and Torah p.134

Unfortunately, the problem that we are discussing is not limited to the subject of the status of women in Judaism. It is a problem that involves the entire area of present-day religious faith. The so-called drift to the right is a drift toward a naive, unquestioning spirituality. In essence, it is a drift away from authentic Halakhah. Because of this it would be useless to place our hopes on the rabbinical establishment either in Israel or in the Diaspora. Just because of this we need rabbis who are *talmidei hakhamim* (talmudic scholars) with an adequate worldly education, who are seriously concerned and troubled by the inadequate regard for the problems of contemporary Jewish religious life, whose sense of rabbinical responsibility will give them courage to speak out; and who, at least in the area of their influence, will introduce the halakhic changes that are required in recognition of the human dignity of the Jewish woman of today. Perhaps this will lead to a gradual halakhic renewal that will ultimately reestablish Judaism as *Torat Hayyim*—a Torah of Life.