**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**Deracheha: Women and Mitzvot**

Women's Status, Part 2

Men's and Women's mitzva obligations are often, but not always, the same. In what types of cases are they the same?

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# **Gender Difference**

In our [previous installment](https://etzion.org.il/en/womens-status-part-1), we explored the various ways the Bible’s account of Creation has been understood with respect to gender relations, and concluded with the idea that men's and women's sanctity is fundamentally equal. Rav Yosef Soloveitchik puts this cogently:

Rabbi Joseph B. Soloveitchik, “Adam and Eve,” *Family Redeemed* , p. 71 There is no doubt that in the eyes of the Halakhah man and woman enjoy an equal status and have the same worth as far as their *humanitas*is concerned. Both were created in the image of God, both joined the covenantal community at Sinai, both are committed to our metahistorical destiny, both crave and search for God, and with both He engages in a dialogue...

In keeping with this, where there is no tradition to the contrary, we understand that when the Torah writes in generic male language, it addresses everyone, not only men. As *Magen Avraham* writes in his commentary to *Shulchan Aruch*:

*Magen Avraham* 46:9 For the entire Torah was said in masculine language, and even so a woman is included….

The Torah's "masculine language" of address is a feature of Hebrew grammar, and often nothing more.

In many cases, the Torah does explicitly distinguish between the genders. For example, the laws of *arachin*, valuations,[[1]](#footnote-1) present a sort of table for establishing the amount to pay if someone pledges his or her monetary value to the Temple. These values take earning power and fertility into account. They differentiate between men and women much as modern actuarial tables do, reflecting males' income advantage over females.

But many halachic discussions do not treat men and women differently at all. In the context of Shabbat, for example, the Torah explicitly mentions women alongside men, with equivalent rules.[[2]](#footnote-2)

Is there, then, a halachic difference between a man and a woman?

The Mishna asks this question directly:

Mishna *Sota* 3:8 What is [the difference] between a man and a woman?

The man [with *tzara'at*] loosens [his hair] and tears [his clothing] and the woman [with *tzara'at*] does not loosen [her hair] and tear [her clothing].

The man vows to make his son a Nazirite and the woman cannot vow to make her son a Nazirite.

The man shaves [brings sacrifices on completion of being a Nazirite from money or animals set aside] on his [deceased] father's [incomplete term of] being a Nazirite and the woman does not shave [bring sacrifices on completion of being a Nazirite from money or animals set aside] on her [deceased] father's [incomplete term of] being a Nazirite.

The man [can] sell his daughter [to servitude] and the woman cannot sell her daughter [to servitude].

The man can effect his daughter's betrothal and the woman cannot effect her daughter's betrothal.

The man is stoned [i.e. put to death for a capital crime] naked and the woman is not stoned naked.

The man is hanged [after execution] and the woman is not hanged [after execution].

The man is sold [to pay off] his theft and the woman is not sold [to pay off] her theft.

Despite the promise of its opening, this mishna only teaches us some specific cases of halachic distinction between men and women.[[3]](#footnote-3) It neither enumerates all of the cases nor presents a general rule.

Some of the laws in this selection are easy to understand and some are not. For example, we can readily comprehend why, out of concern for modesty, a female with *tzara'at* does not tear her garments and loosen her hair the way a male does. Other laws here, though, relate to a woman's role in a patriarchal society, and may demand more explanation.

The Talmud supports each of these rulings by citing verses or received tradition, whether or not the ruling seems to make sense on its own.

The Talmud doesn't simply recapitulate the mishna's assertion that men or women are different. Each instance of difference requires and receives proof. Why? Because the baseline assumption is that the same halacha applies both to women and to men.

In practice, Halacha often distinguishes between men and women, but each time it does, those distinctions require explanation and support, because we share so much between us.

## ● Can there be difference without discrimination? (See Appendix One.)

Let's move on to discuss some general rules of thumb for how gender distinctions do or do not apply.

# **Halachic Categories and Gender**

Although each halacha merits investigation on its own terms to see if it applies to women and men, some rabbinic texts do present rules of thumb for determining halachic practice by gender. For example, the following Talmudic passage discusses areas of equal treatment under the law:

*Bava Kama* 15a It was taught in the *bet midrash* of Rabbi Yishmael: The verse says, "A man or a woman if they will do from any of the sins" (*Bemidbar* 5). The verse equated a woman to a man for all punishments in the Torah.

In the *bet midrash* of Rabbi Elazar it was taught: "And these are the laws that you will place before them (*Shemot* 21)." The verse equated a woman to a man for all the civil legislation [and tort laws] that are in the Torah.

In the *bet midrash* of Hizkiya and Rabbi Yosei HaGelili it was taught: The verse says, "And he put to death a man or a woman" (*Shemot* 21). The verse equated a woman to a man for all the deaths that are in the Torah.

The Talmud here gives examples of three major legal categories in which "the verse equated a woman to a man": prohibitions and their punishments, civil legislation and tort law, and legal ramifications of wrongful death.

In the continuation of the passage,[[4]](#footnote-4) the Talmud rejects several notions that might lead to distinguishing between men and women. First, the Talmud rejects the idea that the Torah's civil legislation should apply only to men just because they would often take the lead in negotiating business. Later, the passage also refuses to distinguish between the loss of a man's soul and of a woman's.

**A Typology** Another mishna takes a mitzva-based perspective on men and women. It presents a typology of *mitzvot* and relates to men's and women's relative obligations in each. Let's look at the first sections of the mishna one by one:

**1. Parents' Obligations for Children**

Mishna *Kiddushin* 1:7 Every mitzva pertaining to the child incumbent on the parent: men are obligated and women are exempt.

A father has an obligation to perform certain *mitzvot* for his son, including *berit mila* (circumcision), *pidyon haben* (redemption of the first born), and teaching him Torah. Women are exempt from the obligation to circumcise the son because the command in the Torah was given to Avraham and not Sara.[[5]](#footnote-5) Women are exempt from redeeming the first born because a female first born need not be redeemed, and the verse creates a link between the redeemer and the one being redeemed.[[6]](#footnote-6) Women are exempt from teaching Torah because women are exempt from learning Torah. (See more [here](https://deracheha.org/learning-torah).)

**2.** **Childrens' Obligations for Parents**

The mishna continues:

Mishna *Kiddushin* 1:7 And all *mitzvot* pertaining to the parent incumbent on the child, both men and women are obligated.

A child also has an obligation to perform some *mitzvot* for his or her parents. These fall equally on men and women, and include honoring and revering parents. Here, however, the Talmud introduces a gender distinction.

*Kiddushin* 30b "A man [his mother and father they shall revere]" (*Vayikra* 19:3): Only a man [is subject to the halacha of revering his parents], whence a woman['s obligation]? When the verse says, "they shall revere," behold here are two [i.e., both man and woman are subject to the halacha]. If so, what does the verse come to teach [with the word] "man"? A man has it in hand to perform [the mitzva]; a woman does not have it in hand, because the domain of others is upon her. Rav Idi son of Avin said Rav said: If she is divorced, the two of them are equal [in obligation].

The Torah's command to revere parents takes "a man" as its subject, possibly excluding women. Yet it concludes with the subject "they," in the plural. The Talmud learns from the plural ending that sons and daughters alike have an obligation to revere parents.

Why does the verse begin with "a man"? This points to a practical distinction: a married daughter is not expected to fulfill this mitzva fully. "The domain of others is upon her." The assumption is that, for better or worse, marriage impinges on a daughter's ability to perform this mitzva in a way that it does not impinge on a son's. Married women are thus released from the obligation when it gets in the way of family life.

## ● Is a wife really considered to be in her husband's domain? (See Appendix Two.)

If a daughter is divorced (or widowed or single), then "the two of them are equal." Marriage does not interfere, and her obligation is equivalent to a son's.

Here we have a baseline of gender-neutral Halacha. Material factors that could place the mitzva out of a woman's reach lead to a gender distinction. When those factors are not relevant, as in the case of a single woman, her legal obligations are the same as a man's. The sages make this ruling based on both a close textual reading of the Torah and their understandings of marriage.

**3.** **Prohibitions** The next stage of the mishna discusses prohibitions:

Mishna *Kiddushin* 1:7 And in every prohibition, whether time-bound or not, both men and women are obligated, except for not destroying [the beard] and not [shaving] all around [the *pe’ot*] and [a *kohen*'s] not becoming impure [through contact with] the dead.

With few exceptions, all prohibitions in the Torah apply to women as well as to men. The prohibition of a *kohen* becoming impure is introduced by a call to *benei Aharon*, which the *midrash halacha* reads as "the sons of Aharon," with daughters excluded.

## ● Can't benei refer to sons and daughters? (See Appendix Three.)

The verse in *Vayikra* groups *pe'ot* and beards together. Women are exempt from the law against cutting them, because most women do not have sideburns or beards.**[[7]](#footnote-7)** These exceptions are limited in scope, and each has a clear rationale.

This section of the mishna discussing prohibitions employs the phrase "*zeman geramah*," literally 'time causes it,' to categorize *mitzvot*. This means that the mitzva is time-bound, it applies at a specific time and not at another.[[8]](#footnote-8)

An example of a negative time-bound commandment is the prohibition of eating *chametz* (leaven) on Pesach. An example of a negative commandment that is not time-bound is the prohibition against stealing. Halacha follows this mishna. As a rule, women are subject to both sets of negative prohibitions.

The mishna mentions the time-bound factor here because it becomes relevant to the next category it addresses, positive *mitzvot*. We discuss them in our next shiur.

**Appendices**

## ● Appendix One: Can there be difference without discrimination?

*We can define feminism as the theory of equality of the sexes. While the most recent trend is to question binary notions of gender altogether, earlier feminist discourse may prove useful to us for clarifying what it means to treat men and women similarly or differently.*

*In the late twentieth century, equality feminists sought gender parity by rejecting gender distinctions across the board, and by pushing for gender-neutral theories and policies. Difference feminists, in contrast, held that men and women have equal status, but that equality does not indicate sameness. They argued that equality could be expressed by men and women filling differing roles.*

*Equality feminism, in insisting on universal gender-neutral legislation, cannot be reconciled with Torah's frequently gender-specific laws, though it can be reconciled with the many areas in which Torah does not differentiate between genders.[[9]](#footnote-9) Difference feminism, on the other hand, might be compatible with Halacha as a whole, harkening back to the double account of creation in which we are both equal and distinct.[[10]](#footnote-10)*

*Late Israeli legal scholar and Supreme Court justice Menachem Elon put these issues in legal terms:**[[11]](#footnote-11)*

Prof. Menachem Elon, *The Status of Woman* As far as equality is concerned, I would like to point out that there is a major principle in law which distinguishes "discrimination," which is invalid, from "distinction," which is valid, such that one must treat every person equally unless there are material differences between them which are real and relevant to the issue. The critical question is, of course: when are the differences between men and women "real" and "relevant" so as to justify "discrimination" and make it into "distinction"?"

*Even today, we lack a definitive, overarching consensus on what constitutes 'real and relevant' difference between the genders. In the absence of one, we should assume that gender differences in Halacha belong to the realm of distinction, not discrimination.*

## ● Appendix Two: Is a wife really considered to be in her husband's domain?

*The assumption that a woman is in her husband's domain in a way that could limit her activities may be uncomfortable for the modern reader. This construction of marriage is not merely sociological, however; it has a halachic basis.*

*For example, though the wife retains independent ownership of properties that were hers prior to marriage, from marriage onward, property is joint and largely controlled by the husband, by rabbinic decree.*

*The husband’s rights to the wife's property are tied to his obligations to her. These include the Torah-level obligations to provide her food, clothes, and shelter, which the Rambam refers to as a type of subjugation of husband to wife.[[12]](#footnote-12) There are also halachically acceptable mechanisms by which a married couple may agree to administer their property differently, allowing the wife control.*

*Jewish marriage does place different types of obligations on each spouse. However, couples have the freedom to work within Halacha to define how their marriages function.*

*In practice, a married daughter often takes the lead among siblings in caring for elderly parents, sometimes at the expense of her own family and pursuits. This halacha, albeit working within a hierarchical view of marriage, also may protect a woman from becoming overextended. Sometimes hierarchy can achieve important halachic or social goals.*

## ● Appendix Three: Can't benei refer to sons and daughters?

*It can be hard to understand how this type of midrash works, especially since the word “*benei*” can mean either ‘sons’ or ‘children.’*

*How can we make sense of this?*

*Sometimes the Torah refers to all Jews as a group and sometimes it explicitly distinguishes women from men. In ambiguous cases, like “*benei*” in this verse, our sages often stipulate that one meaning is correct.*

*Whether or not females are included in a plural word like this varies from verse to verse, and depends on context and tradition.[[13]](#footnote-13)*

*Some background on midrash can be helpful here. Midrashic readings often provide textual derivations for a halacha. Those derivations, following carefully formulated traditional exegetical rules, can be the actual source of the halacha. Sometimes, though, a midrash expounds texts in order to support a previously known halachic tradition by connecting it to the text.*

*This particular midrash halacha may well be a midrash of the second type, upholding a previously known tradition that daughters of a* kohen *have a different role from sons. In other words, the answer to 'why is there an exemption' does not necessarily boil down to the interpretation of "*benei*" as "sons of."*

*In this case, Chumash itself tells us of the special role of Aharon's four sons, without mention of his daughters. The* midreshei halacha *that differentiate daughters of a* kohen *from sons, from Temple service to becoming ritually impure, all have the same structure. Together these* midrashim *establish the difference between male and female priests, as part of one cohesive tradition.*

1. *Vayikra* 27:1-8. Note that some of the female values are higher than some of the male values, and that the proportional variation with age is not the same for men and women. For more discussion, see R. Amnon Bazak, "The Value of Man," available here: <https://www.etzion.org.il/en/value-man>. [↑](#footnote-ref-1)
2. *Shemot* 20:9-10. [↑](#footnote-ref-2)
3. See, for example, *Tosefta* 2:7-9, quoted ad loc. [↑](#footnote-ref-3)
4. *Bava Kama* 15a And they are all necessary. For if it taught us only the first one [punishment], there [men and women have the same status] because God had mercy upon her in order that she receive atonement, but with respect to laws, [one might think] they apply to men because men are active in business and women not. And if it taught us laws, we would think that was in order that she make a living, but atonement [one might think] a man who is subject to all the *mitzvot* needs [atonement], and a woman, who is not, does not. And if it taught us both of these, perhaps here [the status is the same] because of atonement and livelihood, but regarding death, a man's would entail payment, because of his obligation in more *mitzvot* and a woman’s not. And if it only taught about the payment for wrongful death, [one might think] that is just because there is loss of life [whether man or woman] but the other two that don't involve loss of life I might say not – [we conclude that all three verses are] necessary. [↑](#footnote-ref-4)
5. *Kiddushin* 29a. See also *Tosafot* s.v. *Oto ve-lo ota*, who raise the possibility that the mitzva of *berit mila* is considered a positive time-bound mitzva. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. *Kiddushin* 35b It stands to reason, for behold, they [women] do not have beards. [↑](#footnote-ref-7)
8. Rambam, *Perush Ha-mishnayot Kiddushin* 1:7 "*Mitzvat aseh she-hazeman geramah*" means that the obligation to perform it applies at a certain time, and that at other times the obligation does not apply. [↑](#footnote-ref-8)
9. Halacha does not conflict with many of the practical objectives of equality feminism, such as equal pay for equal work or equal access to health care. On the contrary, we have seen that the Talmud teaches that women are fully subject to the Torah's civil legislation and tort laws. The major point of irreconcilability between Halacha and equality feminism is the denial of the legitimacy of making distinctions based on gender. Halacha does distinguish between the genders in several areas. [↑](#footnote-ref-9)
10. A recent attempt to develop a Torah version of difference feminism can be found in **Miriam Kosman, *Circle, Arrow, Spiral: Exploring Gender in Judaism* (New York: Menucha Publishers, 2014).** [↑](#footnote-ref-10)
11. Menachem Elon, *Ma’amad Ha-isha* (Tel Aviv: Kibbutz Ha-meuchad, 2005), 40. Translation: Shoshana Zolty, *And All Your Children Shall be Learned* (Lanham: Rowland & Littlefield, 1993), 48. [↑](#footnote-ref-11)
12. *Hilchot Nedarim* 12:9. [↑](#footnote-ref-12)
13. An example of women being included is receiving blessing:

    *Bava Batra* 110b “So that your days and your children's days will be many,” is this also your sons and not your daughters? [No, women are included]. A blessing is different. [↑](#footnote-ref-13)