

THE CENTER FOR WOMEN IN JEWISH LAW

*To Learn and To Teach*

Study booklets regarding women in Jewish law

NUMBER ONE

THE MEHITZAH IN THE SYNAGOGUE

Rabbi Monique Susskind Goldberg

Translated from the Hebrew by

Rabbi Diana Villa



THE SCHECHTER INSTITUTE OF JEWISH STUDIES

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## THE CENTER FOR WOMEN IN JEWISH LAW

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## PREFACE

### THE SCHECHTER INSTITUTE OF JEWISH STUDIES

The Schechter Institute of Jewish Studies is one of the leading academic institutions of Jewish studies in the State of Israel. The unique approach of Schechter combines traditional and modern methods of study. Historical and textual discussions of Jewish sources are accompanied by cultural and topical discussions, which grapple with the ethical and social dilemmas of Israeli society today. The Schechter Institute offers courses of study towards an interdisciplinary M.A. degree in Jewish studies in classic fields such as Bible, Jewish Thought and Jewish History alongside innovative fields of study, which examine Gender, Education, the Community and Art from a Jewish perspective.

The students from all over the country who study at Schechter represent a broad spectrum of beliefs and world-views within Israeli society. They are attracted by the warm, open and pluralistic atmosphere at the Institute.

In the fields of applied research, the Schechter Institute runs the Institute of Applied Halakhah, the Center for Judaism and the Arts and the Center for Women in Jewish Law.

### THE CENTER FOR WOMEN IN JEWISH LAW

The Center for Women in Jewish Law was established at the Schechter Institute of Jewish Studies in 1999 with the assistance of a grant from the Ford Foundation. The first purpose of the center – to study the status of women in the synagogue – is presented in my book *The Status of Women in Jewish Law: Responsa* published in 2001 and in the booklets entitled "To Learn and to Teach", of which this is the first issue. The second purpose is to find halakhic solutions to the problem of modern-day *agunot* (anchored women) who are compelled to wait many years to receive a *get* (religious divorce) from their husbands. This problem is addressed in a book entitled *Halakhic Solutions to the Agunah Dilemma*, which will appear shortly; and in the bi-annual *Jewish Law Watch*, which examined actual *agunah* cases that have languished for years in the rabbinic courts without resolution.

## TO LEARN AND TO TEACH

This new series of booklets is devoted primarily to the status of women in the synagogue. It is based on my book *The Status of Women in Jewish Law: Responsa*, but it is intended for the general public. In this inaugural booklet, Rabbi Monique Susskind Goldberg rewrote my responsum on "The Mehitzah in the Synagogue", which appeared in the above-mentioned book. The goal was to make that responsum intelligible to a layperson who does not have a strong background in Talmud and Jewish law. Rabbi Diana Villa added a Glossary of Authors and a Glossary of Terms in order to assist the reader.

The booklets in this series will appear in five languages – Hebrew, English, Russian, Spanish and French – in order to reach as many readers as possible in Israel and the Diaspora.

We hope that these booklets will encourage the public to learn and to teach about the status of women in Jewish law and that those activities will also lead to action.

Prof. David Golinkin  
The Schechter Institute of Jewish Studies  
Jerusalem  
April 2004

## Introduction\*\*

Men and women are separated physically in Orthodox synagogues during public worship. This separation takes place by having women sit in a special section of the synagogue<sup>1</sup> or through a partition that is placed between them. In the nineteenth century, mixed seating was introduced in some congregations in the United States, and today this is the accepted custom in most Reform and Conservative synagogues both in Israel and abroad. Even so, most Orthodox rabbis still oppose any change in the seating arrangements of the synagogue.

The purpose of this booklet is to clarify the *halakhah* (Jewish law) regarding separation between the sexes and the *mehitzah* in the synagogue.<sup>2</sup>

### 1) Is mixed seating prohibited in the synagogue?

According to the Orthodox position, it is prohibited for men and women to sit together in the synagogue. According to some important Orthodox rabbis, this is a Biblical (*de-oraita\**) prohibition. According to Rabbi Soloveitchik\*, for example, this is "a Pentateuchal injunction which can never be abandoned by any legislative act...What was decreed by God can never be undone by human hand."<sup>3</sup>

The two main arguments of those who require the *mehitzah* are:

- a) That the sexes were already separated in the Temple; therefore they should also be separated in the synagogue.
- b) According to Rabbi Soloveitchik, the separation is necessary in order not to transgress the prohibition of *ervat davar* (anything unseemly).

We will now examine these arguments.

\*\* A Glossary of Authors and a Glossary of Terms appear at the end of this booklet. An \* refers to the Glossary of Terms; a • refers to the Glossary of Authors.

1 Nowadays this area is called the *Ezrat Nashim* (Women's Court) because that was the name of one of the Temple courts, even though there seems to be no connection between them. See our description of the Women's Court below.

2 This article is based on a responsum by Rabbi David Golinkin, which was published originally in *The Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, Vol. 2, in 1987. It was reprinted in his book *The Status of Women in Jewish Law: Responsa*. We direct the readers to that revised and expanded version. See the list of bibliographical abbreviations at the end of the booklet. The translations into English are based on the J.P.S. *Tanakh*, the Hertz Siddur, the translation of the Mishnah by Philip Blackman and the Soncino Press edition of the Talmud. Whenever biblical verses are quoted in other translations, they have been replaced by the J.P.S. version.

3 *Conservative Judaism* 11/1 (Fall 1956), p. 50; Litvin, pp. 139-140.

### a) Were the sexes separated in the Second Temple?

The Orthodox decisors' main argument is that men and women were already separated in the Temple, and that this was a Biblical obligation.<sup>4</sup> In their opinion, since the synagogue is a *mikdash me'at*, (minor sanctuary - this is a midrash on Ezekiel 11:16 which can be found in Megillah 29a), the obligation to separate the sexes is a Biblical (*de-oraita\**) prohibition.

#### The Women's Court in the Temple

The Second Temple area was divided into sections. The sections became holier the closer they got to the Holy of Holies.<sup>5</sup> The first section was called the Women's Court and one had to pass through it and the Nicanor Gate to enter the innermost sections of the Temple. The Women's Court was not meant only for women, and there is no halakhic source indicating that women could not go any further than that.<sup>6</sup> This section apparently received its name due to the fact that women usually approached only until Nicanor Gate and did not go any further unless they had to bring a sacrifice or the first fruits.<sup>7</sup>

According to Tannaitic (see *tannaim\**) and Amoraic (see *amoraim\**) sources, and the testimony of Josephus Flavius\*, it is clear that men and women were present in the Women's Court all year long, and there is no proof that they were separated.<sup>8</sup>

#### Sources which refer to a separation between the sexes in the Temple's *Ezrat Nashim*

Public ceremonies held to serve God were carried out in the Women's Court. These included the Torah reading by the High Priest on the Day of the Atonement (Yoma 69a-b) and the Torah reading by the king for *Haqhel\** (Sotah 40b-41a and parallel Talmudic sources). The Water Drawing festivities also took place in the Women's Court, and the Mishnah\* (Sukkah 5:1) says about them: "Anyone who has not witnessed the Water Drawing festivities [*Simhat Beit Hasho'evah*] has never seen rejoicing in his life".

4 See, for example, Rabbi Moshe Feinstein's responsum in *Iggerot Moshe*, section Orah Hayyim, No. 39 = Litvin, pp. 11-19, (Hebrew) and 118-125 (English).

5 See Mishnah Kelim 1: 8-9.

6 For more information see Safrai, "Ezrat Nashim", pp. 331-332.

7 See, for example, Tosefta Arakhin 2:1 and Mishnah Bikkurim 1:5.

8 See Golinkin, pp. 186-187.



At a later date, the rabbis instituted that a gallery must be erected in the Temple's Women's Court during the time that the Water Drawing festivities took place. And this is what they taught in Mishnah\* Midot 2:5:

Originally [the walls of the Women's Court] were bare, but subsequently they [the Court] surrounded it with a balcony so that the women could look on from above while the men were below, so that they should not intermingle.

At first glance, it might seem that the Women's Court was surrounded by a permanent balcony, in which the women stood all year round. However, the Mishnah\* commentators (Maimonides\*, the Meiri\*, the Rosh\*, Rabbi Ovadiah of Bertinoro\*, Tif'eret Israel\*) explained that the balcony was erected solely for the Water Drawing festivities.<sup>9</sup> Those who instituted this enactment did so in order to separate between the sexes and thus avoid frivolous behavior during the great festivity.<sup>10</sup>

And so we have learned in Mishnah\* Sukkah 5:2:

At the conclusion of the first festival day of Tabernacles they [the priests and Levites] descended [the fifteen steps that led from the Court of the Israelites] to the Court of the Women, where they made a great enactment.

In Tosefta\* Sukkah 4:1 (Lieberman edition p. 272) it is written:

At first, when they witnessed the Water Drawing festivities, the men would see it from the inside and the women from the outside. When the rabbinic courts observed that they engaged in frivolous behavior, they made three balconies in the court, in which women sat on three sides, and saw the Water Drawing festivities without mingling [with the men].

In the Babylonian Talmud\* (Sukkah 51b), the "great enactment" that the Mishnah\* mentions is explained as follows:

What was the "great enactment"? Rabbi El'azar replied: We have learned [in Mishnah Midot]: "Originally [the walls of the Women's Court] were bare, but subsequently they [the Court] surrounded it with a balcony so that the women could look on from above while the men were below".

9 According to Professor Albeck, in his Addenda to Mishnah Sukkah (*Mishnah*, ed. H. Albeck, Vol. 2, Jerusalem and Tel Aviv, 1988, p. 477), there apparently were fixed protrusions from the walls, and the boards and railings were added on the holiday.

10 The Mishnah (Sukkah 5:4) describes the festivities thus: "Pious men and men of good deeds used to dance before them [the priests] with lit torches in their hands and saying before them songs and praises. And countless Levites with lyres and harps and cymbals and trumpets and other musical instruments were there".

Our rabbis have taught: “Originally the women used to sit inside [the Women’s Court] while the men were outside, and this led to frivolous behavior. They then instituted that the women should sit outside and the men inside, and this still led to frivolous behavior. Therefore it was instituted that the women should sit above [in the gallery] and the men below”.

In other words, according to a rabbinic enactment, a gallery was erected every year to separate between men and women before the Water Drawing festivities. This would prevent any “frivolous behavior” which might have occurred as a result of the great festivity.

Later on (folios 51b-52a), the Talmud discusses this question: how is it possible that the rabbis changed the original divine plan of the Temple, considering that the original plan had no balcony:

But how could they do so [alter the original structure of the Temple]? Is it not written, “All this [I give you] in writing as the Lord has made me understand by His hand on me” (I Chronicles 28:19, referring to the construction of the First Temple)! Rav answered: They found a scriptural verse and expounded it: “And the land shall mourn, each family by itself and the house of David by themselves and their womenfolk by themselves and their wives apart” (Zechariah 12:12). Is it not, they said, an *a fortiori* argument? If in the future, when they will be engaged in mourning and the Evil Inclination will have no power over them, the Torah nevertheless says, men separately and women separately, how much more so now when they are engaged in rejoicing and the Evil Inclination has sway over them.<sup>11</sup>

In other words, how was it possible that the rabbis changed the Temple plan? We have seen that it is written in the book of Chronicles that the whole plan (“all”) was delivered by God through an act of prophecy! Rav (a first generation Babylonian amora – see *amoraim\**) answered that the rabbis reached that conclusion through an *a fortiori* argument based on a verse in Zechariah. If at a time of mourning, when the Evil Inclination has no power, men and women must remain separate, at a festive time, we should be more aware of the Evil Inclination, and separate the sexes. Therefore, they legislated that it was necessary to erect a balcony.

Orthodox rabbis saw in the opinion of the amora Rav proof that the balcony in the Women’s Court at the temple was a biblically ordained law (*de-oraita\**). Rav explained that the rabbis had the balcony erected on the basis of the verse from

11 See also Jerusalem Talmud, Sukkah 5:2, fol. 55b.

Zechariah. Rabbi Moses Feinstein\* (*Iggerot Moshe, Oraḥ Ḥayyim* 39 = Litvin, Hebrew, p. 11 and English, p. 119) concluded from this that:

It is as though it was clearly expressed that fixed protrusions and a balcony must be erected. Gad the visionary and Nathan the prophet, who were informed by God of the building plan, did not have to tell them about this [because it is as if] they were included in "all this [I give you] in writing".

In other words, the balcony was included in the original Temple plan, even though this wasn't expressed explicitly. Therefore, according to Rabbi Feinstein, the separation between the sexes is a biblical obligation.

However, this is not evident from the sources. It is clear from the Mishnah\* and from the Tosefta\* that the balcony was erected as a Rabbinic enactment (*takkanah\**) and not as a biblically ordained obligation. The verse which the Talmud interprets is from the Prophets and not from the Pentateuch, and therefore it cannot be a biblical injunction. Rav's sole intention was to justify the rabbis' enactment through a verse, but not to prove that the balcony was biblically ordained.<sup>12</sup>

In summary, from these sources we learn that:

- 1) The rabbis instituted a requirement that a balcony must be erected at the time of the Water Drawing festivities to avoid frivolous behavior.
- 2) The separation between the sexes in the Temple was temporary and limited solely to the duration of the Water Drawing festivities.
- 3) The Orthodox rabbis' assumption that the balcony's erection was biblically ordained is not correct. This separation was a rabbinic enactment, as is explicitly stated in the Mishnah, Tractate Sukkah.

### **The synagogue as a "minor sanctuary"**

The fact that the synagogue is called a "minor sanctuary" in the Aggadah (non-legal sources) does not prove that we can draw legal parallels between the Temple and the synagogue. The two institutions are very different, both as far as their structure and their use is concerned. Even if we did conclude that there was a fixed partition or separation between the sexes in the Temple (and we have proved that this was not the case), this would not prove that there is a *halakhic* requirement to have a partition in the synagogue. "We cannot draw conclusions regarding public prayer in the synagogue on the basis of mass festivities in the Temple."<sup>13</sup>

<sup>12</sup> See Golinkin, p. 182.

<sup>13</sup> Golinkin, p. 183 and *ibid.*, note 5.

## **b) Something unseemly [*ervat davar*]**

Some Orthodox rabbis consider that the source for prohibiting mixed seating in the synagogue is the verse in Deuteronomy 23:15, "Let Him not find something unseemly among you".<sup>14</sup> They consider that this verse teaches us about the need to separate between the sexes to avoid frivolous behavior. However the subject of the verse in Deuteronomy is not the separation between the sexes, but rather a requirement to protect the encampment from all impurity. The verse's simple meaning refers to the fact that whoever has had a nocturnal emission (*ba'al kerit*\*) must leave the encampment and that one must relieve oneself outside its perimeter. The rabbis in the Talmud\* (Berakhot 25b) learned from this verse that the *Shema* prayer must not be read next to *ervah* (human nakedness). However, the Talmud does not connect this verse in any way to the separation between men and women in the synagogue. The modern rabbis who applied this verse in that context in fact created a new *midrash halakhah* (deriving Jewish law from Biblical verses by applying certain rules of interpretation – a prerogative of the Tannaim\* only).

**In summary, it is clear that there is no Talmudic basis for the demand of separating men and women in the synagogue. None of the rabbinic literature from Talmudic times until the nineteenth century mentions the fact that mixed seating is forbidden in the synagogue. It follows that the practice of separating between the sexes in the synagogue is a custom, and we will now look into the origin of this custom.**

## **2) There is no evidence that men and women were separated during public worship until the Middle Ages**

### **a) The First and Second Temple periods**

There are some allusions in the Bible and the Apocrypha to the fact that there was no separation between the sexes during worship in the First and Second Temple periods.<sup>15</sup>

14 This is Rabbi Soloveitchik's argument – see above, note 3. Rabbi Soloveitchik differentiates between separation and a partition. He recognizes that it is difficult to find a source for the obligation of having a partition in the Pentateuch. He argues that the *mehitzah* is a rabbinic injunction (*de-rabbanan*\*), as a fence to the Torah (*seyag la-Torah*\*).

15 Golinkin, pp. 185-186.

### **Public Torah reading in the Biblical period**

It is written in Deuteronomy 31:10-12:

And Moses instructed them as follows: Every seventh year, the year set for remission (*shemittah\**), at the Feast of Booths [*Sukkot*], when all Israel comes to appear before the Lord your God in the place that He will choose, you shall read this Torah aloud in the presence of all Israel. Gather the people - *men, women*, children and the strangers in your communities - that they may hear and so learn to revere the Lord your God and to observe faithfully every word of this Torah.

And in Nehemiah 8:1-2 we read:

The entire people assembled as one man in the square before the Water Gate, and they asked Ezra the scribe to bring the scroll of the Torah of Moses with which the Lord had charged Israel. On the first day of the seventh month, Ezra the priest brought the Torah before the congregation, *men and women* and all who could listen with understanding.

From these sources we learn that men and women gathered together to listen to public Torah readings, and there is no mention whatsoever of their being separated.

### **Mixed worship in the Temple**

In the Book of Judith 4:11-12 (Anchor Bible, ed. Carey A. Moore, p. 7) it is written:

All the Israelite *men, women* and children living in Jerusalem prostrated themselves before the Temple and put ashes on their heads and spread out their sackcloth before the Lord...and with one voice they cried out to the God of Israel.

The Book of Judith was written in the Second Temple period (apparently in the fourth century BCE), and this is clear evidence of mixed prayer inside the Temple.

### **The Torah reading during *Haqhel\** in the Second Temple's Women's Court**

As we mentioned above, according to the Talmud (Sotah 40b-41a), the king read the Torah during *Haqhel\** in the Women's Court in the Second Temple. Since

women are obligated to observe the commandment of *Haqhel*,<sup>16</sup> this implies that women were present for this ceremony in the Women's Court in the Second Temple in the same manner as they had been present in the days of Ezra and Nehemiah. There is no testimony that the sexes were separated on this occasion.

## **b) Ancient synagogues**

We will now examine whether there is evidence in literary sources or in archaeological findings of a separation between men and women in ancient synagogues.

### **There is no mention of a partition or women's section in the sources**

There is no mention of a partition or women's section in the sources between the end of the Second Temple period and the Geonic period (500-1000 CE).<sup>17</sup>

There are, however, Talmudic sources from which Orthodox decisors tried to prove the presence of a partition in the synagogue in the Talmudic period. The following is an example of that effort:

There is a section in Kiddushin 81a dealing with the issue of *yihud*, which prohibits a man and a woman to be alone in a room. We are told that "Abaye made a partition of jugs; Rava made a partition of reeds". The circumstances of the incident are not clear. Rashi, for example, explains (*ibid.*, s.v. jugs), that it occurred in "a place in which a group of men and women got together for a sermon or a marriage ceremony". However, it was clearly not a synagogue. The Talmud is only telling us that, under certain circumstances, Abaye and Rava found it necessary to erect temporary partitions. Indeed, the Codes did not use this source to rule that a *mehitzah* is required.

### **Women used to go to the synagogue and participate in services**

According to Jewish law, women are obligated to pray.<sup>18</sup> However it might be argued that the fact that there is no mention of a Women's Court or a partition in the sources is due to the fact that women were not used to going to the synagogue and instead worshipped at home. This assumption is incorrect. There

16 See Deuteronomy 31:10-12; Kiddushin 31a; Maimonides, Laws of Hagigah 3:1.

17 See Golinkin pp. 188-191 for a review of the sources.

18 See Rabbi Golinkin's responsum on the subject: "Women in the *Minyan* and as *Shelihot Tzibbur*", in the *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, Vol. 6 (5755-5758), pp. 59-68 = Golinkin, pp. 47-59.

are many sources which show that women took part in the services and went to the synagogue regularly. Some examples follow:

- Josephus Flavius in *The Antiquities of the Jews* (XIV, 10, 24, par. 259-261, Whiston edition, pp. 412-413) describes a decision by the authorities in Sardis (Asia Minor) at the end of the first century BCE:

This decree was made by the senate and the people... [that the Jews be allowed to] assemble together, according to their ancient legal customs... and that a place may be given them where they may have their congregations, *with their wives* and children, and may offer, as did their forefathers, their prayers ...to God.

This section shows that women participated in the services in the synagogue at Sardis.<sup>19</sup>

- In a *baraita*\* in the Babylonian Talmud\*, (Avodah Zarah 38a-b), it is written:

A [Jewish] woman may set a pot on a stove and let a Gentile woman then come and stir it pending her return from the bathhouse or the synagogue, and she need not worry.

This means that a Jewish woman can set a pot on the fire, and a Gentile can stir it while the Jewish woman goes to the bathhouse or the synagogue. This shows that women were as used to going to the synagogue as they were going to the bathhouse.

- In the Babylonian Talmud, Sotah 22a, we are told:

A certain widow had a synagogue in her neighborhood; yet she used to come daily to the House of Study of Rabbi Yoḥanan and pray there. He said to her, "My daughter, is there not a synagogue in your neighborhood?" She answered him: "Rabbi, but have I not reward for the steps? [for the extra distance I walked to attend the services]."

Rabbi Yoḥanan is not surprised that the woman comes to the synagogue every day, only that she does not go to her neighborhood synagogue.<sup>20</sup>

This is how Prof. Shemuel Safrai summarizes this matter:

The fact that women were obligated to pray and even used to go to the synagogue while there is no proof of the existence of a separate section provides a certain amount of evidence that there was no women's section and no partition.<sup>21</sup>

19 Golinkin, p. 188.

20 See other examples in Golinkin, pp. 52-53 and Safrai, *Ezrat Nashim*, pp. 334-336.

21 Safrai, *Ezrat Nashim*, p. 334.

### **There is no archaeological evidence that there was a women's section in the ancient synagogue**

In the early twentieth century, archaeologists discovered balconies in the ruins of some ancient synagogues, and decided unequivocally that they were women's sections. After reexamining over one hundred synagogues from Talmudic times which were discovered in Israel and in the Diaspora, it became clear that only five synagogues in Israel actually had balconies.<sup>22</sup> In addition, we have no archaeological proof that the balconies which were discovered were used as women's sections.

We can also learn about the lack of balconies in ancient synagogues from the inscriptions which were discovered in honor of donors. Numerous inscriptions mention mosaic floors, gates, entrances, patios, guest-accommodations, a column or a series of columns, steps, a lintel, a hostel, rooms, a water installation, etc., but none of them relate to a women's section.<sup>23</sup>

**In summary, we have seen up to now that the women in antiquity used to visit the synagogue regularly. We have also seen that there is no literary or archaeological proof of the existence of a partition or women's section in those days.**

### **3) The *meḥitzah* or women's section is a custom which developed in the Middle Ages**

Even though there is no halakhic source before the nineteenth century requiring a partition or a women's section, there are numerous medieval sources which prove indirectly that the sexes were separated in the synagogue.

- a) The most ancient source is Seder Eliyahu Rabba from the end of the Geonic period. It says (Chapter 9, Ish Shalom edition, p. 46 as translated by Braude and Kapstein, Philadelphia, 1981, p. 147): "Nor should a man stand among women and pray, because he is likely to be distracted by the presence of women".<sup>24</sup>
- b) The women's section is mentioned explicitly for the first time in some Genizah fragments from eleventh-century Fostat, Egypt. Prof. Ze'ev Safrai and others assume that the women's section was a compromise with the Muslim custom which did not allow women to enter a mosque altogether.<sup>25</sup>

22 Brooten, pp. 104-123.

23 See Safrai, *Ezrat Nashim*, p. 337; Golinkin, p. 192.

24 Golinkin, p. 192, gives a similar explanation.

25 Safrai, *Moment*, p. 8 and Golinkin, p. 193.



- c) Sources in Spain and especially in Germany, mention a partition or a women's section as of the thirteenth century (usually called "the women's synagogue").<sup>26</sup>
- d) The explicit obligation to separate the sexes in the synagogue through a partition or women's section appears for the first time in halakhic sources at the end of the nineteenth century. Orthodox rabbis made this a requirement as part of their struggle against other Jewish religious movements.

#### **4) May the custom of a *mehitzah* or women's section be abolished?**

It is clear, on the basis of what we have said so far, that the separation between the sexes in the synagogue by a partition or women's section is not a biblical nor a rabbinic obligation; rather, it is a custom which developed towards the end of the Geonic period. The question, therefore, is whether an ancient custom can be abolished, or whether it is impossible to change a custom which has been accepted by *Kelal Yisrael* (the collective Jewish people).

##### **a) The Orthodox rabbis' arguments**

Some Orthodox rabbis recognize that the separation between the sexes in the synagogue was originally a custom,<sup>27</sup> but still forbid any change in this matter. Their arguments follow.

##### **We are not allowed to change an ancestral custom**

The Talmud and the Midrash stress in a few places that an ancestral custom cannot be changed.<sup>28</sup> These passages are based on verses such as: "My son, heed the discipline of your father and do not forsake the instruction of your mother" (Proverbs 1:8).

26 See a list of sources in Golinkin, p. 193, note 17.

27 See Rabbi Kotler, p. 22.

28 Pesahim 50b; Beitzah 4b; Jerusalem Talmud Pesahim 4:1, fol. 30b = Bereshit Rabbah 94:4, ed. Theodor-Albeck, p. 1174, in the variant readings to line 5.

## **The Supreme Rabbinical Court in Jerusalem must be obeyed**

Those who are opposed to changing customs in any way rely on Maimonides\*, Laws of Rebels (Mamrim) 1:1-2:

The Great Sanhedrin (Supreme Rabbinical Court) of Jerusalem is the root of the Oral Law. The members thereof are the pillars of instruction. Out of them go forth statutes and judgements to all of Israel...Whoever does not act in accordance with their instruction transgresses a negative commandment, as it is said: "You must not deviate from the verdict that they announce to you either to the right or to the left" (Deuteronomy 17:11)... Whether the direction given by them is with regard to matters that they learned by tradition - matters that form the contents of the Oral Law...or with regard to measures devised by them to serve as a fence about the Law (*seyag LaTorah\**) – measures designed to meet the needs of the times, comprising decrees, ordinances and *customs*; with regard to any of these three categories, obedience to the direction given by them is a positive command. Whoever disregards any of these, transgresses a negative command.<sup>29</sup>

According to certain Orthodox rabbis, the partition (*mehitzah*) is one of the customs determined by the Supreme Rabbinical Court and cannot be annulled.

## **b) Answers to these arguments**

### **Maimonides' intention**

In this section, Maimonides\* deals only with customs enacted by the Supreme Rabbinical Court in Jerusalem, but we are dealing with a custom which developed 1,000 years after the destruction of the Temple.

### **Ancient customs have been abolished in the past**

Even though the Talmud stresses the need to maintain ancestral customs, thousands of customs have been abolished in the past, for different reasons: the custom was based on error, was unreasonable or illogical, it was a "bad custom", etc.<sup>30</sup>

29 Yale University Press edition, New Haven, 1949. See also Maimonides' Laws of Sanctification of the New Month 5:5.

30 See examples in Elon, pp. 937-942.

### The need to take the particular time and place into account

A lot of laws and even more so, a lot of customs, were abolished in Jewish history because the original reason for that law or custom disappeared due to societal change. The later decisors tell us about "changes in Nature".<sup>31</sup> Even the Rema\*, who wrote in the *Shulhan Arukh\** (*Orah Hayyim* 690:17): "One should not abolish any custom or mock at it, as [customs] were not established for nothing," wrote in another place: "However if the circumstances changed in comparison to what they were in the times of the early decisors, the custom can be changed according to the times" (this is a paraphrase of the Rema's responsum number 21 [19 in later editions] summarized by the author of Magen Avraham\* on *Orah Hayyim* 690, subpar. 22).

Men and women were separated in many areas of life in the Middle Ages, and therefore, for reasons of modesty, they were also separated during services. The presence of women in the synagogue could have distracted the men during prayer. But in our days (or "now" [*ha'idana*] as the decisors say), men are used to meeting women and sitting with them in different places and under various circumstances in all areas of life, such as study, work, recreation, etc. As a result, men will not have trouble concentrating in the synagogue because they are sitting next to women. It follows that the partition does not add anything to the synagogue services. On the contrary, the partition makes women feel alienated and inferior, and drives some of them away from the synagogue.<sup>32</sup> Therefore we can say that the partition [*mehitzah*] is not appropriate to the social reality of our times, and does not add anything to the quality of the worship of God.

### The concepts of "now" (*ha'idana*) and "being used to something" (*regilut*) as sources for changes in halakhah

Many decisors throughout the generations have applied the arguments "now" (that is, changes in the times and circumstances) and "being used to something", as a basis for changes in Jewish law and custom.<sup>33</sup>

Rabbi Yehiel Yaakov Weinberg\*, the author of *Seridei Esh*, used this argument in a responsum dealing with the issue of the partition. In this responsum he deals with the disagreement between Rabbi Moshe Feinstein\* and the Hungarian rabbis regarding the height of the partition. Rabbi Feinstein thought that a partition eighteen *tefahim\** (fists) high was sufficient, while the Hungarian rabbis

31 For examples, see Jacobs, chapters 9-10; Guttel, pp. 33-47.

32 Men and women are separated in all areas of life in some circles and neighborhoods. Obviously these communities would not consider a change regarding the partition custom appropriate.

33 See examples in Golinkin, p. 195, notes 21-22.

required a partition which reached “above the heads”. This is what the author of *Seridei Esh* writes (Part 2, No. 14, pp. 29-30):

The Hungarian rabbis are very strict and require that the partition should reach above the women’s heads. They go even further and demand that if the synagogue does not have such a partition, it is forbidden to pray there, it is forbidden for women to come and worship there, and it is preferable that they should remain at home. Their intention is certainly good, as they want to maintain the modesty of previous generations. However, in our times, circumstances and the nature of things have changed. If women remain at home and do not come to the synagogue, they will forget Judaism altogether. We certainly should not push them away and keep them afar due to a strict interpretation of the law which has no solid basis in the Talmud or among the decisors.

Rabbi Weinberg’s arguments can be used to prove that the partition can be abolished altogether:

- “In our times circumstances and the nature of things have changed”, and a partition is unnecessary in modern society in which men and women are used to being together, since it does not add anything to the quality of services;
- The partition keeps many women away from the synagogue, and “we should not push them away and keep them afar”;
- The partition is not obligatory and it is only “a strict interpretation of the law which has no solid basis in the Talmud or among the decisors.”<sup>34</sup>

The decisors also applied the argument of “being used to something” in order to change or abolish laws or customs. One example will suffice.<sup>35</sup> Rabbi Weinberg applies this argument in the above-mentioned responsum to explain why Rabbi Feinstein accepted a relatively low partition. The author of *Seridei Esh* writes:

Regarding women uncovering their heads - he already wrote in *Iggerot Moshe* that we can rely on the Rif\* and Maimonides\* who rule that hair is not a sexual distraction when praying the *Shema* or the *Amidah* (silent devotion).<sup>36</sup> This is even more true in our times, when the vast majority do not cover their heads and people are used to this, and hair is not something which is usually covered and so it is written in *Arukh Hashulhan*.

34 See Golinkin, pp. 195-196.

35 For more examples, see Golinkin, p. 196.

36 Rabbi Weinberg relies on *Iggerot Moshe*, Oraḥ Ḥayyim, Vol. 1, no. 42, s.v. “hine badavar”. However, in *Iggerot Moshe* it says “Hair is not a sexual distraction regarding the *Shema* and words of Torah”.

In other words, since most women do not wear a head covering in our days, men are used to this and hair is not considered a distraction any more.

Rabbi Feinstein obviously did not use this argument to abolish the partition, because, in his opinion, it is a "biblical prohibition" (*de-oraita*\*). But the author of *Seridei Esh* explains that since "hair is a sexual distraction" is only a rabbinic prohibition (see Berakhot 24a), Rabbi Feinstein felt free to abolish this prohibition on the basis of "being used to something".

If a rabbinic prohibition can be annulled because we are "used to something", we can certainly annul the partition, which is only a custom, for the very same reason.

Therefore, we can affirm that it is permissible to annul the custom of the *mehitzah* in the synagogue due to changes in society and because we are "used to something".

## 5) Summary and conclusions

- a) We have seen that the requirement to separate men and women in the synagogue has no basis in the Talmud and halakhic literature from Talmudic times until the nineteenth century. Therefore this practice of separating the sexes is a custom and not a law.
- b) We have proved historically that the partition or the women's section did not exist in the ancient synagogue. The first testimony about a women's section in a synagogue is from eleventh-century Fostat, in Egypt. After that, there is ample evidence from Spain and Germany.
- c) We have proved that this custom can be abolished on the basis of "now" or "the changing nature of things", since men in our times are used to being near women in all kinds of circumstances. The custom of having a partition was appropriate to the social situation of the Middle Ages, but is not suitable to a modern, mixed society.
- d) Many modern women are not comfortable praying in a place which has a partition. We may, therefore, abolish the partition in order to help attract these women to the synagogue.
- e) Rabbi Golinkin adds in his responsum that "there is already enough alienation and loneliness in modern families. The synagogue should be a place which brings families together and not one which separates them."<sup>37</sup>

37 Golinkin, p. 198.

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## Glossary of Authors

*Bertinoro*, Rabbi Obadiah of Bertinoro, (Italy and Israel, 1450-circa 1516), author of the classical and comprehensive commentary on the Mishnah\*, based on Rashi and Maimonides.

*Feinstein*, Rabbi Moses (Lithuania and the U.S., 1895-1986): author of the responsa *Iggerot Moshe*, one of the leading halakhic authorities of his time. His rulings are accepted in most Orthodox circles around the world.

*Josephus Flavius*: Jewish historian who lived during the first century CE. His works are a source, and sometimes the only surviving source, for our knowledge about different events from the time of the revolt against the Romans and the destruction of the Temple.

*Maimonides (Rambam), Rabbi Moses ben Maimon* (Spain and Egypt, 1135-1204): physician, philosopher and halakhic authority. Author of the *Mishneh Torah*. Maimonides also wrote commentaries on the Mishnah\* and the Talmud\*, responsa, philosophical works (such as *The Guide for the Perplexed*) and medical works.

*Meiri, Rabbi Menahem ben Shlomo Ha-Meiri* (Provence, 1249-1315), author of *Beit ha-Behirah*, a commentary on most of the tractates of the Talmud\*. He also wrote novellae on the Talmud.

*Rema, Rabbi Moses Isserles* (Poland, 1525-1572): author of *Darkhei Moshe* on the *Arba'ah Ha-Turim* by Jacob ben Asher, and glosses to Caro's *Shulhan Arukh\**, known as the *Mappah* (Tablecloth). These glosses supplemented Caro's code with the laws and customs of Germany and France. In this way, they contributed to its becoming authoritative throughout the Jewish world in the sixteenth century and the major code to this day.

*Rif, Rabbi Isaac Alfasi* (North Africa and Spain, 1013-1103): author of a classic code organized according to the order of the tractates of the Talmud\*.

*Rosh, Rabbi Asher ben Yehiel* (Germany and Spain, 1250-circa 1327): important decisor who combined the German and Spanish schools of halakhah. His major work was *Piskei Ha-Rosh*. He also wrote novellae on the Talmud\* and many responsa.

*Soloveitchik, Rabbi Dr. Joseph Dov Halevi* (Eastern Europe and the U.S., 1903-1993): teacher at Yeshiva University in New York, who became the spiritual mentor of a whole generation of American Orthodox rabbis. The "Rav", as his disciples knew him, did not usually write halakhic decisions, yet he wrote philosophical treatises such as *Ish Ha-Halakhah*, *The Lonely Man of Faith* and *Kol Dodi Dofek*.

*Tiferet Israel*, written by Rabbi Israel Lipschutz (Germany, 1782-1860), an important commentary on the Mishnah\*.

*Weinberg, Rabbi Dr. Yehiel Yaakov* (Russia, Germany, Switzerland, 1885-1966): the last rector of the Orthodox Rabbinical Seminary in Berlin, Talmudic authority and decisor, author of responsa *Seridei Esh*.

## Glossary of Terms

*Amoraim*: Rabbis of the Talmudic (see *Talmud*\*) period (220-500 CE), who taught and studied in the academies in Israel and Babylonia.

*Ba'al Keri*: a man who has experienced a nocturnal emission. In Talmudic times he was impure and had to immerse in a *mikveh* (ritual bath).

*Baraita*: tannaitic (see *tannaim*\*) dictum not included in the *Mishnah*\*.

*De-oraita*: biblical law.

*De-rabbanan*: rabbinic law (from the time of Ezra the Scribe to the end of the Talmudic [see *Talmud*\*] period).

*Haqhel*: Meeting day, in which the king read certain sections of the Torah (from the book of Deuteronomy) to the whole people of Israel (men, women and children) in the Temple courtyard, every seven years, at the end of the first day of the feast of *Sukkot* (Tabernacles).

*Magen Avraham*: one of the principal commentaries on the *Shulhan Arukh*\*, written by Rabbi Abraham Gombiner (Poland, 1637-1683).

*Mishnah*: a collection of mostly legal teachings, edited by Rabbi Judah Ha-Nasi, around 200 CE.

*Seyag Latorah*: a fence around the Torah; rabbinic prohibitions (*de-rabbanan*\*) added by the sages to keep people away from biblical (*de-oraita*\*) prohibitions.

*Shemital*: the sabbatical year in which the fields must lie fallow and there is remission of debts.

*Shulhan Arukh*: sixteenth-century law code, written by Rabbi Joseph Caro (Spain and Israel 1488-1575), to which the Rema's\* glosses were added; this helped make it the most influential code to this day.

*Sugyah*: passage in the *Talmud*\* dealing with a particular issue.

*Takkanah*: rabbinic enactment for the purpose of communal improvement, required due to changing circumstances.

*Talmud*: a series of treatises which include the *Mishnah*\* from tannaitic (see *Tannaim*\*) times and the Gemarah, the discussions of the *Mishnah*\* by the *Amoraim*\*. The Babylonian Talmud became the basic source for all future halakhic development.

*Tannaim*: rabbis of the *Mishnah*\*. They studied and taught in the land of Israel from the end of the Second Temple period until 220 CE. Besides the *Mishnah*, they authored many *baraitot* (see *baraita*\*) some of which are gathered in the *halakhic midrashim* (which derive Jewish law from Biblical verses by applying certain rules of interpretation) and the *Tosefta*\*.

*Tefah*, pl. *tefahim*: fundamental unit of length in halakhah, defined as a closed fist or the breadth of four fingers, about ten centimeters.

*Tosefta*: a collection of *baraitot* (see *baraita*\*) which was edited according to the order of the *Mishnah* in the following generation.



THE MEHITZAH IN THE SYNAGOGUE

Rabbi Ishmael, his son, said: "He who learns in order to teach, will be granted the opportunity to learn and to teach; but he who learns in order to practice, will be granted the opportunity to learn and to teach, to observe and to practice".

(Avot, Ethics of the Fathers 4:5)