Can Women be Witnesses in a Beit Din?

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Ask any child, or most adults, whether women are valid witnesses under Jewish law, and they will likely answer that women are "*pasul l'eidut*" — invalid to testify. However, the reality is more nuanced. While many statements in the Talmudic and *halakhic* literature indicate that women's testimony is categorically inadmissible, there are also a number of instances where women's testimony has been accepted in Jewish courts. The use of witnesses originally arose in three contexts: in civil cases, to determine the facts of the case in a dispute over monetary matters; in criminal cases, to determine whether there were grounds for punishing an alleged wrongdoer; and for purposes of establishing status as part of religious rituals, such as marriage or divorce. This article explores women serving as witnesses in civil cases.

Biblical Sources

The plain reading of the Biblical verses about testimony does not differentiate between male and female witnesses. The Torah states:

טו לֹא יָקוּם עֵד אֶחָד בְּאִישׁ, לְכֹל עָוֹן וּלְכָל חַטָּאת, בְּכָל חֵטְא אֲשֶׁר יֶחֱטָא: עַל־פִּי שְׁנֵי עֵדִים, אוֹ עַל פִּי שְׁלֹשָׁה עֵדִים יָקוּם דָּבָר	**15** One witness shall not stand against a man for any iniquity or any sin, in any sin that he may sin; according to two witnesses or according to three witnesses a matter shall be established.
טז כִּי יָקוּם עֵד חָמָס בְּאִישׁ, לַעֲנוֹת בּוֹ, סָרָה	**16** If a corrupt witness shall stand against a man to testify a fabrication against him

יט וְעָמְדוּ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהֶם הָרִיב, לִפְנֵי ה', לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַּיָּמִים הָהֵם. (דברים יט:טו־יז)

17 the two men, between whom there is a dispute, shall stand before the Lord, before the priests and the judges who will be in those days. (Devarim 19:15–17, Steinsaltz translation)

On its face, the Torah seems to require two witnesses, whose gender is not specified; the only reference to men is in the context of litigants.

Tannaitic Sources

As early as the Sifre, the Biblical verses quoted above were understood to exclude women from eligibility to serve as witnesses:

ועמדו: מצוה בנדונים שיעמדו.

שני האנשים: אין לי אלא בזמן שהם שני אנשים; איש עם אשה ואשה עם איש שתי נשים זו עם זו מנין? תלמוד לומר אשר להם הריב מכל מקום.

יכול אף אשה תהא כשירה לעדות? נאמר כאן שני ונאמר להלן שני. מה שני האמור כאן אנשים ולא נשים אף שני האמור להלן אנשים ולא נשים. (ספרי דברים פרשת שופטים פיסקא קצ)

And they shall stand: It is a commandment for the litigants to stand. The two men: This tells me only of two men. From where do I learn of a man with a woman, a woman with a man, or two women? The *pasuk* says "who have a dispute" — in any event.

Could it be that even a woman is eligible to give testimony? The *pasuk* here says "two" and the *pasuk* there says "two." Just as here the two spoken about are men and not women, so too the two spoken about there are men and not women.

(Sifre Devarim, Shoftim, 190)

The Sifre seems to read verse 19:17 to require all litigants, whether male or female, to stand. It then employs the hermeneutic device of a *gezeira shava*, in which the existence of the identical word or phrase in two passages is used to derive a *halakha* from one passage to the other. In this case, both verses speak of "two," referring once to witnesses and once to men, which leads the Sifre to conclude that the two witnesses can only be men.

Notwithstanding the Sifre's blanket statement, the Mishnah's treatment of women's testimony is somewhat ambiguous. For example, the third chapter of Sanhedrin contains a list of persons not eligible to be witnesses — dice players (gamblers), usurers, pigeon racers, traffickers in *shemita* produce, relatives, and a litigant's friend or enemy — and does not expressly exclude women (3:3–5). Those listed as ineligible to testify are engaged in disreputable practices or have

a bias and thus lack credibility. The omission of women from this list would suggest that there is no inherent problem with their credibility. However, the list of individuals who are deemed not qualified to testify because they are relatives (3:4) consists only of men, suggesting that women were not considered eligible to testify for some other, unstated, reason. On the other hand, the Mishnah states that the parties may agree to allow testimony of an otherwise ineligible witness (3:2). While this provision does not address the status of women, the principle seems broad enough to permit the parties to agree to admit the testimony of a woman.

The Mishnah in Rosh Hashana is also somewhat ambiguous. In describing the witnesses who are eligible to testify that they saw the New Moon, the Mishnah identifies the same list as in Sanhedrin 3:3 and adds slaves. It then goes on to say:

זה הכלל כל עדות שאין האשה כשירה לה אף הן אינן כשירים לה:

> This is the general rule — any testimony for which a woman is not qualified, these also are not qualified (Mishnah Rosh Hashana 1:8).

This Mishnah seems to assume categories of testimony for which women are not eligible but also suggests that there are categories of testimony for which they are eligible, without stating what those categories might be. However, the Mishnah in Shevuot, about who is required to take an oath of testimony (swearing that they do not have relevant testimony) seems to assume that women are not eligible to testify:

שבועת העדות נוהגת באנשים ולא בנשים, ברחוקין ולא בקרובין, בכשרים ולא בפסולין, ואינה נוהגת אלא בראויין להעיד... (משנה מסכת שבועות פרק ד משנה א)

The oath of testimony applies to men and not to women, to non-relatives and not to relatives, to kosher witnesses and not to ineligible witnesses, and applies only to those eligible to testify… (Mishnah Shevuot 4:1)

By contrast, the Tosefta is clear that there are at least some circumstances in which a woman's testimony is accepted. It provides that all are believed to testify that a kohen's wife who was taken captive was not raped — "even her son, even her daughter" — other than the woman herself and her husband

because a person doesn't testify on his own behalf (Tosefta, Ketubot 3:2).[1] All of these sources use the language of testimony (עדות), not just believability (נאמנות), thus raising the level of the woman's statement to that of formal testimony.

In another example, the Tosefta expressly permits women's testimony, but only when it is given immediately after occurrence of the event:

Rabbi Yochanan ben Barokah said a woman or a minor is believed when they say 'the bee swarm came from here.' When does this apply? When they are testifying right there, but if they went out and came back they are not believed because [of a concern that] they only say it out of persuasion or fear [i.e. that their testimony has been influenced by others]. (Tosefta, Ketubot (Lieberman) 3:3)

אמ' ר' יוחנן בן ברוקה נאמנת אשה או קטן לומ' מיכן יצא נחיל זה. במי דברים אמורים? בזמן שהעידו על מעמדן אבל אם יצאו וחזרו אין נאמנין שלא אמרו אלא מתוך הפיתוי ומתוך היראה. (תוספתא מסכת כתובות (ליברמן) פרק ג הלכה ג)

Similarly, in Yevamot 16:7, the Mishnah addresses whether a single witness that a husband is dead is sufficient to allow his wife to remarry. The Mishnah states that the Sages established a presumption that a single witness was sufficient and that the witness could be a woman or a slave. The Mishnah then reports two dissenting views. Rabbi Eleazer and Rabbi Yehoshua reject the "one witness" rule completely. Rabbi Akiva accepts that rule but disagrees regarding the acceptability of women and slaves as witnesses. He then modifies his view to conclude that, in limited circumstances, a woman's testimony will be accepted:

And the law was established that they allow a woman to remarry on the evidence of one witness. And it was established that they allow a woman to remarry on the testimony of one witness from the mouth of another witness [i.e. hearsay testimony], from a slave, from a woman, or from a female slave. Rabbi Eleazer and Rabbi Yehoshua say a woman is not allowed to remarry on the testimony of one witness.

והוחזקו להיות משיאין על פי עד אחד. והוחזקו להיות משיאין עד מפי עד, מפי עבד, מפי אשה, מפי שפחה. רבי אליעזר ורבי יהושע אומרים אין משיאין את האשה על פי עד אחד.

1. See also Mishnah Ketubot 2:6 and 2:9, allowing testimony by a woman that another woman was not raped.

Rabbi Akiva ruled: [a woman is not allowed to remarry] on the evidence of a woman, on that of a slave, on that of a female slave or on that of relatives. They said to him: It once happened that a number of Levites went to Tsoar, the city of palms, and one of them became ill on the way, and they left him in an inn. When they returned they asked the [female] innkeeper, "Where is our friend?" And she replied, "He is dead and I buried him", and they allowed his wife to remarry. Should not then a kohen's wife [be believed at least as much] as an innkeeper!" He answered them: When she will [give such evidence] as the innkeeper [gave] she will be believed, for the innkeeper had brought out to them [the dead man's] staff, his bag and the Torah scroll which he had with him.

רבי עקיבה אומר, לא על פי אישה, ולא על פי עבד ולא על פי שפחה ולא על פי קרובים. אמרו לו, מעשה בבני לוי שהלכו לצוער עיר התמרים, וחלה אחד מהם, והניחוהו בפונדק, ובחזירתן אמרו לפונדקית איה חברנו, ונמת להם מת וקברתיו; והשיאו את אשתו. אמרו לו, לא תהא כוהנת כפונדקית. אמר להם, ובשתהא הפונדקית נאמנת. והפונדקית הוציאה להם מקלו, ותרמילו, ומנעלו, ואפונדתו, וספר תורה שהיה בידו.

While this Mishnah provides that a woman's testimony is accepted for purposes of allowing a woman to remarry — either without condition (according to the Sages) or, at least if there is corroborating evidence (according to Rabbi Akiva) — it is not clear how broadly we can generalize from it. It is likely that the rabbis were strongly motivated by a perceived need to enable women to remarry when there was even some evidence that their husbands were dead, which led to a relaxation of the normal rules of testimony, both to permit a single witness and to allow that witness to be a woman.

The view expressed in this Mishnah by Rabbi Akiva that a woman's testimony is accepted only where there is corroborating evidence can also be seen in an unattributed Mishnah (Gittin 2:7), which provides that even a woman relative who is not permitted to testify that someone's husband died is believed when she brings that person a *get* from abroad because the *get* document provides proof of the divorce.

It is notable that, with one exception, the Tannaitic sources do not state a reason for the exclusion of women's testimony. (In the one case where a reason is given, Tosefta Ketubot 3:3, the stated reason is a concern that the woman's testimony would be influenced by others.) This suggests that the assumption that women do not testify was so pervasive that offering a reason to exclude their testimony was unnecessary. And yet, in a limited number of specific instances, the need for a woman's testimony was deemed great enough to override this widespread assumption. However, the instances in which a woman's

statement was relied on appear to have occurred outside of a formal court setting, and thus would not constitute formal "testimony."

Gemara

The primary discussion in the Gemara regarding women's ineligibility to testify is in Bavli Shevuot 30a. Commenting on Mishnah Shevuot 4:1, the Gemara asks about the source for a woman's ineligibility to testify and provides three *braitot* as proofs. The first is a *braita* that derives the rule from an interpretation of Devarim 19:17, which states וְעָמְדוּ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהּ הָרִיב (literally, "and the two men shall stand, between whom the dispute is"). Because the phrase "between whom the dispute is" clearly refers to the litigants, the phrase "and the two men shall stand" is construed to refer to the witnesses and thus to require male witnesses. The *braita* acknowledges that this is not a strong proof (ואם נפשך לומר — and if it is your wish to say [that this is not a proof]) because the entire phrase could refer to the litigants. It then provides as an alternate proof the *gezeira shava* cited by the Sifre: since both 19:17 and 19:15 refer to "two," in one case referring to "two men" and in the other referring to "two witnesses," the verses taken together refer to male witnesses.

The Gemara then cites a second *braita* arguing that the phrase "the two men shall stand" must refer to witnesses rather than litigants since, while witnesses generally come in pairs, at times multiple litigants might come to court. Again, the *braita* acknowledges the weakness of the argument, in this case because even when there are multiple individuals as parties, there are typically only two sides to a case (plaintiffs and defendants), and again provides the *gezeira shava* argument as a fallback.

The third *braita* cited asserts that the reference to "two men" must refer to witnesses rather than litigants because women do come to court as litigants. Again, the *braita* acknowledges the weakness of the proof, this time because, although women are legally entitled to come to court, they typically do not and instead send agents to appear on their behalf. Yet again the *braita* falls back on the *gezeira shava* argument to conclude that only men may be witnesses. This Gemara suggests that the disqualification of women as witnesses was a long-standing tradition that the Gemara struggled to justify. While the justification appears weak, ultimately the conclusion is upheld.

The Gemara's conclusion that women are not eligible to testify is taken as a given in Bavli Bava Kamma 88a, dealing with the question of whether a Canaanite slave is eligible to testify. There, Ulla uses a *kal v'chomer* argument to assert that if women are ineligible as witnesses, so too are slaves. The Gemara does not discuss the premise that women are ineligible but instead considers the various similarities and differences between women and slaves to determine whether the comparison is valid.

Despite the apparent blanket rule against admitting testimony of women, the Gemara describes several instances in which the word of a woman is accepted and treated as credible when significant determinations are at stake. One example is that of a midwife, in Bavli Kiddushin 73b:

אמר רב חסדא: שלשה נאמנים לאלתר. אלו הן: ...

Rav Hisda said: there are three cases where people are believed at the moment [that the event occurs], and they are these …

חיה דתניא חיה נאמנת לומר זה יצא ראשון וזה יצא שני.

A midwife, as it is taught: a midwife is believed to say 'this one [of twins] emerged first [and thus is the *bechor*], and this one emerged second.'

...

תנו רבנן נאמנת חיה לומר זה כהן וזה לוי, זה נתין וזה ממזר. במה דברים אמורים? שלא קרא עליה שם ערער, אבל קרא עליה ערער אינה נאמנת. ערער דמאי? אילימא ערעור חד והאמר רבי יוחנן אין ערעור פחות משנים? אלא ערעור תרי.

… Our sages taught: [If several women gave birth at the same time] a midwife is believed when she says 'this [baby] is a Kohen, and this is a Levi, this is a *natin*[2] and this is a *mamzer*' [i.e. she is believed to say which baby came from which mother]. In what case is this said? If no one contests [her statement], but if an objection was raised, she is not believed. What type of objection? If we say it is an objection by one person, doesn't Rabbi Yochanan say there is no objection with less than two? Rather, it means an objection by two [people].

ואיבעית אימא לעולם אימא לך ערער חד וכי אמר רבי יוחנן אין ערעור פחות משנים הני מילי היכא דאיתא חזקה דכשרות אבל היכא דליכא חזקה דכשרות חד נמי מהימן

Alternatively, one could say it actually was an objection by one, and when Rabbi Yochanan said an objection is invalid if made by less than two that was in a case where there was a *chazakah* of *kashrut* (presumption of legitimacy), but where there is no presumption of legitimacy, even one [challenger] is believed.

2. *Natin* (Gibeonite) and *mamzer* are categories of people who are not permitted to marry into the Israelite community.

From this Gemara, we see that a woman is seen as credible and her statements are used to determine facts of monetary significance (which child is the first born, relevant for inheritance purposes) and personal status (which child is a kohen or *mamzer*). If her statement is challenged by two witnesses, they are believed over her. This is reasonable since Jewish law generally requires two witnesses and generally does not even accept testimony of a single witness. However, if her statement is contradicted by a single witness, the Gemara provides two alternative views. Under the first view, the statement of the midwife is always upheld over that of a single challenger. Under the alternative view, her statement is upheld only if there is a "*chazakah* of *kashrut*" (presumption of legitimacy). The commentaries understand this presumption as relating to the lineage of the baby. However, under the case presented, where the very issue is which baby belongs to which mother, no baby can have the required *chazakah*. Thus, the testimony of the midwife can never survive a challenge, even by a single witness.

The Gemara in Bavli Yevamot 117b deals with a case where a single kosher witness testified that a woman's husband had died, which would make her free to remarry, and two invalid (female) witnesses subsequently testified that he did not die. The Sages initially ruled that in such a case the testimony of the two women would be believed as against that of a single kosher (male) witness, and the woman would be required to leave her new husband. The Gemara then qualifies this statement: the two women are to be believed when they contradict a single man only if they were the initial witnesses and testified to the death. However, if a man initially testified to the death, even 100 women cannot negate his testimony. This latter statement is challenged with a *braita* which states that whenever the Torah permits a single witness to testify to the death of a woman's husband, that testimony can be negated by contrary testimony of two witnesses. The Gemara then reconciles this *braita* by holding that the two women are believed only if they came first by establishing a general rule that the testimony of two women is equal to the testimony of one man.

In Bavli Bava Kamma 114b, the Gemara discusses another area in which women's statements are believed for purposes of determining property ownership. The case involves a swarm of bees being pursued by their owner. A statement by a woman (or a minor) that "it was from here that the swarm emerged" was deemed credible for determining ownership of the bees. However, the Gemara clarified that this was not formal testimony, and in fact was accepted only because it was made in an offhand manner (מסיחין לפי תומם).

In summary, the Mishnah and the Gemara seem to reflect a general principle that women are not acceptable as witnesses but without articulating a reason for this exclusion. However, these texts contain several instances in which women's statements are relied on for making determinations, including those with significant consequences. Yet the instances in which women's statements are relied on are either not formal court cases (e.g., the midwife, the swarm of bees) or involve the special circumstances of testimony regarding the death of a woman's husband, where the rules of testimony were relaxed to provide that a single witness, even one not otherwise eligible to testify, was sufficient. Even in the latter situation, women's testimony was accepted over that of a man only when it would serve to facilitate the policy goal of enabling the widow to remarry.

Rishonim, Shulchan Aruch, and Rema

The Sefardic poskim generally take a hard line against admitting women's testimony, even when women are the only available witnesses. For example, Rambam in *Hilkhot Nizikei Mamon* (Laws of Monetary Damages) 8:13 states the following:

אין הנזקין משתלמין... אלא בראיה ברורה, ובעדים הכשרים להעיד. שלא תאמר הואיל ואין מצויין באוריות הסוסים וברפת הבקר וגדרות הצאן, אלא העבדים והרועים וכיוצא בהן, אם העידו שבהמה זו היא שהזיקה את זו – שומעין להן; או אם העידו קטנים או נשים שאדם זה חבל את זה, או העידו בשאר נזקין – סומכין עליהן. אין הדבר כן; אלא לעולם אין מחייבין ממון על פי עדים, עד שיהיו עדים הכשרים להעיד שאר עדייות...

Damages should not be collected … unless definite proof is brought with witnesses who are acceptable to testify. We do not say that since only shepherds, servants, and the like are found in the stables of horses, the stalls of cattle, and the corrals of sheep, their testimony should be accepted if they testify that one animal damaged another. Similarly, if minors or women testify that one person injured another or caused another type of damage [one might think] that we rely on them. This is not so. Rather, financial redress is required on account of witnesses only when the witnesses are acceptable with respect to other kinds of testimony…

Similarly, writing in response to a question about a dispute regarding whether a woman transferred ownership of synagogue seats to her son, the Rashba (R' Shlomo ibn Aderet, 1235–1310, Spain) states, in Responsa, Vol 5, #139:

Know, that the testimony of women, even if there are a thousand [women], they are all equal to the testimony of one, and their testimony is not testimony except in matters of prohibitions.… And maybe you found one of the *Rishonim* [who held that the testimony of women is valid] in the place where women sit in the synagogue because it is a place just for women and men do not enter there when women are sitting there. But we do not know of such things, and never heard of them, and they are not worthy to be relied on.

דעו: שעדות הנשים, ואפי' אם יהיו אלף, כולן שוות כעדות אחת, ואין עדותן עדות, אלא בדבר איסור בלבד.... ואולי מצאתם כן לאחד מן הראשונים, במקומות שהנשים יושבות שם בבית הכנסת, מפני שהוא מקום מיוחד לנשים, ואין האנשים נכנסים שם בשעת שהנשים יושבות שם. ואנחנו לא נדע דברים אלו, ולא שמענו מעולם, ואין ראוי לסמוך עליהם.

The Rashba finds the situations in the Gemara where a woman's statements were relied on to be not applicable to the case at hand. In the case of the midwife who was relied on regarding which baby was the *bechor,* he states that such reliance is necessary because there is no other way to determine the facts since men are not present in the birthing room. And in a case described in Bavli Niddah 48b, where a woman was allowed to examine (and presumably testify) whether a girl had two pubic hairs, he states that the testimony is allowed only because the underlying physical evidence was available even without her testimony. However, he concludes, in a case involving monetary matters, women's testimony is not considered testimony at all, and even 100 women are not treated as a single witness.

The Ashkenazic Rishonim are more willing to accept women's testimony in certain, albeit limited, situations. In a frequently-cited responsum, #353 (*siman* שנג), the Trumat HaDeshen (R' Israel Isserlein, 1390–1460, Austria) deals with a case of disputed seats in the women's section of a shul. One claimant, Leah, brought two women witnesses that the seats belonged to her. The second claimant, Rachel, brought a single male witness to support her claim. The Trumat HaDeshen sets the stage for his decision with a very strong statement regarding the acceptability of women's testimony in appropriate circumstances:

ואף על גב דבעלמא אין עדות אשה כלום, בנדון זה דאינהו רגילי למידק טפי מאנשים מהימנינן להו שפיר. וכן מצאתי הועתק מפסקי גדול דנאמנות הנשים להעיד לאלמנה אלו הבגדים לבשה בהן בחיי הבעל, משום דאין האנשים רגילין להסתכל בבגדי הנשים, והביא ראיה מהא דאמרי' ג' נאמנים על הבכור חיה לאלתר. הא קמן דבמילי דלא רגילי האנשים למידע מהמנינן לנשים, אפי' לאפוקי ממונא כי התם בבגדי אלמנה. ונראה דבמקומות בהכ"נ של הנשים נמי אין האנשים רגילים לידע איזה מקומה של אשה זו ואיזו של זו.

And even though, as a general matter, female testimony has no value, on this matter where women are likely to be more attentive than men, it is better to believe them. And so I have found cited from a great *posek* that women are believed to testify regarding a widow that she wore particular clothing while her husband was alive, since men do not typically look at women's clothing; and he brought proof from that which was said [in the Gemara, Kiddushin 73b]: three are believed regarding the *bechor,* the midwife immediately [after birth]. Thus, on matters where men are not likely to know, we believe women, even to extract money like in the case of the widow's clothing. And it seems that with regard to seats in the women's section of the synagogue, men are also not likely to know which seat belongs to this woman and which to that woman.

The Trumat HaDeshen goes on to acknowledge that the Gemara in Bava Kamma 15a states that, in cases of monetary damages, acceptable witnesses are free men and Jews. But he argues that this statement intends to exclude slaves and non-Jews, who lack either legally recognized kinship relationships (in the case of slaves) or an obligation to keep *mitzvot* (in the case of non-Jews). He thus claims that the statement in the Gemara is not meant to exclude Jewish women, who have neither of these deficiencies.

Accordingly, he concludes that if Rachel had a presumption (*chazakah*) of ownership of the disputed seats but Leah had two female witnesses supporting her claim, Leah could take the seats away from Rachel based on the testimony of the two female witnesses. However, the situation would differ if Rachel had a single male witness against Leah's two female witnesses. In such a case, based on the Gemara in Yevamot 117b, the two sides would be considered of equal weight, and the disputed seats would be awarded to the woman who had the presumption (*chazakah)* of possession.

This *teshuva* takes the idea of women as witnesses to an entirely new level. Whereas the Gemara treats women as credible and relies on their statements for making important determinations, it for the most part does not recognize their statements as formal testimony. By contrast, the Trumat HaDeshen is willing to accept women's testimony in a formal court setting as the basis for a plaintiff winning a monetary judgment. Thus, the *teshuva* goes a long

way toward establishing the admissibility of women's testimony in financial disputes. However, the scope of this decision is very limited. First, it is limited to matters in which women are likely to pay attention to the facts and men are not. Perhaps more important, in any case in which the testimony of two female witnesses is challenged by that of a single male witness, the testimonies cancel each other out.

The Shulchan Aruch (Choshen Mishpat 35:14), following the Sefardic tradition, makes the blanket statement that women are ineligible to testify. However, the Rema (R' Moshe Isserles, 1530–1572, Poland) disagrees, making the following comment:

וכל אלו הפסולים, פסולים אפילו במקום דלא שכיחא אנשים כשרים להעיד (הרשב"א בתשובה והרמב"ם בפ"ח מה' נזקי ממון וכ"כ הב"י), וכל זה מדינא, אבל י"א דתקנת קדמונים הוא דבמקום שאין אנשים רגילים להיות, כגון בב"ה של נשים או בשאר דבר אקראי שאשה רגילה ולא אנשים, כגון לומר שבגדים אלו לבשה אשה פלונית והן שלה, ואין רגילים אנשים לדקדק בזה, נשים נאמנות (ת"ה סי' שנ"ג ואגודה פ' י' יוחסין). ולכן יש מי שכתב דאפילו אשה יחידה, או קרוב או קטן, נאמנים בענין הכאה ובזיון ת"ח או שאר קטטות ומסירות, לפי שאין דרך להזמין עדים כשרים לזה, ואין פנאי להזמין (מהרי"ק שורש קע"ט ומהר"ם מריזבורג וכלבו סי' קט"ז). והוא שהתובע טוען ברי (מהרי"ק שורש כ"ג/צ"ג/) (וע"ל סכ"ח סט"ו בהג"ה).

And all of these invalidations [of women witnesses] apply even where valid male witnesses are not typically found (citing Rashba, Rambam, and the Beit Yosef). And all of this is according to the strict letter of the law. But there are those who say that there is an ancient *takana* (enactment) that in a place where men are not typically present, such as the women's section of a synagogue, or in other happenstance circumstances where women, but not men, are typically present — such as to say that a particular woman wore certain clothing and they belong to her — where men do not typically pay particular attention to such matters, women are believed (citing the Trumat HaDeshen and the Agudah). And accordingly, there is one who wrote that even a single woman, or a relative or a minor, are believed regarding assault or embarrassment of a *talmid chacham* or other quarrels or informing to the secular authorities, since there is no way or opportunity to invite valid witnesses to this (citing Maharik, Maharam, and Kol Bo). And this is so long as the plaintiff is certain of his claim (citing the Maharik).

In his earlier work, *Darchei Moshe* (commenting on the Tur, Choshen Mishpat 35:3), Rabbi Isserles provides somewhat greater detail about the ancient *takana* regarding women's testimony, stating that the Maharik ascribes this *takana* to Rabbenu Tam, and the Kol Bo ascribes it to Rabbenu Gershom Me'Or

Hagolah.[3] The Darchei Moshe states that even though, under the strict letter of the law, women's testimony is not accepted even in places where men are not commonly found, as stated by Rambam and Rashba, these earlier *takanot* provided for accepting women's statements in cases of assault, embarrassment of a *talmid chacham,* and all quarrels where valid witnesses are unlikely to be present, and states that this is also true in the case of informants. He notes that the Trumat HaDeshen limits women's testimony to uncommon, happenstance situations ("אקראי בעלמה") where men typically don't pay attention, as opposed to most cases of monetary damages, where presumably men are commonly present and paying attention. However, he goes on to say:

However, it appears to me that in matters of assault or injuries, women are believed, as stated by Rabbenu Tam, since this is also not common … and therefore it seems to me there is no reason to reject their words without clear proof.	מיהו נראה דבדבר הכאות וחבלות נשים נאמנות וכדברי רבינו תם דזה גם כן לא שכיחי ... ולכן נ"ל דאין לדחות דבריהם בלא ראיה ברורה.

Thus, the Darchei Moshe takes the earlier view of the Trumat HaDeshen, which allows women to testify regarding "women's matters" where men are either not present or not likely to be paying attention, and expands it based on the *takana* to include cases of assault or other injury. The theory seems to be that if the only witnesses to an incident are women, the reasons to admit their testimony are the same as for cases involving "women's matters." The essential factor is the absence of male witnesses rather than anything inherent to the incident. However, in line with the ruling of the Maharik, he limits the admissibility of women's testimony to cases where the plaintiff has made a "*bari*" claim (i.e. a claim in which the plaintiff asserts he is certain).

The Rishonim take two approaches to expand the admissibility of women's testimony from the cases described in the Talmud. The first is a case law approach, exemplified by the Trumat HaDeshen, who reasons by analogy from the midwife case to accept women's testimony in other areas where women are

3. See Maharik (R' Joseph Colon Trabotto, 1420–1480, Italy) Responsum # 179 (קע"ט), stating that an early enactment of Rabbenu Tam provides that even an individual woman (or relative) is believed to testify that she saw an assault because there is no opportunity to invite valid witnesses when there is a sudden event; see also Sefer KolBo *siman* 115 (קי"ו) describing the *takana* of Rabbenu Gershom, which cites the enactment of Rabbenu Tam.

likely to be the only witnesses present. He continues the limitations set forth in the Talmud regarding the nullification of women's testimony when there is conflicting testimony from a male witness. The second approach is a legislative approach, exemplified by the *takana* of Rabbenu Tam, which extends the admissibility of women's testimony to cases of assault and other situations that arise suddenly in places where men might be present but happened to not be present at the time of the incident. The *takana* seemingly does not address the acceptability of women's testimony if there was conflicting testimony from a male witness. However, the *takana* adds a new limitation: the woman's testimony is admissible only if the injured person can state with certainty who injured him (i.e. can make a "*bari*" claim). The admissibility of women's testimony only where the plaintiff makes a "*bari*" claim seems to be a throwback of sorts to the cases in the Mishnah (Yevamot 16:7 and Gittin 2:7) in which the woman's testimony is believed only with corroborating evidence. In the case of a "*bari*" claim, the certainty of the plaintiff provides some corroboration. However, it is not clear why such corroboration was deemed necessary, given that, in the absence of conflicting testimony, the midwife's testimony was accepted without need for corroboration.

It is interesting that the Rema takes as his premise that women's testimony is inadmissible. In his view, the *takana* does not change this formal exclusion of women's testimony. He describes the *takana* as providing that "we believe women" (נשים נאמנות) in the situations covered by the *takana* without expressly calling their statements testimony. As a result, the Rema creates a hybrid situation: women are not eligible to give formal "testimony," but their statements are relied on to determine the outcome of certain court cases.

Acharonim

Several Acharonim comment on the Rema's statement in Choshen Mishpat 35:14 and try to limit its scope. The Me'irat Einayim (R' Yehoshua Falk, 1555–1614, Poland) states (in Choshen Mishpat 35:30) that the Tur (in Choshen Mishpat seif 408) cites the Rambam's position that only kosher witnesses can be relied on in cases involving monetary damages (נזיקין). He further states that neither the Tur nor the Shulchan Aruch nor the Rema himself say that the ancient *takana* referred to by the Rema is strong enough to allow women

to testify in cases of monetary damages. In support of his position, the Me'irat Einayim cites the Trumat HaDeshen (*se'if* שנ"ג) as well as Darchei Moshe on Choshen Mishpat 35:13 and 408. This appears to be a misreading of the Darchei Moshe on Choshen Mishpat 35, which describes the *takana* as covering assaults (הכאות) and quarrels (כל דבר קטטה) and extends it to other forms of injury (חבלות). Moreover, while the Rema does not comment about women's testimony in *siman* 408 of the Shulchan Aruch, the Darchei Moshe's comment on *siman* 408 of the Tur refers to his comments on *siman* 35, indicating his belief that the expanded approach to women's testimony described there applies as well in cases of monetary damages.

The Shach (R' Shabbetai Kohen, 1621–1662, Eastern Europe) states that while the Maharshal allowed women's testimony, it was only in the absence of a *chazakah* regarding ownership of the property in dispute. If there was a *chazakah* of ownership for three years, it would outweigh any testimony by women to the contrary. He also states that, in any case, the testimony of a single male witness outweighs the testimony of two female witnesses, again citing the Maharshal.

The Nodah B'Yehudah (R' Ezekiel Landau, 1713, Poland — 1793, Prague) issues a responsum (Choshen Mishpat #58) (שו"ת נודע ביהודה מהדורא תניינא — חושן משפט סימן נח) elaborating on the issue of women's testimony. The case involved a situation where, several days after the occurrence of a theft, two women testified that they had seen the stolen items in a certain person's home, and the accused person denied stealing them. The Nodah B'Yehudah noted that, with respect to an occurrence in a place where women are typically found and men are not, women witnesses would be believed even without the *takana* referred to by the Rema, based on the midwife discussed in the Gemara. However, since this theft occurred under circumstances where men and women were equally unlikely to be found, as is the case in most instances of assaults and quarrels, the only basis for admitting the women's testimony was the *takana* referred to by the Rema. Yet the *takana,* as described by the Rema, would permit using women's testimony only where the plaintiff made a "*bari*" claim against the accused. In this case, although the plaintiff could state with certainty that he had been robbed, he was not certain of the thief. Thus the *takana* would not allow for admitting the women's testimony in this case.

However, the Nodah B'Yehudah goes beyond this reason to reject the women's testimony. He states that even if the plaintiff had made a "*bari*" claim that he had seen the stolen items in the accused's home, the women's testimony

would not be admitted. Unlike the situations covered by the *takana,* where the assault or quarrel occurred suddenly and the only possible witnesses were on the scene at that very moment, the women here did not testify that they saw the theft being committed but only that they had seen the stolen items in the accused's home. Thus, it was possible that there could be male witnesses who also saw the items in the accused's possession. The Nodah B'Yehuda declines to extend the *takana* to this situation. He concludes his *teshuva* by clarifying that he is not deciding that the women's testimony would be accepted if they had in fact witnessed the theft, but that there is room to reach such a decision in those circumstances.

The Aruch HaShulchan (Rabbi Yechiel Michel Epstein, 1829–1908, Lithuania) takes a more complex position**.** In his discussion of invalid witnesses (Choshen Mishpat, *siman* 35, *se'if* 13), he begins by stating that we do not accept the testimony of invalid witnesses even if there are no valid witnesses. He then refers to the early *takana* discussed by the Rema as well as the various limitations on admissibility of women's testimony raised by other *poskim,* describing the position that women's testimony is accepted in places where women are commonly found and men are not and the view that women's testimony is accepted regarding assault, embarrassment of a *talmid chacham,* other quarrels and disagreements, and informants. However, in line with the Rema, he limits reliance on women's testimony under the *takana* to cases where the plaintiff has direct knowledge that enables him to make a "*bari*" claim. Moreover, in reliance on the Schach, he holds that, even after the *takana*, a single valid (i.e. male) witness is believed more than any number of invalid (i.e. women) witnesses, and, in reliance on the Maharshal, he holds that the testimony of women does not override the presumption of possession (*chazakah*). He then cites the position of the Nimukei Yosef that, even under the *takana,* women's testimony is accepted only when the essence of the matter is already known and not denied by the defendant, in which case the women's testimony is permitted to supply the details. But if the only knowledge of the event is from the women's testimony and the defendant completely denies the claim, we do not judge based on their testimony. Here, again, we see a requirement that the woman's testimony needs some corroboration coupled with a belief that the women's testimony can be overridden by contradictory male testimony.

However, in his discussion of Laws of Monetary Damages, (Choshen Mishpat, *siman* 408, *se'if* 1–2), the Aruch HaShulchan takes a more expansive view of the admissibility of women's testimony and does not mention any of

the limitations he described in *siman* 35. He begins his discussion of damages for causing injury by reiterating the Rambam's ruling that such damages are only payable based on the testimony of valid witnesses. He goes on to say that the Rema had already limited this ruling to the strict letter of the law and had ruled based on the earlier *takana* of Rabbenu Tam that, in a place where no valid witnesses were present, we accept the testimony of invalid (i.e. women) witnesses. He notes that the Me'irat Einayim argued that the earlier *takana* applies only in uncommon occurrences but not in cases of monetary injury, which are common. To this point, the Aruch Hashulchan responds in extremely strong language:

ותמיהני דא"כ לא שבקת חיי דמאין נקח עדים כשרים לנזקי שן ורגל וכה"ג

> And I was shocked because if this is so, there is no room left to survive, because from where will parties get valid witnesses to [various forms of property damage].

He speculates that the primary reason people opposed allowing testimony of invalid witnesses was out of a concern that such witnesses would be more likely to accept payment from one of the parties to testify falsely. His solution is to give the *beit din* the power to reject testimony of invalid witnesses that it finds not credible and to admit testimony that it believes would lead to a correct judgment. He believes that this approach is necessary:

שאם אי אתה אומר כן יחריבו השדות והגנות והפרדסים ואין אומר השב

> Because if you do not say so, the fields, gardens, and orchards will be destroyed and there will be nobody to respond.

It is difficult to reconcile the statements of the Aruch HaShulchan in these two *simanim*. However, one possible reading is that, while he acknowledges that, as a legal matter, the *halakha* contains these limitations on women's testimony, he believes that in judging actual cases, there is room for a *beit din* to consider women's testimony if it determines that their testimony is necessary to reach a correct judgment. Yet even in his discussion of the limitations on women's testimony, the language of the Aruch HaShulchan displays a subtle development in the thinking about women's testimony. Whereas the Rema avoids using the word testimony (עדות) regarding women's participation in court proceedings, and instead speaks of women's "statements" (דבריהם) and that

women "are believed" (נשים נאמנות), the Aruch HaShulchan discusses women's statements in court proceedings using the language of testimony (עדות).

Conclusion

Although, on its face, the Torah does not expressly specify a gender requirement for testimony, from the time of the Mishnah, the Torah verses have been interpreted to exclude women as valid witnesses. Nevertheless, both the Mishnah and the Gemara contain specific examples of situations where women's statements were relied on, most notably the midwife's statements as to which child was born first and which child was born to which mother, thus establishing a precedent that, in the absence of other witnesses, a woman's "testimony" could determine both economic and personal status questions.

The Sephardic Rishonim, most notably the Rambam and the Shulchan Aruch, followed the Talmudic general rule that women's testimony is inadmissible and do not include any of the contrary examples as normative *halakha*. However, the Ashkenazic Rishonim not only rely on the Talmudic exceptions to the general rule but expand them. The first expansion reflects a case law approach that extends the principle behind the midwife to other situations where women were likely to be the only available witnesses, such as regarding transactions in the women's section of the synagogue. The second expansion is a legislative enactment (*takana*) by Rabbenu Tam that accepts women's statements in court proceedings regarding incidents, such as assaults, that arose suddenly in places where men might have been present but were not present at the time of the incident. Each of these expansions comes with its own limitations. Under the case law approach, women's "testimony" could be nullified, or perhaps outweighed, by the contrary testimony of a single male witness. Under the *takana*, women's "testimony" was not admissible unless the plaintiff could make a definite ("*bari*") claim. The Rema preserves both of these expansions while seemingly taking pains to avoid referring to the women's statements as testimony.

The Acharonim try to limit the scope of the Rema's rulings by focusing on the limitations on women's testimony but do not deny that there were some limited, instances in which women's statements would be admissible. The Nodah B'Yehuda, in his *teshuva*, expressly acknowledges both the case law and

takana as bases for accepting women's testimony (at times even referring to it as testimony) while finding that neither applied in the particular case. The Aruch HaShulchan, in his discussion of valid and invalid witnesses, preserves both the expansions regarding the acceptance of women's statements in court proceedings and the limitations on admitting such statements. However, he gives added legitimacy to such statements by referring to them as testimony. Moreover, in his discussion of the laws of monetary damages, he disagrees with *poskim* who limit the admissibility of women's testimony and, in extremely strong language, urges judges to consider women's testimony where it is necessary to reach a correct result.

Thus, over time we have moved, very gradually, from categorical statements of the inadmissibility of women's testimony to reliance on women's statements in court proceedings in limited situations to the labeling of such statements as testimony and to the call by a major *posek* for judges to rely on women's testimony whenever necessary to reach a correct judgment.