

Mitsvat assei she-hazeman gerama.

The text of the Mishnah Kiddushin I: 7 is the following:

וכל מצוות עשה שהזמן גרמה, האנשים חייבין והנשים פטורות. וכל מצוות עשה שלא הזמן גרמה, אחד אנשים ואחד נשים חייבין. וכל מצווה בלא תעשה, בין שהזמן גרמה ובין שלא הזמן גרמה אחד אנשים ואחד נשים חייבין חוץ מבל תקיף ומבל תשחית ומבל תטמא למתים.

We find a similar text in Tossefta Sotah II: 8:

האיש עובר על מצוות עשה שהזמן גרמה, מה שאין כן באישה.

The problem is now to appreciate the range and the importance of these rules relative to the positive and negative laws. Are they absolute rules resulting from the interpretation of the scriptures, with nevertheless the existence of exceptions based on drashot of biblical quotations, which can allow us to make deductions or are they statistical rules found by the process of induction from the examination of the different particular cases. In such a case these rules cannot help us solving an undetermined case. It seems that both opinions exist in the Talmud. We find in Kiddushin 34a:

אמר רבי יוחנן: אין למדים מן הכללות.

We find in Kiddushin 35a :

אמר רבא, פפונאי ידעי לה לטעמא דהאי מילתא, ומנו? רב אחא בר יעקב.

Rabbi Johanan does not make deductions from general rules even if the rule enumerates exceptions because we have no certitude that the list of exceptions is complete. Often such a list is not limitative. Therefore we can conclude that the rule has not an absolute character and no deductions can be made. In fact this rule was found through induction from the study of particular cases that we know from drashot of biblical quotations or by rabbinic tradition. Rabbi Akha, by contrast, as it results from the development of the Gemara, considers and shows that the rule was found by one of the hermeneutical rules, the comparison or היקש. Therefore this rule has an imperative value and it can be used for deductions because the list of exceptions is limitative.

The difference between the two points of view is limited: it would concern an object for which we have no traditions. According to Rabbi Akha the women would be exempted while according to Rabbi Johanan, we should not have any reason to exempt them.

Rambam in his commentary on the Mishnah.

Rambam adopts the position of Rabbi Johanan: we don't deduce from the rules, even if it contains exception introduced by חוץ, detailing exceptions, because we have no certitude that this list of exceptions is complete: תנא תני ושייר. Thus the meaning of such a rule is that in the majority of the cases it is correct. But in fact, we only know if a woman is obligated or not by tradition; there is not a precise rule, which can be applied in any case. Thus among the time dependent positive mitsvot, the following list of exceptions given by Rambam: eating matsa on Pessah evening, rejoicing on the festival, hakheel, tefila, megila reading, Hanuka and Shabbat candles and Kiddush, belongs to the category of time dependent positive laws and nevertheless their obligation for women is the same as men. This list was established by the study of these particular mitsvot on the basis of teachings or drashot scattered through the Talmud. Now among the positive laws, which are not time dependent and represent the majority of the mitsvot, Piria ve Rivia (the obligation of reproduction), the study of the Torah, redeeming of the firstborn and the war against Amalek, are mitsvot from which women are exempted despite the general rule and these exceptions are all known by tradition. Finally the last rule about the negative laws is always true except for three laws: bal takif and bal tashrit

concerning the man's beard and bal tetameh la meitim about the interdiction to defile oneself for a dead, which concerns males but not females belonging to the family of Cohanim.

Rambam in his Hibbur.

In Hilkhhot Avodah Zarah 12: 3 he wrote:

כל מצוות עשה שהיא מזמן לזמן ואינה תדירה, נשים פטורות, חוץ מקידוש היום ואכילת מצה בלילי הפסח ואכילת הפסח ושחיטתו והקהל ושמחה שהנשים חייבות.

In Hilkhhot Tefilah 1: 2 he wrote:

אין לתפילה זמן קבוע מן התורה ולפיכך נשים ועבדים חייבין בתפילה לפי שהיא מצוות עשה שלא הזמן גרמה.

In Hilkhhot Berakhot 5: 1 he wrote:

נשים ועבדים חייבין בברכת המזון. וספק יש בדבר אם הן חייבין מן התורה לפי שאין קבוע לה זמן או אינו חייבין מן התורה.

In the first quotation, devoted to time dependent mitsvot, the enunciation looks much like the opinion of Rav Akha: enunciation of a general rule followed by a list of exceptions. But we cannot draw any certitude and it is also possible that this is an a posteriori representation of the reality without any taking of position in the discussion between Rav Akha and Rabbi Johanan.

In the second quotation, Rambam contradicts his position in his commentary of the Mishna, where he had classified tefila in the category of time dependent positive mitsvot, which women are obliged to perform in the same way as men. He had probably in mind the prayer in its rabbinical organization of morning and afternoon prayers and women are bound to say them for they are a manifestation of love.¹ This would thus be a positive time dependent mitsva derabanan which women are bound to say like megila and Hanukah candles, which are also mitsvot hakhamim. In his Mishneh Torah, Rambam considers two different aspects in tefila: first a general obligation of prayer, Torah obligation not time dependent. It speaks about a prayer in any form and structure, for example *Modeh ani* would fulfill this requirement: this prayer is not time dependent and should be said on each day and women would be bound. A second obligation of rabbinical order concerns the prayer in its rabbinical structure of morning, afternoon (and evening prayer) which women are not bound to say. In this second quotation Rambam relates to the first point of view and he writes that women are bound because it is not a time dependent mitzvah. By contrast, women would not be bound to say the structured prayers (morning and afternoon).

In the third quotation, Rambam rules that women must say the prayer after meal. There is nevertheless a doubt whether this obligation is from the Torah, because this prayer is not time dependent or if this obligation is rabbinic.

Because of the formulation of these three quotations referring to time dependent mitsvot and mitsvot which are not time dependent, Professor Jacob (Gerald) Blidstein proposed the conclusion that Rambam changed his mind and came back to the principles of authoritative rules of time dependent mitsvot and time independent mitsvot.² This point of view would be justified by the fact that we find in different places through the Gemara, the use of the concept time dependent mitsvot or time independent mitsvot as a test deciding whether women are obliged to perform or not.

By contrast Rabbi Dror Fixler³ argues that there is no reason to suppose that Rambam, in this specific case, changed his position. He notes that Rambam never used the argument that a

¹ Berakhot 20b.

² See Sinai, year 5064, vol 128, pp. 66 – 71.

לתוקפו של מוסג "מצוות עשה שהזמן גרמן" במשנת הרמב"ם מאת יעקב בלידשטיין.

³ See Sinai, year 5064, vol 131, pp. 41 – 53.

mitzvah is time dependent, to justify that women are not bound by it. In the second and third quotations above, Rambam mentions that these mitzvot are time independent, but says Rabbi Fixler, it is not to justify directly the obligation of the women. According to Rambam's view, he says, we do not rest on authoritative rules and, in order to free women from a mitzvah, we need a "drasha" a special learning. Now if we don't dispose of it, then in the case of a time dependent mitzvah, we must consider that maybe there is a tradition releasing her. By contrast, in the case of a time independent mitzvah, there is no reason to suspect that she is released from that mitzvah.

This is in fact what Rambam wrote in the second and the third quotation is that if we don't know a particular learning releasing a woman from prayer or meal grace, then as we are in the case of time independent mitzvah, there is no reason to suspect that women should be released from these obligations. In other words the Rambam's quotations about מצוות עשה שלא הזמן גרמה and שאין קבוע לה זמן are not the reason of the obligation but the reasoning justifying why we must not suspect that they are released from these obligations. The slight difference and the shade in meaning between these two positions are very subtle and the problem remains open. In fact this discussion has no practical consequence, it is a problem of philosophy of the Halakhah.

Other rulers adopted the point of view of the authoritative rules and justified the obligation of women to fulfill mitzvot or the fact that women are released from mitzvot by the rules releasing them from time dependent positive mitzvot and bounding them to time independent mitzvot.

Shulhan Arukh justifies different related laws by the principles of time dependent mitzvot and time independent mitzvot. It justifies that women are released from the obligation of tsisit, tefilin, Shema and Shofar by the rule of time dependent mitzvot and writes that they are bound by the obligation of Kiddush although it is a time dependent mitzvah.

Aharonim and sefer mitzvot ha-Shem adopts this point of view. In this last book the first quotation mentioned above from Rambam's *hilkhot Avodah Zarah*:

כל מצוות עשה שהיא מזמן לזמן ואינה תדירה, נשים פטורות, חוץ מקידוש היום ואכילת מצה בלילי הפסח ואכילת הפסח ושחיטתו והקהל ושמחה שהנשים חייבות.

is established into a fundamental and authoritative rule.

I will end by noting that the subject is much debated and that there are even discussions about the category, time dependent or time independent, in which some mitzvot should be classified and therefore there are also differences about the women's obligation. For example in the laws about bringing bikkourim and the recitation and benediction on bikkourim and sefirat ha-omer, which are at the first sight, and even the second sight, time dependent positive mitzvot, there are divergent opinions. Some, like Ramban, consider them as time independent mitzvot. This can create a difference at the level of the obligation of women.