

# Responsum on Equal Pay

*Jonathan Cohen on behalf  
of the CCAR Responsa Committee*

*Sh'eilah:* Is there an obligation under Jewish law to pay men and women the same for comparable labor?

Submitted by Rabbi Marla Feldman, Women of Reform Judaism, and Rabbi Mary L. Zamore, Women's Rabbinic Network, on behalf of the Reform Pay Equity Initiative

*T'shuvah:* In responding to your question we must recognize that the formulators and proponents of halachah throughout the centuries have recorded, defended, and in many instances also promoted distinctions and inequalities between men and women, including ones that have occurred in the realm of work and its remuneration. To cite one example, it was accepted that under many circumstances women would not be entitled to compensation for their work; rather, the revenue generated through their efforts would be directed to their fathers or husbands.<sup>1</sup> In addition, even when women were offered payment for their work, there is evidence to suggest that much of their work was defined by then accepted gender and family roles.<sup>2</sup> However, our response to your question is shaped by two assumptions: (1) that women *are* paid for their work, and (2) that women and men do *comparable* work. On this basis, we turn to the question of pay regulation and equity.

Starting during the Talmudic period, questions of payment or remuneration for work (in Hebrew, *sachar*) were resolved on the basis of local customs and jurisdictions.<sup>3</sup> We note a tendency to level, or render equal, payment and protect workers among Talmudic Sages. For example, in a discussion on the obligation of the employer in cases where the stipulation of pay to laborers does not

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include a specific wage and the employer's commitment is based on local custom, R. Joshua requires a minimum payment of the lowest wage paid for comparable work in the locality, while the Sages rule that an average wage must be paid.<sup>4</sup> In addition, the Talmud indicates that members of a Jewish jurisdiction or polity may regulate rates, weights, and measures as well as wages.<sup>5</sup> In other words, wage-fixing and regulation are explicitly permitted in these sources. Further, this rule is cited by leading respondents. For example, the Rashba explains that such regulations may be approved by members of a professional or trade association without the approval of others in their city and that these enactments carry the weight of Torah law,<sup>6</sup> and the Rosh addresses the possibility that in certain monetary matters courts of law may depart from Torah law on the basis of this rule.<sup>7</sup> Also, this Talmudic rule includes the stipulation that members of a jurisdiction may establish monetary sanctions to enforce their regulations.<sup>8</sup> In addition, citing Rambam, the Beit Yosef teaches us that the two-pronged purpose informing such sweeping administrative authority is to regulate the affairs within a jurisdiction and to enable the success or thriving of its subjects, citizens, or inhabitants.<sup>9</sup>

In addition, generations of *poskim* identified certain matters as subject to the rule *dina d'malchuta dina*—in other words, matters that fall under the recognized jurisdiction of non-Jewish law. In brief, the application of this principle has been restricted in three principal ways. It applies to:

- i. matters that are specifically in the interest of the ruler or of government (taxes and other sources of revenue for the state, for example); or
- ii. government regulation for the well-being of inhabitants in the jurisdiction; and
- iii. legislation or regulation that does not directly contravene or uproot *din Torah*.<sup>10</sup>

We note that there are a number of potential difficulties that arise with respect to the application of this rule to the regulation of employment and wages. Beyond the need to consider the position of certain *poskim* who ruled that *dina d'malchuta dina* depends upon the legitimacy of the ruler, administrator, or legislator,<sup>11</sup> a number of halachic authorities restrict its scope to matters touching on real property.<sup>12</sup> The Chatam Sofer famously rejects the application of

this rule to an employment issue in part because in his view the ruler (or king) enjoys the power to act arbitrarily (and unfairly) in hiring decisions.<sup>13</sup> However, R. Elijah b. David Tayeb is understood to have opined that the rule does apply to relations of employment.<sup>14</sup> Needless to elaborate, arguments such as the concern with the arbitrary use of power do not apply to our current condition with respect to the regulation of employment. Indeed, upon consideration, we hold that the question with which we are presented raises a matter that is central to the public good, that we cannot assail the legitimacy of our legislation and regulation, and that pay equity does not in any way contravene *din Torah*. Recognizing the complexity of this issue, we suggest that *dina d'malchuta dina* would apply to most aspects of employment legislation and regulation in general and the principle of equal pay for comparable work in particular.

It bears noting that the Hebrew word *sachar* touches upon notions of reward and merit that the words “payment” or “remuneration” do not necessarily denote. Thus, to cite a famous example, R. Elazar and R. Tarfon’s dictum, “[Recognize that] the master of your work is trustworthy to pay the *sachar* of your actions” refers to the divine reward for the engagement in mitzvot.<sup>15</sup> Yet the Sages clearly frame their analysis of this aspect of the relationship between humanity and its maker in the context of the employment relationship. Our tradition also teaches that the *sachar* for the performance of mitzvot is determined on the basis of the depth of one’s commitment and faith or the quality of one’s performance of the commandments.<sup>16</sup> Indeed, we learn that the *sachar* for Rachel’s modesty was the reward of ancestry to Israel’s first king Saul, and that, in turn, the *sachar* for Saul’s modesty would be the merit of being a forefather to Queen Esther.<sup>17</sup> These demonstrate that the quality of one’s character and actions is the divine criterion for the setting of *sachar*, as opposed to gender identity. With considerations of equity in mind, we may emphasize the explicit equivalences in both comportment and reward and recompense to both men and women in this text. Similarly, in yet another midrash, Miriam’s ability to nourish Moses is identified as an example of divine *sachar* for the righteous in general.<sup>18</sup> In addition, we learn that in reward, *sachar*, for the righteousness of women entire generations of Israel were saved and redeemed, reminding us that the very survival of our

tradition has depended on divine recognition and reward offered on account of women's actions.<sup>19</sup>

The Reform Movement has had a long record of advocacy on the issue of equal pay, and its repeated statements have fallen within the purview of the halachic mandate to promote regulation of wages for the sake of social repair and justice for employees regardless of gender identity and orientation.<sup>20</sup> Recognizing that equal pay is an issue that touches on individuals and families and therefore affects every man, woman, and child in our society, we address it in the context of our application of the rule *dina d'malchuta dina*. Informed and inspired by the teaching of our Sages, who lived within conditions wherein women were all too often treated unequally and unjustly, and who nevertheless conceived of an equitable, gender-neutral system of divine *sachar*, we continue to pray for and act towards the implementation of a vision of justice, repair, and full recognition for all who labor in our society and world. May the words of the midrash describing the righteous as *mitkasher bi'melachto* (one becoming worthy and meritorious through the qualities of his or her labors) be realized,<sup>21</sup> may we merit the Psalmist's blessing that we consume the fruit of our labors, rejoice, and be blessed with goodness,<sup>22</sup> and may our efforts lead all to the recognition in the inherent value of labor, as Rabbi Simon taught, "Great is labor, for it brings dignity to the person who engages in it."<sup>23</sup>

### Notes

1. *Mishnah K'tubot* 4:4; *Mishneh Torah Hilchot Ishut* 3:1; *Shulchan Aruch Even Haezer* 37:1; 80:1.

2. For example, in *Exodus Rabbah* 1:11 and *BT Sotah* 11b we note a distinction between the labors of men as opposed to those of women. Indeed, the assignment of men's work to women and vice versa was identified as an oppressive Egyptian practice during the period of slavery, one that required men and women to function in ways that did not correspond to their "natures." For listing of married women's labors and tasks, *Mishnah K'tubot* 5:5; *Mishneh Torah Hilchot Ishut* 21:7.

3. *BT Bava M'tzia* 87a.

4. *Ibid.*

5. *BT Bava Batra* 8b; *Tosefta Bava M'tzia* 11:23.

6. *Rashba* 4:185.

7. *Rosh* 55:10.

8. See Rashi cf. על קיצתם, להסייע, *BT Bava Batra* 9a.

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9. *Beit Yosef Choshen Mishpat* 231:20.
10. See the *Siftei Kohen* on *Shulchan Aruch Choshen Mishpat* 369:11
11. For example: *Mishneh Torah Hilchot G'zelah* 5:18.
12. *Beit Yosef Choshen Mishpat* 369:14 citing R. Eliezer of Metz “we do not pronounce.”
13. *Responsa Hatam Sofer Choshen Mishpat* 19.
14. *Responsa Sha'al haish Choshen Mishpat* 1; Also see *Responsa Tarshish Shoham Choshen Mishpat* 100.
15. *Mishnah Avot* 2:14, 16.
16. For example, see Albo's *Sefer Haiqarim* 1:10 or *Exodus Rabbah* 2:2.
17. *BT M'gillah* 13b.
18. *Exodus Rabbah* 1:25.
19. *BT Sotah* 11b and See Rashi cf. “שאף הן היו באותו הנס” and the *Tosafot* citing *Rashbam* cf. “היו באותו הנס”, *BT Pesachim* 108b.
20. A 1928 resolution of the CCAR with respect to women in industry calls for safe and sanitary conditions, a maximum of eight hours of work per day, and pay equality with men for equal work; an additional resolution on pay equity followed in 1984, and it was re-affirmed in 2017.
21. *Exodus Rabbah* 2:2 and *Ecclesiastes Rabbah* 5:11.
22. *Psalms* 128:2.
23. *BT Nedarim* 49b.