

## Corrections.

Page

- |    |                      |  |
|----|----------------------|--|
| 3  | Near (18)            | This minimum is arrived at. Who arrives?<br>Where are the hermeneutics?  |
| 2  | (7)                  | What is there to indicate that Samson's marriage was a Beensh marriage? Where did you get this interpretation of Judges 15,1? Is it your own?  |
| 5  | 7th line from top.   | Exploitation by brother-in-law. How would he exploit her?  |
| 7  | near (37)            | Saved him from death? Scotch-wise he died of shock when he heard of his wife's generosity. See I Samuel 25 verses 37, 38.  |
|    | after (37)           | "A society that degraded its women." To the ancient oriental man or woman would these restrictions have signified degradation as they do to us? Are you not projecting our own viewpoints into those remote places and epochs? |
| 8  | just above (59)      | Jacob's short seeming labors for Rachel occurred before their marriage. Gen. 29, 20.   |
|    | near (59)            | Note 59 is incorrect. In I Sam. I, 8, the man is worth to his wife more than ten sons.   |
|    | (61)                 | Does not Cant. 8, 6 like Gen. 29, 20 refer to premarital love?   |
| 9  | (66)                 | Widow as chattel. II Sam. 3, 7 and 16, 21 refer not to wives but to concubines. In I Kings 1, 4 Abishag was a nurse not a wife.  |
|    | (67)                 | How forced? The duress seems to have been on the brother-in-law. Cf. Deut. 23, 5-9.  |
| 11 | 4th line from top.   | English diction: "instances of women rising."  |
|    | 5th line.            | "Could not be denied." Why not?  |
|    | 6th ,,               | English diction: "Instances of women being regarded." "She attained." after "women" in plural  |
| 13 | 5 lines from bottom. | English diction: "Was partly due to."  |
| 19 | (127)                | Happy to die in childbirth. I Sam. 4, 20 does not say this. Bystanders try to comfort the dying woman by telling her that the child is a boy.  |
| 31 | (204)                | Did you yourself see the Assuan papyri?  |
| 41 | (262)                | Ten dinars of perfume on every Meneh of dowry. This is 4 1/6 % . Spend that much how often?  |
| 47 | (314)                | Does Lev. 24, 12 refer to widow's necessities? It is rather her privilege. Sacred food again permitted. Is   |

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THE ECONOMIC POSITION OF WOMEN  
as reflected  
IN THE BIBLE AND TALMUD

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February 1. 1932,

Hebrew Union College,

To Madeline, My Wife.....

this thesis

is affectionately dedicated.

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## Chapter One

To understand the economic position of the woman in ancient Israel one must have some understanding of her social and legal status. The one is interdependent with the others. Unlike inorganic matter which can be precipitated into its compounds, a social organism cannot thus be analyzed. To comprehend any one phase of social organization one must understand the entire social organism. We shall, therefore, discuss in this chapter the social and legal status of the Hebrew woman in the Biblical period as a background to an analysis of her economic position.

In the earliest Biblical records we find considerable evidence that points to a period in which the woman, especially as mother, held a most important position in the family. Not only was she the one who gave names to her children but kinship was also traced through her. In the documents of the Hexateuch we find that the older the document the greater is the percentage of names given by the mother. Thus in the J document, which is generally recognized as the oldest, out of the twenty-nine references to the naming of children twenty-two are metronymic, (1) three patronymic and four uncertain. And even these earliest documents come from a transition period in which there was already the tendency to suppress metronymic references and to substitute patronymic. (2)

That there was a time in Israelitish history when kinship was traced through the mother is evidenced by numerous passages and hints in the Bible. It seems that in ancient Israel and even down to the time of the monarchy there existed the so-called "beena" type of marriage in which the woman remained with her clan and received occasional visits from one or more men who would come to live with her for a temporary period. The offspring of such unions belonged to the mother, since the father was often unknown, and kinship was consequently traced through her. (3)

References to this "beena" type of marriage may be seen in the case of Jacob who goes to live with his wives' family; and when, after serving his allotted time, he tries to take his wives and children away with him, Laban pursues him and says, "These are my daughters and the children are my children." Moses, too, seems to have contracted a marriage of the "beena" type with Zipporah as is significantly pointed out in the verse: "And Moses was content to dwell with the man, and he gave Moses Zipporah, his daughter." Samson's marriage to the woman of Timnah seems to have been of this type as was Gideon's with the woman of Shechem. It is significant also that in the story of Amnon and Tamar, who were half brother and sister, there was no legal bar to their marriage only because they were children of one father but of different mothers. And where kinship is traced through the mother the children of one father but of different mothers are considered as strangers for the purposes of marriage. Thus we see that under the "beena" type of marriage the mother held a very important position in the family, naming the children which belonged to her and to her clan and being the one through whom kinship was traced. Further proof of woman's independence under the "beena" type of marriage may be seen from her position in certain cognate Arab tribes practicing "beena" marriage in which the woman had her own tent into which she could welcome her visitors and dismiss them at her pleasure. The method of dismissal was as follows: "If she lived in a tent she turned it around, so that if the door faced east it now faced west; and when the man saw this he knew that he was dismissed."

But this independence of the woman was curtailed in later times. Already at the time of the beginning of the monarchy the patronymic system was becoming firmly entrenched, and not only was the naming of the children done by the father but kinship was also traced solely through him. His wife no longer belonged to her clan where she remained and received

his occasional calls or compel<sup>ed</sup> him to live with her people. He was now the "baal", the master and owner of his wife who was forced to follow him to his home. She was his property by right of purchase.

The prevailing manner of securing a bride was by purchase; and the term used in the Bible for the purchase price is "mohar"<sup>(11)</sup>. The marriage was in the nature of a commercial transaction; and since there was no definite medium of exchange the mohar could be of various kinds. It could be a direct cash payment in money or gifts, or personal services<sup>(12)</sup> and labor.<sup>(13)</sup> Shechem was ready to pay any kind of mohar for Dinah.<sup>(14)</sup> Othniel offered military services and captured the town of Kiriath-Sefar as payment for Caleb's daughter.<sup>(15)</sup> David is asked one hundred Phillistine<sup>(16)</sup> forskins as the price for Michal, and Hosea buys his wife for fifteen<sup>(17)</sup> pieces of silver and a homer of barley.

While in the early period we find no definite amount of mohar, at a later time we find a tendency to fix a minimum of fifty shekalim for a virgin. This minimum is arrived at from the price which one had to pay<sup>(18)</sup> for raping or seducing a virgin. Rape or seduction was considered as theft of virginity; and virginity had an economic value to the father who could get a greater price for a virgin than for a non-virgin. There is no definite minimum price as mohar for a non-virgin. However, we see that Hosea paid fifteen pieces of silver and a homer of barley for a woman<sup>(19)</sup> "who had been beloved by a man". The mohar for a wife, whether virgin or non-virgin, depended of course on many factors among which were beauty, social position and general desirability. Thus a priestly virgin, by virtue of her aristocratic position, was valued at double the mohar<sup>(20)</sup> of ordinary virgins.

The very act of acquiring a wife by purchase as one would acquire any commodity gave the wife, at least in contemplation of the law, the status of a chattel owned by the husband and inherited by his heirs. And before

she became the property of her husband she was owned by her father or  
(21)  
her brothers who could despoise of her at will. The father could  
sell his daughter as a maid-servant for the purpose of having her be-  
come the wife of the master or his son. The latter had to treat the  
girl not as a slave but as a wife, and he had no power to sell her to a  
(22)  
third party should he dislike her.

An excellent illustration of the position of the woman is found in  
the law regarding a seduced virgin. "And if a man entice a virgin that  
is not betrothed, and lie with her, he shall surely pay a mohar for her  
to be his wife. If her father utterly refuses to give her unto him, he  
(23)  
shall pay money according to the mohar of virgins". It seems clear  
that the only question involved here is the compensation for the damage  
to property, a damage which is thought to be suffered not by the girl  
but by her father who loses actual money through her loss of virginity;  
for should he try to give her unto another man he would receive only the  
mohar of a non-virgin. Moreover, the father has the absolute right either  
to give her to her seducer as his wife or to keep her. The case of a  
raped girl is somewhat different. The ravisher must pay not only a mohar  
of fifty shekalim to the father but he cannot refuse to marry her nor  
(24)  
can he ever divorce her. This latter provision is doubtless for the  
protection of the girl as well as a punishment for the ravisher. In  
the case of the raped girl the father is helpless to prevent his daugh-  
ter's marriage.

The status of woman as property is also illustrated in the develop-  
ment of the levirate institution. There seem to have been five stages  
(25)  
in the evolution of the levirate marriage institution. In the first  
stage the widow, who is left without male issue, must marry the bro-  
thers of her deceased husband in the order of their age from the eldest  
to the youngest, and if there be no brothers it is incumbent upon the



father of the deceased to perform the duty of raising up a male heir for him. In this stage the perpetuation of the name of the deceased is of primary importance. (26) The second stage limits the duty of marrying the widow to the brothers living in the same household with the deceased. (27) Here, too, the primary purpose of the levirate marriage seems to be to perpetuate the name of the deceased. In the third stage we already see the attempt of the law to protect the widow against exploitation by her brother-in-law. While the perpetuation of the dead man's name is still of importance, the problem of inheritance of his property is coming to the fore. Since the widow is regarded as belonging to her dead husband's estate, she, together with his other property, is inherited by his brother who is his next of kin. If the brother accepts his obligations and takes the widow, she becomes his legal wife even though any male children of the union are the nominal children of the deceased. As the wife of the brother she is entitled to all the rights and privileges of wifehood. However, should the brother refuse to marry the widow she would be in an uncomfortable situation unable to marry another until she had raised an heir for her deceased husband. To protect her against such an exigency the custom of Halizah developed which forced the brother-in-law either to marry her or to release her unconditionally and thus permit her to marry whomever she pleases. (28)

In the fourth stage of the development of the levirate institution we find that the property element becomes dominant while the idea of the perpetuation of the deceased's name takes on a secondary significance. No longer is the duty or right of the levirate marriage restricted to the brother of the deceased but is extended to the next of kin however remotely related that kin may be. (29) This next of kin not only inherits the decedent's estate but also the widow until such a time when a male heir is born of the union who takes the name of the deceased and inherits

his estate. The next of kin is not obliged to marry the widow; but in such a case he cannot enjoy any of the estate either and his place may be taken by the one next in line of kinship until the entire male line is exhausted. (30)

In the fifth stage of the levirate institution the original idea of perpetuating the name of the deceased seems to be entirely lost. In this stage the child born of the levirate union is regarded as the offspring of his natural father and not as the child of the deceased. (31) The levirate institution seems to have become now entirely a matter of inheritance; the heir of the deceased inherited the widow together with the rest of the deceased's property and could make her his wife if he chose. If he refused to marry her she became a free person again to do as she pleased. (32)

Another illustration of woman's dependence may be seen in the law regarding her rights to make vows or to enter into agreements. As long as a woman remained unmarried in her father's house he had absolute control over her actions. He could annul any vows which she might have made without his consent or any agreements she might have entered into without his knowledge. (33) A married woman was subject in the same way to the control of her husband. Thus, if a woman makes vows or enters into agreements before her marriage, her husband may annul them after marriage as soon as he learns of them. (34) Only the widow and the divorcee are free agents in the matter of vows and agreements. (35) In the eyes of the law woman was a chattel and nothing expresses this more pungently than the following: "Unto woman He said, 'I will multiply thy pain and thy conception; in pain shalt thou bring forth children; AND THY DESIRE SHALL BE TO THY HUSBAND, AND HE SHALL RULE OVER THEE.'" (36)

But while in legal contemplation woman was the chattel of her father or her husband, in practice she was often far from that. We have nume-

rous examples in Biblical literature of women who rose to very prominent positions in the communal life by virtue of their personalities and abilities. One could hardly regard a woman like Abigail, whose clever and energetic action saved her husband from death and her home from destruction, a mere chattel. (37) It is unlikely that a society that degraded its women to the status of mere property could have produced women like Deborah (38) or the Shunamite (39). Women like Miriam (40), Hannah (41), Jael (42), the mother of Micha (43), the matriarchs (44), Huldah (45), the woman from Tekoa who advised David in regard to his treatment of Absalom (46), Naomi and Ruth (47) give ample proof that the Israelitish woman was no mere chattel but could rise to positions of prominence and influence. Moreover the tribute paid to the ideal woman in the Bible certainly does not refer to a piece of property. Indeed, she is the mistress of her domain. (48)

The tendency to regard woman less as a chattel and more as a person may be seen in the following passages: "And God created man in His own image.....male and female created He them"; "Honor thy father and thy mother"; "And forsake not the teachings of thy mother"; and it is significant that in the Deuteronomic edition of the decalogue the wife is especially mentioned as an independent entity apart from the husband's other possessions. (49) (50) (51) (52)

It is interesting to note in this connection that although polygamy was permitted we do not find many instances of numerous wives except in the case of kings. Among the ordinary people, and even among men of means, we find the tendency to limit one's marital affiliations to one or two wives. Thus we see that Elkanah, Samuel's father, had two wives; (53) Lamech had two wives; Abraham seems to have had only one wife, Sarah, (54) though he also took Hagar as his concubine. (55) Isaac had only one wife, Rebecca (56), as seems to be also the case with Joseph who married Asnath, the Egyptian (57). Job had one wife (58) and the Shunamite, Jael, Abigail,

Ruth, Naomi and the ideal woman of Proverbs seem to have been the only wives. It seems clear that polygamy, though legal, was not generally practiced in Israel. The most that can be said is that bigamy was practiced by the wealthier Israelites or that some had, in addition to their one wife, a concubine.

There can be hardly any doubt that the wife was treated with respect and that there was often great affection between husband and wife as is seen in the love of Jacob for Rachel whose years of labor for the sake of his beloved seemed as a day so great was his love for her. Elkanah, though anxious for children from his barren wife, Hannah, comforts her with the statement that she is worth to him more than ten sons. (59) And great must have been the love of Paltiel for Michal, who was torn from him, and whom he followed weeping until forced to return to his home without her. (60) Perhaps there is not in the world's literature a more passionate expression of love than in the Song of Songs:

Strong as death is love,  
Inexorable as Sheol is jealousy...  
Many waters cannot quench love,  
Neither can rivers drown it.....(61)

Let us now examine the status of the unmarried woman, the woman who is a widow<sup>or</sup> divorcee. The lot of the widow must have been a pitiful one in ancient Israel judging by the prophetic utterances urging their protection and the legislation attempting to carry such protection into effect. Left without her natural protector the widow must have been prey to the oppression of the unscrupulous. In prophetic preaching and in Biblical legislation she is invariably classed together with the orphan who is recognized as the most helpless member of society. The people are continually admonished to plead the cause of the widow and the orphan and to protect them from oppression. (62) A case of oppression is recorded in the book of Kings where a widow is being hounded by creditors and forced to sell her children into slavery. (63) We find much le-



gislation in the Bible to alleviate the miserable lot of the widow by forbidding the taking of her garment in pledge for a loan; by demanding that the widow be permitted to follow the gleaners to pick up the leavings and the grain in the corners of the field or vineyard. Yet, in spite of sentiment and legislation favoring their protection and kind treatment we have seen that the widow was treated often as a chattel passing on to the heirs of her husband as property. Forced to marry her brother-in-law if her husband died leaving her without male issue and only being released at her brother-in-law's pleasure, her position was far from enviable. Only when the institution of Halizah developed did she gain her freedom in such cases.

#### DIVORCE

Since the husband purchased his wife and she was, in the eyes of the law, his property, he could, in the early Biblical period, keep her if he wished or divorce her at his pleasure for no other reason than that he no longer cared for her. Very little formality had to be observed. A simple dismissal seems to have been sufficient. The wife, on the other hand, had no such power to divorce her husband. She could be divorced but could not divorce. And the reason is obvious. Money was paid for her, and were she permitted to divorce her husband he would suffer an economic loss. However, if he divorces her then he has no one but himself to blame for his loss. This economic loss which divorce entailed no doubt served somewhat as a deterrent to capricious dismissal; for the loss not only of the mohar but also the services of a domestic servant would make a man think twice before taking such a drastic step.

As the conscience of the people developed through the influence of prophetic teaching, sentiment and law tried to protect the woman against the caprice of her husband; and we find in the seventh century B.C.E. that divorce becomes a formal matter. No longer can the husband mere-

ly drive his wife out of his house but he must go through the legal formality of writing her a bill of divorcement. <sup>(71)</sup> Moreover, the Deuteronomic writers further restricted the freedom of divorce in certain cases. <sup>(72)</sup> Thus where a virgin had been violated or a wife falsely accused of unchastity <sup>(73)</sup> the husband was forbidden ever to divorce her. Another limitation upon the husband's unlimited divorce privileges is found in the law prohibiting a man from remarrying his divorced wife after she had become <sup>(74)</sup> the wife of another, and the latter had either divorced her or had died. Some scholars think that this law was enacted more for the protection <sup>(75)</sup> of the second husband than for the wife.

Besides the legal obstacles in the way of capricious divorce the moral sense of the people inflamed by prophetic zeal revolted against the practice. The classic utterance against divorce in the Bible is found in the statement of Malachi who points out that the reason why Yaweh had forsaken Israel is "that Yaweh hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously though she is thy companion and the wife of thy covenant.....Therefore take heed to your spirit and let none deal treacherously against the wife of his youth; for I hate putting away, saith Yaweh, God of Israel!" <sup>(76)</sup>

Unlike the widow, the divorcee seems, even in the early law, to have <sup>(77)</sup> immediately returned to her former status in her father's house. As regards her position in society she again assumed the role of an unmarried woman with the handicap that she was no longer eligible to marry a high priest and her mohar was that of a non-virgin.

## Chapter Two.

We have seen that all through the Biblical period the woman was in legal contemplation the property of her father when unmarried and that of her husband later on. But in actual practice we have noted instances of women rising to lofty heights of influence both in the home and in the community. The element of personal affection, of true love of man for woman could not be denied and already in early times we have found instances of women being regarded more and more as personalities. This higher attitude toward women continued to grow in the Talmudic period where in actual practice she attained her full status as a person, although in the technical eyes of the law she was still regarded as a person of secondary character subject to her male guardians, father and husband.

The first evidence we have of woman's elevated position from a mere chattel, subject to barter and sale, to the status of a person is in the formalities attending her marriage. No longer can the man come to her father and pay the stipulated price and carry off the daughter. He must now submit to certain legal formalities and enter into a contract relationship with his intended bride; not with her father. Already toward the end of the Biblical period we see this form of marriage developing. In the Book of Tobit, which was probably written about 200 B.C.E., we find that the institution of contractual marriages is already well established. Raguel gave his daughter in marriage to Tobias and as part of the formality of the marriage he took a paper "and did write an instrument of covenants and sealed it" (78). Another pre-Rabbinic source for the "ketubah", or marriage contract, we find in the Assuan and Elephantine-papyri, dating approximately to the fifth century B.C.E. (79). The Rabbis quite logically assume that the marriage contract is Biblical in origin and they deduce this from

the fact that since there was a bill of divorcement it follows that there must have been a writ for marriage also. (80)

The tannaim looked upon the ketubah not merely as a statement of the covenants between the bridegroom and the bride but even regarded it as consummating the marriage. Hence ketubahless marriages were frowned upon and regarded as illegal and immoral. (81) It is reported of Rabbi Meir that he said, "A wife has a ketubah, a concubine has not." (82) It is also told of a certain couple who, having been captured and forcibly mated, abstained from intercourse because a ketubah had not been made out. (83)

We had seen that in the early Biblical period marriage was a commercial transaction in which cash or services was paid to the father for the hand of his daughter. She had nothing to say in the matter nor did she benefit from the purchase price. In the Talmudic period, while in form marriage was still a conveyance, in content it was full of romance. The husband and wife were not master and slave but help-mates. The father no longer had tyrannical powers over his daughter. Witness the romance of Akiba and the daughter of Calba Sabua. In spite of her father's objections she married the man she loved. (84) The ketubah was indeed not a love-letter but by its very legal and commercial character it only served to protect the interests of the woman not to make her the object of her husband's domination as we shall see later on.

The development of the significance of the mohar is another evidence of the elevation of woman's position. Originally, as we have seen, the mohar, or purchase price, was given to the father of the bride for his own use, just as he would keep any goods received in exchange for other goods which belonged to him. By a gradual development the mohar became not a marriage but a divorce price. It inured not to the benefit of the father but to the benefit of the



bride for her protection.

The traditional account of the history of the mohar is illuminating. "In olden times when her ketubah was at her father's house, it was easy for him (her husband) to divorce her. Therefore did Simeon ben Shetach institute that her ketubah be with her husband and that he write 'all my property be lien and guarantee for the money of thy ketubah'".<sup>(85)</sup> The Jerusalem Talmud has a more lengthy account.

"In olden times, her ketubah was entrusted to her parents and he found it easy to divorce her; and then it was ordained that her ketubah be with her husband, yet he could easily divorce her. Then it was instituted that a man buy for his wife's ketubah cups and dishes and bowls....Following upon this came the enactment that a man should use his wife's ketubah in business, for, as he uses his wife's ketubah in business and loses it he will find it difficult to divorce her. This is what Simeon ben Shetach instituted.....that a man put his wife's ketubah into business".<sup>(86)</sup> Thus we see that while economically it made marriages more feasible since the husband did not have to pay out anything but merely <sup>to</sup> give his note against the time when he died or divorced his wife, these enactments also served as effective deterrents to capricious divorce. A man would think twice before divorcing his wife if thereby he was forced to pay her two hundred zuzim, the mohar price, together with other property settlements.

### Polygamy.

While we have seen that even in the Biblical period polygamy was not generally practiced except among the royalty partly due to economic reasons and partly due to the growing sense of the wife's personality and the mutual affection between husband and wife, in the Talmudic period the tendency in practice was to restrict a man to one wife, although in legal theory polygamy was not abolished for

Western Jews until the edict of Rabbenu Gershom about 1000 C.E.<sup>(87)</sup>  
References to polygamous marriages in the Talmud are rare. Indeed  
the opinion of the rabbis was very strong against such practices.  
The proposed taking of a second wife by a certain rabbi even for  
valid reasons was prevented by the fear that the public would look  
upon his second wife as a concubine.<sup>(88)</sup>

This attitude toward polygamy and many statements that crowd the  
Talmud illustrate the fact that the position of the wife was not as  
a subordinate creature but as the person who helps to make a man com-  
plete and his house a home. As Rabbi Eliezer said, "A man who has no  
wife is not a man";<sup>(89)</sup> or statements such as the following: "If thy wife  
is small stoop down to her";<sup>(90)</sup> "Let a man be scrupulous in honoring his  
wife, because whatever blessing prevails in a man's home is there be-  
cause of his wife";<sup>(91)</sup> "Whoso loves his wife like himself and honors her  
more than himself shall attain the Scriptural promise 'Thou shalt  
know that thy tent is in peace'";<sup>(92)</sup> "If a man's first wife dies, it is  
as though the Temple were destroyed in his days";<sup>(93)</sup> Rabbi Jose said  
that he never called his wife "Ishti" but always "Besi", my home,<sup>(94)</sup> and  
the Talmudic word "Debeso" is generally translated as "his wife".

That the tendency was to place woman on the same social level as  
man is abundantly illustrated by the sentiment favoring a single  
standard of morality for both men and women. Thus we see that the  
Biblical provision which compelled a married woman suspected of un-  
chastity to drink the cup of bitter water is<sup>(95)</sup> modified in the Talmud  
to the effect that the ordeal is ineffective unless the husband him-  
self is pure.<sup>(96)</sup> It is as important for men as for women to keep above  
suspicion.<sup>(97)</sup> Therefore a man should not be left alone with a woman or  
even two women or to walk behind a woman.<sup>(98)</sup> Thus also a bachelor may  
not be a teacher or a woman a scribe, teacher or soldier to avoid

suspicion of unchastity; and whoever dallies when counting coins in the hands of a woman with lascivious intent will incur punishment even though he be the greatest of scholars and has merits equal to those of Moses. (100)

From our discussion thus far we have seen that in the Talmudic period the tendency was to elevate the social position of the married woman. Let us now see how Talmudic legislation and sentiment affected the position of the unmarried woman. In this class we may place not only the virgin but also the widow and the divorcee.

### Virgin.

We have seen that in the Biblical period the father had the right to sell his minor daughter as a maidservant with the object of course that her purchaser would take her for a wife for himself or his son. (101) The practice of being sold into technical slavery was probably abolished, insofar as it concerned Hebrew slaves after the fall of <sup>the</sup> monarchy in 586 and an attempt to re-introduce it after the return from the Babylonian exile was effectively crushed under Nehemiah. (102) The Talmudic regulations on this subject, therefore, are merely casuistic. However, they are valuable for our discussion because they serve to show the attitude of the rabbis toward the position of women. Thus we find the Talmud restricting the Biblical right of the parent to dispose of his daughter by providing that only in cases of extreme necessity may this right be exercised; (103) and he is obliged to ransom her as soon as possible. (104) Moreover, a father might not sell his daughter twice; (105) nor after she had reached maturity, i.e. the age of twelve years and a half. (106) In order to make sure that the sale of a daughter was for the purpose of providing her with a husband the rabbis prohibited the father from selling her to one who was unable to marry her himself or who had no children who could. (107) Nor could the father

sell his daughter on condition that she does not become the wife of  
her master. (108) Since the sale was primarily for her benefit, to secure  
a husband for her, any agreement that would vitiate this purpose is  
contrary to law. Another restriction on the father's right to sell  
his daughter is found in the provision that he may not sell even his  
minor daughter if she had already been married and was now widowed  
or divorced. (109)

Further evidence of the growing independence of women may be seen  
from the "miun" regulations protecting the rights of marital choice  
of minor orphaned daughters. Thus where a minor orphan girl is given  
in marriage by her mother or brothers without her consent she has the  
privilege of "miun", i.e. objecting or refusing to live with the hus-  
band chosen for her. (110) And according to the famous Babylonian teacher,  
Rab, a father had no right to marry off his minor daughter but had  
to wait until she attained maturity and could consent to her father's  
choice. (111)

A great deal of freedom seems to have been permitted to unmarried  
women in the earlier Talmudic period. Not only was consent of pa-  
rents often dispensed with but a youth and maiden could marry at any  
time merely by calling in any chance witness. Against this state of  
affairs Rab protested. (112)

#### Widow and Divorcee.

The widow and the divorcee were generally recognized as indepen-  
dent persons no longer subject to the jurisdiction of their parents. (113)  
They were "sui juris". They were bound by their vows and responsible  
for their agreements. (114) The only stigma that attached to a divorcee  
was that she was unable to marry a priest; although a widow was not  
under such a restriction. (115) The status of the widow and divorcee is  
pointed out in the Mishna which says that a "woman comes into her own



power", i.e. obtains her freedom, by a bill of divorce or by the death  
(116)  
of her husband whereby she is invested with all the rights and <sup>has all the</sup> liabi-  
lities of a single woman who has been emancipated by her father. (117)

### Chapter Three.

The primary economic function of woman in ancient Israel grew out of her biological function as a bearer of children. This conception Israel held in common with all ancient peoples; and even many so-called moderns have not advanced far beyond it. To understand the reason for this primary significance of the woman as a bearer of children in ancient Israel one must understand the political economy of that people.

In the pre-monarchic stage of Hebraic society, that semi-nomadic era known as the period of the Judges, the Israelites formed loose confederacies of tribes which were in turn composed of more closely federated groups of clans or large family groups. <sup>(118)</sup> In such a society, where the family or clan was the most effective social and political unit, the importance of children, especially male children, can be readily seen. Every male child born meant another prospective warrior to uphold the prestige and power of the clan. Female children, too, were of importance as domestic servants and as a source of revenue at marriage, though on a far lower plane than male children. <sup>(119)</sup>

It is in view of such politico-economic conditions that we can appreciate the many verses in the Bible extolling the bearing of children and bemoaning the lot of the barren woman. A woman's chief ambition was to become a mother; for by becoming a mother, especially of a son, her social position <sup>was</sup> considerably elevated. So we find Sarah bemoaning her sterility as a curse and consenting to become a vicarious mother through her slave, Hagar, which would give her the status of at least a nominal mother <sup>(120)</sup> (since she owned her slave and her slave's children). The story of the daughters of Lot, who conspired to have intercourse with their father in order to beget children because there were no other men to marry, is significant as showing the lengths to which women might go to perform their function as bearers of children. <sup>(121)</sup>

It goes without saying that in such a society the wife who bore the most children would have the most important position in the household and the greatest claim upon the affection of her husband; yet we find several instances in the Bible showing that love sometimes triumphed even over the strong desire for children. The passionate love of Jacob for his barren Rachel (122) and Elkanah's tender solicitude for Hannah (123) speak eloquently of the existence of true romance. Generally, however, motherhood was an exceedingly important factor in determining a husband's affection for his wife. Thus we see that Leah's womb is opened to make her more beloved by Jacob; and to gain (124) in favor Rachel and Leah compete in motherhood even giving their slave girls to Jacob that they might become nominal mothers of numerous offspring. (125) Other instances showing the importance placed upon the begetting of children are Rachel's appeal to Jacob to "give me children lest I die" (126); and the thought that a mother may die happy if death comes in childbirth. (127) In the tragic story of Jephtha's daughter it was the fact that she must die a virgin without fulfilling her natural function as a mother that sends her to the hills to mourn her fate. (128)

#### As Housewife.

Coupled with the woman's function as a bearer of children was her function as home-maker and housewife. In addition to her household duties the male members of the family, especially in poorer homes, did not hesitate to give their women work in the field and other outside labors. (129) There was not much gallantry exhibited toward the weaker sex although we find exceptions in Jacob's rolling the stone off the mouth of the well for Rachel and Moses' protecting the daughters of Jethro from the rowdy shepherds. (130) (131)

Among the chief duties of the housewife was the preparation of the family's food. This included cooking and baking and preparation of the (132)

meat after it had been killed by the husband. <sup>(133)</sup> In the preparation of the bread the preliminary tasks of grinding the grain or pounding the corn in the mortar were the tasks of the housewife or of the female slave. <sup>(134)</sup> This was the hardest kind of work and was considered the most menial. <sup>(135)</sup> When Deutero-Isaiah describes the downfall of Babylon he pictures her as stripped of her finery and reduced to the arduous task of grinding the grain. <sup>(136)</sup> Besides the preparation of the food the housewife was expected to spin the flax and wool for the family's clothing and to do weaving and embroidering. <sup>(137)</sup> Of course, much of the drudgery of housework was eliminated from the lives of the more wealthy women who brought rich dowries of money or slaves. Such women had a great deal of leisure which was often misused according to the <sup>opinion of the</sup> prophets. Amos speaks in no uncertain terms when he addresses the women of the upper classes in Samaria as "kine of Bashan" who are continually urging their husbands to get more wealth so that they might carouse the more. <sup>(138)</sup> And Isaiah scathingly denounces the haughty, pleasure-seeking daughters of Zion. <sup>(139)</sup>

The ideal type of womanhood in ancient Israel, however, was neither household drudge nor frivolous pleasure-seeker. She was in truth mistress of her home, the management of which was left entirely in her hands; for

The heart of her husband doth safely trust in her  
And he hath no lack of gain.  
She doeth him good and not evil  
All the days of her life.  
She seeketh wool and flax,  
And worketh willingly with her hands.  
She is like the merchant ships;  
She bringeth her food from afar.  
She riseth also while it is yet night,  
And giveth food to her household  
And a portion to her handmaidens.  
She considereth a field and buyeth it;  
With the fruit of her hands she planteth a vineyard.  
She girdeth her loins with strength,  
And maketh strong her arms.  
She perceiveth that her merchandise is good;  
Her lamp goeth not out at night.

She layeth her hands to the distaff,  
 And her hands hold the spindle.  
 She stretcheth out her hand to the poor,  
 Yea, she reacheth forth her hand to the needy.  
 She is not afraid of the snow for her household;  
 For all her household are clothed with scarlet.  
 She maketh for herself coverlets;  
 Her clothing is fine linen and purple.  
 Her husband is known in the gates where he sitteth  
 Among the elders of the land.  
 She maketh linen garments and selleth them;  
 And delivereth girdles unto the merchants.  
 Strength and dignity are her clothing,  
 And she laugheth at the time to come.  
 She openeth her mouth with wisdom;  
 And the law of kindness is on her tongue.  
 She looketh well to the ways of her household,  
 And eateth not the bread of idleness.....(140)

This picture of the ideal wife gives us an excellent idea of the woman's economic position in Israel prior to the destruction of the second Temple. That the ideal wife must also be a mother is taken (141) for granted. Her position is essentially that of absolute mistress of the home. She supervises all the household affairs, attends to the needs of the family and superintends the work of the servants assigning to each his task. Her work does not end with mere supervision; she, herself, keeps busy from early morning to late at night spinning, weaving and making clothes for herself and her family. She seems to be also an important factor in adding to the family income by selling cloth and garments which she manufactures in her home. She is evidently at home in dealing with the traveling merchants; for she knows the value of goods and knows how to strike a good bargain. With her surplus earnings she makes investments in real estate. She purchases a vineyard and from the produce thereof she adds still more to the income of the family. In such a household it is difficult to see what there is left for the husband to do; and according to the writer there seems to be little for him to do except to sit with the (142) elders at the gate and glory in his ideal helpmate. That this rhapsody is not a mere wish-fulfillment but actually describes the posi-



tion to which some women have been able to rise because of their character and ability is borne out by the position attained by such women as Abigail, the Shunamite, Micha's mother, Jael, and, of course, the matriarchs, Sarah, Rebecca, Rachel and Leah.

#### In The Talmud.

The conception of woman as a housewife and bearer of children was continued in the Talmudic period. To be fruitful and to multiply was still a commandment that was enforced by the provision that after ten years childless marriages must be dissolved. However, in the period of the Talmud woman had risen above the stage of a propagating animal. She had now attained the status of a personality whose importance in the community did not depend solely upon her motherhood. This newer tendency is found expressed in the following haggadic narrative. A certain couple was childless for ten years and, being faced with the law demanding divorce in such cases, they turned in their perplexity to Rabbi Simon ben Yohai. The rabbi, seeing that the husband and wife were devoted to each other and that childlessness was the only bar to their happiness, advised them to divorce. But, advised the rabbi, since their separation involved no ill feeling between them it would only be proper that the same sumptuous feasting that attended their nuptials should also attend their separation. During the course of the feasting, when the husband was flushed with wine and in high good humor, he told his wife that she might select of all his treasure anything that her heart desired to take with her to the house of her parents when she was forced to leave him. That night, when the husband was sleeping off the effects of the feasting, the woman had her servants carry him to her parent's home. When the man awoke the next morning he inquired as to his whereabouts and was astonished to learn that he was in his wife's parents' home. Upon his asking the reason for his presence there his wife replied, "Did

you not tell me that I might take from your house anything that I desired most? There was nothing in your house that I desired more than you! The sequel to the story was that the rabbi blessed the couple and through his intercession they were blessed with a son. (148)

Although the status of the woman had been elevated considerably in the Talmudic period her place in the communal economy was still chiefly as a housewife. The ideal woman of the Bible was also the ideal woman of the Talmud. Her duties were very much the same. If she were the wife of a poor individual her household tasks were often arduous, consisting of grinding the flour for the bread, baking, washing, cooking, knitting, nursing her children, making her husband's bed, mixing his drinks and such personal duties as washing his face, hands and feet. (149) If the wife brought with her as her dowry servants, she could delegate the more difficult tasks to them. Thus, if she brought one servant with her she was freed from the task of grinding the grain, baking and washing clothes. If she brought two slaves as her dowry or their equivalent in money or goods she was freed from cooking and nursing her children; if three, she was not obliged to make the beds nor work in wool. If she brought with her a dowry of four slaves or their monetary equivalent she was freed from all housework and could sit still in her chair. (150) However, the personal services which a wife owed to her husband she could not delegate to another no matter how much dowry she brought. She was still obliged to wash her husband's face, hands and feet. (151) But though legally a wealthy woman had the right to remain absolutely idle public opinion as expressed by the rabbis was against such practices. Rabbi Eliezer maintains that even though a woman brings a hundred slaves her husband may and ought to insist that she busy herself with spinning or weaving lest idleness should lead her into mischief. Rabbi Simon ben Gamliel also favors

a woman's busying herself with some work that she may not become subject to melancholia from too much leisure. (152)

However, the husband cannot place too great a burden upon his wife even if he is very poor and she brings little dowry. He can only demand that she do only those household tasks which are essential for the maintenance of their home. He cannot compel her to earn money for him by working for others; nor can he demand that she perform labors which may be unbecoming, unpleasant or injurious to her health or personal appearance. (153) Besides her household duties the wife was not expected to support the family by her work. Indeed, the rabbis frowned upon any attempt of a husband to live off the earnings of his wife. A household supported by the wife, they said, could never be blessed. (154) However, the wife was not confined exclusively to her kitchen. As in the case of the "Eshes Hayyil" the woman in the Talmudic period was also no stranger to business. She might take charge of her husband's store either as manager or as clerk or act as his agent. She might be guardian to infant children and handle their property. In such cases she no doubt had to have some knowledge and understanding of money matters. (155) Cases of women working while their husbands studied were not infrequent in the period of the Talmud and even much later. The story of Rabbi Akiba's wife is a classic. (156)

#### Unmarried Women.

Thus far we have discussed the economic position of woman as wife and mother. To be wife and mother was the goal of all women and marriage, which very often occurred upon the girl's attaining puberty at the age of twelve years and a half, the means to that goal. (157) But the unmarried woman also had her place in the household economy. It was quite customary for the unmarried female members of the family, especially in the semi-nomadic stage of Israelitish society, to care



for the flocks of sheep or goats where there were no men available  
(159)  
for that work. Thus we find Rachel tending her father's sheep and  
(160)  
the daughters of Jethro watering their father's flocks. Drawing  
(161)  
water was another task delegated to the young maidens. Besides these  
outside activities the unmarried woman was no doubt trained in the  
management of a household in preparation for her life career and  
taught the art of spinning and weaving etc. The more difficult tasks  
(162)  
of the house and field were doubtless delegated to the female slaves.

The sphere of the ancient Israelitish woman as that of her sisters  
among other peoples both ancient and modern was not limited to the  
home or to the field. The unmarried woman, whether widow or divorcee,  
could always practice her most ancient profession as a prostitute, a  
profession which in ancient Israel was recognized as legitimate until  
the thunder of the prophetic teachings drove it from its position of  
respectability. These very denunciations of the prophets and the Deu-  
teronomists under prophetic influence against prostitution, profane  
as well as sacred, show that among the masses the prostitute was not  
(163)  
without legitimate status. Ordinary harlotry was quite respectable  
in ancient Israel as may be seen from the matter-of-fact account of  
(164)  
Judah's relations with Tamar whom he mistakes for a harlot; the visit  
(165) (166)  
of the spies to Rahab, and Samson's visit to the harlot of Gaza. Jep-  
(167)  
tha, one of the Judges, was himself the son of a harlot. The harlot  
plied her profession usually by sitting at the door or windows of her  
house, which was situated at or near the gate of the city, and from  
(168)  
her vantage point would call to the men as they passed by. Sometimes  
she would stroll through the streets singing and playing to attract  
(169)  
attention. The harlot was distinguishable from her more chaste sis-  
(170)  
ter by her mode of dress and general carriage. For her services the  
harlot would usually get a kid or some other small animal or its equi-  
(171)  
valent.

In the Talmudic period, with harlotry discountenanced and the growth of city life, the sphere of the unmarried woman was restricted to the domestic duties of the home and the home industries of spinning, weaving and embroidering which widows, deserted women, divorcees and even housewives carried on as means of livelihood. To work outside the home for others was considered improper since it forced the woman to mingle with strange men and was thus a source of temptation for herself as well as for the men with whom she came into contact. Thus a woman was not permitted to follow the profession of a teacher, scribe or soldier since these professions might lead to unchastity. (172) As for the unmarried virgin, her place was with her mother from whom she acquired the necessary instruction and training for her career in life as wife and mother.

#### Chapter Four.

The right of inheritance in Biblical law is based upon the conception of the tribal ownership of land. Only individuals that had tribal personality and could take the place of the parent in the tribe could inherit his estate. Such a conception obviously excluded females from the right of succession since before their marriage they were the property of their fathers and after marriage of their husbands. However, as the position of women became more secure they began to demand more rights. Thus we find the daughters of Zelphhad complaining that their father's share will be altogether lost since he died without leaving male issue and therefore they demand that (173) they be given the right to succeed him. The granting of this privilege to the daughters, however, threatened the whole conception of tribal ownership and the members of the Zelaphad ~~tribe~~<sup>clan</sup> complained that in the event of the marriage of his daughters outside the tribe his property would also be taken from the tribe. To avoid this difficulty the law provided that daughters may inherit, if there remain (174) no sons, provided that they marry within their own tribe. "And every daughter that possesseth an inheritance in any tribe of the children of Israel shall be the wife unto one of the family of the tribe of her father, that the children of Israel may possess every man the (175) inheritance of his fathers" Thus daughters were made heirs of the second degree with reservations. But under no circumstances did a (176) wife or a mother inherit.

These restrictions against the wife's right of inheritance seem to have been avoided somewhat by the freedom given to the husband as testator to dispose of his property as he saw fit. Thus we find Samuel, an amora of the third century C.E., citing a law that "If the husband wills his wife a share in his estate, she is treated as

(177)  
one of the heirs. However, if the husband willed his entire estate  
to his wife, she is regarded as no more than an administratrix. The  
reason for this law can be understood as a protection for the heirs;  
for it might happen that a husband will give his entire estate to  
his wife to the exclusion of his heirs because of a strong affection  
for her or her exertion of undue influence upon him at the time of  
making the will. (178)

While the daughter in Biblical law could be heir to her father's  
estate only if there were no sons and provided she married within  
her father's tribe she was not entirely <sup>excluded</sup> deprived from sharing in her  
father's estate even when she married outside her father's tribe.  
Her share was given her in the form of a dowry which was generally  
recognized as a gift in lieu of the right of succession. Thus we see  
that Rachel and Leah are given Bilhah and Zilpah as their handmaidens; (179)  
and when Jacob hesitates to leave Laban both Rachel and Leah say to  
him: "Is there yet any portion or inheritance for us in our father's  
house? Are we not counted by him as strangers?" Here it is evident (180)  
that whatever gifts Laban had given to his daughters were considered  
by them as their share in his estate and henceforth they were as  
strangers to him as far as inheritance was concerned. Caleb gave his  
daughter a field and springs as her dowry; Pharaoh gave his daughter, (181)  
the wife of Solomon, the city of Gaza as her "Shiluchim", "send-off". (182)  
The Book of Tobit tells of a very liberal dowry given by Raguel to  
his daughter, half of his entire possession. The idea of the dowry (183)  
as a substitute for the right of succession is recognized by Talmudic  
law. The idea of the dowry as a bait to attract suitors is a later (184)  
one, probably of late tannaitic origin. (185)

Even when the dowry came to be considered as a wedding gift to  
both the bride and groom title remained in the bride, the groom



merely using it for the benefit of the family. To protect the bride's rights in the dowry the groom is obliged to stipulate its value at the time of the marriage and to receipt it in the ketubah guaranteeing its return to the bride at the time of the dissolution of the marriage either by his death or divorce. He cannot sell it since title is in the wife, nor can she sell it since the husband is (186) entitled to its use. The tendency, however, seems to have been to enlarge the husband's rights with regard to the dowry so that by the beginning of the second century C.E. the husband was considered not (187) only as the tenant but for all practical purposes as the legal owner. All that was left to the wife was the right to claim her dowry in case of the death of her husband or divorce, and this claim she could sell provided anyone would care to buy it; for its value depended entirely on her survival or divorce. (188) But in spite of the enlarged privileges given to the husband over the dowry the wife's rights were not entirely ignored. The husband had no right to sell the dowry articles without the wife's consent. (189) Moreover, at divorce the wife can demand the return of her dowry articles in specie, or as much of them (190) as are left, and refuse cash payment offered by her husband.

There was no standard amount of dowry either in the Bible nor in the Talmud. A father might give as much as his generosity or means might dictate. Thus we find in the Bible dowries ranging from slaves (191) to cities and in Tobit half of the father's possessions. In the Talmud (192) too, dowries range from fifty zuzim, four hundred zuzim, a thousand (193) dinarim or more. The Tannaim and later Amoraim, however, place a minimum of fifty zuzim, or enough to buy the bride's wardrobe for a (194) year which every father has to give to his daughter. (195) This applies even to an orphan who is given a dowry of at least fifty zuzim out of the father's estate. If the father is too poor or the estate in-

sufficient to give even this minimum of dowry it is supplied by the  
(196)  
charity fund. There was no maximum restriction upon the father.  
But when the dowry had to be taken from his estate it was established  
(197)  
by Judah Ha Nasi at ten percent of the estate. Later Amoraim feeling that to leave the father unrestricted in his dowry gifts would deprive the sons of their rightful inheritance decreed that even the father himself while alive might not give a dowry in excess of ten  
(198)  
per cent of his possessions.

Besides the wife's rights in the dowry she owned other property which was at first distinguished from the dowry and to which the husband had no rights whatever. These were gifts given to her by her prospective husband before marriage. Already in Biblical days we find that social usage required the prospective bridegroom to give gifts to his intended bride on betrothal. Eliezer gives, on behalf of  
(199)  
Isaac, presents to Rebecca; Shechem offers not only mohar but also  
(200)  
mattan (gifts) for the hand of Dinah. While the mattan was not obligatory and did not affect the legality of the marriage, it was nevertheless customary. As the mohar represented the commercial side of the marriage, the mattan represented the romantic; the former was given to the father, the latter to the bride. Later on the mattan became closely allied with the mohar and lost its original romantic function, and like the evolution of the mohar, the mattan, too, became merely the promise of the husband which was stipulated in the ketubah and matured, like the dowry, upon his death or divorce. Thus, like the mohar, it became a divorce price. In the Talmud both are grouped together in the ketubah, the mohar being called "Ikhar ketu-  
(201)  
bah" and the mattan, "Tosafot ketubah".

Another source of property which the wife owned as her private estate was melug. In the Bible dowry and melug seem not to have been

distinguished. Both were originally the wife's private property to which the husband had no rights. For the first time in Assuan Papyri the distinction between the two is made, melug being considered as "her property and possession"; and in the early tannaitic sources it is called "the property that comes and goes with her" (202). The difference between dowry property and melug lies in the fact that whereas in the former the husband was responsible for loss or damage to such property; in the case of melug he was not responsible for either loss or damage. (203) While the husband early became the tenant of his wife's dowry he had no such right in her melug except by her consent. The wife (204) had full freedom to dispose of her melug independently of her husband. Originally this absolute freedom to dispose of her melug applied not only to property she received as a wedding gift but to all property that she may have received at any time either prior to betrothal, (205) after betrothal and even after marriage.

The first restriction on her absolute rights over her melug comes toward the end of the second commonwealth when it was decreed that "as to the property acquired by the wife after nuptials, if she sold it, the husband can reclaim it from the purchaser" (206). The reason for this restriction being that since the wife herself is legally under the control of the husband he has also control over her property. The school of Hillel followed the tendency to restrict the woman's rights over her own property while the Shammaites favored an enlargement of her rights. Thus the Hillelites forbade the wife to sell melug that she acquired after she became betrothed, since in legal contemplation the betrothal made her a wife, while the Shammaites (207) held the contrary view. However, both schools agreed that if she did (208) sell such property the sale was valid. Rabbai Gamliel disapproved of the restrictions on the woman's liberty and was of the opinion that

she had the right to sell melug property which she acquired after betrothal even after nuptials. (209) His disciples, however, disagreed with him although his opinion seems to have prevailed so that for some time after the Temple was destroyed a woman's rights in the disposition of her melug were not interfered with except in that property which she acquired after nuptials. (210)

Rabban Gamliel's liberal policy was doomed to defeat in the face of the tendency to give the husband more and more legal and economic power over his wife's property. By the time of the Bar Kochba rebellion, second century C.E., it was already well established that the husband is heir to the wife's property. On the basis of this principle the rabbis further restricted the wife's freedom in the disposition of her property. About 135 C.E. the Academy at Usha decreed that a sale by the wife of any of her melug was valid only if she survived her husband, otherwise the surviving husband could recover it from the purchaser. (211)

This placed the husband in a far better position than that of an ordinary heir; for an heir could not prevent the decedent from disposing of his property either during his lifetime or by will, and the later Amoraim point out in commenting on this Takanah that it actually gives the husband legal ownership of his wife's melug. All that remains to her is the privilege of selling her claim to it which was valuable only if she happened to survive her husband or was divorced. (212).

Another basis for restricting the wife's rights in her own melug was found in the principle that gave the husband the right of usufruct in such property. It was argued that if the wife were permitted to sell her melug during her husband's lifetime how could his right of usufruct be exercised? To avoid this obvious inconsistency Rabbi Simeon ben Yohai ( second century C.E. ) held that



a woman can never sell her melug; but if the husband had no knowledge of the existence of such melug and had no reason to expect it, the sale would be valid. <sup>(213)</sup> This was a doubtful privilege for the wife; for it is hardly likely that she could have anything of value that would be unknown to her husband.

The final effort to restrict the wife's rights in her own property effectively deprived her of any power over her melug. About the third century C.E. Judah Nesiah in Palestine and Rab and Samuel in Babylonia ruled that a married woman has no legal right to dispose of any of her property after marriage, even if she acquired such property before betrothal. <sup>(214)</sup> Under this ruling all that was left to the wife was the doubtful value of selling her claim to that property, which would mature only in case of divorce or upon her surviving her husband, if she could find a purchaser to buy that chance. This absolute powerlessness of the married woman to deal with her own property made even the richest married woman legally penniless. This legal poverty of married women is succinctly summed up in a Mishnah which states that "A woman and a slave are bad opponents. Whoever injures them is liable for damages, but they are not liable for injury to others" <sup>(215)</sup> since they are property-less. The Talmud also asks: "How can a woman have anything? Whatever is hers belongs to her husband" <sup>(216)</sup> There is nothing she can really call her own. What belongs to her husband is his; and what belongs to her is also his. Whatever she earns or finds in the street are his. He owns the household articles; even the crumbs from the table. She cannot invite a guest without her husband's consent, for she would be stealing from him. <sup>(217)</sup> If she works in her husband's store she can be made to swear in court that she has not stolen anything from him. <sup>(218)</sup>

Economically she seems to be completely within the power of her husband.

This deprivation of all her property rights and absolute economic dependence upon her husband in the face of the general recognition of woman's human and social rights can be explained only on the ground that Jewish law assumed absolute responsibility on the part of the husband to provide for his wife and family. Once married, the rabbis felt, she needed no more to worry about economic welfare; hence what use would property be to her. This conception is not unique in Jewish law. In our English common law, too, the married woman was absolutely within the legal and economic power of her husband; and it is only by statutory enactment in comparatively recent times that the married woman has been legally and economically emancipated.

But while the married woman was legally property-less, her husband was not given actual capital ownership in her property. His rights were merely those of use and succession. Thus he could not sell his wife's melug without her consent. He could only sell his right of succession which was valuable only if he survived her, or he could sell the usufruct, provided he used the proceeds for the benefit of the family. Only when both husband and wife agree to the sale of her melug is it valid. However, in case where the melug is of an unproductive character, such as jewelry, or an heirloom, old slaves or old fruit trees, the court may order it sold and more productive property bought with the proceeds provided the wife does not object to such sale on the ground of personal attachment or family sentiment connected with such property.

This right of usufruct of the husband seems to be a rabbinic enactment and is not found in Biblical law. In the Assuan Papyri that right is given to the husband only by special agreement and in consideration of certain improvements that he agrees to make on the property.

The right of usufruct is not, however, the husband's private right even in rabbinic law. It is given to him only as the head of the family and he can exercise it only for the benefit of the family not to increase his personal estate. Even if the yield of the property is greater than the family's needs he cannot use it for himself but must sell the surplus and use the proceeds for the comfort of the family. The term "comfort of the family" was somewhat broadly interpreted as is shown by the following case: A woman brought with her melug two female slaves. The husband then took another wife and gave her one of the first wife's slaves as a gift. The first wife brought suit to recover her slave and the court held that since the second wife was a member of the husband's family she had the right to use the slave as it was using the usufruct for the family's benefit.<sup>(226)</sup>

What constituted usufruct was not always an easy matter to decide.<sup>(227)</sup> It was generally recognized that the fruit of a field, the offspring of cattle and slaves are fruit.<sup>(228)</sup> Products of a mine are fruit, although Rabbi Meir says that they are capital if the fruit exhausts the mine.<sup>(229)</sup> The wearing of a garment even until it becomes worthless is given the husband as usufruct.<sup>(230)</sup> If the melug consists in her right to enjoy the fruit of something, as for example, the right to milk someone's goat, or to pick fruit from someone's orchard, the husband takes over her rights completely and the wife is left without anything.<sup>(231)</sup> But not all the wife's melug property may be used by the husband. Where the wife is given a gift by her father or a stranger with the express stipulation that the husband shall not enjoy it use he is effectively debarred therefrom.<sup>(232)</sup> Also where the husband himself gives a gift to his wife or has sold her something his right of usufruct is impliedly waived.<sup>(233)</sup> The wife may deprive her husband of his

right of usufruct also by a legal fiction. The woman is permitted to make out a fictitious deed of conveyance of her melug prior to her marriage. (234) Since the witnesses to the deed know its fictitious character it is without validity should the grantee try to collect on it. On the other hand it is valid as regards the husband who is unaware of its fictitious character and such melug falls within the category of goods "unknown to and unexpected by the husband" (235) This fiction effectively deprives the husband of his right of usufruct but, as we have already seen, only of that which the wife acquired prior to betrothal. What she acquires after betrothal she cannot convey at all; hence cannot make use of this fiction. Another exception to the right of usufruct is the waiver on the part of the husband of this right of use in the following formula: "I lay no claim or suit to thy property, its fruit, or the fruit of its fruit forever!" (236)

Besides the wife's rights in her melug, which, in case of her survival of her husband or divorce, became again her private estate, she also had rights under the ketubah, the marriage contract. Under the ketubah, as we have seen, she was entitled to her dowry, mattan and mohar which the husband was obliged to pay her in case of divorce and the heirs in case of her surviving her husband. Her ketubah rights were in the nature of a promissory note given her by her husband. What was the economic value of this promise? In the first place by the enactment of Simon ben Shetach the wife became a preferred creditor against her husband or his estate. When the husband stated in the ketubah "all my property shall be guarantee and security for the payment of thy ketubah" (237) he thereby gave his wife a lien on his property which would have to be satisfied before ordinary creditors would be paid or the heirs inherit. This lien clause applied to the mohar, mattan and dowry and the failure to specify this lien

clause in the ketubah was of no legal significance; it was considered  
(238)  
a scribal error.

Indeed, in the opinion of the rabbis the lien is mandatory, i.e. the husband cannot pay the ketubah to his wife as long as they remain married. This is expressed in the dictum that "the ketubah does not  
(239)  
mature during life;" i.e. the life of the marriage which may terminate either at death or divorce. The purpose of this restriction is obviously as a deterrent to divorce; for if the husband is obliged to liquidate the ketubah at divorce, he will hesitate to take such a step. On the other hand if the husband is permitted to pay the ketubah at any time during married life he thenceforth is free to divorce his wife at will; for he is no longer checked by the ketubah obligations; hence the reason for making the lien mandatory. Moreover the husband can in no way affect this mandatory character of the lien over all his property. Thus, if the husband assigns a certain piece of property to his wife as security for her ketubah, the  
(240)  
lien, nevertheless, attaches to all the rest of his property also. And if one wishes to buy realty from the husband free of the wife's ketubah lien, he must first obtain a written waiver from the wife and there must be positive evidence that this waiver was not granted  
(241)  
either through coercion or to please her husband. Only if the husband conveys his property to his children with the wife's consent and leaves her even a small parcel of land as security for her ketubah, only in such a case is the lien removed from the bulk of his property and attaches only to the small piece of property left as security.  
(242)

But while the ketubah was lien on the husband's property, it at-  
(243)  
tached only to his real property. However, certain movables were regarded as so integral a part of the household that they were consi-



(244)  
dered as realty for the purposes of the lien. In Geonic times,  
when the Jews owned little real property, the ketubah lien was exten-  
ded to cover the husband's personal property also. (245)

As a rule the date of the ketubah is also the date of the lien;  
hence ordinarily the lien would cover only property owned by the  
husband at the time when the contract was entered into. Property  
acquired by him subsequent to that date would be exempt. To give  
the wife greater security, however, the Amoraim inserted in the ke-  
tubah the additional statement: "property that I did acquire or that  
I SHALL ACQUIRE." (246). This additional formula is important; for  
it made the lien attach to property acquired after marriage. Thus  
if the husband after marriage, bought some property and then sold it,  
the wife could recover it from the purchaser to satisfy her ketubah  
lien. Another protection of the wife's rights is found in the pro-  
vision for the kind of property out of which to pay the ketubah.  
The Talmud provides that the ketubah is to be paid out of the poor-  
est property. (247).

This was remedied by post-Talmudic authorities who inserted in  
the Ketubah the words "out of the choicest of my property" (248).

To protect the wife's rights under the ketubah still further she  
was <sup>permitted</sup> to demand a guarantor to indorse the lien. Thus, she could re-  
quire the husband's father to act as guarantor so that she might  
collect from him in default of her husband. (249).

A stranger may  
also act as guarantor but he is liable only for the dowry unless  
he expressly assumes the obligations of an absolute guarantor. (250)  
The following provisions are found in the lien clauses of most ketubahs:  
"And as for the security of the ketubah (mohar), dowry and ~~gittan~~ <sup>gittan</sup>,  
I have assumed for myself and for my heirs after me that they be  
paid of the choicest of the property and possessions that I have

under the sky, both what I did acquire and what I shall acquire,  
immovables and movables....during my life and after my death, and  
even out of the cloak on my back, from this day and forever more....<sup>(25)</sup>

## Chapter Five.

The obligation on the part of the husband to support his wife must at least be co-eval with the institution of baal marriage where the husband becomes the master and owner of his wife. The very fact that there is no Biblical provision compelling the husband to support his wife while there is one with reference to a female slave seems to show that the support of one's wife was taken for granted. With reference to the female slave we have the following provisions: "If he (the master) espouse her (his Jewish maidservant) to his son, he shall deal with her after the manner of daughters....her food, her raiment and her conjugal rights shall he not diminish?" To the tannaim these verses teach that the husband's duty to support his wife rises out of the conception that he owns her as he does his slave, (252) or because he gets her services in exchange for such support; and since the Bible provides for the alimentation of a slave they argue that the duty of the husband to support his wife is also Biblical in origin. (254)

The amount and character of the maintenance is determined by the husband's means provided she gets no less than the necessities in keeping with the standards to which she has been accustomed. (255) "The wife ascends with her husband but does not descend with him" is a legal maxim which gives the wife the advantage of her standards as well as those of her husband. Quite different is this from the marriage formula of to-day which makes the woman take her husband "for better or for worse." Jewish law gives the woman the advantage of the "better" not the disadvantage of the "worse." Even the poorest man must supply his wife with her weekly ration consisting of two kabin of wheat or four of barley, one half kab of peas or beans, one half log of oil, a kab of dates or figs or other fruit, wine for

cooking and an extra portion for the nursing mother. This is indeed  
(257)  
not a magnificent stock of supplies but it is calculated to supply  
about fourteen meals for the week, averaging two meals a day. The  
third meal required by law for the Sabbath is not included in this  
ration because she is expected to take the first Sabbath meal with  
(258)  
her husband at his table. If the husband has the means the wife is  
also given wine for drinking provided he can be around to watch that  
(259)  
the wine does not go to her head.

So much for food. The husband must also keep his wife in cloth-  
ing befitting her social position. Milady's wardrobe included a head  
cover, a girdle, a pair of shoes at the approach of every holiday  
season and fifty zuzim's worth of dresses, the kind that will become  
(260)  
her age and stature--at the beginning of every winter season. If  
the husband's wealth or the wife's social position demanded greater  
(261)  
display, then he was obliged even to buy her silks and perfumes. In  
some localities it was expected of the husband to spend on his wife's  
(262)  
perfumes ten dinars for every maneh of dowry he received.

In addition to food and clothing the alimentation obligation re-  
quired furnishing her house. The house among the poorer folk must  
have been a small thatched mud hut with one or at most two rooms  
quite bare of what we would call furniture. The household articles  
which the husband was required to furnish consisted of a rug or mat,  
a bed and mattress,--and among the richer folk also a pillow--a cup,  
(263)  
a jar, a pot, a flask, a candle and a wick lamp. In addition he al-  
(264)  
so had to give her in cash a silver maneh per week for pin money.

As an extension of the duty to support the husband is required to  
(265)  
provide his wife with medical attention. However, the law draws a  
distinction between the duty to support and medical care. The lat-  
ter might involve a great burden upon the husband in case of chronic

or protracted illness. Thus we find that the Babylonian Talmud teaches that the husband must pay all medical expenses. (266) The Palestinian Talmud, on the other hand, holds that while the husband is required to pay for current medical attention, he cannot be forced to pay a lump sum. Only as he gives food can he be expected to give medical care. (267) Both Talmuds agree that a widow who is supported out of her husband's estate can require of the heirs only current medical care, not a lump sum; the latter she must supply out of her own ketubah. (268) If a husband is burdened by a chronically ailing wife the older law gives him the right to say to her: "Here is thy divorce and thy ketubah, go and cure thyself!" (269) But the later tannaim with a finer sense of chivalry declared that it was immoral for a husband to discard an ailing wife; and forbade a husband to divorce his wife while she was sick. He must wait until she recovers. (270)

Another duty incumbent upon the husband was to ransom his wife from captivity. This was quite important in ancient times because of the methods of warfare and the enslavement of conquered peoples. Moreover, piracy, robbery and bedouin attacks were very common occurrences and the dangers of captivity were ever present. Thus the law placed the moral responsibility of ransom upon the father in case of an unmarried girl and a legal responsibility upon the husband in case of a married one. (271) The husband's responsibility rests chiefly upon his contractual obligation in the ketubah where he stated: "If thou be made a captive I shall redeem thee and take thee back to me as wife!" (272) One of priestly descent, because of the Biblical prohibition against his marrying a profaned woman would insert in the ketubah: (273) "If thou be made captive, I shall redeem thee and cause thee to return to thy land!" (274) The duty to ransom in the older halachal became operative at betrothal but the later law made it operative only after



(275)  
nuptials. As to the amount the husband must pay, if necessary, there is some difference of opinion. One tradition holds that he must pay a ransom of even ten times her value as a slave the first time she is captured; after that only her market value as a slave. Another tradition requires the husband to pay ten times the amount of her ketubah the first time she is captured; after that only an amount equal to the ketubah. Rabban Simon ben Gamliel restricts the maximum to the value of her ketubah or her market value both for the first or any later capture on the ground that too liberal ransoms will encourage capture and become a menace to the community. The duty to ransom obtained only if the husband were alive and could take the woman back to wife. The Levir or the heirs were not obligated to ransom her unless she was captured while the husband was still alive. Otherwise she must use her ketubah for her ransom.

To provide proper burial for his wife is another of the husband's duties to her. We find precedents for this obligation in the Bible. Abraham buried Sarah and Jacob provided burial for Rachel and Leah. In rabbinic law we find this duty well established. It is incumbent upon the husband to provide burial for his wife as befits her station as well as his, giving her the advantage of the higher social position. The poorest husband, however, must provide a grave and funeral procession consisting of two flutes and two wailing women. Because in the opinion of the law the husband's duty to provide burial is based upon his right to inherit her property, the duty does not survive him. Thus his heirs are not obliged to provide burial for the widow. Should the husband refuse to provide burial for his wife, or having gone to a distant land is unable to do so, the court takes the burial expenses out of his estate.

The husband's duty to support and clothe his wife probably began

in early times with the betrothal and this continued even to Talmu-  
dic times. But the later opinion declared that these obligations  
(287)  
began with nuptials with the proviso that if the nuptial ceremony  
was delayed beyond the customary date through the groom's negligence,  
he was responsible for the bride's maintenance during the period of  
(288)  
delay. Of course the duty to support the wife remained in force only  
so long as they were married. It terminated with divorce, but only  
so long as the divorce gave the wife freedom to marry another. If  
it was for any reason legally in doubt and the divorcee would not  
(289)  
marry another the alimention obligation continued. In the case of  
a levirate marriage the Levir must take over the deceased husband's  
obligations until he marries her himself, and thenceforward he as-  
(290)  
sumes such obligations on his own account as her levirate husband.

As we have already seen the rabbis conceived of the husband's  
duty to support his wife as rising out of her dependent position.  
She was owned by him as he owned his slave; and just as his ownership  
gave her the right to his support, so it also gave him the right to  
(291)  
her services and if she worked for another, to her earnings. This  
conception of almost a master-slave relationship between husband and  
wife gave way in time to the marriage contract idea which saw a re-  
(292)  
ciprocal relationship in support for services and earnings. The  
Talmud divides the duty to support into three categories, necessary  
food and clothing, comforts above the line of necessity and spending  
money. In the same way the woman's earnings are divided, normal  
labor under normal effort standardized at five selaim's worth of  
(293)  
woof work in Judea, the increment above such normal effort, and ex-  
(294)  
tra earnings due to extraordinary effort and skill. The prevalent  
view seems to be that the normal labor pays for the normal support  
and the extra labor for the spending money. The extraordinary labor

and skill is the husband's profit for which he does not have to give  
an equivalent in support. It is considered as his "find" <sup>(295)</sup> The gener-  
al rule is that although the husband is entitled to all of his wife's  
earnings, she cannot pocket from her allowance for maintenance any-  
thing above her needs, except the partly worn clothing which may be  
of use to her. <sup>(296)</sup>

In addition to her earnings the husband is entitled to whatever  
she may find. <sup>(297)</sup> The reason for this seems to be to prevent family  
troubles or to prevent the wife's stealing from her husband and  
claiming that she found the goods. <sup>(298)</sup>

While the normal relationship envisaged in the Talmud is that the  
husband supports the wife and she works for him, the wife is given  
the option of supporting herself and retaining her earnings. <sup>(299)</sup> How-  
ever, she cannot neglect the personal services which she owes her  
husband as washing his hands, face and feet. But if she is support-  
ed by her husband and refuses to work for him the law permits the  
husband to resort to self-help either by threatening her with the  
lash to break her stubbornness or by just starving her into submission. <sup>(300)</sup>  
On the other hand, if the husband is guilty of voluntary non-support  
the court may compell him to grant her a divorce according to Rab;  
but according to Samuel the court may use such methods as it deems  
best to compell him to support her. <sup>(301)</sup> If his failure to support is  
due to poverty the only redress left the wife is to compell the hus-  
band to divorce her and get a judgment for her ketubah against such  
a time when the husband will have the property to pay it. <sup>(302)</sup>

If the husband is unable to support his wife because of insanity  
the court permits her to use his estate for her maintenance. <sup>(303)</sup> How-  
ever, if a husband should by vow restrain his wife from enjoying  
his property the court makes use of a legal device which permits her

to use his property without violating his vow. A guardian is appointed to pay for her maintenance and since the guardian is not restrained by the husband's vow he can take his payment out of the interdicted property.<sup>(304)</sup> The position of the deserted woman was pitiful indeed. Unable to marry another without proof of her husband's death she was compelled to appeal to the courts for help. However, for the first three months after her desertion she was helpless since the court felt that no household was so improvident as to be without a three month's supply of food.<sup>(305)</sup> After the three month's period the court sold as much of the husband's estate as was required for her alimony.<sup>(306)</sup> But while the court can sell the husband's estate for the wife's support we find this seemingly anomalous law that should she be supported by a stranger during her husband's absence he has no action against the husband's estate. "He has put his money on a deer's horn" as the saying goes.<sup>(307)</sup> And yet should the wife borrow money from a stranger for her support he can recover from the husband's estate.<sup>(308)</sup> It is difficult to see the distinction between the two cases. The only distinction seems to be that in the first case the support seems to be gratuitous, and unsolicited and smacks perhaps of illegality in their relationships. The latter case is more in the nature of an ordinary debt.

As we have already seen the wife is given the option to support herself and keep her earnings. It is obvious, therefore, that should the husband for any reason fail to support his wife she may retain her earnings if she is working and may draw upon such income even before the court acts on her petition for alimony.<sup>(309)</sup> Some authorities permit the husband to tell his wife to support herself and to keep her earnings; but in such a case he must supply any deficiency.<sup>(310)</sup> It seems to have been not an uncommon practice for the husband to sti-



pulate in the marriage contract to be free from supporting his wife  
(311)  
and to let her keep her earnings. Such provisions were especially  
common in cases where the husband went away to study and left his  
wife to shift for herself and often for him too.

We have already seen that it was not until comparatively late Biblical times that the daughter was given the right of inheritance if  
(312)  
there were no sons, provided she married within her father's tribe.  
(313)  
The wife, however, was not given any such right of inheritance at all. Although there is no direct statement either in favor of her right of inheritance or against it, yet the fact that she was specifically excluded from the list of those that may inherit in Numbers 27:7-8 implies her inability to be counted as an heir. Moreover, the provision that the widowed or divorced daughter of a priest who is without issue  
(314)  
may return to her father's house and "eat of her father's bread" implies undoubtedly that she is excluded from any rights of inheritance in her husband's estate; and not only is she excluded from the right of succession but even maintenance is denied her as is evidenced from the phrase "and eat of her father's bread". She again assumes the position she held in her father's house before marriage. All this applies only if the widow is left without issue and she is not able for some reason or other to enter into a levirate marriage. If she does enter into such a marriage then, as we have seen, she is supported by her levirate husband. On the other hand, if she is left with issue  
(315)  
she is maintained by her children out of her husband's estate.

An advance over this Biblical provision for the widow is found in the marriage contract of Papyrus G which provides: "If on the morrow or any other day As-hor shall die without male or female issue by  
(316)  
Withpaya, his wife, Withpaya shall have power over his house." The earliest rabbinic ketubah also provided "Thou shalt dwell in my house



and be supported out of my estate as long as thou shalt dwell in  
 widowhood in my house...<sup>(317)</sup> This formula was originally used by all  
 Jews of Palestine; but in the Tannaitic period we find it used only  
 by the Jews of Jerusalem and Galilee. They seem to have been the  
 more liberal group among the Jews and more romantic and "were more  
 concerned with the honor of their wives than with the security of  
 their estates"<sup>(318)</sup> The Judeans, however, were less romantic and more  
 practical. They were afraid that such a formula would compel the  
 heirs to support the widow indefinitely and thus consume the entire  
 estate. Therefore, they revised the formula to read: "Thou shalt  
 dwell in my house and be supported out of my estate during thy wi-  
 dowhood UNTIL THE HEIRS WILL AGREE TO PAY THEE THY KETUBAH!"<sup>(320)</sup> Thus  
 while the Galilean formula left the choice with the widow the Ju-  
 dean left it with the heirs who at any time might tell the widow to  
 take her ketubah and go. This must have led to a great deal of hard-  
 ship for the widow for whom only her ketubah was left. Probably as  
 a protest against such conditions Judah Hanasi provided in his will  
 "Move not my widow from my house"<sup>(321)</sup>

Unfortunately for the widow economic conditions played havoc with  
 chivalry and the tendency to favor the Judaeen formula grew. While  
 both formulae continued to be used in ketubahs, the later amoraim  
 tended to interpret even the Galilean formula more and more strictly  
 in favor of the heirs. Thus the phrase: "When thou shalt marry a-  
 nother" was construed to mean: "When thou has set thy mind on mar-  
 rying another..." This left a great deal of room for interpretations  
 unfavorable to the widow; for the court was ready to see in the  
 widow's slightest act an implied intention to marry again. Thus,  
 if the widow paints and powders it is sufficient ground for suppos-  
 ing that she intends to remarry and of course must take her ketubah

(322)  
and go. Of course, if she accepts proposals of marriage or has il-  
licit relations with other men she forfeits her right of maintenance, (323)  
The widow may also lose her right to be supported out of her hus-  
band's estate if she presents her ketubah for payment; or if she (324)  
sells part of her ketubah which is regarded as a presentation for  
payment. (325)

Now let us see what being supported from her husband's estate  
meant for the widow. In the first place she was entitled to a dwell-  
ing and maintenance, and under normal conditions she continued to  
live as she had done when her husband was still alive. She may use (326)  
the gold and silver vessels and the slaves of the household. The  
heirs cannot force her to submit to any other arrangement. On the  
other hand she can't compel them to give her an allowance and per-  
mit her to live with her parents, unless she claims that her youth  
makes it improper for her to live with the heirs who are young men.  
However, the heirs ca not force her to live with her parents against (327)  
her will even if they pay for her support. The house left to the  
widow by the husband as a dwelling cannot be sold by the heirs. They  
are not obliged to keep it in repair, however, and should it become  
unirhabitable the widow has no recourse. She cannot even repair it  
at her own expense; for if the provisions of the clause cannot be  
fulfilled by what the husband himself left, the provision is auto-  
matically cancelled. So also, if the dwelling is a hovel and can-  
not be called a "house" as specified in the clause, the widow has no  
claim on the estate for living quarters. She must find her own liv-  
ing quarters and is supported by the heirs. (328)

As we have seen in the case of the wife so the widow is entitled  
to ordinary medical attention to be paid for out of the estate; a (329)  
lump sum must be paid for out of her ketubah. Upon her death the

(330)  
heirs pay for her burial expenses. The heirs are not obliged to pay  
(331)  
her ransom, however; although one tradition requires them to do so  
(332)  
if she was captured prior to her husband's death.

Most of the provisions discussed above apply only if the husband left an estate out of which the widow might be supported. If he left no estate the widow has no claim for support even upon her own children. (333) However, if the father conveyed his property to his children during his lifetime, although legally there is no estate left, the widow must be supported by the children according to an enactment of Usha which obligates the children to support their father and his wife in the event that he deeds his estate to them during his lifetime. (334) While Jewish law does not enforce the payment of back alimony nevertheless if the widow was forced to borrow money for her support because of the heirs' neglect they are obliged to pay her debts. (335)

In return for the support given her the widow owes to the heirs her labor. She is expected to do the same work that she did for her husband except the personal services such as washing the face, hands and feet. (336) In all cases the widow has the choice of keeping her earnings and supporting herself. She is also given as her own whatever she finds or comes by without labor. (337) As to her own property, dowry, mattan, mohar and melug the heirs, unlike the husband, have no right of usufruct since this right seems to be reciprocal with the obligation to ransom. (338)

A widow whose husband died without issue is supported out of her husband's estate for three months and thereafter she becomes the wife of the levir who undertakes all the duties of a husband. The reasons for the three month's provision lies in the fact that a widow without issue cannot enter upon a levirate marriage until

three months after her husband's death. After the three months period she is treated as a widow who has accepted a proposal of marriage and therefore forfeits her right of support from the estate. (339)  
If there is a delay between the time of her husband's death and her marriage to the levir of more than three months the levir must support her if the delay is caused through his negligence, and if the fault is hers she must support herself. (340)

The refusal of a wife to obey the natural and normal orders of her husband constitutes rebellion. Especially in the refusal to cohabit with him is found grounds for treating a wife as a *שׂוֹמְדָּה*, a rebellious woman. In the latter case the wife is punished by a fine of seven dinarim per week until her entire ketubah is cancelled; and if she persists in her rebellion the husband may recover his fines even from some other of her property that she may have come by as a gift or inheritance and then she may be divorced. Later practice required that the rebellious woman be warned and given a year's separation from her husband without support and if she still persisted in her rebellion she was divorced with the loss of her ketubah, taking only as much of her dowry as she ~~was~~ <sup>could</sup> get her hands on. In the seventh century this procedure was modified by the geonim who feared that the woman might take her case to the non-Jewish courts. They did away with the year's separation and ordered an immediate divorce with the loss of her mattan and mohar only. Her dowry she got back at the value entered in the ketubah and her melug in the condition in which she found it at the time of the divorce. (343) (344)

To constitute rebellion on the part of the wife the refusal to cohabit must be due to malice. A wife who refuses to cohabit with her husband out of honest revulsion is not treated so harshly. According to one view she can get a divorce upon application forfeiting her mo-



har and Mattan and taking her dowry in the condition that she finds  
(345)  
it.

### Orphan Daughter.

We have already seen that daughters could inherit only if there  
(346)  
were no sons. If there were sons the daughters were left at their  
mercy. To protect the orphan daughter the husband and wife entered  
into an agreement as part of the marriage contract by which the husband  
agreed to provide for the support of such orphan. This agreement  
was set down in the ketubah as follows: "The female children  
which thou shalt beget by me shall dwell in my house and be supported  
(347)  
out of my estate until they are married." This clause was known  
as the Ketubat Benan Nukban (KBN). Some authorities put the terminus  
of the heirs' duty to support the orphan daughters at their reaching  
the age of puberty, which was twelve years and a half, an age at  
(348)  
which most girls were either betrothed or married. It was generally  
agreed, however, that the heirs are free from the duty to support  
(349)  
the orphan daughters from the time of their betrothal. This applied  
only to a regular marriage at maturity. In the case of a rabbinic  
marriage, i.e. where the mother or brothers gave a minor girl in marriage,  
their duty to support did not terminate even with nuptials,  
and if she returned to them while still a minor they were obligated  
(350)  
to support her out of her father's estate.

The KBN provision has validity only if there are sons. If there  
(351)  
are no sons then, of course, the daughters inherit the entire estate.  
While sons have the right of succession they have no right to maintenance  
out of the father's estate. Therefore, if the estate is sufficient  
only for the maintenance of the daughters, the sons are completely  
disinherited. As a Mishnah expresses it: "In a limited estate  
(352)  
the daughters are supported and the sons go begging." A limited



estate is generally defined to be one which is not sufficient to support the family until both girls and boys reach their majority. (353) But if a wealthy estate has become limited after the sons were admitted as heirs they cannot be excluded but share equally with the daughters until the estate is consumed. Yet, in spite of these apparently liberal provisions for the support of the orphan daughters they still remained at the mercy of the sons; for since legal title to the estate is vested in the sons, if they should sell it the sale is valid. (354) (355)

The rights of the orphan daughters under the KBN clause included a home, food, and clothing out of their father's estate. In addition to these provisions they must also be provided with a dowry (parnasah). This latter obligation is not part of the KBN clause but grows out of the father's personal obligation to give his daughter a dowry which in the time of Judah Hanasi was standardized at ten per cent of the estate. (356) If she is given a smaller dowry she may, even after marriage, claim the rest. (357) This claim for the dowry does not, like the KBN clause, terminate at maturity or even at marriage. (358)

The earnings of an orphan daughter and what she finds belong to the heirs in return for the support which she gets; but if she recovers damages for an injury done her, as in a case of seduction, that money belongs to her exclusively. (359) (360) The rabbis found an opportunity for protecting the orphan daughter in their interpretation of the Biblical verse: "And you shall take them (the gentile slaves) as inheritance for your children after you" which they held to mean "THEM you may give as an inheritance to your sons; but you do not give your daughters as an inheritance to your sons". (361) (362)

Chapter Six  
Legal

The unbroken chain of Jewish/tradition from Biblical times through the Talmudic period has given the husband absolute freedom in his power to divorce his wife. However, the conscience of the people and especially of the spiritual leaders rebelled against such autocratic power on the part of the husband which often led to great abuse and hardships for the helpless woman. The prophets thundered against these abuses and the rabbis tried to legislate to check them; but in spite of everything divorce still remained the sole prerogative of the man, although under certain circumstances the woman was later given the right to appeal to the court to compel her husband to grant her a divorce. While the rabbis as jurists upheld the husband's freedom in divorce, as moralists they condemned it severely. Thus we find that Rabbi Elazar, while upholding the husband's legal right to divorce his wife at his pleasure, said: "Over him who divorces the wife of his youth, even the altar of God sheds tears" (363) Rabbi Yohanan put it even more strongly when he said: "He that putteth away his wife is hated by God." (364)

Probably the most effective deterrent to easy divorce was the provision that if the husband divorces his wife without justifiable cause he must immediately pay her her ketubah which meant that he had to pay her the value of the matten, mohar and dowry besides returning her melug. (365) This entailed quite an outlay and was doubtless sufficient inducement for a re-consideration on the husband's part before he took such an expensive step. On the other hand, if the divorce by the husband is justified, i.e. occasioned by some fault of the wife, he suffered no loss whatever. The loss is placed upon her. So also if the wife, for valid reasons, persuades the court to compel her husband to grant her a divorce she suffers no loss of her rights in her ketubah. (366)

Let us now see what are considered valid grounds for the husband to divorce his wife with no financial loss to him. Sterility is a valid ground for divorce; but the court does not presume that sterility is due to any defect in the wife unless otherwise proved and, therefore, she is not penalized by losing her ~~ketubah~~ <sup>(367)</sup>. But if the wife had been divorced twice before on the grounds of sterility and she marries again without informing her third husband of her previous divorces on that ground, he may divorce her on the ground of sterility and deception and she forfeits her entire ketubah. <sup>(368)</sup> Deception in general is a ground for divorce with total loss of the ketubah, whether it be deception as to some physical defect or as to certain vows which the wife had made prior to her marriage. <sup>(369)</sup> Unfaithfulness is, of course, a ground for divorce with the wife's total forfeiture of her ketubah rights. <sup>(370)</sup>

Laxity in religious matters is a legitimate ground for divorce; but the wife does not lose her ketubah rights unless her husband had first warned her in the presence of witnesses and she disregarded his warnings. <sup>(371)</sup> Laxity includes disregard for accepted conventions and customs. Thus if the wife appears in public with arms and shoulders exposed or head uncovered; if she bathes in men's bathing places, weaves in the public market place, indulges in conversation with men or flirts with them; if she acts familiarly with her slaves or neighbors, speaks of private matters in public, curses her husband's parents in his presence and does similar unseemly things which are frowned upon by the Jewish mores, she may be divorced with the total loss of her ketubah. <sup>(372)</sup>

But while the wife should not be vulgarly familiar, she must be sociable otherwise she might make her husband objectionable among the neighbors. Thus if the wife has by vow interdicted herself from lending to or borrowing from her neighbors household utensils and occasional groceries; if she has vowed not to attend weddings or funerals nor

to make new clothes for herself or her children, she may be divorced with the total forfeiture of her ketubah rights. <sup>(373)</sup> The husband may also legitimately divorce his wife if she refuses to follow him to his domicile provided he keeps within certain limits. She must follow him from a foreign country to Palestine; and within Palestine from one city to another of equal size within certain districts or lose her ketubah. <sup>(374)</sup>

What are the grounds on which a woman may sue to compel her husband to grant her a divorce without loss of her ketubah rights? If the husband by vow or for any other reason denies his wife her conjugal rights of cohabitation, she may sue for divorce and recover the full value of her ketubah. <sup>(375)</sup> If, however, this refusal to cohabit is due to illness, the husband is given six months in which to cure himself; and if he cannot be cured within that period he must divorce his wife upon her demand with full payment of her ketubah. <sup>(376)</sup> Unnatural sexual intercourse if insisted upon by the husband is a ground for divorce with payment of the ketubah. <sup>(377)</sup> Sterility on the part of the husband is no ground for divorce since the woman is not bound by the commandment to beget children. She may secure a divorce, however, if she claims that she wants a support and the comfort of a child in her old age. In such a case, she may recover her ketubah with the exception of the matten. <sup>(378)</sup>

Non-support is, of course, a ground for divorce provided that the disciplinary measures that may be used by the court to compel support fail. Rab holds that non-support entitles the woman to an immediate divorce with the full payment of her ketubah; for, as he puts it: "A person cannot live with a serpent in one cage." <sup>(379)</sup> The wife is also entitled to a divorce if her husband by vow or otherwise attempts to limit her freedom of action or enjoyment of certain things. Thus a vow by the husband prohibiting his wife from enjoying any single fruit is a ground for divorce. <sup>(380)</sup> So also if he prohibits her from wearing ornaments or from



using cosmetics or wearing shoes for three days in a village and twenty-four hours in the city, or from using the bath for two weeks in a village and one in the city. (381) If the husband prohibits his wife from visiting her parents for two months if they live in the same city, or for two consecutive holidays if they live in a different city, she is entitled to a divorce with the payment of her ketubah. (382) Nor can the husband restrict his wife's social freedom by forbidding her attendance at weddings or funerals or lending and borrowing small household utensils to and from her neighbors or making new garments for herself or her children. (383) He cannot compel her to do useless work (384) . to be totally idle (385) or to let strangers taste her cooking. (386)

Honest revulsion is also recognized as a ground for divorce. This revulsion may be due to the husband's unattractiveness either because of some physical defect or his repulsive occupation. Thus if a husband has bad breath or has lost an arm or a leg; or if he is a tanner or dung carrier, the wife may secure a divorce. (387) The wife has also certain domiciliary rights. The husband cannot force her to leave Palestine for a foreign country nor to go from a larger city to a smaller one; and if she insists upon her rights she can compel a divorce with the payment of her ketubah. (388)

Upon the maturity of the ketubah at divorce the husband's entire estate is liable for its payment. Nor can the husband claim any exemptions on the ground of poverty. In a certain case brought before Rabbi Akiba the husband claimed that he could not pay the full amount of the ketubah which amounted to 400 zuzim and offered to pay half of it. Rabbi Akiba replied : "You must pay the whole ketubah even if you sell the hair on your head." (389)

The ketubah, as we have seen, was developed largely for the protection of the wife against easy divorce. All the laws concerning it, therefore, were interpreted generally in favor of the woman. Thus if



she lost her ketubah but produced a bill of divorce with the statement that she had not been paid her ketubah she was permitted to collect it. <sup>(390)</sup> If the husband refused to pay the ketubah upon presentation for payment, the court could attach as much of his property as was necessary to satisfy it; and if the property was insufficient the husband was compelled to support his wife until her ketubah was entirely satisfied. <sup>(391)</sup> And though he was thus compelled to support his divorced wife in such a case, he was not entitled either to her earnings or to anything that she may have found. <sup>(392)</sup> Thus the woman, who was unjustifiably divorced by her husband or who, for valid reasons, compelled her husband to grant her a divorce, lost nothing of her economic rights as a wife as long as her ketubah remained unpaid in full. She had, in such a case, both the freedom of a divorced woman and the security of a wife.

### Conclusion

The economic position of the Jewish woman as reflected in the Bible and in the Talmud may be summed up as follows: both in the Biblical and the Talmudic periods the woman's place was considered to be in the home. Her economic function in Jewish society was chiefly as housewife and mother. In spite of the ever growing appreciation of womanhood and woman's gradual elevation from the status of a chattel owned and dominated by her father, brothers or husband to that of a personality of equal importance to them, there never was in Jewish tradition, as reflected in the Bible and Talmud, any idea of the economic equality of the sexes. The Jewish woman was always economically dependent upon her male relatives whose duty it was to provide for her needs.

While it is true that the woman was given the privilege of working and keeping her earnings for her own support, such a privilege was of doubtful value. There was very little economic opportunity in Biblical and Talmudic times for a woman to pursue other than home industries. Even such work as spinning, weaving and embroidering, which was generally recognized as woman's work, was conducted as a home industry. Outside the home she could do very little. She could not be a teacher nor a scribe; she could not engage in any occupation which would necessitate her contact with men other than her relatives. The anxiety of the Jews to maintain the chastity of their women excluded the latter from almost all fields of economic endeavor outside the home with the possible exception of acting as clerks or managers in their husbands' establishments which were probably no more than small bazaars connected with the dwellings.

But while the woman's economic opportunities were limited, their social privileges were continually being enlarged. The rabbis were always eager to find ways and means of protecting them from the abuse to

which their dependent economic position subjected them. First by the institution of the ketubah which restricted the husband's hitherto unlimited divorce privileges; and later by giving the woman the right to sue for divorce under certain circumstances, the rabbis gave the woman an effective weapon to protect herself against a cruel or capricious husband. The institution of the "miun" was also a step in the direction of women's social emancipation. No longer could even a minor orphan daughter be bartered away by her mother or brothers without her consent. Protected by the rabbinic ordinance of the "miun" she could at any time refuse to live with the husband chosen for her against her will. In these and many other ways the rabbis, by ingenious interpretation of Biblical passages and by the invocation of the principle of the Oral Law, were able to enact rules and regulations enlarging the woman's social position which compensated her in part for the lack of economic freedom.

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