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# Is the Entire Kotel Plaza Really a Synagogue?

By David Golinkin

## QUESTION:

Since the arrest of Nofrat Frenkel in November 2009 for wearing a *tallit* and trying to read the Torah at the *Kotel*, there has been much discussion of the Women of the Wall and the right of women to wear a *tallit* in the women's section at the *Kotel*.<sup>1</sup> There has not been enough discussion, however, of a much greater problem: In recent years, the Rabbi of the *Kotel* has expanded the synagogue section of the *Kotel* plaza and the Kotel Guard now patrol the entire *Kotel* plaza. They have posted large signs warning people to dress modestly. They tell people how to dress and what to wear, they tell women and girls not to sing, they separate girls from boys and they tell Christians to remove the crosses from their necks. The result is that non-Orthodox Jews have begun to avoid the *Kotel* entirely and many military ceremonies have been moved to other locations. Indeed, a recent poll (December 23, 2009) shows that 90% of Israelis want less gender-separation at the *Kotel*.<sup>2</sup>

Therefore, please answer the following questions:

- I. Was the area near the *Kotel* considered a synagogue before 1948 and did it have a *mehitzah*?
- II. Why is the Ministry of Religion in charge of the entire *Kotel* plaza?
- III. What is the halakhic status, as opposed to the legal status, of the *Kotel* plaza; is it really a synagogue?
- IV. How should the State of Israel deal with the fact that the entire *Kotel* plaza is slowly but surely becoming a *Haredi* synagogue?

## RESPONSUM:

**I. There was no synagogue at the *Kotel* until 1948 and men prayed beside women without any *mehitzah*.**

This fact was stressed by Professor Shmuel Shilo in his *halakhic* article about the Women of the Wall in 1997 (Shiloh, p. 163) and by Dr. Doron Bar in his recent book *Jewish Holy Places in Israel from 1948-1968* (Bar, p. 212). Indeed, A.M. Luncz, Y.Y. Yehudah and Mordechai Hacohen have already assembled most of the sources about prayers at the *Kotel* from 1520 – when the *Kotel* became a popular Jewish prayer spot – to 1967. They did not deal with our topic directly, but it is clear from the testimony of Luncz and Yehudah who lived in Jerusalem from 1869 to 1918 and 1863 to 1941 respectively and from numerous photographs and paintings, that women visited the *Kotel* on a regular basis, that women frequently made up the majority of worshippers at the *Kotel*, and that there was no permanent *mehitzah* next to the *Kotel* until 1948 when the *Kotel* and the Old City were captured by the Jordanians.

Luncz testified in 1882:

1. "Every Friday immediately after noon multitudes of our brethren - men, women and children - flock to the *Kotel*, old men and women leaning on their canes" (Luncz, 1882, pp. 30-31).
2. He goes on to describe groups of men praying on the right and left, while "in the middle, women stand with white shawls covering their backs, their lips expressing prayers and praises to the living God" (*ibid.*, p. 32). In other words, he is describing men praying on the left and right with a group of women praying in the middle without a *mehitzah*.

Luncz adds many details in his extensive article on the *Kotel* from 1913:

3. "On Fridays, and especially on the Friday before a New Moon is blessed, the alley before the *Kotel* was filled with men, women and children beginning at noon" (Luncz, 1913, p. 32).
4. "But on the 9th of *Av*... this place [= the area next to the *Kotel*] was full from the beginning of the night until the morrow with many men and women... . On *Tisha B'Av* morning, the majority of the alley was filled with *mekonenot* [= women mourners] and only a few men came to recite *Kinot* [= *Tisha B'av* elegies] as individuals" (*ibid.*, p. 33).
5. "Also in this century [= the early twentieth], when many of our brethren from all the Diaspora communities made *aliyah* and settled in the Holy City, it happens that the alley before the *Kotel* is totally filled with men, women and children..." (*ibid.*, p. 46).

Similar testimony is found in Yehudah's article from 1929:

6. "In 1841, my great-grandmother the *Rebbetzin* used to go to the *Kotel* in the summer and winter every Friday afternoon and remain there until candle lighting time to read the entire book of Psalms and the Song of Songs" (Yehudah, p. 141).
7. "When I was very young, until age five (ca. 1868), my mother, *z"l*, and my grandmother, *z"l*, used to take me to the *Kotel*; sometimes only women were there" (*ibid.*).
8. "Many times on other days of the year... I would find men and women praying and reading" (*ibid.*, p.142).
9. "I remember when I was very young that Siman-Tov Meyuhass used to sit at the *Kotel* with a table and chair in front of him... and if a distinguished man or woman would come, he would give them a chair to sit on ... " (*ibid.*).
10. "Poor Sefardic rabbis would sit there [= at the *Kotel*] and read in *La'az* [= Ladino] before elderly men and women who sat in a circle in rows to hear from the rabbi *Me' am Lo' ez* [by R. Yaakov Kuli], *Reishit Hokhmah* and other books of this type..." (*ibid.*).

11. Luncz (1913, p. 51) explains that a few years after 1880 a man began “to bring benches and small chairs and then someone came and set up a folding *mehitzah* to separate the men from the women.” It is clear that Rabbi Luncz himself saw this as a big innovation and he also saw this as the reason for a long-term dispute which developed between the Jews and the Muslims, which led to decrees against the Jews at the *Kotel* in 1912.
12. On *Erev Pesah* 1913, Dr. Yosef Klausner visited the *Kotel* for the first time immediately after making Aliyah. He testified “that the Jews and Jewesses approach the *Kotel* and kiss every single stone” (Hacohen, p. 49).  
In the nineteenth century, non-Jewish visitors to the *Kotel* also described men and women praying side by side (Hacohen, p. 53):
13. R. H. Hershel, an apostate, found Jewish men and women from Poland and Germany praying next to him at the *Kotel* in 1843.
14. V. G. Woodcock described old men and women praying there in 1848.
15. In 1855, William Price found a large crowd of men and women of all ages next to the *Kotel*.
16. Gregory M. Wortabt also described Jews and Jewesses praying and crying there in 1855.

Furthermore, all of the testimony above is confirmed by many paintings and photographs of men and women praying at the *Kotel* side by side as individuals or in small groups or in mixed groups:

1. An etching by William Henry Bartlett from 1842 or 1844 shows men and women side by side in two clusters near the *Kotel* (Ben Dov, p. 102; Druk; Hacohen, p. 27; Naor, p. 176).
2. A painting from 1854 shows men and women sitting in clusters or standing individually at the *Kotel* (Vilnay, p. 308).
3. A photograph by Felix Bonfils in 1870 became the basis of an etching by Taylor in the 19th century. It shows men standing at the *Kotel* and women seated right next to them (Ben Dov, p. 67; *The Jerusalem Post*, June 21, 2002, p. B14).
4. A painting by Hunter from the 19th century, which was apparently based on a photograph, shows a row of men and three women praying fervently side by side at the *Kotel* (Ben Dov, p. 110).
5. Four colored postcards from the late nineteenth/early twentieth century show men and women praying as individuals or in clusters at the *Kotel*. In one, they are almost touching each other and in a second they are lined up at the *Kotel* – women, men and women (Ben Dov, after p. 96).

6. A photograph from 1900 by Kilkor Kworkian, an Armenian photographer who lived in the Old City, shows many women and a few men praying at the *Kotel* (*In Jerusalem*, January 14, 2000, p. 7).
7. A postcard from the early 20th century based on a painting by J. L. Jerome shows individual men and women praying at the *Kotel* and one man and woman are standing right next to each other (Ben Dov, p. 103).
8. In 1913, Ephraim Lilien painted clusters of men and women praying at the *Kotel* (Ben Dov, p. 201; Hacoheh, p. 18).
9. An undated photograph from a German travelogue shows many women and a few men praying side by side at the *Kotel* (Ben Dov, p. 75).
10. Another undated picture shows a woman, a man and four women praying near each other at the *Kotel* while two Turks stand guard (Ben Dov, p. 115).
11. An undated photograph shows three women and one *Haredi* man praying near each other at the *Kotel* (Hacoheh, p. 59).

## **II) Why Is the Ministry of Religion in Charge of the *Kotel*?**

In his recent book about Jewish holy places in *Eretz Yisrael* from 1948 to 1968, Dr. Doron Bar, a Senior Lecturer in Land of Israel Studies at the Schechter Institute, devoted a chapter (pp. 205-219) to the *Kotel* after the Six Day War. In June 1967, the *Kotel* was under the jurisdiction of Rabbi Goren and the IDF Chaplains. A few days after the war, bulldozers came and cleared away many houses near the *Kotel* to form a large plaza. At that time, Prime Minister Levi Eshkol and Defense Minister Moshe Dayan wanted to give the responsibility for all the religious and historical sites in Judea and Samaria including the *Kotel* to the National Parks Authority. Dr. Zerah Warhaftig, the Minister of Religion, was adamantly opposed and by June 26<sup>th</sup>, the *Kotel* was under the jurisdiction of the Ministry of Religion. At the same time, the Knesset passed the "Protection of Holy Places Law 5727, 1967" which appointed the Chief Rabbis of Israel to set the rules and regulations of the *Kotel*.

Rabbi Shlomo Goren, the Chief Rabbi of the IDF, officially handed over the *Kotel* to Zerah Warhaftig on July 3, 1967. Until that date, there was no *mehitzah* at the newly cleared *Kotel* plaza. By July 19, 1967, the Ministry of Religion had erected a *mehitzah* and the men's section was four times larger than the women's section. This led to a public outcry and Prime Minister Levi Eshkol called the area with a *mehitzah* "*mikhlaot*" [= pens or prisons]. Orthodox Jews and the Ministry of Religion reacted strongly and rejected the claims of those who said that the *Kotel* should be given to the National Parks Authority. Others said that the *Kotel* is only a retaining wall of the Temple and therefore a secular, historical remnant. The Ministry of Religion later set up *Mishmar Hakotel*, the *Kotel* Guard, in April 1968, whose members wore special uniforms.

By November 1967, two meters of earth had been dug up near the *Kotel* which created a plaza with two levels. The lower level was used for prayer and the upper level was already used for military swearing-in ceremonies by September, 1967. In early 1968, a struggle developed between the Ministry of Religion and the Chief Rabbinate vs. Prof. Benjamin Mazar and the Department of Antiquities, who began to excavate the southwest corner of the *Kotel*. The Chief Rabbinate claimed that the *Kotel* and the entire area surrounding the Temple Mount are holy and may not be viewed as historical or archaeological sites. In the end, they reached a compromise: Mazar may excavate the southwest corner but not the area of the *Kotel* plaza.

Thus, in June 1967, many thought that the *Kotel* plaza should be a national park. Zerah Warhaftig won the battle and since then the *Kotel* has been under the jurisdiction of the Ministry of Religion and the Chief Rabbinate. Even so, the 1968 episode regarding the archaeological excavations shows that the power of the latter authorities was not absolute and they were only left in control of the *Kotel* plaza itself.

### **III) What is the halakhic status, as opposed to the legal status, of the *Kotel* Plaza; is it really a synagogue?**

A passage in the Talmud Yerushalmi (Megillah 4:1, ed. Vilna 23a) seems to indicate that you can take an existing courtyard and dedicate it as a synagogue.<sup>3</sup>

On the other hand, the Rambam rules (Hilkhos Tefillah 11:21) that:

The plaza of a city which is used for prayer on public fast days and the like is not sacred because it is temporary and was not fixed for prayer. And so too houses and courtyards which the people gather in for prayer are not sacred, because they were not specified only for prayer; rather they are for temporary prayer like a person who prays in his house.

The first half of this law is based on the opinion of the Sages in Megillah 26a, but the second half seems to be the Rambam's own opinion. This law was then codified in the *Tur* and *Shulhan Arukh Orach Hayyim* 154 and in other codes of Jewish law (Bet Yosef, Knesset Hagedolah, Kaf Hachayim and *Mishnah Berurah ad loc.*).

These two laws teach us that:

- a. it is permissible to sanctify a courtyard as a synagogue;
- b. a courtyard used as a temporary or intermittent synagogue which was not specified only for prayer does not have the sanctity of a synagogue.

Therefore, according to Jewish law, there is a clear halakhic difference between the lower prayer area next to the *Kotel*, which has been used as a synagogue on a daily basis since July 1967, and the much larger upper plaza which is only used for prayer on *Shavuot* or *Tisha B'Av* when 50,000 to 100,000 people come to the *Kotel* to pray. In other words, the lower prayer area next to the *Kotel* is a courtyard which was sanctified as a synagogue, while the large upper plaza is a temporary place of prayer which does not have the sanctity of a synagogue.

Indeed, there are two ways of proving that the Chief Rabbinate and other prominent Orthodox rabbis also differentiate between these two areas:

1. Rabbi Yitzhak Yosef, the son of former Sefardic Chief Rabbi Ovadia Yosef, wrote in his *Yalkut Yosef* in 1990 (Vol. 2, pp. 276-277):

It is forbidden to eat and drink near the Kotel, in the place which was sanctified by tens of thousands of Jews for prayer... and if one does a circumcision near the Kotel, it is good not to distribute candy and confections there, only outside the area near the Kotel.

In note 11, he explains that it is forbidden to eat and drink near the *Kotel* according to Megillah 28a and that according to *Shulhan Arukh Oraḥ Hayyim* 151:1 it is forbidden to eat and drink in a synagogue. In other words, in the opinion of Rabbi Yitzhak Yosef, who wrote his book “with the careful editing and agreement” of his father (according to the title page), the area near the *Kotel* is a synagogue and it is therefore forbidden to eat and drink there. But “outside the area near the *Kotel*”, i.e. in the large upper plaza, it is permissible to eat and drink because it is not a synagogue.

2. Secondly, it is clear from the actual behavior of the Chief Rabbinate, Rabbi of the *Kotel* and Kotel Guard from 1967 until just a few years ago that in practice it did differentiate between the lower area near the *Kotel* which it considered a synagogue and the large upper plaza which it did not:

#### **IN THE LOWER PRAYER AREA**

- a. *mehitzah*, chairs, torah reading tables
- b. the Kotel Guard demands wearing a *kippah* and modest dress
- c. no cars and police cars
- d. no military ceremonies

#### **IN THE UPPER PLAZA**

- a. no *mehitzah*, chairs or tables
- b. no Kotel Guard
- c. cars and police cars
- d. military ceremonies

It is therefore clear that even if someone claims that the established custom of the *Kotel* was to pray with a *mehitzah* – a claim we have disproved in paragraph I above – the large upper plaza is not a synagogue according to Jewish law and according to the practices of the Chief Rabbinate itself for about 35 years after the Six Day War. Therefore, the Chief Rabbinate has no halakhic right to demand certain types of dress or behavior in that area.

**IV) How should the State of Israel deal with the fact that the entire *Kotel* plaza is slowly becoming a *Haredi* synagogue?**

Thus far we have seen that:

- I. There was no *mehitzah* at the *Kotel* until 1948; it was viewed and treated as a prayer area and not a synagogue;
- II. The Ministry of Religion/Chief Rabbinate was given jurisdiction over the *Kotel* in June 1967 after a political struggle, but the Antiquities Authority managed to limit that authority to the *Kotel* plaza and to exclude the much larger areas to the south and southwest of the Temple Mount;
- III. According to Jewish law and according to the actual practice of the Chief Rabbinate for decades after 1967, the lower area near the *Kotel* is a synagogue while the larger upper plaza is not;

In light of these facts, I would like to agree with the suggestions made in a recent article by Rabbi Barry Schlesinger, the President of the Rabbinical Assembly of Israel (*The Jerusalem Post*, January 12, 2010, p. 14):

- a. The lower area near the *Kotel* will continue to serve as an Orthodox synagogue not because it was before 1948 – it was not – but because it has been one since 1967 and it will be impossible to turn back the clock after 42 years;
- b. The upper plaza should be turned over to the National Parks Authority or the City of Jerusalem either by a government decision or by changing the law. Item II above serves as a good precedent for this. The Chief Rabbinate and the Ministry of Religion tried to prevent the Antiquities Authority from excavating the areas south and southwest of the Temple Mount. These areas were then removed from their hegemony and the result was the incredible discoveries of Prof. Mazar and others in the area which is now the Davidson Archaeological Park. The same thing should be done now regarding the upper plaza at the *Kotel*. It must be turned over to a non-partisan government body before the Rabbi of the *Kotel*, who is *Haredi*, turns it into a *Haredi* synagogue.
- c. Robinson's Arch was designated by the government in 1999 as a synagogue/prayer area for Conservative and Reform Jews and for the Women of the Wall. This should now be reaffirmed or passed as a law by the Knesset. The government should also provide Torah scrolls, *siddurim* and *talitot* and allow use of the area at all hours of the day without paying an entrance fee after 9:15 am.

If this plan is adopted, both Orthodox and non-Orthodox Jews will be able to continue to pray in their respective areas of the *Kotel* and the IDF and all Jews can continue to hold ceremonies and public events in the upper plaza of the *Kotel*.

In this way the *Kotel* can become a source of peace which unites the Jewish people as envisioned in our ancient sources (see Berakhot 30a and parallels).

## NOTES

<sup>1</sup>Matthew Wagner, *The Jerusalem Post*, November 18, 2009; Peretz Rodman, ynet, November 22, 2009; Nofrat Frenkel, Forward.com, November 24, 2009; Gil Troy, Jpost.com, November 26, 2009; Isabel Kershner, *The New York Times*, December 21, 2009; Ron Kampeas, JTA, December 28, 2009; Editorial, *Forward*, January 15, 2010; Ben Harris, *The Jerusalem Post*, January 15, 2010, p. 8; Josh Nathan-Kazis, *Forward*, February 5, 2010.

<sup>2</sup>Haim Shapiro, *The Jerusalem Post*, August 14, 2001; Amiram Barkat, Haaretz.com, December 16, 2003; Andrew Sacks, *Forward*, January 9, 2004; Noga Tarnopolsky, *The Jerusalem Post Magazine*, January 30, 2004, pp. 18-19; Etgar Lefkovits, *The Jerusalem Post*, February 11, 2004, p. 4; Etgar Lefkovits, *The Jerusalem Post*, October 17, 2005, p. 3; Etgar Lefkovits, *The Jerusalem Post*, March 10, 2006, pp. 1, 7; Jorg Luyken, *The Jerusalem Post*, Succot 5768, September 26, 2007, pp. 18-21; Haviv Rettig Gur, *The Jerusalem Post*, September 25, 2009; Peggy Cidor, In Jerusalem, December 11, 2009, pp. 10-13; Abe Selig, *The Jerusalem Post*, December 14, 2009; Jamie Romm, *The Jerusalem Post*, December 23, 2009; Yizhar Hess, ynet, January 3, 2010; Rabbi Daniel Sperber, nrg, January 3, 2010.

<sup>3</sup>See *Or Zarua*, Part II, end of paragraph 385; *Rosh to Megillah*, Chapter 4, paragraph 1, ed. Vilna, fol. 37a, which was then quoted by the *Bet Yosef to Tur Orach Hayyim* 153. Also cf. Ber Ratner, *Ahavat Tziyon V'Yerushalayim: Megillah*, Vilna, 1912, p. 62.

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