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Bogeres in the Grave

Abaye said: If one violates a woman and she later dies, he is exempt from paying the fine.

The *Gemora* comments: That which was obvious to Abaye was a matter of inquiry to Rava, for Rava inquired: Does a girl attain a state of *bogeres* in the grave or not (*the violated girl died and she would have become a bogeres before Beis Din issued a ruling on the violator*)?

The *Gemora* explains: If we say that she attains a state of *bogeres* in the grave, the fine would belong to her son (*if she has one; based on the Mishnah (41b) which states that although the fine usually belongs to the victim’s father, if she becomes a bogeres before the violator is found to be guilty, the fine belongs to her or her inheritor, namely, her son*). Or, perhaps, she does not attain a state of *bogeres* in the grave and therefore, the fine would belong to her father?

The *Gemora* challenges the facts for such an inquiry: Can a girl who died while she was still a *na’arah* give birth before her death? But Rav Bibi cited the following Baraisa in front of Rav Nachman: Three types of women are permitted to insert a wad into their bodies prior to engaging in marital relations in order to prevent conception. They are: A minor, a pregnant woman and a nursing woman. A minor is permitted because otherwise, she may become pregnant and die. A pregnant woman is permitted because otherwise, she might become

pregnant again, and the second fetus will crush the first one. A nursing woman is permitted because otherwise, she might be compelled to wean her child, resulting in his death.

The Baraisa continues: What age minor are we referring to? We are concerned when the minor is between eleven and twelve years old. If she is younger or older than that, she is not permitted to cohabit in that manner; these are the words of Rabbi Meir. The Chachamim disagree with the entire ruling and state that these women should cohabit in the regular manner and Heaven will have compassion on them (*becoming pregnant in these situations is highly unusual and therefore we prohibit them from utilizing and type of contraceptive measures*) as it is written [Tehillim 116:6]: *Hashem protects the simple. (It is evident that a minor cannot conceive; how then, could the na’arah have given birth?)*

Perhaps you will answer that she became pregnant while she was a *na’arah* and gave birth while still a *na’arah*; this cannot be the case, for Shmuel said: There are only six months between the time a girl becomes a *na’arah* until she becomes a *bogeres*.

The *Gemora* explains Rava’s inquiry in a different manner: If we say that she attains a state of *bogeres* in the grave, the father would lose his right to the fine (*and the violator would keep the money*). Or perhaps, she does not attain a state of *bogeres* in the grave and therefore, the fine would belong to her father?



Mar bar Rav Ashi explains Rava's inquiry differently: Does the father lose the right to the fine if his daughter died while she was a *na'arah* (in the same manner as he would lose the right if she became a *bogeres* while still alive)?

Rava's inquiry remains unresolved. (38b2 – 39a2)

Rava inquired of Abaye (according to R' Akiva in our Mishnah, who stated that when one violates a girl who was previously betrothed and divorced, the fine belongs to her and not to her father): What is the halachah if he raped her (a *na'arah*) and became betrothed (before any judgment was issued)? [Does the fine still belong to her father, or is it now payable to herself?]

Abaye said to him: Is it written in the Torah: *Then the man . . . shall give to the father of the na'arah 'who was not a betrothed woman'*? [Since that phrase is not included when the Torah is discussing payment, but rather when the act occurred, it is obvious that the fact that she became betrothed after the violation makes no difference and the fine still belongs to her father.]

Rava retorted: Following, however, your line of reasoning, how will you explain that which was taught in the following Baraisa: If he raped her and she married (*erusin* and *nisuin*), the fine belongs to herself (and not her father); is it written in the Torah: *Then the man . . . shall give to the father of the na'arah 'who was not a married woman'*?

Abaye responded: Now, is that a comparison? There (when she got married), the following analogy may well be made: Since the state of *bogeres* removes a girl from her father's authority, and marriage also removes a girl from her father's authority (the two therefore may be compared to one another, as follows): Just as in the case of a *bogeres*, if he violated her and then she became a *bogeres* (before

judgment), the fine belongs to the girl herself, so too in the case of marriage, if he violated her and then she married (before judgment), the fine belongs to the girl herself. But as to betrothal, does it (*erusin*) completely remove a girl from her father's authority? Surely we learned in a Mishnah: In the case of] a betrothed girl, her father and her husband jointly may invalidate her vows. [This is different than a married woman, where it is the husband solely who can annul her vows. Accordingly, it is only marriage where we can compare to a *bogeres* – that the father loses his rights to her fine, but regarding betrothal, he still retains that right.] (39a2 – 39a3)

Mishnah

The *Mishnah* states: One who seduces pays three types of payments and one who violates pays four. One who seduces pays for embarrassment, the blemish, and the Torah mandated fine for seducing. One who violates also pays for the pain he inflicted.

What are the differences between one who violates and one who seduces? The violator is required to pay for the pain that he inflicted, and the seducer does not pay for pain. The violator is required to pay the fine immediately (*even if he marries her*), whereas the seducer pays the fine only when he sends her away. The violator is required to drink from his pot (*he must marry her*), whereas the seducer may send her away, if he desires.

How does the violator "drink from his pot"? He is required to marry her even if she is lame, blind or afflicted with boils. If, however, she committed adultery after the marriage or if she is unfit to marry into the congregation, he may not remain married to her, as it is written: *And she shall be to him as a wife*. She must be a woman that is fit for marriage to him. (39a3)

Which Pain?

The *Mishnah* had stated: The violator is required to pay for the pain that he inflicted.

The Gemora asks: What pain are we referring to?

Shmuel's father answered: We are discussing the pain of her being thrown to the ground before she was violated.

Rabbi Zeira asks: Accordingly, if he would have thrown her down onto silk, would there be no liability for pain? The *Gemora* proves from the following *Baraisa* that this is not the case: Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon: One who violates a woman is not required to pay for the pain that he inflicted, as the woman would in any case have subsequently suffered the same pain through her husband. They said to him: A woman cohabiting by her free will is not to be compared to one cohabiting by constraint.

Rather, Rav Nachman says in the name of Rabbah bar Avuha: We are discussing the pain of the separation of her legs, as it is written: *and you separated your legs for every passerby.*

The *Gemora* asks: If so, a seducer should also be required to pay for this pain?

Rav Nachman answers in the name of Rabbah bar Avuha: A girl who is seduced is compared to a man who says to his fellow, "Rip my silks and you will be exempt from paying." (*By willing to be seduced, she is waiving her rights to the payment.*)

The *Gemora* objects to this line of reasoning: The payments do not belong to the girl; they belong to the father! She cannot waive these rights.

Rather, Rav Nachman says in the name of Rabbah bar Avuha: The smart women say that a girl who was seduced does not suffer any pain from the separation of her legs.

The Gemora asks: But we see (on a practical level) that she does have pain?

Abaye said: Mother told me, "[The pain she experiences is] like hot water on a bald person's head" (although she does experience some pain in the spreading of her legs, it is deemed insignificant, and is offset by the pleasure she receives).

Rava said: The daughter of Rav Chisda (his own wife) told me, "It is like the lancet puncture (of a bloodletter)."

Rav Pappa said: The daughter of Abba Suraah (his own wife) told me, "It is like hard bread rubbing against one's palate." (39a3 – 39b1)

Preventing the Marriage

The *Mishnah* had stated: The violator is required to pay the fine immediately (*even if he marries her*), whereas the seducer pays the fine only when he sends her away.

The *Gemora* asks: How can he send her away if he didn't marry her yet (*once he marries her, there is no fine*)?

Abaye answers: The *Mishnah* means that he pays when he decides that he will not marry her.

The *Gemora* cites the following *Baraisa* supporting this explanation: Although they said that the seducer only pays the fine if he decides not to marry her, he is required to pay for embarrassment and the blemish immediately. In cases of violation and seduction, the girl and the father can prevent the marriage from occurring.

The Gemora asks: Regarding one who has been seduced, this (that the girl and her father may reject the marriage) may well be understandable, because it is written: *If refusing shall her father refuse*; since from 'refusing' (one

time – without any repetitive expression) I would only have known that her father may reject the marriage, from where could it be deduced that she herself may also reject? It was, therefore, explicitly stated (the repetitive expression) *'shall he refuse,'* implying in all cases (even when it is only her that refuses). But regarding a case of violation, though one may well grant that she may reject him, since it is written: *and she shall be for him (as a wife),* which implies only if she is willing (to marry him), from where, however, is it deduced that her father (may also object to the marriage)?

Abaye answers: It is because it is illogical to allow the sinner to profit from his sin (*because the father could have prevented this marriage from taking place before the violation, it would stand to reason that he can still prevent it*).

Rava answers: It is derived through a *kal vachomer* from a case of seduction. If a seducer who has acted against the wish of her father alone (for she gave her consent) may be rejected either by herself or by her father, how much more so the violator, who has acted both against the wish of her father and against the wish of herself (so it would stand to reason that they both can reject the marriage).

The Gemora notes: Rava did not give the same reply as Abaye, because, having paid the fine, the violator can no longer be described as a sinner gaining an advantage. Abaye does not give the same reply as Rava, because it may be argued: In the case of a seducer, since he himself may reject the marriage, her father also may object to it; but in the case of a violator, since he himself may not reject the marriage, her father also may have no right to reject it. (39b1 – 39b2)

Fine and her Kesuvah

The Gemora cites a *Baraisa*: Although they said that the violator is required to pay the fine immediately (*to the*

father), if she demands a divorce later, she does not receive a *kesuvah* payment. If he died before her, the money which was paid for the fine is regarded as her *kesuvah* payment. Rabbi Yosi the son of Rabbi Yehudah says: She does receive a *kesuvah* payment of a *maneh*.

The Gemora explains the reasoning for their dispute: The reason that the Rabbis instituted a *kesuvah* (*an obligation for the husband or his estate to pay the wife a certain amount of money in case he divorces her or dies*) is in order for it to be not so light in his eyes to divorce her; the violator cannot divorce her anyway, so there is no reason for a *kesuvah* payment. Rabbi Yosi the son of Rabbi Yehudah maintains that the violator can torture his wife until she says that she does not want him any longer (*so there is still a reason for the kesuvah payment*). (39b2 – 39b3)

INSIGHTS TO THE DAF

A SHORT CONCEPTION

The Gemora stated that perhaps one can say that a girl became pregnant while she was a *na'arah* and gave birth while still a *na'arah*; this cannot be the case, for Shmuel said: There are only six months between the time a girl becomes a *na'arah* until she becomes a *bogeres*.

The Acharonim ask from this Gemora on a teshuva written by the R"l Mintz, which is quoted in the Rama (E"R; 4; 14). He states: A woman who became pregnant from her husband towards the end of the month of Sivan, and she gave birth in the beginning of Kislev, even though there are only five months in between (*Tammuz, Av, Elul, Tishrei and Cheshvan*), we are not suspicious that she became pregnant beforehand because there are a total of seven months from conception to the birth and that is sufficient; the child is regarded as a seven-month baby.

If so, it should be possible for a *na'arah* to conceive and give birth before she becomes a *bogeres*? She can give birth in five months and two days!

The Chelkas Mechokeik answers that according to the R"l Mintz, a girl is not considered a *na'arah* for a complete six months, but rather, she would become a *bogeres* after four months and two days; as long as she became a *na'arah* at the end of one month – four months and two days later, she becomes a *bogeres*.

DAILY MASHAL

Hashem protects the Simple

Our Gemora states: The Chachamim disagree and state that these women should cohabit in the regular manner and Heaven will have compassion on them (*becoming pregnant in these situations is highly unusual and therefore we prohibit them from utilizing and type of contraceptive measures*) as it is written [Tehillim 116:6]: *Hashem protects the simple*.

The Gemora in Yevamos declares that although it is dangerous to give a baby a bris on a cloudy day, nevertheless, it is permitted nowadays because Hashem “protects the simple.” Ritva writes that one who is concerned about the possible danger has the option to not act “simply” and may delay the bris until the clouds clear. The Tzitz Eliezer cites this comment to support his position in a dispute he has with Harav Shlomo Zalman Auerbach concerning the parameters of this principle.

Rav Auerbach writes that the principle “Hashem protects the simple” applies whenever people do not treat a particular behavior or condition as dangerous. This is also the way Rav Auerbach sets up the parameters of pikuach nefesh. Rav Auerbach writes that people’s perception of danger is what defines the principle of pikuach nefesh. Consequently, when there is a perception of danger, one

is even permitted to desecrate Shabbos, even though medically there may not be any danger.

Harav Waldenberg, however, disagrees, and poses the following challenges to Rav Auerbach. Nowadays, doctors do not perceive metzitzah as a medical necessity; does that mean that it is no longer required? Another example relates to Chazal’s assertion that a woman up until three days postpartum is considered to be dangerously ill. If people no longer consider a postpartum woman dangerously ill, does that mean that it is not permitted to desecrate Shabbos on her behalf?

Therefore, Rav Waldenberg writes that we only apply the principle that “Hashem protects the simple” in those cases identified by Chazal. This is consistent with the opinion of Terumas Hadeshen, who writes that it is difficult to be lenient concerning something dangerous based on the principle of “Hashem protects the simple.” Furthermore, concludes Rav Waldenberg, even when Chazal declare that the principle of “Hashem protects the simple” is applied, Ritva maintains that one could be cautious. Therefore, one should certainly be very cautious before further applying this principle to new circumstances.