

ואין אוסרין על היחוד לימא דלא כרבי יהושע –

And we do not prohibit a woman on account of seclusion; should we say that this ruling is not according to ר"י.

OVERVIEW

The גמרא cites the opinion of רב; if a married woman secludes herself with a stranger, she is permitted to return to her husband.¹ We do not assume that she was [ברצון] נבעלה (which would have prohibited her from returning to her husband). We derive from the ruling of רב that a יחוד does not presume a ביאה. The גמרא claims that this ruling is incompatible with the ruling of ר"י according to זעירי who maintains that מדברת means (only) נסתרה, and not נבעלה. In this case of יחוד it is the opinion of ר"י that an unmarried woman becomes אסורה לכהונה because we assume that (לנתין ולמזור) נבעלה. It is apparent that ר"י maintains that by a יחוד there is a presumption of ביאה; not like רב.²

asks: תוספות

תימה לרבי שמשון בן אברהם דלזעירי (נמי) דאמר נסתרה -

The רשב"א is perplexed by the גמרא's assumption that the דין of אין אוסרין על היחוד is incompatible with the view of ר"י according to זעירי **for (even) according to זעירי who maintains** that מדברת means נסתרה; there were no עדים – משנה, nevertheless the שנבעלה –

איירי כגון דמודה היא שנבעלה -

is discussing a case where **for instance she admits that she was נבעלה** (as רב. רב will immediately prove). Therefore there is no comparison to the דין of רב. רב maintains that אין אוסרין על היחוד, in a case where (the [married] woman maintains that) there was no ביאה, merely יחוד; and זעירי will agree (even according to ר"י) that אין אוסרין לכשר נבעלתי (unmarried) woman claims that she is not believed.³ The משנה is discussing a case where the (unmarried) woman claims that she is not believed.³ The משנה is not discussing a case of יחוד, but rather a case of ביאה.

¹ See following מעלה ד"ה, תוספות, that רב is discussing a case of an איש.

² The contradiction is (even) somewhat magnified. ר"י maintains that not only is there a presumption of ביאה by יחוד, but also a presumption of נבעלה לנתין ולמזור.

³ תוספות maintains (originally) that the contradiction between רב and ר"י is concerning יחוד. תוספות does not want to interpret that the contradiction is concerning how we rule by a ספק; that רב is lenient by a (יחוד) ספק and ר"י is strict by a (ביאה) ספק. תוספות asserts later that there is a difficulty in assuming that this is the contradiction. One reason may be that we cannot compare the ספק of ביאה by יחוד to the ספק of נבעלה by נתין ומזור.

הרי זו בחזקת בעולה וכו' ר"י states (even according to זעירי) when ר"י states 'וכו' it is only in a case where she claims נבעלתי, but not in a case where she claims לא נבעלתי:

דאי אמרה לא נבעלתי אם כן הוי ספק ספיקא⁴ -

For if she claimed לא נבעלתי, she would be believed for then, this claim of makes it a doubt within a doubt; one doubt is if she was נבעלה at all (then she is certainly לכהונה כשרה), and even if she was נבעלה, there still remains a doubt that perhaps she was נבעלה to a כשר (and she is still לכהונה כשרה). In the case of a ספק ספיקא we know –

דמכשיר רבי יהושע כדאמר לקמן⁵ התם ספק ספיקא -

that as the גמרא states later would approve her marrying into כהונה ר"י **'there it is a ספק ספיקא'** and therefore ר"י is מכשיר. It is evident from that גמרא that in the case of נסתרה the woman claims נבעלתי לכשר (otherwise it would be a ספק ספיקא and she would be כשרה). The question remains; there is no contradiction between ר"י and רב. רב maintains אין אוסרין על היחוד only in a case of יחוד. However ר"י is discussing a case where we know there was ביאה, by her admission that (נבעלתי לכשר). It is not merely a case of יחוד.

answers: תוספות

ויש לומר דלעולם איירי דקאמרה לא נבעלה⁶ -

And one can say that really the משנה is discussing a case where she claims that she was not נבעלה, and the reason she is not believed (according to ר"י) even though it is (seemingly) a ספק ספיקא is because –

וחשיב ליה חדא ספיקא דאין אפוטרופוס לעריות -

It is considered as one ספק; not a ספק ספיקא. It is assumed that she was נבעלה. The only ספק is if it was לכשר or ולממזר. The reason we consider her as נבעלה is **for there is no 'guardian in regards to illicit relationships';** we assume that if she was נסתרה, there was a ביאה. The only ספק is if it was לכשר or לנתיין. The contradiction between ר"י and רב is now apparent; רב maintains that אין אוסרין על היחוד, ביאה does not presume יחוד. However ר"י maintains that if she was נסתרה it is

a ביאה. It should be borne in mind however, that in either case there is only one ספק. If there was ביאה in the case of רב (no matter with whom) she is לבעלה אסורה. See later in this תוספות (footnote # 9) and 'Thinking it over' # 3.

⁴ See 'Thinking it over' # 4.

⁵ The גמרא there cites an opinion of ר"י in another משנה (concerning עיסה) which (seemingly) contradicts his opinion in our משנה that the woman is נאמנת. The גמרא resolves the contradiction by stating that if she was נאמנת עיסה is a ספק ספיקא and therefore even ר"י agrees that she is מותרת. The case of נאמנת עיסה is discussed at length in the גמרא there.

⁶ See 'Thinking it over' # 2.

assumed that she was also נבעלה.

תוספות has a difficulty with this explanation:

אבל קשה דבהדיא משמע בריש פרק שני (לקמן טז,א) דאיירי בנבעלת -

However there is a difficulty for it is clearly indicated in the beginning of the second פרק that according to זעירי the משנה is discussing a case where it is known (through her admission) that she was נבעלה -

דקאמר⁷ הניחא לזעירי דאמר מאי מדברת נסתרה -

For the גמרא there states: 'according to זעירי it is understood that there is a מיגו (issue) for זעירי maintains that the meaning of מדברת is נסתרה; therefore there is a מיגו in the case of מדברת -

דמגו דאי בעיא אמרה לא נבעלתי מהימנא⁸ כולי -

For 'since' if she would have claimed, 'I was not נבעלה she would have been believed, etc.; therefore she is believed when she claims נבעלתי. It is evident from that גמרא that in the case of מדברת she is claiming נבעלתי, and not לא נבעלתי. If she would have claimed לא נבעלתי she would be נאמנת. The original question of תוספות returns. There is no contradiction between רב (who is discussing a case of יחוד) and the case of ר"י where there was ביאה; as the woman claims (לכשר) נבעלתי.

תוספות answers:

לכך נראה דפריך לזעירי דבספיקא חדא אסרינן לה -

Therefore it seems that the challenge of the גמרא is that according to זעירי, זעירי forbids her to marry into כהונה (even) on the basis of one ספק (whether she was נבעלה to a כשר or to a ומזר (נתין ומזר); this is incompatible with רב -

והא יחוד דאשת איש דספיקא חדא היא ואין אוסרין על היחוד -

For the יחוד of an איש with a stranger which is also (only) one ספק; whether or not there was ביאה and we do not forbid her to her husband because of the יחוד. The contradiction between רב and ר"י is that ר"י invokes an איסור on the basis of a ספק; while רב invokes no איסור on the basis of a ספק.⁹

תוספות remains somewhat dissatisfied with this answer:

וקצת קשה דלכאורה נראה דיחוד איחוד פריך -

⁷ The גמרא there maintains that ר"י admits to ר"ג ור"א that a certain type of מגו (which is mentioned in ב' פרק) is effective; but not the type of מגו that ר"ג ור"א maintain in the first פרק. The גמרא then attempts to discern where there is an effective מגו in the first פרק (according to ר"ג ור"א). The גמרא concludes that according to זעירי, there is an effective מגו in the case of מדברת.

⁸ In our text the גירסא is: 'מגו דאי בעי אמרה לא נבעלתי וקאמרה נבעלתי מהימנא'. The word 'מהימנא' is written adjacent to נבעלתי and not as in תוספות גירסא, near the words נבעלתי. See 'Thinking it over' # 1.

⁹ In this answer תוספות disregards any differences between the types of ספיקות. See footnote # 3.

And it is somewhat difficult to accept this interpretation **for it seemingly appears** from the גמרא (as תוספות will shortly prove) **that the challenge** was **from** one case of יחוד **on** another case of יחוד; from the case of יחוד by רב (where אוסר על היחוד is ר"י (ראוה מדברת) of זעירי by יחוד (אין אוסרין וכו' to the case of יחוד by יחוד). However, since we have proven that (even) in the case of נסתרה she is claiming (לכשר) נבעלתי; it is not a situation of (merely) יחוד by זעירי, but rather a case of a ספק to whom she was נבעלה.

מספק will now explain why it is assumed that the גמרא asked איחוד and not מספק. אספק.

מדפריך לזעירי ולא לרב אסי:

since the גמרא challenges (only) זעירי and not אסי רב. If the question is מספק (as אספק [reluctantly] concluded), then the same question could be asked according to רב אסי. According to רב אסי, in a case where נבעלה and there is a ספק as to whom, אסורה מספק. This would seemingly contradict the statement of רב that אוסרין על היחוד; that we are not אוסר on the basis of a ספק. The same question that is asked on זעירי can be asked on רב אסי, if the question is מספק אספק. If, however, the question would be איחוד, then it is understood that the question cannot be on רב אסי, because רב אסי maintains that מדברת means נבעלה, which is certainly not יחוד. The question would be only on זעירי who interprets מדברת to mean נסתרה. It could have meant (only) לכשר נבעלתי, were it not for the גמרא in פרק שני which indicates that she is claiming נבעלתי and not נבעלתי.

SUMMARY

Originally תוספות assumes that (according to זעירי) in the case of מדברת, the woman claims נבעלתי. The conclusion (based on the second פרק) is that she claims נבעלתי.

concludes that the contradiction between ר"י (according to זעירי) and רב is in regards how to deal with a ספק (איסור) רב. רב maintains אין אוסרין על ספק ביאה לנתין ולממזר, while ר"י maintains that a ספק (ביאה) is מותר, that a ספק ביאה לנתין ולממזר is אסורה. It is not clear why the same question does not apply to ר"י (according to) רב אסי.

THINKING IT OVER

1. Is there any difference whether we are like גורס that לא אמרה 'דאי אמרה' or as our גירסא, which is, that נבעלתי מהימנא? ¹⁰

¹⁰ See footnote # 8. See רש"ש.

2. Originally תוספות maintained that she is claiming לא נבעלתי.¹¹ How can we reconcile this with our משנה, where she states 'איש פלוני וכהן הוא'; she does not say לא נבעלתי?¹²

3. In the תוספות of הוה אמינא that the question (on זעירי) was איחוד; why indeed did not the גמרא ask a similar question of ספק אספק (even) according to רב אסי?¹³

4. Initially תוספות assumed that she must be saying לכשר נבעלתי, for if she claimed לא נבעלתי she would be מותר, since it is a ספק ספיקא.¹⁴ However if she is believed to claim לא נבעלתי then she should also be believed that לכשר לא נבעלתי for she has a מגו to claim לא נבעלתי!¹⁵

¹¹ See footnote # 6.

¹² See אילת השחר.

¹³ See footnote # 3.

¹⁴ See footnote # 4.

¹⁵ See פנ"י.