

מעלה עשו ביוחסין –

They set higher standards in regards to Kohannic lineage

OVERVIEW

The גמרא asked that the ruling of רב (אין אוסרין על היחוד) contradicts the ruling of ר"י (זעירי) (according to ר"י) that אינה נאמנת. The גמרא answered that there is no contradiction. The ruling of ר"י is concerning (a subsequent) marriage to כהונה, therefore she is אינה נאמנת, since מעלה עשו ביוחסין; however the ruling of רב is not concerning marriage to כהונה. It follows therefore that the leniency of רב is concerning an אשת איש. An אשת איש that was מתייחד is not¹ because איסור לבעלה, ¹ because יחוד does not presume ביאה. It is not conceivable that רב is discussing a פנויה, for even if a פנויה was נבעלה, the only possible (subsequent) איסור is to a כהן;² and we just concluded that רב is not discussing איסור כהונה.

The complete statement of רב (as cited in our גמרא) is מלקין על היחוד ואין אוסרין. The apparent understanding is that these two ruling are discussing the same case; if there was a יחוד, בי"ד will give מלקות (for this act of פריצות); however there will be no subsequent איסור ramifications. תוספות will ask that it seems from another גמרא that these two rulings are discussing different cases, which seems illogical.

תוספות asks:

תימה דמשמע דאין אוסרין על היחוד איירי באשת איש ולא בפנויה -

It is astounding! For this answer of 'מעלה עשו ביוחסין', **indicates that the ruling of 'אין אוסרין על היחוד' is discussing a case of a married woman and it is not discussing a case of an unmarried woman.** The גמרא reconciles the rulings of רב and ר"י; that the reason ר"י is strict is because in his case there are ramification for marrying into כהונה (and by כהונה we are more strict, since מעלה עשו ביוחסין); however in the case of רב, there are no such ramifications (therefore רב is lenient). This answer is valid if רב is discussing the יחוד of an אשת איש and the (only) concern is whether she is permitted to return to her husband. However, if רב is discussing the יחוד of a פנויה, then the concern whether there was ביאה or not, is (also only) in reference to whether she may marry a כהן. This is precisely the same concern as in the

¹ An אשת איש that was מזנה ברצון is אסורה לבעלה מן התורה.

² There is no איסור in marrying a woman who was נבעלה (even outside of marriage). Even a כהן may marry a נתין וממזר וכיו"ב to a נבעלה provided that she was not נבעלה בעולה.

case of ר"י! In fact it is (almost³) the exact same case! Why is ר"י strict and רב lenient!? We must therefore conclude that אין אוסרין על היחוד is discussing an אשת איש. However there is a difficulty with this –

ובסוף קידושין (דף פא, א ושם) מוקי מלקין על היחוד דוקא בפנויה -

For in the end of קידושין, מסכת רב אשי **there establishes** that the ruling of 'מלקין על היתוד' is **only specifically in** the case of a פנויה –

אבל באשת איש לא דאתה מוציא לעז על בניה⁴ -

However if there was **יחוד** by **an איש**, there is no מלקות; the reason is as the גמרא there states **for you will be spreading (false) rumors about her children**. The question is since the opening ruling of רב that **מלקין על היחוד**, is discussing a פנויה and not an איש, it would seem obvious that the ruling immediately following, of **היחוד** ואין אוסרין על היחוד is a continuation of the former ruling and is also discussing a פנויה and not an איש. However our גמרא indicates that **היחוד** אין אוסרין על היחוד is discussing only an איש and not a פנויה!

תוספות anticipates a possible (partial) solution to this question and rejects it:

ואפילו למר זוטרא דמלקין ומכריז באשת איש -

And (the question stands) **even according to מר זוטרא** who disagrees with רב **אשי** and maintains **that even by an אשת איש we are מלקין** for יחוד, **and** in order to prevent בניה לעז על בניה, **we announce** that we only know that there was מלקין על היחוד (ביאה). Seemingly according to מר זוטרא, there is no difficulty; since היחוד refers to an אשת איש, so does היחוד על היחוד refer to an אשת איש. This is seemingly in agreement with the תירוץ of the גמרא. Nevertheless תוספות rejects the solution (even) according to מר זוטרא; מר זוטרא –

מודה דבפנויה נמי איירי –

agrees that the ruling of מלקין על היחוד **is also discussing** the case of a פנויה as well as an אשת איש.⁵ He is only adding to רב אשי, that not only does מלקין על היחוד apply to a פנויה it can even apply to an אשת איש. It should therefore follow, that the סיפא of the ruling מלקין על היחוד ואין אוסרין (as well as an אשת איש), just like מלקין על היחוד. The question remains: if אין אוסרין על היחוד is referring to a פנויה (also), then the only concern by a פנויה is whether she remains לכהונה; if we maintain ביוחסין מעלה עשו ביוחסין, it should apply to the case of רב as well.

³ In the case of ר"י she admits that נבעלתי (לכשר); in the case of רב she claims לא נבעלתי. See תוספות ישנים.

4 If an אִשׁ אֲשֶׁת אִישׁ that was מְתֻחֵד with a stranger would receive מְלָקוֹת, it would be perceived that she was מזונה. If it is assumed that she was מזונה, then any (ensuing) children will be looked on as פְּסוּלִים. They are either from the בועל (in which case they are ממזרים מה"ת) or (even) from her husband (in which case they are בני חייבי לאווין, for she is forbidden to her husband).

⁵ See 'Thinking it over'.

answers: תוספות

ואומר רבינו תם דאף על גב דמלקין על היחוד איירי בפנויה -

And the ר"ת says that even though that the ruling of היחוד is
(certainly) **discussing** the case of a **פנויה**, however the ruling of –

אין אוסרין על היחוד לא איירי אלא באשת איש -

'אין אוסרין על היחוד' is not discussing the case of a **פנויה** (according to זעירי)
but rather it is discussing a case of an **אשת איש**. It is the view of the ר"ת that on
account of the difficulty of תוספות question, we are forced to split the two rulings of רב.
The first ruling of היחוד מלקין על is definitely concerning a **פנויה** (and also an **אשת איש**
according to זוטרא); however the second ruling of היחוד ואין אוסרין על is only concerning
an **אשת איש**. However by a יחוד of a **פנויה** the ruling, according to ר"י (according to זעירי),
would be that she is **אסורה לכהונה**.⁶

תוספות has an additional question:

ואם תאמר והא אמרינן בפרק בתרא דנדרים (דף צא,ב) -

And if you will say; that we have learnt in the last פרק of נדרים –

גבי ההיא נואף דעייל לגבה דההיא איתתא -

concerning this adulterer who entered the house of this woman. The גמרא
there relates that when he was (hiding) in the house he noticed that a poisonous snake ate
some of the food in the house. When the נואף realized that the husband returned home the
נואף appeared and -

אמר ליה נואף לא תיכול מינהון דטעמינהו חויה -

The נואף said to the husband do not eat from those foods for a snake
tasted them and poisoned them. The husband then asked if he is permitted to live with
his wife, since the נואף may have had relations with her –

אמר רבא איתתא שריא אם איתא דעבד איסורא ניחא ליה דלימות -

רבא ruled that the woman is permitted to be with her husband. רבא gave a
reason for his ruling, for **if it happened that he transgressed** with the
woman **he would have preferred that the husband die**; he would not have
prevented him from eating the poisonous fruit. This proves that there was no ביאה.

משמע דאי לאו האי טעמא היתה נאסרת על ידי יחוד -

It seems from the fact that רבא required a reason to permit the woman to her
husband that if there was no such reason she would be אסורה לבעלה just

⁶ The reason why by a יחוד of a **פנויה** she is **אסורה לכהונה** (for we assume there was [לנתין ולממזר] ביאה), and by
a יחוד of an **אשת איש** she is **מותרת לבעלה** (we assume there was no ביאה), is (the answer of our גמרא) that מעלה
עשו ביוחסין. In reality we assume there was no ביאה by a יחוד; however we will not allow her to marry a כהן,
since מעלה עשו ביוחסין. The simple explanation is that the **פנויה** can marry anyone else (besides a כהן); the
אשת איש however will become **אסורה לבעלה**. We do not wish to do this, since it is based only on a ספק.

through the יחוד alone. This contradicts what has been said up to now that אין אוסרין refers specifically to an איש. There is no need for any additional proofs to permit the husband and wife to remain together.

answers: תוספות

ויש לומר דנואף שאני -

And one can say that by a נואף it is different. There is more suspicion by a נואף than by a יחוד with a 'regular' person. Therefore רבא required additional proof that there was no ביאה.

offers a different interpretation: תוספות

והרב רב יוסף דשליטן תירץ דאין אוסרים על היחוד איירי בפנויה כמו מלקין על היחוד -
And אין answered original question that the ruling of מלקין על היחוד is concerning a פנויה just like the ruling of היחוד is concerning a פנויה. This interpretation removes original question; how is it possible that מלקין על היחוד is discussing a פנויה and אין אוסרין על היחוד is concerning an איש. According to ר"י דשליטן, they are both concerning a פנויה.⁷ However there still remains the question, that if אין אוסרין על היחוד is concerning a פנויה why is this any different than the case of ר"י where מעלה עשו ביוחסין.

– אין אוסרין על היחוד תוספות explains that the ruling of

ולא איירי לכהונה אלא אין אוסרין אותה לבנו כשתתיחד עם אביו –
And we are not discussing her eligibility to marry into כהונה; for she is indeed since אסורה לכהונה but rather מעלה עשו ביוחסין the ruling of רב that אין teaches us **that we do not prohibit her from marrying his son when she was מתייחד with the father.** If she was מתייחד with יעקב, she may marry the son of יעקב, for we do not assume that there was ביאה. This rule is necessary (specifically) –

לרבי יהודה דאסר באנוסת אביו (יבמות צז,א):
according to ר"י who prohibits the relationship of a person with a woman who was (even merely) forced by his father. One may not marry his father's wife (מדאורייתא) if they were legally married. However if a father had a forced relationship with a woman; there is no איסור for the father's son (from a different marriage) to later marry her, since she is not the father's wife. ר"י however maintains that there is an איסור מדאורייתא even by אביו. רב is teaching us that if there was merely יחוד with the father, the son may marry this woman (who was מתייחד with his father). We

⁷ As far as the question from נדרים is concerned, the answer will be the same, that נואף שאני.

do not assume that there was any ביאה, just יחוד.⁸

SUMMARY

The ruling of מלקין על היחוד is concerning a פנויה (and an אשת איש according to מר זוטרא); however the ruling of אוסרין על היחוד is concerning only an אשת איש. A אשה that was מתייחד with a נואף would need additional proof להחזיר לבעלה.

מ"ר יוסף משליטן maintains that אוסרין על היחוד is to permit a son to marry a woman who was מתייחד with his father [(even) according to ר' יהודה].

THINKING IT OVER

מר זוטרא assumes that מלקין על היחוד refers to a פנויה (as well as to an אשת איש).⁹ Why does מר זוטרא assume this? Perhaps מר זוטרא maintains that מלקין על היחוד refers only to an אשת איש?!

⁸ In this case there is no עשו ביוחסין, since we are not dealing with a כהן (see [however] footnote # 6).

⁹ See footnote # 5.