

## ועל<sup>1</sup> ידי נפשות אסורה לבעלה –

**And because of capital punishment; she is forbidden to her husband**

### OVERVIEW

The משנה states that if a woman is taken into custody (נחבשה) by gentiles on account of monetary issues (that she owes them money), she is מותרת לבעלה, and חושש ישראל previously explained that she is מותרת even כהן לבעלה (for we are not even for אונס). The משנה continues that if, however, she was taken because she was condemned to die,<sup>2</sup> she is forbidden to her husband (if she is released). תוספות will clarify whether this only means לבעלה כהן, or even לבעלה ישראל, for we are חושש that she was מזנה ברצון.

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אסורה לבעלה comments that this rule of תוספות

היינו אפילו לבעלה ישראל דחיישינן שמא נתרצת כדי למצא חן שלא יהרגנה<sup>3</sup> -

**Means she is prohibited even if her husband is a ישראל, for we are concerned, perhaps she agreed to זנות, in order she should find favor in the eyes of the gentile, so that he will not kill her –**

anticipates and rejects the opposing viewpoint:

דאי לבעלה כהן קאמר ואסורה שמא נאנסה אם כן הוה ליה למימר אסורה לכהונה<sup>4</sup> -

**For if the משנה meant she is forbidden only לבעלה כהן, because we are concerned perhaps she was נאנסה (but she is never לבעלה ישראל, because we are not חושש that she was ברצון), if indeed this is what the משנה means, the משנה should have stated she is forbidden to לכהונה, and not that she is forbidden [only] to her husband.**

**אלא ודאי אפילו לבעלה ישראל אסורה -**

**Rather we must certainly say that she is forbidden even לבעלה ישראל, out of concern that she was נבעלה ברצון as תוספות just explained.**

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<sup>1</sup> The תוס' מהרש"ל states that this תוס' is a continuation of the previous תוס'. They are one תוס'.

<sup>2</sup> See רש"י ד"ה ע"י.

<sup>3</sup> The fact that she was released may support this assumption that she was נבעלה (ברצון), for otherwise why was she released if she is מחויב מיתה!

<sup>4</sup> תוספות may be presenting a twofold difficulty with the interpretation that אסורה לבעלה means only לבעלה כהן. Firstly the משנה should be more precise and not lead us on to mistakenly assume that it means she is אסורה even לבעלה ישראל. Secondly (and more importantly) the משנה is incorrect, she is not merely אסורה לבעלה כהן but rather she is אסורה to every כהן since we suspect her of נבעלה לעכו"ם which makes her a זונה (even if it was באונס). [In the רישא where תוספות previously explained that she is מותרת even לבעלה כהן, there is no difficulty why did not the משנה state לבעלה כהן, because the term לבעלה means to whomever her husband is whether a ישראל or a כהן. However here where we wish to limit the term לבעלה to a כהן only, the משנה should have been more specific. See also תו"י on the previous תוס'.]

asks: תוספות

ואם תאמר צנועות לישתרו<sup>5</sup> דקודם לכן<sup>6</sup> מסרן נפשיהו -

And if you will say; the modest women should be permitted לבעלה, for there is no concern that נבעלו, since previously they were willing to sacrifice their lives not to have relations with the עכו"ם -

כדמשמע בריש מכילתין<sup>7</sup> (דף ג,ב) גבי כל הנשאת ברביעי תיבעל להשר תחלה -

As is indicated in the beginning of this מסכת, regarding the statement of רבה, that there was a decree that whoever marries on Wednesday should first be with the minister –

answers: תוספות

וצריך לומר דהכא חיישינן על כל אחת שמא אינה צנועה<sup>8</sup> ואפילו נראית צנועה שמא אינה:

And it will be necessary to say that here (in the case of נפשות ע"י נחבשה) we are concerned regarding each individual woman that perhaps she is not a צנועה, and even if she appears to be a צנועה, we are still concerned that perhaps she is not a צנועה and was נבעל to the עכו"ם.

## SUMMARY

A woman who was נחבשה בידי עכו"ם ע"י נפשות is אסורה (even) לבעלה ישראל for we are concerned that she was נבעלה ברצון to save herself.

## THINKING IT OVER

Tosfos asked that the צנועות should be מותרות. Does לבעלה ישראל mean only, or even לכהונה<sup>9</sup>?

<sup>5</sup> The connection of this question to that which Tosfos said previously that she is אסורה even לבעלה ישראל, may be that if she is only אסורה לכהן, then we can (perhaps) understand that even though she is a צנועה, nevertheless she was נבעלה (see [however] footnote # 6), however if she is אסורה even לבעלה ישראל, the צנועות should be מותר, because there is no reason to assume that they were נבעלה ברצון. See 'Thinking it over'.

<sup>6</sup> This may mean that they allowed themselves to be killed by the הגמון, before they knew that אונס is permitted (רש"ש), or it may mean that they would kill themselves before allowing the הגמון to be with them (רש"ש).

<sup>7</sup> The first משנה in our מסכת stated that a בתולה marries on רביעי. The גמרא on ג,ב stated that from the 'danger' and onward they married on ג' (instead of ד'). רבה explained that the סכנה was this decree that תבעל כל הנשאת ביום ד' תבעל. רבה (there is no danger; rather they are forced to be מזנה). The גמרא asked why do you refer to this as a סכנה; it is an אונס (there is no danger; rather they are forced to be מזנה). The גמרא answers, there are צנועות who will be מוסר נפש rather than to be נבעל, therefore it is a סכנה for the צנועות. In any event we see that there are צנועות who will be מוסר נפש; these צנועות should be מותר to their husbands since they will not be מזנה (even באונס). Why do we say that all the women are אסורות לבעליהן?

<sup>8</sup> Previously (on ג,ב) the גמרא called it a סכנה (and changed the wedding time) because we know that in the general population there are צנועות who will be מוסר נפש; however we do not know for sure which individual is a צנועה, therefore they are all אסורות.

<sup>9</sup> See footnote # 5 & 6.