

Also by a betrothed maiden; – אף נערה המאורסה יהרג ואל יעבור¹ he should be killed and not transgress

Overview

The גמרא explains that we derive איסור עריות from רציחה, just as by a רוצח the rule is מה הזית דדמך דידך סומק טפי (because of the reasoning of יהרג ואל יעבר (וכו'), the same applies to the איסור עריות (exemplified by a נערה המאורסה) that one is not permitted to transgress עריות, even under the threat of being killed if he does not comply. תוספות will explain whether this refers to the male only or also to the female.

פירוש² הבעל אבל היא תיבעל ולא תיהרג –

The explanation of יהרג ואל יעבר is referring to **the male**; however **she**, the woman who is being coerced, **should acquiesce** to the act **and not** allow herself to **be killed** -

דקרקע עולם³ היא⁴ כדאמר בן סורר ומורה⁵ (סנהדרין ע"ב) –

for she is merely considered as the **world's ground**, as the גמרא states in The ruling of יהרג ואל יעבר by עריות does not apply to women.

תיהרג ואל תעבר offers additional proof that the woman is not subject to תיהרג ואל תעבר:

ובריש כתובות (דף ג, ב) נמי פריך ולידרוש להו דאונס שרי⁶ –

And also in the beginning of כתובות the גמרא asks, **'and let us teach the women that if they are forced, it is permitted'** for them to rejoin their husband; indicating there is no תיהרג ואל תעבר for women. Therefore we cannot be גורס that תיהרג ואל תעבר, for the woman who plays a passive role is not obligated to be מוסר נפש for גילוי עריות.

תוספות offers a dissenting opinion:

¹ In our texts it reads תהרג ואל תעבור. See following footnote # 2.

² The term פירוש is used here to negate the גירסא of תהרג (she should be killed), indicating that (even) the נערה must allow herself to be killed, but rather יהרג (he) the בעל should allow himself to be killed.

³ The simile is that just as the earth is trodden upon but is not active, similarly the woman is passive.

⁴ The woman is not participating actively; her role is merely passive acquiescence.

⁵ The גמרא there explains the reason אסתר was permitted to live with אחשוורוש (even though it was בפרהסיא [see תוספות there (ד"ה והא) is because אסתר was (merely) עולם שרי].

⁶ The גמרא there states that there was a decree that women (at their חופה) had to be first נבעל to the הגמון. The גמרא would be מוסר נפש not to be נבעל for they (thought they) would be אסור to their husbands. The גמרא asked let us inform them that by אונס they are not לבעליהן (if he is not a כהן) and they need not resist the הגמון. This proves there is no יהרג ואל יעבר for the woman. If the ruling would be יהרג ואל תעבר by the woman as well, how can she allow herself to be נבעל by the הגמון, since she is an איש אשת.

ורבינו יצחק אומר דשפיר גרסינן תיהרג –

And the ר"י states that we are rightfully 'תיהרג'; that the woman allow herself to be killed rather than transgressing גילוי עריות (under certain circumstances) -

– **דהא דמשמע בבן סורר ומורה ובריש כתובות דאונס שרי –**

For that which is indicated in סורר ומורה and in the beginning of פרק בן סורר ומורה that אונס is שרי for the woman -

– **היינו היכא שהיא קרקע עולם ולא עבדה מעשה –**

That is only if she indeed is קרקע עולם and did not do anything active -

– **אבל לעשות מעשה כגון שאומר לה שתביא הערוה עליה תיהרג ואל תעשה מעשה –**

However for her perform an act, for instance if the gentile tells her that she should bring the ערוה upon herself (otherwise he will kill her), she should be killed and not perform this act of bringing the ערוה upon herself.

The ר"י will now prove his point that קרקע עולם is not a blanket היתר for women to be עובר יהרג ואל יעבר, but rather it is part of the general היתר, that יהרג ואל יעבר applies only when one is active (male or female), but not when one is passive; then there is no יהרג ואל יעבר (by male or female).

– **דמרוצח ילפינן ורוצח לא מיחייב למימסר נפשיה אלא כשאומר לו להרוג בידיים –**

For we derive the ruling of יהרג ואל יעבר from 'a murderer', and a potential רוצח is not obligated to forfeit his life, only when he is told to (actively) kill with his hands -

– **אבל אם אומר הנח לזרוק עצמך על התינוק או תיהרג –**

However if the gentile orders, 'allow yourself to be thrown on an infant (thereby killing the infant), or you will be killed -

– **אינו חייב למסור עצמו כדי להציל חבירו –**

He is not obligated to forfeit his life in order to save the infant's life; for the person is not doing anything, he is passive. He is being thrown on the infant; he need not struggle (and be killed) in order not to be thrown on the infant.

explains the rational for this ruling תוספות

– **דאדרבה איכא למימר מאי חזית דדמיה דחבריה סומק טפי דילמא דמא דידי סומק טפי –**

For on the contrary⁷ in this situation we can say, 'why do you 'see' that the friend's blood is redder, perhaps my blood is redder.⁸ Therefore just as by a רוצח the rule of יהרג ואל יעבר is only when he is actively killing someone; however

⁷ The source that by a רוצח we maintain יהרג ואל יעבר is because of the logic of סומק טפי. There is however no פסוק or other proof. This same logic can be turned around to exempt him from being killed if he is merely passive.

⁸ One person is going to be killed; whether it is the child or the adult. The adult can claim since I am not doing anything, why should I be required to struggle and save the child's life if this will cause me to get killed.

when someone is being killed by him being passive, the rule is יעבר ואל יהרג, the same is true by גילוי עריות that the חיוב of יעבר ואל יהרג (both by men and women) is only if they are active, but not if they are passive.

anticipates a possible misinterpretation of this ruling and corrects it:

ומיהו לדידיה אם אומרים לו הנח לתקוע אותך בערוה יהרג ואל יעבור –

However concerning the male, if gentiles say to him allow yourself to be impaled into an ערוה, the ruling is יהרג ולא יעבר -

דלא מצי למימר לא עבידנא מעשה –

For in this case he cannot claim I did not perform an act -

דכיון⁹ שתוקעין אותו –

(for) since they are impaling him -

ואין קישוי אלא לדעת כדאמרינן בריש הבא על יבמתו (יבמות נג,א¹⁰) –

[For] hardening can be only mindfully (and voluntarily) -

ומה שהוא מתקשה הוא מעשה¹¹: –

And the fact that he becomes hardened is considered an act. He is not passive despite that others are impaling him; the קישוי makes him an active participant.

Summary

The rule of יהרג ולא יעבר (concerning רציחה וגילוי עריות) is only when it is transgressed in an active manner; however if the transgressor is (totally) passive there is no דין of יעבר ואל יהרג.

Thinking it over

1. What is the rule concerning עבודה זרה; is the חיוב of יעבר ואל יהרג there only if he is active, or also even if he is passive?

2. Tosfos compares the קרקע עולם of the woman to being thrown on a child. Seemingly there is a difference, when one is thrown on a child he is merely a medium to the killing; however the woman is participating in גילוי עריות!¹²

⁹ There are various גירסאות here; some are גורס that (indicating that כיון שתוקעין וכו' דאין קישוי וכו') is the reason for פטור [See תוספות הרשב"א].

¹⁰ This should read נג,ב. See תוספות ד"ה אין (that if he is already מקושה there is no חיוב of יעבר ואל יהרג).

¹¹ See שפ"א that even though the קישוי is באונס (it is א"א שלא יתקשה), nevertheless it is considered a מעשה [באונס], for which the דין is יעבר ולא יעבר.

¹² See: ח"ב אות קנא and דבר שמואל בסוגיין אות א', ברכת אברהם אות יג.