

וימי מעברא? והתני רב ביבי קמיה דרב נחמן: שלש נשים משמשות במוך, אלו הן: קטנה, ומעוברת, ומניקה; קטנה – שפא תתעבר ותמות, מעוברת – שפא תעשה עובר סנדל, מניקה – שפא תגמול את בנה.

ואיזוהי קטנה – מבית אחת עשרה שנה ויום אחד עד שתים עשרה שנה ויום אחד. פחות מיכן ויתר על כן – משמשות כדרך והולכת, דברי רבי מאיר. והכמים אומרים: אחת זו ואחת זו משמשות כדרך והולכת, ומן השמים ירחמו, משום שנאמר "שומר פתאים ה'!"

וכי תימא דאי עברא בשהיא נערה ואולידה בשהיא נערה, ובשיתא ירחי מי קא ילדה? והאמר שמואל: אין בין נערות לבגרות אלא ששה חדשים! וכי תימא: בציר הוא דליכא, הא טפי איכא – הא "אלא" קאמר!

Rava's dilemma is based on the assumption that a rape victim is able to conceive before she is a grown woman. The Gemara asks: **And can a minor conceive? But didn't Rav Beivai teach a baraita before Rav Nahman: It is permitted for three women to engage in relations with a contraceptive resorbent.^N These are they: A minor, and a pregnant woman, and a nursing woman.** The *baraita* elaborates: **A minor may do so lest she conceive and die;^{NB} a pregnant woman, lest her existing fetus be crushed^B by another fetus and assume the shape of a sandal fish^B if she conceives a second time; and a nursing woman, lest she conceive, causing her milk to spoil, which will lead her to wean her son prematurely, endangering his health.**

And the baraita further states: What is a minor girl?^N A minor girl is a girl from eleven years and one day old until twelve years and one day old. If she was less than that age or more than that age, she proceeds and engages in relations in her usual manner; this is the statement of Rabbi Meir. And the Rabbis say: Both this woman and that woman, i.e., in the cases of all these women, she proceeds and engages in relations in her usual manner, and from Heaven they will have mercy and prevent any mishap, due to the fact that it is stated: "The Lord preserves the simple" (Psalms 116:6).^N Apparently, a minor is unable to conceive.

And if you say that she conceived when she was a young woman, twelve years old, and gave birth when she was a young woman, and died before she reached the status of a grown woman, can a woman give birth in six months after conception? But didn't Shmuel say: There are only six months between becoming a young woman and becoming a grown woman?^H And if you say that Shmuel is saying that it is less than six months that there is not transition from young woman to grown woman status; however, more than six months there is transition, as different women develop differently, and therefore she could conceive and give birth while she is a young woman, that is not so, as Shmuel said: Only, indicating that the period is neither less nor more than six months.

BACKGROUND

Lest she conceive and die – שפא תתעבר ותמות: A minor girl, who has not yet reached puberty, cannot conceive. However, the age of puberty is not uniform but is heavily influenced by genetics and nutrition. There are documented cases of young girls who have indeed conceived and given birth. Regardless, the younger the girl is when she conceives, the greater the danger posed by the pregnancy. Presumably, due to the narrowness of the pelvis of a young girl, she would not survive delivery of her child.

Lest her existing fetus be crushed, etc. – שפא... עוברא: In the case of twins or simultaneous pregnancies, which are possible albeit infrequent, one of the fetuses occasionally develops more quickly and thereby severely reduces the blood supply to the other fetus. In these situations the undernourished fetus does not develop properly but remains a fleshy mass adjoined to the placenta, similar in shape to the sandal fish.

Sandal fish – סנדל: This fish is referred to today as the species sole, a group of flatfish, a name derived from the Latin solea, referring to both the fish and the sole of a shoe. The common sole, *Solea solea*, possesses an interesting feature: Both of its eyes are on the right side of its body.



Sandal fish

HALAKHA

There are only six months between becoming a young woman and becoming a grown woman – אין בין נערות – לבגרות אלא ששה חדשים: A minor who develops the signs of puberty, two pubic hairs, becomes a young woman. Precisely six months later she becomes a grown woman, as per the statement of Shmuel (Rambam *Sefer Nashim, Hilkhot Ishut* 2:2; *Shulhan Arukh, Even HaEzer* 234:1, and in the comment of Rema).

NOTES

It is permitted for three women to engage in relations with a contraceptive resorbent, etc. – שלש נשים משמשות במוך וכו' – The early commentaries disagree over the meaning of this statement. Some explain that she inserts the material to cover the entrance of her uterus before engaging in relations, while others maintain that she uses it after intercourse to absorb the semen (see *Tosafot*). The precise nature of this *halakha* is also a matter of dispute among the early commentaries. Rashi maintains that only these three types of women may engage in relations with this resorbent, and it is prohibited for others to do so. However, many other early commentaries, among them Rabbeinu Tam, contend that the Sages were advising or even requiring these three women to use the resorbent due to the danger involved.

Lest she conceive and die – שפא תתעבר ותמות: The Gemara's question is clear according to this version of the text, as the indication is that a minor who conceived cannot survive the ordeal of childbirth, and certainly her child will not live. However, according to the variant reading in *Yevamot* (12b): Lest she conceive and lest she die, apparently it is possible for her to conceive and give birth. The Ramban and his students maintain that this version is according to the opinion that children are an indication of grown-woman status, suggesting that she was a grown woman when she conceived, even though both in

terms of age and in terms of physical development there was no indication of puberty.

What is a minor girl – איזוהי קטנה: The meaning is: Whose legal status is that of a minor in terms of this *halakha*? In principle, as long as she has yet to develop the requisite physical indicators, she is still classified as a minor. Here, however, a special definition is necessary, as even Rabbi Meir concedes that under a certain age, there is no concern that a minor might conceive.

The Lord preserves the simple – שומר פתאים ה' – Many commentaries question this attitude: In a life-threatening situation, how can one say that from Heaven they will have mercy, and rely on the notion that the Lord preserves the simple, when the Torah commands that one must avoid all dangers and violate virtually all prohibitions in order to avoid endangering one's life (see *Avoda Zara* 18a)? One opinion is that the Gemara employs this approach only with regard to people conducting themselves in a conventional manner and according to the standard mode of conduct. The assumption is that God protects them, as the fact is that most people are not harmed (*Kovetz Shiurim*). Alternatively, the Gemara employs this approach only in a case where this potential danger affects only a minority of cases, and people need not take special precautions to avoid unlikely occurrences.

If he forcibly had intercourse with a young woman and she was later betrothed – בָּא עָלֶיהָ וְנִתְאַרְסָה – If a girl who was raped or seduced was later betrothed to another, her fine and the other payments belong to her father, as betrothal does not release her from her father's authority (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:16; *Tur, Even HaEzer* 177).

If he forcibly had intercourse with her and she later married – בָּא עָלֶיהָ וְנִשְׂאתָ – If one who seduced or raped a young woman did not pay the fine and the accompanying payments until she became a grown woman or married, the fine and the other payments are paid to her (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:15).

A betrothed young woman with regard to the nullification of vows – נִעְרָה הַמְאוּרְסָה לְהַתְרַת נְדָרִים – The vows of a betrothed young woman may be nullified only if they are annulled by both the father and the husband. If only one of them annulled her vow, it remains intact, as stated in the mishna in *Nedarim* cited in the Gemara (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 11:9; *Shulhan Arukh, Yoreh De'a* 374:5).

אֵלָּא הָכִי קָמִיבַעֲמָא לִיהֵ: יֵשׁ בְּגֵר בְּקִבְרָא וּפְקַע אָב, אוֹ דְלִמָּא: אִין בְּגֵר בְּקִבְרָא וְלֹא פְקַע אָב? מָר בַּר רַב אֲשִׁי בְּעֵי לָהּ הָכִי: מִיִּתָּה עוֹשָׂה בְּגוּרָתָ, אוֹ אִין עוֹשָׂה בְּגוּרָתָ? תִּיקֵי.

בְּעֵי מִינְיָה רַבָּא מֵאבֵי: בָּא עָלֶיהָ וְנִתְאַרְסָה מְהוּ אָמַר לִיהֵ: מִי כְּתִיב "וְנָתַן לְאָבִי הַנֶּעְרָה אֲשֶׁר לֹא אָרוּסָה"? וְלִטְעַמֵּיךְ, הָא דְתַנְיָא: בָּא עָלֶיהָ וְנִשְׂאתָ – לְעִצְמָהּ, מִי כְּתִיב "וְנָתַן לְאָבִי הַנֶּעְרָה אֲשֶׁר לֹא נִשְׂוָהָ?"

הָכִי הַשְׁתָּא?! הֵתָם, הוֹאִיל וּבְגוּרָתָ מוֹצִיָּא מְרֻשּׁוֹת אָב, וְנִשְׂוֹאִין מוֹצִיָּאִין מְרֻשּׁוֹת אָב, מְהוּ בְּגוּרָתָ, בָּא עָלֶיהָ וּבְגֵרָה – לְעִצְמָהּ, אָף נִשְׂוֹאִין, בָּא עָלֶיהָ וְנִשְׂאתָ – לְעִצְמָהּ, אֵלָּא אִירוּסִין – מִי קָא מְפָקִי מְרֻשּׁוֹתָא דְאָב לְגַמְרֵי? הָא תַּנּוּ: נִעְרָה הַמְאוּרְסָה אָבִיהָ וּבְעִלָּהּ מְפִירִין לָהּ נְדָרֶיהָ.

Rather, Rava's dilemma is unrelated to whether or not her son inherits the fine payment. This is his dilemma: Is there achievement of grown-woman status in the grave and therefore the right of the father to receive payment of the fine lapsed; and since there is no one claiming the payment, the rapist need not pay? Or perhaps there is no achievement of grown-woman status in the grave, and the right of the father did not lapse. Mar bar Rav Ashi raised the dilemma in this manner: Does death effect grown-woman statusⁿ or does it not effect grown-woman status? No resolution was found for this dilemma, and the Gemara concludes that the dilemma stands unresolved.

On a similar note, Rava inquired of Abaye: If he forcibly had intercourse with a young woman and she was later betrothed,^h what is the halakha? Abaye said to him: Is it written: And he shall give to the father of the young woman who is not betrothed? Actually it is written: "If a man finds a young woman... who was not betrothed" (Deuteronomy 22:28), which indicates that the determining factor is whether she was betrothed before the rape and not whether she is engaged at the moment of payment. Rava asked him: And according to your reasoning, that which was taught in a baraita: If he forcibly had intercourse with a young woman and she later married,ⁿ the fine is paid to her, not to her father. There too, ask: Is it written: And he shall give to the father of the young woman who is not married? Even though the verse does not address the moment of payment, if she married the fine is paid to her.

Abaye retorted: How can these cases be compared? There, in the case of marriage, there is reason to diverge from the plain meaning of the verse, as grown-woman status removes her from the authority of the father and marriage removes her from the authority of the father. Just as with regard to grown-woman status, if he forcibly had intercourse with her and she became a grown woman, the fine is paid to her, as it is written: "And he shall give to the father of the young woman" (Deuteronomy 22:29); so too, with regard to marriage, if he forcibly had intercourse with her and she later married,^h the fine is paid to her. However, with regard to betrothal, does it removeⁿ her from the authority of the father entirely? Didn't we learn in a mishna (*Nedarim* 66b): With regard to a betrothed young woman, her father and her husband together nullify her vows?^h Apparently, betrothal does not remove her entirely from her father's authority, and therefore, the halakha with regard to betrothal cannot be derived from the halakha with regard to grown-woman status. Therefore, Rava's question is not difficult.

NOTES

Does death effect grown-woman status – מִיִּתָּה עוֹשָׂה בְּגוּרָתָ: It is clear from Rashi and other commentaries that the question is not whether death always effects grown-woman status, or even whether she is considered a grown woman in the grave. Rather, this statement should be read in the negative: Does the father forfeit his right to the fine when she dies just as he would if she became a grown woman? The later commentaries add that the difference between these two interpretations is that if she actually were to achieve grown-woman status in the grave, her creditors could collect the debt from the fine.

If he forcibly had intercourse with a young woman and she was later betrothed – בָּא עָלֶיהָ וְנִתְאַרְסָה: The commentaries explain that this is not a question according to the opinions of Rabbi Yosei HaGelili or Rabbi Akiva cited in the baraita, but only according to the opinion of Rabbi Akiva of the mishna, who maintains that a betrothed woman is entitled to payment of a fine that is paid directly to her. Others maintain that Rava posed this question

according to Abaye's opinion that the decisive time for determining payment of a fine is when the rapist stands trial: Does her change in status mean that she herself receives the payment?

If he forcibly had intercourse with a young woman and she later married – בָּא עָלֶיהָ וְנִשְׂאתָ: In the Jerusalem Talmud, the ruling is that even if she later married, the fine belongs to her father. According to the discussion in the Talmud there, since she was raped while still under her father's authority, the payment is to the father, even if she left his authority entirely in the interim.

Betrothal, does it remove, etc. – אִירוּסִין מִי קָא מְפָקִי וְכוּ': The Ritva writes that the Gemara sought to cite a proof for this claim from the halakhot of vows, as it is clear that with regard to monetary matters, betrothal does not release her from her father's authority. The suggestion is that since payment of the fine is a Torah decree, it should be viewed as a unique halakha rather than a standard monetary obligation, and therefore the father could lose the right to this money upon her betrothal.

Vessel [atztiz] – עֲצִיץ: The descriptions of the sources indicate that the reference is to a ceramic or wooden vessel, usually unfinished or not completely fired in the kiln. This type of vessel was used for tasks that required a simple receptacle, but not one with exacting craftsmanship. An atztiz was often used for potted plants or as a chamber pot. Sometimes it was crafted from the bottom of a broken jug.

Vessel [atztiz] – עֲצִיץ: Similar to the Arabic ابيض, 'asīṣ, which has the same meaning.

מתני' המפתה נותן שלשה דברים, והאונס ארבעה. המפתה נותן בושת ופגם וקנס, מוסיף עליו אונס שנותן את הצער. מה בין אונס למפתה? האונס – נותן את הצער, והמפתה – אינו נותן את הצער. האונס – נותן מיד, והמפתה – לכשוציא. האונס – שותה בעציצו, והמפתה – אם רצה להוציא, מוציא.

MISHNA The seducer gives the father of his victim three things, and the rapist gives the father four.^h The mishna specifies: **The seducer gives the father payments for humiliation, degradation, and the fine. A rapist adds an addition to his payments, as he also gives payment for the pain. What are the differences between the halakha of a rapist and that of a seducer? The rapist gives payment for the pain, and the seducer does not give payment for the pain. The rapist gives payment immediately,^h and the seducer does not pay those payments immediately but only when he releases her. The rapist drinks from his vessel [atztiz],^{BLHN} i.e., marries the woman he raped, perforce, and the seducer, if he wishes to release her, he releases her.**

ביצד שותה בעציצו – אפילו היא חגורה, אפילו היא סומא, ואפילו היא מוכת שחין. נמצא בה דבר ערוה, או שאינה ראויה לבא בישראל – אינו רשאי לקיימה, שנאמר "ולו תהיה לאשה" – אשה הראויה לו.

The mishna clarifies: **How does the rapist drink from his vessel? Even if the woman he raped is lame, even if she is blind, and even if she is afflicted with boils, he is obligated to marry her and may not divorce her. However, if a matter of licentiousness is found in her,^h e.g., if she committed adultery, or if she is unfit to enter the Jewish people, e.g., if she is a mamzeret, he is not permitted to sustain herⁿ as his wife, as it is stated: "And to him she shall be as a wife" (Deuteronomy 22:29), from which it is inferred that she must be a woman who is legally suitable for him.**

גמ' צער דמאי? אמר אבוב דשמואל: צער שחבטה על גבי קרקע. מתקיף לה רבי ירמיה: אלא מעתה, חבטה על גבי שיראין הכי נמי דפטור? וכי תימא הכי נמי – והתניא, רבי שמעון בן יהודה אומר משום רבי שמעון: אונס אינו משלם את הצער מפני

GEMARA The mishna taught that a rapist pays for the pain that he caused. The Gemara asks: **For what painⁿ is he obligated to pay? Shmuel's father said: It is for the pain that he caused when he slammed her onto the ground while raping her. Rabbi Zeira strongly objects to this: But if what you say is so, if he slammed her onto silk, so too is the halakha that he is exempt from payment for pain? And if you say indeed that it is so, but isn't it taught in a baraita that Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: A rapist does not pay for the pain due to the fact**

HALAKHA

The seducer gives three things and the rapist four – המפתה – נותן שלשה דברים והאונס ארבעה: One who seduces a virgin must pay the fine, and the payments for humiliation and degradation. The rapist pays these and must compensate her for her pain as well (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:7; *Shulhan Arukh, Even HaEzer* 177:1).

The rapist gives payment immediately – האונס נותן מיד: The rapist must pay the four indemnities for which he is liable immediately, and then marry the young woman. In contrast, the seducer pays the fine only if he opts not to take her as a wife (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:7).

שותה בעציצו – שותה מן הכלי: A man who rapes a virgin is obligated to marry her if she and her father consent. He must do so even if she is lame or blind, and he may never divorce her against her wishes (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:3; *Shulhan Arukh, Even HaEzer* 177:3).

If a matter of licentiousness is found in her – נמצא בה דבר ערוה: If his rape victim was forbidden to him, even if the prohibition is by rabbinic law, he is not permitted to marry. Similarly, if he married her and she acted in a licentious manner, he is required to divorce her (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:5; *Shulhan Arukh, Even HaEzer* 177:4).

NOTES

Drinks from his vessel – שותה בעציצו: This refers to a rudimentary earthenware vessel, fit only for potted plants (Rambam's Commentary on the Mishna) or other base uses, such as sewage and the like (*Talmidei Rabbeinu Yona*; see *Shita Mekubbetzet*). In short, this is not a vessel used for drinking and was chosen by the *tanna* for that very reason. Since this man chose to drink from a lowly vessel, he must continue to do so.

The Maharik writes that the *halakha* that a rapist must marry his victim serves to protect the daughters of Israel, so that powerful men will not abuse them. The Radbaz therefore states that this should not be viewed as a penalty but as a positive mitzva. Consequently, even if there were no witnesses and he admits to the rape and is thereby exempted from paying the fine, he is obligated to marry her. As explained above, the reason is that he drinks from his vessel. Once he raped her, he can no longer claim that he does not desire her.

He is not permitted to sustain her – אינו רשאי לקיימה: The *tanna* uses this expression in order to include both cases: That of a rapist who married her and later found her behaving in a licentious manner, necessitating their divorce; and one who cannot marry her in the first place because she is prohibited to him. Instead of saying that he divorces her or he may not marry her, the *tanna* states: He may not sustain her (*Rashba*).

For what pain – צער דמאי: *Tosafot* ask a simple question: Were the Sages unaware that the first time a virgin engages in intercourse it is painful? That seems to be indicated by their question. *Tosafot* and other early commentaries answer that it is clear that this *tanna* does not consider the pain of the tearing of the hymen sufficient to render one liable for payment, as otherwise a seducer would also be deemed liable.

BACKGROUND

Pain – צער: Pain experienced during sexual intercourse might be the result of a lack of lubrication or due to vaginal muscle contractions. Typically, if a woman willingly engages in intercourse, those two problems do not exist, or at least are greatly mitigated. However, a woman who is raped does not want intercourse and does not cooperate in performance of the act, and therefore she could very well experience intense pain that could lead to actual injury. The same applies to a minor girl, as described in *Tosafot*. In contrast, the pain experienced by the breaking of the hymen is not as intense and, as the Gemara describes, is nothing more than a light wound in a sensitive area.

שְׂפוּפָה לְהִצְטַעַר תַּחַת בְּעֵלָהּ, אָמְרוּ לוֹ: אֵינּוּ דוֹמֵה נְבִיעָלָת בְּאוֹנֶס לְנְבִיעָלָת בְּרָצוֹן! אֲלֵא אָמַר רַב נַחֲמָן אָמַר רַבָּה בַר אַבּוּהֵ: צַעַר שֶׁל פְּסוּק הַרְגָּלִים. וְכֵן הוּא אָמַר: "וּתְפַשְׁקִי אֶת רַגְלֶיךָ לְכָל עוֹבֵר".

אֵי הֵכִי מְפוֹתָה נְמִי! אָמַר רַב נַחֲמָן אָמַר רַבָּה בַר אַבּוּהֵ: מִשָּׁל דְּמְפוֹתָה לְמַה הַדָּבָר דּוֹמָה – לְאָדָם שֶׁאֵמַר לְחֵבִירוֹ: קָרַע שִׁירְאִין שְׁלִי וְהַפְּטִיר. שְׁלִי?! דְּאִבּוּהֵ נִינְהוּ! אֲלֵא אָמַר רַב נַחֲמָן אָמַר רַבָּה בַר אַבּוּהֵ: פְּקוּחוֹת שְׂבָהֶן אִמְרוֹת: מְפוֹתָה אֵינן לָהּ צַעַר.

that she will ultimately suffer^N the same pain during intercourse when under the authority of her husband? They said to him: One who has intercourse against her will is not comparable to one who has intercourse willingly. Apparently, the pain associated with rape is a direct result of the forced intercourse and not of some associated cause.⁸ Rather, Rav Nahman said that Rabba bar Avuh said: It refers to the pain of spreading her legs during intercourse. And likewise, the verse says:^N “And you opened your legs to every passerby” (Ezekiel 16:25).

The Gemara asks: If so, a seduced woman should also^N be obligated to make that payment as well. Rav Nahman said that Rabba bar Avuh stated a parable: To what can this matter of a seducer be compared? It can be compared to a person who said to another: Tear my silk^N and be exempt from payment. Since she engaged in relations of her own volition, she certainly absolved him of payment for the pain. The Gemara asks: Tear my silk? It is not her silk, and therefore she may not waive payment for damage to it; it is the silk of her father, as the fine and the other payments are paid to him. Rather, Rav Nahman said^N that Rabba bar Avuh said that the clever women among them say^N that a seduced woman has no pain during intercourse, as she is a willing participant.

NOTES

שְׂפוּפָה לְהִצְטַעַר וכו' – That she will ultimately suffer, etc. – In the Jerusalem Talmud this is deemed comparable to removing the wart from someone who was planning on doing so anyway. She cannot demand compensation as she would have experienced the pain of her loss of virginity at some point. The Rabbis respond that although the act itself would have been performed eventually, her suffering is greater if it is performed against her will. In the Jerusalem Talmud, it is explained that Rabbi Shimon agrees that the rapist must pay for any pain other than the pain of the intercourse itself, e.g., if he pushed her onto thorns, as he disputes the need to pay for pain only with regard to the pain of the sexual act itself. The Hatam Sofer asks: Can't the woman claim that she would have never been subject to the pain of intercourse, as since a woman is not obligated to take a husband, she might never have married? He answers that since the fine is compensation for diminishing her prospects of marriage, if she claims she does not want to marry at all, she would no longer be entitled to the fine.

וְכֵן הוּא אָמַר וכו' – And likewise, the verse says, etc. – Some commentaries explain that this verse is cited in order to explain the spreading of legs to which it refers. The Ritva contends that the meaning of this expression is clear from the context; rather, the verse indicates that this act involves pain, as the prophet is castigating the Jewish people for the fact that it was willing to suffer the pain in order to engage in licentious behavior with others.

אֵי הֵכִי מְפוֹתָה נְמִי – If so, a seduced woman should also – The Ramban views the Gemara here as one component of a complex question: If this pain is significant, then a seducer should also have to pay for it, and if it is not significant, the Rabbis should agree that even a rapist should be exempt. The *Shita Mekubbetzet* summarizes the question: The pain of losing her virginity is a one-time occurrence, and therefore she will not experience this pain again. The argument that she will eventually suffer pain during intercourse when under the authority of her husband does not apply to the pain of spreading her legs, as the pain she suffers now will not reduce that of any later cohabitation (see *Tosafot*).

קָרַע שִׁירְאִין שְׁלִי – Tear my silk – The logic is that since she suffers the pain to her own body, it is hers and she can waive her right to

it (Rabbeinu Crescas Vidal; see Ritva). The *Kovetz Shiurim* explains that her forgiving the debt is insufficient to exempt the rapist for payments of humiliation and degradation, as even though the action that rendered him liable was performed on her body, her father is also affected by the humiliation and degradation. With regard to her pain, in contrast, even when the father is entitled to the payment, the pain affects her exclusively. The Ra'avad rules that the payment for the pain of rape is paid to the victim herself, not to her father.

The *Hakham Tzvi* explains that although a father has the right to give his daughter away in marriage, he cannot give her away to undergo suffering. Apparently, the Torah did not entitle him to the payment for her pain. The Ran, in the next chapter, contends that since he has the right to marry her to a repulsive person, e.g., one who is afflicted with boils, with whom she would only agree to engage in intercourse unwillingly, apparently, he has the right to give her away to undergo suffering, and therefore the payment for her pain also belongs to the father.

אֲלֵא אָמַר רַב נַחֲמָן וכו' – Rather, Rav Nahman said, etc. – The word rather indicates that Rav Nahman's statement is not necessarily based on the previous answer with regard to the spreading of legs. Instead, it could be explained that he reverts back to the first opinion, that the pain is the pain of intercourse, and the difference between the two cases is that a seduced woman does not suffer pain. Some commentaries have a variant reading excluding the word rather (see Ritva and *Shita Mekubbetzet*). The later commentaries continue to discuss whether a seduced woman experiences no pain, as any suffering is obscured by the pleasure of the act, or whether she does experience pain but it is not taken into consideration due to her desire.

פְּקוּחוֹת שְׂבָהֶן אִמְרוֹת – The clever women among them say, etc. – The significance of clever women is not immediately apparent in this context. The *Shita Mekubbetzet* explains that a significant factor in the pain of intercourse for a woman, even the first time, is the failure to prepare her body properly. Clever women know how to prepare their bodies so that the tearing of their hymen causes merely slight discomfort, as indicated by the various metaphors cited in the Gemara.

When does the seducer pay – מתי משלם המפתה – A seducer pays compensation for humiliation and degradation immediately, but he pays the fine only if he does not marry his victim (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:7).

Both she and her father, etc. – בין היא ובין אביה וכו' – In the cases of both a raped and a seduced young woman, if either she or her father refuses the marriage, the rapist or seducer pays the fine and is not obligated to marry her (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:3).

והא קא חזינן דאית לה! אמר אביי, אמרה לי אם: כמיא חמימי על רישיה דקרחא. רבא אמר: אמרה לי בת רב חסדא: כי ריבדא דכוסילתא. רב פפא אמר: אמרה לי בת אבא סורא: כי נהמא אקושא בחינבי.

The Gemara asks: **But don't we see that even a married woman has pain when she engages in sexual relations for the first time?** **Abaye said: My foster mother told me that the pain is like hot water on the head of a bald man. Rava said: My wife, Rav Hisda's daughter, told me that it is like the stab of a bloodletting knife. Rav Pappa said: My wife, Abba Sura's daughter, told me that it is like the feeling of hard bread on the gums.** When a woman engages in intercourse willingly, the pain is negligible. Therefore, the seducer is not obligated to pay for pain.

"האונים נותן מיד, המפתה לכשיציא" וכו'. לכשיציא, אשתו היא? אמר אביי: אימא לכשלא יכנס. תניא נמי הכי: אף על פי שאמרו המפתה נותן לכשלא יכנס, בושת ופגם – נותן מיד. ואחד האונים ואחד המפתה, בין היא ובין אביה יכולין לעבב.

The mishna continues: **The rapist gives payment immediately, and the seducer when he releases her, etc.** The Gemara asks: **When he releases her? Is she his wife?**^N He did not yet marry her, so how can the mishna use the language of divorce? **Abaye said: Say that he gives payment when he opts not to marry her.**^H If he marries her he need not pay. **That opinion was also taught in a baraita: Although they said that the seducer gives the fine when he opts not to marry her, the compensation for her humiliation and degradation he gives immediately.** The *baraita* continues: **Although both the rapist and the seducer are obligated to marry their victim, both she and her father^{NH} are able to prevent the marriage.**

בשלמא מפותה – בתיב "אם מאן ימאן אביה", אין לי אלא אביה, היא עצמה מנין – תלמוד לומר "ימאן", מכל מקום.

The Gemara asks: **Granted, with regard to a woman who was seduced, it is written: "If her father refuses [maen yemaen] to give her to him"** (Exodus 22:16), and the Sages interpreted: **I have only derived that her father can prevent the marriage; from where do we derive that she herself can do so?** **The verse states: Maen yemaen,** a double verb indicating that the marriage can be prevented in any case, i.e., she too may do so.

אלא אונים, בשלמא איהי – בתיב "ולו תהיה" – מדעתה. אלא אביה מנלן?

However, from where is it derived that they can prevent the marriage in the case of a rapist? **Granted, she herself can prevent the marriage, as it is written: "And to him she shall be as a wife"** (Deuteronomy 22:29), and the term "shall be" indicates **with her consent. However, from where do we derive that her father can prevent the marriage?**

אמר אביי: שלא יהא חוטא נשכר. רבא אמר: קל וחומר: ומה מפתה שלא עבר אלא על דעת אביה בלבד, בין היא ובין אביה יכולין לעבב, אונס שעבר על דעת אביה ועל דעת עצמה – לא כל שכן.

Abaye said: No verse is necessary as it stands to reason that the father too can prevent the marriage **so that a sinner will not profit.** If her father could not prevent the marriage, the rapist would acquire the right to marry the young woman despite the father's refusal, a right not accorded to one who seeks to betroth a young woman in a conventional manner. **Rava said** it is derived through an *a fortiori* inference: **Just as in the case of a seducer, who contravened only her father's will, as she acquiesced to his proposition, nevertheless both she and her father can prevent the marriage; in the case of a rapist, who contravened both her father's will and her own will, all the more so is it not so that both she and her father can prevent the marriage?**

NOTES

When he releases her – לכשיציא: The Ritva's explanation clarifies the phrase: When he releases her, in this context. He explains that it means that the man releases her in court when he declares that he does not wish to marry her.

Is she his wife – אשתו היא: Almost all commentaries read this expression in the form of a question: Is she his wife? If he didn't marry her yet, how can he release her? The Ra'avad, however, understands it as a statement: If he married her and she is his wife, upon their divorce he must pay her marriage contract of one hundred dinars, consistent with the Ra'avad's approach with regard to a seduced woman. The Rashba questions this interpretation, for it would mean that the sinner profited, as he paid only one hundred dinars instead of the fifty sela fine, which is two hundred dinars, like the dowry of virgins. Furthermore, a seducer can subvert the halakha by marrying and immediately divorcing her, thereby saving one hundred dinars.

Both she and her father – בין היא ובין אביה: Tosafot ask: How can the young woman object? After all, her father has the right to marry her to the man of his choice. Some commentaries (Ritva;

Rabbeinu Crescas Vidal) maintain that this is referring specifically to an orphan or a grown woman. They explain that the phrase: Both she and her father, refers to different cases. Sometimes she can object, if she is no longer subject to her father's authority, and in other cases, her father has the right of refusal. Others accept Rashi's explanation in tractate *Kiddushin*: Even though her refusal cannot prevent him from marrying her if her father agrees, it obligates the seducer to pay the fine immediately.

Several other interpretations are proposed by the Ran. One suggestion is that if she does not want to be his wife, although her father still retains the power to marry her to him, there is no longer a mitzva for the rapist or seducer to wed her. Alternatively, he suggests that this is a unique halakha in that the Torah granted her the right of refusal due to the ordeal she went through, despite the fact that in standard circumstances she cannot refuse her father's choice of a husband for her. The *Yam shel Shlomo* writes that the purpose of the statement that both she and her father can refuse is to emphasize that the mitzva to marry the victim of one's rape and seduction victim applies only to the man, but there is no mitzva incumbent on the woman or her father.

NOTES

She has no claim upon him – אין לה עליו כלום: The Gemara provides different explanations for a divorcée and a widow because the reason for the marriage contract varies in each case. With regard to a divorcée the Sages instituted a marriage contract so that her husband would not divorce her lightly, and the Gemara therefore states that there is no need for that ordinance for a rape victim, as he cannot divorce her at all; therefore, she has no claim upon him. In the case of a widow the purpose of her marriage contract is to make her a more attractive marriage prospect, and therefore the Gemara states that she has already received the money in payment of the fine (*Tosafot*; Rosh; Ritva). The Rosh adds that even according to those who maintain that the obligation of the marriage contract of a virgin is by Torah law, since the verse states: “Like the dowry of the virgins” (Exodus 22:16), it is clear that the fine replaces the marriage contract.

The marriage contract of a raped woman – כתובת אנוסה: The ruling authorities disagree with regard to the basic question of whether or not a rape victim receives a marriage contract. The Rambam maintains that she is not entitled to a marriage contract, whereas the Ra’avad states that she receives a marriage contract of one hundred dinars, like any other non-virgin. The conclusion in the Jerusalem Talmud seems to support the opinion of the Ra’avad. The Gemara there discusses whether a seduced woman or a raped woman is entitled to the other conditions of a marriage contract, such as provision for her male children that predated her marriage, and sustenance for her daughters, among other stipulations.

HALAKHA

The money of her fine offsets her marriage contract – יצא כסף קנסה בכתובתה: The Sages did not institute a marriage contract for a raped young woman, as it is prohibited for her husband to divorce her. She does not even receive payment of the marriage contract in the event of his death, in accordance with the opinion of the first *tanna* (Rambam *Sefer Nashim*, *Hilkhot Na’ara Betula* 1:4; *Shulhan Arukh*, *Even HaEzer* 177:3).

רַבָּא לֹא אָמַר כְּאַבְיֵי, כִּיּוֹן דְּקָא מְשֻׁלְמִים קָנְסֵי – לָאוּ חוּטְיָא נִשְׁכָּר הוּא. אַבְיֵי לֹא אָמַר בְּרַבָּא, מִפְּתֵיהּ דְּאִיהוּ מְצִי מְעַבְבֵי – אָבִייהּ נְמִי מְצִי מְעַבְבֵי, אֹנִיס דְּאִיהוּ לֹא מְצִי מְעַבְבֵי – אָבִייהּ נְמִי לֹא מְצִי מְעַבְבֵי.

תַּנְיָא אִידְךָ: אִף עַל פִּי שְׂאֲמְרוּ אֹנִיס נוֹתֵן מִיד, כְּשִׁיּוֹצִיא הוּא – אִין לֵה עֲלוּי כְּלוּם. כְּשִׁיּוֹצִיא? מִי מְצִי מִפִּיק לָהּ? אִימָא: כְּשִׁתְּצִיא הִיא – אִין לֵה עֲלוּי כְּלוּם. מַת – יֵצֵא כְּסָף קָנְסָהּ בְּכַתּוּבָתָהּ. רַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה אָמַר: יֵשׁ לָהּ כְּתוּבָה מְנָה.

בְּמַאי קָמִיפְלִגִי? רַבְּנֵי סְבָרֵי: טַעְמָא מַאי תַקִּינוּ רַבְּנֵי כְּתוּבָה – בְּדִי שְׁלָא תְהֵא קֵלָה בְּעֵינֵי לְהוֹצִיאָהּ, וְהָא לֹא מְצִי מִפִּיק לָהּ. וְרַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה סְבָר: הָא נְמִי מְצִיעַר לָהּ עַד דְּאִמְרָהּ הִיא “לֹא בְּעֵינֵי לָךְ.”

“אֹנִיס שׁוֹתֵהּ בְּעֵצִיו.” אָמַר לִיה רַבָּא מִפְּרוּקִיא לְרַב אֲשִׁי: מִגְמַר גְּמָרִי מִהֲדָרִי

The Gemara elaborates: **Rava did not say in accordance with the explanation of Abaye, as since the rapist pays the fine he is not a sinner who profits, as he too must pay the dowry of a virgin even if he marries her. Likewise, Abaye did not say in accordance with the explanation of Rava because in the case of a seducer, where the seducer himself can prevent the marriage, her father can also prevent the marriage. In the case of a rapist, where the rapist himself cannot prevent the marriage, her father also cannot prevent the marriage.**

It was taught in another *baraita*: **Although the Sages said that the rapist gives payment immediately, when he releases her she has no claim upon him.**^N The Gemara asks: **When he releases her? Can he release her?** It is prohibited by Torah law for him to do so. Rather, emend the *baraita* and say: **When she leaves, if she seeks to divorce him and demands a bill of divorce, she has no monetary claim upon him.** Similarly, if he died, the money of her fine offsets her marriage contract.^H The fine, which was the equivalent of the dowry of virgins, replaces her marriage contract. **Rabbi Yosei, son of Rabbi Yehuda, says: Even a rape victim has a marriage contract of one hundred dinars,**^N like the marriage contract of all non-virgin wives.

The Gemara asks: **With regard to what principle do they disagree?** The Gemara explains: **The Rabbis maintain: What is the reason that the Sages instituted a marriage contract for the woman? They instituted it so that she will not be inconsequential in his eyes, enabling him to easily divorce her.** Because divorcing her will cost money, he will not do so rashly. **And this woman whom he raped, he cannot release her by Torah law, obviating the need for a marriage contract. And Rabbi Yosei, son of Rabbi Yehuda, maintains: With regard to this woman too, although he cannot divorce her, he can torment her until she says: I do not want you.** When she initiates the divorce, he can divorce her. Therefore, the Sages instituted that she receives the marriage contract of a non-virgin to prevent him from doing so.

The mishna continues: **A rapist drinks from his vessel, and the seducer is not obligated to marry the woman he seduced. Rava from Parzakya said to Rav Ashi: Since the halakhot of a rapist and a seducer are derived from each other with regard to the sum of the fine,**

Perek III
Daf 40 Amud a

לְהָא מִיִּלְתָּא נְמִי לִיגְמָרוּ מִהֲדָרִי! אָמַר קְרָא: “מִהוּ יִמְהַרְנָה לוֹ לְאִשָּׁה” לוֹ – מִדְּעַתּוֹ.

for this matter too, marrying the woman against his will, let them be derived from each other. Rav Ashi replied that the verse says with regard to a seducer: “He shall pay a dowry for her to be a wife to him” (Exodus 22:15);^N “to him” means in accordance with his will.

NOTES

מִהוּ יִמְהַרְנָה – indicating that the seducer’s agreement is required. *Talmidei Rabbeinu Yona* maintain that the difference is whether the term “to him” appears at the beginning of a sentence, in which case there is no indication that his agreement is necessary, or whether it appears at the end of the verse, which indicates that his consent is required.

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