

Daf Notes

Insights into the Daily Daf

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Kesuvos Daf 39

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Daily Daf

Bogeres in the Grave

Abaye said: If one violates a woman and she later dies, he is exempt from paying the fine.

The *Gemora* comments: That which was obvious to Abaye was a matter of inquiry to Rava, for Rava inquired: Does a girl attain a state of *bogeres* in the grave or not (*the violated girl died and she would have become a bogeres before Beis Din issued a ruling on the violator*)?

The *Gemora* explains: If we say that she attains a state of *bogeres* in the grave, the fine would belong to her son (*if she has one; based on the Mishna (41b) which states that although the fine usually belongs to the victim's father, if she becomes a bogeres before the violator is found to be guilty, the fine belongs to her or her inheritor, namely, her son*). Or, perhaps, she does not attain a state of *bogeres* in the grave and therefore, the fine would belong to her father?

The *Gemora* challenges the facts for such an inquiry: Can a girl who died while she was still a *na'arah* give birth before her death? But Rav Bibi cited the following braisa in front of Rav Nachman: Three types of women are permitted to insert a wad into their bodies prior to engaging in marital relations in order to prevent conception. They are: A minor, a pregnant woman and a nursing woman. A minor is permitted because otherwise, she may become pregnant and die. A pregnant woman is

permitted because otherwise, she might become pregnant again, and the second fetus will crush the first one. A nursing woman is permitted because otherwise, she might be compelled to wean her child, resulting in his death.

The braisa continues: What age minor are we referring to? We are concerned when the minor is between eleven and twelve years old. If she is younger or older than that, she is not permitted to cohabit in that manner; these are the words of Rabbi Meir. The Chachamim disagree with the entire ruling and state that these women should cohabit in the regular manner and Heaven will have compassion on them (*becoming pregnant in these situations is highly unusual and therefore we prohibit them from utilizing and type of contraceptive measures*) as it is written [Tehillim 116:6]: *Hashem protects the fools. (It is evident that a minor cannot conceive; how then, could the na'arah have given birth?)*

Perhaps you will answer that she became pregnant while she was a *na'arah* and gave birth while still a *na'arah*; this cannot be the case, for Shmuel said: There are only six months between the time a girl becomes a *na'arah* until she becomes a *bogeres*.

The *Gemora* explains Rava's inquiry in a different manner: If we say that she attains a state of *bogeres* in the grave, the father would lose his right to the fine (*and the violator would keep the money*). Or

perhaps, she does not attain a state of *bogeres* in the grave and therefore, the fine would belong to her father?

Mar bar Rav Ashi explains Rava's inquiry differently: Does the father lose the right to the fine if his daughter died while she was a *na'arah* (in the same manner as he would lose the right if she became a *bogeres* while still alive)?

Rava's inquiry remains unresolved. (38b – 39a)

Mishna

The *Mishna* states: One who seduces pays three types of payments and one who violates pays four. One who seduces pays for embarrassment, the blemish, and the Torah mandated fine for seducing. One who violates also pays for the pain he inflicted.

What are the differences between one who violates and one who seduces? The violator is required to pay for the pain that he inflicted, and the seducer does not pay for pain. The violator is required to pay the fine immediately (*even if he marries her*), whereas the seducer pays the fine only when he sends her away. The violator is required to drink from his pot (*he must marry her*), whereas the seducer may send her away, if he desires.

How does the violator "drink from his pot"? He is required to marry her even if she is lame, blind or afflicted with boils. If, however, she committed adultery after the marriage or if she is unfit to marry into the congregation, he may not remain married to her, as it is written: *And she shall be to him as a wife*. She must be a woman that is fit for marriage to him. (39a)

Which Pain?

The *Mishna* had stated: The violator is required to pay for the pain that he inflicted.

The *Gemora* asks: What pain are we referring to?

Shmuel's father answered: We are discussing the pain of her being thrown to the ground before she was violated.

Rabbi Zeira asks: Accordingly, if he would have thrown her down onto silk, would there be no liability for pain? The *Gemora* proves from a *braisa* that this is not the case.

Rather, Rav Nachman says in the name of Rabbah bar Avuha: We are discussing the pain of the separation of her legs.

The *Gemora* asks: If so, a seducer should also be required to pay for this pain?

Rav Nachman answers in the name of Rabbah bar Avuha: A girl who is seduced is compared to a man who says to his fellow, "Rip my silks and you will be exempt from paying." (*By willing to be seduced, she is waiving her rights to the payment.*)

The *Gemora* objects to this line of reasoning: The payments do not belong to the girl; they belong to the father! She cannot waive these rights.

Rather, Rav Nachman says in the name of Rabbah bar Avuha: The smart women say that a girl who was seduced does not suffer any pain from the separation of her legs.

The *Gemora* explains that even though, she does experience some pain, it is deemed insignificant, and is offset by the pleasure she receives. (39a – 39b)

Preventing the Marriage

The *Mishna* had stated: The violator is required to pay the fine immediately (*even if he marries her*), whereas the seducer pays the fine only when he sends her away.

The *Gemora* asks: How can he send her away if he didn't marry her yet (*once he marries her, there is no fine*)?

Abaye answers: The *Mishna* means that he pays when he decides that he will not marry her.

The *Gemora* cites the following *braisa* supporting this explanation: Although they said that the seducer only pays the fine if he decides not to marry

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A SHORT CONCEPTION

her, he is required to pay for embarrassment and the blemish immediately. In cases of violation and seduction, the girl and the father can prevent the marriage from occurring.

The *Gemora* provides Scriptural sources to the fact that she and the father can prevent the marriage from occurring by a case of seduction, and the *Gemora* provides a Scriptural source that she can prevent the marriage from taking place by a case of violation.

The *Gemora* asks: How do we know that the father can prevent the marriage from taking place by a case of violation?

Abaye answers: It is because it is illogical to allow the sinner to profit from his sin (*because the father could have prevented this marriage from taking place before the violation, it would stand to reason that he can still prevent it*).

Rava answers: It is derived through a *kal vachomer* from a case of seduction. (39b)

Fine and her Kesuvah

The *Gemora* cites a *braisa*: Although they said that the violator is required to pay the fine immediately (*to the father*), if she demands a divorce later, she does not receive a *kesuvah* payment. If he died before her, the money which was paid for the fine is regarded as her *kesuvah* payment. Rabbi Yosi the son of Rabbi Yehudah says: She does receive a *kesuvah* payment of a *maneh*.

The *Gemora* explains the reasoning for their dispute: The reason that the Rabbis instituted a *kesuvah* (*an obligation for the husband or his estate to pay the wife a certain amount of money in case he divorces her or dies*) is in order for it to be not so light in his eyes to divorce her; the violator cannot divorce her anyway, so there is no reason for a *kesuvah* payment. Rabbi Yosi the son of Rabbi Yehudah maintains that the violator can torture his wife until she says that she does not want him any longer (*so there is still a reason for the kesuvah payment*). (39b)

The *Gemora* stated that perhaps one can say that a girl became pregnant while she was a *na'arah* and gave birth while still a *na'arah*; this cannot be the case, for Shmuel said: There are only six months between the time a girl becomes a *na'arah* until she becomes a *bogeres*.

The Acharonim ask from this *Gemora* on a teshuva written by the R"Y Mintz, which is quoted in the Rama (E"Y; 4; 14). He states: A woman who became pregnant from her husband towards the end of the month of Sivan, and she gave birth in the beginning of Kislev, even though there are only five months in between (*Tammuz, Av, Elul, Tishrei and Cheshvan*), we are not suspicious that she became pregnant beforehand because there are a total of seven months from conception to the birth and that is sufficient; the child is regarded as a seven-month baby.

If so, it should be possible for a *na'arah* to conceive and give birth before she becomes a *bogeres*? She can give birth in five months and two days!

The Chelkas Mechokeik answers that according to the R"Y Mintz, a girl is not considered a *na'arah* for a complete six months, but rather, she would become a *bogeres* after four months and two days; as long as she became a *na'arah* at the end of one month – four months and two days later, she becomes a *bogeres*.