

Captivity, Trauma, and Halakhah

Session IV: Testing the Limits of "בשבויה הקלוי" How Medieval Responsa Reframed the Talmudic Discussion

I. The Talmud Draws a Line

1. Mishnah Ketubot 2:9.

A woman who was taken into custody by gentiles because of a financial matter remains permitted to her husband.	האשה שנחבשה בידי גוים על ידי ממון מותרת לבעלה
If she was taken into custody on a capital charge, she is prohibited to her husband.	על ידי נפשות אסורה לבעלה

Rashi on Ketubot 26b

If she was imprisoned because of money, she is permitted to her husband – For they fear losing their money, and therefore they do not violate her sexually.	עי ממון מותרת לבעלה - דמרתתי להפסיד ממון ואינן מפקירין אותה.
If she was imprisoned because of a capital charge	עי נפשות - שהיתה נידונה למות.
She is prohibited to her husband, because once they treat her as sexually available, we are concerned that she may eventually have consented to one of them.	אסורה לבעלה - דהואיל ונוהגין בה הפקר חוששין שמא נתרצתה באחד מהן.

2. Babylonian Talmud, Ketubot 51b

a) The Father of Samuel said: The wife of an Israelite who was raped is forbidden to her husband, for we are concerned that her beginning was under coercion but her end was with consent.	אמר אבוב דשמואל: אשת ישראל שנאנסה - אסורה לבעלה, חיישין שמא תחלתה באונס וסופה ברצון.
b) Rav challenged the father of Samuel: But we write in the ketubbah: If you are taken captive, I will redeem you and restore you to me as my wife.	איתיביה רב לאבוב דשמואל: אם תשתבאי אפרקינך ואותבינך לי לאינתו!
c) He was silent.	אישתיק.
d) Rav applied to Abba of Samuel the verse: Princes refrained from speaking, and laid their hand upon their mouth.	קרי רב עליה דאבוב דשמואל: שרים עצרו במלים וכף ישימו לפיהם.
e) What could he have said? In the case of a captive woman, the Sages were lenient.	מאי אית ליה למימר? בשבויה הקילו.
f) According to Abba of Samuel, in what case does the Torah permit a woman who was raped?	ולאבוב דשמואל, אונס דשריא רחמנא היכי משכחת לה?
g) When witnesses testify that she cried out from beginning to end.	כגון דקאמרי עדים שצווחה מתחלה ועד סוף.

h) This disagrees with Rava, who said: Whenever her beginning was under coercion and her end with consent—even if she says, Leave him alone! Had he not approached me, I would have hired him—she is permitted.	ופליגא דרבא, דאמר רבא : כל שתחלתה באונס וסוף ברצון, אפי' היא אומרת, הניחו לו, שאלמלא (לא) נזקק לה היא שוכרתו - מותרת,
i) Why?	מט?
j) Because evil inclination clothed her.	יצר אלבשה.

3. Babylonian Talmud, Ketubot 51b

Rav Yehudah said: <i>These women who were abducted by brigands are permitted to their husbands.</i>	אמר רב יהודה : הני נשי דגנבו גנבי - שריין לגובריהו.
The Sages said to Rav Yehudah: But they bring the brigands bread!	אמרי ליה רבנן לרב יהודה : והא קא ממטיאן להו נהמא!
He replied: They do so out of fear.	מחמת יראה.
They challenged him further: But they send them arrows!	והא קא משלחן להו גירי!
He replied: They do so out of fear.	מחמת יראה.
However, if they abandoned their husbands and went to the brigands of their own accord, they are prohibited to their husbands.	ודאי, שבקינהו ואזלן מנפשייהו - אסירן.

II. The Rishonim Challenge the Line

4. The Stringent Position (Or Zaru'a)

She is prohibited, for a woman imprisoned under threat of death is forbidden to her husband. The Sages assessed the mind of a woman and concluded that she will certainly consent, even verbally, in order to save her life....Since they could not release her for an entire month, we must fear that she eventually consented to one of them.

5. The Lenient Position (R. Peretz, R. Meshullam, R. David)

When she was seized for the purpose of conversion, they would not violate her, for according to their religion the rape of a virgin was punishable by death....A woman who converted under persecution, and fled immediately when the opportunity arose, is permitted to her husband—even if he is a Kohen.

6. Hagahot Maimoniyot (R. Samson b. Avraham)

If both husband and wife converted together and later repented, the wife is permitted to return to her husband.

7. Maharik (Responsum 160) – Italy 15th century

Case: Case Presented to Maharik (Responsum 160)

A Kohen's wife had repeatedly urged her husband to leave his position as manager of an estate. After months of disagreement, she left home with their young daughter and went to the house of a Christian neighbor. Her husband found her there speaking with the deputy bishop, priests, and Christian women, who believed she wished to convert to Christianity. She explained that she no longer wished to continue her husband's occupation and refused to return home, saying that he had repeatedly broken his promises to change.

The deputy governor assured the husband that nothing would be done to her by force and that she would spend forty days in a convent before any decision about conversion was finalized. She was taken there that afternoon.

The very next morning she changed her mind and asked to return home, explaining: I am the wife of a Kohen. If I remain here another day or two, my husband will never be able to take me back. The governor accepted her request, returned her to her husband, and

personally urged him not to reproach or mistreat her. She returned home that evening in repentance.

8. Selections from Maharik's responsa:

- a) She was never secluded with ordinary men, but only in the presence of the deputy boshop, his priest, other officials, and Christian women. In such circumstances, we cannot invoke the presumption that most gentiles are sexually licentious, for these officials had both religious and legal reasons to prevent any misconduct, and anyone violating these rules faced severe punishment. Since even an actual captive is prohibited only because of the concern that most gentiles are sexually licentious, that concern certainly does not apply here. Therefore, she remains permitted.
- b) Since the circumstances themselves indicate that she originally intended to convert, and for that reason she went there, but later changed her mind. Nevertheless, she did not enter seclusion there for the purpose of sexual relations. Therefore, in my opinion, she should not be regarded as a captive or as a woman imprisoned by gentiles in a manner that would render her prohibited to her husband.
- c) The Sefer Mitzvot Katan (Semak) of Zurich likewise cites Rabbi Isaac of Corbeil: *If a Kohen and his wife were forced to convert, and immediately after the persecution ended they returned and repented, her case is not comparable to that of a woman imprisoned under threat of death, who is prohibited. That ruling applies only where her captors never intended to release her, in which case they would certainly violate her. But where they were prepared to release her peacefully if she converted, then, even if she did convert and later returned, she is certainly not prohibited.* Thus explained Rabbi Isaac of Corbeil.
It is therefore explicit that Rabbi Isaac of Corbeil, one of the later authorities, held that when a woman is not held under the threat of death, she is not prohibited even to her husband, who is a Kohen.

9. Terumat HaDeshen 15th century

– The Captives of Austria

In 1420–1421, Duke Albert V of Austria launched a systematic persecution of the Jews of Austria (the Vienna Gesera). The Jews were accused of aiding the Hussites and of desecrating the Host. Their property was confiscated, synagogues were closed, and the Jewish communities of Vienna and the surrounding towns were destroyed. Many Jewish men and women were arrested and imprisoned. Husbands and wives were separated and held in different houses or prisons. Their captors repeatedly pressured them to convert to Christianity, using imprisonment, torture, and the threat of execution. Some accepted baptism under duress, while others resisted. On March 12, 1421 (17 Adar 5181), approximately 200–250 Jews who refused to convert were burned alive outside the walls of Vienna, while others were expelled from Austria.

After the persecutions ended, many of the women who had converted under duress returned to the Jewish community and sought to resume married life with their husbands. Their cases were brought before the leading halakhic authorities of the generation. Despite the complexity of the circumstances, the rabbis ruled unequivocally that these women were permitted to return to their husbands.

10. Selections from Terumat HaDeshen responsa

- a) We shall now explain the reasoning that led the leading authorities to permit each of these cases.
- b) Those women who were held individually in captivity and escaped in purity by fleeing from imprisonment to their Israelite husbands were certainly permitted, as the *Semak* wrote above: 'There is no greater case of one imprisoned for the sanctification of God's Name than this.' They were pressured day and night to convert, and were often subjected to torture in an attempt to turn them away from their faith....
- c) However, it does not seem at all appropriate to permit a woman who actually converted, even if she returned immediately upon finding an opportunity to escape...
- d) ...for she should be prohibited because she had been imprisoned under threat of death, alone, for several days.
- e) Those women who converted together with their husbands, or whose husbands had converted before them and they did not remain behind after their husbands, are explicitly permitted in the responsum of the Rashba cited above—even if they converted deliberately, and certainly if they did so under compulsion—for their husbands protected them. We know of no authority who explicitly disagrees with this reasoning.
- f) However, regarding those women who remained for weeks or months even after they had an opportunity to escape, and whose husbands were not with them, I do not know how they can be permitted. Since they had the opportunity to flee and nevertheless did not leave their state of impurity to return to purity, they must be regarded as acting willingly, and I know of no authority who permits such a case.

11. Darkei Moshe (Short), Even Ha-Ezer 7:13

- a) It seems to me that it is possible that the great authorities who permitted these women did not do so according to the strict law, but because of the exigencies of the time. They feared that, God forbid, if women knew they would never be allowed to return to the husbands of their youth, they would abandon all restraint. Therefore, they ruled leniently.
- b) But can one really be lenient where there is concern for a biblical prohibition?
- c) It seems to me that they relied on the principle stated in the Talmud (Ketubot 3a): 'Whoever betroths a woman does so subject to the authority of the Rabbis,' and the court has the power to annul the marriage retroactively. She is therefore regarded as if she had never been married, and even if she had sexual relations, she would remain permitted to her husband. This is my opinion.