

מעלה עשו ביוחסין –

They set higher standards in regards to Kohannic lineage

OVERVIEW

The גמרא asked that the ruling of רב (אין אוסרין על היחוד) contradicts the ruling of ר' יהושע (according to זעירי) that אינה נאמנת. The גמרא answered that there is no contradiction. The ruling of ר"י is concerning (a subsequent) marriage to כהונה, therefore she is נאמנת, since מעלה עשו ביוחסין; however the ruling of רב is not concerning marriage to כהונה. It follows therefore that the leniency of רב is concerning an אשת איש. An אשת איש who was מתייחד is not לבעלה¹ because איסור כהונה does not presume ביאה. It is not conceivable that רב is discussing a פנויה, for even if a פנויה was נבעלה, the only possible (subsequent) איסור is to a כהן;² and we just concluded that רב is not discussing איסור כהונה.

The complete statement of רב (as cited in our גמרא) is מלקין על היחוד ואין אוסרין על היחוד. The apparent understanding is that these two ruling are discussing the same case; if there was a יחוד, בי"ד will give מלקות (for this act of פריצות); however there will be no subsequent איסור ramifications. תוספות will ask that it seems from another גמרא that these two rulings are discussing different cases, which seems illogical.

תוספות asks:

תימה דמשמע דאין אוסרין על היחוד איירי באשת איש ולא בפנויה -

It is astounding! For this answer of 'מעלה עשו ביוחסין', indicates that the ruling of 'אין אוסרין על היחוד' is discussing a case of a married woman and it is not discussing a case of an unmarried woman. The גמרא reconciles the rulings of רב and ר"י; that the reason ר"י is strict is because in his case there are ramification for marrying into כהונה (and by כהונה we are more strict, since מעלה עשו ביוחסין); however in the case of רב, there are no such ramifications (therefore רב is lenient). This answer is valid if רב is discussing the יחוד of an אשת איש and the (only) concern is whether she is permitted to return to her husband. However, if רב is discussing the יחוד of a פנויה, then the concern whether there was ביאה or not, is (also only) in reference to whether she may marry a כהן. This is precisely the same concern as in the case of ר"י! In fact it is (almost³) the exact same case! Why is ר"י strict and רב lenient!? We must therefore conclude that אין אוסרין על היחוד is discussing an אשת איש. However there is a difficulty with this –

ובסוף קידושין (דף פא,א ושם) מוקי מלקין על היחוד דוקא בפנויה -

¹ An אשת איש that was מזנה ברצון מן התורה is לבעלה.

² There is no איסור in marrying a woman who was נבעלה (even outside of marriage). Even a כהן may marry a נבעלה provided that she was not נבעלה to a כהן.

³ In the case of ר"י she admits that (לכשר) נבעלתי; in the case of רב she claims לא נבעלתי. See תוספות ישנים.

'מלקין על' there establishes that the ruling of רב אשי, מסכת קידושין For in the end of
– פנויה is only specifically in the case of a היחוד'

אבל באשת איש לא דאתה מוציא לעז על בניה⁴ -

However if there was **יחוד by an אשת איש**, there is no **מלקות**; the reason is as the **גמרא** there states **for you will be spreading (false) rumors about her children.** The question is since the opening ruling of **רב** that **היחוד על**, **מלקין** is discussing a **פנויה** and not an **אשת איש**, it would seem obvious that the ruling immediately following, of **היחוד על** **אשת איש** is a continuation of the former ruling and is also discussing a **פנויה** and not an **אשת איש**. However our **גמרא** indicates that **היחוד על** **אשת איש** is discussing only an **אשת איש** and not a **פנויה**!

anticipates a possible (partial) solution to this question and rejects it:

ואפילו למר זוטרא דמלקין ומכריו באשת איש -

And (the question stands) **even according to מר זוטרא** who disagrees with **אשי** and maintains **that even by an אשת איש we are מלקין** for **יחוד**, **and** in order to prevent **ביאה** (not **יחוד**), **we announce** that we only know that there was **יחוד**. Seemingly according to **מר זוטרא**, there is no difficulty; since **מלקין על היחוד** refers to an **אשת איש**, so does **היחוד על** **אשת איש** refer to an **אשת איש**. This is seemingly in agreement with the **תירוק** of the **גמרא**. Nevertheless **תוספות** rejects the solution (even) according to **מר זוטרא**; for even **מר זוטרא** – **מודה דבפנויה נמי איירי -**

agrees that the ruling of **היחוד על** **מלקין** **is also discussing** the case of a **פנויה** as well as an **אשת איש**.⁵ He is only adding to **רב אשי**, that not only does **היחוד על** **מלקין** apply to a **פנויה** it can even apply to an **אשת איש**. It should therefore follow, that the **סיפא** of the ruling **היחוד על** **אשת איש** is also discussing a **פנויה** (as well as an **אשת איש**), just like **היחוד על** **מלקין**. The question remains: if **היחוד על** **אשת איש** is referring to a **פנויה** (also), then the only concern by a **פנויה** is whether she remains **לכהונה**; if we maintain **עשו ביוחסין** for **ר"י**, it should apply to the case of **רב** as well.

answers:

ואומר רבינו תם דאף על גב דמלקין על היחוד איירי בפנויה -

And the ר"ת says that even though that the ruling of היחוד על **מלקין** **is** (certainly) **discussing** the case of a **פנויה**, however the ruling of –

אין אוסרין על היחוד לא איירי אלא באשת איש -

'אין אוסרין על היחוד' is not discussing the case of a **פנויה** (according to **זעירי**) **but rather** it is discussing a case of an **אשת איש**. It is the view of the **ר"ת** that on account of the difficulty of **תוספות** question, we are forced to split the two rulings of **רב**. The first ruling of

⁴ If an **אשת איש** who was **מתיחד** with a stranger would receive **מלקות**, it would be perceived that she was **מזנה**. If it is assumed that she was **מזנה**, then any (ensuing) children will be looked on as **פסולים**. They are either from the **בועל** (in which case they are **ממזרים מה"ת**) or (even) from her husband (in which case they are **לאווין**, for she is forbidden to her husband).

⁵ See 'Thinking it over'.

(מר זוטרא according to אשת איש and also an פנויה is definitely concerning a מלקין על היחוד); however the second ruling of ואין אוסרין על היחוד is only concerning an אשת איש. However by a אסורה לכהונה⁶ the ruling, according to ר"י (according to זעירי), would be that she is of a יחוד

תוספות has an additional question:

ואם תאמר והא אמרינן בפרק בתרא דנדרים (דף צא,ב) -

And if you will say; that we have learnt in the last פרק of נדרים -

גבי ההיא נואף⁷ דעייל לגבה דההיא איתתא -

concerning this adulterer who entered the house of this woman -

אמר ליה נואף לא תיכול מינהון דטעמינהו חויה -

The נואף said to the husband do not eat from those foods for a snake tasted them and poisoned them. The husband then asked if he is permitted to live with his wife, since the נואף may have had relations with her –

אמר רבא איתתא שריא אם איתא דעבד איסורא ניחא ליה דלימות -

רבא ruled that the woman is permitted to be with her husband. רבא gave a reason for his ruling, for **if it happened that he transgressed with the woman he would have preferred that the husband die**; he would not have prevented him from eating the poisonous fruit. This proves that there was no ביאה.

משמע דאי לאו האי טעמא היתה נאסרת על ידי יחוד -

It seems from the fact that רבא required a reason to permit the woman to her husband that if there was no such reason she would be אסורה לבעלה, just **through the יחוד** alone. This contradicts what has been said up to now that היחוד על היחוד אין אוסרין על היחוד. אשת איש. There is no need for any additional proofs to permit the husband and wife to remain together.

תוספות answers:

ויש לומר דנואף שאני -

And one can say that by a נואף it is different. There is more suspicion by a נואף than by a יחוד with a 'regular' person. Therefore רבא required additional proof that there was no ביאה.

תוספות offers a different interpretation:

והרב רב יוסף דשליטן תירץ דאין אוסרים על היחוד איירי בפנויה כמו מלקין על היחוד -

⁶ The reason why by a יחוד of a פנויה she is אסורה לכהונה (for we assume there was [לנתין ולמזור] ביאה), and by a יחוד of an אשת איש she is מותרת לבעלה (we assume there was no ביאה), is (the answer of our גמרא) that מעלה עשו ביוחסין. In reality we assume there was no ביאה by a יחוד; however we will not allow her to marry a כהן, since מעלה עשו ביוחסין. The simple explanation is that the פנויה can marry anyone else (besides a כהן); the אשת איש however will become אסורה לבעלה. We do not wish to do this, since it is based only on a ספק.

⁷ The גמרא there relates that when he was (hiding) in the house he noticed that a poisonous snake ate some of the food in the house. When the נואף realized that the husband returned home the נואף appeared.

אין אוסרין original question **that the ruling of** **אין אוסרין** **is concerning a פנויה just like** the ruling of **היחוד** **is concerning a פנויה**. This interpretation removes original question; how is it possible that **היחוד** is discussing a **פנויה** and **אין אוסרין** is concerning an **אשת איש**. According to ר"י דשליטן, they are both concerning a **פנויה**.⁸ However there still remains the question, that if **היחוד** **אין אוסרין** is concerning a **פנויה** why is this any different than the case of ר"י where מעלה עשו ביוחסין.

– אין אוסרין על היחוד explains that the ruling of תוספות

ולא איירי לכהונה אלא אין אוסרין אותה לבנו כשתתיחד עם אביו –

And we are not discussing her eligibility to marry into **כהונה**; for she is indeed **אין אוסרין על היחוד** that **רבי** teaches us **that we do not prohibit her** from marrying **his son when she was מתייחד with the father**. If she was **מתייחד** with יעקב, she may marry the son of יעקב, for we do not assume that there was **ביאה**. This rule is necessary (specifically) –

לרבי יהודה דאסר באנוסת אביו (יבמות צז,א):

according to ר"י who prohibits the relationship of a person with a woman who was (even merely) **forced by his father**. One may not marry his father's wife (מדאורייתא) if they were legally married. However if a father had a forced relationship with a woman; there is no **איסור** for the father's son (from a different marriage) to later marry her, since she is not the father's wife. **ר"י** however maintains that there is an **איסור מדאורייתא** even by **אנוסת אביו**. **רבי** is teaching us that if there was merely **יחוד** with the father, the son may marry this woman (who was **מתייחד** with his father). We do not assume that there was any **ביאה**, just **יחוד**.⁹

SUMMARY

The ruling of **היחוד** **מלקין על היחוד** is concerning a **פנויה** (and an **אשת איש** according to **מר** (זוטרא); however the ruling of **אין אוסרין על היחוד** is concerning only an **אשת איש** להתירה. A **אשה** that was **מתייחד** with a **נואף** would need additional proof להתירה לבעלה. **הר"ר יוסף משליטן** maintains that **אין אוסרין על היחוד** is to permit a son to marry a woman who was **מתייחד** with his father [(even) according to **ר' יהודה**].

THINKING IT OVER

מר assumes that **היחוד** **מלקין על היחוד** refers to a **פנויה** (as well as to an **אשת איש**).¹⁰ Why does **מר** assume this? Perhaps **מר** maintains that **מלקין על היחוד** refers only to an **אשת איש**?!

⁸ As far as the question from **נדרים** is concerned, the answer will be the same, that **נואף שאני**.

⁹ In this case there is no **מעלה עשו ביוחסין**, since we are not dealing with a **כהן** (see [however] footnote # 6).

¹⁰ See footnote # 5.