**ואין אוסרין על היחוד לימא דלא כרבי יהושע –**

**And we do not prohibit** a woman **on account of seclusion; should we say that** this ruling **is not according to ר"י.**

Overview

The גמרא cites the opinion of רב; if a married woman secludes herself with a stranger, she is permitted to return to her husband.[[1]](#footnote-1) We do not assume that she was נבעלה [ברצון] (which would have prohibited her from returning to her husband). We derive from the ruling of רב that a יחוד does not presume a ביאה. The גמרא claims that this ruling is incompatible with the ruling of ר"י according to זעירי who maintains that מדברת means (only) נסתרה – יחוד, and not נבעלה. In this case of יחוד it is the opinion of ר"י that an unmarried woman becomes אסורה לכהונה because we assume that נבעלה (לנתין ולממזר). It is apparent that ר"י maintains that by a יחוד there is a presumption of ביאה; not like רב. [[2]](#footnote-2)

-------------------

תוספות asks:

**תימה לרבי שמשון בן אברהם דלזעירי (נמי) דאמר נסתרה -**

**The רשב"א is perplexed** by the sגמרא' assumption that the דין of אין אוסרין על היחוד is incompatible with the view of ר"י according to זעירי, **for (even) according to זעירי who maintains** that מדברת means **נסתרה;** there were no עדים שנבעלה, nevertheless the משנה –

**איירי כגון דמודה היא שנבעלה -**

**is discussing** a case where **for instance she admits that she was נבעלה** (as תוספות will immediately prove). Therefore there is no comparison to the דין of רב. רב maintains that אין אוסרין על היחוד, in a case where (the [married] woman maintains that) there was no ביאה, merely יחוד; and זעירי will agree (even according to ר"י) that אין אוסרין על היחוד. The משנה is discussing a case where the (unmarried) woman claims לכשר נבעלתי; it is (only) then that ר"י maintains that she is not believed.[[3]](#footnote-3) The משנה is not discussing a case of יחוד, but rather a case of ביאה.

תוספות will now prove that (even according to זעירי) when ר"י states הרי זו בחזקת בעולה וכו', it is only in a case where she claims לכשר נבעלתי, but not in a case where she claims לא נבעלתי:

**דאי אמרה לא נבעלתי אם כן הוי ספק ספיקא - [[4]](#footnote-4)**

**For if she claimed לא נבעלתי,** she would be believed **for then, this** claim of לא נבעלתי **makes it a doubt within a doubt;** one doubt is if she was נבעלה at all (then she is certainly כשרה לכהונה), and even if she was נבעלה, there still remains a doubt that perhaps she was נבעלה to a כשר (and she is still כשרה לכהונה). In the case of a ספק ספיקא we know –

**דמכשיר רבי יהושע כדאמר לקמן[[5]](#footnote-5) התם ספק ספיקא -**

**that ר"י would approve** her marrying into כהונה **as** the גמרא **states later ‘there it is a ספק ספיקא’** and therefore ר"י is מכשיר. It is evident from that גמרא that in the case of נסתרה the woman claims נבעלתי לכשר (otherwise it would be a ספק ספיקא and she would be כשרה). The question remains; there is no contradiction between ר"י and רב. רב maintains אין אוסרין על היחוד in a case of יחוד only. However ר"י is discussing a case where we know there was ביאה, by her admission that נבעלתי (לכשר). It is not merely a case of יחוד.

תוספות answers:

**ויש לומר דלעולם איירי דקאמרה לא נבעלה[[6]](#footnote-6) -**

**And one can say that really** the משנה **is discussing** a case **where she claims that she was not נבעלה,** and the reason she is not believed (according to ר"י) even though it is (seemingly) a ספק ספיקא is because –

**וחשיב ליה חדא ספיקא דאין אפוטרופוס לעריות -**

**It is considered as one ספק**; not a ספק ספיקא. It is assumed that she was נבעלה. The only ספק is if it was לכשר or לנתין ולממזר. The reason we consider her as נבעלה is **for there is no ‘guardian** in regards to **illicit relationships’**; we assume that if she was נסתרה, there was a ביאה. The only ספק is if it was לכשר or לנתין ולממזר. The contradiction between רב and ר"י is now apparent; רב maintains that אין אוסרין על היחוד, that יחוד does not presume ביאה. However ר"י maintains that if she was נסתרה it is assumed that she was also נבעלה.

תוספות has a difficulty with this explanation:

**אבל קשה דבהדיא משמע בריש פרק שני (לקמן טז,א) דאיירי בנבעלת -**

**However there is a difficulty for it is clearly indicated in the beginning of the second פרק that** according to זעירי the משנה **is discussing** a case where it is known (through her admission) that **she was נבעלה –**

**דקאמר**[[7]](#footnote-7) **הניחא לזעירי דאמר מאי מדברת נסתרה -**

**For** the גמרא there states: ‘**according to זעירי it is understood** that there is a מיגו (issue) **for** זעירי **maintains that** the meaning of **מדברת is נסתרה;** therefore there is a מיגו in the case of מדברת **–**

**דמגו דאי בעיא אמרה לא נבעלתי מהימנא[[8]](#footnote-8) כולי -**

**For ‘since’ if she would have claimed, ‘I was not נבעלה she would have been believed, etc.**; therefore she is believed when she claims לכשר נבעלתי.It is evident from that גמרא that in the case of מדברת she is claiming לכשר נבעלתי, and not לא נבעלתי. If she would have claimed לא נבעלתי she would be נאמנת. The original question of תוספות returns. There is no contradiction between רב (who is discussing a case of יחוד) and the case of ר"י where there was ביאה; as the woman claims נבעלתי (לכשר).

תוספות answers:

**לכך נראה דפריך לזעירי דבספיקא חדא אסרינן לה -**

**Therefore it seems that** the **challenge** of theגמרא is that **according to זעירי,** ר"י **forbids her** to marry into כהונה (even) **on** the basisof **one ספק** (whether she was נבעלה to a כשר or to a נתין וממזר); this is incompatible with רב –

**והא יחוד דאשת איש דספיקא חדא היא ואין אוסרין על היחוד -**

**For the יחוד of an אשת איש** with a stranger, **which is** also (only) **one ספק;** whether or not there was ביאה, **and we do not forbid her** to her husband **because of the יחוד.** The contradiction between רב and ר"י is that ר"י invokes an איסור on the basis of a ספק; while רב invokes no איסור on the basis of a ספק.[[9]](#footnote-9)

תוספות remains somewhat dissatisfied with this answer:

**וקצת קשה דלכאורה נראה דיחוד איחוד פריך –**

**And it is somewhat difficult** to accept this interpretation **for it seemingly appears** from the גמרא (as תוספות will shortly prove) **that the challenge** was **from** one case of **יחוד on** another case of **יחוד;** from the case of יחוד by רב (where אין אוסרין וכו') to the case of יחוד by זעירי (of ראוה מדברת) where ר"י is אוסר על היחוד. However, since we have proven that (even) in the case of נסתרה she is claiming (לכשר) נבעלתי; it is not a situation of (merely) יחוד by זעירי, but rather a case of a ספק to whom she was נבעלה.

תוספות will now explain why it is assumed that the גמרא asked מיחוד איחוד and not מספק אספק.

**מדפריך לזעירי ולא לרב אסי:**

**since the גמרא challenges** (only) **זעירי and not רב אסי.** If the question is מספק אספק (as תוספות [reluctantly] concluded), then the same question could be asked according to רב אסי. According to רב אסי, in a case where ראוה שנבעלה and there is a ספק as to whom, ר"י maintains that she is אסורה מספק. This would seemingly contradict the statement of רב that אין אוסרין על היחוד; that we are not אוסר on the basis of a ספק. The same question that is asked on זעירי can be asked on רב אסי, if the question is מספק אספק. If, however, the question would be מיחוד איחוד, then it is understood that the question cannot be on רב אסי, because רב אסי maintains that מדברת means נבעלה, which is certainly not יחוד. The question would be only on זעירי who interprets מדברת to mean נסתרה. It could have meant (only) יחוד, were it not for the גמרא in פרק שני which indicates that she is claiming לכשר נבעלתי and not לא נבעלתי.

Summary

Originally תוספות assumes that (according to זעירי) in the case of ראוה מדברת, the woman claims לא נבעלתי. The conclusion (based on the second פרק) is that she claims לכשר נבעלתי. תוספות concludes that the contradiction between ר"י (according to זעירי) and רב is in regards how to deal with a ספק (איסור). רב maintains אין אוסרין על היחוד, that a ספק (ביאה) is מותר, while ר"י maintains that a ספק ביאה לנתין ולממזר is אסורה. It is not clear why the same question does not apply to (ר"י according to) רב אסי.

Thinking it over

1. Is there any difference whether we are גורס like תוספות that 'דאי אמרה לא נבעלתי מהימנא'; or as our גירסא, which is, that כי אמרה (לכשר) נבעלתי מהימנא?[[10]](#footnote-10)

2. Originally תוספות maintained that she is claiming לא נבעלתי.[[11]](#footnote-11) How can we reconcile this with our משנה, where she states 'איש פלוני וכהן הוא'; she does not say לא נבעלתי?![[12]](#footnote-12)

3. In the הוה אמינא of תוספות that the question (on זעירי) was יחוד איחוד; why indeed did not the גמרא ask a similar question of ספק אספק (even) according to רב אסי?[[13]](#footnote-13)

4. Initially תוספות assumed that she must be saying לכשר נבעלתי, for if she claimed לא נבעלתי she would be מותר, since it is a ספק ספיקא.[[14]](#footnote-14) However if she is believed to claim לא נבעלתי then she should also be believed that לכשר נבעלתי for she has a מגו to claim לא נבעלתי![[15]](#footnote-15)

1. See following תוספות ד"ה מעלה, that רב is discussing a case of an אשת איש. [↑](#footnote-ref-1)
2. The contradiction is (even) somewhat magnified. ר"י maintains that not only is there a presumption of ביאה by יחוד, but also a presumption of נבעלה לנתין ולממזר. [↑](#footnote-ref-2)
3. תוספות maintains (originally) that the contradiction between רב and ר"י is concerning יחוד. תוספות does not want to interpret that the contradiction is concerning how we rule by a ספק; that רב is lenient by a ספק (יחוד) and ר"י is strict by a ספק (ביאה). תוספות asserts later that there is a difficulty in assuming that this is the contradiction. One reason may be that we cannot compare the ספק of ביאה by יחוד to the ספק of נתין וממזר by a ודאי ביאה. It should be borne in mind however, that in either case there is only one ספק. If there was ביאה in the case of רב (no matter with whom) she is אסורה לבעלה. See later in this תוספות (footnote # 9) and ‘Thinking it over’ # 3. [↑](#footnote-ref-3)
4. See ‘Thinking it over’ # 4. [↑](#footnote-ref-4)
5. דף יד,א. The גמרא there cites an opinion of ר"י in another משנה (concerning אלמנת עיסה) which (seemingly) contradicts his opinion in our משנה that the woman is אינה נאמנת. The גמרא resolves the contradiction by stating that אלמנת עיסה is a ספק ספיקא and therefore even ר"י agrees that she is מותרת. The case of אלמנת עיסה is discussed at length in the גמרא [and תוספות] there. [↑](#footnote-ref-5)
6. See ‘Thinking it over’ # 2. [↑](#footnote-ref-6)
7. The גמרא there maintains that ר"י admits to ר"ג ור"א that a certain type of מגו (which is mentioned in פרק ב') is effective; but not the type of מגו that ר"ג ור"א maintain in the first פרק. The גמרא then attempts to discern where there is an effective מגו in the first פרק (according to ר"ג ור"א). The גמרא concludes that according to זעירי, there is an effective מגו in the case of ראוה מדברת. [↑](#footnote-ref-7)
8. In our text the גירסא is: 'מגו דאי בעי אמרה לא נבעלתי וקאמרה נבעלתי מהימנא'. The word 'מהימנא' is written adjacent to וקאמרה נבעלתי and not as in תוספות גירסא, near the words לא נבעלתי. See ‘Thinking it over’ # 1. [↑](#footnote-ref-8)
9. In this answer תוספות disregards any differences between the types of ספיקות. See footnote # 3. [↑](#footnote-ref-9)
10. See footnote # 8. See רש"ש. [↑](#footnote-ref-10)
11. See footnote # 6. [↑](#footnote-ref-11)
12. See אילת השחר. [↑](#footnote-ref-12)
13. See footnote # 3. [↑](#footnote-ref-13)
14. See footnote # 4. [↑](#footnote-ref-14)
15. See פנ"י. [↑](#footnote-ref-15)