

# The Beautiful Captive Woman

## Introduction

This week’s Torah portion, *Ki Tetze*, includes a passage that shocks modern sensibilities:

When you take ... your enemies ... captive, and you see among the captives a woman of beautiful form (אִשָּׁה יְפֵת-תָּעַר), and you desire her, you may take her to yourself as a wife. Then you shall bring her into your house, and she shall shave her hair, let her nails grow, and discard her captive’s clothing. She shall spend a month in your house weeping for her father and mother. After that, you may go unto her and possess her, and she shall be your wife. But if you no longer desire her, you must release her outright. You may not sell her for money. Since you had your will with her, you shall not enslave her. [Deuteronomy 21:11-14]

Torah was ahead of its time. Custom was to treat captive women as sex slaves, servants, objects. It still is, sadly, in many parts of the world.

## Does the Torah approve of this behavior?

No. Torah only grudgingly tolerates practice and tries to change soldier's mind by providing disincentives:

- Soldier must marry her or release her.
- She must discard her captive’s clothing:
  - Enemy women dressed seductively during wars to ensnare soldiers. [Sifrei Devarim 213:1]
- She must make herself unattractive (head shaven, long nails, plain clothing).
- Soldier must wait a whole month before marrying her (cooling off period).

-She must live in his house, so he has to see her crying and looking unattractive every day, all the time.

The Torah indirectly warns of dire consequences if this practice is followed. Indeed, it continues with:

-If a man has two wives, one loved and the other unloved, and both ... have borne him sons, but the first-born is the son of the unloved one —when he wills his property ... he may not treat as first-born the son of the loved one in disregard of the son of the unloved one who is older. Instead, he must accept the first-born, the son of the unloved one, and allot to him a double portion of all he possesses; since he is the first fruit of his vigor, the birthright is his due.

-If a man has a wayward and defiant son, who does not heed his father or mother and does not obey them even after they discipline him, his father and mother shall take hold of him and bring him out to the elders of his town at the public place of his community. They shall say to the elders of his town, "This son of ours is disloyal and defiant; he does not heed us. He is a glutton and a drunkard." Thereupon the men of his town shall stone him to death. Thus you will sweep out evil from your midst: all Israel will hear and be afraid. [Deuteronomy 21:15-21]

Implication: If you marry her, in time you will come to hate her, and she will give you a rebellious son who may have to be executed.

-Talmud: Case of rebellious son never happened and never will. [Sanhedrin 71a]  
Meant only as warning to soldier?

## **Does she convert to Judaism?**

If she converts willingly, then they can get married right away. An unwilling conversion is invalid. If she does not convert, Torah procedure applies.

Maimonides sums it up:

[Even] after he has had the first intercourse with her, she still remains a non-Jew. Now, if she accepts [conversion] she immediately immerses in a mikvah [and then she can marry him]. If she does not wish to convert, she sits in his house for thirty days ... He does not prevent her from weeping for her religion [which she can no longer practice]. She grows her fingernails long and shaves her head so that she will appear despicable in his eyes. She is to remain in the house with him. When he comes in, he sees her, and when he leaves, he sees her. This is done so that he will come to loathe her. He discusses matters with her for thirty days to induce her to convert. [Mishneh Torah, Kings and Wars 8:5]

## **Does this practice allow intermarriage?**

Soldier must marry her. Only marriage is mentioned. It is the only approved status for sex. So the Torah says: "Better that you intermarry and have non-Jewish children than that you treat this woman as a sex slave."

Note that one can break all commandments to save a life, except those against idolatry, sexual immorality and murder (*piku'ach nefesh*). Sex matters are a top priority. Preventing prohibited intercourse is of paramount concern.

Note that earlier instructions do prohibit marriage to female captives:

When the Lord your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you ... You shall not intermarry with them. Do not give your daughters to their sons or take their daughters for your sons, for they will turn your children away from Me to worship other gods, and the Lord's anger will blaze forth against you and He will promptly wipe you out. [Deuteronomy 7:1-4]

Commentators say these instructions apply only to the people living in Eretz Yisrael at the time of the Exodus, not those involved in later wars.

## Why not just prohibit the practice?

Why does the Torah allow this behavior? Talmud: It is a concession to the evil inclination, because soldiers on the front line can't restrain themselves:

It is preferable for Jews to eat sick animals that were slaughtered properly, rather than eat carcasses... [Kiddushin 21b-22a]

This means that it is better to do something questionable than to do something explicitly forbidden. If the Torah prohibited it, the soldier may do it anyway, and come to break other Torah commandments later (slippery slope). The Mishna says:

מצווה גוררת מצווה, עברה גוררת עברה

*Mitzvah goreret mitzvah, averah goreret averah*

One good deed brings another good deed; one transgression brings another transgression. [Avot 4:2]

The Talmud [Kiddushin 21b-22a] also offers other observations:

-Is the soldier allowed to have sex with her when he first sees her? Rav says yes. Shmuel says no, arguing: The phrase "Then you shall bring her into your house" means that he should not pressure her to have sex during

the war. Later, Rashi and Ramban agreed, but the other commentators insist he may not have sex with her right away.

-The fact that she is referred to only as “a woman” implies she is permitted even if she is married.

-The term “her” implies that he may take her, but not her and another woman, one for him and one for his father, or one for him and one for his son.

The Talmud lays down the general principle that rabbis must not make a ruling that they know the people cannot follow:

We do not lay a hardship on the community unless the majority can endure it.  
[Bava Batra 60b]

## **Why does she have to be “beautiful”?**

The Torah describes the captive woman as being “of beautiful form”. Why, since it is a subjective matter? The Midrash says:

Whence do I derive that the same applies to an ugly woman? From “and you desire her”: even if she is not beautiful. If so, why is it written “of beautiful form”? Scripture speaks of the common instance. [Sifrei Devarim 211:7]

Perhaps, but what would have been lost if the Torah had just said “a woman” instead of “a woman of beautiful form”?

Or HaHayyim, 18<sup>th</sup>-century Moroccan rabbi, writes:

[When the Torah wrote וְהִשְׁקֵתָּ בָּהּ, he desired her], it was very careful to write בָּהּ, meaning “something within her” instead of אוֹתָהּ, meaning “her.” This means that the soldier is not infatuated with the body of the woman but with something inside her, her holy soul which he was able to recognize.

One can be forgiven for being skeptical. But this meaning is favored by mystics, including Hassidim.

## **Other views**

-The Sages taught: [The verse states:] “And she shall shave her head and do her nails”. [The phrase “do her nails” is ambiguous.] Rabbi Eliezer says: It means she cuts her nails. Rabbi Akiva says: It means she grows them long. [Yevamot 48a; Sifrei Devarim 212:2]

-Perhaps “do her nails” is the Torah’s way of saying, “Whatever is considered attractive at the time, she must do the opposite.”

-“And she shall mourn her father and her mother”: Rabbi Eliezer says this is to be taken literally. But Rabbi Akiva says: “her father and her mother” means idolatry, as it is written [in Jeremiah]:

They say to wood “You are my father” and to a stone “You have given birth to us.” [Jeremiah 2:27]

[Yevamot 48b; Sifrei Devarim 213:3]

-Indeed, why assume she lost both her parents, instead of just one, or a sibling, or a child, or nobody?

-Ramban: By living in his house for a month, perhaps she will be appeased and come to desire *him*.

## **How prevalent was this practice?**

The Talmud tells us that King David was one of the prime users of this leniency:

Rav Yehuda says that Rav says: [King] David had 400 children [in his army], and all of them were sons of beautiful women [taken captive during war]. And they grew [their hair in] a gentile hairstyle, and they all sat in carriages of gold. And they walked at the head of the troops, and they were the strong-arm [enforcers] of the house of David, [on whose loyalty David’s monarchy relied.] ... [These 400 youths did not fight in the battles, but] would go in front of the troops to frighten everyone.

...

[David’s daughter] Tamar was the daughter of a beautiful woman [taken captive in war and was born before her mother converted. Therefore, Tamar was not considered Jewish. The proof is what Tamar said to Amnon, son of David:] “Now, therefore, speak, please, to the king, for he will not withhold me from you” [2 Samuel 13:13]. [If they are siblings, David would not allow the marriage if Tamar was considered Jewish.] [Sanhedrin 21a; Kiddushin 76b]

No cases have been recorded since that time.

## **Why doesn’t the Torah make more concessions to the evil inclination?**

Torah does not say “If you have a strong craving for a bacon-cheeseburger, you may have it, but you must donate 100 times its value to charity, to buy food for the poor.” So why does it allow the equivalent for the captive woman?

- Because the sex drive is the strongest drive?
- Because wartime is very high-stress and we must make allowances to soldiers so they can perform at their best?
- Because exceptions are best kept to a minimum or the rule becomes meaningless?

Shabbat shalom.