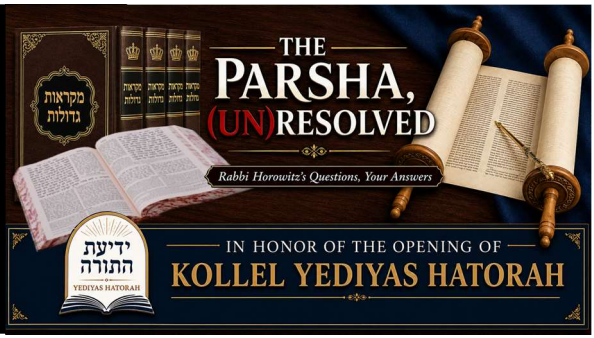
פרשת

כי תצא

שנת תשפ"ו



כב:כד וְהוֹצֵאתָ֣ם אֶת-שְׁנֵיהֶ֗ם אֶל-שַׁ֙עַר | הָעִ֣יר הַהִ֔וא וּסְקַלְתֶּ֥ם אֹתָ֛ם בָּאֲבָנִ֖ים וָמֵ֑תוּ אֶת-(הנער) הַנַּעֲרָ֡ה עַל-דְּבַר֩ אֲשֶׁ֨ר לֹא-צָעֲקָ֜ה בָּעִ֗יר וְאֶת-הָאִ֛ישׁ עַל-דְּבַ֥ר אֲשֶׁר-עִנָּ֖ה אֶת-אֵ֣שֶׁת רֵעֵ֑הוּ וּבִעַרְתָּ֥ הָרָ֛ע מִקִּרְבֶּֽךָ׃

The *Possuk* seemingly implies that an adulterous woman is punished specifically because she did not cry out. Is that truly the reason? One would think she is punished for the severe prohibition itself.

Perhaps the *Possuk* is teaching us how to establish whether the act was consensual—by observing whether she remained silent or cried out. However, this explanation also seems insufficient. Capital punishment in Torah law requires *Hasra'ah*—a formal warning delivered by the witnesses, which must be explicitly accepted by the perpetrator. In fact, the *Yalkut Shimoni* (Mishpatim, Remez 326) derives the requirement for *Hasra'ah* from this very verse, interpreting the words "*al devar*" to mean "on account of speech," i.e. the witnesses' warning.

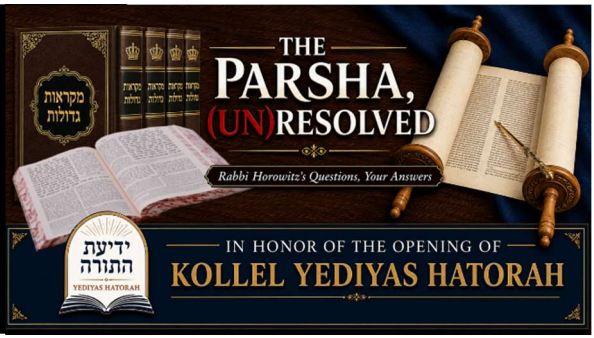
Furthermore, the *Gemara* (Sanhedrin 40b) states that *Hasra'ah* requires the perpetrator to respond, "I understand that I am liable for death, and I am doing it nonetheless." If so, this explicit acceptance alone should be more than sufficient to establish her intent. Whether she remains quiet or cries out during the act should therefore be entirely irrelevant.

To send your answers or to join the distribution list, email shaisavraham@gmail.com

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פרשת כי תצא שנת תשפ"ו

Answers

We have five answers.

1. The answer of **R' Chaim Stern** (Beitar Illit) is based on the words of the **Baal HaTurim**, who writes that even if she was afraid that the rapist would harm her, she could still scream and say it was because of the pain of *besulim*. Based on this, we can explain that even if she accepted the warnings of the witnesses, she still has a claim in court that she was forced to play along with the rapist for fear of her life. However, if she did not scream, we will not accept her defense, as this excuse does not explain her actions.

This explanation is difficult, because for that same reason, we should say that even if she screamed, there is no proof that she did not consent. Perhaps she committed the *aveira* willingly and only screamed because of the pain of *besulim*? Perhaps we should say that at least we have a *safek*, and we would not execute someone in *Beis Din* if there is any *safek* regarding her guilt. However, this needs to be clarified: here, she already accepted the warning, which is a clear indication of her guilt, and to remove this evidence, we would need something more compelling.

2. **R' Aharon Shapiro** (Beitar Illit) showed me that the sefer **HaKsav VeHaKabbala** asks this exact question. He answers with a tremendous *chiddush*. Based on the *Gemara* in Kesuvos (Daf 51a)—that according to one opinion, a woman who is in the process of being raped and finishes the act willingly is not prohibited to her husband because the desire to finish the act was forced upon her—the HaKsav VeHaKabbala maintains that regarding a death penalty verdict, everyone would agree that even if this shift happened before the act itself, she would not be sentenced to death. According to this, if she first screamed and then afterward accepted the witnesses' warning, we

could acquit her, as we have proof that at least at the beginning of the process she was not a willing participant. Although he bases this *chiddush* on the **Targum Yehonason**, it is nonetheless a major *chiddush*.

3. I myself thought of a possible answer, which is situationally the opposite of the HaKsav VeHaKabbala. Generally, after a perpetrator has accepted the warning of the witnesses, he still has the option of regretting his course of action and can simply abandon his plans by not actualizing the *aveira*. The fact that he continues and commits the *aveira* is the proof that he did not retract. However, an adulterous woman does not perform the act herself; rather, she allows the act to be done to her. If so, how can we know that she stands by her declaration that she is prepared to be killed for her actions? On this, the Torah tells us that if she did not scream, we can assume that she is continuing to commit the *aveira* willingly, as expressed by her acceptance of the witnesses' warning.

After writing this answer, **R' Yitzchak Ben-Zaken** (member of Kollel Yediyas HaTorah) showed me that I hit upon the exact same answer stated by **R' Shamshon Refael Hirsch** Zt"l.

All three of these answers are based on explaining the necessity of her lack of screaming to determine her intent to commit the *aveira* willingly. This approach does not seem to be completely satisfactory, as the wording of the *possuk* implies that this element of her lack of screaming is the core reason she is to be killed, not just a detail in the judicial process. It should be noted, though, that the *possuk* here does not have to state the reason she is killed, as it was already stated, so it opens itself up to *darshen* specifics in the *Halacha*. We would still need to clarify why the *possuk* repeats the *aveira* of the man with the exact same wording: עַל-דְּבַר אֲשֶׁר-עִנָּה אֶת-אֵשֶׁת רֵעֵהוּ.

4. **R' Aryeh Black** (member of Kollel Yediyas HaTorah) suggested that perhaps this detail is not relevant to her verdict—as her acceptance of the warning is sufficient—and it is written to teach us that for other Halachos where no

warning is needed (forbidding her to her husband, loss of her kesubah, or the financial responsibilities of the man), we can determine whether she was a willing participant based on whether or not she screamed.

R' Black himself admitted that it is very difficult to explain our possuk this way—to take it out of its context completely—and in general, I would not include such an answer in this forum.

I included it because we find the **Rambam** (Hilchos Naarah Besula 1:2) writes, in regard to the financial obligations of a man who had relations with an unmarried woman, that if the act was done in the field, we can assume that it was rape. By contrast, in the city, if she did not scream, we can assume she was a willing participant. It is clear that these indications are taken straight from our *pesukim*, showing that the Rambam also took these concepts and applied them to other *Halachos*. It should be noted that this is not proof that the **only** purpose of this part of the *possuk* is for these other *Halachos*.

What is very interesting is that the **Raavad** asks on the Rambam that these indications seem to be unnecessary, as we need witnesses to testify about the details of the case (as with any monetary case), and they can tell us whether she was a willing participant or not. See the **Kesef Mishna**, who answers his question. What is puzzling is that they fail to note that this question can be asked not only on the Rambam, but on the *possuk* itself!

5. **R' Shmuel Kletzkin** (member of Kollel Yediyas HaTorah) answered that a woman's share in an *aveira* of immorality is not through action, but rather by allowing the man to perform the action with her. When the *possuk* says that she is guilty for not screaming, it is expressing her share of the *aveira* through one example—that she didn't scream—with the intention being that she willingly allowed him to perform the action on her.

I think that this last explanation is the most satisfactory, as the *possuk* is stating the core reason for her verdict by specifying her exact role in the *aveira*.