

# Babylonian Talmud: Tractate Sanhedrin

## Folio 76a

[Thus]: Why is her case [i.e., his wife's maternal grandmother forbidden]? Because her mother is [forbidden] on pain of death by fire. But can you say the same in his case, seeing that his mother is forbidden on pain of stoning [only]? Further, his maternal grandmother is like her's: just as in the latter case no distinction is drawn between his wife's maternal grandmother and her [his wife's] daughter,<sup>1</sup> so in the former, no distinction should be allowed between his own maternal grandmother and his daughter.<sup>2</sup> Whilst on the view that stoning is severer, the analogy cannot be made on account of this last difficulty.<sup>3</sup>

But if so,<sup>4</sup> just as his daughter-in-law is forbidden him, so is his wife's daughter-in-law forbidden him?<sup>5</sup> Abaye answered: The Writ saith, [Thou shalt not uncover the nakedness of thy daughter-in-law:] she is thy son's wife;<sup>6</sup> teaching, you can punish only for incest with his son's wife, but not with her [his wife's] son's wife. Raba said: Whether it be maintained, 'judge from it in its entirety,' or 'judge from it and place it on its own basis', this could not be deduced. For on the first view, [the deduction would proceed thus:] just as his daughter-in-law is forbidden him, so is her's forbidden him. [Then carrying through the analogy] 'in its entirety,' just as in his case [the penalty] is stoning,<sup>7</sup> so in her case is the penalty stoning. But if we regard stoning severer, this analogy can be refuted. [Thus]: Why is his [daughter-in-law forbidden]? Because his mother is forbidden him on pain of stoning: Can you then say the same of her daughter-in-law, seeing that incest with her mother incurs only death by fire?<sup>8</sup> Moreover, her daughter is forbidden on pain of burning: shall her daughter-in-law be forbidden on pain of stoning?<sup>9</sup> [This is no difficulty, for] let his own case prove it: his own daughter is forbidden by fire, yet his daughter-in-law by stoning. But [refute the analogy thus:] just as in his case, thou drawest no distinction between his mother and his daughter-in-law, so in her's [his wife's], you can draw no distinction between her mother and her daughter-in-law.<sup>10</sup> And on the view that burning is considered more severe, the analogy cannot be made because of this last difficulty.<sup>11</sup> Whilst on the view, 'judge from it and place it on its own basis,' [the deduction would proceed thus:] just as his daughter-in-law is forbidden him, so is her daughter-in-law forbidden; and place it on its own basis, thus: in the former case, [his daughter-in-law] the punishment is stoning; but in the latter, burning, the punishment we find for incest with her mother. But if stoning is severer, this can be refuted. [Thus]: Why is his daughter-in-law forbidden? Because his mother is forbidden him on pain of stoning. But can you say the same of her daughter-in-law, seeing that her mother is forbidden only on pain of burning! Moreover, just as in his case, you draw a distinction between his daughter [punished by burning] and his daughter-in-law [by stoning], so in her case, you should draw a distinction between her daughter and her daughter-in-law.<sup>12</sup>

And even on the view that burning is severer, the analogy cannot be made on account of this last difficulty.

Whence do we know that his daughter by a seduced woman [not his wife] is forbidden him?<sup>13</sup> — Abaye said:<sup>14</sup> This may be proved by arguing from the minor to the major; if he is punished for incest with his daughter's daughter, surely he is punished for his own daughter!<sup>15</sup> But can punishment be imposed as the result of an ad majus conclusion? — The argument merely illumines the prohibition.<sup>16</sup> Raba answered: R. Isaac b. Abudimi said unto me; we learn identity of law from the fact that 'hennah' [they] occurs in two related passages, and likewise 'zimmah' in two.<sup>17</sup>

The father of R. Abin learned: Because we have no express sanction [from Scripture that incest] with an illegitimate daughter [is punished by burning], therefore the Writ must say, And the daughter of a man [and] a priest, if she profane herself through her father, she profaneth him; she shall burnt with fire.<sup>18</sup> If so, just as in the case of a priest's [adulterous] daughter, only she is burnt, but not her paramour, so for incest with an illegitimate daughter, only she should be burnt, but not her paramour?<sup>19</sup> — Abaye answered: The Writ sayeth, she profaneth her father, teaching that this applies only to a case where she profaneth her father, excluded thus is this case,<sup>20</sup> since her father profanes her,<sup>21</sup> Raba answered, In the former case<sup>22</sup> you rightly exclude him from the penalty of a priest's daughter, and assimilate him to an Israelite's daughter.<sup>23</sup> But in this case,<sup>24</sup> to whom will you assimilate him? to an unmarried woman?<sup>25</sup>

Now, whence do we derive a formal prohibition of incest with an illegitimate daughter? This is in order according to Abaye and Raba: from the verse from which they deduce punishment, they also learn the prohibition.<sup>26</sup> But what of the deduction made by R. Abin's father?<sup>27</sup> — R. Elai answered: The Writ sayeth, Do not profane thy daughter to cause her to be whore.<sup>28</sup> R. Jacob, the brother of R. Aha b. Jacob objected: Is this verse, Do not profane thy daughter to cause her to be a whore, employed for this purpose? But it is needed for that which has been taught: 'Do not profane thy daughter, to cause her to be a whore' I might think that this prohibits<sup>29</sup> a priest from marrying his daughter to a Levite or an Israelite:<sup>30</sup> therefore Scripture states, 'to cause her to be a whore', shewing that the reference is only to profanation by harlotry, thus prohibiting the giving over of one's daughter for sex purposes without marriage intention? If so, Scripture should have said al tahl; why al tehallel? — That both may be deduced from it.<sup>31</sup>

Now, how do Abaye and Raba utilize the verse, Do not profane thy daughter to cause her to be a whore? — R. Mani said: [According to them] this refers to one who marries his [young] daughter to an old man.<sup>32</sup> As it has been taught: Do not profane thy daughter to cause her to be a whore; R. Eliezer said: This refers to marrying one's [young] daughter to an old man. R. Akiba said: This refers to the delay in marrying off a daughter who is already a bogereth.<sup>33</sup>

R. Kahana said on R. Akiba's authority: The only poor in Israel is the subtly wicked and he who delays in marrying off his daughter, a bogereth.<sup>34</sup> But is not one who thus delays himself subtly wicked?<sup>35</sup> Abaye answered:

[To Part b](#)

*Original footnotes renumbered.*

1. Incest with both being punishable by fire.
2. So that incest with the former should be punished by burning, as with the latter. This however is impossible, for incest with one's grandmother cannot be more severely punished than with his mother, the penalty for which is only stoning, which on the present hypothesis is more lenient than burning.
3. Since according to this comparison incest with his maternal grandmother is punished by burning. But his maternal grandmother should also be compared to his mother, the punishment for which is stoning; hence the entire analogy falls to the ground.
4. This raises a new difficulty, reverting to the statement (75b) that his relatives are compared to hers.
5. I.e., the wife of her son by a previous husband. But this is not so.
6. Lev. XVIII, 15.
7. v. *supra* 53a.
8. Hence, since the prohibition of his relative, viz., his mother, is so severe, it is natural that it should extend in a downward direction too, whereas the prohibition of her relation, viz., her mother, being punished only by burning and consequently weaker, its extent may be more limited, and not embrace her daughter-in-law.
9. Surely not!
10. Hence, incest with the latter should be punished by burning. But as has already been proved, stoning is the proper punishment; therefore the entire analogy is impossible.
11. Though the former two do not arise.
12. I.e., Just as the punishment for his daughter-in-law is severer than for his daughter, viz., stoning instead of burning, so her daughter-in-law should be more stringently interdicted than her daughter, viz., by stoning, instead of burning. But if we compare her daughter-in-law to her mother, the punishment is burning. Hence the entire deduction is impossible.
13. As explained by Abaye *supra* 75b. q.v. The difficulty arises because in Lev. XVIII, 10 q.v., which has been interpreted as referring to his illegitimate offspring, no mention is made of his own daughter.
14. V. next note.
15. [Thus Tosaf.; var lec., Did not Abaye say etc. i.e., 'what is the question'-surely Abaye has solved it.]
16. I.e., does not add the prohibition of another person, but shews that when Scripture (in Lev. XVIII, 10) interdicted his daughter's daughter, it meant that the daughter relationship in general is forbidden.
17. V. p. 342, n. 1; just as in Lev. XVIII, 17 the daughter is forbidden equally with the daughter's daughter, so in XVIII, 10. The punishment of burning is then deduced from Lev. XX, 14.
18. Lev. XXI, 9. 'A man' is superfluous, and therefore teaches that even if she is only his daughter, not his wife's, this law holds good. By translating the rest of the verse as in the text, we deduce that an illegitimate daughter is burnt for incest with her father; and by regarding 'a man' as distinct from 'priest' (the latter being attached to the former with the copula 'and'), the deduction is made to refer to any illegitimate daughter, not only a priest's (v. Tosef. Sanh. XII).
19. Seeing that the former is deduced from 'she shall be burnt with fire', whilst the verse is made to refer to incest too.
20. Incest with one's illegitimate daughter.
21. Her case is excluded from the limitation implied in, she (and not her paramour) 'shall be burnt with fire': hence her paramour is likewise punished.
22. The seducer of a priest's adulterous daughter.
23. I.e., punishing him by stoning instead of burning. For the limitation of 'she', though teaching that the special law of a priest's daughter does not apply to him, yet leaves him to be punished as the seducer of a married woman in general.
24. Incest with an illegitimate daughter.
25. For if an incestuous paramour be excluded from the punishment of an adulterous woman, whether the daughter of a priest or an Israelite (since relationship is independent of these), his law can only be assimilated to that of an unmarried woman, whose unchastity is not punished at all. But surely it cannot be maintained

that an illegitimate daughter is burnt for incest with her father, though her offence is a passive one, and less than the man's (v. *supra* 74b), whilst he goes scot free! Hence the limitation of 'she' cannot apply to this.

26. Both being stated in the verses they employ for this purpose.
27. Lev. XXI, 9 speaks only of punishment, but contains no prohibition.
28. Lev. XIX, 29. This includes incest, and since 'daughter' in general is mentioned, it applies to an illegitimate one too.
29. Lit., 'the Writ speaks of a priest etc.'
30. Since he thereby 'profanes her', in that she is not permitted to eat of *terumah* (v. [Glos.](#)) thereafter.
31. The latter [H] is a heavier form, yet with the same meaning [H], the former. Being heavier, it has a wider application.
32. Since she cannot willingly accept him, she may be led to adultery.
33. Having attained puberty, she may become unchaste if not married. Marriage, of course, was then at a far earlier age than now.
34. This is explained further on.
35. Why 'and he who delays etc.': the two are identical. His wickedness consists in that he keeps her unmarried, that he may profit by her labour whilst endangering her chastity.

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## Sanhedrin 76b

This is its meaning: Which poor man is subtly wicked? He who delays marrying off his daughter, a bogereth.<sup>[1](#)</sup>

R. Kahana also said on R. Akiba's authority: Beware of one who counsels thee for his own benefit.<sup>[2](#)</sup>

Rab Judah said in Rab's name: One who marries his daughter to an old man or takes a wife for his infant son, or returns a lost article to a Cuthean,<sup>[3](#)</sup> — concerning him Scripture sayeth, [that he bless himself in his heart saying, I shall have peace, though I walk in the imagination of mine heart] to add drunkenness to thirst: The Lord will not spare him.<sup>[4](#)</sup>

An objection was raised: He who loves his wife as himself and honours her more than himself,<sup>[5](#)</sup> and leads his children in the right path, and marries them just before they attain puberty — of him Scripture saith, And thou shalt know that thy tabernacle shall be in peace and thou shalt visit thy habitation, and shalt not sin.<sup>[6](#)</sup> — If just before puberty, it is different.

Our Rabbis taught: He who loves his neighbour, displays friendly intimacy towards his relatives, and marries his sister's daughter and lends a *sela'* to the poor man in time of his need — of him Scripture saith, Then shalt thou call, and the Lord shall answer.<sup>[7](#)</sup>

Our Rabbis taught: [And if a man take a wife and her mother, it is wickedness: they shall be burnt with fire,] both he and they [ethe'en].<sup>[8](#)</sup> [This means], he and one of them. That is R. Ishmael's opinion. R. Akiba said: [It means], he and both of them. Wherein do they differ?<sup>[9](#)</sup> — Abaye said: They differ as to the text from which the law is derived: R. Ishmael maintains that 'he and ethe'en' means 'he and one of them', for in Greek 'one' is hello.<sup>[10](#)</sup> Hence [incest with] his mother-in-law's mother [as a punishable offence] is arrived at [only] by [Biblical] interpretation. But R. Akiba maintained, 'he and ethe'en' means 'he

and both of them', hence his mother-in-law's mother is explicitly interdicted in this verse.<sup>11</sup> Raba said: They differ about his mother-in-law after [his wife's] death: R. Ishmael holds that [incest with] his mother-in-law after [his wife's] death is punished by burning; whilst R. Akiba's view is that it is merely forbidden.<sup>12</sup>

**MISHNAH.** THE FOLLOWING ARE DECAPITATED: A MURDERER, AND THE INHABITANTS OF A SEDUCED CITY. A MURDERER WHO SLEW HIS FELLOW WITH A STONE OR AN IRON, OR KEPT HIM DOWN UNDER WATER OR IN FIRE, SO THAT HE COULD NOT ASCEND THENCE, IS EXECUTED. IF HE PUSHED HIM INTO WATER OR FIRE, BUT SO THAT HE COULD ASCEND, YET HE DIED, HE IS FREE [FROM DEATH]. IF HE SET ON A DOG OR A SNAKE AGAINST HIM [AND THEY KILLED HIM], HE IS FREE FROM DEATH. BUT IF HE CAUSED A SNAKE TO BITE HIM [BY PUTTING HIS JAWS AGAINST HIM] — R. JUDAH RULED THAT HE IS EXECUTED; THE SAGES, THAT HE IS NOT.

**GEMARA.** Samuel said: why is 'hand' not mentioned in connection with iron?<sup>13</sup> — Because iron can kill no matter what its size. It has been taught likewise: Rabbi said; It was well known to Him who spake and the world came into being that iron, no matter how small, can kill; therefore the Torah prescribed no size for it. This however, is only if one pierced therewith:<sup>14</sup>

OR KEPT HIM DOWN UNDER WATER. The first clause teaches the extreme limit of the law, and so does the last. Thus, the first clause teaches the extreme limit of the law, that though he himself did not push him [into the water], yet since he could not ascend, [through being held down], and so died, he is executed. The last clause likewise teaches the extreme limit, that though he actually pushed him into the water, yet since he could have ascended, but died, he is free from death.

Whence do we know that [he is liable to death] for keeping him down? — Samuel answered: The Writ sayeth, Or if with enmity he smote him with his hand:<sup>15</sup> this extends the law to one who keeps his neighbour fast [e.g., in water, thus causing his death].

A certain man confined his neighbour's animal in a place exposed to the sun, so that it died [of sunstroke]. Rabina held him liable: R. Aha b. Rab ruled that he was not. Rabina held him liable by an *ad majus* argument from a murderer. If a murderer, in whose case unwitting murder is not treated as deliberate, nor an accident as intention, is nevertheless executed for confining [his neighbour in a place where he must die];

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*Original footnotes renumbered.*

1. Through his poverty he delays her marriage, that he may profit from her labour, The poor man has no other opportunity of cunning wickedness
2. Lit., 'in his own way'.
3. v. p. 388, nn. 5-6.
4. Deut. XXIX, 18ff. i.e., the associations involved in these practices are displeasing in the eyes of the Lord. [How bitter must have been the persecution of the Jews under Ardeshir (v. Funk, *op. cit* 1, pp 66 ff.) to have provoked gentle Rab to this harsh utterance.]
5. By providing her with fine ornaments (Rashi).

6. Job. V. 24. This proves that it is meritorious to marry off one's children whilst minors.
7. Isa. LVIII, 9.
8. [H], Lev. XX, 14.
9. For obviously R. Akiba cannot mean that a man's wife must be burnt because her husband committed incest with his daughter.
10. [G], acc. of [G].
11. Since R. Ishmael maintains that only 'one of them' is denoted by [H], it must mean his mother-in-law. Consequently, her mother is not directly referred to, and has to be deduced. But R. Akiba, translating [H] 'both of them' (which cannot possibly include his wife), regards the verse as referring to his mother-in-law and her mother; hence death by fire for the latter is explicitly taught in this verse.
12. R. Ishmael interprets the verse, '*he and one of them*' i.e., even if only one of them is alive (viz., his mother-in-law), the penalty for incest is burning, whilst R. Akiba maintains, 'he and both of them' i.e., only during the lifetime of *both* is incest with his mother-in-law punished by fire. Otherwise, there is no penalty, though it is forbidden.
13. In Num. XXXV, 16-18, dealing with murder, iron, stone, and wooden weapons are enumerated: 'hand' is used in connection with the latter two, implying that they must be large enough to afford a hold to the hand, but not in connection with the first.
14. But if used to strike therewith, it must be of a certain minimum size before the murderer is executed.
15. Num. XXXV, 21.

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