



לע"נ ברוך בענדיט ובזכה גרוס ע"ה
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The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

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THE SIXTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ גרשון בן החבר מרדכי

YEVAMOS DAF 64 IS DEDICATED

L'ZECHER NISHMAS DOVID BEN YITZCHOK EIZIK

Yevamos Daf 64

Our Mishna details the painful situation of a man who did not have children for ten years. He may not continue as is, since he is obligated to bear children.

But as we learn this halacha, we wonder why we don't hear of such divorces taking place! Indeed, many gedolei hador were unfortunately childless, and yet they did not divorce their wives. Why is this?

The rabbonim have deliberated over it for hundreds of years.

The Shulchan Aruch paskens like the Mishnah (E.H. 154:10). He must divorce her or marry another woman, and if he refuses we will force him to comply. However, the Rema refers us to Siman 1 where he records "the minhag for several generations already not to enforce halachos to do with marriages." There, the Shulchan Aruch says that if a boy is past twenty and still not married, Beis Din will force him to get married (unless he desires to learn and fears marriage will distract him). This is from the Gemara.

The Rema says that in our days the custom is not to force him. Similarly, if a man who did not yet fulfill peru urevu wishes to marry a woman who cannot bear children, we should disallow it, but the custom is "not to be particular about zivugim."

Even according to the Rema, the poskim make qualifications to the minhag. But first, let's go back to the Rishonim to try to understand this practice.

The Rosh here discusses whether the halacha that he must divorce her is enforceable in Beis Din or not. He cites proofs for both sides of the argument, and concludes that we can't physically force him, but we would put pressure on him to comply. Then he writes that some people wanted to say that this entire halacha doesn't apply to those living outside of Eretz Yisroel, like the Gemara says by Avraham Avinu that those years didn't count. These opinions argue that perhaps childlessness is a punishment for living in

chutz la'aretz. He rejects this; "it's illogical to advocate to nullify a mitzvah from the Torah on the strength of this weak argument!" Most people in the world are blessed with children even though they don't live in Eretz Yisroel, so why should we blame one couple's childlessness on that? And the Amoraim in the Gemara discuss the intricacies of this halacha, even though they lived in chutz la'aretz! Anyhow, Avraham was different – Hashem told him to go live in Eretz Yisroel, so we may link his lack of children to that. But we cannot extend this reasoning to others.

Another one of the Rishonim, the Raavan, did ascribe to this idea. He writes that in the Diaspora we do not enforce this since living in chutz la'aretz doesn't count. Plus, he quotes Chazal (Bava Basra 60b) that since the goyim dominated us and forbade us from doing mitzvos, we should really stop having children! Thus, we don't enforce halachos of peru urevu. (The second proof is somewhat difficult, as the Gr"a on Siman 1 says that the Gemara doesn't really mean we should stop having children. Rather, it's a lamentation over our state in golus after the Churban, which is the context there.)

The commentators on the Shulchan Aruch limit the Rema's comment. Beis Shmuel says that we don't force him to divorce her if she is still capable to bear children; if not, we would intervene. The Chelkas Mechokek differentiates between a childless couple and the other case mentioned, a bachelor. If he is not married at all, we would force him. And even according to the Raavan, in Eretz Yisroel we should coerce a childless couple to separate. And yet, we do not. Let's see more.

The main source of the Rema is a teshuva of the Rivash, a Rishon (Siman 15). The episode he addresses was of a fellow who

wanted to marry a very wealthy, ninety-year-old lady. The kahal was up in arms because the man did not yet have children so should not marry such a woman, besides that it was obvious he was doing it just for her money. He didn't care, took his case to the mayor of the city, and complained about what they were doing to him. The Jews explained to the magistrate that it's improper to do this until one fulfills peru urevu, and the fight continued.

The Rivash was consulted and begins by spelling out the Torah's views on the subject. One should marry a woman who can bear children, especially if he hadn't yet had a boy and girl (as we saw on daf 61). And even then, it's meritorious to try to continue bearing seed, from "do not stay your hand" (daf 62b). Beis Din should enforce this in any way they can.

However, he continues, we have not heard of such intervention, for many years already. In prestigious communities led by great Torah scholars, they let people do what they wanted. (As long as it's not a forbidden marriage.) He opines that it's because there are very many instances in which a union is inappropriate, and if we would get involved and prevent every one, there would be no end to the arguments and disasters! Some examples: a bas Kohen shouldn't marry an am ha'aretz, one shouldn't marry a ketaneh, and a man shouldn't marry a woman until he has seen her. All these and more were common practices in days of old, and the Rabbis did not intervene or protest.

Rav Moshe Shternbuch shlit"a comments that there is not a clear-cut explanation why we don't follow our Mishnah anymore. He quotes several ideas. 1) Although the Shulchan Aruch gives two options – divorce or marrying another woman – we do not have the second option anymore. Sometimes, divorce might lead to

emotional problems which may border on pikuach nefesh. So, we leave it alone. 2) Maybe Hashem didn't grant them children due to a lack of kedusha, so it won't help. 3) Based on the Gemara in Bava Basra above, in our days of spiritual dangers, infertility may be an indication from Heaven that any children they would have wouldn't be righteous. These are not reasons to abstain from having children, but can support the long-standing custom in Klal Yisroel.

He concludes with the advice for couples in this situation to adopt a child, which is considered as if they gave birth to him. Or, support financially others raising their children, which is also akin to having them (Teshuvos V'Hanhagos 4:275).