

***Parashat Ki These'*****פְּרִשַׁת כִּי תֵצֵא****INTRODUCTION:**

*Parashat Ki These'* (Deut. 21:10-25:19) contains the following *sidrot*:

*Hundred-and-Fifty-Sixth Sidra'*, women taken in war, birthright of the first-born, the rebellious son, hanging and burial, returning lost articles, the fallen animal, and cross dressing;

*Hundred-and-Fifty-Seventh Sidra'*, the bird's nest, guard rails, forbidden mixtures, tassels, the defamed bride, adultery, adultery by a betrothed woman, rape of a betrothed woman, rape of a single woman, adultery with one's father's wife, and forbidden marriages;

*Hundred-and-Fifty-Eighth Sidra'*, purity within a military encampment, sheltering escaped slaves, prostitutes, and charging interest;

*Hundred-and-Fifty-Ninth Sidra'*, keeping vows, passing through someone's field, divorce and remarriage, military exemption, the millstone, kidnapping, *sara'ath*, loans, paying wages on time, accountability, the under privileged;

*Hundred-and-Sixtieth Sidra'*, gleanings for the poor, court verdict and flogging, muzzling a working ox, the duty of a brother-in-law, modesty in brawls, cities in war, weights and measures, and remembering the 'Amalekites.

**ANALYSIS:**

*Hundred-and-Fifty-Sixth Sidra'* (Deut. 21:10-22:5): Women taken in war, birthright of the first-born, the rebellious son, hanging and burial, returning lost articles, the fallen animal, and cross dressing.

When we go to war against our enemies and YHWH delivers them into our hands, enabling us to take captives, if there is amongst the captives a woman with a beautiful form and one of us is drawn to her, wanting to take her for a wife, then he may do so under these terms:

- i) she is first to be brought into the midst of his house (i.e. become part of his household),
- ii) her head is to be shaved and her nails pared,
- iii) she is to *"turn aside the garment of her captivity from off her"* (Deut. 21:13). Many commentators have remarked about this phrase, some say that *the garment of her captivity* is the garment that she was wearing when taken captive, while others say it is a metaphor for her to abandon her religion and culture.
- iv) she is to sit in his house and mourn for her father and mother, for an entire month,
- v) and after that he can have sexual relations with her, he then becomes her husband and she his wife.

However, if it turns out that he has no delight in her, then he is to divorce her and she becomes her own woman. She cannot be sold for money; she is not to be tyrannized, since she was humbled.

If a man should have two wives - one whom he loves and the other whom he hates - and they both bear him sons, however, the wife whom he hates bore his first-born. Then, when the time comes for him to share out his landed inheritance amongst his sons, he must not overlook the prerogative of his true first-born, the son of the wife

whom he hates, and regard as first-born the son of the wife whom he loves. The prerogative of the first-born - a double share of the father's landed inheritance - belongs solely to his true first-born son.

If a man should have a son:

- who is stubborn and rebellious,
- who does not hearken to the voice of his father nor to that of his mother,
- both his parents have disciplined him,
- but he still does not hearken to them,

Then both his father and his mother are to seize him and take him, *"to the elders of his city and to the gate of his place"* (Deut. 21:19). The Torah here refers to the case being brought to the gate of the city, since it was at the gate of a city where the local court held session. The parents are to declare to the court that:

1. this is indeed their son,
2. he is stubborn and rebellious
3. he does not hearken to both of their voices
4. he is a glutton and a drunkard!

Then all the men of the city are to pelt him with stones so that he dies, in order to burn out the evil from our midst, and all Israel will hear and fear.

If someone is guilty of a sin, that carries the punishment of death, and are put to death and subsequently hung upon a tree, their corpse cannot be left on the tree overnight. It must be buried on the same day, for a hanging corpse is an insult to God since it makes the land impure.

If we see our brother's ox or sheep wandering, we are not to ignore it, but are to return it to our brother. However, if our brother does not live near by or we do not know to whom the animal belongs, then we are to bring it home keeping it until the first opportunity arises that enables us to restore the animal to its owner. We must also do likewise for a donkey, garment, or any item that can be regarded as our brother's lost property.

If we see the donkey or ox of our brother fallen in the road, we are not to ignore the animal and our brother, but are to help him raise it up.

A man's item shall not be upon a woman, and a man is not to dress in the garment of a woman, for all who do such are an abomination to YHWH our God.

*Hundred-and-Fifty-Seventh Sidra'* (Deut. 22:6-23:9): The bird's nest, guard rails, forbidden mixtures, tassels, the defamed bride, adultery, adultery by a betrothed woman, rape of a betrothed woman, rape of a single woman, adultery with one's father's wife, and forbidden marriages.

If we happen to come across a bird's nest in a tree or on the ground, containing fledglings or eggs, and the mother is crouching over the fledglings or eggs, we cannot take the mother along with the offspring. Instead, we are to send away the mother before taking her offspring, in order that it may be well with us and so lengthening our days.

When a new house is built, it must always have a parapet for its roof, for if it does not, and then someone falls from the roof their life's blood will be upon the household whose house it is.

We are not to sow our vineyards with two kinds of seeds, *"lest you sanctify the fullness of the seed that you sowed, and the increase of the vineyard"* (Deut. 22:9). We

cannot plough with an ox and with a donkey yoked together. We are not to wear a garment that is *sha'atnez* [שְׂעֵטָנָיִם] - wool and flax together.

Twisted-cords [גְּדִלִים] we are to make for ourselves on the four extremities of a garment with which we cover ourselves. (This commandment is related to the one concerning *siṣith*, see Numbers 15:37-41).

If a man marries a woman and after having sexual intercourse with her, he hates her and brings against her a baseless charge - defaming her - and says, *"I took this woman, and when I approached her, I did not find in her signs of virginity"* (Deut. 22:14). Then the young woman's father and mother are to take the signs of her virginity and present them to the elders of the city at the gate as evidence that the charges brought against her are unfounded. If the evidence does indeed invalidate the charges brought against her, then the elders of that city are to take the husband, discipline him, and fine him a hundred units of silver - which is presented to the young woman's father on her behalf - nor can he ever divorce her, since he brought an evil name upon a virgin of Israel. However, if the husband's charge can be substantiated it would mean that the young woman was guilty of having sexual intercourse with one man while being betrothed to another. This is tantamount to adultery - referred to here by the Torah as *"a disgrace in Israel, to commit whoredom"* (Deut. 22:21). The young woman is therefore to be brought to the entrance of her father's house, and the men of her city are to stone her with stones until she dies, *"and you shall burn out the evil from your midst"* (Deut. 22:21).

If a man is found having sex with a woman married to another man, then both of them are to die, *"you shall burn out the evil from Israel"* (Deut. 22:22)

If a man finds a young woman - a virgin who is betrothed to another man - in a city, and has sex with her, then both of them are to be taken to the gate of the city and stoned with stones until they die. *"The young woman on the matter that she did not cry out in the city, and the man, on the matter that he humbled his neighbour's wife; and you shall burn out the evil from your midst"* (Deut. 22:24).

However, if the man finds the betrothed young woman in a field, seizes her and has sex with her, then only the man shall be put to death. Nothing is to be done to the young woman since there is not in her a sin worthy of death. The Torah compares the matter of raping a betrothed woman to that of intentional murder. *"For in the field he found her; the betrothed young woman cried out, and there was no saviour for her."* (Deut. 22:27)

If a man finds a young woman - a virgin who is not betrothed - he seizes her, has sex with her, and they are found, then the man is to give the young woman's father fifty of silver, he is to marry and can never divorce her since he humbled her.

A man shall not have sex with his father's wife (even if she is not his mother).

A man whose sexual organ has been wounded by crushing or has been cut off cannot enter into the assembly of YHWH. A *mamzer*<sup>1</sup> [מְמַזְרֵר] cannot enter into the assembly of

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<sup>1</sup> The concept that a מְמַזְרֵר [mamzēr] is a child conceived through a forbidden union (i.e. incestuous or adulterous) is a late understanding of this term. The earliest understanding is that a מְמַזְרֵר is an idol-worshipper. The word מְמַזְרֵר is thus a compound word derived from מוֹם [mūm] - a blemish, and זָר [zār] - strange. This is how Philo, Targum Pseudo-Yonathan, and the Jerusalem Talmud (Kiddushin 3:9 64c) understood the word מְמַזְרֵר. Philo also stated that a מְמַזְרֵר is the offspring of a harlot, however, he did refer to idol-worshippers as harlots; for just as a harlot had many lovers so an idol-worshipper had many gods. He also referred to an atheist as someone

YHWH, even to the tenth generation. An 'Ammonite or a Moabite cannot enter into the assembly of YHWH, even to the tenth generation; forever. Since they did not greet us with bread or water during our wanderings in Transjordan, but instead hired Bil'am the son of Bo'or from Pethor in Aram of the Two Rivers, to curse us. However, YHWH was not willing to listen to Bil'am, and turned for us the curse into a blessing, because He loves us. We are not to seek their peace or their good all our days; forever. We are not to abhor an Edomite for he is our brother, nor are we to abhor an Egyptian, since we were sojourners in his land. Children born to an Edomite or to an Egyptian - third generation, may enter into the assembly of YHWH.

*Hundred-and-Fifty-Eighth Sidra'* (Deut. 23:10-21): Purity within a military encampment, sheltering escaped slaves, prostitutes, and charging interest.

When we go to war against an enemy and set up military camps, we are to keep away from anything that is evil. If a soldier becomes impure due to a nocturnal emission of semen, he is to go outside of the camp. At the turn of evening, he is to wash with water and when the sun has set he shall come back into the camp. When a soldier needs to defecate, he is to go outside of the camp to a place that has been specially designated for that purpose. The soldier is to have a spade along with his weapons so when he needs to relieve himself he can dig a hole with it, defecate into the hole, and then bury his excrement. Our military camps are to be kept holy since YHWH walks about in the midst of them to rescue us and to hand over our enemies to us; therefore, He must not see in us an abhorrent thing, and thus turn away from us.

A slave (from another land) comes to us seeking refuge after they have escaped from their master, the slave is to be permitted to settle amongst us in any city that they choose; they are not to be maltreated.

There is not to be a *kedesha* [קִדְשָׁה - a female religious Canaanite prostitute] found amongst the daughters of Israel, nor is a *kadesh* [קִדְשִׁי - a male religious Canaanite prostitute] to be found amongst the sons of Israel. *"You shall not bring the fee of a whore or the price of a dog<sup>2</sup> to the House of YHWH your God for any vow; for an abomination to YHWH your God are the two of them."* (Deut. 23:19)

We are not to charge our brother [i.e. fellow Israelite] interest on money, on food, or on anything that one charges interest, in order that YHWH will bless us upon the Land in all that we do. However, we may charge the foreigner interest.

*Hundred-and-Fifty-Ninth Sidra'* (Deut. 23:22-24:18): Keeping vows, passing through someone's field, divorce and remarriage, military exemption, the millstone, kidnapping, *šara'ath*, loans, paying wages on time, accountability, the under privileged.

When we vow a vow to YHWH we are not to delay in paying it, YHWH requires it from us. If we do delay in fulfilling our vows, it will be counted against us as a sin. If in the moment of vowing a vow we cease and refrain from continuing to make the vow, then it

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who is barren; for just as someone who is barren cannot bear fruit so the ways of the atheist are fruitless and sterile. The word מְגִזֵּר might also be the name of an actual nation, since the verse is located in a section of the Torah dealing with forbidden nations. The following verses from the Mikra' lend credence to this understanding, *"And מְגִזֵּר shall dwell in 'Ashdod."* (Zekh. 9:6); *"And half their children spoke in the language of 'Ashdod, and they were not able to speak the language of Judah; but according to the language of each people."* (Neh. 13:24)

<sup>2</sup> Dog - a derisive term for a male prostitute.

shall not be counted as a sin against us. A vow must be; i) made willingly, ii) vowed to YHWH i.e. His name is to be used in the formula, and iii) the vow is to be uttered with our mouths i.e. audibly; all that we vow we must keep and do.

When we come into our neighbour's vineyard, we may eat as many grapes as we desire, however, we cannot put any of the grapes into a vessel and take them away with us. When we come into our neighbour's standing-grain, we may pluck ears with our hands; however, we cannot wave a sickle over our neighbour's standing-grain.

*"When a man takes a woman and possesses her; and it shall be if she does not find favour in his eyes because he has found in her an abhorrent thing, and writes for her a Document of Cutting off and places it in her hand, and sends her from his house."* (Deut. 24:1) If she subsequently marries another man and he also comes to hate her, then he too must carry out the three procedures for divorce; i) writing for her a *Sefer Kerithuth* [סֵפֶר כְּרִיתוּת - Document of Cutting off], ii) placing it in her hand, and iii) sending her away from his household. However, after she is divorced or widowed from her second husband, she cannot remarry her first husband since she has made herself impure to him by having sex with another man, *"for it is an abomination before YHWH; and you shall not cause the land to sin, which YHWH your God, is giving to you as an inheritance."* (Deut. 24:4)

When a man takes a new wife, he is exempt from military duty for one year, even at a time of war or national emergency, and he is to remain at home in order to bring joy to his wife whom he has taken.

A hand-millstone or a millstone cannot be taken in exchange for a loan since these are the tools by which the miller earns his livelihood. Therefore, the implements and tools of someone's trade cannot be taken as a pledge for a debit, since this will deprive them of the means to earn a livelihood.

When a man is found stealing a fellow Israelite (i.e. kidnapping), and tyrannizes him and sells him, then the thief shall die, *"and you shall burn out the evil from your midst."* (Deut. 24:7)

We must be very careful in regards to the plague of *Şara'ath* [צָרַעַת] and do according to all that the *kohanim* instruct. We are to remember what YHWH did to Miriam - struck her with *Şara'ath* - during the wanderings after the Exodus from Egypt.

When we loan anything to our neighbour we cannot enter his house in order to take an item of his as a pledge. We must wait outside for him to bring the pledge to us. If the person to whom we have made the loan is poor and as a pledge they give bedding, then we cannot retain it over night. Their pledge must be returned to them before sunset so that they can use it at night, and recollected the next day, *"and he shall bless you; and to you it shall be righteousness, before YHWH your God."* (Deut. 24:13)

We are not to oppress a hired worker who is poor and needy, whether they are an Israelite or a Sojourner. On the day that a hired worker is due their wage, we are to pay them before sunset, since they are poor and are in need of their wage. If we do not pay them on time and they call out to YHWH against us, then it will be counted as our sin.

*"Fathers shall not be put to death on account of the children, and children shall not be put to death on account of the fathers; every man for his own sin they shall be put to death."* (Deut. 24:16)

Justice is not to be turned aside for the Sojourner or orphan and the garment of a widow cannot be taken in exchange for a loan. We are to remember that we were slaves in Egypt and YHWH our God ransomed us from there, hence the reason why He commanded this very commandment.

*Hundred-and-Sixtieth Sidra'* (Deut. 24:19-25:19): Gleanings for the poor, court verdict and flogging, muzzling a working ox, the duty of a brother-in-law, modesty in brawls, cities in war, weights and measures, and remembering the 'Amalekites.

When we harvest our fields, we cannot turn back and collect any sheaves that we have forgotten in the field, they are for the Sojourner, orphan, and widow; *"in order that YHWH your God will bless you, in all the doings of your hands."* (Deut. 24:19) During the olive harvest when the olives are beaten off from the trees, we cannot go over the boughs again, any remaining olives are for the Sojourner, orphan, and widow. When we gather the grapes of our vineyard, we are not to glean the vines afterwards since the remaining grapes are for the Sojourner, orphan, and widow. *"And you shall remember, that you were a slave in the land of Egypt; therefore I command you to do, this thing."* (Deut. 24:22)

If there shall be a dispute between men then they are to approach the court in order for their case to be judged; to declare as righteous the righteous one, and condemn as wicked the wicked one. If the wicked one is deserving of strokes, then the judge is to have him laid fallen and struck in his presence, the number of strokes being in accordance with their wickedness. Up to forty strokes can be administered, this number cannot be exceeded, lest by adding to this number, the strokes become too many and our brother is degraded in our eyes.

We cannot muzzle an ox while it is threshing grain. Thus, while the ox is working it is allowed to eat freely from its labours, just as the labourer who works in the orchard, vineyard, or field is permitted to eat from the produce whilst they work.

When brothers dwell together and one of them dies childless [literally - *and a son there is not to him* Deut. 25:5], the dead brother's wife is not to leave her husband's family to marry someone from outside his family, instead her brother-in-law shall marry her fulfilling the duty of a brother-in-law. The first child that she bears to her brother-in-law is to be raised in the name of his dead brother, so that his name will not be blotted out from Israel. However, if the man does not desire to take his sister-in-law, then she is to go to the elders and tell them that her brother-in-law will not consent to fulfil the duty of a brother-in-law thus refusing to establish for his brother a name in Israel. The elders of his city are to summon him and are to speak with him. Nevertheless, if he still refuses to take her, then his sister-in-law shall approach him before the eyes of the elders, remove his shoe from off his foot, and spit in his face, stating, *"So shall it be done to the man, who will not build up the house of his brother."* (Deut. 25:9) His name shall then be called in Israel - The House of the Removed Shoe.

*"When men strive together a man and his brother, and the wife of one comes near, to rescue her husband from the hand of him that is striking him; and sends out her hand, and she grasps (him) by his privates. Then you shall cut off her hand; your eye shall not pity (her)."* (Deut. 25:11-12)

We are to be honest in our business dealings by not possessing false or inaccurate weights and measures. All our weights and measures are to be accurate providing perfect readings, *"in order that your days will be lengthened, on the soil, which YHWH your God gives to you. For an abomination to YHWH your God is anyone doing this; anyone doing injustice."* (Deut. 25:15-16)

We are to remember what 'Amalek did to us, when we went out from Egypt (see *Parashath Beshallah*), how they attacked our tail, all the worn out ones at our rear, when we were faint and weary, *"and he did not revere God"* (Deut. 25:18). Therefore,

when YHWH gives us rest from all our enemies round about in the land which He has given us to possess as an inheritance, we are to blot out the remembrance of 'Amalek from under the heavens, *"you shall not forget."* (Deut. 25:19)

### **TEACHINGS OF HAKHAM REKHAVI:**

*When a man takes a woman and possesses her; and it shall be if she does not find favour in his eyes because he has found in her an abhorrent thing, and writes for her a Document of Cutting off and places it in her hand, and sends her from his house.* (Deut. 24:1)

The Torah permits divorce. The conditions and grounds upon which divorce proceedings are initiated differ according to whether it is the husband who files for divorce or the wife. A husband may only initiate divorce proceedings against his wife upon the grounds that he has *"found in her an 'erwath davar [עֲרוֹת דָּבָר]"*. This *'erwath davar* is too much for the husband to deal with and he can no longer tolerate his wife because of it, hence the phrase; *"she does not find favour in his eyes"*. Since divorce from the standpoint of the husband is solely incumbent upon the term *'erwath davar*, it is therefore crucial that we ascertain an accurate meaning of the term *'erwath davar*.

A literal translation of the term *'erwath davar [עֲרוֹת דָּבָר]* would be *a thing of nakedness* as in the verse, *"The nakedness [עֲרוֹת] of your father and the nakedness of your mother you shall not uncover; she is your mother, you shall not uncover her nakedness."* (Lev. 18:7) Some commentators therefore concluded that an *'erwath davar* is an act of sexual misconduct such as adultery. Nevertheless, this opinion seems unlikely for two main reasons:

1. The phrase, *"if she does not find favour in his eyes"* is rather insubstantial when dealing with the act of adultery, which the Torah refers to as *treachery*, as in, *"Any man any man if his wife is unfaithful, and she is treacherous with him being treacherous."* (Num. 5:12)
2. The punishment for a married woman who commits adultery is death as can be clearly seen from the verse, *"And a man who commits adultery with the wife of (another) man, who commits adultery with his neighbour's wife; death is to be put to death the adulterer and the adulteress."* (Lev. 20:10) and not divorce.

It could be argued that Deuteronomy 24:1 is referring to a case where the husband does not have any substantial evidence that his wife has committed adultery, but has a deep rooted suspicion that this is the case. However, this argument conflicts with the plain meaning of the phrase; *"because he has found in her"* which implies that he has witnessed or has evidence of this *'erwath davar*. Besides the case put forward in this argument is precisely the type of case dealt with in the ordeal of the suspected adulterous, see Numbers 5:11-31. In addition, if there is no substantial evidence against her, but she confesses through her own mouth to the act of adultery, then she becomes forbidden to him and therefore divorced from him ipso facto. This is because the Torah stipulates that, a man can remarry his divorced wife providing that in the interim she has not been subsequently married and then divorced or widowed from someone else, if she has done so, she becomes impure to him, see Deut. 24:4. Therefore, if a man's former wife is forbidden to him, if after the annulment of their marriage she has had

sexual relations with another man, then how much more so if she commits adultery.

A more accurate rendition of *'erwath davar* into English would be *an abhorrent thing*. Deuteronomy 23:14 can validate this understanding where we see the phrase used with this connotation, "*And a place there shall be for you, outside the camp; and you shall go outside there. And a spade there shall be for you with your weapons; and it shall be when you sit outside (to relieve yourself), you shall dig with it, and you shall return and you shall cover up your excrement. For YHWH your God walks about in the midst of your camp to rescue you and to give your enemies before you, your camp shall be holy; and He shall not see in you an 'erwath davar [עֲרֻת דְבָרָה - abhorrent thing], and turn away from you.*" (Deut. 23:12-14) Therefore, the *abhorrent thing* that compels the husband to divorce his wife could be any unpleasant quality, or any act of gross misconduct, that goes against all normal human sensibilities and is thus comparable to publicly exposed human excrement.

If the husband was aware of this *abhorrent thing* prior to the marriage and yet still proceeded to marry her, he cannot later bring forward this *abhorrent thing* as grounds for divorce since he entered the marriage with eyes wide open. The *abhorrent thing* can only be used as grounds for divorce if it became apparent in the woman after the marriage since the Torah stipulates:

1. "*When a man takes a woman*" - marries her,
2. "*and possesses her*" - and has had sexual relations with her,
3. "*and it shall be if she does not find favour in his eyes because he has found in her an abhorrent thing*" - in other words being totally unaware of this *abhorrent thing* prior to the marriage.

Therefore, the husband cannot divorce his wife upon his will but only upon a reason and that being an *abhorrent thing*. However, he must not have possessed any prior knowledge to the marriage that the defect existed. The husband must then bring the matter before the court for them to consider, for if it were up to the discretion of the husband - who desires to divorce his wife - to consider what constitutes an *abhorrent thing*, he would classify a light defect as a serious one.

However, a man who falls under either of these categories;

- A man who raped an unbetrothed virgin and she desired to marry him, Deuteronomy 22:28-29
- A man who had falsely accused his wife of not being a virgin when he married her, Deuteronomy 22:13-21

Cannot initiate divorce proceedings unless the wife endangers his life or becomes an apostate.