

## Sexual Abuse and Marital Rape

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April 24, 2006

Millions of people a year are the victims of sexual violence. The National Center for Injury Prevention and Control of the Center for Disease Control reports the following statistics:<sup>1</sup>

- About 2 out of 1000 children in the United States were confirmed by child protective service agencies as having experienced sexual assault in 2003.
- Among high school youth nationwide, about 9% of students reported that they had been forced to have sexual intercourse.
- Among college students nationwide, between 20% and 25% of women reported experiencing completed or attempted rape.
- Among adults nationwide, more than 300,000 women and over 90,000 men reported being raped in the previous 12 months; one in six women and one in thirty-three men reported experiencing an attempted or completed rape at some time in their lives.

Marital rape, a common form of sexual violence, accounts for approximately 25% of all rapes and is experienced by 10-14% of married women. Shockingly, it was not until July 5, 1993 that marital rape became a crime in all 50 states. In 17 states and the District of Columbia, there are no exemptions from rape prosecution granted to husbands. However, in 33 states, there are still some exemptions given to husbands from rape prosecution.<sup>2</sup>

How could it be that throughout most of world history, even in countries founded on principles of morality and justice, that a husband could rape his wife with impunity? How could it have taken so long for marital rape to become a crime? Chief Justice Sir Matthew Hale of mid-17th century England explains the position: "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract."

How does Jewish law define the violations of rape, marital rape and other forms of sexual assault?

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<sup>1</sup> <http://www.cdc.gov/ncipc/factsheets/svfacts.htm>

<sup>2</sup> [www.vawnet.org/DomesticViolence/ Research/VAWnetDocs/AR\\_mraper.pdf](http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_mraper.pdf). When his wife is legally unable to consent due to mental or physical impairment or if she is unconscious or asleep a husband is exempt from prosecution in many of these 33 states.

## The Wrongs of Rape

Rape is forbidden for many reasons.<sup>3</sup> We will evaluate a number of explanations: sex, violence, emotional distress, and lack of consent, and then turn our attention to marital rape and sexual violence in a domestic setting.

### 1. Rape as a sex crime

Any sexual or sexualized activity in which nonmarried partners engage, even if it is consensual, is forbidden by Jewish law. According to most authorities, these activities are biblically prohibited. Rambam bases this prohibition on the verse, “There shall not be prostitutes among the daughters of Israel” (Lev. 23:18), explaining that all nonmarital intercourse is, by definition, promiscuous and therefore licentious.<sup>4</sup> Others maintain that only casual promiscuous sex is included in this prohibition; a monogamous relationship between unmarried partners is rabbinically forbidden.<sup>5</sup> Other sources for this proscription include: “Do not prostitute your daughter, to cause her to be a harlot; lest the land fall to harlotry, and the land become full of wickedness” (Lev. 19:29);<sup>6</sup> “When a man marries a woman and has relations with her” (Deut. 24:1), marriage is a prerequisite for cohabitation;<sup>7</sup> “You shall not bring the hire of a harlot...into the house of the Lord your God for any vow; for these are abomination to the Lord your God” (Deut. 23:19);<sup>8</sup>

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<sup>3</sup> While rape in and of itself is morally repugnant, it is necessary to articulate the reasons and legal arguments that support this position. Nevertheless, by doing this, we run the risk articulated by Rabbi Aharon Lichtenstein, “By His Light: Character and Values in the Service of God” (Jersey City, NJ: Ktav, 2003), p. 125:

that one will then think that the only significance of the moral element is that it is part of the divine command. At the end of the war in Lebanon, some cast doubt on the halakhic severity of the prohibition of killing non-Jews. My colleague Rav Yehuda Amital spoke out very forcefully on the issue, and among other things, he quoted the opinion of the Ra’avan (*Bava Kama* 113a) that it is an *issur de-oraita* (biblical prohibition). I recall that someone was critical of this, and he said, “What kind of education is this? It teaches the student that whether or not he’s going to kill a gentile should be dependent upon a Ra’avan in *Bava Kama*!...The Rambam answers that with regard to *mishpatim* (civil law), or areas *bein adam le-chavero* (between man and his fellow), certainly a person should not feel constrained solely by the *tzav* (divine command), but rather should feel an inner constraint because of the moral element *per se*.

<sup>4</sup> *Hil. Ishut* 1:4; *Even ha-Ezer* 26:1.

<sup>5</sup> Ra’avad to *Hil. Ishut* 1:4; Ramban to Deut. 23:18. See *Teshuvot Ziz Eli’ezer*, I, no. 27.

<sup>6</sup> *Teshuvot* Rashba, IV, no. 314.

<sup>7</sup> *Sefer ha-Mitzvot*, positive commandment 213.

<sup>8</sup> *Temurah* 29b, “R. Elazar said: If an unmarried man has intercourse with an unmarried woman without the intention thereby of making her his wife, he makes her a harlot.” This opinion is rejected and a single woman who has had intercourse with a Jewish man, who is not her husband, while she has engaged in a prohibited act and may be considered promiscuous, is nevertheless permitted to a *kohen*.

and the prohibition for contemporaries to have concubines,<sup>9</sup> despite the biblical precedent.<sup>10</sup>

In addition to sexual intercourse, any form of sexual intimacy or sexualized touch between nonmarried partners is forbidden,<sup>11</sup> as is being secluded with most members of the opposite sex.<sup>12</sup>

The words of Rabbi Joseph B. Soloveitchik describe the consequence of inappropriate sexual activity:

If the sexual impulse is not redeemed and is left in its crudity, the participants in the drama are guilty of an act of mutual exploitation and vulgarization. The corruptions are interlaced and compounded with enslaving a human being, with denying him the most elementary right of personal existence. The person is depersonalized, desensitized and de-emotionalized. The climax of the hedonic sexual union is ipso facto an act of objectification of the personal, intimate and unique.<sup>13</sup>

Notwithstanding the broad prohibition forbidding even consensual relations, there are a number of reasons to discuss the issue of rape: 1) to serve as a backdrop to better understand our subject of sexual violence in marriage; 2) to acknowledge that there is a qualitative difference between consensual and forced sex, even if both are prohibited, and to explore the nature and consequences of this distinction; and 3) to articulate an appropriate Jewish response to rape in a society in which most sexual practices do not conform to Jewish law.

The Talmud describes the psychological disfunction that may motivate a person to desire illicit sex as “stolen waters [that to him] are sweet, and bread eaten in secret [which to him] is pleasant” (Proverbs 9:17). This *yezer ha-ra* (evil inclination) is a drive that may overwhelm him into feeling that he is unable to control his passions. This is no

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<sup>9</sup> This, despite *Teshuvot She'eilat Ya'avetz* II, no. 15:

[Some say] Ramban, who permits a concubine, in our day when men are morally lax, sleeping with maid servants and forbidden sexual partners, would forbid it...It seems to me the opposite. For this reason the master [Ramban] would permit it, so that people would not commit greater offenses involving *karet* (excision) from the Torah. For a man with bread in his basket will not have the same burning desire to go after forbidden relations. There are similar rulings where the rabbis have permitted even something forbidden by rabbinic law to prevent a Torah transgression.”

<sup>10</sup> *Kesef Mishneh* to *Hil. Ishut* 1:4; *Teshuvot Radbaz*, IV, no. 225; and *Teshuvot Rivash* 425. See, however, *She'eilat Ya'avetz* II, no. 15.

<sup>11</sup> *Hil Issurei Bi'ah* chapter 21.

<sup>12</sup> *Kiddushin* 80b; *Hil Issurei Bi'ah* chapter 22; *Even ha-Ezer* 22.

<sup>13</sup> Joseph B. Soloveitchik, *Family Redeemed* (*MeOtzar HoRav*: eds., David Shatz and Joel Wolowelsky, 2000), p. 93.

excuse. There is no justification for engaging in any form of forbidden sexual activity and no license is ever granted to do so:

Rav Yehudah said in Rav's name: A man once conceived a passion for a certain woman and his heart was consumed by his burning desire (even to the point of his life being endangered.) When the doctors were consulted, they said, "His only cure is that she shall submit (to him sexually)." Thereupon the Sages said: "Let him die rather than that she should yield." Then [the doctors said]; "let her stand nude before him." [The Sages answered,] "Sooner let him die." Said the doctors, "Let her (at least) converse with him from behind a fence." The Sages replied, "Let him die rather than she should converse with him from behind a fence."<sup>14</sup>

In understanding this Talmudic passage, there is a difference of opinion as to whether the Sages were considering a case in which a married woman or a single woman was the subject of this wanton lust. All agree that any sexualization of a married woman is subsumed under the prohibition of adultery. Those who apply this prohibition to the objectification of a single woman do so in order to protect her welfare and security, as well as to maintain the dignity and honor of all women and to promote a proper societal sexual ethic.<sup>15</sup>

The obligation to prevent a man from raping a married woman,<sup>16</sup> committing incest, or molesting a child stems from the would-be perpetrator's designation as a *rodef* (persuer). This designation of the abuser as *rodef* mandates doing anything necessary to prevent the offence—even killing him if that is the only way to prevent him from committing a sexual assault.<sup>17</sup> Although one who sexually assaults another without genital penetration technically does not come under the category of *rodef*,<sup>18</sup> he is

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<sup>14</sup> *Sanhedrin* 75a; *Hil. Yesodei ha-Torah* 5:9.

<sup>15</sup> *Sanhedrin* 75a:

R. Papa said: Because of the disgrace to her family. R. Aha the son of R. Ika said: That the daughters of Israel may not be immorally dissolute.

<sup>16</sup> Specifically a married woman, so as to prevent a violation of the prohibition of adultery. Some have suggested that the limitation of adultery to a married woman is to preserve the sanctity of the institution of marriage. (Biblically, a man could take more than one wife so his sexual relationships were not necessarily exclusive. This was later prohibited by the *herem* (rabbinic edict) of Rabbenu Gershom in the tenth century.) Others have suggested that adultery was a violation the husband's exclusive right to his wife; a relationship that was not reciprocal. See Jeffrey H. Togay, "Adultery," *Encyclopedia Judaica*, Vol. II, col. 313. See also Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (New York: Harper & Row Publishers, 1990) pp. 170-177.

<sup>17</sup> *Sanhedrin* 73a; *Hil. Rotzeiah* 1:10; *Hoshen Mishpat* 425:3-4.

<sup>18</sup> *Sanhedrin* 73a; *Tosaphot*, s.v. *hayavei keritut*.

considered a *rodef* because of our concern for the victim, in this instance, specifically the psychological trauma and depression she suffers.<sup>19</sup>

## 2. Rape as Violence

The Torah explicitly compares rape to murder, “for as when a man rises against his neighbor and slays him, so is this matter” (Deut. 22:26).<sup>20</sup> Simply put, rape is a physical and emotional assault on a woman that has a devastating impact on her physical, psychological and sexual wellbeing.

The comparison to murder also defines rape as a form of violent assault and battery. Now, while all physical assaults can be located on a continuum which begins with relatively minor physical attacks like slapping and which culminates in the extreme of murder, there are clear differences between battery and murder. Lesser acts of violence differ not only in the severity of the damage they cause but also in the punishment they invoke. Murder results in the death penalty; assault engenders payments in five areas: damage, pain, healing, lost wages, and shame.<sup>21</sup>

Rape is a form of *habalah* (assault)<sup>22</sup> which, like other forms of *habalah*, invokes financial liability. Not only must the rapist pay the fifty silver-piece fine mentioned in the Torah,<sup>23</sup> but he must also pay for the pain, shame, and character degradation that he

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<sup>19</sup> Similarly, see *Teshuvot Iggerot Moshe, Even Ha-Ezer IV*, no.68.

<sup>20</sup> Regarding the analogy of rape to murder, see *Sanhedrin* 74a:

Forbidden sexual relations and murder [may not be committed to save one's life], according to the opinion of Rabbi (Yehudah the Prince). For it has been taught: Rabbi (Yehudah the Prince) said, “For as when a man rises against his neighbor, and slays him, even so is this matter.” But what do we learn from this analogy of a murderer? This comes to throw light and is itself illumined. The murderer is compared to a betrothed woman: just as a betrothed woman must be saved [from rape] at the cost of [the ravisher's] life, so in the case of a murderer, he [the victim] must be saved at the cost of his [the attacker's] life. Conversely, a betrothed woman is compared to a murderer: just as one must rather be slain (martyred) than commit murder, so also must the betrothed woman rather be slain than [engage in consensual relations]. And how do we know this of murder itself? It is common sense.

<sup>21</sup> *Baba Kama* 83b.

<sup>22</sup> *Teshuvot Divrei Yeziv, Even ha-Ezer* no. 77.

<sup>23</sup> Deut. 22:28-29:

If a man finds a girl who is a virgin, who is not betrothed, and lays hold of her, and lies with her, and they are found; then the man who lay with her shall give to the girl's father fifty shekels of silver, and she shall be his wife; because he has afflicted her, he may not put her away all his days.

A simple reading of this verse seems to indicate that the rapist must marry his victim, even against her will, thus revictimizing her for a lifetime. This is not the case. *Tosefta*,

caused.<sup>24</sup> These additional payments make no distinction between the rape of a virgin and the rape of a non-virgin.<sup>25</sup>

In defining the nature of the physical pain caused by rape, the Talmud rejects the suggestion that it refers to any accompanying brutality<sup>26</sup> and focuses on what it cites as the essential difference between forced and unforced intercourse: *pisuk raglayim* (the spreading of the legs).<sup>27</sup> *Pisuk raglayim* refers to more than a woman's position during sexual intercourse; otherwise we might come to the absurd conclusion that every sexual act is an act of violence. It refers to the coerced and violent physical assault perpetrated by forced genital penetration.

By defining the act of rape as violence and assault, rape is removed from the category of sex altogether. In other words, rape is not sex that happens to be perpetrated by force. Rape is assault. And the act of imposed penetration is itself a violent act regardless of the nature of the circumstances that accompany it, i.e., whether or not the rapist hit her or held a gun to her head.<sup>28</sup>

While this definition of rape is useful from both legal and political perspectives—it helped rally communities to pass stricter rape laws and helped the masses understand the horrendous nature of rape—many argue that it is insufficient and problematic as well. While the “rape as violence” theory places the blame where it belongs—on the rapist—it ignores the fact that even if it is not a sexual act, is an act of sex, and it ignores the impact of this unique violation on the victim. It does not distinguish between sexual violence and non-sexual violence. And it should. For the victim, being sexually molested is

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*Ketubot* 3:7 indicates that the woman has the right to prevent this marriage by withholding her consent.

<sup>24</sup> *Ketubot* 39a.

<sup>25</sup> See *Tosafot, Ketubot* 39b, s.v., ‘*i hakhi*.

The Torah states, Deut. 22:28-29:

If a man finds a girl who is a virgin, who is not betrothed, and lays hold of her, and lies with her, and they are found. Then the man who lay with her shall give to the girl's father fifty shekels of silver, and she shall be his wife; because he has humbled her, he may not divorce all his days.

Two important observations:

- 1) The payment is given to the father only if the woman is a *na'arah*, a young girl who is economically dependent on her father. An older woman keeps the payment herself. (*Sifre; Ketubot* 39a)
- 2) The rape victim is not forced to marry the rapist. She has the right to refuse the marriage. (*Ketubot* 39b)

<sup>26</sup> Being thrown to the ground, for example.

<sup>27</sup> *Ketubot* 39b.

<sup>28</sup> See, for example, Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Ballantine: 1975).

qualitatively different than being punched in the nose. And for the perpetrator, he chose to act in a sexual manner and in addition to being physically hostile and coercive.

### 3. Rape as emotional distress

Victims of rape are impacted in many ways. In addition to suffering physical injury they suffer great distress living with the memory of what happened to them, worrying about the risk of pregnancy and disease, and living with feelings of guilt, shame and self-loathing. Victims often blame themselves for succumbing to the rape. And there is a high rate of Post-Traumatic Distress Syndrome, 49% higher than victims of other forms of violence.<sup>29</sup>

Ann Cahill describes the emotional impact of rape:

In the act of rape, the assailant reduces the victim to a non-person. He (for the overwhelming majority of rapists are male, another aspect of the sexually differentiated nature of the act) denies the victim the specificity of her (for the overwhelming majority of rape victims are female) own being and constructs her sexuality as a mere means by which his own purposes, be they primarily sexual or primarily motivated by the need for power, are achieved. . . . The victim's difference from the assailant — her ontological, ethical, and personal distinctness — is stamped out, erased, annihilated.<sup>30</sup>

Jewish law prohibits emotional assault and abuse. As noted above, in the case of rape, it prescribes payment by the attacker for the shame he caused. In addition, the verse, “You shall not wrong one another; but you shall fear your God; for I am the Lord your God” (Lev. 25:17) prohibits emotional distress.<sup>31</sup> This is referred to as *ona'at*

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<sup>29</sup> Alan Wertheimer, *Consent to Sexual relations* (Cambridge University Press: 2003), p. 104.

<sup>30</sup> Ann Cahill, *Rethinking Rape* (Cornell University Press, 2001), pp. 192-93.

<sup>31</sup> *Baba Metzi'a* 58a:

Our Rabbis taught: “You shall not wrong one another;” (Lev. 25:17) Scripture refers to verbal wrongs. You say, “verbal wrongs,” but perhaps that is not so, [maybe] monetary wrongs is meant? [This cannot be so because] when it is said, “And if you sell anything to your neighbor, or acquire anything from your neighbor [you shall not wrong one another] (Lev. 25:14), monetary wrongs are already dealt with. Then to what can I apply “You shall not wrong each other?” [The verse refers] to verbal wrongs, e.g., if a man is a penitent, one must not say to him, “Remember your former deeds.” If he is the son of converts he must not be taunted with, “Remember the deeds of your ancestors.” If he is a convert and comes to study the Torah, one must not say to him, “Shall the mouth that ate unclean and forbidden food come to study the Torah which was uttered by the mouth of God!” If he is visited by suffering, afflicted with disease, or has buried his children, one must not speak to him as his companions spoke to Job, “Is not your fear [of God] your confidence, and your hope the integrity of your ways?”

*devarim* (verbal wrongdoing) and includes any speech or activity which maliciously attacks another's sense of self<sup>32</sup> or causes emotional or psychological pain.<sup>33</sup> Essentially, *ona'ah* refers to any form of emotional harm that is brought about by any kind of physical or psychological coercion or oppression.<sup>34</sup>

In addition, rapists also violate “And you shall love your neighbor as yourself” (Lev. 19:18) and “What is hateful to you, do not to your neighbor.”<sup>35</sup>

#### 4. Rape as lack of consent

A person who lacks the capacity to give informed consent is considered an *'a-nus* (one compelled to act unwillingly); he is not liable for his actions and his contracts are invalid. A person must have the opportunity to choose freely without “any feeling of constraint interfering with the freedom of his will.”<sup>36</sup>

Likewise, consent is an essential element in all sexual activity. Judaism insists that all intimacy between husband and wife be consensual.<sup>37</sup>

What constitutes consent? An initial glance at the Bible seems to suggest that lack of protest implies consent. The Torah, Deuteronomy 22:23-27, states:

If a girl who is a virgin is betrothed to a husband, and a man finds her in the city, and lies with her; Then you shall bring them both out to the gate of that city, and you shall stone them with stones that they die; the girl,

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Remember, I pray you, who ever perished, being innocent?” (Job 4:6-7) If donkey drivers sought grain from a person, he must not say to them, “Go to so and so who sells grain,” knowing that [that person] has never sold any. R. Yehudah said: One may also not feign interest in a purchase when he has no money, since this is known to the heart only, and of everything known only to the heart it is written, “and thou shalt fear thy God” (25:17).

<sup>32</sup> See Rashi to Lev. 25:17.

<sup>33</sup> See Rashi, *Baba Metzi'a* 59b, s.v. *hutz*; Rambam, *Sefer ha-Mitzvot*, no. 251

<sup>34</sup> *Kol ha-Ramaz* to Mishneh, *Baba Metzi'a* 58a.

<sup>35</sup> *Shabbat* 31a.

<sup>36</sup> *Salmond and Heuston on the Law of Torts* (19th ed. 1987), pp. 564-65.

<sup>37</sup> *Eiruv* 100b: Rami b. Hama citing R. Assi further ruled: A man is forbidden to compel his wife to the [marital] obligation, since it is said in Scripture: “Without consent the soul is not good ; and he that hurries with his feet sins” (Prov. 19:2); *Ba'ailei ha-Nefesh*, *Sha'ar ha-Kedushah*; *Hil. De'ot* 5:4; *Even ha-Ezer* 25:2.

Consensual intercourse with an unmarried woman is prohibited as outlined above. Nonconsensual intercourse is rape. Although nonmarital relations are forbidden by Jewish law, there is a marked difference between consensual and nonconsensual sex. Consensual sex is the responsibility and liability of both parties, nonconsensual sex is the liability of the rapist alone who violates the various prohibitions we are now discussing.

because she cried not, being in the city; and the man, because he has afflicted his neighbor's wife; so you shall put away evil from among you. But if a man finds a betrothed girl in the field, and the man forces her, and lies with her; then the man only who lay with her shall die; But to the girl you shall do nothing; there is in the girl no sin deserving death; for as when a man rises against his neighbor, and slays him, so is this matter; For he found her in the field, and the betrothed girl cried, and there was no one to save her.

The Torah distinguishes between the responsibility of the victim to cry out in the city and the field, assuming that in the city her pleas will be worthwhile because help is available, while in the field it is not. This distinction is important in understanding the expectations of protest in proving nonconsent. In an unpopulated area a woman need not cry out for help; the cry will not be heard anyway and thus absence of protest is immaterial. In the city, a populated area, it is expected that someone will hear her cry and intervene. Therefore, if she does not protest she must have consented. But this differentiation is not absolute. Even if she is in a populated area, if she suspects that her cries will be ineffective, literally falling on deaf ears because no one will come to her assistance no matter what, then her lack of crying out implies nothing about consent.<sup>38</sup>

In fact, the Talmudic sages castigated those societies that are deaf to the cries of those in need and do not protect their victims. The Sages ascribed moral causes even to natural events and suggested that one of the causes of a solar eclipse is when no one in the city responds to the screams of a raped woman.<sup>39</sup> The reason is apparently this: the darkness of the night is a time when everyone in the city is sleeping and the windows are closed and the shades are drawn, and no one is aware of her screams. But if, in the middle of the day, no one pays any attention to her cry for help and everyone is as inattentive and unhelpful as they would be in the middle of the night, the city will be stricken with darkness and plunged into the shadows of night. This type of indifference was most grossly expressed on March 13, 1964, when no fewer than 38 neighbors saw or heard Kitty Genovese being attacked in New York City; not one came to her aid. The Genovese Syndrome described people who were too indifferent, uncaring or or apathetic to get involved and help a fellow human in distress.<sup>40</sup>

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<sup>38</sup> *Ha-Ketav ve-ha-Kabbalah* to Deut. 22:23.

<sup>39</sup> *Sukkah* 29a.

<sup>40</sup> Michael Dorman, "The Killing of Kitty Genovese," <http://www.newsday.com/community/guide/lihistory/ny-history-hs818a,0,7944135.story?coll=ny-lihistory-navigation>.

While one opinion holds that a rape victim's protest must be continuous from the beginning to the end of the attack, the authoritative position is that an initial protest alone is sufficient in order to establish nonconsent.<sup>41</sup>

Despite their differences, both of these approaches places the onus of proving lack of consent on the victim herself, a burden which many contemporaries argue is unfair and inappropriate. For one thing, it ignores the responsibility of the rapist. For another, there may be times when a woman is unable to protest or is ineffective in communicating her dissent. Ann Cahill, in her *Rethinking Rape*, argued:

Specifically with regard to rape, consent theory falters on locating the ethical wrong of rape in the absence of the victim's consent. To approach the wrong of rape as embedded in the nonconsensual nature of the act is inevitably to place the ethical burden on the victim. The ethical question that courts must pursue becomes whether the victim sufficiently communicated her nonconsent, or whether that nonconsent was likely given the history of the victim.<sup>42</sup>

Yet, evaluating the presence of any protest may be the only way for judges who, in order to reach decide the legal consequences of the rape, must determine whether or not the victim consented to the sexual encounter.

Nevertheless, Jewish law understands that there may be times that a woman is unable to protest, and that lack of protest is not necessarily a signal of consent. Rambam writes, for example, that if she was threatened to remain silent while a sword is being held to her throat, absence of protest is not an indication of consent.<sup>43</sup> There are other limitations on her ability to refuse sexual activity and to withstand coercion as well.

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<sup>41</sup> The Talmud, *Ketubot* 51b, offers a disturbing example of the lack of continuous protest. The Talmud often offers extreme scenarios in order to test the limits of the principals it is evaluating:

Rava said: Any woman, the rape of whom began under compulsion, even if it ended with her consent, and even if she said, "Leave him alone." and that if he had not made the attack upon her she would have hired him to do it, is permitted [to her husband]. What is the reason? He plunged her into an uncontrollable passion. It was taught in agreement with Rava: "And she be not seized" (Num. 5:13) [only if she participates willingly from the beginning] is she forbidden (to her husband), [from which it follows] that if she was seized (i.e., acted under compulsion) she is permitted (to her husband). But there is another class of woman who is permitted even if she was not seized. And who is that? Any woman who began under compulsion and ended with her consent.

See also *Hil. Ishut* 24:19.

<sup>42</sup> Ann Cahill, *Rethinking Rape* (Cornell University Press, 2001), pp. 174—75.

<sup>43</sup> *Hil Na'arah ha-Betulah* 1:2.

## What is coercion?

Coercion is an act of an agent (the coercer), who aims to secure complying action or activity from another (the coercee), and who does so either by using force or violence to directly alter the behavior of the coercee, or else by imposing a practical necessity upon the coercee by showing a willingness and ability to use force or violence to undermine the coercee's ability to satisfy his or her basic needs.<sup>44</sup>

How does Jewish law define coercion? What are its parameters? Is it coercion if a rapist has no gun or knife but threatens her with bodily harm? What if her boss threatens to fire her from her job unless she has sex with him? What if the threats are not made explicitly, but she has reasonable grounds to fear retaliation that are implicit in what appears to be a simple request? What if he makes false promises or engages in other deceptions so that she consents without being properly informed of the true circumstances? What if she is seduced by her therapist or physician or teacher or rabbi?

At first glance it appears that threats are not deemed coercive in Jewish law. Sources indicate that an agreement, even if reached under pressure, is valid and effective. For example, the Talmud stated that we do not convict a man of destroying property based upon his threats to do so because "a person often boasts and does not follow through."<sup>45</sup> Elsewhere we learn that if a person consents to sell something, even if he consents through fear of physical violence, the sale is valid. This is because the Talmud views all sales as taking place under compulsion—the seller needs the money, otherwise he would not sell the object.<sup>46</sup>

However, most authorities do not accept this opinion as authoritative and claim that all agreements occasioned by threat or intimidation are invalid.<sup>47</sup> And *Tosafot* rule that the assumption that people do not always follow through on threats does not apply if they are made by those who usually do follow through on them, making them as real and menacing as a knife held to one's throat.<sup>48</sup>

Is it rape if a woman submits because of threats or intimidation that she believes a would-be assailant will carry out? Do the previous arguments that dealt mainly with monetary matters apply to rape?

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<sup>44</sup> Scott A. Anderson, "Towards a Better Theory of Coercion, and a Use for It" at <http://ptw.uchicago.edu/Anderson02.pdf>, p. 12.

<sup>45</sup> *Shevu'ot* 41a.

<sup>46</sup> *Baba Batra* 47b and *Rashbam*, s.v. *kol de-mezabin 'inish*.

<sup>47</sup> *Hoshen Mishpat* 205:7.

<sup>48</sup> *Tosafot*, *Shevu'ot* 46a s.v., 'avid 'inish de-gazim; *Teshuvot Ri mi-Gash*, no. 122; *Keneset ha-Gedolah*, *Hil. Mokher be-'O-nes*, *Bet Yosef*, *siman* 205, 15-29; *Teshuvot Yabi'a 'Omer*, III, *Even ha-Ezer*, no. 20.

The Talmud<sup>49</sup> recognizes the coercive nature of threats when it comes to rape. It lists nine categories of objectionable intercourse, one<sup>50</sup> of which includes all forms of coerced sex, whether it is “consented” to out of fear (*eimah*) or whether it is forced upon the victim in an aggressive manner (*anusah*).<sup>51</sup> When subject to pressure, intimidation and fear, a person is afraid to say no and loses the ability to express any meaningful consent.

### **Consensual Intercourse, Coerced Intercourse, and Forced Intercourse**

Thus, we find that Jewish law recognizes three major categories of sexual relations: consensual intercourse, coerced intercourse, and forced intercourse.

#### **1. Consensual intercourse**

It is forbidden for a man to force his wife to have intercourse.<sup>52</sup> Even if she is not forced outright, as long as she is not amenable to intercourse, sexual relations are prohibited.<sup>53</sup> Rambam rules, “[Her husband] should not coerce her [to have relations] when she does not desire to do so. Rather, [they should engage in intercourse only] when there is mutual desire and pleasure.”<sup>54</sup> Even if she is ambivalent about her desire, relations are forbidden.<sup>55</sup>

In *Iggeret ha-Kodesh*, chapter 6, ascribed to Ramban, we find the following guidance:

When a man has relations [with his wife] he should not do so against her will and he should not rape her; the Divine Presence does not abide in such unions in as much as his intentions in opposition to hers, and she does not consent to his desire. He should not quarrel with her or strike her concerning marital relations. Behold, the Sages said (*Pesahim* 49b), “Just as a lion tears [his prey] and devours it and has no shame, so an ‘*am ha-arez* (ignorant boor) strikes and cohabits and has no shame.” Instead, he

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<sup>49</sup> *Nedarim* 20b. In addition to fear motivated and forced relations, the other categories include intercourse engaged in 1) when her husband hates her and is thinking of another woman; 2) when one of the parties is excommunicated; 3) when a husband who has two wives has intercourse thinking that he is with the other wife; 4) when one party is angry with the other; 5) when one party is drunk; 6) after the husband has already decided to divorce her; 7) when she is sleeping with another man; 8) when a woman brazenly demands relations.

<sup>50</sup> See Ran, s.v., *benei anusah*.

<sup>51</sup> *Hil. Issurei Bi'ah* 21:12-13; *Orah Hayyim* 240:2-3; *Even ha-Ezer* 25:10.

<sup>52</sup> *Eiruvin* 100b: Rami b. Hama citing R. Assi further ruled: A man is forbidden to compel his wife to the [marital] obligation, since it is said in Scripture: “Without consent the soul is not good; and he that hurries with his feet sins” (Prov. 19:2); *Ba'ailei ha-Nefesh, Sha'ar ha-Kedushah; Hil. De'ot* 5:4; *Even ha-Ezer* 25:2.

<sup>53</sup> *Magen Avraham, Orah Hayyim* 240, no. 7; *Zohar, Bereshit* 49b, 148b, *Va-yikra* 225b.

<sup>54</sup> *Hil. Ishut* 15:17.

<sup>55</sup> *Masekhet Kallah Rabbati* 1:11; *Tur, Orah Hayyim* 240 and *Even ha-Ezer* 25.

should entice her with kind and alluring words and other appropriate and reputable things. He should not have relations with her while she is sleeping because their intentions are not united and they are not of the same mind. Rather, he should wake her and arouse her with conversation. The bottom line is this: when a man is sexually aroused he should make sure that his wife is aroused as well [before having intercourse].

Reasonable words and acts of enticement that attempt to woo another person and seduce her into consensual relations are permitted and are not considered coercive. However, if these advances are rebuffed, they must be stopped.

We will return to the issue of marital rape and a wife's option of refusing intercourse.

## **2. and 3. Forced and Coerced Intercourse**

While all coerced sex is forbidden, there are various forms and degrees of coercion. At the extreme end of the spectrum is threat of physical, emotional or financial harm. Realistic fear for one's safety and well-being, apprehension that one's future may be seriously jeopardized if one refuses to submit, concern over threats to the welfare of one's children or family, and the like render the act coercive. A woman really has no viable choice in these situations because the only other option is suffering, harm or great sacrifice. In such cases, the perpetrator is guilty of rape.

At the other end of the spectrum is marginal consent. Rev. Marie Fortune points out that "acquiescence may pose as 'consent,' but it is not the same."<sup>56</sup> She is referring to what some call "altruistic" sex which is undertaken in order to keep a partner satisfied. Here there are no threats of violence and she is not terrorized. In this situation a woman agrees to sex for what she perceives to be *shalom bayit*, perhaps to keep her husband sexually satisfied, perhaps to avoid a fight. While this is not ideal and while, as stated above, a husband should not have relations with his wife unless she is aroused and willing, such situations may occur during long term relationships and, if they do not define the totality of their sexual relationship, are not sufficiently coercive to qualify as rape according to Jewish law.

There are other degrees of coercion as well. A responsum by Rabbi Jacob Ettlinger (1798-1871) recorded in his *Binyan Tziyyon*<sup>57</sup> will be helpful in defining two intermediate places on the continuum. R. Ettlinger was asked to rule on the status of a pious, yet naïve, woman who submitted sexually to a guest who stayed at her home. After a while, she was taken in by his claims that he was Elijah the Prophet and that her destiny was to become the mother of the Messiah, to be fathered, of course, by this guest.

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<sup>56</sup> Marie Fortune, *Sexual Violence: The Sin Revisited* (The Pilgrim Press: Cleveland, OH, 2005), p. 56.

<sup>57</sup> *Teshuvot Binyan Tziyyon* no. 152.

Of concern to R. Ettliger was the woman's status pertaining to her husband. Jewish law forbids a couple to remain together after a wife has consensual intercourse with a man other than her husband; it permits them to remain together if she was raped. In this case, was her submission consensual making it forbidden for her to remain with her husband or was she raped?

After outlining and dismissing the approach of Maharik, R. Ettliger outlines his own approach. R. Ettliger begins his discussion by citing an opinion of Maharik: In deciding a case in which a woman incorrectly believed that she was not doing anything wrong when she was having an affair, Maharik ruled that engaging in extramarital intercourse even if done *be-shogeg* (inadvertently, in error) is still considered adultery and the woman is forbidden to her husband.<sup>58</sup> He brought proof for this position from the actions of Queen Esther. According to rabbinic tradition, Esther was actually a married woman, the wife of Mordecai.<sup>59</sup> But because she engaged in intercourse with Ahasuerus only when summoned by him, an summons she could not refuse on pain of death, each act of intercourse was rape and Esther was not an adulteress. However, when it became necessary to plead with Ahasuerus for the lives of the Jewish people, it was she who initiated that meeting—and that meeting was more than a simple tête-à-tête—for she willingly submitting to the king.<sup>60</sup> As a result of this consensual act, Esther was afraid that she would no longer be able to remain Mordecai's wife.<sup>61</sup> Thus, even though the encounter was occasioned by duress, i.e., the danger to the Jewish people, and even though her intention was not to sin, Maharik considered this a consensual sexual act.<sup>62</sup>

R. Ettliger disagrees, arguing in defense of Esther and on behalf of the woman in question. According to R. Ettliger, an essential element of adultery is found in a verse describing the *sotah* ordeal: “And when he has made her drink the water, then it shall come to pass, that, if she is defiled, and has trespassed against her husband, that the water that causes the curse shall enter into her, and become bitter, and her belly shall swell, and her thigh shall fall; and the woman shall be a curse among her people” (Numbers 5:27). Adultery is a “trespass against her husband.” Therefore, if she does not engage in

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<sup>58</sup> Maharik, *shoresh* 167, cited by Rema, *Even ha-Ezer* 178:3.

<sup>59</sup> *Megilah* 13a:

“And when her father and mother died, Mordecai took her for his own daughter” (Esther 2:7). A Tanna taught in the name of R. Meir: Read not ‘for a daughter’ [*le-bat*], but ‘for a house’ [*le-bayith*]. (i.e., a wife)

<sup>60</sup> *Megilah* 15a:

“Until now [I have slept with Ahasuerus] under compulsion, but now I will do so of my own will.”

<sup>61</sup> *Megilah* 15a:

“And if I perish, I perish” (Esther 4:16): As I am lost to my father's house so I shall be lost to you.

<sup>62</sup> Similarly, *Bet Shmue'l*, *Even ha-Ezer* 178, no. 4 rules that a woman who willingly engages in intercourse even if it is in order to save the lives of others, as was the case of Esther, is forbidden to her husband because the intercourse was consensual.

extramarital sex for her own pleasure but acts solely for the sake of Heaven, it is not a violation of her relationship with her husband and the act does not render her an adulteress. In Esther's case, she hesitatingly acted at the behest of her own husband himself. Rashi puts words into Esther's mouth: "Even though I am going of my own volition [to sleep with the king], it is 'o-nes (a result of force and coercion)."<sup>63</sup>

In the case confronting R. Ettlinger, he felt that this woman was naively coerced by the misrepresentations and manipulations of her guest; she had no intention of rebelling against her husband. Clearly, under normal circumstances, a husband has no right to forgive the exclusive nature of his intimate relationship with his wife. The kind of arrangement known as "open marriage" is not a viable *halakhic* or moral option. The *Binyan Tziyyon's* analysis is relevant only with regard to understanding the impact of coercion on a woman's state of mind and the nature of her consent or lack thereof. With the agreement of other respected decisors, R. Ettlinger was willing to dissent from the opinion of Maharik.

He suggests a further distinction that takes into account the object of coercion. The *Mishneh, Ketubot* 26b, states:

A woman was imprisoned by heathens: if [they took her hostage] for the sake of [procuring ransom] money, she is permitted to her husband (upon her release). If [they took her hostage] for the purpose of [taking her] life, she is forbidden to her husband (upon her release).

What is the difference between these cases? If the kidnapers have a pecuniary interest in keeping their hostage safe and well protected, we do not suspect that they will engage in intercourse with her—they need to "protect their investment." However, if the hostage's life is in danger, the Mishneh suspected that she may have voluntarily had sex with her kidnapers in order to entice them to release her. Such sex, although resulting from her desperate and ominous situation, is not considered coerced; they did not coerce the sex act. Only if the coercion is for sex itself do we consider whatever ensues as rape. However, when the coercion is for another matter and the sex is "volunteered" for the purpose of saving oneself from those other dire consequences, this is not deemed the kind of coercion which defines that intercourse as rape.<sup>64</sup>

This does not mean that the perpetrator has not committed a sin. On the contrary, he acted appallingly, sinfully and illegally. It does mean, however, that there was a

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<sup>63</sup> *Megilah* 15b:

"And stood in the inner court of the king's house" (Esther 5:2): R. Levi said: When she reached the chamber of the idols, the Divine Presence left her. She said, "My God, My God, why have You forsaken me" (Psalms 22:2). Do You punish the inadvertent offence (*shogeg*) like the presumptuous one (*mezid*), or one done under compulsion ('o-nes) like one done willingly (*ratzon*)?

<sup>64</sup> *Shevut Ya'akov*, II, no. 117.

sufficient level of consent with regard to the sexual act that renders a married woman forbidden to her husband.<sup>65</sup>

Thus, there are two more points in the continuum of coerced sex between acquiescence and forced intercourse. One is where the coercion is intrinsic—the intercourse itself was coerced—and is considered rape. The other is where the duress is extrinsic and intercourse was offered as a way of relieving a difficult situation. In this case, there are two perspectives. From the perspective of the woman, the law regards the sex as consensual, although it may condone it if it is motivated for a greater good. And from the perspective of the perpetrator, the law regards his act as sinful and coercive.<sup>66</sup>

Sexual relations between a woman and her therapist, physician, clergy or teacher can fall into these categories as well. If the professional threatens her with what to her are significant consequences—financial, emotional, physical, psychological, or spiritual—to submit to intercourse or suffer the consequences, the act is rape. There is an inherent imbalance of power in these relationships that makes full consent impossible. Because she is often vulnerable in the settings in which she interacts with and depends upon these authorities and because in our society people are conditioned to trust and respect them and to defer to their wisdom and insight, it can become difficult for her to distinguish between appropriate and inappropriate interaction. This is true when patients, students and congregants may fear losing the attention of that authority figure or when they are unable to withstand inappropriate manipulation and exploitation of their vulnerabilities. The psychological concept of transference, the unconscious redirection of feelings or emotions onto a therapist, may be at play as well. Thus, a woman's ability to give informed consent is compromised. Every code of professional ethics forbids such relationships.

Canadian Supreme Court Justice Gérard Vincent La Forest summarizes:

In my view, this approach to consent in this kind of case is too limited. As Heuston and Buckley, [page247] Salmond and Heuston on the Law of Torts (19th ed. 1987), at pp. 564-65, put it: "A man cannot be said to be 'willing' unless he is in a position to choose freely; and freedom of choice predicates the absence from his mind of any feeling of constraint interfering with the freedom of his will". A "feeling of constraint" so as to "interfere with the freedom of a person's will" can arise in a number of situations not involving force, threats of force, fraud or incapacity. The concept of consent as it operates in tort law is based on a presumption of individual autonomy and free will. It is presumed that the individual has freedom to consent or not to consent. This presumption, however, is untenable in certain circumstances. A position of relative weakness can, in some circumstances, interfere with the freedom of a person's will. Our

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<sup>65</sup> *Maharik* no. 167; *Terumat ha-Deshen*, *pesakim* no. 92; *Teshuvot Shevut Ya'akov* II, no. 117. See, however, *Teshuvot Sho'el u-Meshiv*, *mahadura aleph*, III, no.48.

<sup>66</sup> See Ramban to Deut. 22:23.

notion of consent must, therefore, be modified to appreciate the power relationship between the parties.<sup>67</sup>

He continues:

An ability to "dominate and influence" is not restricted to the student-teacher relationship. Professor Coleman outlines a number of situations which she calls "power dependency" relationships: see Coleman, "*Sex in Power Dependency Relationships: Taking Unfair Advantage of the 'Fair' Sex*" (1988), 53 Alb. L. Rev. 95. Included in these relationships are parent-child, psychotherapist-patient, physician-patient, clergy-penitent, professor-student, attorney-client, and employer-employee. She asserts that "consent" to a sexual relationship in such relationships is inherently suspect. She notes, at p. 96:

The common element in power dependency relationships is an underlying personal or professional association which creates a significant power imbalance between the parties ... . Exploitation occurs when the "powerful" person abuses the position of authority by inducing the "dependent" person into a sexual relationship, thereby causing harm.

While the existence of one of these special relationships is not necessarily determinative of an overwhelming power imbalance, it will, at least in the ordinary case, be required.<sup>68</sup>

This issue of the abuse of power imbalance as it relates to teachers, rabbis, and other professionals is a difficult concept for some to accept. At times the sexual relationships between these professionals and their clients appear consensual. It is clear that the rabbi, teacher or professional is abusing his position and that his client lacks the capacity for full consent.

### **Marital Rape**

Sexual relations are a defining feature of marriage. Every other type of relationship or responsibility that exists between husband and wife can be shared by any two individuals—financial support, household duties, companionship, etc. It is intimacy itself which is uniquely reserved by the Torah for husbands and wives to share with, and only with, each other. That is why, according to most authorities, Jewish law empowers a couple to negotiate almost every aspect of their relationship and, for example, set as a condition of marriage that they will have no financial responsibilities or household obligations to each other. However, they cannot set as a precondition to marriage that they will not engage in intimate relations.<sup>69</sup>

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<sup>67</sup> Norberg v. Wynrib, [1992] 2 S.C.R. 226; [1992] S.C.J. No. 60, par. 27.

<sup>68</sup> Norberg v. Wynrib, par. 39.

<sup>69</sup> *Ketubot* 56a; *Hil. Ishut* 6:10; *Even ha-Ezer* 38:5 and 69:6. See, however, *Teshuvot Tashbetz* I:94; Ramban to *Baba Batra* 126b; *Havot Ya'ir* to Rif, *Baba Mezi'a* VII, 54a.

The central importance of sexual intimacy in a marriage was described by Rabbi Joseph B. Soloveitchik:

...a covenantal marriage is a hedonic, pleasure-oriented community. Judaism did not overlook or underestimate the physical aspects of marriage. On the contrary, once sacrificial withdrawal from the sinful erotic paradise of change and variety is completed, the natural element in marriage comes to the fore. The two partners owe each other not only fidelity, but also full gratification of their sexual needs... Each one must observe these laws of consortium with regard to the other. The marriage must not be converted into an exclusively spiritual fellowship. Marriage without carnal enjoyment and erotic love is contrary to human nature and is to be dissolved. The ethic of marriage is hedonistic, not monastic.<sup>70</sup>

A husband is obligated to have intercourse with his wife and he may not spitefully deprive her of sex.<sup>71</sup> This duty is found in the biblical verse, “he shall not reduce her food, her garment, and her duty of marriage (*onah*)” (Ex. 21:10).<sup>72</sup> R. Naftali Zvi Yehudah Berlin explains that it is more than just a legal proscription:

Reason tells us that (the man) is so bound. It is, as we well know, for this purpose that a bride enters into marriage, and she is forbidden to find her pleasure elsewhere because of her husband. Hence, if he denies her sexual relations, she is deprived of her right. Even for denying her the pleasure of bearing children, he may be compelled to divorce her and pay her *ketubah*...since she is not to be deprived of her pleasures.<sup>73</sup>

While a woman has no explicit obligation to cohabit with her husband, many authorities infer from the very nature of the marriage commitment itself a mutual obligation that husbands and wives will be available to each other sexually.<sup>74</sup>

But this obligation is not absolute and does not offer unconstrained license to a husband to be with his wife whenever he wants. Thousands of years ago Judaism rejected statements like that of Chief Justice Sir Matthew Hale that a "husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract." Jewish law insists that it is forbidden for a man to

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Nahum Rakover, “Coercion in Conjugal Relations” in *Jewish Law Association Studies I: The Touro Conference Volume*, B. S. Jackson, ed., 1985 pp. 103-104.

<sup>70</sup> Soloveitchik, p. 50.

<sup>71</sup> *Hil Ishut* 14:7.

<sup>72</sup> See *Ketubot* 47a- 48b for other possible sources.

<sup>73</sup> *Birkat ha-Netziv* to the *Mekhilta de R. Yishma'el, Mishpatim* 3 cited by Rakover, pp. 102-103.

<sup>74</sup> Rashba to *Nedarim* 15b.

force his wife to have intercourse;<sup>75</sup> all sexual intimacy must be consensual.<sup>76</sup> Rambam rules, “He should not coerce her [to have relations] when she is not desirous. Rather, [they should engage in intercourse only] when there is mutual desire and pleasure.”<sup>77</sup> We have already seen the Talmudic restriction on sex categorized as *anusah* (rape) and *eimah* (coerced out of fear).<sup>78</sup> And Maharit writes that a wife should not be forced to have sex because “she is not a captive to be sexually ravished at her husband’s whim.”<sup>79</sup>

Does a wife have the right to refuse to have relations with her husband? Rambam writes:

If a woman prevents her husband from having sexual relations with her, she is called a *moredet* (a rebellious wife). [The court] inquires of her as to why she rebelled. If she said, “I am repelled by him and cohabitation with him is impossible for me,” [the court] forces him to divorce her because a wife is not a prisoner who must consort with a person whom she despises.<sup>80</sup>

This opinion is confirmed by R. Moshe b. Yosef of Trani, known as Mabit, who states that a woman cannot be compelled to submit to her husband because “she is unlike a captive woman who can be compelled to submit to sexual relations with a man she does not desire.” He compares her conjugal rights to those of food and clothing which her husband is also obligated to provide, and which she can also reject. He also points out that the Torah speaks of “*her* conjugal rights” (Ex. 21:10) and not simply of “conjugal rights;” those rights are hers and not her husband’s.<sup>81</sup>

While a wife has the right to reject cohabitation, there may be consequences to her refusal. The court may pressure her to comply by threatening to reduce the amount she is owed in her *ketubah*.<sup>82</sup> If she persists in her refusal she may be divorced having lost the financial obligations due to her from her husband.<sup>83</sup>

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<sup>75</sup> *Eiruvin* 100b; Rami b. Hama citing R. Assi further ruled: A man is forbidden to compel his wife to the [marital] obligation, since it is said in Scripture: “Without consent the soul is not good ; and he that hurries with his feet sins” (Prov. 19:2); *Ba’ailei ha-Nefesh, Sha’ar ha-Kedushah; Hil. De’ot* 5:4; *Even ha-Ezer* 25:2.

<sup>76</sup> See Warren Goldstein, *Defending the Human Spirit: Jewish Law’s Vision for a Moral Society* (Feldheim: NewYork, 2006), pp.151-220.

<sup>77</sup> *Hil. Ishut* 15:17.

<sup>78</sup> *Nedarim* 20b.

<sup>79</sup> *Teshuvot Maharit* I, no. 5.

<sup>80</sup> *Hil. Ishut* 14:8.

<sup>81</sup> *Kiryat Sefer to Hil. Ishut* 14.

<sup>82</sup> *Ketubot* 63b

What is the definition of a “rebellious wife”? Amemar said: [One] who says. “I like [my husband] but wish to torment him.” If she said, however, “He is repulsive to me,” no pressure is to be brought to bear upon her. Mar Zutra ruled: Pressure is to be brought to bear upon her. Such a case once occurred, and Mar

A wife may refuse excessive sexual demands made by her husband and not be labeled a *moredet*.<sup>84</sup> And a woman may refuse to engage in sexual practices that are unacceptable to her.<sup>85</sup>

### **Conclusion**

Sexual relations are meant to be an expression of love, intimacy and sanctity. They are an interaction between two people that finds them at their most vulnerable and exposed—physically and emotionally. It is for these reasons and others, that while respect and dignity should define all human dealings, they are essential in sexual interactions. Judaism came to elevate and sanctify the sexual act with the institutions of marriage and *taharat ha-mishpahah* (family purity).<sup>86</sup> Nonconsensual and forced relations degrade and defame sexual intimacy as well as the partner whom one is obligated to love and respect.

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Zutra exercised pressure upon the woman and [as a result of the reconciliation that ensued] R. Hanina of Sura was born from the reunion. This, however, was not [the right thing to do]. [The successful result] was due to the help of Providence.

<sup>83</sup> *Even ha-Ezer* 77:2-3.

<sup>84</sup> *Teshuvot Yaskil Avdi*, V, no. 69

<sup>85</sup> *Nedarim* 20b; *Ba'alei ha-Nefesh*, *Sha'ar ha-Kedushah*; *Hil Issurei Bi'ah* 21:9; *Even ha-Ezer* 25:2.

<sup>86</sup> See Norman Lamm, *Hedge of Roses* (Feldheim, 1966)