

The Torah instructs on the conduct of soldiers during wars that take place post-conquering of the Land.

**וְרֵאִיתָ בַּשְּׂבִיָּה אִשָּׁה יְפֹת־תָּאָר וְחִשְׁקָתָּ בָּהּ וְלָקַחְתָּ לָּךְ לְאִשָּׁה:**

“And you see in the captives a woman of beautiful appearance and you desire in her, and you take her for yourself as a wife.” (Devarim 21:11).

Why does it say “see” when a more appropriate word would be “find” as in, *if he finds a woman of incredible beauty*. Why does it use the phrase “captives” and not “among the conquered?” Does “take her as a wife” mean the same as other pesukim with similar phrases (marriage)? Does this pasuk condone being intimate with captives? Also, what is the lesson by saying specifically a “woman” that is beautiful?

The Gemara interprets this pasuk as an allowance for a Jew to take a gentile woman as a wife. Some learn that he can be intimate with her prior to the marriage, one time. Gemara Kiddushin 21 b says, *Rav and Shmuel dispute if a Kohen is allowed to be intimate with a captive woman. The issue is that a Kohen cannot marry a convert. Rav says the Torah allows being intimate before conversion because of the evil inclination [many infer that he would do so anyway, so the Torah allows him to act and does not make it a sin]. Shmuel says that since he will not be able to ultimately convert her and stay married to her, the kohen cannot be intimate with her initially.*

Further, Gemara Semachos 7:8 says, *thirty days is the general in the Torah. It applies to the woman captive. She may not be taken as a wife for thirty days after taking her. In that time, she is to sit in the door, shave her head, and allow her nails to grow long.*

Many commentators read these Gemaras as the Torah allowing soldiers to be intimate with their captives once, and then after they must convert them and marry them. They ask, how can the Torah allow such behavior? Their answer is that it is better to allow this behavior than to put stumbling blocks before Bnei Yisroel and have them sin. The language in Gemara Semachos is almost explicit that thirty days must pass from pasuk 11 (seeing her and desiring her and *taking* her) and pasuk 12-13 (converting her). However, this is not the plain reading of the Gemaras. The Torah is not allowing a one-off intimacy before converting her and marrying her. In reality, the pasuk is not giving a carte blanche to rape at will. This question about how can the Torah allow one to act in such away is more perplexing when the gentile world itself made such behavior a war crime at the Geneva Convention. Bnei Yisroel are no less capable of civil behavior than the rest of the world.

Other Gemaras qualify the previous ones. Further in Gemara Kedushin 22a, it says, *the person desires this woman. It is subjective that she is a woman of beautiful appearance. Also, he may not take her and another woman.* This reduces the “taking” activity to one

woman. If the situation was about soldiers letting off steam then it would allow them to take all of the captive women they find desirable. This is especially true since the soldiers can have more than one wife. The Torah would allow them to *take* as many captives as they wanted. The Gemara says, only one. Clearly, this is about discerning selection.

Gemara Chullin 109b says, *based on our pasuk, a Jew is not allowed to be intimate with a gentile, however, this pasuk allows a Jew to marry a gentile under the right conditions. Clearly, the pasuk is referring to marriage, not wanton intimacy.*

The Midrash says, *even if she is married.* (Sifrei Devarim 211:7).

Chizkuni says, *we know this includes a gentile married woman because it says אשת which connotes married, not just אשה which means woman. The Torah does not usually recognize marriage in gentiles, however, here it is stating even a woman who is exclusive to a man is allowed to be taken without any type of divorce action on her part. The fact that the Torah allowed a man to marry such a woman after the conditions of pesukim 12-13 are met is remarkable.*

How can it be she's married? The men are all killed in battle. It is unlikely, then, that this woman is married. Perhaps it is possible that she is married to an elderly or wounded man, or someone else that did not go to war. However, the Torah already said, "Hashem, your Lord, will give them into your hands and you shall strike *all* its males dead." (Ibid 20:13). It then says that "woman and children" can be taken as slaves. (Ibid 20:14). All soldiers and all males of the city are killed. Therefore, unless she is married to someone from another city, it is most likely that she is not married. The Midrash can mean that the Torah does not require an inquiry into the matter, no matter how unlikely. It can also be that anyone unfit for war is also unfit for slavery so is not mentioned as part of the loot. The simple understanding, though, is all males are killed so how can she be married? Also, elderly and wounded males can be taken as slaves and used for other purposes besides physical labor (scribes, craftsman, intellectuals). Further, as I state below, "woman" denotes she is an adult and at the age of consent. If she does not object then the assumption is she is unmarried. *Tzarich iyun.*

A lot of the misconception comes from misreading Rashi. Rashi has been relied on by the masses since Medieval times to summarize the Midrash and Gemara's understanding of the pesukim.

Rashi says, *this was said only because of a man's evil inclination. שֶׁאִם אֵין הַקֶּבֶ"ה מְתִירָה , אֲבָל אִם נִשְׁאַה סוֹפוּ לְהִיּוֹת שׁוֹנְאָה* "For if HKBH would not permit her then the soldier would bed her in sin. However, if he does marry her, he will come to hate her. Many interpret this to mean, "if he ultimately marries her, after the one-off and after converting her." However, neither Rashi nor the Gemara says that. Rashi means, if he does marry her, i.e. "take her" per our pasuk, then ultimately he will end up hating her. She is not a good fit for marriage. He is only marrying her out of lust and whimsy created by battle. In any other circumstances, this is not a good marriage match for him. The marriage cannot work. Thus, the Torah says next, "If a man has two wives..." (Devarim 11:15). Also, to prevent sin means that the Torah allowed the marriage so that he will be intimate with

her in a proper way instead of raping her. If even marriage was impermissible then he would likely sin.

Ibin Ezra says, *he desires her – to be his wife and then he takes her as a wife*. It is not that he desires to take her as a wife now but only takes her as a wife later, after conversion.

Ramban says, *he has a lust for her so she is permitted to him only because of the lust. If he has no lust, he may not take a wife from among the captives. The Midrash says not to take more than one. This means, he may not take one for his father and one for his son, too. It is only if the soldier has the desire may he marry a captive. Those not present have no desire.*

Ohr Chaim poses the question: *how can the Torah allow a person to give into his evil desires and sexual urges at a time when Hashem is performing miracles and giving victory and expansion (or defense) to His people? This pasuk is talking homiletically about the war one has with the Evil Inclination. He goes out to “war” against his Evil Inclination and he sees his soul – the woman of beautiful appearance – and he must desire his soul (over the sin he wants to commit) so that he can “take his soul for a wife” to nourish its spirituality.* My answer is given below.

It appears that Ramban, Chizkuni, and Ohr Chaim all read our pasuk as a soldier having a desire and acting on it, so the Torah condoned it, and only after following pesukim 12-13 can he marry her. In fact, it is about the soldier having a desire and the Torah finding a way to allow the behavior in a way that is not sinful. There is no allowance to be intimate with a captive before marriage. Our pasuk is saying as follows:

“And you see.” This is a war post-conquest. It is either a war of expansion, to retake lost territory, or to defend territory already held. The conquest of the Land wars do not allow for loot or slaves. (Devarim 20:16). Not a soul shall live (ibid) and you shall utterly destroy the cities (Ibid 20:17). If the pasuk said “find” it would give the impression of looking for something. This pasuk says, “And you see.” It can be happenstance. Among the captives taken one woman stirs desire. “Seeing” also means the person is looking among the captives for something. He is seeking out slaves or house servants. He is looking at the captives, seeking out useful spoils. He sees a woman that can be useful to him, as a wife.

“Among the captives.” Meaning, this is at the battle site. This is not on the way back and it also does not apply to women from a neighboring city that visited after battle. The ‘captivity’ implies a sort of possession as a result of conquest. Just as territory will now belong to Yisroel, so too, this woman will now be quasi-Yisroel.

“A woman.” נַפְשָׁא denotes possession. She possesses this beautiful appearance. She is a woman, not a man. There still is no allowance to desire or marry a man, even in the heat of battle. Further, it cannot be a man, because the captives are only women and children. (See ibid 20:14). She is also a woman, not a girl. She must be an adult and the age of consent. This is not a girl in her father’s house. This is not a young lady who must be given away but now has no male relatives because they were all killed. She is a woman, an adult, who is in possession of herself. From here we see an aspect of consent.

“That has beautiful appearance.” This phrase is found three times in the Torah and twice in Na’ch. “And Leah’s eyes were softened and Rachel was beautiful in appearance and had beautiful complexion.” (Bereishis 29:17). Interestingly, by Rachel her beauty is

described as both *beautiful appearance* and *beautiful complexion*. Similarly, that phrase is used for Esther. “And the maiden had beautiful appearance and a good complexion.” (Esther 2:7). The phrase is also found: “Behold, from the River (Nile) came up seven cows, healthy and meaty, and beautiful appearance, and grazing.” (Ibid 41:18). In Shmuel it describes Avigayil (a woman who advises King Dovid and later becomes his wife) as “intelligent and beautiful appearance.” The Torah says Sara “had beautiful complexion.”

What is the difference between appearance and complexion? Beautiful complexion seems to indicate an objective beauty in the subject. Avram was afraid that Pharaoh was going to take his wife because of her objective beauty. Esther caught the king’s eye because of her objective beauty. Rachel was objectively more beautiful than her sister and was the choice of Yaakov. Contrastingly, cows have subjective beauty. Pharaoh dreamt of meaty and healthy cows, cows he can use for meat or labor. Their “beautiful appearance” was in their usefulness to him. Similarly, Avigayil was intelligent and had beautiful appearance. She was not the desire of Dovid’s eye because of her looks. It was her intelligence and her good advice that made her beautiful to him. Here, too, the captive woman is not objectively beautiful. She is subjectively desirable, and only because of her situation. She is a foreign woman, a gentile, and a captive, and that makes her “appear beautiful” to this person. Thus, it is not a beauty that drives lust. It is circumstances that creates a desire and also an ability for her to fill a need. She can be a slave or she can be a helpmate, a wife.

“And he desires in her.” Not just desiring her, but he has a desire in her. There is more to her than just being a captive and possible slave. She has something he seeks in a mate, qualities that allow this attraction to perhaps last long-term. This is not a fleeting fancy but a stronger urge of wanting what she has to offer.

“And you take her for yourself as a wife.” He marries her. *For yourself* is a key phrase. “When a man takes a woman and is intimate with her (lit. to possess her).” (Devarim 24:1). “Go to the land of my birthplace and take a woman *for my son*, for Yitzchok.” (Bereishis 24:4). “Arise, go to Padam-Aram...and take *for yourselves*, there, a wife.” (Ibid 28:2). These are all the same “take” and “for yourself.” They all mean for marriage proper. This pasuk, too, refers to marriage. He takes her as a wife. Further, if he no longer desires her, he has to divorce her. “If you no longer want her then you must send her away, for her soul.” (Devarim 21:14). *Soul* meaning with alimony or something akin to her kesubah. Once marrying her he cannot sell her or enslave her, because he did not take her as a slave. He took her as a wife. This is the same “sending her” as it says by marrying a Yisroel woman. (Ibid 24:1). An earlier pasuk talked about wars taking place out of the conquered territories and that “woman, children, and livestock” can be taken as loot. (Ibid 20:14). There it says *לָךְ תִּבְרָךְ* “plunder for yourself.” It does not say “take.” There, it was giving permission to grab slaves—no payment. Here, it is allowing marriage—a transaction. Once married the woman cannot then be turned into a slave. She gains proper wife status.

And this is how the Midrash Sifrei and previous Gemaras can be translated and understood in a way that is consistent with this same understanding. There is no allowance for a one-off. The Torah was protecting a person from his evil inclination by

saying, if the soldier desires a captive woman, then he can have her, but he will have to marry her first. He *cannot* treat her as a possession to be used and then put into slavery, sold, or just let go. There is no rape allowed. She will have to be the age of consent and will have to be cared for and supported like any other wife. He can also only have one, so he must be discerning. He cannot act indiscriminately on his desires. This is “taking” – a transaction. He gives her something of value and they marry and he supports her.

As to Ohr Chaim’s question about how can the Torah allow carnal lust during a time of goodness from Hashem, the answer is simple. It doesn’t as there is no allowance for that in our pasuk. A thorough look at Ohr Chaim’s own explanation about the “woman” being the soul also implies that he believes that the Torah is referring to an appropriate relationship and conduct.

From this pasuk we can also learn how to properly look for a spouse. First one has to look. A good wife will not just come without looking or effort. Also, she cannot be a captive. The two must be on equal footing in their power dynamics and also have similar values and goals. She cannot be so beholden to him that she will lose her sense of self to him. He should find her subjectively beautiful and find beautiful qualities in her. He should have a desire for her and for qualities in her. There must be physical attraction and a long-term desire that will not be quelled shortly. She must have what to offer him besides satisfying his lust. Finally, he takes her as a wife. A wife is a partner, helpmate, and longer-term homemaking and family building partner.