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Extramarital Relations among Jews in the Ottoman Empire

SUMMARY

The present paper deals with the ways in which Jewish communities in the Ottoman Empire handled cases of extramarital relations (fornication) among Jewish men (married or unmarried) and unmarried women. The present study covers a wide range of Jewish legal sources from the beginning of the 16th century to the last decade of the 19th century. As we have seen, the occurrence of sexual relations out of wedlock for married men, or unmarried men and unmarried women, was an extant feature of Jewish society; it was almost certainly much more widespread than adultery. Particularly common were relations between the betrothed, usually leading to marriage. Similarly, cases were common of unmarried women, often maidservants in Jewish homes, who had sexual liaisons with different men. Most of the surviving sources deal with women's pregnancy and their demands that the men marry them, or at least acknowledge their paternity and pay child support for the babies. Jewish society stood guard over its sexual morality, deliberating about cases of extramarital pregnancy within the confines of the local legal court. The communities' supervision of sexual morality led to the enactment of new decrees in some places and in rare cases, the offenders involved would be punished by lashes. We learn that Jewish society attempted to conceal sexual offenses from the eyes of the Muslim rulers.

Key words: extramarital relations, Jews, Ottoman Empire

Słowa kluczowe: związki pozamałżeńskie, Żydzi, Imperium ottomańskie

1. Introduction

The purpose of the present paper is to discuss the ways in which Jewish communities in the Ottoman Empire handled cases of extramarital relations (fornication) among Jewish men (married or unmarried) and unmarried

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women. The topic will be based on the extensive responsa literature which provides a wealth of information about Jewish life in the Ottoman Empire¹, offering solutions to actual legal and social problems. The present study covers a wide range of Jewish legal (*Halakhic*) sources from the beginning of the 16th century to the last decade of the 19th century. Many responses were written by the leading law authorities of the greatest communities during the Ottoman period.

The topic may be studied over a period of 400 years: throughout these centuries, society remained observant and conservative; its conventions concerning sexual relations outside the marital framework did not change. They were based on the Halakhic notion forbidding sexual relations out of wedlock². This notion is present in the Talmud and in all of Jewish legal literature composed in the Middle Ages and the Modern period.

Sephardic Jews settling throughout the Ottoman Empire after the expulsion of the Jews from Spain in 1492 made efforts to establish religious communities in accord with Jewish Halakhic laws and the norms customary in society in Christian Spain. These new arrivals made up the preponderant majority of the Jewish population in most communities; living side by side with them, primarily in Istanbul and a number of Greek cities, were Romaniote Jews, descended from the Jews of the original Byzantium. Mustaarab Jews lived in the Arab provinces of the Empire side by side with the Sephardim; these Jews spoke Arabic and, like their Arab neighbors, were very strict in observing the principles of modesty for women. Their wives almost never left the doors of their houses or the Jewish neighborhood³. Large cities of the Ottoman Empire were home to Jews of Italian origin who observed those moral norms which had been accepted in the Jewish communities of medieval Italy⁴.

¹ See Libraries at Union College, "Responsa", <http://huc.edu/libraries/exhibits/rablit/responsa.php>. The responses below will be marked as follows: the number of the response will be signed No. The symbol # meanings for a clause in the response. Many Responsa books are divided into four parts: *Orach Haim*; *Yore De'ah*, *Even ha-Ezer* and *Hoshen Mishpat*. Most of the responses dealing with extramarital relations are included in *Even ha-Ezer*.

² Maimonides, *Mishneh Torah (Repetition of the Torah)*, *Ishut* (laws of marriage), chapter 1#1–4; Rabbi Yaacov b. Asher, *Tur* (Four Rows) *Even ha-Ezer*, Kiddushin (Betrothal), No. 26; Rabbi Yosef Caro, *Sulchan Aruch* (Code of Jewish Law), *Even ha-Ezer* 26:1.

³ Leah Bornstein-Makovetsky, *The Jewish Woman in Aleppo and the Norms of Modesty in the Ottoman Period* (in Hebrew), [in:] Tova Cohen & Saul Regev, eds., *Woman in the East, Woman From the East: The Study of the Oriental Jewish Woman* (Ramat-Gan: Bar-Ilan University, 2005), pp. 55–68 (in Hebrew); Ruth Lamdan, *Deviations from the accepted moral norms in Jewish Society in Eretz Israel and Egypt in the 16th Century*, (in Hebrew), [in:] Israel Bartal & Isaiah Gafni (eds), *Sexuality and the Family in History* (Jerusalem: Shazar, 1998), pp. 119–130 (in Hebrew). About Jewish women's modesty in Middle East and West Europe communities in the middle-Ages see Abraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Lebanon, New Jersey: Tauber: 2004), pp. 105–108.

⁴ On the Jewish Society in the Ottoman Empire there is extensive research. For Example see Leah Bornstein-Makovetsky, *The Structure, Administrative, Organization and Spiritual Life of the Sephardic*

2. Sexual Relations between Unmarried Jewish Men and Women

It is to be assumed that sexual relations between unmarried men and women and between unmarried women and married men were more common than adultery; in general, they did not pose a *Halakhic* problem which needed to be turned over to the *Halakhic* arbiters of the period. This explains why relatively few sources pertaining to these cases have been preserved.

The *Halakhic* authorities and the Jewish judges (*dayanim*) were asked to intervene only in problematic cases, such as a man's refusal to marry the expectant woman of his future child, or libels against unmarried women, which originated with men or women interested in leveling a charge of fornication against them.

We hear of such situations on occasion when financial disputes would arise concerning monetary support for raising a child, or the question would be raised as to whether the child may serve as a Kohen [priest, as per the *Halakhic* definition] due to the doubt attaching to the identity of the father.

We learn that problems of low-level sexual morality came up even in the most conservative communities. For example, a mid-eighteenth-century British visitor in Aleppo writes about the phenomenon, though limited in scope, of young Jewish women in the city who had become pregnant as a result of relations with members of their household or with other men⁵.

3. Supervision of Morality in Jewish Society

Jewish society in the Ottoman Empire observed the Jewish laws of morality and modesty, and men and women who violated these laws had to improve their behavior and to submit to the requirements of the Jewish legal authorities. Problems of extramarital relations in the community were turned over to the local Jewish court according to the legal powers granted the Jewish communities by the Ottoman authorities. The Jewish legal authorities (*dayanim*) dealt with most such cases in secret.

Communities in the Ottoman Empire in the 16th–18th Centuries, [in:] *The Sephardi Heritage, II: The Western Sephardim*, eds. R. Barnett & W. Schwab (London: Grendon Northants, 1989), pp. 314–349; idem, *A City of Sages and Merchants, the Jewish Community of Aleppo, 1492–1800* (Ariel: Ariel University Center, 2012) (in Hebrew); Avigdor Levy, ed., *The Jews of the Ottoman Empire* (Princeton, New Jersey: 1994); *ibid.*, *The Sephardim in the Ottoman Empire* (Princeton, 1992); Minna Rozen, *The Last Ottoman Century and Beyond: The Jews of Turkey and the Balkans, 1808–1945*, vol. 1 (Tel Aviv: Tel Aviv Diaspora Institute, 2005); Yaron Ben Naeh, *Jews in the Realm of the Sultans, Ottoman Jewish Society in the Seventeenth Century*, (Tubingen: Mohe Siebeck 2008).

⁵ Alexander Russell, *The Natural History of Aleppo*, vol. 2 (London: G. G. and J. Robinson, 1794), pp. 55–56.

Jewish communal and religious leaders in the Ottoman Jewish communities had ways of coercing their members to obey the Jewish sexual morality laws⁶. Only in extreme cases did they appeal to the Ottoman authorities which, according to Islamic law, did not differentiate between the concepts of “adultery” and “fornication” and used to brand both as sins. The term “*Zinā*” is generally defined in Islamic law as denoting sexual intercourse voluntarily engaged in by a man and a woman who are not married to each other, regardless of whether one or both of them is married to someone else⁷.

Muslim law defines any situation in which a man spends time alone with a woman of any age as a violation. The Ottoman Criminal Code specifies that a non-Muslim offender is liable to half the fine imposed on a Muslim in a similar situation, depending on the offender’s economic status⁸.

4. Meeting and Mixing between the Sexes

We will see that the Jewish communities did everything they could to control and prevent meeting and mixing between the sexes by means of ethics regulations. In reality, it was not possible to prevent these meetings entirely, even though it appears that they were limited in number, due to the young marriage age of men and women in Jewish society.

Generally women were first married at the age of approximately 13 or 14, and men beginning between the ages of 13 and 17, up until 20 at the latest. It was customary in Jewish society to marry off the women at a young age so as to prevent them from engaging in sexual relations before marriage⁹. Rabbi Shmuel de Medina, a leading Halakhic authority of the 16th century in Salonika, writes that due to “the deterioration of the times”, girls need supervising and improvement; they should be married off early¹⁰. Since most Jewish women did not work outside the home, there was more of an opportunity to keep up their modesty within the confines of the household.

⁶ See Joseph R. Hacker, *Jewish Autonomy in the Ottoman Empire – Its Scope and Limits: Jewish Courts from the Sixteenth to the Eighteenth Centuries*, [in:] Avigdor Levy, ed., *The Jews of the Ottoman Empire* (Princeton: Darwin Press, 1994), pp. 153–202.

⁷ See Rudolph Peters, “*Zina*”, [in:] *The Encyclopedia of Islam, second edition*, (Leiden: Brill Online); idem, *Crime and Punishment in Islamic Law, Theory and Practice from the Sixteenth to the Twenty First Century* (Cambridge: Cambridge University Press, 2005), pp. 35–36.

⁸ Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V. L. Ménage (Oxford: Oxford University Press, 1973), p. 101.

⁹ See Minna Rozen, *A History of the Jewish Community in Istanbul, The Formative Years, 1453–1565* (Leiden–Boston: Brill, 2002), pp. 114–120.

¹⁰ Rabbi Shmuel de Medina, *Rashdam Responsa* (Lvov: Balaban: 1862), *Hoshen Mishpat*, No. 320.

During the 19th century, the number of girls and young women working for pay outside the home rose perceptibly. As a result, more opportunities for men and women to meet without supervision arose during this period¹¹.

5. The Attitude to Extramarital Relations in Jewish Law

Fornication (cohabitation of a man, married or unmarried, and an unmarried woman) is in Jewish law a much lighter offense than adultery (sexual intercourse between a man and a married woman). Yet it is strictly prohibited by Jewish law, which objects to any sexual relationship between a man and a woman who are not married to each other¹².

As far back as in the Talmud, every Jewish male is required to write a Ketubah [wedding document specifying the conditions of marriage and support for the wife]; a Halakhic ruling was issued to the effect that anyone cohabiting with his wife in the absence of a Ketubah, renders his intercourse with her an act of harlotry. It was also specified that a bridegroom may not spend time alone with his betrothed before the two of them stand under the traditional bridal canopy and the Seven Blessings are recited for them¹³. This was the way of thinking accepted in all Jewish communities.

Even so, debates arose during the Middle Ages concerning the possibility of a man's having regular sexual intercourse with a woman designated as available to him alone (a concubine) without marrying her. The problem came up primarily in Christian Spain. The Spanish rabbis opposed the institution of concubinage; the decision articulated by Nahmanides (Rabbi Moses ben Nachman Girondi) to the effect that a concubine is permitted to a layman, was not accepted by most Halakhic authorities. Many sources indicate that Spanish authorities struggled against sexual licentiousness so as to prevent relations out of wedlock¹⁴.

Instances of extramarital relations between men (whether married or single) and single women (whether unmarried, divorced, or widowed) were a familiar enough occurrence in Jewish communities, even though one has the general impression that their occurrence was limited in scope. R. David Ibn

¹¹ See Gila Hadar, Carmen Salonica – *Gender in, Family and Tension among Jewish Women Tobacco Workers, "Pe'amim"* 2006, no. 107, pp. 5–37 (in Hebrew).

¹² Maimonides, *Mishne Torah* (Tel Aviv: Rishonim) *Nashim*, Isorei Biah, Nos. 21, 22; Rabbi Yosef Caro, *Shulchan Aruch, Even ha-Ezer* (Venice: Zagara, 1697), Nos. 26 #1–4 (in Hebrew).

¹³ Rabbi Yosef Caro, *Kesef Mishneh*, *Ishut* (Matrimonial), Chapter 10#1; *Talmud Bavli, Ketubot*. P. 7b. (in Hebrew).

¹⁴ See Yom Tov Assis, *Sexual Behaviour in Mediaeval Hispano-Jewish Society*, [in:] Ada Rapoport-Albert and Steven J. Zipperstein (ed.), *Jewish History [Essays in Honour of C. Abramsky]* (London: P. Halban, 1988), pp. 25–59; Grossman, *Pious and Rebellious* (See note 3 above at pp. 111–116).

Zimrah (1479–1573), Rabbi of the Cairo community, discusses in one of his responsa the occurrence of concubinage in his time as the practice of a few violators; he forbids having a concubine under any circumstances¹⁵.

6. Sexual Relations for the Betrothed

Cases of bridegrooms who had sexual relations with their betrothed before marriage were known of in Jewish society. This is why little documentary evidence survives of their occurrence. In practice, it was common for bridegrooms to visit the homes of their brides, despite the fact that this custom was usually considered unfit in Jewish society. Thus, for instance, the words “evil custom” are used concerning a betrothed man who visited the home of his future bride in Skopje (Macedonia) in 1592¹⁶.

Normally, a long time would elapse between the betrothal and the wedding ceremony, at least one year, during which the couple were not permitted to be in intimate contact with each other. This led to the emergence of a tradition of courting among young people, which would in turn occasionally lead to sexual liaisons.

Once the future bride became pregnant, the betrothed couple usually made haste to marry. If the bridegroom refused, for whatever reason, to take the woman in marriage, various types of pressure would be exerted upon him by her family, and occasionally by the community, to coerce him to marry her. The principal argument was that he had “despoiled” her, making her no longer be a virgin. The situation was particularly dire for Romaniote Jews, who treated betrothal as marriage, making it obligatory for the bridegroom to give the woman a *get* [document of divorce] if he wanted to annul the betrothal. Such a case arose, for instance, in Istanbul in the early 16th century, when Yehudah Ibn Tzur, wanted to divorce his betrothed, the daughter of Chaim Badurko, for no specifiable reason after he had engaged in sexual intercourse with her during a period of 9 months. He was suspected of wanting to divorce her because she belonged to the Romaniote group, who were not permitted to leave Istanbul. The leaders of the Romaniot Old Poli congregation gathered to listen to the charges brought by the father that Ibn Tzur had tricked his daughter, who had been certain that they were about to get married. She wanted to commit suicide, and was even rescued by neighbors when she once attempted to do this; she claimed that she had had intercourse with the man because they were about to get married anyway. Her father claimed that his daughter was a modest young woman, threatening to kill her before the entire

¹⁵ Rabbi David ben Avi Zimra, *Radbaz Responsa*, vol. 4 (New York: Otzar ha-Sefarim, 1978), No. 1296.

¹⁶ Rabbi Shlomo Hacohen, *Maharshach Responsa*, vol. 3 (Jerusalem: Zichron Aharon, 2011), No. 30.

congregational gathering, should the bridegroom not marry her. The court ruled that the man was not permitted to divorce her. His desire to divorce her and his claim about wanting to do this for reasons of hatred, were considered a pretext by the court. The argument was also stated by the court that should he want to divorce her as a betrothed woman, the sexual relations between them would be thereby rendered a lawless act, and that "no greater disgrace than this situation can arise in the world"¹⁷.

Cases of this type would be decided by the Jewish legal courts. For example, a bridegroom promised to marry his betrothed, but later, when it became clear that she was pregnant and her father demanded that the bridegroom marry her, the man shirked the demand, going as far as to annul the match and even charging that the young woman had engaged in licentious relations with her mother's bachelor brother. The Jewish court (almost certainly in Safed) ruled that he could swear to not having had intercourse with her, but also proposed that he should compromise with her concerning the child support which he would pay for the newborn¹⁸.

The occurrence of a future bride's pregnancy in a situation when the bridegroom attempted to deny his paternity was apparently rather common. In this vein, we hear of one Yaakov Abuhav, most likely a resident of Safed in the 16th century, who confessed in the presence of two witnesses to having had a son by an unmarried woman that he had engaged in sexual intercourse with for a long period of time while she lived in his courtyard¹⁹. In the course of the same century, a young woman arrived in Salonika from Italy turned out to be pregnant. The young man she indicated as the father of the fetus denied the identification, claiming before the Rabbi of the Italian synagogue that he had never engaged in sexual relations with the woman. Even so, he was forced to take her in marriage, after being threatened with being charged before a Muslim judge. The community's chief dayan (judge) Rabbi Shmuel de Medina, was angered by this, since according to the Halakhah in Judaism, a man may not marry a woman who is pregnant by a different man. The court ruled in this case that as a compromise, the young man should pledge to contribute 2,500 akçe (silver coins) toward the young woman's marriage on account of her honor, as well as because there had been witnesses to the young man's admission that he had kissed and embraced her. The compromise was also meant to prevent non-Jews from hearing about the case. However, later, Rabbi Shmuel di Medina ruled to exempt the man from any debt to the young woman²⁰.

¹⁷ Rabbi Eliyahu Mizrachi, [in:] Rabbi Eliyahu Ibn Haim, *Maim Amukim Responsa*, (Venice: Francisco Viseri, 1647), No. 1.

¹⁸ Rabbi Yom Tov Tsalhalon, *Maharitz Responsa* (Venice: Vendramin Press, 1694), No. 108.

¹⁹ Rabbi Moshe Mitrani, *Mabit Responsa*, vol. 1 (Venice 1629: Yoani Kalioni), No. 323.

²⁰ *Rashdam Responsa* (see note 10 above at *Even ha-Ezer*, No. 137).

The occurrence of extramarital pregnancy was to be encountered throughout the Ottoman period. For instance, in August 1915, the court in Istanbul deliberated concerning the case of an adolescent woman who had claimed in court that she was pregnant by a certain man. The court permitted him to marry her, and the man in their presence assumed the obligation to feed and provide for the future newborn. When it became known that the man was already married, the court forbade him to marry the woman in addition to his first wife, who refused to be divorced. Upon hearing this, the man attempted to deny his paternity²¹. Similarly, we learn about an unmarried woman in Istanbul in 1905, who was pregnant by a married man. The man confessed his paternity but later denied it. Rabbi David Pifano ruled that he was required to support the newborn child²².

7. Modesty rules and ordinances

To prevent problems of this kind, some Jewish communities enacted modesty rules and ordinances, with the goal of maintaining a good reputation for the Jewish public, as well as of preventing sexual relations between men and women affianced to each other but not yet married. One example is the regulation in the community of Arta, a sizable community in Greece, in the first half of the 16th century, which forbade bridegrooms to come to their brides' houses²³. Another example is the Aleppo community regulations of 1774, forbidding bridegrooms to visit their brides²⁴.

In addition, we know of the Decrees of Jerusalem and Safed in the 16th century which forbade a bridegroom to see his betrothed before the night of their wedding. Rabbi Moshe Trani, one of the great rabbis of Safed, ruled more leniently, permitting the bridegroom-to-be to visit the home of his future bride together with his father or elder brother, but not to eat there unless a celebration should be in process at the house. Shortly before the planned time of his wedding, the betrothed man would be able to enter the house daily to see to needs connected with the wedding ceremony. In Egypt, too, limitations were imposed in the 16th century upon meetings between men and women²⁵.

²¹ Rabbi David Piffano, *Nose ha-Efod Responsa*, in his book *Chagor ha-Efod*, vol. 2 (Sofia: A. Assa Press 1928), No. 5.

²² Pifano, *Nose ha-Efod Responsa*, (see note 21 above at No. 6).

²³ See Leah Bornstein-Makovetsky, *Life and Society in Arta Community in the 16th Century*, "Pe'amin" 1991, no. 45, pp. 143–145 (in Hebrew).

²⁴ Rabbi Yehuda Katsin, *Machane Yehuda Responsa* (Jerusalem: Ahavat Shalom, 1989), Nos. 12, 30–32, 34; L. Bornstein-Makovetsky, *The Jewish Woman* (See note 3 above at pp. 60–62).

²⁵ Abraham Haim Freimann, *Jerusalem Regulations*, [in:] Yizhaq Baer et al, eds, *Dinaburg Jubilee Book*, (Jerusalem 1949), p. 209 (in Hebrew); Lamdan, *Deviations* (See *supra* note 3 above at pp. 123–124). In Jerusalem this regulation existed overall the Ottoman period, Freimann, *op. cit.*

8. Pregnant betrothed woman

Some rabbis in Jewish society were concerned that if pregnancy was not by the betrothed man and this last refused to marry the pregnant betrothed woman, she may hurt the child. It appears that the occurrence of relations between a betrothed woman with a man other than her betrothed was rare; it is only rarely mentioned. In one instance, we learn in the first half of the 17th century, about a betrothed adolescent in Gallipoli who had given birth, with the child almost certainly not having been fathered by her bridegroom. She claimed to have been made pregnant by her bridegroom. On the day when she gave birth to a baby after 9 months – and not 7½ months, as she claimed – the Jewish court sent an emissary to the home of her parents to prevent them from causing the death of the newborn, this being a severe transgression. But the young woman brought about the baby's death herself, thus making the court certain that her bridegroom had not been its father. The court had ruled that the bridegroom should pay her 15,000 akce as compensation, but exempted him from payment after the birth. This case of the death of the baby is exceptional²⁶.

In another instance, from the first half of the 17th century a new arrival man took most probably in Salonika “a virgin unmarried young woman” in marriage, staying with her in the home of her father, where he ate, drank, and spent the night. He divorced her 4 months later. Two months after that, she realized that she was pregnant, and the man acknowledged his paternity. In this case, the man involved was “an elder and learned in Torah”, claiming that he had denied his paternity on account of the disgrace at having the pregnancy be from him. The Jewish court ruled that his confession should be accepted²⁷.

9. Extramarital Pregnancy of Unmarried Women – and the Consequences

Extramarital pregnancy did not necessarily lead to punishment for young or unmarried women in Jewish society. It seems that in most cases of pregnancies of unmarried women, the name of the father was known and the child was considered legitimate; Jewish courts or Jewish community leaders would typically resolve the issue by obtaining a confession of paternity from the father of the child either before or after birth; this would typically be followed by the man's marriage to the child's mother²⁸.

²⁶ Rabbi Meir de Boton, *Responsa* (Izmir: Gabai, 1660), No. 26.

²⁷ Rabbi Haim Shabtai, *a Torat Haim Responsa*, vol. 3 (Salonica: Nachman and Kanpilius, 1722), No. 52.

²⁸ For instance see Rabbi Nissim Haim Moda'i, *Meimar Haim Responsa*, [in:] Rabbi Haim Moda'i,

Very few cases are attested in which the father's name was not available. Once born, the child in such a case would be referred to as "*shtoki*" among the Jews²⁹.

Extramarital pregnancy of unmarried women was considered a defect, with women denying pregnancy out of wedlock. The fact that divorced women, widows, and fiancées had sexual intercourse and became pregnant out of wedlock, was almost certainly an occurrence limited in scope, just as the phenomena of adultery and prostitution were limited in extent in Jewish society³⁰. Extramarital sexual relations resulted in a bad reputation for both the men and the women in Jewish society.

Thus, for instance, in the 16th century, a children's *melamed* [teacher] was defamed after he had engaged in extramarital sexual relations with an adolescent girl³¹. A widow's betrothed in early 17th-century Safed claimed that he had learned that the bride-to-be was a woman of ill repute, and that the commissioners of offences who functioned as an investigate body in the Jewish community had punished a number of young men who had been suspected of offences committed together with her, as well as that the commissioners had sent her for investigation after it had become known that she was pregnant³².

Among the reasons for a man's refusal to marry the woman made pregnant by him could be various considerations, including that in some cases such a man would already be married to another woman. Spanish and Italian Jews included in their marriage contracts (*Ketubbot*) the pledge not to take another wife, while the Romaniote Jews abided by the "Prohibition of Rabbenu Gershom" dating from the 10th century, which forbade marrying a second wife³³. Thus, for instance, Rabbi Shmuel de Medina deliberated concerning an "honored" unmarried woman in Salonika who had become pregnant by a married man. The man acknowledged the child as his son, and provided support for him. The Halakhic arbiter ruled that the child was the man's son in all respects, and should inherit his father equally with the man's other sons, those born him by his wife³⁴.

Haim le-Olam Responsa, vol. 2 (Izmir: Di Sigura Press, 1879), *Even ha-Ezer*, No. 45; Rabbi Haim Palagi, *Haim ve-Shalom Responsa*, vol. 2 (Izmir: Roditi Press, 1872), *Even ha-Ezer*, Nos. 35, 74.

²⁹ The sources provide information about a native of Ioanina, a "*shtoki*", who married a woman that knew nothing of his problematic status. He was forced to divorce her in Izmir in 1878. See *Meimar Haim*, (see note 28 above at No. 39, #62). A *shtoki* is only permitted to marry a convert or a slave who has been freed from bondage.

³⁰ About the 16th century see Lamdan, *Deviations* (see note 3 above at pp. 119–130).

³¹ *Rashdam Responsa* (see note 10 above at *Yore De'ah* no. 141).

³² Rabbi Yosef Trani, *Maharit Responsa*, 2 (Fiorda: Beer, 1700), *Even ha-Ezer*, No. 49.

³³ See Bornstein-Makovetsky, *Life and Society in Arta* (see note 23 above at pp. 150–154); Rozen, *A History* (see note 9 above at, pp. 129–139). On this topic see Elimelech Westreich, *Transitions in the Legal Status of the Wife in Jewish Law – A Journey Among Traditions* (Jerusalem: Magnes Press, 2002) (in Hebrew).

³⁴ *Rasham Responsa* (see note 10 above at *Even ha-Ezer*, no. 233).

Additional reasons for a man's not marrying the pregnant woman could include hatred which he developed toward her, the desire not to have to support the new child, or the desire to marry someone else. The case is known of a woman in the 16th century whose husband maintained a sexual liaison with an unmarried woman; the wife demanded that the court issue a ruling forbidding this woman to her husband. She was afraid that her husband might contrive ways to bring about her own death for sheer love of the other woman, whom he would then be able to take in marriage³⁵.

Jewish society was compelled to find a solution for the cases of unmarried women who had become pregnant; it also had to take into account the women's distress. There was primarily the need to look into whether the claims put forth by the woman in such a situation about the paternity of the fetus were correct. In all these cases, the community and the court became involved. The Jewish authorities were generally unable to coerce the man to marry his child's mother³⁶.

10. Libelous Accusations Made by Men or Women

The phenomenon was also current of a pregnant woman's charging that some man was the father of the fetus in order to force him to marry her or to acknowledge his paternity, even though the pregnancy would really be by someone else. There were also cases of women considered "abandoned" who became pregnant. In such a case, the woman would try to claim that she had become pregnant by a certain man, and when the man in question would deny paternity, she would appeal to the Muslim court with the demand that he should acknowledge his paternity there.

In such a case, if the man thought it likely that she should fulfill her threats by appealing to the Muslim court, he would normally agree, paying her child support as per the decision of the *cadi*; he would then later appeal to the Jewish court to confirm that the child was not his. Thus, for example, in Egypt we learn of an unmarried "wanton" woman who engaged in licentious behavior with both Jews and Muslims. Upon becoming pregnant, she claimed to be pregnant by a certain Jew. This last claimed to have had intercourse with her in a way that does not lead to pregnancy. He went with her to the town of Rashid, there writing her a "Kabin" document in the Muslim court; she gave birth to a son, and he was required to provide child support for 8 years. He thereafter divorced her in Muslim court, as well as gave her a *get* in the Jewish court. When the son reached the age of 20, the Jewish man denied being

³⁵ *Radbaz Responsa*, vol. 7 (Warsaw: Zetzer, 1982), No. 30.

³⁶ See, for instance, Palagi, *Haim ve-Shalom Responsa* (see note 28 above at No. 102).

his father, arguing that he had originally gone with the woman to the town of Rashid because of her ties with non-Jews. He also claimed to have never married her in a Jewish ceremony, nor to have divorced her by means of a *get*. Rabbi Meir Gavizon, a leading Cairo rabbi, ruled that the young man was not his son and that the son was a “son stubborn and rebellious” (Deut 21:18). The ruling also stated that the son was not a *mamzer* [offspring of illegitimate union unfit to become a part of the Jewish People], but that, nevertheless, due to the persistence of a slight doubt that he may be the man’s biological son, he would not be able to marry even the granddaughter of this particular man³⁷.

In rare instances, men would bring against young girls trumped up charges as per which the young girls had supposedly had sexual intercourse with them. The courts would disqualify such accusations, which were bound to harm the women, primarily by preventing them from being able to get married successfully in the future, and by preventing them from being considered fit to marry *kohanim* [priestly descendants of the Biblical Aharon]³⁸.

Sometimes the wedding would take place after the child’s birth; sometimes this would also be after its death. Thus, in Izmir we learn about a Jew who had seduced a virgin. He acknowledged his paternity. Three months after the birth, the child died and the couple wanted to get married without waiting out a period of 3 months as is the norm in Jewish law³⁹. It is a reasonable assumption that the man had been married prior to this time.

Similarly, in 16th-century Egypt, we hear of an unmarried woman who became pregnant, and the man acknowledged his paternity in the presence of a number of people, claiming that he was forced to make the confession because she had had intercourse with other men, as well, during the same period of time. He married her in a Muslim court, and then divorced her while she was still pregnant, later providing for the circumcision for the new baby after the birth⁴⁰.

11. Maidservants and Masters

Among Jews in Christian Spain of the Middle Ages, sexual relations between masters and Jewish maidservants were common, similar to the situation

³⁷ Rabbi Meir Gavizon, *Responsa*, ed, Eliav Shochatman, vol. 2 (Jerusalem: Jerusalem Institute, 1985), *Even ha-Ezer*, No. 5.

³⁸ For example: Rabbi Yitzhak Mayo, *sa Sefat ha-Yam Responsa* (Salonica, Bezalel Ashkenazi, 1818), *Even ha-Ezer*, No. 12.

³⁹ *Haim le-Olam* (see note 28 above at *Even ha-Ezer*, No. 7).

⁴⁰ Rabbi David Ibn Zimra, *Radbaz Responsa*, 3 (Fiorda: Zirendorf & Hayyim b. Zvi Hirsh Orphans Press, 1781), No. 536 (561).

in Christian society⁴¹. The same was also true in Italy at the time of the Renaissance, and in Eastern Europe of the 17th century⁴². This type of behavior was transferred by the exiles from Spain to the communities which they established in the Ottoman Empire; even so, one has the general impression that the phenomenon was limited in scope. Young girls and women from the lower strata of Jewish society often worked as house servants in wealthy Jewish homes; the women in question were utterly unprotected when beyond the confines of their own homes.

The extant evidence indicates that Jewish maidservants would at times become pregnant by their employers; in some instances, they would have intercourse with particular men in the house. For instance, we hear of an adolescent maidservant in a Jewish home, concerning whom a rumor spread to the effect that she engaged in sexual relations with the master of the house and his two adult sons. After she became pregnant, she claimed that she had conceived by the son known as "Shimon", who was married but childless. The man confessed to this in his parents' presence before he died. He said to them that he had not made his confession in the presence of witnesses on account of shame and disgrace. In this case, the woman was said to be "a whore," and her sister a prostitute who had given birth to three sons from three different men. It may then be that the maidservant conducted herself in a way similar to her sister. The arbiter deliberating concerning this case ruled that the suspect's widow should not become his brother's wife in levirate marriage, but should go through the ritual of *chalitzah* [lit., discarding: the removing of the shoe as part of the ceremony of refusing to marry the widow of a man who had died childless].

Hence, it follows that he thought the likelihood was great that the child was Shimon's son⁴³.

In a similar case from the early 17th century, the son of the master of the house, himself still a bachelor, had intercourse with the maidservant, who became pregnant by him. He took her as his wife, but died shortly thereafter. The maidservant gave birth to a daughter, and the man confessed his paternity in the presence of his parents⁴⁴.

In another case from the 16th century, we learn of a widowed maidservant who was seduced by the master of the house, later giving birth to a son. The master of the house supported her and the child during his lifetime, leaving

⁴¹ See Assis, *Sexual Behaviour* (see note 14 above).

⁴² See Eliot Horowitz, *Masters and Women Servants in Jewish Society in Europe during Late Middle Ages and Early Modern Periods*, [in:] *Sexuality and the Family in History*, ed. Israel Bartal and Isaiah Gafni (eds) (Jerusalem: Shazar, 1998), pp. 198–197 (in Hebrew).

⁴³ *Torat Haim Responsa*, vol. 3 (see note 27 above at no. 55).

⁴⁴ *Maharit Responsa*, 2 (see note 32 above at *Even ha-Ezer*, no. 17). This rabbi suspects her of having sexual relations also with other Jews.

a daughter by his wife at the time of his death. There was a concern that relatives of the daughter's would not let the son inherit, but would demand the whole of the deceased man's possessions in a Muslim court, based on that according to Muslim law, only the children of the married wife inherit. In this case, the Jewish court fought for the rights of the son, so as to enable him to inherit his father⁴⁵.

12. Sexual Relations among Family Members

Family members lived in the same houses, sharing the same courtyards. This led to instances of sexual relations between adolescent girls and members of their own families. For example, evidence from the 18th century – apparently from Iraq or Syria – indicates that an adolescent found to be pregnant said that she had conceived by her father's brother who lived under the same roof with her family after he had seduced her⁴⁶. In another case dating from the same time, an adolescent conceived by the son of her father's partner, who used to come to the house⁴⁷.

13. Punishment by the Jewish Authorities

Such couples were seldom beaten by the Jewish communal leaders. We learn that in 1758 Jewish leaders of a village in the Istanbul area ordered the beating of a woman engaged to be married; she was suspected of sexual relations with the son of her employer, but was not handed over to the Ottoman authorities. Subsequently, both she and the suspected man denied having had intercourse, and the midwives who had checked her claimed that she was, indeed, a virgin⁴⁸.

During the 16th century in the communities of Istanbul, Bursa, Safed, Sophia, and Salonica, a special committee of a few members known as *commissioners of offences (berurei averot)* functioned as an investigative body, and as a body for the collection of testimony and examination of witnesses about offenders, especially offenders against morality⁴⁹. In Bursa, this committee

⁴⁵ *Radbaz Responsa*, vol. 4 (see note 15 above at No. 120). About the Islamic inheritance laws see Joseph Schacht, *Mirāth*, [in:] *Encyclopaedia of Islam* 7 (2nd ed.) (Leiden: Brill 1991), pp. 106–113.

⁴⁶ Rabbi Tsedaka Hutsin, *Mishpat u-Tsedakah Responsa, Even ha-Ezer* (edition by Rabbis Mordechai Lopez & Rabbi Yitzhak Nissim (Tel Aviv: Privately published, 1975), No. 1.

⁴⁷ *Mishpat u-Tsedakah*, *ibid*, *Even ha-Ezer*, No. 2.

⁴⁸ *Haim le-Olam* (see note 28 at *Even ha-Ezer*, No. 3).

⁴⁹ L. Bornstein-Makovetsky, *The Va'ad Berurei Averot as a Judicial Body in Christian Spain and the Ottoman Empire*, "Jewish Law Association Studies", X (New York: Global Publications, State University, 2000), pp. 136–138.

operated also during the 17th century, while in Istanbul, it seems to have functioned from the beginning of the 17th century until the final years of the 18th century. A similar committee of *commissioners of fines* (*berurei hakenasot*) operated in Izmir, Bursa and Magnesia throughout the 17th–19th centuries⁵⁰. For example, in Istanbul on August 31, 1602, this committee summoned an individual to appear before them, because he was suspected of cohabitation with a maid-servant. Now, in light of his oath to them that she had converted and married him in full accordance with the law, he had received a document from the committee. Rabbi Yehiel Bassan writes in his responsa that had he not taken the oath, the individual could have “suffered punishment either by the levying of a fine, or through flogging, or through excommunication, as any of these would have been appropriate measures”⁵¹. Most likely, the same committee or the Jewish court of Istanbul also looked into the case of the pregnant widow at about the same time⁵².

14. Rape

Jewish society treated cases of rape with severity, at times coercing the rapist to marry the victim. We learn of the occurrence of rape in rare instances, albeit it is a reasonable enough assumption that many of the cases noted above as extramarital relations actually belong under this rubric. Thus, close to the beginning of the 17th century, apparently in Safed, we hear of an adolescent raped by someone proposed as her future fiancé. When it became clear that she was pregnant, her father coerced the young man to marry her. The young man wanted to divorce her a short time thereafter, allegedly on account of the hatred that he had for her. Rabbi Yom Tov Tzahalon ruled that if the case was one of rape, the man could not divorce his wife, while if he seduced her originally, divorce was permissible for him⁵³.

In the 18th century, the *commissioners of offenders* of Istanbul investigated the molestation of an eight-year-old girl by a young man by the name of Moshe Abuhav. The testimony and evidence were handed over to Rabbi Avraham Meyuhav, who obligated the young man to wed the girl⁵⁴.

⁵⁰ L. Bornstein-Makovetsky, *The Va'ad Berurei Averot* (see note 49 above at pp. 117–140); Yaron Ben-Nae'h, *A Scandal in Istanbul*, “East and Maghreb” 2008, no. 8, pp. 37–56 (in Hebrew).

⁵¹ Rabbi Yehiel Bassan, *Yehiel Bassan Responsa* (Constantinople: Yona b, Yaacov, 1737), No. 34. In the 17th century a Jew married his maidservant after she gave birth to a son. Rabbi Haim Benveneste, *Ba'ei Hay'e Responsa, Even ha-Ezer* (Salonica: Israeliga, 1788), No. 6.

⁵² Rabbi Eliyahu Ibn Haim, *Ra'anah Responsa* (Jerusalem: Stizberg, 1960), No. 45.

⁵³ See Rabbi Yom Tov Tzahalon, *Responsa Maharitaz Hchadashot*, ed. Yaacov Spigel, vol. 1 (Jerusalem: Jerusalem Institute, 1980), No. 29.

⁵⁴ Rabbi Abraham Meyuchas, *Bene Avraham Responsa* (Constantinople: Ashkenazi, 1773), *Even ha-Ezer*, No. 26.

It appears that in cases of rape, the Jewish court would occasionally opt to hand the rapist over to the Muslim court or to the Ottoman ruler in order to ensure severe punishment. In one case, the rapist was judged by the Muslim court, and sentenced to penal servitude in the galleys of the Empire⁵⁵. Occasionally, the Jewish community would opt to punish the rapist by making the case public in the synagogues of the city. This is what happened in Izmir in 1827, when a rumor spread that the master of a house had abused a virgin young girl working as a maidservant in his home. The commissioners of fines investigated the case, threatening the man and charging him with despoiling and mistreatment of a virgin. The man denied the charge, but refused to swear to it. They wanted to proclaim his guilt in the city's synagogues, but he cried out against this. Rabbi Avraham Palagi was requested to issue a ruling by his father.

He ruled that the man must not be coerced to swear. However, should they find out that he had committed the forbidden act he should be punished "as befits him"⁵⁶. It is to be supposed that most cases of rape were adjudicated only in the Jewish court, with the minority reaching the Muslim courts⁵⁷. By contrast, when a Jewish woman would be raped by a Muslim, she would complain before a Muslim court⁵⁸.

15. Punishment by the Ottoman Authorities

Medieval Islamic law and Ottoman law adopted the Qur'anic punishments for fornication which became "chastisement" (*ta'zir*), or flogging with 100 lashes and excommunication⁵⁹. Sometimes, the offenders would be expelled from the city or pay fines. The fixed fines varied between 10 and 3,000 akce⁶⁰.

⁵⁵ Rabbi Meir de Boton, *Responsa* (see note 26 above at No. 52).

⁵⁶ Rabbi Abraham Palagi, *Shema Avraham Responsa*, vol. 1 (Salonica: Saadya Halevi Ashkenazi Press, 1850), *Yore De'ah*, No. 23.

⁵⁷ A Jewish woman in Jerusalem sued on April 28, 1695 a Jew who raped her and as a result she became pregnant. He denied it and swore. The Cadi rejected the claim. Amnon Cohen and Elisheva Pikali, *Jews in the Muslim Court of Jerusalem in the 17th century: Society, Economic and Organization* (Jerusalem 2010), p. 333 note 2 (in Hebrew).

⁵⁸ A Jewish woman claimed in the Muslim court on 10 May, 1585 that a Muslim man and his slave raped her when she returned from the bath. Because she did not bring evidences it is not known what was the judge's ruling. Amnon Cohen and Elisheva Pikali, *Jews in the Muslim Court of Jerusalem in the 16th century: Society, Economic and Organization* (Jerusalem: Ben Zvi Institute, 1993), p. 172 document 179. In the year 1654 a Jewish woman accused a Muslim man in the Muslim court of raping her little daughter. Her claim was denied. Cohen & Pikali, *Jews in the Muslim Court of Jerusalem in the 17th century* (*ibid*), pp. 332–333 document 253.

⁵⁹ Heyd, *Studies* (see note 8 above at pp. 273–277); Peters, *Crime and Punishment*, (see note 7 above at 35–36).

⁶⁰ Heyd, (see note 8 above at pp. 275–279).

Criminal justice in the Ottoman Empire was administered by two classes of officials: the judges (*qadis*) charged to conduct investigations according to Muslim law; and the military, primarily consisting of the Ottoman governors and their subordinates⁶¹. Fornicators were generally handed over by the *qadis* to executive officials who were authorized to punish them. We learn that in many cases, the actual punishment was flogging, but in many cases, the defendants, both Muslim and non-Muslim, would not be brought before a Muslim court at all, but would be punished immediately upon arrest with lashes or blows by order of an executive officer⁶². Jewish moral offenders were also afraid of being summoned before the Admiral of the Ottoman navy (*Kapudan Pasha*) in Istanbul, who had the authority to adjudicate criminal cases⁶³. The instance of Ovadia Halevi from Istanbul, serves as an example. This wealthy man was suspected of having sexual relations with a young girl. After her problematic marriage with his son in 1768, he expressed his concern before the leaders of the Jewish community that his daughter-in-law would level severe charges against him, and even convey them to the Admiral of the Ottoman navy⁶⁴.

Imprisonment was resorted to, often in addition to chastisement and a fine, for a number of sexual offences. An offender would be imprisoned either by the judge or after the judge had convicted him, or by the executive officers that would often imprison a person without trial in order to extort money from him. The *Kanun* normally did not prescribe prison term length, leaving this to the discretion of the judge.

16. Conclusions

As we have seen, the occurrence of sexual relations out of wedlock for married men, or unmarried men and unmarried women, was an extant feature of Jewish society; it was almost certainly much more widespread than adultery. Particularly common were relations between the betrothed, usually leading to marriage. Similarly, cases were common of unmarried women, often maid-servants in Jewish homes, who had sexual liaisons with different men. Most of

⁶¹ Beglerbegis (Valis, Pashas), governors of the *vilayets* (provinces), and the sancakbegis (district governors).

⁶² Heyd, (see note 8 above, at pp. 273.–277); Peters, *Crime* (see note 7 above at pp. 35–36). A Jewish source from the second half of the eighteenth century points out that some Jews from Rhode wanted to hold over to the governor two Jewish men and one Jewish woman accusing them as adulterers in order that he would punish each of them with 50 lashes and squeeze money from them. Rabbi Haim Shlomo Tarsa, *Haim Shena'im Responsa* (Izmir: Di Segura, 1861), No. 26.

⁶³ For the legal authorization and capacities of the Admiral, see Heyd, (see note 8 above at pp. 210, 260).

⁶⁴ *Haim le-Olam*, (see note 28 above at *Even ha-Ezer*, Nos. 3–4. Rabbi Shlomo Sfami decided to punish the rabbi who organized the marriage of the couple.

the surviving sources deal with women's pregnancy and their demands that the men marry them, or at least acknowledge their paternity and pay child support for the babies. Quite often, a man would deny being responsible for the pregnancy; in addition, there was the occurrence of trumped up accusations made by the woman against the man, charging him with responsibility for the pregnancy. There were also cases of accusations made by men against women. Jewish society stood guard over its sexual morality, deliberating about cases of extramarital pregnancy within the confines of the local legal court. Leaders of the community also dealt extensively with the matter. In dire cases, Jewish society made a practice of threatening men and women who maintained sexual liaisons with each other; it was aided in this by both the commissioners of offences and commissioners of fines operating within a number of communities. The communities' supervision of sexual morality led to the enactment of new decrees in some places, aiming to limit contact between men and women and between bridegrooms and their brides. In rare cases, the offenders involved would be punished by lashes. It seems that only in extreme situations, such as in cases of rape, did the Jewish courts and leaders hand over to the Muslim courts and the Ottoman authorities those moral offenders who refused to obey the ruling issued by the Jewish court. It stands to reason that the Jewish men and women who maintained extramarital liaisons with each other were aware of the Muslim court's and Ottoman rulers' authority to impose punishment in these situations. Insofar as Jewish sources do not often mention punishment of this kind, it becomes more and more likely that in most cases – even those which did not end in marriage – Jewish society attempted to conceal these sexual offenses from the eyes of the Muslim rulers.

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