



## What are the Determining Factors Defining a Sexual Encounter as Rape?

### Can a Person be a Rape Victim even if She Didn't Protest?

Rape, abuse and harassment of women is unfortunately more common than we may realize. Besides the many cases reported daily in the news, numerous instances of rape go unreported due to the shame and embarrassment of the abused or her parents. In many cases the victim is a minor who may not even understand the nature of the traumatic experience that just happened to her. [According to the statistics:](#) One in four girls will be sexually abused before they turn 18 years old. 96% of people who sexually abuse children are male. One in five women will be raped at some point in their lives. 91% of the victims of rape and sexual assault are female, and 9% are male. Once, when I taught the story of Dinah, the topic of blaming the victim came up. How do we know if a woman was actually raped or if she played her part by either egging the man on by the way she dressed and/or flirted? Perhaps she complied or even enjoyed herself? There is absolute consensus among the commentaries that Dinah was definitely raped and had no pleasure whatsoever from the sexual encounter with the prince of the land. When I explained to my students that rape, according to halacha, is contingent on the rape-victim screaming or in other ways protesting, I encountered the outrage of my students. They knew several women who had been completely numbed when being molested and thus incapacitated from reacting in any way. Nevertheless, they were still raped. Since rape includes an element of trauma, it's not surprising that rape victims sometimes suffer from posttraumatic stress disorder (PTSD). Among other symptoms, this includes psychic numbing and a diminished responsiveness to the external world (See, for example, Mary P. Koss and Mary R. Harvey, *The Rape Victim: Clinical and Community Interventions* (Sage Publications, 1991), pp. 78-79). I decided to look into the definition of a sexual encounter as rape, according to Halacha. Is there halachic evidence for defining a sexual encounter as rape even in the case when the victim was unable to protest?

### Did Dinah Scream?

When Dinah is raped by Shechem her reaction isn't recorded in the Torah:

**ספר בראשית פרק לד (א) וַתֵּצֵא דִּינָה בַת לֵאָה אֲשֶׁר יָלְדָה לְיַעֲקֹב לִרְאוּת בְּבָנוֹת הָאָרֶץ:**  
**(ב) וַיֵּרָא אֹתָהּ שָׁכֶם בֶּן חָמוֹר הַחִוִּי נָשִׂיא הָאָרֶץ וַיִּקַּח אֹתָהּ וַיִּשְׁכַּב אִתָּהּ וַיַּעֲנֶה:**

"Dinah, the daughter of Leah, whom she had borne to Ya'acov, went out to look about among the daughters of the land. 2 When Shechem the son of Chamor, the Chivite, the prince of the land saw her, he took her, lay with her, and violated her" (*Bereishit* 34:1-2).

Here, the Torah portrays many of the dynamics of rape. In the story of Dinah, the Torah shifts from treating her as the grammatical subject in the first verse to grammatical object in the next. She is described as such no less than four times in the second verse. This alludes to how the rapist treats his victim as an object. During the rape, her intentions and words do not matter. The rape is a jarring blow and many women take a great deal of time to recover from it. Some never recover. These women may continue to feel that they are objects, and that they cannot speak. Society reinforces these effects by encouraging silence on the part of women who have been raped. Some women take years to speak about their rape; some never do. The story of Dinah reflects this dynamic. This may be an indication of numbness and withdrawal (Rav Uri Cohen, *What Can the Torah Teach Us About Rape*). The story of Dinah reflects these real-life dynamics.

Did anyone ask Dinah about her experience, or how she feels? Is it possible that Dinah tries to recover her sense of self in silence and isolation? According to Ramban, Dinah definitely screamed. He learns this from the Hebrew word וַיַּעֲנֶה/vay'aneha – “and defiled her” which clearly refers to rape as Ramban explains:

...Every intercourse that is forced is called עֲנוּי/inui – ‘affliction.’ Likewise, “You shall not treat her as a slave, because you have afflicted her (עֲנִיתָהּ/initah)” (*Devarim* 21:14). “and my concubine they forced (עֲנוּ/inu) and she died” (*Shoftim* 20:5). Scripture praises her by informing us that she was raped and was not interested in the prince of the land (*Ramban, Devarim* 34:2).

Ramban continues to describe how Dinah screamed and cried constantly. Otherwise Shechem wouldn't have needed to ask his father, “Take for me this girl for a wife” (*Bereishit* 34:4). The girl was already in his possession and as the prince of the land, he had no need to fear that anyone would take her away from him. Yet because of Dinah's resistance towards him, Shechem tried to bribe her family to convince her to concede willingly to the match (*Ramban, Bereishit* 34:12)

### Is the Torah Blaming the Victim?

There are commentaries who explain Dinah to be somewhat at fault, as it states, “Dinah went out.” Had she stayed within the Jewish camp, in accordance with the ways of modest daughters of Israel, she would not have been molested (*Tzror HaMor, Bereishit* 34:1). Yet, the majority of commentaries refrain from blaming Dinah. She is called “daughter of Leah” to tell her praise. Dinah is compared to her mother in righteousness and modesty. Just as Leah went out in holiness towards Ya'acov to conceive more tribes, so did Dinah have pure intentions (*Arbanel ibid.*). In contrast, the Torah has no mercy for the perpetrator of rape. Not only is rape of a married woman a capital crime (*Devarim* 22:25), the rape of any woman is compared to murder (*Devarim* 22:26). As such, it is not only permitted but actually a mitzvah to kill a rapist who is pursuing a woman, in order to save her from being molested (*Sefer HaChinuch* 600). The rapist of an engaged or married woman incurs the death penalty, whereas the rapist of a single woman must pay reparation for damages, as well as for her suffering, embarrassment and emotional anguish. This shows the Torah's compassion and insight into the psychological injury of the rape victim (*Babylonian Talmud, Ketubot* 39a-b). It is not the Torah but the rape victims themselves who, at times, become prey to the natural phenomenon to blame themselves. Guilt feelings of the rape victim is a type of psychological poison or venom that the attacker leaves with his unfortunate victim. Since the Torah determines that rape is like murder – “This is no different from the case where a man rises up against his neighbor and murders him” (*Devarim* 22:26) then it obviously doesn't blame the victim. Does someone murdered in cold blood by terrorists need to do *teshuvah* for what they did to him?

### If She Doesn't Scream, It Isn't Rape

It is vital to define rape from a halachic perspective, as it may determine the difference between adultery and abuse in the case of a married woman. If the woman in question was married to a non-Kohen, she is permitted to her husband after being raped. However, if the sexual encounter with another man is not considered rape, the woman is forbidden to her husband, and moreover liable for the death penalty as an adulterous wife (*Devarim* 22:22). A court in Italy recently acquitted a man who raped his coworker, finding that because she did not scream, it could not be proven that she did not give her consent. In a shocking verdict, despite the woman's testimony at trial and a psychological evaluation corroborating the rape, the Court acquitted the defendant. The Court found that the woman did not scream, cry, call for help, or ask the assailant to leave her alone in order to prevent the rape. According to the Court, the victim's response was too “weak” to show that she did not consent to sexual contact.

<https://www.womenslinkworldwide.org/en/awards/cases/if-she-doesn-t-scream-it-isn-t-rape>

The Torah distinguishes between a girl in the city and in the field. If the rape took place in a public place "the penalty shall be imposed on the girl because she did not cry out in the city, and on the man, because he violated his neighbor's wife" (*Devarim* 22:24). Yet, in a desolate place, she is not expected to scream since no one would hear her. "After all, [the man] attacked her in the field, and even if the betrothed girl had screamed out, there would have been no one to come to her aid" (*Ibid.* 27). It seems to me, that most rapists today would choose a rather desolate place to commit their crime, in order to avoid finding themselves behind bars. Even a city may today be considered as a field, since most homes are insulated with noise-proof walls, through which the neighbors may not discern if anyone screams. As long as the rape victim could assume that nobody would help her, there would have been no point in her screaming. Even in an apartment in the city, where there are neighbors who would have heard the rape-victim scream, the rapist may have muffled her mouth or threatened to kill her if she would scream. "According to Rambam, every woman in the field is considered raped until a witness testifies that she willingly consented to have intercourse. Every woman in the city is considered seduced [rather than raped] because she did not scream, until they witnessed that she was raped. For example, the rapist pulled his sword and told her, 'if you scream, I will kill you.' Ra'avad wrote, I do not know what difference it makes whether witnesses come to testify or not..." (*Tur, Even Haezer* 177). In cases of doubt, the *beit din* (rabbinic court), must give the benefit of the doubt to the rape-victim, who is not to be embarrassed with any punishment whatsoever (Rabbi Yerucham Fishel Perla, *Commentary on Sefer HaMitzvot of Rabbenu Saadia Gaon*, Vol. 3, #37 p. 363). I will venture to suggest that in cases where the woman declares that she was molested in a city, a psychologist's testimony to the fact that she was numbed and unable to scream, even if this doesn't qualify to punish the rapist, it should suffice to verify that the woman was raped and therefore exonerated from any guilt.