**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**LIFECYCLES – HILKHOT ISHUT**

**Rav David Brofsky**

**Shiur #04: *Pilagshut***

**Introduction**

[Last week](http://etzion.org.il/en/sexual-relations-without-kiddushin) we discussed the various sources that prohibit sexual relations outside of marriage. We demonstrated that the Talmud clearly prohibited relations between a man and an unmarried woman, either due to the Rabbinic prohibition of *yichud* from the time of David Ha-Melekh, the Biblical prohibition of *kedeisha*, or as a violating of the positive *mitzva* of *kiddushin*. Interestingly, many of these sources express concern about the promiscuous nature of relationships that are neither monogamous nor bound by financial obligations and responsibility.

The *Rishonim* discuss whether there is another type of relationship, a lower form of “*ishut*,” within which a man and woman may live together, known as *pilagshut*. In our first *shiur*, we mentioned that the Rosh suggested that one can fulfill the obligation of *peru u-revu* through fathering children with a *pilegesh*. What is a *pilegesh*? Is it really permitted to enter into a concubinal relationship, and what are the characteristics of this relationship?

***Pilagshut***

 We find the term *pilegesh* numerous times in *Tanakh*, always referring not to a temporary arrangement, but rather to a wife of some sorts. For example, Ketura, is described as Avraham’s *pilegesh* (*Bereishit* 25:6). Earlier, the Torah states that Avraham “took a wife (*isha*), and her name was Ketura” (ibid. 1). Bilhah, the maidservant of Yaakov who bore two of Yaakov’s children, is described as a *pilegesh* (ibid. 35:22). David Ha-Melekh’s relationship with his concubines appears to be permanent (*II Shmuel* 20:2), even after his death, as was Shaul’s relationship with his *pilegesh* (ibid. 3:7). Even in the story of *pilegesh ba-Giv’a*, the *pilegesh’s* father is referred to as “his father-in-law” (*Shoftim* 19:4). In the *Tanakh*, the term *pilegesh* refers to regular women as well as to maidservants, and it appears to indicate a marriage, but of a lower status.

***Pilegesh* in the Talmud**

We should first note that there is a debate regarding the definition of a *pilegesh*. The Talmud Yerushalmi (*Ketubot* 5:2) questions the following verse, “And David took more concubines and wives out of Jerusalem, after he came from Hebron; and there were yet sons and daughters born to David” (*II Shmuel* 5:13):

And who is a wife and who is a concubine? R. Meir says: A wife has a *ketuba*, while a *pilegesh* does not have a *ketuba*. R. Yuda says: Both [a wife and a *pilegesh*] have a *ketuba*; a wife has a *ketuba* and the extra stipulations of a *ketuba* (*tenai ketuba*), and a *pilegesh* has a *ketuba* but does not have the extra stipulations of a *ketuba*.

This passage implies that the sole difference between a wife and a *pilegesh* is the extent of the husband’s financial responsibilities. However, a woman becomes a *pilegesh* through *kiddushin* and is halakhically viewed as an *eshet ish*. This also emerges from another passage in the Yerushalmi (*Yevamot* 2:4), which implies that the relatives of a *pilegesh* are forbidden to her husband, just as if they were formally married. This approach seems to match the Biblical model of a concubine, who is a permanent, lifetime partner – a somewhat “lower level” spouse.

The Talmud Bavli seems to adopt a different approach. In a similar attempt to explain the verse cited above, the *gemara* (*Sanhedrin* 21a) teaches:

Who are wives and who are concubines? R. Yehuda said that Rav said: Wives are with a *ketuba* and *kiddushin*; concubines are without a *ketuba* and without *kiddushin*.

Although our text of the *gemara* states that a *pilegesh* has neither a *ketuba* nor *kiddushin*, some *Rishonim* apparently had a variant text, which implied that even according to the Talmud Bavli, the only difference between a wife and a *pilegesh* was the *ketuba*. This *girsa* is cited by Rashi (*Bereishit* 25:6), Raavad (*Hilkhot Ishut* 1:4), Ran (*Teshuvot* 68), the Rivash (395), and others. Most *Rishonim*, however, maintain that a *pilegesh* does not have *kiddushin* either.

It is important to note that there is no evidence of concubinal relationships in Talmudic literature, and aside from the passage cited above, there are no discussions relating to its details or nature.

***Pilagshut* in the *Rishonim***

The *Rishonim* discuss this question and disagree regarding the definition and permissibility of a *pilegesh*. There appear to be four approaches found in the *Rishonim*.

Some *Rishonim* rule that a concubinal relationship is created through *kiddushin*, and it is therefore, in essence, not much different than a regular marriage. As mentioned above, aside from Rashi, R. Yitzchak ben Sheshet Perfet (1326–1408), known as the Rivash, rules in accordance with this view.  It would appear that according to this view, a concubinal relationship can only be terminated with a *get*.

 Others maintain that while a *pilegesh* does not have *kiddushin*, only a king, and not a regular person (*hedyot*), is permitted to enter a concubinal relationship. This position corresponds with the impression given by the *Tanakh*, although the story of *pilegesh ba-Giv’a* (*Shoftim* 19) must then be understood as being against the *halakha*, or as referring to another type of wife (such as an *ama Ivriya*). This approach also explains why there is no evidence of concubinal relationships from the Talmudic period.

The Rambam (*Hilkhot Melakhim* 4:4), in the midst of a discussion regarding the rights of a Jewish king, writes:

Similarly, he may take wives and concubines from the entire territory of *Eretz Yisrael*. The term “wives” implies women who were married with a *ketuba* and *kiddushin*; concubines are women who were not given a *ketuba* and *kiddushin*. With the act of *yichud* alone, the king acquires her, and relations with her are permitted him. A commoner (*hedyot*) is forbidden to have a concubine.

The Rambam rules clearly that a regular person may not have a concubine. Other *Rishonim*, including Rabbeinu Yona (Sha’arei Teshuva 3:94), Rashba (Responsa 4:314), and Me’iri (*Sanhedrin* 21a), concur with the Rambam.

What is the source of this prohibition? Most commentaries (Kesef Mishna, *Hilkhot* *Melakhim* 4:4; Ra’avad, *Hilkhot Ishut* 1:4; Rema, *Even Ha-Ezer* 26:1) explain that a *pilegesh* is prohibited due to the prohibition of *kedeisha*, "There shall not be a harlot among the children of Israel" (*Devarim* 23:18), which we discussed last week. Some insist that living with a *pilegesh* would violate the positive commandment of *kiddushin* (see, for example, Rivash 395). Others suggest that according to the Rambam, this prohibition is only Rabbinic (see Radak 9:8, Radbaz 4:225), although the text of the Rambam does not support this claim. Incidentally, the Ramban (*She’elot U-Teshuvot Ha-Rashba Ha-Meyuchasot Le-Ramban* 284) had a different text of the Rambam, which does not mention this prohibition.

Of course, the question remains why a *pilegesh* is permitted to a king. The *Acharonim* offer different explanations. Rabbeinu Yona (Sha’arei Teshuva 3:94) explains that since the fear of the king is upon everyone, even without the formalities of *kiddushin* and *ketuba*, the king’s relationship with a *pilegesh* will be permanent, as there is no fear of her engaging in promiscuous behavior.

Other *Rishonim* explain that theoretically, a *pilegesh* (without *kiddushin*) would be permitted, but such behavior is Rabbinically prohibited. For example, R. Moshe Ha-Levi Abulafia (Yad Ramah, *Sanhedrin* 21a, s.v. *mai*; see also Responsa Binyamin Ze’ev 112), explains that “the rabbis prohibited [this practice] so that the daughters of Israel should not be *hefker*.” Others suggest that the rabbis feared that concubines, due to their somewhat less public profile, would not properly immerse in the *mikve*, and they therefore prohibited the entire institution of *pilagshut* (see Shulchan Arukh, *Even Ha-Ezer* 26:1).

 Finally, a number of *Rishonim* rule that there is no fundamental halakhic objection to a concubinal relationship. The Ramban (ibid.), for example, in response to a question from Rabbeinu Yona, wrote that “a *pilegesh* is certainly permitted.” He continues:

One who wishes to marry a woman, so that she should be prohibited to others and be considered his [wife regarding] inheritance and to defile himself for her [i.e. a *kohen* would become ritually impure when burying her], the Torah says he should betroth her, accompany her to the *chuppa*, and say the *birkat chatanim* in the presence of ten… And if he wishes that she should be a *pilegesh*, and not be his [wife] and not prohibited to others, and not betroth her, the choice is his.

The Ramban appears to present two different models of permitted relationships, *ishut* and *pilagshut*. Other *Rishonim*, including the Raavad (*Hilkhot Ishut* 1:4), Ran (*Teshuvot* 68), and Rosh (ibid., see also *Teshuvot Ha-Rosh* 32:13), agree with the Ramban.

 All of these opinions are referring to a permanent relationship, in which a couple lives together as husband and wife – not to a couple deciding whether to formalize their relationship, and certainly not to a couple living with each other for an undefined period of time. As we shall see, R. Yaakov Emden was the only authority to suggest the permissibility of a concubinal relationship for a short, defined period of time, “*le-zman katzuv*.” Furthermore, the Ramban himself concludes, “And my teacher… in your place warn them to stay far from the *pilegesh*, because if they were to know of this permissive ruling they would stray, and break boundaries, and lie with them during their time of *niddut*.”

 R. Yosef Karo rules in the Shulchan Arukh (*Even Ha-Ezer* 26:1):

A woman is not considered to be a married woman unless she is properly betrothed. Even if he lies with her in a promiscuous manner, without the intent of marriage, she is not considered to be his wife … and even if he designates her for him, we force him to release her.

The Rema adds:

She is certainly embarrassed to immerse [in the *mikve*], and he will lie with her in her state of *niddut*. But if he designates her and he immerses in the *mikve* for him, some say that this is permitted, and that this is the *pilelgesh* mentioned in the Torah, and some say that this is prohibited and that he receives lashes for violating "There shall not be a harlot …"

Both R. Yosef Karo and the Rema seem to agree that concubinal relationships are forbidden, although they appear to disagree regarding the source.

***Pilagshut* in the *Acharonim***

There have been occasional attempts in the modern era to implement *pilagshut*. For example, in response to the challenges of his day, R. Yaakov Emden, (1697–1776) suggested instituting the practice of *pilagshut*. In a shocking responsum (Responsa Ya’avetz 2:15), he examines the sources and rules that if the woman will immerse in the *mikve* and will remain faithful to her “husband,” the concubinal relationship is not only permitted, but may also be beneficial:

And regarding the fact that our communities has refrained from the practice of *pilegesh*, they have done so of their own volition and out of the assumption that it is prohibited… The truth is that the [concubinal relationship] is permitted and no prohibition was ever enacted against it, even as a safeguard… On the contrary, *pilagshut* itself is a safeguard around the Torah, because it can keep one from promiscuous and licentious behavior, and sexual liaisons and relations with one’s wife during her menstrual period, and the wasting of seed by men who are not married, and even by those who are married when their wives are not available to them. [Moreover, *pilagshut* is beneficial] also towards the great mitzvah of *peru u-revu*…

And so, regarding these rabbis who follow in the Ashkenazic customs… they have wrought all sorts of destructive stumbling blocks upon the people, compelling many to transgress what is indeed forbidden by the Torah. Therefore, in my opinion, it is a great *mitzva* to publicize that [*pilagshut*] is permitted. Especially so in our generation, when the “Canaanites dwell in the land” who so love sexual licentiousness, in particular the spreading among our people of the immoral cult of Shabbatai Tzvi, prince of the adulterers…

Nonetheless, I do not want that one should rely exclusively on my opinion about this subject, unless it is endorsed by the Greats of the generation… Anyone who wants to rely upon my ruling on this matter should first seek the involvement of a Rabbinic authority … that it is permissible and clean of any hurdles and that there be an exclusive relationship.

A similar suggestion was made by R. Yitzchak Toledano (Ha-Yam Ha-Gadol 75) in the 20th century. It should be noted that aside from the objections described below, R. Emden is the first to view the concubinal relationship as “temporary,” and not as a form of *ishut*.

Although R. Emden never implemented his proposal, it sent shockwaves throughout the Rabbinic world. His view was met with halakhic and moral objections. As we demonstrated, the majority of *Rishonim* reject the option of *pilagshut* for either halakhic or practical reasons. Furthermore, he does not take into account the standing and welfare of the women (i.e. the *pilegesh* and the wife), and he does not relate to the impact this practice may have on the institution of marriage or to the larger moral and societal ramifications of his suggestion. R. Chaim Soloveitchik reportedly described one who acts upon this proposal as “*naval bi-reshut Ha-Torah*.”

 Although the *Acharonim* either reject or discourage the practical implementation of *pilagshut*, at times, halakhic authorities invoke *pilagshut* in order to solve difficult halakhic quandaries in areas such as *giyur*, *pesulei chitun*, and *agunot*.

In recent years, Prof. Zvi Zohar (*Akdamut* 17) suggested encouraging young religious singles to adopt the model of *pilagshut* as a means of permitting pre-marital sexual relationships. He claims that a high percentage of young Orthodox single are sexually active but do not keep the laws of family purity, and it is therefore proper to bring this halakhic model to their attention. He suggests that young religious Israelis who are not married but who are sexually active should maintain one partner and define their relationship as “*pilagshut*.” His article was widely criticized, both for its poor and misleading scholarship and for its morally and spiritually problematic content.

As mentioned above, many object not only on halakhic grounds, but also out of concern for women and their status in society and the impact of such proposals to the institution of marriage. R. Ben-Zion Meir Chai Uziel (1880-1953), the first Sephardic chief Rabbi of Israel, raises a broader concern (*Piskei Uziel Be-She’elot Ha-Zeman* 75):

This is a great breach not only in the married and family life of the Jewish People, but also in the entire Torah, as [the Torah] is one organized and protected package, and any violation of it cause destruction to the entire [package]. Not recognizing “He who sanctifies the Jewish People through *chuppa* and *kiddushin*” transforms the Jewish People into a secular [nation], and from there secularism spreads to all aspects of [our] lives.

Recognizing and encouraging non-marital sexual relationships not only weakens the sanctity of marriage, but also threatens to undermine the Torah’s ideal of infusing all aspects of our lives with *kedusha*.