

Headlines



Halachic Debates of Current Events

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Yichud with an Elderly Man

BACKGROUND

In the summer of 2013, the American Association of Retired People (AARP) published a grim report on the effect of changing demographics on the future of care for the elderly in the United States. The report showed that the steady decline in birthrates over the last several decades has resulted in fewer family members available to care for the aged. In 2013, according to the report, for every person aged 80 or above, there was an estimated seven people between the ages of 45 and 64 – the primary caregiving ages – to provide home care. The researchers predicted that this number will drop to four by 2030, and to lower than three by 2050. The shortage of potential caregivers is further exacerbated by the ever growing divorce rate, which results in more disabled people finding themselves without a healthy spouse to care for them.

Moreover, as modern medicine allows patients with chronic, debilitating conditions to live longer, the need for full-time care has increased and is expected to continue to rise. In a paper published in 2013, the Centers for Disease Control and Prevention concluded, “The need for caregiving for older adults by formal, professional caregivers or by family members – and the need for long-term care services and supports – will increase sharply during the next several decades, given the effects of chronic diseases on an aging population.”

The inevitable consequence of these trends is an increase in paid caregivers for elderly patients, professional aids hired to either live with patients or tend to them for significant portions of the day.

As the majority of caregivers for the elderly are women, this arrangement calls upon us to address the question as to the permissibility of an elderly man being alone with a female aid. Such a situation is usually discouraged because it may lead to an *aveirah*. However in this case, the chance of the *aveirah* happening is very remote, and in some cases even impossible.

QUESTIONS TO CONSIDER

- Should we allow female caregivers to be alone with elderly males?
- What halachic factors can you think of that would go into this decision?

THE ISSUR OF YICHUD

The Mishna in Kiddushin (80b) refers to the issur of Yichud, which forbids a man and a woman to be secluded together:

Kiddushin 80b

MISHNA: A man should not seclude himself with two women, but a woman may seclude herself with two men... A man may seclude himself with his mother or daughter...

GEMARA: Rabbi Yochanan said in the name of Rabbi Yishmael: Where is there a hint to Yichud in the Torah? It says, “If your brother, the son of your mother will entice you” (Devarim 13:7). Can only the son of your mother entice and not the son of your father as well? Rather it is to teach you that a son can seclude himself with his mother and not seclude himself with any other [women classified as] arayos in the Torah.

לא יתייחד אדם עם שתי נשים אבל אשה אחת
מתייחדת עם שני אנשים... מתייחד אדם עם אמו
ועם בתו...
א"ר יוחנן משום ר' ישמעאל רמז ליחוד מן התורה
מנין שנאמר (דברים יג:ז) כי יסיתך אחיך בן אמך
וכי בן אם מסית בן אב אינו מסית אלא לומר לך
בן מתייחד עם אמו ואסור להתייחד עם כל עריות
שבתורה.

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QUESTIONS TO CONSIDER

- Why would the Torah be so careful in the area of illicit relations, that certain men and women are not even allowed to be secluded together?

We see from the Mishna that the issur of Yichud is modified to a certain extent by the legitimate possibility of an *avairah* occurring. It is for this reason that a woman can seclude herself with two men and a man may seclude himself with his mother or daughter. In both cases, the likelihood for an *avairah* to occur is so remote that we don't concern ourselves to forbid the seclusion between the man and woman.

The question arises whether we can conclude the same about an elderly man for whom intercourse is difficult or perhaps even impossible. Would we similarly conclude in those instance that Yichud would similarly be permitted?

Interestingly, nowhere in the Gemara or early Rishonim is a distinction drawn between an elderly man and a young one. The Shulchan Aruch in Even HaEzer (22:1) codifies the issur of Yichud as well as the heter of two relatives being secluded, but nowhere says that the halacha would be different if the man is old. This led certain Achronim to conclude that such a distinction could **not** be made and that Yichud would still apply.

QUESTIONS TO CONSIDER

- Is this the only conclusion to be drawn from the lack of literature on the subject?

INTERIM SUMMARY

- There is an issur of secluding oneself with someone with whom it is prohibited to have intercourse.
- The exceptions are one's mother or daughter.
- Nowhere in the Gemara or Rishonim do people say that the ruling would be different if one of the people in question is old.

THE COMPARISON TO A SOTAH

Rav Moshe Yehuda Leib Zilberberg in his *Zayis Ra'anani* (E.H. 1:1), draws proof for this conclusion from the Gemara's discussion in *Maseches Sotah* (26b)

The Gemara is talking there about the case of a *Sotah*, which is a unique case where a woman is warned by her husband to avoid secluding herself with a certain man, but she goes ahead and does it anyway. There is a specific process we enact in that case to determine whether the woman had intercourse with that man. The Gemara discusses which sort of man the husband can warn his wife to avoid secluding herself with and thereby avoid becoming a *Sotah*.

Sotah 26b

But Shmuel says: we warn [a woman about] an infertile man (*shachuf*)... Isn't this obvious? You might have thought the Torah said, "A man lied with you, (and emitted) semen" (*Bamidbar* 5:13) – this would preclude a *shachuf*, so we teach that it is not so.

והאמר שמואל שחוף מקנין על ידו... פשיטא מהו דתימא (במדבר ה:יג) ושכב איש אותה שכבת זרע אמר רחמנא והא לאו בר הכי הוא קמ"ל.

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The Gemara says that a woman can be warned to not to have Yichud with a man who cannot have intercourse. This means that if she secludes herself afterward, we would proceed with the *Sotah* process to determine if she had intercourse, despite it being impossible! Yet, the Gemara not only says that the *Sotah* procedure still applies, it assumes it is obvious that the case would be so!

It may seem tempting to say that the same restrictions that govern who a man can warn his wife about are the same as those which determine who she can have Yichud with in the first place. After all, the halachos of both *Sotah* and Yichud are designed to avoid illicit relations from occurring.

Rav Zilberstien points out that if it were true that Yichud with a *shachuf* was permitted, and that there is reason to say the laws of *Sotah* are linked to the laws of Yichud, the Gemara would have not thought that the ruling that a *shachuf* is susceptible to the laws of *Sotah* was obvious. To the contrary, it is a true novelty that there would be a discrepancy between the laws of Yichud and *Sotah*. Rav Zilberstien concludes that the fact that the Gemara thought it so obvious that the laws of *Sotah* apply to a *shachuf* is indicative Yichud would likewise apply.

QUESTIONS TO CONSIDER

- Why would – or wouldn't – we learn the parameters of Sotah from the parameters of Yichud?

THE LENIENT OPINIONS

Rav Eliezer Waldenberg objects to this line of reasoning on the following grounds.

Tzitz Eliezer 7:46

There is a proof to this matter that the issue of "warning" [by Sotah] is not dependent on the issur of Yichud from the language of the Mishna in Sotah (24a) which teaches "We issue warnings on all the *arayos*" which implies it is coming to include all the *arayos* without exception. This includes [warning] regarding the woman's father or son where there isn't also an issur of Yichud.

דיש הוכחה לכך דדבר הקינוי אינו תלוי באיסור היחוד מלשון המשנה בסוטה שם דקתני על ידי כל עריות מקנין ומשמע דבאה לרבות כל עריות בלי יוצא מן הכלל והיינו אפילו ע"י אביה ובנה שבהם אין גם איסור יחוד.

Rav Waldenberg uses the Mishna by Sotah which implies that **the Sotah procedure would apply even if the woman is with her father or son**. As we showed previously, the laws of Yichud do not apply in those cases. Rav Waldenberg concludes that the laws of Yichud and Sotah must therefore be independent. With this in mind, just because the laws of sotah apply to a *shachuf*, it doesn't mean that the same would be true by Yichud.

Rav Waldenberg therefore rules leniently that an elderly man **can** have Yichud with a female caregiver.

INTERIM SUMMARY

- The Gemara says the laws of Sotah apply to a *shachuf* (infertile person) and the Gemara assumes this would be obvious.
- Rav Moshe Yehuda Leib Zilberberg says Yichud must be likewise be assur because logically the laws are linked.
- Rav Eliezer Waldenberg disagrees because Sotah seemingly applies to a father and son, whereas Yichud would not apply there.

RAV MOSHE'S CONCERN

Rav Moshe Feinstein (Iggeros Moshe, E.H. 4:65:10) agrees with the analysis of the Tzitz Eliezer but raises a unique concern. He points to a story in Kiddushin (81b) where Rav Chiya bar Ashi, who, after not having engaged in relations with his wife for several years due to his old age and loss of desire, was suddenly aroused when his wife posed as a well-known prostitute. This story demonstrates that even though an older man does not experience desire, he might still be capable of arousal and intercourse. This possibility, Rav Moshe writes, makes it difficult to determine when an elderly male patient would be allowed to be secluded with a woman.

Rav Moshe therefore concludes by distinguishing between those women with whom seclusion is forbidden by force of Torah law, and those women with whom seclusion is forbidden mi'de'rabbanan.

When it comes to a married woman or a nidda, with whom Yichud is forbidden on the level of Torah prohibition, an elderly man should avoid seclusion unless his impotence is confirmed and beyond doubt. In cases involving Yichud that is forbidden only mi'de'rabbanan, seclusion would be allowed once the man feels impotent and does not experience sexual desire. This ruling would apply to the case of a non-Jewish female caregiver, for Yichud with a non-Jewish woman is forbidden mi'de'rabbanan. In the case of a Jewish caregiver who is married, or single but presumed a nidda, seclusion would be allowed only once the patient's impotence is medically verified or otherwise certain.

There may be a precedent for allowing an elderly man to be alone with a female from Tanach. There is a story involving Dovid Hamelech from the beginning of Melachim I which addresses our case

Melachim I: Chapter 1

And King David was old, advanced in his years, and they [his servants] covered him in garments but they would not warm him. His servant said to him, "Let us search for our master, the king, a virgin maiden, and she will stand in front of the king and be a servant, and she will sit on your bosom and warm our master, the king." They searched for a fine maiden in all the boundaries of Israel and they found Avishag the Shunamite and they brought her to the king. The maiden was exceedingly fine and she was a servant for the king and served him, and the king did not lie with her.

והמלך דוד זקן, בא בימים; ויכסהו, בגדדים, ולא יחם, לו ויאמרו לו עבדיו, יבקשו לאדני המלך נערה בתולה, ועמדה לפני המלך, ותהי לו סכנת; ושכבה בקרבו, ויחם לאדני המלך ויבקשו נערה יפה, בכל גבול ישראל; וימצאו, את-אבישג השונמית, ויבאו אותה, למלך והנערה, יפה עד-מאד; ותהי למלך סכנת ותשרתהו, והמלך לא ידעה.

QUESTIONS TO CONSIDER

- Why might we be reluctant to learn a proof straight from this story in Tanach?

David was very cold so he had Avishag use her body heat to warm him. This involved Avishag being secluded with him. The Gemara in Sanhedrin (22a) points out that David had the option of marrying Avishag but decided not to because he had married the maximum number of wives that a king is allowed to marry and didn't want to divorce one of his current wives just to marry Avishag. So instead, he decided to have Yichud with an unmarried woman. Why was he allowed to do this?

Rav Yaakov Reischer, in his Iyun Yaakov (Sanhedrin), writes that **Yichud was permitted because of the potential risk to King David's life**. As he faced a life-threatening situation that necessitated the services of a woman, Yichud was allowed.

At first glance, it would appear that according to Rav Reischer, Yichud for an elderly patient is permitted only when this is necessary to avoid a risk to the elderly man's life.

However, the Gemara continues and records a conversation between Avishag and Dovid. Avishag asked Dovid why he didn't marry her and he responded that he couldn't marry another wife. Avishag responded that Dovid was just saying that because he couldn't consummate a marriage anyway. To prove her wrong, Dovid called his wife Batsheva and had intercourse with her. Commenting on this story, Rav Reischer explains that **Avishag presumed King David was impotent because she was allowed to be secluded with him**. She figured that this was permitted because he no longer desired or was capable of intimate relations. In truth, King David had not lost his vitality, yet due to the threat to his life, he was still permitted to have Yichud.

We see from Rav Reischer's comments that, in reality, any impotent man can have Yichud. Dovid had to rely on the risk to his life only because he wasn't truly impotent.

ONE FINAL THOUGHT

One final reason to be lenient is brought by the Radbaz who addresses the issue of women begin employed by men:

Responsa of the Radbaz 3:481

And furthermore, since they are working, they are considered "workers" and they [the men] constantly need the women to do the work, they will not ruin their status. Therefore, the possibility of a sin is remote.

ותו כיון דעושים מלאכה זו הם בעלי האומנות והם צריכין בכל שעה להביא נשים לעשות מלאכתן לא מרעי לחזקתייהו. הילכך הדבר רחוק שיעשו עבירה

The Radbaz points out that whenever you have a man and a woman in a position where the woman fulfills a pivotal role for the man, the man will be naturally discouraged from sinning with her because he doesn't want to risk their professional relationship. The Radbaz thought this was a reason enough to be lenient regarding issues of Yichud.

CONCLUSION

While there is seemingly no inherent *heter* (leniency) provided by the Gemara or Rishonim, there are several compelling *svaros* (lines of reasoning) to rule leniently:

1. The man may be **incapable** of sinning.
2. If the woman is a non-Jew, the Yichud is only an ***issur derabanan***.
3. The permissibility of this type of Yichud may be proven from the story of **Dovid and Avishag**.
4. There may be reason to be lenient based on the fact that the man is **de-incentivized to sin** because he needs the female caregiver's services.

DISCLAIMER:

The views and opinions presented in this sourcesheet should not be taken as *halachah l'maaseh*. Before applying these halachos to real-life situations, one must consult with a competent halachic authority.