



Caregivers and Questions of *Yichud*

Then there was an opportune day when he entered the house to do his work – no man of the household staff being there in the house – that she caught hold of him by his garment, saying, “Lie with me!” But he left his garment in her hand, and he fled, and went outside.

(Bereishis 39:11-12)

Yosef's intentions as he came to the house of *Potifar* on that 'opportune' day is the subject of much discussion in *Chaza"l* and by the *Rishonim* and *Acharonim*. According to one Medrash, Yosef had innocent intentions – he had merely come to take care of his affairs. This is also the understanding of *Targum Onkelos*. However, even so, given that *Potifar's* wife was in the house at the time, why was Yosef not concerned about the prohibition of *Yichud* (seclusion with a woman who was forbidden to him)?

The *Chasam Sofer* (*Drashos*, 5564, *Drush l'Chanukah*) offers a remarkable answer. The Torah in describing the house of *Potifar* on that day says "*v'Ein Ish*" – there was no man (there at the time). *Chaza"l* assert that these words also allude to the fact that Yosef saw that "*he was not a man*" meaning *that he had temporarily become impotent*. If so, there would have been no prohibition for Yosef to be secluded with a woman at that time as he would have been unable to sin with her.

The notion that *Yichud* is permitted when a man has no potential for sexual relations is extremely relevant to an increasingly common question. In recent decades, as life expectancy has climbed, many of elderly people require care in the later years of life. Since it is not always possible for family members to fulfill the role of caregiver, it has become prevalent to hire others to do the job instead. These caregivers often spend countless hours with the people in their care.

Is there any prohibition of *Yichud* for an elderly man to hire a female caregiver? Given that many elderly men become impotent, is it therefore permissible for them to be secluded with a woman?

The *Shulchan Aruch* (*E.H.* 22:11) rules: "*A person may be secluded with a girl younger than the age of three and a boy younger than the age of nine as the Chachamim only decreed that Yichud is forbidden with a woman or man who is capable of sexual relations*". The *Zayis Ra'anan* (*E.H.* 1:1) contends that the same should be true of an



elderly, impotent man – since he cannot engage in sexual relations, he should have no prohibition of *Yichud*.

On the other hand, one could draw the opposite conclusion from the Gemara in Shabbos (111a) which rules that the prohibition of *Sirus* (castration) even applies to an old, impotent man. *R' Yochanan* explains that since it is theoretically possible for a man to restore his virility through medication, it is forbidden to perform *Sirus* even to the elderly. The same argument can be made for the prohibition of *Yichud*. Unlike a girl below the age of three and a boy below the age of nine, an elderly man can theoretically regain the ability to engage in sexual relations. Therefore, the Halachos of *Yichud* should still be in force.

(The *Zayis Ra'anan* then goes on to say that we should not compare the Halachos of *Sirus* with those of *Yichud*. *Yichud* depends upon the potential for engaging in sexual relations; thus an elderly man who has no ability do so may be excluded. The fact that he could theoretically recover the ability should not prohibit *Yichud*. *Sirus*, by contrast, permanently inhibits the potential for procreation. Since an elderly man may yet be able to procreate with the use of medication, the act of *Sirus* is still forbidden.)

Ultimately, the *Zayis Ra'anan* rules stringently¹ in all cases of *Yichud* that would be an *Issur d'Oraisa* (such as seclusion with a married woman). He debates at length whether to be stringent in cases that would only be an *Issur d'Rabbanan*, but concludes that one should be stringent regardless since all unmarried women are today considered to be *Nidos* (with whom the prohibition of *Yichud* is *d'Oraisa*).

The *Tzitz Eliezer* (6:40, *Kuntres Issurei Yichud* 22) disagrees and maintains that *Yichud* is only forbidden in cases where there is an actual possibility of sexual relations. He proves this from the words of the *Rambam* (*Hilchos Issurei Biah* 22:1) who rules, "It is forbidden to seclude oneself with any one of the *Arayos* (women with whom it is forbidden to have sexual relations), whether she be old or young, **as this leads to sexual relations**". These words imply that the *Chachamim* did not forbid *Yichud* out of concern for other improper activities (such as *Chibuk v'Nishuk* - hugging or kissing) but purely because of the risk of sexual relations. The same is implied by other *Rishonim*. If so, there is room to be lenient with *Yichud* for an elderly man who is impotent.

¹ Based on a *Yerushalmi* (*Sotah* 1:2).



He augments this ruling by citing the *Kiryas Melech Rav* (the son of the *Machaneh Efrayim*, *Shu"t* 2:26) who permitted an old, impotent man to hug and kiss any of the *Arayos!* His reasoning is that the purpose of the prohibition of *Chibuk v'Nishuk* (even according to those that hold it is an *Issur d'Oraisa*) is to be a safeguard from engaging in sexual relations, thus, where sexual relations are impossible, *Chibuk v'Nishuk* is permitted. This would be all the more true of the Halachos of *Yichud*².

However, the *Tzitz Eliezer* concludes that it would be better for him to avoid situations of *Yichud* because of *Maris Ayin* (giving the appearance of committing a sin in front of people who are unaware of his impotence). However, if nobody can see him or those who are there are aware of his physical capabilities or lack thereof, it would be permitted.

Elsewhere (7:46:2), the *Tzitz Eliezer* cites Rav Elyashiv *zt"l* who prohibited *Yichud* with an old, impotent man due to the ruling of the *Zayis Ra'anan* cited above. He proceeds to refute the proof. In yet another *Teshuva* (12:67:2), he cites the *Chasam Sofer* (cited above) as support for his conclusion.

Rav Moshe Feinstein *zt"l* (*Igros Moshe*, *E.H.* 4:65:10) agreed in principle to the ruling of the *Tzitz Eliezer*. However, he cautions that it is possible that an old man may suddenly rediscover his virility. Therefore, practically it should only be permitted in cases of a *Saris* (eunuch).

Rav Moshe proves this from the Gemara in *Kiddushin* (81b) which relates that *Rav Chiya bar Ashi* would Daven during *Tachanun* that Hashem should "save him from the *Yetzer Hora*". *Rav Chiya's* wife, who once overheard this Tefila, expressed surprise for he had already refrained from engaging in marital relations with her for a number of years due to impotence in his advanced age. Which *Yetzer Hora* could he possibly have been afraid of?

She proceeded to perfume and adorn herself and appeared to her husband while he was learning in the garden. When he asked her who she was she answered that she was a certain promiscuous woman who lived in the area. *Rav Chiya* wanted to engage in sexual relations with her and she agreed on condition that he pluck a pomegranate for her from the top of the tree. Later, *Rav Chiya* was filled with immense regret at his act. Though his wife ultimately revealed to him that she had been that

² The *Kiryas Melech Rav* and other Poskim caution against *Chibuk v'Nishuk* since "*Mechuar haDavar*" – the matter is distasteful, even if it is essentially permissible. However, the *Tzitz Eliezer* maintains that this description would not apply to the act of *Yichud*, which would be permitted *l'Chatchila*.



woman, he could not be comforted. He sat inside the baking hot oven to atone for his sin and fasted for the rest of his days.

This episode, maintained Rav Moshe, proves that even the elderly who are impotent can rediscover their virility if the circumstances are right. Therefore we cannot be lenient with regards to *Yichud* unless doctors have determined that it is utterly impossible for the man in question to engage in sexual relations³. We might also add that today, when many substances are available which abet men's virility, there would be all the more reason to suspect that an old man would be able to rediscover the strength of his youth.

Rav Shlomo Zalman Auerbach *zt"l* (*Shulchan Shlomo* 3, p56) also questions the lenient position of the *Tzitz Eliezer*. He cites Rav Yisrael Zev Mintzberg⁴ (*Otzar haPoskim* 9, *Hashmatos*, p128) who ruled categorically that *Yichud* applies to young and old alike as well as a ruling of the *Rashba* that *Yichud* applies even to somebody who is deathly ill or in the throes of death.

Therefore, the tendency of current Poskim is to forbid *Yichud* for all men unless it is certain that they will remain impotent. Accordingly, a male caregiver should be found for an elderly man⁵.

However, the Poskim agree that if cameras are installed throughout the house, there is no issue of *Yichud*. This is a clever method of not only avoiding *Yichud* but also monitoring the caregiver. Rav Elyashiv *zt"l* and Rav Nissim Karelitz *zt"l* both agreed that closed circuit television cameras on the premises are akin to an "*open door to the Reshus haRabim*" where there is no *Yichud*, even if the footage will only be viewed at a later date⁶.

³ Rav Moshe even contends that the stringent ruling of the *Zayis Ra'anan* was only said with regard to a man who has not been determined by doctors as being thoroughly incapable of ever engaging in sexual relations again.

⁴ Also known as the *Gri"z Mintzberg* (1872-1962). He served as the Ashkenazi Chief Rabbi of the Old City of Jerusalem prior to the War of Independence.

⁵ See *Sefer Devar Halachah* (additions to Chap. 2, No. 9) who cites the *Chazon Ish* who ruled this way as well as *Shu"t Divrey Malkiel* (4:102).

⁶ See the *Kuntres "Moria"* version 367, p148 in an essay by Rav Chanoch Albak who cites these rulings.