HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

196 - PILEGESH - PART 2 OU ISRAEL CENTER - WINTER 2020/21

- In Part 1, we looked in depth at the Torah prohibition of kedesha and generally at the halachic question of consensual¹ sexual activity before marriage.
- We saw three halachic approaches:
- (i) The Rambam (and others) are more prohibitive. Some understand the Rambam to rule that all sexual relationships before marriage² are prohibited, either due to negative prohibition of kedesha or the positive mitzva of Kiddushin to get married. Others understand that the Rambam clearly prohibits casual sexual relationships before marriage but may not prohibit a long-term monogamous relationship in the same way. We will see below the Rambam's perspective on pilegesh.
- (ii) The Ra'avad (and others) are less prohibitive. Most mefarshim understand that this position prohibits <u>casual</u> sexual relationships but accepts in principle the permissibility of a long-term monogamous relationship under the rubric of pilegesh. We will see below if this approach accepts pilegesh in practice.
- (iii) The Ramban understands that the Torah prohibition of kedesha applies only between two people who are otherwise halachically prohibited to marry eg a Cohen and a zona/gerusha etc. We will see below that his position on pilegesh is unusually permissive.

A] WHAT IS A PILEGESH?

- The word pilegesh appears many times in Tanach. It's meaning is debated:
- Some understand it as an Indo-European loan-word related to Ancient Greek: παλλακίς pallakis, meaning concubine³.

ולשון פילגש 'פלג אשה' - כלומר לשכיבה ולא לפריה ורביה.

שפתי חכמים בראשית כה:ו

2.

Others read pilegesh as 'plag isha' - a partial wife. Unlike a full wife, whose role in the family is central - as reflected by the formality of the marriage and her financial settlement, a pilegesh takes a more limited role, largely as a monogamous sexual partner.

• Nevertheless, pilagshut was clearly adopted in Tanach as a response to infertility and one of the roles of the pilegesh was to bear children - eg Hagar, Bilha, Zilpa. This has also been a factor in some of those who have promoted pilegesh in modern times.

קֹדֶם מַתַּן תּוֹרָה הָיָה אָדָם פּוֹגֵע אִשָּׁה בַּשׁוּק אִם רָצָה הוּא וְהִיא נוֹתֵן לָהּ שְׂכָרָהּ וּבוֹעֵל אוֹתָהּ עַל אֵם הַדֶּרֶהְ וְחוֹלֵהְ וְזוֹ הִיא הַנְּקְרָאת קְדֵשְׁה. א"א אין קדשה אלא מזומנת והיא המופקרת לכל אדם, אצל המייחדת עצמה לאיש אחד אין בה לא מלקות ולא איסור לאו והיא הפילגש הכתובה. ובעלי הלשון דורשין 'פילגש' מלה הפוכה, ומורכבת צ'פי שגל' – עומדת לפרקים למשגל. משמשת את הבית ופעמים למשכב

רמב"ם הלכות אישות פרק א הלכה ד

We saw in part 1 that the Rambam describes a pre-Sinai world, where a man and a woman could engage in a casual and consensual sexual relationship. After Matan Torah, he learns this to be the Torah prohibition of kedesha. The Ra'avad disagrees regarding a monogamous relation of pilegesh. He sees the word as a metathesis⁴ formulation related to 'shegel' - sexual relations.

• All of these explanations have in common that a pilegesh is a less formal and less prestigious status than that of wife.

^{1.} We also looked briefly at the concepts of rape - ones, and seduction - pitui.

^{2.} As we discussed in Part 1, this analysis is only applicable if a women has immersed in a mikve to remove her halachic status of nidda. A woman who is a nidda is prohibited to any man - even her husband - as one of the arayot. We also looked in Part 1 at the halachic and hashkafic implications of single women visiting the mikve.

^{3.} The modern Hebrew use of the word pilegesh as more akin to a mistress does not reflect the classic use of the term.

^{4.} Metathesis is a linguistic phenomenon whereby letters within a word switch around. Examples in Hebrew include בש/כשב. This also happens in other languages and dialects - consider pretty/purty. The Latin 'circus' is a romanization of the Greek κίρκος (kirkos), itself a metathesis of the Homeric Greek κρίκος krikos, meaning "circle" or "ring. See

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B] PILAGSHIM IN TANACH

 One of the features of Sefer Bereishit is its underlying discussion of the appropriateness and effectiveness of pilagshut concubinage.

- Pilagshim are referred to a number of times in Sefer Bereishit and then never again in the Chumash.
- Bereishit 25:6 Avraham is described as having 'pilagshim'5.
- Bereishit 35:22 Bilha is referred to as the pilegesh of Ya'akov (would the same also go for Zilpa?)
- Bereishit 36:12 Timna the pilegesh of Elifaz (son of Esav). Timna is the mother of Amalek.
- Divrei HaYamim 1:1:32 Ketura is described as the pilegesh of Avraham.
- Divrei HaYamim 1:2:46,48 Kalev has two pilagshim Eifa and Ma'acha who bear him multiple children.
- Later in Tanach, pilagshim make a 'come back' with a number of references, including:
- Shoftim 8:31 the pilegesh of Gidon (mother of Avimelech).
- Shoftim Chapter 19 the narrative of the Pilegesh of Giva.
- Shmuel 2:3:7 the pilegesh of Shaul Ritzpa bat Aya.
- Shmuel 2:5:13 David is described as taking multiple pilagshim.
- Shmuel 2:15:16 David flees from Avshalom and leaves 10 pilagshim behind. Avshalom sleeps with them (16:22) and David re-accepts them (20:3), but will not sleep with them again.
- Melachim 1:11:3 Shlomo has 300 pilagshim (in addition to 700 wives).
- Divrei HaYamim 2:11:21 Rechavam has 60 pilagshim (in addition to 18 wives).
- Esther 2:14 Achashverosh has multiple pilagshim.6
- Clearly, pilagshim are a rarity in Tanach and appear to be reserved for the leaders/kings.
- In many cases the line between pilegesh and isha is blurred. Full wives are occasionally referred to as 'pilagshim'.
- In most cases pilagshim are taken in addition to a full wife and not in place of the classic family structure.
- In many cases pilagshim are permanent arrangements.7
- The accounts of pilagshut in Tanach are usually negative, or at least tense. Consider:
- Tensions between Hagar and Sarah.

- Reuven and Bilha.

- Amalek as the product of a pilegesh.

- The story of the Pilegesh of Giva
- Ishboshet's accusation to Avner over the pilegesh of Shaul.
- Avshalom sleeping with the pilagshim of David
- Shlomo's multiple wives and pilagshim drawing him away from God.
- Pilagshut is often associate with a status of 'shifcha' maidservant.8

לבן לקח את שתי שפחותיו ונתן לשתי בנותיו. וכי שפחותיו היו! והלא בנותיו היו!! **אלא מבנותיו של אדם מפלגש נקראו** שפחות

פרקי דרבי אליעזר (היגר) - "חורב" פרק לה

Chazal learn that Bilha and Zilpa⁹ were also Lavan's daughters from a pilegesh, which gave them the status of servants¹⁰.

C] PILAGSHIM IN SECOND TEMPLE TIMES

- We see that Second Temple rulers eg Herod had pilagshim and treated them as property¹¹, although this is likely to have been a Hellenic, rather than Jewish or halachic approach to pilagshut.
- Josephus writes that children by a concubine are mamzerim¹², which is not the halachic position.

D] PILAGSHIM IN CHAZAL

- One of the reasons why Tanach is so important in this issues, is the virtual disappearance of the institution of pilegesh in post-Biblical times.
- The concept and halachot of pilegesh are not much discussed by Chazal and we do not find any instance of pilegesh relationships being applied in practice (although see G1 below and R. Yaakov Emden's different perspective).
- 5. These are identified by the commentators as Hagar and Ketura, although there is debate as to whether each of these was truly a pilegesh or a full wife.
- 6. Note the poetic reference to pilagshim in Shir HaShirim 6:8-9.
- 7. Consider the pilagshim of David who could not be released to any other man and became 'living widows' ie effectively widows even when their husband was alive. This may be specifically related to status of the king (there are also halachot regarding belongings of the king which may not be used by any other person).
- 8. Such as the Pilegesh of Giva whose husband is described as an 'Adon' (Softim 19:26) and certainly treats her like a servant! Consider also Hagar and Bilha, both of whom were effectively servants and are referred to as Pilagshim.
- 9. Bilha is herself also described as a pilegesh and is 'given' to Yaakov by Lavan, almost as property.
- 10. See also Bereishit Rabba 82:14 where Timna becomes a pilegesh to Eliphaz since she would rather be a sifcha in Avraham's family than a princess in her own.
- 11. Herod gave one of his Pilagshim, Pannychis, as a gift to Archeleus King of Cappdocia as thanks for reconciling a family dispute see Josephus Wars of the Jews 1:25:6.
- 12. See Antiquities 2:1 on the mamzerut of Amalek.

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D1] YERUSHALMI

ואי זו היא אשה ואי זו היא פילגש! ר' מאיר אומר: אשה יש לה כתובה, פילגש אין לה כתובה. רבי יודה אומר: אחת זו ואחת זו יש לה כתובה. אשה יש לה כתובה ותנאי כתובה, פילגש יש לה כתובה ואין לה תנאי כתובה.

תלמוד ירושלמי (וילנא) מסכת כתובות פרק ה הלכה ב

4.

5.

The Talmud Yerushalmi present a halachic consensus that a pilegesh DOES require kiddushin, like a regular wife¹³. The difference between marriage and pilagshut is financial only. Rabbi Meir rules that a pilegesh receives no ketuba¹⁴ at all. Rabbi Yehuda rules that she receives a ketuba but not on the same terms¹⁵ as a full wife.

רבי זריקן בשם רבי חנינה אשת חמיו אסורה מפני מראית העין. אי תימר תורה. הרי דוד שנשא רצפה בת איה שנאמר (שמואל ב יבּח) וָאֶתְּנָ*ה לְךְּ אֶת־בֵּיִת אֲדֹנֶיךְ וְאֶת־נְשֵׁי אֲדֹנֶיך* בְּחֵיקֶ*קְּ*

תלמוד ירושלמי (וילנא) מסכת יבמות פרק ב

The Yerushalmi also indicates that Shaul's concubine, Ritzpa, received kiddushin. Since David married Ritzpa, the Yerushalmi uses this relationship to prove that one may, according to Torah law, marry one's father-in-law's wife. ¹⁶

רבן שמעון בן גמליאל אומר - מוצל היה ראובן מאותו החטא ולא נזקק לאותו מעשה. איפשר מי שעתיד לעמוד בראש שבטים בהר עיבל ואומר (דברים כזּכּ) *ארור שוכב עם אשת אביו* נזקק לאותו מעשה!?

ספרי דברים פרשת וזאת הברכה פיסקא שמז

Chazal in the Sifrei assert that Reuven could not have slept with Bilha as this would have been the same as sleeping with one's father's <u>full</u> wife.

• All of these sources¹⁷ indicate that a pilegesh requires kiddushin like a regular wife¹⁸. The informality of the relationship is only on the financial side.

D2] BAVLI

מאי נשים ומאי פלגשים! אמר רב יהודה אמר רב: נשים, בכתובה ובקידושין. פלגשים - בלא כתובה ובלא קידושין. 7

סנהדרין כא

The Bavli takes a different line and rules that a wife receives kiddushin and a ketuba but a pilegesh has neither!

Many of the Rishonim support this girsa in the Bavli, although some clearly have a different girsa!

(ו) הפילגשים - ... נשים בכתובה, פילגשים בלא כתובה. כדאמרינן בסנהדרין (כא א) בנשים ופילגשים דדוד:

רש"י בראשית כה:

Rashi clearly had a version of the Bavli ¹⁹which ruled (like the Yerushalmi) that a pilegesh <u>requires kiddushin</u> and differs from a wife only in terms of her financial settlement.

• Elsewhere, the Bavli also indicates that it may rule that a pilegesh DOES require kiddushin. For instance it quotes²⁰ the midrash concerning Reuven and Bilah that we saw above.

^{13.} This is the most straightforward understanding of the sugya based on the standard Venice printed edition. There is however a significant nusach question, since the Leiden manuscript reads בבי יודה אומר: אחת א ואחת א אומר: אחת א ואחת א אומר: אחת א ואחת א אומר: אחת א אומר: אומר:

^{14.} Even though the details of ketuba are a later rabbinic institution, this could be reflected back into the Biblical period to mean that the pilegesh received less financial security relative to a wife.

^{15.} Ketuba refers to the basic payment of 100/200 zuz specified in the contract. Tenai Ketuba refers to the 'extras' that a wife receives, such as the tosefet ketuba, ketubat benin dichrin (settlement for male children) and other financial terms that a wife receives but a pilegesh does not.

^{16.} Note also Bereishit Rabba 32:1 which takes a similar line when it accuses Achitofel of allowing gilui arayot when he encouraged Avshalom to sleep with David's pilagshim.

^{17.} Nevertheless, some of these sources are aggadot, which raises the question of whether one may learn halachic conclusions from aggada. For more on this see http://rabbimanning.com/wp-content/uploads/2019/01/Learning-Halacha-From-Midrash.pdf

^{18.} This could be the reasons why we do not find Pilagshim at the time of Chazal. They stressed the need for a wife to be a willing party to a marriage and to have financial security, so to choose a pilegesh relationships would effectively be a way to circumvent this. If pilegesh were a more informal arrangement, without kiddushin, it could perform a different function. For the Kings, in Biblical times, neither of these reasons applied. The King could summon a woman without her consent, and financial security is obviously a non-issue. (The issue of consent is one of the ways in which Chazal understand how Batsheva could later be permitted to David if she was married to Uriah when David slept with her. She was summoned to the king and her consent was irrelevant, so she had the status of a a *anusa* who is permitted to her *me'anes*.

^{19.} This girsa is also quoted by Ravad (on Hilchot Ishut 1:4), Ran (Shu't 65), Rivash (Shu't 395), Radvaz (Shu't 4:225) and others.

^{20.} Shabbat 55b. See also Ritva on Yoma 66b s.v. ploni who understand the Bavli to question (in relation to Avshalom) whether David's pilagshim had kiddushin or not.

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9.

• The question of whether a pilegesh requires kiddushin is clearly germane to whether this status is in any way relevant today. If a pilegesh <u>does</u> require kiddushin, it would need a formal ceremony to create it and, critically, a halachic divorce *(get)* - to terminate it. This would effectively render it of little practical use as an alternative to marriage, even if it pilegesh were otherwise permitted - see below.

ורבנן אמרי למלך שהיה לו אשה ופלגש. כשהוא הולך אצל אשתו הוא הולך בפרהסיא וכשהוא הולך אצל שפחתו הולך במטמוניות. כך אין הקדוש ברוך הוא נגלה על אומות העולם אלא בלילה (במדבר כב) *ויבא אלהים אל בלעם לילה* (בראשית לא) *ויבא אלהים אל לבן הארמי בחלום הלילה*

בראשית רבה (וילנא) פרשת וירא פרשה נב

Chazal saw the relationship with a pilegesh as furtive and less honorable. They compare relations with a wife to true prophecy - by day, and relations with a pilegesh to the communication of God with non-Jewish seers - Bilaam and Lavan - by night.

E] <u>PILAGSHIM IN HALACHA - RISHONIM: 4 APPROACHES</u>

E1] APPROACH 1: PILEGESH REQUIRES KIDDUSHIN

.10 הפילגשים - ... נשים בכתובה, פילגשים בלא כתובה.

רש"י בראשית כהו

As we saw above, Rashi understands that a pilegesh requires kiddushin but has no ketuba.

(יח) לא תהיה קדשה - מופקרת, מקודשת ומזומנת לזנות ואונקלוס תרגם 'לא תהא אתתא מבנת ישראל לגבר עבדא' – שאף זו מופקרת לבעילת זנות היא, <u>מאחר שאין קדושין תופסין לו בה</u> 'ולא יסב גברא מבני ישראל אתתא אמא' – שאף הוא נעשה קדש על ידה, <u>שכל בעילותיו בעילות זנות שאין קדושין תופסין לו בה</u>

רש"י דברים כגייו

On the mitzva of kedesha, Rashi seems clear than any sexual relationship without kiddushin is considered a 'beilat znut' - immorality.

• This is the position of R. Natronai Gaon²¹ and the Rivash²². It is also the position of the Vilna Gaon²³.

E2] APPROACH 2: PILEGESH DOES NOT REQUIRE KIDDUSHIN BUT IS ONLY PERMITTED TO A KING

ןכֵן לוֹקֵחַ מִכֶּל גְבוּל יִשְׂרָאֵל נָשִׁים וּפִילגְשִׁים. נָשִׁים בִּכְתַבָּה וְקִדּוּשִׁין. וּפִילגְשִׁים בְּלֹא כְּתַבָּה וּבְלֹא קִדּוּשִׁין. אֶלָא בְּלְבַד קוֹנֶה אוֹתָהּ וּמֵתֶּרֶת לוֹ. אֲבָל הַהֶּדְיוֹט אָסוּר בְּפִילֶגֶשׁ אֶלֶא בְּאָמָה הָעִבְריָּה בִּלְבַד אַחַר יִעוּד. וְיֵשׁ לוֹ רְשׁוּת לַעֲשׁוֹת הַפִּילַגְשִׁים שֶׁלּוֹקֵחַ לְאַרְמוֹנוֹ טַבָּחוֹת וְאוֹפוֹת וְרַקָּחוֹת. שֻׁנָּאֲמֵר ושמואל א' היּג*וֹנְאָת בְּנוֹתִיכֶם יִקּח לְרַקָּחוֹת וּלְטַבָּחוֹת וּלְאפׁוֹת*

רמב"ם הלכות מלכים פרק ד הלכה ד

The Rambam rules²⁴ that a pilegesh has NO kiddushin, but ONLY the king has permission to have a pilegesh. Also the status of the pilegesh in the palace is similar to a servant.

- We saw in Part 1 that many mefarshim understand that, for the Rambam, if a regular person sleeps with a pilegesh, this constitutes the Torah prohibition of kedesha, since marriage is the only option for sexual relations. We also saw that other mefarshim question that approach and understand the Rambam's view on kedesha to prohibit only casual relations.
- Alternatively, the prohibition of pilegesh for the Ramban is a breach of the positive mitzva of marriage kiddushin.
- This is also the position of other poskim, including Rabbeinu Yona²⁵, Rashba²⁶ and the Meiri²⁷.
- Some poskim (including the Ramban) challenge this position from various accounts in Tanach of people who were not kings but took a pilegesh eg Gidon, Kalev. One response to this that many of these lived before there was a Jewish king, so the restriction did not apply, or that they effectively had the status of king.

^{21.} Teshuvot R. Natronai Gaon (Brody 5754) YD 262.

^{22.} Shu't Rivash 395, 398.

^{23.} On Shulchan Aruch EH 26:7 - see below.

^{24.} We will see below that there is again a girsa question in this Rambam, with the Ramban having slightly different wording.

^{25.} Sha'arei Teshuva 3:94.

^{26.} Shu't Rashba 4:314.

^{27.} Sanhedrin 21a s.v. kvar.

E3] <u>APPROACH 3: PILEGESH DOES NOT REQUIRE KIDDUSHIN BUT IS NOW RABBINICALLY PROHIBITED</u>

מאי פילגשים ומאי נשים? אמר רב יהודה אמר רב נשים בכתובה וקידושין, פילגשים בלא כתובה ולא קידושין ... ואף על גב דקידושין דאורייתא דכתיב כי יקח איש אשה, ואין קיחה אלא בכסף וה"ה לשטר ולביאה הני מילי לשויא אשת איש לחייבו במזונותיה, ולאסרו בקרובותיה, ולאסרה בקרובותיו, ולחייב עליה משום אשת איש ושאר דברים התלוים באישות. אבל אם רלה לייחד אשה בלא כתובה ובלא קידושין מדאורייתא שפיר דמי ורבנן הוא דגזור כדי שלא יהיו בנות ישראל הפקר:

יד רמ"ה סנהדריו כא

The Yad Rema (R. Meir Abulafia - 12C Spain) understands that pilegesh, without kiddushin, is permitted by Torah law. However, the Rabbis prohibited this outright so that Jewish women will not be treated in a casual manner - 'hefker'.

• According to this approach, the Rabbinic prohibition is intrinsically connected to the status of pilegesh.

14. בארץ הזאת שרגילין להתיחד עם הפנויות אשר אתם בבית ודבר מכוער הוא להחזיק הקול. ופנויה המשמשת בבית ראובן ויצא קול שמתיחד עמה אם יכולין בני משפחתה למחות שלא תעמוד אצלו כי הוא פגם להם שתהיה פלגשו.

תשובה ... ופנויה המשמשת בבית ראובן ויצא קלא דלא פסיק שמתיחד עמה - לא מיבעיא בני משפחתה שיכולין למחות.
אלא בית דין היו כופין אותו להוציאה מביתו כי דבר ידוע שהיא בושה לטבול ונמצא שבועל נדה.

שו"ת הרא"ש כלל לב סימן יג

The Rosh escaped from persecution in Germany and spent the latter part of his life as head of the community in Toledo. There were many wealthy Jews in the community who married and also kept pilagshim²⁸. The Rosh rules that the family of a young woman who became a pilegesh could object that it slurred their family name. He also rules that Beit Din could stop the arrangements on the basis that the pilegesh would be embarrassed to use the mikve and would have relations when she was nidda.

אבל במי שמייחד לו אשה דהיינו פילגש לא איירי הכא אלא בהלכות מלכים ואין בה לא לאו ולא מלקות ולא איסור תורה שאם היתה אסורה מן התורה לא היתה מותרת למלך. אבל איסורא דרבנן איכא. ולגבי מלך או נשיא לא גזרו דאינה בושה מלטבול, אבל גבי הדיוט גזרו דכיון שהיא בושה לפעמים בושה מלטבול.

שו"ת רדב"ז חלק ד סימן רכה (אלף רצו)

The Radvaz understands this to be a full rabbinic prohibition. He also rules that, although pilagshut is permitted according to Torah law, it is prohibited rabbinically for a commoner on the basis that the woman may be embarrassed to use the mikve since she is not a full wife, and will have relations when she is nidda. For a king, there is no such concern.

• According to this approach, the Rabbinic prohibition is a side factor which may or may not apply, depending on the actual circumstances.

E4] APPROACH 4: PILEGESH DOES NOT REQUIRE KIDDUSHIN AND IS PERMITTED - IN PRACTICE?

16. ורש"י כתב נשים בכתובה, פילגשים שלא בכתובה, כדאמר בנשים ופילגשים דדוד בסנהדרין (כא). <u>ואין הדבר כן, כי לא תקרא</u> פילגש אלא כשהיא בלא קדושין. כי הכתובה מדברי סופרים, והגירסא בסנהדרין פילגש בלא כתובה וקדושין.

רמב"ן בראשית פרק כה פסוק ו

The Ramban disagrees with Rashi on Chumash and rules that a pilegesh has NO kiddushin.

- In fact, this is indicative of a broader position of the Ramban which he sets out in his teshuvot.
- The halachic position permitting pilegesh (at least in principle) is also found in other Rishonim, including the Ran²⁹, Kol Bo³⁰ and R. Menachem ben Zerach (15C Spain)³¹.

^{28.} For more on Jewish approaches to concubinage in the ancient and mediaeval world see *The Institution of Concubinage among the Jews*, Louis M. Epstein, Proceedings of the American Academy for Jewish Research Vol. 6 (1934 - 1935), pp. 153-188, available at https://www.jstor.org/stable/3622278. Epstein draws distinctions between different types of concubine - Hellenic vs Jewish, oriental vs occidental. He also argues that in Spanish society there were both betrothed pilagshim with kiddushin, and also unbetrothed pilagshim without kiddushin. See https://jwa.org/encyclopedia/article/spain which writes: "In thirteenth-century Castile, there were Jewish men with both Muslim and Gentile concubines and Christians with Jewish and Muslim concubines. The community of Toledo attempted to ban the practice of taking Muslim concubines in 1281, but to no avail." At various stages in history, Christian authorities in Spain passed laws prohibiting Jews from keeping Christian concubines. Relationships with Muslim concubines are also recorded. In one case, Abulfacem, a Jew of Mula [Murcia], and his Muslim concubine Axona were arrested by the king's brother and procurator in Murcia, and the couple jointly appealed to the king. He ruled that they should be allowed to cohabit, since neither was a Christian. The teshuvot of the Spanish Rishonim - Rashba, Rivash and Tashbatz contain many responsa dealing with pilegesh questions. Most of these authorities prohibited pilagshut.

^{29.} Shu't Ran 68.

^{30.} Siman 75.

^{31.} Tzeida Lederech Ma'amar 3 Klal 1 Chap 2

- 1 - עוד זאת התשובה השיב הרמב"ן ז"ל לר' יונה זצ"ל....

17.

הגיעני מצותך בענין הפלגש. להודיעך בה דעתי על דרך אמת לא כנושא ונותן. לא ידעתי במה יסתפקו בה דודאי מותרת היא כיון שיחדה לעצמו. שלא נאסרה אשה בזנות לישראל אלא ממדרשו של רבי אליעזר בן יעקב. נמצא אח נושא אחותו ואב נושא בתו. ועל זה נאמר ומלאה הארץ זמה. אבל כשנכנסה בביתו והיא מיוחדת וידועה לו בניה נקראים על שמו ב- ומותרת. שהרי דוד נשא אותה. ולא הוזכר בכתוב ולא בגמרא הפרש בין מלך להדיוט. ומצינו גדולי ישראל נושאין אותה. שנאמר ועיפה פילגש כלב ילדה. וגדעון שופטן של ישראל שדבר בו ה' כתיב בו ופילגשו אשר בשכם ילדה לו. וא"ת שהשופט הרי הוא כמלך מפני שנוהג שררה על הציבור ופילגשו ידועה. נתת דבריך לשיעורים להתירה לבעלי השם. ופילגש בגבעה אילו היתה אסורה עליו לא אמר הכתוב ויקם אישה וילך אחריה. וכתיב (שופטים יטה) וַיִּאֹמֶר ְ אֲבַּיִּ עָשֶׂוּ זִּמֶּח וּיְבָלְ, הוא אמר (שופטים כּוּ) וְאַלַּיִלְ וְאֵבַּיְלְשִׁי וְאֲבַּתְּלְּהָ כִּי עָשֶׂוּ זִּמָּח וֹיִבְלָ, הוא אמר (שופטים כּוּ) וְאַלַּאַי וְאֲבַּתְּלְהָ כִּי עָשֶׂוּ זִּמָּח וֹילְבָ הוֹ הוא אמר ווה היא מותרת ומדבריהם הוא דגזור. וכי באיזה מקום הוזכרה גזירה זו בתלמוד! ואיזה ב"ד נמנו עליה! ובאיזה זמן נשנית משנה זו!

וכל שבא לישא אשה שתהיה אסורה לכל אדם וקנויה לו לירשה וליטמא לה, אמרה תורה יקדש ויכניס לחופה ויברך ברכת חתנים בעשרה. הא אילו רצה שתהיה לו פילגש שלא תהא קנויה לו ולא אסורה על אחרים ולא קדש כלל <u>הרשות בידו</u>. 15 - וגם דברי הרמב"ם ז"ל אינם לאסור פילגש להדיוט ולהתירה למלך. אלא כך אמר וכל הבועל אשה לשם זנות בלא קידושין לוקה מפני שבעל קדשה. ולשם זנות היינו שפגע בה ובעלה ולא יחדה לעצמו לשום פילגשות דהיינו קדשה. ולא אמר הר"ם ז"ל כל הבועל בלא קדושין לוקה. וכן בהלכות מלכים כשהזכיר פילגשים במלך לא הזכיר כלל שהוא היתר מיוחד לו. וכבר כתבתי זה בספר המצות תראהו משם.

ואתה רבינו ה' יחייך במקומך תזהירם מן הפילגש שאם ידעו ההיתר יזנו ויפרצו ויבואו עליהן בנדותן.

שו"ת הרשב"א המיוחסות לרמב"ן סימן רפד (עיין כתבי הרמב"ן שעוועל כרך א' דף שפ"א)

The Ramban makes a number of bold statements in this teshuva to his student, Rabbeinu Yona Gerondi: (i) pilegesh is permitted to all, and not only to a king; (ii) there was never a rabbinic prohibition against it; (iii) he clearly has a different girsa in the Rambam and therefore understands that the Rambam too permits a monogamous pilegesh arrangement for regular people. However, at the end of this section he adds a warning that Rabbeinu Yona should, in practice, warn people away from pilagshut since it leads to immorality and sin.

• There is a major debate, both in academia and also in the mefarshim, as to whether this last sentence was indeed penned by the Ramban himself or added in the margins by a zealous talmid!³²

E5] THE CHEREM OF RABBEINU GERSHOM

- Although the issue of pilegesh is far less discussed amongst the Ashkenazi Rishonim (and was far less prevalent in their society), there is a discussion as to whether it would breach the cherem of Rabbeinu Gershom against polygamy.
- Some of the later Ashkenazi Rishonim, such as Terumat HaDeshen³³ and Maharam Padua³⁴ rules that pilagshut was NOT in principle a breach of the Cherem. Later, the Maharshal³⁵ ruled that there would be be a breach of the Cherem. See below as to the strident position of R. Yaakov Emden.
- The original Cherem applied only to Ashkenazi communities, although Sefardi/Edot HaMizrach communities have adopted the practice and it is standard for a Sefardi ketuba to include a clause that the husband will not take a second wife. The Yemenite community did not accept the Cherem, although, in practice, they do not today take more than one wife (and this is illegal in Israel).
- Some authorities have suggested that the original Cherem was limited in time, but the Ashkenazi community has consistently reaffirmed the Cherem over the last 1000 years.

F] PILAGSHIM - SHULCHAN ARUCH

אין האשה נחשבת אשת איש אלא על ידי קדושין שנתקדשה כראוי. אבל אם בא עליה אדם בלא קידושין לשם זנות לוקה משום לא תהיה קדשה, והיא זונה האמורה בתורה. ואפילו לא בא עליה לשם זנות אלא לשם אישות בינו לבינה אינה משום לא תהיה קדשה, והיא זונה האמורה בתורה. ואפילו לא בא עליה מביתו. וכ"כ א"א הרא"ש ז"ל בתשובה: פנויה המשרתת נחשבת כאשתו אפי' אם יחדה. אלא אדרבא כופין אותו להוציאה שבני משפחתה יכולין למחות בידו שהוא פגם להם שתהיה בבית ראובן ויצא קלא דלא פסיק שמתייחד עמה. לא מיבעיא שבני משפחתה לטבול ונמצא שבועל נדה ...

טור אבן העזר הלכות קידושין סימן כו הלכות קידושין:

18.

The Tur prohibits pilagshut and quotes the teshuva of his father, the Rosh.

^{32.} There is evidence in both directions. For a detailed analysis, see Nissuin Shelo Kedat Moshe VeYisrael by R. Eliakim Elinson chapter 4. R Elinson clearly concludes that the sentence did NOT come from the Ramban, but was added later, and that the Ramban permitted pilagshut in practice.

^{33. 209}

^{34.} Shu't Maharam Padua 19.

^{35.} Yam Shel Shlomo Yevamot 2, 11.

19.

אין האשה נחשבת אשת איש אלא על ידי קדושין שנתקדשה כראוי. אבל אם בא עליה דרך זנות, שלא לשם קדושין, אינו כלום. ואפילו בא עליה לשם אישות בינו לבינה, אינה נחשבת כאשתו, ואפילו אם ייחדה לו. אלא אדרבא כופין אותו להוציאה מביתו. הגה: דבודאי בושה היא מלטבול, ובא עליה בנדתה. אבל אם מייחד אליו אשה וטובלת אליו, יש אומרים שמותר והוא פלגש האמורה בתורה (הראב"ד וקצת מפרשים), וי"א שאסור ולוקין על זה משום לא תהיה קדשה (דברים כגית) (הרמב"ה והלא מפרשים), וי"א שאסור ולוקין על זה משום לא תהיה קדשה (דברים כגית)

שולחן ערוך אבן העזר הלכות קידושין סימן כו סעיף א

The Shulchan Aruch rules that a man and woman may only live together in marriage - after kiddushin and nissuin. Even if they chose to live together in a monogamous relationship as man and wife, this is still prohibited without a formal marriage. The Rema understands that the reason for this is a rabbinic decree in case she will be embarrassed to go to the mikve and they will end up having relations when she is nidda. The Rema then brings two other opinions - (i) Ra'avad - that a formal pilegesh is permitted (since she will not be embarrassed to use the mikve); (ii) Rambam - that pilegesh is prohibited as a kedesha.

G] PILAGSHIM - ACHARONIM

Almost all Acharonim over the the last 500 years have clearly prohibited pilagshut - either in principle or in practice.

והוי יודע שאפילו הרמב"ן ז"ל המתיר אם היה בזמננו זה שהם פרולים בשפחות ובביאות האסורות היה גם הוא אוסר. תדע שכתב באותה תשובה בעלמה וז"ל ואתה רבינו השם יחייך במקומך תזהירם מן הפלגש שאם ידעו ההיתר יזנו ויפראו ויבוא עליהן בנדותן עד כאן לשונו. ומעתה אתה דן קל וחומר במקומנו ובזמננו זה. גם הרשב"א ז"ל שהתיר הפלגש לא התיר אלא על ידי קדושין גם מדברי הראב"ד זכרונו לברכה נראה שהפילגש יש בה איסור

שו"ת רדב"ז חלק ד סימן רכה (אלף רצו)

The Radvaz - in North Africa - is fairly typical in quoting those Rishonim who are more lenient but showing how, in practice, that would not translate into a practical heter. He observes that main 'matir' - the Ramban - warns against Pilgashut and that his warning would apply kal vechomer in later generations which were less moral³⁶.

בדורינו שפשטה חרם דרבינו גרשון שלא לישא אשה על אשתו, ק"ו פילגש ואשתו דלא עדיף. ואף היכא דלא נתפשט חרם 21. דר"ג אין להתיר כלל. כי בעו"ה הדור פרוע, אם תתיר לו פלגש, תמלא הארץ זימה

ים של שלמה מסכת יבמות פרק ב

The Yam Shel Shlomo, in Ashkenaz echoes a similar position.

G1] RAV YA'AKOV EMDEN

- In Shu't Ya'avetz 2:1537, R' Yaakov Emden (18C Germany) addresses the issue of the pilegesh (concubine) and writes that:
 - The status of pilegesh is not in principle prohibited today, even for regular people.
 - The cherem of Rabbeinu Gershom not to have a second wife was an improper measure and a stumbling block! It was influenced by the moral norms of Ashkenazi Europe and he regards it as Chukat HaGoy. It was not accepted in most communities and anyway expired in the year 5000 (1240 CE).
 - Pilegesh which must be monogamous and fully observe the laws of taharat hamishpacha is an appropriate measure³⁸ to avoid sexual promiscuity³⁹, preserve sexual morality and promote having more children.
 - Contrary to other opinions, R. Emden understands that pilagshut was practiced by Chazal⁴⁰.
 - In the context of the times, shock-waves were still reverberating around the Jewish community after the debacle of Shabbetai Zvi. Some underground Sabbatean movements (in particular Frankism) promoted sexual immorality and promiscuity as a religious act to 'sanctify the forbidden'.
 - He fully analyses the positions of the Rambam, Ra'avad, Radvaz and Rivash and disagrees with them all. However, he writes that one should not rely on his ruling without the agreement of other halachic authorities.
- Almost all halachic authorities disagreed with R. Emden.

^{36.} It is fairly standard for commentators to paint their own generation as less moral than previous, building on the hashkafic concept of 'yeridat hadorot'. It is not necessarily always the case in practice and the sexual mores of medaeival Spain were in many ways more permissive than those of later times. Nevertheless, even where later generations ARE less sexually moral, this has been used by some commentators - see R. Yaakov Emden below - as a reason to PERMIT pilagshim and not to prohibit them.

^{37.} A translation of most of the teshuva is available at http://www.aishdas.org/avodah/faxes/RYE_pilegesh.pdf. The original Hebrew is available at <a href="https://gitlab.com/pninim.org/pninim/-/blob/master/%D7%A9%D7%90%D7%95%D7%AA_%D7%95%D7%AA_%D7%95%D7%AA%D7%95%D7%AA%D7%95%D7%AA%D7%95%D7%AA%D7%95%D7%AA%D7%95%D7%AA%D7%95%D7%AA_%D7%AA_%D7%95%D7%AA_%D7%D7%AA_%D7%95%D7%AA_%D7%D7%AA_%D7%95%D7%

^{38.} He calls pilagshut a custom of our holy ancestors and argues that for us to have a negative approach to it effectively casts aspersions on these holy men.

^{39.} He writes that the challenges of his time included adultery, men having relations with women who were nidda, with non-Jewish women, with prostitutes, and wasting seed.

^{40.} He quotes Yoma 18b where Rav and Rav Nachman would announce when visiting other towns that they were looking for a single woman to be with them for their stay. Many mefarshim understand this to be a second wife but R. Emden reads it as pilagshut.

22.

H] MODERN DISCUSSIONS

- A number of recent writers have raised the question of whether pilegesh should be revived as an institution in modern society to resolve current challenges.
- In the mid 1990s an organization based in New York purported to arrange concubines. It was met with outrage and condemnation by all rabbinic bodies.⁴¹ Other such organizations have sprung up over the last 20 years.⁴²
- In 2006 Prof. Zvi Zohar (an academic at Bar Ilan University) wrote a highly provocative article promoting Pilgashut to resolve pressing issues which he identified in religious society, including: young couples who identify as orthodox but live together before marriage, young orthodox men who conduct illicit relationships with non-Jewish women, older single women who are unable to marry.
- Zohar's article received detailed responses from Rav Shmuel Ariel, Rav Yehuda Henkin and Rabbanit Michal Tukochinsky/Rabbanit Racheli Fraenkel. All entirely negated his position on halachic, hashkafic, moral, ethical and societal grounds. These include its demeaning effect on women, the undermining of the sanctity of marriage and the halachic and hashkafic imperatives on young people to marry, and the undermining of sexual morality in society as a whole⁴³.
- In 2012, a senior Sefardi Rabbi in Israel suggested pilagshut as a possible solution in the case of a man whose wife refused to accept a get and where the man needed to have a family and perform the mitzva of pru u'revu⁴⁴.

וכן הוא הדין בכל מה שחטאו היחידים בכל צבור וצבור בפרוץ באחד מהאיסורים שבתורה כגון ביין נסך או גבינה של עכו"ם או שעטנז וכיוצא, שהעלם עין השופטים והמנהיגים מתיר אותם כאלו הם מותרים מן הדין שכבר <u>הפכו בזה חטאות היחיד אל חטאות הצבור מכללם</u>. וכמה פעמים נתחבטתי על זה על אודות הנשים הקדשות שהיה אסורן רופף ביד שופטי ישראל אשר בדורנו. ולא עוד אלא שכבר יאותו בקצת הקהלות ליתן להם חנינה ביניהם, גם יש שמפסיקין להם פרס מהקהל. כי אמרו כיון שמצילות את הרווקים או הסכלים מחטא אסור אשת איש החמור או מסכנת הגויות מוטב שיעברו על לאו זה משיבאו לידי אסור סקילה או סכנת שריפה.

ואני דנתי על זה פעמים רבות לפניהם ולפני גדוליהם והסברתי להם שהחטא הגדול אשר יעבור עליו איש איש מבית ישראל, בסתר ושלא לדעת הרבים וברשות ב"ד, חטאת יחיד הוא. והוא שבעונו ימות ע"י ב"ד של מעלה או מטה וכל ישראל נקיים, כמו שהיה עון פילגש בגבעה אם היו ב"ד שלהם מוסרין האנשים הרשעים ההם לבדם ביד ישראל. אמנם החטא הקטן כשיסכימו עליו דעת הרבים והדת נתנה בבתי דיניהם שלא למחות בו, הנה הוא זמה ועון פלילי וחטאת הקהל כלו ולא נתן למחילה אם לא בפורענות הקהל, כמו שהיה בבני בנימן על השתתפם בעון. והוא היה עון סדום כמו שביארנו שהם ובתי דינין שלהם הסכימו שלא להחזיק יד עני ואביון. ולכן הוא טוב ומוטב שיכרתו או ישרפו או יסקלו החטאים ההם בנפשותם משתעקר אות אחד מהתורה בהסכמת הרבים. כמו שאמר בזה שעשתה בו פרשה בפני עצמו לא תהיה קדשה וכו" נברים כג) כמו שיתבאר שם ב"ה. ומי שלא יקבל זה בדעתו אין לו חלק בבינה ונחלה בתורת אלהית.

עקידת יצחק בראשית שער כ (פרשת וירא)

Rav Yitzchak Arama was a senior posek in 15C Spain before and during the Expulsion. At a certain point, the Spanish authorities made it a capital offence for a Jewish man to sleep with a non-Jewish woman, even a prostitute. Some in the community were in favor of establishing a communal network of Jewish prostitutes to save the men from potential execution or breaching the prohibition of adultery. Rav Arama is clear that this would change a private sin into a communal one, which is far more serious. Even if individuals commit serious halachic prohibitions, the community should not normalize immorality just to save those individuals.

• As such, there is almost total rabbinic and communal agreement that the solutions to the societal challenges we face cannot be found in pilagshut.

^{41.} See https://www.independent.co.uk/arts-entertainment/the-concubine-connection-1359270.html

^{42.} https://www.jpost.com/Jewish-World/Jewish-News/New-Jewish-group-wants-to-restore-polygamy. See also https://forward.com/sisterhood/160383/are-concubines-now-kosher/

^{43.} Prof. Zohar's articles, the 3 responses and Zohar's reply can all be read at https://bmj.org.il/wp-content/uploads/2019/12/17.11.Zohar_.pdf

^{44.} https://vosizneias.com/2012/07/17/jerusalem-sephardic-rabbi-endorses-concubine-scenario-under-jewish-law/