

Promiscuity

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The question is often asked: how do the *halachic* guidelines regarding interaction between the genders apply within the changing sexual mores of our modern society? *Halacha*, of course, applies to all times yet, this statement is often misunderstood. What is meant by the eternal nature of *Halacha* is the eternal essence of *halachic* principles. Actual *halachic* manifestations, i.e. actual presentations of *halachic* conclusions, however, do change because such conclusions are actually a result of these eternal principles responding to specific fact situations. *Halachic* practices thus can change as a result of changes in the facts even as the eternal *halachic* legal principles never change. See, further, my “**Examining the Ideal**,” **Nishma Update, December 1992** and **Rabbi Michael J. Broyde and Avi Wagner, Journal of Halacha and Contemporary Society 39, “Halachic Responses to Sociological and Technological Change”**. Thus the question can be asked: how do the present mores and manners within modern society – the modern facts – affect the *halachic* directives in regard to conduct between the genders?

There are many different issues that can be included within this question. The conclusions may also not necessarily lead to more leniencies but, in addition to maintaining a view that *halachic* demands may not change, there is also the possibility that greater stringency in the law may be required in our age. Many years ago, a friend once mentioned to me that he believed that the leniency in regard to *yichud*, being alone, with a married woman was no longer applicable in our time. As **Shulchan Aruch, Even HaEzer 22:12** states, the codified *halacha* is that, as long as her husband is in the city, one can be *mityached* with a married woman, as the fear of her husband is still upon her. My friend contended that married women today are really no longer afraid of their husbands in this way and, as such, the reason presented to allow *yichud* is no longer applicable. *Yichud* with a married woman, as such, should be prohibited even in cases where it was once allowed. His argument was an example of a case where the changes in our societal attitudes would

actually demand greater *halachic* stringency. The fact is, though, that he was also thereby supporting the concept that changes in society could affect the *halachic* directives – and sometimes that could also be toward greater leniency.

The fact that the Shulchan Aruch itself presents cases where the law of *yichud* would continue to be applicable in the case of a married woman, because she would not have this fear of her husband, actually supports the contention that this law is dependent upon a certain factual circumstance which can change. It is not, however, always easy to make such a determination. Sometimes what we think is a factor dependent upon the facts, thus presenting an allowance for change, is actually a factor embedded in the essential *halachic* principle and thus not open to change. In this case, the psychology of women – whether married women fear their husbands in a certain way – was deemed to be a factor to be determined in fact and thus open to change. Yet, even in regard to psychological assumptions, this is not always the case. **Rabbi Soloveitchik** was noted to have contended that the principle of *tav l'meitav tan du mi'l'meitav armalu*, that a woman would rather live with a husband in a less ideal situation than be alone with the hope of a better situation, was part of the essential principle of the *Halacha* and thus not subject to change. Essentially he was stating that this principle in regard to the psychology of women was embedded in the principles of *Halacha* and thus, regardless of what women in our age may even declare, this principle must be accepted as unchanging with eternal significance in the determination of *halachic* conclusions. Thus, according to this understanding, the view expressed in **T.B. Ketubot 75a** that a woman will settle to be married even if it would prevent the possibility of marrying better in the future is deemed to be equally applicable today regardless of what we may think the facts, specifically our determination of the facts of the modern female's psychological preferences, may be. We, thus, must be careful with any consideration (which may change the *halachic* practice) that we are not denying the eternal nature of a true *halachic* principle. Yet, if the facts have changed and we deny this truth and declare something that does change to be eternal, we can also be making a *halachic* mistake.

So we return to our question: how does the modern conduct between the sexes affect the *halachic* directives and guidelines in this regard? How do the behaviours,

attitudes and values existent in our society regarding each gender and regarding interaction between the genders affect the *halachic* definition of what should be the ideal? **Rabbi Aryeh Lebowitz, Journal of Halacha and Contemporary Society 55, “Co-education – Is it Ever Acceptable?”** presents a disagreement between the *poskim* with the Levush and the Aruch Hashulchan seemingly taking one view and Rabbi Ovadya Yosef assuming the opposite. The Levush contends that in a society where there is a greater mingling of the sexes, the concern for lewd thoughts decreases and thus the strictures of *Halacha* may lessen. In a similar vein, the Aruch Hashulchan maintains that in a society where married women do not cover their hair, one need not be concerned with saying a *bracha* in front of a married woman with uncovered hair as this hair cannot be deemed as causing the creation of lewd thoughts. These two authorities, according to Rabbi Lebowitz, maintain that when society’s standards lessen, there is less sexual tension and thus *halachic* standards can also lessen. Rav Ovadya Yosef, however, presents in general terms the opposite view. He contends that as standards within society lessen, the *Halacha* needs to respond with greater restriction for this lessening of standards reflects greater laxity. If society accepts greater laxity, he argues that we, to protect our Torah standards, must respond with greater stringency. Both positions actually seem to say that indeed *halachic* practice does respond to changes in the mores of society but they disagree concerning how to respond.

Rabbi Lebowitz’s presentation of this disagreement may, however, be misleading. Do these variant *poskim* truly disagree or are they actually responding to essentially different changes within society? Both positions bring sources to defend their views and upon closer examination one would actually be left, in any event, with the problem of reconciling these differing views within the sources. It may thus be that the Levush, Aruch Hashulchan and Rabbi Yosef are not actually in disagreement but are considering different types of changes in the conduct between the sexes. Rabbi Lebowitz may be coupling together different changes in conduct between the sexes when in fact these changes reflect major differences in their underlying motivations. All these changes indeed may reflect greater laxities in the *prima facie halachic* directive regarding proper behaviour between the sexes but for different reasons.

The *prima facie halachic* conduct demanded may reflect what is necessary to maintain a certain level of *tzniut*, proper sexual norms, given certain sociological and psychological conditions. Conduct, as such, may change for two broad reasons. One group of proponents of change may still wish to maintain the level of *tzniut* of the former generations but due to sociological and psychological changes may believe that this goal of *tzniut* is now also attainable with certain changes in behavior. Those who contend that the *halachic* standard may lessen may accept such an understanding of the shifts within our society and may be responding to certain shifts in society's mores because they are deemed to reflect sociological and psychological changes but not a change in the underlying sexual moral standard of the society. Another type of change may reflect, though, a change in the very sexual moral standard of the society. In such cases, certain behaviours are now considered acceptable because the previous standards of *tzniut* are dismissed with even a disinterest in *tzniut*. Those who contend that the *halachic* standard may need to become more stringent may be considering this type of shift in society's mores. Our response to such a change may indeed have to be greater entrenchment in the values of Torah.

The *Halacha* actually, for example, speaks of changes in the standards of dress and recognizes that some changes in these standards can be incorporated in the designation of proper *halachic* behaviour. If women start to wear skirts that only go to their knees where before society had set a standard that skirts should go to the ankles, this new societal standard of the knees can be incorporated into the *Halacha*. This, though, is because the overall attitude toward sexuality still remained the same. Society was not stating that it was no longer interested in *tzniut* but, rightly or wrongly, was saying that these same standards of *tzniut* can still be reached with a certain broadened acceptance concerning the length of skirts. A societal shift based on a new disinterest in *tzniut* and the adopting of new standards of dress because of a goal to promote promiscuity would not, though, be entertained within the context of *Halacha*. Such a shift in society's standards would, at best, be irrelevant to the *halachic* system or could lead to greater stringency in *halachic* practice in order to prevent the change in society's moral standards from negatively affecting Torah goals.

The fact is that two very different motivations for change in conduct between the genders have engulfed our society in the last century. One is the liberalization of sexual moral values themselves. This is part of what has happened in the past half-century and may be to what Rabbi Yosef is specifically referring. If society becomes more lax in its standards of conduct between the sexes because society now favours greater sexual contact between the genders, it is difficult to incorporate such laxities into our *halachic* system or to consider such laxities in a re-evaluation towards leniency of what is *halachically* proper. A shift in society to increase the mingling of the sexes in order to foster greater sexuality may have to be responded to by *Halacha* in a manner that challenges this value.

Yet, there may be another reason for what we perceive to be greater laxity in the behaviour between the genders and this reason may actually call for these laxities to affect the *halachic* standards in a more lenient fashion. Within our society, what has also occurred is a greater call to recognize women as individuals and as generic human beings not necessarily solely within the context of their sexuality. Mingling of the sexes in this regard is, thus, not motivated by more lenient standards regarding sexuality but rather by a desire that women achieve the same stature and prominence as men. The lowering of certain standards in the behaviour between the sexes is thus the result of a desire to grant equal opportunity in education and in the workplace. It is the result of a desire for women to not be seen in a sexual manner but rather as equal and individual human beings. This type of perception may even be comparable to the *white geese* term applied in the *gemara* to indicate that one perceives women outside of their sexuality. While it may still be hard pressed to apply such a perception in a general way to all of our society today – in the time of the *gemara* it was specifically used to describe how only certain very pious individuals were able to ignore the sexuality of women – the fact that a society is furthering such a view of women in their consciousness could have an affect in lowering *halachic* standards within such a society as well. It is this type of change to which the Levush and the Aruch Hashulchan are responding.

The strange thing about our society is that we have actually experienced both of these types of changes at the same time. Much of the disagreement that we have

encountered in regard to how the Torah world should respond to these changes is, thus, actually a reflection on which motivation for change is deemed to be the focus. The greater question, however, may be how it was possible for these two motivations for change to co-exist. One of these motivations would seem to be built upon a greater recognition of women as sexual beings while the other motivation would seem to wish to foster a recognition of women outside of their sexuality. Yet our society seems to have set as its goal both objectives – a greater recognition of women in a sexual context thus promoting greater sexuality but also a greater recognition of women outside of a sexual context thus promoting greater acceptance of women in the general functioning of our society. How did our society accomplish this seemingly contradictory objective – and, most importantly, how does this recognition impact upon Torah?

The answer may lie in how we have attempted to integrate women into the greater public workings of our society. For years, women were considered to be qualitatively different from men in a variety of ways and this distinction permeated our societies throughout the centuries. Women, as such, were not perceived to be different solely because of their sexuality but also in regard to many other tasks that were deemed to be part and parcel of the feminine being. The result was that women were indeed seen in a strongly sexual context but this context expanded also beyond the realm of sexuality *per se*. When our modern society, however, wished to lower the barriers between the sexes in a variety of contexts, it did so by arguing that this way of viewing women was inherently incorrect. Women were, like men, simply human beings. The argument was that there was no real distinction between men and women outside of the physical differences which effectively only really concerned sexual behaviour. The result was that the promotion of equality was built upon the concept of an absence of value in any sexual distinction between individuals – men and women were just the same. But the reality was that they were still different in regard to their physical being. This, though, was deemed to be insignificant in regard to the greater value of the person as a human being. And furthermore since this distinction ultimately did not have a real value, greater sexual indulgence was also not a problem. If our physical beings need to be scratched, what is the problem with that? This behaviour to satisfy a physical sexual desire is not really deemed

as connected to one's personhood as a human being – why should one thus restrict this sexual behaviour? This became part of the attitude of our society.

Tzniut has an interesting double affect upon the relations between the genders. It obviously intends to foster a proper sexuality that places boundaries and parameters on our sexual expression. But interestingly, the Torah view of *tzniut* also fosters the very distinction between the sexes. The practice of *tzniut* promotes a recognition of distinction between the sexes as it also places restrictions on the standards of interaction between the genders. Within the purview of Torah, a woman is a woman and that demarcation extends beyond physical distinctions to touch upon many further distinctions even into the soul. Sexuality within this context is thus not solely about a physical drive but reflects a meshing of two beings with distinct characteristics.

Men and women are indeed both human beings but they are also qualitatively distinct within the categorical definition of human beings. When the humanity of women is ignored and all that is perceived is their sexual nature, the result is promiscuity and the lessening of the status of women, as women are seen solely in sexual terms. Thus, when society takes steps to foster the perception of women within the general context of humanity, the results can be positive and serve to foster *tzniut* even with laxity in the general standards of behaviour that may have been preciously implemented. Yet, when society overextends this view of women to see them solely within the generic context of humanity thereby perceiving sexual distinctions as solely physical, the standards of *tzniut* can also falter for the complete perception of the women is lost and the value challenges inherent in the attempt to connect the male and the female are also lost. The result can also be *pritzut*, immorality. *Tzniut* does not ignore the reality of sexuality but rather instructs us how to apply the reality of sexuality and sexual distinctions properly. How to achieve this goal indeed must be built upon the starting point of the mores of the society as they exist. This demands a true and full understanding of these mores and their motivations – with a goal towards the ideal of Torah that celebrates God's creation of male and female.