**YESHIVAT HAR ETZION**

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

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**LIFECYCLES – HILKHOT ISHUT**

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**Shiur #01: Is There a *Mitzva* to be Married?**

**Introduction**

This week, we begin an exciting new series: Life Cycles. In this course, we will, God willing, address the laws of marriage, birth, *brit mila*, *pidyon ha-ben*, bar/bat mitzvas, and death.

We will dedicate this year to the study of *ishut*, laws relating to marriage. We will discuss the *mitzva* of marriage, sexual relations outside of the context of marriage, *pilagshut*/civil marriage, the nature and methods of *kiddushin*, the definition and nature of *nisu’in*, *sheva berakhot*, *ketuba*, the modern wedding ceremony (laws and customs), prenuptial agreements and other proposals, *shivat yemei mishteh* and *sheva berakhot*, *peru u-revu* and family planning, and *shana rishona*. This week, we will discuss whether there is a *mitzva* to be married.

The commentaries discuss how to legally categorize the halakhic institution of marriage. On the one hand, it is evident that the Torah desires that men and women marry (*Bereishit* 2:18) and that there is a positive commandment to bear children (ibid. 1:28; *Yevamot* 65b). But can the act of finding a partner and initiating a marriage relationship itself be categorized as an obligation or as a *mitzva*? And if marriage itself if not a halakhic imperative, is there an aspect of marriage that can be considered a *mitzva*? Finally, how does this question contribute to our general understanding of the Torah’s view of marriage?

In order to understand this week’s *shiur*, we must familiarize ourselves with certain terms. There are two parts to the wedding ceremony: the *kiddushin* (or *eirusin*) and the *nisu’in*. In a future *shiur*, we will discuss the practical and conceptual differences between these two parts of the marriage ceremony. For now, *kiddushin* generally refers to the formal aspect of the ceremony, known as a “*kinyan*,” through which the legal status of marriage is accomplished. Nowadays, *kiddushin* refers to when the man gives the women a ring and declares, “*Harei at mekudeshet li be-taba’at zo ke-dat Moshe ve-Yisrael*” (“Behold you are consecrated unto me with this ring in accordance with the law of Moses and [the People of] Israel). However, the *mishna* teaches (*Kiddushin* 2a) that *kiddushin* can be achieved through contract (*shetar*) or sexual relations with the intent of forming this relationship (*bi’ah*). Once *kiddushin* has taken place, the marriage can only be terminated through a *get*. *Nisu’in* refers to the more intimate union between the man and women, which is achieved through standing together under the *chuppa*, reciting the *sheva berakhot*, and *yichud*. We will relate to these different stages of the wedding ceremony throughout our discussion this week.

***Mitzvat Kiddushin* in the Talmud**

 The Torah mentions the concept of *kiddushin* in the context of the laws of divorce (*Devarim* 24:1):

When a man takes a wife and is intimate with her, and it happens that she does not find favor in his eyes because he discovers in her an unseemly [moral] matter, and he writes for her a bill of divorce and places it into her hand, and sends her away from his house.

The Torah employs the word “*ki*” to describe the marriage, which in this case is to be terminated. It is not clear from this verse whether the Torah means to imply that a man should or must marry a woman, or whether it is a voluntary process through which a marriage is created.

 In numerous places, the Talmud implies that *kiddushin* is a “*mitzva*.” For example, the Talmud teaches (*Kiddushin* 41a) that a person should preferably not appoint an agent to perform the act of *kiddushin* (i.e. betrothing a women through a gift), as “it is better to perform a *mitzva* oneself” (*mitzva bo yoter me-beshelucho*). Similarly, in the context of the *mishna*’s statement (*Beitza* 36b) that *kiddushin* should not be performed on Shabbat and Yom Tov, the *gemara* describes *kiddushin* as a “*mitzva*,” although it appears to distinguish between the *kiddushin* of one who is already married with children and one who is not.

 The *Rishonim* grapple with this interesting issue in a number of places. For example, regarding the *gemara*’s statement that a person should preferably perform the “*mitzva*” of *kiddushin* himself, the *Rishonim* disagree as to whether the *gemara* refers to the *mitzva* of *kiddushin* or whether *kiddushin* is termed a “*mitzva*” because it is a “*hechsher mitzva*,” a preparatory stage of the *mitzva* of *peru u-revu*.

The *gemara* further explains that the principle of *mitzva bo yoter mi-beshelucho* applies to women as well and that a woman should therefore preferably not appoint an agent to accept *kesef kiddushin* on her behalf. To which *mitzva* is the *gemara* referring? The Ran explains (*Kiddushin* 16b) that the *gemara* refers to the *mitzva* of *peru u-revu* and that women also fulfill the *mitzva* through their “assistance” in fulfilling it. However, the *Sefer Ha-Miknah* (*Kiddushin* 41a) disagrees and insists that the *gemara* refers to *kiddushin* as a “*mitzva*” because it is a “*matir*,” an act that permits a prohibited activity. Accordingly, a woman also has a part in this *mitzva*, as it permits her to live with her husband.

***Mitzvat Kiddushin* and *Birkat Ha-Eirusin* (The Marriage Blessing)**

The *Rishonim* relate to this issue most directly in the context of a discussion regarding the laws of the *birkat ha-eirusin*, the blessing recited at the beginning of the wedding ceremony, before the *kiddushin*. The text of the blessing is:

Blessed … Who has sanctified us by Your commandments and commanded us concerning [forbidden] intimate relationships and forbidden to us those women who are [only] betrothed with *eirusin*, but permitted to us those women who are married to us by *chuppa* and *kiddushin*. *Barukh* … Who sanctifies the people Israel by *chuppa* and *kiddushin*.

The Rosh (*Ketubot* 1:12) and other *Rishonim* note that the text of the blessing does not match the pattern of other *birkot ha-mitzvot*:

Some question the formula of the blessing and why we do not say, “[He who] has commanded us to betroth a woman.” Furthermore, where do we find a similar blessing in which we praise that which God prohibited? For we do not say, “[Blessed] … who has prohibited *eiver min ha-chai* and permitted slaughtered meat”!

Why doesn’t the *birkat ha-eirusin* follow the general pattern of other blessings recited before performing *mitzvot*?

The Rosh explains that marriage is not an inherent and necessarily part of the central mitzvah of *periya u-reviya*:

It appears to me that the blessing is not for the fulfillment of the *mitzva*, as *periya u-reviya* is the fulfillment of the *mitzva*, and if he were to take a concubine (*pilegesh*) and fulfill *periya u-reviya*, he would not be obligated to wed a woman. Similarly one who marries an older woman, an *eilonit*, or a woman who cannot bear children also says this blessing … as there is no obligation to perform this *mitzva* and it does not fulfill [the *mitzva*] of *periya u-reviya* and therefore a blessing was not instituted for this *mitzva*.

The Rosh concludes that the blessing is a *birkat ha-shevach*, which "was instituted to give praise to God who has sanctified us and separated us from the other nations and commanded us to betroth permitted women and not those who are prohibited to us.” (We will challenge the Rosh’s problematic assertion regarding a *pilegesh* in a future *shiur*.)

 The Rosh clearly maintains that there is no halakhic imperative to marry, nor does marriage technically fulfill a *mitzva*. Accordingly, in his view, unlike *birkot ha-mitzva*,the blessing is recited after the *kiddushin* and must be said in the presence of ten men. Although, as mentioned above, there are numerous sources that indicate that *kiddushin* is indeed a *mitzva*, according the Rosh, the *gemara* apparently refers to a *mitzva* in the sense of the performance of a good deed, the preferred manner in which one in meant to fulfill the commandment of procreation.

 Most *Rishonim* disagree and assert that there is a *mitzva* of *kiddushin* of some sort. They differ, however, as to the type and nature of this *mitzva*.

For example, R. Yitzchak of Corbeil, in his Sefer Mitzvot Katan (Smak), implies that there is a positive *mitzva* to initiate *kiddushin* and to be married. Other *Rishonim*, however, appear to disagree, implying that although one is not obligated to marry, one who wishes to marry a woman must do so in the manner described by the Torah. The Sefer Ha-Chinukh (552), for example, writes:

We were commanded to betroth a woman in one of three ways before the marriage… Of the roots of the commandment are that we are commanded to perform an act with a woman [that] indicates the matter of their being a couple before he lays with her, and that he should not have sexual relations with her like he would have sexual relations with a prostitute, without another act between them first... And the sages obligated us to recite a blessing upon this commandment – the man betrothing (see Mishneh Torah, *Ishut* 3:3, and Sefer Mitzvot Ha-Gadol, pos. comm. 41) or someone else on his behalf and he answers, *Amen* – in the way that we recite a blessing on all commandments. For we hold that with blessings over commandments, “Even though he has [already] fulfilled [it], he may fulfill [it] for another”… And our custom is to arrange it over a goblet full of wine and to recite it after the act of betrothal. And they said that the explanation of this is that since the act of betrothal is dependent upon the consent of another – that is, the woman – it is not fitting to recite the blessing over the commandment before the commandment, as with other commandments.

The Chinukh clearly believes that the blessing is a *birkat ha-mitzva*, as *kiddushin* is considered to be a positive commandment. Interestingly, he adds that it was customary to say the blessing after the *kiddushin*, despite the fact that the *birkat ha-mitzva* is usually said before the performance of a *mitzva*, since it would be improper to say the blessing before the man betroths the woman, as she may refuse.

 The Ramban (*Ketubot* 7b) offers a middle approach. He explains that in the time of the Talmud, the wedding ceremony was divided into two parts. First, the man betrothed the woman (*kiddushin*) through money, a contract, or sexual relations, and only after a year did they begin living together as a married couple (*nisu’in*). The Ramban explains that since the full *mitzva* of marriage is only fulfilled after the *kiddushin* and *nisu’in*, the blessing cannot be recited with the *kiddushin*, which is only part of the *mitzva*. According to the Ramban, while *kiddushin* and *nisu’in* together indeed constitute a *mitzva*, the blessing recited at the *kiddushin* is a *birkat ha-shevach*, and not a *birkat ha-mitzva*.

**The View of the Rambam**

 The Rambam’s opinion is the subject of much discussion. Although the Rambam writes numerous times that *kiddushin* is a positive commandment (Sefer Ha-Mitzvot, pos. comm. 213; introduction to *Hilkhot Ishut*; *Hilkhot Ishut* 1:2, 3:23), it is not clear from the Rambam which part of marriage is the *mitzva*. His son, R. Avraham ben Ha-Rambam (*Birkat Avraham* 44), explains that the *nisu’in*, the second and final part of the marriage ceremony, is the *mitzva*. This fits with what the Rambam writes in his introduction to *Hilkhot Ishut*, where he writes that the *mitzva* is “*lisa isha*,” and not “*le-kadesh isha*,” as well as with the Talmud’s statement (*Moed Katan* 18b) implying that *nisu’in*, and not the *kiddushin*, is the *mitzva*. This position is certainly reasonable, as ultimately the *nisu’im* marks the beginning of married life.

Nevertheless, this position is difficult to accept, as the Rambam seems to emphasize the *kiddushin*, or “*likuchin*,” and not the *nisu’in*. This is especially true regarding the blessing over the *kiddushin*, which he describes as a *birkat ha-mitzva* that cannot be said after the *kiddushin*. If so, in what way does the *kiddushin* serve as the central part of this *mitzva*?

 Interestingly, some suggest that *kiddushin* is not a positive commandment, but rather what is known as an *issur aseh* (see Rivash 395). One who engages in sexual relations outside of the context of marriage violates an “*issur aseh*,” as one is not permitted to have relations without first performing an act of betrothal. It is possible that this was also the view of the Rambam, who also describes the *mitzva* as “having sexual relations (*liv’ol*) through *kiddushin*” (Sefer Ha-Mitzvot) and “to marry (*lisa*) a woman with *ketuba* and *kiddushin*” (introduction to *Hilkhot Ishut*). In other words, *kiddushin* is a “*matir*,” an act which permits an otherwise prohibited activity.

Alternatively, it is possible that according to the Rambam, the *mitzva* is indeed the *kiddushin*, and it is the *kiddushin* that represents and reflects the nature of halakhic marriage. *Kiddushin* creates the formal, legal relationship within which one may live a full, married life. Without *kiddushin* – and, according to the Rambam, without the financial responsibility created by the *ketuba* (although the Rambam maintains that the formal obligation of *ketuba* is *mi-derabbanan*) – one is not permitted have intimate relations with a woman. It is this context and method that is the *mitzvat aseh* and which ultimately reflects the Rambam’s view of marriage. In other words, the Rambam believes the sanctification and formalization of the association between and man and woman is a halakhic prerequisite for pursuing an intimate relationship. As we shall discuss in the future, this is no surprise, as the Rambam maintains that aside from a king, one may not live with a *pilegesh* (concubine); he only sanctions a relationship forged through *kiddushin* and *ketuba*.

Accordingly, we can understand why the *birkat ha-eirusin* does not relate only to the act of *kiddushin*, but rather to the context and purpose of *kiddushin*:

Who has sanctified us by Your commandments and commanded us concerning [forbidden] intimate relationships and forbidden to us those women who are [only] betrothed with *eirusin*, but permitted to us those women who are married to us by *chuppa* and *kiddushin*.

Since it is not the act of *kiddushin* per se but the process and what it accomplishes that constitutes the *mitzva*, this is a fitting blessing.

 Finally, it is worth noting the view of R. Achai Ga’on in his *She’iltot* (165):

[The obligation is to] marry and bear children and be engaged in populating the world, as it says, “Take wives and beget sons and daughters [and take wives for your sons and give your daughters to men, and they shall bear sons and daughters, and multiply there and be not diminished]” (*Yirmiyahu* 29:6).

R. Achai appears to count marriage and bearing children as one *mitzva*. This position may be similar to the approach of the Mordekhai (*Ketubot* 132), who writes:

We do not say the blessing, “He who has sanctified us with his commandments and commanded us to betroth a woman,” since the act of *kiddushin* is not the completion of the *mitzva* … And even at the time of *nisu’in*, we do not say this blessing lest it be deemed a *berakha le-vatala* (blessing in vain), lest they will not merit to have children (*le-hibanot*) together.

The Mordekhai appears to maintain that the *mitzva*, in its fullest sense, includes *kiddushin*, *nisu’in*, and bearing children.

**Conclusion**

This week we discussed whether to view marriage in general, and *kiddushin* in particular, as a *mitzva*. We noted that while it appears that the Rosh does not consider marriage a formal *mitzva*, most other *Rishonim* relate to *kiddushin* as a fulfillment of a *mitzva*, an obligation to be married, a prohibition to cohabit without *kiddushin*, or as a broader ideal to initiate and establish a formal, legal relationship that includes responsibilities before engaging in a more intimate relationship.

Next week, we will discuss whether one may engage in sexual relationships before or outside of marriage.