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## KOL ISHA: A WOMAN'S VOICE

The time-old halakhic question of participation in events containing women's singing has resurfaced, in all of its acuity, in the modern world, given the cultural changes that have taken place regarding the status of women and their place in society. In light of this, the issue demands halakhic treatment, not only regarding religious society itself – which has also undergone and is undergoing internal significant changes in this matter, but also regarding a person finding himself in attendance of events whose content and style is determined by general society.<sup>1</sup>

### A. The Singing Voice and the Speaking Voice of a Woman

In general, three Talmudic *sugyot* are mentioned in discussions regarding women's singing: the passage of "*kol be-isha erva*," which appears twice (*Berakhot* 24a, *Kiddushin* 70a), and the passage at the end of *Sotah* (48a), which forbids joint singing by men and women. It is important to emphasize that the passages deal with entirely distinct matters; the context of the passage in *Sotah* does not at all resemble that of its counterparts in *Berakhot* or *Kiddushin*.

The passage in *Sotah*, just like the parallel passage in *Gittin* (7a), deals not with women's singing in its own right, but rather with the place of song in our world. Hazal did not perceive the phenomenon of song as a

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<sup>1</sup> This topic has been discussed at length in twentieth century halakhic literature, including the recent articles in *Tehumin*: "*Kol Isha* in our Times" [Hebrew], R. Yonatan Rosensweig, *Tehumin* 29, 138-143; "*Kol Be-Isha* – Response of R. Yaakov Ariel" [Hebrew], *Tehumin* 30, 212-215. My goal is not to present a position never heard before; to the contrary, I am here to substantiate previously voiced positions that have not received their due consideration. Due to constraints of both time and space, this article was scaled down extensively during *Tehumin's* editing process. Anyone interested in receiving the expanded Hebrew version may contact the author at moshehl@haretzion.org.il.

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given, but scrutinized its essential value with a not insignificant measure of suspicion, and they did not always endorse it. Understandably, they do not negate music in a sweeping fashion and do not oppose a phenomenon that played a role in the Temple service. Their concern is about song that is unfitting and inappropriate, due to a number of reasons, including the frivolity and giddiness accompanying certain kinds of song, the sadness required in the wake of the *hurban* of the Temple, and the necessity of restraint in the experience of man.

This issue is the topic discussed in *Sotah* and *Gittin*. These passages deal with the proper approach to song, without relation to the singer's identity. The *mishna* in *Sotah*, dealing with the *hurban*, establishes: "from the time the Sanhedrin ceased to function – song ceased in the banquet halls, as it is written (Isaiah 24:9), 'with song they will not drink wine.'" The prohibition stems from the sorrow of the *hurban* and is based on a verse in Lamentations (5:14); therefore, the *mishna* only prohibits song that detracts from the sorrow of the *hurban*, and it applies the prohibition only to banquet halls, places of frivolity and happiness unbefitting a reality of sadness and loss. Pursuant to the *mishna*, a number of additional sayings relating to song are brought in the *gemara* (48a):

Rav Huna said: the song of sailors and farmers is permitted, [and the song] of the weavers [which, according to Rashi, is only for laughter] is forbidden... Rav Yosef said: men singing with women answering [constitutes] immodesty; women singing with men answering is like [setting] fire to sawdust. What is the practical distinction [between the two]? The abolishment of the [latter] should precede the [former]. Rav Yohanan said: Anyone who drinks accompanied by four musical instruments – brings upon the world five punishments, as it is written (Isaiah 5:11): 'Woe to those who rise early in the morning, pursuers of strong drinks, who stay up late into the night; wine will inflame them, and it will be that the fiddle and the harp, the drum and the pipe, and wine at their parties, and they will not behold the actions of God'...

Whether the above passage continues to discuss song forbidden in the wake of the *Hurban* or whether it presents song as a factor leading to the *Hurban*, it is clear that it deals with song containing giddiness and immodesty. This is clear from the words of R. Yohanan, who quotes verses dealing with tavern songs (and not with women's singing), but it is also true regarding the entire passage, whether it discusses giddiness accompanied by alcohol or not. Even when the *gemara* establishes that mixed singing is the worst and gravest of its kind, its context is song of giddiness

and immodesty, and it relies upon the assumption that the mixing of genders intensifies the frivolity and libertinism involved. The passage deals not with women's song as such, but rather with the parameters of the prohibitions of giddiness and frivolity. Indeed, frivolity is far more common in unrestrained mixed singing than in non-mixed singing of the same variety. Therefore, the *gemara* adds to its discussion about mixed singing the song of the workmen, and it forbids "the song of the weavers" even in the absence of women.

What is evident from the Bavli's discussion is explicit in the Yerushalmi (*Sotah*, 9:12): "R. Hisda said: At first, the awe of the Sanhedrin was upon them and they would not recite words of obscenity in song. But now, when the awe of the Sanhedrin is not upon them, they recite words of obscenity in song." As we have already argued, the problem here is the content of the songs, not the identity of the singers, whether they be male or female.

The same is true of the parallel passage in *Gittin* (7a):

They sent [a question] to Mar Ukba: What is the source for the prohibition of singing? He etched and wrote to them: 'Do not rejoice Israel to the glee of the nations' (Hosea 9:1). Should he not have sent [the verse] from here (Isaiah 24:9): 'With song they will not drink wine, strong drink will be bitter to those that drink it'? Had [he chosen] that verse, I would have concluded that only song of musical instruments [is forbidden], but [the song of] the mouth is permitted. This is what he is teaching us.

Here, too, the *gemara* does not come to forbid the voice of a woman. It does not deal with women's song at all, but rather with song itself and unacceptable expressions of joy. Therefore, it had the initial thought to forbid instrumental music and to permit vocal song. The root of the prohibition, as it emerges from the verses cited in the *gemara*, is joy itself and unbecoming exultation, and not the accompanying musical sounds which are only contributory to the violation. Meiri summarized this nicely: "All kinds of song dedicated to debauched joy and not intended as praise for the Creator, blessed be He, or as a facet of a mitsva, but in the way of frivolity and pleasure related to food and drink – it is forbidden to listen and fool about with it, whether the song is [performed] with an instrument or the song is vocal."

In summary, the passages in *Sotah* and *Gittin* deal with the general prohibition of song, which stems from a concern for giddiness and the obligation to mourn over the *hurban*, and they are not related to women's

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singing. It is not possible to make any inferences from them regarding the parameters of *kol isha*. This distinction emerges clearly from the ruling of Rif (*Berakhot* 21a, in his pagination), which brings these passages in the context of the *gemara* in *Berakhot* (31a) that forbids a person to fill his mouth with laughter in this world, and not in the framework of his rulings in matters of *keri'at Shema* or coming close to *arayot*.<sup>2</sup>

### B. “The Voice of a Woman” – Only When Leading to Feelings of Intimacy

#### 1. Talmudic Discussions

From here we turn to the passages that discuss the matter of *kol isha* as a prohibition in its own right. We learn in *Berakhot* (24a):

R. Yitshak said: An [exposed] handbreadth (*tefah*) of a woman is *erva*. With regard to what? If in regard to looking, did R. Sheshet not say: Anyone who gazes even at a woman’s little finger, is considered as if he gazes at her private parts? Rather, regarding one’s wife and reciting the Shema. R. Hisda said: A woman’s leg (*shok*) is *erva*, as it states (Isaiah 47:2), ‘Reveal your leg (*shok*), pass over rivers,’ and it is also written (ibid., v. 3), ‘Your *erva* will be uncovered and also your shame will be revealed.’ Shmuel said: A woman’s voice is *erva*, as it is written (Song of Songs 2:14), ‘since your voice is pleasant and your appearance is attractive.’ R. Sheshet said: A woman’s hair is *erva*, as it is written (4:1), ‘Your hair resembles a herd of goats.’

The Rishonim famously debate whether this passage deals only with the issue of *erva* regarding *keri'at Shema*, or whether it comes to prohibit listening to female singing even not during prayer.<sup>3</sup> Indeed, the context of the passage would seem to imply that the prohibition is limited to *keri'at Shema* alone. Moreover, the prohibition of hearing the voice of one’s wife during *keri'at Shema*, as explained there, attests to the notion that the root of the prohibition does not stem from the *erva* prohibitions; one’s wife is permitted to him from the perspective of the laws of *erva*,

<sup>2</sup> By contrast, Rashi’s commentary integrates the prohibition of “*kol be-isha erva*” into this discussion; according to him, the passage prohibits “the songs of women” as part of *kol isha*. This is what the *posekim* who cite this passage in the context of *kol isha* rely upon.

<sup>3</sup> See *Yere'im* (392), *Mordekhai* (80), *Shita Mekubetset* (*Berakhot* 24a, s.v. *kol be-isha*; see also *Hiddushei ha-Ra'ah* ad loc.), Rosh (*Berakhot*, 3:37), and Beit Yosef (*Orah Hayyim* 75).

and the only reason to prohibit hearing her voice is on account of the laws of *keri'at Shema*.

In any case, in *Kiddushin* (70a) it is stated that the voice of a woman is *erva* even not during prayer, as presented in the context of a conversation between two Rabbis: “Will you send my greetings to [my wife] Yalta?” He replied: ‘Shemuel said as follows - the voice of a woman is *erva*.’” The context of the discussion is the prohibition of extending greetings to a woman, namely hearing the voice of a woman - even not during *keri'at Shema*. In light of this, Rambam integrated the law of *kol isha* with the laws of coming close to *arayot* (*Issurei Bi'ah*, 21:1-2) and the Mehaber followed suit (*Shulhan Arukh*, *Even ha-Ezer* 21). Rambam ruled as follows: “It is forbidden to hear the voice of an *erva* or to see her hair,” and the *posekim* adopted this approach – that the prohibition of “*kol be-isha erva*” is not unique to *keriat Shema* but rather is a general prohibition.

## 2. Which “Voice” is Forbidden?

We should, however, ask: What is the “voice” of a woman that is forbidden? It is inconceivable that it is forbidden to hear the voice of a woman even in the context of plain conversation and that regular, day-to-day discussion between a man and a woman is forbidden! Necessarily, we must conclude that the prohibition does not include all “voices” and the prohibition should be limited to specific “voices” alone. Logically, two options stand before us: To distinguish between different *types of voices* or to distinguish between *different situations* of hearing a voice. If we follow the first option, it is plausible to suggest that while song is forbidden, speaking is permitted. This assumes that the concept of “*kol be-isha erva*” refers to the song of women and not to their speech. Indeed, this is what we find in the Rishonim’s comments on the passage in *Berakhot* regarding *keri'at Shema*.

However, the passage in *Kiddushin* stands as a fortified wall against any attempt to distinguish between different types of voices, since it emerges from there that even a greeting is forbidden as part of the law of *kol isha*. Based on this, Rashba (*Berakhot* 24a) distinguishes between different situations of hearing a voice and rules that the passage indeed forbids speech, but only speech that can lead to feelings of intimacy, and his words are indeed compelling. The Meiri (*Berakhot*, ad loc.) writes similarly on this matter.<sup>4</sup>

<sup>4</sup> Maharshah (*Yam Shel Shlomo*, *Kiddushin* 4:4) attempts to limit the prohibition of *kol isha* to song alone, but in the process he is forced to uproot the passage in *Kiddushin* from its plain meaning.

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Therefore, we should no longer distinguish between women's singing and speech. Rather, we should limit the prohibition of *kol isha* to specific contexts only. Were there a specific prohibition of women's singing, there would be room to argue that the prohibition is absolute. As it turns out, since the prohibition is not limited to song, but rather includes speech as well, we must necessarily limit it to specific contexts – in accordance with the words of Rashba.

From here we conclude: song which leads to feelings of intimacy between a man and a woman, or which emphasizes the singer's sensuality and femininity for the listener, or if it sexually stimulates him – is forbidden to be listened to. However, song which does not lead to feelings of intimacy or sexual thoughts is not forbidden.

### 3. Only a Voice Leading to Feelings of Intimacy is Forbidden

We should note that the distinction drawn by Rashba sits well with the reasoning and source of the prohibition. After all, the Talmudic passage in *Berakhot* did not bring a source for listening to a woman's voice as such. Rather, it cited a verse teaching that a pleasant voice is an instrument expressing the relationship taking shape between the lover and his beloved, under the assumption that a similar level of closeness is forbidden to strangers. Since the verse speaks of a voice leading to intimacy, we have no source forbidding a voice that does not lead to feelings of intimacy – neither one of speech nor one of song.

Moreover, the limitation of the prohibition to a voice leading to feelings of intimacy emerges clearly from the foundation of the prohibition, as understood by Rambam (*Issurei Bi'ah*, 21:1-2), an understanding that sheds light upon the proximity in the Gemara between “*kol be-isha ervva*” and “*tefah* (an exposed handbreadth) *be-isha ervva*.”<sup>5</sup>

Anyone cohabiting with one of the *arayot* by way of the limbs, or if he hugs and kisses *in a lustful manner and benefits from the proximity of skin* – he is subject to lashes from the Torah, as it states (Leviticus 18:30): ‘to avoid acting in the abominable customs’ and so forth. And it states (ibid., v. 6): ‘do not come close to uncover [their] nakedness’ – namely, do not come close to the things that lead to the uncovering of nakedness... And it is forbidden for a person to signal with his hands or feet or to wink

<sup>5</sup> Indeed, the passage in *Berakhot* deals with *ervva* regarding *keri'at Shema*, and it is not necessarily true that it should be connected to the present context. Nevertheless, Rambam does not distinguish between the two and he includes them as one in *Hilkhot Issurei Bi'ah*.

with his eyes at one of the *arayot*, or to laugh with her or act frivolously, and even to smell the perfume that is upon her or to look at her beauty - is forbidden. *And we strike one who intends to do these things with [rabbinic] lashes of rebellion.* And one who looks even at the little finger of a woman *and intends to derive benefit*, is as if he gazes at her private parts. And even to hear the voice of an *erva* or to see her hair is forbidden.”

What emerges from the words of Rambam is that looking at a woman’s body, hearing her voice, and seeing her hair are not distinct prohibitions. Rather, they are all expressions of the prohibition “do not come close to uncover nakedness,” which is not limited to physical contact. Similarly, it is clear from his words that the Biblical prohibition of coming close to *arayot* was only stated regarding “a lustful manner” when “he benefits from the proximity of skin” and that rabbinic lashes are only administered to one who acts with intent.<sup>6</sup> Hearing a woman’s voice or seeing her hair are prohibitions less severe than looking at her body (as in the words of Rambam: “*and even* to hear the voice of an *erva* or to see her hair”), and, therefore, if looking at her body is forbidden only when one intends to do so and does so in a lustful manner, how much more so regarding hearing her voice.<sup>7</sup>

We should add that it seems that not only is a voice accompanied by intent for pleasure or feelings of intimacy included in the prohibition of “*kol be-ishah erva*,” but any song emphasizing femininity and impressing upon the listener with its pleasantness is also included in the prohibition.

Evidently, the opinion of Rashba, which distinguishes between speech leading to feelings of intimacy and plain speech, also emerges from the words of Rambam, and we should not forbid listening to song when no pleasure or feelings of intimacy are involved.<sup>8</sup>

<sup>6</sup> The matter of non-affectionate touching is the subject of a debate between *Beit Yosef* (*Yoreh Deah*, 195) and Shakh (*Yoreh Deah*, 157:1 and 195:20). However, it seems that even *Beit Yosef* will admit that we should not compare the acts of hugging and kissing, which entail physical and substantial contact, to the act of looking. Regarding the prohibition of looking, all we have are the words of Rambam, who establishes that a handbreadth of a woman is forbidden as *erva* only when one intends to derive pleasure, and not when affection and pleasure are absent.

<sup>7</sup> We should not deduce from Rambam that looking is forbidden only if accompanied by pleasure, while listening is always prohibited, since listening is presented as an expansion of the prohibition of looking and “listening should not be worse than seeing.”

<sup>8</sup> To be thorough, Rambam offers a dual prohibition regarding looking: First, the law of coming close to *arayot*, similar to the prohibition of touching; Second, the concern for sinful thoughts. This duality is reflected well in chapter 21 of *Hilkhot Issurei Bi’ah*: The beginning of the chapter deals with the prohibition of coming close

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Ra'aviah (*Berakhot*, 76), unlike Rambam, bases the prohibition of “*kol be-isha erra*” on the sexual thoughts caused on its account and not on the laws of coming close to *arayot* - since the voice “has no substance”: “And I say that the reason [for the prohibition] is that, even though the voice is not perceived by the eye, it nevertheless causes sexual thoughts. And all of the things [mentioned above relating] to *erra* specifically apply to what is not normally revealed, but [regarding] a maiden who normally reveals her hair – we are not concerned, since it lacks [the causing of] sexual thoughts, and so too regarding her voice [to one who is accustomed to it].”

Like Rambam, even Ra'aviah limits the application of the prohibition of *kol isha*, and, in his opinion, a voice one is accustomed to is not forbidden. Ra'aviah's words are cited in *Hagabot Maimoniyot* (Hilkhot *Keri'at Shema*, chapter 3, 60) and are codified as halakhah by Rema (*Orah Hayyim*, 75:3).<sup>9</sup>

In summary, Rambam, Rashba and Ra'aviah – the major Rishonim who dealt with this topic, are all of the opinion that not all voices are prohibited and that there is no decree forbidding a woman's voice as such. Moreover, they take the position that we should distinguish between a voice associated with pleasure, feelings of intimacy, and concern

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to *arayot*, and the prohibition of looking is brought in this context (21:1-2); Yet, the second half of the chapter deals with the prohibition of sexual thoughts, and even in this context Rambam mentions, yet again, the prohibition of looking (21:21). We should assume that Rambam identified the duality in the Talmudic passages. He therefore opined that the passage in *Berakhot* deals with the prohibition of looking on account of coming close to *arayot* (and therefore the entire passage is brought by Rambam in the beginning of the chapter); another passage, *Avoda Zara* 20a, forbids looking on account of the concern for sexual thoughts, as is evident from the fact that the prohibition of looking at women extends to observing animals while they cohabit and to looking at women's clothing even while not worn (as in Rambam, *ibid.*, 20-21). In contrast, listening to song is only mentioned earlier (in 21:2) and is not mentioned again in the context of looking at the end of the chapter. Indeed, we should forbid listening to a voice of a woman that leads to sexual thoughts, but Hazal did not forbid listening to the voice of a woman as such, but rather only when one intends to derive pleasure – based on the laws of coming close to *arayot*, as we have explained.

<sup>9</sup> Here, too, we should turn our attention to the fact that Rema's words were stated regarding *keri'at Shema*, and we have mentioned earlier that it is not necessarily true that we should compare the laws of *keri'at Shema* to the prohibitions of *Even ha-Ezer*. However, it seems that in the present case it is possible to make such a comparison, since Rema's leniency is based upon the notion that sexual thoughts are not invited by the normal voice of a woman. Therefore such thoughts will also not exist when one is not engaged in reciting *keri'at Shema*. If the voice is not *erra* and was only prohibited out of concern for sexual thoughts, there is no reason to prohibit it in a context where such a concern does not exist.

for resulting sexual thoughts, on the one hand, and a voice which neither comes close to sin nor invites sexual thoughts, on the other.

### C. The Proper Contemporary Halakhic Approach

#### 1. Lenient Opinions of the Aharonim and their Halakhic Status

The prohibition of listening to *kol isha* is codified in Shulhan Arukh (*Even ha-Ezer*, 21:1) together with the remainder of the laws of coming close to *arayot*.<sup>10</sup>

A person must distance himself from women very, very much. And it is forbidden to signal with his hands or feet and wink with his eyes at one of the *arayot*... and it is forbidden to hear the voice of one of the *arayot* or to see her hair. And one who intends to [transgress] one of these things – we strike him with [rabbinic] lashes of rebellion. And these things are also forbidden with regard to [women who are not classified as *arayot* but are nevertheless] forbidden from a negative [biblical] commandment.

The language of the Mehaber does not distinguish between speech and song, and his words do not take a clear position on whether the prohibition only applies to one who intends to derive pleasure or if listening to a woman's voice is categorically forbidden in its own right. The commentaries on Shulhan Arukh distinguished between song and speech (see *Beit Shemuel* 21:4, *Magen Avraham* 75:6, *Mishnah Berurah* 75:17), and according to them there is room to argue that all song is forbidden and that Rashba's words should be limited to speech alone.

The questions of the scope of the prohibition and the permissibility of listening to song without intent to derive pleasure are discussed explicitly in *Sedei Hemed* (Kuf, 42; part 5, p. 282 in the widely used Bnei Brak edition). The gist of his words regarding the Aharonim debating the issue is that most *posekim* forbid it, while the author of *Divrei Hefets* permits it "so long as it is not a voice of lust-provoking songs and the listener does not intend to derive pleasure from her voice" and "there is no issue so long as he does not intend to derive pleasure from her voice." We should add that one who himself looks at the words of *Divrei Hefets*,<sup>11</sup> as *Sedei*

<sup>10</sup> The prohibition is codified in Siman 21, which deals with coming close to *arayot*, and not in Siman 23, which deals with the prohibition of sexual thoughts. From here we see that *Shulhan Arukh* sided with Rambam that the prohibition is founded upon "do not come close," unlike Ra'aviah, who bases the prohibition on the concern for sexual thoughts.

<sup>11</sup> This book was written by R. Aharon de Toledo and was published in Salonika

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*Hemed* recommends, will see that his line of thinking is very similar to what we have presented in accordance with Rashba.

Is it possible to rely, with regard to our issue, on the permissive minority opinion or should it be treated as nonexistent and nullified in relation to the opinions of those who forbid the matter? This very question was discussed by *Sedei Hemed*: “One who sees [*Divrei Hefets*’] words... will rightfully deem them cogent. And even though it is surely correct to act stringently not in accordance with the aforementioned words of *Divrei Hefets*, in any case [they] are not, Heaven forbid, classified as inscrutable words.”

Here we have the unequivocal determination that the lenient opinion is not to be treated as nonexistent, and that it is indeed a legitimate opinion whose words are cogent. Therefore, even though *Sedei Hemed* recommends acting stringently unlike this opinion (and take note that he does not rule against it but rather establishes that it is proper not to rely upon it), he does not nullify the words of those who rule permissively. Even if one looks at contemporary responsa which come to reject this lenient position, he will clearly see that there is no unequivocal proof-text negating it.<sup>12</sup> As such, one who wishes to rule in accordance with the lenient opinion, if its words seem convincing to him, has what to rely upon.

Moreover, this opinion has enjoyed a revival in our days in the famous responsum of *Seridei Esh* (2:8), where he permits joint singing of Shabbat *zemirot* by members of a mixed youth movement. Among his reasons to halakhically permit this in practice he cites the lenient opinion brought by *Sedei Hemed*, and by so doing he returned it to the forefront of current halakhic discussion. Needless to say, *Seridei Esh* is a central posek and his work is one of the indispensable works of contemporary halakhic literature. An opinion cited and adopted by him, even if one disagrees with it, is surely not be invalidated.

### 2. *Pesak* Considerations in Modern Times

As we have seen thus far, the primary path in the teachings of our masters, the Rishonim, leads to the conclusion that the voice of a woman is not forbidden when it does not yield feelings of intimacy or sexual thoughts, and that this opinion even has grounding among our masters, the Aharonim. While these premises are true in every time and setting, they

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in 1798. The discussed passage appears in *derush* 36 (p. 112-13). A reproduction of the book can be found at HebrewBooks.org, where I had the privilege of studying it.

<sup>12</sup> See, for example, Responsa *Tsits Eliezer*, 14:67. See also Responsa *Tsits Eliezer* 5:2 and 7:28.

are even more so when the times call for them, and when consideration of the needs of the generation enters the picture as a halakhic factor. Let us take note that *Seridei Esh* is singled out as a *posek* with a deep understanding of the complex dynamic created by the present day rendezvous between the modern and religious worlds, as well as a *posek* with a high level of sensitivity to societal reality and the needs of the generation. It is not by chance that he is the author of the permissive responsum on this matter, based on contemplation and consideration of the historic needs of the time period.

In the fifty years that have elapsed since *Seridei Esh* wrote this responsum to French Jewry following the Holocaust, the sociological reality has changed. The problems that he pointed to from his day have been replaced with others, yet the basic truths he pointed to and the fundamental approach he advocated—that in this matter we should adopt the permissive approach in deference to the needs of the generation—all remain in place, driven by two main considerations.<sup>13</sup>

First, in a generation worthy of women who wish to actively participate in giving praise and thanks to God at the Shabbat table, the Passover Seder and in many other settings, and in an era when women personally express themselves in all general areas of life, it is highly obligatory to enable them to express themselves in religious contexts as well. Inasmuch as it is possible to encourage the inclusion of women in the service of God in the context of legitimate halakhic *pesak*, it is both our privilege and duty to do so. The order of the day is *pesak* confining the prohibition of *kol isha* when we are dealing with the inclusion of women in religious contexts.

Secondly, the question of women's song is forcefully distancing entire communities that are living in a culture where the concept of "*kol be-isha erva*" is both foreign and strange and where women's song is an everyday phenomenon. They are not capable of understanding halakhic and

<sup>13</sup> In an editor's comment to the Hebrew version of this article, R. Yisrael Rozen commented that the responsum of *Seridei Esh* deals with songs of a religious nature, sung at the Shabbat table and at religious youth movement activities. Therefore, R. Rozen raised doubts regarding the possibility of extending it to women's song in the context of public appearances and secular ceremonies, which are at the heart of the current public debate in Israel. I responded there that I was careful in my words to focus on the "fundamental approach" of *Seridei Esh*, who deals with this question not only in light of literary sources but rather sees the needs of the generation as an important component of a halakhic decision. The merging of the leniency applying in the absence of feelings of intimacy with reflection upon social reality is the relevant core of the responsum for the purposes of the present discussion. Each and every generation has its needs and difficulties.

cultural norms that crystallized within a different social reality, and they do not understand why Halakhah restricts the expression of women. Stringent *pesak* in this matter causes the alienation of these communities from the entire halakhic system, since for them the question of women's song is just one example that reflects upon the whole. A policy of stringent *pesak* desiring to satisfy all halakhic opinions is liable to harm rather than help.

I will emphasize that I am not arguing on the basis of halakhic principles such as “*et la'asot* (it is a time to act for the sake of God),” “it is better that they act in innocence and not out of will,” or the like, but rather on the basis of the halakhic claims presented above which establish the lenient opinion as legitimate. Unlike the concept of “*et la'asot*,” which allows a breach of Halakhah for the sake of the higher purpose of keeping the Torah in its general sense, the concept of “*she'at ha-dehak*,” which is based on the needs of the time, is quite prevalent. It includes the ability to rule leniently in cases of pain, loss, sickness, compromised *oneg Shabbat*, compromised conjugal *onah* rights, compromised domestic peace, and a host of other examples familiar to any *posek*. In a time of need, one may rely upon some halakhic opinions without satisfying them all (see Rema's introduction to *Torat Hattat*), and at times one may rule like a lone opinion (as Rabbi states in Tosefta *Eduyot*, 1:4). “These and these are the words of the living God,” and if the opinion exists and has not been rejected, one may rely upon it. Nowadays, we may not rely on the opinions of Beit Shammai or of Abaye, since they have been utterly rejected and no longer exist as halakhic options; however, it is possible to rely on lone opinions advanced by later *posekim* that were not totally rejected from the halakhic consensus.

D. “His Stringency is Found to be a Leniency” – Stringency and Leniency in *Kol Isha*

Before I conclude, it is fitting to mention an additional and significant argument regarding the question of women's song. Although I am concerned that I am abbreviating what should be a lengthier discussion, I will briefly emphasize that the encounter between man and woman is of a dual nature. On the one hand, man belongs to the biological-natural world. His creation is presented in the first chapter of Bereshit as a part of the wider totality of the living world and its physiological processes; natural patterns of behavior are common to him and to the animal world. Together with that, man is a unique and singular creature, who departs from and transcends the natural world to the world of spirit and emotion.

The description of man's creation in the second chapter of Bereshit uproots him from the living world and establishes him in his unique world, emphasizing his relationships with his Creator and his environment as being unique and specific to him. Man has been given the ability to redeem his biological urges and transform them into experiences expressing a deep emotional and religious connection between he and his fellow man and between he and his Creator.

Thinkers of all generations have discussed the duality of human existence.<sup>14</sup> Hazal expressed it well in their words in Tractate *Hagigah* (16a):

Six things are said concerning human beings; three [describe them] like the ministering angels, three [describe them] like animals. Three [describe them] like the ministering angels – they have knowledge like the ministering angels, and they walk upright like the ministering angels, and they speak in the holy tongue like the ministering angels. Three [describe them] like animals – they eat and drink like animals, they procreate like animals, and they defecate like animals.

What is stated about human existence in general is also true regarding the relationship between man and woman. On the one hand, a biological relationship exists between male and female as creatures of nature, including instinctive physical intimacy, sexual desire, and the drive to conquer and suppress, to engender and procreate. With that, a spiritual and emotional relationship exists between man and woman, one that is unique to the human race. Deep love, the sharing of fate and destiny, mutual responsibility, and joint dreams characterize the relations between a couple and coronate the union with the crown of sanctity.

Halakhah regulates the relationship between man and woman, and it strives to transform it from a natural-biological relationship into one of love and human intimacy. This goal is achieved by channeling physical relations into the framework of marriage and by limiting contact between the sexes not in the context of marriage. One of these limitations is the prohibition of hearing a woman's voice.

As stated above, the possible roots of the prohibition are two: coming close to *arayot* and the prohibition of sexual thoughts. There is a great

<sup>14</sup> In our generation, the writings of my teacher and grandfather, R. Joseph B. Soloveitchik, deal with this extensively. See his *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (New York: Toras HoRav Foundation-Ktav, 2000), 3-22, and *The Emergence of Ethical Man*, ed. M. Berger (New York: Toras HoRav Foundation, 2005), 7-12, 85-91.

difference between the two. The first assumes a charismatic conception of man and forbids hearing a woman's voice in order to prevent the internalization of feelings of love and companionship vis-à-vis a person incompatible with him (and therefore the prohibition applies only regarding those forbidden to him as *arayot*). The second, however, focuses on the biological instinct and is based upon the perception of the other as an object, not as a subject. The beholder of sexual thoughts fantasizes *about* the other and does not relate *to* the other. Therefore, sexual thoughts are prohibited not only concerning *arayot* but rather concerning all women.<sup>15</sup>

The problem created in the wake of sexual thoughts raised by *kol isha* is not just the thought itself or its physiological results—the notion that “one should not think sexual thoughts during the day lest he come to impurity at night” (*Ketubbot* 46a)—but also that the thought establishes the relationship between man and woman as a biological male-female system rather than a spiritual bond between man and woman. By way of homily, we may say that the “thoughts of sin are more difficult than sin” (*Yoma* 29a) since, while sin is a flawed act in its own right, thoughts of sin reflect upon the existence of man as a being of nature.

The halakhic significance of this is that the extension of the prohibition of *kol isha*, on the basis of concern for sexual thoughts, to a context where it is not justified to do so, is not just unhelpful – it is harmful. It brings about an emphasis on natural existence, and paints the human condition as one of sexual existence alone. Indeed, this kind of extension of the prohibition provides a wider halakhic safety net regarding the thoughts themselves, but at the same time it amplifies the classification of human existence as biological-natural at the expense of the perception of man as a more elevated being. The *posek* who is concerned for sexual thoughts in a case of women's song where the listener does not intend to derive pleasure perceives man as a creature whose natural urges overbear him. Therefore, stringent *pesak* in this matter diminishes man's character and minimizes the image of the divine within him.

In this sense, out of place stringency in the laws of *kol isha*, based on far reaching concern for sexual thoughts, is not an ordinary halakhic stringency and enhancement but rather a leniency and disparagement regarding the nature of man. Therefore, we should rule stringently only

<sup>15</sup> Thoughts between man and his wife, which flow from the loving relationship between them, including the legitimization of its sexual aspect, are not forbidden.

where necessary and we should not favor a policy of stringent *pesak*. The reasoning of some *posekim* that every person experiences sexual thoughts in every situation, and therefore all women's song should be forbidden – even in a case where the listener does not intend to benefit, assumes that relations between people are at all times and in all instances of a biological-natural character; it assumes that a man is incapable of seeing a woman or hearing her voice without perceiving her as an object. Statements in the style of “what he writes in a letter regarding religious songs that the boys do not intend to benefit from the voices of the girls is a painful mockery,” which were written to *Seridei Esh* in reaction to his responsum,<sup>16</sup> are especially painful due to their bluntness and lack of respect for an eminent *posek*, as well as their assumption that man is incapable of liberating himself from his urges even while experiencing spiritual elation. True, Hazal (*Bava Batra*, 164b) count sinful thoughts as a transgression which no man can escape even for a single day, and there is no doubt that the sexual urge is one of the most powerful and primal within man; however, this is not to say that man is unable to escape sinful thoughts at every hour of every day. Just as Halakhah takes care to preserve the boundaries of modesty, it is also careful not to present man as a creature exclusively driven by urges, and halakhic authorities should take caution against charging every encounter between a man and a woman with sexual tension. If “great is human dignity that it overrides a negative Torah commandment” (*Berakhot* 19b, and see there for the particulars of this rule), then so too man's dignity as a charismatic creature whose existence is not merely biological demands *pesak* that does not forbid every voice of a woman in its own right.

#### E. Summary and Conclusions

We may summarize as follows: Under circumstances in which the song does not arouse sexual desire, does not emphasize femininity in a sensual manner, and the listener estimates that he will not come to have sexual thoughts – we should not forbid listening to a woman's voice, whether in speech or in song. This conclusion not only relies upon the explicit stance of the greatest of the Rishonim – Rambam, Rashba and Ra'aviah; it appears in the literature of the Aharonim as a recognized opinion, and it has been applied in our generation by an eminent *posek*. This opinion takes into account the present societal reality together with its needs and constraints, while at the same time rules stringently regarding the obligation

<sup>16</sup> *Seridei Esh*, 3:49.

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to preserve man's dignity and embolden his image as a spiritual creature who is not controlled by biological drives alone.

In terms of day-to-day life, this means that we may permit women's singing of Shabbat *zemirot*, participation in official ceremonies of a serious and formal nature, listening to random radio commercials, and the like. It is both possible and appropriate within the framework of Halakhah to permit these scenarios, and one who does so rules faithfully and legitimately.