A New Analysis of "Kol B'Isha Erva"

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There is no prohibition whatsoever of innocent singing; rather, only singing intended for sexual stimulation, or flirtatious singing, is forbidden. Although this distinction is not explicit in the early rabbinic sources, it closely fits the character of the prohibition as described in different contexts in the Talmud and the Rishonim, and it is supported by the language of the Rambam, the Tur, and the Shulchan Arukh.

Q: We have a practice in our school, in ceremonies organized for various events, that a female student sings as part of the ceremony. Is this practice halakhically acceptable?

A: The issue of "Kol B'Isha Erva" (the voice of a woman is nakedness) is discussed extensively in many contexts, mainly in the responsa of the great rabbinic figures of the past generation. Even, so this issue has not been discussed in relation to communities that already have an established practice of leniency and allowance of women to sing publicly. The premises of this responsum will be thus:

A) The tradition of the poskim (halakhic arbiters) of examining existing practices and investigating whether the community has legal ground on which to stand.

B) The assertion of the Maharshal, (accepted as practical halakha) that psychological and spiritual need is considered an important concern that justifies reliance upon a lone or minority halakhic opinion. And according to reliable accounts, there are women in certain communities who are so offended by the ruling forbidding them to sing in public that they turn away from the Torah and commandments due to it.

We will investigate the topic of "Kol B'Isha" according to its principal sources. For clarity's sake, these sources will be investigated topically, without tangential digressions, and not in chronological order.

What is the subject of the original saying "the voice of a woman is erva (nakedness, lewdness, or sexual impropriety)"?

The Talmud in Masekhet Berakhot 24a relates:

Rabbi Yitzhak said: "A handbreadth of a woman is erva." With respect to what [does it constitute erva]? If we should say that it is for looking [at a woman], had not Rav Sheshet said: "Why does the scripture list the outer adornments together with inner adornments? To teach us: anyone who looks at even the little finger of a woman is as if he were looking at her genitalia!" Rather, it refers to his wife, and for the recitation of Shema.

As is often the case with the Oral Torah, there is almost no word in this passage that has not merited much interpretation. For clarity's sake we will deal only with the interpretations that are important to the halakhic issue at hand.

The Talmud presents Rav Sheshet's statement as opposed to that of Rabbi Yitzhak, thus creating a conflict between the two statements. The Talmud resolves this by claiming that the statement "the handbreadth of a woman is erva" was said only in the context of the recitation of the Shema: it is forbidden to recite the Shema in the presence of a women who has a handbreadth of customarily covered flesh exposed, and this ruling applies even to one's own wife. In contrast to this, the words of Rav Sheshet - that one must not look for pleasure[1] at even the little finger of a woman - are meant to apply in general circumstances. Even though it would have been possible to explain Rav Sheshet's statement as a simple moral injunction, the Talmud in Masekhet Avoda Zara defines it as a prohibition of looking at a woman in an inappropriate way.[2] Thus, the statement of Rav Sheshet finds its way to the Rambam, the Tur, and the Shulhan Arukh as practical halakha - there is even a disagreement among the poskim as to whether the prohibition is deoraita (biblical) or derabanan (rabbinic).[3]

The next section of the Talmud leads to differences of opinion among the Rishonim, as it is unclear with regard to what context the following sayings are presented:

Rav Hisda said: "The shin of a woman is erva, as it is said: (Isaiah 47) ‘Bare your shin, wade through the rivers,' and it is written: (ibid.) ‘Your nakedness shall be

uncovered' and your shame shall be exposed.'"

Shemuel said: "The voice of a woman is erva, as it is said: (Song of Songs 2) ‘For your voice is sweet and your face is comely'"

Rav Sheshet said: "The hair of a woman is erva, as it is said: (Song of Songs 4) "Your hair is like a flock of goats."

After the Talmud has suggested a different context for each of the two opening, "conflicting," statements of the previous section, it is difficult to ascertain to which context it is appropriate to attribute these following statements. The saying that is relevant to our discussion is that of Shemuel: "The voice of a woman is erva."[4] Does this refer to the specific, narrow prohibition regarding the proper recitation of the Shema, or is it a broader prohibition similar to that of inappropriate glances? A third possibility is that the relegation of the prior statements to their specific contexts was simply due to the Talmud's need to resolve seemingly competing statements, and that Shmuel's statement can therefore be applied to both domains.

All of these interpretive options are raised by the Rishonim and the Aharonim:

HaRav Yitzhak MiVienna, the author of the Or Zarua, holds that "Kol B'Isha" applies, like the prohibition of gazing at women, only in general circumstances, and has no bearing whatsoever on the recitation of Shema.[5] This also seems to be the opinion of the Rashba in his Hidushim,[6] as well as the stance of the Rosh: "Shemuel said: ‘The voice of a woman is erva, as it says "for your voice is sweet and your face is comely"' - to listen to, and not with regard to the recitation of the Shema."[7]

This also seems to be the position of the Rambam in the Mishneh Torah:

"And it is forbidden for a man to ‘wink' using his hands or his feet, or to hint with his eyes at a woman forbidden to him, or to joke with her or to act light-headedly, and even to smell the perfume she is wearing or to look at her beauty is forbidden, and willful violators are to be beaten as upstarts. And he who looks at even the little finger of a woman to take pleasure in it is like one who looks at her genitalia, and even to hear a voice of an erva or to see her hair is forbidden."[8]

From the equation of the prohibitions regarding voice and hair to the general prohibition of looking, we can infer that their presence does not necessarily imply sexual stimulation - rather, what is problematic is the inappropriate interaction with them by the looker or the listener. Therefore, in the laws of the recitation of

the Shema, the Rambam does not list the voice of woman as one of those things that detract from the proper recitation of the Shema: "And the whole body of a woman is counted as erva; therefore, he should not look at the body of a woman when he is reciting; even if it were his wife and even if only a handbreadth of her were exposed, he should not recite in her presence."[9]

The Tur as well ruled, in accordance with the Rambam, that "Kol B'Isha" is limited to the topic of general modesty: "and it is forbidden to listen to a voice of erva,"[10] making no mention of a connection to the recitation of the Shema.

In contrast to this, the Raavya rules, in accordance with precedent opinions, that the central prohibition of "Kol B'Isha" specifically regards the recitation of Shema.[11] This is also the opinion of the Ritva in his Hidushim on Masekhet Berakhot. This position can be supported by the stylistic similarity of Shemuel's statement to the first statement "a handbreadth of a woman is erva," which is relegated by the Talmud itself to the topic of the recitation of the Shema. We]find a similar (though somewhat broadened) ruling in the Mordekhai, who states that not just the recitation of the Shema, but even learning Torah is forbidden in the presence of a woman singing:

It is prohibited to recite the Shema in the presence of an unclothed non-Jew, and it also says in the Talmud that a handbreadth of a woman is erva, even his wife, meaning a handbreadth of flesh that is customarily covered, and likewise the shin and voice of a woman are erva. And Rav Hai Gaon explained that this is all with regard to the recitation of Shema. And Rabbi Eliezer from Mitz wrote in Sefer HaYireim: "Therefore it is forbidden to perform the core parts of communal prayer while listening to the voice of a woman singing, but due to our sins we are settled among the nations in a condition of imperfect observance, and therefore we are not careful not to learn Torah in the presence of non-Jewish women singing," and so ruled the author of Halakhot Gedolot, and so ruled Rabbenu Hananel..."[12]

Rabbi Yosef Karo rules in the Shulhan Arukh according to the opinion of the Rambam in the Mishneh Torah that we should understand the Shemuel's statement in the broader sense: "and it is prohibited to listen to a voice of erva"[13] and he even rules to be stringent on the issue of the recitation of Shema as well: "One must be careful not to listen to the voice of a woman singing while reciting the Shema,"[14] and this ruling is in concert with his words in his magnum opus, the Beit Yosef: "And with regard to the halakha, it seems that we side with the Rambam, but it is in any event good to be cautious before the fact not to see hair and hear the voice of a woman singing during the recitation of Shema."[15]

In summary: there is a fundamental dispute among the Rishonim. Important Rishonim held that the main prohibition of listening to a woman's voice is only during the recitation of the Shema and other core parts of the prayer service, in accordance with the intuitive context of Shemuel's statement "the voice of a woman is erva." In contrast to this approach, other Rishonim held that the prohibition is analogous to that of looking at a woman, though it is still appropriate to be stringent with regard to the recitation of the Shema as well.[16]

What manner of a woman's voice is considered erva?

The poskim that hold that it is forbidden to hear the voice of a woman in general, and not just during the recitation of the Shema and the core parts of prayer, are divided as to what type of voice is prohibited - is it forbidden only to hear a singing voice, or is listening to common speech proscribed as well? And what about a singing voice that people are already used to? Is every type of singing voice prohibited? Let us begin this discussion with a disagreement between the Rashba and the Raavad described by the Rashba himself:[17]

And the fact that Rav Yitzhak said that a handbreadth of a woman is erva, and that we hold that this applies to his wife during the recitation of Shema, the Raavad of blessed memory explained that it is possible that this refers to a normally covered part of her body, and Rabbenu Hananel commented on this, saying that the shin of a woman is a normally covered and sexually provocative part of the body, even to her husband, and even though it is not normally covered on men, but her face and hands and feet and the non-singing voice of her speech, and her hair that comes out of her braid that is not covered, one need not worry about these as he is used to them and not disturbed. And with regard to another woman, it is forbidden to look at anything, even her little finger and hair, and it is forbidden even to hear her speak, as we say we say in Masekhet Kiddushin: "'let your honor send a salutation to Yalta [Rabbi Nahman's wife]!' He said to him: ‘thus said Shemuel: "the voice of a woman is erva."'" And nevertheless it seems to me that this refers specifically to the voice of a salutation, because there is intimacy in it.

It is important to pay attention to the fact that even the Rashba did not prohibit hearing all speech of a woman, rather only speech that has "intimacy."

In any event, his position is not ruled as halakha by the Shulhan Arukh: "one must guard against hearing the voice of a woman singing." Even though this is said specifically in reference to the recitation of the Shema, the Magen Avraham applies it to general rules of modesty as well: "'The singing voice of a woman' -

Even an unmarried woman, and see the Even HaEzer 21, which states that the singing voice of a married woman[18] is always forbidden to hear, but the voice of her speech is permitted."[19] The Maharshal had already asserted that there is no prohibition of listening to a woman's speech:

And that which it says that the voice of a woman is erva, meaning that it is forbidden to speak with a woman, as Rashi explained, that if I should say hello, she would answer me - this seems to me to be strained, for they only prohibited listening to a singing voice, as the scriptures say (Song of Songs, 2): "For your voice is sweet and your face is comely." Also, we do not find that the original great sages were careful not to converse with women, as we see from several instances in the Talmud and other works not referenced here. Rather one should not ask a woman how she is doing out of a sense of intimacy. And we do not hold according to Rabbi Eliyahu Mizrahi, who forbids talking to women, even to ask her where her husband is, and I have already proved that his position is false, see in the chapter "Hasokher et Hapoalim," Siman 6, and the ruling that one does not use a woman at all, adult or child, we shall write, God willing, ahead in Siman 80, that nowadays we rely on the opinion opposed to Shemuel, that said that everything done for Heaven's sake is permitted."[20]

This explanation of the poskim, that the voice prohibited because it might lead to immodest behavior is that of song, is supported explicitly in the Talmud in Masekhet Sota: "Rav Yosef said: ‘when men sing and women respond - it is immodest; when women sing and men respond - it is like a fire in chaff.' What is the practical difference? That one should abolish the one before the other."[21]

Rashi explains:

"Like a fire in chaff" - because the responder pays special attention to hear the singer, and consequently the men will pay attention to the women's singing, and the voice of a woman is erva, as it is written: "let me here your voice" (Song of Songs, 2), and it will fire his evil inclination like a fire in chaff. But when men sing and women respond, there is a little immodesty, as the voice of a woman is erva but it does not fire his evil inclination to the same extent, because the singers to not pay such close attention to hearing the responders.

From the words of the Marshal and the Magen Avraham, we can understand that there is a prohibition of listening to the voice of a woman singing; given this, the poskim advise several dimensions that allow us to be lenient in various ways:

A) Everything here refers only to a lone voice and not to song in a group, as "two voices are not heard."

This distinction is widely accepted among different groups within the community, and it is therefore the custom to permit women's singing in a choir. This dispensation is extremely strained, alien to the character of the subject, and transferred from an altogether different context - hearing the sound of a shofar on Rosh Hashanah.[22] Rabbi Yehiel Weinberg has already raised a serious difficulty on this avenue: "With regard to what is written that two voices are not heard, is it not explicit in the Talmud that because it is pleasant to listen to, one would pay more attention? And nothing is more pleasant to listen to than what our sages attested to, that the voice of a woman is erva, from the verse "For your voice is sweet and your face is comely," see Berakhot 24."[23]

B) The prohibition applies only to listening in a manner similar to looking at a woman for sexual pleasure.

This distinction can be taken from a simple reading of all the material related to the subject, from the language of the Rishonim and the ruling of the Beit Yosef about them, although it is not stated specifically. According to this approach, my teacher, Rabbi Aaron Soloveitchik, ruled that there was no problem in public song when we, his young male students, were participating in the singing. Rabbi Aaron did not permit listening to women by themselves, even in a group, but at the heart of his position was the equation to the prohibition of looking, and the distinction between staring for sexual pleasure and general, innocent sight - and the difference is clear.

C) There is no prohibition whatsoever of innocent singing; rather, only forbidden is singing intended for sexual stimulation, or flirtatious singing.

Although this distinction is not explicit in the early rabbinic sources, it closely fits the character of the prohibition as described in different contexts in the Talmud and the Rishonim, and it is supported by the language of the Rambam, the Tur, and the Shulhan Arukh: "it is forbidden to hear a voice of erva" as opposed to language forbidding song generally.[24] (Even according to the most correct reading of the text of the Rambam - "to hear the voice of a forbidden woman or to see her hair," the word erva referring to the woman herself - the distinction is still supported by the context and the Rambam's general sense.)

The two latter distinctions are necessary, for they solve a difficulty in the language of the Beit Yosef: "And with regard to the halakha, it seems that we side with the Rambam, but it is, in any event, good to be cautious before the fact not to see hair and hear the voice of a woman singing during the recitation of Shema."[25]

This language is strange. If a general prohibition already exists on hearing a woman singing, the soft language "but it is in any event good to be cautious before the fact" with regard to the recitation of the Shema is inappropriate. However, if we interpret this position in accordance with the Tur (Even HaEzer, Siman 21) that this is with regard to problematic listening and problematic singing, we can understand the language of Rav Karo that during the recitation of the Shema one should "be cautious before the fact not to...hear the voice of a woman singing." It is appropriate to be careful during the recitation of Shema not to hear any singing of a woman, even that which is not problematic from the perspective of modesty.

These two latter distinctions are brought in the Sedei Hemed in the name of the Divrei Hefetz,[26] and were criticized by Rabbi A. D. Horowitz in a letter to Rabbi Yehiel Weinberg:

And as for what the Sedei Hemed said in the name of the Divrei Hefetz - firstly, the Sedei Hemed writes that is correct to act stringently, despite his opinion, and besides this, did not the Sedei Hemed write explicitly: "only one who does not intend to gain pleasure from her voice?" In that case, who can be responsible for monitoring such a thing? And also, what he writes in a letter that in religious singing the young men do not intend to benefit from the voice of the young women - it is a painful joke to say this, and it is easy for his venerable learnedness to say this in his old age (may he live long) (see the Tosafot on Masekhet Sota 19a, s.v. "Vekhohen," referencing the Talmud Yerushalmi, about an old priest). Does it not say in the Talmud, Masekhet Niddah, 13a, to the effect that in fear and trembling there is no suspicion of sinful fantasy - and even there the Beit Yosef wrote in Orah Haim, Siman 3, that the poskim left this out, as they could not be sure, and all depends on one's personal character..."[27]

We should pay attention to the fact that although Rabbi Horowitz's criticism of our latter distinctions (that the only prohibition is that of listening for pleasure, and that we need not worry about religious singing) is quite strong, there is still no claim of a formal prohibition on all song, rather a concern that these distinctions would be difficult to implement in reality: There is no possibility, according to this approach, that we will avoid all "exceptions", and that we will ensure that

everyone will be listening innocently, and we must assume that there will always be some of the listening to women that will be problematic.

It seems to me that specifically these distinctions are the most appropriate to our circumstances, and that it is relatively easy to implement them. I have been asked for practical advice many times by students who have long been used to hearing female singers, and only discovered the halakhic problems with this after they had acquired a broader Torah knowledge. I always ask them how they react to the women's singing, and without exception they claim that the song does not arouse them unless it is intended to. Songs with this intention are characterized by their lyrics, melody, musical style, dress and body language. In communities that have the practice of permitting women's singing in serious ceremonies (even if this practice developed unintentionally) even those who wish to change the practice do not claim that the music arouses them, rather they think that there is a formal prohibition on all female singing. We are therefore witnesses to the fact that there is problematic singing, and there is singing that is entirely non-problematic.

It is likely that the stringent approach of Rabbi A. D. Horowitz can be explained by the Raavya, who considers the matter dependent on acclimation, and if so, even if groups within a certain community can be justifiably lenient, this possibility is not open to every community:

It is ruled in Halakhot Gedolot that all that we say here, that a handbreadth of a woman is erva, even if she is his wife, and with regard to another woman, even something smaller than a handbreadth, and likewise the shin of a woman is erva, and likewise the hair of a woman is erva [and likewise the voice of a woman is erva] - for all of these things it is forbidden to recite the Shema in their presence, and so explains Rabbenu Hananel. And I say that the reason for this is that even though the voice is not visible to the eye, there is nevertheless cause sexual fantasies. And all of the things [that we have related above] as erva only refer to things that are not customarily exposed. But we do not worry about an unmarried woman who regularly leaves her hair uncovered, because this does not cause fantasies, and so too with her voice [that he is used to].[28]

In light of the fundamental disagreement among the Rishonim and the interpretations offered of the ruling of the Shulhan Aruch, we can summarize:

· It is permitted to be lenient with regard to listening to the voice of a woman singing when there is a clear sense that the listening is innocent and the singing is innocent.

Such an assessment is dependent on five conditions:

1. Context and appropriate atmosphere

2. The lyrics of the song

3. The musical style

4. Dress

5. Body language

According to this approach, there is no problem with those among our daughters who are modest and upstanding to develop a career in singing, even within the general culture, as long as they do not make concessions of the refined foundations of Torah culture, and do not cooperate with the vulgar, commercialized aspects of the culture surrounding us. In an approach that is not accepted as halakha, the Sefer Hasidim held that there is a parallel prohibition on women to listen to the voices of men.[29] Even though this is not practiced halakha, it is ideal to pay attention to the five conditions I have outlined even in the case of a man singing in the presence of women.

· The dispensation for two or more voices is far-fetched and should not be relied upon alone.

In practice, when we rely upon this dispensation alone, there are many pitfalls. It seems that we have found a simple, easy answer, and we need not worry about the lyrics, or the melody, or the musical style, or the dress or body language, and in reality this sometimes creates a culture unbefitting the spirit of the Torah.

1. The Rishonim write about looking for pleasure or sexually inappropriate looking, and distinguish between this type of gazing and "sight".

2. Avodah Zarah 20a, ulistakulei mi sharei

3. Beit Yosef, E. H. 21

4. Every statement of this passage deserves its own discussion, as they each have unique characteristics and their own parallel passages.

5. Or Zarua, 1, hilkhot taharat keriat shema utefilah, no. 133

6. Hiddushei ha-Rashba, Berakhot 24a

7. Rosh, Berakhot, 3:37

8. Rambam, Hilkhot Issurei Biah, 21:2.

9. Rambam, Hilkhot Keriat Shema 3:16; See also his Responsa, no 224.

10. Tur E.H. 21

11.Raaviyah, Masekhet Berakhot, vol. 1, no 77, quoted at the bottom of p. 7.

12. Mordekhai, Berakhot, chapter Mi sheMeito, 247:80

13. Shulhan Arukh E.H. 21:1

14. Shulhan Arukh E.H. 21:1

15. Shulhan Arukh O.H. 75:3

16. Beit Yosef O.H. 75

17. Rashbah Berakhot 241

18. In the interest of objectivity, it should be pointed out that the Rif overlooks the subject entirely. see the full text of the Talmudic passage: Kiddushin 70a .According to Magen Avraham, it seems that the only prohibition is regarding a married woman, and not a single woman who he may marry. See also Tzitz Eliezer 7:28; and Yabia Omer 1, O.H. 6

19. Magen Avraham, O.H. 75:6

20. Yam Shel Shelomo, Kiddushin, chapter 4, no. 4

21. Sotah 48a

22. Rosh Hashanah 27a

23. From a letter sent to Rabbi Avraham David Horowitz, cited in Seridei Esh, 1:121, p. 394

24 Tur, Even haEzer, no. 21. Rambam, Issurei Biah, 21:2

25. Beit Yosef, O.H. 75..

26. Sedei Hemed, section Kof, kelal 42 (vol. 5, p. 282)

27. The full text of the letter can be found in Seridei Esh, vol. 1, no. 121, p. 394.

28. Raaviyah 1, Berakhot no. 76; Mordekhai on Berakhot 247:80

29. Sefer Hasidim, no. 614