A New Hearing for Kol Ishah

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I.

The topic of kol ishah, the halakhic prohibition on men from listening to a woman's singing voice, is obviously a matter of concern for religiously observant Jews. Yet, there are various interpretations as to what exactly constitutes the prohibition. The present essay aims to clarify the prohibition, demonstrating that it is far less restrictive than is commonly believed.

Rabbi Eliezer Waldenberg ruled that it is permissible for a man to hear a recording of a female singer when the singer is not visible to the listener. Rabbi Yosef Eliyahu Henkin held similarly. Rabbis J. David Bleich and Haim David Halevi indicated that the use of electronics for the audio alone does not mitigate the prohibition; the listener must not be able to see the singer at all. Rabbi Ovadia Yosef and Rabbi Haim David Halevi both ruled that electronic recordings mitigate the prohibition only if the listener has never once glimpsed the woman singer, and Rabbi Yosef applied this even after the woman singer is deceased. Going still further, Rabbi Yaakov Breish, Rabbi Shmuel Wosner, and Rabbi Binyamin Silber all ruled that even audio-only electronic recordings of women may not be listened to, with no mitigations or leniencies whatsoever. According to them, listening to a woman sing is simply prohibited. Rabbi Menashe Klein disagreed with Rabbis Breish, Wosner, and Silber, and argued that electronic records are not the woman's "real" voice, and that listening to recordings ought to be permitted. Even he, however, stated that it is "distasteful" to rely in practice on the leniency."[1]

All these recent authorities took it for granted that listening to women sing is categorically forbidden for men, and that only select and specific factors may mitigate this otherwise absolute prohibition. It is understandable, then, that so many Orthodox laymen assume that men listening to women sing is categorically forbidden. It is taken as almost axiomatic that kol ishah is strictly and absolutely forbidden; few if any compromises are brooked, and leniencies are offered reluctantly if at all.

II.

However, the preceding understanding is in need of careful anaylsis. On three separate occasions in the Talmud (Berakhot 24a, Kidushin 70a, and Sota 48a), statements are made about the sexual (`erva -or peritzuta) nature of a woman's voice. The one which will concern us is the primary one, in Berakhot 24a, where we read,

"Shemuel said: The voice of a woman is nakedness (kol b'isha `erva) as it says (Song of Songs 2:14) 'for your voice is sweet and your countenance comely.'"

This passage occurs during a discussion of reciting Shema in the presence of `erva. One might interpret Shemuel as continuing that discussion, or as beginning a new one about just what is `erva irrespective of Shema. As is apparent from the discussion, a woman's exposed handbreadth (tefah) is forbidden to be seen during Shema, while her little finger (etzba ketana) is forbidden to be gazed upon with sexual intent at all times. Thus, kol ishah must be like either of these two paradigms. There is a range of authorities on either side of this dispute, but the Rambam and Tur-Shulhan Arukh rule that kol ishah is a general prohibition, not linked to Shema. This is thus the practical halakha to be taken for granted in this essay. It is an undeniably clear principle that gazing upon a woman's little finger is prohibited only where there is sexual pleasure, as is shown in Avodah Zara 20a-b. If kol ishah is like a little finger, then the implications are obvious. (Also note that Shemuel says only kol, "voice", with no mention of singing per se.)

It was my friend Dowid Mosha who first pointed out to me that kol ishah's being a general prohibition is actually potentially a leniency, not a stricture. He quoted the Rambam, Hilkhot Issurei Biah 21:2, which says [2], "And he who looks at even the little finger of a woman to take pleasure in it is like one who looks at her private parts, and even to hear a voice of an erva or to see her hair is forbidden."

As Dowid then explained, "it is apparent that the focus is on the intent and the result. If an individual wishes to be aroused, is likely to be aroused, or is aroused

inadvertently, then he or she must take the necessary measures to protect themselves." Rambam equates looking at a woman's etzba ketana, her little finger, with hearing the voice of a woman. And there is no prohibition of gazing at a woman's finger per se; the prohibition is only when one so gazes specifically for the sake of sexual pleasure.

Furthermore, Rambam speaks of scrutinizing (mistakel) her little finger (etzba ketana) with intent to take pleasure in it (v'nitkaven leihanot). He uses the word mistakel, which carries the implication of intense scrutiny, as opposed to the word ro'eh, which would imply simple ordinary sight. According to Rambam, the prohibition surrounding etzba ketana is that a man is forbidden to intensely scrutinize (mistakel) a woman's little finger with the express intention of deriving sexual pleasure thereby (v'nitkaven leihanot). Since Rambam links this discussion of etzba ketana with kol ishah, it seems apparent, as Dowid expressed, that kol ishah is likewise prohibited only when there is sexual pleasure involved.

Similarly, the Tur (Even ha-`Ezer 21), writing about different tzeniut-related prohibitions, relates them all to shema yavo l'harher bah, "lest he come to reflect (or muse) [sexually] on her". Regarding etzba ketana and kol ishah specifically, the Tur quotes the Rambam nearly word-for-word, as does the Shulhan Arukh (Even ha-`Ezer 21:1). It is clear that the Rambam and the Tur-Shulhan Arukh held that kol ishah is like etzba ketana, meaning that to listen to a woman's voice is prohibited in the same way that it is forbidden to scrutinize (mistakel - not to merely see, ro'eh) upon her finger in order to take sexual pleasure (v'nitkaven leihanot). And thus, Rabbi David Bigman rules:

"From the equation of the prohibitions regarding voice and hair to the general prohibition of looking [i.e. mistakel at an etzba ketana], 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. ... There is no prohibition whatsoever of innocent singing; rather, only singing intended for sexual stimulation, or flirtatious singing, is forbidden. ... The prohibition applies only to listening in a manner similar to looking at a woman for sexual pleasure."

Rabbi Avraham Shammah lists several grounds for leniency in kol ishah, indicating that "the essential one, in my opinion, is that the prohibition is specifically for one who intends to enjoy a forbidden pleasure."

Rabbi Yehiel Yaakov Weinberg (Seridei Esh 2:8) defended the German-Jewish custom of mixed-sex zemirot, as well mixed sex Jewish youth groups (similar to

Benei Akiva and NCSY).[3] He interpreted the Rambam that the prohibited form of "gazing" and listening is only that which entails sexual pleasure. Rabbi Weinberg also relied on the Sedei Hemed (section Kuf, kelal 42), who ruled that a man's listening to a woman sing funeral dirges does not violate kol ishah, as no sexual pleasure is entailed in such songs. The Sedei Hemed was relying on the Divrei Heifetz (113b), who "stated that as long as a woman is not singing sensual love songs, and as long as a man does not intend to derive pleasure from her voice, there is no prohibition, such as if she is singing praises to God for a miracle, or is singing a lullaby to a baby, or is wailing at a funeral." [4] Rabbi Weinberg also cited the Sefer ha-Eshkol (Hilkhot Tefillah sec. 4 or 7), that listening to a woman sing is prohibited only where there is sexual pleasure. Rabbi Weinberg reasoned that if the Sedei Hemed could permit funeral dirges due to their lacking sexual pleasure, then he could permit Shabbat zemirot on the same grounds. It is obvious that we today can likewise permit by the same logic any song which does not lead to sexual thoughts. Thus, this interpretation that kol ishah is like etzba ketana, i.e. permitted where sexual pleasure is absent, is not only apparent from the simple meaning of Rambam's words, but is also endorsed by Rabbi Yehiel Weinberg.

Rabbi Weinberg also relied on the opinion of the Ritva and Rema, "that all is for the sake of heaven" (to be discussed later in this essay). In general, if one knows that he himself is capable of a certain act without incurring sexual thoughts, then this act becomes permitted for him.

III.

Some may react to this interpretation as brilliant casuistry, but nevertheless reject it as being against traditional Jewish practice and belief. It behooves us, then, to see whether this lenient understanding of kol ishah could stand up to non-textual (mimetic) traditional Jewish behavior and practice.

In Rabbi Dr. Marc D. Angel's Foundations of Sephardic Spirituality: The Inner Life of Jews of the Ottoman Empire, we find an amazing piece of testimony. There, on page 125, discussing the singing of Ladino (Judeo-Spanish) romances (ballads), with their often emotional if not downright sensual lyrics, Rabbi Angel says, inter alia:

"Although there were religious pietists who objected to singing love songs, the romances were very popular throughout all strata of Sephardic society. Men and women often sang these songs together. It was not unusual for women to sing solo parts in the presence of men. [Emphasis added.] People participated in the

singing and enjoyed the songs in a natural, easygoing way."

Rabbi Angel offers personal testimony in note 6:
"I [Rabbi Angel] was raised in the Sephardic community of Seattle, Washington, and well remember our many family gatherings where romances were sung. Jews of great piety sang right along with those of lesser piety. I do not remember anyone ever objecting to the singing of love songs by men and women. In the early 1980s, Haham Dr. Solomon Gaon, himself a Judeo-Spanish-speaking rabbi, taught classes in Sephardic folklore at my Congregation Shearith Israel in New York City. I well remember him singing love songs, enthusiastically and nostalgically. Both of us participated in a program of Sephardic culture sponsored by the Hebrew College of Boston. A female soloist sang a selection of romances, after which Haham Gaon not only applauded loudly but rose to speak in praise of the singer for her beautiful rendition of the songs. Haham Gaon, who served as chief rabbi of the Spanish and Portuguese Congregations of England and as head of the Sephardic Studies Program of Yeshiva University in New York, was a very prominent Orthodox Sephardic rabbi and a man of impeccable piety."

Rabbi Shammah similarly testifies:
"I did not grow up hareidi, and I was not educated according to hareidi principles. From my childhood [under his parents, traditional immigrants from Syria to Israel] until my adulthood I do not remember closing my ears, nor was I instructed to do so, and I heard the best music, both from the Orient and the West, even when performed by female singers, and even at live performances. Apparently, the principle is based on the fact that there is no intent here for some forbidden pleasure. [People] have testified to me that there were Torah-observant Jews at the performances of the famous Egyptian singer, Umm Kulthum [considered by some to be Egypt's most famous and distinguished twentieth-century singer], and even more than that, they listened to her songs and learned them well, even though some of the songs had inappropriate words. Prayer leaders (among them scholars) used her tunes [in the prayer services], until this day, with the approval of halakhic authorities, who knew quite well the source [of these tunes]."

There is also firm evidence that Cochini Jewry (the Jews of Kerala, the southwest coast of India), known to be dedicated to Torah and traditional religious observance,[5] allowed women to sing in the presence of men (Wikipedia, "Cochin Jews"). According to K. Pradeep:
"Here, unlike other Orthodox communities, the Jews did not follow the Talmudic injunction against women singing in public. For centuries, the Cochin Jewish women have been singing Jewish songs in Malayalam. There was a rich tradition

of women's liturgical music sung on public occasions - weddings, circumcisions and holidays. ... The social life of the Jewish community in Kerala had centered on rituals in the synagogue and festive meals at home. The women sang during these celebrations."

Similarly, according to Martine Chemana, in her article "Women Sing, Men Listen", notes:
"... On the religious level, even though their participation in rituals remained marginal, in the space reserved for them they held a complementary role in the singing of liturgical texts. ... Originally, the opportunities for performances were, as said earlier, during family celebrations associated with ceremonies which preceded and marked weddings, which in the past lasted as long as 2 weeks; name-giving for newborns (akin to Hindu custom); berit-milah; bar mitzvah; before or after religious holidays and festivals such as Passover, Purim, Hanukkah, Succoth, Simhat-Tora; related to the construction or inauguration of synagogues.... The Malayalam songs are thus only performed by women, but the men who listen to them also know the songs, as was evidenced during the memorization process. The men who were present remembered the words or the tunes when the women had forgotten them. The Cochini women also take part in liturgical singing in Hebrew in the synagogue - as I was able to hear in the Cochin synagogue during Yom Kippur in September 2001... In Cochin, apart from folk songs, some women also take part in the chanting of liturgy. Women from Yemen also sing during wedding ceremonies."

Barbara C. Johnson's description in "Cochin: Jewish Women's Music" is very much the same:
"Though Malayalam Jewish songs have always belonged to the women, men in their community often heard them performed in Kerala ... At times they sang for all-female events, such as a women's party for the bride, but generally they performed in mixed gatherings, where the men of the community listened respectfully. ... In Kerala, Jewish women sang in Hebrew together with men, joining in full voice to sing piyyutim in the synagogue, at the Shabbat family table and at community-wide gatherings to celebrate holidays and life cycle events. In contrast to many other traditional Jewish communities, it was not their custom to prohibit men from hearing women's voices raised in song."

We have already discussed the German Neo-Orthodox practice of women singing zemirot in the presence of men. However, our previous discussion was around the technical halakhic justification; let us now examine the general sociological and historical details. According to Professor Mordechai Breuer's Modernity Within

Tradition (p. 6):

"Rabbi Yehiel Jacob Weinberg (1885-1966) tells the following story on that subject [in Shu"t Seridei Eish]: arriving in Berlin from Lithuania in 1914, he noticed that, in Orthodox families, men and women sang the table hymns [zemirot] together at Sabbath meals, even though, according to religious regulations, men were forbidden to listen to the singing of women. When he expressed his astonishment about that, it was explained to him that leading Orthodox rabbis had sanctioned such conduct on the basis of halakhic considerations. In some families, domestic singing was even led by the women, a practice that, at times, embarrassed a guest who was unaccustomed to it. Such a lack of restraint was permitted - mainly in the family circle - but was often censured when efforts were made to apply it to society at large."

But the footnote to that final sentence reads (ibid., p. 411):
"However, see Jeschurun (1885), 18:11, for a report of a public function at the Orthodox school in Frankfurt am Main [Rabbi Hirsch's community] at which a teenager from the girls' Lyzeum [the girls' section of the Orthodox day school founded by Rabbi Hirsch] sang in the presence of a crowded audience."

Further, in Modernity Within Tradition, we read (p. 150):
"Attendance at the theater, the opera, the concert hall, and even the cabaret was no longer a rarity among Orthodox families after the end of the century. In 1882 the Jüdische Presse already carried a rather long, well-disposed review about Saint-Saëns's opera Samson and Delilah. ... The Israelit praised an observant female opera singer as well as a strictly observant male concert vocalist. Social evenings in Orthodox organizations of various kinds featured stage performances or music. In 1906 the board of the Jewish youth group Livyath Hen [Wreath of Grace] in Mainz sent out invitations to a talk by Rabbi Dr. J. Bondi that was followed by evening entertainment consisting of music, a comedy (played by a lady and three men), a vocal quartet, and singing by five ladies and four men."

Even though neither Rabbi Hirsch nor any other rabbis attended the opera (contrary to the regnant "common knowledge") [6], it appears that plenty of German Neo-Orthodox Jews did. It appears quite safe to say that to one degree or another, German Neo-Orthodoxy sanctioned men listening to women singers. According to our evidence, then, it was considered natural and acceptable by traditional Jews that men hear women sing, in the Judeo-Spanish lands (Turkey, the Balkans, Greece, etc.), in Egypt, Syria, Germany, and Cochin (India). Thus, aside from textual authority in the traditional halakhic literature, we find that we also have the support of traditional Jewish practice for our lenient interpretation.

This may not be the interpretation of the majority of historical Jewish communities and traditions; what is clear, however, is that both a significant textual basis for leniency exists in the primary halakhic sources, and that a number of significant and important Jewish communities relied on this leniency in practice.

IV.

Until now, we have explained the matter from one perspective, by showing that according to the Rambam (whom the Shulhan Arukh accepts as the primary law) kol ishah is prohibited like etzba ketana, i.e. only where there is sexual pleasure involved. But we may investigate the matter from another direction, and come to the same conclusion.

Rabbi David Bigman quotes the Maharshal (Yam Shel Shelomo, Kidushin 4:25 no. 4) as saying:
"... And we do not hold according to Rabbi Eliyahu Mizrahi, who forbids talking to women, even to ask her where her husband is, ... and the ruling that one does not use a woman at all, adult or child, we shall write, God willing, ... that nowadays we rely on the opinion opposed to Shemuel, who said that ‘everything done for Heaven's sake is permitted.'"

This statement by the Maharshal has a storied history, and deserves greater elaboration than is possible here. [7] Briefly put, in the Gemara, there are several stories of rabbis who seem to have committed various infractions of the laws of tzeniut, explaining to others that for individuals of their level of piety, the women were like geese or wooden beams, i.e. not sexually enticing, and that "all is for the sake of heaven" (ha-kol le-shem shamayim). Sefer ha-Hinukh (188) says that no one today may apply these rationalizations for himself, but by contrast, the Tosafist Rabbi Yitzhak of Corbeil in Sefer Mitzvot Katan (30) and Ritva (end of Kidushin) hold that if any individual knows himself to be capable of looking at women without impure thoughts, then he is permitted to so do. In the Ritva's words:
"... and so is the law that everything is according to what a person knows about himself, if it is appropriate for him to maintain a distance [from women] because of his sexual urges, he should do so, ... while if he knows that his sexual urges submit to him and are under his control ... he is permitted to look and to speak with a woman who is forbidden to him and to ask the well-being of another man's wife ..."
Rabbi Hai Gaon expressed similar logic, as Rabbi Henkin shows ("Hirhur and Community Norms"). Most importantly, the Maharshal, relying on the Ritva, says in his Yam Shel Shlomo (Kidushin, 4:25 no. 4), that

"Everything depends on what a person sees, and [if he] controls his impulses and can overcome them he is permitted to speak to and look at an erva and inquire about her welfare. The whole world relies on this [emphasis added] in using the services of, and speaking to, and looking at, women."

What is particularly noteworthy about this Maharshal is that whereas Rav Hai Gaon and the Semak and Ritva spoke of individuals who know themselves, the Maharshal speaks of "the whole world", i.e. an entire community or society being collectively inured to women. The Maharshal is following Tosafot in Kidushin 82a: "On ‘all is for the sake of heaven' [i.e. the justification these rabbis in the Gemara offered for their apparently immodest acts] we rely nowadays [in] that we make use of the services of women."

Tosafot speaks of "we"; like Maharshal, Tosafot is going beyond the individuals spoken of by the Semak and Ritva, and instead speaking about an entire society. Additionally, the Ramah (Even ha-Ezer 21:5) follows Tosafot [8], and the Levush (the Maharshal's student) and Arukh ha-Shulhan both rely on this "whole world" extension made by the Maharshal and Tosafot. [9] The upshot is that apparently immodest acts are permitted if the individual knows himself (Rav Hai Gaon, Ritva and Semaq) or his society (Maharshal, Tosafot) to be on the level that he will not have impure thoughts. This provides us a basis to permit kol ishah, along with any other particular acts which were once considered sexually immodest, but which we today know we are inured to. Whether listening to women sing, or shaking their hands, or anything else, the permission is hereby granted as long as we know that we are truly able to engage in these acts without impure thoughts.

We still need to explain why the Maharshal did not apply kol ishah to a woman's speaking voice. The phrase kol ishah literally indicates a woman's voice, and not her singing voice per se. As we see from the Maharshal, other rabbis (Rabbi Eliyahu Mizrahi) indeed held that speaking to women in general was prohibited, and the Rambam [10] and Sefer ha-Hasidim (sec. 313) held similarly. [11] Why, then, does the Maharshal interpret kol ishah as being limited to singing? And why did other authorities also limit kol ishah to song?

The significance of this point should not understated. Countless Orthodox authorities take it for granted that kol ishah is limited to singing. But many early authorities did in fact include speech in the prohibited category of kol ishah. Rabbi Saul Berman makes a similar complaint, arguing that the Aharonim forgot what the real reasoning behind kol ishah was, and turned it into a blanket prohibition. Because of this, the Aharonim took one position of some Rishonim for granted, viz. that kol ishah is limited to singing. Why?

One could offer a historical-sociological-psychological argument that Maharshal was limited and influenced by his own practical experience, and this argument has indeed been put forth before. The Rashba (Hidushei ha-Rashba, Berakhot 24) says [12], regarding the handbreadth of a woman being `erva during the recitation of the Shema, that,
"the Raavad of blessed memory explained that it is possible that this refers to a normally covered part of her body ... 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."

In other words, a "handbreadth" (which according to the Talmud is prohibited only during Shema, whereas an etzba ketana is prohibited at all times) means not that just any handbreadth-sized area of the woman's body is erva, but that only an area that is normally concealed is erva.[13] According to the Ra'avad, then, "the non-singing voice of her speech" is not erva because it is not normally "concealed", because it is ordinarily "exposed", so to speak. Since her speaking voice is ordinarily heard, her speaking voice is like her face or her hands, and only her singing voice is seldom heard, making normally concealed and thus erva. The Ra'ayyah (Berakhot 76) [14] voices what could be said to exemplify a general Ashkenazi approach:
"All the things mentioned above as sexually stimulating are only to be treated as such when they are not customarily exposed, but [for example, with regard to] an unmarried woman whose hair is customarily exposed [15], we need have no concern, for there is no arousal, as with regard to her voice, for one who is accustomed to hearing it.

Based on this, Maharshal dismissed the possibility that kol ishah prohibited mere speech; such speech is customarily uncovered, as it were, and only song is customarily concealed.

But all this provides a basis for leniency as well: if, in the times of the Ra'avad and Maharshal, a woman's singing voice was seldom heard and was thus like the concealed parts of her body, perhaps today, her singing voice is not seldom heard, making it no longer "concealed". Perhaps today, her singing voice, being commonly heard (at least on the radio), is just like her speaking voice, i.e. like an ordinarily-exposed part of her body, like the face or hands, and subject to fewer (if any) prohibitions.

And in fact, Rabbi Joshua Falk (Perisha on the Tur, Even ha-`Ezer 21:2) stated precisely the Maharshal-ian habituation thesis with regard to kol ishah![16] Rabbi

Falk introduces the concept of regilut, "regularity", as relevant to kol ishah. Apparently, any voice to which one is accustomed is no longer prohibited by kol ishah. According to the Ramah (Shulhan Arukh, Orah Haim, 75:3), "a voice to which one is accustomed is not considered erva." [17] Also, the Ramah (ibid. Even ha-`Ezer 21:5) held that "all is for the sake of heaven." [18]

Let us consider another halakha relating to male/female relationships, to see how halakhot "change" based on changed circumstances. Rabbi Shammah notes that according to Mishnah Kidushin 4:13, a male bachelor may not teach children, and women may not teach children at all. The Gemara explains (82a), that these prohibitions stem from fears of sexual impropriety i.e. that the teacher (either an unmarried man, or any woman, married or not) will become engaged in forbidden relations with the childrens' parents. Rambam (Hilkhot Issurei Biah 22:13 and Hilkhot Talmud Torah 2:4) and the Shulhan Arukh (Yoreh Deah 245:20-21 and Even ha-Ezer 22:20) both rule in this way. Rabbi Shammah exclaims that no one even attempts to keep these laws anymore! Furthermore, the Shulhan Arukh issues a stern warning (Even ha-Ezer 21:1) to "keep very far from women", and it prohibits a man to walk behind a woman in the marketplace. Rabbi Shammah points out that those who strictly forbid kol ishah are never as strict regarding mixing in the marketplace. Even the Hareidim go to shopping centers and markets frequented by men and women!

Since we see that religious authorities no longer uphold the prohibition for male bachelors and women to be schoolteachers, or for men walking behind women in the marketplace, then why cannot we apply the same leniency to kol ishah? Rabbi Shammah caustically remarks on the hypocrisy of those who are lenient in some areas but stringent in others. According to Rabbi Shammah:
"... It seems to me, and this should be said as a generalization, that what is being considered is not really a matter of [women's] modesty. Rather, halakha is being used as a religious marker. That is to say, in a situation where it is quite impossible to be stringent, such as distancing oneself from women very, very much, people aren't careful. But it is very easy to be stringent in forbidding hearing a woman's voice, while - in the best case - the added value of an internal sense of religiosity is great. In a less positive light, it is a minute effort for a huge return of being able to externally demonstrate one's religiosity. This phenomenon, that generally is quite widespread, is worthy of penetrating criticism, and the words of the prophets are brimming with such [criticism]."

Rabbi Shammah cites the Ritva and Maharshal which we discussed earlier, viz. regarding how being inured and habituated to women and resistance to having

sexual thoughts permits certain otherwise immodest activities. Rabbi Shammah continues, and notes that Rabbi Ovadia Yosef, following the Levush (who in turn followed the Maharshal), also permits many examples of what was once a violation of tzeniut but which is nowadays customary and ordinary. Rabbi Shammah notes that Rabbi Yosef rejected applying this logic to kol ishah. But, as Rabbi Shammah continues, we have nevertheless learned the relevant basic principles, and we may apply them to kol ishah, even if Rabbi Yosef himself did not.

V.

Until now, we have been discussing what we have been calling a "leniency," i.e. the permission for men to listen to women sing based on the fact that kol ishah is prohibited only where sexual pleasure is entailed. However, we must emphasize that this leniency is not absolute; kol ishah is in fact prohibited where sexual pleasure is present. Rabbi Shammah says:
"... the wise person... should know that no two situations are exactly alike and therefore should use good judgment with integrity and honesty, because the essence of these laws is not to observe them literally and formally, but rather their purpose is to improve society."
This is not an absolute heter; but a conditional heter, based on what one knows he or she is capable of.

Similarly, according to Rabbi Bigman:...
"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. ... 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."

VI.

Since kol ishah is forbidden only if it causes immoral sexual pleasure, shouldn't women be forbidden to hear kol ish if mens' singing gives them improper pleasure? Rabbi Bigman states: [19]
"In an approach that is not accepted as halakha, the Sefer Hahasidim (614) held that there is a parallel prohibition on women to listen to the voices of men. 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."

According to Rabbi Bigman, anything sexually immodest is forbidden, regardless of which sex is singing and which is listening. Similarly, in a personal communication I had with Rabbi Marc Angel, it was axiomatic to Rabbi Angel that "by logical extension, male singers who intend to be erotically stimulating to females should also be prohibited from singing in the presence of women." If the halakha speaks only of men listening to women singing, it is likely that this is only because that was the most common situation of sexual immodesty.

When one becomes sympathetic to the feelings of women [20], something else will become apparent. As Rabbi Angel said to me in the course of his advising me on this present essay, "If males are stimulated by hearing women singing zemiroth or anything else, then this is the male's problem, and the male should leave the premises. The burden of responsibility devolves on the listener, not the singer. ... It's the responsibility of listeners to know what they can or can't handle; the burden of responsibility is not on the singers." Similarly, Rabbi Shammah said, "Even more, this formulation does not attempt to 'defend the purity of men' at the cost of hiding the women and covering them."

VII.

According to Rabbi Cherney:
"In our own generation, R. Ovadia Yosef has expressed the opinion that ‘you should not let your heart seize the argument that nowadays, since we are accustomed to the voices of women, we need not be concerned that [the voice arouses lewd thoughts], for we may not say these things out of our own understanding if it is not mentioned by the authorities.' (Responsa Yabia Omer vol. 1 sec. 6.) ... In conclusion, we should view this prohibition of the sages as well as others of its genre as protection against a breakdown of sanctity, a measure incumbent upon us as sincerely observant Jews."

According to Rabbi Howard Jachter:
"Both Rav Ovadia Yosef (ibid. [Yabia Omer 1:6]) and Rav Yehuda Henkin (Teshuvot Bnei Banim 3:127) reject the claim that this prohibition [of kol ishah] does not apply today since men nowadays are accustomed to hear a woman's voice. These authorities explain that since the Gemara and Shulhan Arukh codify this prohibition, we do not enjoy the right to abolish it. The Gemara and its commentaries do not even hint at a possibility that this prohibition might not apply if men become habituated to hearing a woman's voice. Thus, all recognized Posekim agree that the prohibition of kol ishah applies today."

But we have shown that one may disagree with this conclusion. Rabbi Bigman states:
"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 Shulhan Arukh."
Although Rabbis Ovadia Yosef and Yehuda Herzl Henkin are correct that the prohibition of kol ishah is binding according to the literature, yet leniencies are implicit in sources such as Rambam and the Tur-Shulhan Arukh. In fact, these leniencies were already drawn upon by rabbinic authorities, whether to permit speaking to a woman (Maharshal, classifying only singing as kol ishah) or to permit funeral dirges and mixed-sex zemirot (Rabbi Yehiel Weinberg, Sedei Hemed, Divrei Heifetz). The problem is exactly that which Rabbi Saul Berman expressed: [21]

"For the Aharonim... kol b'ishah ervah is a declaration that a woman's singing voice, under all circumstances, is to be considered a form of nudity. In light of this proposition, it is understandable that the Aharonim virtually totally discard the limiting principle of accustomedness which the Rishonim used so extensively. [Rabbi Berman cites aforementioned Ra'avyah, Rashba/Ra'avad, Ritvah, Maharshal, and Ramah.] ...The importance of this position [of Rabbi Weinberg] lies in the fact that it constitutes a major departure from the treatment of a woman's singing voice as a form of [absolute inherent] nudity. It reinstates the tradition of the Rishonim, that the ban on a woman's voice is functionally motivated and is related to the likelihood of its resulting in illicit sexual activity."

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But see also the criticism on Rabbi Berman's article:
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http://hirhurim.blogspot.com/2004/05/kol-ishah.html> (Archived 1 Feb 2010 by WebCite® at <http://www.webcitation.org/5nDDkmeSX>.)
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http://www.dovweinstock.com/blog/kol-beisha-erva-hebrew> (Archived 1 Feb 2010 by WebCite® at <http://www.webcitation.org/5nDECU7zp>.)
2) “A New Analysis of 'Kol B'Isha Erva'.” trans. Yedidya Schwartz. (English translation.)
2a) The Institute for Jewish Ideas and Ideals, 4 February 2009; <
http://www.jewishideas.org/rabbi-david-bigman/new-analysis-kol-bisha-erva>
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http://www.webcitation.org/5nDEQ7KeW>.)
2b) Torah in Motion, 8 April 2008; <http://www.torahinmotion.org/virtproglib/e-tim/download/Bigman_Kol%20BIsha%20_translation-FINAL.doc> (Archived 1 Feb 2010 by WebCite® at <http://www.webcitation.org/5nDEZOJgS>.)
2c) Cyberdov: Life in Riverdale, NY (Blog), 4 August 2008. <
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http://bcrfj.revues.org/index942.html> (Archived 1 Feb 2010 by WebCite® at < http://www.webcitation.org/5nDEyqa90>.) French: < http://bcrfj.revues.org/index752.html> (Archived 1 Feb 2010 by WebCite® at < http://www.webcitation.org/5nDFSw8NF>.)

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2) Author's response to criticisms to the first article. Kolekh. 27 January, 2007. < http://www.kolech.org.il/show.asp?id=25484> (Archived 1 Feb 2010 by WebCite® at <http://www.webcitation.org/5nDGjN3e9>.)
3) Both of the preceding Hebrew articles are translated together by Debby Koren as “Kol b’Isha with a Current Perspective: A halakhic opinion offered by Rabbi Avraham Shammah.” <http://www.jofa.org/pdf/uploaded/1529-GHKB8620.pdf> (Archived 1 Feb 2010 by WebCite® at < http://www.webcitation.org/5nDGN2Q9L>.)

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Endnotes:

1. Precise citations, as well as more thorough discussion, of all these authorities is found in Jachter. Berman and Cherney also offer detailed discussion of *Aharonim*.

2. Translation according to Rabbi Bigman.

3. Nearly every recent secondary source on *kol ishah* discusses Rabbi Weinberg,

but the most thorough discussions are in Berman (pp. 63f. on pp. 10f. of the PDF),

Cherney (p. 69 on p. 7 of the PDF), Jachter, and Shammah (pp. 5-9).

4. Quoted from Koren's footnote 21 in Rabbi Shammah’s article.

5. See *Wikipedia*, “Cochin Jews,” s. v. "The Jewish Encyclopedia states,..." In the specific revision of that article cited in this essay (viz. 340155258), that entire paragraph in *Wikipedia* was written by myself, under the *Wikipedia* pseudonym “Sevendust62”.

6.Professor Marc Shapiro, “Obituary: Professor Mordechai Breuer zt”l”.

7. For thorough discussion, see especially Henkin, “Hirhur and Community Norms” and idem. “Contemporary Tseni’ut,” sec. “C. The *Sugyot* in *Kiddushin* and *Sota*”, pp. 25ff. Also, Berman (p. 53 on p. 5 of the PDF; n. 89 on p. 62 on p. 10 of the PDF), Cherney (pp. 73f. on pp. 9f. of the PDF), and Shammah (pp. 4f., 11-13.).

8. Cherney, op. cit.

9. Henkin, op. cit.

10. Blau (Jerusalem: 1960), vol. 2, pp. 398-400, no. 224, as cited by Berman (p. 53 on p. 5 of the PDF, p. 56 on p. 7 of the PDF) and Cherney (p. 60 on p. 3 of the PDF), and Bigman (n. 9).

11. Berman (op. cit.) and Cherney (op. cit.).

12.Quoted from Rabbi Bigman.

13. Cf. Bigman (n. 9) and Shapiro “Another Example of 'Minhag America'” (p. 152 on p. 5 of the PDF) for quotations from the *Beit Yosef* and *Tur* (respectively) elaborating on customary concealment and exposure. This principle, of permitting the exposure (and sight) of what is customarily exposed, and prohibiting the exposure of what is customarily concealed, applies throughout the laws of *tzniut*, as do the principles of *hirhur* and *hana'ah*. Cf. n. 15 below on hair-covering.

14. Quoted by Berman (pp. 48f. on p. 3 of the PDF) and Bigman (last two sentences of the lengthy quotation ending with the anchor for n. 28), and paraphrased by the Maharam Alashkar, as quoted in turn by Shammah (p. 11).

15. The approach this entire essay takes on *kol isha*, could be applied to other areas of *tzniut* (cf. n. 13 above), including hair-covering, both of married and unmarried women. See Shapiro “Another Example of 'Minhag America'” and Broyde "Hair Covering and Jewish Law." However, the Arukh ha-Shulhan would reject this; see Shapiro (pp. 149-150 on pp. 2-3 of the PDF) and Henkin "Hirhur and Community Norms:" (p. 82 on p. 2 of the PDF).

16. Cherney, p. 61 on p. 3 of the PDF.

17. Cherney, ibid.

18. Cherney, p. 74 on p. 10 of the PDF.

19. Cf. Berman, bottom p. 53 on p. 5 of the PDF, s.v. “A further fascinating...”; and Shammah p. 4, s.v. “It was my intent...”.

20.Much of Rabbi Weinberg's responsum deals with the personal subjective feelings of women - Rabbi Weinberg ruled leniently largely because he knew the women would be insulted and slighted if he ruled strictly; and Rabbi Shammah devotes particular attention to this aspect of Rabbi Weinberg's responsum. See also Chemana and Johnson, who note that the Cochini Jews were not only lenient in *kol isha*, but that also, they offered an education to women equal to that availed men.

21. Pf. 62f. on p. 10 of the PDF.

Post-Publication Addendum (4 Feb 2010):

In note 15, I remark that the leniency on kol isha can be applied to other areas of tzniut, such as hair-covering. I found an additional reference, an article by Rabbi Irving Greenberg making the same argument, only in the opposite direction. I.e., the article shows leniency in hair-covering and applies this to kol isha. Rabbi Greenberg is also concerned with the dignity of women (cf. n. 20).

Greenberg, Irving. “Kol Isha: The Question of Women’s Singing," source unknown.
<http://michaelmakovi.blogspot.com/2010/02/kol-isha-question-of-womens-singing_03.html>
(Archived 3 Feb 2010 by WebCite® at <http://www.webcitation.org/5nGiUmiOu>.)

Dr. Charlie Hall of the Albert Einstein School of Medicine of Yeshiva University told me that Rabbi Joseph Soloveitchik held that the prohibition of kol isha applied only in situations that would engender improper thoughts. Dr. Hall told me that Rabbi Soloveitchik attended the opera, and considered it to be “advanced culture”, and that far from being prohibited (for containing kol isha), that its attendance was actually to be encouraged. He added that Yeshiva University holds an annual opera fundraiser.

I found that Rabbi Aaron Rakeffet-Rothkoff of Yeshiva University gives

apposite testimony in a lecture from 28 January 2002, <http://www.yutorah.org/lectures/lecture.cfm/709758/Rabbi_Aaron_Rakeffet-Rothkoff/2002-01-28_R._Emanuel_Rackman___28-Jan-02> ---> <http://download.yutorah.org/2002/920/709758/2002-01-28%20R.%20Emanuel%20Rackman%20%20%2028-Jan-02.MP3>.

Rabbi Rakeffet-Rothkoff, at 73:14, says Rabbi Soloveitchik classified

as kol isha only "sexual" or "sultry" singing.

At 73:44, Rabbi Rakeffet-Rothkoff says, "There is eidut [testimony] that the Rav [= Rabbi Soloveitchik] and Rabbi Yitzhak Hutner attended operas in Berlin. Rabbi Yitzhak Hutner attended operas in Berlin??!! These are facts! Rabbi Hutner had actually a subscription to the opera in Berlin."

Post-Publication Addendum (11 July 2010):
Berman (p. 59 on p. 8 of the PDF) and Cherney (pp. 63 bottom to 64 top, on pp. 4-5 of the PDF) both note (following Rabbi Joshua Falk's Perishah commentary on the Tur) note that whereas the Tur, Shulhan Arukh, and Beit Yosef speak of kol erva, "a voice IS prohibited," by contrast, the RambaM speaks of kol HA-ervah, "the voice of THE forbidden woman." According to the first reading by the Tur et. al., a woman's voice in and of itself is prohibited, period, without distinctions. But according to the second reading of the RambaM (which seems to be preferred by many as both more correct historically as well as more correct logically), kol ishah is prohibited only when the woman herself is prohibited to the man. Just today, a student of Rabbi Yosef Kappah, Elisheva Barre, independently made the same point that Berman and Cherney do (following Falk), and she quoted to me Rabbi Kappah's explanation of the Rambam's inclusion of the definite article: "kol isha sh'hi ervah lo," "the voice of a women that she is forbidden to him " (Hypothetically, if Rambam had excluded the definite article, saying "kol isha erva," "the voice of a woman is forbidden," then Rabbi Kappah would have said, "kol isha she'hu ervah lo", "the voice of a woman that it is forbidden to him," meaning the

voice itself was inherently forbidden.) I did not discuss this originally in my article, because the only apparent heter would be for a man to listen to an unmarried Jewish woman; married Jews and all gentiles would be forbidden. In fact, perhaps even an unmarried Jewish woman in niddah would be an ervah (forbidden woman). But today, Elisheva Barre pointed out to me that, "I think it [viz. the presence of the definite article "ha," "the"] places the main point of this prohibition which is the hirhur in the right place and proper proportion, so that bottom line of the halacha is indeed for men and women to be normal." That is, the fact that only arayot (plural of ervah) are forbidden, and not women in general or their voices in general, emphasizes the fact that the prohibition of kol ishah has a definite teleological basis (i.e. it is based on means and ends), and is not an absolute Rabbinic prohibition without any exceptions (lo plug). If so, the heter would not merely extend to unmarried Jewish women who are not in niddah. Instead, we could extrapolate that if the prohibition is based on definite means and ends, with a specific and clear purpose (viz. to avoid forbidden sexual encounters and activities), then we can be lenient anywhere in which forbidden sexual activity is unlikely. This would dovetail with the thesis of this entire article.

Post-Publication Addendum (7 August 2011)
Aryeh Newerstein just showed me the following passage from Marc Shapiro, Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jehiel Jacob Weinberg, 1884-1966 (Littman Library of Jewish Civilization, 2002), p. 52, n. 13: Rabbi Yehiel Yaakov "Weinberg makes particular mention of one of these [strange German Orthodox-Jewish customs], that of women singing together with men at the Sabbath table, see SE [= Seridei Eish] ii, pp 15-16. Further illustration of how unusual this practice seemed to Jews of East European extraction is seen in the fact that R. Zvi Yehudah Kook saw fit to mention it in one of the youthful letters he wrote to his father from Switzerland. See Tsema? tsevi (Jerusalem, 1991), 106. Dr. Judith Grunfeld, daughter of a learned German rabbi and among the first teachers in the Polish Beth Jacob schools, told me that she had never heard of any religious prohibition of women singing in front of men until she arrived in Poland."