

A REPRINT FROM

Rabbi Joseph H. Lookstein  
Memorial Volume

ספר זכרון  
להרב יוסף חיים לוקשטיין

Edited by  
Leo Landman

KTAV Publishing House Inc.,

New York, 1980

Kol 'Isha

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The identification of a woman's voice as a likely source of sexual stimulation has led many modern Halakic authorities to ban, albeit with substantial dissent by other authorities, activities such as choirs of men and women together,<sup>1</sup> women singing *Zemirot* in the presence of men other than their husbands,<sup>2</sup> listening to records of women singing,<sup>3</sup> and even women singing lullabies to their children in the hearing of men.<sup>4</sup> Talmudic sources, however, seem to provide only the slightest web upon which these later stringencies are based.

The primary Talmudic source ascribing sexual quality to the female voice is a statement ascribed to the Amora Samuel and cited twice in the corpus of the Talmud. The first instance of its use appears in tractate *Berakot* in the context of an Amoraic discussion of the permissibility of reciting the *Shema* in the presence of a nude person. At the conclusion of the discussion, the *Gemara* inserts four separate statements concerning sexual incitement, one of which is the declaration by Samuel that *Kol b'isha erwah*, "a woman's voice is a sexual incitement."<sup>5</sup>

The identical statement ascribed to Samuel is found a second time in tractate *Kiddushin* in a context totally unrelated to the passage in *Berakot*.<sup>6</sup> In this second instance, R. Judah, having unwillingly appeared before R. Nahman for adjudication of a claim against him on a charge of

1. Responsa *Hatam Sofer*, *Hoshen Mishpat*, no. 190.
2. *Be'er Sheba Kuntres Be'er Mayim Haim*, no. 3.
3. Responsa *Yabiah Omer*, vol. 1 no. 6.
4. *Yishrei Leb*, E. H., Letter *Kab*, no. 12.
5. *Berakot* 24a.
6. *Kiddushin* 70a.

slander, proceeded to cast aspersions on the scholarship of R. Nahman by challenging the propriety of every element of his behavior. The following three exchanges then take place:

1. R. NAHMAN: Will you send a greeting to my wife, Yalta?  
R. JUDAH: Thus said Samuel, "A woman's voice is a sexual incitement."
2. R. NAHMAN: It is possible through a messenger?  
R. JUDAH: Thus said Samuel, "One must not inquire after a woman's welfare."
3. R. NAHMAN: Then by her husband!  
R. JUDAH: Thus said Samuel, "One must not inquire after a woman's welfare at all!"

The matter of R. Judah greeting Yalta is then dropped (at her insistence), and the charges against R. Judah are discussed.

While other elements of Samuel's position, as reported by R. Judah, are pursued elsewhere in the Talmud,<sup>7</sup> the declaration of a woman's voice as a source of sexual incitement is greeted with complete silence in both instances of its citation, with neither disagreement nor subsequent corroboration to be found in the corpus of Talmudic literature.

A further Talmudic reference to the arousing quality of women's voices is referred to in the context of the discussion of the general prohibition against singing at feasts, which was instituted at the time of the destruction of the Second Temple.<sup>8</sup> That ban, with a fascinating history of its own,<sup>9</sup> elicited in the *Gemara* the following comment: "R. Joseph said: When men sing and women join in, it is licentiousness; when women sing and men join in, it is like a fire raging in flax."<sup>10</sup>

On the basis of this dictum, the Geonim uniformly and strongly condemn the practice of having women entertainers at festive gatherings of men, whether the women be instrumentalists or vocalists.<sup>11</sup> But the

7. *Vis. B. M.* 87a and *Kiddushin* 81b-82a.

8. *Mishna, Sojah* 9:11.

9. Boaz Cohen, "The Responsum of Maimonides Concerning Music," in *Law and Tradition in Judaism*, pp. 167-81.

10. *Sojah* 48a.

11. *Ozar Ha-Geonim, Sojah*, sec. 143, pp. 272-73; *Ozar Ha-Geonim, Gittin*, secs. 18-19, pp. 6-10; and cf. *Ozar Ha-Geonim, Succah*, sec. 189, pp. 69-70. Also vis. Cohen, *op. cit.*, pp. 170-72.

force of this opposition seems exclusively to emerge from the ban against music rather than the licentious character of women's singing. Indeed, in the course of the entire Gaonic discussion of this matter, never once is Samuel's dictum, *Kol b'isha erwa*, cited, despite its obvious relevance to the issue under discussion. This fact alone would have been sufficient to allow a conclusion, which is, however, explicitly formulated by Hai Gaon,<sup>12</sup> that Samuel's law is not a general proposition as to the sexually arousing character of a woman's voice, but rather is a restriction on the recitation of *Shema* under circumstances where it is not possible to maintain proper concentration.

The Gaonic separation of these two laws, that of Samuel and that of R. Joseph, remained the norm of Rabbinic treatment of the two issues for the following eight hundred years. R. Joseph's law did not enter into consideration of the law of *Kol 'Isha* until the advent of R. Moshe Sofer in a responsum which he wrote in 1814.<sup>13</sup> We will therefore set aside the issue of the ban on music in order to focus more closely on the attitude toward women's voices.

The *Rishonim*, basing themselves on the meager sources provided in the Talmud, began to investigate the implications of Samuel's statement. While all Franco-German *Rishonim* accepted Samuel's statement as Halakically binding, their positions differed with regard to two basic questions related to the scope of the resultant prohibition. Firstly, are the consequences limited to the recitation of *Shema*, and secondly, are all forms of a woman's voice equally included under the law?

Rab Hai Gaon<sup>14</sup> and Rabbenu Hananel<sup>15</sup> were apparently the primary influences which led to the restriction of Samuel's dictum to the recitation of *Shema*. Most German scholars, foremost among them R. Eliezer b. Yoel Halevy, proceeded to indicate that given Samuel's law, one was prohibited from reciting the *Shema* while hearing the voice of a woman.<sup>16</sup>

However, three divergent opinions were expressed by contem-

12. *Ozar Ha-Geonim, Berakot*, sec. 102, p. 30.

13. *Op. cit.*, n. 1.

14. *Ozar Ha-Geonim, Ha-Perushim, Berakot* 24a, p. 30. Cited in Mordecai, *Berakot*, sec. 80.

15. *Ozar Ha-Geonim, Berakot, Pirush Rabbenu Hananel*, 24a, p. 24. Cited in Rabbiah, *Berakot* sec. 76 (p. 52).

16. *Rabbiah, Ibid.*

poraries and students of the Rabiah. R. Eliezer b. Samuel of Metz, author of the *Sefer Yereim*, extended the restriction to any *Dabar shebekedusha*; and R. Mordecai b. Hillel, citing R. Eliezer of Metz,<sup>17</sup> implies its applicability to the study of Torah as well.<sup>18</sup> R. Isaac b. Moses, in the *Or Zarua*, is the only authority who disagrees with the basic premise and denies the applicability of Samuel's law to the recitation of *Shema*.<sup>19</sup> However, he fails to indicate what alternative applicability it might have.

In all forms of the limitations on context thus far, it is clear that the central concern with hearing a woman's voice is not its intrinsic sensuousness, but the purely functional concern that it might distract a man from his concentration on prayer or study. It is certainly significant that the sole contexts in which the law of *Kol 'Isha* is held applicable are ones which require some special degree of attentiveness, and in which distraction is of particular concern.<sup>20</sup> That they viewed distraction as a motive for the law of *Kol 'Isha* is further emphasized by a suggestion ascribed to Rab Hai Gaon that the rationale of Samuel was that upon hearing her voice a man would turn to look at the source of the sound.<sup>21</sup> It was thus not inherently wrong to hear a woman's voice, but one might not, while hearing it, be engaged in a religious activity which required his wholehearted attention.

The second area of limitation dealt with by the *Rishonim* of Franco-Germany relates to the form of the voice to be included in Samuel's law. Beginning with R. Eliezer of Metz,<sup>22</sup> possibly based on Rab Hai Gaon,<sup>23</sup> scholars of Ashkenaz consistently refer only to a woman's singing voice as the bar to recitation of *Shema*. The barren statement of Samuel could have been taken to refer even to a woman's speaking voice, and indeed such is the clear implication of the Talmudic passage in *Kiddushin*. Nevertheless, the passage in *Berakot* was systematically limited to the singing voice.

17. *Sefer Yereim*, sec. 392. Cited in *Mordecai*, *supra* 8.

18. *Mordecai*, *supra* 8.

19. *Or Zarua*, *Laws of Kriat Shema*, sec. 133. He argues from the *reductio ad absurdum* by which a woman would herself not be permitted to recite *Shema*.

20. *Vis. Mishna Berakot* 2:1, 4:5-6; *Mishna Abot* 3:7; *Erubin* 65a.

21. *Tosefot Ri to Alfasi on Berakot* 24a, and Rabiah, *op. cit.* 9, in the name of R. Hai Gaon.

22. *Op. cit.*, no. 11.

23. *Op. cit.*, no. 15.

Two further restrictive chords are sounded by the Rabiah when he says:

All of the things mentioned above as sexually stimulating [*erwah*] 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, we need have no concern, for there is no arousal, as with regard to her voice, for one who is accustomed to hearing it.<sup>24</sup>

In this brief passage, R. Eliezer has introduced the principle that arousal or distraction is a function of *regilit*, of one's accustomedness to the particular exposure. Secondly, he has indicated the special standing of the unmarried woman, whose presence among men with hair exposed and whose voice is a commonplace, results in the absence of distraction or arousal even at the time of recitation of *Shema*. These further limitations on Samuel's law are picked up and developed by later scholars.

We must note at this point the striking absence, among the scholars thus far cited, of any references to the Talmudic passage in *Kiddushin* as that might relate to Samuel's dictum. The fact is that the *sugya* in *Kiddushin*, and R. Judah's use of Samuel's declaration there, runs directly counter to the interpretation of Samuel by these German scholars. Firstly, the context there is clearly not the recitation of *Shema*. Secondly, it is the woman's speaking voice, not her singing voice, to which R. Judah objects and for which he cites Samuel as support. We are almost forced to the conclusion that these scholars viewed the dramatic exchange between R. Judah and R. Nahman as a purely 'Aggadic account of R. Judah's attempt to discredit his supposed judge, with no actual Halakic implications to be drawn from the use of apparently legal statements.<sup>25</sup>

The emphasis by German scholars on the passage in *Berakot* to the exclusion of the passage in *Kiddushin* is counterbalanced by the almost diametrically opposite approach taken by all other schools of *Rishonim*.

R. Isaac Alfasi, seminal to all of Sephardic scholarship, established the basic alternative pattern by omitting entirely the dictum of Samuel from the codification of tractate *Berakot*. He thereby indicated, as was

24. *Op. cit.*, no. 9.

25. This analysis is implied by R. Samuel Edels by his inclusion of this passage in his *Hiddushei 'Aggadot. Maharsha, Kiddushin* 70a.

duly noted by subsequent authorities,<sup>26</sup> that he considered Samuel's law to have been rejected by the Talmud. Alfasi therefore recognizes no limitation on the permissibility of reciting the *Shema* while hearing a woman's voice. Consistent with his treatment of the *sugya* in *Berakot*, when Alfasi arrives at the passage in *Kiddushin*, he omits the first exchange between R. Judah and R. Nahman, thereby again eliminating Samuel's declaration that a woman's voice is sexually stimulating.

The Rif, however, does not totally eliminate the sequence of exchanges in which Samuel is cited. Of the three statements ascribed to Samuel by R. Judah, the Rif omits the first and the third, but allows the second to stand intact.<sup>27</sup> The omission of the first statement, that "a woman's voice is a sexual incitement," is in accord with Alfasi's position in *Berakot* that there is no general prohibition of *Kol 'Isha*. The elimination of the third dictum, that "one must not inquire after a woman's welfare at all," even via her husband, is in accord with the conclusion of the *Gemara* in *Baba Mezia* that when inquiry is made "through her husband it is permitted."<sup>28</sup>

The second law of Samuel cited by R. Judah, to which Alfasi grants Halakic authority, would prohibit inquiry after the welfare of a married woman (only) via a messenger. The implication left by the Rif is that the central concern of the *Halaka* is that a married woman not enter into any form of surreptitious relationship with another man lest it lead to adultery. It is certainly the character of the relationship rather than the woman's voice which is the subject of prohibition. Indeed, in this case of communication via messenger, the primary parties would not even be speaking to each other directly so as to raise any concern with sensuousness of the woman's voice.

Rashi likewise confirms that the core issue in communication via messenger is the quality of the social relationship which might result. He says: "lest through inquiry after her welfare they will become familiar with each other through their messenger, and come to love one another."<sup>29</sup>

Even the Tosafists omit any treatment of Samuel's law of *Kol 'Isha* in its site in *Berakot*, and fail to introduce it in any way in their treatment

26. *Hiddushei Ha-Rashba, Berakot* 25.

27. Alfasi, *Kiddushin* ch. 4.

28. *B. M.* 87a.

29. Rashi, *Kiddushin* 70b, s.v. *Ein shoalin bishlom isha*.

of the *sugya* in *Kiddushin*. They likewise seem to follow a path parallel to the Rif by suggesting the character of the social relationship as the basis of the proscription of inquiring after the welfare of a married woman.<sup>30</sup> The Tosafists do, however, give Halakic authority to the third statement in the *sugya* in *Kiddushin*.<sup>31</sup>

Before proceeding with the Rambam and the balance of Sephardic scholars, we must look at the *Rishonim* of Provence, who seem to pursue a path which approximates more closely that of the *Rishonim* of Germany while responding to the implied objections of the Rif to that approach.

The Rabad of Posquières was seemingly the first of the *Rishonim* to attempt a complete reconciliation of the *sugyot* in *Berakot* and *Kiddushin*. In the process, he negates the two basic limitations of Samuel's law introduced by the German *Rishonim*, namely that the context of the prohibition is the recitation of *Shema*, and that only a woman's singing voice is of concern. Following primarily the more extensive ruling of R. Judah in *Kiddushin*, the Rabad posits the normal speaking voice of women as the subject of Samuel's restrictive ruling, and does not limit the proscription against hearing such a voice to the time of the recitation of *Shema*.<sup>32</sup>

He does, however, make two limiting concessions, one in the direction of the *Rabiah*, and the other in the direction of the Rif. In the context of the recitation of *Shema*, he concedes that the speaking voice of one's wife is not a bar to performance of the act since "he is accustomed to it, and it does not agitate him." However, her singing voice, or the speaking voice of some other woman, would bar the performance. The significance of the concession is his allowance, as the *Rabiah* with him, of the operation of *regilut*, of accustomedness, to limit the applicability of Samuel's general law.

The second limitation suggested by the Rabad, following R. Judah's application of Samuel's dictum, is that the proscription of hearing a

30. Tosafot, *Kiddushin* 70b, s.v. *Ein shoalin*.

31. They resolve the apparent contradiction between *Kid.* 70b and *B. M.* 87a in two different manners. In *Kid.* 70a, s.v. *Ein shoalin*, they suggest that it is permissible to inquire, but not to send regards even via her husband. (Similarly R. Nissim, *Hiddushei Ha-Ran B. M.* 87a). In *B. M.* 87a, s.v. *Al yedei ba'alah*, they suggest that it is permissible to inquire as to her presence, but not as to her welfare even via her husband. Vis. E. Urbach, *Baalei Ha-Tosefot*, Jerusalem: 1968. (1935), pp. 492-94, and 501-3.

32. Cited in *Hiddushei Ha-Rashba, Berakot* 25.

woman's speaking voice applies "only to her voice in issuing greetings or in responding to greetings, as was the case there [in *Ḳiddushin*], for in such cases there is expression of warm friendship."<sup>33</sup> Through this statement the Rabad indicated, as did the Rif before him, that the central concern is not the presumptive sensuousness of her voice *per se*, but rather the character of the relationship which might be established between them by means of their communication with each other.<sup>34</sup> Reflecting back, then, on the first concession of the Rabad, he implied that even as to the recitation of *Shema* it would only be a woman's singing, or her voice in greeting him directly, which would bar his performance of the act, but not simply the fact that he hears her speaking.

Given this second limitation, it is not at all clear that the Rabad would recognize the existence of a general bar to hearing the singing voice of a woman, other than in the case of recitation of *Shema*, in the absence of some special manifestation of warm friendship being expressed directly to the man listening to her.

We do, however, move closer to such a general ban in the writings of R. Menaḥem Ha-Meiri. After extensive citation of the position of the Rabad, the Meiri suggests, albeit hesitantly, a possible analogy between a woman's greetings and her singing voice.<sup>35</sup> The full implication of that analogy, not spelled out by the Meiri, is that Samuel's law not only proscribes at all times the warm exchange of friendly greetings, but also the hearing of a woman's singing voice.<sup>36</sup> Given the loss of his writings for some six hundred years, however, the Meiri's suggestion finds no echo in subsequent Halakic writings, though a similar conclusion is reached on other grounds.

While raising this possibly most severe of positions, the Meiri also

33. *Ibid.*

34. In the course of his exposition, Rabad suggests why Rif might have concluded that Samuel's law had been rejected by the *Gemara*. Since the *Gemara* had previously concluded that contact with the nude backside of a woman did not bar recitation of *Shema*, then certainly hearing her voice would not bar it. Rabad suggests, however that such physical contact with one's own wife, absent any visual stimulation, could indeed be less arousing than hearing a warm greeting from another woman whom he could also see at the same time.

35. *Bet Habeḥirah*, *Berakot* 24a.

36. The fact that Meiri offers this analogy in the context of the *sugya* in *Berakot*, but makes no reference to a woman's singing voice in his treatment of the *sugya* in *Ḳiddushin*, might, however, lead us to suggest that he agrees with Rabad as described above.

suggests a line of thought allowing for great flexibility in the application of Samuel's law. In discussing the ban on warm exchanges of greetings, Meiri suggests that the stringency of Samuel's law may not be applicable "to a person who knows of himself that the character of his inclination is not such as to lead him to become habituated to sexual arousal through such matters. But concerning this and other such matters the Torah says 'you shall fear your Lord, I am God.'"<sup>37</sup> Despite the final note of warning, the Meiri has introduced an extensive subjectivity which would allow each individual to draw for himself the line beyond which he might not proceed.

This view of the dictum of Samuel not as binding law but as moral teaching to be applied by each individual as he deems most appropriate for his personal religious condition is carried even further among Spanish scholars, in particular by the *Riṣba*, who applied this approach even to areas of sexual arousal other than a woman's voice.<sup>38</sup>

An interesting parallel to this pattern is the position of R. Judah He-Ḥasid of Regensburg. In the *Sefer Ḥasidim* he suggests as one of the reasons that an unmarried man ought not be a teacher of young women, the law of Samuel, *Ḳol b'isha erwa*.<sup>39</sup> The context clearly does not suggest that the female student might burst into song, and so we are left with a single German *Rishon* who applies Samuel's dictum to the speaking voice of women, as well as to a broader context than the recitation of *Shema*.

A further fascinating element of R. Judah's treatment of this issue is that he is first to propound a reciprocal restriction against women hearing the voices of men.<sup>40</sup> While his legal basis for this extension is exceedingly doubtful,<sup>41</sup> the resultant law of *Ḳol 'Ish* is certainly consistent with the law of *Ḳol 'Isha* as analyzed by Rif and Rabad. Since, according to them, the fundamental concern is not the voice *per se* but the character of the social relationship which might result, what difference should it make whether it is her voice or his which excites the interest in pursuing an illicit relationship?

37. *Bet Habeḥirah*, *Ḳiddushin* 70b.

38. *Riṣbah*, end of *Ḳiddushin*, s.v. *Weasiknah*. Cited with approval by R. Solomon Luria, *Yam Shel Shlomo*, *Ḳiddushin*, chap. 4 *din u'pisqa* 25.

39. *Sefer Ḥasidim*, Parma, sec. 835; Bologna, sec. 313.

40. *Ibid.*, Parma, sec. 59, Bologna, sec. 614.

41. Keuben Margoliot, *Meḳor Ḥesed*, commentary to *Sefer Ḥasidim*, Bologna, sec. 614, p. 307 n. i.

Turning now to the Rambam and the Spanish *Rishonim*, we find the clear predominance of the approach of Alfasi. The Rambam, like Alfasi, omits entirely the law of Samuel from his treatment of things that would bar the recitation of *Shema*.<sup>42</sup> Rabbenu Asher specifically indicated that Samuel's declaration, that a woman's voice is sexually inciting, is inapplicable to the context of the recitation of *Shema*.<sup>43</sup> Jacob ben Asher, author of the *Turim*, following the unanimous opinion of his three primary authorities, Rif, Rambam, and Rosh, omits the law of *Kol 'Isha* from the laws concerning the recitation of *Shema*.<sup>44</sup>

In dealing, however, with the statements ascribed to Samuel in the *sugya* in *Kiddushin*, only the Rambam preserved intact the holding of the Rif. Using the same language as the Rif, he records as law only the second of the three dicta of Samuel, namely, "one may not inquire at all after a woman's welfare, even via a messenger."<sup>45</sup> Rabbenu 'Asher<sup>46</sup> and his son, Jacob baal HaTurim,<sup>47</sup> departed from the position of the Rif in this area and held, in accord with Tosafot,<sup>48</sup> that one may not send greetings to a married woman even via her husband, though asking after her welfare of her husband is permissible.

Thus far, Samuel's declaration that a woman's voice is *erwah*, is a sexual stimulant, has had limited Halakic impact. For German *Rishonim* it has meant only a bar to the recitation of *Shema* while hearing a woman's singing voice. For North African and Spanish *Rishonim* as well as the Tosafists it has meant limited restrictions on the exchange of warm greetings with married women. Only among Provençal scholars have both contexts, that of recitation of *Shema* and that of exchange of greetings with married women, been affected, and among them only in the Meiri is there any implication of the possibility of a more general ban on hearing the singing voice of women at all times.

The foundation for a radical extension of the applicability of Samuel's law is laid by a further statement of the Rambam. Negative commandment number 353 in the Rambam's *Sefer Hamizwot* begins as follows:

42. Maimonides, Code, *Laws of Kriat Shema* 3:16.

43. Rabbenu Asher, *Berakot*, sec. 37.

44. *Tur*, O. H., chap. 75.

45. Maimonides, Code, *Laws of Prohibited Relations*, 21:5.

46. Rabbenu Asher, *Kiddushin*, chap. 4, sec. 4.

47. *Tur*, Eben Ha-ezer, chap. 21.

48. Tosafot *Kiddushin* 70b, s.v. *ein shoalin*. Vis. above 25.

We are warned against approaching any of the 'Arayot [women prohibited to us in marriage], even short of intercourse, as by embracing, or kissing, or other similar obscene acts, as it is said, "None of you shall approach to any that is near of kin to him, to uncover their nakedness" [Lev. 18:6]. As if He had said, You shall not approach through any nearness that might lead to forbidden union.

In his Code, Maimonides offers further examples of activities which are prohibited under this commandment lest they lead to forbidden acts of intercourse.<sup>49</sup> He then lists a group of activities banned rabbinically for the same reason, and among them lists, "and even to hear the voice of an *erwah* [a woman prohibited in marriage] or to see her hair, is prohibited."<sup>50</sup>

Despite the similarity in language, it is critical to note that the Rambam here has still not adopted the law of Samuel, but continues in essence his agreement with Alfasi. Rambam has not declared a woman's voice to be *erwah* (which was the essence of Samuel's dictum *Kol b'isha erwah*); rather he has indicated that hearing a woman's voice, similar to viewing her hair or ogling her body in a sensuous manner, is an activity which might lead to intercourse and is therefore banned in the context of the relationship to an *erwah*, a woman with whom intercourse is prohibited. Indeed, the Rambam specifically excludes from the full severity of this law both an unmarried woman, with whom marital intercourse would be permissible, and one's wife while she is a *niddah*, since intercourse with her will soon be permissible.<sup>51</sup> Rambam's careful language, therefore, is that it is prohibited *lishmoa Kol ha-erwa*, "to hear the voice of an *erwah*."<sup>52</sup>

The Rambam thus agrees with Alfasi, firstly that the context of concern with a woman's voice is not the recitation of *Shema*, but rather the social relationship between a man and woman prohibited to him in marriage. Secondly, he agrees with Alfasi that the voice at issue is not the singing voice but the normal speaking voice. He has, however, gone beyond the Rif in his specification of a woman's voice as the focus of the

49. Maimonides, Code, *Laws of Prohibited Relations*, 21:1.

50. *Id.* at 21:2. The penalty for these is lashes by Rabbinic ordinance (*Makkat mardut*).

51. *Id.* at 21:3 and 4.

52. *Id.* at 21:2.

ban on the development of warm social relationships between persons married to others.

Definitive indication that for the Rambam, *Ḳol 'Isha* referred to the speaking voice is to be found in one of his Responsa.<sup>53</sup> Upon being asked whether it is permissible to listen to Arabic music, Rambam fulminates against all music, whether instrumental or vocal. He lists five possible prohibitions applicable in various circumstances when music is heard.<sup>54</sup> He says: "If the singer is a woman, there is a fifth prohibition, since they [the Sages] of blessed memory, said *Ḳol b'isha erwah*, and *a fortiori* if she is singing."<sup>55</sup> The use of the *a fortiori* clearly indicates that the dictum of Samuel, taken by itself, refers not to the singing voice, but to the speaking voice. This responsum likewise reinforces the Rambam's emphasis on social context. After all, he is speaking here of a woman singing obscene songs, with instrumental accompaniment, at a nonreligious festivity at which wine is being consumed.<sup>56</sup>

A subsequent citation of the view of the Rambam, however, led eventually to a completely different interpretation of his position. R. Jacob ben Asher, in an extensive paraphrase of this entire section of the Rambam's code, wrote, *We-asur lishmoa Ḳol erwah oh lirot sa'arah*.<sup>57</sup> While he omitted the definite article *he* prior to the word *erwah*, he was clearly using *erwah* in the same fashion as the Rambam, as referring to the woman, not as an adjectival description of the voice. The word *erwah* continues to function for R. Jacob as the subject of the next phrase *oh lirot sa'arah*, "or to see her hair," meaning the hair of the woman who is an *erwah*.

R. Joseph Karo, in his *Shulḥan 'Aruk*,<sup>58</sup> preserved the omission of

53. Jehoshua Blau, *Responsa of Moses B. Maimon, Mekizei Nirdamin* (Jerusalem: 1960) vol. 2, pp. 398-400, no. 224.

54. Jacob b. Asher, *Tur, Oraḥ Ḳaim*, sec. 560, points out an apparent contradiction between this responsum and the position of Rambam in *Mishne Torah, Laws of Fast Days 5:14*. In *Mishne Torah*, Rambam prohibits singing unaccompanied by instruments only at a feast when wine is being drunk, while in the responsum he contends that singing is prohibited at all times. Indeed the very first of the five prohibitions, against listening to foolishness and obscenity, whether sung or merely spoken, lends to this entire responsum the sound of the moralist borrowing the precision and the formulæ of the jurist. Viz. *Guide to the Perplexed*, Pt. 3, chap. 8.

55. *Op. cit.* Responsum no. 224 at p. 400.

56. Cf. Cohen, *op. cit.*, p. 174.

57. *Tur, E. H.*, chap. 21.

58. *Shulḥan Aruk, E. H.* 21:1.

the definite article, *he*, as he had found it in the *Tur*.<sup>59</sup> Yet he too recognized clearly the fact that the Rambam follows Alfasi in the inapplicability of Samuel's law to the recitation of *Shema*.<sup>60</sup> Indeed, Karo in the *Bet Yosef* asserts that the final *Halaka* is in accordance with Rambam in this regard. However, he adds, with a bow toward the Rabiah and other German *Rishonim*, "Nevertheless, it is initially best to avoid [*Tob lizaher*] seeing a woman's hair or hearing her singing voice while reciting the *Shema*."<sup>61</sup> (emphasis added). In accordance with this reservation, he records in the *Shulḥan 'Aruk*, "One should avoid [*yesh lizaher*] hearing a woman's singing voice during the recitation of *Shema*."<sup>62</sup>

The result of all this is that R. Joseph Karo records in his *Shulḥan 'Aruk* three separate laws deriving from the initial statement of Samuel, each of which is the exclusive opinion of one or more separate *Rishonim*, but to all of which no prior *Rishon* had consented.

1. He follows the Tosafists, Rabbenu Asher, and the *Tur* in prohibiting the sending of warm regards to a woman, even via her husband.<sup>63</sup>

2. He follows the Rambam and the *Tur* in treating a woman's speaking voice as a possible "approach" to intercourse, therefore banning conversation with a woman who is an *erwah* to the particular man.<sup>64</sup>

3. He tends toward the position of the Rabiah and other German *Rishonim* in preferring the avoidance of hearing a woman's singing voice while reciting the *Shema*.<sup>65</sup>

The validity of each of these three laws depends upon totally different interpretations of the two basic *sugyot* in *Kiddushin* and *Berakot*. As well, they are reflections of interpretations of Samuel's law which are at total variance from each other both as to the context of its applica-

59. The implication of the absence of the letter *he* in the text of the Rambam used by both the Baal Ha-Turim and Karo is emphasized by the quotation of the Rambam without the *he* by Karo in his comments to the *Tur, Bet Yosef, E. H.*, chap. 21, s.v. *Umah sheketab*. However, the Rome edition of Maimonides' Code includes the *he* as in our printed editions.

60. *Bet Yosef, Tur, O. H.*, chap. 75, s.v. *Katab ha-Rosh*.

61. *Ibid.*

62. *Shulḥan Aruk, O.H.* 75:3.

63. *Shulḥan Aruk, E.H.* 21:6. Rif and Rambam disagree.

64. *Id.* at 21:1, Rabiah, other German *Rishonim*, and Rif disagree.

65. *Shulḥan Aruk, O.H.* 75:3. Rif, Rambam, Rosh, and *Tur* disagree.

bility and as to the form of the voice which is the subject of concern. Despite all of this, the development of a thesis which reconciled all three of these laws and subsumed them under a unified Halakic principle was not long in coming, and when it came, it reshaped the entire understanding of Samuel's law and gave it broader applicability than any *Rishon* had even conceived possible.

R. Joseph Karo had explicitly stated in the *Bet Yosef* that the *Halaka* remains in accordance with the Rambam, that the law of *Kol 'Isha* is not restrictive on the recitation of *Shema*, although he advised following the more restrictive opinion of the German *Rishonim*.<sup>66</sup> Yet, as noted above, in the *Shulhan 'Aruk* he omits reference to the Rambam's position and records only his advisory opinion in the language of *yesh lizaher*, "one should avoid."<sup>67</sup> This apparently led R. Moshe Isserles, as well as almost all subsequent scholars, to assume that Karo had shifted his position and adopted fully the opinion of the Rabbah banning the recitation of *Shema* while hearing a woman's singing voice. It is for that reason that the Rama does not take issue with Karo, but merely adds the additional note sounded throughout the writings of German *Rishonim*, that "a voice to which one is accustomed is not to be considered as *erwah*."<sup>68</sup> In this fashion, Karo's advice came to be treated as law.

A second critical development occurred in relation to Karo's treatment of the Rambam's position of voice as an "approach" to intercourse. In that context, neither the Rambam nor the *Tur* nor Karo had indicated any special status of the singing voice. On the contrary, the entire premise of the Rambam's new suggestion<sup>69</sup> was that even a woman's speaking voice could cause the development of a social relationship which might lead to prohibited intercourse. The only context, even according to Karo, in which the singing voice raised any special problem was in regard to the recitation of *Shema*, and there, we have noted, he was following the German rather than the North African and Spanish schools. However, at this point, the omission by the *Tur* and Karo of the definite article *he* from the Rambam's phrase *kol ha-erwa* led to a radical reinterpretation of Karo's intent and a major new restriction on hearing a woman's singing voice.

66. *Bet Yosef*, *Tur O.H.*, chap. 75, s.v. *Katab ha-Rosh*.

67. *Shulhan Aruk*, *O.H.* 75:3.

68. *Ibid.*

69. *Vis. n.* 43 and related text.

R. Joshua Falk, in the *Perisha*, his commentary on the *Tur*, is the first to indicate that there were now two alternative ways of interpreting the phrase *kol erwah*.<sup>70</sup> Firstly, that *erwah* is a noun and is the subject of *Kol*, to be translated as "the voice of an *erwah*." This interpretation would exclude an unmarried woman as well as one's own wife. It was this meaning which was clearly intended by the Rambam as indicated by both his use of the definite article and his specific exclusion of unmarried women and one's own wife even while a *niddah* from the consequence of this law.<sup>71</sup> But the absence of the *he* in the *Tur* makes a second interpretation possible, namely, that the word *erwah* is an adjective describing *kol*, to be translated as "a sexually stimulating voice." Such a voice, suggests R. Falk, would be a singing voice as opposed to a mere speaking voice. Of course this interpretation would leave no room for the exclusion of an unmarried woman, nor even of one's own wife since it is the voice which is designated as *erwah*, not the person.

R. Falk proceeds unequivocally to indicate his preference for the first interpretation, since the general context of the law under discussion would produce, using the second interpretation, a total ban on the hearing of a woman's singing voice, and, as R. Falk states, "why should it be prohibited for a man to hear the [singing] voice of his wife at a time other than prayers?"<sup>72</sup>

Subsequent authorities, while preserving the specific objection of R. Falk to limiting a man's hearing his own wife singing, nevertheless opt for the second interpretation of *Kol erwah*. Thus R. Joel Jaffa Sirkis, while indicating the specific exclusion of one's own wife,<sup>73</sup> indicates his having opted for the newer interpretation when he says, "One ought be severe as to a woman's singing voice even as to the recitation of *Shema*."<sup>74</sup> (emphasis added). He has gone so far as to take the *Tur*'s statement *Assur lishmoa kol erwah*<sup>75</sup> as a general law banning the hearing of a woman's singing voice, which is now to be applied to the more specific situation of recitation of *Shema*.

A further clarification of this new approach is made by R. Samuel

70. *Perisha to Tur E.H.*, chap. 21, sec. 2.

71. *Vis. n.* 41 and related text.

72. *Op. cit.*, n. 57.

73. *Bet Hadash to Tur E.H.* chap. 21, s.v. *Weasur Lishmoa*.

74. *Bet Hadash to Tur O.H.* chap. 75, s.v. *Weasur*.

75. *Tur, E.H.*, chap. 21.



b. Uri of Fürth in the *Bet Shmuel*, his commentary to the *Shulhan 'Aruk*. Following the second interpretation, he explicitly uses the phrase *Kol erwah* as meaning a woman's singing voice in contradistinction to *Kol diburah*, her speaking voice.<sup>76</sup> He also preserves, and possibly even extends, the reservation of R. Sirkis in the *Bet Hadash*, that the general prescription does not apply to one's wife or to an unmarried woman.<sup>77</sup>

The new principle is then given explicit formulation by R. Abraham Abele Gumbiner in the *Magen Abraham*: "The singing voice of a married woman is always forbidden to be heard, but her speaking voice is permitted."<sup>78</sup>

This new principle, consistently read into the earlier major codes, is of course productive of a position more severe than any heretofore contemplated as to a woman's singing voice. However, by the same token, the reinterpretation had produced a major new area of leniency. Previously, the Rambam's code or the *Shulhan 'Aruk* could have been read so as to prohibit a man from hearing a woman's speaking voice, even in casual conversation. Indeed, as we have indicated, that was clearly the intent of all but the Franco-German *Rishonim*. Now, having established that the term *Kol erwah* refers exclusively to the singing voice, no further objection to casual conversation would be raised. Thus R. Gumbiner, in capping this lengthy process of reinterpretation, indicates in a single simple sentence that having taken away with one hand, he has given with the other. Singing is forbidden, but speaking is permitted.

But while the language of the major *Rishonim* was thusly reinterpreted, it was not easy to escape the implications of the *Gemara* in *Kiddushin* in which, clearly, Samuel's law was applied to simple exchange of greetings. Undaunted by the apparent contradiction and continuing to insist that the sole applicability of *Kol b'isha erwah* was to the singing voice, the *Aharonim* were compelled to resolve the problem. Perhaps most quaint of the solutions is the suggestion that "we must say that it was their custom at that time to respond to greetings with melody, in a singing voice, so that it is impossible to say that *Kol b'isha erwah* applies."<sup>79</sup>

76. *Bet Shmuel* to *Shulhan Aruk*, E.H. chap. 21, sec. 4.

77. *Ibid.* Except at times of prayer.

78. *Magen Abraham* to *Shulhan Aruk*, O.H., chap. 75, sec. 6.

79. *Zeidah La-Derek Al Ha-Torah*, Issakar Baer Eilenburg, cited in *Responsa Bet David*, no. 188.

Equally engaging, now that the ban against women's singing was so total, was the question of the Song of Deborah the Prophetess. This problem lent itself, however, to a number of different solutions, primary amongst them either that she sang together with a male companion, Barak ben Abinoam, or that since her words were by divine inspiration, they simply did not constitute *Kol 'Isha*, the voice of a woman.<sup>80</sup>

Up to this point, the singing voice of an unmarried woman is consistently excluded from the general proscription against hearing a woman's singing voice.<sup>81</sup> This final gap, however, was severely sealed by R. Joseph Te'omim, author of the *Peri Megadim*. Starting with the previously agreed upon position he states: "The singing of an unmarried woman, other than at the time of recitation of *Shema*, is permissible. But it seems logical that an unmarried woman who is a *niddah* is included in the category of *erwah*."<sup>82</sup> Given the continuing practice of unmarried women not going to the *miqvah*, any girl having begun menstruating would remain in a state of *niddah* until her immersion just prior to marriage.<sup>83</sup> In this manner, R. Te'omim has extended the general ban on hearing a woman's singing voice to include even unmarried women past the age of puberty.

It is striking that neither he nor subsequent authorities, who only rely on him as the source of this extension, seem disturbed by the implicit position of the Rambam<sup>84</sup> and the identical explicit position of R. Jacob Tam,<sup>85</sup> that a *niddah* is not included in the category of *erwah*. Sustaining this latter position would have preserved the exemption for unmarried women, but the movement was instead in the more stringent direction.

This new status of the unmarried woman was further reinforced when R. Moses Sofer, establishing the pattern for all later *Aharonim*, interpreted the position of the *Bet Shmuel* in accordance with the caveat of R. Te'omim. R. Sofer explicitly reads the *Shulhan 'Aruk* as having banned the singing voice of any woman except, as he interprets the *Bet Shmuel*, an unmarried woman who is not a *niddah*.<sup>86</sup>

80. *Vis. Ozar Ha-Posekim, Eben Ha-Ezer*, vol. 9, p. 50.

81. *Perisha, Bet Shmuel, and Magen Abraham* to *Shulhan Aruk*, O.H., chap. 75.

82. *Peri Megadim, Mishbezot Zahav*, to *Shulhan Aruk*, O.H., chap. 75.

83. *Vis. Shabbat* 64b and *Responsa R. Isaac b. Sheshet*, no. 425.

84. Maimonides, *Code, Laws of Prohibited Relations* 21:3.

85. R. Jacob Tam, *Sefer Ha-Yashar, Responsa*, sec. 80(1).

86. *Responsa Hatam Sofer, Hoshen Mishpat*, no. 190.

As indicated earlier in this article, the *Hatam Sofer* was also the first person to introduce into discussion of *Kol 'Isha* the dictum of R. Joseph, in the *Gemara Sojah*,<sup>87</sup> banning responsive singing by men and women together. It was logical for him to do so since the question submitted to him was whether the synagogue in Vienna could have a mixed choir at a reception it was to host during the Congress of Vienna in September of 1814.<sup>88</sup> The inclusion of the dictum of R. Joseph added a further element to the new uniformity and consistency which the *Aharonim* had created.

These *Aharonim*, from R. Joshua Falk through R. Moses Sofer, shaped a whole new understanding of Samuel's law, and an extensive new context for its applicability. As we had seen, for German *Rishonim* the dictum *Kol b'isha erwah* meant only that the *Shema* could not be recited while listening to a woman singing, since that would be distracting and would prevent proper concentration. For the *Rishonim* of North Africa and Spain, Samuel's law affected no restriction on the recitation of *Shema*, but contributed to a ban on such verbal communication as might lead to an illicit sexual relationship. For Provençal *Rishonim* both concerns were valid and both bans adopted with the inherent limitations of each kept intact.

For the *Aharonim*, however, neither distraction from due attentiveness nor the likelihood of illicit sexual intercourse resulting is the basic thrust of Samuel's law. For them, *Kol b'isha erwah* is a declaration that a woman's singing voice, under all circumstances, is to be considered a form of nudity, to be exposed exclusively to one's husband. 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.<sup>89</sup> One might suggest that being accustomed to a woman's voice limits its distracting quality, or limits the likelihood of its arousing someone to perform an illicit act of intercourse. But the *Aharonim*, in effect, suggest that being accustomed to seeing a woman's nudity in no way makes the act itself permissible.

The history of the new law of *Kol 'Isha* since the time of R. Moses Sofer is largely the continuing extension of the applicability of the prohibition to additional situations in which a woman's voice may be heard

87. *Sojah* 46a.

88. Responsa, *Hatam Sofer*, H.M., no. 190.

89. E.g., Rabbiah, *op. cit.*, n. 18; Rabad, *op. cit.*, n. 26; Meiri, *op. cit.*, n. 31; Rifbah, *op. cit.*, n. 32; Luria, *op. cit.*, n. 32; Isserles, *op. cit.*, n. 55.

in song.<sup>90</sup> There have, however, been three significant attempts among contemporary scholars to partially stem the tide toward ever increasing severity.

R. Moshe Feinstein, while acceding entirely to the position of R. Joseph Te'omim and adopting the full implications of a woman's voice as a form of nudity, fights a valiant battle to at least prevent the extension of the prohibition to girls over the age of nine, or possibly, as his questioner seemed to suggest, even to girls from the age of three.<sup>91</sup> He does, however, concede that with the presumption of the onset of puberty being set at age twelve, the full prohibitions of *Kol 'Isha* begin with girls at that age.<sup>92</sup>

R. Yehiel Weinberg, author of *Seridei 'Esh*, was asked by representatives of a Jewish school in France whether it was permissible for the male and female students to sing *Zemirot* together on the Sabbath.<sup>93</sup> His permissive response was based on three arguments. The first was a technical argument based on the legal principle that "two voices are not heard" simultaneously. Thus, since the boys and girls would be singing together, there would be no singling out of girls, and therefore no prohibition would apply.<sup>94</sup>

For his second, more significant argument, R. Weinberg harks back partially to the Rambam and other *Rishonim* of the Spanish school to insist that the rationale for banning a woman's voice at times other than the recitation of *Shema* is that it would arouse sensuous thoughts and provide sexual pleasure. That being the case, he argues, the singing of *Zemirot* certainly ought not be banned since "that arouses religious feelings, not thoughts of sin."<sup>95</sup> The importance of this position lies in the fact that it constitutes a major departure from the treatment of a woman's singing voice as a form of 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.

The final argument made by R. Weinberg is also a reversion to the

90. See above n. 1-4. Cf. *Ozar Ha-Posekim*, E.H. chap. 21, par. 1, vol. 9, pp. 49-50.

91. Responsa *'Iggerot Moshe*, *Orah Hayim*, no. 26.

92. *Id.* at p. 70, vol. 2.

93. Responsa *Seridei Esh*, vol. 2, no. 8.

94. Of course this argument could likewise lead to the conclusion that anything but solo, even a duet of two women, would be permissible.

95. Responsa *Seridei Esh*, *op. cit.*, at p. 16, col. 1.

*Rishonim*, but this time to the *Mordecai*, the great compendium of the *Rishonim* of Franco-Germany. R. Weinberg suggests that even given the applicability of the prohibition of *Kol 'Isha* in this case, the ban should be overridden by the principle of *Et la'asot la'hashem*, "It is time to work for the Lord, they have made void Thy law."<sup>96</sup> While recognizing the grave dangers involved in assuming such authority, R. Weinberg suggests that the lightness of the prohibition and the seriousness of the possible consequences commend this course to him nevertheless. Combining Halakic acumen and awareness of reality, he says:

However, in our case, since there is no absolute prohibition, but rather a righteous custom and practice of modesty, it is possible to marshal support and to permit the practice in France. For the situation of Jewry has arrived at a point of crisis, and if we do not grasp educational methodologies which are tested and crowned with success . . . the Torah will, God forbid, be forgotten among Jews."

He proceeds to cite precedent for this suspension of *Kol 'Isha* from the *Mordecai*, who acted similarly when the consequences might have been the suspension of learning in the academies.<sup>97</sup> R. Weinberg concluded that despite the apparent dissimilarity between his concern and that of the *Mordecai*,

they are actually one and the same. In countries like Germany and France, women would feel disgraced and see it as a deprivation of their rights if we prohibited them from joining in the rejoicing over the Sabbath by singing *Zemiroth*. This is obvious to anyone familiar with the character of women in these countries. The prohibition could drive women away from religion, God forbid."<sup>98</sup>

Again the significance of this concluding argument by R. Weinberg lies not so much in the permissive conclusion as in the method of his arriving at the conclusion. Here, as in his second approach, R. Weinberg does not view the prohibition of *Kol 'Isha* as an absolute ban equivalent to other forms of nudity. Rather, he views it as "a righteous custom and

96. Psalms 119:126. *Id.* at p. 16, col. 2.

97. *Ibid.*

98. *Mordecai, Berakot*, sec. 80.

99. *Responsa Seridei Esh, op. cit.*, at p. 17, col. 1.

practice of modesty," as a functional device designed to assure the highest possible standard of sexual morality. Where the attempt to enforce the supralegal standard would result not in greater religiosity, but in the alienation of women from Judaism altogether, he feels that it is appropriate to suspend the enforcement of that standard.

Similar to this third argument by R. Weinberg is a brief suggestion made by R. Abraham Isaiah Karelitz, known as the *Hazon 'Ish*. Dealing with the ban on hearing a woman's singing voice during *Shema* and during Torah study, the *Hazon 'Ish* cites the *Mordecai* and follows that with a quotation from the *Tosefot Ri*, "that if he can concentrate and not pay attention to the singing voice, it is permissible."<sup>100</sup> He proceeds to extend these principles from hearing a woman's singing voice to seeing her hair, and concludes:

For these reasons it is possible to sustain the permission nowadays to preach publicly and to refer to Rabbinic passages although there are women with uncovered hair before him. Because of *Et la'asot* and because it is possible to rely on the opinion of the *Tosefot Ri* that since he does not pay attention to it, it is permissible.<sup>101</sup>

Without entering into the problem of the analogy between a woman's singing voice and her uncovered hair, what is vital in R. Karelitz's treatment of *Kol 'Isha* is that he reintroduces the functional concerns of the *Rishonim*. Rather than treat a woman's singing voice as an absolute form of nudity, invariably barring the recitation of *Shema*, he concerns himself with the underlying issue of distraction from concentration and gives approval to a subjective resolution depending on whether distraction actually occurs or not. In this regard he reopens for our consideration the voluminous literature of the *Rishonim* propounding *regilut*, accustomedness, as a limitation of the ban on hearing woman's voice.<sup>102</sup>

Thus, while R. Moshe Feinstein was barring the floodgates to further severity, R. Yehiel Weinberg and the *Hazon 'Ish* were opening the possibilities for a substantial departure from the entire approach of the *Aharonim* and for a significant reversion to the mode of treatment of

100. *Hazon 'Ish, O.H.—Moed, Laws of Kriat Shema*, end of sec. 16.

101. *Ibid.*

102. See above n. 70.

this entire issue by the *Rishonim*. Such a return to the approach of the *Rishonim* will compel a reevaluation of the basic question which they posed. Firstly, is a woman's singing voice a distraction from proper concentration on *Shema*, prayer and study? Secondly, is the singing voice of a woman under all circumstances productive of the type of social relationship which could result in illicit intercourse? And if the answer to the second question is only partially positive, how does the enforcement of that standard weigh in the balance with the possibility of substantial alienation from Judaism? These are the questions which the *Rishonim* faced, which the *Aḥaronim* obliterated, and which have now been reentered into consideration to shape the future consequences of Samuel's dictum.