

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

86 - KOL ISHA OU ISRAEL CENTER - SPRING 2018

A] STRUCTURE

The different areas of halacha which are comprised in kol isha:

1. The woman's issues:-
 - (i) Pritzut/Tzniut - issues of personal dignity and singing in public.
 - (ii) Lifnei Iver - not to directly cause men to commit aveira.
 - (iii) Ahavat Re'im - sensitivity to men's feelings.
2. The man's issues:-
 - (i) Saying divrei Torah and davening etc. whilst listening to a woman's voice.
 - (ii) Listening to a woman's singing to derive sensual pleasure.
 - (iii) Ahavat Re'im - sensitivity to women's feelings.

B] THE SUGYA IN SOTAH: SINGING AND KALUT ROSH

1. **מתני'.** משבטלה סנהדרין - בטל השיר מבית המשתאות, שנאמר: בשיר לא ישתו יין וגו' אמר רב יוסף: זמרי גברי ועני נשי - פריצותא, זמרי נשי ועני גברי - כאש בנעורת. למאי נפקא מינה? לבטולי הא מקמי הא

סוטה מח.

The Mishna in Sotah deals with the loss of 'song' from the Jewish world after the Churban. The Gemara then discusses different types of responsive song. If the men lead the song and the women are listening and responding, that is labelled 'pritzut' (the opposite of tzniut). But if the women are leading the song and the men responding, that is compared to a destructive fire. Although the first case is not good, the second is far worse!

2. כאש בנעורת - לפי שהעונה מטה אזנו לשמוע את המזמר לענוה אחריו ונמלאו האנשים נוחנים לצם לקול הנשים וקול זאשה ערוה כדכתיב **השמיעני את קולך** ומזעיר את ילרו כאש בנעורת. אבל זמרי גברי ועניין נשי קלת פריצות יש, דקול זאשה ערוה אבל אינו מזעיר ילרו כל כך שאין המזמרים מטיים אזנס לקול העונים

רש"י סוטה מח.

Rashi explains that when the men listen intently to the women it provokes the yetzer hara directly. When the women listen and respond to the men there is less yetzer hara. Rashi describes that as קלת פריצות - a lower level pritzut.

• The context of this Chazal is clearly a concern with singing which creates an inappropriate atmosphere. Either it distracts generally from focus on the Churban, or, in a mixed group of men and women, it can descend into sexual flirting and kalut rosh.

C] DEFINING 'PRITZUT' - SINGING AND PERSONAL DIGNITY

3. ויגד תהיה לך על אונקד והיה בשבתך חוץ ונפרתה בה ושבת וכסית את צאתה: כי ה' אלקיך מתהלך בקרב מחנך להצילך ולתת איביך לפניך והיה מחנך קדוש ולא יראוהו בך ערות דבר ושב מאחריך

דברים כ"ג-טז

The Torah includes a mitzvah to keep the 'battlefield bathroom' clean and dignified. This involves a constant awareness that God's existence and presence is real at all times and that, as such - our lives and surroundings must remain 'kadosh'. Part of this includes not allowing any 'ervah' to be seen around us in such a way that expels and excludes kedusha and God's presence.

4. יהא צנוע - ... וכסמ"ק מונח לניעות למזבח דלורייתא

ביאור הלכה סימן ג

The Shulchan Aruch rules the obligation to be tzanua¹. The Biur Halacha quotes the Smak who lists this as one of the 613 mitzvot.

5. הגיד לקד אדם מה טוב ומה ה' דורש ממך כי אם עשות משפט ואהבת חסד והצנע לקד עם אלהיך (מלודת ליון: וכלנע - מלשון לניעות וכסתר)

מיכה וזו ומצודת ציון זא

The concept of tzniut is one of the three fundamental principles of Judaism, as outlined by Micha. One explanation of 'tzniut' is 'hidden' - not to conduct one's religious life in an exhibitionist or arrogant way.

• One of the first issues therefore is to identify whether singing or performing in public (for a man or woman) is an appropriate expression of personal dignity. This will depend greatly on context - the audience, the status of the performer, the type of performance.

6. ואלו יוצאות שלא בכתובה - העוברת על דת משה ויהודית

משנה מסכת כתובות זא

A woman loses her rights to a ketubah if she breaches 'Dat Moshe' or 'Dat Yehudit'. Dat Yehudit relates specifically to issues of tzniut and the appropriate behavior of a Jewish woman.

7. ואיזו היא דת יהודית? הוא מנהג הצניעות שנהגו בנות ישראל

רמב"ם הלכות אישות פרק כד הלכה יב

The Rambam defines Dat Yehudit as the 'minhagim of tzniut' of Jewish women.²

• What is the Dat Yehudit of religious communities (across the board) regarding women singing in public?

D] THE SUGYA IN BERACHOT: ERVA AND A WOMAN'S SINGING VOICE

8. השמיעני את קולך כי קולך ערב ומרציד נארה

שיר השירים ביד

Shiur Hashirim praises the pleasantness of a woman's singing voice and emphasizes the desire of others to hear it.

9. קולך ערב - מדמשבח לך קרא בגוה - שמע מינה תאזכר היא

רש"י שם

Rashi explains that the 'pleasantness' of the woman's voice has a 'flip-side' - the desire of men to listen to it!

10. חז חסיד שאל לאליה זכור לטוב: ערום מהו שיקרא שמע? אמר ליה: ולא יראה בך ערות דבר - 'ערות דיבור'

תלמוד ירושלמי מסכת תרומות פרק א דף מ טור ד /ה"ד

There is a halachic prohibition on any 'Torah dibbur' in the presence of 'ervah' - nakedness. This will include reading the Torah, saying berachot, tefillah and learning.

11. אמר רבי יצחק: טפח באשה ערוה. למאי? אילימא לאסתכלי בה והא א"ר ששת למה מנה הכתוב תכשיטין שבחוץ עם תכשיטין שבפנים לומר לך כל המסתכל באצבע קטנה של אשה כאילו מסתכל במקום התורף! אלא באשתו, ולקריאת שמע. אמר רב חסדא: שוק באשה ערוה ... אמר שמואל: קול באשה ערוה, שנאמר (שיר השירים ביד) כִּי קוֹלְךָ עֵרֵב וּמְרָאֵיךָ נְאֻה. אמר רב ששת: שער באשה ערוה, שנאמר (שיר השירים דא) שְׁעָרֶיךָ כְּעֵדֵר הַקָּעִים

ברכות כד.

Ervah on a Torah level means full nakedness, but Chazal added to the Torah level ervah a list of Rabbinic ervot in front of which Torah and tefillah etc are prohibited.

1. Specifically in areas which are the most private - the bathroom and the marital bedroom.

2. For a more detailed analysis of the application of Dat Yehudit to the mitzvah of tzniut, see a series of 3 shiurim at <https://rabbiManning.com/index.php/audio-shiurim/understanding-tzniut/>

These are based on verses in Tanach and include:-

- a Tefach³ exposed in a place which is normally covered
- any area exposed on the thigh (above the knee).
- the voice of a woman
- the hair of a woman.

12. שמואל אמר קול באשה ערוה מה טעם (ירמיהו ג:ט) וְתָמָּה מִקֹּל זְעֵתָה וְתַחֲנִיף אֶת הָאָרֶץ וּגו'

תלמוד ירושלמי (וילנא) מסכת חלה פרק ב הלכה א

The Talmud Yerushalmi also brings Shmuel's din, but quoting a verse in Yirmiyahu which clearly deals with a sexual context and has nothing to do with Kriyat Shema.

In the case of the Tefach, the Gemara clearly limits the application of this situation to saying Kriyat Shema and the halacha of 'ervat dibbur', and negates application to the halachot of inappropriate sexual contact (which are dealt with elsewhere). What about the case of 'kol'? Is its application also restricted to the case of Kriyat Shema, or can we learn a more general application to sexual contact and a prohibition on listening to the voice of a woman who is 'erva'? Would it prohibit listening to a woman's voice outside the context of Torah and kedusha, eg in a concert.

13. ... טפח באשה ערוה ... וכן שוק וקול באשה ערוה. ופי' רב האי גאון דכל הני לענין ק"ש. וכתב הר"א ממיץ בס"י הלכך אסור לומר דבר שבקדושה בשמיעת קול שיר של אשה ...

מרדכי ברכות פרק מי שמתו רמז פ

The Mordechai (13C, Europe) quotes Rav Hai Gaon⁴ who understands that the discussion in this sugya only relates to women singing during Kriyat Shema. As such, we are unable to learn from here a general prohibition on listening to women singing.⁵

14. אמר שמואל 'קול באשה ערוה' שנאמר כי קולך ערב - פירוש לשמוע ולא לענין ק"ש

רא"ש ברכות פרק ג אות לז

The Rosh⁶ (13C Europe) however understands that the sugya does not refer to a specific issue of 'ervat dibbur' during Kriyat Shema, but introduces a general halacha prohibiting listening to other women (who are erva) singing.⁷

E] THE SUGYA IN KIDDUSHIN: ERVA AND INAPPROPRIATE RELATIONSHIPS

15. נשדר ליה מר שלמא לילתא, א"ל, הכי אמר שמואל: קול באשה ערוה. אפשר ע"י שליח! א"ל, הכי אמר שמואל: אין שואלין בשלום אשה. על די בעלה: אמר ליה, הכי אמר שמואל: אין שואלין בשלום אשה כלל

קידושין ע.

Rav Nachman asked Rav Yehuda if he would like to send a greeting to Rav Nachman's wife, Yalta. His reply was that any intimate exchange between men and women is assur - kol b'isha erva

• This sugya has nothing to do with 'Torah dibbur' - Kriyat Shema, Tefilla etc. The 'kol isha' which is prohibited here is a kol which creates some level of inappropriate intimacy between people.

16. אבל לא יתכן לבחור ללמוד לבנות ... פן יתגבר יצרו עליו או יצרה עליה ו'קול באשה ערוה'. אלא האב ילמוד בתו ואשתו

ספר חסידים אות שיג

Sefer Chasidim quotes the din of 'kol b'isha erva' as a reason to prohibit a young unmarried man from teaching young women. Again, this is based on a concern for inappropriate flirting and is not related to Shema etc.

3. 8-10 cm/ 3¼-4¼ inches.

4. This is also the position of R. Chananel, the Ravyah, Ravad, Rashba and many others.

5. One question is whether these mefarshim learn that such a general prohibition does not exist at all (as is claimed by some modern commentators) or if they would learn such an Issur from the other sugyot.

6. The Rif, the Rambam and the Tur also omit any halacha of kol isha with regards to Kriyat Shema (as opposed to the general prohibition of listening to women singing).

7. There is no explicit mention of Kriyat Shema for the other rabbinic ervot in this sugya, indicating a more general application. This would make sense in the context of kol, which is harder to categorize as part of the prohibition of 'seeing an ervat dvar'. Unlike tefach, shok and hair, 'kol' is not a visual stimulus.

F] THE HALACHIC PSAK**(a) Kol Isha in a sexual context**

17. ... ואסור לאדם לקרוץ בידיו וברגליו או לרמוז בעיניו לאחת מן העריות או לשחוק עמה או להקל ראש ואפילו להריות בשמים שעליה או להביט ביפיה אסור, ומכין למתכוין לדבר זה מכת מרדות ... ואפילו לשמוע קול הערוה או לראות שעה אסור

רמב"ם הלכות איסורי ביאה פרק בא הלכה ב

Rambam brings the issur of kol isha together with the other issurim of inappropriate sexual behavior, shomer negiah etc.⁸

18. צריך אדם להתרחק מן הנשים מאד מאד. ואסור לקרוץ בידיו או ברגליו ולרמוז בעיניו לאחד מהעריות. ואסור לשחוק עמה, להקל ראשה כנגדה או להביט ביופיה. ואפילו להריות בשמים שעליה אסור. ואסור לשמוע קול ערוה או לראות שעה. והמתכוין לאחד מאלו הדברים, מכין אותו מכת מרדות. ואלו הדברים אסורים גם בחייבי לאוין

שולחן ערוך אבן העזר סימן כא סעיף א

The Shulchan Aruch rules (in Even Haezer) like this Rambam. Specific intention² to benefit sexually from any inappropriate interaction with an erva, even where there is no physical contact, is prohibited.

(b) Kol Isha in a Shema/Tefilla context

19. יש לזהר משמיעת קול זמר אשה בשעת קריאת שמע. (כנה: ואפי' זאשמו.)

שולחן ערוך אורח חיים סימן עה סעיף ג

Shulchan Aruch also rules in the laws of Kriyat Shema (in Orach Chaim) that a man should be careful not to listen to a woman singing while saying Shema etc. This even applies to his wife, ie where there is nothing sexually inappropriate.

G] WHAT IS A 'KOL'? SPECIFIC APPLICATIONS**G1] SINGING vs SPEAKING**

20. אבל קול הרגיל צו אינו ערוה

שולחן ערוך אורח חיים סימן עה סעיף ג

The Rema rules that a 'normal' voice is not an erva.

21. קול ערוה - ... ודוק' קול ערוה אסור אבל קול דיבור שלב מותר. וא"ל מש"ס קידושין (דף ע') דאיתא שם קול ערוה אפילו זשאלח שלומ' אסור, פירץ הרשב"א קול דבור מה שהוא משיב על שאלת שלומה גרע טפי...

בית שמואל אבן העזר סימן כא ס"ק ד

This is understood to refer to a regular speaking¹¹ voice of a woman, which is not a problem. The case of personal greetings referred to in Kiddushin is worse since it suggests a more intimate connection.

22. הרגיל בו - ר"ל כיון שרגיל בו לא יבוא לידי כרכור ואפילו מא"א ואפי"ה אסור לכיון לכוח מדיבורה שכרי אפילו זבגדיה אסור להסתכל להנות

משנה ברורה סימן עה ס"ק יח

Mishna Berura also understands that this refers to a regular voice, which is acceptable between any man and woman, provided that the man is not focused on the woman's voice in an inappropriate sexual manner.

8. The Rambam sets up a typology of different aveirot of sexual closeness. The core aveira is sexual intercourse, which is usually additionally prohibited with karet or the death penalty. Then the Torah creates its own fence with a secondary Torah prohibition of 'lo tikrevu' - shemirat negia - physical intimacy short of full sexual intercourse. Finally there is an 'outer' rabbinic fence of tertiary rabbinic prohibitions of inappropriate flirting, staring, listening to singing etc.

9. Which raises the question of the status of interactions in which there is NO intention to benefit sexually. In the case of shemirat negiah, such non-sexual contact (eg in a medical context) is clearly permitted. What would be the equivalent cases in relation to kol isha?

10. Many of the Rishonim (including the Rambam) do NOT specifically relate kol isha to Kriyat Shema but rather see it as a general issue of inappropriate sexual contact. As such, the Shulchan Aruch does not use the language of 'prohibition' but rather 'caution'. On the issue of listening to the voice of an erva however, he clearly uses the language of issur.

11. Many Rishonim distinguish between the singing and speaking ('regular') voice of a woman. Humming would appear to be 'not normal' and thus included in kol isha.

G2] AN ELECTRONIC 'KOL'

- Most poskim have ruled that the amplification of the the voice - eg through a microphone - is NOT alone a reason for heter.¹² It may however be a contributory factor for leniency in the presence of other factors eg radio - see below.
- Many poskim rule that one cannot be 'yotzei' an obligation through an amplified electronic sound eg shofar, megila, a beracha¹³.

G3] AN 'INVISIBLE KOL'

23. גמירי, דאין יצר הרע שולט אלא במה שענינו רואות

סוטה ח.

Chazal state that the sexual yetzer hara is not as powerful without a visual stimulus. Could this serve as a 'heter' for some aspects of kol isha? (It will not necessarily help when it comes to the din of Kriyat Shema etc).

24. תנו רבנן: רחב בשמה זינתה, יעל בקולה רבי יצחק: כל האומר רחב רחב - מיד ניקרי. אמר ליה רב נחמן: אנה אמינא רחב רחב ולא איכפת לי? - אמר ליה: כי קאמינא - בידועה ובמכירה

מגילה טו.

Chazal also discuss certainly extremely beautiful women. Yael could arouse with her voice, Rachav just with the mention of her name, but only to those who knew her!

If so, what is the psak in the case of a 'disembodied' voice - where the man listening cannot see the actual singer?

- **The lenient position:** Tzitz Eliezer (5:2), Rav Yosef E. Henkin, Maharam Shick E.H. 53 - muttar to listen to a woman's singing voice on the radio. 'Intention to enjoy' the voice is still assur according to some poskim. This heter may not apply to TV/video.
- **The strict position:** Chelkat Ya'acov - 1:163, Rav Vosner (Shevet HaLevi E.H 3:181) - always assur.
- **A middle position** Rav Ovadiah Yosef: (Yaviah Omer O.H. 1:6) - assur if the listener knows what the woman looks like, even through a picture¹⁴ and even if the woman is no longer alive.

25. (יג) המורם מכל האמור דביודעה ומכירה אפ"י ע"י תמונה אסור לשמוע קולה בגרמפון או ברדיו, אבל אם אינו מכירה מותר, ואין בזה משום קול באשה ערוה.

ש"ת יביע אומר חלק א - אורח חיים סימן ו

G4] MULTIPLE VOICES

• Some poskim have sought leniency in the concept of *Trei Koli Lo Mishtamai* - that multiple voices are not properly heard. See Seridei Aish 2:8 who is dealing with a mixed group in a religious youth group¹⁵. However the heter is weak on its own and it is clear from the teshuva of the Seridei Aish that one of his main concerns is kiruv rechokim and the need to keep the group Jewishly involved. His permits the group to sing together based on a combination of three leniencies: (a) multiple voices; (b) zemirot (see below); (c) the fact that the intention of the group was leshem shamayim and for Jewish outreach. He also invokes the principle of עת לעשות לה' הפרו תורתך.

- As such, this heter is more realistic when combined with other factors etc zemirot.

G5] ZEMIROT

- Some poskim (see Sdei Chemed 4:485 and Seridei Aish 2:8) are lenient when it comes to women and men singing Zemirot together.

12. See Rabbi J David Bleich, Contemporary Halachic Problems 2:152.

13. Whether one should say Amen to a beracha heard over a microphone or on the radio is a separate question and will depend on whether one is hearing it in 'real time' or with a time-delay.

14. It is well known that Rav Ovadia listened to recordings of the music of Egyptian female singer Umm Khultum since he had not seen a picture of her.

15. Similar to a modern NCSY group.

There are many indications in the sources that the issur of kol isha would not apply in the same way to matters of 'kedusha'. (See Shoftim 5:1 when Devora and Barak sing Shira together¹⁶.) This was the practice in the strictly observant German communities during the 19C and 20C.

• Many poskim do not accept this heter and in many communities women do not sing zemirot in mixed settings. However other poskim (eg Rav Soloveitchik) in North America did accept this heter and it is the practice in many communities.

G6] HUSBANDS AND WIVES

- Is a husband allowed to listen to his wife singing when she is a niddah? Some poskim (Igrot Moshe Y.D. 2:75, Aruch HaShulchan Y.D. 195:23, Pitchei Teshuva Y.D. 195:10) prohibit this.
- Ben Ish Chai generally prohibits but is lenient if the husband cannot avoid it, eg the wife is singing a child to sleep.
- Others (Rav Ovadia Yosef - Taharat Habayit 2:167-170) permit it, although write that it is better to be machmir in this.
- Note that this would only apply to the sexual issues of singing and would not permit the husband to say Kriyat Shema etc while his wife was singing.

G7] CHILDREN

- Rav Moshe Feinstein (Igrot Moshe O.C.1:26) and Rav Ovadia Yosef (Taharat Habayit 2:270) rule (based on the Mishna Berura 75:17) that in case of need, one may rely on the ruling that the prohibition of Kol Isha does not apply to girls who are not niddot. Rav Moshe wrote (in 1947) that one may assume that there is no problem listening to the singing of girls below the age of eleven.

H] IS HABITUATION A LEGITIMATE GROUND FOR LENIENCY?

- There are NO poskim who rule that, since men are now 'used to' women singing, therefore kol isha is not now a halachic problem. It still remains a halachic issue. But can habituation make any difference at all?

26. צריך לאדם שיזהר כשיקרא את שמע או יתפלל שלא יפנה עיניו לשום דבר המביא לידי הרהור ... וכן שוק באשה ושער באשה הראוי להתכסות וקול של זמר באשה ערוה לענין ק"ש ובלבד במה שאין רגיל בה. אבל פניה וידיה ורגליה וקול דבורה שאינו לזמר ושער היוצא חוץ לצמתה אין חושש להם

בית הבחירה (מאיר) ברכות כד.

Many of the Rishonim (here the Meiri) write that the issur of kol isha for Kriyat Shema does not apply to a regular voice which a person is used to, since this does not lead to improper sexual thoughts.

27. וכל הדברים [שהזכרנו למעלה] לערוה דווקא בדבר שאין רגילות להגלות. אבל בתולה הרגילה בגילוי שער לא חיישינן, דליכא הרהור, וכן בקולה [לרגיל בו]

ראבי"ה חלק א - מסכת ברכות סימן עו

Here too, the Ravva writes that in all matters concerning erva and Kriyat Shema the halacha will depend on the degree to which the man is used to exposure to the erva. Therefore, the hair of a single girl is excluded from the concern of erva since men are used to seeing it.

28. ... מיהו עכ"פ לדינא נראה שמוותר לנו להתפלל ולברך נגד ראשיהן המגולות כיון שעתה רובן הולכות כך והוה כמקומות המגולות בגופה וכמ"ש המרדכי בשם ראבי"ה בספ"ג וז"ל כל הדברים שהזכרנו לערוה דוקא בדבר שאין רגילות להגלות. ... וכיון שאצלינו גם הנשואות כן ממילא דליכא הרהור [והרי"ף והרמב"ם השמיטו לגמרי דין שיער וקול משום דס"ל דלאו לק"ש איתמר עב"י]

ערוך השולחן אורח חיים סימן עה

The Aruch HaShulchan famously rules that since so many married Jewish women do not cover their hair these days (which he does NOT in any way justify), our habituation to seeing such hair means that a man MAY now say berachot etc in the presence of that hair.¹⁷

16. Although were they actually husband and wife?

17. This position was firmly rejected by other poskim such as the Mishna Berura.

29. י. אשה שמניקה את בנה ומגלה דדיה, אסור לקרות או לברך כנגדה, אפילו היא אשתו, וכ"ש באשה אחרת. וי"א כיון דהאשה דרכה לגלות דדיה בומן היניקה, הרי הדדים נחשבים אותו זמן כמו כפות הידים והפנים, ורק אם אינה מניקה שדרכה להצניע דדיה ומקפדת על זה, אז אסור לקרות כנגדה, ויש לסמוך על סברה זו, בשעת הדחק:

בן איש חי שנה ראשונה פרשת בא

Perhaps the most extreme application of this is the Ben Ish Chai regarding a woman who normally nurses a child in public. He quotes an opinion (on which he is prepared to rely where necessary) that since her breasts are often revealed, they have the same halachic status as other part of the body which are normally exposed, and it is permitted for a man to say berachot etc in such a situation.

30. והא דאמר רב יצחק טפח צאשה ערוה ואוקימנא צאשהו וצק"ש פירש הראב"ד ז"ל דאפשר דוקא ממקום לנוע שצב ... אצל פניה ידיה ורגליה וקול דבורה שאינו זמר ושערה מחוץ ללמטה שאינו מחכסא אין חוששין להם מפני שהוא רגיל צבן ולא טריד. וצאשה אחרת אסור... לשמוע אפי' קול דבורה כדאמרינן בקדושין [ע' א'] לישדר מר שלמא לילתא אמר ליה הכי אמר שמואל קול צאשה ערוה, ואלא מיכו נראה דדוקא קול של שלתא שלום או צהצתא שלום כי הכס דאיכא קרוב דעת ...

היוזשי הרשב"א מסכת ברכות דף כד עמוד א

Nevertheless, ALL of the above discussion regarding habituation pertain to the issue of Kriyat Shema and the need for extra focus. But when it comes to the general prohibition of improper sexual contact through kol isha, the Rashba is unwilling to accept ANY argument of habituation!

31. אל יקח לבך לומר דהשתא חשיבי כרגילים בקול נשים ואין לחוש להרהור, וכעין מ"ש הר"ח דלרגיל בקול מותר. (אלא דהתם ר"ל קול הרגיל בו שאינו של זמר). שאין לנו לומר דברים אלו מדעתנו כל שאינו מפורש בש"ס ופוסקים. ... הן אמת שראיתי לחלבוש (סוף א"ח במנהגים אות לו) שכל, אמרו בס' חסידים כ"מ שאנשים ונשים רואים זא"ז כגון בסעודת נישואין, אין לברך שהשמחה במעונו, לפי שאין שמחה לפני הקדוש ברוך הוא כשישי הרהורי עבירה. ע"כ. ואין נוהרין עכשו בזה, ואפשר משום דעכשו מורגלות הנשים הרבה בין האנשים, ואין כאן הרהורי עבירה כ"כ, דדמיין עלן כקאקי חירי, מרוב הרגלן בינינו, וכיון דדשו דשו. עכ"ל הלבוש. מ"מ אין כל הנידונים שוין. ויש לחלק בין הנושאים. וק"ל.

ש"ת יביע אומר חלק א - אורח חיים סימן ו

Rav Ovadia Yosef here explains that habituation is not an automatic heter. He rejects it in the case of kol isha, at the same time as accepting that some classic poskim permitted mixed seating at weddings on these grounds and that this was the minhag in many communities for centuries.

Similarly, in business life and general society there has been a significant change in the interaction between men and women, which has been accepted in halacha. Habituation would not however be a heter for mixed dancing or swimming, which are areas far more prone to yetzer hara.

1] IS POSITIVE INTENTION A LEGITIMATE GROUND FOR LENIENCY?

32. רב אחא מרכיב לה אכתפיה ומרקד, אמרי ליה רבנן: אן מהו למיעבד הכי? אמר להו: אי דמיין עלייכו ככשורא - לחיי, ואי לא - לא

כתובות יז.

The Gemara records that one of the Amoraim would carry the Kallah on his shoulders around the wedding feast (perhaps on a chair). When his students asked how this was halachic legitimate his answer was that there was no sexual context for him, but would be for them!¹⁸

33. רב גידל הוה רגיל דהוה קא אזיל ויתבי אשערי דטבילה, אמר להו: הכי טבילו והכי טבילו. אמרי ליה רבנן: לא קא מסתפי מר מיצר הרע? אמר להו: דמיין באפאי כי קאקי חירי

ברכות כ.

Similarly, Rav Gidel would instruct women on hilchot tevila by the mikva. When challenged as to whether this was appropriate, he responded that the women were like 'white geese' to him.

18. Compare the modern phenomenon of the Mitzvah Tanz with the Rebbe.

34. רב אחא בר אבא איקלע לבי רב חסדא חתניה, שקליה לבת ברניה אותבוה בכנפיה. אמר ליה: מר נמי עבר ליה אדשמואל, דאמר שמואל: אין משתמשים באשה! אמר ליה: אנה כאידך דשמואל סבירא לי, דאמר שמואל: **הכל לשם שמים**

קידושין פא:

Rav Acha Bar Aba was challenged when he placed his granddaughter on his lap. Was there not an obligation to avoid contact between men and women!? His response was that he was clearly acting 'Leshem Shamayim' and when it came to such issues of interaction between men and women, this made a difference.

35. אסור להשתמש באשה כלל, בין גדולה בין קטנה, בין שפחה בין משוחררת, שמא יבא לידי הרהור עבירה. באיזה שמוש אמרו, ברחיצת פניו ידיו ורגליו, אפילו ליצוק לו מים לרחוץ פניו ידיו ורגליו אפילו אינה נוגעת בו, והצעת המטה בפניו, ומציגת הכוס. כגב: וי"א דבוא כדין זכאילכ עמה בקערה נמי אסור בכל ערוה כמו זאשמו נדה ... וי"א דכל שאינו עושה דרך חבה, רק כוונתו לשם שמים, מותר. לכן נהגו להקל בדברים אלו ...

שולחן ערוך אבן העזר הלכות אישות סימן כא

The Shulchan Aruch rules that one must be very conscious of inappropriate mixing between men and women. The Rema adds that in some areas, where the people are clearly acting Leshem Shamayim, the situation may be different.

• How does this impact of kol isha? In areas which are clearly prone to yetzer hara, there are few grounds for leniency on the basis of habituation. However it is certainly arguable that where the context is not one of yetzer hara, the intentions¹⁹ are Leshem Shamayim and there is a real 'down side' to walking out, this argument need to be considered²⁰.

J] IS CONTEXT A LEGITIMATE GROUND FOR LENIENCY?

36. כל שאינו קול של שיר עגבים ואינו מתכוין ליהנות מקולה ... ואף כי ודאי נכון להחמיר ... מ"מ אינו בסוג דברים תמוהים חלילה

שזי חמד בשם דברי חפץ

One opinion quoted by the Sdei Chemed²¹ appears to restrict the ambit of kol isha to a clearly sensual context.

K] IS CONTEXT A LEGITIMATE GROUND FOR LENIENCY?

In a 2013 article in Tradition Journal²² R. Moshe Lichtenstein²³ caused some controversy in his approach to the question of kol isha in the context of army ceremonies etc and whether there was a need for religious soldiers to leave if a women began to sing (eg Hatikva).

37. In the fifty years that have elapsed since Serdei Esh wrote this responsum to French Jewry following the Holocaust, the sociological reality has changed. The problems that he pointed to from his day have been replaced with others, yet the basic truths he pointed to and the fundamental approach he advocated—that in this matter we should adopt the permissive approach in deference to the needs of the generation—all remain in place, driven by two main considerations. First, in a generation worthy of women who wish to actively participate in giving praise and thanks to God at the Shabbat table, the Passover Seder and in many other settings, and in an era when women personally express themselves in all general areas of life, it is highly obligatory to enable them to express themselves in religious contexts as well. Inasmuch as it is possible to encourage the inclusion of women in the service of God in the context of legitimate halakhic pesak, it is both our privilege and duty to do so. The order of the day is pesak confining the prohibition of kol isha when we are dealing with the inclusion of women in religious contexts. Secondly, the question of women's song is forcefully distancing entire communities that are living in a culture where the concept of "kol be-isha erva" is both foreign and strange and where women's song is an everyday phenomenon. They are not capable of understanding halakhic and cultural norms that crystallized within a different social reality, and they do not understand why Halakhah restricts the expression of women. Stringent pesak in this matter causes the alienation of these communities from the entire halakhic system, since for them the question of women's song is just one example that reflects

19. We saw above that the prohibition of kol isha relates to a man who has 'kavanna' to benefit in a sensual way from the voice. Absent such kavanna, the halacha may be different.

20. This has been a real issue in Israel Army ceremonies where there are often women singer as part of the program. Should all the religious soldiers leave (which causes considerable offense and resentment) or may they stay. One is certainly NOT allowed to do a clear aveira in order to avoid upsetting someone else, but is it so clear in this case? See the article *Kol Isha: A Woman's Voice*, Rav Moshe Lichtenstein, Tradition 46:1, 2013 p9. See also extracts below.

21. R. Chaim Hezekiah Medini - 19C Turkey.

22. And in Techumin (Hebrew - vol 32 p 291)

23. One of the Roshei Yeshiva of Yeshivat Har Etzion.

upon the whole. A policy of stringent pesak desiring to satisfy all halakhic opinions is liable to harm rather than help.

Kol Isha: A Woman's Voice, Rav Moshe Lichtenstein, Tradition 46:1, 2013 p19

38. In this sense, out of place stringency in the laws of kol isha, based on far reaching concern for sexual thoughts, is not an ordinary halakhic stringency and enhancement but rather a leniency and disparagement regarding the nature of man. Therefore, we should rule stringently only where necessary and we should not favor a policy of stringent pesak. The reasoning of some posekim that every person experiences sexual thoughts in every situation, and therefore all women's song should be forbidden – even in a case where the listener does not intend to benefit, assumes that relations between people are at all times and in all instances of a biological natural character; it assumes that a man is incapable of seeing a woman or hearing her voice without perceiving her as an object. True, Hazal (Bava Batra, 164b) count sinful thoughts as a transgression which no man can escape even for a single day, and there is no doubt that the sexual urge is one of the most powerful and primal within man; however, this is not to say that man is unable to escape sinful thoughts at every hour of every day. Just as Halakhah takes care to preserve the boundaries of modesty, it is also careful not to present man as a creature exclusively driven by urges, and halakhic authorities should take caution against charging every encounter between a man and a woman with sexual tension. If “great is human dignity that it overrides a negative Torah commandment” ... then so too man's dignity as a charismatic creature whose existence is not merely biological demands pesak that does not forbid every voice of a woman in its own right.

Kol Isha: A Woman's Voice, Rav Moshe Lichtenstein, Tradition 46:1, 2013 p22

39. We may summarize as follows: Under circumstances in which the song does not arouse sexual desire, does not emphasize femininity in a sensual manner, and the listener estimates that he will not come to have sexual thoughts – we should not forbid listening to a woman's voice, whether in speech or in song. This conclusion not only relies upon the explicit stance of the greatest of the Rishonim – Rambam, Rashba and Ra'aviah; it appears in the literature of the Aharonim as a recognized opinion, and it has been applied in our generation by an eminent posek. This opinion takes into account the present societal reality together with its needs and constraints, while at the same time rules stringently regarding the obligation to preserve man's dignity and embolden his image as a spiritual creature who is not controlled by biological drives alone. In terms of day-to-day life, this means that we may permit women's singing of Shabbat zemirot, participation in official ceremonies of a serious and formal nature, listening to random radio commercials, and the like. It is both possible and appropriate within the framework of Halakhah to permit these scenarios²⁴, and one who does so rules faithfully and legitimately.

Kol Isha: A Woman's Voice, Rav Moshe Lichtenstein, Tradition 46:1, 2013 p23

24. For other responses on this issue from Rav Yosef Tzvi Rimon and other senior poskim in the Religious Zionist world see <https://www.torahmusings.com/2012/02/singing-soldiers/>. For a report of the IDF's official response see <https://www.israelnationalnews.com/News/Flash.aspx/230564>
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