

## **“Kol b’Isha with a Current Perspective”:** A halakhic opinion offered by Rabbi Avraham Shammah

Translated and annotated by Debby Koren

*In a particular town in Israel, it has been the annual custom on Yom HaZikaron, Israeli Memorial Day, for a girls’ choir to sing at the memorial ceremony. However, as children tend to do – thank God, some of the girls have reached the age of 11 or 12 and in 2007 some members of the community raised questions about the propriety of the choir singing in public, because of the concern of “kol b’isha erva” (“a woman’s voice is a sexual enticement”<sup>1</sup>). The rabbi of the town proceeded to forbid the public appearance of the girls’ choir.*

*Rabbi Avraham Shammah, a citizen of the town, sought to address the question of the scope of the authority of the community rabbi and wrote the following statement, originally intended as an internal communication. He has since agreed to make this statement public, and it appeared in abridged form on the website of an Israeli newspaper and in complete form on the Kolech<sup>2</sup> website.<sup>3</sup> Following the publication of this statement, there was much reaction (ranging from thanksgiving and praise to accusations of heresy) and public debate on the websites, and Rabbi Shammah responded to his critics with a second statement.<sup>4</sup> He has graciously agreed to allow me to translate both statements for publication on the JOFA website. All annotations (additions in square brackets as is common with translations, and footnotes, unless specified to be the author’s footnotes) are mine and were added to make a close-to-literal translation read better in English (the additions in square brackets) and to assist the lay reader in following the halakhic references (the footnotes).*

*Rabbi Shammah was born in Israel to parents who immigrated to Israel from Syria. He studied at Yeshivat Har Etzion for eight years and received s’mikha from the Chief Rabbinate. He served in a combat unit in the IDF and fought in the first Lebanon war. His university studies were in the areas of Hebrew language, education, and Talmud, and he is currently completing a doctorate in the Talmud department at Hebrew University in the field of midrash halakha. Rabbi Shammah teaches Hebrew language, Bible, midrash halakha, and the development of the prayer service at the Herzog Teachers’ College.*

*Rabbi Shammah’s first statement is as follows:*

The following discussion will be divided into these sections:

1. Public, ideological, values-based questions vs. purely halakhic questions
2. Stringency and leniency in questions of this nature
3. Rabbis’ opinions vs. laypersons’ opinions

1. Questions relating to matters of [women’s] modesty and women’s status are essentially ideological, and they have public, social, educational, and values-based perspectives. With questions of this nature, the Torah-view cannot be based solely on

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<sup>1</sup> B’rakahot 24a.

<sup>2</sup> Kolech, the Religious Women’s Forum, is an Israeli feminist organization.

<sup>3</sup> The original Hebrew article and the readers’ comments can be found at

<http://www.kolech.org.il/show.asp?id=25318>

<sup>4</sup> Available at <http://www.kolech.org.il/show.asp?id=25484>

purely halakhic sources; rather they require broad deliberation [based on the values] of the Torah. I don't only mean that the halakhic sources themselves (numerous as they are) lack clear answers to questions of this nature. Rather, primarily because of the character of the halakhic system, it is not within its domain or authority to provide answers to these questions. Therefore, we would say that in such cases it is the ideology, and not pure halakhic discourse, that dictates the practice to us. Even though there are many halakhic sources on these matters, it is clear that in the course of time, significant developments have occurred. Therefore, implementation of the halakhic rulings such as these and others in our times is dependent upon the ideological and interpretive approach of the *posek* or whoever interprets [these rulings].

This is not the correct platform to point out the endless variety of problems of this type, for which decisions were not reached based on in-depth deliberation of pure halakhic sources, but rather ideology dictated their resolution. It is sufficient to mention one example of this, a *halakha* whose origin is not a merely a decree of the *rishonim* or *aharonim*, nor is it a generic stringency. Rather, this [example] is explicit in the Mishna *Kiddushin*, is discussed in the Babylonian Talmud, and is codified by Maimonides [in the *Mishne Torah*] and [by R. Yosef Karo in] the *Shulhan Arukh*. Yet, even so, to the best of my knowledge, in practice this is not upheld. We learn in the Mishna, *Kiddushin* 4:13: “A bachelor may not teach small children and a woman may not teach small children”<sup>5</sup> The *g'mara* explains there (Babylonian Talmud *Kiddushin* 82a): “A bachelor – because of the mothers of the children (i.e., the mothers who bring their children to school and would meet the teacher [who is a bachelor]); a woman – because of the fathers of the children (i.e., the fathers who bring their children would meet the [female] teacher). Maimonides rules thus in two places (*Hilkhot Isurei Bi'a* 22:13 and see also *Hilkhot Talmud Torah* 2:4): “Whoever has no wife may not teach small children because of the boys’ mothers who come to school for their sons and he [the teacher] would be enticed by the women. Likewise, a woman may not teach little ones because of their [the children’s] fathers who come for their sons ...”. The *Shulhan Arukh* also ruled this matter [in the same way] twice: *Yo-re De'a* 245:20-21 and *Even HaEzer* 22:20.

I will ask, then, out loud: Is there anyone who conducts [himself] as such?<sup>6</sup> Is there even anyone who wishes to conduct [himself] as such?

I selected only a minor, simple example, and I only cited basic [i.e., fundamental] sources. But from this everyone can learn that times have changed, and that these laws are no longer adhered to in their [original] format. What is more, [in contrast to the original law], [actual] practice is quite permissive, and men, among them rabbis and educators who are in their twenties, teach young single women between the ages

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<sup>5</sup> It is difficult to translate this sentence literally. A closer translation would read “A bachelor may not teach how to read the Torah; a woman may not teach how to read the Torah”. This would be similar to teaching *Humash* (the Pentateuch) in a *heder* (a one-room schoolhouse) and refers to teaching young children.

<sup>6</sup> What is actually most amazing in answer to this question, is that even Maimonides – whose ruling was just cited – ruled otherwise in a specific case of a woman who taught children for a living and whose often-absent husband did not support her or their children, but did not want her to teach children to support herself and their children. In Maimonides’ responsum 34, he suggested to this woman to be a “rebellious wife” so that her husband will be forced by the *beit din* to give her a divorce. She would then be an independent woman and “teach whom she pleases and do what she pleases”.

of sixteen and twenty (or married women of all ages), in schools, in universities and colleges, in religious high schools and post-high school [women's] institutions of study. (And even if the educators are married – so what? Don't we hear, to our great sorrow, every now and then of disgrace and [shameful] incidents?) And in the institutions that are not *haredi*, women also teach men. There is no doubt that [circumstances] such as these would not have ever been considered in the Mishna, and yet [people] permit [themselves] to act in this manner.

[Thus,] we find that practices of modesty are dependent mainly on the public, educational, and social standpoint of the *posek*, and on his direct consideration [of the matter] and not on one halakhic analysis or another.

This brings me to the topic under our consideration in the matter of women singing:

Our teacher [R. Yosef Karo] ruled in the *Shulhan Arukh*: “**A [male] person has to distance himself from women, very, very much.** [Therefore,] it is forbidden to flirt ... and it is forbidden to be frivolous with her, to be lightheaded in her presence, or to look at her beauty. Even to smell the perfume that is on her is forbidden. It is forbidden to look ... lest he might have sinful thoughts about her. If one [i.e., a man] meets a woman in the market, he is forbidden to walk behind her, but rather runs and diverts her to the sides [of the path] or [to be] in back of him ... and one who looks even at the small finger of a woman with the intent to derive pleasure, it is as if he looked at her privates ... and it is forbidden to hear the lewdness of voice [of a woman] or to see her hair ...” (*Shulhan Arukh Even HaEzer* 21:1)

I wonder out loud: Do all of those who arise to forbid hearing the voices of women uphold everything that is written in this *halakha*? Do they distance themselves from women **very, very much**? The answer is “**absolutely not!**”; certainly not [according to] the intent of our teacher [R. Yosef Karo]. It should be expressed in clear language: in our day, society is **mixed** (men and woman). And even in the most stringent *haredi* groups, there is a mixed society at various levels. Work places are mixed, even in the *haredi* sector, and married men and married women meet there on a daily basis for the course of hours. The grocery stores in this sector are completely mixed, at banks married men and married women work and meet; likewise, in the markets, the streets, and every locale. We find, then, that this *halakha* has been dismissed and ignored, until it is no longer regarded strictly. Go out and see what people do in the market!<sup>7</sup>

It seems to me that this applies to other details in the continuation of this ruling in the *Shulhan Arukh*, and my intent is regarding the matter of hearing the voice of a woman – this [ruling], too, is not the same in our day as it was long ago. Could one conceive of permitting men, on one hand, to teach and educate young women between the ages of sixteen and twenty, and on the other hand forbidding them [the men] to hear the voice of a woman? Where is the judicial integrity? After all, this is a case of a fortiori: if both the [situations of] education and teaching young women, whether

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<sup>7</sup> The expression “Go out and see what people do” appears in several places in the Talmud (*B'rakhot* 45a, *Eruvin* 14b, and *M'nahot* 35b). Sometimes, when a question of an unsettled *halakha* arises, the common practice determines that *halakha*. Apparently, to make a connection with the ruling in the *Shulhan Arukh*, the author added the words “in the market”, which is in the style of similar expressions in the Talmud such as “Go out and see how oxen are sold in the market.” (*Baba Kama* 84b)

single or married, and [situations] of gender-mixed work environments have been permitted (as I will show further on), in spite of [the fact that] to our great sorrow, shameful incidents occur all too frequently, how much more so should there be no stringency in the case of hearing a woman's voice, due to which shameful incidents are not commonly found - I have never heard that a person has transgressed because of this [hearing a woman's voice].

And so, one must really wonder, from an anthropological, sociological, and psychological perspective – what is the reasoning of those punctilious people to be lenient in the matter of teaching young women and to be stringent in the matter of hearing [a woman's] voice? From a logical point of view, this [inconsistency] is intolerable, especially because those same people who rule stringently are not generally known for deficiencies in [halakhic] judgment. 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].

Let us return to the issue at hand. If a person asks what the meaning is for us in our times of the ruling to “distance oneself from women very, very much”, as the *Shulhan Arukh* rules, I would answer and say that if I were asked to express this [ruling] in a form that is relevant to our times, I would say thus: “Women and men should behave in a manner that reflects great respect for one another; they should not consider one another in a crude manner such as sexual objects; they should not dress provocatively, nor should their body language be provocative; they should not digress to intimate conversations and they should not exaggerate their physical closeness when having a discussion, or the like; the wise person has his eyes in his head<sup>8</sup> and not find loopholes in the Tora, but 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.” It was my intent at the outset to phrase my words in egalitarian language, addressing men and woman equally, [language that does] not objectify women or men: women are not defined as [objects of] lewdness nor are men [defined] as male animalistic or chemical creatures that are pheromonally attracted, without control, to females. Rather, the definition [of men and women that I suggest] recognizes their self-control and demands of them behavioral standards. Even more, this formulation does not attempt to “defend the purity of men” at the cost of hiding the women and covering them.

Centuries ago, the Ritv”a<sup>9</sup> relied on this principle, [and wrote] at the end of *Kiddushin*: “... **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**

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<sup>8</sup> Ecclesiastes 2:14.

<sup>9</sup> Ritv”a is the acronym for R. Yom Tov ben Avraham Alsh’vili (c. 1250 - c.1320). He was a Spanish Talmudist and authored commentary on the Talmud and a large corpus of responsa.

women] because of his sexual urges, he should do so, and [for him] even to look at women's colored clothing is forbidden ... 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, and that was the situation with Rabbi Yohanan who sat near the gates of the *mikve* and was not concerned about his evil inclination<sup>10</sup>, and [with] Rabbi Ammi, in front of whom the king's maidservants went out [to sing and praise him]<sup>11</sup>, and [with] several of the Sages who conversed with those ladies<sup>12</sup>, and [with] Rav Ada bar Ahava of whom it is said in *K'tubot* that he lifted a bride on his shoulders and danced with her and did not concern himself with [unseemly] thoughts<sup>13</sup> - [all these behaved as such] for the reason that we stated ..."<sup>14</sup>

In addition, in spite of all the complexity and difficulty with the matter, one should not easily dismiss the [concept] of the public becoming accustomed [to mixing with women], or that [the public] does not perceive a woman's voice as [provoking] lewdness. This [aspect] of being accustomed [to mixing with women] has significant weight in general reasoning, and the *poskim* have relied on it, each according to his method.<sup>15</sup>

Some of the great *aharonim* have risen and reduced [the stringency of] this prohibition of hearing a woman's voice. Whether it be hearing the recorded voice of a deceased woman, or hearing her voice on the radio or recordings (and some of the reasons cited are also appropriate for hearing via a sound system); whether it be a [a woman] whom he [the listener] doesn't know [personally], etc. [ - these are all cases in which one *aharon* or another has said that the prohibition does not apply.] The great [*poskim*] of Germany, R. Azriel Hildesheimer and Rabbi Y'hi'el Weinberg have excelled in their pedagogical wisdom (and disagreed with the great [*poskim*] of

<sup>10</sup> *Baba M'tzi'a* 84a.

<sup>11</sup> *K'tubot* 17a, but this is told of Rabbi Abahu. This incident about Rabbi Abahu is referred to in a number of sources (e.g., Rashi *Yoma* 73a s.v. Rabbi Abahu). The source of the error in the text of the Ritv" a could very well be a transcription error, but the person involved is not significant to the point that is being made.

<sup>12</sup> E.g., *Shabbat* 127b, *Yoma* 84a.

<sup>13</sup> *K'tubot* 17a. In our standard text (Vilna edition of the Babylonian Talmud) this is told of Rabbi Aha. However, several manuscripts have Rabbi Ada bar Ahava. In any event, the person involved is not significant to the point that is being made.

<sup>14</sup> The author added the following in a footnote: "I do not deny that the Ritv" a did, in fact, end his words [by stating that] 'however, it is not appropriate to be lenient in this except for someone very pious who knows his impulses, and not all scholars are confident about [controlling] their impulses.' Nevertheless, he was referring to extreme cases that are related, such as carrying a bride on the shoulders or Rabbi Yohanan sitting at the entrance to the *mikve*. In any event, the essence of my intent is to learn from the Ritv" a the principle of caution in modesty itself, and not about the laws of modesty as formalistic regulations."

See also Rabbeinu Yona in the name of Hai *Ga'on B'rakhot* 17a on the pages of the Ri" f and *Sefer Mitzvot Katan* 30. However, the Maharsha" 1, (16<sup>th</sup> century Poland) takes this one step further when he states that "... everything is according to what his eyes see, and if he controls his impulses, and can overcome them, he is permitted to speak with and look at a forbidden woman, and ask about her well-being. Everyone relies on this to use [the services of], to speak [with], and look at women. In any case, he is forbidden the services of a maidservant in the bathhouse. But if he sees that his impulses control and overcome him a lot, he should distance himself and not speak at all with another man's wife, and should not even look at [a woman's] colored garments." (*Yam Shel Sh'lomo Kiddushin* 4:25)

<sup>15</sup> In addition to the previous footnote, see Henkin, Yehuda Herzl, "Contemporary Tseni'ut,"

**Tradition**, 37:3, 2003, pp. 1-48 and Henkin, Yehuda, "Hirhur and Community Norms," in **Equality Lost**, Urim Publications, 1999, pp. 76-86.

Eastern Europe, Lithuania, Poland, and Hungary, such as the *Hatam Sofer*, whose halakhic decisions are infused with great suspicion of the Reform movement), and permitted young men and women to sing religious songs and *z'mirot* together, for various reasons. One [reason being] that “two voices are not heard [i.e., are not distinguishable]”<sup>16</sup> (and this is the case for a choir); the second [reason is] that the essential motivation is for Heaven, in which case one should not be concerned about licentious thoughts (and it seems to me that the concept of religious songs, for which case one should not be concerned about licentious thoughts, is subject to flexibility according to honest and straightforward judgment); the third [reason], **and this is the essential one in my opinion, is that the prohibition is specifically for one who intends to enjoy a forbidden pleasure.** These great and brilliant [rabbis] were well aware of educational needs, were attentive to women, and were alert to the changing status of women. Even more important is that they were well aware **that it is plausible that their permission constitutes a deviation from the formal halakha as expressed in the *g'mara*, the *rishonim*, and the *Shulhan Arukh*.** It is worthy to quote the illuminating words of Rabbi Yehi'el Weinberg, *S'ridei Esh* 1:77, even though I am well aware that these [words] were said in connection to something different from our matter. Nevertheless, there are similarities, and there are even additional aspects in our generation and location, that, as a matter of fact, give greater strength to these words:

“... his honor, a scholar in Torah, describes the method of education, ... which is in accordance with the educational methods that were in practice in Germany before the destruction [i.e., the Holocaust], and now disputants from a known Orthodox faction have risen against him, [and] according to their opinion this [educational method] is not according to the essence of Judaism. [The disputants] have two complaints: [one] complaint is against the form of this organization in that boys and girls join together in the activities ... and [the second] complaint is against the practice that the boys and girls sing *z'mirot* at the Shabbat meals or other hymns together ...”<sup>17</sup>

“I will answer each point in its order. The complaints of the Orthodox [faction] certainly have [halakhic sources] on which to rely [for their opinion], for, after all, according to the law of the Torah men should be separated from women ... and the second complaint ... and his words imply that it is forbidden for young men and young women to sing together - even Shabbat *z'mirot*.

“In any event, when I was asked ... I instructed them that they should continue their activity in accordance with the way that was delineated for them by the great [rabbis] of Germany, who were very righteous ... and the great [rabbis] of Germany were

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<sup>16</sup> The concept that two voices cannot be distinctly heard at the same time is raised in *Rosh Hashana* 27a, and Rashi uses this concept several times to explain certain statements of the Sages, such as the prohibition to have two translators of the Torah reading (*M'gilla* 21b s.v. *U-vilvad shelo y'he ehad ko-re u-sh'nayim m'targ'min* [so long as there is not one reader with two translators]). (It was once the practice to have someone translate the reading of the Torah to Aramaic, verse by verse, following the reader, and the Sages forbid having multiple simultaneous translators, because – according to Rashi - hearing multiple voices would not satisfy the requirement for the translation to be heard by the congregation.) See, also, Rashi *Sotah* 39b s.v. *ad she-yikh-le amen* (until “amen” is completed) and Rashi *Rosh Hashana* 34b s.v. *mi-tish'a b'nei adam k'e'had lo yatza* (from nine people as one he did not fulfill his obligation).

<sup>17</sup> This responsum is referring to a youth group that has coeducational activities. The “boys and girls” referred to were teens or young adults.

erudite and expert in the wisdom of education and therefore they succeeded by their deeds to raise whole generations of people who had both the fear of Heaven and secular learning, something that did not occur under the [most] brilliant of the great [rabbis] of Lithuania and Poland, because they did not know how to adjust the education [-al methods] according to the conditions of the time. It is known what the brilliant Rabbi Salanter<sup>18</sup> told upon his return from Germany, where he met with Rabbi Azriel Hildesheimer and saw him lecture classes in Bible and *Shulhan Arukh* in front of young single women. He [Rabbi Salanter] said thus [in reaction]: if any one of the rabbis from Lithuania would act in such a manner in his community, they would remove him from his post, and such is the law. In any event, it is my hope that my place in the afterworld will be with Rabbi Azriel Hildesheimer . . . And now the rabbis of Poland and Hungary who have found their way to France see the modern practices . . . and they vehemently protest them, because these practices are in opposition to explicit laws . . . but these said rabbis are not erudite in the conditions of life . . .

“The very fact of the association of boys and girls under the banner of Torah and tradition constitutes a great force of strengthening and encouragement for the spirit of the youth . . . the Jewish young man or young woman feels alone and abandoned. He has no emotional support within the home or family . . . the young Jew, upon reaching maturity, feels alone in his world. Judaism, as taught by the elders of the old school, is in his [the young person’s] eyes to be a life of seclusion and loneliness, . . . from which one must extract oneself with all [one’s] strength . . . Meeting others and mutual friendship, when maintained in a framework of Jewish modesty, and the excursions and the proper and modest [activities of] entertainment have a great power of attraction. They form a surrounding and atmosphere that is totally and purely Jewish, within which [the young people] absorb the love of Torah and the love of Judaism . . . We are left with one and only one path of salvation - to endear Judaism and to demonstrate its spiritual pleasantness and beauty in a framework of Jewish companionship . . .

“And now I want to explain the difficulties of the matter at hand from a halakhic perspective . . . that “gazing” is watching for the purpose of [erotic] pleasure . . . that the prohibition is one of gazing with excessive staring . . . that the intended meaning [of “gazing”] is gazing that brings about sinful thoughts. And this consists of **private thoughts** and each person is responsible to guard [oneself] from this type of abominable gazing . . .

“This practice of boys and girls singing *z’mirot* together . . .after examination and enquiry it was told to me that the brilliant and righteous Rabbi Azriel Hildesheimer and also Rabbi Samson Raphael Hirsch in Frankfurt on Main permitted singing of *z’mirot* together, and the reason is that two voices [in unison] are not heard [distinctly].<sup>19</sup> [Therefore,] since they are singing together, there is no concern of the prohibition . . . and I searched and found in the *S’dei Hemed*<sup>20</sup> . . . who cited in the

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<sup>18</sup> Rabbi Israel Lipkin Salanter (1810-1883) is considered the founder of the *mussar* movement.

<sup>19</sup> See footnote 16.

<sup>20</sup> *Ma’arekhet HaKuf* 42 IV:485.

name of a Sephardi rabbi<sup>21</sup> to permit *z'mirot* [sung] by men and women together ... because there is no suspicion of [sinful] thoughts with hymns.

“ ... the meaning [of this] is that only gazing so as to have [erotic] pleasure is forbidden ... he cited in the name of the one who states that one is permitted to read the *Sh'ma* even if he hears the singing voice of a woman and even if he sees her hair if his intent is not to have [erotic] pleasure from her, and what is stated in the *g'mara* that the voice and hair of a woman are licentiousness only refers to the prohibition to have [erotic] pleasure from the voice or hair of a forbidden woman ... but if it is not during the time of reading the *Sh'ma*, then certainly it is not forbidden **unless his intent is to have [erotic] pleasure**. This is according to Maimonides' opinion, as above,<sup>22</sup> and if so it can be said that with *z'mirot* there is no concern that their intent is have [erotic] pleasure from a woman's voice ... refer to the *Otzar HaG'onim* for *B'arakot* that was cited, and also in *Hiddushei haRitv" a, Kiddushin*, he [the Ritv" a<sup>23</sup>] wrote that everything is according to what a person knows of himself, because his [evil] inclination is subject to his control and if he is not of defective nature<sup>24</sup> at all then he is permitted to look and to speak with a forbidden woman and to ask about the well-being of a married woman ... and there is another reason to permit *z'mirot* ... **that whatever one does not do in a manner of affection but is only done for the cause of Heaven is permitted ...**

“Therefore I have instructed ... to rely on the great [rabbis] of Germany, who were expert in the wisdom of education and understood the mind of the daughters of the generation who were educated in schools and learned languages and sciences, who are sensitive about their personal respect and see insult and rejection in prohibiting them from participation in [singing] *z'mirot*. Therefore they permitted women to participate in [singing] Sabbath *z'mirot*. We see and know that the great [rabbis] of Germany succeeded in the education of daughters and young women more than the great [rabbis] of all the other countries. In Germany we have seen women who are learned and have a high level of [enlightened] education, who are stringent about the religion of Israel and perform commandments with enthusiasm. Therefore, I do not dare to forbid what they permitted ... Because of our sins we are dispersed in many countries, and “It is time to act for the Lord, for they have violated Your teaching.”<sup>25</sup>

<sup>21</sup> The rabbi that the *S'dei Hemed* cites is R. Aharon De Toledo (*Divrei Hefetz*, Salonika, 1798 p. 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.

<sup>22</sup> As noted, R. Shamah has cited only portions of R. Weinberg's responsum. In a previous (but not quoted herein) paragraph in R. Weinberg's responsum, R. Weinberg cites Maimonides *Hilkhos Isurei Bi'a* (Laws of Forbidden Sexual Relations) 21:2, in which Maimonides states that “one who looks even at a woman's little finger with the intent to derive [erotic] pleasure is as if he looked at her privates and even to hear the voice of a forbidden woman or to see her hair is forbidden.” R. Weinberg points out that the meaning of Maimonides' words is that the prohibition to hear a woman's voice is only if there is intent to thereby derive erotic pleasure.

<sup>23</sup> *Kiddushin* 82a s.v. *hakol l'fi*.

<sup>24</sup> Based on *Hagigah* 15b, lit. “if he does not have muck in his heart”. Rashi *Hagigah* 15b s.v. *tina hayta b'libam* (they had muck in their hearts) means that they were always evil.

<sup>25</sup> Psalms 119:126 (Translation JPS, 1982). This verse in Psalms is cited several times in the Talmud as justification for allowances or edicts issued by the Sages that, at first glance, are not consistent with the law, but are designed to protect the Torah. This halakhic concept has been applied in responsa frequently. The *S'ridei Esh* points out in this quoted responsum that only the Sages have the authority to apply this principle, but then goes on to explain that in the case being discussed in this responsum, it is not something that is absolutely forbidden, but only a pious custom, and therefore there is reason to



Therefore, we are not cautious about learning while hearing the song of gentile women<sup>26</sup> ..., because in countries such as Germany and France the women feel insulted and an affront on their rights if we forbid them to participate in the joy of the Sabbath [expressed] by [singing of] *z'mirot*. This matter is understood by whoever is familiar with the nature of the women in these countries ...” Until here [were] his [R. Weinberg’s] words.

All these reasons to permit [can be stated] even without relying on the method of Rav Hai Ga’on and other *rishonim*, who explained that a woman’s voice is lewd only in the matter of reading the *sh’ma* in her presence.

2. With questions of this type, one should not speak of the “stringent approach” or the “lenient [approach]”, because what is stringent on one hand is lenient on the other. Therefore, one should not accept the position that maintains that one must be aligned with the opinion of those who are “stringent”, [an opinion] that purportedly is the common denominator that would be accepted by the general community. After all, in their stringency, these “stringent [people]” are being lenient in other aspects, such as respect for others and love of one’s fellow person (which even includes women), freedom of expression, and the obligation [to provide] education [to youngsters]. In their stringency, they are in a situation of “he causes a loss to others”.<sup>27</sup> Furthermore, many times these types of questions that arise are not presented in a specific manner; rather they are connected to the cultural nature of a society, community, or a populace.

3. In light of the above, we find that there is no absolute advantage to the opinions of rabbis versus any other opinion in such questions, so long as the opinion stems from uprightness, value-based and Torah-based thought, and with broad ideological consideration of social and ethical aspects. With such questions, the [lay] public even takes precedence over its rabbis. In other words, recognition of educational values takes precedence over the legalistic elucidation of the *halakha*. The benefit of a rabbi in this case would be primarily in such elucidation, in theoretical and scholarly instruction that is dependent upon and derives from his a priori ideological attitude.

4. If not for the process of “haredization”, the self-righteous piety, and the trend to the “right” [religiously speaking], I would not have needed to address such a question at all, because, from my perspective, the matter is simple and clear, and is consistent with straightforward intuition. I did not change [my attitude] in this issue whatsoever. I did not grow up *haredi*, and I was not educated according to *haredi* principles. From my childhood 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,

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permit.

<sup>26</sup> “Because of our sins ... gentile women” In the omitted part (indicated by the ellipsis inserted by R. Shamah), R. Weinberg tells us that this is a citation of the Mordekhai, quoted in *Ma’adanei Yom Tov*. It is found in *Ma’adanei Yom Tov B’rakhot* 3:37 (in the Ro”sh) par. 90, and tracing back R. Lipman’s citations, we find that the *Beit Yosef* cites that the Mordekhai said this in the name of the R’em (the Tosafist R. Eliezer ben Shmu’el of Metz, France, 12<sup>th</sup> century, student of Rabbeinu Tam), and this citation is found in his *Sefer Y’re’im* 392.

<sup>27</sup> The legal concept of *hav l’aharinei* – causing a loss to others, or doing something positive at the expense of others – appears in *Kiddushin* 65b. It is applied to various circumstances, such as making certain types of testimony inadmissible or prohibiting collection of a debt by an agent if the debtor also owes large sums to other lenders.

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].

### **Summary**

- Matters of modesty and the status of women are not purely halakhic [issues] and they require broad value-based judgment.
- In such matters, there is no “stringent” side and “lenient” side; due to their complexity, what is stringent for one aspect is lenient for another.
- Because a broad value-based judgment is necessary, the advantage of the opinions of rabbis over honest Torah-based opinions of any person, including women, is narrowed, as the crystallization of a [halakhic] ruling is guided by the ideological decision.

*The following is a translation of R. Shammah's response to his critics and elaboration of his initial statement.*

### **“All is According to the Customs and Locations”: Rabbi Avraham Shammah Responds to Critique**

Translated and annotated by Debby Koren

#### **“White Geese”<sup>28</sup> or “Only her lips move but her voice is not heard”<sup>29</sup>?**

In my article “*Kol b'Isha* with a current Perspective” that was published on this site, I wrote about the laws of modesty, which have undergone transformation in the course of time. Some of the readers were astounded – how can there be change in these laws as a result of change in reality?! They also expressed surprise [saying]: even if there are certain laws of modesty that are not scrupulously observed, how can that fact influence the determination of the ruling in other matters of modesty?!

Out of the vast and varied material on this matter, I carefully examined two sources in order to clarify the subject (while a third source, of an opposing view, will be presented at the end for further elucidation). The strength of these two sources is such that they can present an encompassing concept of our subject. They represent a wide spectrum of time, from the Middle Ages until our time, and a wide spectrum of geographical space, from the East to the West. These two sources are not marginal, but rather represent centrist halakhic ruling, and were written by outstanding halakhic authorities.

#### **Mahara”m Alashkar**

The first source is quite well-known, and it has been referenced relatively often in [works about the] history of halakhic ruling and [academic] research about *halakha*. R. Moshe ben Yitzhak Alashkar (known as Mahara”m Alashkar, among the exiles from Spain, [who lived during the] 15<sup>th</sup>-16<sup>th</sup> centuries) was asked in North Africa (Responsum 35): “My friend, you asked of me a question, whether we should be concerned about those women who are accustomed to reveal [some of] their hair outside of their braid ... as it is completely forbidden, and the Sages clearly stated that a woman’s hair is a sexual enticement, and therefore [is it not] fitting to admonish and warn them not to reveal it.”

Mahara”m Alashkar replied that this is permitted, because in the contemporary practice, it is usual for that hair to be exposed: “Response: Indeed, there is no concern about that hair [that is outside of the braid], because it is customary to reveal it ... and that [which is said] ‘a woman’s hair is a sexual enticement’ is only referring to hair that it is usual to be covered, but a person is accustomed to that which is usually uncovered [and therefore is not aroused] and it is permitted ...”

Mahara”m Alashkar continued by citing from the words of the Ravy”ah (Rabbeinu Eliezer ben Yoel HaLevi, Ashkenaz, [who lived during the] 12<sup>th</sup>-13<sup>th</sup> centuries) a fundamental, comprehensive rule about all those things that the Sages established that

<sup>28</sup> R. Shammah is referring to what is related in *B'rakhot* 20a about Rav Gidel, who used to sit near the entrance to the *mikveh* and give women directions on how to immerse. The Sages asked him if he wasn't afraid of his evil inclination and he replied that to him the women all appear as white geese (according to Rashi, though it might be some other white bird). The meaning of Rav Gidel's reply is that he ignores or is immune to the sexual allure of the women.

<sup>29</sup> Samuel I 1:13.

they are forbidden because of sexual enticement: “Likewise, the Ravya”h wrote that all those [things] that we mentioned for [concern about] sexual enticement are specifically for things that are not customarily exposed, but an [unmarried] maiden who customarily has exposed hair – we are not concerned about sinful thoughts.”<sup>30</sup>

Mahara”m Alkashar concluded by stating “all is according to the customs and the locations.” From this we learn for our case of a woman’s voice, as well. After all, the practice and usual behavior in our time is that it is not customary for a woman’s voice to be “covered”. Rather, we are used to hearing it, and it is not considered enticing.

And so we have, according to Mahara”m Alkashar, in the matters of [a woman’s] voice and hair, and all those things that the Sages forbade because of sexual enticement that “all is according to the customs and locations”.<sup>31</sup>

### **R. Ovadya Yosef**

The second source was written by one of the great halakhic authorities of our generation – R. Ovadya Yosef. R. Ovadya Yosef often relies on the explanation that in these times women are regularly among us [the men] (that is to say: society is mixed), and permits many things by weight of this [reasoning]. R. Ovadya Yosef has relied on the words of R. Mordekhai Yaffe (born in Prague, but resided in various European locations [and lived] in the 16<sup>th</sup> century), the author of the *L’vush*, who permitted reciting the special benediction for wedding meals at a mixed wedding meal, because “now” (the 16<sup>th</sup> century) “women are very accustomed to being with men. [Therefore], there isn’t much sinful thought, because they [the women] appear to us as white geese<sup>32</sup>, due to their regularity among us.”

Likewise, thus wrote R. Ovadya in his responsum *Yabia Omer* (VI *Orah Hayim* 13): “I had brought some further support ... from what the *L’vush* wrote ... that even though Sefer Hasidim it is written that wherever men and women see each other at a wedding meal the special benediction for wedding meals should not be said ... in any event [people] are not careful about this [prohibition] now, and the reason is that now women are very accustomed to being among men, and there are not so many sinful thoughts, because they appear to us as white geese, due to their regularity among us.”

R. Ovadya continues and brings [further] support for this [idea], according to the testimony of the student of R. Israel Isserlin (author of *T’rumat HaDeshen*, Ashkenaz, 15<sup>th</sup> century), to be lenient in walking behind a woman, in spite of the severe words that were said in the Talmud about one who does so.<sup>33</sup> This is what Rav Ovadya

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<sup>30</sup> The author’s footnote: The citation is from Ravya”h I, *B’rakhot* 76, where the Ravya”h continued his commentary “likewise with her voice”. However, there are several versions to the continuation – see there.

<sup>31</sup> The author’s footnote: This paragraph of Mahara”m Alkashar was even put to a far-reaching application in the well-known ruling of R. Yosef Mashash in the matter of [a woman’s] head covering in these times (*Otzar HaMikhtavim*, #1884, III, p. 211). This ruling is also discussed on this [the Koleh web]site.

<sup>32</sup> The author’s footnote: The metaphor is borrowed from a statement that was said by Rav Gidel [who sat near] the entrance to the bathhouse. Babylonian Talmud *B’rakhot* 20a. [See footnote 28.]

<sup>33</sup> The author’s footnote: Refer to the Babylonian Talmud, *B’rakhot* 61a: “A person should not walk behind a woman in the road, even his wife. If he encounters her on a bridge, he should divert her to the sides [of the path]. Whoever goes behind a woman when crossing a river has no portion in the World to Come.” Similarly, in a parallel [passage] in Tractate *Eruvin* 18b, Rabbi Yoḥanan adds “[Better to walk] behind a lion than behind a woman.”

wrote: “I already cited support for this [view] from what is written in the book *Leket Yosher*<sup>34</sup> ... in the name of ... *T’rumat haDeshen*, and this are his words: ‘He also said that it is permissible to walk behind a friend’s wife ... because in these times we are not so careful about [not] walking behind a woman’. It appears that his reasoning is similar to that which the *L’vush* wrote, that in these times, because women are very accustomed to being among us, they appear to us as white geese ... and our teacher the *Hid”a* (R. *Hayyim* David Azulai, [who lived in] the 18<sup>th</sup> century, was born in Jerusalem and traveled all over Europe [as an emissary from the Land of Israel]) cited the quoted words of the *L’vush* in his responsum *Yosef Ometz* (47) ... in the city ... of Salonika they did not have this concern [of walking behind a woman] ... and also in Ashkenaz they were not concerned about it.”

R. Ovadya continues there and adds in the matter of the injunction against conversing at length with a woman: “... regarding that [we] are not so cautious the Sages’ instruction not to converse extensively with a woman ... we have not found that God-fearing scholars weigh their words with a scale so as not to converse at length with a woman ... because in these times women are very accustomed to being among us and there isn’t so much sinful thought, as they appear to us as white geese ...”

R. Ovadya concludes his words: “Precisely in their [the Sages] times when they didn’t see a woman outside because ‘all the honor of a king’s daughter is inwards’<sup>35</sup>, so that when seeing a woman they would immediately have sinful thoughts [was there justification for concern], which isn’t the case presently with women being involved in business, accustomed to being among us, and no one is so aroused when seeing them or speaking with them to have sinful thoughts. ...”<sup>36</sup>

We found that these two sources teach the principle that we sought. The span of time is from the days of the Ravy”ah until our time, and [the sources] represent Spain and North Africa, Ashkenaz and Eastern Europe, Israel and the Middle East.

### **Another Viewpoint**

It is not the purpose of this article to survey the entire spectrum of views on this issue, all of which are legitimate, but rather to substantiate the stand that I took in my earlier article.

However, I will mention briefly a source with a viewpoint that is very different from the two sources that were presented above. R. Efraim Zalman Margaliot, the author of *Ma-te Efraim* (Brody, Poland, 18<sup>th</sup>-19<sup>th</sup> century) forbade a daughter from saying *kaddish*, even though the deceased had no son to say *kaddish*, and even if the father expressed this wish before his death. Thus he wrote in the laws of the mourner’s

<sup>34</sup> The author’s footnote: This is a composition of R. Yosef ben Moshe, a student of the author of *T’rumat HaDeshen*, who documented many of his rabbi’s practices in the composition *Leket Yosher*.

<sup>35</sup> Psalms 45:14. As is quite well known, the translation above of the verse in Psalms is an exegetical interpretation of the verse that is not true to its literal meaning. The literal meaning of the verse is “all the treasure of the king’s daughter is brought inwards”. The word *k’vuda* means “vessels and chattel” and the exegetical interpretation reads the word as *k’voda*, to mean honor. This interpretation clearly is out of context of the verse, but has been used in many sources to express a world-view that honorable women stay out of public view.

<sup>36</sup> The author’s footnote: In all honesty, it must be emphasized that R. Ovadya himself did not permit [hearing] a woman’s voice except if it is recorded and [the male listener] does not know her [personally]. In any event, we learned the sought principles from him.

*kaddish* (*Ma-te Efraim*, Warsaw 5680, 4:8): “Heaven forbid that she should make her voice heard publicly by saying *kaddish*.” He explained himself in *Elef l’Ma-te*: “In my humble opinion, since in these times (c. 1800 Poland) licentiousness is common, the daughter should not say *kaddish* ... and even though there is no [concern of] *kol b’isha erva* ... in any case it is likely that she will try to make her voice attractive ... it is fitting and correct that every proper God-fearing [woman] ... would not make her voice heard when there is a man, but rather “only her lips move but her voice is not heard”<sup>37</sup> at all, because perhaps a man who hears it might have sinful thoughts ... because she has to be cautious so that no one will stumble [and sin] because of her.”

What transpired to this statement from *Ma-te Efraim* is also quite interesting. Even in our times halakhic authorities have been asked this question [about a daughter saying *kaddish*], and among them the [former] Chief Rabbi of Israel and of Tel Aviv [at different times], R. Yisrael Meir Lau. He, too, forbade a daughter to say *kaddish* (Responsa *Yahel Yisrael* 90), and buttressed his decision with the words from *Ma-te Efraim*. This is what R. Lau wrote: “In *Ma-te Efraim* ... certainly it should be forbidden if she wants to say *kaddish* during the prayer [service], because *kol b’isha erva* and Heaven forbid that she should make her voice heard, whether in the synagogue or in a *minyan* in her home ... (refer to *Elef Ma-te* 7 in which he clarifies that *kaddish* is considered *kol b’isha erva*, and certainly in these times licentiousness is common; examine it there).”

Anyone who examines R. Lau’s words will find that even though he himself attributes the view that *kaddish* is a situation of *kol b’isha erva* to *Ma-te Efraim*, this is clearly in opposition to what the *Ma-te Efraim* actually wrote, as he [the author of *Ma-te Efraim*] specifically established that saying *kaddish* is not a case of *kol b’isha erva*, but rather it is forbidden for other reasons, and that it is not fitting for a proper God-fearing woman. Perhaps an error was in front of R. Lau, but it is also possible that R. Lau thought to be even more stringent in these times (=20<sup>th</sup> century), out of educational and ideological reasons, and expressed himself even more sharply, and even attributed his view to the author of *Ma-te Efraim*.

### **Conclusion**

There is a vast gulf between the view that is expressed as “women in our times appear to us as white geese” and the view that “it is fitting that every proper and God-fearing woman not let her voice be heard when there is a man and only have her lips move but her voice not be heard.” In any case, it appears to me that it is clear that these different opinions are separated by a different evaluation of the changes in reality, and the halakhic view depends upon the weight given to this change. Essentially, what separates the two opinions are different educational, ideological attitudes towards the changing societal reality.

These ideological differences are not a result of purely halakhic examination. Rather, quite the opposite, the halakhic examination is dependent upon them [the ideological differences].

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<sup>37</sup> Samuel I 1:13. Clearly, in Samuel, the phrase is descriptive and not prescriptive.