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## CONTEMPORARY TSENI'UT

**T** *seni'ut*, Jewish standards of modesty in dress and behavior particularly as relating to women, is at the focus today of renewed public interest. In this essay I will examine the key Talmudic *sugyot* and *halakhot* regarding *tсени'ut*, in the hope of clarifying this much discussed but little comprehended area of halakha.

### A. THE *SUGYA* IN *BERAKHOT*

#### *Erva*

In *Berakhot* 24a:

R. Yitshak said: “An [uncovered] *tefab* (handbreadth) in a woman is *erva*.” Regarding what [did R. Yitshak say this]? If in regard to looking [at women], did not R. Sheshet say: “. . . Anyone who gazes even at a woman’s little finger, is as if he gazes at her private parts”? Rather, regarding his wife and reading the *Shema*.

R. Hisda said: “A woman’s leg (*shok*) is *erva*, as it is written (*Isaiah* 47:2), ‘Reveal your leg (*shok*), pass over rivers,’ and it is also written (v. 3), ‘Your *erva* will be uncovered and your shame will also be revealed.’”

Shemuel<sup>1</sup> said: “A woman’s voice is *erva*, as it is written (*Song of Songs* 2:14), ‘. . . for your voice is pleasant and your appearance is attractive.’”

R. Sheshet said: “A woman’s hair is *erva*, as it is written (4:1) ‘Your hair resembles a herd of goats. . . .’”

R. Yitshak did not need to forbid gazing lasciviously at women, for that was already prohibited with regard to even less than a *tefab*. Rather, “regarding his wife and reading the *Shema*” prohibits reciting the *Shema* in the presence of a usually covered but presently uncovered (and therefore provocative) *tefab*. This can be understood in two ways:

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- 1) *Even* in the case of one's wife a *tefah* or more is forbidden, and all the more so with other women—but less than a *tefah* is permitted.
- 2) *Only* in the case of one's wife is less than a *tefah* permitted, but in other women any uncovered area at all that is usually covered is forbidden—even less than a *tefah*.

The first view is that of R. Hai Gaon and R. Yona,<sup>2</sup> *Sefer Yere'im*,<sup>3</sup> *Semag*,<sup>4</sup> *Semak*,<sup>5</sup> *Ets Hayyim*,<sup>6</sup> *Sefer ha-Me'orot*,<sup>7</sup> R. Manoah,<sup>8</sup> *Orhot Hayyim*,<sup>9</sup> Ra'ah,<sup>10</sup> *Obel Mo'ed*,<sup>11</sup> and *Tur*.<sup>12</sup> The second view is that of *Halakhot Gedolot*,<sup>13</sup> R. Hananel,<sup>14</sup> Ra'avya,<sup>15</sup> *Sefer ha-Eshkol*,<sup>16</sup> *Or Zaru'a*,<sup>17</sup> *Hagahot Maimoniyot*,<sup>18</sup> and possibly Rosh.<sup>19</sup> The *Shulhan Arukh* and many major commentators rule according to the first view.<sup>20</sup>

### *Ervat Davar*

*Devarim* 23:15 states: “*ve-lo yir'eh bekha ervat davar*” (so that [God] will not see in you a matter [*davar*] of nakedness).<sup>21</sup> The Sages explained “*davar*” as “*dibbur*” (speech),<sup>21a</sup> and the verse is taken to mean that *Keri'at Shema* and other spoken matters of *kedusha* may not be recited when human genitalia (*erva*) are exposed. Since the verse does not state “*ve-lo tir'eh*” (*you shall not see*) but “*ve-lo yir'eh*” ([God] will not see), *Keri'at Shema* is proscribed by Torah law if actual *erva* is visible, even if the person reciting *Shema* is blind or his eyes are closed and he does not see it.<sup>21b</sup>

Non-genital but provocative parts of the body, however, are *erva* only rabbinically, and it is to this category that an uncovered *tefah* belongs. *Shok*, hair, and voice will be discussed below.

The Torah prohibition does not depend on *hirbur* (sexual thoughts), since a male may not recite *Shema* when the genitals of other males or even his own alone are visible, even though there is normally no *hirbur* among men, and similarly for women among themselves. Rabbinical *erva*, however, is linked to *hirbur*.<sup>22</sup>

### The Length of a *Tefah*

A *tefah* is nominally a one-dimensional measurement of length, corresponding to a handbreadth, i.e., the width of a palm. It is located by various *Abaronim* at different points on a scale between 8 and 10.4 centimeters.<sup>23</sup> *Tefah be-isha*, however, refers to a two-dimensional surface area having both length and width (or breadth). There are at least three ways to define such a *tefah*:

- 1) A strip a *tefah* long, of any width.<sup>24</sup> In practice this amounts to a

one-dimensional measurement, taken *le-humra*: if either the length or width of the section exposed is a *tefah*, it is considered *erva*.

2) An uncovered patch the area of a square *tefah* (*tefah al tefah*).<sup>25</sup> According to the various calculations of a *tefah*, this would range from 64 cm<sup>2</sup> to 108.16 cm<sup>2</sup>. This area can be measured as 1 x 1 *tefahim* or as 2 x 1/2, 3 x 1/3, and so forth.<sup>26</sup> Even if one of the dimensions is more than a *tefah*, if the total area is less than that of a square *tefah* it is not *erva*.

3) An uncovered band in which both length and width are at least a *tefah*. In practice this, too, amounts to a one-dimensional measurement, but *le-kula*:<sup>27</sup> if either length or width is *not* a *tefah*, it is not considered *erva*.

According to the first definition, the area of *tefah be-isha* can be less than a square *tefah*; according to the second it is exactly that of a square *tefah*; while according to the third definition, in my opinion even more than a square *tefah* may still not be *tefah be-isha*.

Support for the third definition can be brought from an adjacent *sugya*. In *Berakhot* 23b the rabbis discuss the maximum amount one should uncover oneself on the toilet, for *tzeni'ut*. "One source taught, when he relieves himself he uncovers a *tefah* in back and two *tefahim* in front, while another source taught, a *tefah* in back and nothing in front."<sup>28</sup> Manifestly, this does not mean uncovering an area of only one or two square handbreadths. These are not large enough—certainly not the 8x8=64 cm<sup>2</sup> (9.91 sq. inch) measurement, and not even the 108.16 cm<sup>2</sup> figure—not to mention the impossibility of maneuvering one's clothing in exactly the requisite way.

Rather, the *Gemara* is describing a person who uncovers himself by pulling down or pulling up his garments a distance of one or two *tefahim* all along his front or rear, even though this reveals much more than a square *tefah* or two. This is called an uncovered *tefah* regarding *tzeni'ut* in the toilet, and we can learn from it in considering an uncovered *tefah* regarding *tzeni'ut* in women, a page later in the *Gemara*.

If the third definition of *tefah* is used, few of the necklines women normally wear today expose a *tefah*.

### ***Shok***

Why was *shok*, of all the parts of the body, singled out by R. Hisda for special mention? There are a number of possibilities:

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1) One might think that *shok* is not *erva* at all.<sup>29</sup> R. Hisda therefore clarifies that *tefab be-isha erva* applies to a woman's *shok*, the same as to other normally-covered parts of her body.

2) According to R. Hisda, the law regarding *shok* is more stringent than it is regarding other parts of the body: in *shok*, even less than an uncovered *tefab* is *erva*.<sup>30</sup>

3) By citing *Isaiah*, R. Hisda indicated that the halakhic status of *shok* is unchangeable.<sup>31</sup> Since Scripture explicitly links *shok* with *erva* it will always rabbinically have the status of *erva*, even in a climate or society where women go about with uncovered thighs.

Possibilities 1 and 2 are mutually exclusive, as those who explain R. Hisda as stating that *shok* is like other covered parts, cannot also be saying that *unlike* other parts even less than a *tefab* of *shok* is forbidden. *Rishonim* who cite possibility 1 are *Sefer ha-Eshkol*, Ra'avad, *Sefer ha-Hashlama*, *Sefer ha-Me'orot*, *Sefer ha-Batim*, Ra'ah, Rashba and, apparently, *Tur*. Possibility 2 is found in the *Aharonim*. Rambam and the *Shulhan Arukh* make no separate mention of *shok*, indicating that they, too, view it as the same as other parts of the body. Rif deleted the entire *sugya*.<sup>32</sup>

### Location of *Shok*

R. Hisda's proof-text is from *Isaiah* (47:2-3):

Take millstones and grind flour; reveal [your] plait, expose [your] hem, reveal [your] *shok*, cross rivers. Your *erva* will be revealed and your disgrace will be visible.

*Shok* is not explicitly labeled *erva*, but the two are clearly linked.

Note that in verse 2 all the verbs are in the imperative: "*kehi*" (take), "*hespi*" (expose), and "*gali*" (reveal); while verse 3 is in the passive future tense: "*tigal*" (will be revealed) and "*tiraeh*" (will be visible). I think the inference is clear: if she uncovers her *shok* her *erva* will then be revealed, even unintentionally. *Shok* and actual *erva* are adjacent to each other, and uncovering one will result in uncovering the other. This may be the meaning of R. Avraham Alshvili and *Shita Mekubbetset* in *Berakhot* 24a who wrote, "although occasionally [*shok*] is revealed, it has the status of a covered area of the body because it leads to [uncovering the actual] *erva*."

It also supports the ruling that *shok* with regard to *erva* refers to a woman's upper leg, above<sup>32a</sup> and not below the knee,<sup>33</sup> for the lower leg is not adjacent to *erva* and uncovering it will not result in uncovering *oto makom*. Isaiah's depiction of a woman exposing her *shok* in order to cross rivers (*neharot*)<sup>34</sup> is further indication that *shok* is above the knee; were it below the knee and she were clothed down to her ankles to cover it, she would have to raise her skirts to cross even a puddle. The only reference in Scripture to a woman's *shok*, then, appears to refer to her upper leg, as opposed to talmudic usage where it invariably connotes an area below the knee.<sup>35</sup>

I think the above may help explain *tefah be-isha erva*, as well. As opposed to *shok*, hair and voice, an uncovered *tefah* has no Scriptural peg and nothing directly attests to its provocative nature. R. Yitshak in *Berakhot* offers no source for it. It may, rather, be a *gezera*. *Erva* is the quintessential covered part of the body; sexual relations are euphemized as *gilluy erva*, uncovering the always-covered genital region. Since parts of the body that are always covered resemble *erva* in this regard, the rabbis prohibited reciting *Shema* when those parts are uncovered, lest they be confused with actual *erva* and *Shema* be recited when actual *erva* is uncovered.

#### ***Keri'at Shema* or Torah**

*Shema* is paradigmatic of all prayers and blessings: none may be recited in the presence of uncovered *erva* of even rabbinical nature. Is studying Torah permitted in such circumstances? *Sefer Yere'im*<sup>36</sup> forbids it, and for that reason relies on “*et la'asot la-Shem*” for a dispensation to permit Torah study within earshot of the songs of gentile women; he is cited by a number of *Rishonim*.<sup>37</sup> All the more so, this would apply to *tefah*.

However, others disagree. Me'iri writes in *Berakhot* 24a:

Seeing a *tefah* in his wife anywhere that is normally not exposed, prohibits *Keri'at Shema* but does not prohibit *divrei Torah*, since seeing causes *hirhur*.<sup>38</sup>

This is also the opinion of *Sefer ha-Hasblama*,<sup>39</sup> who records an additional sentence that apparently was in his text of the *Gemara*:

Did not R. Sheshet say, “. . . Anyone who gazes even at a woman's little finger, is as if he gazes at her private parts?” Rather, regarding his wife. [But] in *divrei Torah*, why not? Rather, regarding his wife and reading the *Shema*.

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This is important support for permitting men to lecture on Torah and *mussar* to audiences that include women who are improperly dressed.<sup>40</sup>

### **Halakha: *Tefah* and *Shok***

An uncovered less-than-*tefab* of normally-covered parts of the body, including *shok*, is not considered *erva* and does not impede the recital of *Shema* and other matters of *kedusha*. This is the view of most *Rishonim*, the *Shulhan Arukh* and many major *Aharonim*. And while any community is entitled to set more rigorous standards and make them obligatory on its members, it cannot bind members of other communities, nor even those who do not belong to any community.

This is as opposed to the recent *Oz ve-Hadar Levusha*<sup>41</sup> by Rabbi Eliyahu Falk who prohibits a blouse whose top button is slightly too low and where some skin on the collarbone is visible below what can be considered the neck, but well less than a *tefab*:

All areas that must be covered . . . must be covered completely. There is absolutely no *heter* for a woman to leave less than a *tefab* of those areas uncovered . . . even a minor exposure is provocative and a serious shortcoming in *tseni'ut*. It is therefore *asur* for the neckline of the garment to extend even half a centimeter beyond the permitted level.

I wonder what provocation there is in a half-centimeter, and whether R. Falk is not defining it into existence: if the neckline is too low, *ipso facto* it must provoke. As for the sources he cites, Rema merely brings, as a second opinion, the view of *Hagahot Maimoniyyot* that even less than a *tefab* is forbidden, and according to some authorities Rema himself disagrees. What R. Falk refers to as Rema is not Rema himself but Rema as construed by the *Hazon Ish*, which is not the same thing.

The arguments of the *Hazon Ish* are far from decisive, in my opinion,<sup>41a</sup> and his conclusion rests on the assumption that concerning a prohibited part of a woman “no seeing is possible [of less than a *tefab*] without [forbidden] gazing,” an assumption that does not appear to be shared by the *Rishonim*.<sup>42</sup> As for R. Moshe Feinstein, the citation from *Iggerot Moshe*<sup>43</sup> distinguishes between seeing and gazing (unlike the *Hazon Ish*), and although he explains the view of *Hagahot Maimoniyyot* he does not specifically endorse it.<sup>44</sup>

### Upper Arm (*Zero'a*)

The upper arm is not mentioned separately in *Berakhot* 24b. However, Rashi in *Isaiah* 47:2 describes both *shok* and *zero'a* as limbs that a woman normally covers,<sup>45</sup> and *Sefer Rokeah* writes:<sup>46</sup>

Hair, whether of his wife or another woman, or her *shok*, or a *tefah* of her skin or when her upper arms are uncovered [*zero'oteha megulot*]<sup>—</sup> he is forbidden to recite *Shema* or pray [facing her].

*Aharonim* derived from this that *zero'a* has the same halakhic status as *shok*.<sup>47</sup> I am surprised at this, for close examination of the *Rokeah* yields a different conclusion. Note that he changes the order of the *Gemara* and begins with hair and *shok* followed by *tefah*, rather than listing *tefah* first; the implication is that *tefah*, mentioned only afterwards, does not apply to either *shok*<sup>48</sup> or hair. But he also does not write “a *tefah* from her skin or her upper arms” but rather “a *tefah* from her skin or when her upper arms are uncovered,” i.e., *tefah* does not apply to the *zero'a* either, which has its own measure, that of being uncovered. We are constrained to interpret this as being *le-kula*, as referring to most of the limb, for if over 50% of the upper arm is covered it certainly cannot be deemed “uncovered.”

*Zero'oteha megulot* is the same regarding *Keri'at Shema* as it is regarding *Dat Yehudit*, the binding customs of modest Jewish women. In *Ketubot* 72b, “R. Yehuda said that Shemuel said, ‘[*Dat Yehudit* is violated] if she displays her upper arms to people.’” And in *Gittin* 90a:<sup>49</sup>

This is characteristic of a bad person: he sees his wife going out with uncovered head, and she knits in the market place and [her dress is] open (*u-feruma*) on both sides . . . [and doesn't remonstrate with her].

Rashi explains that this is how gentile women in France dressed, with flesh of their bodies visible around their armpits, as in *Jeremiah* (38:12). This is the meaning of the Jerusalem Talmud in *Gittin*:<sup>50</sup>

From where do know that [a woman] who goes out with her hair uncovered, her dress open on both sides and her upper arms exposed [*u-zero'oteha halutsot*] [can be summarily divorced]?

This is *Korban ha-Eda*'s second explanation:

This refers to when her flesh is visible, and her upper arms have to be completely exposed. But if her sleeves are merely torn, although the flesh of her upper arms is visible, this is not immodesty [*peritsut*].

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It emerges from Rashi, *Yerushalmi* and *Korban ha-Eda* that *peritsut* in exposure of the upper arms comes not from the arms themselves, but from the body being visible via the arms;<sup>51</sup> this, then, is what *Sefer Rokeah* means by *zero'oteha megulot*, the same language as *zero'oteha halutsot* in the *Yerushalmi*. This is a powerful source for *limmud zekhut* in behalf of otherwise modest women whose sleeves do not reach to their elbows.

A typology can be established, then, as follows:

1. sleeveless dresses—forbidden by all opinions, as body can be seen.
2. short sleeves, loose—forbidden by all opinions if body can be seen.
3. short sleeves, tight—body cannot be seen, but forbidden if most of the upper arm is uncovered (*rubo ke-kulo*)
4. sleeves half-way to elbow—forbidden because of *tefah meguleh*, room for *limmud zekhut*
5. sleeves to within a *tefah* of the elbow—minimum permitted
6. sleeves to elbow—recommended
7. sleeves to below elbow—first level *humra*
8. sleeves to wrists—second level *humra*.

This does not supplant any communal or familial *minhag*.

### Hair: Married and Unmarried Women

Girls and never-married women<sup>52</sup> are permitted to go about bareheaded, and men may recite *Shema* in their presence. There are two schools of thought concerning hair. The first is that of Rabbenu Tam<sup>53</sup> and others<sup>54</sup> who hold that unlike the statements regarding *tefah* and *shok*, “hair in a woman is *erva*” does not prohibit men from reciting *Shema* but only warns them not to gaze at women’s hair, because of the likelihood of *hirbur*. This would explain why R. Sheshet says only “a woman’s hair is *erva*” but makes no mention of *tefah*.

Following this, we might explain that there is nothing wrong with unmarried girls (*betulot*) going about bareheaded, for just as they need not cover their little fingers they need not cover their hair. The onus is on the man not to gaze at their hair, just as it is his responsibility not to gaze at their fingers. But this is a false analogy: a woman’s fingers are unobtrusive and not especially alluring. Hair, by contrast, is basic to a woman’s good looks. Since hair is *erva*, i.e., a source of *hirbur*, regard-

less of the question of *Keri'at Shema*, why is the hair of unmarried women not a stumbling block to men, particularly since today all post-pubertal unmarried girls are *nidot*?<sup>55</sup>

The answer must be that because men are used to seeing the hair of unmarried women, they pay no attention to it and therefore there is no *hirhur*.

According to the second school of thought, however, held by most *Rishonim*, a married woman's uncovered hair does prevent a man from reciting the *Shema*, in a rabbinical extension of “*ve-lo yir'eh bekha ervat davar*.” This applies whether or not a man has *hirhur* in the specific case.<sup>56</sup> Nevertheless, concerning the hair of unmarried girls and women, Ra'avya writes:

All these things [mentioned above] as *erva*, are only in things that are not normally uncovered (*en regilut le-biggalat*). But we are not concerned about a maiden who normally goes about bareheaded, for there is no *hirhur*.<sup>57</sup>

According to this, as well, since men are used to seeing the hair of unmarried girls there is no *hirhur*.

#### ***Mishna Berura and Arukh Ha-Shulhan***

A fundamental disagreement concerning this issue can be found among *Aharonim* starting from a century ago. The *Mishna Berura* (75:10) writes:

Even if the way of this woman and her friends in that place is to go bare-headed in the market as immodest women do, it is forbidden [to recite *Shema* facing her uncovered hair], just as in the case of uncovering her *shok* which is forbidden under all circumstances . . . because she is required to cover her hair by law [and this involves a Torah prohibition]. All daughters of Israel who hold fast to Mosaic practice [*Dat Moshe*] from the days of our forefathers through today, have been careful about this.

But *Arukh ha-Shulhan* (*Orah Hayyim* 75:7) disagrees.<sup>58</sup>

Come, let us decry the breaches [in observance] in our generations. With our many sins, for many years daughters of Israel have been wanton in this transgression, and they go about bareheaded. All the protests against it have proved futile; the plague has spread, and married women go about with their hair [uncovered] like *betulot*. Woe to us that this has happened in our day! However, in any event it seems that, by law, we are permitted to pray and recite blessings facing their

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uncovered heads, because nowadays most of them go about in this way and it has become like the normally uncovered parts of her body, as *Mordekhai* wrote in the name of Ra'avya: "All these things mentioned above as *erva*, are only in things that are not normally uncovered, but we are not concerned about a virgin who normally goes about bareheaded, for there is no *hirbur*." Since with us even married women do so, it follows that there is no *hirbur*.

According to the *Mishna Berura*, that which law (as opposed to custom) requires to be covered does not lose its *erva* status even if all women uncover it, whether or not *hirbur* is present. According to the *Arukh ha-Shulhan*, on the other hand, the absence or presence of *hirbur* in a majority of men at any given time is decisive, and *Rishonim* are cited to that effect. Indeed, Ra'avya, *Mordekhai*, Rosh and *Hagabot Maimoniyyot* all mention no factor other than *hirbur*.

*Sefer ha-Battim*,<sup>59</sup> however, seems to add a consideration similar to that of the *Mishna Berura*:

There is someone who said that it is permitted [to recite *Shema*] while facing the *betulot* because such is their way [to go bareheaded], and her hair is like her face, hands and feet. But in a married woman, all of her hair in a place that should properly be covered (*ra'uy le-hitkasot*), is *erva*.

The wording "should properly," implies an imperative. According to this, only in the case of unmarried girls who are under no obligation to cover their hair, can uncovered hair be classed with hands, face and feet and *Shema* may be recited facing them, but not in the case of married women who by law must cover their hair.

R. Moshe Feinstein<sup>60</sup> adduces support for *Arukh ha-Shulhan*'s position from the *Gemara*, and R. Ovadia Yosef also discusses the matter at length.<sup>61</sup> In practice, this ruling of *Arukh ha-Shulhan* is widely relied on. *Oz ve-Hadar Levusha*, however, makes no mention of it.

### Types of Infractions

The gap between the *Mishna Berura* and the *Arukh ha-Shulhan* is somewhat narrower than it seems. The *Arukh ha-Shulhan* describes a situation in which most women in most places go bareheaded, while the *Mishna Berura* is concerned with "this woman and her friends in that place" (*be-oto makom*), i.e., a few women in a specific location. The *Arukh ha-Shulhan* might well agree with the *Mishna Berura* on this.

More significantly, the *Mishna Berura* refers only to violations of

Torah law: “This involves a Torah prohibition. . . . All daughters of Israel who hold fast to Mosaic practice. . . .” He does not mention infractions of merely “Jewish” practice (*Dat Yehudit*); concerning these, the *Mishna Berura* would agree with the *Arukh ha-Shulhan*.

This distinction is of importance today because the arguments within many Orthodox communities are not over married women going altogether bareheaded, which all agree is forbidden under *Dat Moshe*. Rather, the controversy is over the parameters of *Dat Yehudit*, and concerning this there is no stricture in the *Mishna Berura* against taking local practice into account in permitting *Keri’at Shema* and *tefilla*.

## B. THE SUGYA IN KETUBOT

In *Ketubot* 72a-b one finds:

*Mishna*: These [women] can be divorced without being paid their *ketuba*: a violator of *Dat Moshe* and [*Dat*] *Yehudit*. What is *Dat Moshe*? If she feeds him untithed food, has relations with him when she is *nidda*, does not separate *halla*. . . . What is *Dat Yehudit*? If she goes out bareheaded or knits in the marketplace and converses with everyone.

*Gemara*: Isn’t [going out] bareheaded a Torah violation [*de-orayta*], as it is written (*Bemidbar* 5:18), ‘[the priest] shall uncover the woman’s head,’ and R. Yishmael’s school taught [that this is] ‘A warning to the daughters of Israel that they should not go out bareheaded?’ From the Torah, [wearing] a *kalta* is sufficient, but [according to] *Dat Yehudit*, even a *kalta* is forbidden.

R. Asi said [that] R. Yohanan [said], ‘[wearing] a *kalta* does not constitute [going] bareheaded.’

R. Zeira<sup>62</sup> challenged him: ‘What location [is being referred to]? If in the market place, [wearing only a *kalta*] is a violation of *Dat Yehudit*. And if in a [private] courtyard, [if you require a *kalta* there at all] you will not have even one daughter of our forefather Abraham left married to her husband!’

Abbaye, or perhaps R. Kahana, said: ‘[R. Asi is referring to when she goes] from courtyard to courtyard via a passageway.’

### **Derivation from *Sota***

A woman suspected by her husband of infidelity, called a *sota*, suffered

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the degradation of having her head uncovered before a throng of onlookers at the entrance to the Temple courtyard. Apparently, prior to that her head had been covered. The Talmud learns from this that married women must cover their heads.<sup>63</sup>

But perhaps all that can be learned is that a woman who approached the Temple grounds covered her head out of respect there, but not elsewhere? Were that the case, there would be little humiliation involved in having her headcovering removed. That the Torah considers it a humiliation indicates that women did not appear bareheaded in public.

### *Dat Moshe and Yehudit*

In my opinion, there are two different explanations in the *Rishonim* of *Dat Moshe* and *Dat Yehudit*:

1) *Dat Moshe* refers to norms of *tzeni'ut* mandated by the Torah, or at least a rabbinical edict with a *semakh* from the Torah,<sup>64</sup> while under *Dat Yehudit* are those originating in custom. This is explicit in Rashi,<sup>65</sup> Rambam,<sup>66</sup> *Semag*,<sup>67</sup> *Tosafot Rid*,<sup>68</sup> *Orhot Hayyim*,<sup>69</sup> Me'iri,<sup>70</sup> *Maggid Mishneh*,<sup>71</sup> and other *Rishonim*.

2) Rosh,<sup>72</sup> however, writes that a woman violates *Dat Moshe* if she is a stumbling-block before her husband, having already caused him to sin. *Dat Yehudit*, by contrast, prohibits “brazen behavior [that arouses] the suspicion of promiscuity” (*hatsifuta ve-hashad zenut*) i.e., in the future, regardless of the provenance of the norm her behavior violates.

Rosh does not ascribe *Dat Yehudit* to custom, nor do *Semak*<sup>73</sup> and *Tur*,<sup>74</sup> and it is likely that they all share the same approach. Rosh's definition resolves a number of difficulties in the *Mishna* and *Gemara*.<sup>75</sup> Nevertheless, most *Rishonim* follow the first explanation that *Dat Yehudit* is grounded in custom, and this is the view cited by the *Aharonim*.

### *Time and Place*

Rashi<sup>76</sup> defined *Dat Yehudit* as practices adopted by Jewish women (*she-nahagu benot Yisrael*) that are not required by Scripture. A number of *Rishonim* imply that these practices vary according to time and place. *Tosafot Rid*<sup>77</sup> writes that *Dat Yehudit* does not inherently involve a prohibition, but only that “women behave [*nohagot*] in such fashion as a way of *tzeni'ut*,” in the present tense, i.e., it depends on contemporary practice. *Semag*<sup>78</sup> writes that *Dat Yehudit* requires that a woman wear a

shawl “like all the other women” (*ke-shaar kol ha-nashim*); hence, if the others do not wear one, neither need she.

Moreover, Rambam is clear<sup>79</sup> that *Dat Yehudit* varies from place to place. For what he says in *Hilkhhot Isbut* 24:12:

What is *Dat Yehudit*? It is the modest behavior practiced by daughters of Israel. These are the things, that if she does [any] one of them, she has violated *Dat Yehudit*: She goes out to the market place or in an open passageway and her head is uncovered and she is not wearing a *redid* [shawl or *chador*] like all the women, even though her hair is covered with a kerchief.

is preceded by 13:11:

[In] a place where their custom is that a woman does not go out to market with only a cap (*kippah*) on her head, until she wears a *redid* that covers all of her body like a *talit*, [her husband] must give her a *redid* . . .

That same *redid*, without which a woman violates *Dat Yehudit* in chapter 24, is dependent on local custom in chapter 13.

#### **R. Asi and R. Zeira**

The end of the *sugya* seems to contradict the view that *Dat Yehudit* varies according to local circumstances:

R. Asi said [that] R. Yohanan [said], ‘[wearing] a *kalta* does not constitute [going] bareheaded.’

R. Zeira challenged him: ‘What location [is he referring to]? If in the market place, [wearing only a *kalta*] is a violation of *Dat Yehudit*. And if in a [private] courtyard, [if you require a *kalta* there at all,] you will not leave even one daughter of our forefather Avraham not divorced from her husband!’

If women’s *minhag* determines what is *Dat Yehudit*, how could R. Zeira challenge R. Asi that “you will not leave even one daughter of our forefather Avraham not divorced”? If all women went bareheaded in their courtyards then by definition that was the *minhag*, and no violation of *Dat Yehudit* was involved!

There are a number of possibilities:

1) This is proof of the position of Rosh, *Semak* and *Tur* that *Dat Yehudit* is not necessarily custom,<sup>80</sup> as explained above. Rather, *Dat Yehudit* is a rabbinical enactment like any other. R. Zeira challenged

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R. Asi that if *Dat Yehudit* rabbinically required a woman to wear a *kalta* in her courtyard, all Jewish women would be in violation.

2) *Dat Yehudit* was originally based on custom, but it became halakha and is now unchangeable.<sup>81</sup> R. Zeira challenged R. Asi based on the assumption that originally women had covered their hair in courtyards and that this had become *Dat Yehudit*, necessitating the *kalta* that R. Asi was referring to. Abbaye replied that there had never been a custom for women to cover their hair in their own courtyards, and R. Asi was referring to something else.

3) R. Zeira's statement, "you will not leave even one daughter of our forefather Avraham undivorced," is clearly hyperbole, as there were many women, such as Kimhit,<sup>82</sup> who did not uncover any hair even inside their homes, let alone in their courtyards. All R. Zeira meant to say was that many women do uncover their hair in courtyards, and that according to R. Asi they would be subject to divorce.

### Defining *Kalta*

Wearing a *kalta* (lit. "basket"<sup>83</sup>) in public meets the Torah's requirements, but not those of *Dat Yehudit*. In the *Rishonim* one can ascertain at least four explanations of what is wrong with a *kalta*:

- 1) Quality of coverage. A *kalta* was like a woven basket, and hair was visible through the interstices (Rivan,<sup>84</sup> *Terumat ha-Deshen*<sup>85</sup>). By contrast, an optimum headcovering is fully opaque.
- 2) Quantity. A *kalta* was a round cap<sup>86</sup> like a basket, and did not cover all of the woman's hair (R. Yehonatan<sup>87</sup>). *Dat Yehudit* requires that all the hair be covered.
- 3) Identity. A *kalta* was an actual basket used for carrying small things, worn on top of the head (Rashi,<sup>88</sup> *Nimukei Yosef*<sup>89</sup>). Alternatively, it was a pad or cushion worn on the head to serve as a base for balancing loads (Me'iri<sup>90</sup>). In either case, since any girl or woman wore one when she wished to carry things to or from market it did not identify her as being married,<sup>91</sup> and this violated *Dat Yehudit*.
- 4) Propriety. *Kalta* was a cap used to absorb the grime of the hair, worn under the normal headcovering (*Arukh*<sup>92</sup>). It was an undergarment not intended for display, and wearing it in public was

therefore a breach of *Dat Yehudit*.

I think there is no disagreement between 1 and 2. Both have the same goal of maximum hair coverage: even if the headcovering covers the entire head, if hair is visible through the cracks it violates *Dat Yehudit*, and even if the covering is opaque, if it does not cover all the hair it, too, violates *Dat Yehudit*. This is in contradiction to *Iggerot Moshe*,<sup>93</sup> which does not consider the possibility that *Dat Yehudit* requires covering all of the hair.

What is Rambam's position? *Bab*<sup>94</sup> assumes that Rambam agreed with 1, that a *kalta*'s disability lay in its porousness, but there is not the slightest indication of this in Rambam's words. I think Rambam's view is 4, that a *kalta* was a private or informal haircovering that was not respectable enough to wear in public, even if it covered enough hair. This explains *Hilkhot Ishut* 13:11:

[In] a place where their custom is that a woman does not go out to market with only a cap (*kippa*) on her head, until she wears a *redid* that covers all of her body like a *talit*, [her husband] must give her a *redid* . . . .

Why is a *redid* that covers all of her body required for covering her hair? The point is that although a *kalta* is technically adequate, and in some places wearing one in public is accepted, as is clearly implied by "a place where their custom is . . ." (as noted above<sup>95</sup>), in other places it is not considered respectable for a woman to go out in public without a *redid*.

### **Tefah in Hair**

A *tefah* in a woman is *erva*, and hair in a woman is *erva*. Does the measurement of a *tefah* also apply to hair? It is not possible to prove anything from the order of the statements in the *Gemara*.

To Rambam and others, uncovered hair is not an impediment to reciting *Shema* at all. Rather, *se'ar be-isha erva* comes only to prohibit pleasurable gazing at any amount of a woman's hair, just as it is forbidden to gaze even at her little finger.

The question of *tefah* or less than *tefah* arises only with *Rishonim* who rule that *se'ar be-isha erva* applies to *Keri'at Shema*. Those *Rishonim* who permit *Keri'at Shema* if less than a *tefah* of flesh is exposed, even in other women,<sup>96</sup> are unlikely to be more stringent with hair than with skin. However, those who forbid reciting *Keri'at Shema* while facing even less than an uncovered handbreadth may hold the same with regard to hair.<sup>97</sup>

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R. Moshe Feinstein<sup>98</sup> argues in a different way that a minimum of *tefah* applies also to hair. The Torah requires uncovering the *sota's* head<sup>99</sup> (*u-fara et rosh ha-isha*) and not her hair; ergo, it relates to the hair on the head as a unit and not as individual strands.<sup>100</sup> If the *kohen* uncovered most or at least a large part<sup>101</sup> of her head she was duly considered *peru'at rosh* by Torah law, but certainly not if he uncovered only a small part of it. Since the obligation for a married woman to cover her hair derives from *sota*, it follows that any woman most of whose hair is covered is not considered by the Torah as *peruat rosh*. As noted above, R. Feinstein overlooks the possibility that *Dat Yehudit* requires that all the remaining hair also be covered.

He then argues that since the Torah does not designate which part is to be covered, *all* of the hair on the head is in the category of a place in the body that is normally covered, and therefore the principle of *tefah be-isha erva* applies. But I think this begs the question of whether *tefah* applies to hair in the first place. In addition:

- 1) Why not argue the opposite? Because no specific part of the hair needs to be covered according to Torah law, none of it is *a priori* in the category of a place normally covered.<sup>102</sup>
- 2) *Se'ar be-isha erva* and *peri'at rosh* are from two unrelated *sugyot*, in *Berakhot* and in *Ketubot*. Linking the two is a *hiddush*, which requires substantiation.
- 3) According to *Iggerot Moshe*, a woman's hair is *erva* only indirectly, by dint of the head being a normally-covered part of the body in accordance with R. Yitshak's statement. But R. Sheshet's citation of the verse from *Shir Ha-Shirim* implies that hair is a sexual distraction in its own right.
- 4) If *u-fara et rosh ha-isha* determines that all the head is to be considered normally covered, and that therefore an uncovered *tefah* of hair is *erva*, this is a Torah-based determination that cannot be changed whether or not in practice women cover all of their heads. This is similar to the view of the *Mishna Berura* mentioned above.<sup>103</sup> Yet R. Feinstein agrees there with the *Arukh ha-Shulhan*.<sup>104</sup>

### Denying *Iggerot Moshe*

The *Iggerot Moshe*, in any case, permits uncovering up to a square *tefah* of hair within the hairline. This contradicts *Oz ve-Hadar Levusha's* portrayal of contemporary halakha as uniformly forbidding any display of

hair. In defense of his position, the author of *Oz ve-Hadar Levusha* claims, first, that the *Iggerot Moshe* gives no general *heter* to expose any hair above the forehead:

People assume that Maran Hagaon Harav Moshe Feinstein *zt"l* allowed women to leave less than a *tefah* uncovered. This is totally incorrect. He allowed this only under pressing circumstances, as is evident from the wording at the beginning of the Responsum.<sup>105</sup>

To support this contention, the author cites a report by a London rabbi of a conversation with R. David Feinstein, in which the latter spoke about his father's ruling:

Hagaon Rav Dovid *shelita* said to me that it is clear from the text of the *teshuva* that his father *zt"l* never intended to give an all-out *heter* for the exposure of two finger-widths of hair. The *teshuva* was a personal *heter* given for an exceptional case. As he writes, 'she [the lady who did not agree to cover her hair] should not be considered a major sinner *ch"v*.' This is also indicated from the introductory words of the *teshuva*, 'In the first place I intended not to answer your query in writing, as it is adequate that I give a verbal *heter* when the circumstances justify it,' etc. The responsum also finished with the words 'It is correct for women to be stringent and cover their hair completely, as the *Chassam Sofer* held.' All this clearly implies that no general *heter* was given.

But R. Feinstein does not say "she should not be considered a major sinner," in the singular. What he does say is "those [women] who want to be lenient," in the plural, referring to women in general; there is no mention of any specific "lady who did not agree to cover her hair." Also, the *teshuva* does not say "she should not be considered a major sinner," rather, "they should not be considered violators of *Dat Yehudit*," i.e., not sinners at all, neither major nor minor. Thus he concludes, "even a scholar and a fearer of Heaven should not refrain from marrying such a woman."

This pattern of wishful or willful misreading of the *Iggerot Moshe* is evident in other places as well. The *teshuva* was not in fact "a personal *heter* given for an exceptional case." The hesitancy at the beginning of the *teshuva* refers to replying specifically in writing, not to any hesitancy about the reply itself, and no "pressing circumstances" are involved except as regards writing the *heter* as opposed to transmitting it orally. If there is reluctance to give a "general *heter*" it is in the sense of not cir-

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culating it, lest it lead women who until then covered all of their hair to lower their standards, but the *heter* was there for anyone who needed it. This explains the remarkable fact that although the *teshuva* professes to disagree with *Hatam Sofer*,<sup>106</sup> it makes not the slightest reference to the *minhag* factor which is a key component of the latter's argument. R. Feinstein had no intention of prompting women who already had a *minhag le-habmir* to abandon it.

*Oz ve-Hadar Levusha*'s second argument is that R. Feinstein retracted his earlier view:

The ruling mentioned (*O.C.* 4:112) is written in a responsum dated 5717 and again in a responsum (*E.H.* 1:58) dated 5721. There is, however, a third responsum (*O.C.* 4:15) dated 5732 in which it is written explicitly that even less than a *tefah* of hair must be covered in line with other "covered areas" of a woman's body which must be fully covered, and even less than a *tefah* may not be exposed.<sup>107</sup>

This refers to the fact that in the two earlier responsa the *Iggerot Moshe* argued that even the *Hagahot Maimoniyyot* cited by Rema, which forbids viewing less than a *tefah* of flesh in women other than one's wife, would permit less than a *tefah* of hair, i.e., that there is no disagreement on this matter. In the third responsum, however, he wrote that the question "depends on the controversy concerning less than a *tefah* [of flesh] brought by Rema," i.e., there *is* disagreement on this matter. According to *Oz ve-Hadar Levusha*, therefore, the last *teshuva* of R. Feinstein's on the subject rules "explicitly" that any amount of hair must be covered.

However, besides the fact that there is nothing explicit about it, the *Iggerot Moshe* did not specify that we rule according to Rema on this issue, but only that it is a matter of controversy. In addition, as opposed to the first two responsa which discuss the Rema/*Hagahot Maimoniyyot* view, the third responsum has no discussion at all and merely mentions it in passing. It is unlikely that this represents a retraction of previous arguments.

### Outside the Hairline

*Oz ve-Hadar Levusha* does not mention an additional *heter* propounded by R. Feinstein,<sup>108</sup> that of even more than a *tefah* of hair *outside* the hairline. The source for this leniency is Rashba (and others) on *Berakhot* 24a in the name of Ra'avad:

Her face, hands and feet, and her speaking voice that is not singing,

and her hair outside her *tsama* that is not covered [*eno mitkaseb*]<sup>109</sup>—they are of no concern [*en hosheshim labem*], because he is used to them and they do not distract him.

Hair outside the braided and covered<sup>109</sup> part of her head is mentioned along with face and feet, which are each more than a *tefab*. But I think this is no proof that Ra'avad permitted leaving more than a *tefab* of hair uncovered. He was justifying the practice in his time, and the custom then was certainly not for women to expose such quantities of hair, within or without the hairline. On the contrary, in most if not all medieval communities married women exposed little or no hair. This is evident from halakhic<sup>110</sup> and pictorial<sup>111</sup> sources.

Nevertheless, R. Feinstein could permit more than a *tefab* outside the hairline simply by following his own line of reasoning. Since the Torah specifies uncovering the *sota*'s head and not her hair, the *kohen* needed to uncover only the hair on the woman's head, and not what hung down on her neck and shoulders. Consequently, no Torah obligation can be derived for a married woman to cover hair outside her hairline. In the absence of such an obligation, hair outside the hairline would not be considered a place that is normally covered, and *tefab be-isha* would not apply.

### **Shoulder-length Hair**

However, evidence can be brought from the *Gemara* that a woman with loose hair down to her shoulders is considered *peru'at rosh*, even if her head is covered. In *Ketubot* 15b, the Mishna states that a maiden goes out to her wedding wearing a *hinuma* and with her head *paru'a*. Rashi explains that her hair hung on her shoulders, and he defines *hinuma* as “a kerchief [*tse'if*] on her head, hanging down over her eyes.” Even though she wore a headcovering, if her hair fell loose on her shoulders she was deemed *peru'at rosh*; for a married woman this would violate *Dat Yehudit*.

### **Separate Halakhot**

*Se'ar be-isha erva* and *Dat Moshe vi-Yehudit* stem from two completely separate talmudic discussions, the first in *Berakhot* and the second in *Ketubot*. The Torah law<sup>112</sup> that married women must cover their hair in public, derived in *Ketubot* from the verse in *Bemidbar*, is independent of the rabbinical laws of *erva* regarding *Keri'at Shema* expounded in *Berakhot*. Thus, the *Arukh Ha-Shulhan* could state:

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For many years daughters of Israel have been wanton in this transgression, and they go about bareheaded . . . the plague has spread, and married women go about with their hair [uncovered] like *betulot*. Woe to us that this has happened in our day! However, in any event it seems that, by law, we are permitted to pray and recite blessings facing their uncovered heads, because nowadays most of them go about in this way, and it has become like the normally uncovered parts of her body.<sup>113</sup>

Going bareheaded was and remains a transgression, and only *Keri'at Shema*, prayers and blessings were affected by widespread violation of the halakha in this regard. Noncompliance spread widely in Europe, commencing with the Emancipation in the early nineteenth century. Virtually no Ashkenazic<sup>114</sup> rabbinic authority justified it.<sup>115</sup>

### Permitted Exposure

By talmudic law, in certain circumstances some exposure of hair was permitted even in the presence of strangers. In *Ketubot* 72b cited above, “[wearing] a *kalta* does not constitute [going] bareheaded . . . [when she goes] from courtyard to courtyard via a passageway [*mavuy*].” According to Rivan and *Terumat ha-Deshen* hair was visible through the interstices and according to R. Yehonatan hair was visible around the *kalta*,<sup>116</sup> nevertheless, a woman was permitted to wear one in a *mavuy* even though it was a semi-public area and strangers were present.

*Semag*<sup>117</sup> and Rabbenu Yona<sup>118</sup> wrote that “from courtyard to courtyard via a passageway” means that the woman must go from one to the other without stopping; to tarry she would need optimum hair-covering, and not merely a *kalta*. This may also be the intention of Rivan, who wrote that the hair between the cracks of the *kalta* is “not so visible” to the men in the passageway. There may have been shops and shopkeepers in the passageway, and if the woman stopped she would be looked at. A glimpse of some of her hair as she walked by, however, was of no consequence.

*Nimukei Yosef* even permitted a woman to stop and linger in a *mavuy* while wearing only a *kalta*, as long as she did not do so regularly (*bi-kvi'ut*).<sup>119</sup>

### In a Courtyard

A woman may go about in a courtyard without any headcovering, if no one aside from members of her immediate family sees her there. This is the opinion of Rashi,<sup>120</sup> *Tosafot*,<sup>121</sup> Mahariah,<sup>122</sup> Ran,<sup>123</sup> Ritva,<sup>124</sup> and others.<sup>125</sup>

Some *Rishonim* seem to permit this even when strangers are present. *Nimukei Yosef*<sup>26</sup> wrote:

In her yard which is not open to many [*she-en rabbim boke'in sham*], she need not be concerned [even] about actual bareheadedness [*peri'at rosh mamash*].

And according to the *Terumat ha-Deshen*,<sup>127</sup>

in a courtyard the woman needs no [head] covering at all . . . certainly the prohibition of being bareheaded is only because of men's licentiousness [*peritsut de-gavrei*], and where many [men] are not usually found [*lo shekhiha rabbim*] such as in a courtyard, there is no objection.

The simple import of both *Nimukei Yosef* and the *Terumat ha-Deshen* is that a *kalta* is mandatory only in a courtyard frequented by many people (*rabbim*), but not if only a few visitors are present. One can discount their wordings as *lav davka* and require a *kalta* if any stranger is present, as is Ritva's position.<sup>128</sup> But even if so, indubitably, Ritva, *Nimukei Yosef* and the *Terumat ha-Deshen* all require in a courtyard *no more* than a *kalta*, even in the presence of strangers and for an extended period. I think all *Rishonim* agree, for this is the sense of "from courtyard to courtyard": the courtyards are, presumably, not both hers, and she cannot assume that no strangers will be there. Nevertheless, a *kalta* is sufficient, even though by many definitions of a *kalta* some hair is visible.

Moreover, in the Talmud, a courtyard often refers to a central enclosure serving a number of dwellings<sup>129</sup> that are accessible only through the courtyard. Ri'az,<sup>130</sup> who wrote, "It is forbidden [for a woman] to go out in a courtyard without a *kalta* on her head," I think is referring to such a courtyard, and not a completely private one. He cites the *Yerushalmi* (*Ketubot* 7:6):

A woman who goes out in a *kapilton* [*kalta*] is not considered as *rosha paru'a*. This refers to a courtyard, but [if she goes out] to a *mavuy*, she is considered as *rosha paru'a*. . . . A courtyard that many people enter [*rabbim boke'in bo*] is like a *mavuy*, while a *mavuy* that not many people enter is like a courtyard.

The enclosure under discussion is one that either many people enter or only a few people enter.<sup>131</sup> A completely private *hatser* is not under discussion, and the *Yerushalmi* would agree that in the latter case no

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head covering at all is needed. This counters the view that postulates a disagreement between the *Bavli* and *Yerushalmi*.

Similarly, the *Tur* records (*Even ha-Ezer* 115):

. . . If she is not wearing a *redid* like all the women [but only a *kalta*], she is liable to be divorced without [being paid her] *ketuba*, but only if she goes out that way in a public domain, in an open passageway (*mavuy mefulash*) or in a courtyard that many enter. But if [she goes out] in a partially closed passageway and in a courtyard that few enter, she is not liable to be divorced.

*Bah* inferred from the *Tur* that although the woman is not subject to divorce, it is still improper (*meguneh*) for her to expose any of her hair. But I think that the *Tur*, like the *Yerushalmi*, is contrasting a courtyard that many strangers enter with one that few enter (but some do). In the case of a completely private courtyard, he agrees with Rashi and *Tosafot* that there is no opprobrium in going bareheaded.<sup>132</sup>

### Indoors

Talmudic *Dat Yehudit* thus establishes a sliding-scale: in one's home or yard when no strangers are present a woman's hair may be completely uncovered; in a semi-private area where there are a limited number of neighbors or visitors a *kalta* must be worn, but some hair can remain visible through or outside it without it being considered *peritsut*; in a frequented area an optimum headcovering is required, just as in the marketplace.

However, the *Mishna Berura*<sup>133</sup> wrote:

Even if the woman's way is to cover [hair] only in the marketplace but not in [her] house or yard, nevertheless, according to all opinions it is in the category of *erva* even in the house, and it is forbidden to read *Shema* facing it if [even] part<sup>134</sup> [*miktsat*] of it is uncovered.

According to this ruling, even though the woman may go bareheaded in the privacy of her home without penalty, her husband may not recite *Shema*, *Birkat ha-Mazon* or any other blessing, or say *divrei Torah* in her presence unless she covers her hair. In practice, this makes going bareheaded in a family setting impossible, particularly at *Shabbat* meals.

This would also apply to covered parts of the body, as there is no reason to be more lenient concerning them than concerning hair.

Presumably, however, it only applies when what is covered is covered for reasons of *tzeni'ut* and not merely for utilitarian use. For instance, in cold climates where everyone wears gloves outdoors to keep warm, one would not claim that women's fingers and hands are, therefore, *erva* indoors.

However, even with this qualification the ruling leads to improbable conclusions. In many Arab countries Jewish women went outside with their faces veiled, as already noted in the Mishna.<sup>135</sup> The veil was for reasons of *tzeni'ut* as defined in those societies. Were the faces of Jewish women, then, considered *erva* inside their own homes? This has never been suggested by anybody.

Moreover, what logic is there for ruling that if a woman covers her hair in the marketplace, say for one hour a day (or week), this alone determines its *erva* status for all other hours and places? This might apply to other women, but not to one's wife, whom he sees regularly at home with her hair uncovered.

### ***Yad Efraim***

The source for the *Mishna Berura's* ruling is the *Yad Efraim*, printed in editions of *Shulhan Arukh Orach Hayyim* since 1820. In 75:1, the *Shulhan Arukh* permits *Keri'at Shema* in the presence of virgins who customarily go bareheaded. *Magen Avraham*<sup>136</sup> commented:

[This is] difficult, for in *Even ha-Ezer* 21:20 [*Shulhan Arukh*] wrote, "Daughters of Israel shall not go bareheaded in the market place, whether married or single," and Rambam also wrote this.

*Magen Avraham's* initial assumption was that the *penuyot* (unmarried women) mentioned in *Even ha-Ezer* are the same as the *betulot* (virgins) mentioned in *Orach Hayyim*. On that basis, he pointed to a contradiction: why are *penuyot* forbidden to go bareheaded in the marketplace, in *Even ha-Ezer*, while in *Orach Hayyim* one is allowed to recite *Shema* in the presence of *betulot* even though they are bareheaded?

The *Yad Efraim* commented on *Magen Avraham's* difficulty:

It would seem that it should not be difficult at all, [for we could say that] here [in *Orach Hayyim*] where [someone] wants to recite *Shema* in the house or courtyard, there is no prohibition [to do so in the presence of bareheaded *betulot*, as opposed to in the marketplace]. Perforce [since *Magen Avraham* did find it difficult] one must say that he is of the opinion that, if so, the same would apply even to married women. One is forced to conclude that since married women cover [their hair]

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in the marketplace, it is *erva* regarding *Keri'at Shema* even indoors.

That is to say: *Magen Avraham* could have resolved the contradiction by explaining that the uncovered hair of *betulot* is *erva* only in the market place where hair is customarily covered, but not in a house or yard. Since he chose not to do so, it must be because he held that what is *erva* in public is *erva* in private, and there is no difference between *betulot* and married women in this regard. (Still, it is unclear to me why there should not be a difference between other married women and one's wife.)

Such a *diyyuk* is a fragile basis for halakha. It infers from what the *Magen Avraham* did not say, and one can not be sure that it is what *Magen Avraham* meant. Writing after the *Mishna Berura*, other compilers<sup>137</sup> ignored this *Yad Efraim*, and its acceptance depends on the *Mishna Berura's* prestige.<sup>138</sup> In the time of *Yad Efraim* the question was theoretical, as most women covered their hair both indoors and out. Those who today cover their hair indoors when in the presence of strangers but not when alone with their immediate families, in any case, have not adopted this *humra*.

### *Iggerot Moshe*

Disagreeing on logical grounds but without mentioning *Yad Efraim* and *Mishna Berura*, R. Moshe Feinstein wrote in his *Iggerot Moshe* (*Yoreh De'a* 2:75):

Concerning a woman's hair with regard to her husband when she is a *nidda*, it is certainly better than her normally covered parts. For women who are not stringent like Kimhit but only [observe] what is obligatory, and do not cover their hair at home when other men are not present— [the fact] that a woman's husband is continuously familiar with her is a strong argument for not prohibiting it. . . . In principle it stands to reason that, by law, those covered parts that the husband is forbidden to gaze at are only those parts that are covered at home when only her husband is present, or even when no one at all is present, for women get dressed anyway. It makes no sense [to say] that the covered parts [at home] are those she covers in the marketplace or in the presence of other men when extra *tzeni'ut* is required, although it is good to be stringent in these matters. . . .

*Oz ve-Hadar Levusha*<sup>139</sup> adopts the *Mishna Berura's* view on this matter entirely, and does not mention the *Iggerot Moshe*.<sup>140</sup>

### C. THE SUGYOT IN KIDDUSHIN AND SOTA

In *Kiddushin* (70a):

[R. Nahman said to R. Yehuda,] “Let [my daughter] Donag pour us drinks.” [R. Yehuda replied,] “Shemuel said, ‘one may not make use of a woman.’” [R. Nahman said to him, “But] she is a child!” [R. Yehuda replied,] “Shemuel said explicitly, ‘one may not make use of a woman at all, whether adult or child.’”

[R. Nahman said,] “Would you like to convey greetings [*shalom*] to [my wife] Yalta?” [R. Yehuda replied,] “Shemuel said, ‘a woman’s voice is *erva*.’” [R. Nahman said,] “It’s possible [to send and receive greetings] via an emissary!” [R. Yehuda replied,] “Shemuel said, ‘one may not ask about the welfare of a married woman.’” [R. Nahman said,] “[Not even] via her husband?” [R. Yehuda replied,] “This is what Shemuel said: ‘one may not ask about the welfare of a married woman at all.’”

#### *Kol Be-Isha Erva*

In *Berakhot* (24a), when Shemuel said “a woman’s voice is *erva*” it meant her singing voice, as is seen from his citing *Shir Ha-Shirim* (2:14), “Let me hear your voice, for your voice is pleasant [*arev*].” In *Kiddushin* 70a, however, *kol be-isha* refers to asking about the welfare (*she’ela bi-shlom*) of a married woman. This has nothing to do with singing. I think his statement there relies on a different Scriptural peg, as found in the Jerusalem Talmud (*Halla* 2:1):

Shemuel said, “a woman’s voice is *erva*.” What is the reason? “It shall be that from the voice of her whoring (*mi-kol zenuta*), the land will be polluted. . . .” (*Jeremiah* 3:9).

In context, “voice” here means report or public knowledge, but in its literal connotation it serves as a peg to link women, speech and *zenut*. *She’elat shalom* of a woman through an emissary or via her husband relates to *erva* only in this second sense.<sup>140a</sup> Even when transmitted through an intermediary, some words (i.e., voice) can lead to *keruv ha-da’at*,<sup>140b</sup> familiarity and affection, and potentially to sin.

#### *Ha-Kol Le-Shem Shamayyim*

As cited by R. Yehuda in *Kiddushin* 70a, Shemuel seems to have prohibited making use of women and *she’elat shalom* of married women, in any shape or form. Nevertheless, in *Kiddushin* 81b we find a counter-

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vailing principle, propounded by none other than Shemuel:

R. Aha bar Abba visited his son-in-law, R. Hisda. He took his granddaughter on his lap . . . [R. Hisda said to him] “You have violated Shemuel’s [prohibition], for Shemuel said, ‘One may not make use of a woman.’” [R. Aha bar Abba replied,] “I hold like Shemuel’s other [statement], ‘*ha-kol le-shem shamayyim* (all in the name of Heaven).’”

One should not make any use of a woman, yet Shemuel himself permitted reliance on “all in the name (or: for the sake) of Heaven” when circumstances warranted. “In the name of Heaven” in this context means of innocent intent<sup>141</sup> and legitimate purpose, and not necessarily in order to fulfill a specific *mitsva*.

*Rishonim* used this principle to justify leniencies that were widespread. *Tosafot* in *Kiddushin*<sup>142</sup> wrote, “We rely on this [*ha-kol le-shem shamayyim*] nowadays in that we make use of women,” and *Semag*:<sup>143</sup> “We rely on . . . ‘all [that is] in the name of Heaven.’” In *Berakhot* 24a, the *Sefer ha-Me’orot* cites Ra’avad:

In another woman, it is certainly forbidden to gaze at any part of her, even at her little finger or her hair, and it is forbidden to hear her words, as is stated in *Kiddushin*, and even *she’elat shalom*. [But] today we are accustomed to [permit] *she’elat shalom* and in necessary matters, and [we rely on] *ha-kol le-shem shamayyim* as is [mentioned] there.

The references to “we” are to the community in *Tosafot*’s time. The difficulty is that R. Aha bar Abba was a talmudic sage and presumably on a level far higher than most. *Tosafot* say as much; in *Shabbat* 13a regarding Ulla, who kissed his sisters<sup>144</sup> on their hands or sleeves, *Tosafot* wrote:

He knew that he himself would not come to *hirbur*, as he was a complete *tsaddik*, as we say in Chapter 2 of *Ketubot* [17a] that R. Ada bar Ahava<sup>145</sup> used to carry her [the bride] on his shoulders and dance. The [other] rabbis asked him, “May we do that?”<sup>146</sup> He answered, “If she is like a wooden beam to you, go ahead! Otherwise, no.”

And *Tosafot R. Elhanan* wrote in *Avoda Zara* 17a:

He [Ulla] permitted himself [to do so] because she was like a wooden beam to him, as is said in chapter 2 of *Ketubot* regarding a bride. And it is said in *Kiddushin*, “I hold like Shemuel’s other [statement], ‘*ha-kol le-shem shamayyim*.’”

R. Aha bar Abba is thus equated with Ulla and R. Aha, who were complete *tsaddikim* and to whom women were like a “wooden beam.”<sup>147</sup> But, if so, how could *Tosafot*, *Semag* and Ra’avad extrapolate from him to people in their day? The ability of a *tsaddik gamur* to refrain from *hirhur* says nothing about lesser mortals!

There are a number of possibilities:

- 1) R. Aha bar Abba was indeed a *tsaddik gamur*, but that is not the reason he gave. Since his justification was *ha-kol le-shem shamayyim* and not that women were to him like a “wooden beam,” one learns that *le-shem shamayyim* is sufficient even if one is not a *tsaddik*.
- 2) Only in extreme cases need one be a *tsaddik gamur*. Thus, R. Aha who carried a bride on his shoulders explained that to him she was like a “wooden beam,” and R. Gidel who in *Berakhot* 20a sat at the entrance to a women’s *mikveh* (*sha’arei tevila*) explained that they were like “white geese,” because otherwise it would have been impossible to avoid *hirhur* in such circumstances. In less provocative situations, however, even the average person can say *ha-kol le-shem shamayyim*.
- 3) As an individual, only a complete *tsaddik* like R. Aha bar Abba may take liberties in matters of *hirhur*. But the community as a whole has a different status, and therefore *Tosafot* wrote that “we” make use of women. The reason is that the everyday, routine and commonplace nature of a practice forestalls *hirhur*.<sup>147</sup>

### Special Leniencies

*Rishonim* differ as to whether egregious behavior such as R. Gidel’s sitting near the entrance to the women’s *mikveh* and R. Aha’s dancing with a bride on his shoulders can be permitted at all in later generations. Nowadays, may even a saint do what they did? *Sefer ha-Hinnukh*<sup>148</sup> wrote no, and moreover made no distinction between extreme cases such as those of R. Gidel and Rav Aha and everyday circumstances:

In everything that they *z”l* warned us, a man is not permitted to deviate from their good counsel. . . . That you find a few incidents in the *Gemara* which appear to contradict my words, is no contradiction at all. Only in case of a *mitsva* were they slightly lenient, as we find that R. Yohanan<sup>149</sup> used to sit at *sha’arei tevila* so that the women would look at him and give birth to children as good-looking as he was, and he never

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looked at them, *halila*. And Rabi<sup>150</sup> who put a bride on his shoulders did so for a *mitsva*, to cause her joy. . . . Also they *z"l* were like angels, who did not occupy themselves even momentarily with anything but Torah and *mitsvot* . . . and they felt no wicked feeling in anything. . . . But we, today, are not to make even the slightest breach in these matters.

*Semak*,<sup>151</sup> however, wrote that someone to whom women are like geese or a beam is permitted to look at them, and did not limit this to talmudic times. Similarly, Mei'ri wrote in *Ketubot*<sup>152</sup> that only someone free of all *hirhur* can carry a bride on his shoulders or gaze at her in order to endear her to the groom. The implication is that there can be such individuals, even today. In *Kiddushin*<sup>153</sup> Mei'ri wrote that one is permitted *she'elat shalom* of a married woman (only) if he has no trace of *hirhur*, "and on this and the like it is said ' . . . and you shall fear your God, I am *Hashem*,' " i.e., a person is permitted to claim that he has no *hirhur*, and God will judge whether he is being truthful.<sup>154</sup>

Ritva<sup>155</sup> wrote:

. . . everything depends on what a person recognizes in himself. If he recognizes that his impulses are overcome and under his control and he has no lust at all, he is permitted to look at and speak with an *erva* and inquire about a married woman's welfare. Such is the case of R. Yohanan who sat at the gates of [the place of women's] immersion and was not afraid of the evil inclination . . . and R. Ada bar Ahava,<sup>156</sup> about whom it is said in *Ketubot* that he placed a bride on his shoulders and danced with her and was not afraid of *hirhur*, for the reason mentioned. However, it is not proper (*en ra'uy*) to be lenient in this, other than a great *basid* who knows his impulses, and not all scholars [can] rely on their impulses [being under control].

In theory, extraordinary individuals can take liberties that are forbidden to others. But in practice, who can claim to have reached such a level? Moreover, Ritva equates looking at, speaking to and inquiring about an *erva* with the more extreme cases of R. Aha and R. Gidel or R. Yohanan. For any leniency, then, one needs to be a *basid gadol*.<sup>157</sup>

### Individuals and Community Norms

The above would seem to be in clear disagreement with *Tosafot*, *Semag*, *Sefer ha-Me'orot* and Ra'avad, none of whom made any condition about extraordinary individuals. But I think there is disagreement only according to the first two possibilities as to how and what *Tosafot* learned from R. Aha bar Abba, listed above. According to the third,

there is no dispute. *Semak*, Mei'ri and Ritva deal with individuals, but *Tosafot*, *Semag* and Ra'avad refer to whole communities whose practices have changed: "We rely on [*ha-kol le-shem shamayyim*] nowadays in that we make use of women;" "Today, we are accustomed to *she'elat shalom* and in necessary matters, and *ha-kol le-shem shamayyim*." An individual cannot interact with women more than do his peers without exposing himself to *hirhur*. But if such is everyone's day-to-day behavior, it loses its provocative character.

### *Leket Yosher*

The author of *Terumat haDeshen* is quoted in *Leket Yosher*:<sup>158</sup>

He said that it is permitted to walk behind the wife of a *haver* or behind his mother, because nowadays we are not all that prohibited (*en annu muzharim kol kakh*) from walking behind a woman.

Walking behind a woman is prohibited in *Berakhot* (61a) because of *hirhur*,<sup>159</sup> and just who permitted it? However, because nowadays women go everywhere and we are accustomed to walking in back of them, no *hirhur* results.<sup>160</sup>

### Maharshal

In *Yam Shel Shelomo*<sup>161</sup> Maharshal quoted both *Tosafot* and Ritva, and he wrote in the introduction:<sup>162</sup>

It will be explained that everything is according to what his eyes see, and [if he] controls his impulses and can overcome them he is permitted to speak to and look at an *erva* and inquire about her welfare. The whole world (*kol ha-olam*) relies on this in using the services of and speaking to and looking at women; nevertheless, it is forbidden for maidservants to attend to him in the bath[house].

The first sentence mirrors Ritva, while the second restates *Tosafot* and makes explicit what was implicit:

- 1) *Tosafot* refer to the whole community (*kol ha-olam*) and not just to themselves. Simple people as well as scholars rely on *ha-kol le-shem shamayyim*.
- 2) *Tosafot* cited "to make use of women" only as an example. The leniency equally applies to looking at and speaking to women, etc.—whatever is normal in day-to-day affairs.

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3) *Tosafot* did not permit activities that are inherently productive of *hirbur*, such as being washed by maidservants. This is an extreme case and would require one to be a *basid gadol*, just like carrying a bride on one's shoulders.

### *Levush*

R. Mordechai Yafeh, who studied under Maharshal, openly subscribes to the third possibility listed above as to how *Tosafot* learned from R. Aha bar Ada. In the *Minhagim* at the end of his *Levush Orab Hayyim* he wrote, regarding mixed seating<sup>163</sup> at wedding feasts:

Nowadays we are not careful about [avoiding] this, possibly because nowadays women are very common among men, and there is not so much<sup>164</sup> sinful *hirbur* [about them], because they seem to us like “white geese” due to the frequency of their being among us. And what [people] got used to, they paid no attention to [*kevan de-dashu, dashu*].<sup>165</sup>

Embodiments of this approach in recent times were the strictly Orthodox Germanic-Dutch Jewish communities,<sup>166</sup> largely destroyed in World War II but remnants of which have survived in different countries. They were characterized by mixed men-and-women seating at weddings, social events and even *shiurim*, by handshakes between men and women, etc.,—*ha-kol le-shem shamayyim*.

*Levush's* concluding statement, “*kevan de-dashu, dashu*,” can also mean “what was done, was done,”<sup>167</sup> i.e., it might have been preferable had women not become commonplace among men, but since they became so, we judge matters accordingly. This is similar to the *Arukh ha-Shulhan's* observation on the consequences of women going bare-headed.<sup>168</sup> But there is an important difference: the requirement for married women to cover their heads in public is of Torah origin and cannot change, and it is independent of *hirbur*. Therefore, halakha continues to insist that women cover their hair. By contrast, the strictures against interaction with women are meant to forestall *hirbur* and related hazards. If these are ameliorated by “the frequency of their being among us,” as *Levush* wrote, there is no obligation to return to conventions that prevailed at the time of the Talmud. From *Tosafot* through *Levush*, we find no exhortation to turn the clock back to more pristine times.

### Christian and Muslim Societies

*Tosafot*<sup>169</sup> reflect the changed role of women in their time. For example,

*Yehuda-Herzl Henkin*

in *Avoda Zara* (23a), on the question of whether seclusion (*yibud*) with a non-Jew results in a woman being forbidden to her *kohen* husband, *Tosafot* wrote:

If so, you will not have even one daughter of our forefather Abraham<sup>170</sup> who is the wife of a Kohen left married to her husband, for it is impossible that she will never be secluded with any non-Jew at least for a brief interval.

This reflected conditions in Christian France, where in the Jewish community wives often ran the family businesses when their husbands were away, occupied or deceased. Extensive contact with non-Jews was involved, and inadvertent *yibud* at one time or another was almost inevitable. One cannot imagine, say, Rambam<sup>171</sup> using such an argument, for in Muslim societies women played no such role and were heavily chaperoned.

**Distinctions in *Kol Be-Isha***

Various arguments and considerations have been advanced and gradations have been proposed regarding *kol be-isha*:

- 1) Singing that is recorded, broadcast or electronically amplified (heard only through a loudspeaker), is preferable to live performance. A voice converted into electrical impulses and then reconverted into audible sound is technically not a “voice.”
- 2) Two or more women singing together are preferable to a soloist, because of the difficulty of hearing any one voice clearly.<sup>172</sup>
- 3) Singing along with the women by the man or men is preferable to passive listening.<sup>173</sup>
- 4) A situation where the singer is not visible<sup>174</sup> is preferable to one where she is.
- 5) A situation where the singer is not known by the listener is preferable to one where she is.<sup>175</sup>
- 6) *Zemirot Shabbat*<sup>176</sup> and songs using verses from *Tanakh* or the *siddur*, sung for religious sentiments, are preferable to nonreligious music. Similarly, Israeli folksongs are preferable to popular music, etc.

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### Choral Singing

In *Sota* 48a:

R. Yosef said, “when men sing and women respond, it is *presentsuta*; when women sing and men respond it is like fire in kindling.” What difference does it make [how they are described]? To determine which should be abolished first.

Rashi explained:

Like fire in kindling, because one who responds inclines his ear to hear the singer, [in order] to respond after him. The result is that the men pay close attention to the women’s voice[s], and [since] *kol be-isha* is *erva* as it is written (*Shir Ha-Shirim* 2:14) “Let me hear your voice,” [therefore] he [it] inflames his *yetser* like fire in kindling. But when men sing and women respond, [although] there is a little *peritsut* because of *kol be-isha erva*, he does not inflame his *yetser* so much, because the singers do not incline their ears [to listen carefully] to the voice[s] of the responders.

Rashi means that for men to respond as a chorus to what the women sing,<sup>177</sup> they need to listen attentively to the women. Attentiveness nullifies the effect of *trei koli*,<sup>178</sup> and therefore the women’s voices inflame the men’s *yetser bara*. When men lead and women respond, however, the men do not have to listen attentively—although of course they hear the women singing—and therefore there is only a “little” *peritsut*.

According to this, if men listen without special concentration, *trei koli* does not completely obviate *kol be-isha* but it minimizes it. This raises the possibility that if the men are not listening at all or, alternatively, they themselves sing along or there are other mitigating factors along with *trei koli*, the result would be that there is no *peritsut* altogether. The fact that the *Gemara* does not state a greater *hiddush*, that there is *peritsut* even when men and women sing in unison rather than responsively, is indication of this.

Rashi in *Sota* further cited the verse in *Shir Ha-Shirim* (2:14), “let me hear your voice” (*hashmi’ini et kolekh*). The verse continues “for your voice is pleasant,” which is the Scriptural peg for *kol be-isha erva* cited in *Berakhot* (24a). This is the prototypical *kol be-isha*:<sup>178a</sup> a single woman singing for a man who is enjoying listening to her.

### Visibility

There are differing views on the connection between *kol be-isha erva* and a woman’s being visible:

- 1) A woman's singing voice is *erva* even when she is not visible (*Sefer Yere'im*,<sup>179</sup> *Mordechai*<sup>180</sup>).
- 2) A woman's singing voice is *erva* only when she *is* visible (Ra'avya<sup>181</sup>).
- 3) *Kol be-isha* is *erva* if the listener has previously seen the woman, even if she is not now visible while singing (*Aharonim*<sup>182</sup>).

The first view, that she need not be visible at all, is implicit in *Sefer Yere'im*:

It is forbidden to recite *Keri'at Shema* or a *davar she-bi-kedusha* while hearing a woman's voice in song. [But] in our sins, we dwell among the nations, and "it is a time to act for *Hashem*, violate the Torah"—therefore, we do not take care not to learn when hearing the voices of gentile women.

In crowded urban conditions it was impossible to escape the sound of non-Jewish women singing. Obviously, the Gentile women were not inside the *bet midrash*. Their voices were heard from adjacent houses and courtyards, and there is no reason to assume that the Jews either saw them or knew those who were singing. Nevertheless, if not for "it is a time to act for *Hashem*," it would have been forbidden to learn Torah because of *kol be-isha erva*.

A man may overhear the sultry song of a woman he does not know and fantasize that she is a temptress, only to discover upon meeting her that she is ugly and no object of desire.<sup>183</sup>

### ***Kol in a Woman***

The second view is found in Ra'avya, who wrote as a second explanation, "some explain [that *kol be-isha* is *erva*] because a man usually looks at her when she sings." This fits the language *kol be-isha*, literally "in a woman," and not disembodied. In the same way that *se'ar be-isha* refers only to hair attached to the body and not after being cut, even if worn as a wig,<sup>184</sup> *kol be-isha* refers to a voice "attached" to a woman. This is hinted at in *Shir Ha-Shirim*, "for your voice is pleasant and your appearance is attractive," which links hearing and seeing.

In *Sota* 8a, the *Gemara* states, "we have learned that [a man's] evil inclination rules only in what his eyes see," which seems to support Ra'avya's view. But it is no proof, for the statement can be understood in different ways:

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a) Sense perception is essential for the *yetser hara* to rule. “What his eyes see” is an example, but the same applies to hearing, touch, etc. As the Sages said,<sup>185</sup> “can’t a blind person perform all the abominations in the world?”

b) A man’s evil inclination “rules in what his eyes see” means that vision is the main cause of *hirbur*. However, it is not the only catalyst; hearing can also cause *hirbur*, albeit less so than sight.

### Seeing and Recognition

The third view is that if one knows a woman her singing is *erva* to him even if she is not now visible, but not otherwise. As *Tosafot* wrote in *Sota* (8a):

[People] raise a question from *Hagiga* (11b), “Regarding forbidden relations, his [evil] inclination waxes whether [they are] before him or not.” [But] that is no difficulty, for what it means is that someone who saw an *erva* once, always has *hirburim* about her.

Similarly, the *Gemara* in *Megilla*<sup>186</sup> declares that anyone who exclaimed “Rahav, Rahav!” had an immediate seminal discharge. *Tosafot* in *Sanhedrin* 45a asked how this could be reconciled with the statement that the *yetser hara* rules only in what the eyes see. It answered that the *Gemara* itself explains that such a discharge occurred only in the case of someone familiar with her (*be-yode’a u-ve-makira*). Ergo, if one knows a woman, she can be the cause of *hirbur* whether she is present and visible or not.

However, I think this is not conclusive with regard to *kol be-isha*. If the *yetser hara* reacts more strongly to seeing than to hearing, as suggested above, one cannot extrapolate from the former to the latter. It is also unclear what can be learned from Rahav and the other women mentioned there in *Megilla*. They were the most beautiful women in history, and what applied to them may not apply to others.<sup>187</sup>

### Pictures

Is seeing a picture or a photograph of a woman the same as *yode’a u-makira*? Some cite *Sanhedrin* 39b as proof that pictures can arouse and therefore photographs of women are to be avoided:

Ahav was a repressed [*metsunan*] individual, and Izevel made two images of prostitutes for his chariot, so that he would see them and become aroused.

But what were these “images of prostitutes?” Either they portrayed prostitutes Ahav already knew and would recognize as such, or they were erotic pictures of women in general, who for that reason were deemed *zonot*. If the first, it does not show that pictures have any effect unless the woman is known to be a *perutsa*. If the second, it does not demonstrate that pictures of ordinary women cause *hirhur*, but only that pornography, obviously, does.

#### D. PRINCIPLES OF PESAK

##### *Lo Palug*

In general, *lo palug* (a characteristic of rabbinic legislation not to allow for exceptions) does not apply in matters of *hirhur*. If it did, R. Aha would not have lifted a bride on his shoulders and R. Gidel and R. Yohanan would not have sat at the entrance to a ladies’ *mikveh*, nor could *Semak*, Ritva and Mei’ri have permitted special individuals to exempt themselves from many of the strictures regarding *hirhur*, even today.<sup>188</sup>

Even *Radbaz*,<sup>189</sup> who wrote regarding the prohibition of walking behind a woman that all women in all countries are the same, did not write that all men are the same. This distinction between who is subject to the enactment (men) and what or whom the enactment is about (women), with only the latter being subject to *lo palug*, is made by *Taz* and cited by *Bi’ur Halakha* in *Orah Hayyim* 275:1.

##### *Vox Populi*

Widespread practices influence rabbinic rulings in a number of ways, including:

- 1) “Go see what the people say.”<sup>190</sup> In case of doubt as to what is halakha, custom is decisive in choosing between various options.
- 2) “Better they be unwitting violators than deliberate ones.”<sup>191</sup> An anti-halakhic custom which is firmly entrenched and unlikely to be changed, should not be openly challenged.<sup>192</sup>
- 3) When a practice seemingly violates halakha, it may prompt (re)examination of the sources in an effort to discover grounds for it, or *limmud zekhut*.<sup>193</sup> If strong enough, these grounds may legitimate the practice.

What is legitimate custom to one *posek* may be an unfortunate development in the eyes of another. This is particularly the case in matters of *tzeni’ut*, where subjectivity is intrinsic.

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### Reality

In general, halakha—pristine, theoretical law as derived from the sources—is blended with factors “on the ground”—such as *lekbathila* and *bedi’aved*, *mutav sheyibeyu shogegin*, extenuating circumstances (*sha’at hadehak*), etc.—to produce *hora’a*, an actual ruling. Often, familiarity with reality and an intuitive grasp of what is possible and needed in a given community distinguishes the *posek* from the mere great Torah scholar.

A grasp of reality plays another role, as well. Preliminary evaluation of a situation may determine the halakhic arguments brought to bear on it. My grandfather<sup>194</sup> and teacher, wrote this on the topic of *aguna*, a woman whose husband is missing and presumed dead:

It is known that the *gedolim* first evaluated the situation, and [only] after it was clear in their minds that he [the husband] was indeed dead, they spliced together [*tsirefu*] various halakhic arguments [to that effect].<sup>195</sup>

Similarly, in matters of *tzeni’ut*, when I am certain there is *hirhur* I will be unmoved by considerations such as whether a voice heard over the radio is technically a woman’s voice or not. If, on the other hand, I perceive there is no *hirhur*, I will be more receptive to countervailing arguments.

### Limits to Enactments

A man may not gaze at the colored clothes of a woman he knows, lest he bring himself to *hirhur*.<sup>196</sup> In *Bereshit* (49:11), Rashi explained the verse “*kibes ba-yayin levusho u-ve-dam anavim suto*”:

Colored [clothes], from the word “to incite” [*sutah*]. The woman wears them in order to entice the male to look at her.

That being the case, why didn’t the Sages forbid the wearing of colored clothes at all, at least outside the home? I think they were unable and unwilling. Women seek to be attractive and would not accept such a prohibition, any more than they agreed not to wear jewelry on *Shabbat* because of the dangers of carrying.<sup>197</sup>

This accords with Rashi’s and most *Rishonim*’s explanation of *Dat Yehudit*<sup>198</sup> as customs that modest women first accepted on themselves. The Sages could not impose everything unilaterally.<sup>199</sup>

### Ideology

Books such as *Oz ve-Hadar Levusha* are as much about ideology and *musar* as they are about halakha. This ideology prohibits a woman from standing out—and from being outstanding. She must not act in a play, paint a mural, play an instrument or otherwise demonstrate special skills in front of men, lest she attract attention and her movements excite them.<sup>200</sup>

But I think no such *issur* exists. For example, *Oz ve-Hadar Levusha's* source for the above is *Radbaz*, cited above:<sup>201</sup>

The basic reason [for not walking behind a woman] is that because of her walking and movements [*hilukha u-tenu'ateha*] he will arrive at *hirhur*, even if she is fully covered . . . he is forbidden to walk even in back of his wife. . . . If she is far enough away so that he does not recognize and discern her walking and her movements, it is permitted, but [in] any [circumstances in which] he sees and discerns her walking and the movements of her limbs, it is prohibited.

From this, the *Mishneh Halakhot*<sup>202</sup> derived that watching *any* movement of a woman's limbs is prohibited, even if clothed. But clearly, *Radbaz's* "her walk and her movements" refers to the distinctively feminine sway of the hips and body while walking.<sup>203</sup> It has nothing necessarily to do with movements that are identical in both men and women and have no sensuous aspect to them, such as playing the piano, bowing a violin, or peeling a potato.

I have no quarrel with the author of the *Mishneh Halakhot*, who is entitled to his opinion. I do have a quarrel with popularizers such as *Oz ve-Hadar Levusha*, who copy such opinions as if they were basic halakha.<sup>204</sup>

### Excellence in *Tseni'ut*

According to this ideology, as well, the one area in which a woman should strive to excel is that of *tseni'ut* itself. Just as a man has the study of Torah, a woman has the practice of *tseni'ut*.<sup>205</sup> The world of *tseni'ut* is all-encompassing,<sup>206</sup> and women are expected to "work on their *tseni'ut* as a counterpoint to the man's day-and-night Torah study."<sup>207</sup> A woman's ultimate distinction is to be considered a *tsanu'a*.<sup>208</sup>

*Oz ve-Hadar Levusha* mentions, approvingly, a Rebbetzin

who never displayed her vast knowledge. Whenever the words of the Rambam, the *Chovas Levavos* or the *Mesilas Yesharim* were quoted at the *Shabbas* table or at a family gathering, she would listen quietly and

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closely as if the words were new. She never hinted that she was fully acquainted with what was being quoted.<sup>209</sup>

An alternative, that she should share her knowledge with others and deliver a *devar Torah*, is not mentioned. That apparently would be displaying special skills and reflect a lack of *tzeni'ut*. The author does not raise the issue of women's Torah learning directly, but it is clear he does not expect women to challenge or be challenged intellectually.

In a sense, books like *Oz ve-Hadar Levusha* continue the process of standardization of halakha at the expense of local custom, which began with the *Mishna Berura* and has continued in earnest since the Second World War. *Tzeni'ut* is particularly ill-suited for such standardization, and what is suitable for *kiddush*-cups and *matsot* may not be suitable for the amount of a woman's hair showing, if any. There is a danger here of losing sight of the real basics of modesty—not to mention being so concerned about not thinking about women that one can think of nothing else.

## NOTES

1. Shemuel belonged to the first generation of *Amoraim*, while R. Yitshak, R. Hisda and R. Sheshet lived in the second and third generations; Shemuel's pronouncement, "a woman's voice is *erva*," therefore, preceded those about *tefah*, *shok* and hair. Why? Perhaps because the prohibition of voice is the least obvious of the four: *kol* is non-visual and not easily subsumed under *ve-lo yir'eh bekha ervat davar*, "and [God] shall not see a matter of *erva* in you" (*Devarim* 23:15; see the passage below headed "*Ervat Davar*"); see *Sefer Ra'avia*, no. 76. For that very reason it was necessary to proclaim its nonetheless *erva* status, even before the others. (But see *Or Zaru'a* 1:133, who attributes the statement on hair to Shemuel and on voice to R. Sheshet, *pace* the partial emendation there.)
2. R. Yona to Rif, *Berakhot* (33a), s.v. *erva*, "*ve-hu ha-din le-khol isha ha-megala tefah.*"
3. *Sefer Yere'im ha-Shalem* (392): "*de-afilu ishto ki megala tefah mina asur likro Keri'at Shema ke-negda.*"
4. *Mitsvat Aseh* 18, "*tefah be-isha ervat . . . ve-lo yikra af al pi she-hi ishto.*"
5. *Mitsva* 83, "*tefah be-isha ve-afilu hi ishto.*"
6. *Hilkhot Keri'at Shema* (Ch. 3), "*kol tefah be-isha afilu be-ishto ervat.*"
7. Compare to *Berakhot* 25a, "*ve-tefah be-isha . . . afilu be-ishto u-le-Keri'at Shema.*"
8. *Sefer ha-Menuha*, *Hilkhot Keri'at Shema* 3:16, "*tefah meguleh mi-guf ha-isha harei hu ke-tso'a . . . ve-davka tefah, aval pahot mi-tefah lav kelum hu.*"
9. *Hilkhot Keri'at Shema* 36, "*kol guf ha-isha ervat afilu hi ishto, im ro'eh mimena tefah meguleh lo yikra ke-negda.*" The same for *Sefer Kolbo* by the same author (Ch. 10).

10. *Commentary to Berakhot 24a*, “*tefah be-isha erva . . . le-inyan Keri’at Shema ve-afilu be-ishto.*”
11. *Ma’arekhet Tamid 5:5* (p. 49a), “*tefah meguleh . . . harei hu ke-erva ve-afilu be-ishto asur likrot et ha-Shema ke-negdah.*”
12. *Tur Orach Hayyim 75*, “*tefah hameguleh be-isha . . . asur likrot Keri’at Shema ke-negdah afilu hi ishto.*”
13. Cited in *Sefer Ra’avia*, par. 75, and other *rishonim*, but not found in our editions of *Halakhot Gedolot*.
14. Cited in *Sefer Ra’avia*, loc cit.
15. *Ibid.*
16. *Sefer ha-Eshkol* (ed. Auerbach), 1:7 (p. 15).
17. 1:133.
18. *Hilkhot Keri’at Shema 3:60*. This view is commonly cited as that of *Hagahot Maimoniyyot*, but his language is from Ra’avia. I have not cited Rambam because it is unclear what his opinion is; see *Bet Yosef* and *Bah* in *Tur, Orach Hayyim, 75*; *Lehem Mishneh* in *Hilkhot Keri’at Shema, loc. cit.*; and see at length *Benei Tsiyon*, (Lichtman) Vol. 2, 75:1.
19. *Berakhot 3:37*. Cf. Rosh’s wording “*ha le-aheret ha le-ishto*” with *Or Zarua*.
20. *Orach Hayyim 75:1, Levush, Bah, Eliyahu Rabba, Shulhan Arukh ha-Rav and Arukh ha-Shulhan et al*, but see *Peri Hadash, Taz* and *Peri Megadim 75:1*. Rema cites the second view as an additional opinion but does not decide between them, and *Bah* and *Eliyahu Rabba* wrote that Rema agrees with the first view. The *Hayyei Adam* (4:2 in *Nishmat Adam*) wrote that “all the *posekim*” follow the first view. Many *Aharonim* rule that a married woman must cover all her hair (see below) but do not necessarily accept the second view concerning less than an uncovered *tefah*. Others hold that although the first view is primary, it is advisable where possible to pay heed to the second; see *Kaf ha-Hayyim, Orach Hayyim, 75:10*.
21. The syntax is difficult: the Torah could have written “*devar erva*”; what is “*ervat davar*,”—literally “an *erva* of a matter (or word)”? Perhaps *erva* here has the connotation of shame, i.e., there shall not be a recitation of *Shema* made shameful by exposed genitalia. However, in the only other biblical use of *ervat davar*, in the adjacent *Devarim 24:1*, “*ki matsa ba ervat davar*,” concerning grounds for divorce, none of this applies (see *Sifrei* and *Midrash Tanna’im* there and in 23:15). It may be that the exposition of *davar/dibbur* is only an *asmakhta* peg for a wholly rabbinical prohibition; this would explain why Rambam omitted “*ve-haya mahanekha kadosh, ve-lo yir’eh bekha ervat davar*” from *Sefer ha-Mitsvot*, cf. Ramban, *Hosafot le-Mitsvot Lo Ta’aseh*, no. 11.
- 21a. *Shabbat 150a* and Rashi; *Yerushalmi Terumot 1:1*, and see *Alei Tamar* on the *Yerushalmi, ad .loc.*
- 21b. “*Velo yir’eh*” can also be vocalized “*velo yeira’eh*” (it shall not be seen), to the same effect.
22. Ra’avad as cited by *Sefer ha-Hashlama, Sefer ha-Me’orot* and Rashba to *Berakhot 24a*; *Sefer ha-Menuha* and *Sefer ha-Battim* in *Hilkhot Keri’at Shema, loc. cit.*; Ra’avya and others.
23. See *Encyclopedia Talmudit*, s.v. *ama, tefah*. The most widely accepted measure, which is the Jerusalem *minbag* and that of my grandfather and

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was the measure used by Rambam, is 8 cm. There are many who use a higher figure *le-humra* but not *le-kula*. Surprisingly, R. Falk (see note 41 below) cites 10 cm., a round number corresponding to no one's calculation and which represents a marked *kula* relative to 8 cm.

24. *Responsa Mekadeshei ha-Shem*, no. 97. The responsum is by the author of *Responsa Mishneh Sakhir* and *Em ha-Banim Semeha*.
25. But see *Nidda* 26a, “we said a *tefah*, not a *tefah al tefah!*”.
26. *Responsa Iggerot Moshe, Even ha-Ezer* 1, no. 58, takes it for granted that  $2 \times 1/2 =$  one *tefah* for the purpose of head covering.
27. See *Benei Banim* vol. 4, *ma'amar* 3(1). This applies in the case of a covered area adjacent to an uncovered area, such as along the neckline, but not in the case of a hole or “window” in the clothing.
28. The *Gemara* explains that the two sources reflect anatomical differences between men and women.
29. Either because a woman's *shok* is occasionally uncovered (Ra'ah, R. Avraham Alshvili, *Shita Mekubbetset*); or because the parallel limb in a male is not a place of *tseni'ut* and need not be covered (Ra'avad and others); or because a woman's *shok* is frequently soiled and one might think it is not an object of desire (*Bah*).

The latter two explanations raise questions. First, there are other parts of the body that are *tsanu'a* in a man and not in a woman, e.g., the stomach—“Your stomach is like a mound of wheat” (*Shir Ha-Shirim* 6:3)—so why single out *shok*? Also, according to *Bah*'s explanation, the prohibition of gazing at a woman's *shok* could not be learned from the prohibition of gazing at her little finger, for although a finger is smaller it is also cleaner, and so there is no *kal va-homer*. Why, then, expound that an uncovered *shok* prevents the recitation of *Shema*? Perhaps R. Hisda only meant that gazing at a woman's *shok* is prohibited in spite of its being sullied.

However, it can be countered that R. Hisda's citation of the verses in *Isaiah* linking *shok* with *erva*, which in turn evokes the “*ve-lo yir'eh bekha ervat davar*” that the sages see as referring to *Keri'at Shema*, shows that he, too, is referring to *Keri'at Shema*.

30. *Bah* and *Peri Megadim*, *loc. cit.* Each interprets the *humra* according to his own view: for *Bah* who holds that an uncovered *tefah be-isha* applies equally to one's wife and to other women, less than a *tefah* is *erva* only in the case of *shok*. *Peri Megadim*, on the other hand, wrote that according to the view of *Hagahot Maimoniyyot* that in other women even less than a *tefah* is *erva*, *shok* is just an example, and less than a *tefah* is considered *erva* in other covered parts of the body as well.
31. *Sefer ha-Eshkol*, *loc. cit.* “Because Scripture calls [*shok*] *erva*, it involves *ve-lo yir'eh bekha ervat davar*,” i.e., its status cannot be changed. This would equally apply to female breasts, which are linked by Scripture to “*erya*” (sic) in *Ezekiel* 16:7: “. . . your breasts are formed and your [pubic] hair is growing and you are naked and *erya*.” It would therefore be forbidden to recite *Shema* in the presence of uncovered breasts even among tribes whose women go bare-breasted in public.
32. See Ra'avad quoted in *Sefer ha-Me'orot* and Rashba.
- 32a. Subsequently I was delighted to find that Rashi's contemporary R. Yosef Kara, in his commentary to *Isaiah* 47:3, wrote that *shok* was the “upper

- thigh” (*shok bi yerah ha-eloyona*).
33. *Mishna Berura*, 75:1; see *Hazon Ish, Orach Hayyim*, 16:8; *Iggerot Moshe, Even ha-Ezer* 4, 100 (*anaf*6) takes this view as a given. However, it remains the subject of controversy.
34. *Neharot* are rivers, as opposed to *nehalim* (streams). See also Radak in 47:2, who cites *Midrash Hazit* as interpreting “*shoval*” as the turbulent or strongly flowing part of the river (*shibbolet ha-nahar*), as in *Psalms* 69:3. This cannot likely be crossed by lifting one’s garments only up to the knees.  
Radak, for himself, explains *shok* as being the lower leg in *Judges* 15:8. But I think there is no solid scriptural proof that this is so; see *Deuteronomy* 28:35, *Psalms* 147:10, *Song of Songs* 15:5, and *Proverbs* 26:7, all of which can be interpreted as referring to either above or below the knee. Even “*shok al yerekh*” in *Judges* is idiomatic and “*al*” can mean “next to,” lending itself to other interpretations.
35. See *Mishna Ohalot* 1:8; *Nidda* 8:1 (57b), *et al.*
36. *Loc. cit.* *Sefer Yere'im* views *kol be-isha* as rabbinically the same as actual *erva*, similar to *tefah*. A *davar she-bi-kedusha* may not be said if such singing is audible, even if those present pay no attention to it. A voice is audible, even if one is not listening.
37. *Mordekhai, loc. cit. Piskei Rikanti* quotes *Sefer Yere'im* but does not explicitly refer to studying Torah.
38. In contrast to *Sefer Yere'im*, Meiri views the prohibition of reciting a *davar she-bi-kedusha* facing an exposed *tefah* as being solely because of *hirhur*. But Torah itself is the antidote to *hirhur*, as in *Kiddushin* 30b, “I created the evil inclination, [but] I created Torah as an antidote”; and see *Benei Banim*, vol. 2, p. 162.
39. *Loc. cit.* *Sefer Rokeach*, as well, wrote that when facing *erva* it is forbidden to “recite the *Shema* and pray,” and did not mention Torah study.
40. See *Hazon Ish, Orach Hayyim* 11:8.
41. Rabbi Pesach Eliyahu Falk, *Oz ve-Hadar Levusha: Modesty, an Adornment for Life: Halachos and Attitudes Concerning Tznius of Dress and Conduct* (Feldheim, 1998), p. 218.
- 41a. See *Benei Banim* vol. 4, *ma'amar* 3(3).
42. Rabbenu Manoah’s formulation is “in a woman’s body . . . less than a *tefah* is nothing” (*lav klum hu*).
43. There are a number of responsa in *Iggerot Moshe* on this issue. See *Benei Banim*, vol. 3, no. 25 (5) and my section below, “Denying *Iggerot Moshe*.”
44. See *Tiferet Shemuel* on Rosh in *Berakhot*, no. 37: “Women who regularly uncover their upper arms and they regularly are open until near their breasts [*regilin li-hyot patuah ad samukh le-dadeha*], I apply to them [the Scriptural phrase] ‘*hukim lo tovim*,’ and ‘a *tefah* in a woman is *erva*.’” It is unclear whether he refers to sleeveless dresses that permit the body to be seen around the arms as in the *Korban ha-Eda* cited below (next section), or what seems more likely, to the 17th-18th century European fashion of extremely low necklines. In any case, the principle of “a *tefah* in a woman is *erva*” is the yardstick.
45. He does not equate *zero'a* with *shok* except insofar as both are usually covered. Rashi’s other views on *shok* are not known, other than that apparently he views both *tefah* and *shok* as applying to *esbet ish* and not to women in

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- general; see *Enayyim le-Mishpat* to *Berakhot* 24a, par. 9 and *Sefer Benei Tsiyon*, *loc. cit.*
46. *Hilkhot Tefilla*, chap. 324.
  47. *Eliyahu Rabba* 75:3, *Hayyei Adam* 4:2, *Mishna Berura* 75:2.
  48. He may be of the opinion that in *shok* even less than a *tefab* is forbidden. Concerning hair, see below.
  49. *Tosafot* on 90b, s.v. *im benei adam*, identify the discussion as concerning *Dat Yehudit*.
  50. 9:11.
  51. See *Divrei Hamudot* to Rosh in *Berakhot*, par. 116. This makes perfect sense, for why should the faraway upper arms have the same stringency as thighs that are adjacent to actual *erva*?
  52. *Bet Shemuel*, *Even ha-Ezer*, 21:3.
  53. Cited in *Piskei Rikanti*, *Orhot Hayyim*, and *Ohel Mo'ed*. *Rabbenu Tam* specifically cites unmarried women as proof that *se'ar be-isha erva* is unconnected to *Keri'at Shema*.
  54. R. Yehuda ben Yitshak Sir Leon (whose *Tosafot* are mislabeled “*Tosafot R. Yehuda ha-Hasid*”), cited in *Or Zaru'a*. This is apparently the opinion of Rambam, as well, who mentions hair in *Hilkhot Issurei Bi'a* (21:2) but not in *Hilkhot Keri'at Shema* (3:16).
  55. According to the *Mishna Berura* (75:7), *niddot* are in the category of *arayot*. However, this is the subject of considerable controversy, as is the related question of whether relations with a *nidda* are subject to *yehareg ve-al ya'avur*; see Rashi in *Sanhedrin*, 73b, s.v. *a-pegama rabba*; Ritva in *Pesahim*, 25b; *Sefer ha-Hinnukh*, no. 296; R. Tam in *Sefer ha-Yashar* (*Teshuvot*), no. 80; *Tosafot* in *Gittin*, 2b, s.v. *havi*; Rashba in *Hullin*, 10a. See also *Responsa Penei Yehoshua*, 2:44; *Maharsham* 2:182; *Avnei Nezer*, *Yoreh De'a*, no. 12 (11) and 461(10); *Helkat Yo'av*, *Yoreh De'a*, no. 29; and *Tsits Eliezer*, 17:32 and 20:36.
  56. See below, “*Lo Palug*.”
  57. *Sefer Ra'avia*, *loc. cit.*, followed by *Mordekhai*, Rosh, and *Hagahot Maimoniyot*.
  58. The *Mishna Berura* on this section of *Orah Hayyim* was published in 1892, and the parallel *Arukh ha-Shulhan* appeared in 1903. (*Arukh ha-Shulhan* on *Hoshen Mishpat* was the first section to be printed, in 1874). *Arukh ha-Shulhan* cites the *Mishna Berura* by name numerous times, such as in 11:2, 12:4, 25:23, 62:4, and 91:22. He cites the *Mishna Berura* but rejects his views in 79:11 and 219:22. Often he disagrees without mentioning the *Mishna Berura* by name; see AH's 55:20 which is clearly a response to MB 55:52; AH 370:13 which responds to MB 370:27; and such is the case here as well. On the question of the authority of *Arukh ha-Shulhan* versus the *Mishna Berura* see *Benei Banim*, vol. 2, no. 8.
  59. Cf. *Or Zaru'a*, pt. 1, no. 133.
  60. *Iggerot Moshe*, *Orah Hayyim*, vol. 1, no. 42.
  61. *Yabi'a Omer*, vol. 6; *Orah Hayyim*, no. 13 (2-3, 5).
  62. R. Asi's student; see *Pesahim* 106a.
  63. Alternatively, from the redundancy that the priest shall uncover “the woman's head” (and not “her head”) we learn that that woman's head alone shall be uncovered, and not the heads of other women (*Me'iri*).

64. Rambam as explained by *Terumat ha-Deshen*, no. 242 (see also no. 10). According to this, the *Gemara*'s question, "Isn't [going] bareheaded *de-Oraita*?" refers to a *remez* and not to an explicit law. Cf. Me'iri, "*Dat Moshe* applies to commands written in the Torah or hinted in it."
65. *Ketubot* 72a, s.v. *Dat Yehudit*.
66. *Hilkhot Ishut* 24:11-12.
67. *Mitsvot Aseh* 48.
68. *Ketubot* 72a.
69. Part 2, *Hilkhot Ketubot*, par. 33.
70. *Ketubot* 72a.
71. *Commentary on Rambam*, loc. cit.
72. *Ketubot* 3:27 (p. 28), and see *Benei Banim*, vol. 3, no. 22, translated in my *Responsa on Contemporary Jewish Women's Issues* (Ktav, 2003), chap.17 (henceforth ROCJWI).
73. *Mitsva* 28.
74. *Orah Hayyim* 115. The author of the *Tur* was Rosh's son.
75. See *Benei Banim*, *ibid.* For instance, why does the Mishna list going bare-headed only under *Dat Yehudit* and not under *Dat Moshe*?
76. *Loc. cit.*
77. *Ibid.*
78. *Loc. cit.*
79. Cf. *Perisha* in *Even ha-Ezer* 115, sub. par. 10.
80. According to all opinions, *Dat Yehudit* was not solely a matter of *minhag*. While women could introduce stringencies, only the Sages could decree forfeiture of the *ketubah*.
81. Similar to R. Zeira's famous statement, "the daughters of Israel initiated the stringency that if a woman sees a drop of blood, even the size of a mustard seed, she counts seven clean days" (*Berakhot* 31a). Although originally a *humra* introduced by women, it became established halakha.
82. *Yoma* 47a, "many [women] acted like Kimhit."
83. *Bikkurim* 3:8, *Ketubot* 82b, and elsewhere.
84. Cited in *Shita Mekubbetset* (*Ketubot* 72a) as "Rashi, first edition."
85. *Teshuva* 10.
86. *Arukh*, s.v. *k-l-t*.
87. *Ketubot* 72a.
88. *Ibid.*
89. *Hiddushei Nimmukei Yosef*, *ibid.*
90. *Ibid.*
91. Covering a woman's hair was a sign of marriage even among the gentiles; see *Sanhedrin* 58b.
92. S.v. *k-p-h*.
93. See below.
94. *Orah Hayyim* 75.
95. See above, "Time and Place."
96. Especially those who permit up to a *tefah* even in *shok*; see above, "*Shok*."
97. This seems indicated in Ra'avia, but the language is not conclusive.
98. *Iggerot Moshe*, *Even ha-Ezer*, vol. 1, no. 58. This is his main *teshuva* on the topic.
99. I.e., the part of the head where the hair grows.

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100. The verse cited by R. Sheshet, “Your hair is like a herd of goats,” refers to hair in the aggregate.
101. “*Rov ha-rosh, oh le-khol ha-pahot karov le-rov ha-rosh.*” *Iggerot Moshe* does not explain why less than 50 % would be sufficient.
102. Particularly if less than 50% is sufficient; see previous note.
103. See above, “*Mishna Berurua* and *Arukh ha-Shulhan.*”
104. *Iggerot Moshe, Orah Hayyim*, vol. 1, no. 42; see also vol. 4, no. 15 (1).
105. *Oz ve-Hadar Levusha*, p. 236.
106. See *Orah Hayyim*, no. 36.
107. *Oz ve-Hadar Levusha*, p. 238.
108. *Even ha-Ezer*, vol. 1, no. 58 (p. 146), and *Orah Hayyim*, vol. 4, no. 112 (end).
109. “*U-para et rosh ha-isha*” has the connotation both of undoing the braids and uncovering the hair; see *Responsa Seridei Esh*, vol. 3, no. 20.
110. See *Responsa Maharam Alashkar*, no. 35, and *Benei Banim*, vol. 3, no. 21 (p. 66).
111. See *Hebrew Illuminated Manuscripts* (Macmillan, 1969), plates no. 8 (from 12th century Spain), 10 (15th century Spain), 22 (13th century France), 34 (14th century Germany), 39-40 and 43 (15th century Germany), and 51 and 54 (15th century Italy). Most are also found at random in the *Encyclopaedia Judaica*. In a number of the illuminations what appears on women’s temples is ornamentation, but the hair is covered just the same. This is as opposed to the 3rd century murals from the Dura Europus synagogue in Mesopotamia, which portray women’s heads as covered, but with a band of hair exposed above the forehead and along the sides of the face; see *Encyclopaedia Judaica*, vol. 6, columns 283-8 and facing 299-300.
- Plates 55 and 59 from 15th century Italy depict weddings, and the first is from a manuscript of *Tur Even ha-Ezer*. Some of the necklines shown would be forbidden according to *Oz ve-Hadar Levusha*.
112. Or a rabbinic law hinted at in the Torah; see above, note 64.
113. *Loc. cit.*
114. The one exception is in *Yad ha-Levi*, a commentary on *Sefer ha-Mitsvot* published in 1926, and a handful of Sephardic responders have also done so. I am indebted to Rabbis Aryeh and Dov Frimer for this information. *Ben Ish Hai*, however, in *Halakhot* (first collection), *Bo*, par. 12, does not justify the practice but only writes that since women go bareheaded one may recite *Shema* in their presence, similar to *Arukh ha-Shulhan*.
115. *Shulhan Arukh, Even ha-Ezer* 115, lists *peru’at rosh* under *Dat Yehudit* in paragraph 3 but not under *Dat Moshe* in paragraph 1. This recently led a colleague to claim that according to the *Shulhan Arukh* even going completely bareheaded in public violates only *Dat Yehudit*, which is a matter of *minhag* and subject to change. But such a view is (1) impossible according to those who view *peru’at rosh* as a Torah violation, (2) found nowhere in the *rishonim*, and (3) it contradicts R. Yosef Karo’s own *Bet Yosef*.
- The problem is that the *Shulhan Arukh* combined two incompatible positions. In par. 1 he copied the language of the *Tur* who followed the Mishna in *Ketubot* which does not list *peru’at rosh* under *Dat Moshe*; see above, “*Dat Moshe* and *Yehudit.*” and in *Benei Banim*, vol. 2, no. 22. In par. 3, however, the *Shulhan Arukh* copied the language of Rambam in

*Hilkhot Ishut* (24:12) that the source of *Dat Yehudit* is *minbag*, which is nowhere mentioned in the *Tur*. The two are contradictory, and the intent of *Shulhan Arukh* remains obscure.

However, I think the problem is not in halakha. Rambam wrote that a woman violates *Dat Yehudit* if she goes out to market “*ve-rosha paru’a ven aleha redid*.” This must mean that she is considered *peru’at rosh* inasmuch as she is not wearing a *redid*, even though she is wearing a *kalta*. It does not mean that if her head is completely uncovered she violates only *Dat Yehudit*, for Rambam wrote in the previous halakha that going out completely bareheaded violates *Dat Moshe*! Since in par. 3 the *Shulhan Arukh* copied Rambam’s exact wording, it presumably meant the same thing by it that Rambam did. The difficulty is that, if so, the *Shulhan Arukh* nowhere mentions the prohibition of going out completely bareheaded. That women are forbidden to do so, however, is incontestable.

116. See above, “Defining *Kalta*.”
117. *Loc. cit.*
118. *Loc. cit.*
119. *Hiddushei Nimmukei Yosef* to *Ketubot* 72b. However, he cites Rashi’s explanation of *kalta*, which does not necessarily involve any hair being visible. See above, “Defining *Kalta*.”
120. *Ibid.*
121. *Ibid.*
122. *Hagahot Asheri* to *Rosh*, *Ketubot* 7:9.
123. On *Rif*, *loc. cit.*
124. *Commentary* to *Ketubot*, 72.
125. This may also be Rambam’s position; see *Benei Banim*, vol. 3, no. 21 (p. 65).
126. *Loc. cit.*
127. *Loc. cit.*
128. *Loc. cit.*
129. As in *Mishna Eruvin*, 2:6, 6:8, and elsewhere.
130. *Shiltei Gibborim* on *Rif*, *loc. cit.*
131. “Few people” may also refer to the residents of the houses around the courtyard, as opposed to “many people,” i.e., strangers from the outside.
132. There is no contradiction between this and *Kimhit* in *Yoma* 47a who was atypical in covering all her hair even indoors; see *Benei Banim*, vol. 3, no. 21, translated in *ROCJWI*, pp. 137-8.
133. In 75, sub par. 10.
134. According to *Hagahot Maimoniyot*, and equating hair with skin.
135. *Shabbat* 6:6.
136. *Orah Hayyim* 75, sub par. 3.
137. *Arukh ha-Shulhan*, *Be’er Ya’akov*, *Kaf ha-Hayyim*, etc.
138. Another example of a ruling that achieved prominence only because it was cited by the *Mishna Berura* is the question of a woman reading *Megilla* for other women. See my *Equality Lost: Essays in Torah Commentary, Halakha and Jewish Thought* (Urim, 1999), pp. 58-9.
139. *Oz ve-Hadar Levusha*, pp. 212, 219, 222, 261, etc.
140. *Sefer Taharat ha-Bayyit*, vol. 2, p. 165 cites *Iggerot Moshe*, but in the digest at the end of the volume (p. 19) the author’s son added “on condition that he [her husband] not recite a blessing or *Keri’at Shema* facing

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- her.” This contradictory proviso represents only *Mishna Berura*’s view.
- 140a. See *Benei Banim* vol. 4, p. 34, note. That Shemuel used *kol be-isha erva* in two very different contexts in *Berakhot* and *Kiddushin* was noted by *Sefer haMakneh* (“*trei mimra d’Shemuel ninhu*”), but he did not pursue the matter. Remarkably, this important *Yerushlami* has been largely overlooked. I have not seen any reference to it in the *Rishonim* other than in *Ra’avia* ch. 76, *q.v.*, nor in *Aharonim*; even the commentators on the *Yerushalmi*, including the recent *Alei Tamar*, have no comment *ad loc.*
- 140b. Rashi explained that R. Nahman’s daughter did not wait on R. Yehuda “lest she learn to frequently be with men,” i.e., *keiruv da’at*, perhaps because it was unlikely that if she merely served drinks this would cause *hirhur* in such as person as R. Yehuda. Similarly, Rashi in *Kiddushin* 70a and Rashba in *Berakhot* 24b explain the issue of *she’elat shalom* as one of *keiruv da’at* and not *hirhur*.
141. “*U-be-divrei tsorekh*” of Ra’avad, below.
142. 82a, s. v. *ha-kol le-shem shamayyim*.
143. *Lo Ta’aseh* 126, at the end.
144. See my “*Hibbuk ve-Nishuk Kerovei Mishpaha*,” in *Tehumin*, vol. 21, pp. 374-384, and in *Benei Banim* vol. 4, no. 13.
145. In our editions: R. Aha.
146. Perhaps this took place at a wedding or *Sheva Berakhot* attended only by rabbis and scholars but not common people, who would not have known what to make of it. With that, there are hints that dancing arrangements at weddings then were different from what they are today; see *Nedarim* 51a and *Benei Banim*, vol. 1, no. 37 (3).
147. See my article, “The Significant Role of Habituation in Halakha,” *Tradition* 34:3 (Fall 2000), and further remarks in the Spring 2001 issue.
148. *Mitsva* 188.
149. In our editions R. Yohanan also sat near *sha’arei tevila*, but it is R. Gidel who remarked that women are like “white geese.”
150. In our editions, R. Aha.
151. *Mitsva* 30.
152. 17a.
153. 70a.
154. Cf. the variant in manuscript of Ritva, “*ha-kol lefi Da’at Shamayyim*.”
155. End of *Kiddushin*.
156. In our editions, R. Aha.
157. An exception to this is R. Yona in *Berakhot* in the name of R. Hai Gaon, who wrote, “Even when she is playing (=singing), if he can concentrate on his prayers so that he doesn’t listen and doesn’t pay attention to her, it is permitted and he should not interrupt his prayers. Similarly, when she exposes a *tefah* it is not forbidden [to pray] except while gazing at her, but simply seeing her is permitted.” This refers to anyone and not just a *hasid gadol*. However, the language, “he should not interrupt his prayers,” suggests *be-di’aved*: if he was praying and a woman began singing he need not stop, but if she was already singing he should not start.
158. *Yoreh De’a*, p. 37.
159. Rivevan in *Berakhot* and *Responsa Radbaz*, part. 2. no. 77; see below, “Ideology.” Rashi gives a different reason, that it is dishonorable (*genai*) to

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- walk behind a woman, but this does not fit into the language of *Leket Yosher*.
160. See *Tsits Eliezer*, vol. 9, no. 50; *Yabi'a Omer*, vol. 6, *Orah Hayyim*, no. 13 (5); and my article in *Tradition* 34:3, Fall 2000, note 23, and remarks in the Spring 2001 edition.
161. *Kiddushin* 4:25.
162. On the introductions in *Yam Shel Shelomo*, see *Benei Banim* vol. 1, p. 35, and vol. 2, p. 233.
163. See *Benei Banim*, vol. 1 no. 35, translated in ROCJWI, chap. 19, and see *Otsar ha-Poskim*, vol. 17, p. 107.
164. *Hirhur avera* is one of three things no man escapes daily, according to *Bava Batra*, 164b.
165. See *Gittin* 56b.
166. Despite attempts in some circles to doctor history.
167. Cf. *Bereshit* 43:14; *Esther* 4:16.
168. See above, “*Mishna Berura* and *Arukh ha-Shulhan*.”
169. S.v. *ve-to*.
170. The idiom is from *Ketubot* 72b; see above, “The *Sugya* in *Ketubot*.”
171. Cf. Rambam, *Hilkhot Ishut* 13:11, on a husband not permitting his wife to go out more than “once or twice a month,” and see *Benei Banim*, vol. 1, no. 40, translated in ROCJWI, chap. 24.
172. “*Trei koli lo mishtam’ei*”; see *Rosh HaShana* 27b.
173. *Tosafot*, *Sota* 39b, s.v. *ad she-yikkleh*, “When they themselves sing, they do not hear the voices of their friends.” The circumstances there are of men singing together; however, that is not a reason to distinguish them from men and women who have different voices singing together, for men are themselves divided into basses, baritones, tenors and countertenors.
174. See Ra’avia, below.
175. See below.
176. *Sefer Divrei Hefets*, cited in *Sedei Hemed*, *Ma’arekhet Kuf*, no. 42. On *kol isha* in the reading of the Torah or the *Megilla*, see *Benei Banim* vol. 4, no. 8.
177. Cf. the *Mishna* in *Sota* (5:4) and *Gemara* in *Sukka* (38b).
178. See *Megilla* 21a, *Rosh HaShana* 27a.
- 178a. Regarding the argument put forward recently that *kol be-isha* is not a general proposition as to the sexually arousing nature of a woman’s voice at all (!), see my *Equality Lost*, ch. 8.
179. *Loc. cit.*
180. *Berakhot*, *loc. cit.*
181. *Loc. cit.*
182. See *Yabi’a Omer*, vol. 1, *Orah Hayyim*, no. 6 (11).
183. *Bi-yode’a u-ve-makira* works both ways; see below, “Seeing and recognition.”
184. *Rema*, 85:2.
185. *Sifrei Bemidbar* 116.
186. 15a, and *Ta’anit* 5b.
187. *Rahav* had been a prostitute, as recorded in *Joshua* 2:1 (and see *Zevachim* 116b and *Sifrei Bemidbar* 10). This accounts for the two verbs, i.e., one who had both seen how beautiful she was and knew her professionally; cf. *Maharsha* and *Iyyun Ya’akov* in *Ta’anit* 5b.
188. This applies to *hirhur* but not necessarily to *Keri’at Shema*; i.e., a saint may permit himself to look at what is rabbinically *erva* but will still be forbidden

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- to recite *Keri'at Shema* facing it, *lo palug* devolving on the latter but not on the former. Only R. Hai Gaon, as cited by *Sefer ha-Eshkol* and R. Yona, clearly permits both. On the question of whether *tefah be-isha* as regards *Keri'at Shema* is a question of *birhur* or of *erva*, see at length in *Sefer Benei Tsiyyon* (Lichtman), 65:1, and in *Responsa Mishneh Halakhot*, vol. 7, no. 13.
189. Part 2, no. 770.
190. *Berakhot* 48b.
191. *Betsa* 30a.
192. On who and what is included in “*mutav she-yib'yu shogegin*,” see *Benei Banim*, vol. 2, no. 27. On reconciling this with the Torah commandment of rebuke (*tokhaha*), see vol. 3, *ma'amar* 1.
193. *Limmud zekhut* usually involves the following elements: (1) an established or intractable practice (2) seemingly at variance with halakha, which is (3) practiced by essentially Torah-observant communities and for which (4) grounds or support can indeed be adduced or found, even if normally we would rule otherwise. Determining when these conditions are met is the responsibility of *posekim* on the scene. They can be met in the case of increased mingling of the sexes, as I illustrated with the case of the Germanic-Dutch Yekkish communities.
194. R. Yosef Eliyahu Henkin (1881-1973) was born in White Russia and immigrated to the United States in 1924. For many years before and after WWII he was the preeminent halakhic authority in America. He was also widely revered as a *tsaddik*, in part because of decades of selfless devotion to the Ezras Torah charity fund he directed. For a biography see my *Equality Lost*, chap. 16, and see *Encyclopaedia Judaica*, 1974 Yearbook, p. 415.
195. *Lev Ivra*, p. 29, in *Kitvei ha-Gria Henkin*, vol. 1, p. 164. Also in *Otsar ha-Poskim*, vol. 4 (5717), p. 354.
196. *Avoda Zara* 21a; *Shulhan Arukh*, *Even ha-Ezer* 21:1.
197. *Shulhan Arukh*, *Orah Hayyim* 303:18. In the case of colored clothes it is the responsibility of the man not to look, and not the responsibility of the woman to avoid affording the man something to look at; see *Benei Banim*, vol. 3, no. 26 (2-3).
198. See above, “*Dat Moshe and Yehudit*.”
199. Cf. the recurrent and largely futile attempts to prevent the use by Haredi women of natural-looking or otherwise eye-catching wigs (*sheitels*); see *Oz ve-Hadar Levusha*, pp. 245-254. R. Falk recently published a 42-page English booklet plus sources in Hebrew, entitled “A Halakhic Guide to Present-Day *Sheitels*.” This coincided with the reposting in neighborhoods in Jerusalem of wall-posters from twelve years ago, forbidding the use of such wigs.
200. *Oz ve-Hadar Levusha*, p. 470.
201. See above, “*Lo Palug*.”
202. Vol. 6, no. 25.
203. Cf. *Avoda Zara* 18a, “*dikdeka be-psi'oteha*.”
204. For another example of this, the supposed prohibition of a man carrying the groom on his shoulders at a wedding, see *Benei Banim*, vol. 1, no. 37 (13).
205. *Oz ve-Hadar Levusha*, p. 40.
206. *Ibid.*, p. 37.
207. *Ibid.*, p. 42, in the name of *Hazon Ish*.
208. *Ibid.*, p. 38.
209. *Ibid.*, p. 45.