Introduction:

Does gender matter?

Before approaching the topic of women and their obligation in mitzvot, particularly in contrast to the obligation of men, let us first ask ourselves does gender matter in our lives? People often point to the biological differences between men and women. Biology of course matters in determining certain fundamental differences between men and women. Many studies suggest that men and women feel and think differently, experience events and relationships differently and learn differently. In short, men and women are not only different physiologically, but also differ psychologically and emotionally, whether these differences are influenced by culture, biology or both.

Nonetheless, most people, particularly young people, admit that in their “secular” lives, it hardly matters at all. Their teachers and professors are men and women. Their fellow students or colleagues are male and female. Many have male and female employers or supervisors, and employees of all genders. Men and women at least formally have equal educational and professional opportunities. While women are still underpaid in some professions as compared to men, and greatly underrepresented in some key areas like government and C-level positions, they are able to choose to study and work in fields that are meaningful, interesting and financially lucrative. In marriage, men and women create partnerships and divisions of labour with regard to the household and child rearing responsibilities which are not automatically based on gender. Scheduling is usually based on who has the greater flexibility and on external child care arrangements[[1]](#footnote-1).

In contrast, gender matters very much in traditional Judaism. The traditional structure is made up of a binary in which men and women are different and far from equal. Men have more obligations and thus, more rights. A quorum of ten men is required for a prayer service to take place. Only men lead services, read Torah and generally, oversee the functioning of the synagogue. They are obligated in more mitzvot than women on a daily, weekly, monthly and annual basis. Many of these mitzvot take them out of the home to perform their religious duties, which may seem onerous to some, but also confer privilege. Men alone are deemed fit to serve as witnesses (with a few exceptions) and judges, allowing them to witness marriages and judge petitions in the cases of divorce and conversion. Until recently, only men were asked halakhic questions because they had exclusive access to the Talmud and related halakhic material. This bestowed men with absolute decision-making power in halakha and in the proceedings of rabbinic courts, which has tremendous ramifications over the lives of both men and women.

As Professor Tamar Ross notes, in her important book *Expanding the Palace of Torah*, “A few rabbinic sources appear to have assumed that all the commandments were at the outset addressed only to men…Men’s greater religious obligations, whether or not they are actually fulfilled, confer other legal privileges. By the same token, women’s lesser obligations disenfranchise them in many areas. As in the case of other classes situated on the hierarchical scale, difference in religious responsibility then serves as rationale for women’s diminished valuation.”

Finally, in Jewish marriage, a man exclusively acquires the sexual rights of his wife and there is no equivalent right for women. There is no way to soften this legal reality. Jewish divorce requires the husband to willingly release his wife from this contract by saying, “you are now permitted to any man”. Furthermore, for similar reasons, only married women are charged with committing halakhic adultery if they have an affair with a Jewish man; married Jewish men are not considered to be halakhically adulterous or be implicated in the conception of a *mamzer* if they are unfaithful, as long as their sexual partners are unmarried.

This has become perhaps the most dissonant aspect of the gendered structure for it leaves women completely at the mercy of men in acrimonious cases, stranded for years in limbo, forced to cede money or property in order to be freed of a toxic marriage and creating a moral Achilles heel for a religion that held, and continues to hold itself, to a higher standard than the nations around it.

In fact, challenges to the imbalance of gender in halakha first arose out of the recognition that women were particularly disadvantaged in the laws of divorce. In the late 20th century educated women began to add their voices to the rabbinic halakhic discourse and were not satisfied with the answers being given, pushing for more radical and innovative yet valid solutions that lay dormant within halakhic literature.

Questions around women’s status in traditional Jewish halakha and community have become among the most pressing, theologically, sociologically and halakhically. The issue unleashes questions about modernity, morality, evolution of halakha and rabbinic authority.Yet, despite this, an irrational defense of tradition and traditional gender roles has created an impermeable fortification for many adherents to Orthodoxy, preempting critical evaluation and discussion. For them, a partial or complete deconstruction of gender as non-essential in religious identity seems impossible to consider in an Orthodox context.

Halakha, as a structure, has responded admirably and thoughtfully to many of the other challenges of the modern era. While there are always myriad positions spanning stringency to leniency, science and technology have posed a serious threat to the inner workings and integrity of the halakhic structure. Organ donations, fertility technology, modern banking systems, electricity on Shabbat and *eruv*, are all issues that pushed halakhic authorities to innovate and plumb the depths of halakhic discourse to meet the changing needs of a modern world. Social structures, however, particularly with regard to questions of gender, have met with far less cooperation and much resistance. There is a general suspicion of a perceived feminist agenda. In truth, the issue is significant because of its implications for core traditions, Jewish community, family, ritual and practice.

One fear that has been articulated is that any change in the traditional structure will lead to women demanding complete equality. This concern will be addressed in the chapter exploring the world of women’s Torah study which has led to the demand for female ordination. While there is some truth to this, the use of the slippery slope argument seems to be a too easy way to avoid giving any sort of concrete, well developed explanation, at least with regard to women’s issues, shutting down further discussion.

Another, more legitimate fear to my mind, is that increasing women’s roles could potentially lead to a decrease in the presence of men. In other words, will we gain the women only to lose the men?! In egalitarian spaces, it is not uncommon to find more women attending prayer services and more women registered for rabbinical school than men. While there is room for concern, like the slippery slope argument, one could question whether better education and religious direction could preempt such a fall out. After all, men have not stopped becoming doctors and lawyers although women are vying for the same jobs in many fields and working alongside them!

Feminist critique identifies a deep-seated gender bias that affects the basic discourse of traditional Jewish sources, from the Torah itself through contemporary writings. This gender bias goes beyond actual halakha. In many cases social norms occlude halakhic rules. Men are reluctant to allow women to perform rituals even in cases where it is permitted. For example, a former student of mine arrived at her single brother’s home for dinner on Friday night. While the meal had not yet begun, they had already made *kiddush*. She asked for a cup of wine so that she could make *kiddush* and one of the male guests offered to make it for her. She politely refused and asked for wine so that she could make *kiddush* herself. He again offered to make *kiddush* for her more aggressively, insisting that women cannot make *kiddush*. Halakhically this is inaccurate. In fact, women are as equally obligated as men in *kiddush*. Given that the men had already fulfilled their own obligation, it was actually preferable for my student to make her own *kiddush*! This kind of scene repeats itself regularly throughout the religious world. For many years, men who visited my home were uncomfortable with my making the blessing over challah for the table. When my brother asked a prominent Orthodox rabbi about this practice, he answered that while a woman could perform this ritual, she shouldn’t since it goes against the *mesora*, meaning tradition. As a result, women are silenced from being active rather than passive participants even in mitzvot that obligate them!

A final anecdote: My grandmother, one of 13 children in Williamsburg, Brooklyn, never sat in a sukkah growing up because there was only room for her father and brothers. Since women were not obligated in this *mitzvah*, she, her sisters and mother sat in the kitchen. In contrast, my mother, who did not consider herself a Jewish feminist in any way, took upon herself the mitzva of sitting in the sukkah as an absolute requirement. Even when there was no room, she insisted on being allowed to eat in the sukkah to the acute annoyance of men who had to crowd even more to let her in, grumbling how she really wasn’t obligated. She also scrupulously blessed the lulav and etrog each day of Sukkot and prayed religiously twice a day, not just the mandatory *Shmonah Esreh*, but the full morning and afternoon prayers that included *Shema* and *Hallel* (which she sang loudly) from which she was exempt. She was careful to hear *shofar* every year of her life regardless of the age of her children, hiring babysitters when necessary. For my mother, it was unthinkable that the *mitzvot* which she took upon herself should not be fully binding. Otherwise, where was the religious commitment? Her approach had nothing to do with seeking equality. It was an organic extension of her ongoing relationship with *Torah* and *Mitzvot* and her recognition that rituals create profound meaning and connection to the prayer or holiday in question. She was not interested in making *kiddush* or blessing the *challah* on *Shabbat* and she never would have wanted to read *Torah* or wear *tefillin*. However, many of the *mitzvot* from which she was exempt were, to her, an obvious conduit to spiritual growth. While I was at times annoyed with her, I began to admire the way in which she saw these rituals as directly connected to her service of God with no distinction between exempt, optional and binding.

**Rabbinic Sources about Women**

Rabbinic sources about women are complicated. They can be divided into three main categories. The first category refers to women as “Other”. Women are portrayed as temptresses and pollutants. They are seen as light headed and liable to misconstrue information. According to one *midrash*, even God was unable to control Woman’s nature. In the midrashic narrative, He tries to create Woman as both docile and submissive by creating her out of the most hidden part of man’s body[[2]](#footnote-2). In one particularly difficult text, the Talmud writes: “A woman is a pot of filth and her mouth is full of blood and all run after her”[[3]](#footnote-3). These sources show a distinct suspicion towards, and bias against, Woman, who is portrayed as a strange being in comparison to men.

In contrast, sources about the Jewish wife and mother are overwhelmingly positive and acknowledge the tremendous influence and impact women have on their husbands and sons. Without women’s commitment to God’s covenant, the men, who are obligated to pass on the Torah, would not have the temerity or discipline to fulfil their duties. Women as wives are thus central partners in the perpetuation of the covenant. In short, Jewish theology saw woman and her role as exalted but also, essentially inferior in body and mind. In other words, she is both the symbol of virtue and the symbol of sin.

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| **בראשית רבה (וילנא) פרשה יז**  מעשה בחסיד אחד שהיה נשוי לחסידה אחת ולא העמידו בנים זה מזה, אמרו אין אנו מועילים להקב"ה כלום, עמדו וגרשו זה את זה, הלך זה ונשא רשעה אחת ועשתה אותו רשע, הלכה זאת ונשאת לרשע אחד ועשתה אותו צדיק, הוי שהכל מן האשה. | **Genesis Rabbah 17:**  It once happened that a pious man was married to a pious woman and they did not produce children. Said they, ‘we are of no use to the Lord’, whereupon they divorced each other. The former went and married a wicked woman and she made him wicked while the latter married a wicked man and made him righteous. **This proves that it all depends on the woman**. |

Finally, in the third category are texts presenting the halakhic status and obligations of women in distinction to men; the imbalance between the sexes is made clear. Women are significant partners but they are not equal. Because men have more mitzvot, their lives are worth more. Thus, if a choice must be made to save the life of a man or a woman, the man is given priority[[4]](#footnote-4). This attitude could be seen as a direct reflection of the attitude in the Torah itself since passages in Leviticus dictate a monetary valuation for men and women (in reference to one who wants to donate a person’s value to the Temple), with men being worth more[[5]](#footnote-5). Many commentaries explain that the difference in valuation between the genders is based on the market price for male versus female slaves and not as a measure of spiritual or communal worth. Nonetheless, it is a source in the Torah where hierarchy is clearly present.

This is not to say however, that women are unimportant or undervalued. The Jewish nation could not survive without the wombs of Jewish women. Women’s importance and stature in traditional Judaism is defined by their position as mothers, passing on religious resonance to their offspring, nurturing them as young children and providing a warm home for the family.

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| **שמות רבה (וילנא) פרשה כח**  כה תאמר לבית יעקב, אלו הנשים, א"ל אמור להם ראשי דברים שהם יכולות לשמוע, ותגיד לבני ישראל, אלו האנשים, א"ל אמור להם דקדוקי דברים שהם יכולין לשמוע, ד"א למה לנשים תחלה שהן מזדרזות במצות, ד"א כדי שיהו מנהיגות את בניהן לתורה, א"ר תחליפא דקיסרין אמר הקב"ה כשבראתי את העולם לא צויתי אלא לאדם הראשון ואחר כך נצטוית חוה ועברה וקלקלה את העולם עכשיו אם איני קורא לנשים תחלה הן מבטלות את התורה לכך נאמר כה תאמר לבית יעקב… | **Shemot Rabbah 28**  “Thus shall you say to the House of Jacob” (Exod. 19:3) refers to the women; and declare to the children of Israel (ibid.) refers to the men. Why were the women addressed first? **Because they are more diligent in the performance of *mitzvot*.**  Another explanation: so that they should direct their children to the Torah. R. Tahlipha of Caesarea said, “The Holy One Blessed be He said, ‘When I created this world, I first commanded Adam and only afterwards was Eve commanded. However, she disobeyed and brought ruin to the world. Now, if I do not call upon women first they will render the Torah void. Therefore, the passage opens, Thus shall you say to the House of Jacob.” |

Furthermore, the halakhic structure takes pains to protect the most vulnerable women in society. If a man or a woman needs to be supported financially, a community with limited resources should protect the women, to shield them from a life of debauchery and prostitution[[6]](#footnote-6). Married women have rights to food, clothing and sexual relations and can petition the court if their husbands are not fulfilling marital obligations. They are expected to have competency in the laws of kashrut (in order to maintain a kosher home), Shabbat and sexual intimacy.

**Time-bound mitzvot and the status of women**

One of the major distinctions between the genders is women’s exemption from positive time bound mitzvot. Growing up in the Orthodox world, it is often presented definitively as the seminal proof that men and women are intended by God to fulfill different roles. I would go as far as to suggest that the foundation of gender separation rests greatly on this distinction. Examples of time-bound mitzvot are tzitzit, tefillin, sukkah, lulav and shofar. As will be explained below, the concept of “time-bound” defies a uniform designation which complicates the attempt to neatly explain women’s exemption from this category of mitzvot.

There are usually two reasons that have emerged in modernity as explanations for this gender division:

1. Women are more spiritual than men and as a result “need” less mitzvot to protect themselves. This is understood to be the innate wisdom of Torah, which recognizes that men and women cannot be religiously fulfilled in the same way. Men are more at risk and thus require more structure and boundaries to pursue a covenantal relationship with God.
2. Women must take care of their young children, and therefore cannot possibly be obligated in time-bound mitzvot.

According to either approach, there is no nefarious hierarchy that privileges men over women. Women and men are in essence equal in the eyes of God. They simply have different roles to play in religious society. This line of thinking then interprets the rationale behind the blessing men say daily “Blessed Are You God Who Has Not Made Me A Woman” in a like manner. Men are thanking God for the extra mitzvot bestowed upon them. This should not be perceived as condescending to women’s status. In stark contrast, however, women do not make a blessing thanking God for not making them a man but rather, a generic blessing was added in which they thank God for making “me as He desired”. Professor Rabbi Daniel Sperber has argued that the blessing men say should be replaced with something more egalitarian, citing multiple sources over the last two millennia in which such changes were made. Needless to say, there has been virtually no interest in Orthodoxy to respond to this disparity beyond the standard explanation citing tradition as the guiding light for all practice.

Text study chips away at the edifice presented above, which asserts that women are different but equal, and are actually privileged by having less mitzvot. First of all, nowhere in the Torah is there a statement making a clear distinction between men and women’s obligation in *mitzvot*. Second, the *Mishna* in Kiddushin that introduces the concept of women’s exemption from time bound *mitzvot* does not include any reasoning or explanation. In fact, nowhere in the Talmud is any justification put forth for the exemptions of women from some of the mitzvot. In this chapter, an analysis of primary sources will be presented along with a critical analysis of how textual interpretations evolve and shape identity.

**What is classified as a Time Bound Mitzva?**

1. The primary source for women’s exemption from time bound mitzvot is in a Mishna in Kiddushin, a tractate that mainly sets out the protocol for halakhic marriage.

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| **Mishnah Kiddushin 1:7**  All of the *mitzvot* that a father is commanded to do for his son, women are exempted from  And all of the *mitzvot* the son is commanded to do for the father, both women and men are equally obligated  And all of the positive time bound commandments, men are obligated and women are exempt  And all of the positive non-time bound commandments, both women and men are obligated  And all of the negative commandments, whether time bound or not, both men and women are obligated except for the prohibition to shave one’s sideburns or beard with a razor and for priests (male) not to incur impurity of the dead. | **משנה מסכת קידושין פרק א**  **משנה ז**  [\*] כל מצות הבן על האב אנשים חייבין ונשים פטורות וכל מצות האב על הבן אחד אנשים ואחד נשים חייבין וכל מצות עשה שהזמן גרמה אנשים חייבין ונשים פטורות וכל מצות עשה שלא הזמן גרמה אחד אנשים ואחד נשים חייבין וכל מצות לא תעשה בין שהזמן גרמה בין שלא הזמן גרמה אחד אנשים ואחד נשים חייבין חוץ מבל תשחית ובל תקיף ובל תטמא למתים: |

There are four categories of mitzvot presented in this *Mishna*: positive time bound, positive non-time bound, negative time bound and negative non-time bound. Women are obligated in three of the categories and exempted from mitzvot defined as positive time bound. No explanation is given and there is no clarity as to what time bound means or how to define the concept of time in this regard. Furthermore, the distinction between time bound and non-time bound mitzvot appears in the Talmud only to emphasize the difference in mitzva obligation between women and men. It serves no other function in the Talmudic discourse[[7]](#footnote-7) and lends itself to the overall impression that women have less religious responsibility. Although no explanation is given explicitly, I would suggest that the context in which the time bound exemption is introduced more than hints at the reason. Historically, and halakhically, when a woman marries she is transferred from her father’s authority (*reshut*), to her husband’s authority. Her commitment, once married, to serve her husband preempts her commitment to serve her father. Her time is not her own. Likewise, her commitment to her husband exempts any time bound commitment to her father in Heaven, God.

This is best illustrated in a parallel text which presents a detailed explanation of the obligation incumbent upon a son when honoring his father:

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| **Tosefta *Kiddush*in1:11**  What is a mitzva that a son has towards his father – to feed, give to drink, dress and cover, bring him outside and bring him inside, wash his face, hands and feet. The same applies to both men and women but the man is able to perform this mitzva **while the woman is unable to do so for the authority of others is upon her.** | **תוספתא מסכת קידושין (ליברמן) פרק א**  **הלכה יא**  אי זו היא מצות הבן על האב מאכיל ומשקה מלביש ומכסה מוציא ומכניס ומרחיץ את פניו ידיו ורגליו אחד האיש ואחד האשה אלא שהאיש ספיקה בו לעשות והאשה אין ספק בידה לעשות מפני שיש רשות אחרים עליה |

To clarify, men and women are equally obligated in the fifth commandment to honor one’s parents. The cited Mishna above states that women are obligated together with men in the fidelity of son to father or more broadly, children to parents. However, married women are not free to fulfil this obligation because they require the permission of their husbands in order to do so, states the Tosefta. Due to the marital relationship, halakha releases them (although they are not exempt)[[8]](#footnote-8) without even citing Biblical verses to justify such a move. The message is clear: A married woman will not be free to perform this mitzva in the same way as a man[[9]](#footnote-9). In the middle ages, this will later become a more broadly used justification for why women are overall exempted from positive time bound mitzvot.

Nonetheless, both the Jerusalem Talmud and the Babylonian Talmud add a caveat that if a woman becomes widowed or divorced, she resumes her full obligation to her parents[[10]](#footnote-10), reverting back to the original *mitzvah*. Unlike positive time bound mitzvot, this temporary exemption is only for the duration of marriage. Finally, even in Talmudic times husbands could allow their wives to fulfil the commandment to honor their parents. Already in the 17th century, the prominent commentary on the Shulchan Aruch known as the Shach (Shabtai Ben Meir HaCohen) insightfully notes that if a husband is not insistent that she give up her obligation, a married woman remains fully duty bound to honour her parents. In the modern era, it is largely assumed by both husband and wife that a woman will continue to actively honour and respect her parents for the duration of her marriage. Interestingly, these authorities did not suggest a parallel condition should be applied to time bound mitzvot.

**What are some examples of time bound mitzvot?**

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| **תלמוד בבלי מסכת קידושין דף לג עמוד ב – לד עמוד א**  כל מצות עשה שהזמן גרמא וכו'. ת"ר: איזוהי מצות עשה שהזמן גרמא? סוכה, ולולב, שופר, וציצית, ותפילין; ואיזוהי מצות עשה שלא הזמן גרמא? מזוזה, מעקה, אבידה, ושילוח הקן. | [***Kiddush*in 34a**](https://www.sefaria.org/Kiddushin.34a.1)  **The Sages taught: What is a positive, time-bound mitzva?** ***sukka*, *lulav*,** **shofar**, **ritual fringes,** **and** the donning of **phylacteries** (Deuteronomy 6:8). , [all of which can be performed only at specific times of the year]  **And what is a positive mitzva that is not time bound?** affixing **a *mezuza*** (Deuteronomy 11:20), construction of **a parapet** on a roof (Deuteronomy 22:8), returning **a lost item** (Deuteronomy 22:1–3), **and the release** of the mother bird from **the nest,** [the mitzva of sending away a mother bird when one finds it sitting on chicks or eggs] (Deuteronomy 22:6–7). |

In the lengthy Talmudic discussion that is excerpted above and continues for several pages in the Talmud, there is an attempt to break down the classification of positive time bound mitzvot from which women are exempted. Several examples are given and include the following: Sukkah, Lulav, Shofar, Tzitzit and Tefillin[[11]](#footnote-11). The mitzvot can be grouped into two categories although it is hard to come up with a unifying thread between the two.

1. Sukkah, Lulav and Shofar are time bound because they can only be fulfilled on specific days of the year. No one disagrees with the time bound nature of these mitzvot. They have no meaning once the holiday passes. Accordingly, this exemption status should apply to all positive commandments on holy days that are calendar dependent, including Shabbat and Passover. But ultimately it does not.
2. Tefillin and Tzitzit. Both of these are ritual objects which are to be worn all day every day which begs the question of their time bound nature.[[12]](#footnote-12) Furthermore, neither of these examples are uniformly accepted as exemptions. There are Tannaim who state outright that women are obligated in both of these mitzvot because they are in fact, not time bound.

**Time bound mitzvot related to the Jewish cycle of Festivals**

An excellent example is the attempt to analyze women’s exemption from sitting in a sukkah. Although it is clear from the outset that women will be exempted, since this is an explicit example given in the *Beraita* quoted above, the Talmud offers an equally valid argument in which women could have easily been included not only in Sukkah but in all of the positive time bound mitzvot. A small piece of the discussion is excerpted below:

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| ***Kiddush*in 34a**  **But** the mitzva of residing in **a *sukka*, which is a positive, time-bound mitzva, as it is written: “You shall dwell in *sukkot* for seven days”** (Leviticus 23:42), [referring to the seven specific days of the Sukkot Festival]., **the reason** women are exempt from this mitzva is because of the continuation of the verse: “All **the citizens** in Israel shall dwell in *sukkot*.” The definite article “the” is an exclusion [the verse could have been “all citizens in Israel”], and serves **to exclude the women** from the obligation to reside in a *sukka*. Consequently, it may be derived from here that if it were not for the specific exclusion**, women** would be **obligated.** [Indicating that women do not receive a blanket exemption from every positive, time-bound mitzva.]  Abaye said: In the case of dwelling in a *sukka* a special verse was necessary to exempt women, as otherwise you might think that since it is written: “In *sukkot* you shall dwell,” this means that you should dwell as you do in your permanent home: Just as a man and his wife live together in a residence, so too, a man and his wife are obligated to reside together in a *sukka*.  And Rava said the specific exclusion was necessary for another reason, as you might think to derive a verbal analogy with regard to *Sukkot*, where the verse states: “On the fifteenth day of this seventh month is the festival of *Sukkot*” (Leviticus 23:34), from Passover, where the verse states: “And on the fifteenth day of the same month is the festival of Passover” (Leviticus 23:6). One would then say that just as there women are obligated to eat *matza* on the first night of Passover, despite the fact that it is a time-bound mitzva, so too here, with regard to the mitzva of dwelling in the *sukka*, women are obligated. Therefore it was necessary for the verse to use the term “the citizens” to exclude women from the obligation to reside in a *sukka*. | **קידושין לד.**  והרי סוכה, דמצות עשה שהזמן גרמא, דכתיב: בסוכות תשבו שבעת ימים, טעמא דכתב רחמנא האזרח - להוציא את הנשים, הא לאו הכי נשים חייבות!  אמר אביי: איצטריך, סלקא דעתך אמינא הואיל דכתיב: בסוכות תשבו, תשבו - כעין תדורו, מה דירה - איש ואשתו, אף סוכה - איש ואשתו. ורבא אמר: איצטריך סד"א נילף חמשה עשר חמשה עשר מחג המצות מה להלן נשים חייבות אף כאן נשים חייבות צריכא |

On the face of it, it makes sense to include women in the *mitzvah* of sukkah. There are some compelling methodological reasons to do so as well as practical ones. Abaye notes that if the mitzva on sukkot is to “dwell” in the sukka, it should include women. Otherwise, men will be obligated to eat their meals and sleep inside the sukka while their wives and daughters eat and sleep inside the home. Yet Sukkot is a holiday in which families are commanded to rejoice together as explicitly stated in the Biblical text cited below!

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| Deuteronomy 15: 13-15  After the ingathering from your threshing floor and your vat, you shall hold the Feast of Booths for seven days.  **You shall rejoice in your festival, with your son and daughter, your male and female slave, the Levite, the stranger, the fatherless, and the widow in your communities.**  You shall hold a festival for the LORD your God seven days, in the place that the LORD will choose; for the LORD your God will bless all your crops and all your undertakings, and you shall have nothing but joy. | דברים טז  (יג) חַ֧ג הַסֻּכֹּ֛ת תַּעֲשֶׂ֥ה לְךָ֖ שִׁבְעַ֣ת יָמִ֑ים בְּאָ֨סְפְּךָ֔ מִֽגָּרְנְךָ֖ וּמִיִּקְבֶֽךָ:  (יד) **וְשָׂמַחְתָּ֖ בְּחַגֶּ֑ךָ אַתָּ֨ה וּבִנְךָ֤ וּבִתֶּ֙ךָ֙ וְעַבְדְּךָ֣ וַאֲמָתֶ֔ךָ וְהַלֵּוִ֗י וְהַגֵּ֛ר וְהַיָּת֥וֹם וְהָאַלְמָנָ֖ה אֲשֶׁ֥ר בִּשְׁעָרֶֽיךָ:**  (טו) שִׁבְעַ֣ת יָמִ֗ים תָּחֹג֙ לַיקֹוָ֣ק אֱלֹהֶ֔יךָ בַּמָּק֖וֹם אֲשֶׁר־יִבְחַ֣ר יְקֹוָ֑ק כִּ֣י יְבָרֶכְךָ֞ יְקֹוָ֣ק אֱלֹהֶ֗יךָ בְּכֹ֤ל תְּבוּאָֽתְךָ֙ וּבְכֹל֙ מַעֲשֵׂ֣ה יָדֶ֔יךָ וְהָיִ֖יתָ אַ֥ךְ שָׂמֵֽחַ: |

In a different vein, Rava argues that sukka could be equated to Passover, as they both fall on the 15th of the month. Since women are obligated in the Passover offering and eating Matza on Passover although both are time bound mitzvot, this could serve as a precedent to obligate women in sukka which falls on the same date of a different month. At the end of this passage, the Talmud concludes that the article “the”, which in Hebrew is one extra letter, is inserted in the text to clarify that women are exempt despite legitimate arguments that could determine otherwise.

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| Leviticus 23:42  You shall live in booths seven days; all **the citizens** in Israel shall live in booths. | ויקרא כג: מב  בסכות תשבו שבעת ימים כל **האזרח** בישראל ישבו בסכות. |

In a parallel Talmudic text in tractate Sukka[[13]](#footnote-13), where the discussion about women’s exemption from sukka is directly relevant to the material in the tractate, the Talmud introduces an irrefutable proof for women’s exemption: *hilchata*, meaning it is an oral tradition received from Sinai. The textual exposition of the citizen is not conclusive enough to rule out women’s obligation, especially given Abaye and Rava’s textual expositions which bring strong argument from Scripture to obligate women. It can only conclusively rest on a tradition from Sinai.

In a similar manner, the Talmud presents logical arguments to obligate women in the mitzva of tefillin and even, in the mitzva of learning Torah. With each example, complicated methodological principles are asserted to support inclusion but ultimately used to defend their exemption from each and every one of the examples cited. The Talmud acknowledges the difficulty in justifying the exemptions but no one questions or contradicts the precedent dictated by the *Mishna*. Read through a modern lens, it feels as if a parallel universe is being laid out in which the reader can see “the road not taken,” towards greater gender equality in mitzva obligation. At the end, this road is blocked and the path towards differentiation is the only one left open.

**Many Exceptions to the Rules**

The Mishna established a principle in which women are exempted from time bound mitzvot that take place at a specific time or on a specific day of the year. At the same time, the Mishna states unequivocally that women are obligated in all non time bound mitzvot. Yet, the Talmud brings several significant examples in which women are obligated in positive time bound commandments and exempted from a number of non-time bound positive ones.

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| ***Kiddush*in 33b**  Is this in fact a rule?  What about matzah, joy on holidays, and the public reading the Torah every seven years, which are all time-bound positive commandments that women are obligated in?  Plus, what about learning Torah, procreation, and redeeming one's first born son, which are all non-time-bound positive commandments that women are exempt from?  Rabbi Yoḥanan says: One does not learn practical halakhot from **general principles**. This is the case even in a place where it says: Except, to exclude a specific matter. | **קידושין לג:**  **וכללא הוא?** הרי מצה שמחה הקהל דמצות עשה שהזמן גרמא ונשים חייבות ותו והרי תלמוד תורה פריה ורביה ופדיון הבן דלאו מצות עשה שהזמן גרמא הוא ונשים פטורות אמר רבי יוחנן **אין למדין מן הכללות ואפילו במקום שנאמר בו חוץ** |

Thus, we are taught that women are obligated in eating matza, rejoicing on the holidays and gathering to hear the king read the Torah every seven years. It also acknowledges that women are exempted from several key non-time bound positive mitzvot, notably Torah study, procreation[[14]](#footnote-14) and redeeming the first-born son[[15]](#footnote-15). In short, the classification of women’s exemption from such mitzvot (or alternatively, automatic inclusion in the positive non-time bound category) is by no means clear-cut since there are many exceptions. As Rabbi Yochanan states, we do not learn from general principles. This begs the question why such a principle exists in the first place and what role it plays in shaping the gender binary. There is a deep sense of the arbitrary and yet, the statement in the Mishna has to hold true at least in some cases or it would be rendered meaningless.

**We do not learn from general principles**

*R' Yochanan said: "We do not learn from general principles, even when the general principle is explicitly stated with its exceptions..." [i.e., general principles are rules of thumb, not hard and fast rules].*

The Talmud’s response to so many exceptions to the rules stated in the Mishna is to conclude with the words of Rabbi Yochanan, an early Amora who lived after the Mishnaic era. In other words, although the Mishnah seems to be codifying a straightforward legal principle, the role of the stated principle is to be examined, assessed, diminished or broadened even if it lessens the accuracy of the statement.

Maimonides in his commentary to the Mishna in *Kiddush*in expresses well this dichotomy between the rule and the applied practice:

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| **Rambam Commentary to *Kiddush*in 1:7**  **And a positive time-bound commandment** is one where the obligation must be carried out at a set time, and when that time passes, the obligation does not take effect, as with Sukkah, Lulav, shofar, tefillin and Tzitzit because their obligation is in the day and not the night. And all others like them.  And positive non time bound mitzvot are those whose obligation takes place regardless of time such as mezuza, building a parapet, charit, you already know that we have a principle that one does not learn from (heuristic) rules, and the term “all” (in the statements about women and positive commandments) truly means “most.”  **But there is no general rule regarding the positive commandments in which women are obligated or exempted, rather they are passed on orally and they are accepted by tradition**. Is it not the case that eating matzah on the first night of Pesah, rejoicing on the festivals, the public reading of the Torah every seven years, **tefillah**, reading of the megillah, lighting Hanukkah candles, lighting Shabbat candles, and reciting *kiddush* **are all positive time-bound commandments and for each of them a woman’s obligation is the same as a man’s obligation**.  And furthermore, the mitzva of procreation, learning Torah, redeeming the first born and the war with Amalek, each of these are non-time bound positive commandments and yet women are not obligated in them. All is passed on by tradition as was explained. | **פירוש המשנה לרמב"ם מסכת קידושין פרק א משנה ז**  **ומצות עשה שהזמן גרמה היא שחובת עשייתה בזמן** מסויים, ושלא באותו הזמן אין חיובה חל כגון הסוכה והלולב והשופר והתפילין והציצית לפי שחובתן ביום ולא בלילה, וכל כיוצא באלו.  ומצות עשה שלא הזמן גרמה הן המצות שחובתן חלה בכל הזמנים כגון המזוזה והמעקה והצדקה, וכבר ידעת שכלל הוא אצלינו אין למדים מן הכללות, ואמרו כל רוצה לומר על הרוב,  אבל מצות עשה שהנשים חייבות ומה שאינן חייבות בכל הקפן אין להן כלל אלא נמסרים על פה והם דברים מקובלים, הלא ידעת שאכילת מצה ליל פסח, ושמחה במועדים, והקהל, ותפלה, ומקרא מגלה, ונר חנוכה, ונר שבת, וקדוש היום, כל אלו מצות עשה שהזמן גרמה וכל אחת מהן חיובה לנשים כחיובה לאנשים. וכך גם מצות פריה ורביה, ותלמוד תורה, ופדיון הבן, ומלחמת עמלק, כל אחת מהן מצות עשה שלא הזמן גרמה ואין הנשים חייבות בהן, אלא כולן קבלה כמו שביארנו. |

He acknowledges that the rule exempting women from time bound mitzvot is not comprehensive since there are too many exceptions. Maimonides concludes that the classifications of mitzvot from which women are exempted do not follow any legal reasoning or logic, but rather are passed on by tradition. Nonetheless, both medieval and contemporary commentaries have attempted to interpret the rule as the Torah’s response to something ingrained in female “nature”, sometimes suggesting that women are deficient and other times, suggesting they are superior in nature. Some of these explanations will be brought further on in the chapter.

**Can and should women wear Tzizit?**

As noted above, there are two parallel categories of mitzvot defined as time bound in the Mishna. The first are mitzvot that occur at a certain time on a certain day of the year. The second are tefillin and tzitzit which are mitzvot worn on the body every day (with the exception of tefillin on Shabbat[[16]](#footnote-16)). How are tefillin and tzitzit time bound and why were women exempted from wearing them?

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| **Tosefta *Kiddush*in Chapter 1, Halacha 1**  What is a positive time bound commandment? Sukkah, lulav, and tefillin.  What is a positive non-time bound commandment? Returning a lost object, sending away a mother bird from the nest, building a parapet and tzitzit.  **Rabbi Shimon exempts women from tzitzit because it is a positive time bound commandment.** | **תוספתא מסכת קידושין (ליברמן) פרק א**  **הלכה י**  אי זו היא מצות עשה שהזמן גרמא כגון סוכה לולב ותפלין אי זו היא מצות עשה שלא הזמן גרמא כגון אבידה ושלוח הקן מעקה וציצית.  **ר' שמעון פוטר את הנשים מן הציצית מפני שהיא מצות עשה שהזמן גרמא** |
| **Jerusalem Talmud *Kiddush*in 61 column 3**  What is a positive time bound commandment? Sukkah, shofar, lulav and tefillin What is a positive non-time bound commandment? Returning a lost object, sending away a mother bird from the nest, building a parapet and tzitzit.  **Rabbi Shimon exempts women from tzitzit because it is a positive time bound commandment.**  Rabbi Shimon said to them (the sages) do you not agree with me that tzitzit is a positive time bound *mitzvah* since night clothing (pajamas) are exempt from tzitzit?  Rabbi Hilla said that the reason the rabbis included women in tzitzit is if a person had clothing that he wore both day and night they would be obligated in tzitzit (and thus, the *mitzvah* on this particular item of clothing would not have a time bound quality since a person would wear it day and night). | **תלמוד ירושלמי מסכת קידושין פרק א דף סא טור ג /ה"ז**  אי זו היא מצות עשה שהזמן גרמא כגון סוכה ושופר ולולב ותפילין אי זו היא מצו' עשה שלא הזמן גרמא כגון אבידה ושילוח הקן ומעקה וציצית.  **ר"ש פוטר הנשי' מן הציצית שהוא מצות עשה שהזמן גרמה**  א"ל ר"ש אין אתם מודין לי שהיא מצות עשה שהזמן גרמא שהרי כסות לילה פטור מן הציצית אמר  רבי הילא טעמון דרבנין שכן אם היו מיוחדות לו ליום ולילה שהיא חייבת בציצית |

According to the first opinion in the Tosefta brought above, tzitzit are not time bound but are determined by the four cornered nature of the garment. Rabbi Shimon disagrees and claims that it is a time bound mitzva without explaining. In the Jerusalem Talmud’s version of this Tannatic text, Rabbi Shimon asks his colleagues why they disagree with him given that a night garment is exempt from tzitzit. The Amora Rabbi Hilla responds on their behalf that a garment that is worn both night and day is obligated in tzitzit. In other words, the mitzva is not time bound but determined by the type of clothing.

It is significant although not surprising, that when the Babylonian Talmud quotes this text (see above *Kiddush*in 34a), it leaves out the argument between Rabbi Shimon and the first opinion in the Tosefta, creating an impression of uniformity by simply placing tzitzit in the category of time bound mitzvot. Rabbi Shimon becomes the normative and only opinion cited [[17]](#footnote-17), although two anecdotes about Amoraim indicate that women were wearing tzitzit based on the halakhic position that it is not time bound and thus obligated[[18]](#footnote-18). Later, in the halakhic literature, tzitzit becomes a mitzva from which women are not merely exempt but actively discouraged and even prevented from performing[[19]](#footnote-19).

**Should women lay tefillin?**

In a similar manner to tzitzit, the time bound nature of tefillin is not without dissent in the Talmud.

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| **תלמוד בבלי מסכת עירובין דף צו עמוד ב**  דתניא: המוצא תפילין מכניסן זוג זוג, אחד האיש ואחד האשה, אחד חדשות ואחד ישנות, דברי רבי מאיר. רבי יהודה אוסר בחדשות ומתיר בישנות. ע"כ לא פליגי אלא בחדשות וישנות, אבל באשה - לא פליגי. שמע מינה: מצות עשה שלא הזמן גרמא הוא, וכל מצות עשה שאין הזמן גרמא נשים חייבות**.** | **Eruvin 96b**  He who finds tefillin on Shabbat brings them indoors by wearing them one pair at a time – this applies to both men and women, to new and old tefillin – these are the words of Rabbi Meir.  Rabbi Yehuda forbids it in the case of new tefillin, but permits it in the case of old ones. Rabbi Meir and Rabbi Yehuda disagree only regarding new and old, but they agree regarding women. **Thus, tefillin must be a positive commandment without a fixed time and women are obligated to perform all such commandments.** |

This is an interesting source because it asserts several Tannaitic opinions in which women are obligated in tefillin since it is not time bound. Like tzitzit, there is a lack of uniformity in the Talmudic discussion with regard to women’s exemption or obligation in these mitzvot. Such disparity is never mentioned in modern conversations about women wearing tefillin and tzitzit since the majority opinion even in the Talmud veered steeply and absolutely away from considering such a possibility. For instance, a Tannaitic midrash considers tefillin the very prototype of positive time bound mitzvot.

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| **Mekhitla D’Rabbi Shimon Bar Yochai Chapter 13**  Another interpretation *In order that the teaching of God’s Torah be in your mouth* to exclude women.  **Just as tefillin are distinctive insofar as they are a positive time bound commandment from which women are exempt, so too, all time bound positive commandments from which women are exempt**. | **מכילתא דרבי שמעון בר יוחאי פרק יג**  ד"א למען תהיה תורת ייי בפיך להוציא את הנשים מה (ה)תפילין מיוחדת מצות עשה שהזמן גרמה נשים פטורות כך כל מצות עשה שהזמן גר,מה נשים פטורות |

This midrash starts off by tying the mitzva of tefillin to the obligation to constantly study Torah and therefore, women are exempted because they are exempted from studying Torah. The next line then integrates the presentation of tefillin as a time bound mitzvot to women’s overall exemption from time bound mitzvot.

The subject of women and tefillin does not only rest on its inclusion or exclusion from the time bound category. Ultimately, tefillin, even if not time bound, reflects a more complicated rabbinic discourse. It is also connected to Torah study since it contains within its parchment the text of Shema within which lies the central commandment to study Torah.

**Tefillin - for those who are obligated to learn Torah:**

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| **Mekhilta Bo – Chapter 17**  So that the Torah of Hashem will be in your mouth. Why was this said? Since it says [in reference to tefillin] “And it shall be a sign”, I understand that even women should be obligated. This makes sense since Mezuza is a positive mitzva and Tefillin is a positive mitzva; if you learn from mezuza which is practiced by men and women, you might think tefillin also should be practiced by women as well as men. The Torah then says “So that the Torah of the Lord will be on your lips,” I only meant this for one who is obligated in learning Torah. From here it is learned that all are obligated in tefillin except for women and slaves.  Michal the daughter of Kush would put on tefillin, the wife of Jonah would go on pilgrimage during the three festivals, Tabi the slave of Rabban Gamliel would put on tefillin: | **מכילתא דרבי ישמעאל בא - מסכתא דפסחא פרשה יז**  למען תהיה תורת ה' בפיך למה נאמר לפי שנאמר והיה לך לאות  שומע אני אף הנשים במשמע והדין נותן הואיל ומזוזה מצות עשה ותפילין מצות עשה אם למדת על מזוזה שהיא נוהגת בנשים כבאנשים יכול אף תפילין ינהגו בנשים כבאנשים **ת"ל למען תהיה תורת ה' בפיך, לא אמרתי אלא במי שהוא חייב בתלמוד תורה**, מכאן אמרו הכל חייבין בתפילין חוץ מנשים ועבדים.  מיכל בת כושי היתה מנחת תפילין, אשתו של יונה היתה עולה לרגלים, טבי עבדו של רבן גמליאל היה מניח תפילין: |

The Mekhilta asks a pointed question. Why is an exegetical connection not made between tefillin and mezuzah? It is obvious that women are obligated in mezuza since it is a mitzva determined by a structure (the house) and not by time or through learning Torah. As both mitzvot appear in the Shema text and both involve Shema written on parchment, one could ask why not obligate in tefillin because of mezuza? The midrash clarifies that tefillin are directly connected to an obligation to learn Torah. Women are exempted from this obligation and thus, are exempted from tefillin. It concludes with two illustrations of exempted parties- Michal, a woman, and Tabi, a slave, who nonetheless put on tefillin, suggesting that exemption does not equal prohibition[[20]](#footnote-20).

According to both Mekhilta texts cited, the exemption of women from tefillin is connected to Torah study and/or time bound mitzvot. This establishes an integral relationship between the exemption from learning Torah with the exemption from time bound mitzvot. The logic seems to proceed as follows: Since women are exempted from the obligation to study Torah, they are exempted from tefillin and since tefillin is a time bound mitzva, women are exempted from all time bound mitzvot.

The B. Talmud follows suit with the same logic:

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| ***Kiddush*in 34a**  From where do we derive that women are exempt from positive, time-bound mitzvot? It is derived by juxtaposition from the mitzva of phylacteries: Just as women are exempt from donning phylacteries, so too, women are exempt from all positive, time-bound mitzvot. And the exemption of women from donning phylacteries is derived from their exemption from Torah study: **Just as women are exempt from Torah study,** as derived from Deuteronomy 11:19, **so too women are exempt from** **donning** **phylacteries,** as the two issues are juxtaposed in the Torah (Deuteronomy 6:7–8). | **תלמוד בבלי מסכת קידושין דף לד עמוד א**  ומצות עשה שהזמן גרמא - נשים פטורות. מנלן? גמר מתפילין, מה תפילין - נשים פטורות, אף כל מצות עשה שהזמן גרמא - נשים פטורות; ותפילין גמר לה מתלמוד תורה, מה **תלמוד תורה - נשים פטורות, אף תפילין - נשים פטורות**. |

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| ***Kiddush*in 34a**  The Gemara asks: **And let us** say the opposite **and juxtapose phylacteries to *mezuza*,** which is also mentioned in that passage. **Phylacteries are juxtaposed to Torah study** in **both the first paragraph and in the second paragraph** of *Shema*, whereas **phylacteries are not juxtaposed to *mezuza* in the second paragraph.** It is therefore preferable to compare phylacteries to Torah study.  The Gemara says: **But** if so, **let us juxtapose *mezuza* to Torah study** and say that women are also exempt from the obligation of a *mezuza*. The Gemara rejects this suggestion: This **could not enter your mind, as it is written** [with regard to the mitzva of *mezuza*:] **“That your days may be multiplied”** (Deuteronomy 11:21). Can it be said that **men need life** but **women do not need life?** Since the reward for the performance of the mitzva of *mezuza* is extended life, this mitzva applies to women as well. | **קידושין לד.**  תלמוד בבלי מסכת קידושין דף לד עמוד א  ונקיש תפילין למזוזה! תפילין לתלמוד תורה איתקיש בין בפרשה ראשונה בין בפרשה שניה, תפילין למזוזה - בפרשה שניה לא איתקיש. ונקיש מזוזה לתלמוד תורה! לא סלקא דעתך, דכתיב: למען ירבו ימיכם, גברי בעי חיי, נשי לא בעי חיי? |

The source analysis used here is based on a methodological principle called *hekesh* or juxtaposition. In short, the Talmud essentially claims that while the verse on tefillin is adjacent to the verse on mezuza in the Torah, in the first paragraph of Shema, it is not adjacent to mezuza in the second paragraph. Meanwhile, tefillin is adjacent to verses about teaching Torah to one’s children in both paragraphs of Shema. For this reason, tefillin must be classified as similar to Torah study, from which women are exempted, rather than similar to mezuza in which women are obligated. For more detail on women’s exemption from Torah study, see chapter?.

**Women and Shema**

In the *Kiddush*in source analysis, the mitzva to recite Shema night and day is not directly addressed as a positive time bound commandment. It comes up peripherally in the context of mitzvot that are mentioned in the text of Shema, such as tefillin, mezuza and Torah study. The explicit exemption from this mitzva is stated in tractate Berakhot. In the Mishna, women, slaves and minors are exempted from Shema and tefillin and obligated in prayer, mezuza and Grace after meals. In the ensuing Talmudic discussion around this Mishnah, it assumes an awareness of the Mishna in *Kiddush*in, exempting women from time bound mitzvot.

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| **תלמוד בבלי מסכת ברכות דף כ עמוד א**  משנה. נשים ועבדים וקטנים פטורין מקריאת שמע  ומן התפילין, וחייבין בתפילה ובמזוזה ובברכת המזון.  גמרא. קריאת שמע, פשיטא! מצות עשה שהזמן גרמא הוא, וכל מצות עשה שהזמן גרמא נשים פטורות! - מהו דתימא: הואיל ואית בה מלכות שמים - קמשמע לן. ומן התפלין פשיטא! - מהו דתימא: הואיל ואתקש למזוזה - קמשמע לן. וחייבין בתפלה דרחמי נינהו. - מהו דתימא: הואיל וכתיב בה ערב ובקר וצהרים, כמצות עשה שהזמן גרמא דמי - קמשמע לן. ובמזוזה פשיטא! - מהו דתימא: הואיל ואתקש לתלמוד תורה - קמשמע לן. ובברכת המזון פשיטא! - מהו דתימא: הואיל וכתיב בתת ה' לכם בערב בשר לאכל ולחם בבקר לשבע, כמצות עשה שהזמן גרמא דמי - קמשמע לן. | **Berachot 20a**  **Mishna:**  Women, slaves and minors are exempt from reciting the Shema and putting on tefillin, but are obligated for prayer, mezuzah, and Birkat Hamazon (the blessing after meals).  **Talmud:** With regard to the *Mishna*’s statement that women are exempt from **the recitation of *Shema*,** [the Talmud asks:] That is **obvious,** as *Shema* is a **time-bound, positive mitzva, and** the halakhic principle is: **Women are exempt from any time-bound, positive mitzva,** i.e., any mitzva whose performance is only in effect at a particular time. *Shema* falls into that category as its recitation is restricted to the morning and the evening. Why then did the *Mishna* need to mention it specifically?  [The Talmud replies:] **Lest you say: Since** *Shema* **includes** the acknowledgement of **the kingdom of Heaven,** perhaps women are obligated in its recitation despite the fact that it is a time-bound, positive mitzva. Therefore, the *Mishna* **teaches us** that, nevertheless, women are exempt.  We also learned in the *Mishna* that women are exempt **from tefillin.** That is **obvious** as well. [The Talmud replies:] **Lest you say: Since** the mitzva of tefillin **is juxtaposed** in the Torah **to** the mitzva of ***mezuza***. Therefore, the *Mishna* **teaches us** that nevertheless, women are exempt.  We also learned in the *Mishna* that women, slaves, and children are **obligated in prayer.** [The Talmud explains that,] although the mitzva of prayer is only in effect at particular times, which would lead to the conclusion that women are exempt, nevertheless, since prayer **is** supplication for **mercy** and women also require divine mercy, they are obligated. However, **lest you say: Since** regarding prayer it is **written: “Evening and morning and afternoon** I pray and cry aloud and He hears my voice” (Psalms 55:18), perhaps prayer should be **considered a time-bound, positive mitzva** and women would be exempt, the *Mishna* **teaches us**. |

In the Mishna, women are grouped together with minors and Canaanite slaves, although the focus of the ensuing Talmudic discussion is only on women[[21]](#footnote-21). In this discussion, time bound suggests anything that has a time limit – even if it is day versus night (Shema) or six days a week (tefillin) but not Shabbat. The shortest time constraint is around the obligation to say Shema in the morning which can only be said up until the third hour into the day (the night time Shema can be said all night). Prayer poses a significant internal contradiction since women are obligated to pray. Prayer always refers to the Amidah prayer in rabbinic text which must be said at least twice and possibly three times a day. In addressing the latent inconsistency in obligating women in prayer while exempting them from Shema, the Talmud explains that all human beings need to pray for mercy extended to them by God. In contrast, women do not seem to need to recite the Shema in order to accept the yoke of heaven.

In the parallel passage in the J. Talmud, the reason for the exemption from Shema is based on the verse that traditionally exempts women from learning Torah:

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| **Jerusalem Talmud Berakhot Chapter 3 Halakha 3**  Women, slaves and minors are exempt…  Where do we learn that women are exempt from the obligation to recite the Shema? From the verse *and you shall teach them to your sons*. To your sons and not to your daughters. | **תלמוד ירושלמי (וילנא) מסכת ברכות פרק ג הלכה ג**  מתני' נשים ועבדים וקטנים פטורין מק"ש ומן התפילין וחייבין בתפלה ובמזוזה ובבה"מ:  גמ' נשים מניין [דברים יא יט] ולמדתם אותם את בניכם את בניכם ולא את בנותיכם. |

The Jerusalem Talmud does not utilize the principle of time bound to exempt women from Shema. Rather, it derives the exemption directly from a verse which is part of the Shema passage, “*and you shall teach it to your sons*”. This verse is interpreted rabbinically to refer only to the obligation to teach sons Torah to the exclusion of daughters and serves as the textual anchor exempting women from the mitzva of Torah study. As seen with tefillin above, the mitzva of Shema straddles two possible interpretive positions to explain women’s exemption. Despite the dual nature of the mitzva (time bound and/or part of Torah study) which seems to absolutely exempt women, there are still rabbinic voices that disagree. One such dissent is found in the minor Talmudic tractate of Sofrim/Scribes:

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| **Minor Tracate Sofrim**  There are some who read the kinnot (prayers of mourning) at night and there are others who delay until morning after the Torah reading, for after the Torah reading, one stands with his head covered in ashes and his clothes folded or torn in three, and reads with weeping and wailing.  If he knows how to translate, it is well and if not, it should be given to a translator to translate so that the nation can understand as well as the women and children **for the women are obligated to hear the reading of the book/Torah like men…and they are obligated in the reading of Shema and prayer (Shemonah Esreh) and the Grace after Meals and Mezuza** and if they do not know how to read in the holy language (Hebrew), they should be taught in any language they can understand and be taught. From hear it was understood that one who makes the blessing must raise his voice for his small sons, his wife and his daughters. | **מסכתות קטנות מסכת סופרים פרק יח הלכה ה**  יש שקורין ספר קינות בערב, ויש שמאחרין עד הבקר לאחר קריאת התורה, שלאחר קריאת התורה עומד אחד, וראשו מתפלש באפר, ובגדיו משולשין, וקורא בבכייה וביללה. אם יודע הוא לתרגמו מוטב, ואם לאו נותנו למי שיודע לתרגמו בטוב, ומתרגם לפי שיבינו בו שאר העם והנשים והתינוקות, **שהנשים חייבות לשמוע קריאת ספר כאנשים, וכל שכן זכרים, וכן הן חייבות בקריאת שמע ובתפילה ובברכת המזון ובמזוזה**, ואם אינן יודעות בלשון הקודש, מלמדין אותן בכל לשון שיכולות לשמוע וללמוד. מיכן אמרו, המברך צריך שיגביה קולו משום בניו הקטנים ואשתו ובנותיו. |

In this rabbinic text, women are obligated to hear the reading of the book (Torah), and they are also obligated in Shema, prayer, Grace after Meals and Mezuza. Furthermore, if they do not know the holy language meaning Hebrew, they are taught to say the prayers in any language that they can understand. Therefore, a man must raise his voice when he blesses so that his minor sons, wife and daughters can hear and be included. This text further emphasizes the lack of uniformity on the subject of women’s obligation in mitzvot by directly contradicting the Berakhot text which assumes absolute exemption from Shema. As was noted in the analysis of the Kiddushin passage, there is a sense of a parallel process taking place in which women during the Amoraic period could have been obligated in positive time bound mitzvot as well as in learning Torah.

**Kiddush on Shabbat**

The continuation of the Talmudic discussion in Berakhot begins to look at exceptions to the rule of women’s exemption from time bound mitzvot. As a reminder, in the Kiddushin text, various exceptions to the rule are listed, including eating matza, rejoicing on Festivals and gathering to hear the Torah read every seven years. The text in Berakhot assesses two other mitzvot, widening the gap between the principle and the numerous exceptions. *Kiddush* which is said at the beginning of Shabbat over wine is brought as the first example.

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| **Berachot 20b**  [The Amorah] R. Adda b. Ahabah said: Women are under obligation to sanctify the [Sabbath] day by ordinance of the Torah. But why should this be?  It is a positive time bound *mitzva* and women are exempt from all positive time bound mitzvot? — Abaye said: The obligation is only Rabbinical.  Said Raba to him: But it says, 'By an ordinance of the Torah'? And further, on this ground we should subject them to all positive time bound mitzvot by Rabbinical authority? Rather, said Raba. The text says “Remember and guard”.  Whoever has to guard has to 'remember'; and since women have to guard, they also have to 'remember'. | **ברכות כ:**  אמר רב אדא בר אהבה: נשים חייבות בקדוש היום דבר תורה. - אמאי? מצות עשה שהזמן גרמא הוא, וכל מצות עשה שהזמן גרמא נשים פטורות! - אמר אביי: מדרבנן. - אמר ליה רבא: והא דבר תורה קאמר! ועוד, כל מצות עשה נחייבינהו מדרבנן! - אלא אמר רבא: אמר קרא זכור ושמור - כל שישנו בשמירה ישנו בזכירה, והני נשי, הואיל ואיתנהו בשמירה - איתנהו בזכירה. |

The structure of the Talmudic passage continues to frame the obligation or exemption of women from specific commandments through the lens of the time bound principle. It starts off with Rav Adda stating that women are obligated in *Kiddush*, meaning the nighttime *kiddush* that sanctifies the beginning of Shabbat. The Talmud then asks why this should be so since *Kiddush* is a mitzva defined solely by the one day a week called Shabbat, and women are exempted from time bound mitzvot.

Abaye suggests that a possible solution is that their obligation is rabbinic rather than Biblical. In this way, women and men would have unequal obligations with men being Biblically commanded and women only rabbinically. This maintains both the structure of the time bound exemption and provides an opening for obligation. Raba rejects this based on a literal reading of Rav Adda’s statement who stated explicitly that the obligation was based on an ordinance of the Torah. Furthermore, Raba notes, using that methodology, women should have been rabinically obligated in all time bound mitzvot, which is not the case.

Raba then employs a classic exegetical methodology: There are two similar verses that command observance of Shabbat. The first states: *Guard* the Sabbath day to keep it holy. One must refrain from transgressing on the Sabbath in order to maintain its holiness. The second verse has a one-word variation: *Remember* the Sabbath to keep it holy. “Remember” is understood to mean actively remembering the Shabbat through the recitation of *Kiddush* and other rituals commanded on Shabbat.

Since women are obligated in the guarding of Shabbat (*shamor*), asserts Raba, they must be obligated in the remembering of Shabbat (*zahor*) which includes *kiddush*[[22]](#footnote-22). This ultimately turns into a halakhic blueprint for all mitzvot involving Shabbat: women are as equally obligated as men to light candles[[23]](#footnote-23), make *kiddush*, wash and bless on the two *challot*, eat three meals a day, enjoy the Sabbath and make havdala to end the Sabbath[[24]](#footnote-24). The end result is that since men and women have an equal obligation in these mitzvot, women could discharge men’s obligation in the same manner that a man can fulfill a woman’s obligation. This principle, along with a specific reference to *kiddush*, is stated clearly in the Shulchan Aruch.

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| **Shulchan Aruch Orah Hayyim 271**  Women are obligated in Kiddush, even though it is a positive commandment that time causes (meaning, a positive commandment dependent on time), because Remember is compared to Guard. And these women since they are included in guarding, they are included in remembering**. And they can discharge men (from their obligation) since they are obligated biblically, like them.** | **שולחן ערוך אורח חיים רעא**  נשים חייבות בקידוש אע"פ שהוא מצות עשה שהזמן גרמא (פי' מצות עשה התלויה בזמן) משום דאתקש זכור לשמור והני נשי הואיל ואיתנהו בשמירה איתנהו בזכירה ומוציאות את האנשים הואיל וחייבות מן התורה כמותם: |

To summarize the Talmudic discussions, most of which occur in Kiddushin and Berakhot, the list of obligations and exemptions for women with regard to the time bound mitzvot principle is presented below:

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| **Exemptions because they are time bound mitzvot**  Shema  Tefillin (difference of opinion)  Tzitzit (difference of opinion)  Sukka  Lulav  Shofar  Pilgrimage on Festivals | **Obligations in Mitzvot Despite the Time Bound Nature**  *Kiddush*  Grace after Meals (possibly rabbinic)  Tefillah (possibly rabbinic)  Matza  Hakel  Simcha  Paschal Offering  Destroying Hametz  Fasting on Yom Kippur (positive and negative) | **Exemptions from Non Time Bound Positive Mitzvot**  Learning/Teaching Torah  Procreation  Redeeming the First Born  Circumcision of a son  Honoring father and mother once married  Destroying the corner of one’s beard or hair  Laying hands on a sacrificial animal  Impurity due to contact with a dead person for a (daughter) of a priest  Donating a half shekel to the Temple |

Following are a list of rabbinic time bound mitzvot and women’s obligation or exemption based on other Talmudic discussions:

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| **Rabbinic Positive Time Bound Mitzvot** | |
| **Women are obligated:**  Hannukah candles  Megillah and other Purim mitzvot  *Bedikat Hametz* (difference of opinion whether they can perform the mitzva or have it performed for them)  Four cups of wine and all Passover mitzvot  Hallel on the night of Pesach  *Lechem Mishnah* or the obligation to have two loaves of bread at the first two and preferably third meal so obligation to have two meals  Lighting Shabbat candles  *Havdalah*  *Eruv Tavshilin* | **Women are exempt:**  Counting of the Omer (Majority opinion feels it is rabbinic but Maimonides counts it as Biblical)  Hallel (rabbinic) |

**Summary:**

The Mishna states that women are exempted from positive time bound mitzvot and obligated in all non-time bound mitzvot. It gives no reason for this differentiation. There are so many exceptions to this rule – both to obligate women in time bound mitzvot and to exempt them from non time bound ones, that the Talmud quotes Rabbi Yochanan acknowledging that we do not truly learn from something listed as a principle in the *Mishna*.

Women are obligated in all of the positive time bound mitzvot having to do with Shabbat, Passover and Yom Kippur. In addition, women are fully obligated in the four mitzvot of Purim and must light candles on Hannukah[[25]](#footnote-25). In fact, there are almost no rabbinically mandated time bound mitzvot from which they are exempt, with the possible exception of counting the Omer which is rooted in Biblical origins, and saying Hallel on festivals. If an exemption from time bound mitzvot is a desirable feature, so central to gender differentiation in Judaism as some claim, why were women included in so many of the Rabbinic positive time bound mitzvot?

Notably, women are obligated in regular daily prayer even though they do not count in a minyan. Women are also supported and encouraged in many homes and communities to take on voluntary mitzvot like shofar, lulav and sukkah, and most especially, saying Shema in the morning upon waking up and upon going to bed. Today, learning Torah is perceived as an obligation incumbent upon women to some degree. Even procreation, while Biblically a man’s obligation, is shared with the woman whereby she too is considered obligated in the ancillary rabbinic obligation to bring children into the world.

In contrast, there is little to no support within Orthodoxy for women putting on tefillin or wearing tzitzit, ironically these are the two mitzvot for which there are opinions that obligated women in the Tannaitic literature. Those mitzvot remain unquestionably gendered. Some of this stems from various other halakhic layers that were added to the discourse[[26]](#footnote-26). Another consideration is that very few women within Orthodoxy have taken on the wearing of tzitzit, tallit and tefillin while in the Reform and Conservative movements, it is part of the coming-of-age process. This contributes to a further politicized divide. Finally, while not accepted as men’s garments in the halakhic sense, the external nature of their mitzvot and their clear association with male garb and male bodies in prayer has led to a visceral response towards women wearing these ritual garments, suggesting a form of cross dressing and eliciting a sense of the taboo.

**Infusing Theological Meaning into the Gender Gap**

Tefillin and tzitzit not-withstanding, the exemption from time bound mitzvot does not functionally create an absolute gender binary since practically women are obligated in many mitzvot and can voluntarily take on others. Conceptually, however, it remains at the heart of gender differentiation, serving as the foundation for the separate but equal philosophy. This distinction has turned into a platform highlighting the differences in character between men and women in traditional Orthodoxy which in turn transmits the sentiment that if men and women have such vastly different religious dispositions, and especially if this can be attributed to God’s will, then it cannot be offensive for women to be limited in religious participation.

At the beginning of the chapter, it was noted that the two explanations most frequently given nowadays as to why women are exempted from specific mitzvot by God and/or Chazal are because of heightened spirituality and time restraints while taking care of children. The earliest attempts, however, to give reason for these exemptions focus on a wife’s subordination to her husband and the spiritual inferiority of women. The discrepancy between past and present justifications along with absolute silence from the Mishna itself reinforces the sense that the explanations given are generally as a result of a fluid social reality.

Both Malmad HaTalmidim in the 13th century southern France and the Abudraham in the 14th century in Spain attribute women’s exemption from time bound mitzvot to the tension it would cause in the household, pitting a woman between God and her husband.

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| **Abudraham, Section III (14th century Spain)**  Woman is exempt from Positive Precepts dependent upon a set time because she is bound to her husband, to attend to his needs. Were a woman obliged to perform such *mitzvot*, her husband might bid her to do something at the precise moment that she is fulfilling one of these *mitzvot*. Should she fulfill the bidding of her Creator and neglect her husband’s demands, she faces her husband’s wrath. On the other hand, should she fulfill her husband’s demands and neglect the bidding of her Creator, she faces the wrath of her Creator. Consequently, the Creator exempted her from these obligations in order to promote harmony between husband and wife.  Do we not find that even the Great Name written in sanctity and purity is effaced in order to promote harmony between husband and wife? | **Malmad ha-Talmidim, Parshat Lekh Lekha South France, 13th Century**  The sign of the covenant [circumcision] is rightly limited to the male, seeing that the female’s role is that of help-mate to the male. It is said, Yet, your urge shall be for your husband, and he shall dominate you (Gen. 3:16); implying that her husband will lead her and direct her in his ways, and that she act in accordance with his instructions.  For this same reason, women are exempt from all Positive Precepts dependent on a set time. Were she bound to observe these *mitzvot* at the set time, her husband would then be left without help at such times. This would lead to discord between them and undermine his authority, which was designed to benefit both husband and wife. |

This seems to broaden the approach brought in Tosefta *Kiddush*in (cited above) explaining that a married woman is exempted from honoring her parents since she is subordinate to her husband. Both of these authorities suggest that without a clear exemption, women would be caught between Creator and husband. Each would be vying for her absolute fidelity and neither God nor husband would understand her forsaking one for the other. In order to have harmony in the home, God exempted her from these obligations.

A different approach emerges in Rabbi Yehoshua Ibn Shuaiv, from the 14th century in Spain, who suggests that a man should bless God every day that “He has not made him a woman” since women’s souls are lesser. Just as the souls of Israelite men are holier than those of non-Jews and Canaanite slaves, so too they are holier than women’s souls, even though women are included in the covenant.

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| **R. Yehoshua Ibn Shuaiv (Spain 1280-1340)**  Therefore men bless every day that “He has not made me a non Jew, that He has not made a slave and that He has not made me a woman… the souls of Israel are holier than that of the other nations, and from the lesser Canaanite slaves and even from women, and even if they are obligated in mitzvot and they are from Israelite seed, their souls are not like the souls of men who are connected to Torah and all of the mitzvot, both positive and negative.” | **דרשות ר"י אבן שועיב תזריע ומצורע**  ולכן אנו מברכין בכל יום שלא עשאני גוי ושלא עשאני עבד ושלא עשאני אשה. כל הנשמות שנבראו תחלת כל דבר ואינן דומות זו לזו, והן מדרגות ואינן ממקום אחד, כי נשמתן של ישראל הן קדושות יותר מן האומות ומן העבדים הכנעניים הפחותים ואפילו מן הנשים, ואם הם שייכי במצות והן מזרע ישראל אין נשמתן כנשמת הזכר השייך בתורה ובכל המצות עשה ולא תעשה |

This is radically different from the more widely known approach in modernity that already appears in the 16th century, in the commentary of Judah Loew ben Bezalel known as the Maharal of Prague, in which women are presented as spiritually superior and thus, less in need of mitzvot[[27]](#footnote-27). The Maharal built his view on a famous midrash which expresses an important sentiment that is prevalent in rabbinic literature: wives and mothers have a tremendous influence on the home and thus, their inclusion at Sinai, while not explicitly stated, was a given. Without their active acceptance of Torah, the men would never have been able to commit[[28]](#footnote-28).

Since traditionally the main duty of women was to enable the Jewish observance of men, this became a space in which a more positive commentary on the imbalance in mitzva observance emerged. Similarly, Rabbi Samson Rafael Hirsch explains that the Torah exempted women because women do not need these mitzvot.

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| **R. Samson Rafael Hirsch (19th century Germany), Commentary to Torah, Lev. 23:43:** Clearly women’s exemption from Positive time bound mitzvot is not a consequence of their diminished worth; nor is it because the Torah found them unfit, as it were to fulfil these mitzvot. **Rather, it seems to me, it is because the Torah understood that women are not in need of these mitzvot.** The Torah affirms that our women are imbued with a great love and a holy enthusiasm for their role in Divine worship, exceeding that of man. The trials men undergo in their professional activities jeopardize their fidelity to Torah and therefore, they require from time to time reminders and warnings in the form of time –related precepts. Women, whose lifestyle does not subject them to comparable trials and hazards, have no need for such periodic reminders. |

Upon reading Rabbi Hirsch, one cannot help but ponder this last sentence. Women were not in the past subject to comparable trials and hazards as men but what would he say about the contemporary situation in which men and women interact regularly in the same challenging external environments? Given that he greatly contextualizes his explanation to a reality that no longer exists, would he argue that now women should be equally obligated?

The Maharal and Rabbi Hirsch reframed some of the earlier speculation on women’s character (inferior to men) and women’s role (subservient to husband), into a more positive outlook in which women are spiritually superior and thus in need of less mitzvot. In the 20th century, Rabbi Abraham I. Kook, continues a tradition of essentialist justifications for the blessing men make in the morning “*that God has not made me a woman*”, distinguishing between men as form and women as matter. In his religious world view, he emphasizes the aspect of complementarity: the receptive female with her qualities of constancy and stability keeps the more dynamic male drive on the correct path[[29]](#footnote-29). In this approach, men and women are partners due to the essential nature of body and soul. The man blesses God for providing him with the opportunity for active engagement, “and great is the gratitude that obligates him to the Creator of the soul, that comes out of each and every man, that God has not made me a woman!”. Regarding a woman’s blessing, Rav Kook writes she has a more simple and direct connection to God and as a result, her blessing is simple gratitude *that God has made me according to His will*. Women are not defined as lesser than men as in Ibn Shuiav. Rather they are harmonizing, acting to assist men in maximizing their potential in serving God. They are directly credited with men’s achievements due to this partnership. While this leaves men as the sole arbiters of authority and leadership, it nonetheless reminds women that they are fundamentally necessary for the continuity and growth of family, community and society.

In short, the two meta-halakhic explanations that became dominant in the 20th century were women’s innate spirituality leading to less existential necessity for mitzvot and the reinforcement of the woman’s central role as wife and mother (rather than submission to husband). For Orthodox and non-Orthodox feminists alike, this differentiation which results in a bifurcation and more obligation for men, can seem apologetic and even demeaning. Despite the traditional religious narrative that women are given equal bidding to fulfill the will of God in their own way, it justifies a hierarchy that ultimately translates into exclusively male authority.

**Feminist scholars in the 20th century**

In the late 20th century, female Talmud scholars began to critically read the sources that presented the differences in obligation and participation between men and women. They felt that the overall gender differentiation was not mandated by God, but largely based on interpretation of text reflecting traditional behavior in patriarchal society. The separation of women from men as a result of lesser obligation in mitzvot, exclusion from the central obligation of Torah study and segregation in synagogue has impacted women’s ability to be visible and participate fully in the central parts of Jewish worship. For some women, there is a sense of social religious marginalization even as simultaneously the romanticization of the male-female partnership is continuously reaffirmed as justification for this necessary bifurcation. As will be seen in the excerpted selections below, women’s voices sound very different than men’s as they encounter the Talmudic texts that establish the gender binary.

For instance, Professor Judith Hauptman noted that the whole platform of time bound mitzvot, distinguishing between men and women’s level of obligation in mitzvot, was devoid of any sort of coherent explanation or Biblical proof text. The only purpose it seemed to serve, she suggested, was to create this differentiation, which put women at a disadvantage. Before Haputman, no male rabbinic authority had seen it as such. In an essay titled *The Jew Who Wasn’t There*, Professor Rachel Adler wrote movingly about the hierarchy that emerges when women have less mitzvot than men:

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| Make no mistake; for centuries, the lot of the Jewish woman was infinitely better than that of her non-Jewish counterpart. She had rights which other women lacked until a century ago...the problem is that very little has been done since then (1000 CE) to ameliorate the position of Jewish women in observant society. All of this can quickly be rectified if one steps outside of Jewish tradition and Halacha. The problem is how to attain some justice and some growing room for the Jewish woman if one is committed to remaining within Halacha. Some of these problems are more easily solved than others. For example, there is ample precedent for decisions permitting women to study Talmud, and it should become the policy of Jewish day schools to teach their girls Talmud. It would not be difficult to find a basis for giving women aliyot to the Torah. **Moreover, it is both feasible and desirable for the community to begin educating women to take on the positive time-bound mitzvot from which they are now excused; in which case, those mitzvot would eventually become incumbent upon women**. |

Not surprisingly, Moshe Meisselman in his traditional book on *Jewish Women in Jewish Law* heavily attacked Adler for having no respect or appreciation for a system that he perceived as respecting and valuing women because of the very distinction in obligation that she was critiquing. “What can be done”, he asked, “if it is God’s will that men and women serve their Creator differently?” Many in Orthodoxy today continue to echo Meisselman, affirming the gender distinction as handed down from God to Moses at Sinai and thus, inviolate. The question that many Orthodox feminists return to over and over again is whether in fact God willed it that men and women serve different religious roles or the evolving structure of halakha had at its outset a clear social hierarchy in which men and women could not be equal. Professor Tamar Ross, in her book on gender and religious practice, dedicated a section to examining women’s unequal obligation to perform *mitzvot*.

Ross, who is a committed Orthodox Jew, a retired professor of Jewish thought at Bar Ilan University and a senior faculty member at the renowned Lindenbaum seminary for women in Jerusalem, generated much controversy when she published her book, *Expanding the Palace of Torah*, in the 1990’s. It was one thing for non-Orthodox Talmud scholars like Judith Plaskow and Judith Hauptman to write feminist critique of rabbinic sources. It was another thing entirely for Orthodox Jews like Rachel Adler (who at the time was Orthodox), Blu Greenberg and Tamar Ross to do the same with the sharp focus of scholarship, textual acuity and insider knowledge along with appreciation for and commitment to the halakhic structure.

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| Blu Greenberg,  I am not arguing here whether halakhic Judaism deems a woman inferior, although there are more than a few sources in the tradition that lend themselves to such a conclusion; nor will I accept at face value those statements that place women on a separate but higher pedestal. **What I am saying is that halakhah, contrary to the feminist values I have described above, continues to delimit women. In some very real ways, halakhic parameters inhibit women's growth, both as Jews and as human beings.**  I do not speak here of all of halakhah. One must be careful not to generalize from certain critical comments and apply them to the system as a whole. In fact, my critique could grow only out of a profound appreciation for the system in its entirety-its ability to preserve the essence of an ancient revelation as a fresh experience each day; its power to generate an abiding sense of kinship, past and present; its intimate relatedness to concerns both immediate and otherworldly; its psychological soundness; its ethical and moral integrity. |

There is much critique of Orthodox feminists from within the traditional Orthodox camp for imposing modern secular ideology onto the “sacred purity” of the traditional Jewish community. While it is true that the voices of these and other Orthodox feminists could only emerge in parallel with the feminist movement, the true revolution began with greater educational opportunities for women both in the broader sense (law, medicine, business) and within the world of Jewish text. As a result of the lifted glass ceiling, women for the first time could add their own voices to the reading of rabbinic text and question some of the basic premises behind the narrative of equal but different gender roles.

**Final Words**

Regardless of the origin of the textual basis for exemption and exclusion of women from full participation in obligation and ritual, the outcome over the millennium has been towards a testimony of differentiation in character between men and women in religious and devotional worship. It has also contributed to an implicit hierarchy in which men have more privilege because of their greater ritual obligation.

That is why questions around women’s status in traditional Jewish halakha and community have become among the most pressing, theologically, sociologically and halakhically. The issue unleashes questions about modernity, morality, evolution of halakha and rabbinic authority.It has become challenging for modern minded Orthodox Jews to articulate a rational justification for the widening gap in the roles that women play in their secular lives compared to their roles within Jewish religion. The traditional, and to my mind, apologetic explanations continue to be used in defense of this disparity. To further this sense of dissonance, most women marry later than they did in the past. The classic justification of hearth and home is missing for many years after women become obligated in mitzvot from the age of 12 and while they are busy pursuing education and professional opportunities. In addition, women live for many years in good health after their responsibilities for child rearing and housekeeping have diminished. Furthermore, women are certainly subject to many of the same spiritual and religious challenges faced by men in modernity as well as the particular questions raised by feminism.

Looking at the list of time bound mitzvot, it is noteworthy that while exempt, women are educated from a young age to say Shema, hear the *shofar* on Rosh Hashana, sit in a *sukka*, bless the four species and say Hallel on holidays as if obligated. In other words, the inconsistencies that emerged in the analysis above as to what is a time bound mitzva and why women are exempt from some and not others are even more exacerbated when we look at those optional mitzvot which are unanimously accepted as pivotal and quasi, if not fully, binding. One could argue that given the change in the social reality of women, women should be unquestionably obligated in all *mitzvot* and only exempted when family circumstances require it. In other words, perhaps it is time to remove the positive time bound mitzvot exemption from the equation altogether.

This suggested upward movement follows a similar trajectory as that seen with Torah study: women were almost entirely removed from the world of sacred text study. There was no thought given to any concrete obligation for women to study beyond what was necessary in order to practice halakha until it became an imperative to ensure connection, engagement and fidelity to observance. In a similar way one could argue that perpetuating the mitzva disparity can cause women to feel alienated and estranged from commitment. Perhaps this is why some of these optional mitzvot have come to be treated as obligatory, specifically hearing the *shofar* on Rosh Hashana and saying Shema. It can likewise lead to women disparaging what is actually incumbent upon them, such as prayer and Grace after Meals, wrongly concluding that they must be exempt because of the time bound or textually wordy nature of the mitzva.

There is little question that obligating women fully in all time bound mitzva would go a long way in removing the sense of hierarchy that takes place in many religious spaces. It seems to me that many of the exemptions have become excuses, used by men and women, rather than seen as opportunities for increased involvement in ritual and practice.

While I recognize that change comes slowly, our first step should be to fully include women in the rituals and practices which are permitted albeit exempt. Thousands of years of societal behavior denied women access to the Torah. Women’s sections in the synagogue were small, if they existed at all, and women often had to struggle to hear or see. In contrast, today most Orthodox communities give great thought when building a women’s section in order to make it easily accessible and provide women with the ability to see and hear the entire service. This consideration in and of itself reflects a change in the way synagogue is experienced and essentially, represents a break from tradition!

Unfortunately, there is a permitted but prohibited attitude that infiltrates the halakhic discourse which discourages people from deviating from the *mesora* in which men traditionally lead rituals. An excellent example is passing the Torah scroll around to the women’s side which rarely happens in most Orthodox communities. It is a particularly contentious issue in Orthodox prayer spaces on the most progressive of college campuses. This is a non-halakhic issue. Almost all authorities agree that a woman can touch a Torah without concern for menstrual impurity.[[30]](#footnote-30) However, it underscores meta-halakhic anxiety around changing the natural order of gender differentiation in any way that differs from what was done in the past.

Likewise, women dancing with a Torah on Simchat Torah is a heated issue that continues to divide congregations in most modern Orthodox communities. Even in the 21st century, women holding or dancing with the Torah has led to verbal and unfortunately, physical violence. The disproportion in the experience of young boys and men who are actively engaged in reading Torah and dancing with the scrolls compared to the women who passively watch from the side, often talking during the long stretches of dancing, is not only painful to experience but incredulous from the perspective of religious values, defying rational explanation. One wonders from the outside looking in how women, who today are actually obligated to study Torah, could possibly threaten the natural order by showing their passion and love for Torah in the manner that men do on the holiday meant to celebrate such devotion.

Women saying kaddish has become another battleground, as if hearing the voices of women chanting a prayer will violate the sacredness of the prayer space and sully the congregation’s ability to express devotion to God. Perhaps it would be less jarring to hear women’s voices if they were obligated to attend prayer services on a regular basis and they would have more equal footing when discussing the women’s section and active roles women could potentially play during or after the services. Enacting such changes as passing the Torah over to the women’s side and allowing women to dance with the Torah on Simchat Torah, neither of which are prohibited, would help to remove the overwhelming sense of imbalance that characterizes the synagogue experience. If more women would say *Kiddush* and bless the challah in the home and particularly at communal events, it would visibly remind us that women have equal obligation in many of the time bound mitzvot and that men and women can and should share these religious responsibilities, especially when their lives outside of religious space are decidedly egalitarian. This could then open the door for women to give vibrant expression to ongoing interaction and religious commitment through greater ritualistic practice.

It is my ardent hope that the young and upcoming generations will work together to create more partnerships in religious spaces and think thoughtfully about increased mitzva obligation for women, rather than automatically falling back on traditional structure as the default. Lack of education, apathy and fear however, continue to make this an uphill struggle.

**A Beit Midrash of Her Own**

When Rabbi Mendel Shapiro instituted Daf Yomi (daily study of one page of Talmud) in 1921 as a means of connecting Jews through a system of Torah study in which everyone worldwide would literally be on the same page of Gemara, he could not have conceived of a world in which women would learn Talmud, let alone study Daf Yomi. And yet, when the fourteenth cycle of Daf Yomi ended in January 2020, there were a significant number of women around the world who joined in the celebrations as active participants.

Watching women take the stage at a unique women’s Siyyum Hashas held at the Jerusalem Convention Center in January 2020, many of whom had founded advanced programs of study in Talmud and Halakha, filled me with awe-struck recognition that somewhere in the last 35 years, a historical process had been set into motion that I was privy to witness and take part in. There is a moving passage describing Rabbi Akiba’s small group of students raising up the Torah into a vast wasteland in the aftermath of the destruction of the Second Temple. On that day in Jerusalem, it felt as if the Talmud had been raised up by this core group of women into a formerly barren desert and passed on to thousands of others, motivating young and old alike to find themselves in the vast sea of pages of Talmud, spurring them on to consider Daf Yomi or multiple other possibilities for engaging in textual study.

Nonetheless, despite major advances in education and knowledge, there are modern Orthodox communities that hesitate or refrain from bringing women to teach Torah, Talmud or Halakha classes to men and women. In the post high school world of seminaries and yeshivot, this is even more apparent. Male rabbis teach young women, often making up a large percentage of the seminary’s faculty, but there are no yeshivot that employ women to teach Torah classes to the male student body. This gives a two-fold negative message. First, that women who teach Torah will somehow introduce a sexual stimulus into the Beit Midrash. Second, that women are less qualified to teach Torah, Talmud and Halakha.

Finally, the fear of the slippery slope is palpable in all discussions around women and Talmud study since this brave new world has led to increased interest by women in halakhic source analysis which has led to discussions of halakhic decision making, ordination and rabbinic court positions. In this chapter, the sources around women and Torah study followed by women and positions of authority will be presented and briefly analysed before engaging in the contemporary discussion around women and ordination.

**Teach to Your Sons and Not Your Daughters**

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| **Deuteronomy 11:19-21**  and teach them to your sons—reciting them when you stay at home and when you are away, when you lie down and when you get up;  and inscribe them on the doorposts of your house and on your gates—  to the end that you and your children may endure, in the land that the LORD swore to your fathers to assign to them, as long as there is a heaven over the earth. | **דברים יא: יט-כא**  (יט) וְלִמַּדְתֶּ֥ם אֹתָ֛ם אֶת־בְּנֵיכֶ֖ם לְדַבֵּ֣ר בָּ֑ם בְּשִׁבְתְּךָ֤ בְּבֵיתֶ֙ךָ֙ וּבְלֶכְתְּךָ֣ בַדֶּ֔רֶךְ וּֽבְשָׁכְבְּךָ֖ וּבְקוּמֶֽךָ**:**  (כ) וּכְתַבְתָּ֛ם עַל־מְזוּז֥וֹת בֵּיתֶ֖ךָ וּבִשְׁעָרֶֽיךָ**:**  (כא) לְמַ֨עַן יִרְבּ֤וּ יְמֵיכֶם֙ וִימֵ֣י בְנֵיכֶ֔ם עַ֚ל הָֽאֲדָמָ֔ה אֲשֶׁ֨ר נִשְׁבַּ֧ע יְקֹוָ֛ק לַאֲבֹתֵיכֶ֖ם לָתֵ֣ת לָהֶ֑ם כִּימֵ֥י הַשָּׁמַ֖יִם עַל־הָאָֽרֶץ: ס |

A close look at this Biblical passage, which makes up the second paragraph of the Shema prayer mentions an obligation to teach the words of the Shema to literally your sons. The overwhelming majority of Biblical references to בן or בנים refer to a son or sons, although there are a small number of instances in which the plural refers to children, including the last verse cited above, verse 21 where it seems more likely that it is talking about the endurance of children[[31]](#footnote-31). In any case, the verse above is presumably talking about the obligation of a father to teach his sons, to the exclusion of his daughters, the words of Shema. The Midrash Halakha Sifre cited below interpreted the clause to include a father’s responsibility to teach his son Torah from a young age, and by association it inferred that the verse excludes daughters.

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| **Sifrei Deuteronomy Piska 46**  *And you shall teach it to your children*. Your sons and not your daughters, so taught R. Yose b. Akiva.  Hence the sages have said: Once an infant begins to talk, his father should converse with him in the holy tongue and should teach him Torah, and if he doesn’t teach him Torah, it is as if he buries him (the son). | **ספרי דברים פרשת עקב פיסקא מו**  (יט) ולמדתם אותם את בניכם, בניכם ולא בנותיכם דברי רבי יוסי בן עקיבה  מיכן אמרו כשהתינוק מתחיל לדבר אביו מדבר עמו בלשון הקודש ומלמדו תורה ואם אין מדבר עמו בלשון קודש ואינו מלמדו תורה ראוי לו כאילו קוברו. |

The midrash introduces two important points that are incorporated consistently into halakha. First, that there is a central obligation for men to study Torah based on the obligation of a father to teach his son the words of Shema, extrapolated to mean the words of Torah. Second, that daughters are excluded as the Biblical verse mentions sons. It is actually somewhat surprising that the midrashic interpretation took such pains to emphasize that the verse excludes daughters. As noted above, בניכם usually refers to sons. However, Talmudic exegesis is known to include daughters at times when the text seems to be referring to only sons. The most prominent example occurs in Deuteronomy 25:5, when a man dies without a son and leaves his widow with the obligation to marry his brother (normally a forbidden relationship) in order to bear a son to commemorate the deceased[[32]](#footnote-32). This text seems to directly refer to a male child who will carry on the dead man’s name. However, the unanimous conclusion of the Talmud is that only when the man dies without *any* children is this practice, known as *yibum* or levirate marriage, instituted. In Midrash Tannaim[[33]](#footnote-33), the midrash determines textually that any progeny left to the deceased, male or female, including a grandchild born to the son or daughter if they have predeceased him, ( even if these grandchildren are barren), fulfill the Torah’s mandate. It seemed very important to rabbinic interpretation to limit this institution which allows a woman to marry her brother in law, normally prohibited, thus perhaps explaining the inclusion of daughters and granddaughters.

In contrast, when we return to our text, the Sifre deliberately excluded daughters in the legal obligation of saying Shema and learning Torah. This suggests a degree of fluidity on the part of rabbinic interpretation whereby daughters can be included or excluded depending on the circumstance and the interpretation.

The Talmud pointedly incorporates the Sifre’s exegesis into a central passage in tractate Kiddushin , concluding that women are exempted from the obligation to teach their sons Torah since they are exempted from study themselves based on the exegesis that men are commanded to teach their sons and not their daughters. However, this was not the main deterrent to women’s Torah study over the last 2000 years nor is it the main explanation presented in the halakhic codes. The Sifre’s interpretation created an exemption for women but it did not outright preclude or prevent women from such study. A bigger obstacle is to be found in Mishna Sotah 3:4.

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| **Mishnah Sotah 3:4**  She has hardly finished to drink when her face turns green and her eyes pop out and she is covered with swollen veins. And they say, “Take her out! Take her out, so she does not defile the Temple Court.” If she had any merit, this held her punishment in suspense. There is merit that holds punishment in suspense for one year…two years…three years; From this Ben Azzai infers, “A man is obligated to teach his daughter Torah so that if she drinks she should know that merit will hold her punishment in suspense.” Rabbi Eliezer says whoever teaches his daughter Torah teaches her *tiflut* — lewdness. Rabbi Yehoshua says a woman prefers one kav and tiflut rather than nine kavim and abstinence. | **משנה מסכת סוטה פרק ג משנה ד (מצורף בהמשך פירוש קהתי למשנה):**  אינה מספקת לשתות עד שפניה מוריקות ועיניה בולטות והיא מתמלאת גידין, והם אומרים הוציאוה הוציאוה שלא תטמא העזרה. אם יש לה זכות היתה תולה לה. יש זכות תולה שנה אחת, יש זכות תולה שתי שנים, יש זכות תולה שלש שנים. מכאן אומר בן עזאי: חייב אדם ללמד את בתו תורה שאם תשתה תדע שהזכות תולה לה. רבי אליעזר אומר כל המלמד בתו תורה כאילו לומדה תפלות. |

In this Mishnaic source, there is a gender bias beyond the legal technicalities of obligation or exemption. The discussion takes place in the tractate Sotah, which assesses a woman’s behavior in what is defined as an undoubtedly adulterous relationship[[34]](#footnote-34). The passage in Numbers 5 describes an ambiguous situation in which the woman is accused of adultery but there are no witnesses to support the accusation. She may be guilty or innocent. In lieu of a trial, the suspected adulteress, known colloquially in rabbinic text as a Sotah, meaning one who went astray, must drink a water mixture made up of dirt from the floor of the Temple and ink which is erased from a scroll with God’s name, to clarify the ambiguity. If she is guilty, her belly will swell and cause her thigh to sag, suggesting impairment to fertility and/or sexuality.

In the Mishnah, various steps are added to the Bible’s protocol, including witnesses to the woman’s seclusion with a man other than her husband. She is thus not only suspected but also doubted within reason of her innocence. Only a lack of witnesses to the actual fornication spares her from the proceedings of a court and the death penalty.

Given her culpability, the ceremony described in the Mishnah presents a far more dramatic impact to her body, causing her eyes to bulge and her veins to swell, ultimately resulting in her death soon after. What happens, wonders the Mishnah, if despite her alleged guilt, there are no repercussions after she drinks the potion? Will this cause people to doubt the power of God’s word?

The answer given is that merit can suspend the punishment, and she will not die immediately, possibly for up to three years. However, it does not specify the type of merit that can suspend such punishment. This will be explored in the Talmud by several generations of Amoraic scholars in Babylonia[[35]](#footnote-35).

Returning to the Mishnaic text, Ben Azzai infers that a man is obligated to teach his daughter Torah so that she knows that even if she is subjected to this ritual, the merit of her mitzvot will protect her. In other words, the early Tanna Ben Azzai seems to suggest that by learning Torah a woman will know not to fear immediate death, and that merit will delay punishment. To the modern reader, Ben Azzai aligns with the outlook that education empowers. By teaching women to understand the underpinnings of the Sotah structure, they can navigate the system without the crippling fear of the unknown. I would go even farther and suggest that within the words of the text emerges an educational philosophy that is preemptive. By educating her towards accruing merit, she may no longer have the desire or time to engage in an adulterous relationship. The Talmud teaches us in tractate Ketubot that boredom leads to promiscuity. Rabbi Eliezer says that even if a woman has 100 maidservants, she must be forced to work with wool, for idleness leads to adultery[[36]](#footnote-36). It is possible to read Ben Azzai as contending with a tactic to prevent societal promiscuity. His antidote is that fathers teach their daughters Torah.

The problem, as the Talmud quickly points out, is that according to the exegesis of the Sifre brought above, women are not obligated to study Torah. How then can the merit of Torah study provide protection from punishment if they have no mitzva to do so? The answer given is that women do not accrue such merit from their own learning, and can only do so, “By making their sons read and study and waiting for their husbands until they come home from the study hall[[37]](#footnote-37).” This greatly dilutes the impact of Ben Azzai’s statement and de-nudes it of practical application with regard to female Torah study.

Rabbi Eliezer, in sharp contrast to Ben Azzai, sees the education of women as dangerous and contributory to sexual licentiousness in society. The Amora Rabbi Abahu goes in a similar direction, explaining that if women study Torah, they will learn deviousness[[38]](#footnote-38). In other words, if women know how to navigate the halakhic system, they will do so and thus avoid consequence or punishment for promiscuous behavior. Keeping women ignorant and afraid of punishment are seen to be important tactics in promoting the sexual mores of monogamy and faithful marriage.

There is no analogous suspicion of this sort regarding men who study Torah, even though adultery requires the involvement of a man!

The overarching conclusion in the greater Talmud discourse is that the study of Torah protects men from transgression, and in particular, from seduction and immoral sexual behavior; in stark contrast, it is assumed that women will misuse their knowledge to throw off the shackles of rabbinic authority and convention, leading to greater sexual immorality. The Jerusalem Talmud brings a heated conversation between a wealthy woman and the Tanna Rabbi Elazar ben Azaria. The matron asks a question about the story of the Golden Calf in Exodus and Rabbi Eliezer, instead of answering her retorts: “May the word of Torah be burned and not given to a woman!” He refuses to even answer a question that involves an explanation of the words of Torah to a woman.[[39]](#footnote-39)

Although Ben Azzai and Rabbi Eliezer are quoted side by side in the Mishna, only the opinion of Rabbi Eliezer is quoted in the Babylonian Talmud and in all commentary afterwards. In fact, it has been exclusively cited as the authoritative statement justifying the denial of access to Torah study for women. In effect, Ben Azzai is essentially erased from all halakhic discourse since his statement is not addressed at all in the Babylonian Talmud’s analysis of the Mishna and does not appear in the Gaonim and Rishonim[[40]](#footnote-40).

There are, however, some interesting parallel early rabbinic sources that remain largely unexplored until the 20th century when the push for women’s education becomes a central issue.

In the Tosefta Berakhot there is a fascinating source in which men and women, in different states of tum’ah (impurity) are permitted to read Torah and study Jewish text. The only category excluded from such pursuits are men with a seminal emission.

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| **תוספתא מסכת ברכות (ליברמן) פרק ב**  **הלכה יב**  הזבין והזבות והנדות והיולדות מותרין לקרות בתורה בנביאים ובכתובים ולשנות במשנה במדרש בהלכות ובאגדות ובעלי קריין אסורין בכולן ר' יוסה או' אבל שונה הוא בהלכות הרגילות ובלבד שלא יציע את המשנה | 1. **Tosefta Berachot Chapter 2:12**   Gonnorheics (male and female), menstruants and parturients (women after childbirth) are permitted to read the Torah, to study Mishna, midrash, religious law and aggada, but men who have had a seminal emission may not. Rabbi Yossi said, however, he may teach regular halachot as long as he does not teach Mishna. |

A seminal emission is the most common and most easily rectified state of impurity. It requires immersing in a ritual bath soon after the emission[[41]](#footnote-41). At a certain point in the early rabbinic period, it was decided that all men experiencing a seminal emission should not pray or learn Torah before immersing in a ritual bath. The message seems to be that men should take care to minimize seminal emissions, although it would be impossible to eliminate such a bodily function completely due to a man’s obligation to procreate and to provide sexual relations to his wife. For our purpose however, it is startling to discover a text that casually references women reading Torah and learning Mishna, midrash, halakha and aggada! Furthermore, this text is repeated almost verbatim in the Jerusalem Talmud[[42]](#footnote-42). A similar theme appears in the B. Talmud but with significant emendation:

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| **תלמוד בבלי מסכת ברכות דף כב עמוד א**  דתניא: +דברים ד'+ והודעתם לבניך ולבני בניך, וכתיב בתריה יום אשר עמדת לפני ה' אלהיך בחורב, מה להלן באימה וביראה וברתת ובזיע אף כאן באימה וביראה וברתת ובזיע; מכאן אמרו: הזבים והמצורעים ובאין על נדות – מותרים לקרות בתורה ובנביאים ובכתובים, לשנות במשנה וגמרא ובהלכות ובאגדות, אבל בעלי קריין אסורים; רבי יוסי אומר: שונה הוא ברגיליות ובלבד שלא יציע את המשנה; | 1. **B. Talmud Berachot 22a**   It is taught in a beraita: “Make them known to your sons and your son’s son,” and it is taught immediately after, “the day that you stood before the Lord your God in Horeb.” Just as there, at Sinai, it should be done with awe, fear and trembling, so too here, when he learns Torah, it should always be done with awe, fear, and trembling.  **From here they said: Gonnorheics and lepers and those who have relations with a Niddah – are permitted to read from the Torah, Neviim and Ketuvim, Mishnah, Gemara, Halachah and Agadah (even though they are impure), but a man who has a seminal emission is prohibited from all of these things.**  **R. Yosi permits a man with a seminal emission to learn Mishnayot that he knows well and can say quickly, but he may not teach others;** |

The bolded text is very similar to the text in the Tosefta and Jerusalem Talmud. However, there is a major modification. Women who were featured prominently in the Tosefta as having the ability to read and learn Torah, are absent. In the B. Talmud, women with uterine bleeding (menstrual, uterine, parturient), are deleted and replaced by a man who has relations with a nidda, which transfers the impurity of the nidda onto him. Despite this impurity, he can nonetheless read and study Torah[[43]](#footnote-43).

Just as Ben Azzai disappears from the Babylonian Talmudic discourse on teaching daughters Torah, the women who read and studied Torah disappear from the beraita quoted in the B. Talmud. The one exception is the Tannaitic figure Beruriah, purported wife of Rabbi Meir who is described as a learned woman. However, it is beyond the scope of this chapter to fully analyze the Beruriah stories, fascinating as they are. Furthermore, Beruriah does not stand as a model for emulation until the modern era and had no impact on the attitude towards girls’ education in classic rabbinic and post rabbinic sources. If anything, the commentary in Rashi which explains that Beruriah was seduced by her husband Rabbi Meir’s student (at his insistence) because she mocked the rabbis for considering women light headed stands as a stark lesson against educating women in Torah[[44]](#footnote-44).

By ignoring Ben Azzai, the question of women’s education lay largely dormant even as it was addressed from Maimonides onward. Rabbi Eliezer Waldenberg,[[45]](#footnote-45) in his 20th century responsa acknowledges that a different, more permissive and legitimate approach to women reading and studying Torah, Oral Law (Mishna, halakha, aggada) was extant in central rabbinic texts, the Babylonian Talmud notwithstanding. Rabbinic authorities who disagree with this idea argue that they have no jurisdiction to reexamine and utilize texts that have long been overruled by the B. Talmud.

**The Next Stage: Maimonides and Sefer Hassidim**

Maimonides is nuanced in his analysis on women and Torah study. In distinction to the Babylonian Talmud, he allows that women who study Torah indeed receive a reward and differentiates for the first time, between women studying Written Torah and Oral Torah. This distinction will remain an important marker in the evolution of women’s Torah study when school curricula begin to emerge from the 19th century onward.

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| **רמב"ם הלכות תלמוד תורה פרק א הלכה יג (מאה 12. ספרד, צפון אפריקה ומצרים)**  אשה שלמדה תורה יש לה שכר אבל אינו כשכר האיש, מפני שלא נצטוית, וכל העושה דבר שאינו מצווה עליו לעשותו אין שכרו כשכר המצווה שעשה אלא פחות ממנו, ואע"פ שיש לה שכר צוו חכמים שלא ילמד אדם את בתו תורה, מפני שרוב הנשים אין דעתם מכוונת להתלמד אלא הן מוציאות דברי תורה לדברי הבאי לפי עניות דעתן, אמרו חכמים כל המלמד את בתו תורה כאילו למדה תפלות, במה דברים אמורים? בתורה שבעל פה אבל תורה שבכתב לא ילמד אותה לכתחלה ואם למדה אינו כמלמדה תפלות. | 1. **Rambam Talmud Torah 1:13**   A woman who studies Torah has a reward but not like the reward of a man because she is not commanded and anyone who does something that is not commanded on him to do so – his reward is not like the reward of the one who is commanded but rather less. Even though she has a reward, the rabbis commanded that a man should not teach his daughter Torah because most women’s minds are not directed towards study. Rather they misinterpret, rendering the text irrational because of their poor minds. The rabbis said, “Anyone who teaches his daughter Torah, it is as if he taught her *tiflut*.” What are we talking about? Oral Torah. However, Written Torah one should not teach her *a priori*, but if he taught her, it is not as if he taught her *tiflut*. |

There are several points of note in Maimonides:

* Women receive reward when they study Torah although not equal to the reward of men. This is in line with the overall Talmudic approach that those who are exempt from a mitzva but nonetheless perform it receive less reward than those obligated.
* *Tiflut* or licentiousness could only come from women studying Oral Torah (although she would still get a reward).
* Written Torah cannot be associated with *tiflut*. Nonetheless, a father should not teach it to his daughter *a priori*.

Maimonides presumes that R. Eliezer’s reasoning as to why women should not be taught is: “*Even though she has a reward, the rabbis commanded that a man should not teach his daughter Torah because most women’s minds are not directed towards study. Rather they misinterpret, rendering the text irrational because of their poor minds.*”

Maimonides, who was a renowned physician in the Sultan’s court in Egypt in the 11th century, was strongly influenced by the prevailing medical theories of the day. Women were considered mentally inferior to men because of their physiological makeup. In his Regimen of Health, Maimonides equates women with children and the ignorant, writing that, “The softness of their souls makes them fearful and irresolute[[46]](#footnote-46).” Women could not overcome their emotions because they were unable to gain the control that men, “Nurtured in the philosophy of morals or in the disciplines and admonitions of Law, acquire strength of mind[[47]](#footnote-47).” They were also more prone to imbalance and disease[[48]](#footnote-48). It is thus all the more impressive that he assigns them reward for the study of Torah despite these deficiencies. In addition, he does not state that all women are unequivocally unable to study, rather he writes that most women are incapable.

At around the same time, in Germany, women’s education was addressed in Sefer Hasidim, an important work spanning two hundred years. In it, fathers are commanded to teach their daughters mitzvot so that they know what to do when overseeing a Jewish home.

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| 1. **Book of Hasidim 313**   Everyone must teach his daughters the mitzvot. The Talmudic statement that he who teaches his daughter Torah is as if he taught her *tiflut* refers only to the profundities and rationale of the mitzvoth and the mysteries of the Torah; these are not taught to a woman or to a minor. **However, a woman should be taught how to observe the mitzvot, for if she does not know the laws of Shabbat, how can she observe Shabbat, and this applies to all similar mitzvot**. Indeed, in the days of Hizkiyahu, king of Judea, men and women, old and young were familiar with the laws of purity and sacrifices. | **ספר חסידים סימן שי"ג (מאה 12 גרמניה)**  חייב אדם ללמד את בנותיו המצוות כגון פסקי הלכות, ומה שאמרו שהמלמד לאשה תורה כאילו מלמדה תפלות, זהו עומק תלמוד וטעמי המצוות וסודי התורה, אותן אין מלמדין לאשה ולקטן, אבל הלכות מצוות ילמד לה, שאם לא תדע הלכות שבת איך תשמור שבת, וכן כל המצוות. |

Sefer Hasidim rules that a man is obligated to teach his daughter practical halakha. While the author does not reject Rabbi Eliezer, he minimizes his position to refer only to the deep study of Talmud or to the “secrets of Torah”. A father must teach his daughter about the mitzvot and how to perform them so that she knows how to perform them properly. In essence, by limiting Rabbi Eliezer to the profundities and mysteries of Torah, it provides a rather broad framework for some form of education, and together with Maimonides, it includes the possibility that such learning has merit for the women who engage in it (and for the men who teach them).

The positions of Maimonides and Sefer Hasidim are essentially the only lens through which the discourse evolves, becoming codified into Shulchan Aruch and the Rema respectively. During the late middle ages, the sages of France and Germany accepted both approaches — the distinction between Oral and Written Torah presented by Maimonides (limiting women to Written Torah) along with the clear need to teach daughters—indicating that women should be educated at home in basic Jewish texts and rituals[[49]](#footnote-49). Furthermore, there are credible accounts of outstanding educated women who served as religious leaders and scholars at this time[[50]](#footnote-50). In the Cairo Geniza for instance, there are descriptions of elementary schools in which young girls and maidens studied as well as schools in which men and women served as teachers. Overall, however, few women had any comprehensive Jewish education despite the softening of Rabbi Eliezer’s position.

The next section will examine some of the changes that began to take place in parts of Europe in the 19th century with regard to the education of girls in the fluency of Jewish sacred texts. The discourse documented in some of the responsa and historical documents from that time reflects both urgency and reluctance, qualities that will continue to be pronounced into the 21st century as the glass ceiling restricting women’s education incrementally and then exponentially rises.

Progress was achieved in the late 18th century when the call for women’s education began to grow dramatically in Germany as a result of the Enlightenment. In 1827 the first Orthodox elementary school in Germany to combine secular with religious subjects opened its doors to girls. It was in this era that Rabbi Esriel Hildesheimer and Rabbi Samson Rafael Hirsch began to advance formal schooling for females. Rabbi Hirsch felt that the purpose of Jewish learning was not purely academic but the goal was religious instruction designed to motivate the student to act.

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| No less should Israel’s daughters learn the content of the Written Law and the duties which they have to perform in their lifetime as a daughter and young woman, as mother and housewife. Many times have Israel’s daughters saved the purity of the Jewish life and spirit. The deliverance from Egypt itself was won by the women; and it is by the pious and virtuous women of Israel that the Jewish spirit and Jewish life can and will again be revived. |

The urgency to educate Jewish girls stemmed from the exigency to reinforce their traditional role as wife and mother. Hirsch reiterated the position taken by Sefer Hasidim but in the context of a broader educational effort outside of the home and with a modern framing. In his book *Horeb*, he set forth the curriculum necessary to educate girls: Hebrew language, vernacular, Torah, Prophets and Writings, Science, History, Teaching of Duties, Writing and Arithmetic. While boys would be taught the theoretical instruction of law, girls would be prevented from acquiring such information. Nonetheless, Hirsch clearly felt that learning “our sacred literature” was essential to teach conscientious fulfillment of duty and execution of task[[51]](#footnote-51). This is probably the first time that text-based education for women is openly connected to deeper engagement and commitment to ritual and practice.

Rabbi Esriel Hildesheimer was also working at the time in Germany to further educational opportunities for girls. Like Hirsch whom he admired, he felt that, “If it is true that knowledge is power, then the Jewish knowledge of our wives and young ladies will contribute to an invincible Jewish power — to power in the home, in Jewish family life and to a priceless influence in the area of the education of our sons.[[52]](#footnote-52)”

The forces of assimilation along with the position and role of women in the larger German society worked in their favor as to the need for an institutional framework. A new approach was clearly necessary if the Jewish family was going to survive. While their stances represented a departure from the traditional Jewish communal norm that denied women formal educational access to all classical textual learning, neither Hirsch nor Hildesheimer permitted female students to study Talmud or the Codes of Jewish Law. The primary responsibility for these young educated girls would be to serve as an anchor for Jewish tradition and practice within the home, inspiring husbands and children. Individual growth and development were surely not the focus.

The trend in Germany did not automatically spread to parts of Eastern Europe[[53]](#footnote-53). The situation in Poland was such that precious communal resources went to financing schools for boys to study Torah. This was largely in order to keep them out of the public schools because of the Compulsory Education Law issued by the Habsburg empire requiring all children in Austro-Hungary to send children between 6 and 14 to public school; Orthodox families deliberately sent their daughters to public schools in an attempt to shield their sons by filling the school quotas with girls. The daughters, rather than the sons, were thus exposed to the external and seductive forces of the gentile world. The result was that young women began assimilating at astonishing rates. Paradoxically, the rabbinic leaders were reluctant and, in many cases, forcefully resistant to opening Jewish schools for girls because it went against tradition. A generation of girls grew up identifying as Poles in language, thought and culture and were completely mismatched with yeshiva educated boys. The Orthodox press cried out against their defection from Orthodoxy but the trend continued and in some extreme cases, women converted to Christianity to marry non-Jewish lovers[[54]](#footnote-54)!

There had already been suggestions put forth to start Jewish schools in Galicia but they had been rejected, partially on the grounds of the ban by Rabbi Eliezer. At a rabbinical conference in Krakow in 1903, the idea was reintroduced. One rabbi pleaded that girls be educated in the knowledge of Torah, “Since so many of them are already far from their people and Jewish spirit[[55]](#footnote-55).” Another proposed afternoon Talmud Torah for girls to learn prayers, blessings and laws. In response, one of the dissenters proclaimed “even this custom they wish to bring to Israel – Talmud Torahs for women! God Forbid! Such a thing will not be!” The conference ended with a stalemate and nothing happened. While it was recognized that there was a growing crisis among young Orthodox women, it was determined that such a turn of events would flagrantly defy rabbinic authority and be perceived as a capitulation to modernity.

The situation only began to change during World War I, when rabbis from Germany who had graduated from Hildesheimer’s rabbinical seminary in Berlin began to arrive in communities in Warsaw and Kovno. Responding to the vital need, they set up Jewish gymnasiums for boys and girls, as well as offering popular religious talks to older girls and women[[56]](#footnote-56). This followed the trend that had begun in Germany decades earlier and reflected an organic evolution in Jewish pedagogy, encouraging boys and girls to master a fluency in sacred texts alongside other secular subjects.

In Krakow, however, there was continued and almost absolute resistance due to the strong Hasidic leadership utterly opposed to Jewish education for girls although it was actually in that city in which the most famous defections of Hasidic girls to convents took place! Against this backdrop, it is all the more remarkable that Sarah Schenirer succeeded in her endeavors. She faced an uphill battle when she embarked on her journey to develop and implement a system of learning for girls in more traditional religious communities than those recruited by Hirsch and Hildesheimer first in Germany, and later by their students in Warsaw and Kovno. It is noteworthy that shortly before she opened the first Beit Yaakov school, Rabbi Yisrael Meir Kagan, known as the Chafetz Chayim, acknowledged the dire need for such schools in a commentary to tractate Sotah:

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| **Chafetz Chayim Likutei Halachot Sotah 21b**  “He who teaches his daughter Torah.” Evidently this was so only in previous times, when family tradition was strong enough for everyone to emulate his parents as indicated in the verse, “Ask your father and he will tell you” (Deut. 32:7). We could say that a girl should not be taught to learn Torah but rather model her conduct on that of her righteous parents. Now, however, our sins being many, parental tradition has weakened very much and frequently the daughters even leave home. Specifically, those who regularly study gentile language, it is surely a great mitzvah to teach them – Chumash and the Prophets and the Writings and the moral instruction of the Sages such as Ethics of our Fathers and Menorat ha Ma’or so as to strengthen within them our holy faith. If not, they are liable to completely stray far from the path of the Lord and transgress all the principles of our religion, God forbid. |

Although he acknowledged Rabbi Eliezer’s ban, the current state of affairs had so drastically eroded any formally accepted model that daughters were rejecting tradition and leaving home. It was now a mitzva to teach them the contents of Jewish sacred texts or they could completely stray and transgress. Despite the acknowledged necessity, he did not actively pursue the establishment of a school system for girls. It was into this breach that Sarah Schenirer stepped. Born in Krakow in 1883 to a Hasidic family, Schenirer was a seamstress who spent every evening studying Torah[[57]](#footnote-57). After she heard Rabbi Dr. Moshe David Flesch in Vienna call for the spiritual rejuvenation of Judaism through greater devotion and commitment to study on the part of the Jewish woman,[[58]](#footnote-58) she began to implement her plan to teach Jewish text. In 1917, she gathered 40 women and girls for a study session. The older girls mocked her but the women enjoyed her lecture. She realized then that she was going to have to start with younger students and in a more systematic way, very much reflecting the process towards elementary education described in the Talmudic tractate Bava Batra[[59]](#footnote-59). Amid growing controversy, she sought a consult with the Belzer Rebbe, who wrote, “blessings and success” on a piece of paper thus approving of her initiative but refraining from allowing his Hassidim to send their daughters to her school[[60]](#footnote-60). Nonetheless, very quickly the numbers of enrolled students grew exponentially and a few years later the Agudah organization took over the running of the schools.

What was particularly outstanding about Sarah Schnerir’s life’s work was not just the school system for young students that she established, but the teacher training college that she founded which provided a strong foundation in belief and practice to the dedicated young women who became teachers dedicated to inspiring their students[[61]](#footnote-61). The goal of both the college and the school system was to reinforce not only observance but also religious enthusiasm and fervor using informal educational methods such as songs, dances, plays and trips[[62]](#footnote-62). Religious piety and ideological commitment were the mission and highest achievement for Orthodox Jewish women, meant to extinguish any desire they may have felt for higher education[[63]](#footnote-63). For this reason, the schools did not provide a strong foundation in Hebrew text study for the girls beyond traditional Yiddish texts that were universally approved of, so that the girls learned sacred texts based on Yiddish translation and commentaries intended for lay people rather than in the original Hebrew[[64]](#footnote-64). Yiddish was touted as a holy language and its complete immersion was meant to counter attraction to Polish language and culture. This was in contradistinction to the Hirsh-Hildesheimer gymnasiums which were interested in inculcating a Torah with Derek Eretz ideology.

It cannot be overstated how significant the Bais Yaakov school system was in proving within the most conservative and resistant ultra Orthodox communities the remarkable impact education had and continues to have in connecting and engaging young women to their religious heritage and halakhic practice. Nonetheless, the tide was already turning in all parts of the Jewish world as schools were being established with a focus on a modern education system for both girls and boys, integrating a strong commitment to religious observance with compulsory secular subjects necessary for building a sustainable life in contemporary society. Today it is obvious that every community builds their own school systems for girls to reflect its own ideologies, customs and interpretations. From the most extreme Hasidic sects to the most liberal, within observant communities, all children go to Jewish schools that tailor their curricula to reflect religious ideology regarding the world of Torah study as well as attitudes towards secularism.

**But Should Women Learn Talmud?**

As educational opportunities for women increased in the mid to late 20th century and the feminist movement demanded equal educational, professional, social and economic opportunities for women, the question of Talmud study for women began to take root. In 1937, even before feminism actively took root in the Orthodox community, Rabbi Joseph Dov Soloveitchik and his wife Tonya founded the Maimonides school in Boston which offered girls and boys equal educational opportunities including the study of Talmud. However, it remained outside of the mainstream school curricula for many decades[[65]](#footnote-65). In the 1970s Rabbi Moshe Feinstein was asked about teaching Mishna in Bais Yaakov schools. He answered briefly but emphatically in the negative.

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| **Igrot Moshe (Rav Moshe Feinstein 20th Century USA)**  Teachers want to teach Mishnayot in the Beit Yaakov school for girls. Maimonides ruled like Rabbi Eliezer that this should not be taught. Mishna is Oral Law and therefore it should be prevented. Only Pirkei Avot should be taught in order to awaken in them love for Torah and good values but not the rest of the tractates and since the matter is simple/clear, I will remain concise. | 1. **איגרות משה, יו"ד ג,פז (הרב משה פיינשטיין מאה 20 ארה"ב):**   בבתי הספר לנערות בית יעקב רוצים המורים ללמוד עמהן משניות. רמב"ם פסק כרבי אליעזר שאין ללמד. משניות הוא תורה שבעל פה, ולכן צריך למונעם. רק פרקי אבות (יש ללמד) בהסבר לעוררן לאהבת תורה ולמידות טובות, אבל לא שאר המסכתות, ומתוך פשיטות אקצר |

At the same time, in Israel, responsa by ultra Orthodox rabbis like Bentzion Feurer and Moshe Malka endorsed nuanced and moderate positions with regard to integrating Oral Law (Mishna and Talmud) into the curricula for girls.

Rabbi Feurer was asked whether it is permissible to teach both Written and Oral Torah to girls. His response, published in the religious education journal No’am, explicitly concluded that the teaching of Mishna was permitted and to be regarded as positive, particularly in schools where students were going to be taught real *tiflut* (secular studies).

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| **Rabbi Benzion Fuerer, Noam, Volume 3 (translation Getsel Ellinson)**  But today a daughter who does not study Torah studies actual *tiflut* instead, and surely we must choose between actual *tiflut* and “as if” *tiflut*, we prefer the latter. In our times, the argument for Torah study by women outweighs by far the argument against; for in place of the perfect faith diffused by the Torah, young women are fed meaningless notions of *tiflut* and objectional ideas found in secular irreligious literature. A single Torah text book might well eradicate the impact of many volumes of *tiflut* study. Whether we like it or not, the traditional melamed has been replaced by the lady teacher who transmits the Torah to boys and girls in elementary school. If girls do not learn Torah in school, the irreligious teacher will replace the religious teacher and transmit to the children in elementary school their own spurious version of Torah…evidently this induced the eminent Torah scholars of the past two generations to approve teaching Torah to girls — **both Written and Oral Torah, e.g Mishnah, Codes**, etc. I wish that all Jewish girls would study Torah and not expose their hearts to the *tiflut* of this permissive generation. |

Rabbi Moshe Malka, an eminent rabbinic authority in Morocco who became the rabbi of Petah Tikva, went even further in acknowledging the need to increase Torah study for women to keep up with the educational challenges provided by advanced secular education. He suggested that R. Eliezer’s would surely waive his ban in light of the contemporary educational reality.

While in practice, no ultra Orthodox schools formally teach their female students Talmud, the explanations given by these rabbinic authorities further illuminates the contemporary discourse on the topic. In addition to Rabbi Malka, a number of rabbinic authorities, including the Lubavitcher Rebbe, were able to recognize the dissonance in limiting women from learning Oral Law while allowing them to learn secular subjects at the highest academic levels.

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| **Menachem Mendel Schneerson, Parshat Emor 5750**  In the generations preceding us there did not exist educational institutions for girls…every daughter received [the traditions] from her mother and the older women [in the community]etc. Nonetheless, in the last few generations, the great rabbis established educational institutions for girls, seeing it as an exigency of the hour, since without question they leave their homes and are influenced by what they see outside etc. and thus, it is a necessity to establish for them educational institutions in which they will receive proper and approved religious education.  And this, then applies to the study of the Oral Torah (beyond the study of halakhot that apply directly to them). **Since nonetheless, women and girls learn a variety of disciplines through which cunning enters into them. Thus, it is not just permissible for women to study the Oral Law, but beyond this, according to the very reasoning of the Halacha itself, it is necessary to teach them Oral Torah**. Not just to learn the halakhic decisions without their reasons, but also to teach them the reasons behind the laws, including the fine dialectical arguments that are found in the Torah. **For it is in human nature, male and female, to desire and take pleasure even more in this kind of study.** Through this there will be in them a development of the senses and of the connections infused with the spirit of our Holy Torah. |

Rabbi Schneerson recognized the absurd disparity that restrictions on women in the world of Torah study created in comparison with their access to secular knowledge. In addition, he astutely noted that women of today, just like men, crave the intellectual stimulation provided by dialectical Talmud study. This acknowledgement essentially collapsed the fragile construct that had existed in the 20th century in order to uphold some semblance of Rabbi Eliezer’s statement by differentiating between Written and Oral Torah.

Nonetheless, as with the Belzer Rebbe who approved Sarah Schenirer's initiative but not for his own community, the Lubavitch school system for girls has to this day never included Oral Torah study in its curriculum. While halakhically possible, it is not desirable in communities which reinforce a strong gender differentiation which permeates all aspects of communal structure and society, most specifically through educational frameworks that continue to distinguish between boys and girls curricula of study.

Already in the 1970s, women had slowly begun studying Talmud formally. Rabbi David Silber who founded a women’s yeshiva named Drisha and was a student of Rabbi Soloveitchik, began teaching classes to women. Likewise, in Israel, Rabbi Chaim Brovender did the same at his women’s yeshiva, Beruria (now called Midreshet Lindenbaum), known fondly as Brovender’s for many years. Stern College opened a Talmud class for women in 1977 amidst great consternation within the walls of Yeshiva University. Ultimately, it was Rabbi Soloveitchik who himself gave the opening class that quelled the naysayers, at least temporarily[[66]](#footnote-66). At the end of his lecture, he expounded on the importance of both men and women studying Oral Torah:

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| Without *Torah She-Ba’al Peh (Oral Torah)*, there is no Judaism. Any talk about Judaism minus *Torah She-Ba’al Peh* is just meaningless and absurd. Like if one never studied physics and writes the philosophy of nature. It’s ridiculous, you can’t write the philosophy of nature before you are acquainted with physics, so you cannot write about Judaism if you are not acquainted with *Torah She-Ba’al Peh*. It’s important that not only boys should be acquainted, but girls, as well. I’ll support you as far as education is concerned. If you have problems come to me, I’ll fight your battles. |

From the late 1980’s onward, more and more opportunities arose for women in modern Orthodoxy to study Talmud. The discourse of *b’dieved* which justified such studies in the 1970’s gave way to a discourse of *lchathila*, in which Talmud study for women was seen as an organic continuation of the obligation to teach girls Torah that was perpetuated from the 19th century onward. The famous passage in Shema which had been initially interpreted as, “*And teach it to your sons*,” had already been tacitly reinterpreted as, “*And teach it to your children*,” by the 20th century in order to justify and reinforce the need to allocate communal resources to educating girls in parallel to boys. It was no longer understood to be particularly about fathers and sons but about parents and children. By the late 20th century, many modern Orthodox high schools had begun to incorporate Talmud into their curriculum for girls, at least partially. Many midrashot (post high school programs for Israelis and gap year students who come to Israel to study Torah for a year) offer some Talmud, varying from minimal exposure to a significant number of hours spent studying Talmud text.

On a more advanced level, in 1990, Matan opened an Advanced Talmud Institute (from which I graduated) which provided stipends for women to study full time for three years along with a schedule that allowed for daycare pick up time. At the same time, Nishmat and Beruria (Midreshet Lindenbaum) with its Beruria’s Scholars program offered similar programs. Alumna of those programs began to open seminaries (*midrashot*) for Israelis and/or Americans with an emphasis on Talmud study. Stern College eventually opened a graduate program in advanced Talmud studies. Most recently, Drisha opened the first “yeshiva” for women run by a cadre of women who have been studying and teaching Talmud for decades and have implemented a yeshiva style curriculum. There has been incredible progress in making the Talmud accessible to a critical mass of women of all ages who are now able to engage with a central text that has had far reaching implications for Jewish and religious identity and practice. This in turn has allowed women to access the page as active learners rather than passive listeners, joining the echoing voices raised in Torah study dating back to Sinai.

This might translate into a false sense of complacency. While there are indeed opportunities for women to advance in their study of Talmud, it is important not to romanticize the current reality. Despite Rabbi Soloveitchik’s clear support, there have been continuous misgivings around where this kind of study will lead and suspicion that women will forever after be unsatisfied with the traditional gendered structure of Orthodoxy as a result. Rabbi Mordechai Willig who was the first Talmud instructor at Stern, now, 35 years later, publicly opposed women studying Talmud because of the subsequent rumblings caused by such learning.

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| The inclusion of Talmud in curricula for all women in modern Orthodox schools needs to be reevaluated. While the Gedolim of the twentieth century saw Torah study to be a way to keep women close to our Mesora *(tradition)*, an egalitarian attitude has colored some women's study of Talmud and led them to embrace and advocate egalitarian ideas and practices which are unacceptable to those very Gedolim (Torah giants)[[67]](#footnote-67). |

In practice, very few female students actually take Talmud classes. In addition, there is a considerable imbalance between the world of Torah study for men and for women which is unlikely to change in the near future. This is radically different than anything seen in the academic and professional worlds in which standards and expectations are the same for men and women. Stern College, for instance, offers Advanced Talmud classes which require the small number of students who register to prepare for 6 hours a week and attend a two-hour shiur. In contrast, men at Yeshiva College enrolled in the Beit Midrash program, which makes up about half of the student body, devote 24 hours a week to Talmud study on top of their regular college course load.

The contrast is equally significant in the Israeli seminary/yeshiva world. Women’s gap year seminary programs in Israel which schedule 6-10 hours of Talmud a week, are considered heavy on Talmud study. Parallel programs for young men expect their students to study 6-8 hours of Talmud a day. This has led to critique both from the [few] young women seeking more rigorous studies and from the male yeshiva world which at times mockingly finds women’s programs lacking in comparison.

The underlying explanation behind the disparity is that men have an ongoing mitzva to study Torah, meaning Talmud, throughout their lives. Thus, considerable support, resources, passion and even pressure are put on men in religious society to ensure the hallowed study halls known as Beit Midrash, are filled. Since women are not traditionally obligated to study Torah for Torah’s sake and the question of necessity to educate women in Talmud remains an open ended one, there is no corresponding social or financial structure to support such intensive study. Furthermore, many women’s programs pedagogically endorse a more diverse program of study, offering not only Talmud and halakha, but serious classes in Bible and Jewish philosophy. This can be seen as an advantage to women’s education compared to the traditionally rigid structure of men’s yeshiva in broadening access to a more diverse study of Torah beyond the page of Talmud. However, from within the world of yeshivot, it is likely to be perceived as inferior.

Although it is unanimously accepted that parents are obligated to educate both sons and daughters in Torah study, this does not translate into an equally perceived life-long obligation to study on a daily basis. Once a woman marries and has children, childrearing and household duties are seen as religiously obligating women parallel to Torah study for men. I myself have heard lectures in which leading rabbinic authorities express the opinion already articulated in tractates Sotah and Berakhot (cited earlier in this chapter), that for a woman, the laundry, childrearing and housekeeping duties that allow her husband to study Talmud bring her merit as if she herself studied Talmud.. Nonetheless, it must be acknowledged that there are a proliferation of Torah study classes regularly available to women in all modern Orthodox and ultra Orthodox communities, reinforcing the greater communal acceptance that Torah study in its many forms is the most central way to ensure and inspire connection and dedication to a life of religious practice.

**Can Women Become Halakhic Authorities?**

By the early 1990’s, the advent of women’s Talmud study led to programs geared towards graduating women competent in Jewish texts, from the Talmud through the 1000 plus years of Talmudic commentary alongside classic halakhic discourse emanating from the Talmudic texts and culminating in contemporary halakha reponsa. The aim of these programs was professional development, positioning women to take up leadership roles in communities and jobs based on Talmudic and halakhic expertise. They included Midreshet Lindenbaum’s rabbinic advocate program training women to argue divorce cases in rabbinic courts and Nishmat’s halakhic advisors (Yoatzot Halakha) training intended to respond to the perceived urgency in introducing women to the frontlines of sensitive questions on intimacy and sexuality. These, along with women’s Talmud programs that were encouraging students to spend several years studying classic Talmud texts, ultimately led to the debate around ordination that arose at the beginning of the 21st century.

There are three considerations around the greater topic of women and positions of authority that need to be evaluated from a halakhic standpoint. All of them will be unpacked textually below.

* Women’s testimony is not accepted by the rabbinic court except under certain circumstances. The Mishna states that those who are not fit to serve as witnesses are barred from serving as judges as well. Since judges issue halakhic rulings, the logic thereby dictates that women cannot be ordained as halakhic authorities.
* The Torah states that should the people of Israel desire it, they shall appoint a king. Midrash halakha explains that the Torah explicitly specifies a king and not a queen. Based on this interpretation, Maimonides stipulates that only men may be appointed to positions of communal authority.
* Women are considered a source of sexual distraction in halakha. This point is not directly addressed in the sources around religious leadership but hovers in the background of all conversations having to do with women interacting with men.

**Women as Judges**

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| **Deuteronomy 19:15-17**  (15) **A single witness** may not confirm a person’s guilt or blame for any transgression or sin; a case can be ruled valid only on the testimony of **two witnesses** or more.  (16) If a man appears against another to testify maliciously  (17) the **two men** in dispute shall appear before the LORD, before the priests or magistrates in authority at the time, | דברים יט  (טו) לֹֽא־יָקוּם֩ עֵ֨ד אֶחָ֜ד בְּאִ֗ישׁ לְכָל־עָוֹן֙ וּלְכָל־חַטָּ֔את בְּכָל־חֵ֖טְא אֲשֶׁ֣ר יֶֽחֱטָ֑א עַל־פִּ֣י׀ שְׁנֵ֣י עֵדִ֗ים א֛וֹ עַל־פִּ֥י שְׁלֹשָֽׁה־עֵדִ֖ים יָק֥וּם דָּבָֽר:  (טז) כִּֽי־יָק֥וּם עֵד־חָמָ֖ס בְּאִ֑ישׁ לַעֲנ֥וֹת בּ֖וֹ סָרָֽה:  (יז) וְעָמְד֧וּ שְׁנֵֽי־הָאֲנָשִׁ֛ים אֲשֶׁר־לָהֶ֥ם הָרִ֖יב לִפְנֵ֣י יְקֹוָ֑ק לִפְנֵ֤י הַכֹּֽהֲנִים֙ וְהַשֹּׁ֣פְטִ֔ים אֲשֶׁ֥ר יִהְי֖וּ בַּיָּמִ֥ים הָהֵֽם: |

The Biblical text makes clear that two witnesses are necessary to confer guilt or innocence upon a defendant. It also relates to false testimony and it establishes that disputes should be brought before God, represented by the priests or the judges/magistrates who hold authority at the time. In the next verse, not cited, is the command and obligation that the judge or priest must investigate the matter thoroughly before ruling. The following Midrash Halakha, based on the verses above, serves as the source for the Talmudic exclusion of women as witnesses.

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| **Sifre Devarim Shoftim 190**  *And they will stand* (Deuteronomy 19:17).  It is incumbent that those being judged should stand.  *Two men*. I only know thus that this is when there are two men. A man and a woman or a woman and a man or two women one against the other, how do I know they too stand in judgement? The Torah says: who have a dispute. Any people (male or female) in any kind of dispute.  Could this mean then that a woman can stand as witness? It says here *two* and it say there Deuteronomy 19:15 *two [witnesses]* . Just as here it means men to the exclusion of women, so too there it means men to the exclusion of women. | **ספרי דברים פרשת שופטים פיסקא קצ**  ועמדו, מצוה בנדונים שיעמדו.   1. שני האנשים, אין לי אלא בזמן שהם שני אנשים איש עם אשה ואשה עם איש שתי נשים זו עם זו מנין תלמוד לומר אשר להם הריב מכל מקום, 2. יכול אף אשה תהא כשירה לעדות נאמר כאן שני ונאמר להלן +דברים יט טו+ שני מה שני האמור כאן אנשים ולא נשים אף שני האמור להלן אנשים ולא נשים. |

The exegesis in the Sifre brought above proceeds as follows:

In verse 15, we have the word “*shnei*” or “two” in the masculine to describe the need for two or more witnesses. In verse 17 we have the word “shnei” (two) followed by the noun “men” to describe two people in a dispute. This rendering of “two men” in verse 17 is understood also as an elucidation of the same noun “two” in verse 15, to clarify that it too refers to two men, to the exclusion of women as witnesses. Paradoxically, the exegesis in the same midrash of verse 17 is that the term “two men” is non-gendered and refers to both men and women as litigants!

As I have mentioned in other chapters, this type of exegesis in which the usage of masculine pronouns or the use of the word “men” or “sons” to exclude women is prevalent in rabbinic interpretation. However, it is notable that in this case, women were included in the justice system as litigants, despite the use of the explicit noun “men” and yet excluded as witnesses by the same exact verse. Such inconsistency can be jarring but it is very much prevalent in the unfolding of halakha from the outset. Two thousand years later, it is almost impossible to renegotiate early interpretations of Biblical text.

As the mishna in Shavuot makes clear, women cannot take the oath of testimony because they are not fit to bear witness. If you cannot take such an oath, you cannot qualify as a witness.

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| **B. Talmud Shavuot 30a**  **MISHNA:** **The oath of testimony is practiced with regard to men but not with regard to women, with regard to non-relatives** of the litigants **but not with regard to relatives, with regard to** those **fit** to testify **but not with regard to** those **unfit**. **And** the oath of testimony **is practiced only with regard to** those **fit to testify.** | **תלמוד בבלי מסכת שבועות דף ל עמוד א**  /מתני'/. שבועת העדות נוהגת באנשים ולא בנשים, ברחוקין ולא בקרובין, בכשרין ולא בפסולין, ואינה נוהגת אלא בראוין להעיד |

A Mishna in tractate Nidda further states that those who cannot serve as witnesses cannot serve as judges.

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| **Mishna Nidda 6:4**  Whoever is eligible to act as a judge in a capital case can serve as a judge in a monetary case and there are those who are eligible to serve as judges in a monetary case but not serve on a capital case. **Whoever is eligible to act as judge is eligible to act as witness but one may be eligible to act as witness and not as judge.** | **משנה מסכת נדה פרק ו משנה ד**  [\*]כל הראוי לדון דיני נפשות ראוי לדון דיני ממונות ויש שראוי לדון דיני ממונות ואינו ראוי לדון דיני נפשות [\*] כל הכשר לדון כשר להעיד ויש שכשר להעיד ואינו כשר לדון: |

To summarize, women cannot be administered the oath of testimony because they cannot act as witnesses and they cannot serve as judges since one who cannot witness cannot judge. Nowhere in the rabbinic conversation is any attempt made to rationalize the exclusion of women, e.g. due to a flaw in women’s character. The claim that some make, that women cannot be witnesses because they do not have the ability to remain objective due to their emotional tendencies has no basis in the Talmud[[68]](#footnote-68). In practice, women can actually testify in many important areas of law, particularly on personal status issues regarding the state of affairs between a husband and wife, status of virginity including her own, establishing that a captive woman was not raped and is subsequently permitted to marry a priest, and her own or another woman’s personal status which would permit or prohibit her/them from marrying.

In addition, women can testify in monetary issues and cases in which a single witness is sufficient, along with the halakhic status regarding issues of kashrut, separating hallah, checking for hametz, and menstrual purity and impurity[[69]](#footnote-69). The exclusion of women from testifying in court cases where only two male witnesses are accepted is treated as an apodictic statement, existing without explanation or contextualization[[70]](#footnote-70). There are also many exceptions to the rule.

**Deborah: Judge and Prophetess**

The judge and prophetess Deborah served as an ancient precedent for a wise woman’s ability to act as both a political and religious authority, posing a challenge to the later disqualification of women as rabbinic court judges (or rabbis).

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| **Judges 4:4**  Deborah, wife of Lapidot, was a prophetess; she led Israel at that time.  …and the Israelites would come to her for judgement. | **שופטים ד:ד**   וּדְבוֹרָה אִשָּׁה נְבִיאָה, אֵשֶׁת לַפִּידוֹת--הִיא שֹׁפְטָה אֶת-יִשְׂרָאֵל, בָּעֵת הַהִיא.  …וַיַּעֲלוּ אֵלֶיהָ בְּנֵי יִשְׂרָאֵל, לַמִּשְׁפָּט. |

How could Deborah, a woman who is prohibited by Oral Law from serving as a judge, serve as judge and leader? The Babylonian Talmud does not address this specific question. However, many Talmudic commentaries are bothered by this discrepancy and try to come up with an approach that maintains the integrity of both Oral Law and the Biblical story.

Two common answers are given to solve this conundrum. The first, prevalent in the school of Tosafot is that Deborah taught the relevant laws for the disputed case but did not actually judge. A variation on this is found in Sefer HaChinuch who referenced, “Wise women fit to render halakhic decisions[[71]](#footnote-71).” Both acknowledge women’s ability to master halakhic material although Tosafot limited the application of this knowledge to an educational rather than leadership role.

A second answer brought by Nahmanides, is that she was appointed judge by the community. In other words, since the people voluntarily accepted her authority, she was a judge by will of the people but not through halakhic fiat. There is actually a well-established rule that litigants can agree to be judged by anyone, even those normally forbidden from this position, including a family member or someone disqualified for other reasons.

**King but not Queen: Women in Positions of Authority**

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| Deuteronomy 17:15  (15) You shall appoint **a king** over yourself, one chosen by the LORD your God. Appoint a king of your own people; you must not appoint a foreigner over you, one who is not your kinsman. | דברים י״ז:ט״ו  טו) שׂ֣וֹם תָּשִׂ֤ים עָלֶ֙יךָ֙ מֶ֔לֶךְ אֲשֶׁ֥ר יִבְחַ֛ר יי אֱלֹקֶ֖יךָ בּ֑וֹ מִקֶּ֣רֶב אַחֶ֗יךָ תָּשִׂ֤ים עָלֶ֙יךָ֙ מֶ֔לֶךְ לֹ֣א תוּכַ֗ל לָתֵ֤ת עָלֶ֙יךָ֙ אִ֣ישׁ נָכְרִ֔י אֲשֶׁ֥ר לֹֽא־אָחִ֖יךָ הֽוּא׃ |
| Sifrei Devarim 157:2, 8-10  (2) "A king": and not a queen.  (8-10) Another thing: you shall appoint a king. This is a positive commandment. You cannot appoint a foreigner (non Jew). This is a negative commandment. **From here it was said that a man should be appointed to be a communal leader, and a woman should not be appointed to be a communal leader.** | ספרי דברים קנ״ז:ב׳, ח׳-י׳  ב) מלך. ולא מלכה.  (ח-י) דבר אחר שום תשים עליך מלך, מצות עשה. לא תוכל לתת עליך איש נכרי, מצות לא תעשה. איש נכרי, **מיכן אמרו האיש ממנים פרנס על הציבור ואין ממנים האשה פרנסת על הצבור**. |

The verse in Deuteronomy commands the nation of Israel to appoint a king when they enter the land. This was limited in the Midrash Halakha to men. In a subsequent (less known) clause, the midrash added a statement that only men can be communal leaders.

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| **Rambam Laws of Monarchy 1**  **Halacha 5**  A woman should not be appointed king as it is written in the Torah, “appoint a king” and not a queen. This principle also applies to all other positions of authority within Israel. Only men should be appointed to fill them. | **רמב"ם הלכות מלכים פרק א הלכה ה**  אין מעמידין אשה במלכות שנאמר עליך מלך ולא מלכה, וכן כל משימות שבישראל אין ממנים בהם אלא איש. |

Maimonides famously incorporated this restriction from the Midrash Halakha into the Mishneh Torah (cited above), where he extended the limitation on communal leadership to all positions of authority. This became known in the halakhic discourse as “*serarah*”or power of authority-a catch word for the prohibition of women to serve in positions of authority.

Not all medieval authorities agreed with Maimonides. Many of the major medievalists ruled that women could hold a position of political and communal power if they achieved communal acceptance, largely due to the precedent of Biblical Deborah, cited above. Major medieval authorities such as Nahmanides, Rashba, and Ritva understood that the usage of “judge” indicated that Deborah served as a precedent for women in positions of political authority. The Ritva is particularly interesting because while he agreed with Maimonides that the prohibition of *serarah* barred women from all communal positions, he contended that if there was communal acceptance, there was no *serarah*. According to this approach, Deborah *de facto* served as [rabbinic] judge and political leader since the people chose to accept her authority and unanimously submitted to her. A community, thus, could appoint a woman as their political, communal or religious leader without violating the tenet of *serarah*.

**The Contemporary Picture**

The question of women and positions of authority was almost completely theoretical until the 20th century. Over100 years ago, on the eve of the first election in Mandatory Palestine, the issue of women’s suffrage and participation in public life was a contentious one in Israel. It came before chief rabbis Rabbi Abraham Isaac Kook, chief Ashkenazi rabbi and Rabbi Ben Zion Meir Uziel, chief Sephardi rabbi, for resolution.

Rabbi Kook prohibited both possibilities, stating that women must be prevented from occupying any positions of office as well as those involving judgement and testimony. He further wrote that women engaging in public life perverts the ideals that Torah represents for a just and moral society when it guards and protects the holy and pure nature of the wife and mother in the home. Another concern was over possible promiscuity and immodesty that could ensue should women leave the home to enter the voting booth let alone going to work alongside men in mixed venues. Rabbi Uziel completely disagreed. He held that women in his day had the capacity to engage in public life and hold positions in public office, seeing men and women as equally capable and finding there were no compelling halakhic reasons to prevent it.

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| This ruling of the Rambam only refers to an appointment by the Sanhedrin. But when the appointment is by the consent of the community, where through a majority vote the public voices its opinions, the agreement and trust of the public in its appointees, who will be supervising their communal affairs – in such a case even he would agree that there is no hint of a prohibition [i.e. for a woman to serve].  …It is common sense that in any serious meeting and meaningful conversation there is no question of lack of modesty….And sitting in the proximity [of women] when involved in communal affairs, which is work of holiness, does not lead to lightheartedness. For all Israel are holy people, and her women are holy and are not to be suspect of breach of modesty and morality[[72]](#footnote-72). |

In addition to invoking the approach that communal appointment is not the *serarah* prohibited by Maimonides, he concludes that the concern for sexual perversion is unfounded. Women and men can respectfully interact in professional environments without concern for perversion in the dynamic.

While women were given the vote and the ability to run for office by the State, enormous controversy erupted around women serving on religious councils in Israel and serving as synagogue presidents in the USA. In Israel, in 1987, Leah Shakdiel made headlines when she turned to the Supreme Court after the Attorney General barred her from serving on a religious council because of religious restrictions of *serarah*. The Court overturned the State and in 2016, the Attorney General’s office ruled that all religious councils must be comprised of 30% women. In practice, it is actually hard to find enough women to serve on such councils. One might conclude that it is difficult to inspire women to serve in positions previously barred to them for religious reasons, even though legal and halakhic allowances are being made. On the other hand, it is also possible that women are simply disinterested in serving on religious councils for other reasons having more to do with time constraints and general apathy about religious affairs.

In contrast, in America, the Council of Young Israel Synagogues, which mostly caters to a modern Orthodox population, to this day do not allow women to serve as president of their synagogues due to *serarah*. *Serarah* was also invoked in a famous two-part responsa written by Rabbi Moshe Feinstein as to whether a widow could be appointed kashrut supervisor, in place of her dead husband, to support herself and her son. After meticulously explaining why a woman could serve in this capacity, despite the element of communal authority involved, due to the many Rishonim who disagreed with Maimonides on *serarah*, he concludes that he was nonetheless advised to uphold Maimonides ruling. Instead, he suggested a compromise: a rabbi would formally hold the title of kashrut supervisor while the widow would be hired to do the supervising[[73]](#footnote-73). Even today, *serarah* remains one of the focal points of all questions around women and communal authority, despite near halakhic consensus that communal acceptance negates the halakhic issues.

**Leadership and Professional Training Programs on the Path to Ordination**

As mentioned, by the early 1990’s, Talmud study programs began to think of ways to further advance their graduates beyond the walls of the Beit Midrash. In Israel, Midreshet Lindenbaum opened a program to train women to serve as rabbinic advocates in the rabbinic divorce courts. For the first time, women were intensively studying halakhic laws of divorce in depth and taking rigorous exams to qualify for jobs that had previously been available only to learned men. Eventually, some of their graduates began to work in the rabbinic courts, arguing difficult and complex cases before the judges. Two well-known graduates are Dr. Rachel Levmore[[74]](#footnote-74), who out of her work with chained women or women unable to get Jewish divorces known as agunot, came to compose two halakhic prenuptial agreements intended to prevent or circumvent drawn out and embittered divorce situations which trap mostly women, and Rivka Lubitch who wrote a painful and devastating account of her 20 years working as a rabbinic advocate. Lubitch has worked tirelessly to expose the complex reality of children labeled as *mamzerim* in Israel while experiencing much backlash and personal attacks on her work. It must be noted that the last thirty years has seen some critical advances (not enough but still, some progress) made in the rabbinic courts in trying to find broader solutions for women trapped and unable to obtain divorces. This has been as the result of collaborations between learned women and men, as well as female lawyers and professional feminist advocates, along with tremendous public pressure, pushing this forward as a central and important issue.

Soon after, Nishmat opened its halakhic advisors or *yoetzet halakha* program to train women in the intricate and sensitive laws of Nidda, to enable them to serve as first responders to nidda and sexuality questions. In addition to the intense halakhic training (which rivals parallel all-male training programs), Nishmat includes hundreds of hours of supplementary information in gynecology, sexuality, fertility and intimacy. The Nishmat hotline has answered over 250,000 questions to date and this does not include the hundreds and thousands of questions fielded by women not working on the hotline who are graduates not only of Nishmat but of similar training programs. This breaking of silence suggests an enormous need that was simply waiting to be met. I myself field multiple calls and questions weekly from women who thank me for my sensitivity and availability, admitting that they would never call a male rabbi with such personal questions. During the recent corona virus outbreak, *yoatzot halakha* and Nishmat were at the forefront of ensuring mikva safety throughout the crisis, along with the Jerusalem based Eden Center, entirely made up of women, and women serving in rabbinic and pastoral leadership positions throughout Israel and the USA.

The yoetzet halakha program is not without critics. There are prominent right wing Orthodox communities in the Diaspora in which rabbinic leaders have fought to prevent a yoetzet from establishing herself in the community and actively discouraged women from going to them for answers. In the fall 2019 issue of the ultra Orthodox journal Dialogue, Rabbi Aharon Feldman, the head of the prestigious Ner Israel yeshiva in Baltimore and a senior member of Agudas Israel, the largest ultra Orthodox rabbinic council in America, wrote an article titled *Yoatzot Halacha – Are They Good for Jews*? In it he disparaged the training of women to answer halakhic questions in nidda, and more to the point, critiqued this terrible distortion of the traditional avenues in which rabbis were the only address for such questions. He further wrote that the increased observance by women of these laws does not justify the price being paid to the greater integrity of Torah.

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| As such, the introduction of Yoatzot Halacha into the synagogue must be resisted. We cannot permit a movement which strives to uproot Halacha – which is the goal of many of those who would introduce female Rabbis – to take the slightest hold in our shuls. Even if it is true that Yoatzot Halacha will contribute to greater observance of taharas ha-mishpacha (family purity), winning the battle for increased observance of this mitzva is not worth losing the war for the integrity of the entire Torah. |

Rabbi Feldman was attacking what the yoatzot represent—which is a fundamental shift in how halakhic questions are answered and the role women play in leadership and community. To Rabbi Feldman, Orthodox feminism, fueled by learning programs such as the Yoatzot program, has paved the way for the Maharat or Orthodox ordination program in New York, which seeks to give women legitimacy as communal and religious rabbinic leaders.

Meanwhile, in the second decade of the 21st century, a number of programs began teaching women the basic curriculum for ordination. As these programs gained traction and began graduating students, the topic of ordaining women in the Orthodox community which had seemed theoretical and impossible in the 1990’s, became explosive in the first decades of the 21st century. The binary structure differentiating between men and women in traditional Jewish life began teetering with the possibility and untold consequence of women taking a seat at the rabbinic table. Programs launched in Israel at Matan, Midreshet Lindenbaum, Beit Morasha, and Harel, and most famously at Yeshivat Maharat in New York, educate women in the laws of shabbat, kashrut, marriage, conversion, mourning and nidda with rigorous exams given after each unit of study. All bestow titles to their graduates, but most avoid the controversial usage of Rabbi. The titles range from those incorporating the Hebrew word for teacher into the title such as *Heter Horaah* (literally, permission to instruct) and M*orat Halakha (teachers of halakha)* which mirrored earlier approaches, for instance, found in Tosafot, allowing women to teach halakha, to the more controversial *Rabba* (an invented female version of the word *Rav* or Rabbi in Hebrew) and finally, Maharat, a Hebrew acronym for the words *Manhiga Hilkhatit Rukhanit Toranit* denoting a female "leader of Jewish law spirituality and Torah." In the United States, the topic was more politicized than parallel programs in Israel both because of the concern for appearing to resemble non-Orthodox denominations which have been ordaining women for decades[[75]](#footnote-75) and because of the professional status and job market for rabbis which differs considerably from the communal structure in Israel.

Finally, Rabbis Feldman and Willig et al. rightly perceived that opening the pages of Talmud to women was the beginning of an increasingly slippery slope upon which women have pushed for more access to the most central Jewish texts at the foundation of observance and ritual. In addition, and in parallel, as Rabbi Willig also anticipated, the synagogue has become a flashpoint for reconsideration of gender roles with first women’s tefilla groups[[76]](#footnote-76) followed by women’s megillah readings and finally, partnership prayer groups in which women are able to actively participate in some (but not all) of the service, including reading the Torah. This has disturbed the equilibrium of mesora, a concept which will be defined below

As with all issues of a gendered nature, concerns for the impact of such a move on the greater religious structure are paramount. The Orthodox and ultra Orthodox rabbinical institutions responded accordingly to the idea of women being ordained.

The following statement was issued by the Moetzes Gedolei Ha-Torah of America:

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| “These developments represent a radical and dangerous departure from Jewish tradition and the **mesoras haTorah** and must be condemned in the strongest terms. Any congregation with a woman in a rabbinical position of any sort cannot be considered Orthodox.” |

The Rabbinical Council of America (RCA), which as a body has supported the advancement in women’s Torah scholarship, was more nuanced in its rejection:

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| “In light of the opportunity created by advanced women’s learning, the Rabbinical Council of America encourages a diversity of halakhically and communally appropriate professional opportunities for learned, committed women, in the service of our collective mission to **preserve and transmit our heritage**. Due to our aforesaid commitment to sacred continuity, however, we cannot accept either the ordination of women or the recognition of women as members of the Orthodox rabbinate, regardless of title. Young Orthodox women are now being reared, educated and inspired by mothers, teachers, and mentors who are themselves beneficiaries of advanced women’s Torah education. As members of the new generation rise to positions of influence and stature, we pray that they will contribute to an ever-broadening and ever-deepening wellspring of Talmud Torah, *yir’at Shamayim* and *dikduk be-mitzvot*. |

In 2015, the RCA publicized a resolution on “policy concerning women rabbis” in which they reasserted the violation of mesora and stated that RCA members may not ordain women, hire women into a rabbinic position or allow a title implying ordination to be used by a teacher of holy studies in an Orthodox institution[[77]](#footnote-77). In 2020, in Israel, a group of observant and learned women who had already passed private ordination exams, petitioned the High Court—and won their suit—demanding to take official rabbinate ordination exams that would recognize their level of knowledge on par with that of men and grant them equal pay and professional status. The response on the part of the rabbinate was similar to that put out by the RCA:

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| “In accordance with the halakhic position of the council of the chief rabbinate, that reflects the traditional-halakhic position that has existed for many generations in the Orthodox world, it is impossible to ordain women into rabbinic positions.” |

The common denominator to all these statements is the preservation of heritage and tradition, known as mesora in halakhic literature. While questions of ordaining outstanding minors arose from the 14th century onward, there was absolute silence with regard to women (often classified with minors in rabbinic literature), hardly surprising given that women were not systematically educated and certainly not in the nuances and intricacies of Jewish law. There was thus no possible opportunity for a mesora of women rabbis to be established. Educating women on an institutional level was itself born out of a breach in the mesora that eventually led to widespread institutionalized education of daughters across the spectrum, as detailed earlier in this chapter.

**One Last Note about Semikha/Ordination:**

Another argument that has been presented against women and ordination is their inability to be conferred with classic semikha which refers to a specific type of ordination that existed in ancient times and has not been bestowed for over 1000 years but remains a stubborn theoretical benchmark for those who can be ordained even on a lesser level. Yet, converts, who are similarly barred from classic semikha, are routinely ordained, even though there are certain limitations placed on their ability to serve as public authorities. As with women, early rabbinic and halakhic texts actively exclude male converts from positions of religious authority including judging, witnessing and communal authority. Yet, learned male converts are nonetheless permitted to serve as synagogue rabbis (a decision dating back hundreds of years), and there is no fear that they will somehow forget the halakhically imposed restrictions on their leadership[[78]](#footnote-78).

Rabbi Bakshi Doron, former Chief Sephardic Rabbi of Israel, is one of the only authorities I am familiar with who equates the ability of converts to hold positions of leadership, including Torah leadership, with women.

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| “From all that has been said above it appears that a woman (and a convert) can serve in leadership positions…A woman (and convert) can serve as decision makers and teach Torah and halakhic rulings…They can judge without coercion. There is some doubt whether they can accept authority through a democratic vote, which has the halakhic status comparable to their acceptance of by the congregation. In the opinion of many authorities this is permitted. Therefore, in the case of a woman, one should rule leniently in this direction, since the actual prohibition is the subject of controversy among the Rishonim. In all such positions one must make a clear distinction between the power of authority and the power of leadership.” |

Not surprisingly, he nonetheless affirmed that he would not support ordaining women, seeing it as a Reform innovation[[79]](#footnote-79). As with Feldman and his opposition to the yoatzot, we see the push-pull motion that has defined the movement of women advancing in Torah study from the outset. Women can teach and answer halakhic questions. They can even judge without coercion, according to Rabbi Bakshi Doron. However, they cannot become rabbis.

**Women’s Voices**

Until now, women have been conspicuously absent from the halakhic discourse. That is beginning to change. In *Expanding the Palace of Torah: Orthodoxy and Feminism*, Dr. Tamar Ross wrote, “It is likely that women entering into the halakhic discussion will contribute their unique perspective, impacting on any given topic. Taking into consideration different concerns can bring about different conclusions regarding the law.” A decade later, Rabbanit Dr. Michal Tikochinsky wrote an article on *Women in Positions of Halachic Leadership* in which she noted that Ross’ words have been found to be accurate. She brought several examples that illustrate the need for female voices. The first is when discussing the role of women in a given congregation. This includes the height and transparency of the *mehitza* (although sometimes, it is women who want a more opaque divider) and ways of making women feel included in the congregation which is actively made up of men.

One of the issues that has been heightened in the last few decades has been recitation of kaddish by women during services. Women were traditionally told that they could not say kaddish in the synagogue, or, only with men accompanying them, which caused pain and humiliation for a growing number of women. Those who had no brothers were told to hire strangers in their stead to fulfill their duty towards the memory of a parent or spouse or child. The push to allow women to say kaddish in synagogue has been driven by knowledgeable women who are using halakhic sources to argue for legitimacy. While this has become more acceptable, there are still many communities in which it is seen as suspicious and controversial. Only recently, I found myself in two prayer quorums in which I was discouraged from saying kaddish out loud. While allowing women to lecture on Torah after services is more accepted, many communities will still not allow a woman to speak in the main sanctuary or in the middle of services. The concern is clearly to keep women in a defined role and not blur any gender boundaries suggesting religious female leadership roles.

One of the most welcome changes in the last decade have been the increased publication of halakhic articles and responsa by learned women. This is an important advancement in disseminating the years of scholarship, research and interpretation that have been going on in the women’s yeshivot.

I will bring one final example that I have personally been involved in which reflects the advancement in scholarship and ownership over halakhic sources by religious women. Traditionally, over the last 900 years, a mikva attendant oversaw a woman’s immersion in the ritual bath (mikva). Absent in the Talmud and Gaonim, the idea of an attendant is first cited in the 12th century literature. Until then, it seems likely that women went together to immerse if only for safety because the requirement was to immerse after dark and often the mikvaot were on the outskirts of town.

The Shulchan Aruch brings two halakhic positions which he clarifies as being equally halakhically valid in Beit Yosef, his commentary to the Tur[[80]](#footnote-80).

In the first, he cites the position of earlier medievalist Rabbeinu Asher, known as the Rosh who writes that a woman over 12 years old should stand over the immersing woman to make sure that not one hair protruded out of the water, thus invalidating the immersion. The second position brought in the Shulchan Aruch, and cited originally by the equally significant medieval authority known as Raavad, is that when a woman immerses alone, she should gather her hair into a loose hair net to avoid the said problem.

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| **Shulchan Aruch Yoreh Deah 198: 40**  A Jewish woman older than 12 years and one day must stand over her when she immerses to make sure that not one hair of head floats above the water and if there is no one to stand above her, or it is nighttime, she should tie her hair in a woolen threads or a hair band on her head as long as it is loosened or with a hairnet or she should tie a loose garment on top of her hair. | **שולחן ערוך יורה דעה הלכות נדה סימן קצח**  **סעיף מ**  צריך לעמוד על גבה מה] קלא'> יהודית גדולה יותר מי"ב עח) שנה ויום אחד בשעה שהיא טובלת שתראה קלב'> שלא ישאר משער ראשה צף על פני המים; עט) קלג'> ואם אין לה קלד'> מי שתעמוד על גבה, קלה'> או שהוא בלילה, (כב) קלו'> תכרוך שערה על ראשה מו] קלז'> בחוטי צמר או ברצועה שבראשה, ובלבד שתרפם או קלח'> בשרשרות של חוטים נב פ) חלולות מז] או קושרת בגד רפוי על שערותיה. |

By the 20th century, it was unthinkable that women would immerse alone. However, in the wake of feminism and the rise in sexual harassment, women have been encouraged to express feelings of discomfort or coercion with regard to their sense of agency over their own bodies. Some began to ask why they couldn’t immerse unattended since it was their personal mitzva. After learning halakhic sources, women discovered that the mikva attendant was not a halakhic mandate in ensuring their preparedness for the actual immersion. In addition, with mikvaot that are indoors and well lit, it is easy to discern whether the entire body along with every hair on the head has gone under the water. Stories of aggressive intervention by mikva attendants who insisted on checking women head to toe before allowing them to immerse began to circulate, but even those who had no complaints wondered why they were obligated to have someone else observing them at their most vulnerable.

Several years ago, a woman came to the mikva where I volunteer. She told me she hated the mikva because she hated having another woman present. I offered her the option of going in alone. When she emerged, she said it was the first time after many years of marriage, that she had actually enjoyed the experience of ritual immersion. It was the first of several similar stories I heard in a short period of time. I immediately called two rabbis to relay this information and discuss future steps. The first was the rabbi of my community who responded that we should allow women to immerse alone as a policy, if it was important to them. From that moment on, the mikva in my hometown allows women to choose whether to have an attendant present. For some, it is the first time they feel comfortable with the mitzva. For others, it increased the meaningfulness of the mitzva when they were given agency over the ritual. Still, others ask that the attendant come in only once they are in the water to supervise the actual immersion and leave before they emerge from the water. In this model, there is a sense of supervision but without a feeling of uncomfortable exposure.

The second conversation was with one of the rabbinic founders of the yoatzot halakha program. After I shared some of these stories with him, he paused and said something extraordinary: “Nechama, this is why we need women to answer questions in this area of halakha. It would never have occurred to me or to my colleagues that a woman would have a problem with another woman.”

Women’s voices, expressing discomfort and in some cases avoiding immersion altogether for a practice that is not a halakhic necessity has allowed the opening of spaces that are compatible with both halakha and the needs of women today.

This issue became a point of contention in mikvaot across Israel. Eventually a group of women petitioned the Israeli high court, arguing that mikva was their private mitzva and it was no one’s concern to ensure proper compliance or observance. They expanded their argument to push back against the standard practice of asking women if they were married, arguing that even if single or gay women immersed, it in no way invalidated the waters of the mikva and thus, was an infraction of civil liberties in a publicly funded institution. The Ministry of Religious Affairs fought back viciously, as did many mikva attendants who felt that the feminist movement was unreasonably threatening to erode something foundational about mikva practice. In the end, the High Court ruled in favor of the petitioners. It was a significant moment historically because it was born out of the feminist movement along with advanced Torah scholarship for women. It is changing the way mikva is practiced within halakhic structure, giving full agency over this practice to the women who are obligated in the mitzva. However, this initiative has not been welcomed everywhere, and in many mikvaot outside of Israel the mesora of the attendant is not only maintained but strictly enforced. Outside of Israel, mikvaot are privately funded by the community and as a result, the local rabbinic authority has the final and sometimes the only word.

**Chapter Three: Ervah Defined**

When you walk into an observant community, one of the first things that an insider will notice is how the women dress since this will often reflect the religious tenor of observance and commitment within the greater community. Sleeve length, skirt length, pants versus skirts and the amount of hair covered/uncovered as well as the choice of head covering reflect a women’s religious identity more than any other ritual practice or commitment, which in turn is perceived to reflect questions of greater commitment to halakha. In the last century, with both increased gender interaction and loosened clothing restrictions, the religious dialogue reflects a strong preoccupation with the temptations presented by a society that allows “immodestly” dressed women to freely circulate in the boardroom, classroom, and synagogue. No public space-secular or religious-is immune to the pervasive influence of fashion trends that seek to reveal rather than conceal.

The conversations around dress code are greatly exacerbated by the modern, liberal feminist discourse in which women seek to claim ownership over dress choices and body image expressed through clothing that allows them to feel confident and comfortable with their bodies. Restricting these choices because of Jewish laws that date back to an era in which women and their bodies were largely seen as sexual triggers for male desire is alienating and unsatisfying as grounds for continued practice. In turn, religious discourse will respond that modern society objectifies women by pressuring them to reveal more of their body for male gratification. Ironically, religious books encouraging modest dress also objectify women by deconstructing every aspect of the woman’s body into the parts that can be seen or must be covered[[81]](#footnote-81).

Many modern women chafe against a religious structure that seems unusually concerned with clothing them and minimizing their presence by silencing their voices in public ritual space. This is reinforced by the perception in greater society that respectful gender interaction is possible even when women are not following religious dress codes. What increases the contentiousness of the dialogue is that there are almost no parallel restrictions on men in terms of dress,[[82]](#footnote-82) nor is there any concern for female sexual arousal that occurs with the interaction between the genders.

Women, particularly young women, want to know if there is a requirement stemming from the Torah for women to cover their bodies, or a norm dictated from within a particular society, or perhaps behavior designed to differentiate the religious Jewish women from their counterparts and safeguard them from secular promiscuous society? Different educational approaches have been presented to answer these questions, often by explaining to women that their religious duty includes modest (as defined by the religious community) clothing choices in their ongoing service to God.

One prevailing suggestion is that a woman views herself as a protector, helping men avoid unwanted and uncontrollable sexual thoughts. In this narrative, women are active partners in the continuous drive towards holiness and sanctity in family, community and society. This approach works more organically in right-wing, ultra-Orthodox sectors in which feminist ideology educating towards full gender equality is often rejected as alien to the core beliefs of Torah and rabbinic authority. Nonetheless, it is also presented, with much greater dissonance, as the woman’s duty to protect men from sexual desire in modern Orthodox schools, where it is frequently disregarded, or more seriously, considered offensive and irrelevant. Furthermore, the dissonance is increased exponentially when students note that their fathers and brothers are able to concentrate and work in environments in which women are immodestly dressed, without needing special protection.

Another educational approach is to empower women to dress modestly as part of their ongoing engagement with God’s presence in their lives[[83]](#footnote-83). The latter ideology shifts the focus away from the male gaze and concerns for male sexual desire towards women’s religious identity, externally reflected in their clothing choices. The challenge to this approach is that the texts that make up the core of halakhic obligation regarding women’s dress are almost exclusively concerned with male sexual desire. For an educated generation of Jews raised on text study and critical source analysis, the topic of women and dress can feel forced, alienating and far from reflecting the current social reality. There are no obvious text sources tracing the evolution of a required female dress code from the Bible to the Talmud until today in a coherent manner. We do not hear women’s voices or practices articulated by the community of women adopting and practicing them.

With regard to its origins in halakha (Jewish law), the dress code of women largely involves men’s inability to worship God through prayer or Torah study in the presence of *ervah* (to be defined below, but literally meaning nakedness) since women are consistently regarded as sources of *ervah*. However, in the larger social religious sphere, beyond the walls of the synagogue and study hall, the dress of a woman that allows a man to pray while in her presence has become the required dress code for the religious woman all of the time. Therefore, understanding the definition of *ervah* in rabbinic and halakhic literature is central to engaging in a conversation about women and dress in religious society. It also touches on a larger conversation about male desire and the ongoing struggle towards its control when in the physical proximity of women. Reflected therein is a strong aspiration to build a society focused on sanctity and Godliness, and devoid of sexual diversions that result from the intermingling of men and women. While Judaism embraces sexuality as a divinely sanctioned necessity, turning us all potentially into partners in Creation, it is acutely aware of the destructive characteristic embedded therein, most particularly through the lens of male sexual desire.

In this and the following chapters, the topic of women and *ervah* will be examined through an analysis of relevant primary texts. Unfortunately, text analysis is often glossed over in favor of glib pronouncements regarding halakhic prohibitions and male sexual desire. This can lead to a complete delegitimization of the topic due to patronizing over-simplification or coercive rigidity that frequently accompanies the discussion. There is rarely room to offer a more nuanced approach or question a particularly biased reading. My aim is to approach the topic with a critical yet respectful outlook, evaluating the textual sources in Torah, Talmud and later rabbinic writings so that the reader can appreciate the validity of ongoing religious conversations around gender, dress and sexuality in Judaism.

As the key rabbinic texts are presented, each relevant concept will be assessed and its original context examined. This will help give vital perspective to the placement of the sources and allow them to be understood as part of a greater Talmudic discourse before separating them out for deliberation. The next step will be to see how the earliest commentaries to the Talmud, known as Rishonim (1000-1500 CE) relate to the Talmudic material. Understanding how the earlier sources evolved over time into the later presentations of the topic is important to appreciating contemporary approaches. Finally, a look at some of the more recent halakhic material will be necessary to gain perspective of the current situation. This introduction provides the groundwork for the next four chapters where the topics of women wearing pants, singing and hair covering will be analyzed independently as sources of *ervah*, along with other practical halakhic considerations.

**Biblical Sources**

The concept of *ervah* appears in three sections in the Torah. The first reference is in Exodus 28:42, requiring the priest to wear an undergarment to cover his genitalia or, literally, *ervah*. In chapters 18 and 20 of Leviticus, *ervah* appears repeatedly in the context of sexual prohibitions, in reference to the genitalia of women who are sexually forbidden. Exposing a woman's *ervah* is a euphemism for sexual intercourse. The language is directed towards the Israelite male as he is told repeatedly that he is prohibited to uncover the nakedness of his father’s wife, his brother’s wife, his sister and his menstruant wife. The collection of these prohibitions is referred to as g*ilui arayot*, literally uncovering the *ervah* of prohibited women. Violation of these commandments leads to an absence of *kedusha* or sanctity. God threatens to vomit the nation out of the land for the violation of these laws which are central to maintaining a relationship of holiness with God who is holy.

There are two final references to *ervah* found in Deuteronomy, but with a different textual presentation than seen previously in Exodus and Leviticus. The phrase *ervat davar* (literally, a matter of nakedness) appears first in Deuteronomy 23:15 where it states:

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| “The Lord your God walks in the midst of your camp… therefore shall your camp be holy; that He see no matter of nakedness (ערות דבר) in you and turn away from you.” | כִּי֩ יְהֹוָ֨ה אֱלֹהֶ֜יךָ מִתְהַלֵּ֣ךְ **׀** בְּקֶ֣רֶב מַחֲנֶ֗ךָ לְהַצִּֽילְךָ֙ וְלָתֵ֤ת אֹיְבֶ֙יךָ֙ לְפָנֶ֔יךָ וְהָיָ֥ה מַחֲנֶ֖יךָ קָד֑וֹשׁ וְלֹֽא־יִרְאֶ֤ה בְךָ֙ עֶרְוַ֣ת דָּבָ֔ר וְשָׁ֖ב מֵאַחֲרֶֽיךָ׃ {ס} |

As we learned in Leviticus with regard to the character of the land of Israel, holiness is possible only when *gilui arayot* — the uncovering of prohibited sexual nakedness (i.e., prohibited sexual relations) — is controlled. In Deuteronomy, there is an expansion beyond a prohibited sexual act to something more conceptual. While the earliest rabbinic interpretation of this verse interjects the Leviticus sources into the Deuteronomy verse by explaining, that, “sexually prohibited behavior removes the Divine Presence,”[[84]](#footnote-84) a plain reading of the text seems to go beyond Leviticus. Many translators translate “*ervat davar*” as “offensive” or “inappropriate behavior," not limited only to the sexual. *Ervat davar* has to be removed or controlled if God is to be present in the camp of the Israelites when they go out to war against their enemies. This verse commands holiness even during wartime, an environment where Godliness would seem to be most absent. It is juxtaposed to the previous passages in which men are commanded to leave the camp to purify themselves in water following a seminal emission and to carry a spike with their gear in order to bury excrement in a designated area outside of the camp. The Torah seems to suggest that *ervat davar* is not only talking about the limits on sexual behavior found in Leviticus but also implying something broader — the concept of muting the physical in deference to the spiritual. While bodily wastes are a normal part of the human condition and cannot be prevented, there must be discretion within the surreal world of war where the physical is often far more manifest than the spiritual.

While the military camp of the Israelites was not practically relevant for thousands of years, these guiding concepts of discretion around bodily needs remained resonant in the rabbinic period and onward. In the post-Temple world, places of prayer and Torah study took the status and position that were previously reserved for sites of God’s dwelling in the Israelite military camp and in the Temple. Laws relating to holy space were then transferred into these sanctified spaces. *Ervah* cum *ervat davar* defined as sexual promiscuity, bodily nakedness and the unseemly (i.e. human waste) must be absent in order for holiness to exist.

The final biblical reference to *ervah* is in Deuteronomy 24:1 where the term *ervat davar* is used to explain the reason that a man might divorce his wife.

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| A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house; | כִּֽי־יִקַּ֥ח אִ֛ישׁ אִשָּׁ֖ה וּבְעָלָ֑הּ וְהָיָ֞ה אִם־לֹ֧א תִמְצָא־חֵ֣ן בְּעֵינָ֗יו כִּי־מָ֤צָא בָהּ֙ עֶרְוַ֣ת דָּבָ֔ר וְכָ֨תַב לָ֜הּ סֵ֤פֶר כְּרִיתֻת֙ וְנָתַ֣ן בְּיָדָ֔הּ וְשִׁלְּחָ֖הּ מִבֵּיתֽוֹ׃ |

In Mishna Gittin 9:10, Beit Shammai suggests that the divorce is based on “a matter of *ervah*” or prohibited sexual behaviour, based on this text. Beit Hillel broadens the interpretation and reads it as an “*ervah*-like matter” or something unseemly or indecent that gives the man grounds for divorce like “spoiling his soup.” Sexual infidelity is most obviously reflecting of *ervat davar* but it can include other inappropriate behaviour as well. The linguistic connection between the two verses in Deuteronomy suggests that just as *ervat davar* dissuades God’s presence in the military camp, *ervat davar* can cause a man to divorce his wife.

In summary, *ervat davar* expands the definition of *ervah* from a specific bodily area (genitalia) that must be covered to a broader concept of some form of indecent behaviour (even involuntary) that if unchecked deters God’s presence or leads, in the case of marriage, to divorce. Later in the Talmudic and post-Talmudic discourse, it seems to me that *ervah* and *ervat davar* blend together so that once definitions of *ervah* are established, they will expand to encompass far more than the simple covering of female nakedness.

**Berakhot 24a-b**

***Ervah* as a Deterrent to Prayer and Blessing**

The central starting point for halakhic discussion regarding a woman’s code of dress is a unit of text located in the third chapter of tractate Berakhot in the Babylonian Talmud. It is here that several rabbinic statements about women and *ervah* are arranged into a scripted discussion about exposed thigh*[[85]](#footnote-85)*, uncovered hair or hearing a woman’s voice.

Nonetheless, before we zoom in, a general introduction to the Talmudic chapter in which it is found will help frame its analysis. Throughout the vast corpus of Talmudic literature, *ervah* appears as a euphemism for a woman who is sexually prohibited to a man based on either familial relationship or her marital status, as per Leviticus 18. Here in Berakhot, however, the technical boundaries of defining physical e*rvah* are explored within the context of the prohibition of a man to pray or study Torah in its presence*[[86]](#footnote-86)*. Since much of the tractate focuses on the laws surrounding the obligation to say Shema, the prayer known as Shemonah Esreh (called *tefillah* in the Talmud) and the Grace After Meals, it is not surprising that chapter three focuses on the correct way to recite the Shema, a prayer that involves acceptance of God’s presence and thus requires utmost concentration and discipline. The chapter examines distractions that interfere with men’s ability to say Shema properly. These include death, seminal emissions, , nakedness, bodily waste and sexual arousal.

In the page of Talmud immediately before our text about women as sources of *ervah*, the following scenarios are presented and discussed:

1. A married couple lying in bed. The Talmud understands that people sleep naked and the proximity of *ervah* between the two bodies is inevitable even when covered with a sheet or coverlet. Where can the man store his tefillin safely to protect them from theft or mice without disgracing them with the presence of nakedness?
2. Two traveling men are sleeping naked in bed covered by a sheet. How should they say Shema? Although the Talmud does not suggest there is any sexual impropriety to this scenario, male nakedness is *ervah* and thus, an impediment as we explained above to engaging with God’s presence through Shema. This would be the case even if a man were alone.
3. The Talmud moves on to ask in a different context about a husband and wife naked in bed. The man has the obligation to say Shema. The woman does not. Her body is familiar *ervah* which suggests a sexual neutrality, but, there is still the possibility that sexual relations might occur between the two.

In each of these cases, different resolutions are offered:

In the first case, the tefillin preferably should be tied in a knot within the coverlet beside his head. They can remain there even when the couple has sexual relations.

In the second case, the two men, who are ostensibly lying side by side, should turn their heads away from one another’s *ervah*.

In the third case, the husband and wife, who are presumably facing one another, should turn back to back since backsides do not, according to Rav Hunah, constitute halakhic *ervah*.

As a result of Rav Hunah’s attitude towards backsides, the precise technical definition of *ervah* is narrowed to the exposure of genitalia. Female nakedness is then addressed by quoting a Mishnah brought from tractate Hallah, which will be quoted below[[87]](#footnote-87). It is determined that a woman, when alone, can make the blessing over hallah while naked for she can squat and cover her *ervah*. A man however, cannot because his *ervah* cannot be flattened against the ground or hidden by crouching. As a result, male and female genitalia are acknowledged as fundamentally different in their structural anatomy and appearance.

Finally, a scenario is described whereby a father is naked in bed with his small children. At what point do their sexual organs become *ervah* and prevent him from saying Shema? The Talmud suggests that the age of the child will determine the answer to this question.

Immediately before the textual unit that serves as the cornerstone for halakhic rulings with regard to women’s dress, a little humor is displayed: A question is asked “what if you see your pubic hair poking out of the sheet just as you want to say Shema?” Pubic hair is the quintessential Talmudic sign of sexual maturity for males and females. Does seeing a hair distract or prevent you from saying Shema? The Talmud answers: You simply say, “a hair, a hair.” In other words, it is just hair and nothing more. Even though pubic hair is a sign of sexual maturity, its appearance outside of actual exposed nakedness is not a cause for distraction. Not everything associated with our sexual organs becomes unseemly or *ervat davar*!

To summarize: the *ervah* in all of these passages is the actual exposure of sexual organs which prevents men and women from blessing or praying. Context and magnitude matter. In all of these situations, *ervah* is naturally situated in private space. The Talmudic discourse arranges each scenario so that the presence of nudity is in and of itself not a problem. Furthermore, it is expected that *ervah* will be present in intimate moments – not only during sexual intercourse but also while lying under the coverlet. There is nothing morally problematic with *ervah* although sometimes it has to be covered to allow for prayer or a blessing to be said. While shocking as a visual, the naked woman separating her hallah dough does not pose a danger to the religious fabric of society. The Talmud is merely inquiring — does her nakedness allow her to bless the hallah in God’s name? From its unequivocal answer in the affirmative, we further understand that the boundaries of *ervah* are indeed circumscribed by a specifically uncovered and blatantly exposed part of the body and that there are gendered differences between male and female nudity.

**Covered but Uncovered**

The series of statements which serve as the foundation of the halakhic discourse on modest dress appear as a unit only once in the entire Babylonian Talmud,[[88]](#footnote-88) woven together from statements made by Amoraim living between 200-300 CE. There are no Tannaitic sources to give greater weight to each statement, and the context where each statement was originally made is unclear.

Due to its centrality, this unit will be analyzed in its entirety. It is extremely brief. The statements largely stand on their own without elaboration or discussion. In the previous section, *ervah* literally referred to the nakedness of genitalia. In this section, there are no exposed or semi-exposed genitalia but nonetheless, the sages quoted posit that exposure of other parts of a women’s body, or even her voice represent a distraction for men and a potential source of sexual thoughts and illicit behavior and this too, although not actual physical *ervah,* is defined as such. This textual unit exceeds the confines of the previous pages of Talmud in which *ervah* had a very definite boundary. It is more reminiscent of *ervat davar*, a term suggesting that there is behavior that prevents God from walking within the camp of Israelite men and must be removed or avoided to allow access to sanctity.

**Berachot 24a**

**R. Isaac** said: A *tefah* (handsbreadth)[[89]](#footnote-89) in a woman constitutes *ervah*.

*How so? If one gazes at it?!*

*But has not* **R. Shesheth** [already] said: Why did Scripture enumerate the ornaments worn outside the clothes with those worn inside[[90]](#footnote-90)?  To tell you that if one gazes at the little finger of a woman, it is as if he gazed at her secret place!

*No, he was referring to one's own wife, and only when he recites the Shema.*

**Rabbi Isaac** said: a handbreadth in a woman is *ervah.*

**Rav Hisda** said: a thigh in a woman is *ervah*, as it is written (Isaiah 47:2), "Bare your *shok*, wade through the rivers,” and it is written (*ibid.*, v. 3), “Your *ervah* shall be uncovered and your shame shall be exposed.”

**Samuel** said: a woman's voice is *ervah*, as it is written (Song of Songs 2:14) “For your voice is sweet and your appearance is comely.”

**Rav Sheshet** said: Hair in a woman is *ervah*, as it is written (*ibid*. 4:1), “Your hair is like a flock of goats.”

The Talmud brings four sages, who lived roughly in the same time period[[91]](#footnote-91), within the greater overall theme of the chapter which, as noted, examines types of *ervah* that lead to an inability to say Shema. Until this point in the chapter, *ervah* had been defined by uncovered genitalia and bodily waste. What is unique about these four statements about women is that they are no longer about literal nakedness.

It is entirely probable that each of these statements reflects a discourse independent of Shema, centered around the concern for sexual arousal triggered by male awareness of female presence. There are many such statements in the Talmud regarding the seductive power of the male gaze[[92]](#footnote-92). It is understood both then and now, that religious society is best protected when sexual desire is contained. Likewise, it is not clear that any of these were intended to be anything more than advisory statements. It is the Talmud’s editors who bring them specifically together into a chapter engaging in the discourse around saying Shema.  
The first statement about the handsbreadth of a woman being *ervah* is far reaching if Rabbi Isaac is taken at face value. This would essentially equate the uncovering of any body part to naked genitalia. In fact, upon first reading, it is unclear whether Rabbi Isaac is talking about an uncovered handsbreadth. The suggestion could be made that the mere presence of women, even when fully clothed, is akin to nakedness. Women and men should consequently never be in contact with one another except when absolutely necessary and certainly not outside of the family unit! This approach will be cited later by Maimonides and Shulchan Aruch. The casualness of the previous page of Talmudic discussion regarding male and female nakedness in bed, and buttocks that might not be *ervah*, provides a jarring contrast to Rabbi Isaac’s thesis.

To compare and qualify Rabbi Isaac as well as further engage in discussion about women’s influence, the Gemara brings Rabbi Sheshet’s midrashic interpretation comparing the temptation of seemingly innocuous outer ornaments like bracelets to an inner ornament that comes into contact with the female sexual organ[[93]](#footnote-93). Rabbi Sheshet uses this juxtaposition to state that one who gazes at the little pinky of a woman might as well be looking at her actual *ervah*. In essence, if a man gazes lustfully even at a most innocuous part of a woman’s body, like the little pinky, it has the power to derail him both sexually and spiritually. His interpretation acknowledges the sexual power that the covered, and certainly the uncovered, female body has to arouse men. This too provides a sharp, even uncomfortable, contrast to the earlier scenarios where a couple naked in bed simply turned back to back so that the man could say Shema despite the actual presence of *ervah*.

The question posed by the text for the reader is how is this passage meant to be understood? There are two suggested answers to that question:

1. Rabbi Isaac and Rabbi Sheshet are both talking about Shema since that is the theme of the chapter, and the entire unit is thus structured around sexual distraction when a man is saying this important prayer. All of the subsequent statements are meant to be understood within the context of the laws of Shema.
2. After previously discussing actual *ervah*, particularly of a woman, with regard to the laws of Shema, the Talmud has moved into a more general discussion about the male gaze and the power of sexual desire that can be triggered at all times simply by the presence of a woman. The additional three statements about the thigh, voice and hair of a woman would then be a continuation of moral philosophizing rather than a continuation of Shema restrictions.

Whatever the original intent of Rabbi Isaac, his statement is positioned by the Talmud within the halakhic discourse of Shema. Even his wife, who is an actual outlet for sexuality and also a familiar presence in household interactions devoid of sexual potential can distract him, with only a handsbreadth, from the concentrated task of saying Shema with intent[[94]](#footnote-94). In order to read it together with the earlier scenarios brought on the previous pages, he can be naked in bed with his wife but must completely turn away from the sight of her due to the power of visual stimulus. Rabbi Isaac thus becomes an important source for halakhic consideration in the laws of Shema.

Rabbi Sheshet in contrast, remains outside any clearly defined halakhic structure on matters of dress and *ervah* since no one expects women to cover their little finger when a man is saying Shema. At the same time, it indicates the awareness that a man’s intrinsically carnal nature could lead him to have intense sexual thoughts even while gazing at something as innocuous as a woman’s little finger. These feelings would indeed prohibit him from saying Shema. While not directly tied to laws of Shema in any practical and applied sense, Rav Sheshet’s words serve as an example of cautionary assertion concerned with limiting male-female interaction to protect the male from unseemly behavior which could be tied back to *ervat davar* which precludes God’s presence from residing within sacred space.

The Talmud restarts the discussion by repeating Rabbi Isaac’s statement about the handsbreadth of a woman equaling *ervah* followed by statements about thigh, voice and hair of a woman. Is the Talmud continuing to reflect on halakhic boundaries around Shema or is it now bringing Rabbi Isaac’s statement in the manner of Rabbi Sheshet, cautionary warnings against women’s seductive potential?

The latter seems more likely, especially since the discussion on Shema concluded that sexual thoughts about one’s wife’s little finger prevents a man from saying Shema. There can be no greater stringency to such a presumption! Repeating the statement of Rabbi Isaac most likely indicates the beginning of a new discussion which is peripherally related to the topic at hand. At any rate, three additional statements are made about *ervah* that have an associative quality to one another. No further analytical discussion takes place. Their halakhic importance and practical application are unclear in the Talmudic context and left open to further evaluation in the post Talmudic era.

**Three Sources of *Ervah*:**

The first statement in this group is made by Rabbi Hisda who declares that the thighof the woman is *ervah*, quoting a source in Isaiah. Isaiah is not normally a source for halakha and neither is Song of Songs which serves as the primary text supporting the next two statements. This reinforces the earlier suggestion that such statements were made in the context of moral guidance to avoid possible triggers for male sexual arousal. The verses serve as associative textual support for each Amora’s position.

The second statement is by the first generation Amora Samuel, who is the earliest of the sages quoted in this unit. He declares that the voice of a woman is *ervah*[[95]](#footnote-95). Samuel seems to be referring to the voice of a woman in its entirety, including the conversational voice, thus seeming to advocate for a complete separation of the genders outside of the immediate family unit[[96]](#footnote-96). This reading is upheld by other references to Samuel’s position. In Kiddushin, a student of Samuel uses this precise statement to deflect speaking to a minor daughter or sending regards to a woman through her husband. The premise is that verbal interaction with women opens the door to *ervah* itself or more concretely, it expresses a concern for interaction that will lead to the uncovering of nakedness through acts of g*ilui arayot*, and thus, should be avoided as much as possible[[97]](#footnote-97).

If we read Samuel’s statement in conjunction with Rabbi Isaac who stated at the beginning of the unit that even a handsbreadth of a woman is *ervah* along with Rabbi Sheshet who indicated that the pinkie of a woman can be a source of sexual arousal, then we have three sources that when taken together advise that women be covered and silent in order to remove any semblance of *ervah*. Weaving these statements into a chapter on Shema which is about accepting God’s presence implies that only when *ervah* is removed can God’s presence walk in the midst of a community of holiness.

The final statement in the unit is also offered by Rabbi Sheshet. In line with the previous three statements, he brings another source of *ervah*—the hair of a woman—framed by a quote from the *Song of Songs*. This statement becomes central to the discussion of hair covering as it unfolds in the post-Talmudic era and will be carefully assessed in chapter 5.

**The Jerusalem Talmud Parallel**

A parallel text in the Jerusalem Talmud reinforces the assumption that the statements in our unit were not necessarily meant to have direct practical application, at least in the time of the Talmud. The following source appears in tractate Hallah around the scenario referenced earlier in Berakhot.

**Mishna Hallah 2:1:**

A Woman sits and separate hallah while naked because she can cover herself.

A man cannot.

**Jerusalem Talmud**

Is it to say that the buttocks do not fall under the category of *ervah*?

That is indeed the case for saying a blessing.

But as to looking at them even for a second, that is forbidden.

As it is taught in a *Beraita*:

He who stares at a woman’s heel/buttocks is as if he stared at the womb.

He who stares at the womb, it is as if he had sexual relations with her[[98]](#footnote-98).

Samuel said, hearing the voice of a woman is forbidden on grounds of *ervah*.

What is the source?

“*Because of the sound of her harlotry, she polluted the land, committing adultery with stone and tree”* (Jeremiah 3:9).

This passage is important because it achieves two distinct objectives. First, it presents the practical application which is that blessings may in fact be said in the presence of buttocks because they are not strictly speaking *ervah*. However, looking at the buttocks is identical to looking at the womb, or more practically, at genitalia. And looking at a woman’s genitalia is akin to having sexual relations with her, presumably because of its stimulating effect on the male viewer. It is obvious to the author of the passage that the consequence of looking is not the same as actually doing. It is, however, understood that such a strong stimulus is likely to lead to prohibited sexual behavior. While there may not actually be *ervah* present, since strictly speaking only genitalia and not buttocks fit the technical definition, there is definitely *ervat davar* even if not specifically called by that terminology. Samuel who adds that aural stimulus can also lead to sexual promiscuity will be addressed in chapter three on the voice of a woman is *ervah*.

**Where Does *Ervah* Go?**

Before we continue to examine this textual unit, a brief summary on how the tractate resumes its discourse is in order. There is no follow-up or in-depth discussion about any of the statements regarding women and *ervah*. Nothing is clarified or categorized to give further definition or application to the practical as is typically seen in Talmudic discussion. The Talmud picks up the thread of a previously asked question about tefillin and how and where to place them when exposed to *ervah* in the context of an outhouse. It then moves on to other topics such as belching, passing gas and sneezing during prayer. The occurrence of bodily waste and related topics are addressed before coming back around to reconsider male nakedness. A question is asked about male genitalia seen behind something transparent like glass. In contrast, excrement behind glass can be present even during Shema. What seemingly causes it to be a distraction is its smell or the possibility of stepping on it. Once it is covered with a glass receptacle, although seen, it is no longer a harmful source of spiritual pollution. This is not the case for human nakedness. The Torah writes that, “And no *ervat davar* or indecent thing shall be seen in you” ([**Deuteronomy 23:15**](https://www.sefaria.org.il/Deuteronomy.23.15)). Thus, the Talmud concludes, although the sexual organ is covered by something transparent so that there is a barrier, it is still seen[[99]](#footnote-99) and thus prohibited during Shema.

In its inimitable way, the Talmud first reconciles the legal parameters for *ervah* by considering feces. But what works there, covering it with a transparent covering, does not work for nudity. Although nakedness could be technically covered behind a transparent wrapping, its visual presence is enough to deflect the possibility of a direct engagement with God through blessings, prayer and Torah study.

One final note about male *ervah*: It is completely limited to genitalia[[100]](#footnote-100). Nothing else about the man is defined as suchwhich brings our analysis into much sharper relief and begs the question: what is it about the woman’s body that requires broadening the definition to include even minimal exposure? The obvious answer is that since women are sources of sexual arousal for men, there are two separate aspects. The first is the presence of exposed genitalia, which like feces are objectively abhorrent when one is aspiring for connection through prayer and other related activities. The second is distraction due to sexual arousal which is subjective and specific to men who are easily aroused by the presence of covered women. In consequence, the concept of *ervah* goes far beyond the first aspect so that a woman’s voice, hair or little pinkie have the power to distract a man sexually and must be contained.

**Post-Talmudic Discussion of our Sugya**

After the Talmud is redacted in the 7th century CE, the rabbinic authorities known as the Gaonim begin to make order of the Talmudic text, producing some of the earliest works of Talmudic synthesis and interpretation. They proposed a sharp line to distinguish between Halakha and Aggadah, both of which are often found side by side in Talmudic discussion. Halakhah, the straightforward legal discourse in the Talmud, was tagged as authoritative, legal and significant. Aggadah, the lessons learned from rabbinic stories, had lesser status. They also distinguished between rulings that could be accepted as practiced law and the vast Talmudic literature of give and take. Essentially, they sought to winnow the Talmudic dialogue down to its legal conclusion, separating rabbinic speculation, philosophy and other teachings from legally binding rules[[101]](#footnote-101).

Rabbi Isaac Alfasi of Fez, known as the Rif (1013-1103), is a perfect example of the Gaonic approach to Talmud. In his commentary, Sefer ha-Halakhot, he skips over the aggadic portions of the Talmud as well as those dealing with non-applied law, dealing only with the legal sections deemed then-currently applicable[[102]](#footnote-102). His is less of a commentary than a summary of rules that can be gleaned[[103]](#footnote-103). For our purposes, he does not include the statements about thigh, hair and voice into his commentary, giving it no halakhic weight whatsoever. The Gaonic book *Baal Halachot Gedolot* refers to it briefly but only within the context of Shema[[104]](#footnote-104). In a similar vein, Rav Hai Gaon in Otzar Gaonim[[105]](#footnote-105) writes

He should not recite Shema when she is singing for the voice of a woman is *ervah* but opposite her face or opposite an area of her body normally covered or while she is talking normally it is permitted and even when she is singing, if he can concentrate so that he does not hear her and does not pay attention to her, it is permitted and he should not stop his recitation and **when a handsbreadth is uncovered, it is not prohibited unless he stares at it but looking casually is permitted**.

Rav Hai Gaon permits looking at a woman and even hearing her sing if he can concentrate on the Shema. It is the man’s thoughts or response to a woman that distracts him, not her presence. When he is not reciting Shema, presumably, there is no immediate concern for such distraction.

Moving on to the beginning of the period of Talmudic interpreters known as the Rishonim, Maimonides (1135-1204) writes in the laws of Shema that the entire body, even covered, of a woman is *ervah* and forbids a man from gazing at it during the recital of Shema[[106]](#footnote-106). Maimonides turns subjective distraction brought about by the focus of a man’s gaze upon a woman into something objective and applicable to all men[[107]](#footnote-107). Indeed, Maimonides seems to read Rabbi Isaac’s statement in the literal manner suggested above[[108]](#footnote-108) that the presence of a woman is equal to *ervah* at all times, **even when fully clothed**, since she is a visual stimulus that can lead men to have sexual thoughts, something that must be scrupulously avoided during Shema[[109]](#footnote-109). What is more significant is that he continues this thought process in “Laws of Prohibited Sexual Relations,” warning a man strongly against any interaction with women that might lead to sexual benefit. The only leniencies to looking or talking to a woman who is sexually prohibited would be to a single woman that a man is assessing for the purpose of marriage and his menstruant wife when she is defined as Niddah[[110]](#footnote-110). Although she is off limits to her husband sexually, Maimonides explicitly permits him to talk to her. His mother, daughter and unmarried sister would be included in this as well. In short, Maimonides integrates the statements on *ervah* into his laws of forbidden sexual relations. The boundaries between sacred and non-sacred space have become intertwined with one caveat — during Shema he should avoid the presence of women completely because she is essentially representative of *ervah*. In other interactions, he must honestly assess whether he intends to derive sexual benefit before engaging in any sort of interaction. This slight modification allows men to engage with women when necessary even outside the family unit.

A more moderate and nuanced approach emerges in the commentary of the Rashba, (Rabbi Solomon ben Aderet, 1235-1310), on Berakhot. The Rashba focuses on habituation in the interactions between men and women as the determining factor of what constitutes a trigger for sexual arousal. He takes it for granted that modest dress is expected. However, the defining contours of *ervah* vis a vis the woman’s body can change. In his view, a handsbreadth that is considered *ervah* in the Talmud (Rabbi Isaac) refers to an uncovered handsbreadth in a sexually suggestive area of the body and not a covered one as suggested by Maimonides. He quotes the Raavad (Rabbi Abraham ben Aderet 1125-1198), who writes that only parts of the body that are normally covered, including hair, that become uncovered, or a woman’s voice outside of her speaking voice, constitute a source of virtual *ervah*[[111]](#footnote-111) during Shema. He mentions the *shok* as an example,explaining that this is not a part of the body normally concealed by men but since it is normally concealed by women, it has the power to stimulate. He also writes that her *ervah* is not a problem for the woman herself since she can fulfill the mitzva of hallah while naked. It is only a problem for a man when saying Shema. This is a radically different approach than that taken by Maimonides.

It seems that the Rashba and those who follow his school of thought do not believe that it is necessary to disengage from interaction with women completely. While they caution against unwanted sexual arousal, they structure the halakhic component around the recital of Shema. This is perhaps the first codification of acceptable dress for women in halakhic sources. The parts of a woman’s body that must be covered by clothing are defined by habituation and everyday life rather than a yardstick with millimeters and centimeters indicated on it. Any part of a woman’s body that is normally covered when she is fully dressed might be the cause of sexual arousal if uncovered, and thus would be forbidden in sacred space. Any area of a woman’s body that is ordinarily uncovered would not be the cause of any particular excitement. The Rashba recognizes that immodest dress and consequently sexual attention is relative and dependent on society.

In a similar vein, the Ritvah (Rabbi Yom Tov of Seville, 1260-1320), writes explicitly in his commentary on Kiddushin:

And so it is the **law** that everything is according to what a person knows about himself. If it is appropriate for him to maintain a distance (from women) because of his sexual urges, he should do so, and even to look at women’s colorful clothing is forbidden…while if he knows that his sexual urges submit to him and are under his control…he is permitted to look and to speak with a woman who is forbidden to him and to ask the well-being of another man’s wife.

The onus is placed on men having awareness of their sexual arousal triggers but it normalizes mixed gender association. In the Rashba’s approach, habituation is objective. In contrast, the Ritva emphasizes the subjective awareness of each man in knowing his sexual arousal triggers. As we have explained throughout the bulk of the commentary, the language is not directed at women but at men. Unlike Maimonides, these approaches that focus on habituation and familiarity, objective and subjective, normalize mixed gender association.

The codes written by Rabbi Yaakov Ben Asher (1269-1343), author of the *Four Pillars* known as the Tur, and in his wake, the *Shulchan Aruch*, written by Rabbi Joseph Karo (1488-1575), adopt the opinions of both Rashba on legal matters and Maimonides on philosophical spiritual practice into their halakhic definitions on the topic of *ervah*. In their laws of Shema, they add the qualifier that only parts of the body normally covered that become uncovered constitute halakhic *ervah* during Shema in the manner of Rashba. However, in *Even Haezer* 21:1, within the laws of prohibited sexual relations, they echo Maimonides when they come out strongly against all interaction with women that could lead to sexual thoughts and begin the relevant passage by warning men, “to stay far far away from women[[112]](#footnote-112).”

The legal parameters for recital of Shema are clear and defined. The code of behavior within a mixed gender society however, is far from defined and the harsh rhetoric represents an attempt to inspire fidelity beyond the strict boundaries of law.

**Summary**: From the Talmud on, the practical consequence of something that is *ervah*, specifically male and female nudity (along with excrement), seems to be limited to the applied halakhic requirements for saying Shema, extending into similar sanctified space including all prayer, blessings and learning Torah. Defining parts of women’s bodies beyond their genitalia as *ervah* is a reflection of the greater concern for male sexual arousal and its impact on a society striving to avoid any hint of g*ilui arayot*, reflecting both a euphemism for prohibited sexual relations as well as the drive to infuse holiness into its very fabric.

According to one school of thought, including Maimonides, Tur and Shulchan Aruch, women’s bodies and voices are *ervah*, even in non-sacred space. Men should avoid all possible engagement with women outside of the family since women, covered or uncovered, can cause sexual thoughts in men. Furthermore, women are a distraction to men’s ability to focus on their worship of God. For both of the above reasons, men should limit their contact with women.

Nonetheless, in the Talmud and all subsequent literature, women are a presence. Women are in the market place. Women are interacting with men. Even married women are interacting with men outside of the home. They are not invisible and they are not completely covered. The halakhic approach which focuses on habituation in the interactions between men and women is more relevant in most Orthodox communities and can continue to help direct us towards moderation when developing religious guidelines and boundaries for such interaction today. Habituation then, is an important component in the question of male arousal. Some of the questions that arise today in modern Orthodox environments are around how broadly habituation might be applied in a society where minimal clothing and familiarity between sexes is accepted widely. Nonetheless, it must be emphasized that while cultural norms allow for significant uncovering of women’s bodies, it is farfetched to suggest that no objective boundaries exist. Familiarity is only one parameter. Drawing sexual attention is another. The two co-exist in a fragile dance that permits and limits simultaneously.

In conclusion, *ervah* is particular. It needs to be defined so that ritual obligations can be met. Removing *ervah* is simple. A man can cover his nakedness with something minimal and say Shema; a naked woman can crouch and bless the hallah portion. Excrement can be covered with glass. Nonetheless, for God’s presence to walk in the camp of Israel, now actualized by the synagogue or study hall, *ervat davar* must be removed. A man must turn away from a woman’s presence entirely to pray and learn Torah. On a broader scale, concern for what *ervah* cum *ervat davar* represents permeates the fabric of society. Following the Amoraitic statements linking women’s hair, voice, thigh and even a handsbreadth to *ervah,* the concern for male sexual arousal is the driving force in defining women’s presence in society as a source of *ervat davar* even if it is not actually *ervah*.

**Dress Codes and The Daughters of Israel**

The controversial topic of Orthodox women and modest dress relates directly to motifs of gender interaction, gender identity and sexual promiscuity. Many women wish to make thoughtful decisions about clothing choices as a reflection of their religious commitment but feel alienated by a conversation that focuses on the male sexual gaze or *yetzer* in a fully gender integrated modern society. When it comes to specifically the question of pants, women question how they are compromising their modesty by wearing a garment that provides more coverage, especially when seated, is more comfortable and holds a negative bias that reflects a social convention whose halakhic basis they do not understand.

The questions around women and dress are three-fold:

1. Which garments transgress the halakhic norms of feminine modesty as developed through the concept of *ervah*?

2. Does the wearing of pants involve a transgression of the biblical prohibition, “A woman shall not wear men’s apparel” (Deuteronomy 22:5).

3. Is there a legitimate social component extending beyond the pure boundaries of halakhic evaluation?

In this chapter we are going to continue building on the concepts of *ervah* and *ervat davar* presented previously in chapter 3 as we examine *shok*, cross dressing and modern responsa that try to anchor the pants prohibition onto something concrete. We will evaluate whether an entire category of apparel should be deemed unequivocally provocative after we have brought early sources that prove halakhically that the concept of habituation can desexualize uncovering the formerly covered.

**Shok – What is it Precisely**

In the previous chapter, two parallel halakhic and sub halakhic trends were developed regarding women, sexuality and dress. A source-based analysis of *ervah* was presented, focusing on its technical definition as male and female genitalia, as well as its connection to *gilui Arayot* – a literal uncovering of the *ervah* to engage in prohibited sexual behavior. It was further suggested that the quintessence of *ervah* broadened into *ervat davar*, mentioned twice in Deuteronomy. *Ervat davar* as a Biblical concept defies specific physical identification but somehow alienates God’s presence from the camp as well as a man from remaining married to his wife.

In tractate Berachot, a woman’s voice, hair and *shok* (some part of a woman’s leg) are described as *ervah*, reflecting a concern for a type of sexualized interaction between men and women that in turn can lead to an alienation of God’s presence in our midst. Anything that can cause sexual thoughts or serve as a sexual trigger, down to a woman’s pinkie finger, is potentially e*rvah* cum *ervat davar*.

There is ambiguity to the source material. The human *shok* appears in many Biblical verses, but it is hard to pin down a clear definition of which part of the leg is being referenced[[113]](#footnote-113). In verses relating to Temple ritual, *shok* refers to the leg or shoulder of a sacrificial animal that together with *chazeh* (breast) are eaten by the priests when offerings are brought by the people.

Returning to the *ervah* text in Berachot which was analyzed in the previous chapter, Rabbi Hisda states that, “The *shok* of a woman is *ervah.*” He then cites a verse from Isaiah 47:2 in which the prophet casts aspersion on Babylonia who in his prophetic metaphor is compared to a woman. The verse, which is the only source in Tanach in which specifically a woman’s *shok* is referenced, reads: “Remove your veil, strip off your train, bare your *shok,* wade through the rivers[[114]](#footnote-114).” The next verse begins, “Your nakedness shall be uncovered. Your shame shall be exposed.”

In a contemporary analysis of sources on women’s dress, Rabbi Yehuda Henkin reasons that the woman’s thigh is the likely reference both because of its closeness to the woman’s *ervah* and because of the visual depiction in the associated verse. A woman with a long skirt would need to lift it to cross even a small body of water like a puddle. Crossing a river, he understands, requires the woman to lift her skirts high in order to avoid wetness[[115]](#footnote-115). Such exposure is meant to shame the woman by uncovering her *ervah*.

Isaiah does not serve as a normative halakhic source[[116]](#footnote-116), nonetheless, it is a strong voice for what shameful exposure of nakedness looks like using the metaphor of a woman’s body. She is exposed. She is shamed. She is naked.

While the practical application of the Talmudic text might be directed towards the man when he says Shema (or, alternatively, as a general warning to avoid sexual arousal), there is a subliminal message for women within the text as well. If they are seeking to avoid shameful exposure, women should strive to cover up their literal and metaphoric nakedness.

Rabbi Hisda’s statement is neither defined nor contextualized by further Talmudic discussion. By narrowing the potential sexual stimulus of a woman’s body down to the pinkie in an earlier statement in this textual unit, which is always exposed, it seems as though the Talmud is less referring to female exposure and more to the man’s response to woman’s presence. On the other hand, the question of the *shok’s* status might be more practical. It is possible that the *shok* will always remain *ervah* even with habituation since it may be adjacent to actual *ervah* and this proximity heightens its status.

**To summarize**: Based on Biblical sources, *shok* can mean the entire leg, the lower leg or the upper leg in reference to humans. With reference to animal sacrifices, it means thigh and shoulder. We can thus draw no absolute conclusions from the Biblical sources as to exactly which part of the leg is *shok*. The verse in Isaiah and the associated Talmudic reference may be referring to thigh. Such clarity was probably irrelevant outside of private space and Shema since women’s skirts at the time covered the entire leg. As we go through the Talmudic and Halakhic sources, we will explore the possible relevance of these distinctions in an era in which skirt length, drastically and without precedent before the 20th century, lifts first above the calf, and from the 1960’s, to above the knee.

**What Happens After the Talmud**?

The *shok* of a woman is continuously referred to as *ervah* post-Talmud, into the period of Rishonim, and later, into the codes of Tur and Shulchan Aruch because of the possible sexual thoughts it could elicit in men.

From the source material, it seems that it only becomes necessary in the last century to define *shok* as either upper or lower leg with regard to its exposure. Rabbi Israel Meir Kagan, author of *Mishneh Berurah*, for instance, clarifies that the *shok’s* *ervah* refers to the upper leg, above the knee joint. Below that, there is no *ervah* even if exposed. While he writes this in the laws of Shema, it is clear that he is talking about a more general dress code to be implemented as part of the modesty customs of the daughters of Israel. Rabbi Avraham Karelitz, known as Hazon Ish, responds to this ruling in his commentary to the laws of Shema.

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| “The *shok* might connote from the knee down, above the knee being obviously forbidden. After all, Ra’avad wrote that men normally expose the *shok* and this is true only of the leg below the knee. Hence even a single exposed *tefah* below the knee would be forbidden. At the same time, Mishneh Berurah was lenient regarding below the knee…and this seems to be correct. If we forbid below the knee, it would apply even to the foot. Yet in some places women customarily go barefoot, and some part of their foot surely remains exposed. Hence the *shok* of Berachot 24a must connote the thigh…” |

Hazon Ish cites Rishonim such as the Ra’avad and Rashba who state that a man’s *shok* is not *ervah*. To his mind, this cannot mean that men are exposing their thighs[[117]](#footnote-117). Thus, the *shok* of the Rishonim must be the lower leg. Consequently, women, whose *shok* is *ervah*, would be required to cover the lower leg*.*

Nonetheless, in principle he agrees with Mishneh Berurah, who permits exposure of the leg below the knee, since many women circulate in society with bared ankles and feet; it is inconceivable that those could be *ervah*! Thus, the *shok* of Berachot with regard to a woman’s body must be halakhically defined as thigh. This essentially becomes the halakhic consensus.

Thus, women are unequivocally expected to cover their thighs to the knee and more often, to below the knee. It further encompasses the upper arm which is equated with the thigh (in the Torah, both the arm and leg of an animal are defined as *shok*), so that in all halakhic compendiums, as well as in the formal and informal requirements of many religious institutions, women are instructed to cover their arms up to and in some cases, including the elbow.

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| **Responsa Si'ach Nachum 107**  The basic halacha is to cover the *zero’a* (the portion between the shoulder and the elbow), but the Sages did not establish a defined measure for this coverage. In any case, the way of modesty is to cover most of the *zero’a*. However, in matters of modesty in clothing, it is appropriate to consider the customs of the society of Torah-observant Jews with which we wish to affiliate, and if women in that society are accustomed to cover more, it is appropriate to adopt that custom. |

A concern for the exposure of an armpit when a woman lifts her arms is also discussed in the halakhic literature. It would seem that this relates to an intimation of a woman’s breasts which are perceived as having the innate ability to sexually distract men even though they are not explicitly defined as *ervah* in the way that genitalia are. This would neatly parallel the concern for actual *ervah* when the thigh is revealed, creating a close connection between the joint of the upper arm and leg and the subsequent urgency in fully covering a significant amount of skin to avoid any hint of exposure around either of these areas.

Halakhic Precision

Halakha strives for clear parameters and methodical definitions. Mathematical precision is applied in defining the amount of wine that one must drink to fulfill the ritual obligation of Kiddush or the exact amount of matza that makes up a *k’zayit*. We noted that the absence of such technical boundaries in the Berachot text gave the impression of a more conceptual discourse, rather than an applied one. By the 20th century, however, it became necessary to quantify hemline and sleeve lengths in order to create a defined structure beyond the conceptual, presumably because of the increasing exposure of women’s bodies in modern clothing styles.

Rabbi Isaac (in Berachot) declared that a *tefah* or handsbreadth of a woman is *ervah*. In our earlier analysis we considered this could mean that even a covered *tefah* is sexually distracting.

At a certain point, the *tefah,* which is defined as 7-9 centimeters*,* became a benchmark for how much of a habitually covered area can be exposed without presenting concern for *ervah*. In other words, up to a *tefah* of a married woman’s hair or skin exposed above the elbow or knee is not defined as *ervah* and men can pray or learn Torah in its presence. In some observant communities, this has become an acknowledged addendum to dress code, at least for hair and elbows. While this should also apply to the knee area, I have not found a source that equally permits an exposed *tefah* above the knee despite its parallel to the elbow. This is probably because skirts rising above the knee already inch towards the thigh, which borders actual *ervah*. Even if it could be technically tolerated based on a rational application of the *tefah* principle, it remains completely taboo and unmentionable.

One last point must be made about elbows and knees. As noted above (and in chapter three), the parts of a woman’s body that must be covered reflect societal criteria. Any part of a woman’s body (face, hands, feet) that is ordinarily uncovered is largely of no concern for many rabbinic authorities. Where does this leave us today when habituation has uncovered most of a woman’s body? Could an argument be made to allow sleeveless summer dresses or short skirts given their ubiquity in greater society?

Extrapolating from all of the sources, both explicit and implicit, it seems that *shok* as thigh (and upper arm which seems to include upper torso) is an example of something that even habituation does not permit for the reasons enumerated: habituation cannot fully curb or eliminate male sexual response. This attitude certainly contributes to the standardization of a religious dress code for women based on the aspiration to desexualize society. Although it is often stressed that the dress code is also about spirituality and religious female identity, women are considered responsible (within limits) for the effect their attire has on men.

Moving on to the next part of the chapter, which focuses on pants, *shok* does not play a role in the responsa literature since the fabric of the trousers, jeans and leggings literally covers the entire leg. We will have to look elsewhere for the halakhic concepts relevant to this topic.

**Cross Dressing**[[118]](#footnote-118)

In the analysis of women and pants, one of the main sources to address is the prohibition for a woman to wear men’s apparel.

There is an explicit prohibition set out in Deuteronomy 22:5 around cross dressing:

A woman must not put on man’s apparel nor shall a man wear women’s clothing, for whoever does these things is *toeva* (translated as abhorrent or abomination) to God.

The word *toeva* appears throughout the Bible to describe detestable acts largely involving idolatry or sexual promiscuity. Bible scholars feel that this particular prohibition is either about pagan cultic rituals, sexual promiscuity that results from crossing over to mingle with the opposite gender or possibly, about gender separation analogous to upcoming verses in the chapter about prohibiting mixtures in cloth and when sowing seeds. God, who created the biological separation between men and women, expresses affront at the behavior of those who seek to blur this distinction.

The earliest rabbinic interpretation, found in Sifre Devarim Piska 226, understands the verse to mean the following:

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| **Sifre Devarim Piska 226**  *No male article shall be on a woman*. Could this be teaching that a woman should not wear white garments nor should a man wear colored ones? Rather the verse concludes, “Whoever performs these commits an abominable act before the Lord your God.”  Only practices leading to an abominable act are forbidden. As a rule, a woman should not put on male garb and circulate among men, nor should a man adorn himself in a feminine way and circulate among women.  R. Eliezer Ben Yaakov says: Whence do we know that a woman should not wear weaponry and go off to war? It says No male article shall be on a woman. A man shall not adorn himself in women’s ornaments, as it says: *and a man shall not wear women’s clothing.* | ספרי דברים רכו  לא יהיה כלי גבר על אשה. (נזיר נט.) וכי מה בא הכתוב ללמדנו? [אם] שלא תלבש אשה כלים לבנים, ואיש לא יתכסה בגדי צבעונים, (ת"ל) [הרי כבר נאמר] "תועבה", דבר הבא לידי תועבה! [אלא] זה כללו של דבר - שלא תלבש אשה מה שהאיש לובש, ותלך לבין האנשים; והאיש לא יתקשט בתכשיטי נשים, וילך לבין הנשים.  ר"א בן יעקב אומר, [מנין] שלא תלבש אשה כלי זין, ותצא למלחמה? (ומה) תלמוד לומר לא יהיה כלי גבר על אשה. [ומנין] שאיש לא יתקשט בתכשיטי נשים? תלמוד לומר ולא ילבש גבר שמלת אשה. |

Sifre brings two interpretations to the verse in Deuteronomy around cross dressing. In the first, it explains that the clothing is not the essence of the prohibition but rather, the resultant practices that lead to an abominable act. The midrash then clarifies its approach: a woman who puts on men’s clothing to circulate among men or a man who dresses like a woman to access exclusively female space are both done presumably for the purpose of illicit, prohibited sexual acts.

The second voice of Rabbi Eliezer ben Yaakov understands the clause to specifically refer to women wearing weaponry and going off to war and men adorning themselves in women’s ornaments. While this is not directly relevant to our conversation, this interpretation touches on questions of gender identity expressed through clothing or other accessories along with the spaces in which they are worn. Until very recently, war was a profoundly and exclusively male experience and women had no place in such a setting. Crossing over into such male space by a woman erodes the integrity of the entire society and is thus, an abomination. Rabbi Eliezer is comparing women’s ornaments on men to men’s battle garments or accessories on women. It is not about the intended practice in the apparel, which is what the first Tanna interpreted. The act of simply wearing the other gender’s clothing is prohibited. In addition to maintaining strict gender identity through dress, presumably he too is concerned for sexual indiscretion and promiscuity.[[119]](#footnote-119)

If we look at Maimonides’ understanding of this law, he writes explicitly that these acts of cross dressing by both men and women are to arouse the senses to debauchery, or alternatively, for the purpose of idolatry[[120]](#footnote-120). In other words, this mitzva intersects with possible transgression across two major categories of sin — sexual and idolatrous. He further alludes to religious cults which require cross dressing as part of pagan worship, for instance, men wearing gold and pearls and women putting on armor and bearing swords.

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| **Rambam Sefer Hamitzvot, Lo Taaseh 40 (Bar Ilan Project):**  No male article shall be on a woman and a man shall not wear a woman’s garment (Deut 22:5)  One should be aware that this act, i.e., women adorning themselves in male finery or men in women’s finery is sometimes performed to arouse the senses to debauchery as is well known and is also performed for various types of idolatry as is explained in works devoted to this subject. Some amulets are sold with the proviso that the purchaser when wearing them wear clothing of the opposite sex such as gold and pearls in the case of men and armor and weaponry in the case of women | **ספר המצוות לרמב"ם מצות לא תעשה מ**  והמצוה הארבעים היא שהזהיר האנשים גם כן מהתקשט בתכשיטי הנשים והוא אמרו יתעלה (שם) ולא ילבש גבר שמלת אשה. וכל אדם שהתקשט גם כן או לבש מה שהוא מפורסם במקום ההוא שהוא תכשיט המיוחד לנשים לוקה. ודע שזאת הפעולה, כלומר היות הנשים מתקשטות בתכשיטי האנשים או האנשים בתכשיטי הנשים, פעמים תיעשה לעורר הטבע לזמה כמו שהוא מפורסם אצל הזונים ופעמים ייעשה למינים מעבודת עבודה זרה כמו שהוא מבואר בספרים המחוברים לזה. והרבה מה שיושם בתנאי בעשיית קצת הטלאסם וייאמר אם היה המתעסק בו אדם ילבש בגדי נשים ויתקשט בזהב ופנינים והדומים להם ואם היתה אשה תלבש השריין ותזדיין בחרבות. וזה מפורסם מאד אצל בעלי דעת זאת: |

Although in Sefer HaMitzvot, Maimonides mentions both sexual promiscuity and idolatry as the reason for the prohibition, in the Mishneh Torah, he codifies it solely into the laws concerning idolatry.

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| **Rambam Avodah Zarah 12:9-10**  A woman should not wear male articles such as a turban, a hat or armor, nor should she cut her hair like a man. A man should not wear female articles such as colorful clothing or gold jewelry, wherever such items are worn only by women. It all depends on regional custom. If a man or woman violate this, they must receive lashes. | **רמב"ם יד החזקה – הל' עבודת כוכבים פרק יב** (ר' משה בן מיימון, 1138 ספרד – 1204 מצרים)  (ט) העברת השיער משאר הגוף כגון בית השחי ובית הערוה אינו אסור מן התורה אלא מדברי סופרים והמעבירו מכין אותו מכת מרדות במה דברים אמורים במקום שאין מעבירין אותו אלא נשים כדי שלא יתקן עצמו תיקון נשים אבל במקום שמעבירין השיער הנשים ואנשים אם העביר אין מכין אותו ומותר להעביר שיער שאר איברים במספריים בכל מקום:  (י) לא תעדה אשה עדי האיש כגון שתשים בראשה מצנפת או כובע או תלבש שריון וכיוצא בו או שתגלח ראשה כאיש ולא יעדה איש עדי אשה כגון שילבש בגדי צבעונין וחלי זהב במקום שאין לובשין אותן הכלים ואין משימים אותו החלי אלא נשים הכל כמנהג המדינה איש שעדה עדי אשה ואשה שעדתה עדי איש לוקין... |

In Laws of Avodah Zarah, Maimonides writes about women who adorn themselves in a turban, armor or weaponry and men who put on women’s jewelry. He extends it to include a prohibition on all female grooming undertaken by men, with an emphasis on hair removal. Most important, however, is that in the Mishneh Torah he inserts an important caveat – gendered clothing, accessories and behavior are *all according to local societal custom*. In this significant statement, Maimoides recognizes that there is a heavy socio-cultural component to the gendering of dress and behavior norms and that these can change depending on time and place. Like Maimonides and independent of him, the Sefer HaChinuch (published anonymously in 13th century Spain) also linked cross dressing to two categories of sin.

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| **Sefer HaChinuch, Mitzva 542**  Roots of the mitzva — to remove promiscuous behaviour from our holy nation…without a doubt, if men and women wear the same clothing, they will always be mingling together, and the earth will be filled with perversion. Our sages also explained that this mitzva serves to remove all trace of idolatry for such was the way of idolaters. I found these two reasons in the works of Ramban after writing them myself. | **ספר החינוך - מצוה תקמב (מחבר לא ידוע, מאה ה-13, ספרד)**  משרשי המצוה להרחיק מאומתנו הקדושה דבר ערוה... ואין ספק כי אם יהיו מלבושי האנשים והנשים שוים, יתערבו אלו עם אלו תמיד ומלאה הארץ זמה. ועוד אמרו בטעם מצוה זו שהיא להרחיק כל ענין עבודה זרה שדרכן של עובדי עבודה זרה היה בכך. ואלה שני הטעמים מצאתים בספרי הרמב"ם ז"ל אחר כתבי אותם: |

The author writes that the root of the mitzva is to remove both promiscuous behavior and all traces of idolatry from the holy nation. He concludes by noting that he found both of these reasons in Maimonides after he had already written them himself. Both men understand the dilution of gender boundaries as leading to untethered behavior associated with sexual promiscuity and/or idolatry.

Sefer HaChinuch further advocates for a society that maintains clear gender separation through distinct external markers in dress that structure the separation. This is echoed in the commentary of Abraham Ibn Ezra, although the medieval Biblical commentary does not interpret the mitzva as having idolatrous overtones. He writes,

“The purpose of a woman is to give birth, and if she goes out to war with the men, she will come to promiscuity and the same is the case for …the man. The purpose is to prevent smooth faced men from mingling with women and then secretly committing adultery with them. And this shows that the custom in Israel, as in most kingdoms, is for the dress of men to not be like the dress of women but a distinction between them[[121]](#footnote-121).”

Ibn Ezra reinforces the need for distinction in dress to prevent breaking of boundaries that will lead to adultery. In contrast to Maimonides and Sefer HaChinuch who intuited an idolatrous component within the prohibition, Ibn Ezra was concerned only for sexual promiscuity. This was particularly with regard to married women, since adultery was one of the gravest indications of a corrupt society.

While the Rambam, Ibn Ezra and Sefer HaChinuch provided reasons for the mitzva, the Tur[[122]](#footnote-122) and Shulchan Aruch simply codified the law. In the Tur, it is reduced to a simple sentence. “A woman may not wear clothing which local custom deems to be exclusively male nor may she shave her head like a man.” He codifies several prohibitions for men regarding beard and hair grooming and dying. There is also a prohibition for men to look into a mirror which is condemned unanimously by Tur (and Shulchan Aruch) for being by its very essence a woman’s article and forever prohibited to men unless he is shaving or to check for illness in the eyes, for instance[[123]](#footnote-123).

The Shulchan Aruch quoted Maimonides with regard to the relevant laws.

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| **Shulchan Aruch Yoreh Deah 182**  A woman may not clothe herself in men's clothing, e.g., put on her head a mitre or helmet, or wear armor, and so on (which men wear in accordance with the local custom (Tur)) or shave her head like a man. A man may not clothe himself in the clothes of a woman, e.g., wear colored clothing or golden ornaments in a place where only women wear those things. (Rema: Even wearing just one of the garments is forbidden, even if it is apparent by his other garments that this is a man or a woman. (Beit Yosef). | **שולחן ערוך יורה דעה סימן קפב**  לא תעדה אשה עדי האיש, כגון שתשים בראשה מצנפת או כובע או תלבש שריון וכיוצא בו (ממלבושי האיש לפי מנהג המקום ההוא), (טור) או שתגלח ראשה כאיש. ולא יעדה איש עדי אשה, כגון שילבש בגדי צבעונים וחלי זהב במקום שאין לובשין אותם הכלים ואין משימין אותו החלי אלא נשים. *הגה: ואפילו באחד מן הבגדים אסור, אף על פי שניכרים בשאר בגדיהם שהוא איש או אשה (ב"י).* |

Interestingly, Rabbi Moses Isserlis (Rema) inserted a caveat authored by Rabbi Joseph Karo in his commentary to the Tur known as Beit Yosef. Rabbi Karo wrote that one gender specific garment, if worn as adornment externally by the opposite sex, violates the prohibition of cross dressing even if it is clear that the person’s gender is obvious from the rest of his or her clothing[[124]](#footnote-124).

In contrast, Rabbi Joel Sirkis (Bach) in his commentary to the Tur added two elements for consideration when evaluating the prohibitive nature of cross dressing. These will be echoed in two central commentaries on Shulchan Aruch, known as Taz and Shakh.

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| **Bayyit Hadash on Tur Yoreh Deah 182: (17th century Poland)**  The law is lenient in two respects. First of all, no prohibition applies, even against wearing something that makes one more attractive unless one does so to resemble the opposite sex. Clothing worn as protection against the summer sun or winter rain presents no problem.  Second of all, even if a man intends to resemble a woman, no prohibition applies unless in doing so he thereby beautifies himself. As the Sifri states “…a man should not adorn himself with female adornments.”  Therefore, male garments worn by women when they go to market and sit in shops violate no prohibition. They are made only as clothing to cover the body, not for beautification or adornment. Moreover, women wear them only as a protection from exposure to the elements not to resemble men. |

First, as stated in the Talmud, the prohibition only applies if the male or female is cross dressing in an attempt to beautify themselves for the sake of adultery or other forms of perverse behavior.

Second, based on a Talmudic source in Nedarim, women or men who wear one another’s clothing for protection against the summer sun or winter rain do not violate the prohibition in any way. They are intending only to cover and clothe the body but not to remove gender distinctions or adorn and seduce.

In short, three major halakhic authorities from the 16th century onward, clarify and define the prohibition of women wearing men’s clothing, limiting it to cross dressing for very specific and promiscuous purposes.

It is possible to see in the differing halakhic positions of the rabbinic authorities after the 16th century, known as Acharonim, a continuation of the split between the two positions outlined in the Sifre, represented by the first Tanna and Rabbi Eliezer. The first Tanna was concerned for the type of cross dressing that leads to masquerading as the opposite sex for the purpose of engaging in prohibited behavior. Wearing one article of gendered clothing will not achieve that goal and thus, would not be prohibited. Even wearing several articles of gendered clothing, if the purpose is for protection, would not violate any prohibition. In general, the type of clothing is less significant than the resultant behavior. However, Rabbi Eliezer’s position was less interested in behavior. Even wearing one gendered item crossed the gender divide and regardless of behavior, reflected abomination.

One of the main ideas that emerges from the source analysis presented until now is that gender differentiation in society matters in the halakhic literature. Dress is one of the ways in which gender separation is maintained and this ensures fidelity to holiness as reflected in sexual separation. If we remove the markers that police this separation, the possibility of sexual perversion is manifest. As expressed in the Sefer HaChinuch, “If men and women wear the same clothing they will always be mingling and the earth will be filled with perversion.”

The verse in Deuteronomy turns its attention to both men and women. They are equally held accountable for misleading the community of Israel by blurring the gender divide and thus, opening doors to the betrayal of the covenant with God.

A look at the modern responsa on pants which were formally a masculine article of clothing but are today genderless, reveals an emerging, and very strong religious ideology against garments that blur gender differentiation. Nonetheless, it is hard to equate pants with cross dressing based on the halakhic analysis above since it does not involve a desire to disguise gender, engage in idolatrous practices or exemplify sexual promiscuity. Today, pants are simply a garment, without relation to gender, worn to cover the body in the same way that shirts, sweaters, and socks describe garments that clothe different parts of the body and have no clear gender association. What differentiates men’s garments from women’s garments are cut, color and sometimes fabric. There is some overlap today regarding some of these categories. For instance, men will wear pink shirts, a color once exclusive to women, and women will wear men’s sweaters, yet the halakhic literature does not protest such crossing over. Much of this overlap is dictated by fashion norms and has little to do with the underpinnings of the Biblical prohibition[[125]](#footnote-125). Pants, however, remain outside of any sort of measured halakhic conversation.

**A Brief History of Pants**

If we look briefly at the history of women wearing pants, we discover that the phenomenon began in the 19th century and started with women seeking both the literal and symbolic freedom pants provided. While it was against the law for women to wear pants well into the 20th century in some western countries, women nonetheless persisted. When compared to skirts, they give women greater ability to participate fully in physical activities as well allowing women to sit more comfortably and less self-consciously. There is also an important added factor with regard to social and professional status: Women can be perceived by men as equals if they wear similar clothing.

Many religious leaders, Jewish and non-Jewish, protested the slide towards women wearing pants. There was a universal concern that women would exhibit unladylike behavior, possibly veering towards promiscuity. It was equated with the potential downfall of the family, the emasculation of men and social and moral chaos if the gender differences represented by dress were to be obliterated[[126]](#footnote-126).

**The Rabbinic Response**

One of the first rabbinic authorities to deal with the question of women wearing pants was Rabbi Yekutiel Teitelbaum, the head of the rabbinic court in Sighet, Hungary in the 19th century. In his responsa *Avnei Zedek*, he is asked whether women are allowed to wear trousers under their clothing as protection against the cold. Rabbi Teitelbaum seriously addresses the issue from a halakhic perspective and concludes that such garments are permitted.

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| One may rely upon the view of Bah and Taz that even an outright [male] garment is permissible if worn as protection against the cold. Shakh forbade only a man’s so dressing up that one cannot tell he is a man. His entire focus is on the person, not his garb, such that if a man wears only one female garment, and does not intend to resemble the opposite sex, he violates no prohibition. Surely trousers beneath a woman’s clothing, or even over them are permissible, since the woman will ultimately be recognized as such by her other clothing and since she is only wearing this garment as protection from the cold.  …Yet even without my answer, there is still no problem, for after investigation, I have become aware that women’s trousers can be distinguished from men’s being that the two are different. Thus, there are two points in your favor:  There is no intent to resemble men and they are different from men’s garments. Both here and in Poland, even pious modest women have long practiced this, without a complaint being heard. A greater problem is the new phenomenon of women wearing men’s hats and suits…these would seem to be forbidden and I have previously made an uproar about this, demanding that their forbidden status be publicized. Unfortunately, many trespass in this regard **as well by wearing non-Jewish fashions**. May God have mercy on us! |

In his analysis, Avnei Zedek reflects the halakhic discourse that preceded him on the topic of cross dressing. Nonetheless, it is important to note two elements that appear in this responsa. The first is that the pants he is referring to are loose and formless. They are cut to fit women’s bodies but they seem suited for work rather than fashion. He acknowledges that pious women in Hungary and Poland are wearing these garments presumably because of the mobility it gave them to carry out certain jobs and to protect themselves in the winter from very cold climates. He writes specifically that they are not trying to imitate men and that the garments are somewhat modified for women. There is no attempt to cross dress and there is no sexual allure to the garments.

The second is his attack on women who wear men’s suits and hats, a trend occurring in the 19th century in Europe and the USA. This trend incensed the Avnei Zedek who describes the look as “very ugly”. Although he admits that there are some slight differences to the cut of the suits worn by women, they are clearly to his mind menswear and women could be mistaken for men when wearing them. He maintains that such clothing violates a clear prohibition, although he does not specify the source of the transgression. He could be talking about cross dressing but he also could be talking about a prohibition found elsewhere in Shulchan Aruch (Yoreah Deah 171:1) that one may not dress in the manner of the gentiles.

Overall, the Avnei Zedek presents a moderate position but it would be inaccurate to use his responsa to permit skinny jeans and leggings in the manner in which he permitted the pants women were wearing in his generation. In addition, it is clear that he is concerned about the breakdown of gender boundaries in his attack on men’s suits and hats being worn by women, although it is a trend that he is powerless to prevent even within observant communities.

One hundred years after the Avnei Zedek, Rabbi Yehuda Henkin wrote that he asked his grandfather Rav Yosef Henkin, a major halakhic authority, about women wearing pants. His grandfather responded that loose pants were permitted for women and would possibly be even more modest than other clothing options. Rabbi Henkin further explored this added advantage of baggy pants instead of skirts when considering the subject of modest dress[[127]](#footnote-127). He is possibly the only major rabbinic authority in this generation to rule that some form of pants is permissible if they are loose.

More reflective of the overall response to women wearing pants are the rabbinic authorities who show extreme antagonism. There are two schools of thought that emerge. One school argues that pants are so gendered that there is no way to wear them without violating a biblical prohibition. The other school admits that there is no Biblical prohibition. Nonetheless, the garment is absolutely prohibited. In the rhetoric cited below, the sense of a religious war being waged is palpable.

Rabbi Yitzhak Yaakov Weiss, 1902-1989, in his responsa Minhat Yitzhak, is asked about women wearing pants, while serving as the head of the rabbinic court (Av Beit Din) in Manchester England, in 1958. The questioner asks about the source of the prohibition and adds that women’s pants are cut differently than men’s and are distinguishable by color as well so that gender boundaries are maintained.

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| Answer: This question does not require elaborate investigation, for an outright prohibition is involved. Besides, ostentatious clothing such as this is produced, *a priori*, for sin and is associated with promiscuity. Even if they are not classed as “male articles” wearing them still constitutes an “abominable act”. |

In the opening sentence, the Minhat Yitzhak maintains that there is an outright prohibition to women wearing pants but in the second sentence, he reveals his bias, suffused with animosity towards these articles of clothing above and beyond the nature of the prohibition. He states that such clothing are used for sin and promiscuity. Even if they would not be “male articles’, they would still be an abomination. He upholds his position that they are in fact “male articles’ and Biblically prohibited even though they do not fit into any of the categories for male articles that we have seen in previous definitions of the prohibition from the Talmud until the 20th century. Nonetheless, he sees them as sexually corruptive and of necessity, to be avoided from the earliest of ages. He argues that even if, “The female version of these is a bit different from the male version, their labels will still apply, hence they should be forbidden.” When he is asked about a woman wearing pants at home while alone, he responds that this too violates the prohibition of wearing “male articles”. Below is an excerpt from the same responsa where he addresses women wearing pants to ski.

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| Is she allowed to wear trousers to go skiing, when skiing without them is difficult and when if she falls they actually provide an advantage? This seems to depend on a debate among the rabbinic authorities regarding whether a woman is allowed to wear male garb as protection against the elements. On close scrutiny however, it appears that even to wear such garments is forbidden according to all opinions. Even Shakh is lenient only where exposure to the elements is not a matter of choice. Yet who would allow her to wear male garb to go skiing? Better she should stay home and not dress this way…especially as a Torah prohibition is involved. |

In contrast to Rabbi Weiss, Rabbi Ovadia Hodaya, who lived from 1889-1969 and was the head of the Jerusalem Beit Din, has to my opinion a more transparent approach that requires no apologetics.

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| The prohibition of cross dressing is not violated unless a man or woman wear trousers distinctly suited to the opposite sex. For a different reason however they should be forbidden to women. **Trousers are a wild, promiscuous and immodest garment for women since legs are separated from each other to the very top. One who sees a woman wearing trousers may be led to sinful thought or even to fornication**.  Unfortunately, there is no longer any separation between young men and women. All mingle together at work and school….for this reason trousers should be forbidden to women. Every man who truly fears the word of God must keep his daughters from going out in such garb, lest it lead to real sexual offence. |

Pants are wild and promiscuous because they allow men to see the split in the legs of women. In other words, they draw attention to her e*rvah* even if it is actually covered. Habituation will not help when something draws anywhere near to *ervah*. He decries the mingling of the sexes that takes place in school and at work. The camp is being polluted. *Ervat Davar* or conceptual *ervah* is driving away the presence of God.

In short, the difficulty with pants remains even when the halakhic discourse around cross-dressingis resolved. It results in a far more insidious issue for it involves a perceived breach in feminine modesty within society. Rav Hodaya is the first to suggest that the split in the legs represents an insurmountable modesty violation. It is not clear where he draws this from. Rabbi Henkin wonders the same thing. He explains that the phrase “spreading the legs” which Rabbi Hodaya uses in his rejection of pants actually refers in rabbinic literature to the movement a woman makes during sexual intercourse. While this is an immodest position when exhibited outside of that particular act, it is acceptable according to the Talmud when she rides on a horse or donkey. Rabbi Henkin concludes that a woman who walks and sits normally in pants is not exhibiting immodest behaviour. The garment is not the issue, explains Rabbi Henkin; the concern for an immodest pose is relevant either in pants or in a skirt. Pants do not intrinsically represent immodesty.

We have thus presented two schools of religious thought when addressing possible prohibitions with regard to women wearing pants: one school trumpets the Biblical prohibition of cross dressing and the other, an insurmountable breach in modesty.

Those two positions are well represented in a polemic that broke out between Rabbi Ovadia Yosef and Rabbi Eliezer Waldenberg on this topic.

In the early 1970’s, a school principal wrote to Rabbi Ovadia Yosef explaining that his female students were coming to school in mini skirts and there was little he could do to prevent this. He then asked whether pants would be preferable. Rabbi Ovadia starts off his response by attacking the mini skirt, prohibiting it both because of sexual promiscuity and because it violates the injunction not to, “Go after the non-Jews in their behavior…mini skirts are a sign of the promiscuous culture of the West.[[128]](#footnote-128).

He then analyzes the prohibition of “male articles” and comes to the conclusion, after a lengthy analysis involving the Talmud and early and late rabbinic authorities, that pants which are made for women do not violate that prohibition. Even articles of clothing that are unisex do not violate the prohibition. However, he explains that pants are inadvisable:

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| Even so, I admit that *a priori* one should not allow young women to wear trousers since they are an arrogant form of dress that arouses the attention of onlookers more than a normal skirt or dress and provokes sinful thought. Fine Jewish girls should not wear them at all especially those that really cling to the body, for they cause men to stare and to entertain especially sinful thoughts.  If girls do not heed their parents and teachers wishes that they avoid especially short skirts and they go out in public with legs bared which constitutes excessive immodest behavior, we must choose the lesser of two evils and instruct them as a temporary provision to wear trousers…therefore where the girls will not listen to us to wear skirts that cover the knee, trousers are preferable until we influence them to wear the modest dress of all fine Jewish girls. |

Rabbi Ovadia concludes that pants do not violate the Torah prohibition of cross dressing and thus, it comes down to a question of modesty and which garment is less sexually enticing. Pants, he writes, are preferable since they at least cover the entire leg. Mini-skirts are a graver violation of modesty than pants because they expose the *shok*, which he defines as thigh and which is a type of *ervah*. This kind of garment comes close to exposing the actual *ervah* and must be vehemently protested.

Nonetheless, although he does not prohibit them outright, he is not comfortable with pants. He calls them an arrogant form of dress that attracts the attention of onlookers. He is also aware that the young women who are resisting parental and school authority may very well leave the schools and slip farther away from a life of religious observance. The difficult decision to allow pants in this situation shows an awareness for the reality of the situation.

Nonetheless, it is hardly surprising given all that we saw above, that Rabbi Eliezer Waldenberg attacked Rabbi Ovadia Yosef for his perceived soft position on pants.

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| **Tzitz Eliezer Vol. XI, 62 (Getsel Ellison translation)**  Our greatest legal authorities have raised their voices against those who by seeing a pretext for leniency regarding women’s trousers have made themselves “scoundrels with Torah approval”. They have ruled that the Torah simply forbids such trousers with these words “A woman shall not wear male articles” (Deut. 22:5)  Clearly, none of the halakhic differentiations presented by the poskim apply to shameful garments such as these. By their very nature, their abominable arrogance is evident for all to see, as are the lustful thoughts of those who wear them. By exposing the shape of the leg and by accentuating the figure, they are the living fulfillment of “They make a tinkling with their feet” (Isaiah 3:16) It goes without saying that they are forbidden in terms of *Kli Gever*.  Such trousers lay a wicked trap to ensnare young Jewish males in the net of promiscuity. They are almost certainly to be considered accoutrements of fornication. Hidden in their very shape and form is a poisonous incitement to sexually forbidden acts. |

Rabbi Waldenberg condemns the few rabbinic authorities that explain why pants are not male articles. They are not only *kli gever,* writes Waldenberg*,* but also conduits to lust and sexual thoughts. To his mind, they are *ervah* personified. Though there may not be even a *tefah* uncovered on the woman’s body when she wears pants, this kind of clothing is so sexually perverse that he calls them accoutrements to fornication. In contrast to Rabbi Ovadia Yosef, he feels the mini skirt is preferable than pants because it fits into the accepted category of women’s apparel:

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| And in truth, wearing pants causes drawing close to abomination, even worse than the wearing of a mini skirt….for according to what is told, the promiscuous males stand in the middle of the street or at the side with the promiscuous females, the type who wear pants and they draw near to one another and rub against one another through the pants, something that can be avoided when wearing a dress.” |

It seems that the two approaches reflect the different world views of each authority. Rabbi Ovadia Yosef was willing to acknowledge the present reality of women’s dress even though he protested its inevitability. Rabbi Waldenberg, in contrast, felt that any acknowledgement was to be seen as a concession that would cause greater damage in the future. To his mind, it was better to totally and absolutely reject pants as an option rather than accept the reality as a given[[129]](#footnote-129).

**Female Respectability**

The pants topic touches not only on questions of *shok*, *ervah* and cross dressing but also on matters of communal identity and gender affiliation. Rabbi David Bleich in a brief analysis brought in the journal *Tradition* [[130]](#footnote-130), moves away from the strictly halakhic questions of male apparel and male sexual desire to a broader issue involving rabbinic authority and community[[131]](#footnote-131).

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| A number of years ago, the question of the propriety of slacks was presented to a number of prominent scholars by Rabbi Yom Tov Lippa Deutsch… All of the Rabbis whose views on this matter are published in *Taharat Yom Tov* replied in the negative…  …While there is little doubt that in many instances the type of slacks currently in Vogue do not conform with halakhic norms of modest dress, it is difficult to agree that this must necessarily always be the case. For example, an ensemble including slacks designed to be worn under a long modestly cut tunic does not appear to be inherently immodest… The governing concern is that those viewed as exemplars of Torah study, whether male or female, comport themselves in a way which enhances rather than detracts from the honer and esteem in which Torah is held. **Hence, it would seem that as long as slacks are viewed as improper attire by significant segments of the Jewish community, the wearing of such garb by those charged with bearing the banner of Torah should not be sanctioned.** |

After reviewing the halakhic source material presented above, he considers a third possibility— the social religious aspect. He brings an innovative suggestion when he refers the reader to a section of Mishna Torah in which Maimonides describes garb appropriate for a Torah scholar and concludes that both men and women who study Torah and reflect the values of a life committed to Torah should also wear clothing that remind them to comport themselves accordingly and identify them with such a lifestyle. It is a sharp turn away from the dialogue around sexuality, promiscuity and *ervah*, suggesting a nuance in line with modernity in veering from absolute prohibition to aspiration.

Finally, Rabbi Getsel Ellinson presented a nuanced approach in his in-depth analysis of women and pants that focused more on the religious community’s standards of identity and belonging.

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| Another factor that must be taken into account, however, is the existence of a community of modest Jewish girls with their own standard. The fact that they are careful to wear only skirts affords significant weight to this structure. By wearing a skirt, a Jewish girl identifies with this group and separates herself from other permissive circles.  To a certain extent, in the last few decades the skirt has become a sort of “yarmelka” for the scrupulously observant girl who strives to follow our sages’ ethical guidelines as reflected in their halakhic rulings. By her refusal to wear trousers, she demonstrably declares that she is unwilling to resign herself to the dictates of modern style and that she takes exception to the immorality so rampant these days in society at large.  For the modest young woman who comes into contact with that society in the context of her daily work or study, this last factor has special import. Such girls need a constant reminder that they do not identify with the values and lifestyle of their surroundings. My daughter once scored this point saying, “Even if it could be proven beyond the shadow of a doubt that there is nothing wrong with wearing trousers, I would still continue to avoid them.” |

Ellinson was the first one to place the choice ultimately made by women at the center of his assessment. He regarded it as an empowering statement on the part of young women to choose a dress code that distinguishes them from the society at large. By calling the skirt the equivalent of the “yarmelka,” Ellison moves away from questions of modesty and male sexual arousal and focuses instead on identity, values and lifestyle. In quoting his daughter at the end of the footnote, he consciously includes a woman’s voice in his writing, something that was not present in any of the other rabbinic sources quoted.

**Final Thoughts**

The prohibition of cross dressing remains strikingly prominent around the question of women wearing pants. On one hand, this anchors the discourse within a Biblical text, giving clarity to the prohibitive nature of a practice. On the other hand, it feels artificially forced since it contradicts the actual nature of the prohibition as interpreted for 2000 years. There is substantive difference between the cut of men’s and women’s pants, including jeans, and women are not trying to resemble men when they wear these garments. Pants today are so ubiquitous that in fact, women may cause more attention by wearing a skirt! If we go out to the marketplace to see how people are dressing respectfully and respectably, women are wearing pants both loose and tight, to work, school and for elegant dress. In the words of Rabbi Getsel Ellinson, “It is difficult to sustain this idea [cross dressing]…and it seems that the ruling of the authorities stems not so much from formal halakhic considerations as from an aversion to the phenomenon itself and to the tendencies it reflects[[132]](#footnote-132).”

This approach, based on cross dressing, breathes new meaning into the Biblical prohibition. There is an underlying concern that in wearing a garment that had previously been limited to men, women will obliterate a major external difference between the sexes. This obliteration, seen through the eyes of a traditional society based on gender distinction, reflects social and moral chaos and upheaval within the fabric of the family. This fear is particularly exacerbated at a time when the binary structure separating men from women in greater society as well as in some religious spaces has begun to dissolve.

The second approach veers away from cross dressing towards concepts of *ervah*, gender separation and modesty norms[[133]](#footnote-133). This halakhic discourse has fluidity based on habituation and the norms of society. The recent responsa, instead of acknowledging a changing reality and the habituation of societal standards to women wearing pants, voice a clear protest by decrying the desecration inherent in the wearing of such garments, leading to abomination, perversion and absolute moral anarchy. Such virulent rhetoric using words like libertine, wanton, loose and licentious, suggests a certain weakness in formulating a carefully constructed explanation to prohibit such apparel.

The third and most moderate approach is less source based and more focused on the skirt as a sign of religious commitment and identity. This has been in many ways the most successful argument presented in religious communities and schools since it avoids focusing on male *yetzer* and cross dressing. If we look at dress as reflecting religious affiliation and identity, the religious man has tallit and tefillin to mark him in sacred space and kippah and tzitzit in public space while women have no parallel ritual garments. It has been suggested that the skirt, although not a ritual garment per se, serve as a sign of religious identity in the manner of kippah for men[[134]](#footnote-134). In such a way, the skirt is presented as an empowering choice on the part of women to identify with the objectives of a God-fearing religious society. Along these lines, young women are educated to believe that the skirt (along with longer sleeves) represent a greater form of self-respect by desexualizing the way they dress in line with the norms of religious expectation.

Nonetheless, upon close examination, this third approach too fails to convince those women searching for clarity. If anything, it further widens the chasm between men and women in modern Orthodox settings where boys and girls learn side by side and men and women work together as equals. Skirts or long clothing that demonstrate externally a woman’s Avodat Hashem or commitment to the One Above works well in ultra-Orthodox communities where men also have a clear dress code that identifies them as belonging. In contrast, in modern Orthodoxy, men’s clothing is hardly restricted beyond respectability. Men wear kippah and tzitzit but it is even acceptable for an Orthodox man to remove his kippah at work if he feels uncomfortable and tzitzit are almost always tucked in. Furthermore, men can wear baseball caps or other mainstream apparel in lieu of the kippah, allowing them to blend into secular society.

Finally, in these communities, religious men will hardly notice what women are wearing with the exception of tight or particularly revealing clothing, given how ubiquitous jeans, short sleeves, even sleeveless tops are in the classroom and workplace. The Rishonim were correct in recognizing that habituation to a large extent neutralizes *yetzer*.

For modern Orthodox women the gap between expectations of men and women in dress exacerbates a cognitive dissonance in maintaining a structure of halakha that does not reflect their realities. In other words, none of the arguments are convincing: pants are not men’s garments nor are they promiscuous. While the skirt equaling kippah for women is a nice idea, it does not bear with it a sense of halakhic obligation.

Nonetheless, many are aware that it is the unfortunate truth that women who choose to wear pants are perceived as less committed to religious observance. By equating self-respect with halachically acceptable dress choices, women who dress otherwise can be perceived as immodest and promiscuous even if their clothing is modest and respectable.

Thus, the angst filled conversations I have with my students as they try to embark on the next stage of their religious journey, after seminary, usually onto secular college campuses.

I often urge my students to avoid defining their religious commitment solely around the decision to wear or not wear pants. We talk about the Jewish concept of *tzniut* or modesty which as a central value should inspire thoughtfulness in dress, language and comportment, equally affecting men and women. When the prophet Micah preached, “W*alk modestly with God,*” he was exhorting the people of Israel to strive for a quality that should infuse the very essence of our lives, bringing them (and us) closer to the Divine image within.

If women choose to wear only skirts, then that choice should inspire greater attention paid to how the external can serve to fuel true religious growth rather than relying on a stock uniform to replace internal development.

In the same manner, if women choose to wear pants, then they should feel even more motivated to visibly increase their participation in Orthodox prayer quorums and Torah classes both to reinforce their own commitment to halakah and change social perceptions of what committed Orthodox women look like. Their clear adherence to halakha could challenge religious communities to rethink the paradigms around standards of dress. Instead of constantly fighting and/or resenting modesty norms imposed upon them, women should strive to make thoughtful decisions around dress choices and how it reflects their inner commitment to Torah and mitzvot.

Chapter 3: The Voice of a Woman

Samuel, an important Amoraic sage from the 3rd century C.E. in Babylonia famously stated “*Kol B’Isha Ervah*” or “The Voice of a Woman is *Ervah*”, loosely translated as ``uncovered nakedness”. The voice however, cannot be naked in the same way that hair and body parts can be uncovered and exposed. A more accurate interpretation might be indecent exposure to a source of sexual intimacy, with the woman’s voice constituting the source. The prohibition is often associated with the singing voice of a female over the age of 9-11 years but according to some authorities, it can extend far beyond that. For instance, the voice of a woman (hereafter: *kol isha*) might include women saying the mourners prayer (hereafter: kaddish) aloud in a synagogue or speaking words of Torah or saying eulogies, in spaces which include both sexes.

The halakhic perspective on this issue is yet another component of the meta halakhic conversation regarding female identity in Orthodox Judaism and how religious society seeks to desexualize both sacred and non-sacred spaces. As mentioned in previous chapters, issues of Jewish identity for women and modes of dress often reflect religious commitment, identity and communal affiliation. There are empowering aspects to the choices women make regarding dress and hair covering, and in the end, they largely do not interfere with social interactions within Orthodox community even if women choose to reject dressing according to acceptable communal religious norms.

*Kol Isha*is different in several ways. First, this restriction is not about religious identity per se. Instead, it is a law that focuses on the female voice solely as a trigger for potential male sexual arousal. In consequence, there is nothing to be gained for women’s religious practice outside of protecting men from sexual distraction.

A popular Jewish website aimed at explaining Judaism to those less affiliated encapsulates this concern and reflects the perceived ideology behind the restriction:

Men and women have different criteria for sexual arousal. Hearing a woman sing is sexually arousing for a man….While it might be hard for a woman to imagine such a thing, the Sages are very in tune with human nature - and this rule has.. been observed by Jews for thousands of years. So with this in mind, when the Torah sets up barriers to protect society's moral fabric, the emphasis was placed to counter the reality of man's weaker character in these areas. Hearing the pleasant melody of a women singing is just one way a man could become aroused, therefore he should avoid this medium, given that we are obligated to refrain from exposing ourselves to erotic situations[[135]](#footnote-135).

This premise has always felt dissonant from the outset given how prevalent verbal gender interactions are between men and women even within insular Orthodox communities. If men are familiar with women’s voices, even a beautiful voice raised in prayer or meaningful song should not be a conduit to sexual thoughts unless by deeming it such, we essentially sexualize it from the outset. Furthermore, *kol isha* is exclusionary in a way that privileges men. Preventing women from speaking in front of men, or singing together with or in front of men, is tantamount to silencing them or rendering them invisible. It can block women from active participation at professional, social, communal and national events in synagogues, schools and even at the Shabbat table in some cases.

A look at contemporary ***halakhic*** literature heightens this reflexively negative response to women’s voices. However, as we will see, there is much room to re-evaluate this particular prohibition especially in mainstream Orthodox communities.

**Part One: Samuel’s Statement**

The Talmudic text in tractate Berakhot serves as the main source for the introduction of women and *ervah* into the rabbinic discourse[[136]](#footnote-136).

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| **Berachos 24a**  **Samuel said: The voice of a woman is nakedness as it says (Song of Songs 2:14) "for your voice is sweet and your countenance comely."** |  |

When the Babylonian Talmud quotes Samuel stating that the voice of a woman is nakedness, it does not bring a verse from the Torah to buttress his statement, but a poetic expression of love from a verse in Song of Songs, “*your voice is pleasant and your appearance is comely*”. The verse however, does not give us specific information about the voice being described. In this chapter of Song of Songs, the woman is the main speaker. It is she who recalls the time that her beloved described her voice as pleasant and her appearance as lovely. Throughout the chapter, she describes their elusive love for one another and the yearning for the belonging they ardently seek. There is no indication that the voice described is of one singing.

Samuel’s declaration is grounded in the language of the male (as recalled by the female) but it is not clear to what end he is making this assertion. It is likely that the usage of the verse reflects the tonal differences between male and female voices, the latter which are typically higher pitched than the former and therefore, attractive to men[[137]](#footnote-137). It is also possible that Samuel’s statement is to be understood in context. Song of Songs is a book with erotic allusions. Perhaps there is the suggstion that erotic conversation between men and women is analogous to *ervah*. The text does not have any obvious practical application other than a warning against the latent promiscuity embedded in all potential encounters between men and women. This understanding is reinforced by studying two other places where Samuel’s statement is cited in the Talmudic corpus.

The first is from the Jerusalem Talmud where the permissibility of a woman performing the mitzva of halla while naked is considered. The entire text was quoted in chapter one. Here the excerpt will focus on the teaching of Samuel:

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| Jerusalem Talmud Halla, 2:1  **Samuel** said: Hearing the voice of a woman is forbidden on grounds of *ervah*. What is the reason? *It shall be that from the voice of her whoring, the land will be polluted.* |  |

The verse quoted in the Jerusalem Talmud as Samuel’s prooftext gives far more insight into his statement than the verse in Song of Songs, since it actually refers to a voice of whoring in the sense of prohibited sexual relations. Its placement, immediately after a Tannaitic text about a man who gazes at the body of an *ervah* and is accused of virtually having intercourse with her, is central to its understanding. Almost having intercourse is never legally the same as actually having intercourse. However, the Talmud warns that visual stimuli can inflame a man’s desire and create a framework which might lead to prohibited intercourse. In this context, placing Samuel’s statement immediately after suggests that not only visual stimulation can be dangerous but audible stimulation as well. There is no distinction between the speaking or singing voice. What seems relevant is the context of the voice and content of the conversation[[138]](#footnote-138).

This statement of Shmuel appears in one more place in the Talmud.

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| תלמוד בבלי מסכת קידושין דף ע עמוד א  אמר ליה: תיתי דונג תשקינן, אמר ליה, הכי אמר שמואל: אין משתמשים באשה. קטנה היא! בפירוש אמר שמואל: אין משתמשים באשה כלל, בין גדולה בין קטנה. נשדר ליה מר שלמא לילתא, א"ל, הכי אמר שמואל: קול באשה ערוה. אפשר ע"י שליח! א"ל, הכי אמר שמואל:  אין שואלין בשלום אשה. על ידי בעלה! אמר ליה, הכי אמר שמואל: אין שואלין בשלום אשה כלל. שלחה ליה דביתהו: שרי ליה תגריה, דלא נישוויך כשאר עם הארץ | Kiddushin 70a  Rav Naḥman **said to him: Let** my daughter **Donag come** **pour us drinks.**  Rav Yehuda **said to him: This is what Shmuel says: One may not make use of a woman**  Rav Nahman: **She is a minor.**  Rav Yehuda retorted: **Shmuel explicitly says: One may not make use of a woman at all, whether** she is **an adult or a minor.**  Rav Naḥman suggested: **Let the Master send**  **peace to** my wife **Yalta.**   Rav Yehuda **said to him: This is what Shmuel says: A woman’s voice is** ***ervah***  Rav Naḥman responded: Via **a messenger.**  Rav Yehuda**said to him: This is what Shmuel says: One may not send greetings to a woman** (even with a messenger)  Rav Naḥman countered: **with her husband!**  Rav Yehuda **said to him: This is what Shmuel says: One may not send greetings to a woman at all.** |

The context of this discussion is conversation, specifically the extending of greetings to a married woman even via her husband. Rav Yehuda repeatedly rejects Rav Nahman’s attempts to involve his daughter Donag and his wife Yalta in the hospitality extended towards him. Rav Yehuda quotes Samuel over and over again when rejecting all of Rav Nahman’s seemingly moderate suggestions. This excerpt is part of a longer ongoing conversation between Rav Nahman and Rav Yehuda in which the latter continuously quotes Samuel while correcting Rav Nahman’s teachings on various topics. Samuel’s teachings about women appear in the middle of this textual unit.

This source, in which Rav Yehuda quotes Samuel saying that the “voice of a woman is *ervah*” stands as a “fortified wall”, to quote modern rabbinic authority Rabbi Moshe Lichtenstein, against any attempt to distinguish between different kinds of voices, since it is clear that that what is at hand is a greeting. In other words, the Talmud understands Samuel’s statement as restrictive of all conversation with women by equating the voice of a woman to *ervah*[[139]](#footnote-139). Even the suggestion of encountering a woman’s voice via her husband, is defined by Rav Yehuda in the name of Samuel as *ervah*, serving as a stern warning against all conversation between the men and women[[140]](#footnote-140).

To summarize, Samuel’s statement appears in three places in rabbinic literature but none of them directly reference singing. Post-Talmudic interpretation of the sources will be paramount in extracting practical applications since the Talmudic statements themselves give no such clarity.

PART II:

A second selection of sources in the Talmud is also relevant to this discourse. These sources present an attitude of suspicion over song in general and have less to do with women singing but they are important nonetheless for our analysis.

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| **Mishna Sotah 9:11**  When the *Sanhedrin* ceased, **song ceased** from the places of feasting, as it is said, “They drink their wine without song” (Isaiah 24:9)  **Sotah 48a (translation Sefaria and Jastrow)**  Rav Huna said: the song of boat haulers and plowers is permitted, of the weavers is forbidden…  Rav Yosef said: men singing with women answering [constitutes] immodesty; women singing with men answering is like [setting] fire to sawdust.  What is the practical distinction [between the two]?  The abolishment of the [latter] should precede the [former].  Rav Yohanan said: Anyone who drinks accompanied by four musical instruments – brings upon the world five punishments, as it is written (Isaiah 5:11): ‘Woe to those who rise early in the morning, pursuers of strong drinks, who stay up late into the night; wine will inflame them, and it will be that the fiddle and the harp, the drum and the pipe, and wine at their parties, and they will not behold the actions of God’… |

In this source, we read about the tremendous mourning experienced in the aftermath of the destruction of the Sanhedrin and the Temple. The Mishna tells us that song ceased. The Talmud then tries to understand what kind of song ceased. Is it all song or only overly joyful or promiscuous song? Different Talmudic sages from the 4th and 5th century CE in the land of Israel and Babylonia are brought into conversation around the general topic of music and song. Rav Huna explains that boat haulers and plowers can continue to sing but weavers are prohibited[[141]](#footnote-141). Rav Yosef cautions harshly against men singing with women answering (in song) and women singing with men answering. He calls the former immodest and the latter he describes as setting fire to sawdust, presumably because of the potential conflagration when the women and men interact in such a way. The Talmud does not pause to define the type or content of the songs being sung. Nor does it quote Samuel saying the voice of a woman is *ervah*. In the next passage it quotes Rav Yochanan who warns against drinking and listening to musical instruments for that will bring calamity to the world. The Talmud then moves onto the next part of the Mishna which has nothing to do with song or with women.

In modern discourse, the line quoted from tractate Sotah about men singing with women and women singing with men is cited as another source that prohibits *kol isha* but it is misleading to quote those lines out of context. There is no connection made to Samuel’s statement or to *ervah*, nor are any proof texts from Scripture cited. In the parallel passage in the Jerusalem Talmud, there is no direct reference to plowers, weavers, or men and women, but there is a reference to the type of song that must be eradicated in the absence of Sanhedrin:

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| **Jerusalem Talmud Sotah 9:11**  In the beginning, the fear of Sanhedrin was on them and they did not say words of obscenity in song. But now, when the fear of Sanhedrin is not upon them, they recite words of obscenity in song. |

The Jerusalem Talmud seems to clarify the overarching concern in the Babylonian Talmud. The problem, according to this Talmudic text, is the content of the songs and not the identity of the singers. Read together, these two texts about the content and context of song fit well with concern for immodest interaction between men and women leading to promiscuity in society which is an overall theme in rabbinic literature.

Another related source worth noting is a passage in Gittin:

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| **Gittin 7a (translation Sefaria)**  **They sent to Mar Ukva: From where do we know song is forbidden**  following the destruction of the Temple?  **He … wrote to them: “Rejoice not, O Israel, to exultation, like the peoples”** ([**Hosea 9:1**](https://www.sefaria.org.il/Hosea.9.1)).  **And let him send them** **from here: “They do not drink wine with a song; strong drink is bitter to them who drink it”**([**Isaiah 24:9**](https://www.sefaria.org.il/Isaiah.24.9)),  **If**  **by**  **that** verse, **I would say** **this matter** applies only to **instrumental music,**  **however, vocal** song is **permitted.** Therefore, Mar Ukva **teaches us** that all types of song are forbidden. |

In this source, all instrumental music and song is prohibited in order to eliminate unbridled joy, even at moments of happiness. The subject of women in particular does not come up at all. However, it serves to reinforce the Sotah text which ends with a blanket restriction on music after the destruction of the Temple. In short, while there is one statement by Rabbi Yosef in the Sotah text restricting men and women from singing to one another, there are many more statements regarding significant restrictions on music and song. An attempt to uphold these limitations well into the post-Talmudic era was untenable. Despite the destruction of the Temple which was supposed to etch eternal mourning into our daily lives, Jewish communities embraced joyous singing and even drinking and singing at religious events and on the Sabbath. Returning to the subject at hand, it seems fairly clear from the text that the caution is around songs containing giddiness and immodesty, sandwiched as Rabbi Yosef’s statement is between Rabbi Huna who denounces the weavers’ songs and Rabbi Yochanan who warns against drinking accompanied by music. Women and men singing together only increases the frivolity and potential licentiousness. The discourse has little bearing on any practical halakhic conversation around the parameters of *kol ish*a except to caution against overly immodest lyrics or behavior while singing.

One last relevant Talmudic source will be brought in this section. In tractate Megilla, the Talmud addresses the question of women reading megilla for men and in a separate source, women being called up to Torah. With regard to Megilla reading, both in the tractate of Megilla and more significantly, in the tractate of Arachin, the Babylonian Talmud concludes that women are obligated in megillah reading and are halakhically capable of reading for the community, including for men. With regard to Torah reading, the text reads as follows:

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| **Megilla 23a**  Our rabbis taught: All may be numbered among the seven [who are called to the Torah on Shabbat], even a minor and even a woman, but the Sages said: a woman is not to read from the Torah on account of **kevod ha-tsibur (honor to the congregation)** | תלמוד בבלי מסכת מגילה דף כג עמוד א  תנו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה. אבל אמרו חכמים: אשה לא תקרא בתורה, מפני כבוד צבור. |

It is certainly noteworthy that none of the sources relating to women reading megillah or Torah, including parallel reference the statement of Samuel that a woman’s voice is *ervah* to justify restricting either Torah or megillah reading by women in public.

**To summarize:**

The Talmudic sources cited above are referring to post-Temple restrictions and concerns for debauchery stemming from songs with inappropriate and crude content. The Talmud takes a strict position against song and music at all gatherings, particularly those involving wine and women. In Tannaitic times it seems that Jews were ordered to abstain from music completely as a sign of mourning. In Amoraic times, the rabbis tried to dissuade people from engaging in song and music with a few exceptions. From both Talmudic and post-Talmudic sources, it seems that they were never completely successful in eradicating song and music, even frivolous song, from Jewish celebrations[[142]](#footnote-142). These sources do not relate to the halakhic issue of women singing. It is unequivocal that songs of a sexual licentious nature are prohibited both in single sex and mixed company. This nonetheless, still does not implicate by association women singing songs of a non-sexual nature such as folk songs, religious songs or lullabies. For instance, the Talmud does not bring up *kol isha* with regard to megillah reading by women for men or women reading Torah in synagogue as the reason for restricting these practices.

**Post-Talmudic Interpretation**

In the wake of the analysis of Talmudic text, it remains to be determined what the halakhic implications are for women speaking or singing in mixed company.

1. Is a woman’s voice always considered *ervah* as suggested by the source in Kiddushin?
2. On the other hand, given the source in Berakhot, perhaps it is only when a man is saying Shema?
3. Is there any significant difference between a woman’s speaking or singing voice that can be established based on other Talmudic sources?

The practical status of the different statements around a woman’s voice is a matter of opinion among the post Talmudic authorities who continue to interpret and institute halakha in the period between 1000-1500 CE. There are roughly speaking three schools of thought that emerge. The first rejects the whole premise of *kol isha* as being halakhically irrelevant[[143]](#footnote-143). The second sees it as relevant only within the context of the laws of Shema when defining *ervah* translates into applied halakah. However, familiarity and habituation can neutralize the *ervah* component of a woman’s voice, including her singing voice. The third approach shows concern for the voice of a woman, in totality, serving as a sexual trigger for a man if the man has intent to benefit from her voice.

**Approach Number One: Habituation Neutralizes Sexualization Even During Shema**

The focus of much of the early discourse around defining *ervah* revolves around the recitation of Shema and what prevents a man from saying Shema. In this way, *shok*, voice and hair of a woman are defined as *ervah* only during the recitation of Shema, even with regard to a man’s wife who is intimately familiar to him.This school of thought includes some of the earliest commentary on the Talmud. For example, Rabbi Hai Gaon of the 10th century wrote that a man should not say Shema when a woman is singing but, if she is talking normally or he can concentrate while she is singing it is permitted[[144]](#footnote-144). Rabbeinu Hanenel, also of the 10th century wrote that the voice, although it cannot be seen, nonetheless can stimulate, specifically however, referring to situations where the person is not accustomed to the regular voice of a woman[[145]](#footnote-145). It would seem that both of these comments would permit a man’s wife to be present and vocal even while he is saying Shema or learning Torah without concern for distraction.

The idea that habituation or familiarity can potentially desexualize interaction between men and women was fully developed in chapter three where *ervah* was generally defined and analyzed. In short, if a man is accustomed to the exposure of certain parts of a woman’s body like her hands, feet and face, then there is no concern for arousal. The voice of a woman is also considered within this context. The upshot is that habituation can neutralize the male *yetzer* or sexual drive. This approach opens up greater possibilities for casual interaction between the sexes and more specifically, the opportunity for women to sing in front of men.

An important example of this approach with reference to a woman singing is found in the commentary of Rabbeinu Yonah, a 13th century Talmudist, who concluded that both *Shema* and/or other holy occupations should be prohibited in the presence of a woman’s singing voice but then admits “that because of our sins we sit among the gentiles and are forced to hear the Aramean women singing and this is no longer a deterrent to learning Torah.” In other words, hearing the singing of the Aramean women should have prevented men from praying or learning because of direct exposure to *kol isha* which is *ervah*. However, with its regular occurrence, Rabbeinu Yonah recognizes that habituation neutralized this as a sexual deterrent even when focusing on a holy ritual.

This methodology is central to the interpretive approaches of many important rabbinic authorities at this time[[146]](#footnote-146). In all of the related sources, familiarity and normal exposure serve to desexualize what was previously defined as *ervah*. These include parts of the body normally uncovered (face, hands, feet), the hair of a maiden or hair that escapes a married woman’s veil and a woman’s voice, often without distinction between the speaking and singing voice of a woman.

**Approach Number Two**: **Women’s Voices Are Fundamentally Sexual if Men Intend to Derive Benefit**

There are several responsa brought by Gaonic sages condemning the practice of women entertainers performing at men’s gathering without relying on the trope “the voice of a woman is *ervah*”. The tenor of the mixed interaction seems to determine its prohibitive nature rather than Samuel’s statement, which only seems to be relevant in the Gaonic literature with regard to the laws of Shema[[147]](#footnote-147). This halakhic approach fits well with the Talmudic sources in Sotah, Gittin and the Jerusalem Talmud where lyrics with obscenity or frivolity in mixed company are condemned due to underlying concerns for behavior that will lead to promiscuity.

In a similar way, Maimonides wrote a responsa regarding Jewish men hearing Arab women singing in which he protested the practice because of the content of the songs and the wine being consumed. Here he does indeed cite Samuel’s statement: “the voice of a woman is nakedness…even more so if the woman is singing”. Maimonides premise is that Samuel’s statement refers to the speaking voice of a woman, as codified in his laws of sexual prohibition (see below) where he emphasizes that it is the focus on sexual pleasure that creates the prohibition. In a licentious environment of wine and song (and gentile women!), the concern for impropriety is clear.

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| **Rambam** in Issurei Biah (Laws of Sexual Prohibition) 21:1-2  … And it is forbidden for a person to signal with his hands or feet or to wink with his eyes at one of the women sexually prohibited to him, or to laugh with her or act frivolously, and even to smell the perfume that is upon her or to look at her beauty - is forbidden. And we strike one who intends to do these things with [rabbinic] lashes of rebellion. And one who looks even at the little finger of a woman and intends to derive benefit, is as if he gazes at her private parts. **And even to hear the voice of an *erva*** or to see her hair is forbidden. |

In this passage in Mishna Torah, Maimonides codifies a series of behaviors that must be avoided by men when it comes to women sexually prohibited to them, which includes virtually all women except for his wife when she is not menstruant. Direct physical contact leading to sexual pleasure (short of sexual relations) is prohibited from the Torah. Indirect contact, specifically with the intent to derive sexual benefit, including looking at any part of the woman’s body, hearing the voice of an *erva* or seeing her hair are rabbinically prohibited. There is no distinction made between the singing and speaking voice of the woman. It is the intent to derive pleasure, even if the content and context of the interaction are innocent, that determines the prohibitive nature of the voice.

**To summarize**, many of the approaches expressed in the post-talmudic era establish that not all women’s voices are prohibited and that there is no specific prohibition for a woman’s voice to be heard. They distinguish between voices associated with or leading to sexual pleasure or intimacy along with concern for resulting sexual thoughts on one hand, and a voice which does not invite sexual thoughts and has no suspicion of doing so on the other. It is possible to conclude from this thread of interpretation that if singing involved sexual lyrics or sexualized movements, it would be prohibited while singing of liturgy, lullabies or simple folk songs could be permitted. Habituation emerges as a fundamental distinction in defining whether certain things like voice or hair are objectively *ervah* or not. Even in the seemingly more restrictive approach which supports Samuel’s statement that the voice of a woman is *ervah*, content and context of the “uncovered” voice matter. Maimonides specifies intent to derive sexual pleasure as determinative of transgression when listening to a woman’s voice.

While strong concern is expressed for subjective factors regarding female-male interactions that can turn an innocent interaction into one charged with sexual possibility, there does not seem to be a fundamental prohibition for women to sing in front of men once it is established that women and men can interact in an appropriate and non-sexual way. The familiarity/habituation principle seen in the writings of major halakhic authorities from the early Middle Ages onward could certainly be applied to permit women’s speaking and singing voices in the company of men.

This summation was also expressed by the late Rabbi Yehuda Herzl Henkin, a significant contemporary halakhic authority:

“We have seen, then, that there exists a trend – not a dominant trend, but a trend – within halakhic thought that in interactions between the sexes that might ordinarily lead to *hirhur* (sexual thoughts), frequency and familiarity of contact can be a mitigating factor, and that a community can legitimately rely on this ‘in using the services of and speaking to and looking at women’[[148]](#footnote-148).

However, Rabbi Henkin, recognizing that the habituation/familiarity principle could be taken to an extreme in the modern secular world in which the boundaries around speech, dress and comportment are minimal, added an important caveatet:

“No degree of frequency and familiarity can legitimize what is intrinsically or intentionally sexually stimulating. Examples are immodest or provocative dress, erotic performances and entertainment and other pitfalls too numerous to be listed. A sin indulged in a thousand times remains a sin.”[[149]](#footnote-149)

This last point is a fitting response to those who might apply the halakhic concepts of familiarity and habituation to remove most boundaries in a world in which there is an almost non-existent dress code, a ubiquitous sexualization of lyrics and language prevalent in daily conversation and, certainly on many music platforms “nakedness” is virtually uncovered everywhere. Nothing is further from the halakhic truth. Certain behaviors, including types of dress and language remain fundamentally sexualized regardless of familiarity and can never be permitted. The question remains, does this objective sexualization include a woman’s singing voice, as applied by the majority of Orthodox communities worldwide today.

If the laws of *kol isha* would rest largely on the concepts of familiarity, habituation and intent, there would be little to assess in terms of practical halakha today. However, the premise that a woman’s voice, even when speaking, has the requisite potential to trigger male sexual response or foster promiscuity remains present in the halakhic literature. While a woman’s voice will not be *ervah* **all** of the time, first and foremost, extreme caution must be taken when evaluating any situation in which a man will be exposed to this **potential** source of *ervah*.

**Shulchan Aruch until today**

We will begin the final section with the Shulchan Aruch, given its centrality in all contemporary halakhic analysis. Rabbi Joseph Karo lays out his concerns in Even Haezer very clearly around the halakhot of behavior between the sexes. In this way he sounds very much like Maimonides as we have seen above and in chapter 3.

**A person must stay very far from women**. He is forbidden to signal with his hands or his feet, or to hint with his eyes, to one of the sexually prohibited relationships. He is forbidden to be playful with her, to be frivolous in front of her, or to look upon her beauty. Even to smell the perfume upon her is forbidden. He is forbidden to gaze at women doing laundry. He is forbidden to gaze at the colorful garments of a woman whom he recognizes, even if she is not wearing them, lest he come to have [forbidden] thoughts about her. If one encounters a woman in the marketplace, he is forbidden to walk behind her, but rather [must] run so that she is beside or behind him. One may not pass by the door of a promiscuous woman [or: a prostitute], even four cubits [around 6–8 ft or 2–2.5 m] distant. If one gazes even at the little finger of a woman with the **intent to have pleasure** from it, it is as though he gazed at her shameful place. **It is forbidden to listen to the voice of an *erva* or to look at her hair**. If one **intentionally** does one of these things, we give him lashes of rebellion. These things are also forbidden in the case of ordinary Biblical prohibitions.

In general, Shulchan Aruch advocates for strict gender separation in order to prevent men from having sexual thoughts. However, he does not focus on the singing voice as being uniquely erotic. Furthermore, in the laws of Shema, he makes a curious distinction.

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| **Shulchan Aruch Laws of Shema 75**  One should be careful from hearing a woman's singing voice at the time of the recitation of the Sh'ma.  **Gloss:** And even with his wife. But the voice that is normal has no [element of] nakedness in it. | שלחן ערוך הלכות קריאת שמע ע"ה  יש ליזהר משמיעת קול זמר אשה בשעת ק"ש הגה ואפי' באשתו אבל קול הרגיל בו אינו ערוה [ |

There are a few things to note in the text cited above. While saying Kriat Shema, “*a man should take caution not to hear the singing voice even of his wife*”. Rabbi Karo gives warning, but does not prohibit hearing a woman’s singing voice. This language suggests that number one, the speaking voice is a non-issue even during Shema, and number two, the singing voice is not fundamentally erotic. In his standard gloss to Shulchan Aruch, Rabbi Moshe Isserles steps in to clarify that point by adding “*a voice – singing or speaking – that a man is accustomed to, is not ervah*”.

When integrating the texts brought above from Even Haezer together with the laws of Kriat Shema, it is possible to conclude that intent to benefit sexually from hearing the voice of a woman is prohibited and that the singing voice of a woman is not inherently prohibited, even during Shema, if there is no intent and there is familiarity.

**Modernity and Kol Isha**

The shift towards defining *kol isha* as a particular prohibition with regard to a woman’s singing voice is well reflected in the 17th century commentary of Rabbi Abraham Gombiner, known as Magen Avraham, on Shulchan Aruch and later in the early 20th century commentary of the Mishna Berurah written by Rabbi Israel Meir Kagan. It seems that around this time, a blanket prohibition on women singing emerges across the observant world.

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| **Magen Abraham Laws of Kriat Shema 75:3**  6. Singing voice of a woman. Even a single woman. And see the laws of Even Haezer [in Shulchan Aruch] that the singing voice of a married woman is always prohibited but the speaking voice is permitted. | מגן אברהם על שולחן ערוך אורח חיים הלכות קריאת שמע סימן עה סעיף ג  ו (פמ"ג) (מחה"ש) זמר אשה. אפי' פנויה (ב"ש) וע' בא"ע סימן כ"א דקול זמר א"א לעולם אסור לשמוע אבל קול דבור' שרי (ל"ח): |

As noted above, Shulchan Aruch does not single out the singing voice of a prohibited woman in Even Haezer. Moreover, nowhere does he prohibit a woman from singing above and beyond the obvious restrictions regarding content, context and intent to derive sexual pleasure. In the Magen Avraham, a married woman’s singing voice is defined as always prohibited while all women who sing, even those who are permitted like his wife as well as single women who are not fundamentally prohibited, are restricted from singing while a man is saying Shema. This addendum which assumes a fundamental prohibition of a married woman’s singing voice but not her speaking voice seems to be an innovation that has no precedent and does not reflect the language of Shulchan Aruch although it is attributed to it.

In the late 19th century, Rabbi Israel Meir Kagan, author of Mishna Berura, took this idea of prohibiting women singing one step further towards greater stringency.

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| **Mishna Berura Laws of Shema 75:3**  17. *Singing of a woman*. Even a single woman. However, if it is not during Shema, hearing the singing voice of a single woman is permitted but he must not have intent to enjoy it so that he not come to have sexual thoughts. The singing voice of a married woman and of all other sexually prohibited relationships are forever prohibited and also the single woman who is Nidda (menstruant) is also in the category of sexual prohibition. And our single women (literally virgins) are all considered Niddot from the time of their first menstrual cycle.  18. *That he is familiar with*. What Shulchan Aruch meant to say is that a voice he is accustomed to and will not come to have sexual thoughts from. [Mishnah Berurah understands this to implicitly mean a woman’s speaking voice. He has already issued a blanket prohibition on the singing voice of all women from puberty onward] And even that of a married woman. But even so, it is prohibited to have intent to have benefit from her speaking for it is even prohibited to have benefit from looking at her clothing. | משנה ברורה על שולחן ערוך אורח חיים הלכות קריאת שמע סימן עה סעיף ג  (יז) זמר אשה - אפילו פנויה אבל שלא בשעת ק"ש שרי אך שלא יכוין להנות מזה כדי שלא יבוא לידי הרהור וזמר אשת איש וכן כל העריות לעולם אסור לשמוע וכן פנויה שהיא נדה מכלל עריות היא ובתולות דידן כולם בחזקת נדות הן משיגיע להן זמן וסת. וקול זמר פנויה נכרית היא ג"כ בכלל ערוה ואסור לשמוע בין כהן ובין ישראל.  (יח) הרגיל בו - ר"ל כיון שרגיל בו לא יבוא לידי הרהור ואפילו מא"א ואפ"ה אסור לכוין להנות מדיבורה שהרי אפילו בבגדיה אסור להסתכל להנות: |

In the Mishnah Berura’s commentary, we see a final immutable turn away from the plain understanding of Shulchan Aruch that allowed for moderation and nuance depending on context, circumstance and intent regarding a woman’s singing voice. Building on the Magen Avraham’s blanket prohibition for married women to sing under any circumstance, the Mishna Berurah initially concludes that an unmarried woman could potentially be permitted to sing outside of a man saying Shema since unmarried women are not fundamentally prohibited to men. Rabbi Kagan then rejects this, concluding that all unmarried women are presumably *niddah* and thus, fall into the category of sexually prohibited even though they are not married. Finally, he states unequivocally that the only voice that could fall into the category of familiar is the speaking voice provided that a man intentionally does not benefit from such verbal interaction. This ruling leads to many Orthodox communities restricting girls from singing in any public or communal way beyond the age of 11, and sometimes even 9, when a girl could potentially begin to menstruate.

To clarify, the majority of rabbinic authorities in the last few centuries have ruled in keeping with the Magen Avraham and Mishna Berura so that the earlier discourse seen summarized clearly in the Shuchan Aruch is virtually erased. The greater focus around the statement *kol b’isha erva* is about singing and the process outlined earlier – that the prohibition includes speaking and/or singing if the content or context is sexualized and or unfamiliar, almost completely disappears. Even during Shema, the speaking voice of women is now permitted because of the familiarity argument while the singing voice becomes forever prohibited. Familiarity, habituation and intent (as well as context and circumstance) are rendered irrelevant in the face of the now objective sexualization of women’s singing voices.

Nonetheless, there are isolated rabbinic voices that reject this final determination and three of those voices will be assessed below. The question of the scope of the prohibition and possible permissibility of listening to women sing without intent to derive pleasure are discussed the work of Rabbi Haim Hezekiah Medini in his book *Sdei Hemed*, from Jerusalem in the 19th century. He affirmed that most rabbinic authorities by his time indeed prohibited women from singing. However, he cites Rabbi Aharon de Toledo , the author of *Divrei Hefets* published in Salonika in 1798 who permitted it “so long as it is not a voice of lust-provoked songs and the listener does not intend to derive pleasure from her voice.” *Divrei Hefets’s* concern was over music that might contain illicit content and thus, singing that could lead to inappropriate sexualized thoughts and/or behavior but not over the fundamental sexualization of a woman’s singing voice.

Note that in the 19th century, Rabbi Toledo, who most accurately reflects the halakhic discourse presented in the Talmud and post-Talmudic discourse outlined above, has become a minority opinion. Nonetheless, Rabbi Medini acknowledged that his position was a legitimate one[[150]](#footnote-150). Most contemporary responsa who prohibit women singing under any and all circumstances reject or ignore the analysis brought in *Divrei Hefets* but they without any prooftext to undermine his thesis. Given that it is dated post Shulkhan Aruch and has lasting halakhic integrity because of its continuity with earlier rabbinic texts dating back to the Talmud, it should remain relevant for rabbinic authorities seeking a lenient opinion on the matter.

Around the time that Rabbi Medini was writing his responsa in Jerusalem in the 19th century, Rabbi Azriel Hildesheimer and Rabbi Samson Rafael Hirsh, two leading rabbinic authorities from the more modern Jewish communities in Germany permitted men and women to sing Shabbat songs (*zemirot)* together in a family setting. In order to avoid refuting the prevalent ruling which prohibited all women from singing, they based their permissibility on an unprecedented but innovative use of תרי קלי or two voices not being significant. To clarify, the idea of two voices appears in the tractate of Rosh Hashana to explain why two people cannot read Torah simultaneously because there is no way to distinguish who is reading[[151]](#footnote-151). Rabbis Hildesheimer and Hirsh innovatively suggested that if women sing with men or at least two women sing together, it nullifies the concern for sexual promiscuity since there is no way from the halakhic perspective to clearly distinguish whose voice is being heard.

This methodology would have been unnecessary both in Talmudic and post Talmudic discourse as brought above, since singing songs or *zemirot* on Shabbat would not have violated the mandate of *kol isha* as understood by the majority. Sung around a table in a home and focused on the sanctity of Shabbat, such songsinvolve neither promiscuous behavior nor obscene lyrics. While this did not become the mainstream Orthodox approach, some observant communities rely on the “two voices” construct to permit women to sing at the Shabbat table, in a mixed choir with men, or even to allow a group of women to perform together in a modest setting with appropriate lyrics.

The final rabbinic authority who was significant in reintroducing a moderate approach to women singing was Rabbi Yaakov Yehiel Weinberg, known as Sredei Aish. Rabbi Weinberg wrote a famous responsa in which he permitted boys and girls to sing together during youth group activities in France after World War II. He advocated adopting this permissive approach in deference to the needs of the generation[[152]](#footnote-152).

“However, in our case, since there is no absolute prohibition, but rather a righteous custom and practice of modesty, it is possible to marshal support and to permit the practice in France. For the situation of Jewry has arrived at a point of crisis and if we do not grasp educational methodologies which are tested and crowned with success… the Torah will, God forbid be forgotten among Jews…. In countries like Germany and France, women would feel disgraced and see it as a deprivation of their rights if we prohibited them from joining in the rejoicing over the Sabbath by singing *zemirot*. This is obvious to anyone familiar with the character of women in these countries. The prohibition could drive women away from religion God forbid.”

Noting that the prohibition around women singing is based on custom and practices of modesty, Rabbi Weinberg presents the ability to return to the earlier halakhic approaches seen in which context and familiarity can guide the halakhic discourse rather than the immutable fear of all things sexual regarding mixed gender interaction. More importantly, he recognizes the possible alienation felt by women who will take umbrage at the suggestion that their voices are so sexualized as to require their silence.

Rabbi Saul Berman, a modern Orthodox halakhic thinker, in a comprehensive analysis of the halakhic sources around women singing, summarizes this understanding:

"For the Acharonim [later rabbinic authorities]... *“the voice of a woman is nakedness”* is a declaration that a woman's singing voice, under all circumstances, is to be considered a form of nudity. In light of this proposition, it is understandable that the later rabbinic authorities virtually totally discard the limiting principle of accustomedness which the Rishonim [early rabbinic authorities] used so extensively. …The importance of this position [of Rabbi Weinberg] lies in the fact that it constitutes a major departure from the treatment of a woman's singing voice as a form of [absolute inherent] nudity. It reinstates the tradition of the Rishonim [early rabbinic authorities], that the ban on a woman's voice is functionally motivated and is related to the likelihood of its resulting in illicit sexual activity."

In recent years, Rabbi Moshe Lichtenstein from Yeshiva Har Etzion and Rabbi David Bigman from Yeshivat Gilboa have written responsa that permit women to sing – even alone – in religious or national settings. Reflecting the halakhic positions of the Talmud and post-Talmud interpreters, Rabbi Bigman writes that women could be permitted to sing if the context and atmosphere of the gathering are appropriate and the lyrics of the song, dress of the singer, body language and musical style are not provocative:

“According to this approach, there is no problem with those among our daughters who are modest and upstanding to develop a career in singing, even within the general culture, as long as they do not make concessions of the refined foundations of Torah culture, and do not cooperate with the vulgar, commercialized aspects of the culture surrounding us.”

In an article published in two mainstream Orthodox journals of halakha, Rabbi Moshe Lichtenstein, after an extensive analysis of the topic, concludes with Rabbi Weinberg’s position, recognizing that the needs of the generation are great and for many Orthodox men, women’s singing voices are familiar and cause no possible sexual thoughts or distraction. Furthermore, he writes that he does not need to upend the halakhic structure, but can rely comfortably on the earlier halakhic discourse from the Talmud onward.

Nonetheless, despite the clear interpretive process that could allow for leniency, the majority of halakhic opinions are extremely reluctant to follow the Lichtenstein/Bigman approach. For instance, in his essay “*The Parameters of Kol Isha*”, Rabbi Chaim Jachter, a contemporary halakhic authority, starts by stating unequivocally that “the Gemara (Berachot 24a) records the prohibition of *kol isha*” as a starting point for an analysis that limits and rejects possible moderation. It is difficult to see how Rabbi Jachter extrapolates a clear prohibition from such an ambiguous Talmudic statement, as was presented in the first section of this chapter. What is clear is that the Talmudic text becomes secondary to the layers of interpretation built on top of it, particularly in the last four hundred years. Much of mainstream Orthodoxy, have favored a non-negotiable and very stringent perspective about women singing in front of men. It is further invoked beyond actual singing to prevent women from saying kaddish, (citation is Rabbi Ovadia), as if even hearing a woman’s voice in synagogue violates a sacred taboo that will distract men who are meant to be focused on sanctity.

In essence, *kol isha* has become a sort of battleground in which religious communities are tested regarding their fidelity to perceived halakhic observance. It is another situation in which interpretive rulings above and beyond actual source material dominate the religious playing field. It not only affects the discourse of women singing but also has implications for women reciting kaddish in synagogue and even in restricting women from giving lectures or Torah classes to men.

It is my hope that this chapter has helped explain the interpretive process that has unfolded in the last several hundred years towards an unyielding and halakhically disproportionate attitude of stringency. This restrictive “innovation” in prohibiting women from singing or being heard at all in synagogue has been adopted by many as the only legitimate halakhic approach to *kol isha* but does not need to serve as the final note. The source analysis presented here is meant to give shape to the possibility of reclaiming the “traditional” approach, dating back to the Talmud that actually permits women to raise their voices in joyful song and prayer without fear of sexualizing society.

**Women and Hair Covering**

In many Orthodox communities, when a woman marries, she begins to cover her hair. What is interesting to any observer is the complete lack of uniformity associated with this ritual, in contrast to the hijab for instance, which can vary in color but largely looks the same in terms of its coverage and drape and is thus, easily identifiable. In Orthodoxy the range of hair covering apparel varies tremendously, from a colorful headband to a baseball cap or fedora, to various sized scarves to big hats to human hair wigs that cover some or all of their hair to women wearing wigs and a second head covering to some Hassidic communities in which women shave their heads and wear a kerchief or wig over their bald heads. In addition, a sizable minority of observant women do not cover their hair at all outside of religious spaces such as synagogues or when lighting Sabbath candlesThe topic is rarely neutral, touching as it does on identity, femininity, sexuality and modesty. Many women are searching for religious empowerment through textual study and independent decision making around a mitzva that they seek to make “their own.”

Before exploring some of the contemporary aspects of hair covering, where does the obligation of hair covering begin? People often want to know whether the binding nature of the ritual is Biblically based or rabbinically mandated? Furthermore, if there is a clear obligation with an attendant prohibition, why are there a substantial number of women who choose not to cover their hair when they are committed to the rigorous observance of shabbat, kashrut and the many other minutiae that define life as observant Jews? Why has religious society turned a blind eye to this practice rather than actively condemning it as it does with other transgressions within the community?

The topic of hair covering is broken into two chapters. In this chapter, a textual analysis of sources from the Mishna and Talmud will be assessed in order to understand the rabbinic perspective on head covering. Almost all of the relevant Talmudic sources that reference women and head covering will be addressed in the course of the chapter. Notably absent from all of the quoted sources is any reference to *ervah* or the exposed hair of a woman reflecting nakedness which is often the central statement quoted when the topic of hair covering begins. In other words, *ervah* is not the obvious or stated reason that women are covering their hair in the Talmud.

**Mishna Ketubot: Dat Moshe and Dat Yehudit**

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| **Ketubot 7:6**  The following are to be divorced without receiving their *ketubah*: a wife who violates D***at Moshe* or D*at Yehudit*.**  What is [regarded as a violation of] D*at Moshe*?  Feeding [her husband] untithed food,  having intercourse with him during the period of her menstruation,  not setting apart the dough offering,  or making vows and not fulfilling them.  What is [considered to be a violation of] D*at Yehudit*?  Going out with her head uncovered,  spinning in the marketplace,  or conversing with every man. | **משנה מסכת כתובות פרק ז**  וְאֵלּוּ יוֹצְאוֹת שֶׁלֹּא בִכְתֻבָּה, הָעוֹבֶרֶת עַל דַּת מֹשֶׁה וִיהוּדִית. וְאֵיזוֹ הִיא דַּת מֹשֶׁה, מַאֲכִילָתוֹ שֶׁאֵינוֹ מְעֻשָּׂר, וּמְשַׁמַּשְׁתּוֹ נִדָּה, וְלֹא קוֹצָה לָהּ חַלָּה, וְנוֹדֶרֶת וְאֵינָהּ מְקַיֶּמֶת. וְאֵיזוֹהִי דַת יְהוּדִית, יוֹצְאָה וְרֹאשָׁהּ פָּרוּעַ, וְטוֹוָה בַשּׁוּק, וּמְדַבֶּרֶת עִם כָּל אָדָם. אַבָּא שָׁאוּל אוֹמֵר, אַף הַמְקַלֶּלֶת יוֹלְדָיו בְּפָנָיו. רַבִּי טַרְפוֹן אוֹמֵר, אַף הַקּוֹלָנִית. וְאֵיזוֹ הִיא קוֹלָנִית, לִכְשֶׁהִיא מְדַבֶּרֶת בְּתוֹךְ בֵּיתָהּ וּשְׁכֵנֶיהָ שׁוֹמְעִין קוֹלָהּ: |

In this Mishnaic passage, the text introduces examples of offensive behaviour on the part of the wife that gives legitimate cause to the husband to divorce her without her ketubah. There are two categories related to her possible infraction that are presented. The first is termed Dat Moshe and the second Dat Yehudit. These terms appear very infrequently in the Talmud and their translation is not straightforward[[153]](#footnote-153).

Is Dat Moshe strictly reflecting Biblical law? Biblical laws are referred to in the Talmud as *d’orayta,* or sometimes, laws handed down to Moses from Sinai (if there is no explicit Biblical text), and not Dat Moshe. Dat Yehudit is even more perplexing. Is it a category of rabbinic law? If so, why use such a singular descriptor? Could it refer to custom? The Talmud normally uses the term *minhag* to describe customs and traditionsthat a community voluntarily takes upon itself and treats it as seriously as if it were law, even if based on ignorance[[154]](#footnote-154). The significance for violation of Dat Moshe or Dat Yehudit, is personal to a married woman with financial consequence leading as it seems to divorce and forfeit of her *ketubah[[155]](#footnote-155)*It is not in the realm of religious s.n beyond direct implications to the husband as will be seen below. More to the point, these types of law do not apply to unmarried women.

There are four examples in the Mishna that illustrate the violation of Dat Moshe, a category that suggests a connection to Mosaic law meaning Torah: Feeding the husband untithed food, having relations with her husband when she is Nidda (menstruating), not taking the hallah portion of the household dough and taking vows and not fulfilling them. Three out of four of the examples are situations where she causes her husband or the household to sin although only one, Nidda, is exclusively within her purview. Both tithing and the dough offering are non-gendered commandments and a man could have performed them equally well. The Mishna seems to assume that because a wife would be in charge of the household, her husband relies on her to do these mitzvot. Breach of trust is the thread that connects the first three mitzvot of untithed food, menstrual prohibition and taking the hallah portion from the dough. The fourth, not fulfilling the vows, also touches on a woman’s relationship with her husband. The Mishna states that she makes vows and does not fulfill them, which is a Biblical transgression. The husband is not directly affected. Nonethelesssince he has the power given to him in the Bible, to oversee and nullify her vowsif he chooses, it reflects badly on his reputation or that of his household if she does not uphold them. What are conspicuously absent are the violations of severe Biblical prohibitions, such as desecrating Shabbat, eating non-kosher food or thievery. In other words, her personal transgression of Biblical law, if it only affects her, does not cause her to forfeit her *ketubah* or marriage contract. The forfeiture is only implemented when she violates this typology of Dat Moshe and in large part, causes her husband to sin[[156]](#footnote-156).

The Mishna then presents a second category of behavior termed Dat Yehudit (or Dat Yehudim in some manuscripts of Mishna), literally Jewish practice. While there are no commandments in the Torah that directly forbid these behaviors, they are consequential enough that a man can divorce his wife without a ketubah. Included in the list are a woman going out with a bared head, spinning in the marketplace, talking to men, cursing her husband’s parents and speaking so loudly in the house that her neighbors can hear her. The parallel Tosefta in tractate Ketubot adds a few more examples: going out with clothing open on both sides, baring arms, coarse familiarity with servants, spinning in the marketplace and bathing with everyone [men and women] in the bathhouse[[157]](#footnote-157). In violating either Dat Moshe or Dat Yehudit, loss of *ketubah* serves as a severe penalty and clearly was meant to be a significant deterrent. As mentioned earlier, these practices do not pertain to unmarried women.

Given the severity with which adultery on the part of the wife is treated both in the Biblical text and in all ancient societies, the practice of Dat Yehudit may reflect Jewish society’s desire to prevent promiscuous behaviour on the part of married women. Not only women but also men are called upon to uphold these standards. The Tosefta in Sotah 5:9 reinforces this:

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| Rabbi Meir would say: Just as there are different attitudes in consumption of food, so are there different attitudes with regards to women.  Some men, if a fly [merely] passes over his cup, he sets it aside and does not taste it. That [fly in the cup refers to] corrupted women, when he wishes to divorce his wife [but has not done it yet].  Some men, if a fly falls into his cup, he throws it out and does not drink it. And this is the trait of Papus ben Yehuda, who would lock [the door of the house] before his wife, and would leave.  And there is a man where, if a fly falls in his cup, he throws [the fly] out and then drinks it. This is the trait of any man who sees her speak to her neighbors and relatives, and leaves her be.  And there is a man where, if a fly falls into the plate, he crushes it and eats it. **And this is the trait of a corrupted man who sees his wife go out with her head uncovered, her heart warmed for her servants and maidservants, and spins cloth in the marketplace, and [whose shirt is] open on both sides, and bathes and plays around with the men.** This is the command from the Torah to divorce her, for it is stated [[Deuteronomy 24:1-2](file:///C:\Deuteronomy.24.1-2)] "[When a man takes a wife, and marries her, then it comes to pass, if she find no favor in his eyes,] because he hath found some unseemly thing in her, [that he writes her a bill of divorce, and gives it in her hand,] and sends her out of his house... [and she departs out of his house, and goes and becomes another man's wife.]" The text calls him 'another', implying that he is not of similar constitution to the first, [for] the first one sent her away because of sin, and the second came and was lenient toward her. If he merits, the heavens will cause him to send her away from his possession, and if not, she will ultimately bury him, as it says [[Deuteronomy 24:2](file:///C:\Deuteronomy.24.2)] "or if the latter man dies." It is appropriate for this [type of] man dies, because of the woman he brought into his household. One who wishes his wife to die [so he can] inherit her, or that she should die so he can marry her sister, she will ultimately bury him. Similarly, if she wishes he would die so she can marry another, he will bury her. | תוספתא מסכת סוטה (ליברמן) פרק ה הלכה ט  היה ר' מאיר או' כשם שדיעות במאכל כך דיעות בנשים יש לך אדם שהזבוב עובר על גבי כוסו מניחו ואין טועמו זה חלק רע בנשים שנתן עיניו באשתו לגרשה יש לך אדם שהזבוב שוכן בתוך כוסו זורקו ואין שותהו כגון פפוס בן יהודה שנעל דלת בפני אשתו ויצא ויש לך אדם שהזבוב נופל בתוך כוסו זורקו ושותהו זו מדת כל אדם שראה את אשתו שמדברת עם שכיניה ועם קרובותיה ומניחה יש לך אדם שהזבוב נופל בתוך תמחוי שלו נוטלו מוצצו וזורקו ואוכל את מה שבתוכה זו מדת אדם רשע שראה את אשתו יוצאת וראשה פרוע יצאת וצדדיה פרומים לבה גס בעבדיה לבה גס בשפחותיה יוצא וטווה בשוק רוחצת ומשחקת עם כל אדם מצוה לגרשה שנ' כי יקח איש אשה ובעלה וגו' ויצאה מעמו וגו' וכת' קראו אחר שאינו בן זוגו הראשון הוציא מפני עבירה זה בא ונתקל בה השיני אם זכה לשמים מוציאה מתחת ידו אם לאו לסוף שקוברתו שנ' או כי ימות האיש האחרון כדי האיש הזה למיתה שאשה זו כנס לתוך ביתו |

In this text, a man is held accountable for the way he responds to the corrupted behavior of his wife. The man who allows his wife to behave immorally without impeding her or censuring her in any way will end up being buried by her. The examples of immoral behavior that a man is criticized for tolerating in his wife, going out with her head uncovered, her heart warmed for her servants and maidservants, spinning cloth in the marketplace, a shirt open on both sides and bathing/playing around with the men, stop short of actual adultery[[158]](#footnote-158). They are lare the same examples found in the Mishna and parallel Tosefta citedabove, illustrating the violation of Dat Yehudit by married women and resulting in forfeiture of *ketuba*. While not directly a matter for the courts, since there are no witnesses that adultery has taken place, men are strongly urged, if not required, to divorce such women as a sanction to deter such behavior in Jewish society. Men that permit or ignore these kind of actions are branded wicked for essentially exposing society to the perversion that even the suggestion of adultery presents.

When reading these various sources which reference the same behaviors as immoral and corrupting, Dat Yehudit reflects a code of conduct committed to and practiced by married women and upheld by their husbands in the Jewish community. The purpose of this code is clearly to protect society from the debauchery associated with adultery. It is presented in the Mishna as binding, alongside Dat Moshe, even as its boundaries for practical application remain somewhat undefined.

**Going Out With an Uncovered Head**

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| **Ketubot 7:6**  What is [considered to be a violation of] D*at Yehudit*?  Going out with her head uncovered, | **משנה מסכת כתובות פרק ז**  וְאֵיזוֹהִי דַת יְהוּדִית, יוֹצְאָה וְרֹאשָׁהּ פָּרוּעַ,: |

The Mishna states that a married woman going out with uncovered head is a violation of Dat Yehudit. It is unclear what defines uncovered . Notably, uncovered head is not a violation of Dat Moshe and there is no clear Biblical source associated with the practice.However, the Mishna is unequivocal that such behavior translates into divorce without ketuba, signifying that head covering for women was indicative of normative Jewish practice. ..

The Babylonian Talmud responds strongly to such an amorphous and potentially non-binding definition for this practice. In the ensuing discussion around the Mishna, it brings a startling and unprecedented statement, =, asserting unequivocally that going out bareheaded violates Biblical law. This is in direct conflict with the Mishna (and parallel Tosefta), which not only stated that a woman going out with a bared head violates Dat Yehudit but also contrasted Dat Yehudit to Dat Moshe, suggesting a non-Biblical origin to the practice.

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| **Babylonian Talmud Ketubot 72a**  And what is Dat Yehudit?  One who **goes out with her head uncovered.**  **Alas, going out with her head uncovered is forbidden by Biblical law as it is written:**  **“And he shall uncover the head of the woman”** ([Numbers 5:18](https://www.sefaria.org.il/Numbers.5.18)). | תלמוד בבלי כתובות עב.  ואיזוהי דת יהודית?  יוצאה וראשה פרוע.  ראשה פרוע דאורייתא היא! דכתיב: +במדבר ה'+ ופרע את ראש האשה, |

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| The Biblical verse cited as textual support for hair covering in the Talmud is found in the chapter that refers to a woman accused by her husband of adultery without the support of witnesses. In rabbinic text, such a woman is known as *sotah*, which means to go astray and this is the common term used to reference the Biblical text as well. There is no certain way to determine whether this woman has sinned or whether her husband has been overcome by a jealous spirit[[159]](#footnote-159). Given the severity of the accusation and the lack of evidence, the woman is brought before the high priest to undergo a ritual that will establish her guilt or her innocence. One of the steps involves a ritual that uncovers her head or dishevels her hair. במדבר פרק ה  (יח) וְהֶעֱמִ֨יד הַכֹּהֵ֥ן אֶֽת־הָאִשָּׁה֘ לִפְנֵ֣י יְקֹוָק֒ וּפָרַע֙ אֶת־רֹ֣אשׁ הָֽאִשָּׁ֔ה וְנָתַ֣ן עַל־כַּפֶּ֗יהָ אֵ֚ת מִנְחַ֣ת הַזִּכָּר֔וֹן מִנְחַ֥ת קְנָאֹ֖ת הִ֑וא וּבְיַ֤ד הַכֹּהֵן֙ יִהְי֔וּ מֵ֥י הַמָּרִ֖ים הַמְאָֽרֲרִֽים: | Numbers 5:18  After he has made the woman **stand before the LORD, the priest shall uncover/dishevel/unbind the woman’s head** and place upon her hands the meal offering of remembrance, which is a meal offering of jealousy. And in the priest’s hands shall be the water of bitterness that induces the spell. |

What is the priest doing to the woman’s head?

The Brown Driver Briggs Dictionary of the Bible gives three possible definitions to the Hebrew root *p’ra* based on its different citations in the Biblical text: unbind, uncover, let loose i.e. remove restraint. All three options were deliberately inserted into the English translation of the verse above to illustrate the possible nuance with each usage. However, based on more recent scholarship[[160]](#footnote-160), it seems that Biblically, the word *p’ra* most likely means to dishevel or scatter. Similarly, in Akkadian, *pe-ra wasarat* means hair that is unloosened rather than uncovered. In other words, it is likely that the original meaning of the word indicated a ritual in which the priest loosened the woman’s bound hair in order to humiliate her. She stands before him holding a very poor offering of barely sheaves with her disheveled hair drinking water with some dirt and God’s name dissolved in it. It was probably not describing the removal of a head covering nor is there any indication from any other Biblical text that such a head covering was mandated by God. In modernity, this ambiguity around a clear commandment to cover the head once married will be one of the reasons that women will stop covering their hair.

Despite the lack of clarity in the Biblical text, by pre-rabbinic second Temple period, in the works of Septuagint, Philo and Josephus[[161]](#footnote-161), the passage in Numbers is understood to mean the removal of a veil or head covering worn by a woman accused of adultery during the Sotah ordeal. The purpose of the ritual, as understood by these early interpreters, was also to expose and humiliate the woman. This will be clearly echoed in a Mishna in Sotah brought below.

In the rabbinic period, these two different but somewhat overlapping translations of the word *p’ra* can be found in rabbinic text. The dominant one follows the tradition of removal or uncovering. For instance, in a totally unrelated ceremony, during male circumcision, the second stage of the ritual is known as *p’ria*, or the uncovering of the corona after the foreskin is removed [[162]](#footnote-162). Such clarity in its usage in circumcision helps elucidate the normative rabbinic translation when interpreting the the ritual described in the Biblical passage

However, a secondary definition also exists in the rabbinic literature in which *p’ra* is translated as *s’tr,* or loosen, based on a literal reading of the Biblical verse[[163]](#footnote-163). This is reflected in a few Tannaitic sources that will be examined below but it is largely acknowledged, even in those texts, that while dishevelment might have been the original translation in the Bible for *p’ra*, in Rabbinic Hebrew, a different word, *s’tr,* is used to describe loosening of hair. In other words, the earlier definition of loosen is now replaced by the later definition of uncover. Nonetheless, echoes of the earlier usage remain in some rabbinic texts.

**What Happened to the Woman’s Head During the Sotah Ritual?**

Before returning to the Talmudic passage in Ketubot which links the act of a woman going out with a bared head to the sotah passage, several Tannaitic sources will be referenced that describe the sotah ritual, specifically the act of uncovering her head.

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| **ספרי במדבר פרשת נשא פיסקא יא**  **ופרע את ראש האשה, כהן נפנה לאחוריה ופורעה כדי לקיים בה מצות פריעה דברי ר' ישמעאל**  **ד"א לימד על בנות ישראל שיהו מכסות ראשיהן ואף על פי שאין ראייה לדבר זכר לדבר ותקח תמר אפר על ראשה (שמואל ב' יג יט)** | **Sifrei Bamidbar 11**  *And he uncovered the head of the woman.* The priest moved behind her and uncovered her head in order to fulfill the mitzva of p’ria, according to Rabbi Yishmael.  Another opinion. Learn from this that the daughters of Israel should cover their heads, and even though there is no proof of this, there is an allusion to it, "And Tamar took ashes and put them on her head" (Samuel II, 13:19) |

In Sifrei Bamidbar, there is an interpretive passage that describes what happens when the priest approaches the sotah to uncover her head. The first opinion is attributed to Rabbi Yishmael. The priest stands behind her and uncovers her head. He explains that the mitzva of p’ria, defined as uncovering, is carried out with this action.

The second Tanna, who is anonymous, extrapolates from the Biblical passage that the daughters of Israel should cover their heads. This interpretation syncs well with the sources found in Septuagint, Josephus and Philo, written closer to the time of the Tannaim, all of whom translate the word to mean uncover, presumably because of the prevalent practice of women to cover their heads. Philo and Josephus even mention a garment of some sort that is removed from her head[[164]](#footnote-164). Note that the anonymous Tanna attributes the practice of Jewish women covering their heads to the biblical verse of the Sotah, but it is framed as an indication of proper behavior as opposed to a direct Biblical commandment. He recognizes that there is no clear Biblical commandment for women to cover or, conversely, a prohibition for women to uncover their heads.

Thus, it remains unclear from this source whether the obligation has actual Biblical status, or Rabbinic or, belongs to the category of Dat Yehudit – Jewish practice — described explicitly in the Mishna. Neither is it clear from the Sifrei that only married women covered their heads since, “Daughters of Israel,” suggests a larger community. For instance, Maimonides, in his Mishneh Torah, requires both single and married women to cover their heads when going out to the market. Tur[[165]](#footnote-165) and Shulchan Aruch[[166]](#footnote-166) rule accordingly in their respective codes.

**Unbound Hair and the Humiliation of the Accused Sotah**

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| **Mishna Sotah Chapter 1**  Mishna 5  **…And a priest grasps her garment—if it tears, it tears; if it unravels, it unravels—until he has bared her bosom, and he loosens her hair.**  **Rabbi Judah says: if her bosom is beautiful, he does not bare it; if her hair is beautiful, he does not loosen it.** | משנה מסכת סוטה פרק א  משנה ה  …וכהן אוחז בבגדיה אם נקרעו נקרעו אם נפרמו נפרמו עד שהוא מגלה את לבה וסותר את שערה ר' יהודה אומר אם היה לבה נאה לא היה מגלהו ואם היה שערה נאה לא היה סותרו: |

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| Tosefta Sotah Chapter 3  Halakha 2  And so you find with the accused wife, by the same measure which she behaved, retribution is metered out to her.  She stood before the man so as to be attractive to him, therefore the priest stands her before all to show her disgrace as it is written: And the priest stood the women before God.  Halakha 3  She spread beautiful shawls for him, therefore the priest removes the kipa (cover) from her head and places it at his feet.  She braided her hair for him, therefore the priest unbinds her hair.  She adorned her face, therefore her face turns yellow.  She colored her eyes blue for him. Therefore, her eyes bulge out. | תוספתא מסכת סוטה (ליברמן) פרק ג  הלכה ב  וכן אתה מוצא בסוטה שבמדה שמדדה בה מדדו לה היא עמדה לפניו כדי שתהא נאה לפניו לפיכך כהן מעמידה לפני הכל להראות קלונה שנ' והעמיד הכהן את האשה לפני ה'  הלכה ג  היא פירסה לו סדין לכך כהן נוטל כפה מעל ראשה ומניחה תחת רגליו היא קולעה לו שערה לפיכך כהן סותרו היא קישטה לו פניה לפיכך פניה מוריקות היא כחלה לו עיניה לפיכך עיניה בולטות |

The two Tannaitic texts brought above from the tractate Sotah, describe a graphic and violent ritual meant to expose and condemn female promiscuity[[167]](#footnote-167). A process is described of uncovering the woman’s body to humiliate and disgrace the accused for disrobing for her lover.

The interpretation of *p’ra* in the second passage seems to involve two stages that incorporate the two meanings of the word defined above: first uncovering the head and then unbinding or loosening the hair. As described in Halakha 3 of the Tosefta, the priest removes the kipa (head covering) and then unbinds her braided hair. This is far more invasive than the process described earlier in the Sifrei by Rabbi Yishmael, where the priest stood behind her and merely uncovered her head. Rabbi Judah then comments that her bosom should not be revealed when the priest tears her dress and her hair should not be loosened after it is uncovered if her body or hair are especially attractive, for fear that it will encourage sexual thoughts amongst the onlookers rather than serve as a deterrent. Unloosening the hair was seen as an act of sexual intimacy and arousal, far beyond the removal of the kipa. For this reason, Rabbi Judah insists that the second stage of loosening be carried out judiciously.

There are two more Mishnaic sources that are helpful to further our understanding of the word *p’ra* evolving from the definition of loosening to that of uncovering. In the first source below, there is a description of the difference between the wedding of a virgin and a non-virgin.

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| *משנה מסכת כתובות פרק ב*  משנה א  [\*] האשה שנתארמלה או שנתגרשה היא אומרת בתולה נשאתני והוא אומר לא כי אלא אלמנה נשאתיך אם יש עדים שיצאת בהינומא וראשה פרוע כתובתה מאתים ר' יוחנן בן ברוקא אומר אף חלוק קליות ראיה: | Mishna Ketubot *2*  (1) A woman who became a widow or was divorced [and wants her ketubah], she says; You married me [as] a virgin, [and owe me two hundred zuz] and he says; Not so, but I [or in the case where she was widowed the sons say; Our father] married you as a widow [and owe you one hundred zuz]. If there are witnesses that she went out with a curtained litter (Jatrow) and her hair loosened/uncovered, her ketubah is two hundred [zuz]. Rabbi Yohanan ben Beroka says; Also the distribution of [sweet] roasted grain [to the children present at the wedding] is evidence in his area, this, too, was a custom reserved for virgins. |

In the time of the Mishna, marriage took place in two stages. A young woman was first legally married through a ritual known as *kiddushin* or *erusin* (betrothal). She would then remain in her father’s home for up to 12 months to prepare for the final stage in the marriage process known as nisuin. In the Mishna above, the still virgin bride is being carried in a curtained litter[[168]](#footnote-168) to the bridal canopy. Her hair is loosened or uncovered[[169]](#footnote-169). Here again, there is ambiguity with regard to the meaning of p’ra . After the ceremony and a celebratory meal, she will enter her husband’s home and the marriage will be consummated. The Mishna uses the state of the young woman’s head as she is being carried to the marriage ceremony to later determine whether she was a virgin bride or not. This has financial ramifications for the paying out of her marriage contract since a virgin’s ketuba was worth more than a non-virgin.

It is however difficult to determine the definition of the word *p’ra* in this Mishna. Is her hair loosened or her head bare? =In this context, the virgin’s hair as she is carried to the canopy is descriptive and seems to reflect the social norms around the wedding ceremony for virgins in which they loosened their hair (Rashi) and toasted wheat was handed out. While it cannot help further determine the contours of the practice among married women, it does serve an important purpose: virgins (never married women) and non-virgins (married or previously married women) could be identified in society by the state of their hair or head covering. Presumably after the ceremony, the woman would now be expected to go out into society with a covered head in the manner of Dat Yehudit. The Babylonian Talmud on this passage spends much time reflecting on other differences between the weddings of virgins and non-virgins but does not further clarify the practice of covering or uncovering of hair, despite its explicit mention in the Mishna.

Finally, in a Mishna in Baba Kamma, there is an interesting story that directly describes the practice of head covering by married women.

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| Mishna Baba Kamma 8:6  One who shouts at his fellow, he gives him a *sela* (twenty *zuz*). Rabbi Yehudah in the name of Rabbi Yose the Galilean says: “A *maneh* [one hundred *zuz*].” One who slaps his fellow, he gives him two hundred *zuz*; with the back of the hand, he gives him four hundred *zuz*. If he split his ear, plucked his hair, spit [at him] and his spit touched him, stripped his cloak from him, or uncovered the head of a woman in the street, he gives him four hundred *zuz*. (This is the principle): it is all according to the person's honor.  …  (And) there was an incident of someone uncovering the head of a woman in the street. She came before Rabbi Akiva, and he required him to give her four hundred *zuz*.  He said to him, "Rabbi, give me time." So he gave him time. [The man] watched her stand at the entrance of her courtyard, broke a pitcher in front of her, and in it was *issar* [eight *prutot*] of oil. She uncovered her head and scooped [the oil], and rubbed her hands on her head. He placed witnesses against her and he came before Rabbi Akiva. He said to him, "Rabbi, to her I gave four hundred *zuz*?!" He replied, "You haven't proved anything." One who harms himself, even though he is not permitted to do so, is exempt. Others who harm him are liable. | משנה בבא קמא ח:ו  הַתּוֹקֵעַ לַחֲבֵרוֹ, נוֹתֵן לוֹ סֶלַע. רַבִּי יְהוּדָה אוֹמֵר מִשּׁוּם רַבִּי יוֹסֵי הַגְּלִילִי, מָנֶה. סְטָרוֹ, נוֹתֵן לוֹ מָאתַיִם זוּז. לְאַחַר יָדוֹ, נוֹתֵן לוֹ אַרְבַּע מֵאוֹת זוּז. צָרַם בְּאָזְנוֹ, תָּלַשׁ בִּשְׂעָרוֹ, רָקַק וְהִגִּיעַ בּוֹ רֻקּוֹ, הֶעֱבִיר טַלִּיתוֹ מִמֶּנּוּ, פָּרַע רֹאשׁ הָאִשָּׁה בַּשּׁוּק, נוֹתֵן אַרְבַּע מֵאוֹת זוּז.  זֶה הַכְּלָל הַכֹּל לְפִי כְבוֹדוֹ.  …  וּמַעֲשֶׂה בְּאֶחָד שֶׁפָּרַע רֹאשׁ הָאִשָּׁה בַּשּׁוּק, בָּאת לִפְנֵי רַבִּי עֲקִיבָא, וְחִיְּבוֹ לִתֵּן לָהּ אַרְבַּע מֵאוֹת זוּז.  אָמַר לוֹ רַבִּי, תֶּן לִי זְמַן. וְנָתַן לוֹ זְמַן. שְׁמָרָהּ עוֹמֶדֶת עַל פֶּתַח חֲצֵרָהּ וְשָׁבַר אֶת הַכַּד בְּפָנֶיהָ, וּבוֹ כְּאִסָּר שֶׁמֶן. גִּלְּתָה אֶת רֹאשָׁהּ, וְהָיְתָה מְטַפַּחַת וּמַנַּחַת יָדָהּ עַל רֹאשָׁהּ.  הֶעֱמִיד עָלֶיהָ עֵדִים, וּבָא לִפְנֵי רַבִּי עֲקִיבָא. אָמַר לוֹ, רַבִּי, לָזוֹ אֲנִי נוֹתֵן אַרְבַּע מֵאוֹת זוּז.  אָמַר לוֹ, לֹא אָמַרְתָּ כְּלוּם. הַחוֹבֵל בְּעַצְמוֹ, אַף עַל פִּי שֶׁאֵינוֹ רַשַּׁאי, פָּטוּר. אֲחֵרִים שֶׁחָבְלוּ בּוֹ, חַיָּבִין. |

The Mishna brings a story of a man who bares a married woman’s head in public. This act is hardly neutral and serves to humiliate her. If we connect this act to the Sotah ritual, it takes on even greater overtones as the man performs a kind of vigilante justice by outing her as a possibly adulterous woman who should be divorced by her husband without ketuba! Instead of valorizing him, Rabbi Akivaobligates him to pay her 400 hundred zuz, an astronomical sum of money! In protest, the man, who remains suspicious of the woman, breaks a bottle of oil in front of her to prove his case to Rabbi Akiva Without hesitation, she uncovers her head and rubs the oil into her hair! She has exposed her head in public, corroborating the man’s point!

One of the most interesting parts of the story is that she herself is not censured although she is at least violating Dat Yehudit, and according to the Babylonian Talmud is in violation of Biblical law!

At the end of the Mishna, Rabbi Akiva rebukes the man and compares the woman’s action to one who harms oneself. While this is not permitted, it is not cause for dismissing one’s right to compensation in the event one was wronged by another party. The shift, regarding hair, from the Biblical definition of *p’ra* meaning dishevel or unloosen to the rabbinic definition of uncover is most evident from this source in Baba Kamma. The Tanna uses the words *pr’a* and *g’la* (reveal/uncover) interchangeably to describe the same act.

To summarize: While the Biblical word p’ra most likely meant to dishevel, by the rabbinic era, the priest uncovers the head of the woman in all of the Tannaitic texts describing the ritual. In some of them, it is followed by dishevelment of the hair. The Tosefta in tractate Sotah reinforces this understanding of the two-part ritual by mentioning a specific garment — a kipa — that the priest removes from her head before disheveling her hair for greater humiliation. In an ancillary Mishna in Ketubot, virgin brides are described as going to their marriage canopy with loosened or uncovered hair, indicating that virgins and non virgins were distinguished in society by the dressing of their hair[[170]](#footnote-170). The story in Bava Kamma about a man who bares a married woman’s head in public illustrates the humiliation and unspoken accusation of such an act and further, clarifies that the rabbinic understanding of p’ra is to uncover rather than loosen when talking about a married woman’s head.

Back to the B. Talmud

It is now time to analyze line by line the section of the Babylonian Talmud in Ketbuot that we only excerpted above:

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| Ketubot 72a  And what is Dat Yehudit?  One who goes out with her head uncovered.  Going out with her head uncovered is forbidden by Biblical law as it is written:  “And he shall uncover the head of the woman” ([Numbers 5:18](https://www.sefaria.org.il/Numbers.5.18)).  And the school of Rabbi Yishmael taught: It is a warning to the daughters of Israel not to go out with their head uncovered  According to Biblical law, a basket [*kalata*], is sufficient.  However, according to Dat Yehudit,  covering her head with just a basket – is also prohibited;    Rabbi Asi said that Rabbi Yoḥanan said: When there is a basket on her head, it is not considered uncovered!  Rabbi Zeira discussed it: Where? If we say in the marketplace, this is a violation of Dat Yehudit.   And if we say in her courtyard, if so, no daughter of our father Abraham will remain with her husband.  Abaye said, and some say that Rav Kahana said: Going from one courtyard to another courtyard via an alleyway [is forbidden]. | ואיזוהי דת יהודית יוצאה וראשה פרוע:  ראשה פרוע דאורייתא היא דכתיב (במדבר ה, יח) ופרע את ראש האשה ותנא דבי רבי ישמעאל אזהרה לבנות ישראל שלא יצאו בפרוע ראש דאורייתא  קלתה שפיר דמי דת יהודית אפילו קלתה נמי אסור  אמר רבי אסי אמר ר' יוחנן קלתה אין בה משום פרוע ראש הוי בה  רבי זירא היכא אילימא בשוק דת יהודית היא ואלא בחצר אם כן לא הנחת בת לאברהם אבינו שיושבת תחת בעלה  אמר אביי ואיתימא רב כהנא מחצר לחצר ודרך מבוי: |

1. Analysis

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| And what is Dat Yehudit?  One who goes out with her head uncovered.  Alas, going out with her head uncovered is forbidden by Biblical law as it is written:  “*And he shall uncover the head of the woman*” ([Numbers 5:18](https://www.sefaria.org.il/Numbers.5.18)). | ואיזוהי דת יהודית יוצאה וראשה פרוע: ראשה פרוע דאורייתא היא דכתיב (במדבר ה, יח) ופרע את ראש האשה |

The first two lines bolded above are from the Mishna in Ketubot that was analyzed in the previous section. The first example the Mishna brings of violating Dat Yehudit is a woman who goes out with her head uncovered. The B. Talmud starts off its commentary to this example in the Mishna with an unprecedented statement—that having an uncovered head is forbidden by Biblical law based on the passage in Numbers regarding the Sotah. This directly contradicts the Mishna which defines uncovered head as Dat Yehudit and not as Dat Moshe, in which all of the examples are all linked to Biblical commandment. This jump in the B. Talmud will be one of the major textual components for speculation and interpretation over the next two millennia as rabbinic authorities debate the Biblical versus Rabbinic origin of the prohibition.

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| And the school of Rabbi Yishmael taught: It is a warning to the daughters of Israel not to go out with their head uncovered. | ותנא דבי רבי ישמעאל: אזהרה לבנות ישראל שלא יצאו בפרוע ראש! |

In the Babylonian Talmud’s retelling of the Sifrei source cited earlier in the chapter, there are several notable changes. The Talmud has already declaratively stated that head covering is of Biblical origin because of the verse in Numbers. It then brings the Sifrei as precedent for this proof. However, the author of the Sifrei did not cite the verse in Numbers as prooftext, but brought a verse from Samuel II about King David’s daughter, Tamar, placing ashes on her head after being raped.

Second, the Talmud leaves out the prooftext in Samuel completely, presumably since an allusion from a book of Prophets becomes superfluous if the Biblical verse in Sotah is to be understood as a Torah imperative. None of this is particularly unusual in the interpretive world of the B. Talmud. The purpose of this analysis is to try to peel back layers of interpretation to understand how the practice of hair covering evolved

II. The Basket on Her Head

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| Rav Yehuda said in the name of Samuel, with a basket.  By Torah law, her basket [*kalata*], is sufficient.  According to Dat Yehudit,  just a basket [with no secondary head covering] — is also prohibited; | אמר רב יהודה בשם שמואל בקלתה.  דאורייתא קלתה שפיר דמי,  דת יהודית - אפילו קלתה נמי אסור. |

As developed through textual analysis above, there seems to be a conflict between the Talmudic statement that an uncovered head by a woman violates a Biblical prohibition and the Mishna’s classification of the practice as Dat Yehudit. The Talmud resolves this conflict by proposing that the Mishna assumed women who went out were at least wearing a *kalata*, meaning a work basket, on their heads (as Arab women can be seen doing to this day), thereby fulfilling the mandatory minimum requirement for head covering according to Biblical law.

Thus, according to Talmudic reasoning, the Mishna had no need to raise the issue of the Biblical requirement, because it was obvious that all women would be wearing at least a basket. Following this logic, the Mishna refers only to the unique practice of Jewish women, defined as Dat Yehudit, to wear a secondary head covering.

Rashi, in his commentary to this page of Talmud, explains that the *kalata* was literally a basket with a receptacle on the bottom that attached to her head and a receptacle on top to hold small accessories such as needles. It certainly would not have covered all of her head or most of her hair.

The *kalata* also appears in Tannaitic sources in connection to the Jewish divorce document known as Get. The Mishna and a few other relevant Talmudic sources[[171]](#footnote-171), discuss the validity of the husband throwing the Get into her lap or into her work basket rather than placing it into her hand. Since the work basket is considered an extension of herself, it is understood that the act mirrors handing it to her directly. It is this basket that the Talmud is referencing in the context of the discussion of head covering.

Is the Basket Enough?

Samuel vs Rabbi Yohanan - Babylonia vs Israel

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| Rav Yehuda said in the name of Samuel, with a basket.  By Torah law, her basket [*kalata*], is sufficient.  According to Dat Yehudit,  just a basket [with no secondary head covering]—is also prohibited;  Rabbi Asi said that Rabbi Yoḥanan said: With her basket, there is no uncovered head! | אמר רב יהודה בשם שמואל בקלתה.  דאורייתא קלתה שפיר דמי,  דת יהודית - אפילו קלתה נמי אסור.  אמר רבי אסי אמר ר' יוחנן, קלתה אין בה משום פרוע ראש. |

Returning to the Talmudic discussion, there emerges an argument about *kalata* between two Amoraim (circa 250 CE): Rav Yehuda in the name of Samuel and Rav Asi in the name of Rabbi Yochanan[[172]](#footnote-172). Samuel, who is a first generation Babylonian Amora, is quoted by his trusted student Rabbi Yehuda as stating that a *kalata* alone is perceived as bared head according to the standards of Dat Yehudit even though it fulfils the Biblical requirement. In contrast, Rabbi Yohanan, who lived in Israel at the same time as Rav Yehuda in Babylonia, states that a woman who goes out with *kalata* does not have a bared head and cannot be said to be in direct violation of even Dat Yehudit.

Detached from the surrounding discussion in the Talmud, Rabbi Yohanan’s statement suggests that a *kalata* is enough to fulfill the requirement of head covering. In fact, it could easily be undestood as a commentary to the Mishnaon the In other words, Rabbi Yohanan is not reflecting the Talmud’s position that there is a Biblical obligation, rather he is interpreting Dat Yehudit as the head covering requirement in line with the plain reading of the Mishna. In this regard, a *kalata* is enough. Samuel, in contrast, feels a *kalata* is the equivalent of a bared head and that to fulfill Dat Yehudit, as per the Mishna according to the Talmudic interpretation, a second head covering is absolutely necessary.

The parallel Jerusalem Talmud brings an almost identical statement in the name of Rabbi Yohanan, that going out with a single headdress is not in violation of going out with a bared head.

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| Jerusalem Talmud Ketubot 7:6  With her head uncovered.  They meant in the courtyard, even more so in the alleyway.  Rabbi Hiyya said in the name of Rabbi Yohanan, one who goes out with a headdress is not considered to be going out with a bared head.  This is said about the courtyard but to the alleyway, it is as if she is going out with bared head  There is a courtyard that is like an alleyway and an alleyway that is like a courtyard.  A courtyard that many pass through is like an alleyway.  And an alleyway which many did not pass through is like a courtyard. | תלמוד ירושלמי (וילנא) מסכת כתובות פרק ז הלכה ו  וראשה פרוע  לחצר אמרו ק"ו למבוי  רבי חייה בשם רבי יוחנן היוצאה בקפלטין שלה אין בה משום ראשה פרוע  הדא דתימא לחצר אבל למבוי יש בה משום יוצאה וראשה פרוע  יש חצר שהוא כמבוי ויש מבוי שהוא כחצר  חצר שהרבים בוקעין בתוכה הרי הוא כמבוי ומבוי שאין הרבים בוקעין בתוכו הרי הוא כחצר |

This passage strengthens the suggestion that Rabbi Yohanan does not regard head covering as Biblically required since the J. Talmud brings neither a statement about a Biblical requirement or the verse from Numbers as prooftext. The J. Talmud is trying to define the Dat Yehudit requirement as per the straightforward reading of the Mishna. Rabbi Yohanan is quoted in the name of another Amora, Rabbi Hiyya, as stating that a *kapaltin* or headdress (rather than *kalata*) is not considered bared head. Read on its own, this statementsuggests that Rabbi Yohanan required only the *kapaltin* (or *kalata*) to fulfill Dat Yehuidt without anyallusion to a Biblical requirement.

Like the B. Talmud, the J. Talmud rejects the possibility of such a minimal head covering and restricts the *kapaltin* (and R. Yohanan’s position) to sparsely populated courtyards and alleyways. In this way, Rabbi Yochanan’s statement is only relevant under very limited circumstances rather than reflecting a broad halakhic position to be applied at all times. It skips over the marketplace (too obvious), and questions only the requirement for head covering in courtyards and alleyways that many pass through. Dat Yehudit then, is not one uniform in its requirement. The determining factors will involve the type of space that a woman moves through. In short, according to the J. Talmud, it entails a single head covering in unpopulated spaces and a double head covering in public and other populated areas. Returning now to the final lines of text in the B. Talmud, it will be clear that there will be an additional layer added to the discourse in the manner of a Biblical requirement.

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| Rabbi Zeira discussed it: Where? If we say in the marketplace, this is a violation of Dat Yehudit.  And if rather in her courtyard, if so, you have not allowed any daughter of our father Abraham to remain with her husband.  Abaye said, and some say that Rav Kahana said: From one courtyard to another courtyard or via an alleyway. | הוי בה רבי זירא, היכא?  *אילימא בשוק, דת יהודית היא! ואלא בחצר,*  *אם כן, לא הנחת בת לאברהם אבינו שיושבת תחת בעלה!*  *Rabbi Yohanann ben Nuri says this in Gittin*  אמר אביי, ואיתימא רב כהנא: מחצר לחצר ודרך מבוי. – |

As in the J. Talmud, the B. Talmud reframes R. Yohanan’s statement to mean that a *kalata* is enough in semi-private space, so that it not be in direct contradiction with R. Judah’s statement in the name of Samuel or with the opening statement in the Talmud that there is a Biblical requirement which then requires a second Dat Yehudit requirement so as to synthesize with the Mishna.

As is often seen in the Talmud, it is preferable to find a resolution to two seemingly conflicting statements, rather than present them as opposing positions. There is thus, a Biblical requirement which is fulfilled with a single head covering. This single head covering can be worn in alleyways and when walking from courtyard to courtyard, which fulfills the Dat Yehudit requirement for these less populated areas. Public space, however, demands a double head covering. The conclusion up until this point is as follows: A basket fulfils the Biblical requirement for covered head in all spaces. It also fulfils the Dat Yehudit requirement in less populated areas like alleyways and between courtyards. However, in the market place, Dat Yehudit requires a secondary head covering beyond the basket.

Her own courtyard or her private outdoor space is now addressed. Should she be obligated to wear the *kalata* in her courtyard? The Talmud retorts, “If so, you have not allowed any daughter of our father Abraham to remain with her husband![[173]](#footnote-173)” The B. Talmud reasons that if a basket (or its equivalent) were to be required, women would not comply with such a requirement in their courtyards. Thus, no woman would remain married since the penalty for a bared head is divorce without a ketubah[[174]](#footnote-174)[[175]](#footnote-175)! In this respect, the B. Talmud is actually more lenient than the J. Talmud, since the J. Talmud does not seem to allow an uncovered head in the courtyard if anyone passes through while the B. Talmud does not restrict her seemingly even if others are around.

Type of Head Covering

Up until this point, the analysis has been around the force of obligation and where it is to be applied. An inquiry into types of head coverings and hair ornaments mentioned in Rabbinic text will be helpful in trying to ascertain what women were wearing and how this might concretize some of the theoretical discussion presented above.

The kipa, which is a head covering worn by men and women, appears amongst a list of articles of clothing a married woman is entitled to upon entering marriage:

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| משנה מסכת כתובות פרק ה  משנה ח  …ונותן לה מטה מפץ ומחצלת ונותן לה כפה לראשה וחגור למתניה ומנעלים ממועד למועד וכלים של חמשים זוז משנה לשנה.. | Mishna Ketubot Chapter 5:8  …And he must provide her with a bed, a mattress, and a reed mat. He must also give her a kipa for her head, a girdle for her loins, and shoes every festival, and clothing [valued] at fifty *zuz* [a specific unit of money] every year… |

The, “kipa for her head,” seems to be an essential garment, along with a belt and shoes. There is no determination in the Mishna or the Talmud as to size[[176]](#footnote-176). Nor are any other head coverings mentioned on the list. As cited above in Tosefta Sotah 7:3, the priest removes the *kipa* from her head before disheveling her hair, suggesting that at minimum, a wife would be wearing this covering when out in public.

Going Out on Shabbat

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| **Mishna** Shabbat Chapter 6:1  With what may a woman go out and with what may she not go out? A woman may not go out with wool ribbons, nor with flax ribbons, nor with straps on her head…Nor [may she go out] with a frontlet [on her forehead], nor with bangles if they are not fastened to her cap; nor with a cap [under the head-dress] into the public domain…  Mishna 5  A woman may go out with braids of hair whether of her own [hair], or of another woman, or of an animal. [She may go out] with a frontlet [on her forehead], or with bangles if they are sewn [to the cap]; with a cap [under the head-dress] or with a wig into the courtyard…. | מסכת שבת פרק ו:א  בַּמֶּה אִשָּׁה יוֹצְאָה וּבַמָּה אֵינָהּ יוֹצְאָה. לֹא תֵצֵא אִשָּׁה לֹא בְחוּטֵי צֶמֶר וְלֹא בְחוּטֵי פִשְׁתָּן וְלֹא בִרְצוּעוֹת שֶׁבְּרֹאשָׁהּ. וְלֹא תִטְבֹּל בָּהֶן עַד שֶׁתְּרַפֵּם. וְלֹא בְטֹטֶפֶת וְלֹא בְסַנְבּוּטִין בִּזְמַן שֶׁאֵינָן תְּפוּרִין. וְלֹא בְכָבוּל לִרְשׁוּת הָרַבִּים. וְלֹא בְעִיר שֶׁל זָהָב, וְלֹא בְקַטְלָא, וְלֹא בִנְזָמִים, וְלֹא בְטַבַּעַת שֶׁאֵין עָלֶיהָ חוֹתָם, וְלֹא בְמַחַט שֶׁאֵינָהּ נְקוּבָה. וְאִם יָצָאת, אֵינָהּ חַיֶּבֶת חַטָּאת:  משנה ה  יוֹצְאָה אִשָּׁה בְחוּטֵי שֵׂעָר, בֵּין מִשֶּׁלָּהּ בֵּין מִשֶּׁל חֲבֶרְתָּהּ בֵּין מִשֶּׁל בְּהֵמָה, וּבְטֹטֶפֶת וּבְסַנְבּוּטִין בִּזְמַן שֶׁהֵן תְּפוּרִין. בְּכָבוּל וּבְפֵאָה נָכְרִית לֶחָצֵר. |

In Tractate Shabbat, the Mishna brings descriptions of hair ornaments that cannot be worn out on shabbat (Mishna one), and ornaments that can be worn out (Mishna Five). The discussion is focused on concern for objects that although worn can be easily removed. There is particular concern that women will remove jewelry in order to show off to their friendsand walk with it more than four paces in a public space (*Reshut Harabim*) which violates a Biblical prohibition. For this reason, women are not allowed to wear such ornaments, even into their courtyards. In contrast, Mishna five seems to bring examples of hair ornaments that are tied tightly and can be worn into public space. The distinction seems to be between loosely tied ornaments and those that are tied or attached tightly and cannot be easily removed[[177]](#footnote-177). The importance of these mishnayot for our topic is that it gives detailed descriptions of what sort of hair ornaments and head coverings women were wearing in the time of the Mishna. This may help illuminate some of the broader discussion on the topic of head coverings in the rabbinic period.

Finally, at the end of Mishna five are two ornaments that can be worn out, “into the courtyard,” which is a private space, but not into public space. This is curious because the restriction on the courtyard is as a result of a Rabbinic fence preventing a Biblical transgression of carrying in public spaces. Why are these two ornaments treated as an exception in allowing them only into the courtyard while restricting them from public space?

The Talmud explains that despite concern for possible carrying in public spaces, exceptions were made to allow women to wear the wig and *Kabul* into the courtyard in order to ensure her attractiveness to her husband[[178]](#footnote-178).

In line with the conclusion from the Ketubot text above, it suggests that if she were not to permitted to wear her *kabul* or wig, she would go bareheaded into the courtyard. The concern in Shabbat is not for a bare head or violating modesty laws. Rather, it seems that bareheaded women are in danger of appearing less attractive to their husbands and thus, exceptions were made for the wig and *kabul*. While a woman might be allowed to go into her courtyard without a head covering, it was considered unattractive and disfiguring enough that a rabbinic Shabbat restriction intended to prevent carrying was waived in order to allow her to dress her head/hair according to styles of fashion.

Conclusions drawn by scholar Ze’ev Safrai, in his commentary to the Mishnayot in Shabbat and Ketbuot, most seamlessly integrate the different rabbinic sources that have been presented in this section:

Jewish women covered their heads with a cap or net onto which were woven or attached hair ornaments. The hair was not fully covered but the net or cap was obligatory to fulfill the requirements of Dat Yehudit according to the Mishna.[[179]](#footnote-179) The *kipa* in Mishna Ketubot seems to be the same as the *kabul* in Mishna Shabbat which is also the *sachusa* mentioned in the Jerusalem Talmud or the *sabcha* in the Tosefta and was a cap according to Rashi or a hairnet according to Jastrow/Safrai. There is no reference to Dat Yehudit or the Biblical requirement to cover hair in the Talmudic discussion around hair ornaments worn on Shabbat[[180]](#footnote-180). In short, these sources about kipa and hair ornaments seem to reinforce the Mishna’s attitude towards hair covering which is in line with modesty customs and the accepted hair accessories of the time rather than a Biblical requirement.

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Can Aggada help clarify the meaning behind practical Halakha?

Before concluding this section, there are several aggadic sources worth nothing that relate to the practice of women and hair covering. Given that both were written in the land of Israel during the Talmudic period, they might clarify, to some degree, the position that has emerged in the Mishna as well as the difference of opinion between Rabbi Yohanan, who allowed a basket to fulfill the Mishnaic requirement of Dat Yehudit in contrast to Rabbi Judah in the name of Samuel and the Babylonian Talmud who required a double head covering because of Biblical law together with Dat Yehudit.

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| ראשית רבה (וילנא) פרשת בראשית פרשה יז  … ומפני מה האיש יוצא ראשו מגולה והאשה ראשה מכוסה, אמר להן לאחד שעבר עבירה והוא מתבייש מבני אדם, לפיכך יוצאת וראשה מכוסה, ומפני מה הן מהלכות אצל המת תחלה אמר להם על ידי שגרמו מיתה לעולם, לפיכך הן מהלכות אצל המת תחלה, הה"ד (איוב כא) ואחריו כל אדם ימשוך, ומפני מה ניתן לה מצות נדה, על ידי ששפכה דמו של אדם הראשון לפיכך ניתן לה מצות נדה, ומפני מה ניתן לה מצות חלה, על ידי שקלקלה את אדם הראשון שהיה גמר חלתו של עולם, לפיכך ניתן לה מצות חלה, ומפני מה ניתן לה מצות נר שבת, אמר להן על ידי שכבתה נשמתו של אדם הראשון לפיכך ניתן לה מצות נר שבת. | Genesis Rabbah Parasha 17  Why does a man go out bareheaded while a woman goes out with her head covered?  She is like one who has done wrong and is ashamed of people, therefore she goes out with her head covered.  Why do women walk in front of the corpse at a funeral? Because they brought death into the world, therefore they walk in front of the corpse…  Why was the precept of menstruation given to her? Because she shed the blood of Adam by causing his death, therefore was the precept of menstruation given to her.  And why was the precept of dough given to her?  Because she corrupted Adam who was the dough of the world, therefore was the precept of dough given to her.  And why was the precept of the Sabbath lights given to her?  Because she extinguished the soul of Adam, therefore was the precept of the Sabbath lights given to her. |

Genesis Rabbah, written during the fifth century CE, reflects on gender differences between men and women in its interpretation of creation as well as original sin. The first part of the midrash (only partially excerpted) describes biological and social differences. It then brings a different type of interpretation based on character: Women cover their heads out of shame because they brought sin into the world which is a major theme in this passage. Three Biblical mitzvot were given to women because of Eve: Nidda, Hallah and lighting candles. All three come to atone for corrupting Adam. Head coveringis not included in this triad, although the midrash has mentioned it earlier as a form of penance. In other words, head covering does not seem to fit into the paradigm of women’s Biblically based mitzvot which atone for Eve’s sin although it is mentioned in the passage as a form of penance. Clearly the midrash knows women are covering their heads.

The second source is found in Avot of Rabbi Natan and is very similar to the source in Genesis Rabbah.

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| Avot of Rabbi Natan Version B, Chapter 9  Clause One:  Why does woman cover her head and man not cover his head? A parable. To what may this be compared? To a woman who disgraced herself and because she disgraced herself, she is ashamed in the presence of people. In the same way, Eve disgraced herself and caused her daughters to cover their heads.  Clause Two:  For three sins women die in childbirth, for not being careful with Nidda, Hallah and lighting of candles. Why was the mitzva of nidda given to the woman and not the man? For Adam was the blood of the Holy One Blessed be He. Chava came and spilled his blood, therefore, the mitzva of nidda was given to her to atone for the spilt blood. For what reason was hallah given to the woman as a mitzva and not the man? For Adam was the pure bread of the Holy One Blessed be He and she caused it to be impure so the mitzva of hallah was given to her to atone for the hallah she had caused to be impure. For what reason was the mitzva of candle lighting given to the woman and not the man? For Adam was the candle of the Holy Blessed be He and would shine a light to illuminate God’s presence for all of those in the world and she extinguished it. Therefore was the mitzva of candle lighting incumbent upon her to atone for the flame she extinguished…From here the sages said for three transgression women die during childbirth for not being careful with Nidda, Hallah and lighting Shabbat candles. | אבות דרבי נתן נוסח ב  מפני מה האשה מכסה את ראשה ואין האיש מכסה את ראשו. משלו מלה"ד לאשה שקלקלה מעשיה והיא מתביישת מן הבריות שקלקלה. כך קלקלה חוה וגרמה לבנותיה שיכסו את ראשיהן:  על שלש עבירות נשים מתות בשעת לידתן על שאינן זהירות לא בנדה ולא  בחלה ולא בהדלקת הנר: מפני מה מסרו מצות נדה לאשה ולא מסרו אותה לאיש. אלא שהיה אדם הראשון דמו של הקדוש ברוך הוא באת חוה ושפכתו לפיכך מסרו [לה] מצות נדה כדי שיתכפר על הדם ששפכה: מפני מה מסרו מצות חלה לאשה ולא לאיש. אלא שהיה (הקדוש ברוך הוא) [אדה"ר] חלתו של הקדוש ברוך הוא טהורה וטמאתו לפיכך מסרו לה מצות חלה כדי שיתכפר על החלה שטמאתו: מפני מה מסרו מצות הנר לאשה ולא לאיש. אלא שהיה אדה"ר נרו של הקדוש ברוך הוא היה מאיר בו לכל באי עולם וכיבתו לפיכך מסרו לה מצות הנר ונתחייבה [בנר] כדי שיתכפר על הנר שכיבתה: אדם דמו של עולם היה בשביל שגרמה לו (לישראל) לשפך לפיכך נתחייבה בנדה. אדם חלתו של עולם היה בשביל שגרמה [לו] שיטמא לפיכך נתחייבה בחלה. אדם נרו של עולם היה בשביל שגרמה לו שיכבה לפיכך נתחייבה בהדלקת הנר. מכאן אמרו חכמים על שלש עבירות נשים מתות בשעת לידתן על שאינן זהירות לא בנדה לא בחלה ולא בהדלקת הנר: |

Head coveringappears in the first section of the midrash. As in Genesis Rabbah, the reason for women’shead covering is affiliated with bearing the shame of Eve’s sin which obligated her daughters to cover their heads forever after. The second section opens with the famous passage quoted in the second chapter of Mishna Shabbat, about women dying in childbirth for neglecting three Biblical mitzvot “given to women”— Nidda, Hallah and lighting candles. Women were given these mitzvot by God to atone for the sin which forever changed the relationship between Man and God.

In summary, these aggadic texts from the Amoraic period place women’s head covering in a category separate from the other mitzvot classified as women’s mitzvot. While these are aggadic rather than halakhic sources, they may help to shed light on the Mishnaic definition of head covering as Dat Yehudit rather than a Biblical obligation.

Conclusions:

How did women cover their hair in Talmudic times?

Two central positions on the topic emerge from rabbinic text. The earlier Tannaitic sources, particularly the Mishna, Tosefta and one opinion in the Sifrei, regard hair covering as a practice incumbent on the daughters of Israel and classified, in the Mishna uniquely, as Dat Yehudit. These sources do not seem to regard it as a Biblical obligation yet it is nonetheless incumbent upon married women. Uncovering the head in the marketplace was associated with promiscuous behavior which is why a married woman could be divorced without her ketuba!Sources in Shabbat, Baba Kamma and Nedarim also indicate that women covered their heads, but there is no indication of how much of the head or hair was covered. From the description of hair ornaments and the kipa, it seems that women were not covering all of their hair.

The second position emerges from the Babylonian Talmud, which is the only Talmudic era source in which it is stated unequivocally that women’s head covering involves a Biblical obligation. Given the centrality of the Babylonian Talmud, its conclusion has had enormous impact on all post Talmudic halakhic discourse and is seen by many as authoritative in a way that the earlier sources are not.

Finally, in all of these sources about head covering there are no references to a woman’s hair being *ervah*. This reinforces the ambiguity around the legal implications of the “*ervah* statements” in Berakhot, specifically Rav Sheshet who says that the hair of a woman is *ervah*. The interplay between Dat Yehudit and *ervah* will be the focus of the next chapter.

**Hair Covering Continues**

In the previous chapter, rabbinic texts were cited and analyzed regarding the practice of women’s head covering, It was noted that nowhere in those discussions is hair referenced as *ervah*. Yet, one of the most prevalent explanations given for the halakhic mandate of hair covering is that a woman’s hair belongs to her husband once married and turns into a type of nakedness after the wedding ceremony. While defining Dat Yehudit was the focus of the previous chapter, this chapter will explore the shift towards hair as *ervah,* which has significant repercussions for the modern discourse around hair covering, specifically around the choice to wear human hair wigs. However, a good starting point for the continued halakhic analysis of hair covering is Rashi’s interpretation of the Ketubot text on Dat Yehudit which was the central focus of the previous chapter. As discussed,, the Mishna stated that a woman going out with a bared head violates Dat Yehudit and she can be divorced without a ketuba. The Talmud in response stated unequivocally that head covering is a Biblical obligation. To resolve this tension with the Mishna, it proposed that a basic head covering is Biblically mandated while a secondary head covering is required by Dat Yehudit.

Rashi, in his commentary tries to reconcile this tension with two suggested interpretations. In neither does he go quite as far as declaring that head covering for married women is Biblically mandated. Instead, he gives voice to two different positions that emerged in the previous chapter, rtparticularly the idea that head covering is determined by practice rather than law.

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| **Rashi 72a**  ***Mishna – Dat Yehudit*** – that the daughters of Israel practiced even though it is not written [in the Torah]  **Talmud** Ketubot 72a **-** **A warning [to the daughters of Israel]** From the fact that we disgrace her measure for measure, commensurate to her act of making herself attractive to her lover [by uncovering her head] **we can infer** that it is forbidden.  Alternatively, since Scripture states, “And he shall uncover,” we can infer from this that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation. | רש"י מסכת כתובות דף עב עמוד א  **מתני'**. **דת יהודית** - שנהגו בנות ישראל ואף על גב דלא כתיבא  **גמ'**. **אזהרה** - מדעבדינן לה הכי לנוולה מדה כנגד מדה כמו שעשתה להתנאות על בועלה מכלל דאסור  א"נ מדכתיב ופרע מכלל דההוא שעתא לאו פרועה הות שמע מינה אין דרך בנות ישראל לצאת פרועות ראש וכן עיקר. |

When Rashi first comments on the Mishna, he defines Dat Yehudit as the normative practices of the daughters of Israel although ,“they are not written anywhere in the Torah.” He then brings two possible interpretations to the Talmud’s use of the verse in Numbers:

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| From the fact that we disgrace her measure for measure, commensurate to her act of making herself attractive to her lover [by uncovering her head] **we can infer** that it is forbidden. |

Rashidoes not write unequivocally that the verse supports an outright obligation. Rather, in his first interpretation, he infers a prohibition to go about uncovered based on the verse connected to the Sotah ritual. He cites the Tosefta[[181]](#footnote-181) text brought in the previous chapter when writing that the disgrace imposed upon her is in line with the baring of her head and loosening of her hair that she undertook for her lover.

In the second explanation, Rashi is more circumspect:

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| Alternatively, since Scripture states, “And he shall uncover,” we can infer from this that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation |

Rashi’s preference is for the second explanation which is in line with a straightforward understanding of the Mishna. The Biblical text thus is descriptive rather than proscriptive;the practice of the daughters of Israel to cover their heads is what gives the stricture of head covering its authority and definition.

In line with Rashi, there are many post-Talmudic authorities[[182]](#footnote-182) who understand head covering as reflecting the binding practice of Dat Yehudit without defining it as having rabbinic or Biblical status. This should not imply in any way that these authorities saw head covering as optional. After all, a woman can be divorced without ketuba for uncovering her head! Rather, they interpreted it as belonging to a particular category of halakha determined by communal and social norms. At the same time, there are many post-Talmudic authorities of equal stature who concurred with the Talmud’s unequivocal statement that head covering is Biblically obligated[[183]](#footnote-183).

**Maimonides:**

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| **רמב"ם הלכות אישות פרק כד**  הלכה יא  ואלו הן הדברים שאם עשת אחד מהן עברה על דת משה**: יוצאה בשוק ושער ראשה גלוי**, או שנודרת או נשבעת ואינה מקיימת, או ששמשה מטתה והיא נדה, או שאינה קוצה לה חלה, או שהאכילה את בעלה דברים אסורים ואין צריך לומר שקצים ורמשים ונבלות אלא דברים שאינן מעושרין. והיאך יודע דבר זה כגון שאמרה לו פירות אלו פלוני כהן תקנם לי ועיסה זו פלוני הפריש לי חלתה ופלוני החכם טיהר לי את הכתם ואחר שאכל או בא עליה שאל אותו פלוני ואמר לא היו דברים מעולם, וכן אם הוחזקה נדה בשכנותיה ואמרה לבעלה טהורה אני ובא עליה. | **Rambam *Hilkhot Ishut,* 24:11**  If a woman has done one of the following, she is considered to have violated *Dat Moshe*: going out in the marketplace with the hair of her head uncovered, making vows or taking oaths and not fulfilling them, having intercourse with her husband during the period of her menstruation, not setting apart the dough offering, or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed.  How is the husband to know? For instance, if she said that these fruits were tithed by such-and-such Kohen [priest], or such-and-such woman set aside the offering from this dough, or such-and-such sage ruled my menstrual spotting to be pure, and then after he ate or slept with her, he inquired of that person, who informed him that such an incident never took place and also if she was considered to be Nidda by her neighbors and she told her husband she was permitted and he came upon her. |

Maimonides follows the Mishna in breaking down the ways in which a woman is divorced without a ketuba based on violations of Dat Moshe and Dat Yehudit. However, a notable difference relates to head covering. He codifies “going out in the marketplace with the hair of her head uncovered” as Dat Moshe. even though the Mishna classified it explicitly as Dat Yehudit. This suggests that he is formulating law in accordance with the B. Talmud’s determination that there is a Biblical obligation for married women to cover their heads since thecategory

In addition, while all of the Talmudic sources refer to a bared head, Maimonides specifies uncovering the **hair** of her head. This is in keeping with the rest of the passage in which he brings greater clarity and definition to how precisely a woman violates Dat Moshe then was found in the Mishna or the subsequent Talmudic discussion.

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| **Rambam, *Hilkhot Ishut*, 24:12**  What is considered to be *Dat Yehudit*? Those are the modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *Dat Yehudit*: going out in the marketplace or in a through-alley with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief; she spins [flax or wool] with rouge on her face—on her forehead or on her cheek—like immodest gentile women, she spins in the marketplace and shows her forearms to men; she plays frivolously with young lads, she demands sexual intimacy from her husband in a loud voice until her neighbors hear her talking about their intimate affairs, or she curses her husband's father in her husband's presence. | **הלכה יב**  ואיזו היא דת יהודית, הוא מנהג הצניעות שנהגו בנות ישראל, ואלו הן הדברים שאם עשת אחד מהן עברה על דת יהודית: יוצאה לשוק או למבוי ה מפולש וראשה פרוע ואין עליה ורדיד ככל הנשים, אף על פי ששערה מכוסה במטפחת, או שהיתה טווה בשוק וורד וכיוצא בו כנגד פניה על פדחתה או על לחיה כדרך שעושות הגויות הפרוצות, או שטווה בשוק ומראה זרועותיה לבני אדם, או שהיתה משחקת עם הבחורים, או שהיתה תובעת התשמיש מבעלה בקול רם עד ששכנותיה שומעות אותה מדברת על עסקי תשמיש, או שהיתה מקללת אבי בעלה בפני בעלה. |

Like Rashi, Maimonides defines Dat Yehudit as reflecting the modesty practices which the daughters of Israel follow. While a woman violates Dat Moshe by going out with her hair completely uncovered in the marketplace, Dat Yehudit is violated if she goes out in public or into through-alleys with only a kerchief.[[184]](#footnote-186) In this sense, Maimonides reflects the position of the J. Talmud cited in the previous chapter: a simple kerchief will not be enough in a semi-populated area, even if it is not the marketplace. However, unlike the J. Talmud, he does not refer to a required practice for if or what a woman needs to cover in her own private courtyard. This allows future authorities to disagree on this specific matter with regard to Maimonides position. For instance, Rabbi Joseph Karo interprets Maimonides as being lenient with regard to a bared head in a courtyard while Rabbi Joel Sirkis explains that Maimonides prohibited women even in the courtyard from going out with bared heads[[185]](#footnote-187).

These two positions towards head covering are also clearly outlined in the earlier work of two Talmudists from the 13th century: Rabbi Moshe of Coucy who wrote Sefer Mitzvot Gadol (the big book of Mitzvot) in the first half of the century, followed by Rav Yitzhak of Courbeil who wrote his seminal work Sefer Mitzvot Katan (the little book of Mitzvot), in the second half of the century. Rabbi Coucy echoes Maimonides and classifies a woman’s obligation to cover her hair as Dat Moshe; only the secondary head covering is Dat Yehudit. Rabbi Courbeil in contrast, does not consider head covering to fall into the category of Dat Moshe at all. Head coverings are classified as Dat Yehudit. Within this category, distinctions are made between different kinds of interactive space and the type of head coverings that must be worn in each space.

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| 1. **Sefer Mitzvot Gadol, positive commandment 48:** If a woman has done one of the following, she is considered to have violated Dat Moshe: **As presented in the seventh chapter of Ketubot—going out in the marketplace with the hair of her head uncovered, as the school of R. Yishmael taught, “And he shall uncover her head” (Num. 5:18), this is a warning to the daughters of Israel that they should not go out with uncovered head;** making vows or taking oaths and not fulfilling them; having intercourse with her husband during the period of her menstruation; not setting apart the dough offering; or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed… What is considered to be Dat Yehudit? Those are the modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated Dat Yehudit: **going from one courtyard to another by way of an alley with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief and not uncovered entirely…** | 1. **Amudei Golah (Sefer Mitzvot Katan), mitzva 184**: To divorce one’s wife, as it is written, “If a man finds evidence of sexual misconduct on her part, he shall write her a bill of divorce and place it in her hand” (Deut. 24:1). Evidence of sexual misconduct, such as violating Dat Moshe: feeding him untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows and not fulfilling them; **or such as violating Dat Yehudit: going out to the marketplace with her head uncovered, even with a workbasket on her head if she goes out into the public domain—in our society, the hair net called kupia is equivalent to the work-basket; but it is permissible to go from one courtyard to another by way of an alley**—or spinning in the marketplace with rouge on her face—R. Hananel explained that she spins red wool near her face so that it casts a red glow on her cheeks—or acting flirtatiously with the young men. |

Despite the Talmud’s assertion that head covering is דאורייתא, meaning of Biblical origin, and Maimonides subsequently classifying it as Dat Moshe, none of the books of mitzvot popular in the early middle ages that try to deduce how many positive and negative mitzvot make up the traditional 613 mitzvot in the Torah count head covering as an independent positive or negative mitzva. Even Rabbi Coucy who defines it as Dat Moshe includes it within the greater commandment of marriage in a very long description of what the different rights and obligations of husband and wife are to one another are. It is not a mitzva in its own right, reflecting to a larger degree the ambiguity around the determination of its obligatory status.

**Head Covering for Unmarried Women**

One final and very interesting halakha that Maimonides codifies in a different section of Mishneh Torah, codifies that Jewish women, both married and unmarried, should not go out to the marketplace with their heads uncovered.

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| **Maimonides Laws of Prohibited Sexual Relations Chapter 21**  **Halakha 17**  Daughters of Israel should not walk in the marketplace with uncovered heads, whether unmarried or married. Similarly, a woman should not walk in the street with her son following her. [This is] a decree, [enacted so that] her son not be abducted and she follow after him to bring him back and she be molested by wicked people who took hold of him as a caprice. | **רמב"ם הלכות איסורי ביאה פרק כא**  **הלכה יז**  לא יהלכו בנות ישראל פרועי ראש בשוק אחת פנויה ואחת אשת איש, ולא תלך אשה בשוק ובנה אחריה גזירה שמא יתפשו בנה ותלך אחריו להחזירו ויתעללו בה הרשעים שתפסוהו דרך שחוק. |

Dat Moshe and Dat Yehudit are brought only in the Mishna and Talmud in the context of a married woman and her loss of ketuba, Maimonides likewise quotes these in his chapter on the Laws of Matrimony (הלכות אישות) as quoted above. However, in a chapter on prohibited sexual relations (הלכות איסורי ביאה), Maimonides seems to echo the plain language of the Tannaitic text, Sifrei[[186]](#footnote-188). Whereas the Sifrei used the possibly all-inclusive but also ambiguous term “Daughters of Israel,” to describe the practice of head covering, Maimonides states unequivocally that all women, married and unmarried, should cover their heads in the marketplace. As can be seen from both language and context, it is meant to ensure proper conduct and does not involve a Rabbinic or Biblical obligation[[187]](#footnote-189).

In his wake, the subsequent seminal codes of law, Tur and Shulchan Aruch incorporate this guideline, requiring single women to cover their heads in the marketplace but the Tur will also state in Orach Chaim that the hair of virgin women is not *ervah* and men can say Shema in its presence. In other words, the requirement for single women to cover their heads in the marketplace is not because objective nakedness is being exposed. It is reflective of social modesty norms outside of the home[[188]](#footnote-190).

Interestingly while the Tur mostly follows Maimonides, he makes one major and noteworthy exception. Head covering appears only in the category of Dat Yehudit, and not Dat Moshe. Nonetheless, he quotes Maimonides in defining what violating Dat Yehudit looks like, namely going into the marketplace without a double head covering[[189]](#footnote-191).

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| **Tur Even Haezer Ketbuot 115**  And what is Dat Yehudit? Going out with her head uncovered; even if it is not uncovered entirely but only covered by her work-basket—since she was not covered with a headscarf—she is to be divorced. Maimonides wrote that even though a woman’s hair is covered with a kerchief, since she is not wearing a head-scarf like all women, she is to be divorced without receiving her ketubah and this is specifically if she goes out to the public thoroughfare or to a through-alley or to a courtyard where there are many passersby but into an alley that is not a cut through and a courtyard in which many do not frequent, she is not to be divorced. And also, if one spins in the marketplace in such a way that her arms are exposed and if one rubs rouge onto her face. | **טור אבן העזר הלכות כתובות סימן קטו**  **ואיזו היא דת יהודית יוצאת וראשה פרוע אפי' אין פרוע לגמרי אלא**  **ט)קלתה בראשה כיון שאינה מכוסה בצעיף תצא כתב הרמב"ם אף על פי שמכוסה במטפחת כיון שאין עליה רדיד**  **י)ככל הנשים תצא בלא כתובה ודוקא שיוצאת כן ברשות הרבים או במבוי המפולש או בחצר שהרבים בוקעים בו אבל במבוי שאינו מפולש וחצר שאין הרבים בוקעים בו**  **יא)לא תצא** וכן הטווה בשוק שמראה זרועותיה לבני אדם וכן  יב) הטווה ורד כנגד פניה : |

The Tur defines head covering only as Dat Yehudit, although he adopts the Talmud’s ruling (and Maimonides) in requiring that a double head covering be worn into the marketplace. The Shulchan Aruch follows suit, also categorizing the obligation of head covering as Dat Yehudit. Rabbi Yosef Karo uses the language of the Mishneh Torah in describing the types of hair covering רדיד ומטפחת as oppose to the קלתה of the Talmud (retained by the Tur in his code). We do not exactly know what types of head covering are being referred to although presumably they covered much of the head and hair. However, he too stops short of using Maimonides classification of uncovered hair as a violation of Dat Moshe.

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| **Shulchan Aruch, Even Haezer 115**  Paragraph 4  What is Dat Yehudit? The modesty customs practiced by the daughters of Israel. And these are the things that if she violated one of them has transgressed Dat Yehudit: going out to the marketplace or populated alleyway or courtyard in which many pass through and her head is bare and she does not have on it the headscarf like all of the women even though her hair is covered with a kerchief. | שולחן ערוך אבן העזר הלכות כתובות סימן קטו  סעיף ד  איזו היא דת יהודית, הוא מנהג הצניעות שנהגו בנות ישראל. ואלו הם הדברים שאם עשתה אחת מהם עברה על דת יהודית: יוצאת לשוק ח] או למבוי ט] מפולש או בחצר שהרבים בוקעים ט'} בו ט {ט} <ה> וראשה י'} פרוע ואין עליה רדיד ככל הנשים, י] אף על פי (ט) ששערה מכוסה במטפחות… |

**The *Ervah* Factor**

Until this point, both in the previous chapter and in the beginning of this chapter, the focus has been on the practice of women’s head covering known as Dat Yehudit along with a layer of Talmudic interpretation that understands a minimal head covering to have Biblical stature. The famous Talmudic dictum “a woman’s’ hair is ervah” has been absent from both the cited texts and subsequent commentary. At this point, attention will be turned to a seminal text in Berachot that focuses on women as sources of *ervah*. In chapters three-five, an extensive analysis took place in which other sources of *ervah* – shok and voice – were examined based on the Talmudic text. Now we will turn to the relevant statement with regard to hair covering to try and trace the impact it had on applied halakha.

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| **Berachot 24a**  **Rav Sheshet said: hair in a woman is *ervah[[190]](#footnote-192)*, as it is written (*ibid*. 4:1), "Your hair is like a flock of goats.”** | **תלמוד בבלי מסכת ברכות דף כד עמוד א**  אמר רב ששת: שער באשה ערוה, שנאמר +שיר השירים ד'+ שערך כעדר העזים. |

The statement by Rav Sheshet that hair is *ervah* appears only once in the B. Talmud. It is not repeated or referenced anywhere else in Tannaitic sources or in the J. Talmud and it does not lead to further discussion. As presented in the previous chapter and earlier in this chapter, there are many sources referencing married women covering their heads and wearing ornaments and accessories. It is significant that none of those sources reference Rav Sheshet’s statement that hair is *ervah*. Likewise, it is not quoted by the earliest of post-Talmudic commentaries in the context of a woman’s required headwear in public places. Rav Sheshet does not specify how much hair needs be uncovered for it to be considered *ervah,* nor does he specify whether the women in question is married or unmarried.

This fits well with the amorphous nature of the entire passage and its relevance to applied practice. A short review of the *ervah* sources before moving on to the specific topic of hair covering will be helpful for the reader. A longer, more in depth analysis can be found in chapter three.

The Gaonic Sages who lived in the period immediately after the Talmud concur that this whole passage is only relevant with regard to Shema. The seminal11th century Talmudist Rabbi Isaac Alfasi left it out of his Talmudic halakhic commentary altogether. Many post-Talmudic commentators understand these statements in the context of a general warning to men to be wary of any interactions with women that could trigger sexual thoughts (see chapters 1-3 for further analysis).

In their codes of law, Maimonides, Tur and Shulchan Aruch consider everything about a woman to be potentially *ervah* and codify laws directed at men accordingly. An important reference in Maimonides’ Mishnah Torah is to be found in the beginning of chapter 21 in the laws of Prohibited Sexual Relations, where he identifies women’s hair as being a possible source of sexual stimulation if a man intends to derive benefit from it. He codifies the prohibition for a man to interact with a woman who is *ervah* or prohibited to him in any way that is of a sexual nature.

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| **Rambam** **in Issurei Biah (Laws of Sexual Prohibition**) 21:2  … And it is forbidden for a person to signal with his hands or feet or to wink with his eyes at one of the arayot, or to laugh with her or act frivolously, and even to smell the perfume that is upon her or to look at her beauty—is forbidden. And we strike one who intends to do these things with [rabbinic] lashes of rebellion. And one who looks even at the little finger of a woman and intends to derive benefit, is as if he gazes at her private parts. And even to hear the voice of an *ervah* **or to see her hair is forbidden.** | רמב"ם הלכות איסורי ביאה פרק כא  הלכה ב  ….ואסור לאדם לקרוץ בידיו וברגליו או לרמוז בעיניו לאחת מן העריות או לשחוק עמה או להקל ראש ואפילו להריח בשמים שעליה או להביט ביפיה אסור, ומכין למתכוין לדבר זה מכת מרדות, והמסתכל אפילו באצבע קטנה של אשה ונתכוון להנות כמי שנסתכל במקום התורף ואפילו לשמוע קול הערוה או **לראות שערה אסור**. |

All women, outside of his wife with exceptions made for his mother, daughter and young sisters, are considered to be outright sources of *ervah* and thus, demand his constant vigilance when in their presence. A single woman who has not used the mikva, even if she could potentially be his wife, is also prohibited, for she is assumed to be nidda or menstruant. This effectively limits all interaction between the sexes unless he is looking to get married in which case, within reason, he is permitted to gaze at an unmarried women in order to assess whether she finds favor in his eyes[[191]](#footnote-193). In contrast, there is the position of those who acknowledge that familiarity and habituation determine a more objective standard for what can lead to sexual thoughts. In other words, not all of a woman’s body is *ervah*, even during the saying of Shema when it really matters. Only areas that are normally covered must not be exposed.

Essentially, two parallel and separate halakhic issues emerge as related to head covering. Dat Yehudit and/or Dat Moshe dictate that a head covering be worn. A double head covering became necessary based on the Talmud’s interpretation that a basic head covering was required by Dat Moshe and a secondary covering was required by Dat Yehudit. Even Rishonim who define head covering as Dat Yehudit refer to a secondary head covering. In parallel, covering of hair appears in halakhic discussions of *ervah*. One consequence directly impacts a man’s ability to pray in its presence. Since men must avoid looking at *ervah*, they are warned that hair is a possible source of stimulation.

**Introducing Kimhit and the Zohar**

It is impossible to ignore the impact of the Zohar, written around the same time as the commentaries of Rashba and Ritva, which introduces an unprecedented and tremendously stringent position requiring that no hair ever be uncovered on the head of a married woman, even in the privacy of her own home. This does not become immediately normative, but several hundred years later it will be introduced as the ideal. The inspiration for the Zohar’s stringent approach seems to come from the Talmudic passage about a woman named Kimhit which appears in the Talmud as follows:

**Who Was Kimhit?**

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| **Yoma 47a**  It was taught in a Beraita: Kimhit had seven sons and all served as high priests. The sages asked her how she merited this and she answered, “The walls of my house have never seen the hairs of my head.” They said to her, “Many have done so without benefiting.” | תלמוד בבלי מסכת יומא דף מז עמוד א  תנו רבנן: שבעה בנים היו לה לקמחית וכולן שמשו בכהונה גדולה. אמרו לה חכמים: מה עשית שזכית לכך? - אמרה להם: מימי לא ראו קורות ביתי קלעי שערי. - אמרו לה: הרבה עשו כן, ולא הועילו. |

Kimhit had seven sons who all served as high priests. She gives credit to her extreme piety in never exposing her hair even to the walls of her house! The response of the sages to Kimhit is startling. They are not impressed with her excessive piety, nor do they validate it by suggesting that all women behave in a similar way[[192]](#footnote-194). Nonetheless, the Zohar is clearly referencing this passage when it requires that, “The beams of her house not see a single hair of her head”:

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| **Zohar Parashat Naso, p. 125b–126a**  77) R. Hizkiyah stated: a stupor shall befall the man who allows his wife to let her hair be seen protruding forth. This is one of the modest practices of the home. A woman who exposes some of her hair for self-adornment causes poverty for her household, causes her children to be unimportant in their generation, and causes a foreign spirit to dwell in her house. What causes all this? The hair of her head that could be seen protruding forth. If this is true within the home, how much more so in the marketplace. And how much more so [could it lead to] even further brazenness. Thus the verse, “Your wife shall be as a fruitful vine in the innermost parts of your house” (Psalms 128:3).  78) R. Yehudah stated: The hair of the head of a woman being exposed causes “other hair” [i.e., the powers of impurity] to be revealed and harm her. Thus, a woman is required to ensure that even the beams of her house not see a single hair of her head, and all the more so outdoors. | **זוהר כרך ג (במדבר) פרשת נשא [המתחיל בדף קכא עמוד א]**  אתתא דאפיקת משערא דרישה לבר לאתתקנא ביה גרים מסכנותא לביתא וגרים לבנהא דלא יתחשבון בדרא וגרים מלה אחרא דשריא בביתא מאן גרים דא ההוא שערא דאתחזי מרישה לבר, ומה בביתא האי כ"ש בשוקא וכ"ש חציפותא אחרא ובגין כך אשתך כגפן פוריה בירכתי ביתך, אמר ר' יהודה שערא דרישא [דף קכו עמוד א] דאתתא דאתגלייא גרים שערא אחרא לאתגלייא ולאפגמא לה בגין כך בעיא אתתא דאפילו טסירי דביתא לא יחמון שערא חד מרישא כ"ש לבר, ת"ח כמה בדכורא שערא הוא חומרא דכלא הכי נמי לנוקבא, פוק חמי כמה פגימו גרים ההוא שערא דאתתא, גרים לעילא גרים לתתא גרים לבעלה דאתלטייא גרים מסכנותא גרים מלה אחרא בביתא גרים דיסתלק חשיבותא מבנהא, רחמנא לישזבון מחציפו דלהון, ועל דא בעיא אתתא לאתכסייא בזיוותי דביתא ואי עבדת כן מה כתיב (תהלים קכח) בניך כשתילי זיתים, מהו כשתילי זיתים, מה זית דא בין בסתווא בין בקייטא לא אתאבידו טרפוי ותדיר אשתכח ביה חשיבות יתיר על שאר אילנין, כך בהא יסתלקון בחשיבו על שאר בני עלמא ולא עוד אלא דבעלה מתברך בכלא בברכאן דלעילא בברכאן דלתתא בעותרא בבנין בבני בנין, הדא הוא דכתיב (שם) הנה כי כן יבורך גבר ירא יי' וכתיב (שם) יברכך יי' מציון וראה בטוב ירושלם כל ימי חייך וראה בנים לבניך שלום על ישראל (ישראל סבא קדישא): |

In the Zohar there is a mandate for a woman to cover all of the hair on her head, even in the innermost part of her home in order to protect her husband and family. Exposed hair of a woman could unleash terrible misfortune into the world, connecting to powerful external forces in the spheres above that can cause harm to the world below. It is only speculation, but the terrifying language of the Zohar must have had repercussions in the practices of many Jewish communities who wanted to ensure divine protection from tragedy and ill will, leading to women vigilantly covering their hair. In some Hassidic communities, it becomes the motive for shaving a woman’s hair off completely after her wedding to make sure no hair protrudes at any time[[193]](#footnote-195). The Zohar becomes influential in some communities in Ashkenaz even as it is clear that it goes far beyond all halakhic requirements[[194]](#footnote-196).

Whereas the reason for hair covering in the Talmud is clearly Dat Yehudit, or, Jewish practice, and acceptable attire for a married woman, and hair as *ervah* takes up only one line in the entire Talmudic corpus, the concern for hair as *ervah* becomes central to the halakhic conversation in the Middle Ages.

Rabbi Moses son of Isaac Alshaker (known as Maharam Alshaker), who lived in the 15th and 16th centuries and served communities in Tunisia, Greece and Cairo, rejected the stringent approach in the Zohar as standard practice in a responsa he wrote about women who have begun uncovering some of their hair. The questioner wished to know if the community had cause to protest such a liberal practice. His only concern is *ervah*, and specifically the obligation of women to cover their *ervah*. As seen earlier, sources on *ervah* placed the onus on men to avoid exposure to *ervah*, particularly during Shema. This responsa shows that it came to be perceived as a prohibition incumbent upon society to ensure that women dressed properly. The Maharam reflects on the contours of what defines *ervah*. A large portion of his responsa will be quoted below because he has enormous influence on later halakhic authorities, including those of today, particularly those who are looking for opinion which allow some of a married woman’s hair to be exposed in public.

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| Maharam Alshaker 35  I was asked a question by a friend about women who expose some of their hair outside of the veil for beauty and whether we have to be concerned for the teachings of a person who said this is a false tradition of for it is an absolute prohibition and it is explicitly said that a woman’s hair is *ervah* and therefore it is appropriate to rebuke them and warn them not to expose their hair.  Answer: It is clear that there is no reason to be concerned for this hair at all since the custom is to expose it and even for Kriat Shema. And the hair that is *ervah* is only with regard to hair that a woman is accustomed to cover — comparable to the handbreadth and it is thus written in the Talmud that Rabbi Isaac said a handbreadth of a woman is *ervah*, meaning a handbreadth that is normally covered…  Furthermore, it is expressly permitted and even for Shema and women were accustomed to uncovering and certainly the Daughters of Israel were accustomed to such in the days of the Mishna and Talmud. And it is possible that this was the practice even during the time of the Temple. “A woman must adorn herself but leave her lower temple untouched” (Bava Batra 60b).  And the Arukh wrote that when a woman wrapped up her hair she would leave some out between her ears and forehead opposite the sides of her face and she brings lime and applies it to the hair that she does not braid and lets it fall and creates a bang with it. But a rich woman combs it with perfumes and good oils until the hairs stick together…And this is the custom today, that the women wrap their hair and leave out hair on the temples that falls onto their face and the sages called this “temples” as we will explain and it is customary to comb this hair with perfumes and oils like the rich women in days gone by even though it seems that it is not appropriate to do this because of the destruction [over which women would refrain from removing the hair at their temples in mourning] as is written there. | שו"ת מהר"ם אלשקר סימן לה  תלמסאן שאלה שאלת ממני הידיד אם יש לחוש לאלו הנשים שנהגו לגלות שערן מחוץ לצמתן להתנאות בו לפי מה ששמענו מי שהורה ואמר כי שקר נחלו אמותינו הנוהגות לגלותו כי הוא איסור גמור ובפי' אמרו ז"ל שער באשה ערוה ולכן ראוי להוכיחן ולהזהירן שלא לגלותו.  תשובה איברא דאין בית מיחוש לאותו שער כלל כיון שנהגו לגלותו ואפילו לק"ש. וההיא דשער באשה ערוה לא מיירי אלא בשער שדרך האשה לכסותו דומיא דטפח והכי איתה בגמרא אמ"ר יצחק טפח באשה ערוה פי' טפח שדרכה לכסות  …..אדרבה שהתירוהו בפירוש ואפילו לק"ש והעידו שנהגו לגלותו ובודאי כי כן היו נוהגות בנות ישראל בימי חכמי המשנה והתלמוד ז"ל ואיפש' דאפילו בעודן על אדמתן בזמן שבית המקדש קיים כדאיתא בהדיא בפרק חזקת הבתים דאמרינן התם עושה אשה כל תכשיטיה ומשיירת דבר מועט. מאי היא רב אמר בת צדעא שנ' אם אשכחך ירושלם וגומ' ופירש בעל הערוך ז"ל דכתיב בתשובות כשהאשה קולעת שערה משיירת ממנו דבר מועט בין אזניה לפדחתה כנגד צדעתה ומביאה סיד טרוף כשהוא חבוט וטחה אותו שער ואינה קולעת אותו אלא מטילה כנגד פניה זה עושה בת עניים. אבל עשירה שורקתו בבשמים ובשמן טוב כדי שיתחברו שערות זו בזו ולא תהיה כאבלות ויתיפו ע"כ.  וזה המנהג בעצמו הוא מנהג הנשים היום שהאשה קולעת כל שערה ומשיירת שער הצדעים יורד על פניה והוא הנקרא בלשון חכמים בת צידעא כמו שנתבאר ונוהגות גם כן לשרוק אותו בבשמים ושמן הטוב כעשירות של אותו הזמן אף על גב דלא חזי למיעבד הכי זכר לחרבן הבית כדאיתא התם. וכל מה שתמצא בספר הזוהר מקפיד על גלוי שער האשה איפשר דבשער שדרכה לכסותו משתעי דבגמר' סתמא נמי קאמר ואמרינן דלא איתמר אלא במה שדרכה לכסות ולק"ש. ואם יש דבר אחר אנן אתלמוא ואמנהגא סמכינן. ובואו ונצווח על אלו האוסרים אותו שער לאשה בתוך ביתה מההיא דשער באשה |
| And all that you will find in the Zohar, who was stringent regarding uncovering of hair of the woman, it is possible this was when the custom was to cover but in the Talmud it is clear that it was only talking about hair normally covered and Shema. And if there is anything else to say, we rely on the Talmud and the custom. And let us stand and cry out at those who prohibit this hair for a woman in her household because *hair of a woman is ervah* without knowing about which hair we are talking about and what the halakha is as stated in the Talmud and if this is the case then according to their approach, the eyebrow hair should also be prohibited for it says “hair” and it is also written that all of the hair [of the nazir] shall be shaved, his head and his beard and his eyebrows, etc. “and certainly her face, hands and feet” Should these too be prohibited” And what difference does this [eyebrow] hair make? And if it is because it is the custom for it to be uncovered, here too it is the custom for this hair to be uncovered.  …  And were I less fearful, I would even say for those women who have been exiled from the land of the uncircumcised (Christendom), whose practice was to cover all of their hair when they were there, they should not be warned about uncovering since they have established their dwelling place here and they are not planning to return. …  …And even more so, with these women who have no intent to return to their original lands, for they did not cover all of their hair because of a prohibition but rather because that was the custom of the women, even the non Jewish women, to cover all hair. Therefore, even those who would cover all of their hair in their former dwelling place should be allowed to follow the custom of their current dwelling place. And in many situations the rabbis were lenient in order to avoid a wife becoming repulsive to her husband.  And there is no need to continue to explain…Moshe Alshaker. | ערוה בבלי דעת באי זה שער אמרו ולמאי הילכתא איתמ' בגמ' ואלא מעתה לפי דרכם שער גבות עיניה נמי היה להם לאסור דשער קרייה רחמנא נמי דכתיב יגלח את כל שערו את ראשו ואת זקנו ואת גבות עיניו וגומ' וכל שכן פניה ידיה ורגליה דהוה להו נמי למיסרן ומאי שנא אותו שער ואי משום דדרכן להיות מגולין האי נמי דרכו להיות מגולה….  ואלמלא דמסתפינא הוה אמינא דאפילו אותן הנשים שבאו מגורשות מארצות הערלים שהיו נוהגות לכסותו כשהיו שם אין להזהירן שלא לגלותו כיון שקבעו דירתן בכאן ואין לומר בהן דעתן לשוב לארצם. ….  וכל שכן באלו הנשים דליכא למימ' בהו דעתן לשוב לארצם כמו שכתבנו וכל שכן דאפי' בארצן לא היו מכסות אותו משום איסור אלא שלא היה מנהג ארצן לגלותו דאפילו רוב הגויות לא היו נוהגות לגלותו. הילכך אפי' לאותן שהיו נוהגות לכסותו בארצן ראוי להניחן לנהוג כמנהג הארץ אשר גרו בה. ומעשה אמותן הקדושות בידיהן כמו שהוכחנו מההיא דפרק חזקת הבתים דלעיל ובכמה וכמה דברים הקילו רבותינו ז"ל כדי שלא תתגנה האשה על בעלה. ואין צורך באורך. נאם המעוטף באהבתך ולפרידתך קירות לבו מקרקר. משה ן' אל אשקר. נ"ר. |

In his responsum, in which he attempts to define the boundaries of hair as *ervah*, the Maharam Alshakar describes women’s hair that has escaped from the hair-binding. He reassures those who asked the question that, in the manner of the Rashba, hair that is normally uncovered does not fall under the category of *ervah*, even for Shema. This is not only with regard to one’s wife but also with regard to other women. An important citation in the responsa, linking his ruling with earlier halakhic authorities, is quoted in the name of Rav Natan the Son of Yechiel, known as Arukh, who lived in the 11th century and studied with the last of the Gaonim. Rav Natan wrote that when a woman wrapped up hair she would leave some exposed between her ears and forehead opposite the sides of her face. Four hundred years later, the Maharam notes that the women still do the same, wrapping their hair and leaving hair exposed on the sides, using perfumes and fine oils to comb the hair extending past the veil, descending over the face.

He concludes by ruling that if a woman goes from a place in which the custom was to cover all of the hair to a place where the custom is to allow hair to extend from the veil and frame the face, then women should be allowed to act in accordance with local custom. He is not concerned that this hair might be considered *ervah* since it reflects the accepted practice of women regarding hair covering, and men will not be sexually aroused by seeing it.

Two important principles are explained by the Maharam: the first is that the type of hair covering required depends on the accepted practice of women in a community, and the second is that hair that is normally uncovered is not considered *ervah* for the purposes of reciting Shema. He continuously refers to Jewish women’s customs’ with regard to hair covering as defining what of hair is precisely *ervah*. He suggests that women have been uncovering some hair dating all the way back to the Temple. This point directly refutes the Zohar who warns of dire consequence if even one hair is exposed! In the end, he reinforces the known concern of the Sages, presented in the analysis of the Mishna in Shabbat in the previous chapter, to ensure a wife’s attractiveness to her husband based on how other women are appearing in public.

Nonetheless, the Maharam’s responsum is indicative of the halakhic focus shifting to concern for *ervah* rather than reflecting and defining the practice of Dat Yehudit. If the concern for hair covering is that of *ervah,* social behavior would dictate that it must be covered at all times, in public and private spaces. Furthermore, it is thus possible to understand the focus on *ervah* as fully informing the practice of hair covering, thus transforming it into Dat Yehudit.

In keeping with what was presented in the Maharam’s responsa and the move towards total hair covering all of the time, Rabbi Moshe Sofer, known as the Hattam Sofer who lived in the 18th century, wrote that while the Zohar is not halakha, it has uprooted halakha in firmly defining how women should cover all of their hair at all times.

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| **Responsa Hatam Sofer Part 1 (Orach Chayim) Siman 36**  In our lands, where the non-Jewish women go out with bared heads but our mothers did not go out in such a manner, and were very careful of this and heeded the words of the Zohar and were stringent about this, even though if we were called to account to determine halakha we would say that the status of hair outside the veil in the Talmud is towards leniency, meaning according to the Aruch and not like the Rashbam and the halakha is not like the Zohar, nonetheless, since the custom is like the Zohar, on this matter it supplants the law. for where the external books dissent with the Talmud and the external books include midrash, Zohar etc. this custom uproots halakha and becomes the prevalent halakha in Israel and this is brought in Magen Avraham 690: 22.  And the general principle is any hair on the head and forehead in a married woman even in her room is *ervah* if she does not wear a kerchief on her head and in the market and courtyard, also a hat… | **שו"ת חתם סופר חלק א (אורח חיים) סימן לו**  והאמנם בארצותינו שהאומות יוצאות פרועי ראש ואמותינו **לא יצאו ונזהרו מאד וחשו לדברי הזוהר והקפידו על זה מאד,** אף על גב דאילו היינו עומדים למנין לקבוע הלכה היינו אומרים דאותה **שורה מבוארת בש"ס להיתר היינו עפ"י פי' הערוך** **דלא כרשב"ם ואין הלכה כהזוהר**, מ"מ כיון שתפסו המנהג כהזוהר על זה כ' מהר"א שטיין **מנהג עוקר הלכה ונעשה הלכה קבוע**, דהיינו היכא דספרי חצונים חולקים על הש"ס וספרי חצונים היינו מס' סופרים וכדומה או מדרש ופסיקתא והזוהר כא' מהם, אותו מנהג עוקר הלכה ונעשה הלכה רוחת בישראל, ומייתי לי' מג"א סי' תר"ץ סקכ"ב ע"ש:  **הכלל היוצא כל שום שער בשום מקום בראש ופדחת בנשואה אפילו בחדרה ערוה היא אם לא שיש לה מטפחת בראשה ובשוק וחצר של רבים גם כובע,** |

The Hatam Sofer adopts the Zohar’s position since it had become the prevalent custom “in our lands,” thereby overturning and supplanting the law. He concedes that this is not the halakhic consensus based on the Talmudic discourse or the Rishonim and he agrees with the Maharam in principle. He concludes however, that although according to halakha not all hair is *ervah*, and it is in fact based on the practice of women and how much they cover, in his land, the custom is to follow the Zohar, even in private space.

Rabbi Yehiel Mikhal Epstein, author of the Arukh HaShulchan who lived in the period just after Hatam Sofer in the 19th century, took a completely different and two tiered approach to the halakhic discourse, reflecting aspects of both Dat Yehudit and *ervah*.

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| **Arukh HaShulchan Even Haezer 21:4**  Daughters of Israel should not go with bared heads in the marketplace, both single women such as widows and divorcees and married women. And to go with a bared head in the public thoroughfare is prohibited from the Torah as it is written regarding the Sotah: “And he bared the head,” meaning she does not normally go out like this… | **ערוך השלחן אבן העזר כא:ד**  לא תלכנה בנות ישראל פרועות ראש בשוק, אחת פנויה כגון אלמנה וגרושה ואחת אשת איש. ולילך פרועת ראש ברה"ר אסור מן התורה דכתיב בסוטה "וּפָרַע אֶת רֹאשׁ הָאִשָּׁה" (במדבר ה יח) – מכלל דאינה הולכת כה, ובסי' קט"ו יתבאר בזה. |

He rules in Even Haezer, in the section around the laws of marriage, that uncovering hair (for a married woman) is prohibited from the Torah, inferred from the Sotah passage in the Torah. However, he was living in Lithuania at a time where women were not covering their hair at all despite the clear and quite stringent requirements set out by the rabbis of that time. While protesting this promiscuous behavior, he questions whether familiarity can eliminate its definition as *ervah* altogether, going even further than Rashba et al. and Maharam. In the end, the Arukh HaShulchan will suggest that habituation of seeing women’s hair causes it to cease being *ervah*.

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| **Aruch HaShulchan Orach Chayim Hilkhot Kriat Shema, 75:7**  Let us denounce the practice, which, for many years due to our many sins has become widespread, in which the daughters of Israel have broken with tradition and go about with their hair uncovered. Our great consternation about this does not help and this plague has spread, that the married women walk about as the unmarried women with their hair uncovered. Woe unto us that this has happened in our days. However, as far as the law is concerned, it seems that it would be permissible to pray and recite blessings in front of their uncovered heads. Since now the majority do this, their hair has the status of parts of the body which are normally uncovered and as was written in the Mordechai in the name of Raaviah, “All of the things mentioned as *ervah* are specifically things that are not accustomed to be uncovered but an unmarried woman who is accustomed to uncovering hair, there is no concern for sexual thoughts.” | **ערוך השולחן אורח חיים סימן עה סעיף ז**  ועתה בואו ונצווח על פרצות דורינו בעוונותינו הרבים שזה שנים רבות שנפרצו בנות ישראל בעון זה והולכות בגילוי הראש וכל מה שצעקו על זה הוא לא לעזר ולא להועיל ועתה פשתה המספחת שהנשואות הולכות בשערותן כמו הבתולות אוי לנו שעלתה בימינו כך מיהו עכ"פ לדינא נראה שמותר לנו להתפלל ולברך נגד ראשיהן המגולות כיון שעתה רובן הולכות כך והוה כמקומות המגולים בגופה וכמ"ש המרדכי בשם ראבי"ה בספ"ג וז"ל כל הדברים שהזכרנו לערוה דוקא בדבר שאין רגילות להגלות אבל בתולה הרגילה בגילוי שיער לא חיישינן דליכא הרהור עכ"ל וכיון שאצלינו גם הנשואות כן ממילא דליכא הרהור [והרי"ף והרמב"ם השמיטו לגמרי דין שיער וקול משום דס"ל דלאו לק"ש איתמר עב"י]: |

The Arukh HaShulchan straddles an interesting divide. On one hand, the practice of exposing hair has neutralized the *ervah* concern. On the other hand, it is based on a Biblical passage and thus, the prohibited cannot become permitted despite the loss of *ervah* status. This reverts us back to the earliest of rabbinic sources in which the head must be covered but not because of *ervah*. As a result, the amount of head and hair to cover becomes less defined, as will be presented below.

Although the idea that a source of *ervah* can lose its status as such due to habituation is well established in the Rishonim, not all halakhic authorities agree with the Arukh HaShulchan’s analysis and the Mishna Berura, written in the early 20th century by Rav Yisrael Meir Kagan Hakohen, also known as Hafetz Haim, remains steadfast in his position that a married woman’s hair remains eternally *ervah*.

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| **Mishna Berura 75:10**  Hair that is accustomed to be covered—even if it is the practice only to cover in the market and not in the house or courtyard—in any event, it is *ervah* according to all opinions, even in the house and it is prohibited to read opposite if even a little is uncovered.  And know, even if the way of a woman and her friends is to go in the market with an uncovered head in the matter of the promiscuous women, and as with the manner of uncovering the thigh, which is prohibited according to all, since the hair must be covered by law [and there is a Torah prohibition for it is written “and he bared the head of the woman,” which means her head was covered] and also, all daughters of Israel who hold by Dat Moshe are careful with this from the days of our forefathers forever after, it is the category of *ervah* and it is prohibited to read opposite it and it only comes to exclude unmarried women for whom it is permitted to go with an uncovered head or hair that falls out of the veil, for this is dependent on local custom, for if the daughters of Israel do not allow any hair to be revealed, even the smallest amount, then it is in the category of *ervah* and it is prohibited to read opposite it and do not say it is permitted and because it is familiar, there are no sexual thoughts. | **משנה ברורה סימן עה**  (י) שדרכה לכסותו - ואפילו אם אין דרכה לכסותו רק בשוק ולא בבית ובחצר מ"מ [יז] בכלל ערוה היא לכו"ע אפילו בבית ואסור שם לקרות נגדה [יח] אם נתגלה קצת מהן. ודע עוד דאפילו אם דרך אשה זו וחברותיה באותו מקום לילך בגילוי הראש בשוק כדרך הפרוצות אסור וכמו לענין גילוי שוקה דאסור בכל גווני וכנ"ל בסק"ב כיון שצריכות לכסות השערות מצד הדין [ויש בזה איסור תורה מדכתיב ופרע את ראש האשה מכלל שהיא מכוסה] וגם כל בנות ישראל המחזיקות בדת משה נזהרות מזה מימות אבותינו מעולם ועד עתה בכלל ערוה היא ואסור לקרות כנגדן ולא בא למעט רק בתולות שמותרות לילך בראש פרוע או כגון שער היוצא מחוץ לצמתן שזה תלוי במנהג המקומות שאם מנהג בנות ישראל בזה המקום ליזהר שלא לצאת אפילו מעט מן המעט חוץ לקישוריה ממילא בכלל ערוה היא ואסור לקרות כנגדן וא"ל מותר דכיון שרגילין בהן ליכא הרהורא וכדלקמיה: |

According to the Mishna Berura, hair remains *ervah*, even if the normal practice in the marketplace is for women to uncover their hair. The nuances of Dat Yehudit or different styles of head covering are not relevant in his halakhic analysis. As far as he is concerned, since the daughters of Israel covered all of their hair from time immemorial, to do otherwise is to display *ervah*, akin to an exposed thigh, regardless of what is considered acceptable in general society. This is an extreme position as hair today is no more sexual than an exposed face since it is that ubiquitous in society.

In contrast, in another part of the world, the Ben Ish Hai (Yosef Hayim 1835-1909) in Bagdad, writes about pious, modest women who are uncovering their heads.

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| **ספר חוקי הנשים, בין איש חי, עמ' 55**  Look at the women of Europe whose custom is not to hide themselves from strangers. Nonetheless, their clothes are orderly; they do not reveal their bodies except only their faces, necks, hands, and heads. It is true that their hair is uncovered and this custom of theirs is not possible according to our laws. But, they have a justification. They say, “This custom was accepted by all their women—both Jewish and Gentile—to go with their hair uncovered similar to the revealing of their faces. It does not cause men to have sexual thoughts when they see it.” **These are their words to explain this custom and we do not have an answer by which to refute it.** |

Rav Moshe Feinstein in the 20th century, in many ways follows the position set out by the Arukh HaShulchan, seeing hair as no longer *ervah*[[195]](#footnote-197) because of its habitual exposure even in Jewish society. Nonetheless, there is an uncontested Biblical prohibition for a married woman to go out with an uncovered head. What is unique to Rav Moshe is that he uses the *ervah* passage in Berakhot to essentially define the parameters of Dat Yehudit regarding how much hair could be legitimately uncovered. He thus allows women to uncover up to a *tefah* (approximately 9 cm) of their hair as permitted with other sources of *ervah* on her body, since up to a *tefah* of what is normally covered can be seen by a man when reading Shema. This blending of the boundaries of *ervah* into Dat Yehudit gives women a certain latitude in permitting some of their hair to be uncovered, in contrast to the Zohar and subsequent approaches based on it. Accordingly, some women uncover their hair in the front or in the back or even at the top of their heads as long as it does not exceed the *tefah* limit. This is an important step in creating a more defined halakhic framework for head covering requirements given that we no longer know what the *kalta* or *redid* mentioned in the Talmud and Maimonides looked like and how they compared to what is accepted in society.

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| **Igrot Moshe Even Haezer 1:58 (translation Getsel Ellinson)**  …I did not want to write my answer down, preferring to answer orally when asked but now that I have received a second letter from…on the other hand there is an obligation to clarify the halakha even if it is for leniency…  The Talmud expresses the actual prohibition by saying Jewish women are warned not to go out with their hair unkempt—at issue is the hair’s being unkempt—not merely uncovered. As these few disheveled strands cannot render all her hair “unkempt” their exposure poses no problem. Obviously, the prohibition’s scope must be limited by the extent to which the hair of the suspected adulteress had to be exposed…A small exposure surely did not suffice. Rather the Kohen uncovered a section of her hair much larger than a *tefah*. For a woman to violate the prohibition, she must expose an equal amount.  One can derive that a woman’s entire head is considered among the covered parts of the body, yet the strands outside her [covered] tresses will still be exempt, since regarding those parts, up to a *tefah* may be seen unintentionally. We need not be stricter regarding hair than the rest of the body, since the former derives its laws from the latter. As for the possibility that others will gaze intentionally, the same liability exists regarding face and hands, yet these areas need not be covered…therefore, even those who differ with Rashba might rule that no prohibition applies to less than a *tefah*. |

In contrast to Rabbi Feinstein, who upholds the centrality of the Biblical obligation with regard to married women covering their hair, the great halakhic authority in Morocco, Rabbi Yosef Messas, wrote an important responsa in which he defended halakhically, the practice of women in North Africa, to uncover their hair. In his analysis, he returns to the Talmudic sources. He keeps the two chains of halakhic discourse, Dat Yehudit and *ervah*, separate, suggesting that they never really come together halachically outside of saying Shema. Finally, he admits that in all Arab lands, married women covered their hair until there was an influx of French Jewry with a communal practice of uncovering their hair regardless of prohibition or custom.

He uses the second of two explanations found in Rashi on the passage in Ketubot, implying that the issue of head covering in public, including the practice of uncovering the Sotah’s head in the Torah rests on practice alone and is not an actual Biblical prohibition. He then concludes that hair covering is obligatory only from standpoint of Dat Yehudit and only when head covering is the custom within the Jewish community.

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| **R. Joseph Messas (Rabbi of Morocco and later Chief Rabbi of Haifa),**  ***Responsa Mayyim Hayyim*, 2:110, 20th century: (Excerpted from Michael Broyde’s article on hair covering http://traditionarchive.org/news/article.cfm?id=105511)**  Know, my child, that the prohibition for women to uncover their hair is extremely well-founded! For the custom practiced by all women of ancient times was to cover their hair, and one who did not do so was considered to be promiscuous. To them, a woman’s exposed hair was also considered disgraceful (see Rashi, end of *Ketubot* 72a, s.v. *az’harah livnot yisrael*). Therefore, the Sages were exceedingly strict based on the custom of their time, on account of promiscuity and disgracefulness…  Furthermore, Maharam Alshakar, responsum 39, wrote in the name of Ra’avyah that the Talmudic statement that the hair of a woman is considered *ervah*, etc., is limited to the recitation of the Shemaand to hair that it is their practice to cover…*Thus, nowadays when women worldwide* *have abandoned the ancient custom and reverted to the simple practice of not covering their hair, it in no way indicates a deficiency in their modesty or promiscuity, God forbid. . .*  Know, my child, that the prohibition of married women uncovering their hair was quite strong in our community, as it was in all of the Arab lands, before the influx of French Jewry. However, in short order after their arrival, the daughters of Israel transgressed this law and a great dispute arose amongst the rabbis, sages, and God-fearing learned masses…Now all women go out with uncovered heads and loose hair…Consequently, I have devoted myself to find a justification for the current practice, for it is impossible to fathom that we can return to the status quo ante…I attempted to search through the writings of the legal decision makers laid out before me, only to find stringency upon stringency and prohibition upon prohibition. I then set out to fetch knowledge from afar to draw from the sources—Mishna, Talmud and commentaries—before me: perhaps in them I would find an opening of hope through which to enter . . . Many thanks to God that we have found numerous openings to this area to enter in a lawful rather than unlawful manner. They are:  Behold, it is a well-founded principle of all the decisors, upon which they built their sanctuaries like the heights, that which R. Yishmael hermeneutically derived, “And he shall uncover her head,” this is a warning to the daughters of Israel that they should not go out with uncovered head, as it states in *Ketubot* at the end of 72a. And Rashi there explained, “*A warning*—from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. Alternatively, since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation.”  The difference between the two explanations is that according to the first, it seems that the reason the Kohen uncovers her hair is in order to publicly disgrace her. . .this seems to imply that it is prohibited for us to uncover a woman’s hair in public to disgrace her for no reason, but in order to punish her commensurately, the Torah permitted this prohibited act to be done in order to disgrace her. *However, she herself has no prohibition* *to go with her head uncovered, for if she wishes to disgrace herself, she* *may do so at any time*.  Accordingly, now that all the daughters of Israel have agreed that hair covering is not an indication of modesty, and certainly the absence of a head covering carries no disgrace . . . this prohibition has been uprooted from its foundation and become permissible…Furthermore, and more significantly, the explanation of R. Yishmael’s |
| statement rests on two bases—namely, the combination of two unfavourable conditions: uncovering of the hair and the unravelling of the hair from its braids and knots. But uncovering of the hair alone is not covered by the warning at all…*The upshot of all this is that hair covering for women is only obligatory from the standpoint of custom alone*. |

Rav Messas takes the position, as did many Rishonim, that head covering is based on Dat Yehudit or the modesty practices of the daughters of Israel, rather than Dat Moshe or a Biblical requirement. He concludes logically, that since Dat Yehudit is based on societal norms and communal practice, if women stop covering their hair, the practice is no longer binding[[196]](#footnote-198). While his halakhic analysis has merit and reflects some of the analysis around the Talmudic discourse, and while he is correct that for 1500 years there has been ongoing layers of stringency layered upon stringency, his approach is largely rejected.

Most tellingly, Rav Ovadia Yosef, one of the foremost halakhic authorities in Israel in the 20th century, particularly for the Sephardi community, grounds his approach on the Maharam Alashker cited earlier in the chapter and rejects Rav Messas’s analysis:

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| **Yabia Omer Even HaEzer 4:3**  Today, it has become widespread practice for God-fearing women to go out with a kerchief or hat, but without an additional headscarf or veil, and no one makes a fuss. Essentially, women covering their hair is Biblical in nature, and is obligatory irrespective of changes in practice, and is unchanging for all time. **However, with respect to the modest practices of Jewish women, whatever the contemporary practice is although it is lenient, can be accepted.** This accords with the ruling of Maharam Alashkar who permits women, in places where the practice is for all to do so, to go about with hair protruding from under their hat. | **יביע אומר אבן העזר ד, סימן ג**  והנה היום פשט המנהג שהנשים יראות ה' יוצאות במטפחת או בכובע בלבד בלי צעיף או רביד /רדיד/, ואין פוצה פה ומצפצף. וע"כ דדוקא עצם כיסוי הראש שהוא דאורייתא הוא מחוייב המציאות לעולם ולא ישתנה בשום זמן, אבל מנהג בנות ישראל שנהגו לצניעות כל שהמנהג בכל העיר להקל אזלינן בתר מנהגא. ודמי למ"ש מהר"ם אלשקר (סי' לה) להתיר במקום שנהגו הנשים לצאת בשערות שחוץ לצמתן. ע"ש. |

Rav Ovadia affirms the immutable obligation of hair covering, based on the Biblical text, which according to his reasoning cannot be overturned by a change in practice. In this responsa, he seems to be willing to accept any form of hair covering based on the accepted custom in the community[[197]](#footnote-199).

It is interesting that in the late 19th and 20th centuries, it becomes common practice in some cities and communities for religious married women to go out with bared heads, among them prominent rabbis’ wives, despite formidable rabbinic opposition. This influences the rabbinic discourse with authorities such as Rabbi Messas and the Ben Ish Hai willing to consider a reframing of Dat Yehudit that no longer includes head covering for married women. Had more major halakhic voices from across the spectrum agreed with them, it is possible that women would not be covering their hair today outside of the most restrictive communities.

Nonetheless, the majority of rabbinic opinion remained firm, both among Sephardi and Ashkenazi rabbinic authorities, that head covering is obligatory. While few women wear the double hair coverings required by the Talmud, Maimonides and Shulkhan Arukh, in many communities, women cover all of their hair even in the privacy of their home.

**Modern Practice and Interpretation**

Several developments over the last half century should be noted when looking at women’s hair covering in modernity. Many women who identify as observant, keeping shabbat, kashrut and mikva, praying in an Orthodox synagogue, sending their children to Orthodox schools, nonetheless continue the trend started in the 19th century of uncovering their hair. This is not usually based on following the rabbinic opinion of an authority like Rav Messas but on comfort, fashion, the custom of a woman’s mother or because it does not speak to a woman as a meaningful mitzva. Furthermore, it is no longer considered grounds for divorce without ketubah[[198]](#footnote-200) nor does it prevent them in any way from participating in communal events or being fully part of a religious community. In fact, a man without a kipa stands out far more than a woman without a head covering in any religious gathering including synagogue since all single women bare their heads in public in contrast to males who wear kipot from a very young age.

Second, there has been an influx of female voices actively engaged in studying the sources and searching for significance behind the practice of hair covering. Some of these voices talk about the dignity inherent in the mitzva, the symbolic identification of a married woman in public[[199]](#footnote-201), expressing humility before God in the manner of a kipa, the need for greater modesty once married[[200]](#footnote-202) and connecting to a female ritual[[201]](#footnote-203). Women’s voices weighing in on this topic are in and of themselves an innovation as for the first time in Jewish history, women are being heard as they embrace and/or grapple with the gender differences in halakhic Judaism. While attempts to find meaning are always welcome it is also important to recognize that none of the reasons brought above are explicitly stated in the rabbinic and halakhic sources[[202]](#footnote-204). In Ketubot it seems that a married woman has to be identified in public space to minimize promiscuity between the sexes and prevent Sotah-like situations. In Berakhot the concern is solely for a man’s sexual arousal. In other words, interpretive meaning has the potential to infuse a given ritual with greater significance, but to my mind it does not fully uproot any of the earlier original conversations that gave shape and definition to the practice.

Third, many young women, particularly in Israel, who cover their hair have defied rabbinic authority as they embrace the mitzva on their own terms. This is similar to what happened in Europe in the 19th century with the influx of modernity along with greater educational opportunities; many women stopped covering their hair completely. As often happens, particularly for women learning about gendered mitzvot, there can be a simultaneous movement towards and away from the practice. Many women are not interested in protecting men from *ervah* or how much of their head has to be covered by estimating how much a tefah allows to be uncovered. At the same time, they are attracted to a Jewish female ritual dating back thousands of years and choose to cover their head symbolically, as a sign of their new status as married women.

One of the styles most reflective of this trend is a wide headband which covers the top of the head but very little hair. According to Rav Ovadia’s definition above, that any practice of hair covering practiced by the daughters of Israel is legitimate, such a hair covering should be validated by rabbinic authorities but often is not. Below is a responsa of Rabbi Nachum Rabinovitch who echoes the sentiment cited above in the name of Rav Ovadia.

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| Responsa Si’ach Nachum 105 But also when a covering is required, if a small amount of the hair emerges outside the covering, that’s also fine…and in Beit Yosef there he cites the Rashba in the name of Ra’avad: “Her face and hands and feet…and her hair outside of her hair-binding, which isn’t covered—we aren’t concerned about them”…In summary, according to basic halakha one must cover most of the hair of the head, but it is permissible to leave out a bit of hair, and not specifically a certain amount of hair, but as is customary in the community of those who keep Torah and mitzvot to which she belongs. | **שו”ת שיח נחום סימן קה**  … אולם גם כשצריך כיסוי, אם מקצת מן השיער יוצא מחוץ לכיסוי גם זה בסדר, …ובב”י [=ובבית יוסף] שם מביא את הרשב”א בשם הראב”ד: “פניה וידיה ורגליה… ושערה מחוץ לצמתה שאינה מתכסה אין חוששין להן”… לסיכום: מעיקר הדין צריך לכסות את רוב שיער הראש, אבל מותר להוציא קצת שיער, ולאו דווקא שיעור מסוים אלא כפי הנהוג בחברה של שומרי תורה ומצוות אליה היא משתייכת |

Rabbi Rabinovitch does not define the amount that constitutes a small amount. Nor does he define what part of the head is uncovered. He emphasizes that the determining factor is the practice in a community committed to Torah and Mitzvot, which is similar to Rav Ovadia Yosef’s expression in the Yabia Omer brought above. In addition, Rav Rabinovitch was known to agree publicly that a headband, if accepted by the community as a head covering, would be an acceptable halakhic application of Dat Yehudit. However, he did not write this in a responsa, at least not overtly. As noted, women who cover their hair in this way do not usually ask a rabbi for permission. In many ways, this could be seen as an authentic expression by a society of women of Dat Yehudit, reflecting the religious norms of a particular community.

Finally, similar to the headband, the wig is a fascinating meeting place in which rabbinic will interacts and to some degree clashes with religious female (but not feminist) voices. It seems as far back as the Mishna in Shabbat, women wore wigs with non-Jewish hair. It is not clear whether the Mishnaic wig is similar to the human hair wigs worn by religious women today or were used only to thicken a woman’s own hair. What is clear is that she is considered by the Mishna to be more attractive with it than without it.

More than 1000 years after the Mishna was written down, and as *ervah* dominated the halakhic discourse with rabbis calling on women to cover all of their hair, wigs seemed to be an ideal solution. They cover all of a woman’s hair and she remains attractive to her husband, which was an ongoing concern addressed by the Sages and the post Talmudic authorities often with regard to hair and head coverings.

Four hundred years ago, *Shiltei Giborim* who lived at the beginning of the 16th century, anticipated the trend that today allows for human hair wigs in different shades of color and varying lengths and styles to be worn by married women, even if the wig is not discernable to the eye of other people and are often more attractive than a woman’s own hair. He asserted in his gloss to the Rif[[203]](#footnote-205), that only a woman’s hair when attached to her scalp constitutes *ervah*. Whether the wig is made of her own hair or another woman’s, as long as it is not attached to the scalp and even if it is an, “adornment creating the impression of uncovered hair, this poses no problem.” Although a permissive halakhic framework was established, particularly within communities most insistent that such *ervah* be completely covered, wigs remained and continue to remain a subject of controversy given the increased attraction they can bring for a married woman. There are many rabbinic voices that forbid women to wear attractive wigs due to concerns for immodesty and latent promiscuity.

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| **Sde Hemed, Asefat Dinim 4:3**  It has been clearly proven that the wig should not be permitted to married women…even if there is no outright prohibition, it is still improper for married Jewish women to wear wigs in our region. It is immodest…our women do not wear wigs and those women from cities in which the custom is breeched are an inconsequential minority. Heaven forbid that we should learn from their corruption. |

Nonetheless, Rav Moshe Feinstein ruled that wigs are permissible and rejected any concern for immodesty. Common Ashkenazi practice is to permit wigs in even the most stringent of communities although some require a hat on top of the wig.

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| **Igrot Moshe Even Haezer Vol. II, 12**  One can usually discern that a woman is wearing a wig, and even if a man cannot tell, in the vast majority of cases a woman can. Those few instances in which a woman cannot tell, provide the rabbis with insufficient reasons to forbid it…Everyone knows that a woman may be wearing a wig and will assume her to be reputable. |

The last Lubavitcher Rebbe, Rav Menachem Mendel Schneerson, strongly endorsed the wearing of wigs[[204]](#footnote-206). He wrote in Likutei Sichot 13, p. 189:

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| A woman who wears a scarf on her head will tend to take it off in certain cases because of discomfort. As opposed to a woman who dons a wig, even if President Eisenhower walks in, she will not remove it. |

In more modern Orthodox communities, the full wig quickly evolved into the fall which starts further back on the women’s head, allowing her to leave her hair out on top and the sides to blend seamlessly into the fall, which evolved into the kipa fall—essentially a piece of hair the size of a large kipa that blends seamlessly into the crown of the head. While neither Rabbi Feinstein nor Rabbi Schneerson would have allowed such minimal coverage in their own communities or in their halakhic rulings, the adaptation of the wig into the fall and into the kipa shows how women have extended the boundaries of the permissible by adapting the specific medium in a way that empowers them without concern for the particularities of the halakhic discourse.

Even in Sephardi communities, it has proven impossible to ban the wig despite Rav Ovadia Yosef strongly condemning their use and criticizing Sephardic women who reject their own traditions and rabbinic rulings in favor of Ashkenazic rabbis. While there are Sephardic rabbis who allow wigs, the majority opinion continues to be against, based on the requirement for an obvious head covering. Nonetheless, in these communities many women who would not have covered their hair at all in the past are wearing beautiful wigs. Even women who once covered their hair with hats or scarfs have adopted wigs, seeing the move as justified because of their ubiquity in ultra Orthodox Ashkenazi communities and because it makes them feel more attractive. As the world has become smaller, and women from communities with different customs and practices live next door to one another, women are taking ownership of this mitzva by deciding how to cover their hair, influenced more by other women than straightforward rabbinic instructions, and thus, perhaps, reasserting the truest reflecting of the Dat Yehudit practice.

**Family Purity Reframed**

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| In the course of the chapter, many of the concepts around the relevant Jewish laws involved in sexual intimacy will be presented and explained. However, a very short description of the basic structure of the halakhot governing sexual intimacy is necessary at the outset:  When a woman menstruates (or experiences any significant uterine bleeding), she and her sexual partner (spouse), become sexually prohibited until the bleeding ceases and the woman counts seven days clean of blood, culminating with her immersion in a ritual bath known as a mikva. Women who become prohibited in this manner are colloquially referred to as Nidda (this will be explained more fully below).  Throughout the seven days of counting, women are expected to vaginally inspect themselves to prove that the uterine bleeding has stopped. At the end of the seventh day, around nightfall, they begin to prepare for immersion in the mikva. This requires detailed attention to different parts of the body from head to toe to ensure that the immersion will be free of any impediments separating any part of the body from the water.  Intercourse is not the only restriction during this period of time. In order to govern the de-sexualization of the sexual relationship, a series of laws known as *harkhakot* (literally, laws that distance), evolved in order to protect the couple from falling prey to base sexual desire, reminding them consistently throughout this time that they are prohibited. These include an absolute restriction on all forms of touch, separate beds, increased modesty in dress and language, limitations while eating together and refraining from handing things to one another. |

Nidda laws are often grouped together with Shabbat and Kashrut as the central tenets of a halakhically observant way of life. However, they are fundamentally different in several ways.   
First, for men and women who have grown up keeping halakha, praxis from a young age brings familiarity with key traditions and practices and instills meaning into rituals that are performed most often within families and communities. Nidda, in contrast, has long held a sense of opaque silence and taboo. The topic is largely left undiscussed until marriage since sharing information requires opening up conversations around menstruation, female anatomy and sexuality, topics that are avoided out of a sense of modesty and a feeling that such discussions are irrelevant in a society that strictly espouses celibacy before marriage. For this reason, Nidda laws are actually most frequently referred to as laws of Taharat Ha-Mishpacha or Family Purity Laws. This euphemism, which began to appear in the 19th century, removed the uncomfortable concepts of uterine blood, purity/impurity and sexuality, even implicitly, from the terminology. In contrast to other mitzvot which are publicly performed, children often have no awareness that their mothers immerse. At most, towards the ends of high school, girls are given some minimal education about the halakhot, including sometimes a trip to the mikva to introduce some of the concepts and familiarize them with a ritual that will be theirs to practice in the future. While such a trip could potentially provide an opportunity to engage in the issue of Judaism and sexuality, these classes do not usually foster a safe environment for students to ask personal questions. In addition, the subject matter is always presented in a romantic and positive way, without any nuance that could potentially imply that couples, and specifically women, struggle with keeping these laws. There is no framework which prepares young women for what lies ahead in their not-so-distant future. For boys, the situation is even more dire. Introduction to this topic in any sort of comprehensive, educationally coherent way outside of obscure references in the Talmud is virtually non-existent[[205]](#footnote-207). Furthermore, while brides are usually given information beyond the halakhic dos and don’ts, including detailed explanations about physiology, anatomy and sexuality, grooms are not equally educated. At most they are taught about the laws of Nidda rather than prepared for a more realistic understanding of women’s bodies. This is a terrible oversight since there is no way to ignore the direct implications that these laws have on women’s bodies as the couple begins their sexual experience together. No other mitzvot require such meticulous examination of bodily fluids and intimate probing within the body. Furthermore, the laws do not only have repercussions for women’s sexuality and fertility (as will be explained below) but directly affect the sexual experiences of men who are equally prohibited from sexual interaction until their wives’ immerse. Religious couples are well aware that willful transgression leads the couple to suffer the severe punishment of *karet—*being cut off from among the people. This heightens their sense of religious responsibility when considering whether to keep these laws scrupulously or not. *Karet*, or “severance” is the consequence of transgressing one of 36 prohibitions, including eating on Yom Kippur, eating leavened bread on Passover, eating the blood of an animal or a man dying without being circumcised. These transgressions are synonymous with a betrayal of God’s covenant, extending conceptually above and beyond the actual transgression; hence the punishment is severance from the nation commanded to adhere to holiness in order to mimic God who is holy[[206]](#footnote-208).

Women who have complicated relationships with their bodies and sexuality due to religious education, body shaming, a life-long avoidance of their vulva (because of religious instruction or cultural taboos) or sexual trauma of any sort may already be undergoing an intense journey towards healthy sexuality as they approach marriage. The added stress of laws forcing them to directly interact with the source of their anxiety often without any therapeutic process before they begin to learn of the immutable halakhic requirements can complicate the transition. Some women in the religious world have been told never to touch or insert anything, including tampons, into their vaginas in order to protect their virginity, an instruction that already shows gross ignorance of female anatomy[[207]](#footnote-209). Suddenly, on the eve of the wedding they are instructed to go where they have never gone before. The idea of the halakhic internal exam known as *bedika*[[208]](#footnote-210) can be terrifying, let alone the thought of actual penetration.

For other women who have an affirmative relationship with their sexuality and their bodies, this kind of halakhic intervention with regard to a natural biological process can feel primitive, coercive or misogynistic. I have heard even these women express the uncomfortable sense that the rabbis are “in their bodies”, particularly since all of the texts about Nidda laws, until very recently, were authored only by men and the detailed attention paid towards this most intimate part of their body can feel invasive. This type of reflexive response by some women has led to a cacophony of voices, especially on social media, demanding a reevaluation of traditional sources that speak about women’s bodies.

It must be stated clearly however, that there are also many women who feel that these laws foster respect for women, their bodies, menstrual cycles and sexual needs by indicating that sexual relations are not the only medium for intimacy and mandating regular breaks from sexual interaction. For many women, immersion in the mikva connects them to their female ancestry dating back thousands of years, from the period of the Bible and Talmud onward. Heroic stories have been passed on about women who immersed in adverse conditions, endured hardships at times under terrible persecution with a sense of tremendous responsibility towards ensuring the purity of the Jewish family. The mikva, it should be noted, has always been purported to be the first building built in a traditional Jewish community as a sign of its commitment to the sanctity of sexuality within marriage and continuity through childbearing. Many women feel very empowered by a mitzva that is exclusively a “woman’s mitzvot” being directly tied, as it is, to the female cycle and life bearing potential of their bodies.

In short, women are simultaneously demanding greater agency over their bodies in this area of law , as well as seeking deeper meaning in how to integrate these rituals into their marital intimacy in a positive and inspiring way.

Given the hundreds of thousands of Nidda related questions that come into the Nishmat hotline (which is only a statistical reflection of the myriad questions that come to male and female halakhic authorities on the topic outside of the hotline), it is clear that there is heightened awareness of the centrality of keeping these laws along with acute relief in finding an outlet for asking individual questions. As someone who answers questions daily, I am often moved by women who are, on the one hand committed to keeping these laws and on the other hand, urgently want to be sexually permitted, whether they are newlyweds or approaching menopause. They call with the fervent hope that within the halakhic system there will be a solution, a way of permitting uterine bleeding that they fear is prohibited. Often, I am able to help them and their subsequent gratitude which at times is fervent and quite emotional, is touching to witness.

**The Laws of Nidda**

The laws which define the status of uterine blood are complex and rest on the foundation of two different religious-legal contexts in the Bible; the regulations of purity/impurity prescribed for those wishing to enter the Tabernacle and later the Temple, and the code of sexual prohibitions. The duality assigned to the status of this blood, and those that come into contact with it, is the primary challenge in understanding the laws of Nidda. The two aspects are intertwined in rabbinic discussion with few attempts to analyze each structure independently despite the seeming irrelevance of purity/impurity once the Temple is destroyed.

The Biblical text most central to the Nidda laws that relate to sexuality is found in Leviticus 18:19 where the prohibition to have sexual relations with a Nidda is stated.

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| **Leviticus 18:19**  Do not come near a woman during her separation of impurity (menstruation) to uncover her nakedness. | **ויקרא יח, יט**  וְאֶל־אִשָּׁ֖ה בְּנִדַּ֣ת טֻמְאָתָ֑הּ לֹ֣א תִקְרַ֔ב לְגַלּ֖וֹת עֶרְוָתָֽהּ׃ |

**Sexually Prohibited Relationships**

The laws in chapter 18 begin with the prohibition of incest and sexual relations between family members including step and half-members. Adultery, bestiality and sexual relations between two men are included in the list as well. This chapter is seen by many as a prelude to chapter 19 which opens with a call to holiness: “Speak to the whole Israelite community and say to them: You shall be holy, for I the Lord your God, am holy.”

The paradigm of “holiness” is not only for a select few but the entire nation. In imitating God’s holiness, we make holiness our objective. Unlike impurity which occurs involuntarily within our bodies, holiness is incurred by voluntarily choosing to follow in God’s way. It is an ongoing process, an act of partnership between the Israelite nation and God. Holiness is achieved by engaging only in permitted behaviors and refraining from the prohibited, including restrictions on the food we eat, our actions, and central to our discussion, sexual behavior. These boundaries are essentially what distinguish us from the other nations, a fundamental aspect of our relationship with God who has chosen to distinguish us from others. So significant are the laws proscribing sexual behavior that the important medieval Bible commentator Rashi writes at the opening of chapter 19, that the laws of sexual prohibition which appear in chapter 18 comprise the essence of holiness:

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| Rashi Leviticus 19, 2  You shall be holy. Separate from sexual prohibition and from [sexual] transgression for everywhere you find a fence against sexual prohibition, you find holiness. | רש"י ויקרא יט, ב  **קדשים תהיו**. הֱווּ פְרוּשִׁים מִן הָעֲרָיוֹת וּמִן הָעֲבֵרָה, שֶׁכָּל מָקוֹם שֶׁאַתָּה מוֹצֵא גֶדֶר עֶרְוָה אַתָּה מוֹצֵא קְדֻשָּׁה |

In chapter 20, the topic of sexual boundaries is revisited with the related punishments for each transgression presented; the punishment of *karet* is assigned to the man and woman who deliberately engage in sexual relations while the woman is menstruating.

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| **Leviticus 20:18**  If a man lies with a woman in her infirmity and uncovers her nakedness, he has infiltrated her source and she has exposed her blood’s source; both of them shall be severed from among their people. | **ויקרא כ, יח**  וְ֠אִישׁ אֲשֶׁר־יִשְׁכַּ֨ב אֶת־אִשָּׁ֜ה דָּוָ֗ה וְגִלָּ֤ה אֶת־עֶרְוָתָהּ֙ אֶת־מְקֹרָ֣הּ הֶֽעֱרָ֔ה וְהִ֕יא גִּלְּתָ֖ה אֶת־מְק֣וֹר דָּמֶ֑יהָ וְנִכְרְת֥וּ שְׁנֵיהֶ֖ם מִקֶּ֥רֶב עַמָּֽם׃ |

Sanctified sexuality is thus an intrinsic part of the covenantal relationship and symbolic of what is demanded of us as we aspire to integrate the Divine spirit into our lives. It affects not only prohibited relationships but also permitted ones.It is noteworthy that the Nidda is a fundamentally permitted sexual relationship. This sets her apart from other sexual prohibitions mentioned, including adultery, incest and bestiality. She is a woman who is sexually permitted, except during times of uterine bleeding when a man may not uncover her nakedness.

**Impurity Resulting from Uterine Blood**

In order to fully comprehend the concept of the Nidda woman referred to in Leviticus 18:19, one needs to refer back to Leviticus chapters 12-15. It is here that the Bible introduces the boundaries of purity and impurity that include uterine blood among other sources of impurity. These impure persons are barred entry into the sanctum of the Tabernacle and later, the Temple. Impurity mandates distance from the world of ritual sacrifice. Additionally, these Biblically mandated sources of impurity are highly “contagious,” demanding utmost caution and awareness of one’s bodily state, particularly for the priestly community. However, it is not in its essence about moral culpability or transgression. Nor is it about spiritual distance from God since men or women are obligated in all of the attendant commandments, duties and obligations found in the Torah. It precludes them only from partaking in rituals and sacrifices within the Temple precinct. In the next section, five bodily states of impurity stemming from discharge from sexual organs will be presented.

**Birth and Other Sources of Uterine Blood**

Chapter 12, opens with a woman who “seeds” and gives birth.

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| **Leviticus 12:1-8**  The LORD spoke to Moses, saying:  Speak to the Israelite people thus: When a woman at childbirth bears a male, she shall be impure seven days; she shall be impure as at the time of her menstrual infirmity.—  On the eighth day the flesh of his foreskin shall be circumcised.—  She shall remain in a state of blood purification for thirty-three days: she shall not touch any consecrated thing, nor enter the sanctuary until her period of purification is completed.  If she bears a female, she shall be impure two weeks as during her menstruation, and she shall remain in a state of blood purification for sixty-six days.  On the completion of her period of purification, for either son or daughter, she shall bring to the priest, at the entrance of the Tent of Meeting, a lamb in its first year for a burnt offering, and a pigeon or a turtledove for a sin offering.  He shall offer it before the LORD and make expiation on her behalf; she shall then be clean from her flow of blood. Such are the rituals concerning her who bears a child, male or female.  If, however, her means do not suffice for a sheep, she shall take two turtledoves or two pigeons, one for a burnt offering and the other for a sin offering. The priest shall make expiation on her behalf, and she shall be clean. | **ויקרא יב: א-ח**  וַיְדַבֵּ֥ר יְהוָ֖ה אֶל־מֹשֶׁ֥ה לֵּאמֹֽר׃  דַּבֵּ֞ר אֶל־בְּנֵ֤י יִשְׂרָאֵל֙ לֵאמֹ֔ר אִשָּׁה֙ כִּ֣י תַזְרִ֔יעַ וְיָלְדָ֖ה זָכָ֑ר וְטָֽמְאָה֙ שִׁבְעַ֣ת יָמִ֔ים כִּימֵ֛י נִדַּ֥ת דְּוֺתָ֖הּ תִּטְמָֽא׃  וּבַיּ֖וֹם הַשְּׁמִינִ֑י יִמּ֖וֹל בְּשַׂ֥ר עָרְלָתֽוֹ׃  וּשְׁלֹשִׁ֥ים יוֹם֙ וּשְׁלֹ֣שֶׁת יָמִ֔ים תֵּשֵׁ֖ב בִּדְמֵ֣י טָהֳרָ֑ה בְּכָל־קֹ֣דֶשׁ לֹֽא־תִגָּ֗ע וְאֶל־הַמִּקְדָּשׁ֙ לֹ֣א תָבֹ֔א עַד־מְלֹ֖את יְמֵ֥י טָהֳרָֽהּ׃  וְאִם־נְקֵבָ֣ה תֵלֵ֔ד וְטָמְאָ֥ה שְׁבֻעַ֖יִם כְּנִדָּתָ֑הּ וְשִׁשִּׁ֥ים יוֹם֙ וְשֵׁ֣שֶׁת יָמִ֔ים תֵּשֵׁ֖ב עַל־דְּמֵ֥י טָהֳרָֽה׃  וּבִמְלֹ֣את ׀ יְמֵ֣י טָהֳרָ֗הּ לְבֵן֮ א֣וֹ לְבַת֒ תָּבִ֞יא כֶּ֤בֶשׂ בֶּן־שְׁנָתוֹ֙ לְעֹלָ֔ה וּבֶן־יוֹנָ֥ה אוֹ־תֹ֖ר לְחַטָּ֑את אֶל־פֶּ֥תַח אֹֽהֶל־מוֹעֵ֖ד אֶל־הַכֹּהֵֽן׃  וְהִקְרִיב֞וֹ לִפְנֵ֤י יְהוָה֙ וְכִפֶּ֣ר עָלֶ֔יהָ וְטָהֲרָ֖ה מִמְּקֹ֣ר דָּמֶ֑יהָ זֹ֤את תּוֹרַת֙ הַיֹּלֶ֔דֶת לַזָּכָ֖ר א֥וֹ לַנְּקֵבָֽה׃  וְאִם־לֹ֨א תִמְצָ֣א יָדָהּ֮ דֵּ֣י שֶׂה֒ וְלָקְחָ֣ה שְׁתֵּֽי־תֹרִ֗ים א֤וֹ שְׁנֵי֙ בְּנֵ֣י יוֹנָ֔ה אֶחָ֥ד לְעֹלָ֖ה וְאֶחָ֣ד לְחַטָּ֑את וְכִפֶּ֥ר עָלֶ֛יהָ הַכֹּהֵ֖ן וְטָהֵֽרָה׃ (פ) |

The birthing woman is immediately described as Nidda: “She shall be *impure* as at the time of her *niddut* (Leviticus 12:1). This is somewhat confusing to the reader since the introduction to and laws about the Nidda are only to be found in chapter 15. At this point we know nothing about menstrual impurity or about the purification process for the Nidda. In addition, the birthing woman uniquely has two periods of purification: the first is like the Nidda which lasts for seven days (double for birthing a girl); the second stage lasts for 40 days (or 80 days, again double for a girl) in which she experiences what is defined as “pure” blood. Only at the end of the second phase is she allowed to return to God’s sanctuary and bring sacrifices that include a sin and burnt offering.

This episode seems to underscore the fact that a sin offering serves a different purpose in the context of purity/impurity than the classic sin offering which is brought as penance for a transgressive act[[209]](#footnote-211). Normally, sin is manifest in our ability to make choices freely, for right or for wrong. In the world of purity/impurity, the physical manifestations of the body are involuntary and are not subject to our exertion of free will, and yet still mandate a sin offering.

It stands to reason that the Torah placed birth as the first example of impurity resulting from bodily emissions, although it belongs more naturally in chapter 15, in order to pre-empt negative associations with impurity. The act of birthing a human being into the world is essential in order to ensure the continuity of the human race. It is the first commandment imposed upon the newly created Male/Female in Genesis 1. Moreover in rabbinic texts, the newborn child is considered to emerge out of a partnership between man, woman and God[[210]](#footnote-212).

**Leviticus Chapter 15: Seminal emissions and Uterine bleeding as Root Causes of Impurity**

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| **Leviticus 15**  The LORD spoke to Moses and Aaron, saying:  Speak to the Israelite people and say to them:  1. When any man has a penile discharge, he is impure. The impurity from his discharge shall mean the following—whether there is flow from his penis or it is stopped up so that there is no discharge, his impurity means this…Any bedding on which the one with the discharge lies shall be impure, and every object on which he sits shall be impure.  …When one with a discharge becomes clean of his discharge, **he shall count off seven clean days, wash his clothes, and bathe his body in fresh water; then he shall be pure.**  On the eighth day he shall take two turtledoves or two pigeons and come before the LORD at the entrance of the Tent of Meeting (Tabernacle) and give them to the priest. The priest shall offer them, one as a sin offering and the other as a burnt offering. Thus the priest shall make expiation on his behalf, for his discharge, before the LORD.  2. When a man has an emission of semen, he shall bathe his whole body in water and **remain impure until evening.**  All cloth or leather on which semen falls shall be washed in water and remain impure until evening. And a woman who lays with a man who ejaculates, they shall bathe in water and remain impure until evening.  3. When a woman has a discharge, her discharge being blood from her body, **she shall remain in her impurity seven days;** whoever touches her shall be impure until evening.  Anything that she lies on during her impurity shall be impure; and anything that she sits on shall be impure.  Anyone who touches her bedding shall wash his clothes, bathe in water, and remain impure until evening;  …**And if a man lies with her, her impurity is communicated to him; he shall be impure seven days, and any bedding on which he lies shall become impure.**  4. When a woman has had a discharge of blood for many days, not at the time of her menstruation, or when she has a discharge beyond her menstrual period, she shall be impure, as she would be at t he time of her menstruation, for as long as her discharge lasts.  …When she becomes clean of her discharge**, she shall count off seven days**, and after that she shall be pure.  On the eighth day she shall take two turtledoves or two pigeons, and bring them to the priest at the entrance of the Tent of Meeting (Tabernacle). The priest shall offer one as a sin offering and the other as a burnt offering; and the priest shall make expiation on her behalf, for her impure discharge, before the LORD.  You shall put the Israelites on guard against their impurity**, lest they die through their impurity by defiling My Tabernacle which is among them**. | **ויקרא ט״ו**  וַיְדַבֵּ֣ר יְהוָ֔ה אֶל־מֹשֶׁ֥ה וְאֶֽל־אַהֲרֹ֖ן לֵאמֹֽר׃  דַּבְּרוּ֙ אֶל־בְּנֵ֣י יִשְׂרָאֵ֔ל וַאֲמַרְתֶּ֖ם אֲלֵהֶ֑ם אִ֣ישׁ אִ֗ישׁ כִּ֤י יִהְיֶה֙ זָ֣ב מִבְּשָׂר֔וֹ זוֹב֖וֹ טָמֵ֥א הֽוּא׃  וְזֹ֛את תִּהְיֶ֥ה טֻמְאָת֖וֹ בְּזוֹב֑וֹ רָ֣ר בְּשָׂר֞וֹ אֶת־זוֹב֗וֹ אֽוֹ־הֶחְתִּ֤ים בְּשָׂרוֹ֙ מִזּוֹב֔וֹ טֻמְאָת֖וֹ הִֽוא׃  כָּל־הַמִּשְׁכָּ֗ב אֲשֶׁ֨ר יִשְׁכַּ֥ב עָלָ֛יו הַזָּ֖ב יִטְמָ֑א וְכָֽל־הַכְּלִ֛י אֲשֶׁר־יֵשֵׁ֥ב עָלָ֖יו יִטְמָֽא׃  ….וְכִֽי־יִטְהַ֤ר הַזָּב֙ מִזּוֹב֔וֹ וְסָ֨פַר ל֜וֹ שִׁבְעַ֥ת יָמִ֛ים לְטָהֳרָת֖וֹ וְכִבֶּ֣ס בְּגָדָ֑יו וְרָחַ֧ץ בְּשָׂר֛וֹ בְּמַ֥יִם חַיִּ֖ים וְטָהֵֽר׃  וּבַיּ֣וֹם הַשְּׁמִינִ֗י יִֽקַּֽח־לוֹ֙ שְׁתֵּ֣י תֹרִ֔ים א֥וֹ שְׁנֵ֖י בְּנֵ֣י יוֹנָ֑ה וּבָ֣א ׀ לִפְנֵ֣י יְהוָ֗ה אֶל־פֶּ֙תַח֙ אֹ֣הֶל מוֹעֵ֔ד וּנְתָנָ֖ם אֶל־הַכֹּהֵֽן׃  וְעָשָׂ֤ה אֹתָם֙ הַכֹּהֵ֔ן אֶחָ֣ד חַטָּ֔את וְהָאֶחָ֖ד עֹלָ֑ה וְכִפֶּ֨ר עָלָ֧יו הַכֹּהֵ֛ן לִפְנֵ֥י יְהוָ֖ה מִזּוֹבֽוֹ׃ (ס)  וְאִ֕ישׁ כִּֽי־תֵצֵ֥א מִמֶּ֖נּוּ שִׁכְבַת־זָ֑רַע וְרָחַ֥ץ בַּמַּ֛יִם אֶת־כָּל־בְּשָׂר֖וֹ וְטָמֵ֥א עַד־הָעָֽרֶב׃  וְכָל־בֶּ֣גֶד וְכָל־ע֔וֹר אֲשֶׁר־יִהְיֶ֥ה עָלָ֖יו שִׁכְבַת־זָ֑רַע וְכֻבַּ֥ס בַּמַּ֖יִם וְטָמֵ֥א עַד־הָעָֽרֶב׃ (פ)  וְאִשָּׁ֕ה אֲשֶׁ֨ר יִשְׁכַּ֥ב אִ֛ישׁ אֹתָ֖הּ שִׁכְבַת־זָ֑רַע וְרָחֲצ֣וּ בַמַּ֔יִם וְטָמְא֖וּ עַד־הָעָֽרֶב׃  וְאִשָּׁה֙ כִּֽי־תִהְיֶ֣ה זָבָ֔ה דָּ֛ם יִהְיֶ֥ה זֹבָ֖הּ בִּבְשָׂרָ֑הּ שִׁבְעַ֤ת יָמִים֙ תִּהְיֶ֣ה בְנִדָּתָ֔הּ וְכָל־הַנֹּגֵ֥עַ בָּ֖הּ יִטְמָ֥א עַד־הָעָֽרֶב׃  וְכֹל֩ אֲשֶׁ֨ר תִּשְׁכַּ֥ב עָלָ֛יו בְּנִדָּתָ֖הּ יִטְמָ֑א וְכֹ֛ל אֲשֶׁר־תֵּשֵׁ֥ב עָלָ֖יו יִטְמָֽא׃  וְאִ֡ם שָׁכֹב֩ יִשְׁכַּ֨ב אִ֜ישׁ אֹתָ֗הּ וּתְהִ֤י נִדָּתָהּ֙ עָלָ֔יו וְטָמֵ֖א שִׁבְעַ֣ת יָמִ֑ים וְכָל־הַמִּשְׁכָּ֛ב אֲשֶׁר־יִשְׁכַּ֥ב עָלָ֖יו יִטְמָֽא׃ (פ)  ו  ְאִשָּׁ֡ה כִּֽי־יָזוּב֩ ז֨וֹב דָּמָ֜הּ יָמִ֣ים רַבִּ֗ים בְּלֹא֙ עֶת־נִדָּתָ֔הּ א֥וֹ כִֽי־תָז֖וּב עַל־נִדָּתָ֑הּ כָּל־יְמֵ֞י ז֣וֹב טֻמְאָתָ֗הּ כִּימֵ֧י נִדָּתָ֛הּ תִּהְיֶ֖ה טְמֵאָ֥ה הִֽוא׃  ….  וְאִֽם־טָהֲרָ֖ה מִזּוֹבָ֑הּ וְסָ֥פְרָה לָּ֛הּ שִׁבְעַ֥ת יָמִ֖ים וְאַחַ֥ר תִּטְהָֽר׃  וּבַיּ֣וֹם הַשְּׁמִינִ֗י תִּֽקַּֽח־לָהּ֙ שְׁתֵּ֣י תֹרִ֔ים א֥וֹ שְׁנֵ֖י בְּנֵ֣י יוֹנָ֑ה וְהֵבִיאָ֤ה אוֹתָם֙ אֶל־הַכֹּהֵ֔ן אֶל־פֶּ֖תַח אֹ֥הֶל מוֹעֵֽד׃  וְעָשָׂ֤ה הַכֹּהֵן֙ אֶת־הָאֶחָ֣ד חַטָּ֔את וְאֶת־הָאֶחָ֖ד עֹלָ֑ה וְכִפֶּ֨ר עָלֶ֤יהָ הַכֹּהֵן֙ לִפְנֵ֣י יְהוָ֔ה מִזּ֖וֹב טֻמְאָתָֽהּ׃  וְהִזַּרְתֶּ֥ם אֶת־בְּנֵי־יִשְׂרָאֵ֖ל מִטֻּמְאָתָ֑ם וְלֹ֤א יָמֻ֙תוּ֙ בְּטֻמְאָתָ֔ם בְּטַמְּאָ֥ם אֶת־מִשְׁכָּנִ֖י אֲשֶׁ֥ר בְּתוֹכָֽם׃ |

As seen in the text brought above, both men and women are equally subject to states of impurity.

The first example brought is a man with an unnatural discharge from his sexual organ (verses 2-15). He is known as the *zav* (meaning discharge) and his discharge causes severe impurity for a lengthy period, requiring seven clean days without discharge, immersion in a mikva and the sacrifice of sin and burnt offerings to complete purification.

The second example cited is a man who discharges *zera* (seed/semen) (verses 16-18) in a natural way. He remains in a state of impurity until nightfall after immersing in water. If the seminal emission took place in the context of sexual relations with a woman, she too becomes impure and requires immersion.

The third example is the Nidda or menstruant woman, who is impure for seven days total (verses 19-24) If a man has sexual relations with her at this time, he becomes impure for 7 days. It is not defined here as a transgressive act, nor he does not have to bring a sin offering in order to become pure. He incurs the same degree of impurity as the woman (7 days), similar to the manner in which the woman incurs impurity upon direct contact with semen.

The fourth example presents a woman who experiences unnatural uterine bleeding not at the time of her menses or, beyond the 7 days allotted for normal menstruation (verses 25-30). She is known as *zava*, the feminine noun form of the word *zav* in Hebrew, and like the *zav*, she requires seven clean days without discharge, immersion and sacrifices.

We thus see that the natural physical states of seminal emission and menstruation — both of which are necessary to create life — cause states of impurity and are bracketed by the more stringent forms, *zav* and *zava*, which seem to be indicative of something unnatural. Immersion in water is necessary in all cases to transition from impurity to purity[[211]](#footnote-213). In addition, the *zav* and *zava* must bring sacrifices, including a burnt offering and sin offering to complete the purification process. As was explained above with the birthing woman, there is no wickedness or improper behavior associated with impurity. It affects men and women equally and it occurs involuntarily from within the physical body. It is not about bodily cleanliness in the classic sense. A person can be hygienically clean but impure, while another person can be filthy and pure. Impurity is a consequence of being human with certain divine limitations imposed upon the body with regard to engaging with God’s presence in the Tabernacle/Temple.

In effect, God does not warn the nation to avoid impurity with “Thou Shalt Not” language as seen at the beginning of many negative commandments throughout the Torah. At the end of chapter 15, God tells Moses and Aaron to warn the nation to stay away from the Tabernacle when in a state of impurity upon pain of death.

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| **Leviticus 15:31**  You shall warn the Israelites against their uncleanness, lest they die as a result of their uncleanness by defiling My Tabernacle which is among them. | **ויקרא טו:לא**  וְהִזַּרְתֶּ֥ם אֶת־בְּנֵי־יִשְׂרָאֵ֖ל מִטֻּמְאָתָ֑ם וְלֹ֤א יָמֻ֙תוּ֙ בְּטֻמְאָתָ֔ם בְּטַמְּאָ֥ם אֶת־מִשְׁכָּנִ֖י אֲשֶׁ֥ר בְּתוֹכָֽם׃ |

In short, proximity to God’s direct presence in the Tabernacle/Temple requires utmost vigilance.

**Note**: Some women today recoil from the language of impurity and from the idea that a natural occurrence in their body causes them to be impure. For this reason, it is important to study these chapters in the context of Leviticus and note that men and women’s bodies are equally subject to impurity. The practical implication of this status is being barred from the Temple precinct and sacrificial worship while impure. It does not bar an impure person from the normal, daily and weekly rituals that make up our covenantal relationship with God.

To summarize, there are three Biblical categories of impurity due to uterine blood which based on the verses brought in Leviticus 18 and 20, also sexually prohibit women to their partners. In other words, in the case of uterine blood, impurity equals sexual prohibition and purity equals sexual permission. This overlap between the worlds of purity/impurity laws and sexual prohibition laws will require close re-examination particularly as we move towards the era following the destruction of the Second Temple.

**Birthing Woman**. A woman after childbirth follows a two-tiered system which first includes a period of time in which she is impure and sexually prohibited (7 days after the birth of a boy and 14 days after the birth of a girl). Following that period of time, any blood that the birthing woman continues to see is defined as “pure” blood and she is permitted sexually. However, she may not yet bring sacrifices to the Temple until 40 days after the birth of a boy or 80 days after the birth of a girl.

**Nidda** describes a menstruating woman who is obligated to wait seven days from the onset of bleeding until immersing in the mikva. Today this referred to as Biblical Nidda.

***Zava*** describes non-menstrual uterine blood that discharges from the woman’s body over a period of three days. She must wait until uterine blood ceases and then count seven clean days free of bleeding. If she wants to go the Temple, she is required to bring sacrifices.

**One final note**: Rabbinic interpretation added an additional category for women with one or two days of uterine bleeding who were neither Nidda nor*Zava****.*** This category was termed *Zava Ketana* ***(***literally, mini*Zava****)***[[212]](#footnote-214)sincethe Biblical text defines a z*ava* as a woman “who bleeds for many days, not at the time of her Niddut or menses.” The rabbinic sages understood this to mean at least three days of bleeding. However, if a woman bled for one or two days (not Biblically significant), she might without awareness bleed for three days, at which point she would definitely become a z*ava.*  This led to the formulation of the mini *Zava:* If a woman saw one or two days of non-menstrual uterine blood, she had to wait one clean day (and immerse) in order to prove that she was not becoming a full-fledged z*ava*.

Understanding this last category will help explain how a shift was made away from the Biblical categories and towards one uniform rabbinic law.

**Laws of Impurity After the Temple was Destroyed**

After the Temple was destroyed, adherence to the complex system of purity/impurity laws became redundant. However, the verse cited from Leviticus 18:19, that links the prohibition of sexual relations with the Nidda to the laws of impurity could not be ignored. Furthermore, the language in the verse cited from Leviticus chapter 20 threatening the punishment of *karet* to both men and women for having sexual relations when impure with uterine blood applies to all three states described above. Although the language of purity/impurity and the ritual requirements of sacrifice were no longer relevant to practical life, its overall structure vis a vis the Nidda (and *Zava* et al.) remains inextricably intertwined with permitted and prohibited sexual space.

Thus, at the end of the Tannaitic period (circa. 200 CE), Rabbi Judah the Prince began the process of conflating all uterine blood into one uniform halakhic system[[213]](#footnote-215):

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| Nidda 66a  § **Rav Yosef said** that **Rav Yehuda said** that **Rav said: Rabbi** Judah the Prince **decreed** that **in the fields (rural areas),** if **she saw** blood for **one day, she must sit** **six** days.  If she experiences bleeding for **two** days, **she must sit** **six** days.  If she experiences bleeding for **three** days **she must sit** **seven clean** days. | **מסכת נידה סו עמוד א**  אמר רב יוסף אמר רב יהודה אמר רב  התקין רבי בשדות ראתה יום אחד תשב ששה  והוא שנים תשב ששה  והן שלשה תשב שבעה נקיים |

Rabbi Judah presented three rulings for women living far from rabbinic courts (“the fields”).

1. A woman with one day of bleeding should wait six additional days before immersing. In other words, she should behave like a Nidda although the duration of bleeding does not resemble a menstrual period. While one day of bleeding would not normally turn her into a Nidda (women’s periods are on average 4-6 days), Rabbi Judah ruled stringently.
2. If a woman experienced two days of bleeding, Rabbi Judah reasoned that the first day of bleeding could theoretically be non-menstrual. If it was non-menstrual uterine blood, it could not count be included in the Nidda’s seven days of counting. However, the second day could potentially be menstrual. Thus, according to his ruling, Nidda blood would only be counted from the second day on. A woman would need six days from the second day of bleeding (rather than five days as would rationally be expected) to complete the seven Nidda days.
3. Three days of uterine bleeding would turn her into a *zava* regardless of the origin of blood and women would require seven days clean of blood before immersing.

Looking at this last ruling, it is clear that Rabbi Judah took an enormous step towards conflating Biblical Nidda into Zava. For most women three days or more of uterine blood most often reflected their normal menstrual cycle. Biblically, they would have only had to wait a total of seven days including the bleeding before immersing in a mikva. Now Rabbi Judah was requiring seven clean of blood days for three or more days of uterine bleeding regardless of whether the blood was menstrual or not. While Rabbi Judah’s ruling was originally applicable only in rural areas, it essentially determined that Biblical parameters for Nidda should be ignored and menstruating women should be equated with *zava* for the sake of clarity.

Equally extreme were his first and second rulings around one or two days of bleeding. This would previously have turned a woman into a mini-*zava* if it was not at the time of her period, requiring one clean day to ensure that the flow was not continuing further. These women were now required to wait six clean days following their short flow.

In practice, Rabbi Judah’s decision meant adding 3-7 extra prohibited days to any given experience of uterine bleeding depending on its duration. Some women would wait six clean days and some women would wait seven. This certainly had the potential to become confusing given the absence of a clear anchor in Biblical law. It is hardly surprising that in the next line of Talmud, we have the famous statement of Rabbi Zeira who lived circa 300 CE, which completely integrated the Nidda structure into that of *zava* for all women:

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| Nidda 66a  R. Zeira said the daughters of Israel took it upon themselves be stringent. Even if they saw a drop of blood the size of a mustard seed they would abstain for seven clean days. | נידה סו.  אמר ר' זירא בנות ישראל החמירו על עצמן שאפילו רואות טפת דם כחרדל יושבות עליה שבעה נקיים |

Rabb Zeira declared that it was the daughters of Israel who chose to wait for seven clean days after observing even the smallest amount of uterine blood. In truth, however R. Zeira’s statement was adding only one more day to what Rabbi Judah had enacted for women in the fields, as explained above. Most significantly, this statement expanded the ruling to all women, not just presumably less educated women living far from centers of learning. Finally, the statement is more of a poetic exaggeration than halakhically accurate. A mustard seed size of blood does not prohibit a woman unless it includes other significant halakhic criteria[[214]](#footnote-216). Nonetheless, for thousands of years there has been a valorization of the pious daughters of Israel who seemingly influenced the shift from Biblical to rabbinic Nidda.[[215]](#footnote-217) On one hand, this narrative gave halakhic agency to women, crediting them for having a hand in halakhic practice when choosing stringency in order to clarify their own intimate practice. On the other hand, this narrative has caused frustration in the modern era for some women who feel they would be better served by the Biblical models of Nidda and z*ava* which distinguish between menstruation and other forms of uterine bleeding. For this reason, it is important to understand that Rabbi Judah was far more influential in setting up a uniform structure, for the purposes of clarity in transmission of these halakhot than R. Zeira’s later claim about the “daughters of Israel”[[216]](#footnote-218).

This is reinforced in the words of the famous 14th century Talmudist Menachem ben Solomon Meiri in his commentary on tractate Berakhot 31a:

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| The daughters of Israel later adopted an additional stringency…Moreover, they felt it would be more convenient **if the counting were the same for all women**, so one woman would not be counting six days, and another woman seven. The committed women said to each other, ‘There’s not such a big difference between six and seven,’ so they established for themselves that each time they saw blood, they would treat it like deﬁnitive *zava*, and even if it were only the size of a mustard seed, which is clearly from a closed womb, not an open one. |

This shift towards uniformity is cited in the Talmud as a seminal example of “conclusive halakha”[[217]](#footnote-219) and for 2000 years has been unchallenged as the foundation for how Nidda laws are practiced in the post-Temple era. It is all the more interesting that in the 21st century there has been a grass roots movement, led by women, advocating a return to the Biblical differentiation between Nidda and *zava*. While this has been met with complete and total rabbinic resistance, some couples defining as Orthodox are nonetheless gravitating towards this practice. In the next section, the developments that have led to this movement will be outlined.

1. **Fertility Awareness Method and Biblical Nidda**

A major advancement in the last fifty years has seen increased interest in women proactively tracking their fertility and seeking greater understanding of their sexuality. This trend reflects the overall increase in information and resources on female sexuality, along with the feminist movement and the sexual revolution, both of which led women to (slowly) seek more agency over their bodies.

Within the observant community, this trend led to the shocking realization that some women were not becoming pregnant because of Nidda laws. As explained above, women on average are sexually prohibited for 11-13 days per cycle. For a woman trying to get pregnant, timing of sexual intercourse to coincide with ovulation is crucial. Contemporary books on the laws of Nidda often emphasized the wondrous timing of mikva immersion to coincide with the most fertile days of the month. This is generally true for women who have cycles of 26 days or more. However, some women miss ovulation by a day or two either because they bleed for more than six days and/or their cycles are shorter than 26 days. Simply put, it has been proven that abiding by halakha actually prevents a small minority of women from becoming pregnant! Looking back at responsa literature over the last 2000 years, one cannot help but wonder if some of the women who were divorced by their husbands due to infertility[[218]](#footnote-220) were unable to have children solely because of the extended rabbinic structure of seven clean days!

Once this phenomenon was discovered, the initial halakhic response was to work with doctors who would administer high doses of hormones for a few days in order to push off ovulation. This maintained fidelity to the rabbinic structure and helped women become pregnant. The conflict began when women’s awareness of the negative impact of hormones led doctors and observant women to ask why they were being administered potentially harmful medical treatment to resolve an issue that was halakhic in nature.

Senior ob/gyn Dr. Daniel Rosenak[[219]](#footnote-221), himself an Orthodox Jew with a thriving practice in an ultra-Orthodox neighborhood, was one of the driving forces in upsetting the status quo. He published a paper with four other doctors, and subsequently a book[[220]](#footnote-222), suggesting that pre-coital ovulation accounted for infertility in a significant number of religious couples. He also questioned the need to inject hormones for non-medical reasons. This unleashed a firestorm of debate around the sustainability of rabbinic Nidda in the face of possible "halakhic infertility," given the centrality Judaism places on the mitzva of procreation[[221]](#footnote-223). Rosenak also argued that we should return to Biblical Nidda for its more accurate reflection of female sexuality and fertility. Women’s libidos, for instance, increases incrementally during the seven days after menstruation, as they move towards ovulation. It begins to decrease in the days after. The Rabbinic Nidda structure significantly eliminates some of these most sexual days.

Outside of very carefully controlled leniencies given in cases of true halakhic infertility, rabbis were quick to condemn any suggestion that we return to Biblical Nidda. Two yoatzot halakha, Dr. Deena Zimmerman, M.D. and Professor Tova Ganzel, PhD, carried out a serious assessment of Rosenak’s claim and came to the conclusion that his numbers were greatly inflated. While some women were indeed suffering from pre-coital ovulation, a larger number who were claiming halakhic infertility were being too stringent with their practice of Nidda laws. Better education on how to accurately count clean days, a major focus of the yoatzet halakha community, helped many women immerse without resorting to a restructuring of rabbinic law. For example, women were waiting an extra day or two after the menstrual bleeding actually stopped before beginning to count their seven days because they thought, incorrectly, that clean days required an absence of any color on the internal examination cloths. This unnecessary stringency was what was causing them to miss ovulation, rather than the rabbinic structure itself.

In addition to the uproar around halakhic infertility, another major factor in the debate around Biblical vs. rabbinic Nidda has been an increased interest over the last decade in the fertility awareness method (FAM). The FAM campaign in Israel was spearheaded by Michal Schoenbrone, who learned the technique in the USA and brought it back to Israel 30 years ago. In 2006, she began training other women to teach the method. Since then, the number of women interested in FAM has risen steadily into the thousands. To become proficient, a woman must spend several months with a trained professional learning how to assess the signs of ovulation accurately. She learns to identify the signs of fertility through the hormonal imprint that changes as she moves towards and away from ovulation, opening her eyes to the beauty of the body’s design. In this way, using natural methods, a woman can gain control over her fertility and sexuality. For couples who are trying to become pregnant, it allows them to pinpoint the fertile days and increase their statistical probability by having sexual relations at the most potentially fertile time. For couples who want to prevent pregnancy, this method allows the woman to limit the use of contraception to fertile days only, which are 5-6 days a cycle. Women who are attracted to this method feel alienated by halakha’s inflexible and uniform structure which has little to do with their biology, fertility, and sexuality.

Furthermore, the internet has made information more accessible. There are public forums where mini-communities of observant couples have decided together to keep Biblical Nidda. I have taught couples who come to learn with me before marriage and state that they are choosing Biblical Nidda, rather than the required rabbinic structure of seven clean days. A small number of religious married women have also revealed to me that they reverted to Biblical Nidda because they were simply unable to uphold the longer rabbinic structure. Finally, there are Orthodox rabbis who encourage the seven-day Biblical model for non-religious couples interested in keeping a semblance of Nidda laws but are unable to entertain the longer, more complicated rabbinic structure.

This movement towards Biblical Nidda has come about because of women’s greater awareness their sexual needs and fertility, as well as an overall suspicion as to whether rabbinic authority has their best interests in mind. It is a conversation no longer on the periphery but has grabbed the attention of the mainstream religious community who vociferously reject the trend. However, it is undeniably a significant crack in the smooth façade of Taharat Ha-Mishpacha, promising marital sexual bliss to those who follow the prescribed two-week separation and immerse in the “Waters of Eden[[222]](#footnote-224).”

To conclude, I will end with one important anecdote that illustrates the broader contours of the meta-halakhic discussion. For several years Dr. Rosenak went on a speaking tour around the country as both a medical professional and Orthodox Jew loudly advocating for a return to Biblical Nidda. He was usually joined by a prominent rabbi from the national religious community in order to create a halakhic framework for his position. I both attended and subsequently moderated one of these sessions. Both times the sessions were packed with couples eager to hear Dr. Rosenak’s views. It was clear, from the questions, that the majority were not suffering from halakhic infertility. Rather, there was an eagerness to hear a position that championed shortening the rabbinic structure and easing some of the challenges to intimacy that the halakhic system presented. The rabbinic position upheld by the accompanying rabbis, which was meant to temper Dr. Rosenak, reaffirmed religious commitment to Taharat Ha-Mishpacha as it has been practiced for 2000 years but did acknowledge room for leniency in cases of halakhic infertility. However, it was clear that such a limited answer was not what the audience was looking for. Rather, they were looking for a broader answer to their unspoken struggles with the rabbinic structure and the great impact it has on the sexuality of religious couples. It was an interesting illustration of a generation that is interested in observance but unafraid to challenge rabbinic authority.

**The Perpetual Honeymoon?**

In the 20th century, a romantic reframing of the Nidda laws promoted Family Purity Laws as the key to eternal sustainability of the Jewish marriage, differentiating it “from the hedonistic world of free, meaningless, self-indulgent sexual relationships promoted by secular liberal culture as the individual’s right.” In the 1960’s, at the height of the sexual revolution, Rabbi Dr. Norman Lamm, president of Yeshiva University, wrote his famous leaflet, Hedge of Roses, in which he explained that these laws inculcate a positive yet modest attitude towards sexuality.

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| “The laws of niddah create monthly repetitions of this engagement-honeymoon experience… Without such a regulated sexual rhythm, sex would become mechanical, a kind of ‘I-It' relationship. The sexual revolution attempts to promote sexual pleasure by liberating Eros from its traditional bonds, but it actually produces the very opposite effect: erotic boredom and exploitation. The laws of family purity, by contrast, enhance eroticism and create a genuine ‘I-Thou’ relationship between partners. Because of these laws, Orthodox Jewish marriage enjoy a high degree of sexual intensity, that seemingly most contemporary and secular of erotic values. Jewish law is the key to the door of erotic fulfillment, paradoxically slammed shut by the sexual revolution.” (Norman Lamm, Hedge of Roses, pp.?) |

Many subsequent works continue to endorse the “perpetual honeymoon” theory with the intent to make Nidda laws more directly relevant and meaningful to the modern observant couple. The Biblical text however, promises no such rewards. As was seen above, the laws of Nidda first appear in the Bible as part of the section of laws on states of purity/impurity. The prohibition of sexual relations with a Nidda woman appears separately, among the laws of sexual prohibitions. Neither passage promises rewards for keeping these laws, although severe punishment is incurred with transgression.

In the 2nd century CE, Rabbi Meir seems to be the first rabbinic sage to suggest a greater meaning to the practice.

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| **תלמוד בבלי מסכת נדה דף לא עמוד ב**  תניא, היה ר"מ אומר: מפני מה אמרה תורה נדה לשבעה - מפני שרגיל בה, וקץ בה, אמרה תורה: תהא טמאה שבעה ימים, כדי שתהא חביבה על בעלה כשעת כניסתה לחופה. | **Nidda 31b**  Rabbi Meir used to say: Why does the Torah state that a woman retains her status for seven days? Because he becomes accustomed to being with her and becomes repulsed by her. The Torah said: Let her be forbidden to him for seven days so that she will be as dear to her husband as when she entered the chuppa. |

Rabbi Meir suggested that the prohibited days served as sort of aphrodisiac for the husband, preventing familiarity which might turn into contempt. It is noteworthy that he referred to a total of seven days of separation; in other words, his statement predated the shift to the more stringent requirement for seven clean days after the menstrual bleeding has ceased. Forbidden fruit is always sweeter, says the author of Proverbs, and Rabbi Meir suggested that the Torah’s approach encouraged sexual fidelity and satisfaction on the part of the husband.

Gender notwithstanding, Rabbi Meir (and later, Rabbi Lamm) was insightful in recognizing that sexual desire can erode due to familiarity and boredom, and that the sexual relationship is an important, even central piece in fostering intimacy and love. In a similar way, well-known psycho-therapist Esther Perel’s bestselling book *Mating in Captivity* [[223]](#footnote-225) explores the paradoxical union of domesticity and sexual desire, giving various insights on how to maintain passion in a long-term monogamous relationship.

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| “Love enjoys knowing everything about you; desire needs mystery. Love likes to shrink the distance that exists between me and you, while desire is energized by it. If intimacy grows through repetition and familiarity, eroticism is numbed by repetition…love is about having; desire is about wanting…too often, as couples settle into the comforts of love, they cease to fan the flame of desire.” |

On the face of it, the structure of Nidda laws, with its clearly defined boundaries of sexual and non-sexual space should foster greater sexual desire and passion by the distance it demands throughout a couple’s married life. However, while Nidda laws **can** **potentially** infuse sexual intimacy with greater meaning, the reality is that Nidda is far from a magical panacea guaranteeing that sexual intimacy based on these laws will guarantee sexual pleasure or save troubled relationships.[[224]](#footnote-226) Most Orthodox couples are committed to keeping Nidda regardless of whether the laws are meaningful or beneficial to their sexual intimacy. For some couples these laws do add tremendous value to aspects of their sexual and non-sexual relationship, particularly when there is disparity between the sexual needs in the relationship. For instance, structured sexual and non-sexual spaces, as proscribed by Nidda laws, can be helpful in developing a healthy balance using different “love languages”[[225]](#footnote-227) to express intimacy and connection. For a spouse who prefers non-physical and/or non-sexual communication, Nidda laws can naturally create a “break” from sexual expectation and allow for alternative expressions of love without rejecting the overtures of their more physical/sexual partner. Commitment to these laws does result, for some, in greater sexual passion, although sometimes this “benefit” can take years until the laws are appreciated for the added value they bring.

It is my experience that Nidda laws are most successful when the couple honestly acknowledges the impact these laws will have on their particular relationship. Thinking thoughtfully about one another’s needs as they enter and exit the sexual and non sexual spaces determined by Nidda, will help a couple set realistic expectations of what they can anticipate from and give to one another. Ultimately, couples who can articulate healthy goal setting for both sexual and non sexual spaces can help foster the closeness they are working to build and maintain in their marriage with Nidda as part of that process.

It is essential to acknowledge that for some couples, the laws of Nidda never provide the advantage that they have been promised by religious convention. Not infrequently, in such cases, Nidda can create tension, highlighting either the disparity in sexual needs between the couple or leaving one or both feeling lonely and alienated from one another. I have heard many women express gratitude for the childbearing years when mikva does not factor into their lives at all. In that vein, the following story exemplifies a reality that is very rarely mentioned when teaching Nidda laws and illustrates some of what was described above. A woman called me with a question. She had switched to a hormonal IUD and had gone for seven years without menstruating. Confronted with the possibility of becoming Nidda due to some breakthrough (uterine) bleeding, I jokingly suggested that maybe it was time for a break. Very seriously she responded that she would be happy if she never needed the mikva again. The Nidda laws had never been beneficial for her marital intimacy or the couple’s relationship. She had luckily, for her, found a solution that removed Nidda and mikva completely from the equation. This woman, who is not particularly unique, challenges the perpetual honeymoon theory, which asserts that all couples need to replenish libidinal reserves in order to enjoy sex in a monogamous relationship. For couples for whom sexual and physical intimacy is central to their interaction, removing it is like removing oxygen, leaving them straining to infuse emotional intimacy into their marriage during the non-sexual days.

Rabbinic authorities are becoming more aware of the stress that structured sexuality places on the needs of a couple. Some are advising women to double and triple pack their prescribed contraceptive pills (once they are given rabbinic permission to be on the pill) to avoid becoming prohibited[[226]](#footnote-228). This strategy exposes how tenuous, and in extreme cases fraudulent, the romanticizing of Nidda laws can feel to couples who struggle to find meaning or benefit in their application.

**Forbidden Touch**

Given the rabbinic integration of Nidda into Zava described above, the mandated non-sexual space lasts on average 11-13 days a cycle. However, intercourse is not the only restriction during this period of time. In order to govern the de-sexualization of the sexual relationship, a series of laws known as *harkhakot*, evolved in order to protect the couple from falling prey to base sexual desire, reminding them consistently throughout this time that they are prohibited. These include an absolute restriction on all forms of touch, separate beds, increased modesty in dress and language, limitations while eating together and refraining from handing things to one another.

While the restriction on intercourse certainly requires self-control and imposes sexual boundaries, what is often more challenging for couples is the halakhic ban on all physical interaction between the couple during this period. No one talks about the sense of loneliness couples can feel when they are living together but cannot touch. Many find the absence of touch more difficult than that of sexual relations. After all, touch is the way human beings feel connected, nurtured and contained. It is not only about the sexual. As a primary love language, touch informs us that from the moment of birth we are cherished and cared for. Studies have actually shown that humans have brain pathways that are specifically dedicated to detecting affectionate touch in order to communicate that we are safe, loved and not alone[[227]](#footnote-229). Removing it can be bewildering, frightening and alienating. It is why I am most often asked about possible halakhic leniencies to permit affectionate touch. This attitude — that there must be more than one halakhic opinion on the matter — comes from a familiarity with halakha that often has a spectrum of positions regarding almost everything.

As will be shown below, in a short presentation of halakhic sources, there is little to no consideration for the role physical touch plays in conveying love, affection and support within the marital relationship. There is only fear that touch can and will become sexual. This might reflect a more androcentric approach which considers touch solely as a conduit to sexual relations. Fear of the sexual permeates every aspect of the halakhic discussion. It even underlies the analysis as to whether a healthy man can give physical support to his sick wife, since ***his*** sexual urge is unimpaired and could potentially lead him to sin. There is almost no room for nuance or leniency.

To illustrate (and this is only one of many similar stories), a woman struggling with infertility contacted me. She was trying to get pregnant although chances were slim. She had suffered several miscarriages and after the most recent one, found herself suffused with sadness and depression. She was crying regularly. Since she was Nidda after the miscarriage (as are all women), her husband could not touch her, and they would not touch without rabbinic permission, despite the emotional desperation.

I called two different rabbis whom I trusted, both renowned halakhic authorities in Nidda as well as in other areas, to consult about the case. One allowed touching but only with gloves and not with full body contact. At most, a hand on her upper arm to let her feel his presence would have to be sufficient. This leniency was based on the principle of *shinui* which means that there is enough of a change to the prohibited act to remove it from the category of Biblical prohibition so that although rabbinically prohibited, in light of the circumstances, it could be permitted. The other rabbi was less restrictive, allowing touch without gloves and without defined boundaries, as long as the couple could be trusted to avoid sexual touch. He relied on the *Ezer Mekudash*[[228]](#footnote-230) who considers affectionate non sexual touch to be rabbinically rather than Biblically prohibited. As such, in extenuating circumstances such as this one, rabbinic law could be waived. Both of their approaches relied on sources that absolutely prohibit sexual touch but leave open (although somewhat reluctantly) the possibility of a lenient ruling in extreme circumstances for non-sexual and possibly, emotional touch. As we will see below, there is room to permit such touch without consulting a rabbi for a dispensation. However, couples are rarely taught to make a decision like that on their own and rely on the rabbinic authority to determine the severity of their need.

**What Kind of Touch is Prohibited?**

The sources below relate to married couples when they are sexually prohibited (in the aftermath of uterine bleeding such as menstruation, miscarriage, birth etc). However, many of the same prohibitions apply for unmarried couples which is where the term *shomer negiah* or literally, guarding against touch, applies: touching a woman who is Nidda is transgressive outside of first degree relatives and professional situations (medical professionals, hairdresser etc.,). From the moment a girl menstruates for the first time until she immerses in the mikva she is defined as *Nidda*. The difference between the two paradigms is that the married woman will immerse and become permitted to her husband with regularity while the unmarried woman is barred from the mikva and is thus kept off limits until marriage (see chapter ? on *Shomer Negiah*).

It is important to note that all of the halakhic sources are focused on the paradigm of male sexuality. There is a great deal of trepidation regarding **male** sexual desire in the Talmud, where it is often referred to as *yetzer hara* — the evil inclination. This *yetzer* is a potential source of distraction that can turn a man away from his religious obligations including prayer, Torah study and a meaningful connection with the Divine. Even within a permitted, sanctified marital relationship, there is concern that men will be unable to control their sexual desire when their wives are prohibited. Avot D’Rabbi Natan goes as far as to suggest that women should deliberately make themselves unattractive in order to protect their husbands.

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| **Avot D’Rabbi Natan -**  What “fence” has Torah made to its words? Torah says [Leviticus 18, 19] “Do not come near a menstruant woman [to uncover her nakedness]”  Then, may the man just hug her, kiss her, or have idle chat with her [short of intercourse]? The verse says “Do not come near!”  Then, may the woman sleep with him on one bed with her clothes on [short of being naked]? The verse says “Do not come near!”  **Can it be that she may wash her face and put blue shadow on her eyes**? The Torah says “in her menstrual sickness”. **All of the days of her Nidda, she should be shunned.**  From here they said**, all women who intentionally make themselves repulsive while in their period of Nidda will be blessed and all who adorn themselves during their Nidda, the sages are displeased with them:** | **מסכתות קטנות מסכת אבות דרבי נתן נוסחא א פרק ב**  איזהו סייג שעשתה תורה לדבריה הרי הוא אומר ואל אשה בנדת טומאתה לא תקרב (ויקרא י"ח י"ט) יכול יחבקנה וינשקנה וידבר עמה דברים בטלים ת"ל לא תקרב. יכול תישן עמו בבגדיה על המטה ת"ל לא תקרב. יכול תרחץ פניה ותכחול [את] עיניה ת"ל והדוה בנדתה (שם ט"ו ל"ג). כל ימים שבנדתה תהיה בנדוי. מכאן אמרו כל המנולת עצמה בימי נדתה רוח חכמים נוחה הימנה וכל המקשטת עצמה בימי נדתה אין רוח חכמים נוחה הימנה: |

See that the English in the translation does not match – for instance do not draw near and do not approach

This suggestion, that women defile themselves in order to neutralize their husbands’ sexual desire is considered in the Talmud but subsequently rejected by Rabbi Akiba.

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| **תלמוד בבלי מסכת שבת דף סד עמוד ב**  כדתניא: והדוה בנדתה, זקנים הראשונים אמרו: שלא תכחול ולא תפקוס ולא תתקשט בבגדי צבעונין, עד שבא רבי עקיבא ולימד: אם כן אתה מגנה על בעלה, ונמצא בעלה מגרשה. אלא מה תלמוד לומר והדוה בנדתה - בנדתה תהא עד שתבא במים. | **B. Talmud Shabbat 64b**  As we learned in a Tannaitic source: “The menstruate women in her state of separation”; the early authorities said that she may not apply makeup nor put on colorful clothes.  [That was] until Rabbi Akiva came and taught: If you hold this view you will soon make her unattractive to her husband and eventually he will divorce her. So how shall we understand “The menstruating women in her state of separation” [according to R. Akiva]? In her state of separation until she immerse in water. |

The “early authorities” cited here seem to be reflective of the source in Avot D’Rabbi Natan. Its position is rejected by Rabbi Akiva who astutely notes that if a woman makes no effort to groom herself, she may indeed end up becoming repulsive to her husband, resulting in divorce. It seems that Rabbi Akiva understood that the marital relationship is fundamentally a sexual one and that desire cannot be squelched so totally that a man cannot stand to look at his wife. Sexual attraction must exist on a continuum, even when prohibited, or it will lead to an untenable situation within the marriage in which the man will come to revile his wife as a sexual partner. The discipline to desexualize the interaction will have to come from elsewhere and not at the expense of a woman’s attraction.

**Sexual touch - Biblical or Rabbinic**

It is agreed unequivocally that sexual touch is transgressive when it occurs between any two people who are prohibited to one another. There is disagreement, however, in the early rabbinic sources as to whether sexually touching a *Nidda* is Biblically or Rabbinically prohibited. The midrash halakha on Leviticus, Sifra, analyzes the verse brought in Leviticus 18:19.

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| Leviticus 18:19  Do not approach a woman during her period of *niddut* to uncover her nakedness. | **ויקרא י"ח, י"ט:**  ואל אשה **בנידת טומאתה** לא תקרב לגלות ערותה |

It considers the words “*do not approach*” to indicate a more stringent prohibition above and beyond the prohibition of intercourse.

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| **Sifra Aharei Mot Chapter 13:**  *Do not approach a menstrually impure woman for intercourse* (Lev. 18:19): I only know that intercourse is forbidden. From where do we derive that any intimacy is forbidden? *Do not approach.* I only know this regarding a menstruating woman. How do I know it applies to all forbidden liaisons? [It is written] *Do not approach any forbidden relatives for intercourse.* | ספרא  אחרי מות, פרק יג  ואל אשה בנידת טומאתה לא תקרב לגלות ערותה", אין לי אלא שלא יגלה, מנין שלא יקרב? תלמוד לומר "לא תקרב", אין לי אלא נידה בל תקרב בל תגלה, מנין לכל העריות בל תקרבו ובל תגלו? תלמוד לומר "לא תקרבו לגלות", אני ה' אני נאמן לשלם שכר. |

It is noteworthy that Sifra does not explicitly define what the prohibition entails. However, Avot D’Rabbi Natan, using the same literary structure as Sifra, goes into specific detail about what is prohibited which will be reflected later in the laws codified by Maimonides.

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| **Avot D’Rabbi Natan -**  What “fence” has Torah made to its words? Torah says [Leviticus 18, 19] “Do not approach a menstruating woman [to uncover her nakedness]”  **Then, may the man just hug her, kiss her, or have idle chat with her [short of intercourse]? The verse says “Do not approach!”**  Then, may the woman sleep with him on one bed with her clothes on? The verse says “Do not approach!” | **מסכתות קטנות מסכת אבות דרבי נתן נוסחא א פרק ב**  איזהו סייג שעשתה תורה לדבריה הרי הוא אומר ואל אשה בנדת טומאתה לא תקרב (ויקרא י"ח י"ט) **יכול יחבקנה וינשקנה וידבר עמה דברים בטלים** ת"ל לא תקרב. יכול תישן עמו בבגדיה על המטה ת"ל לא תקרב. |

Avot D’Rabbi Natan specifies hugging, kissing and sleeping in one bed even with clothing as violating the Biblical command “do not approach.” This, together with the Sifra text seem to be the sources used by Maimonides to prohibit sexual touch as a Biblical commandment in both Sefer Hamitzvot and the Mishneh Torah, Laws of Sexual Prohibitions. Subsequently, this becomes the dominant halakhic position[[229]](#footnote-231).

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| **Maimonides Sefer Hamitzvot, Negative Precept 353**  We are admonished not to be intimate with those that are forbidden, even if there is no intercourse, such as hugging and kissing. The verse…includes intimacy leading to intercourse. | **ספר המצות מצות לא תעשה שנ"ג.**  והמצוה השנ"ג היא שהזהירנו מקרוב לאחת מכל אלו העריות ואפילו בלא ביאה. **כגון חבוק ונשיקה והדומה להם מפעולות הזנות**. והוא אמרו יתעלה באזהרה מזה (אח"מ יח ו) "איש איש אל כל שאר בשרו לא תקרבו לגלות ערוה". כאילו יאמר לא תקרבו מהן קירוב יביא לגלות ערוה. |

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| **רמב"ם איסורי ביאה, כא,א**  **א** כל הבא על ערווה מן העריות דרך אברים, או **שחיבק ונישק דרך תאווה ונהנה בקירוב בשר**--הרי זה לוקה מן התורה: שנאמר "לבלתי עשות מחוקות התועבות" ([ויקרא יח,ל](http://mechon-mamre.org/i/t/t0318.htm#30)); ונאמר "לא תקרבו לגלות ערווה"([ויקרא יח,ו](http://mechon-mamre.org/i/t/t0318.htm#6)) כלומר לא תקרבו לדברים המביאין לידי גילוי ערווה. | **Maimonides Laws of Forbidden Sexual Relations chapter 21**  **Anyone who performs a sexual act short of intercourse with one of the forbidden relationships, or who hugs and kisses in a sexual way and takes pleasure in physical intimacy**, receives lashes for a biblical transgression, as it says (Leviticus 18:30), "Do not do any of these abominable customs etc.,” and it says (Leviticus 18:6), "Do not approach to uncover nakedness,” which is to say do not approach acts which might bring you to transgressing sexual prohibitions. |

In the highlighted text, Maimonides is explicit that in order to violate a negative prohibition there have to be two qualifying conditions: there has to be intent **and** sexual pleasure derived from the act. The examples he brings are explicitly sexualized. In addition, he refers to this kind of touch as Biblically prohibited in all sexually prohibited relationships, not just between husband and wife when *Nidda*.

Nonetheless, hundreds of years after Maimonides, two major rabbinic authorities, both commentaries from the 17th century on the Shulchan Aruch, disagreed over the scope of his codified Biblical prohibition. Shabbatai ben Meir HaKohen, known as the 'Shakh'[[230]](#footnote-232) understood that non-sexual touch does not violate a Biblical prohibition, based on Maimonides’ language. He explained that intent is the critical factor in determining whether touch is Biblically prohibited or not. Samuel ben Uri Shraga Phoebus, known asthe Beit Shmuel,[[231]](#footnote-233) on the other hand, took an unusually unprecedented and stringent position that seems to redefine the language of Maimonides in arguing that non-sexual touch, without any affection or intent, is prohibited on a Biblical level.

The Shach’s understanding of Maimonides’ code reflects the majority halakhic position so that intent to benefit sexually is the major determinant in violating Biblical law. Nonetheless there remains an inflexible attitude towards any form of touch, even non-sexual, because of the looming Biblical prohibition relating to sexual touch.

Other early Talmudic scholars took issue with Maimonides determination that sexual touch is a violation of a Biblical prohibition, the most well-known being Nahmanides.

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| **Nahmanides Comments to Maimonides Sefer Hamitzvot, Negative Precept 353**  Maimonides cited an explicit *Baraita* text, a respected authority upon whom to base his opinion, but upon scrutiny of the Talmud it is not so. Acts such as hugging and kissing do not violate a Negative Precept of the Torah, but rather a Rabbinic prohibition…an *asmakhta*. (The sages linked their precautionary measure to a Torah verse, but they did not intend to interpret the biblical verse as literally referring to intimate acts.) | השגות הרמב"ן לספר המצוות להרמב"ם מצות לא תעשה שנ"ג  והנה הרב מצא הברייתא הזו המפורשת ותלה דבריו באילן גדול. אבל כפי העיון בתלמוד אין הדבר כן שיהיה בקריבה שאין בה גלוי ערוה כגון חבוק ונשוק לאו ומלקות. ...נבין מהם כי אצלם זה האיסור מדרבנן... אבל אין זה עיקר מדרש בלאו הזה אלא קרא אסמכתא בעלמא. |

In contrast to Maimonides, Nahmanides understands from the Torah that sexually touching a prohibited woman is rabbinic in nature and only uncovering of nakedness (the Biblical euphemism for intercourse) violates a Biblical commandment. He brings proof from the Talmud, in which Rabbi Pedat is quoted as limiting the Biblical prohibition to sexual relations only. Below is the citation:

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| **תלמוד בבלי מסכת שבת דף יג עמוד א**  איבעיא להו: נדה, מהו שתישן עם בעלה היא בבגדה והוא בבגדו?  …  תא שמע: ואל ההרים לא אכל ועיניו לא נשא אל גלולי בית ישראל ואת אשת רעהו לא טמא ואל אשה נדה לא יקרב, מקיש אשה נדה לאשת רעהו. מה אשת רעהו - הוא בבגדו והיא בבגדה אסור, אף אשתו נדה - הוא בבגדו והיא בבגדה אסור. שמע מינה. ופליגא דרבי פדת, דאמ ר רבי פדת: לא אסרה תורה אלא קורבה של גלוי עריות בלבד, שנאמר איש איש אל כל שאר בשרו לא תקרבו לגלות ערוה. | **Shabbat 13a**  **What is** the *halakha* with regard to **a menstruating woman? May she sleep with her husband** in one bed while **she** is **in her clothes and he** is **in his clothes?...**  **Come** and **hear** a different resolution from that which was taught in a *baraita*: It is stated: **“And he has not eaten upon the mountains, neither has he lifted up his eyes to the idols of the house of Israel, neither has he defiled his neighbor’s wife, neither has he come near to a woman in her impurity”** (Ezekiel 18:6). This verse **juxtaposes a menstruating woman to his neighbor’s wife. Just as** lying together with **his neighbor’s wife,** even when **he** is **in his clothes and she** is **in her clothes, is prohibited, so too,** lying with **his wife** when she is **menstruating,** even when **he** is **in his clothes and she** is **in her clothes, is prohibited.**  The Gemara comments: **And** this conclusion **disagrees with** the opinion of **Rabbi Pedat, as Rabbi Pedat said: The Torah only prohibited intimacy that** involves **engaging in prohibited sexual relations,** as it **is stated: “A person shall not approach a near relation, to uncover their nakedness”** (Leviticus 18:6). |

Since the Talmud does not categorically refute Rabbi Pedat, for instance by quoting Sifra which unequivocally prohibited sexual touch on a Biblical level, and even though Rabbi Pedat’s position is ultimately rejected, it is clear to Nahmanides that the prohibition of sexual touch cannot be on the level of a Biblical precept. To this end, he concludes that sexual touching is rabbinically prohibited, serving as a “fence” or a protective expansion of the Biblical law in order to prevent a situation which might ultimately lead to sexual relations. This does not imply that Nahmanides would be casually permissive about sexual touch. However, had his approach become the dominant one, it would certainly have prevented the escalation towards the extreme halakhic attitude that considers that it might be preferable to give up your life rather than touch your Nidda wife (see below).

**Casual Interaction and Touch**

There is no direct Talmudic discussion around casual non-sexual touch between a man and woman who are prohibited to one another with two important exceptions (let me see what that is)[[232]](#footnote-234).

The first relevant source is in the Talmudic tractate Kiddushin 81b-82a which questions whether touch can ever be non-sexual even between first degree relatives. Rav Acha bar Abba appears at his son-in-law Rabbi Hisda’s home and takes his granddaughter onto his lap. Rav Hisda is taken aback by this intimacy. Rav Acha reassures him that Shmuel permits physical affection even for those sexually prohibited to one another, like a grandfather and granddaughter, **if one’s intentions are pure**.

In a similar vein, in his Mishneh Torah, Maimonides permits affectionate touching between parents and children of the opposite sex and grandparents and grandchildren. This becomes the accepted halakha.

In contrast, the second source, brought below, illustrates great suspicion over casual touch between husband and wife when prohibited, regardless of their intent. It is widely quoted in the post Talmudic era as prooftext that even the most casual of touch is strenuously prohibited between husband and wife. This story might well be the source for the halakhic premise that all touch is extremely transgressive, possibly on a Biblical scale[[233]](#footnote-235).

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| **מסכתות קטנות מסכת אבות דרבי נתן נוסחא א פרק ב**  מעשה באדם אחד שקרא הרבה ושנה הרבה ושמש ת"ח הרבה ומת בחצי ימיו והיתה אשתו נוטלת תפליו וחוזרת בבתי כנסיות ובבתי מדרשות והיתה צועקת ובוכה ואמרה להם רבותי כתיב בתורה כי היא חייך ואורך ימיך בעלי שקרא הרבה ושנה הרבה ושמש ת"ח הרבה מפני מה מת בחצי ימיו. לא היה אדם שהשיב לה דבר. פעם אחת נזדמן לה אליהו זכור לטוב אמר לה בתי מפני מה את בוכה וצועקת. אמרה לו רבי בעלי קרא הרבה ושנה הרבה ושמש ת"ח הרבה ומת בחצי ימיו. א"ל כשאת בנדתך כל אותן ג' ימים הראשונים מהו אצלך. אמרה לו רבי ח"ו שלא נגע בי אפילו באצבע קטנה שלו אלא כך אמר לי אל תגעי בכלום שמא תבא לידי ספק. כל אותן ימים האחרונים מהו אצלך. אמרה לו רבי אכלתי עמו ושתיתי עמו וישנתי עמו בבגדי על המטה ובשרו נגע בבשרי אבל לא נתכוין לדבר אחר. א"ל ברוך המקום שהרגו שכך כתוב בתורה ואל אשה בנדת טומאתה לא תקרב: | **Avot D’Rebbi Natan A, Chapter 2**  It happened that there was one student who learned much Mishna and learned much Scripture, and spent much time serving Torah scholars, but who died at half his years [at a young age]. His wife would take his Teﬁllin, bring them around to the houses of prayer and the houses of study and say to the people, ‘It is written in the Torah (Deuteronomy 30:20): [To love the Lord your God, to hearken to His voice and to cleave to Him] for this is your life and the length of your days [to dwell on the land which God promised to your ancestors, to Abraham, to Isaac and to Jacob, to give it to them]. My husband, who learned much Mishna and learned much Scripture, and spent much time serving Torah scholars, why did he die at half his days?’ And no one would answer her a thing.  Once Elijah may he be remembered for good visited her and said to her: My daughter why are you crying and wailing? She retold the whole story.  He asked her, ‘My daughter, during the days of your niddot, all of the first three days, what did he do with you?’  She answered, **‘God forbid! He did not touch me, even on my little ﬁnger! And he said to me, do not touch anything lest you come to doubtful behavior.’**  I asked her, ‘During the rest of the days, what did he [do] with you?’  She answered, ‘I ate with him and drank with him and slept with him in my clothing on the bed and his flesh touched my flesh but did not intend anything else.’  He said to her, ‘Blessed is the God who killed him, for it is written in the Torah “And to a woman in her *Nidda* you shall not approach.”’ |

In the story, we are told of the untimely death of a young scholar who spent much time in the Beit Midrash learning Torah and serving Torah scholars. His inconsolable widow tries to find answers to the eternal question of theodicy. In the course of the narrative, she reveals an interesting bifurcation in behavior between the days of bleeding and the seven “clean” days[[234]](#footnote-236): While she was actively menstruating, the couple maintained a strict separation. He did not even touch her little finger!

The little finger of a woman is a known trigger for male sexual arousal in rabbinic literature and was discussed at length in earlier chapters on *ervah*. The husband was intensely aware of her nakedness, both literal and figurative, and took great pains to maintain distance. Once the bleeding stopped, although still prohibited from sexual relations, the couple resumed modified intimacy during the seven “clean” days, including sleeping in close proximity to one another (although each in their own coverlet) eating together and allowing their “flesh” to touch without any sexual intention.

Elijah’s response to her story is to thunderously and unsympathetically explain that God did well to kill her husband. The deceased’s transgression, explains Elijah, was intimate interaction while she was still prohibited, even though they had no sexual intent. This story unequivocally views all interaction even without direct touch, as transgressing a severe Biblical commandment which caused God to strike him down (one of the rabbinic suggestions is that *karet* is untimely death). It is reminiscent of the text in Leviticus chapter 15, warning both men and women from approaching God’s presence in the Tabernacle while in a state of impurity on pain of death. Elijah echoes the spirit of that warning in reinforcing the death sentence for those who choose to “approach” the Nidda.

As mentioned earlier, this is a most seminal rabbinic text in the halakhic discourse of early Talmudic interpretation on the topic of behavior when the couple is prohibited. It buttresses the need for complete physical separation throughout the period of prohibition with no distinction between days of bleeding and clean days. The question of whether non-sexual touch is prohibited Biblically or rabbinically continues to be evaluated in light of the story which reflects an overall negative and forbidding attitude towards touch.

**Better Death Than Forbidden Touch? - The Beit Yosef.**

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| **Sanhedrin 74a**  …With regard to **all** other **transgressions in the Torah, if a person is told: Transgress** this prohibition **and you will not be killed, he may transgress** that prohibition **and not be killed,** **except for** those of **idol worship, forbidden sexual relations, and bloodshed.** | **סנהדרין עד.**  ....כל עבירות שבתורה אם אומרין לאדם עבור ואל תהרג יעבור ואל יהרג חוץ מעבודת כוכבים וגילוי עריות ושפיכות דמים |

**....**

Rabbi Joseph Karo, author of the Shulchan Aruch, takes the discourse around touching a Nidda to an unprecedented level in his commentary known as Beit Yosef[[235]](#footnote-237). He notes that since Maimonides classified sexual touch as a negative commandment abutting the sexual prohibitions, it can be defined as an accessory to *arayot*, laws of sexual prohibition, which are binding even when there is danger to life. Sexually touching a forbidden relation — including his Nidda wife — might very well be the kind of transgression that demands forfeiting one’s life rather than transgressing, suggests Rabbi Karo in Beit Yosef. This severity in approach will continue to permeate the halakhic discussion around touch between a husband and his Nidda wife, even though the premise that touching a Nidda is so severely prohibited to require giving up one’s life is largely rejected.[[236]](#footnote-238),[[237]](#footnote-239)

For instance, there are notable rabbinic authorities like Noda Beyehuda[[238]](#footnote-240), Pnei Yehoshua[[239]](#footnote-241), Avnei Ezer[[240]](#footnote-242)and Rav Yehuda Herzl Henkin[[241]](#footnote-243) who rule that even full sexual relations with a Nidda, although resulting in the severe punishment of *karet*, is not to be seen as falling into the grim category of *arayot*/sexual prohibitions. One of the reasons given for this distinction, between the Nidda and other sexual prohibitions like incest and adultery, is that the child born to a Nidda is not categorized as *mamzer*, the eternal and terrifying stigma given to a child born out of halakhic adultery and incest. Thus, it cannot result in a prohibition for which one lays down one’s life. While this alleviates some of the severity in transgressively having sexual relations with a Nidda (no *mamzerut*, no laying down one’s life), it nonetheless, remains conceptually in the highest category of prohibition. There is consistent ongoing reluctance to permit any form of touch, regardless of the category of law it falls into. Nowhere will this be more apparent than when dealing with questions of illness while a woman is Nidda.

**What Happens if Her Husband is Ill and There is No One to Care for Him?**

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| **Shulkhan Aruch Yoreh Deah 195:15**  If the husband falls ill, and there is no one to care for him besides his Nidda wife, she is permitted to care for him. She must take the utmost caution to avoid washing his face, hands and feet and making the bed in front of him. | **שולחן ערוך יורה דעה הלכות נדה סימן קצה**  סעיף טו  יט] אם הוא חולה ואין לו מי שישמשנו זולתה, מותרת לשמשו רק שתזהר ביותר שתוכל להזהר מהרחצת פניו ידיו ורגליו והצעת המטה בפניו. |

The Shulchan Aruch permits a woman to care for her husband when he is ill if there is no one to care for him. While he cautions the Nidda wife to avoid washing her husband’s hands or face or make the bed in his presence, he does not actually prohibit her from carrying out these activities when her husband is ill. Building on the first clause, it seems that if there is no one else to serve him, she can do what is necessary to alleviate his suffering. There is room to be lenient because the man is weakened and will not actively channel his sexual urges when ill.[[242]](#footnote-244) The Shulchan Aruch’s language will be far more restrictive the Nidda wife who is ill.

**What Happens if His Wife is Ill and There is No One to Care for Her?**

In contrast to the law above, with regard to the husband, there is no hint of leniency in the Shulchan Aruch’s language when it is the wife who is ill.

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| **Shulchan Aruch, Yoreh Deah 195:16**  If a Niddah becomes ill, her husband cannot attend to her in a way that involves touch, e.g., to help her into or out of bed. **Rema**: And if there is no one to help her, he is permitted to do everything and this is common practice if she greatly needs assistance. | סעיף טז  כ] אשה חולה והיא נדה, אסור לבעלה ליגע בה כדי לשמשה, כגון להקימה ולהשכיבה ולסמכה. [הגה] וי"א דאם אין לה מי שישמשנה, מותר בכל (הגהות ש"ד והגהות מרדכי פ"ק דשבת בשם הר"מ), וכן נוהגין אם צריכה הרבה לכך |
| **Shulchan Aruch Yoreh Deah 195:17**  If her husband is a doctor, it is prohibited for him to feel for her pulse.  **Rema**: And based on what I wrote above, that we rule leniently if she needs him to care for her, it is certainly permitted for him to feel for her pulse if there is no other doctor, she needs him, and her illness puts her in danger. | **שולחן ערוך יורה דעה הלכות נדה סימן קצה**  סעיף יז  (טז) אם בעלה רופא, אסור למשש לה הדפק. הגה: ולפי מה שכתבתי דנוהגין היתר אם צריכה אליו דמשמש לה, כ"ש דמותר (יז) למשש לה הדפק אם (יח) אין רופא אחר וצריכה אליו ויש סכנה בחליה, |

The Shulchan Aruch does not mention any moderation to the law even if there is no one else to take care for the wife, as was the case for the sick husband. This is due to the concern that a healthy man cannot be expected to control his sexual urges when his wife is ill. The Terumat Hadeshen[[243]](#footnote-245), who lived 100 years prior to Rabbi Karo and is often cited by him in the Beit Yosef, writes that when the husband is ill the wife can care for him although she should assiduously avoid touching him. Should she be forced to do so, it can be understood as lacking sexual overtones since her husband is ill and weakened and will thus be able to control his sexual response. However, when the wife is ill and her husband is well, there is no room for leniency since his, “sexual urge may overcome him and he will convince her to submit and there is no deterrent to his having relations with her when she is ill.”

Fortunately, Rabbi Moses Isserliss, in his gloss to Shulchan Aruch known as Rema inserts his differing opinion to both passages cited above to allow a husband to care for his sick Nidda wife. Furthermore, he states that it is the common practice. In the first passage, he rules outright that if there is no one else to care for her, her husband may do so, including helping her in and out of bed. In the second passage, Rema assumes that the physician husband is checking her pulse to establish the degree of danger she is in and thus permits it even though the Shulchan Aruch explicitly prohibits it.

It is notable that any qualifying factors to the degree of illness, or whether the wife is in danger are absent from both Shulchan Aruch and Rema. Given what Rabbi Karo wrote in the Beit Yosef, there is room to speculate that danger might not be enough of a reason to permit the husband to touch his Nidda wife. This leads Rabbi Yechiel Michel Epstein, author of Aruch Hashulchan, who lived in the 19th century, to clarify that the difference of opinion between the Shulchan Aruch and Rema is only when the wife’s life is **not** in danger. In a case of clear danger to the woman’s life, he feels compelled to write, Rabbi Karo would absolutely permit a husband to check his wife’s pulse. In a case where there is no danger, he acknowledges, only the Rema would be lenient. He himself endorses the latter practice of leniency:

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| **Aruch Hashulchan Yoreh Deah 195: 26-27**  The explanation of the matters above is that the Rema and the author of the Shulchan Aruch both reason that in a case of danger it is permitted and even though the Beit Yosef seems doubtful for perhaps he agreed with the opinion of the Rambam who reasoned that all physical touch in matters of sexual prohibitions from the Torah are prohibited from the Torah and thus may not be permitted even in case of danger. In any event it is clear here that he would permit in case of danger…and certainly a professional doctor can check her “hidden organs” if such is necessary since he is doing his job…  And all of these laws and their restrictions are only when there is no danger and therefore, when she is sick, the Beit Yosef prohibited him and the Rema permitted him, since it is not in the category of uncovering nakedness since he is doing it to help her and not out of sexual desire and this is why he wrote “and this is our custom if she needs such help” and did not write only in the case of danger and massaging the pulse, which the Beit Yosef prohibited, was clearly only when there was no danger and the reason the Rema permitted was because he permitted in such a case of no danger and some say he should place a thin barrier on the skin before measuring… | **ערוך השולחן יורה דעה סימן קצה**  סעיף כו  ביאור דבריהם נ"ל דרבותינו בעלי הש"ע תרווייהו סברי דבמקום סכנה מותר ואף שרבינו tהב"י בספרו הגדול מסתפק דאולי לדעת הרמב"ם דס"ל דכל מין קריבה בעריות אסור מן התורה אין להתיר אפי' במקום סכנה ע"ש מ"מ כאן בש"ע פשיטא ליה כן דכ"כ הרמב"ן והרדב"ז בתשו' וטעמו של דבר דאף ע"ג דבס"פ בן סורר ומורה [סנהדרין ע"ה א] אסרו חכמים בכל מין קורבה ואמרו ימות ואל יעבור ע"ש זהו מפני שעבר עבירה והעלה טינא ע"ש ועוד דכל שבמלאכתו עוסק לית לן בה והרי הדבר פשוט להיתר ברופא מומחה שבודק בכל בית הסתרים אם צריך לכך [כרו"פ] משום דעוסק במלאכתו [וזהו כוונת הש"ך בסק"כ והסכימו לו כמה גדולים ולחנם השיג עליו הב"ש באה"ע סי' כ' סק"א ע"ש ודו"ק]:  סעיף כז  וכל דינים אלו מיירי שלא במקום סכנה ולכן כשהיא חולה אסר רבינו הב"י ורבינו הרמ"א התיר מפני שאין זה בגדר ג"ע כיון שעושה דרך שימוש ולא לתאוה וזהו שכתב וכן נוהגין אם צריכה וכו' ולא כתב מקום סכנה ובמישוש הדפק שאסר רבינו הב"י מיירי ג"כ שלא במקום סכנה וזהו שכתב רבינו הרמ"א דמותר כשאין אחר ויש סכנה וכו' כלומר דבזה גם רבינו הב"י מודה שהרי מקורו מהב"י ע"ש אבל לרבינו הרמ"א אפשר דמותר גם באין סכנה כמו שהתיר מקודם אך שכתב דכ"ש במקום סכנה דלכ"ע שרי [כנלע"ד] ויש שכתבו שיניח דבר דק על מקום הדופק... |

**To summarize**, if a woman’s life is in danger, it is agreed by the overwhelming majority of authorities that her husband may do all that is necessary to assist her. The touch being referred to in these cases is service touch, or that which is directly necessary to alleviate physical suffering. However, if she is not in danger, there are conflicting opinions regarding his ability to care for her. Even Rav Elyashiv Knohl, considered a moderate in matters of Nidda, writes: “One should also try to minimize direct physical contact where possible, using a thick garment or blanket as a barrier when holding or supporting the ill spouse. If these issues arise one should consult a rabbi about how to deal with the situation.”

The end result is a sense of deep resistance towards permitting any sort of direct contact between husband and wife, even of the most non-sexual nature, when possibly permitted. While Rabbi Knohl’s language, in the quote above, suggests equal treatment regardless of which spouse is ill, he admits in the previous paragraph in his book that there is more room for leniency when the husband is ill, as per the Shulchan Aruch.

One of the most frequent questions asked by Orthodox couples today is about the birthing woman and whether a husband is permitted to assist his wife during the process, even after she becomes prohibited, since during birth all women become Nidda at some point.[[244]](#footnote-246) This touches on the source material brought above regarding a man physically assisting his sick wife. However, the question of a husband assisting during birth is actually a very contemporary halakhic question, reflecting the late 20th century trend encouraging men to enter the birthing room. Until that time, husbands were essentially banned from witnessing their wives’ labor. Thus, in practice, it was unthinkable that a man would hold his wife’s hand or massage her back as she pushed the baby out. The entire birthing process was overseen by women and/or male doctors. This reality has changed significantly and husbands are now often encouraged to actively and physically support their wives throughout the labor and birth. Rabbinic authorities have been pushed to respond to this actuality and have done so with a plethora of opinions, running the gamut from lenient to stringent as often reflects halakhic decision making.

One of the first questions that was addressed by rabbinic authorities was whether the husband could be in the birthing room given a prohibition on directly looking at the vulva[[245]](#footnote-247). While many rabbis permit husbands to be present at birth, they are instructed to remain by the woman’s head to avoid seeing the baby emerge. Rabbi Henkin outlined various rabbinic positions on the subject that permit and prohibit, with much of the permissibility resting on a man standing away from the woman’s lower body and promising not to look at the baby emerge from the birth canal[[246]](#footnote-248).

Another question that engenders tremendous debate is whether the husband can continue to touch his wife while she is giving birth, even after she becomes prohibited because of uterine blood flow. When I began to have children in the mid-1990’s, there were no moderate rabbinic voices supporting the halakhic possibility of the husband physically supporting his wife throughout and after birth. However, in the last decade or two there has been a shift in permitting what was once unquestionably prohibited. This relates to the sources brought above about providing services for the wife when she is ill. In other words, if the woman needs help to get in and out of bed and there is no one else to assist her, her husband may be called upon. As a result of trying to maintain a more rigorous halakhic standard and not fall back on this default, many religious women hire a doula to provide emotionally supportive touch throughout labor and birth, with the keen awareness that at some point their husbands will no longer be able to do so.

It is indisputable that the birthing woman is defined in halakha as one whose life is in danger. Shabbat may be violated in every necessary way to assist her. Kashrut laws may be suspended if she has an unnatural craving for pork and she may eat and drink as necessary on Yom Kippur. Maimonides codifies the Talmudic law that a candle may be lit for a blind woman in labor on Shabbat if she requests it in order to give her “peace of mind” even though the light has no practical purpose! Yet, there is ongoing controversy regarding the possibility of a husband to provide his wife with emotionally supportive touch during and after birth! This is surprising to couples who assume that given the seeming impossibility of having sexual relations with a birthing woman, there should be even more room for leniency! Yet in halakhic discourse, the sexual nature of the touch is hardly taken into consideration. All touch is potentially sexual especially if the man is healthy, even if the couple has no way of having sexual relations.

To illustrate, Rabbi Knohl writes: “Most prenatal courses encourage the husband to massage his wife during labor, but Jewish law prohibits this [once the couple becomes prohibited]. If a woman is terribly anxious before the birth and feels that she will need her husband’s touch to calm her, the couple should consult a rabbi. Obviously if there is any threat to the woman’s health, then whatever is required to soothe her is permitted. But such situations are extremely rare; normally there is no reason to fear for the woman’s health.”

This statement contains an internal contradiction. On one hand, we treat the woman in labor as if her life is in danger regarding Shabbat (most relevant) and kashrut (less relevant today). When it comes to emotionally supportive touch, however, Rabbi Knohl discourages it because her life is not really in danger! This is reflective of the deep discomfort perceived throughout all halakhic discourse on the topic in permitting touch, particularly emotionally supportive touch, at any time. Perhaps this is because there is no concern that violating the Shabbat for a birthing woman will lead to a more casual attitude to the laws of Shabbat. However, there is constant ongoing and unambiguous concern that allowing the couple to touch when prohibited will lead to a complete dissolution of boundaries.

**Emotional Touch**

So far, we have referred to two types of touch: sexual touch which is absolutely prohibited and non-sexual touch which could be permitted, with reluctance, to provide care in cases of illness and clear physical need. With the birthing woman, we introduced another category which has emerged more recently in halakhic literature known as *derech chiba* – or affectionate/emotional touch that is neither purely for care nor overtly sexual. This is where many couples find the halakhic restrictions incompatible with their needs for emotional intimacy. They expect that within the sources, surely there must be some latitude with regard to affectionate touch. Given the outline presented above, it should be clear that touch is seen as wholly sexual and thus, transgressive even when it does not trigger any such feelings.

As a result, some Orthodox couples make non-halakhic decisions that reflect their own need for emotional intimacy without any sort of religious guidelines[[247]](#footnote-249) while others suffer silently, having been told that there are no dispensations to touch.

It is unfortunately not surprising that this halakhic wariness translates into a lack of empathy for men and women suffering from depression, anxiety, OCD and other mental disorders despite studies that show touch is essential in facilitating calm and emotional healing during mental anguish. Its removal for 11-13 days from within the marital relationship can be crippling for the spouse expressly needing physical closeness during this prohibited time. In contrast to physical illness, where the man or woman can halakhically be defined as physically assisting their spouse when no one else is around to do so, the touch provided to someone suffering from mental anguish is emotionally therapeutic. As a result, it is very difficult for rabbinic authorities to consider this as a necessary circumstance for which allowances could be made given the incredible misgivings that infiltrates the entire discussion.

Many Rabbis reflexively feel that including depression and anxiety on the list of conditions that allow for emotional touch will give people too much leeway, eroding the fear and trembling that permeates every aspect of this topic in halakhic discourse. Rabbi Yonatan Rosensweig who recently extensively researched mental illness and halakha and wrote a book after three years of talking to rabbinic authorities and psychiatrists, discovered that mental illness in general has had little real consideration in halakhic sources outside of very primitive boundaries presented in the Talmud. In the course of writing his book and bringing psychiatrists into conversation with leading rabbinic authorities (in Israel), significant changes in attitude and halakhic decision making took place. Nonetheless, he acknowledged rabbinic resistance to allowing any sort of blanket leniency with regard to touch in situations of mental distress.[[248]](#footnote-250)

**Further Restrictions to Reinforce the State of Separation**

There are several other Rabbinic restrictions that are relevant when the couple is prohibited. All of them are meant to remind the couple that they must avoid sexual interaction, yet none of them aggressively separate the couple. These are collectively known as *harkhakot*, acts of intentional distancing between husband and wife during the prohibited period of *Nidda*. While in the previous section, I suggested that there was a complete absence of nuance to the halakhic discussion with regard to touch, there is much greater nuance to the rest of the restrictions, which allow a couple to live side by side with intimacy, albeit not physical intimacy.

Rabbi Epstein in the Aruch Hashulchan frames the rest of the restrictions very well:

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| **ערוך השולחן יורה דעה סימן קצה**  סעיף א  ידוע שנדה היא ככל העריות שכל העריות הן בכרת וכן נדה היא בכרת ובעניין ההרחקה ממנה איננה שוה לכל העריות יש בדברים שהחמירו בה יותר מבכל העריות כמו ליתן בידה או ליטול מידה וכיוצא בזה כמו שיתבאר לפנינו ויש שהקילו בה יותר כמו שמותר ליהנות בראייתה ובכל העריות פשיטא שאסור אפילו ההסתכלות וכן יחוד דבכל העריות אסור להתייחד ועם אשתו נדה היחוד מותר וכן אמרו חז"ל **[סנהדרין ל"ז א]** סוגה בשושנים התורה העידה עלינו שאפילו כסוגה בשושנים לא יפרצו בה פרצות כלומר באזהרה קלה ובהבדלה מועטת נפרשים מן העבירה [רש"י ד"ה סוגה] וכשאומרת כשושנה אדומה ראיתי מיד פורש ממנה [תוס' ד"ה התורה]: | **Aruch Hashulchan 195:1**  It is known that the prohibition of the *Nidda* is like all of the sexual prohibitions in the Torah that result in *karet* however with regard to distancing oneself from her, restrictions are different. There are things that are more stringent in comparison to the other prohibitions such as passing things into her hand or taking from her hand and so on as will be explained below and there are many more leniencies in her regard such as permitting him to [sexually] enjoy looking at her in a way that is prohibited for those relatives that are prohibited to him. Likewise, seclusion with his wife during *Nidda* is permitted but not with women [such as relatives] who are prohibited to him. As the rabbis said (Sanhedrin 37a), the Torah creates a hedge of roses**. It testifies that we, with only a mild warning and a minimal separation separate ourselves from sin** and when she says I have seen red like a rose he immediately separates. |

In contrast to other women, a married man is allowed to have sexual thoughts about his wife, even when she is prohibited to him; he is allowed to be alone with her, even in the bedroom. The challenge of how to desexualize the relationship within the framework of shared living space is one that directs the next series of laws.

**Desexualizing the Most Sexual Space: The Bedroom**

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| **Shulchan Aruch Yoreh Deah Nidah 195:6**  He should not sleep with her in one bed, even if each is in their own clothing and they are not touching one another. Rema’s Gloss: And even if each one has their own blanket and even if they are lying in two beds and the beds are touching, this is prohibited. | **שולחן ערוך יורה דעה הלכות נדה סימן קצה**  **סעיף ו**  לא יישן עמה במטה, אפילו כל אחד בבגדו ואין נוגעין זה בזה. הגה: ואפילו יש לכל אחד מצע בפני עצמו, ואפילו אם שוכבים בשתי מטות והמטות נוגעות זו בזו, אסור (מרדכי פ"ק דשבת בשם הר"מ). |

As mentioned above, halakha does not require the couple to sleep apart from one another. However, one bed with two blankets as per Rav Pedat’s suggestion (Shabbat 13a) was rejected by the many post-Talmudic authorities. Although a bed wide enough so that two people could sleep on it without touching remained a viable halakhic option into the Middle Ages, the determinative halakha from the *Shulchan Aruch* onward is to require two beds with a minimum separation preventing the beds from touching[[249]](#footnote-251). This separation serves to remind the couple that they are in non-sexual space while simultaneously preserving intimacy by allowing them to lie side by side, talking, breathing and cohabitating next to one another. This all the more noteworthy given the palpable fear of transgression felt in the previous section on touch. Perhaps once that bulwark of halakhic restriction was solidly in place, there was no need to fear crossing minimal boundaries anywhere else, including the bedroom.

**Eating Together:**

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| **Shulchan Aruch Yoreh Deah Laws of Nidda Siman 195**  Paragraph 3  He should not eat with her at the same table unless there is some sort of object distinguishing between his plate and her plate such as bread or a pitcher or, each one should eat on their own placemat/tablecloth.  **Rema**: And some say that a separation between his plate and hers is necessary specifically when they do not share a plate when she is permitted, but if they eat from one plate when she is permitted, than it is enough that each one eats from their own plate and they do not need any other object to separate them. And this the practice.  And there are some who say it is prohibited for him to eat from her leftovers just as it is prohibited for him to drink from what is left in her cup, as will be explained.  Paragraph 4  He should not drink from what is left in a cup that she drinks from.  **Rema**: Only if there was no person who drank from her cup in between or, if the contents of the cup are emptied into another cup, even if it is returned to the original cup [he can drink]; and if she drank and he does not know that she drank from this cup and he wishes to drink from her cup, she does not need to tell him not to drink.  And she is permitted to drink from a cup he drank from. And if she drank from this cup, there are some who say that he can drink what is left, since she has already left, there is no intimacy in the act. | **שולחן ערוך יורה דעה הלכות נדה סימן קצה**  סעיף ג  לא יאכל עמה על השלחן אא"כ יש שום שינוי שיהיה  שום דבר מפסיק בין קערה שלו לקערה שלה לחם או קנקן, או שיאכל כל אחד במפה שלו.  הגה: וי"א דצריכין הפסק בין קערה שלו לקערה שלה היינו דוקא כשאינן אוכלין בקערה אחת כשהיא טהורה, אבל אם אוכלין בקערה אחת כשהיא טהורה סגי אם אוכלת בקערה בפני עצמה, וא"צ היכר אחר, וכן נוהגין. י"א שאסור לו לאכול משיורי מאכל שלה, כמו שאסור לשתות משיורי כוס שלה, וכמו שיתבאר.  סעיף ד  לא ישתה משיורי כוס ששתתה היא.  הגה: אם לא שמפסיק אדם אחר ביניהם או שהורק מכוס זה אל כוס אחר אפילו הוחזר לכוס ראשון (; ואם שתתה והוא אינו יודע ורוצה לשתות מכוס שלה, אינה צריכה להגיד לו שלא ישתה ;  והיא מותרת לשתות מכוס ששתה הוא. ואם שתתה מכוס י"א שמותר לו לשתות המותר, דמאחר שכבר הלכה אין כאן חבה. |

In the same vein as the attention directed towards the bedroom, there is both wariness and nuanced permissiveness. Like the bedroom, minimal boundaries are put in place. The halakha creates a structure in which the couple can eat together with minor reminders that they are prohibited. This was actually not always the case. One of the few Talmudic references to what we call the *harchakot* is a passage that warns the Zav from eating with the Zava lest they come to sin.

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| **Mishna Shabbat 1, 3**  A zav should not eat with a zavah lest it lead to sin. | לֹא יֹאכַ ל הַ זָּ ב עִ ם הַ זָּ בָ ה, w פְּ נֵ י הֶ רְ גֵּ ל עֲ בֵ רָ ה. |
| **Rashi:** A zav should not eat with a zavah - and all the more so a healthy man with a zavah. Lest it lead to sin –since they are alone together, he may come to have intercourse with a zavah, for which the punishment is כרת. | **רש"י מסכת שבת דף יא עמוד א**  לא יאכל הזב עם הזבה - וכל שכן טהור עם הזבה. מפני הרגל עבירה - מפני שמתוך שמתיחדין יבא לבעול זבה שהיא בכרת. |

There was indeed a practice of husband and wife not eating at the same table when prohibited. This is reflected in Raavad’s comment to Maimondes law in Mishneh Torah:

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| Mishneh Torah Laws of Forbidden Sexual Relations Chapter 11  18. It is forbidden to a person to embrace his wife during these seven "clean" days. [This applies] even if she is clothed and he is clothed.42 He should not draw close to her, nor touch her, not even with his pinky. He may not eat together with her from the same plate. The general principle is he must conduct himself with her during the days she is counting as he does in her "days of *Nidda*." For [relations with her] are still punishable by *karet* until she immerses herself, as we explained.  Raavad: And our practice is that they not even eat at the same table and so wrote Rav Acha [Gaon].  19. A *Nidda* may perform any task which a wife would perform for her husband except washing his face, hands, and feet, pouring him a drink, and spreading out his bed in his presence. [These were forbidden as] decrees, lest they come to sin.  For this reason, she should not eat with him from the same plate, nor should he touch her flesh, lest this lead to sin. Similarly, she should not perform these three tasks for him during her seven "clean" days. It is permitted for a woman to adorn herself during her "days of *Nidda*," so that she does not become unattractive to her husband. | רמב"ם הלכות איסורי ביאה פרק יא  ואסור לאדם שידבק באשתו בשבעת ימים נקיים אלו ואף על פי שהיא בכסותה והוא כ בכסותו ולא יקרב לה ולא יגע בה אפילו באצבע קטנה, **ולא יאכל עמה ל בקערה אחת**, כללו של דבר ינהוג עמה בימי ספירה כמו שינהוג בימי נדה שעדיין היא בכרת עד שתטבול כמו שביארנו. +/השגת הראב"ד/ ואסור לאדם שידבק וכו'. כתב הראב"ד ז"ל /א"א/ *אנו נוהגים אפילו על שלחן אחד וכן כתב רב אחא ז"ל.+*  הלכה יט  כל מלאכות שהאשה עושה לבעלה נדה עושה לבעלה חוץ מ מהרחצת פניו ידיו ורגליו ומזיגת נ הכוס והצעת המטה בפניו, גזירה שמא יבוא לדבר עבירה, **ומפני זה לא תאכל עמו בקערה אחת** ולא יגע בבשרה מפני הרגל עבירה, וכן בשבעת ימים נקיים לא תעשה לו שלש מלאכות אלו, ומותר לאשה להתקשט בימי נדתה כדי שלא תתגנה על בעלה. |

Maimonides permits the couple to eat at the same table as long as they do not share a plate. Raavad argues in the name of Rav Acha[i] Gaon that they may not eat at the same table! This was presumably at a time in which tables were very small, unlike the tables we use today. The *Shulchan Aruch* finds a way to synthesize both positions: A couple who are alone may not eat together at the same table unless they put a reminder of their status on the table. Any item that stands out as unusual can be used for this purpose. This is actually identical to the halakhic requirement when two friends eat milk and meat at the same table. When people dine together, they often eat from each other’s plates. It is a sign of familiarity and connection. By placing an unusual object on the table, it reminds the diners that they are not to eat from one another’s place. In the case of the couple, it also reminds them they are in non-sexual space but it does not separate them. They can prepare food for one another and sit down and enjoy the meal together. Slight changes in behavior are enough to allow for normalcy.

Before finishing this section, it is worth noting that Maimonides laws around eating together when the woman is Nidda are based on a text in tractate Ketubot which includes a series of stories in which wives poured their husband wine even though this specific activity is prohibited when she is Nidda.

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| **Ketubot 61a**  Rav Yitzḥak bar Hananya also said that Rav Huna said a similar halakha: All tasks that a wife performs for her husband, a menstruating woman may similarly perform for her husband, except for: Pouring his cup; and making his bed; and washing his face, hands, and feet. | **תלמוד בבלי מסכת כתובות דף סא עמוד א**  אמר רב יצחק בר חנניא אמר רב הונא: כל מלאכות שהאשה עושה לבעלה - נדה עושה לבעלה, חוץ ממזיגת הכוס, והצעת המטה, והרחצת פניו ידיו ורגליו. והצעת המטה, |

This first section limits a wife from washing her husband’s hands, feet and face when she is Nidda as well as restricting her from making his bed (in his presence) and pouring his wine. All three are all understood to be acts of intimacy that a wife is required to perform for her husband even if she has many maidservants. For this reason, all three are prohibited while Nidda although both making the bed and pouring the wine can in fact be done with some slight modification.

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| **Ketubot 61a**  And pouring the cup of wine (is prohibited)  Shmuel’s wife would switch hands and pour with her left hand.  Abaye’s would place it on top of a barrel. Rava’s  on his pillow  and Rav Pappa’s wife would place it on the bench. | **תלמוד בבלי מסכת כתובות דף סא עמוד א**  ומזיגת הכוס.  שמואל, מחלפא ליה דביתהו בידא דשמאלא.  אביי, מנחא ליה אפומא דכובא.  רבא, אבי סדיא.  רב פפא, אשרשיפא. |

In this series of four vignettes, the Amoraim in Babylonia relate that their wives continued to pour their wine albeit with slight changes. To my ear, the stories are a marvelous example of attempts to maintain normal interaction between husband and wife through acts of intimacy even during the Nidda period. The slight changes, putting the glass on a counter or on a low shelf, rather than directly in front of their husband, reminds both husband and wife that they are prohibited to one another. In a similar way, couples can also continue to perform loving, nurturing acts when eating together but with mindful awareness of the non-sexual space they are in through slight changes in behavior[[250]](#footnote-252).

**Passing from hand to hand**:

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| **Tosafot Shabbat 13a**  And Rashi forbade himself from passing a key from his hand to hers (his wife’s) during the days of her Niddut | **תוספות מסכת שבת דף יג עמוד ב**  ורש"י היה נוהג איסור להושיט מפתח מידו לידה בימי נדות |
| **Mahzor Vitri 499**  The law that it is prohibited [for a man] to touch his wife during all the days of her Nidda time, even with his little finger…” There are some who are careful even not to pass her any object. And at the very least it is good to be careful not to pass her any kind of food or drink. It is good and proper to be careful not to pass [anything] from his hand to her hand. And the same holds for her clean days, until she immerses” | **מחזור ויטרי סימן תצט ד"ה ד. דין**  ד. דין שאסור ליגע לאשתו כל ימי נידתה אפי' באצבע קטנה. ויש נזהרין אפילו להושיט לה שום דבר. ולכל הפחות דבר של מאכל ומשתה טוב ונכון מליזהר שלא יושיט מידו לידה. וכן בימי ליבונה וספירתה עד שתטבול: |

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| **Shulchan Aruch, 195:2**  And he should not touch her even on her little finger and he should not pass anything from his hand to hers and not accept anything from her hand lest he come to touch her flesh (also, throwing from his hand to hers or the opposite (is prohibited) | **שולחן ערוך יורה דעה הלכות נדה סימן קצה**  סעיף ב  (ב) ה] לא יגע בה אפילו באצבע קטנה, ג ו] ולא יושיט מידו לידה שום דבר (ג) ולא יקבלנו מידה, שמא יגע בבשרה. (וכן על ידי (ד) זריקה מידו לידה או להיפך, אסור). (ב"ז ס"ס קנ"ט והגהות ש"ד בשם המהר"ם). |

People often wonder whether this restriction on directly passing to one another is a stringency or actual halakha. It is a practice that seems to have originated with Rashi, who did not pass keys to his wife. It became codified into the Shulchan Aruch where it is written that a man must not pass an object to his wife lest he brush against her little finger. The reference to the little finger intimates that even inadvertently brushing against the little finger of his Nidda wife could unleash sexual feelings and must be avoided. This fits well with the analysis presented above, that all touch can potentially become sexual, even if is incurred inadvertently in the most mundane of ways.

For some couples, this restriction borders on the offensive by suggesting that a man’s sexual desire is so unquenchable that the couple must avoid passing things to one another. On a more positive note, it could be reframed so that even the smallest touch can be meaningful and filled with intimacy if treated as such.

I propose a variation to both of the responses presented above. One could look at this law as the ultimate in mindfulness rather than as a deterrent to the male gaze. It is taking the act of passing, which is utterly irrelevant in any and every other prohibited relationship, into something that makes the couple mindful of the non-sexual space they have chosen to create. Multiple times a day, it becomes a reminder for the couple that they are committed to changing the dynamic between them, using different love languages and investing in other forms of connection[[251]](#footnote-253).

That said, couples should use common sense in this regard. If an object is too heavy to carry alone or an infant is sleeping and there is no one else around, they are permitted to carry something together or hand an item from one to the other, provided of course, that they take care not to deliberately touch.

There are two noteworthy responsa that have been written in recent years on the topic of passing that to my mind reflect a modern discourse around the application of Nidda laws in public. Rabbi Moshe Feinstein was asked about easing the restriction on passing in public where there could be no concern for “breaching of fences”, i.e. getting carried away, and second, to avoid embarrassment specifically to the woman if people would realize she is Nidda. Rabbi Feinstein answered strongly in the negative, emphasizing that since women regularly menstruate, it is a frequent occurrence and thus, it should be expected by one and all that a couple be prohibited on a regular basis. He expressed his feeling that there was no reason for this to cause any embarrassment and wrote that the opposite should be true: the couple should feel proud that it is known they are keeping these halakhot.

In contrast, forty years later Rabbi Yuval Cherlow in Israel was asked the same question[[252]](#footnote-254). His answer is far more nuanced than Rav Moshe. Having talked to women about this specific issue, Rabbi Cherlow shows a more sensitive awareness of women’s feelings in this regard. He cites rabbinic authorities who were lenient with regard to passing both in public as well as in the presence of the couple’s children. He also validates the discomfort women feel when their bodies are being scrutinized and wonders about the lack of modesty when people are able to identify when a couple is prohibited or permitted. Furthermore, he notes that throughout history there were times when menstruating women wore different clothing while prohibited which marked their status publicly. Today this is not the case, and women are deliberately private about such matters. Finally, he notes astutely, if halakhic authorities are too stringent in this matter, it could potentially have more serious consequences: If couples come to mock this particular halakha, they may eventually reject the other more significant fences in this area of halakha. It is an inverse of the normal fear for slippery slope!

**Summary**:

The rabbinic attitude is that non-sexual touch between two people who are in a sexual relationship can easily lead to sexual touch and therefore must be avoided during the Nidda period. Even a woman’s little finger might arouse male sexual desire, as noted in multiple sources. If visualization is considered to be distracting, actual touch will be even more so. This is codified into the Shulchan Aruch 195:2, where he writes that a husband may not pass anything to his wife lest he touch her little finger.

Although couples complain that their need for emotional touch is ignored in the halakhic sources, we must also recognize that it is quite commonplace for non-sexual touch to release feelings of arousal unexpectedly. What may start out as purely asexual can very easily cross over into the sexual. I have counselled many couples whereby one spouse wants only emotional touch and finds it frustrating that their partner responds sexually. There is no way to really qualify when touch is completely asexual and where the tipping point is and halakha demands clarity. If one person begins to feel arousal when holding hands but the other does not, is that transgressive? It is easier to eliminate all touch rather than navigate the subjective experience of individual men and women. Thus, the halakha is clinical and impersonal in this regard. As we saw above, the only exceptions that might be made are regarding direct threat to life or serious illness. There is very little concern for mental or emotional well-being which can create tremendous dissonance for couples, particularly when touch is a central expression of the intimacy between them. It is important to validate the integrity of halakha, while also recognizing the complexity of removing touch. Couples who respect the halakhic limitations must make mindful choices and feel comfortable with whatever choices they make, without judgement.

**Finding the Right Balance**   
Halakha is an intricate religious structure which directs and governs our days, weeks, months and years by interpreting the will of the Divine into human behavioral practice. Just as kashrut governs what we eat, the weekly Sabbath and Jewish holidays govern our time and multiple laws govern our interaction with one another, the laws of Nidda govern and have the potential to transform one of the most important aspects of our humanity – that of sexuality.

When I counsel couples on matters of *Nidda* even before marriage, I advise them to formulate and anticipate what it means not to touch for 12 days. Mindful preparation is important to set them up for successful incorporation of laws that will so deeply interface with their emotional, physical, sexual and spiritual selves. In one year, I was helping three different women in the aftermath of miscarriages that all had similar complications resulting in months of uterine bleeding. Not touching for such a prolonged period in the aftermath of such a physically and emotionally draining experience is not impossible however, it demands great effort and emotional investment from the couple. I never want to mislead a couple that this will be automatically beneficial for their marriage. As with other aspects of marriage, communication, consideration and patience along with goal setting and constant reflection will help the couple integrate this in a positive way, but it can take time.

Many of the religious couples I counsel are planning to keep the Nidda laws in some capacity but have often decided against full compliance for a variety of reasons. While halakhically these laws are equated with Shabbat and kashrut, experientially it is not the same for those who make non-halakhic choices in Nidda while simultaneously leading a fully halakhic lifestyle in every other way. The shroud of privacy that veils every couple ultimately means that no one really knows what decisions are being made behind closed doors.

Some couples remain very conflicted about their behavior, feeling a sense of guilt, or worse, shame and failure over their inability to uphold halakha to the utmost. It is particularly acute when the couple’s level of observance suggests scrupulous adherence to these laws. Since in religious education everything about the “sexual” is considered through a “moral” or “immoral” lens, morality is almost reduced to “sexual morality”. Touch at the wrong time is “bad” and at the right time is “good.” Deviation from halakha in this area comes with a cloud of the immoral, creating internal conflict around past and future experiences.

I try to help couples frame the overall structure of Nidda as a means to building a healthy sexual relationship. I point out that it is inconceivable in a monogamous consensual and committed relationship, that there is anything immoral or shameful about a married couple’s expression of desire and attraction towards one another even when it deviates from strict halakha. In Judaism, sexual relations are neither a weakness to be tolerated nor just a pleasure to be indulged but a holy activity and a way of serving God. Couples would do well to see themselves in an aspirational relationship both with God and with one another. They should be kind to themselves as they work towards setting beneficial objectives that allow them to achieve religious integrity and a deeper connection within their marriage. Every cycle provides an opportunity for the couple to think about their interaction in sexual space when permitted and in non-sexual space when prohibited.

I emphasize the element of choice. Especially with regard to our bodies and sexuality it is imperative for people to feel that they have agency over what they do and what is being done to them. Those who **choose** to keep these laws – out of belief and commitment to religious law and tradition – must strive to find a sense of self, even when halakha challenges them. My over-arching aim is to help people think thoughtfully and considerately of these choices and talk openly about how they will manage their relationship as it fluctuates between different types of interaction at different times and stages in their marriage.

To this end, it is important for each of the partners to try and engage in candid conversations with one another even before marriage and certainly throughout about the impact these laws have on their interaction in and out of the bedroom. Greater sensitivity to their respective individual needs will help them have greater appreciation for their different “love languages” and how their similarity or diversity will affect them as they transition from being sexually permitted to prohibited and back again.

When a woman menstruates, it marks the onset of non-sexual space. This may come as relief to one or both spouses if there are intimacy issues or an imbalance in the sexual relationship. On the other hand, this transition may require greater emotional resources if the couple is trying to become pregnant, for instance, and the period is a sign of failure to conceive. If the couple is careful to remove all touch from the relationship, it can trigger feelings of loneliness as the husband and wife embark on almost two weeks with a constant physical separation. Bring a positive outcome

On the other end of this cycle is mikva night which is presented as the culmination of the sexual yearning experienced by the couple. This can work as an aphrodisiac for some marriages. Mikva night certainly creates a basic framework to incorporate sexual intimacy when it can be easy to overlook, particularly when life becomes overwhelmingly busy with work, children, community and more. Less talked about are those for whom mikva night is rife with tension over the logistics of the woman going to the mikva, the mikva experience itself which not all women enjoy (and which obviously impacts her return home) and the expectations over resuming relations. It is not uncommon for couples to chafe, privately or openly, against the expectation that they move from nothing to everything. Some complain that sexuality is not an on and off switch. I have heard both men and women express frustration over the assumption that sexual relations will be automatically resumed.

One anecdote that stays with me is a conversation I had with a religious man who spent much of the conversation extoling the virtues of family purity laws. As we neared the end, and after I had presented some of my own personal thoughts, he suddenly paused. He then, almost to his surprise, reflectively acknowledged that he actually found it annoying that he was expected to stop everything and come home for his wife’s return from the mikva. This story was particularly interesting because on the surface he espoused the traditional rhetoric. Under the surface however, he was surprised to discover that there existed more complicated feelings. This did not detract from his observance or commitment to halakha. However, it reinforces my own perception that there is need for more honest dialogue around the individual and collective experiences that are elicited when keeping these laws.

Often, simply communicating expectations and incorporating some transitional behavior – a romantic dinner, some quality time talking, the man immersing in the mikva, etc. can help the couple come together in a more positive, integrated way. Mikva night is not an automatic panacea. Compromise is often essential. Encouraging each person to articulate their “red lines” helps the couple to listen more attentively to one another in order try to create an atmosphere of connection and respect. When compromise becomes impossible because individual red lines stand rigidly in conflict with one another, couples counselling and/or sensitive pastoral counselling is advisable to help a couple find a direction that will heal rather than harm the tenuous dynamic.

Over the last decade of teaching *Nidda* laws in different forums and working with couples before and during marriage, I have found that many people are looking to infuse their sexuality with meaning. It is why the enterprise of family purity laws and the expansion of *mikva* immersion is creating so much energized discourse, shooting out in so many directions. Sometimes however, these two avowals—commitment to halakha and desire to become or remain sexually permitted—come into conflict with one another. Therapists, rabbis, counsellors and educators who work in this area must show awareness of the complex interplay between halakhic requirement and individual experience that these laws engender, and subsequently develop tools and language to respond adequately to the many layered issues that arise. To quote Dr. Stephen Snyder, a psychiatrist and renowned sex therapist in NYC and an Orthodox Jew: These are astonishing times for sex…..[People] are interested in relationships. They want to have great sex in a committed relationship. They want sex to be an instrument of sanctification and peace at the center of a loving partnership[[253]](#footnote-255).”

1. It would be unfair and grossly inaccurate to portray modern society as egalitarian in nature. There are still many gender biases in place which hurt men and women with preconceptions of their innate capabilities based on their biology. However, with enough willpower, men and women can often push past such stereotypes and fight, if necessary, legally, for entry to gender specific spaces. At home however, heterosexual wives are consistently the most unhappy with the breakdown of household tasks and childcare arrangements which place a significantly unequal burden on them even as men have increased the amount of time they spend on such chores. Interestingly gay male couples have the most equitable breakdown and least dissatisfaction with regard to sharing the burden of home and childcare. There are many studies and articles written on this topic. For two recent ones: <https://www.theatlantic.com/family/archive/2019/05/breadwinning-wives-gender-inequality/589237/> and https://www.nytimes.com/2020/02/13/opinion/sunday/marriage-housework-gender-happiness.html. [↑](#footnote-ref-1)
2. Midrash Deuteronomy Rabbah Parasha 6. [↑](#footnote-ref-2)
3. Babylonian Talmud Shabbat 152a. [↑](#footnote-ref-3)
4. **תלמוד בבלי מסכת הוריות דף יג עמוד א**

   מתני'. האיש קודם לאשה - להחיות ולהשב אבדה, והאשה קודמת לאיש - לכסות ולהוציא מבית השבי. בזמן ששניהם עומדים בקלקלה - האיש קודם לאשה.

   **Talmud Horyaot 13a**

   The man precedes the woman – when it comes to choosing which will live and returning lost articles and the woman precedes the man when it comes to clothing/support and redeeming her from captivity. When both are in danger of becoming debased sexually – the man precedes the woman. [↑](#footnote-ref-4)
5. Leviticus 27. [↑](#footnote-ref-5)
6. As with rabbinic sources in general, there is often contradiction. On one hand there is a protective attitude towards vulnerable women. On the other hand, by rabbinic decree, a woman after childbirth is required to wait 18-24 months after birth before remarrying without exception (even if she is not nursing) on the face of it for the protection of the child. Over the centuries, women widowed or divorced by their husbands were desperately seeking to remarry in order to have a source of sustenance. Some of the women were faced with choosing prostitution or remarriage. The halakhic sources show a curious reluctance to override this particular rabbinic law despite the vulnerability of the women and children in these cases. [↑](#footnote-ref-6)
7. Hauptman, Judith, Rereading the Rabbis, p. 226. [↑](#footnote-ref-7)
8. This is codified in the Rambam and Shulkhan Arukh. [↑](#footnote-ref-8)
9. It must be noted that while a husband has the ability to prevent his wife from caring for her parents, if a man continuously prevents his wife from seeing her parents, it is grounds for divorce with a ketuba. The language in the Mishna is forceful:

   If a man forbade his wife by vow that she may not go to her father’s house: --When the father lives with her in the same town, the husband may retain [her as his wife, if the prohibition was for] one month; but if for two months he must divorce her and give her the ketubah. --When the father lives in another town, the husband may retain [her as his wife, if the prohibition was for] one festival, but if for three festivals, he must divorce her and give her the ketubah. (Mishna Ketubot 7:4). [↑](#footnote-ref-9)
10. P. Talmud Kiddushin 1:7, 61a, B. Talmud Kiddushin 30b.

    [↑](#footnote-ref-10)
11. Shema, which is perhaps the most quintessential of time bound mitzvot, is missing from this list. It appears in the discussion in tractate Berakhot which will be analyzed below.

    [↑](#footnote-ref-11)
12. In the time of the Talmud, tefillin were worn all day every day with a question about wearing them on Shabbat. Berakhot chapter 3 is filled with discussions of how to wear tefillin into the bathroom. At a certain point in the post-Talmudic period, there was a move to limit wearing tefillin to the morning in conjunction with prayer. [↑](#footnote-ref-12)
13. B. Talmud Sukka 28a-b. [↑](#footnote-ref-13)
14. Procreation is an enormous topic, beyond the scope of this book, which touches on fertility, sexuality and contraception. It must be noted that a man cannot perform this mitzva without a woman! If a wife cannot fulfill the mitzva or is put at risk by pregnancy, then he must take another wife. If the son or daughters dies, very common in the ancient world, he must continue to procreate. On the other hand, women may remain unmarried, marry a man known to be sterile and use certain devices to prevent pregnancy because she is not Biblically commanded to procreate which allows her some latitude in protecting herself from becoming pregnant. [↑](#footnote-ref-14)
15. Redeeming the firstborn son becomes an exercise in circular logic. Since daughters are not redeemed they cannot be obligated to redeem. This is the same logical reason used to exempt mothers from circumcising their sons or teaching them Torah. [↑](#footnote-ref-15)
16. The halakha is that tefillin are not worn on Shabbat. However, this was not accepted by all sages at the time. [↑](#footnote-ref-16)
17. This is not unusual and the B. Talmud does this countless times in order to condense certain conversations. [↑](#footnote-ref-17)
18. Sukka 11a and Menachot 43a. Rabbi Amram the Pious and Rav Yehuda attached tzitzit to their wives’ garments. See Rashi and Tosafot there. [↑](#footnote-ref-18)
19. Maimonides in the laws of tzitzit 3:9 writes explicitly that women may wrap themselves in tzitzit (without reciting a blessing) and the Shulchan Aruch codifies it simply as a positive time bound mitzva from which women are exempt. The Rema, after acknowledging this truth nonetheless defines it as an act of conceit should women choose to perform this mitzva. [↑](#footnote-ref-19)
20. In the parallel citation of this source in the J. Talmud, the discourse takes on a different overtone and actually serves to work against the possibility of women performing similar mitzvot, specifically tefillin.

    **תלמוד ירושלמי מסכת ברכות פרק ב דף ד טור ג /ה"ג**

    נשים שאינן חייבות בתלמוד תורה אינן חייבין בתפילין התיבון הרי מיכל בת כושי הית' לובשת תפילי' ואשתו של יונה הית' עולה לרגלי' ולא מיחו בידיה חכמ' ר' חזקיה בשם ר' אבהו אשתו של יונה הושבה מיכל בת כושי מיחו בידיה חכמ' **Yerushalmi Berachot**

    We have learned elsewhere: Women and bondsmen are exempt from reciting the Shema and from Tefilin. This ruling is questioned: Did not Michal the daughter of Kushi don tefillin and did not Jonah’s wife go up for the Pilgrimage Festivals and the Sages did not object? R. Hizkiah answered in the name of R. Abbahu, “Jonah’s wife was turned back and the Sages did object to Michal, the daughter of Kushi.”

    In contrast, the B. Talmud presents the opinion that women can perform optional mitzvot despite their exemption.

    **תלמוד בבלי מסכת עירובין דף צו עמוד א**

    דתניא: מיכל בת כושי היתה מנחת תפילין ולא מיחו בה חכמים. ואשתו של יונה היתה עולה לרגל ולא מיחו בה חכמים. מדלא מיחו בה חכמים - אלמא קסברי: מצות עשה שלא הזמן גרמא היא. - ודילמא סבר לה כרבי יוסי, דאמר: נשים סומכות רשות. דאי לא תימא הכי - אשתו של יונה היתה עולה לרגל ולא מיחו בה. מי איכא למאן דאמר רגל לאו מצות עשה שהזמן גרמא הוא? אלא: קסבר רשות, הכא נמי: רשות. **Eruvin 96a**

    We have learned: Michal the daughter of Kushi used to don Tefillin and the Sages did not object; Jonah’s wife would go up for the Pilgrimage Festivals and the Sages did not object. We must infer that these are regarded as Positive Precepts not dependent upon a set time. Or perhaps the teaching is in accord with the view of Rabbi Yose who says that women may opt to lay their hands on an offering (*semicha*). If you do not say so, why did the Sages not object to Jonah’s wife going up for the Pilgrimage Festivals? Can anyone maintain that going up for the Pilgrimage Festivals is not a Positive Precept dependent upon a set time? We must conclude that this teaching is in accord with the view that these *mitzvot* are optional for women. [↑](#footnote-ref-20)
21. While minors, women and Canaanite slaves are often grouped together, in this particular sugya, it seems as though the other two categories were incidental. See Safrai, Shmuel, Berakhot, p. 130. In general, the Tannaitic strata defines the obligation of minors in a more fluid manner than the later strata of Amoraim. The differentiation within the population of minors will be based on intellectual and/or physical capability. Male minors who can, must. Those who cannot are exempt. See ibid, p. 129-130.

    Later in the Talmud, there will be a uniform boundary demarcated by age. Obligation for minors will be defined as the process of education towards full obligation at thirteen. Canaanite slaves who must partially convert when joining the Israelite household, are continuously in the same category of women. [↑](#footnote-ref-21)
22. The same methodology is used for the obligation of women to eat matza on the first night of Passover. Since the prohibition to own or eat hametz appears next to the commandment to eat matza on Passover in several places in the Torah, a logical extension is used to connect the positive and negative. Women are prohibited from hametz so they must be obligated to eat matzah. The same logic is used to obligate them in both the negative and positive mitzvot when fasting on Yom Kippur. Since it is prohibited for them to eat they must be positively commanded as well to fast even though it is time bound. [↑](#footnote-ref-22)
23. Lighting candles is not a gendered mitzva.since the mitzva is to bring light into the home. Men and women are equally able to light candles and in fact, men who live alone must light candles. As explained in an earlier chapter, candle lighting became a woman’s mitzva because of the importance given to wife and mother and the symbolic nature of the ritual which is bringing light into the home literally but more importantly, figuratively. [↑](#footnote-ref-23)
24. Havdala remains a question. Women are definitely obligated in havdala but is it a Shabbat related obligation in which case men and women would be equally obligated or is it already a time bound obligation outside of Shabbat in which case women should be exempt but the rabbis obligated them because of Havadala’s association with Shabbat? This lack of clarity is reflected in the Shulchan Aruch 296:8:

    Women are obligated in Havdalah, just as they are obligated in Kiddush. And there are those who argue. *RAMA: Therefore, they should not recite Havdalah for themselves, rather they should hear Havdalah from men.* נשים חייבות בהבדלה כשם שחייבות בקידוש ויש מי שחולק: הגה ע"כ לא יבדילו לעצמן רק ישמעו הבדלה מן האנשים:

    The majority opinion is that men have a greater obligation and thus, if a man and woman are in the same place, the man should recite the Havdala.. However, women who live alone, or if the man has already heard havdala, should say it for themselves. See Aruch Hashulchan Orah Hayyim 296 and Mishna Berura Orah Hayyim 296 and Biur Halakha there. [↑](#footnote-ref-24)
25. With regard to some of the rabbinic time bound mitzvot in which women are obligated, such as those associated with Hannukah and Purim as well as rabbinic Passover mitzvot, Rabbi Yehoshua ben Levi (a first generation Amora and thus, someone who lived close to the period of the Tannaim) suggests as an explanation that they were part of the miracle and that is the reason that the Tannaim obligated them. [↑](#footnote-ref-25)
26. Given that four cornered garments are no longer worn, fulfilling the mitzva requires one to purchase an extra garment in order to fulfill the mitzva. It is considered arrogance by some of the early authorities for women to pursue this practice. Tefillin, while once worn all day every day (except Shabbat), became restricted to the morning prayers. An added instruction to keep the body “clean”, specifically to control orifices in order to avoid flatulence while wearing tefillin, became a requirement. Together with some other sources, it was acknowledged that women could put on tefillin but should not and furthermore, it should actively be opposed. [↑](#footnote-ref-26)
27. Maharal of Prague, Be’er HaGola 27a [↑](#footnote-ref-27)
28. **פרקי דרבי אליעזר (היגר) - "חורב" פרק מ**

    ר' פנחס אומר ערב שבת עמדו ישראל בהר סיני עורכין האנשים לבד והנשים לבד, אמ' לו הב"ה למשה לך אמור להם לבנות ישראל אם רוצות הן לקבל את התורה, ולמה שאלו לנשים לפי שדרכן של אנשים הולכין אחרי דעתן של נשים, שנ' כה תאמר לבית יעקב אלו הנשים ותגד לבני ישראל אלו האנשים, **Pirkei D’Rabbi Eliezer – Horeb**

    Rabbi Pinchas said on the eve of Sabbath, Israel stood at Sinai, the men prepared alone and the women alone. God said to Moses Go tell the Daughters of Israel if they want to receive the Torah and why were the women asked? For it is the way of men to follow the opinion of women, as it is written “thus shall you say to the house of Jacob” these are the women and “tell the children of Israel”, these are the men. [↑](#footnote-ref-28)
29. Ross, Tamar, Expanding the Palace of Torah, p. 38 [↑](#footnote-ref-29)
30. A Torah scroll cannot contract impurity. Even if a dead body were to fall on it, it would remain pure due to the stringent requirements that go into the material used to construct the Torah. [↑](#footnote-ref-30)
31. BDB, p. 120, Genesis 21:7, Exodus 21:5. [↑](#footnote-ref-31)
32. Deuteronomy 25: 5-10. [↑](#footnote-ref-32)
33. Midrash Tannaim 25:5.

    ובן אין לו אין לי אלא בן בן הבן ובת ובת הבת טומטום ואנדרגינס מנ' ת"ל אין לו מכל מקום אם כן למה נאמר בן פרט לשיש לו מן השפחה ומן הנכרית שאינו קרוי בנו: [↑](#footnote-ref-33)
34. Unlike the Biblical text which allows for the woman to be accused without cause, the Mishna requires the presence of witnesses when a man warns his wife against secluding herself with a specific man and a witnesses who witnesses the seclusion. By the time the woman is being brought to the high priest for the ritual which will prove her guilt or innocence, she has definitively secluded herself with a man. A very graphically violent ritual is described in far greater detail than in the Biblical text which includes the ripping of her clothing to expose her breasts and the uncovering and disheveling of her hair. See Yishai Rosen Zvi, The Ritual that Never Was, [↑](#footnote-ref-34)
35. Rabbi Yosef states that performing mitzvot only provides protection in the moment that the mitzva is performed. It has no long term, lasting effect either from punishment or from sin. Learning Torah on the other hand does have such an effect and “protects people from punishment and saves them [from sinning].” The later Amora, Rava, suggests that mitzvot can actually protect a person from punishment long term. [↑](#footnote-ref-35)
36. Mishna Ketubot 5:5: The following are the kinds of work which a woman must perform for her husband: Grinding, Baking, Washing. Cooking, Nursing her child, Preparing his bed, And working in wool.

    If she brought one slave woman, she need not grind or bake or wash. [If she brought] two slave-women, she need not cook or nurse her child. If three, she need not prepare his bed or work in wool. If four, she may lounge in an easy chair. If she brought one slave-woman into the marriage she need not grind or bake or wash.,

    **Rabbi Eliezer says: even if she brought him a hundred slave-women he may compel her to work in wool; for idleness leads to unchastity.** **Rabbi Shimon ben Gamaliel says: if a man forbade his wife under a vow to do any work he must divorce her and give her kethubah to her for idleness leads to insanity**. [↑](#footnote-ref-36)
37. Sotah 21a. [↑](#footnote-ref-37)
38. Sotah 21b. [↑](#footnote-ref-38)
39. Sotah 3:18 [↑](#footnote-ref-39)
40. In the Jerusalem Talmud Sotah 3:18, the Talmud asks Rabbi Eleazar ben Azaria to explain the commandment of *hakhel*, the septennial reading of the Torah to the entire people by the king described in Deut. 31:10-13. In that verse it is explicitly stated that men, women and children are obligated to hear the Torah being read. Rabbi Eleazar explains that men come to learn, women to hear and children to give reward to those who bring them. The J. Talmud suggests that Ben Azzai would explain women’s mitzva not as listening but as learning given his approach in the Mishna. This is significant because in contrast to the B. Talmud, it retains Ben Azzai’s opinion as a legitimate option. [↑](#footnote-ref-40)
41. For a priest, it also requires sunset to allow him to eat sacrifices and tithes, all of which must be eaten in a state of purity. See the opening pages of Talmud tractate Berakhot. [↑](#footnote-ref-41)
42. P. Talmud Berachot 3: 4 [↑](#footnote-ref-42)
43. This is not a isolated instance in the B. Talmud when the editors redacted earlier rabbinic texts and I would not want the readers to think that this is done only because the focus is on women. However, it is significant, that this will have tremendous impact on the future halakhic process around the question of women learning and reading Torah. [↑](#footnote-ref-43)
44. See Rashi on Avodah Zarah. See articles in Boyarin, Etam Henkin etc. [↑](#footnote-ref-44)
45. Tzitz Eliezer 9:3 [↑](#footnote-ref-45)
46. Bar Sela, Hoff and Faris, Moses Maimonides’ Two Treatises (cit. n 45), p. 25. [↑](#footnote-ref-46)
47. Ibid, 26. [↑](#footnote-ref-47)
48. Caballero-Havas, Carmen, *Maimondes and His Practice of Gynecology*, in Moses Maimonides and his Practice of Medicine, eds. Collins, Kenneth, Kottek, Samuel, Rosner, Fred, 2013. [↑](#footnote-ref-48)
49. Grossman, Abraham, Pious and Rebellious, p. 161. [↑](#footnote-ref-49)
50. See Grossman, pp. 162-63; Golinkin, Women and Jewish Law… [↑](#footnote-ref-50)
51. **R. Shimshon Raphael Hirsch: commentary to the Siddur – Kriat Shema**

    ולמדתם The term לימוד is more comprehensive than שינון. We believe that it is for this reason that the Halacha bases its statement בניכם ולא בנותיכם limiting the commandment to teach the Torah to the instruction of our sons exclusive of our daughters on the sentence ולמדתם אותם את בניכם and not וששנתם לבניך. **The fact is while women are not to be exposed to specialized Torah study or theoretical knowledge of the Law, which are reserved for the Jewish man,** such understanding of our sacred literature as can teach the fear of the Lord and the conscientious fulfillment of our duty, and all such knowledge which is essential to the adequate execution of our tasks should indeed form part of the mental and spiritual training not only of our sons but of our daughters as well. [↑](#footnote-ref-51)
52. Ellenson, David, German Orthodox Rabbinical Writings, Gender and Jewish History, eds. Marion K. Kaplan and Deborah Dash Moore, p. 167. [↑](#footnote-ref-52)
53. In Israel, Rav Abraham Isaac Kook, the chief rabbi, strongly protested any sort of educational institutions for girls that would teach Torah. He championed the axiom of Rabbi Eliezer and fully adopted the Aristotelian approach in which women were distinctly different and intellectually inferior to men, requiring fathers and husbands to teach and shape daughters and wives. For that reason, he also fought the idea of women serving in government or any leadership capacity or giving them the vote. “Now that the custom of stuffing girls with Torah and enquiry has broken out, the girls mistakenly think that they must continually search for new elements that are not in accord with their character traits. This will cause terrible damage to both their ethical and material life.” Eventually he capitulated for as in Poland, mandatory education laws meant that the girls would be forced to attend secular schools. He was instrumental in setting up the Noam school system for the national religious community. See <https://jwa.org/encyclopedia/article/kook-rabbi-abraham-isaac> and footnotes therein. [↑](#footnote-ref-53)
54. Seidman, Naomi, Sarah Schnenirer and the Bais Yaakov Movement, Littman, 2019, pp. 19-20. [↑](#footnote-ref-54)
55. Ibid, p. 22. [↑](#footnote-ref-55)
56. Manekin, Rachel, The Rebellion of the Daughters, Jewish Women Runaways in Habsburg Galicia, pp. 186-192. [↑](#footnote-ref-56)
57. Weissman, Devorah, Bais Yaakov, in the Jewish Woman: New Perspectives ed. Elizabeth Koltun p. 141. [↑](#footnote-ref-57)
58. Ibid. [↑](#footnote-ref-58)
59. Bava Batra 21a. In this tractate, schools are opened for older boys of 16 and 17 years of age before realizing that such boys were intractable. There is then a shift to start an education system with boys of six and seven. [↑](#footnote-ref-59)
60. The famous letter of the Chafetz Hayim which gave his stamp of approval to Bais Yaakov was actually solicited by Agudah and not by Sarah Schnirer in 1933 to counter opposition in Frysztak against opening a Bais Yaakov. In it he urges all men who fear God to send their daughters to learn in this school. And he categorically rejected the concern for the prohibition to teach daughters Torah calling it a mitzva to educate them in Bais Yaakov [↑](#footnote-ref-60)
61. My own grandmother was a student in one of the first Bais Yaakov classes in Williamsburg New York. One of thirteen children, born to a very religious family, she went to public school according to the compulsory education laws, but in the afternoons took classes at Bais Yaakov in an after-school program. It had an enormous impact on her and for my entire life I heard her talk about the influence of Rebbetzin Vichna Kaplan who inspired her students to think about their relationship to God constantly and have their love for Him reflected in everything they did. [↑](#footnote-ref-61)
62. Manekin, Rachel, pp. 234-235. [↑](#footnote-ref-62)
63. Ibid. [↑](#footnote-ref-63)
64. Ibid. [↑](#footnote-ref-64)
65. As a result, students of his were able to argue for and against the practice. See Seth Farber… [↑](#footnote-ref-65)
66. Stern opened a Talmud class for its students in 1977. Before that, the students had access to Talmudic texts as primary sources used in preparing for classes in Jewish history, law and Biblical exegesis. This was the first time a class aimed at gaining independent skills would be offered. Rabbi Joseph Dov Soloveitchik gave the inaugural lecture. For a moving article describing the process, see [https://thelehrhaus.com/commentary/forty-years-later-the-rav%E2%80%99s-opening-shiur-at-the-stern-college-for-women-beit-midrash/](https://thelehrhaus.com/commentary/forty-years-later-the-rav%25E2%2580%2599s-opening-shiur-at-the-stern-college-for-women-beit-midrash/) [↑](#footnote-ref-66)
67. http://www.torahweb.org/torah/2015/parsha/rwil\_ekev.html [↑](#footnote-ref-67)
68. Rabbinic sources recognized that men could be corrupted away from such objectivity and various professions disqualified men automatically such as gambling and shepherding (Rosh Hashana). Family members are automatically disqualified from testifying for one another. Blind, deaf mute, mentally ill and minor males were all exempted not only as witnesses but also as litigants. [↑](#footnote-ref-68)
69. Sperber, Daniel, Women and Leadership, p. 27, concludes that in all of these areas it would follow that if a woman can give testimony, she can also give judgement. While his position is singular, it is the rational extension of the process that unfolded regarding women and witnessing in court. If they can in fact give testimony even in limited cases, they should logically be able to issue judicial rulings in those cases. [↑](#footnote-ref-69)
70. Moses Meiselman, in his extremely traditional defense of women in Orthodoxy, Jewish Women and Jewish Law, p. 79, New York, 1978, admits that the disqualification of women as witnesses might be completely arbitrary rather than based on something rational. “There are many possible reasons for the technical disqualification of women and no one really knows for sure. The only clear facts are that the ability to testify is neither a right nor a privilege but an obligation from which women have been excused. This disqualification of women is a technical rule rather than an expression of lack of credibility. Thus, women’s statements are acceptable whenever credibility is required rather than witnessed testimony. Women’s statements are not considered witnessed testimony. Nonetheless, a woman’s oath is acceptable in court as is the oath of any credible person [↑](#footnote-ref-70)
71. Sefer HaChinuch, Mitzva 152. [↑](#footnote-ref-71)
72. Uziel, Ben Zion, [↑](#footnote-ref-72)
73. Igrot Moshe, Yoreh Deah, Part 2, 45-46. The debate over women working as kashrut supervisors became politicized in Israel when the women’s organization Emunah petitioned the supreme court in 2013 to allow them to apply for jobs that were exclusively held by men, as long as they passed the requisite exams. Most recently, the rabbinic organization Tzohar teamed up with Emunah to provide courses for female kashrut supervisors. In practice however, there are few women in the field. [↑](#footnote-ref-73)
74. She is the director of the agunah and get refusal prevention project of the international Young Israel Movement in Israel and the Jewish Agency and continues to be the first and only female rabbinical court advocate to sit on the commission for the appointment of rabbinical court judges. [↑](#footnote-ref-74)
75. Ordaining women in the other denominations was also cataclysmic and caused tremendous internal fighting and strife until the inevitable happened. Some of the rhetoric protesting ordination of women in those denominations strongly resembled the arguments used in Orthodoxy. It is difficult to ignore, however, that sharing the profession with women means sharing professional opportunities and the power base that the rabbinic community confers upon its members. One of the upshots has been that more women are in rabbinical school than men. This is also seen in egalitarian prayer spaces that I have observed – there are more women than men. As I often note in my lectures, I do not want to lose the men to gain the women. It will require a concerted educational effort on the part of both genders to create shared and respectful environments in which men and women seek out equal opportunity professions without feeling threatened by shared space.. [↑](#footnote-ref-75)
76. Women’s tefillah groups began in the late 1980’s. Rabbi Abraham Weiss wrote a halakhic analysis in his book…the idea was to allow women to pray together and read from the Torah with aliyot without including the category of prayer defined as “d’varim sh’bekedusha”, prayers requiring a minyan of men specifically kaddish and kedusha. These were considered flashpoint of controversy with many rabbis publicly denouncing and coming out aggressively against them. In the end, they largely have faded away in favor of partnership minyan which involve men and women, a mehitzah and women only participating in the parts of the service that do not require a minyan. In this case though the presence of men allows the participants to include all prayers in the service. [↑](#footnote-ref-76)
77. The emphasis on the word “Orthodox” in each of these responses seems to be a direct reference to the fact that ordination of women has been a flagship issue differentiating Orthodoxy from Conservative and Reform Judaism in the 20th century. Clearly there is a political overtone and reticence from conceding on an issue that was a defining rift between the denominations. [↑](#footnote-ref-77)
78. Brody and Broyde, p. ?. To highlight the distinction between women and ordination and male converts, they tell of a conversation with a senior administrator at a universally respected yeshiva that issues semikah and were planning to issue it to a covert as a sign of his accomplishment in learning even though he knew of his inability to serve on a rabbinic court. He was given permission to act as synagogue rabbi because this was not deemed *serarah* but “avdut” or servitude because of the nature of the communal service and pressures and the reality in which rabbis are subservient to the synagogue board. [↑](#footnote-ref-78)
79. [↑](#footnote-ref-79)
80. Beit Yosef, 148:40. [↑](#footnote-ref-80)
81. See for example Falk, Pesach, *Modesty: An Adornment for Life*. This book is filled with endless diagrams analyzing appropriate and inappropriate cuts and drapes of fabric for every conceivable part of the body, even highlighting the types of shoes that can and cannot be worn with regard to the way the buckle or shoe form highlights the ankle! [↑](#footnote-ref-81)
82. This is only relevant with regard to the modern Orthodox community where men are expected to dress in a respectable manner in school and synagogue but guidelines around covering their bodies do not include covering elbows and knees. In the ultra-Orthodox community, men wear dark pants and jackets and white shirts and hats. In the Hassidic community, each community has its own “uniform” of dress for men which involves several layers of clothing. [↑](#footnote-ref-82)
83. See Leah Taragin Zeller’s doctoral thesis… [↑](#footnote-ref-83)
84. Sifrei Deuteronomy chapter 258. [↑](#footnote-ref-84)
85. The word shok is ambiguous. It could be leg, thigh or calf as will be explained below and in the chapter on pants. [↑](#footnote-ref-85)
86. See Henkin’s analysis, pp. 11-29. See also Ellinson, Getsel, *The Modest Way*, The World Zionist Organization, 1992, pp. 170-173. [↑](#footnote-ref-86)
87. Mishna Hallah 2:3 [↑](#footnote-ref-87)
88. This sugya indeed appears only once in the entire Babylonian Talmud. It appears in a truncated form in the Jerusalem Talmud in the tractate of Halla. One of the statements in the sugya appears in the tractate of Kiddushin 70a on its own. It is the statement of Shmuel that the voice of a woman is *ervah-*understood to mean even the speaking voice of a woman rather than the widely understood singing voice of a woman. The topic of women and singing will be addressed in a different chapter. [↑](#footnote-ref-88)
89. A unit of measurement known in the Talmud as a *tefah*. By today’s measurements it is between 7-9 centimeters. [↑](#footnote-ref-89)
90. This statement is referring to a verse in Numbers 31:50: “So we have brought as an offering to the LORD such articles of gold as each of us came upon: armlets, bracelets, signet rings, earrings, and pendants, that expiation may be made for our persons before the LORD.” The last ornament in Hebrew is called כומז or gold ornament according to Biblical dictionaries. However, the midrash interprets it to mean an internal piercing of the pudendum in order to reflect on the sensitivity of male desire which can be equally inflamed by ornaments both external and internal. [↑](#footnote-ref-90)
91. The statements do not appear in chronological order although three out of four of them lived in the 2nd-3rd generation of Amoraim, between 200-300 CE. Rav Isaac was an Amora in Israel in the 2nd and 3rd generation. Rav Sheshet lived in the 2nd-3rd generation of Amoraim in Babylonia. Rav Hisda also lived in the 2nd and 3rd generation in Babylonia. He was a student of Rav and a contemporary of Rav Sheshet. Shmuel is the earliest of the four. He is a first generation Amora in Babylonia and a partner to Rav with whom he usually disagrees. [↑](#footnote-ref-91)
92. See Avodah Zarah 20 a, Nedarim 20a, Berakhot 61a , etc. For example Nedarim 20a: (translation Sefaria) **Rabbi Aḥa, son of Rabbi Yoshiya, says: Anyone who watches women will ultimately come to sin, and anyone who looks at the heel/buttocks of a woman will have indecent children** as a punishment. **Rav Yosef said: And** this **relates to** all women, including **his wife** when she has the status of **a menstruating woman. Rabbi Shimon ben Lakish said: The heel** of a woman **that is mentioned** is not the heel of the foot, but **the place of uncleanliness,** i.e., the genitalia, and it is called a heel as a euphemism, **as it is situated opposite the heel.**  [↑](#footnote-ref-92)
93. See footnote 10. [↑](#footnote-ref-93)
94. The little finger of a woman will later become the focus of laws governing the non-sexual space of a couple when the woman is Nidda. The concern that passing objects less he brush against her little finger likely stems from this sugya in which the little finger is equated with her genitalia. See chapter nine where these laws are analyzed and discussed. [↑](#footnote-ref-94)
95. 15 See Chapter 3 in which Samuel’s statement is extensively analyzed. [↑](#footnote-ref-95)
96. Since Samuel in other Talmudic narratives engages in sexual relations, we have to assume he does not advocate a monastic lifestyle. [↑](#footnote-ref-96)
97. This will be reinforced by another sugya in Ketubot 72a which we will examine in chapter 4 about Dat Yehudit which involves behavioral norms of married women intended to minimize sexual promiscuity. There too, conversation between women and men is to be heavily restricted. [↑](#footnote-ref-97)
98. Translation: Jacob Neusner, *The Talmud of the Land of Israel*, Volume 9, Hallah, The University of Chicago Press, 1991, p 67. [↑](#footnote-ref-98)
99. 19 Berakhot 25b [↑](#footnote-ref-99)
100. This is summarized succinctly and clearly in the Arukh ha-Shulhan in the laws of Kriat Shema, Orah Hayyim 75:1. “Although for a man only the genitals constitute indecent exposure, it is not so regarding a woman…” I have seen nothing that contradicts the Aruch ha-Shulhan. [↑](#footnote-ref-100)
101. Saimon, pp. 146-47. [↑](#footnote-ref-101)
102. Ibid. [↑](#footnote-ref-102)
103. Ibid. [↑](#footnote-ref-103)
104. ספר הלכות גדולות הלכות ברכות פרק שלישי עמוד מד [↑](#footnote-ref-104)
105. Berachot, Peirushim, pp. 30, section 102. [↑](#footnote-ref-105)
106. Maimonides, Mishneh Torah, Laws of Shema, 3:16. [↑](#footnote-ref-106)
107. He acknowledges, however, as stated in the Talmud, that if he is naked in bed covered by a sheet with his wife and children and their bodies are touching but not seen, he can turn his body and say Shema. There is no visual stimulus in this scenario. [↑](#footnote-ref-107)
108. Rav Isaac said: a *tefah* of a woman is *ervah*. He does not specify whether the *tefah* is covered or uncovered. Maimonides seems to translate this statement into applied law preventing a man from looking at a woman at all when saying Shema. [↑](#footnote-ref-108)
109. Maimonides qualifies this to mean that the concern is leading men to have sexual thoughts. If men will not have sexual thoughts, it will not be prohibited. This is how many understand the Rambam, including the Shach regarding touch when a woman is Nidda. [↑](#footnote-ref-109)
110. There are some leniencies as well for daughters and mothers, but they too are limited by sexual development and possible sexual thoughts. [↑](#footnote-ref-110)
111. Rashba’s commentary on Berachot 24a. [↑](#footnote-ref-111)
112. שולחן ערוך אבן העזר הלכות אישות סימן כא סעיף א

     א] צריך אדם להתרחק מהנשים א מאד מאד. ב] ואסור לקרוץ בידיו או ברגליו ולרמוז בעיניו לאחד מהעריות. ג] ואסור לשחוק עמה, להקל ראשו כנגדה ב ד] או להביט ביופיה. ואפילו להריח בבשמים שעליה אסור. ואסור להסתכל בנשים שעומדות על הכביסה. ואסור להסתכל בבגדי צבעונים של אשה שהוא מכירה, אפי' אינם עליה, שמא יבא להרהר בה. פגע אשה בשוק, אסור [א] להלך אחריה, ה] אלא רץ ו] ומסלקה לצדדין ז] או לאחריו. ג (א) ולא יעבור בפתח אשה זונה, אפילו ברחוק ארבע אמות. והמסתכל אפילו באצבע קטנה של אשה ח] ונתכוין ליהנות ממנה, כאלו נסתכל בבית התורף (פי' ערוה) שלה. ואסור לשמוע ד קול ערוה או לראות שערה. ט] והמתכוין לאחד מאלו הדברים, מכין אותו מכת מרדות. י] ואלו הדברים אסורים גם בחייבי לאוין. [↑](#footnote-ref-112)
113. A look at biblical and rabbinic dictionaries does not help clarify the definition of the word. The Brown Driver Briggs biblical dictionary defines it as leg, or lower leg distinct from thigh, but in animals, the *shok* refers to the upper leg, thigh or hind leg. Jastrow’s Talmudic dictionary defines it as leg in a person, specifically citing our text in Berakhot 24, or as shoulder together with breast with regard to sacrifices. In the modern Even Shoshan Hebrew dictionary, *shok* is defined as the part of the leg below the knee. However, in the Keter dictionary, *shok* is defined as thigh or leg. [↑](#footnote-ref-113)
114. Translation JPS [↑](#footnote-ref-114)
115. Bnei Banim, Volume 4, p. 38. [↑](#footnote-ref-115)
116. See Ephraim Urbach, Tarbitz 18, 1948, Halakha and Nevuah (Heb) and Elon, Menachem Elon, Jewish Law, Volume 1, page 203-204. There is a disagreement internal to the Babylonian Talmud whether non Pentateuchal books can serve as source for halakhic rules. [↑](#footnote-ref-116)
117. That of course is not historical proof. It is simply does not fit with the Hazon Ish’s understanding of how men affiliated with observant communities could have dressed. [↑](#footnote-ref-117)
118. I am not addressing the halakhic issues around cross dressing for the transgender community. Since there is no intent by transgender men and women to engage in sexual promiscuity or to practice idolatry, it seems to me that there are reasons to permit but it would have to be addressed by appropriate religious authorities. [↑](#footnote-ref-118)
119. This midrash has ramifications for girls serving in the army. For an excellent analysis see Beit Hillel’s teshuva on the topic: *And Beit Hillel Says: Halakhic Rulings of the Rabbis and Rabbaniot of Beit Hillel* (Hebrew), Yedioth Aharonoth Books, 2018, pp. 211-260. [↑](#footnote-ref-119)
120. Sefer Hamitzvot Negative Commandment 40. [↑](#footnote-ref-120)
121. Ibn Ezra, 22:5. [↑](#footnote-ref-121)
122. Tur Yoreh Deah 182 [↑](#footnote-ref-122)
123. A mirror is fundamentally and essentially a female article similar to the approach taken by Rabbi Eliezar about a weapon which he saw as irrevocably linked to male articles. [↑](#footnote-ref-123)
124. Rabbi Karo left this out of the Shulchan Aruch. [↑](#footnote-ref-124)
125. For instance, men and women may shop for the same items of clothing in different departments within the same store. Even boyfriend jeans or boyfriend sweaters, while suggestive of men’s clothing are actually cut for women’s bodies and sold in the women’s department. [↑](#footnote-ref-125)
126. http://the-toast.net/2014/08/07/wearing-pants-brief-history/ [↑](#footnote-ref-126)
127. Rabbi Yehuda Henkin notes there that he regrets not clarifying with his grandfather whether tight form fitting pants would be actually prohibited or seen as inappropriate clothing rather than a prohibited garment. He himself does not rule on the matter nor does he address it at any sort of length. [↑](#footnote-ref-127)
128. Rabbi Ovadia is referring to the law codified in Shulchan Aruch Yoreh Deah 171:1 which prohibits going out in the way of idolators or wearing clothing specific to them. Rema adds that one must be separate from gentiles in dress and action. To Rav Ovadia, mini-skirts represent sexual promiscuity and violate a clear prohibition of the law found in Shulchan Aruch. [↑](#footnote-ref-128)
129. Ariel Picar…. [↑](#footnote-ref-129)
130. Tradition, Volume 16:1, 1976, pp. 155-158. [↑](#footnote-ref-130)
131. Rabbi Aryeh Leibowitz in a recent YU podcast (2017) expressed a similar distinction. [↑](#footnote-ref-131)
132. Ellinson, p. 220. [↑](#footnote-ref-132)
133. While Dat Yehudit is only minimally mentioned, I feel that it is underlying the approach that rejects pants as an antithesis to modesty and modesty norms within the accepted garments of the daughters of Israel. [↑](#footnote-ref-133)
134. The kippah is the Jewish head covering worn initially by married men at times of prayer and Torah study and gradually evolving into a sign of Jewish identity to be worn at all times in many but not all communities. Today it is worn, in many different shapes and sizes, by most men and boys affiliated with Orthodox observance at all times as a sign of identity. In non-Orthodox communities, it is worn by men and, most recently, by women, at times of prayer or religious ceremonies taking place in synagogues. [↑](#footnote-ref-134)
135. https://www.aish.com/atr/Kol\_Isha.html [↑](#footnote-ref-135)
136. See chapters one and two for a detailed analysis of the Talmudic text. [↑](#footnote-ref-136)
137. This is the position taken by Rabbi Hisda in Ketubot 75a, who explains that based on this verse an abnormally deep voice in a woman is considered a defect serious enough to allow for the annulment of a marriage if a man has taken a vow to marry a woman without defects. [↑](#footnote-ref-137)
138. While writing this chapter, I came across an article by Dr. Aharon Amit, who supported my reading of the Jerusalem Talmud and reinforced my intuition that the verse from Jeremiah was probably the original *asmachta* or textual link to the statement rather than the verse from Song of Songs. [↑](#footnote-ref-138)
139. There is a similar statement in Mishna Avot: “*One should not talk excessively to women for you may ultimately come to illicit intercourse*”. The Mishna in Avot warns that interaction between the sexes can lead to illicit sexuality and one should limit but not eliminate conversation with women. It neither prohibits such interaction nor singles out the woman’s voice as specifically problematic. The passage in Kiddushin is even more extreme, forbidding not just casual conversation but even words of greeting. [↑](#footnote-ref-139)
140. Dr. Aharon Amit convincingly suggests that Samuel’s statement which is native to the unit in Berachot is brought into Kiddushin by later redactors since some of the manuscripts and early print editions are missing the text of “Samuel said the voice of a woman is *ervah*”. In other words, since Shmuel is being quoted on the topic of sending greetings to a woman, particularly a married woman, later editors imported his statement from Berakhot about a woman’s voice being *ervah*. Since later commentaries use Samuel’s statement to restrict women singing, its appearance in both Kiddushin and Berachot gives greater weight to the statement. To Amit, this explains the absence of Samuel’s statement with all of its implications in the vast majority of post-Talmudic commentary when commenting on Kiddushin. The halakhic implications that emerge from Kiddushin would essentially force us to understand Shmuel’s statement as including the speaking voice of the woman which lines up well with the text in the Jerusalem Talmud. This however, is not the conclusion of halakhic authorities. [↑](#footnote-ref-140)
141. Rashi in his commentary explains that boat haulers and plowers need song in order to inspire them to do their physically strenuous work while weavers sing purely for enjoyment. [↑](#footnote-ref-141)
142. See Cohen, Boaz, Law and Tradition, pp. 167-181. [↑](#footnote-ref-142)
143. The well-known 11th century Talmudist and halakhic authority Rabbi Isaac Alfasi, known as the Rif, ignores the whole *ervah* unit in Berachot (as well as the section Kiddushin quoted in the name of Samuel). This suggests that he saw the statements as rhetorical and not as halakhic since he only incorporated applied halakhic statements into his commentary. [↑](#footnote-ref-143)
144. Otzar HaGeonim, Berachot, Peirushim, pp. 30, section102. [↑](#footnote-ref-144)
145. Otzar Gaonim, Berakhot, Commentary of Rabbeinu Hananel, p. 25, sec. 84 [↑](#footnote-ref-145)
146. Raaviah, Ra’avad, Rashba and Ritva. [↑](#footnote-ref-146)
147. Otzar Gaonim, Sotah, pp. 272-272, sec. 143. Mixed entertainment is condemned in this source as promiscuous and men and women should be excommunicated for partaking in such entertainment. A few lines later, the Gaon also condemns men who play instruments even among only men and he also commends those who avoid playing drums during the bridal ceremony. In Otzar Gaonim Sukkah pp. 69-70, section 189, the Gaon condemns men and women sitting together at festive meals outside of family, extended to include aunts and sisters. In Otzar Gaonim Gittin pp. 8-9 sec. 18, the Gaon writes about a custom in the house of bride and groom for the women to play drums and tambourines and bring gentiles who gladden with harp and string instruments. He answers that song and blessing and music are permitted and encouraged in the home of the bride and groom. But he then condemns a type of love song sung at these gatherings under the influence of the Ishmaelites. He explains that after the Sanhedrin was disbanded, according to the Talmud, the songs of the Ishmaelites were prohibited but not the songs of Israel with the exception for certain work songs which did not have ugly lyrics. Finally, he reiterates what was in Sotah, that men and women singing one to the other is prohibited particularly at festive occasions because of the possible licentiousness. [↑](#footnote-ref-147)
148. Henkin, Yehuda Herzl, Equality Lost, page 81. [↑](#footnote-ref-148)
149. Ibid, page 82. [↑](#footnote-ref-149)
150. “One who sees Divrei Hefets’ words will rightfully deem them cogent. And even though it is surely correct to act stringently, not in accordance with the aforementioned words of Divrei Hefets, in any case they are not Heaven forbid classified as inscrutable words” Sdei Hemed, section 20, principle 42 (vol. 5, p. 282) [↑](#footnote-ref-150)
151. Rosh Hashana 27a. [↑](#footnote-ref-151)
152. Seridei Esh, vol. 1, no. 121, p. 394. [↑](#footnote-ref-152)
153. Sefaria translates as follows: A woman **who violates** the **precepts of Moses,** i.e., *halakha*, **or** the precepts of **Jewish** women, i.e., custom. Its translation of Dat Yehudit is based on the interpretation of Rishonim. Soncino translates: a wife who transgresses the **law of Moshe** or [one who transgresses] **Jewish practice.** [↑](#footnote-ref-153)
154. See Pesahim 50b-51a. [↑](#footnote-ref-154)
155. Ketubah is the Jewish marriage document of ancient origin in which a man promised to support his wife during marriage and, in the case of death of divorce, committed to returning her dowry and a fixed sum of money to ensure her of financial support when robbed of the protection of a husband. It continues to be a necessary part of the marriage ceremony and is signed and given to the wife under the chuppa, the Jewish bridal canopy, although it does not play as central a financial role today as it did in previous times. [↑](#footnote-ref-155)
156. Responsa Rosh 32:8, Ellinson, Getsel, *A Modest Way*, p. 130. [↑](#footnote-ref-156)
157. Tosefta Ketubot 7:6. The Tosefta does not distinguish between the first category of Dat Moshe as presented in the Mishna in which the woman deceives the man into transgression and the second category of Dat Yehudit in which she behaves in an unseemly manner. They are simply described as Dat Moshe and Israel, which suggests that neither are purely Biblical or Rabbinic law. The Babylonian Talmud retains the Dat Moshe/Dat Yehudit terminology in line with the Mishna and ignores the Tosefta’s usage of Dat Moshe and Israel, as do all subsequent post-rabbinic discussions on the topic. [↑](#footnote-ref-157)
158. This source is quoted in the B. Talmud as well in Gittin 90a, concluding with the man’s responsibility to divorce his wife for *ervat davar* or some sort of uncovering nakedness that is suggestive of adultery. [↑](#footnote-ref-158)
159. Numbers Chapter 5, 11-31. [↑](#footnote-ref-159)
160. Shapira, Amnon, פריעת האשה מהי?**Beit Mikra 45b (5760), pp. 177-184. Shapira** studied the two letter roots of p’ra in the Bible and concluded that all of them mean to confuse/let loose/scatter/dishevel. The verb p’ra appears six times in the context of head/hair. Out of the six verses, three are associated with the hair of the priests, one refers to the leper, one to the Nazarite and only the verse cited above refers to a woman’s head. The other verses are: Leviticus 10:6, 21:10, 13:45, Numbers 6:5 and Ezekiel 44:20. [↑](#footnote-ref-160)
161. Septuagint Numbers 5:18; Philo, The Special Laws iii, 57; Josephus Antiquities Book 3, Chapter 11:6. [↑](#footnote-ref-161)
162. משנה מסכת שבת פרק יט משנה ב: [↑](#footnote-ref-162)
163. **Kahane, Menahem, Midrash Sifrei** and commentary to this verse. [↑](#footnote-ref-163)
164. See footnote 8 for citations. [↑](#footnote-ref-164)
165. Tur Even Haezer, 22 [↑](#footnote-ref-165)
166. Shulchan Aruch Even Haezer, 21:2 [↑](#footnote-ref-166)
167. The rabbis of the Talmud debate whether the ritual was actually ever carried out. For an academic analysis, see Yishai Rosen Zvi, The Mishnaic Sotah Ritual, Brill 2012. [↑](#footnote-ref-167)
168. Jastrow p. 348. [↑](#footnote-ref-168)
169. While Sefaria and Schottenstein translate it as uncovered, based on the Babylonian Talmud’s usage of *p’ra*, Jastrow chooses to translate is as loosened. Rashi too explains that her hair would fall on her shoulders. [↑](#footnote-ref-169)
170. Earlier I had suggested that the uncovered head of a married woman was a sign of promiscuity. Here there is indication that virgins were allowed to uncover their heads in contrast to non virgins, a category that could include divorced and widowed women as well as promiscuous or sexually violated women. Furthermore, the virgin in this Mishna is actually a legally married woman who is prohibited to all men except her betrothed. Was she allow to circulate freely in the marketplace without a head covering that would identify her as betrothed? It is certainly difficult to come up with a cohesive explanation for the role hair or head covering played in the ancient world. Nonetheless, even loosely looking a the different sources strongly suggests practices of modesty that consistently, across all of the sources, serves to identify married women in public spaces. [↑](#footnote-ref-170)
171. Gittin 77a, Baba Mezia 9b, Baba Batra 85b. [↑](#footnote-ref-171)
172. The version of the Talmud presented in this chapter is based on the most reliable Talmudic manuscript, which differs slightly from the printed Vilna edition in which the statement in the name of Rabbi Yehuda in the name of Samuel appears anonymously. Rav Yehuda in the name of Samuel appears throughout the entire sugya on Dat Yehudit, defining what each of the examples of the Mishna actually means in Samuel’s opinion. It is thus reasonable to suppose that he had something to say here as well about the uncovered head which is supported by reliable Talmudic manuscripts [↑](#footnote-ref-172)
173. This expression, “If so, you have not allowed any daughter of our father Abraham to remain with her husband,” appears in one other source in the Talmud that is peripherally related. It too deals with a woman’s behavior in the marketplace that marks her as suspect. While not defined as Dat Yehudit, it feels similar. In tractate Gittin, a series of behaviors in the marketplace, specifically, eating, walking with an extended neck (arrogantly) or nursing one’s child are just cause for divorce according to Rabbi Meir because they are considered licentious. Rabbi Akiva cites only the instance of women spinning in the moonlight, gossiping about their indiscretions with men. Rabbi Yohanan replies that if so, you will not allow any daughter of our father Abraham to remain with her husband, for all women will end up under suspicion if such conversation is to be believed since women like to gossip. This supports the reading of Rashi and Tosafot in our sugya, that women will not comply if they have to wear a basket in their own courtyard and much divorce will then ensue because they will be violating Dat Yehudit. [↑](#footnote-ref-173)
174. According to Rashi and Tosafot’s understanding of this passage. See their commentary to Ketubot 72b.

     תוספות מסכת כתובות דף עב עמוד ב

     ואלא בחצר - פי' אפי' בלא קלתה נמי אין בה משום פריעת ראש שאל"כ לא הנחת בת לאברהם אבינו. [↑](#footnote-ref-174)
175. The Ritva on Ketubot 72b, based on Rashi, suggests that a woman could go with a bared head, as long as there are not a lot of people passing through but only some people. “But if in a courtyard, if so, you have not left a single daughter of our patriarch Abraham who could live with her husband!—Rashi of blessed memory explained it so—that in a courtyard there is a prohibition of uncovering hair. The meaning of his explanation is that since according to this suggestion, R. Yohanan’s ruling that when a woman goes with a basket on her head, she is not considered to be of uncovered head applies [in a courtyard, we infer that without a work-basket there would be a prohibition against uncovering hair] even in a courtyard—if so, you have not left a single daughter of our patriarch Abraham who could live with her husband, since most Jewish women go with their heads entirely uncovered in their own courtyards, as no one is there to see. The Talmud concludes that R. Yohanan was referring to one who goes from one courtyard to another by way of an alley. Thus there are three rules with regard to this law: In a courtyard, even without a work-basket, there is no prohibition against uncovering hair; in the marketplace, going even with a work-basket is a violation of dat yehudit; and in an alley, it is permissible to go with a work-basket but not without one....” [↑](#footnote-ref-175)
176. In Ketubot 75a, there is a peripheral conversation in which the kipa appears. The Mishna states that if a man vows not to marry a woman with blemishes and she turns out to have blemishes, the *kiddushin* never took place. The Talmud discusses the blemishes in question and one of the examples given is a mole on her forehead. A question is raised: If the mole is on her forehead, surely he saw it and was reconciled to it! The Talmud answers that it was hidden under the kipa on her head so that it is sometimes visible and sometimes not. In this source, it is suggested that the kipa was something worn by a woman even before marriage and sometimes covered the forehead and sometimes did not. Neither here, nor in the source above is any size or definition given to the kipa.

     As with many Talmudic sources, it is hard to draw final conclusions regarding the kipa and the obligation of women to cover their heads. Pictures from Pompei, roughly around the Mishnaic period, show women wearing a cap that sits on top of her head but does not cover her hair. It seems to be a net contained with the strictures of a cap. This fits the general implicated meaning of kipa in the text. [↑](#footnote-ref-176)
177. In parallel, the Mishna mentions that the looser hair ornaments, such as ribbons or ornaments not tightly attached, could be worn into the mikva while the woman immersed because their looseness did not preclude water from saturating the women’s hair completely. The more tightly tied ornaments were not allowed during immersion. [↑](#footnote-ref-177)
178. The concern for repulsiveness to husband appears in a few other significant areas: a man can prevent his wife from becoming a Nazir to avoid the end process when the Nazir shaves the hair on his/her head as an offering to God by claiming he does not want an ugly wife who will be repulsive to him. The second is Rabbi Akiva’s concern to the sages with regard to a Nidda woman to adorn herself and put on makeup while Nidda. The rabbis are concerned her attractiveness will lead to sinful interaction between the couple if the wife appears too attractive to the husband. Rabbi Akiva is concerned that she will become repulsive to her husband and he will come to divorce her. [↑](#footnote-ref-178)
179. Paintings from this time period have been found of non-Jewish women wearing hair ornaments that match those described in Tractate Shabbat. The golden hair net is seen holding back the hair of a woman in Pompeii. Bangles and frontlets appear in another fresco attached to a band or ribbon held in place at the top of her head. In all of the frescoes the woman’s hair is neatly combed and parted. In some frescoes the woman wears a cap. Whether Jewish women in the time of the Mishna wore a unique head covering is impossible to prove. Some rabbinic sources suggest that the non-Jewish women, because of their promiscuity, went out completely uncovered. Others suggest that they wore a partial head covering and Jewish women wore an additional head covering to distinguish themselves. [↑](#footnote-ref-179)
180. There are a few other sources that state that women cover their heads. These include a Mishna in tractate Nedarim brought below. Although the Mishna does not explicitly state that women cover their heads, the Talmud explains unequivocally that women indeed cover all of their hair. If a person takes a vow to refrain from deriving benefit from people with dark heads, it can only include men. It cannot include women since their hair would not be seen.

     |  |  |
     | --- | --- |
     | Tractate Nedarim 30a  MISHNA: One who takes a vow not to derive benefit from those that have dark heads [*sheḥorei harosh*] is prohibited from deriving benefit from those that are bald, although they have no hair at all, and from the elderly who have white hair. This is because the term is not to be understood in its simple meaning but rather in a broader manner. But he is permitted to derive benefit from women and from children, because only men are called: Those with dark heads.  GEMARA:What is the reason that the term dark heads does not exclude those that are bald? Because it does not say: From those with hair.  The mishna states: But he is permitted to derive benefit from women and from children, because only men are called: Those with dark heads. The Gemara explains: What is the reason for this? Men sometimes cover their heads and sometimes uncover their heads. But women’s heads are always covered, and children’s heads are always uncovered. | נדרים ל׳ ב  מתני׳ הנודר משחורי הראש אסור בקרחין ובעלי שיבות ומותר בנשים ובקטנים שאין נקראין שחורי הראש אלא אנשים  גמ׳מאי טעמא מדלא קאמר מבעלי שיער  ומותר בנשים ובקטנים שאין נקראין שחורי הראש אלא אנשים מאי טעמא אנשים זימנין דמיכסו רישייהו וזימנין דמגלו רישייהו אבל נשים לעולם מיכסו וקטנים לעולם מיגלו |

     [↑](#footnote-ref-180)
181. Tosefta Sotah 3:2 [↑](#footnote-ref-181)
182. Tosafot Rosh (Rabbeinu Asher known as the Rosh) in Gittin 90b, Ritva, Ketubot 72a, Kol Bo, Baal Haitur, Rivash, Raaviah?, Semak. [↑](#footnote-ref-182)
183. Rashba, Ran, Meiri, Shiltei Giborim. [↑](#footnote-ref-183)
184. Maimonides uses the language of מטפחת rather than קלתה [↑](#footnote-ref-186)
185. Beit Yosef and Bach on Tur Even Haezer 115. Cited in the Bach. [↑](#footnote-ref-187)
186. The text of the Sifrei is brought in the previous chapter, page ???. [↑](#footnote-ref-188)
187. Many commentaries on Maimonides try to interpret this halakha as referring to previously married women such as widows or divorcees. This is both because in practice single women did not cover their hair and because the Mishna in Ketubot Chapter 2:1 (cited on page???) states clearly that a virgin bride goes to her wedding canopy with a bared head or loosened hair. However, Maimonides uses the language of פנויה in Halakha 3 and clarifies that it means both a virgin and a non-virgin. [↑](#footnote-ref-189)
188. Even the most ultra Orthodox communities do not require single women who have never been married to cover their hair. That said, in some Hassidic and ultra Orthodox societies, girls over bat-mitzva begin to braid their hair or gather it into a ponytail. Rabbi Ovadia Yosef ruled that single women should cover their hair when praying and learning Torah, and I have personally met some women who follow that instruction. [↑](#footnote-ref-190)
189. The requirement of a double head covering regardless of whether the obligation is Dat Yehudit, Dat Moshe or something else, appears in many if not most post-Talmudic commentary in wake of the Talmud’s statement that a basket is not enough in public space. What remains unclear is the purpose of the second covering. [↑](#footnote-ref-191)
190. The meaning of *ervah* is immodest exposure (of a woman) with concern for sexual stimulation on the part of the man. He is expected to avoid its presence; the burden is not on the woman. Furthermore, it is not clear if this statement is applicable to all situations or only at times of prayer. See chapter three for a general analysis of the concept of *ervah*. [↑](#footnote-ref-192)
191. Maimonides Issure Biah 24:3 [↑](#footnote-ref-193)
192. The Talmud even asks, sardonically, how it came about that seven sons all served as high priests, since the commission of high priest was supposed to be for life! [↑](#footnote-ref-194)
193. This is coupled with a fear that even a single hair protruding from the waters of the ritual bath (mikva) will invalidate the immersion of women who are immersing to become sexually permitted to their husbands. See Getsel Ellinson, A Modest Way, page 161-162. [↑](#footnote-ref-195)
194. It is characteristic of the Ashkenazi approach that stringent custom and practice become more dominant than the requirements set out in the original halakhic sources. [↑](#footnote-ref-196)
195. **Responsa Iggerot Moshe O.C. I:42**

     Even the married women became accustomed to go with heads uncovered. Even though it is prohibited, it is not *erva* regarding *Keri’at Shema* and words of Torah. [↑](#footnote-ref-197)
196. Whether one agrees with Rav Messas’s conclusions or not, it reflects the increased practice of women in his time and, it is the responsibility of a halakhic authority to reinterpret and redirect halakhic conversation in keeping with the needs of his community. It is not fundamentally different from the great halakhic leap taken by the Hattam Sofer in mandating that women cover all of their hair even in the privacy of their own rooms! The two voices—of Rav Messas and the Hatam Sofer—who lived roughly around the same time—reflect the two ends of the spectrum of halakhic discourse. To this day, there are Orthodox women whose practices reflect each of these voices. [↑](#footnote-ref-198)
197. However, in other sources he is more stringent about the amount of hair that must be covered. [↑](#footnote-ref-199)
198. Igrot Moshe, Even Haezer, Vol 1: 114; Yabia Omer Vol. III, Even Haezer 21. [↑](#footnote-ref-200)
199. Rabbanit Oriya Mevorach, 'Why Do I Love my Head-Covering?' (translation from Deracheha.org)

     I’m aware that my full head-covering labels me as a *frum* woman, even though my attitudes might surprise people who have stereotypes about religious people…I am happy for people to see me first of all as a *frum* (observant) woman and only afterwards to get to know me deeply and be as surprised as they wish. Declaring that “the internal is what’s essential, down with stereotypes” is only meaningful in one direction: it is cogent when said by someone who takes on external signifiers that society stereotypes, and it is not cogent when said by someone who removes external signifiers in order to evade stereotyping… [↑](#footnote-ref-201)
200. Ruth Ben-Ammi, 'Proud in the Golan Heights' (taken from Derachecha.org)

     **I have always associated marriage with hair covering…It’s just what makes sense to me. I always considered it a powerful notion that the only person who should see your hair is your husband…The moment people see my hat, they know I’m off-limits, and I think that’s wonderful. I feel protected. I belong to someone; we belong to each other, it’s like a secret that anyone can see. Something covered is always a mystery…**

     Rabbanit Chana Henkin, 'Mo'adon Ovedot Hashem' (translation from Derachecha.org)

     **When a man and woman marry, the barriers of modesty between them fall. This is an expression of the bonding of the couple together as “they became one flesh.” From now on, the members of the couple will stand together on the same side of the barrier of modesty that separates them and other people. At the same time that Halakha sanctifies the physical connection between the couple, it creates a special barrier around the couple. The same halakha that allows the woman to reveal a handbreadth [to her husband], obligates her to cover a handbreadth [with regard to everyone else]. Halakha says to the woman: things that were forbidden are now permitted. But revealing the head in public—which was permitted—becomes forbidden. Thus a balance is created and holiness is preserved in this new and sensitive situation.** [↑](#footnote-ref-202)
201. Susan Rubin Weintrob, 'Why I Wear a Hat,' Hide & Seek, 94-95

     When I attend Jewish community functions, people know that my hat means I am religious. Just as my hat tells them something about me, their reaction to my hat tells me something about them…I don’t wear a hat to stand out or to be different—I wear a hat to link myself to the many generations of women before me. [↑](#footnote-ref-203)
202. Rabbanit Dr. Meirav (Tubul) Kahana, 'At the End of the Day – Submission,' from Olam Katan, May 2019 (translation from Derachecha.org)

     **At the end of the day, after all the discussion and clarification of the matter of head-covering, its value and significance, we also need to say simply and with submission that thus the Oral Torah taught us, that the basis of head-covering is a Torah-level obligation. It is so difficult to exercise the muscle of submission regarding matters that are not understood and clear to us. To simply fulfill them because so commanded the Creator of the world. Especially in our generation, thinking and enlightened on the one hand, connecting and feeling on the other — what isn’t understood or what we don’t “feel” remains out of bounds. Indeed, we must look deeply, clarify, investigate and understand; there is great importance in connecting with mitzvot and to fulfilling them in joy. But the beginning and end of all mitzva fulfillment is the aspect of doing the will of one’s Creator…** [↑](#footnote-ref-204)
203. Shabbat 375 [↑](#footnote-ref-205)
204. The Rebbe felt so strongly about wigs, that a special fund is available for needy brides to assist them in buying beautiful wigs that will assure their complete compliance with the full mitzva of hair covering. [↑](#footnote-ref-206)
205. Young men are largely warned about the evils of masturbation as the source of severe transgression although, religious educational approaches are being developed to normalize the biological aspect of seminal emission even while reinforcing the immutable religious restrictions. [↑](#footnote-ref-207)
206. While transgressions that incur *karet* are often presented as irreparable, in truth, the model of repentance works here as it does for all sin. While eating on Yom Kippur or eating leavened bread on Passover are serious transgressions, people can always find their way back to the holy nation through repentance. The same holds true for Nidda laws. Unfortunately, in an attempt to ensure compliance, women are told about the grave and permanent spiritual destruction they will bring to their husbands and children if they do not keep these laws scrupulously. Educationally, I believe this does more harm than good. I believe in reinforcing an empowering outlook which reminds the couple that they are in an ongoing aspirational relationship with God that at times challenges all of us. [↑](#footnote-ref-208)
207. The hymen is a thin fleshy tissue found just inside the vaginal opening. It stretches when anything is inserted vaginally, like a tampon or a finger. Sexual intercourse causes it to stretch even more. However, the myth of hymenal bleeding proving virginity must be debunked. Some women never bleed even with no prior sexual experience and some women bleed after sexual relations even after many years of experience. The hymen does not tear or disappear and it is actually impossible for a doctor to “know” whether a woman is a virgin or not based on hymenal tissue. [↑](#footnote-ref-209)
208. The internal exam known as a *bedika* which literally means examination, involves inserting a small square of cotton deep into the vagina and moving it into all of the “cracks and crevices” of the vaginal canal in order to check for remnants of uterine bleeding. It is an exam that harkens back to Temple days when women who baked bread or wove curtains for the Temple had to check for possible discharges of *tum’ah* (impurity) from their sexual that would invalidate their work retroactive to the previous internal check.. [↑](#footnote-ref-210)
209. Sin represents a breach and distance in the covenantal relationship while repentance (via the sin offering and confession) offers an opportunity to return and regain closeness. There is a similar trajectory through the purity/impurity model and our relationship to God’s presence in the Tabernacle or Temple. When impure, a person has enforced distance preventing him from bringing sacrifices. Only when pure can he or she return to the Temple. It seems to me this is why the sin offering, which is about bridging distance, might be the appropriate offering even when a sin is not actually committed. [↑](#footnote-ref-211)
210. Nidda 31a. Our Rabbis taught: There are three partners in man, the Holy One, blessed be He, his father and his mother. His father supplies the semen; white substance out of which are formed the child’s bones, sinews, nails, the brain in his head and the white in his eye; his mother supplies the red substance out of which is formed his skin, flesh, hair, blood and the black of his eye; and the Holy One blessed be He, gives him the spirit and the breath, beauty of features, eyesight, the power of hearing and the ability to speak and to walk, understanding and discernment. When his time to depart from the world approaches the Holy One blessed be He, takes away his share and leaves the shares of his father and his mother behind. [↑](#footnote-ref-212)
211. Water is not specifically referenced with regard to the Nidda or the *zava*. Given that water appears in all purification rituals in some capacity, it is reasonable to conclude from the Biblical text that the references to water in purifying the *zav* and *zera* (semen) are relevant for the Nidda and *zava* as well. [↑](#footnote-ref-213)
212. This category became superfluous following R. Judah’s ruling.Fur [↑](#footnote-ref-214)
213. B. Talmud Tractate Nidda 66a. This is a typical halakhic process and does not reflect an ascetic religious outlook. Rather, it reflects the attempt to streamline the halakhic system. I often compare it to the move to define chicken as meat. In the early rabbinic period there was difference of opinion how to relate to chicken and whether it could be cooked with milk products. Eventually, a final, immutable decision was made to place chicken in the same category as meat to make things clearer with regard to kashrut laws. (bring the source on chicken) [↑](#footnote-ref-215)
214. Specifically, *hargasha*, which is a specifically defined sensation that a woman experiences in which she feels her uterus or cervix open to release blood. Barring that sensation, according to the Talmud, a woman does not Biblically become prohibited. This remains a relevant criteria in contemporary halakhic rulings towards leniency when women see uterine blood with the sensation described in the Talmud. [↑](#footnote-ref-216)
215. There were many other steps that went into the uniform way in which Nidda is practiced. For practical halakha, see Rabbi Knohl’s excellent book or Deena Zimmerman , etc. See also Charlotte Fonrobert, Menstrual Purity: Bring the names and citations and page numbers even better. [↑](#footnote-ref-217)
216. While dam tohar after birth was maintained from some centuries in some communities, ultimately birth was treated in the same way. [↑](#footnote-ref-218)
217. B. Talmud Nidda 31a [↑](#footnote-ref-219)
218. A man can divorce his wife if she is barren for ten years. B. Talmud Yevamot 64a, Shulchan Arukh Even Haezer 154:10. [↑](#footnote-ref-220)
219. Haimov-Kochman, Ronit, et al. “Infertility Associated with Precoital Ovulation in Observant Jewish Couples; Prevalence, Treatment, Efficacy and Side Effects.” *IMAJ*, vol. 14, Feb. 2012, pp. 100–103. [↑](#footnote-ref-221)
220. להחזיר טהרה ליושנה [↑](#footnote-ref-222)
221. Rosenak was joined in his efforts by Rivka Shimon, a Temple Mount activist. She argues that we should return to the Biblical structures of Nidda, *zava* and *yoledet* in preparation for the rebuilding of the Temple. [↑](#footnote-ref-223)
222. Aryeh Kaplan’s famous book on mikva is called “Waters of Eden.” [↑](#footnote-ref-224)
223. Perel, Esther, Mating in Captivity, First Harper, 2007. [↑](#footnote-ref-225)
224. The increase in religious sex therapists trained to work with rabbis and advise couples even in the most sexually restricted communities attest to the reluctant acknowledgement that men and women are seeking sexual satisfaction more than ever before. The internet has provided an anonymous platform in which religious men and women, from modern Orthodox to the most restrictive Hassidic communities, are opening up their bedroom doors to expose a frightening lack of information, resources and satisfaction. [↑](#footnote-ref-226)
225. Chapman, Gary, *The Five Love Languages, How to Express Heartfelt Commitment to Your Mate*. Chapman outlined five basic languages used to express love: touch, words of affirmation, quality time, acts of service and gifts. [↑](#footnote-ref-227)
226. If the woman has been prescribed hormonal contraception by a doctor, she can usually extend the number of permitted days by continuously taking active pills. This does not work for every woman, but it can provide relief when a cycle is extended from four weeks to six, eight, ten and even twelve weeks. There are preparations on the market that are manufactured with 12 consecutive weeks of active pills. Some women who have finished with their childbearing opt for an intrauterine device with hormones which can be left in for up to five years. Once the body adjusts to the IUD (in some cases, immediately and in others after a few months of frequent breakthrough bleeding), women can spend years without any uterine bleeding. I have never heard women complain about the absence of non-sexual space or missing nidda in such situations. [↑](#footnote-ref-228)
227. Parker-pope, Tara. “How to Hug During a Pandemic.” *The New York Times*, The New York Times, 4 June 2020, www.nytimes.com/2020/06/04/well/family/coronavirus-pandemic-hug-mask.html?searchResultPosition=1. [↑](#footnote-ref-229)
228. The *Ezer Mekudash* Even HaEzer 20:1, is one of the only sources I have come across who distinguishes between sexual affection (*chibat biah*) and physical affection (*chibat ahava*). Only touch that is meant for intercourse is prohibited from the Torah, he explains in his commentary to Even Haezer. Affectionate touch, akin to touch between a father and daughter, is rabbinically prohibited between a husband and his Nidda wife. This acknowledgement of emotional touch as rabbinically prohibited should allow for some latitude in cases of mental anguish. [↑](#footnote-ref-230)
229. Maimonides however, does not include the restriction on sleeping in a bed while clothed in the Biblical prohibition. [↑](#footnote-ref-231)
230. ש"ך, יורה דעה, קצה, כ [↑](#footnote-ref-232)
231. בית שמואל, יורה דעה, קצה, כ [↑](#footnote-ref-233)
232. Shlomit Ben Shaya, Master’s thesis…. [↑](#footnote-ref-234)
233. Ibid. [↑](#footnote-ref-235)
234. During the Middle Ages, it is documented that women behaved differently during the days of bleeding and the seven clean days to the dismay of many Rishonim. At some point in Ashkenaz women even immersed twice — after seven days like a Biblical Nidda and after seven clean days like the Zava. Sexual relations would only be resumed after the second immersion but certain intimate interaction was permitted already after the first immersion. [↑](#footnote-ref-236)
235. Beit Yosef, Yoreh Deah, 195:17. [↑](#footnote-ref-237)
236. Taken to its logical conclusion, it would effectively prevent Jewish men from saving Jewish women who were Nidda in all life-threatening situations. This is particularly counterintuitive to read into Maimonides since he was a doctor who treated Jewish and non-Jewish women for gynecological and other disorders and illnesses. In other words, Maimonides would certainly permit non sexual touch between a man and woman in order to save a life. [↑](#footnote-ref-238)
237. Rabbi Moshe Feinstein in the 20th century answers this concern, regarding Jewish male doctors ability to treat women.

     **Responsa Igrot Moshe, Even ha-Ezer Vol. II, 14:**

     “When one’s wife is a Niddah and is in no medical danger, her husband [if he is a doctor for instance] may not check her pulse. This is not part of the prohibition against intimacy, applying to forbidden liaisons but rather one of the laws designed to maintain distance between a husband and his wife when she is a Niddah.”

     Rabbi Feinstein elucidates two important points. The first is that the restriction is only if she is not in danger. The second is to clarify that checking the pulse of a woman is not a sexually prohibited act. It is a law, more of a fence, designed to maintain distance between husband and wife. It would not apply for instance to a male doctor treating married women who are forever forbidden to him or a married female doctor treating men. [↑](#footnote-ref-239)
238. קמא אבן העזר סי נה [↑](#footnote-ref-240)
239. שו"ת פני יהושע ב,מד [↑](#footnote-ref-241)
240. אבני עזר, יו"ד, תס"א, אות י [↑](#footnote-ref-242)
241. בני בנים א, לז [↑](#footnote-ref-243)
242. Terumat Hadeshen 252. [↑](#footnote-ref-244)
243. תרומת הדשן רנב [↑](#footnote-ref-245)
244. There are differences of opinion regarding the point in labor at which the couple becomes prohibited. Until she is in active labor, as long as there is no flow of blood resembling the flow of menstruation, she can wear panty liners or colored underwear and ignore bleeding. Once she is ten centimeters dilated, according to all opinions, she is Nidda. This is the stage at which she is ready to push. For clear halakhic guidance, see Deena Zimmerman or Rabbi Knohl’s books on the topic. [↑](#footnote-ref-246)
245. This prohibition, found in Shulchan Arukh Orach Hayyim 140:4, includes looking at and kissing a woman’s vulva. There are other more lenient opinions on the matter and this restriction has been contested by women (and their partners) seeking greater sexual pleasure and couples resisting the classification of the vulva as something repulsive and prohibited for men to look at For an excellent analysis in Hebrew see: https://www.ve-ahavtem.com/post/2018/01/14. [↑](#footnote-ref-247)
246. בני בנים א, ל"ג. [↑](#footnote-ref-248)
247. This is true for both married and non-married couples who are unable or unwilling to be shomer negiah. [↑](#footnote-ref-249)
248. Rabbi Rosensweig suggests that we look at mental illnesses with severe symptoms in the same light as physical illness. Affectionate touch should be seen as service touch, even though it has a strong emotional component. This could include men and women who cannot get out of bed, those who suffer from relentless crying and sadness that results in crippling dysfunction as well as people suffering from obsessive compulsive disorder. In his opinion, allowances based on the Rema et al., could and should be made to alleviate this kind of suffering. He concludes that even if there are those who do not want to be lenient with actual physical touch of flesh on flesh, there is room to permit touch with some sort of barrier, for instance, sleeping in the same bed but with a blanket in between, allowing a sense of security and comfort. [↑](#footnote-ref-250)
249. Some couples separate their beds with a small gap while others place a piece of furniture between them. The bed design can be reflective of different approaches to *Nidda* and the way in which the couple wants to desexualize their relationship in accordance with their halakhic practice. In Israel, a “Jewish bed” was developed for the religious market, which has a shared headboard and one bed frame but separate mattresses. The frames move to separate the beds to whatever distance is chosen. When the couple is permitted, the bedframes are pushed together so that one sheet can be snugly placed over both mattresses.

     Some couples prefer a double bed with one of them sleeping on a trundle bed or mattress on the floor during the prohibited time. Other couples resist having two beds and want to know if there are any halakhic alternatives. If they make the non-halakhic decision to nonetheless buy one large bed, I suggest they act in the manner of couples who find themselves as guests in a hotel or guest bedroom with only one bed while prohibited: create two spaces in the manner of Rabbi Pedat. At minimum, separate blankets and pillows should be used; if possible, put something in the middle of the bed. [↑](#footnote-ref-251)
250. One of the biggest concerns for couples is Kiddush, particularly when company is present. There are a few fairly easy and discrete options. One is that wine already be decanted into the guests’ cups including the cup of the spouse. Another option is that whoever is making kiddush simply pour from the kiddush cup into his/her glass and allow his/her spouse to pour wine from the cup into his/her glass. Similar steps can be taken when the couple are guests in a home and one cup is given to the couple; they can each pour into their own glass. Often thinking about it beforehand, pre-empts the sense of self consciousness. [↑](#footnote-ref-252)
251. Once there are children, particularly infants and small children, using common sense becomes paramount. Never put the baby on the floor of a bus or hood of a car as an alternative to passing from hand to hand! Various responsa have actually been written about passing the baby safely, and suffice to say that the baby’s safety takes precedence over the law prohibiting passing! [↑](#footnote-ref-253)
252. http://shut.moreshet.co.il/shut2.asp?id=6735 [↑](#footnote-ref-254)
253. Snyder, Steven, Love Worth Making, p. 3. [↑](#footnote-ref-255)