In Orthodoxy, even in the most modern of frameworks, young people are given minimal sexual education. The expectation is that good religious boys and girls do not touch or express sexual desire in any way. As my growing practice in pastoral counselling and sexual education is growing specifically with single adults, it is clear that there are many Orthodox teenagers and adults who are struggling to understand sexual attraction, sexual identity and sexual boundaries with no meaningful direction from educators, parents, and rabbinic figures. In this chapter, the past and current trends in religious sexual education will be assessed along with a call for some significant changes in how the topic should be infused with real information and resources along with permission for open and honest acknowledgement of some of the real issues that continue to arise within Orthodox spaces on individual and communal levels.

*Shomer Negiah* Education

Most Orthodox sexual education is based on the vague concept of Shomer Negiah which literally means guarding touch and is based on a carrot and stick approach as will be explained below. The term itself is pseudo-halakhic and was coined in the 20th century, reflecting a value-based principle mined from the halakhic discourse. In other words, *shomer negiah* became the Jewish modern idiom for promoting chastity by strongly restricting all physical touch between the sexes. The necessity for such an idiom stemmed from the vast changes in society and the accepted casual interaction between boys and girls together with increased exposure to sexuality. In order to reinforce religious values and halakhic boundaries around chastity and modesty, some form of religious sex education was and continues to be imperative. However, it is hardly comfortable for many rabbis, educators or youth leaders to talk directly about periods, masturbation, virginity, pornography, sex and mikva, when addressing religious middle and high school students. Since the focus is on religious ideals and values rather than precise halakhic instructions, rarely is an actual source referenced. Instead, a universal connection to a Torah life style which demands abstinence before marriage is strongly reinforced. Thus, *shomer negiah* is a useful platform which encapsulates all that Orthodox Judaism wishes to impart regarding physical interaction between men and women. However, because of its vague allusions to religious morality and commitment to the Divine, *shomer negiah* has disproportionally exploded well beyond the contours of sexual boundaries. Many men and women have expressed to me the sense that *shomer negiah* sits at the center of their entire religious identity, as if the question of “are you or aren’t your *shomer*?” is the only parameter that matters when attempting to define their level of observance. Another enormous drawback with this framework is that it is a “one size fits all” approach for teenagers, young adults, older singles and formerly married men and women entering the dating world. While it is true that halakha does not change regardless of age and circumstance, the educational religious responses mut be more nuanced to astutely counsel and respond to the different situations that emerge at different points in people’s lives.

**The Stick**

The question that I am often asked is where is *shomer negiah* found in the Torah. It isn’t. The prohibitive nature of touch between men and women rests primarily on the *nidda* status of girls and young women from the onset of their first menstruation[[1]](#footnote-1). While sexual relations with a *nidda* falls into the severe category of Biblical transgressions known as *arayot* which includes incest, adultery and bestiality, the laws relating to a *nidda* are different, and far more restrictive than almost any other category of sexual prohibition. This is somewhat understandable since the *nidda* is a woman who is potentially permitted in relationship. She is not a sibling or married to another man. In theory any unmarried man and woman (boy and girl) could marry. In today’s society, they could certainly have sexual relations without consequence. It is not surprising then, that the fences around the *nidda* are among the most unyielding both before and, especially within marriage when the couple is living together in a sexual relationship but are sexually prohibited for a significant amount of time every menstrual cycle.

In short, a man is prohibited from touching a *nidda* in any way outside of the service touch of a professional. This degree of stringency does not apply to affectionate touching with a first degree relative, a member of the same sex, or, a beloved household pet, despite the severity of the prohibition if one were to actually have sexual relations with any of them. When it comes to non-marital touching, as a way of reinforcing strict no-touch boundaries, a strong moral association is also injected into *shomer negiah* based conversations, pushing beyond the usual language of permitted/prohibited. Complete avoidance of touch is considered “good” while any unnecessary touch is considered “bad[[2]](#footnote-2)”.

**The Carrot:**

While fear, guilt, shame and ignorance are powerful tools prevalent in Orthodox discussions around sexuality, modern Orthodoxy simultaneously strives to infuse the relevant halakhot with values, positive discourse and spiritual incentives for waiting until marriage. Gila Manolson’s popular book, *The Magic Touch*[[3]](#footnote-3), which came out in the 1980’s, promoted the notion that refraining from all touch until marriage promised something magical. Her book integrates the halakhic requirements of no touch coupled with value-based goals inherent in *shomer negiah*. In it she reiterates over and over the potency of touch and the ease with which it can be abused, cheapened or trivialized. The book’s premise is to warn young men and women from using one another for purely physical release, and is largely relevant to a young audience in high school and college. She encourages her readers to date and marry quickly to avoid sexual experimentation, saving the sanctity of touch for marriage. Manolson is on point in recognizing that the promiscuity of secular culture puts pressure on very young men and women to get swept up in meaningless sexual encounters that can ultimately stunt their ability to develop or form intimacy. However, it falls short on the flip side of the equation: there is no guarantee that full abstinence from any form of intimate touch before marriage will ensure an enjoyable intimate relationship afterwards. The promised “magic” if a couple waits often requires learning how to experience sexuality and intimacy in a way that is mutually enjoyable, no matter when that intimacy is first encountered. As with other aspects of marriage, communication, consideration and patience along with realistic expectations can help the couple integrate touch and sexuality in a positive way, but it can take time. This can be jarring and even disillusioning to couples who thought that being “*shomer*” was the ultimate gateway into great physical intimacy and pleasure.

More recently, Dr. Yocheved Debow, in her book *Talking About Intimacy and Sexuality*, writes, “Our children are generally ignorant of Judaism’s nuanced and positive approach to sexuality and are deeply entrenched in the images and beliefs of the approach of general society, which often presents a casual and rather shallow perspective…Judaism’s approach…is a resounding “yes”. The laws that restrict [premarital sexual activity] are formed ultimately to make intimacy in marriage more successful and enjoyable[[4]](#footnote-4).”

In this way, Debow encourages parents to simultaneously normalize sexual development and the struggles that challenge our young adults while encouraging halakhic observance as the ideal. Throughout her book, Debow balances normalization of emerging sexuality and sexual feelings with the expectations and obligations of those committed to halakhic observance. However, in the manner of Manolson, she strongly reinforces the potential benefit that halakhic observance offers to meaningful sexuality. Their approaches are most appropriate for a younger demographic who are not yet ready for committed relationships. However, it does not offer direction for men and women who have dated for years and remain single well into their late twenties, thirties and beyond. Furthermore, for those who were at some point committed to *shomer negiah* yet eventually come to sexually experiment before marriage, there is shame, guilt and a sense that all future sexual intimacy will be cheapened by what has come before, furthering the dissonance between the religious ideal and their reality.

To summarize: Halakhic Judaism deems heterosexual marriage as the only legitimate outlet for sexuality. It is only within marriage, framed by the laws of *nidda* and *mikva*, that the sexual can be transformed from the purely carnal into a reflection of the divine. In a famous Talmudic story, a non-Jewish prostitute is so inspired by the restraint shown by a Jewish client that she converts and with rabbinic endorsement spreads the sheets she once used for sin on the marital bed now infused with holiness[[5]](#footnote-5).

Orthodox education uses a two-pronged approach when discussing premarital sexuality. The first rests on Biblical and rabbinic laws that essentially prohibit all forms of casual, affectionate, intimate or sexual touch between men and women who are not married. The second invokes the long-term benefits of showing restraint in accordance with halakha by acknowledging the power of touch as a medium but reserving it only for a committed, marital relationship which will bring the rewards of enhanced potency and pleasure.

**Orthodoxy is pointedly against all non-marital sexuality**

As described above, Orthodoxy vehemently condones non-marital sexual relations. This is understandable from a religious perspective yet it fails to provide a framework for ethical sexual behavior when men and women find themselves outside of the halakhic context. To this end, there are some unprecedented challenges that must be acknowledged as we look at Orthodox Judaism’s attitude towards sexuality:

1. The previous stigmas around pre-marital sexuality no longer exist in secular society. Sexual experimentation as well as sexual relations before marriage are the norm. Public displays of affection are not just tolerated but commended.
2. The interaction between men and women from a young age and into adulthood is prevalent in modern Orthodoxy. Boys and girls encounter one another in school, camp, youth groups and around their parent’s shabbat tables. Friendships morph into crushes and romances starting in middle school and onward.
3. Orthodox young adults, particularly young women, who in the past would have been heavily chaperoned, leave home at 18 and live on their own in dormitories or apartments without any supervision.
4. There is a considerable single population of religious men and women in their twenties and thirties.
5. A small but visible percentage of the population experience same sex attraction and gender dysphoria. There has been reluctant but slow acceptance within the Orthodox community that this is not about perversion or promiscuity but inborn sexual identity. They too experience yearning for relationships and romance in the same way as their heterosexual peers.

Consequentially, the numbers of people, from young adulthood onward, who define as observant but are sexually active in some way before marriage has increased without any sort of religious guidance from educators and mentors. Equally concerning, there is no biological, medical or emotional guidance given by most religious educational institutions on the topic. Instead, religious education focuses largely around a “carrot” and a “stick” approach that was presented above. The carrot represents untold rewards for “saving” all touch until marriage, guaranteed to automatically infuse sexual experience with a magical quality. The stick signifies transgression associated with all pre-marital touch, automatically infusing any “infractions” with shame and guilt. If touch in marriage is deemed sacred, then all other touch suggests defilement.

**While this carrot and stick approach might potentially be effective educationally early on, in middle or high school,** it fails to address the complexities that religious adults encounter in the years before marriage. Unfortunately, both the positive and negative incentives are presented in a one-dimensional manner. **In order to create an authentic religious response to the sexual behavior taking place outside of the marital one, we need to intentionally and fully think about the values and vocabulary we can use in a Jewish context outside of a justification framework. I strongly believe that we must come up with Jewish language and values that move beyond the halakhic language of permitted and prohibited in order to help people make conscious decisions that reflect full agency and choice in this process of sexual decision making. This too is Torah and we need to learn it well.**

**What are the halakhic prohibitions for pre-marital sex?**

There are six practical halakhic issues relevant to questions of pre-marital sexuality:

1. It is prohibited for a man to touch a woman from the moment she menstruates and becomes *nidda*, until she immerses in a ritual bath (mikva). This commandment is described fully in chapter 8 and affects unmarried and married woman alike. Every time a woman menstruates or gives birth she becomes *nidda* and remains sexually prohibited until the bleeding stops and she immerses in the mikva. Since single women are deterred from using mikva, from her first menstrual cycle until the eve of her wedding, a woman is prohibited because of her *nidda* status.
2. The Torah prohibits a man or a woman from becoming a “*kadesh*” or “*kadesha*”. The simple reading of the Torah is a prohibition on prostitution. However, Maimonides rules that all non-marital sexual intercourse violates this negative commandment[[6]](#footnote-6) and many significant halakhic authorities, including the Shulchan Arukh, follow suit[[7]](#footnote-7).
3. A man is prohibited from ejaculating or spilling seed outside of sexual relations. This can happen if he becomes sexually aroused before marriage without any sanctioned release although the primary source material for this prohibition is a bit vague[[8]](#footnote-8). The central kabbalistic text Zohar equates spilling seed to spilling blood and describes this transgression as being worse than all other transgressions without the possibility of repentance. This has had a tremendous impact on attitudes towards male sexuality and masturbation. The revulsion associated with the act lingers even as we tacitly recognize that masturbation is not equated morally, legally or practically with the violence and transgression associated with murder. From a young age, boys are made aware of this prohibition which automatically encourages the self-discipline necessary to avoid any arousal. It is beyond the scope of this book to present an analysis of those sources[[9]](#footnote-9). Suffice to say that the religious conflict, shame, guilt and cognitive dissonance that accompanies male masturbation can have an impact on sexual relations after marriage
4. Female masturbation is much less defined in Jewish sources. Since the majority opinion is that there is no wasted seed when a woman experiences sexual pleasure, there is no clearly identified halakhic position beyond a certain ingrained revulsion around any act that involves sexual gratification outside of marriage or even within marriage. There is a well-known position in the early Talmudic commentaries that women do not experience arousal from touching themselves (or being touched), although other rabbinic authorities suggest an amorphous prohibition. Nonetheless, women are either actively discouraged from thinking about self-pleasure or sexually exploration before marriage or there is a impermeable silence suffusing the topic. While it is assumed that males will (illicitly) masturbate, there is an assumption that women will not. There remains in some religious circles even in modern Orthodoxy resistance to tampon use for unmarried girls, as if inserting something vaginally will cause the hymen to be perforated or, will result in familiarity with a sensation best saved for marriage. For women, the intense emphasis on modesty as a sign of their chastity or protect the men from sexual thoughts has impact on the ability to experience a positive sexual relationship after marriage.
5. Women are expected to be virgins before marriage. The Torah sanctions stoning a non-virgin who is “found out” after marriage although rabbinic law tempers this with financial penalty only. They are warned that if they lose their virginity, their *ketubot* (Jewish marriage contracts), which are read publicly under the *huppa*, will reflect this shameful reality. To clarify, the *ketuba* of a virgin is traditionally worth an amount that is twice as much as that of a non-virgin. Throughout the reading of a *ketuba*, the bride is referred to as the virgin bride. However, many people are unaware this threat is particularly unfounded in today’s dating culture since the *ketuba* is a contract between husband and wife; if the husband is in agreement, information about the wife’s virginity does not have to be factual[[10]](#footnote-10). This trope, that promiscuity will be exposed and cause shame particularly to the bride is intended to effect compliance with the religious value for chastity.
6. Finally, there is the fear that a child born outside of marriage will be stigmatized as *mamzer*. The *mamzer* can never marry within the congregation of Israel and is destined to only marry other *mamzers* because the blemish is forever passed on. This fear is patently unfounded. A *mamzer* is the child of a Jewish married woman from a Jewish man who is not her husband or, as a result of an incestuous sexual relationship. Nonetheless, the *mamzer* is seen as an ambiguous and truly terrifying menace vaguely associated with all illicit sexual relations which adds to the stigma around premarital sex.

**Source Analysis for the prohibition of Kadesha**

As noted, the major transgression for having sexual relations with a *nidda* woman is outlined in chapter 8. The Biblical text does not distinguish between a married or unmarried woman when prohibiting the *nidda*. In fact, there is no outright prohibition over non-marital sexual relations between a man and an unmarried woman in the Bible. The restrictions limiting such relations were societal norms and monetary distinctions between virgins and non-virgins. A young woman was expected to remain a virgin until marriage or there were repercussions for her marriage contract and dishonor brought to her father’s home.

There is however, another Torah prohibition over sexual promiscuity for both men and women found in Deuteronomy 23:18:

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| **דברים פרק כג פסוק יח** לֹא־תִהְיֶ֥ה קְדֵשָׁ֖ה מִבְּנ֣וֹת יִשְׂרָאֵ֑ל וְלֹֽא־יִהְיֶ֥ה קָדֵ֖שׁ מִבְּנֵ֥י יִשְׂרָאֵֽל: | **Deuteronomy 23:18**There shall be no *kadesha* of the daughters of Israel, neither shall there be a *kadesh* of the sons of Israel.You shall not bring a harlot’s fee or the price of a dogTo the House of GodIn payment for any vowFor both of these are abhorrent to your God. |

*Kadesh* and *Kadesha* come from the Hebrew root k.d.sh meaning holy, implying that the text refers to some form of holy prostitution, reflecting the ancient practice of sexual rituals as a form of worship[[11]](#footnote-11). It is hardly surprising that the Torah prohibits such a profession for both men and women. Medieval commentaries equate *kadesha* with the related *zonah* in the Torah, which clearly refers to a prostitute. Some of the consequences are that a *zonah* may not marry a priest nor may her wages be used to purchase sacrifices in the Temple[[12]](#footnote-12). In short, there is a prohibition on all types of prostitution for both men and women[[13]](#footnote-13). However, there is no explicit Biblical prohibition regarding a man and woman who designate one another as sexual partners in some manner of relationship, even if they are not officially married. While the Talmudic discourse largely concurs with this, there is one Tannaitic sage who defines all non-marital sex as promiscuous.

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| **Yevamot 61a****MISHNA:** **A common priest may not marry a sexually underdeveloped woman [*aylonit*],** **unless he** **has a wife and children. [Rabbi Yehuda](/topics/rabbi-yehudah-b-ilai) says: Even** if **he has a wife and children, he may not marry a sexually underdeveloped woman, as she is the *zona*** **stated in the Torah**. **And the Rabbis say: The only** ***zona is* a female convert, a freed** maidservant, **and** any **who engaged in licentious sexual intercourse**.**B. Talmud Yevamot 61b.** R. Eleazar said: An unmarried man who had intercourse with an unmarried woman, with no matrimonial intent, renders her thereby a zonah!R Amram said: The halakha is not in agreement with the opinion of R. Eleazar.” | **יבמות סא.****מַתְנִי׳** כֹּהֵן הֶדְיוֹט לֹא יִשָּׂא אַיְלוֹנִית אֶלָּא אִם כֵּן יֵשׁ לוֹ אִשָּׁה וּבָנִים [רַבִּי יְהוּדָה](/topics/rabbi-yehudah-b-ilai) אוֹמֵר אַף עַל פִּי שֶׁיֵּשׁ לוֹ אִשָּׁה וּבָנִים לֹא יִשָּׂא אַיְלוֹנִית שֶׁהִיא זוֹנָה הָאֲמוּרָה בַּתּוֹרָה וַחֲכָמִים אוֹמְרִים אֵין זוֹנָה אֶלָּא גִּיּוֹרֶת וּמְשׁוּחְרֶרֶת וְשֶׁנִּבְעֲלָה בְּעִילַת זְנוּת גמרא יבמות סא:[רַבִּי אֶלְעָזָר](file:///C%3A%5Ctopics%5Crabbi-elazar-b-shamua) אוֹמֵר פָּנוּי הַבָּא עַל הַפְּנוּיָה שֶׁלֹּא לְשֵׁם אִישׁוּת עֲשָׂאָהּ זוֹנָה אָמַר [רַב עַמְרָם](file:///C%3A%5Ctopics%5Crav-amram) אֵין הֲלָכָה [כְּרַבִּי אֶלְעָזָר](file:///C%3A%5Ctopics%5Crabbi-elazar-b-shamua) |

This passage in the Talmud is referring to women who are prohibited from marrying priests in expansion of the explanation of the Biblical text which prohibits them from marrying a *zonah* and a divorcee. The term *zonah* , according to rabbinic interpretation, includes female converts, freed female Canaanite slaves and women who are sexually promiscuous in the manner of prostitutes. However, virginity is not a pre-requisite for marrying a priest. R. Eleazar in contrast, has a more stringent position: all sexual relations without matrimonial intent render the woman (not the man) a *zonah*. Even in this Talmudic position however, there is nuance: a couple who is having sexual relations with matrimonial intent but before marriage would not render the woman a *zonah*.

Nonetheless, in the post-Talmud era, Maimonides unequivocally rules that all sexual relations without kiddushin violate the prohibition of *kadesha* although he does not go so far as to define a non-virgin as *zonah* for the purpose of prohibiting her to a priest.

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| **Maimonides Ishut Chapter 1:4**Before the Torah was given, when a man would meet a woman in the marketplace and he and she desired, he could give her payment, engage in relations with her wherever they desired and then depart. Such a woman is referred to as a harlot. When the Torah was given, relations with a harlot became forbidden as it is stated, “There shall not be harlot among the daughters of Israel.” **Therefore, a person who has relations with a woman only for the sake of sexual relations, without kiddushin receives lashes as prescribed by the Torah, because he had relations with a *kadesha*.** | **רמב"ם הלכות אישות פרק א הלכה ד**קודם מתן תורה היה אדם פוגע אשה בשוק אם רצה הוא והיא נותן לה שכרה ובועל אותה על אם הדרך והולך לו, וזו היא הנקראת קדשה, משנתנה התורה נאסרה הקדשה שנאמר +דברים כ"ג+ לא תהיה קדשה מבנות ישראל, לפיכך כל הבועל אשה לשם זנות בלא קידושין לוקה מן התורה מפני שבעל קדשה.  |

As stated in the excerpted text, Maimonides takes a hard line against all non-marital sex, anchoring his position in the Biblical prohibition of *kadesha*. However, the medieval commentator on Maimonides’ Mishneh Torah, Rabbi Abraham son of David known as Raavad, refutes this approach since it conflicts with the straightforward meaning of the Biblical passage: Only a promiscuous woman who is available to any man is a *kadesha*. He argues that there is no prohibition if the woman is monogamous, designating herself to one man, even without the ritual of kiddushin.

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| **Added the Raavad**: A woman does not become a kadesha unless she abandons herself to everyone **but if she designates herself for one man she does not incur lashes nor a negative prohibition and she is the concubine that is described in the scripture.** | +/השגת הראב"ד/. א"א אין קדשה אלא מזומנת והיא המופקרת לכל אדם אבל המייחדת עצמה לאיש אחד אין בה לא מלקות ולא איסור לאו והיא הפילגש הכתובה. |

This seminal disagreement continues to reverberate in the centuries following Maimonides’ code. One school of interpretation defines all sex outside of marriage as harlotry. The other school defines only women who engage in multiple non-committed sexual encounters as violating the prohibition of *kadesha*, to the exclusion of a non-marital but monogamous relationship.

**Looking for a workaround: Single Women and Mikva**

While marriage obviates the prohibition of *kadesha* according to all rabbinic authorities and a committed although non-marital relationship does the same according to some authorities, it does nothing to change the status of the *nidda*; even during marriage, she is prohibited when she menstruates. Furthermore, the transgression of sexual relations with the *nidda* is *karet*, which carries with it a sense of divine retribution and places it in a more serious category of sin than the prohibition of *kadesha*. What transitions women from a prohibited to permitted state is the cessation of menstrual bleeding and immersion in the purifying waters of the mikva.

It did not escape the notice of Jewish men that if (Jewish) women, even prostitutes, immersed in the mikva, they would no longer be considered *nidda*. Rabbi Isaac ben Sheshet Perfet, known as Rivash, who was a Spanish Talmudic authority in the 14th century, was asked by the men of his community whether Jewish prostitutes in town should immerse in order to prevent men from transgressing laws of *nidda*. And furthermore, they continued, it would be better for all single women to immerse since it is known that sometimes non marital sex takes place. Mikva immersion would prevent the terrible consequence of *karet* being incurred.

In a thunderous response, Rivash unmistakably rejects any such possibility, clarifying first, that prostitution is prohibited whether the women are *nidda* or not. Second, he affirms the need to protect the daughters of Israel from just such a suggestion. Finally, he adduces that while those in the Raavad’s camp would not see non-marital sex with a single woman as Biblically prohibited, they would all certainly see it as rabbinically prohibited.

While he brooks no tolerance for any alternative possibility, in the end he admits that some authorities (like Raavad see above) allow a man to designate a woman as a concubine, henceforth permitting sexual relations. However, he adds that Maimonides would negate any such option. At the conclusion of the text, he makes it clear that he knows what the men are really asking, which is to absolve them of halakhic guilt when they have relations outside of marriage. He responds that keeping single women in a state of *nidda* until marriage is one of the biggest deterrents to non-marital sexual relations for both men and women and that he has no intention of softening his position in this matter.

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| **Responsa Rivash 425[[14]](#footnote-14) (translation: Dr. Jennie Rosenfeld)****Behold sex with an unmarried woman is prohibited Biblically even when she is not menstruating, according to the Rambam**. She will receive lashes for it; meaning, for having sex promiscuously. For she is a harlot, even though she doesn’t sit in a brothel, and hasn’t made herself universally available. And according to those who dispute the Rambam, and say that sex with an unmarried woman incurs neither violation of a negative precept nor lashes, nevertheless, one violates a rabbinic commandment through sex with her. Even seclusion with an unmarried woman is prohibited by the decree of the Davidic court—how much more so sex with an unmarried woman! There is also an opinion that says that that there is a Biblical violation to have sex with an unmarried woman, even though there is no negative precept and no lashes. The prohibition is [derived from] a positive commandment. “When a man takes a wife and has intercourse with her”—says the Torah (Deuteronomy ). In other words, when you want to have sex, do so through marriage. There are those who permitted sex with an unmarried woman, as long as she is designated for him alone and is his concubine. But even so, Rambam forbade [a concubine] to a regular person and only permitted to the king, as he writes in his book of judges. This dispute is ancient, and space does not permit further expansion….….And that which seemed unfathomable to you: How did they not establish immersion for the single woman, so that men not fall prey to her? There is no room for questioning. Because the unmarried woman is prohibited as we explained—the opposite is true! For if she would immerse then she would truly be a stumbling block because people would be lenient on the prohibition [of premarital sex], since the prohibition would then only be rabbinic [and not an *issur karet*]…[[15]](#footnote-15) |

In the wake of Rivash’s ruling, traditional Jewish society actively discourages and even prevents single women from using the mikva. This ensures that non marital sexual relations would absolutely result in the punishment of *karet*, deflecting any possible excused leniencies.

In the late 20th century, single religious women began discretely using the mikva, particularly in large cities to ensure anonymity. This is reflective of a reality in which some religious men and women begin to engage in sexual relations prior to marriage as part of the emerging sexual ethic of their generation along with the advancing age of marriage. This type of decision making is unique to a halakhically observant demographic who are violating the religious (and halachic) mandate to remain celibate until marriage but temper it with the knowledge that mikva immersion for the *nidda* woman neutralizes the severe Biblical prohibition resulting in *karet*. For some of these couples, using the mikva, while not religiously sanctioned, is to their minds still within the bounds of their observant life style[[16]](#footnote-16). This may also be attributed to the trajectory outlined in chapter two, the widespread halakhic education of the religious population and its influence on private decision making.

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**Sexual interaction in committed relationships working towards marriage**

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**Crossing the boundaries**

 Modern norms around sexuality are infiltrating and influencing the behavior of religiously committed boys and girls, men and women. This a fact that cannot be ignored.

The space in which sexual behavior and religious observance intersect is a fractious one. People who perceive themselves as careful with halakhic observance but nonetheless begin to sexually experiment, will potentially repress or deny such behavior. The sinfulness of the encounter can overpower conscious awareness, preventing any sort of clear assessment of what they are doing or what is being done to them. This can then potentially contribute to a harmful sense of disassociation from the sexual experience along with the inability to take responsibility or acknowledge what is happening which can lead to true objectification or dehumanization of the other during or after the interaction. The sweep of intense sexual feelings coupled too often with drinking, social expectations and an inability to discuss or set boundaries leads to encounters of objectification or senseless groping and emptiness.

Once the *shomer negiah* threshold is crossed, there is no direction or framework for thinking about other Jewish values when sexually touching, or possibly sexually using, another person. We have incredibly relevant values that can be incorporated into this broader conversation, such as respect for human dignity, the deeply embedded belief that every person is created in the image of God, the constant striving for acts of *chessed* or kindness, the idea of loving someone like yourself and the prohibition to cause harm to another human being. Perhaps if every person took with them a virtual guidebook of Jewish values they would be more thoughtful about both what they are doing to someone else and what is being done to them, key factors in creating a sexual ethic in or out of matrimony.

The framework in which some religious men and women encounter sexuality is one in which degrees of transgression are presented on a sliding scale: holding hands is better than kissing which is better than removing clothes and most famously, oral sex is better than penetrative sex because the woman remains halakhically a virgin and, the couple avoids *karet*. A bargaining chip is employed in order try to avoid certain prohibitions – wasting seed or penetrative sex - while willing to incur others considered less halakhically significant. This will be familiar to religious readers as the classic bifurcation between avoiding violation of Biblical law which represents the word of God versus violating rabbinic law which is seen as binding but less prohibitive. Since oral sex, which does not involve penetration, is considered less transgressive than vaginal sex which results in *karet*, it is “sanctioned” as the preferred act. The same logic is incorrectly applied to anal sex[[17]](#footnote-23), although the woman does technically (meaning, *halakhically*) remain a virgin, anal sex carries the same consequence of *karet* as does vaginal sex. In both cases, the couple is engaging in extremely explicit sexual behavior without necessarily being mindful of what contributes to their individual pleasure and the sense of closeness if they are in a relationship.

Even within the context of a relationship, the cognitive dissonance can inhibit any emotional closeness that could be formed through the physical intimacy. As one person explained, shame over sexual exploration in a relationship that could potentially lead to marriage is detrimental, inhibiting the possibility of the touch actually serving as a conduit for emotional growth and an impetus to move towards marriage. Here too, the religious stereotype is that withholding touch serves as the impetus for more quickly committing to marriage but for some people this is not the case. Engaging in emotional and sexual touch can actually foster the level of emotional trust and intimacy necessary to move towards greater commitment.

What is concerning from a sexual education standpoint is that instead of engaging in a value-based conversation about consent, intimacy and the give and take inherent in a sexual act, a legalistic halakhic discourse exists in which the degree of transgression is the only factor considered. Rarely is there any honest discussion about healthy sexual outlets, how to set healthy boundaries beyond the halakhic don’ts or encouragement to save touch for marriage. There is no permission given to think about or set limits since everything is prohibited. This last piece is not unique to Orthodox Judaism. Secular society, with all of its openness, has the same problem in reverse. There is no permission to set limits because everything is permitted.

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While seeking to stay true to religious convictions and commitment to halakha is paramount in religious communities, it is also the responsibility of parents and educators to ensure conversations are held about agency and consent which must be articulated in even the most religious of spaces if only to warn against predators or the dangers of drinking in co-ed environments. Especially in the younger years, it is imperative that religious education be accompanied by clear information about sexual development and the normalcy of sexual desire and attraction, both for heterosexual and LGBTQ students. Only after understanding the biological, hormonal and emotional elements involved in the sexual experience can people take ownership and make room for religious values. As a religion, we are committed to protecting life. Evading discussions about safe sex can lead to dangerous encounters that can result in pregnancy and abortion, or sexually transmitted diseases, which can be life threatening. Furthermore, if we do not infuse these nuanced conversations about non-halakhic sexual behavior with other Jewish values, like loving one’s partner, along with values of righteousness, justice and human dignity, all of which are part of a Jewish sexual ethic within marriage, there is a grave danger that no sexual ethic will be implemented.

It is important to emphasize that the halakha is not being called upon to permit the prohibited. However, it is certainly within the purview of religious parents, educators and rabbis to provide resources, help build parameters and offer advice beyond the boundaries of Jewish law. The sages of the Talmud repeatedly recognized that sometimes in matters of sexuality, guidance *be’diavad*, is necessary.[[18]](#footnote-24) We must not turn a blind eye to the reality of religious couples who are not strictly *shomer negiah* or to members of our community who are LGBTQ as they particularly struggle to form sexual boundaries with even less halakhic guidance[[19]](#footnote-25). An all or nothing approach often leads to negative effects as described above. A nuanced, value-based approach with a wider perspective will benefit Orthodox Jewish society without compromising on the parameters of halakha.

In my years of teaching and lecturing, I find that many single men and women are desperately looking to build a Jewish sexual ethic and infuse their sexuality with meaning despite making non-halakhic decisions. As religious educators and parents, we might be losing more than we gain by only offering rigidity. Finding the balance is essential to both maintaining fidelity to a God-fearing life committed to Torah and mitzvot while sending out “life preservers” to members of the community seeking to incorporate Jewish values within the complex realities of modernity.

1. The Maimonidian prohibition of kadesha is about sexual relations outside of marriage. It do es not extend to sexual touching which is why the *nidda* is a much stronger platform for *shomer negiah.* [↑](#footnote-ref-1)
2. The difference between the nidda and other prohibited relationships is that touch is a normal medium of non-sexual expression between animals, first degree relatives, or members of the same sex. However, intermingling and contact between the sexes where sexual contact is not taboo is another matter. Nidda and adultery have a halakhic “fence” to restrict the possibility of sexual contact. A man may not touch another man’s wife in any way beyond what is necessary in a service based situation (medical care, beauty care). [↑](#footnote-ref-2)
3. Manolson, Gila, The Magic Touch….. [↑](#footnote-ref-3)
4. Debow, Yocheved, Talking About Intimacy & Sexuality, A Guide for Orthodox Jewish Parents, KTAV, 2012, p. 205. [↑](#footnote-ref-4)
5. Menachot [↑](#footnote-ref-5)
6. Mishneh Torah, Ishut, Chapter One: Halakha Four. [↑](#footnote-ref-6)
7. Even Haezer 26:1. [↑](#footnote-ref-7)
8. There are different opinions ranging from very prohibitive to very lenient regarding a married couple’s ability to engage in non-penetrative sexual intercourse for the sake of sexual pleasure, even though there is ejaculation.. [↑](#footnote-ref-8)
9. Bring some resources around wasting seed…. [↑](#footnote-ref-9)
10. Igrot Moshe Orach Chaim 4: 118. Regarding the writing of the Ketuba, you need not tell the rabbi who is officiating.  By signing the Ketuba, the groom is agreeing to the use of the term "*virgin*" - and there is no further concern. He is thereby legally bound to the terms of a virgin’s Ketuba, even if in truth the bride is not, so long as she did not mislead him.... [↑](#footnote-ref-10)
11. BDB p. 873. [↑](#footnote-ref-11)
12. Leviticus 21: 14 and Deuteronomy 23:19. [↑](#footnote-ref-12)
13. |  |  |
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| **רש"י דברים פרשת כי תצא פרק כג פסוק יח** לא תהיה קדשה – מופקרת, מקודשת ומזומנת לזנות. | **Rashi Deuteronomy 23:18**There shall be no kadesha — uninhibited, devoted and ready for harlotry. |
| **רשב"ם דברים פרשת כי תצא פרק כג פסוק יח** (יח) קדשה - זונה, פנויה מנאפת:קדש - בא על פנויות בלא כתובה וקידושין ולא מיוחדת לו כפלגשים: | **Rashbam ibid**A harlot; an unmarried woman who is sexually promiscuous.Kadesh – one who has sex with unmarried women without marriage and *ketubah* or without making them as his concubines. |

 [↑](#footnote-ref-13)
14. Isaac Ben Sheshet, 1326-1408, Algiers. [↑](#footnote-ref-14)
15. The Rivash is referring to the laws of *yichud*, meaning laws that prevent seclusion between a man and woman prohibited to him. These laws are meant to create a boundary that prevents the couple from being completely alone and vulnerable to sexual folly. [↑](#footnote-ref-15)
16. In the early 21st century, this practice came to the forefront of public discourse when questions of religion and state erupted around the controlled nature of who was eligible to immerse in publicly funded mikvaot. A common practice was for mikva attendants to inquire as to the marital status of women. If a woman hesitated or answered honestly that she was single, she was denied entry and forcibly removed. Lesbians were similarly prevented from immersing if their sexual identity was revealed. Given that mikvaot in Israel are publicly funded institutions, the argument was and continues to be, that legally the space should be accessible to all women. After many years of prolonged struggle that eventually made its way to Israel’s High Court, it was agreed that while officially single (and gay) women cannot immerse, mikva attendants were no longer permitted to ask the marital status of the immersing women. [↑](#footnote-ref-16)
17. Anal sex is considered penetrative sex and thus, having this kind of sexual intercourse with a *nidda* woman would result in the punishment of *karet*. However, the woman’s hymen remains “intact” and she is still technically a virgin and entitled to a full ketuba of 200 zuz which some might think makes this act “preferable”. It is not. [↑](#footnote-ref-23)
18. See Yoma 18b where there were Talmudic sages who took a bride for a night or Moed Katan 17a where Rabbi Ilai allows a man who is overcome by his evil (sexual) inclination to wrap himself in black clothing and go to an anonymous place where he is unknown to release his illicit passions. These sources do not sanction non martial sexuality but they make room for semi-justified outlets. [↑](#footnote-ref-24)
19. The complex topic of religious men and women who are LGBTQ and struggling to define their sexual identity within the framework of religious observance deserves its own book. However, it is impossible to completely ignore a reality that almost every religious community and attendant institutions is confronting. For religious men and women who are LGBTQ there is even less tacit acknowledgement or conversation around sexuality. Beyond the halakhically mandated abstinence only position, I believe we need to help LGBTQ members of our community reconcile their sexual identity without completely abandoning the hope of meaningful and committed relationships. Furthermore, halakhic authorities, religious educators and parents must provide guidelines and direction based on values from within halakha as well as defining more clearly gradations of halakhic observance for these members. [↑](#footnote-ref-25)