“When we had sex, we couldn’t use condoms, because having them around would have been admitting an intent to sin or an expectation of fallibility. For the same reasons, I couldn’t take birth-control pills or use any other form of contraception. To prepare to sin would be worse than to break in a moment of irresistible desire. To acknowledge a pattern of repeatedly breaking, of in fact never failing to break, would have meant acknowledging our powerlessness, admitting we could never act righteously. Our faith trapped us: We needed to believe we could be good more than we needed to protect ourselves. As long as I didn’t take the birth-control pill, I could believe I wouldn’t sin again. His father always pulled out, which works until it doesn’t.[[1]](#footnote-1)”

**Chapter 9 Pre-Marital Relationships**

According to halakhic norms, touch between the sexes is prohibited under nearly all circumstances. A person who abides by this norm is referred to as “*shomer negiah*,” literally “one who observes [the prohibition of] touching.” I am often asked where the mandate to be *shomer negiah* is found in the Torah. It isn’t, although the answer is more complicated than that, as will be explained below. This pseudo-halakhic term was coined in the 20th century in the wake of vast changes in society, with increasingly casual interaction between males and females, and with growing exposure to explicitly sexual expectations, in a pervasive secular culture. Thus, *shomer negiah* became a useful (if somewhat vague) platform meant to encapsulate all that Orthodox Judaism wishes to impart regarding physical interaction between men and women before marriage. It describes a Torah lifestyle that demands abstinence before marriage as an essential tenet of religious morality and commitment to halakha. While it sends a very clear and concise message, it also tends to shut down any deeper conversation on the topic of sexuality and provides little halakhic information or direction. Rarely is an actual textual source cited when the subject is addressed.

*Shomer negiah* based education is primarily based on a “carrot” and “stick” model. The carrot represents untold rewards for “saving” all touch until marriage, guaranteed to automatically infuse sexual experience with a magical quality. The stick signifies halakhic violation and transgression, automatically infusing any infractions with shame and guilt. While this tactic might be educationally effective for young people in middle or high school, it fails to address the complexities that religious adults encounter in the sometimes long years before marriage. A “one size fits all” model cannot address the acute differences in dating environments across different age groups and the sexual choices facing teenagers and young adults compared to older singles and formerly married men and women. Having grown up in the Orthodox world and spent the better part of the last 20 years talking to young adults about religion and sexuality, it is increasingly clear that the educational religious responses must be more nuanced to counsel and respond to the diverse situations that emerge at different stages in people’s lives.

My experience in pastoral counseling and sexual education has taught me that many teenagers and adults are struggling to balance sexual attraction, sexual identity, and sexual boundaries with their Orthodox way of life and their commitment to *halakha*. They want to understand more precisely where the halakhic restrictions come from and what they include. For those who make non-halakhic decisions, the dissonance sometimes leads to religious fallout, with no direction or guidance as to how to conduct themselves once halakhic boundaries are crossed.

While the aspiration to keep halakha conflates all touch into one *shomer negiah* basket, there are significant differences between different types of touch – sexual, emotional, casual – that should be outlined in any conversation around halakhic decision making and touch in a relationship. In this chapter, the main halakhic points around touch will be presented and interpreted as the basis for a broader discussion regarding modern dating challenges in the religious community.

Much of the chapter is directed at a modern Orthodox community for whom years of casual dating and/or a long courtship often precedes the decision to marry. However, I am increasingly hearing stories of expectations of touch from women when dating men from the *yeshiva* world in an older dating demographic that potentially includes previously married men and women. There is an overall complaint that it is hard to find sensitive rabbinic authorities willing to acknowledge the realities of what some of them – men and women - are confronting when they embark on dating particularly as they remain single for many long years.

There is some awakening in the modern Orthodox sphere, where couples *are* beginning to seek advice from sympathetic rabbinic/halakhic authorities, male and female, for (realistic) religious guidance when making non-halakhic decisions about incorporating emotional and sexual touch into their developing relationships. The actuality in which there are pastoral counsellors who are willing and can give guidance in such situations is a welcome and important change. It is my sense that allowing people the opportunity to openly talk to educators, rabbis or parents about their sexual behavior will reinforce their commitment to other values in interpersonal relationships, avoiding dissociative and irresponsible behavior, when they are not able or willing to completely refrain from physical or sexual interaction.

**Forbidden Touch[[2]](#footnote-2)**

The prohibition of physical touch between unmarried men and women rests on the *niddah* status of women from the onset of their first menstruation. All rabbinic authorities agree that sexual touch is prohibited when the woman is a *niddah*, meaning she has not completed seven clean days after menstruation and immersed in the *mikvah*.[[3]](#footnote-3) However, there is disagreement, in the early rabbinic sources as to whether sexual touch is prohibited on a *d’orayta* (biblical) or a rabbinic level based on interpretation of the relevant verses in Torah. The main source for the prohibition is the following verse in Leviticus.

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| Leviticus 18:19  Do not come near a woman during her period of uncleanness to uncover her nakedness. | ויקרא פרק יח  **יט** וְאֶל אִשָּׁה בְּנִדַּת טֻמְאָתָהּ לֹא תִקְרַב לְגַלּוֹת עֶרְוָתָהּ. |

Based on early rabbinic interpretation of this verse, Maimonides prohibited sexual touch as violating *d’orayta* (biblical) law in both Sefer Hamitzvot and Mishneh Torah. Subsequently, this became the dominant halakhic position and the one that is almost exclusively cited. However, Maimonides writes that in order to violate a negative prohibition there must be two qualifying conditions: There must be both intent and/or sexual pleasure derived from the act.

Other early post-Talmudic authorities took issue with Maimonides’ on this subject, the most well-known being Nahmanides who understood that sexually touching a prohibited woman violated a rabbinic prohibition and only the “uncovering of nakedness” (the biblical euphemism for intercourse) violates a biblical commandment. He concluded that sexual touching was rabbinically prohibited, serving as a “fence”, a safeguard against transgressing the biblical law, in order to prevent a situation that might ultimately lead to sexual relations.

Shulhan Arukh codified the prohibition on sexual touch as based on a *d’orayta* (biblical) law like Maimonides. However, Rabbi Shabtai Cohen Rapoport, known as Shakh, a 17th century commentary on Shulhan Arukh, indicated that only foreplay that is meant to lead to sexual relations is prohibited by Torah law, i.e. touch without intent for sexual relations is rabbinically prohibited. This does not imply that Nahmanides or Shakh would be casually permissive about sexual touch, but this distinction has clear halakhic implications. Emotional touch does not fall into the same “transgressive” category as intentionally sexual touch. For couples who are trying to create working boundaries that involve physical connection, this differentiation should be an important one. Towards the end of the chapter, a review of the different categories of touch and their halakhic implications will be presented.

**Emotional Touch**

Much of the focus in *negiah* based conversation is around sexual touch and the slippery slope that might lead to sexual relations if any physical interaction is permitted. This is certainly a greater concern today than in the past, when secular society no longer attaches any stigma to non-marital and casual sexual relations. On the contrary, sexual relations before marriage is the norm, and sexual experimentation is regarded as healthy.

Gila Manolson’s popular book, *The Magic Touch,*[[4]](#footnote-4) published in the 1980’s, promoted the notion that refraining from all touch until marriage promises something magical. She reiterated over and over the potency of touch and the ease with which it can be abused, cheapened, or trivialized. The book, primarily directed at an audience of young people in high school and college, aims to discourage them from using one another for purely physical release. It encourages readers to date and marry young and 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 young men and women to get swept up in meaningless sexual encounters that can ultimately stunt their ability to develop or form intimacy. Many men and women exert enormous effort in remaining steadfastly committed to *halakha* when dating. They accept that physical intimacy will begin only after marriage. In many cases, this restraint and the inevitable sexual tension spurs them more quickly towards marital commitment in order to avoid sexual impropriety latent in growing intimacy between the sexes. However, her approach does not acknowledge how central emotional touch can be in fostering the growth of a relationship. Abstinence from any form of physical interaction during the dating period which can last weeks, months and sometimes years can be extremely challenging and for some, impossible. There is little to no consideration in *halakha* for the role touch plays in conveying love, affection and support within an evolving relationship. The only concern is that touch can, and in the eyes of *halakha* almost inevitably will, become sexual.

The reality, unfortunately, does not always correspond to the ideal presented in *The Magic Touch*. Sometimes the lack of touch represses intimacy, acting as an impediment rather than an impetus to move quickly towards marriage. More frequently, touch is either expected or inevitable as the relationship unfolds. Looking more broadly at the religious dating demographic, couples embarking on dating following divorce or the death of a spouse may be wary of waiting until marriage. If their previous sexual relationship was problematic, lack of physical intimacy may act as a significant deterrent in their willingness to commit a second.

# The Halakhic Prohibitions Relating to Non-Marital Sexual Relations

*The Niddah Prohibition and Single Women Using the Mikvah*

It did not escape the notice of Jewish men already 700 years ago that if (Jewish) women, even prostitutes, immersed in the *mikvah* after seven clean days, they would no longer be considered *niddah*. 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 who used their services from transgressing the laws of *niddah*. Furthermore, they stated, perhaps it would be better for all single women to immerse since it is known that sometimes men stumble. Unrestricted *mikvah* immersion would prevent the consequence of *karet* being incurred.

In a thunderous response, Rivash unmistakably rejected any such possibility, clarifying first, that prostitution is prohibited whether the women are *niddah* or not. Second, he affirmed the need to protect all of the daughters of Israel from just such a suggestion.

At the conclusion of the text, he makes clear that he knows what the men are really asking, which is to absolve them of guilt when they have relations outside of marriage. His response to their question is to affirm that keeping single women in a state of *niddah* 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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| **שו"ת הריב"ש סימן תכה**  שאלת: לבאר לך, מה שכתוב בתורה: ואל אשה בנדת טומאתה, לא תקרב לגלות ערותה. אם נאמר על כל אשה נדה: בין באשתו, בין בפנויה? ואם הוא כן, איך לא הזכירו דבר זה, הרשב"א ז"ל בספר תורת הבית; ולא הראב"ד ז"ל בספר בעלי נפש? כי לפי לשונם, לעולם לא דברו: אלא באשתו של אדם; ואיך מורגל בפי כל אדם: פלונית פנויה מותרת? וחכמים ז"ל, איך הניחו שום קדשה בעולם? כי מסתמא, אינן מטהרות עצמן. ואיך לא תקנו: שום תקון, או שום גדר של טהרה, בפנוי'; כדי שלא יכשלו בה רבים, אחר שהבא עליה ענוש כרת, והנוגע בה באצבע קטנה, חייב מלקות? ואם באשתו בלבד הכתוב מדבר, הוקשה לך לשון הרמב"ם ז"ל, בהרבה מקומות. שנראה מדבריו: שאסור הנדה: בין באשתו בין בפנויה.  תשובה: דבר ברור הוא: שאסור ביאת הנדה; לא באשתו בלבד, אלא: בין באשתו, בין באשת חברו, בין … וזה דבר פשוט. ולא נסתפק בו אדם מעולם. והדבור בו מותר. גם הכתוב אמר סתם: ואל אשה בנדת טומאתה. ולא חלק: בין אשתו, לפנויה. שהרי לא אמר: ואל אשתך. ….  ….  ומה שהוקשה לך: איך חז"ל הניחו שום קדשה בעולם, שהרי אינן מטהרות עצמן. חלילה שחז"ל יניחו קדשה, ויתירוה! ואף אם תהיינה טובלות לנדותן. והכתוב צווח. באו ונצווח על דורנו, שאין דומה יפה. וגדולי הדור, העלם יעלימו את עיניהם, פן יכשלו בני פריצי עמנו, בנכריות, ותצא אש, ומצאה קוצים, ונאכל גדיש. והקדשות שהיו בימי חז"ל, שלא ברצון חכמים היו.  ומה שנפלאת: איך לא תקנו טבילה לפנויה, כדי שלא יכשלו בה רבים? ואין כאן מקום תמה! שהרי כיון שהפנויה אסורה, כמש"כ. אדרבה! אם היתה טובלת, היה בה מכשול: שהיו מקילין באסורה; כיון שאין אסורה, אלא מדרבנן. | Responsa Rivash 425 (translation: Dr. Jennie Rosenfeld) Question: You asked me to explain to you that which is written in the Torah: “And to a menstruating woman do not come near to uncover her nakedness” is it said about every menstruating woman, be it his wife or be it an unmarried woman? And if so, how was this not mentioned in all the laws of niddah discussed in the Rashba, Raavad etc. For according to their words, they only talked about married women; and how did it become customary to be known by all that an unmarried woman is permitted? And according to our sages, how did leave any kedeshot in the world? For it must be true that the women did not purify themselves. And how did they not make a decree – no corrective or fence of purity for single women; so that the many not stumble since after all the punishment is Karet, and one who touches the little finger of a nidda incurs lashes? And if it was only about his wife that the Torah talks about, there is difficulty with the language of the Rambam in many places since he makes clear that there is a prohibition to touch a niddah – whether single or married:  The answer is clear: Sex with a menstruating woman is forbidden whether she is his wife, whether she is his friend’s wife, whether she is unmarried and this is clear. And no-one ever doubted it. And even speaking about it is unnecessary. The verse even said simply “To a menstruating woman do not come near. And it made no distinction between one’s wife and an unmarried woman for it did not say “to your wife”…..  And that which you asked: how did Chazal allow any prostitutes to remain in business for they do not purify themselves (through immersion). Heaven forbid that Chazal would permit prostitution, even if the prostitutes were to immerse for menstrual purity! For the Torah has shouted: “There should not be a prostitute from the daughters of Israel.” ….Come let us reprimand our generation which is not behaving properly. And the leaders of our generation hide their eyes (and pretend not to notice the Jewish prostitutes), lest the promiscuous Jewish men fall prey to non-Jewish prostitutes and that lead to even worse consequences. And the *kedeshot* that existed in Chazal’s time were against their wishes.  And that which seemed unfathomable to you: How did they not establish immersion for the single woman, so that people not fall prey to her? There is no room for questioning. For because the unmarried woman is prohibited as we explained—it would be the opposite! For if she would immerse then she would truly be a stumbling block for then people would be lenient on the prohibition [of premarital sex], since the prohibition would then be rabbinic [and not an *issur kareit*]… |

It is clear from the responsa that Rivash recognized how easy it would be to clear the way for outright promiscuity with the permission of Torah if single women would be allowed to go to *mikvah*. His position on the matter essentially became the only one that is cited thereafter in Tur and Shulhan Arukh, continuing the societal, religious and halakhic norms in place both before and after his time which allowed traditional Jewish society to prevent single women from using the *mikvah.* By aggressively enforcing a ban on *mikvah* use before marriage, the severity of the threat of *karet* acted (and continues to act) as a deterrent.

It is interesting that single women using *mikvah* has re-emerged as an issue from the late 20th century onward but with a major difference: Instead of men looking to immerse all women as a spiritual insurance policy against *karet*, women are seeking out the ritual as a way of bridging their sexual behavior with halakha. Rarely do they consult with rabbinic authorities but come to the decision on their own or together with their partner.

I have heard of mixed rabbinic positions on whether single women should immerse in a *mikvah* when they are sexually active. Some feel that at least *karet* is avoided and perhaps through engaging in the ritual, there is a better chance of maintaining a level of commitment to observance and to monogamy. Others, like Rivash feel that couples should feel guilt over their transgressive behavior. Allowing women to immerse would give a veneer of permissibility yet, this school of thought argues that there is no way to sanction non-marital relations.

The practice of single women using *mikvah* is unique to a halakhically observant educated demographic who are violating the religious (and halakhic) mandate to remain celibate until marriage but temper it with the knowledge that *mikvah* immersion neutralizes the severe biblical punishment of *karet*. It is emblematic of a more relaxed sexual culture and a sense of agency that financially independent adults living on their own feel when making decisions about their personal life and halakhic behavior. For some of these couples, having sex after the woman has immersed in a *mikvah*, while not rabbinically sanctioned, is to their minds still within the bounds of their observant life style[[5]](#footnote-5). It is also reflective of those trying to navigate the conflict inherent in the reality of their lived experience both as Orthodox Jews and sexually active singles.

Anecdotally, I have met observant couples who began using *mikvah* in some way before marriage and others who while sexually active, deliberately decided to wait until marriage in order to distinguish non-marital from marital sexual relations and frame *mikvah* use as unique to their commitment to a Jewish marriage.

Not surprisingly, this practice is most prevalent in cities where there are greater clusters of religious singles along with more anonymity around *mikvah* use than in past generations when the community had the ability to monitor closely who was using the *mikvah*.

# Kadesh/Kadesha

The question of single women using the *mikvah* comes up mostly for couples in a committed relationship. In this section, the halakhic differences between promiscuous and committed non-marital sexual relations will be considered.

Interestingly, there is no outright prohibition in the Torah against engaging in consensual sexual relations when a woman is unmarried. There is however a specific Torah prohibition against sexual promiscuity which can be 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. |

It is noteworthy that the words *Kadesh* and *Kadesha* come from the Hebrew root k.d.sh meaning holy, possibly reflecting the ancient practice of sexual rituals as a form of worship in other religions[[6]](#footnote-6). It is hardly surprising that the Torah prohibits such a profession for both men and women. There is also mention of the *zonah*, another term for prostitute, in a number of Biblical verses.

For instance, a *zonah* may not marry a high priest (later understood to include all priests) nor may her wages be used to purchase sacrifices in the Temple[[7]](#footnote-7). In short, there is a prohibition on all types of prostitution for both men and women[[8]](#footnote-8). In contrast, there is no explicit biblical prohibition regarding a man and woman who designate one another as sexual partners in some manner of relationship[[9]](#footnote-9), even if they are not officially married. While the Talmudic discourse largely concurs with this conclusion, there is one Tannaitic sage who defines all sexual relations without matrimonial intent as promiscuous.

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| Tractate Yevamot 61a-b  Mishna: A common priest may not marry a sexually underdeveloped woman [*aylonit*], unless he has a wife and children. [Rabbi Yehuda](file:///C:\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 *zonah* stated in the Torah. And the Rabbis say: The only *zonah* is a female convert, a freed maidservant, and any who engaged in licentious sexual intercourse.  Talmud: 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](file:///C:\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: [רַבִּי אֶלְעָזָר](file:///C:\topics\rabbi-elazar-b-shamua) אוֹמֵר פָּנוּי הַבָּא עַל הַפְּנוּיָה שֶׁלֹּא לְשֵׁם אִישׁוּת עֲשָׂאָהּ זוֹנָה  אָמַר [רַב עַמְרָם](file:///C:\topics\rav-amram) אֵין הֲלָכָה [כְּרַבִּי אֶלְעָזָר](file:///C:\topics\rabbi-elazar-b-shamua). |

The Mishnah is presenting a list of women prohibited from marrying a priest based on the Biblical verse that prohibits a priest from marrying a *zonah* or a divorcee, even if she is technically a virgin, although priests with the exception of the high priest are not required to marry virgins. The term *zonah*, according to this Mishnah, includes female converts (even virgins), freed female Canaanite slaves and women who are sexually promiscuous in the manner of prostitutes. R. Eleazar in contrast, has a more stringent position: all sexual relations without matrimonial intent render the woman (but not the man) a *zonah*. However, even according to this more stringent Talmudic position, sexual relations with matrimonial intent would not render the woman a *zonah*.

Nonetheless, in the post-Talmudic era, Maimonides unequivocally rules that all sexual relations without *kiddushin* (halakhic marriage) violate the prohibition of *kadesha,* although he does not go so far as to define a non-virgin as a *zonah* or prohibit her from marrying a priest.

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| Maimonides, Laws of Ishut Chapter 1:4  Before the Torah was given, a man would meet a woman in the marketplace and if both he and she desired, he could give her payment, engage in relations with her wherever and then depart. Such a woman is referred to as a harlot.  When the Torah was given, relations with a *kadesha* became forbidden as it is stated, “There shall not be *kadesha* among the daughters of Israel.” Therefore, a person who has sexual relations with a woman only for the sake of prostitution, without matrimony 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. |

While Maimonides takes a hard line against all sexual relations outside of marriage, anchoring his position in the prohibition of *kadesha*, 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. He argues that only a promiscuous woman who is available to any man is a *kadesha*. If the woman is monogamous, designating herself to one man, there is no prohibition, even without the ritual of *kiddushin*. He compares her to the relationship of concubine which was a sanctioned non-marital sexual relationship.

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| Raavad commented:  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 actually 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’ codification of law. One school of interpretation defines all sex outside of marriage as promiscuous. 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.

Rivash in his afore cited responsa, acknowledged the prominence of those who rely on the lack of an explicit biblical prohibition to permit sexual relations outside of marriage. He refuted this vigorously by citing Maimonides and furthermore, stated unequivocally that although there are those who disagree with Maimonides (i.e., Raavad), all would agree non-marital relations would violate rabbinic law[[10]](#footnote-10). Nonetheless, the amorphous character of the prohibition around such relations played a key role in the blocking of single women from immersing in the *mikvah* back in the 15th century. In this way there could be no disagreement about the transgressive nature of sexual relations with a *niddah*. The severity of the threat of *karet* acted (and continues to act) as a deterrent for religious couples considering sexual relations.

It is remarkable to note that in the 18th century, Rabbi Jacob Emden sought to reintroduce the institution of concubine, in order to counter the sexual immorality of his own day. In a very long responsa, he analyses many of the sources brought earlier in this chapter and concluded that there is room to permit a man to take a woman as a concubine particularly in order to avoid greater promiscuity. Among other things, he insisted that a couple committing to this non-marital framework observe laws of *mikvah*, practice monogamy for the duration of the relationship and act in consultation with a rabbi.

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| She’elat Yaavetz Pt. 2 No. 15 (Translation Rabbi Michael Gold and Nechama Goldman Barash)  I further attest that one who wishes to rely on my instructions should nonetheless not do so unless he appoints a Rabbi and just teacher to instruct him. Who will arrange the permission according to full seclusion safeguarded from mishap, in other words, to designate a room in his house and warn her from seclusion from all other men. And if he finds that she has transgressed and not been careful (in interactions with other men}, he will send her immediately from his house. And he should ensure that she immerses at the proper time and inform her that there is no shame to this immersion at all. And explain to her as well that children who will be born to her from him are fully accepted (*kosher*) as with all those who have proper lineage, when she holds up the agreement and remains faithful to this man. However if she betrays him, then the children are children of promiscuity and she would be violating the prohibition of *kadesha* for every sexual intercourse she engages in, whether with him or any other man. And in this way, if they listen and follow all that was said, then there is no concern for stumbling in sin….  And also *talmedei chachamim* (Torah sages) require this even more so, for every man who is greater than his friend, his desire is greater as well [a quote from Tractate Sukkah 52a] and it is better that he have bread in his basket [also quote from Talmud meaning sexual satiety] and have children if he has not merited to do so from his wife…and it all follows the intention of his heart. As long as a person directs his heart to Heaven…and I have already embellished on this topic for too long for those who understand and intuit the matter. That it emerges from “*there is time to act on behalf of the Lord* [a principle that is invoked to allow for halakhic latitude when dire need calls for it]”! | שאלת יעבץ חלק ב מספר 15  עוד אני מעיד במי שרוצ' לסמוך על הוראתי זאת עכ"פ לא יעשה כזאת עד שימלך ברב ומור' צדק לעדתו. שיסדר לו ההתר ע"פ יחוד גמור בטוח ממכשול דהיינו לייחד לה חדר בביתו ולהזהיר' מיחוד כל שאר אדם. ושבאם תמצא שעבר' ולא נזהר'. ישלחנ' מיד מביתו. וכן יצוונ' שתטבול בזמנ' ויודיענ' שאין בזה בושה. כלל. ולבאר לה ג"כ שהבנים שתלד ממנו. כשרים כשאר מיוחסים שבישראל כשתשמור בריתה ותהא נאמנת לאיש הזה. משא"כ אם תזנה עליו. אזי בניה בני זנונים וחייבים עליה משום קדשה על כל ביאה וביאה בין איש זה בין אחרים. ובאופן זה אם ישמעו ויעשו ככל האמור אזי אין אחריות מכשול עון…  וגם ת"ח צריכים לכך ביותר שכל הגדול מחברו יצרו גדול וראוי להיות לו פת בסלו ולקיים זרע אם אינו זוכה לו מאשתו שנפלו בגורלו והכל הולך אחר כוונת הלב. בלבד שיכוין אדם דעתו לשמים. …וכבר הארכתי יותר מדי למבין ומשכיל על דבר. שהוא משום עת לעשות וגו'. |

While Emden’s suggestion was rejected by both rabbis and communities alike, his approach is reflective of an attempt to integrate halakha into actual lived lives. He felt it better for people engage in sexual activity that had some degree of religious sanction than in totally forbidden activity they were engaging in anyway. Although such a sexual relationship could not be equated with marital sexuality, at least it infused the sexuality with some form of commitment and meaningful intention. The spirit of his proposal has been adopted to by a small percentage of religious couples in committed relationships who use *mikvah* before marriage (mentioned in greater detail in the previous section) and practice monogamy but in contrast to Emden’s required rabbinic direction, it is mostly being carried out outside of the framework of any sort of rabbinic consultation.

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| Following is a summary of different types of touch and their halakhic ramifications as analyzed above:  **Sexual relations**, defined as penetrative sex, (anal or vaginal), carry the greatest degree of halakhic consequence on a religious scale if the woman is *niddah* since the punishment as stated in Torah is *karet*.  If one has relations with an unmarried woman who is not *niddah*, it still violates a biblical transgression of *kadesha/zenut* according to Maimondes (as explained above). Without the *niddah* factor and in a committed, monogamous relationship, it will be difficult to find public rabbinic sanction but, there are those throughout halakhic history who permitted such a relationship.  **Sexual touch with sexual intent** with a woman who is *niddah* . This includes all type of sexual touch short of penetration. According to Maimonides such touch violates a negative prohibition if there is intent to be sexual. According to the school of Nahmanides, all sexual touch violates a rabbinic rather than biblical prohibition.  **Emotional touch**, for instance, a hug, holding hands, sitting or walking arm in arm, falls into a grey area. If it remains non-sexual, according to the more stringent approach of Maimonides, it violates a rabbinic safeguard established to prevent touch from becoming sexual. Thus, even if the emotional touch should unintentionally elicit a sexual sensation, it does not meet the criteria stated by Maimonides or by Shakh for intent, and would certainly not violate a biblical prohibition. The extreme caution for this kind of touch is due to rabbinic awareness that the emotional can quickly veer into the sexual at times of heightened emotion or simply because two people are attracted to one another.  **Casual and service-based touch** are not prohibited based on halakhic criteria analyzed above. Tapping someone on the shoulder or professionally shaking someone’s hand does not violate any category of *halakha*. Medical professionals are always permitted to treat members of the opposite sex. However, men and women within the Orthodox community often make absolute decisions to avoid any sort of physical contact, including hand shaking, outside of service or medical touch as a defining religious safeguard clarifying for themselves and others a strict no-touch policy. |

**Expectations of virginity and fear of *mamzerut***

There are several other aspects to consider when thinking about non marital sexuality that are quasi-halakhic and are nonetheless vaguely prevalent within the religious discourse.

Virginity, particularly for women, is a religious expectation that is expressed in the Jewish marriage contract (*ketubah*). Specifically, the *ketubah* of a virgin is traditionally worth an amount that is twice as much as that of a non-virgin and throughout its reading under the *huppah*, the bride is referred to as the virgin bride. One of the educational tactics used in religious education is to tell young women that this public reading is a declaration of their chastity or, alternatively of their promiscuity if they had relations. This is more scare tactic then true *halakhic* threat since the *ketubah* is a contract between husband and wife. If the husband is in agreement, information about the woman’s virginity does not have to be factual and her prior sexual experience not a matter of public record.[[11]](#footnote-11) Since many young women are ignorant of this *halakhic* reality, the threat of being exposed in the *ketubah* is a real one.

Additionally, this misconception has led to situations where religious couples will choose to engage in oral and anal sexual relations in order to preserve the woman’s virginity so that her *ketubah* not be compromised, or because they believe that by refraining from vaginal intercourse they escape the punishment of *karet*, without considering the broader questions of mutual pleasure and whether this behavior is preferable. In the last part of this chapter, the question of intentional, consensual decision making around sexual behavior in light of religious education will be addressed.

Similarly, young women are led to believe that if they become pregnant out of wedlock, the child will be stigmatized as *mamzer*, inaccurately translated as bastard, which in English does mean a child born out of wedlock. The threat of *mamzer* is significant since a child branded suchcan never marry within the congregation of Israel, destined to only marry other *mamzers* because the blemish is forever passed on. This fear is also unfounded since a *mamzer* is the child of an adulterous or incestuous sexual relationship. It is neither the product of a non-marital relationship nor of a woman who has sexual relations when *niddah*. Nonetheless, the possibility of giving birth to a *mamzer,* since it is vaguely associated with all illicit sexual relations, adds to the stigma around pre-marital sex.

Masturbation

A man is prohibited from masturbating, especially when that results in ejaculation outside the context of sexual relations with his wife. The primary source material for this prohibition is vague.[[12]](#footnote-12) However, a man who deliberately stimulates himself for sexual pleasure culminating in ejaculation is described as wasting seed. In religious texts the avoidance of masturbation is called *shmirat habrit* or guarding the covenant. This is meant to reflect a man’s commitment to his covenant with God as expressed through the central rite of circumcision, symbolizing sexual self-control. It is beyond the scope of this book to present an analysis of those sources.[[13]](#footnote-13) The Zohar’s extreme position, equating masturbation with a transgression worse than all others, has had a tremendous impact on attitudes towards male sexuality and masturbation.

Female masturbation is sparsely mentioned in rabbinic sources. While there is a difference of opinion in the Rishonim, with some halakhically opposing female masturbation, it is not referred to at all in Shulhan Arukh. The majority opinion is that since a woman experiencing sexual pleasure does not involve wasted seed, female masturbation is not clearly prohibited. Nonetheless, there is an air of uncomfortable disapproving silence on the topic, reinforcing the attitude that sexual self-gratification is to be avoided even if not overtly forbidden.

**Unsanctioned Sexual Urges**

Talmudic sources and stories about unsanctioned and illicit sexual urges appear throughout rabbinic literature. Rarely is a solution offered and often, the protagonist shows heroic discipline in refraining from the transgressive act. However, in the text below, an outlet is sanctioned for a man who is overcome by his desire.

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| Tractate Kiddushin 40a  [Rabbi Ilai](file:///C:\topics\rabbi-ilai-(ii)) the Elder says: If a person sees that his evil inclination is overcoming him, he should go to a place where he is not known, and wear black clothes, and he should cover himself in simple black garments, and he should do as his heart desires, but he should not desecrate the name of Heaven in public. | תלמוד בבלי מסכת קידושין דף מ עמוד א  אמר רבי אלעאי הזקן: אם רואה אדם שיצרו מתגבר עליו, ילך למקום שאין מכירין אותו, וילבש שחורים ויתכסה שחורים ויעשה כמו שלבו חפץ, ואל יחלל שם שמים בפרהסיא |

In this source, Rabbi Ilai, who seems to be addressing fellow members of the Talmudic academy or possibly even himself, acknowledges the reality of sexual urgency and at times its overwhelming presence in a person’s life. He does not condone it, nor does he demand absolute restraint.[[14]](#footnote-14). Rabbi Ilai is presenting the lesser of the evils in allowing a person to discretely find a way to surrender to his illicit sexual urges without blatantly and publicly flaunting the religious values and practices in the religious community.

In the next source, despite the risk to a man’s life, the rabbis forbid any outlet for his illicit sexual need.

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| סנהדרין עה.  אמר רב יהודה אמר רב:  מעשה באדם אחד שנתן עיניו באשה אחת, והעלה לבו טינא.  ובאו ושאלו לרופאים  ואמרו: אין לו תקנה עד שתבעל.  אמרו חכמים: ימות, ואל תבעל לו.  תעמוד לפניו ערומה?  ימות ואל תעמוד לפניו ערומה.  תספר עמו מאחורי הגדר?  ימות ולא תספר עמו מאחורי הגדר.  בשלמא למאן דאמר אשת איש היתה - שפיר.  אלא למאן דאמר פנויה היתה מאי כולי האי  רב פפא אמר: משום פגם משפחה.  רב אחא בריה דרב איקא אמר: כדי שלא יהו בנות ישראל פרוצות בעריות. | Tractate Sanhedrin 75a  Rav Yehuda says that Rav says: There was an incident involving a certain man who set his eyes upon a certain woman and passion rose in his heart, to the point that he became deathly ill. And they came and asked doctors. And the doctors said: He will have no cure until she engages in sexual intercourse with him.  The Sages said: Let him die; she may not engage in sexual intercourse with him.  The doctors said: She should at least stand naked before him.  The Sages said: Let him die; she may not stand naked before him.  The doctors suggested: The woman should at least converse with him behind a fence.  The Sages insisted: Let him die; she may not converse with him behind a fence.  Rabbi Ya’akov bar Idi and Rabbi Shmuel bar Naḥmani disagree about this issue. One of them says: The woman in question was a married woman, and the other one says: She was unmarried.  This is fine according to the one who says that she was a married woman . But according to the one who says that she was unmarried, what is the reason for all this opposition?  Rav Pappa says: Because it is a flaw on the family, [i.e., harm to the family’s reputation].  Rav Aḥa, son of Rav Ika, says: This is so that the daughters of Israel should not be promiscuous with regard to forbidden sexual relations. Were they to listen to the doctors’ recommendations, Jewish women might lose moral restraint. |

In this text, a man has developed an unnatural and insatiable sexual desire for a specific woman. The rabbis forbid him to have sexual relations with her, see her naked or, even converse with her behind a fence in order to assuage this desire, although it may lead to loss of his life.

In the Talmudic discussion Rav Pappa and Rav Aha try to understand why such stringency would be necessary for an unmarried woman given that no severe sexual prohibition exists when it comes to an unmarried woman (as compared to adultery or incest). Why should we risk a man’s life for such a prohibition, especially given the rabbinic principle that threat to life overrides most biblical prohibitions? Rav Pappa suggests the concern is for her family’s honor. Rav Aha takes the discussion in a different direction: The concern is for the moral character of the daughters of Israel. If we would begin asking women to perform sexual acts for men outside of marriage, it would result in women losing their moral compass regarding sexuality.

I would add to this that the premise of the story, allowing a man to objectify a woman for his own sexual needs without any consideration for her as a partner, (not to mention without consideration for her consent!) is antithetical to the moral, social and religious fabric of a Torah based society. Regardless of how one reads the story, we see evidence that sexual morality within the rabbinic discourse goes beyond the letter of the law.

Taken together, the stories seem to be polar opposites but in fact, I believe they can be read in synergy with one another. In the Rav Ilai text, a man is given license to discretely find a sexual outlet if he is unable to overcome his evil inclination. Women are shadowy presences, unknown and unnamed, concealed perhaps by the man’s dark clothing. The code of conduct is directed by the rabbinic framework. The man’s behavior does not threaten society because he is instructed to behave outside of it. In contrast, in the text in Sanhedrin, no such license is given. In this story, the woman is known and identified to the man and the rabbis. She is a daughter and a sister to her family. Any action on his part will be very much taking place publicly and within society. In light of this, it seems, sexual morality demands forbearance and avoidance of any impropriety, at least for the family’s sake and for the protection of all of the sisters and daughters of Israel in our communities. Together, it seems that the stories can be read as reflecting the complexity of evaluating individual situations that have potential impact on the fabric of religious society. With regard to the broader “*shomer negiah*/non marital sexuality” conversation, there is a necessity in providing guidance for the private sexual reality experienced by many religious men and women. However, publicly, religious society can and should reinforce its sexual values through the lens of halakha.

In a similar vein, perhaps it is time to rethink the complete ban on masturbation or at least weigh it against the other options for sexual release. In order to acknowledge sexual urges and redirect men and women from sexually experimenting with one another, there could be a sliding scale in which masturbation might be found as a more optimal alternative. This is not without precedent. Sefer Hassidim in the 13th century writes:

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| Sefer Hassidim 176  A person once asked about one who is overcome by desire and fears transgressing having sex with a married woman or with his menstruating wife or any of the other sexual prohibitions which are forbidden to him. Could he masturbate so that he not transgress? And they answered him at that time he should masturbate because that is preferable to transgressing adultery with a woman. However, he needs atonement and should sit in ice during the winter or he should fast forty days during the summer. | ספר חסידים  מעשה באחד ששאל מי שיצרו מתגבר עליו וירא פן יחטא לישכב איש או עם אשתו נדה או שאר עריות האסורות לו אם יכול להוציא זרעו כדי שלא יחטא והשיב לו באותה שעה יש לו להוציא שאם אשת איש מוטב שיוציא שכבת זרע ואל יחטא באשה. אבל צריך כפרה ישב בקרח בימי החורף או יתענה ארבעים יום בימי החמה. |

Sefer Hassidim does not want his readers to become casual about masturbation, and so, the atonement requirement reinforces the *b’dieved*, nature of the suggestion. Nonetheless, the question and answer presented are fascinating and reflect a thoughtful awareness of the need for a sexual outlet for men facing enforced abstinence, even in the case of a *niddah* wife where the prohibited period will eventually end!

Additionally, the possibility for a designated monogamous sexual relationship with *mikvah* immersion could be presented to individuals without seeing it as broadly accepted within society. This proposal correlates with similarly minded suggestions; Rabbi Jacob Emden, raising the possibility of reintroducing the concept of concubines, and the practice of single women using *mikvah*. Both suggestions echo the Talmudic discourse of Rav Ilai, showing a willingness to confront and respond to an inevitable reality for individuals.

**Crossing the *shomer negiah* threshold**

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 often deny that such behavior is taking place. The sinfulness of the encounter overpowers 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 is too often coupled with drinking, social expectations and an inability to discuss or set boundaries. This is not unique to religious couples sexually exploring. However, once the *shomer negiah* threshold is crossed, there is no direction or framework for thinking about other Jewish standards when sexually touching, or possibly sexually using, another person. To quote Rabbi Michael Gold, “sex as a purely physical act outside of the context of a relationship detracts from holiness…. It is the opposite of holiness or designation – it is sex as purely physical release with no pretense of relationship[[15]](#footnote-15).”

Nonetheless, especially in such spaces (of meaningless causal sexual interaction), there is a need to encourage people to think about crafting a Jewish sexual ethic that they can call up during such encounters. In one of the few resources calling for a Jewish sexual ethic, Rabbi Arthur Green writes that sexually active men and women must evolve a sliding scale of sexual values. “At the top of this scale would stand the fully knowing and loving relationship….while rape – fully non-consenting .... sexuality – would stand at the bottom. Somewhere near the middle of the scale, neither glorified nor condemned, would be the relationship of two consenting persons, treating one another with decency, fulfilling the biological aspects of one another’s love needs, while making no pretense at deeper intimacy. Given such a scale, a Jew might begin to judge his/her own sexual behavior in terms of a series of challenges which s/he might want to address”.[[16]](#footnote-16)

Casual non-relational sex does not reflect the criteria of holiness. This does not mean, however, that there are no ethical or even religiously motivated considerations for those engaging in such sexual relations. At the very least, people should be proactive in invoking other Jewish values and commandments: To respect a fellow human being, to avoid causing harm to oneself or one’s partner, to protect oneself and one’s partner. Being honest and intentional about sexual decision making, especially where it runs counter to religious practice, can help people implement other ethical practices and other Jewish values.

Even within the context of a relationship, I have seen how cognitive dissonance between the perception of religious observance levels and prohibited sexual behavior can inhibit emotional closeness that might be formed through the physical intimacy which is happening anyway. Shame over sexual exploration becomes detrimental, hindering the possibility of touch serving as a conduit for emotional growth and an impetus to move towards marriage.

Many years ago, a young woman called me to describe a situation in which she and her boyfriend, both aligning themselves with a more “right wing” religious practice and committed to *shomer negiah* behavior, were careful not to be alone with one another. However, they repeatedly found themselves in compromising situations in outdoor spaces hoping not to get caught. Marriage was not a possibility for at least a year given their ages (eventually they did marry). The rabbi’s wife she went to for counsel was kind and told her that while falling in this manner was natural, they should keep picking themselves up and recommitting to *halakha*. However, the sense of constant failure was crippling any ability to gain control over the situation. Here, the cognitive dissonance created around *shomer* was leading to more extreme sexual behavior rather than towards no touch. I suggested they create safer and more realistic boundaries by acknowledging their behavior and infusing it with mutual respect for one another and a sense of what role physical touch was playing in the relationship in terms of bringing them towards greater emotional intimacy. In other words, it was important that they create a Jewish sexual ethic to contain their behavior.

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, whether it is encouragement to save touch for marriage, or how to set boundaries beyond the strictest *halakhic* prohibitions. There is no permission given to be mindful about setting practical 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. There too, there is a need to be mindful about limits; thinking and expressing feelings about consent, pleasure, desire, and need.

**An imperfect world: How should we be educating?**

To reinforce religious values, some form of religious sex education became has become imperative. While seeking to stay true to commitment to *halakha* is paramount in religious communities, it is also the responsibility of parents and educators to ensure that 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 vital that religious education be accompanied by clear information about sexual development and the normalcy of sexual desire and attraction, for heterosexual and LGBTQ students. Only then can people take ownership and make room for clear decision making with religious values and/or halakhic commitment as guiding factors.

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. Similarly, failure to provide clear definitions of consent with regard to touch and sexual behavior runs the distinct chance of non-consensual interactions when such engagement occurs. 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 *halakha* is not being called upon to permit the prohibited. Yet, as was shown in the sources there is nuance in *halakha* and distinction between different kinds of touch and types of sexual behavior. It is certainly within the purview of religious parents, educators and rabbis to provide resources and offer advice beyond the boundaries of Jewish law. The sages of the Talmud repeatedly recognized that sometimes in matters of sexuality, guidance *b’dieved*, is mandated.[[17]](#footnote-17)

In my years of teaching and lecturing, I find that many religious single men and women, in heterosexual and LGBTQ[[18]](#footnote-18) communities, are desperately looking to build a Jewish sexual ethic and infuse their sexuality with meaning despite making non-halakhic decisions. It is here, at this most critical area of their lives, they find themselves without any sort of religious guidance from educators, rabbis and mentors. In order to create an authentic religious response to the sexual behavior taking place outside of marriage, we need to intentionally and fully think about the values and vocabulary we can use in a Jewish context outside of a justification framework. This too is Torah and we need to learn it.

1. Excerpted from The New York Times, “The Abortion I Didn’t Have”, Merritt Tierce. [↑](#footnote-ref-1)
2. The next few paragraphs have been excerpted from chapter 8. For a longer text analysis of source material, see there. [↑](#footnote-ref-2)
3. The focus will be on a woman who is *niddah* but the same methodology applies to all sexually forbidden relationships. For a detailed analysis of this prohibition and the halakhic requirements see the previous chapter. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. In the early 21st century, this practice came to the forefront of public discourse in Israel when questions of religion and state erupted around the controlled nature of who was eligible to immerse in publicly funded *mikvaot*. It was common practice for *mikvah* 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. Since *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 litigation that eventually made its way to Israel’s High Court, it was agreed that officially single (and gay) women would not be allowed to immerse, however *mikvah* attendants were no longer permitted to ask the marital status of the immersing women resulting in a “don’t ask, don’t tell” policy. [↑](#footnote-ref-5)
6. BDB p. 873. [↑](#footnote-ref-6)
7. Leviticus 21: 14 and Deuteronomy 23:19. [↑](#footnote-ref-7)
8. |  |  |
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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-8)
9. A man sexually assaulting or seducing a woman comes with consequence in Torah [↑](#footnote-ref-9)
10. This statement was not completely accurate since if a man designates a woman as his concubine, it is considered by those in the Raavad school to be permitted. [↑](#footnote-ref-10)
11. Igrot Moshe Orach Chaim 4: 118. Regarding the writing of the *ketu*ba, 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-11)
12. There is a range of opinions among halakhic authorities on the question of male masturbation. Some view it as a Torah prohibition and others argue that it is a rabbinic prohibition. There are lenient opinions that argue that a married couple may engage in non-penetrative sexual intercourse for the sake of sexual pleasure, even though the man ejaculates outside of the woman’s vagina. [↑](#footnote-ref-12)
13. [↑](#footnote-ref-13)
14. Missing from the story is the exact way this should be done: Jewish or non Jewish woman? Niddah or not niddah etc. That is not the purpose of the story. Later commentaries try to fill in those gaps. [↑](#footnote-ref-14)
15. Gold, Michael, Does God Belong in the Bedroom?, Jewish Publication Society, 1992, p. 26. [↑](#footnote-ref-15)
16. Green, Arthur, “A Contemporary Approach to Jewish Sexuality,” in The Second Jewish Catalog, edited by Sharon Strassfeld and Michael Strassfeld, JPS, 1976, p. 99. [↑](#footnote-ref-16)
17. See Yoma 18b where there were Talmudic sages who took a bride for a night or Moed Katan 17a cited above. These sources do not sanction non-martial sexuality but they make room for semi-justified outlets. [↑](#footnote-ref-17)
18. The topic of religious men and women who are LGBTQ and struggling to define their sexual identity within the framework of religious observance is complex. 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-18)