The identification of a woman’s voice as a likely source of sexual stimulation has led many modern Halakic authorities to ban, albeit with substantial dissent by other authorities, activities such as choirs of men and women together, women singing Zemirot in the presence of men other than their husbands, listening to records of women singing, and even women singing lullabies to their children in the hearing of men. Talmudic sources, however, seem to provide only the slightest web upon which these later stringencies are based.

The primary Talmudic source ascribing sexual quality to the female voice is a statement ascribed to the Amora Samuel and cited twice in the corpus of the Talmud. The first instance of its use appears in tractate Berakot in the context of an Amoraic discussion of the permissibility of reciting the Shema in the presence of a nude person. At the conclusion of the discussion, the Gemara inserts four separate statements concerning sexual incitement, one of which is the declaration by Samuel that Kol b’isha eruah, “a woman’s voice is a sexual incitement.”

The identical statement ascribed to Samuel is found a second time in tractate Kiddushin in a context totally unrelated to the passage in Berakot. In this second instance, R. Judah, having unwillingly appeared before R. Nahman for adjudication of a claim against him on a charge of

1. Responsa Ḥaṭam Sofer, Hoshen Mishpat, no. 190.
2. Be’er Sheba Kuntres Be’er Mayim Īlam, no. 3.
slander, proceeded to cast aspersions on the scholarship of R. Nahman
by challenging the propriety of every element of his behavior. The fol-
lowing three exchanges then take place:

1. **R. Nahman**: Will you send a greeting to my wife, Yalta?
   **R. Judah**: Thus said Samuel, “A woman’s voice is a sexual
   incitement.”

2. **R. Nahman**: Is it possible through a messenger?
   **R. Judah**: Thus said Samuel, “One must not inquire after a
   woman’s welfare.”

3. **R. Nahman**: Then by her husband!
   **R. Judah**: Thus said Samuel, “One must not inquire after a
   woman’s welfare at all!”

The matter of R. Judah greeting Yalta is then dropped (at her insis-
tence), and the charges against R. Judah are discussed.

While other elements of Samuel’s position, as reported by R. Judah,
appear elsewhere in the Talmud, the declaration of a woman’s
voice as a source of sexual incitement is greeted with complete silence in
both instances of its citation, with neither disagreement nor subsequent
corroborating evidence to be found in the corpus of Talmudic literature.

A further Talmudic reference to the arousing quality of women’s
voices is referred to in the context of the discussion of the general
prohibition against singing at feasts, which was instituted at the time of
the destruction of the Second Temple. That ban, with a fascinating history
of its own, elicits in the Gemara the following comment: “R. Joseph
said: When men sing and women join in, it is licentiousness; when
women sing and men join in, it is like a fire raging in flax.”

On the basis of this dictum, the Geonim uniformly and strongly
condemn the practice of having women entertainers at festive gatherings
of men, whether the women be instrumentalists or vocalists. But the

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10. Sojat 48a.
18–19, pp. 6–10; and cf. Op. Ha-Geonim, Succah, sec. 189, pp. 69–70. Also see

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The force of this opposition seems exclusively to emerge from the ban
against music rather than the licentious character of women’s singing.
Indeed, in the course of the entire Geonic discussion of this matter,
never once is Samuel’s dictum, *Kol b’ishrit erwa*, cited, despite its obvious
relevance to the issue under discussion. This fact alone would have been
sufficient to allow a conclusion, which is, however, explicitly formulated
by Hai Gaon, that Samuel’s law is not a general proposition as to the
sexually arousing character of a woman’s voice, but rather is a restriction
on the recitation of *Shema* under circumstances where it is not possible
to maintain proper concentration.

The Geonic separation of these two laws, that of Samuel and that of
R. Joseph, remained the norm of Rabbinic treatment of the two issues
for the following eight hundred years. R. Joseph’s law did not enter into
consideration of the law of *Kol Isha* until the advent of R. Moshe Sofer
in a responsum which he wrote in 1814. We will therefore set aside the
issue of the ban on music in order to focus more closely on the attitude
toward women’s voices.

The *Rishonim*, basing themselves on the meager sources provided
in the Talmud, began to investigate the implications of Samuel’s state-
ment. While all Franco-German *Rishonim* accepted Samuel’s statement
as Halakically binding, their positions differed with regard to two basic
questions related to the scope of the resultant prohibition. Firstly, are the
consequences limited to the recitation of *Shema*, and secondly, are all
forms of a woman’s voice equally included under the law?

Rab Hai Gaon and Rabbenu Hananel were apparently the primary
influences which led to the restriction of Samuel’s dictum to the
recitation of *Shema*. Most Geonic scholars, foremost among them R.
Eliezer b. Yoel Halevy, proceeded to indicate that given Samuel’s law,
one was prohibited from reciting the *Shema* while hearing the voice of a
woman.

However, three divergent opinions were expressed by contem-
poraries and students of the Rabiah. R. Eliezer b. Samuel of Metz, author of the Sefer Yereim, extended the restriction to any Dabar shebekkeduha; and R. Mordecai b. Hillel, citing R. Eliezer of Metz, 17 implies its applicability to the study of Torah as well. 18 R. Isaac b. Moses, in the Or Zarua, is the only authority who disagrees with the basic premise and denies the applicability of Samuel's law to the recitation of Shema. 19 However, he fails to indicate what alternative applicability it might have.

In all forms of the limitations on context thus far, it is clear that the central concern with hearing a woman's voice is not its intrinsic sensuousness, but the purely functional concern that it might distract a man from his concentration on prayer or study. It is certainly significant that the sole contexts in which the law of Kol 'Ischa is held applicable are ones which require some special degree of attentiveness, and in which distraction is of particular concern. 20 That they viewed distraction as a motive for the law of Kol 'Ischa is further emphasized by a suggestion ascribed to Rab Hai Gaon that the rationale of Samuel was that upon hearing her voice a man would turn to look at the source of the sound. 21 It was thus not inherently wrong to hear a woman's voice, but one might not, while hearing it, be engaged in a religious activity which required his whole-hearted attention.

The second area of limitation dealt with by the Rishonim of Franco-Germany relates to the form of the voice to be included in Samuel's law. Beginning with R. Eliezer of Metz, 22 possibly based on Rab Hai Gaon, 23 scholars of Ashkenaz consistently refer only to a woman's singing voice as the bar to recitation of Shema. The barren statement of Samuel could have been taken to refer even to a woman's speaking voice, and indeed such is the clear implication of the Talmudic passage in Kiddushin. Nevertheless, the passage in Berakot was systematically limited to the singing voice.

18. Mordecai, supra 8.
19. Or Zarua, Laws of Krist Shema, sec. 133. He argues from the reductio ad absurdum by which a woman would herself not be permitted to recite Shema.
21. Tosefot Ri to Alfas in Berakot 24a, and Rabiah, op. cit. 9, in the name of R. Hai Gaon.

Kol 'Ischa

Two further restrictive chords are sounded by the Rabiah when he says:

All of the things mentioned above as sexually stimulating [erouah] are only to be treated as such when they are not customarily exposed, but [for example, with regard to] an unmarried woman whose hair is customarily exposed, we need have no concern, for there is no arousal, as with regard to her voice, for one who is accustomed to hearing it. 24

In this brief passage, R. Eliezer has introduced the principle that arousal or distraction is a function of reglut, of one's accustomedness to the particular exposure. Secondly, he has indicated the special standing of the unmarried woman, whose presence among men with hair exposed and whose voice is a commonplace, results in the absence of distraction or arousal even at the time of recitation of Shema. These further limitations on Samuel's law are picked up and developed by later scholars.

We must note at this point the striking absence, among the scholars thus far cited, of any references to the Talmudic passage in Kiddushin as that might relate to Samuel's dictum. The fact is that the sugya in Kiddushin, and R. Judah's use of Samuel's declaration there, run directly counter to the interpretation of Samuel by these German scholars. Firstly, the context there is clearly not the recitation of Shema. Secondly, it is the woman's speaking voice, not her singing voice, to which R. Judah objects and for which he cites Samuel as support. We are almost forced to the conclusion that these scholars viewed the dramatic exchange between R. Judah and R. Nahman as a purely 'Aggadic account of R. Judah's attempt to discredit his supposed judge, with no actual Halakic implications to be drawn from the use of apparently legal statements. 25

The emphasis by German scholars on the passage in Berakot to the exclusion of the passage in Kiddushin is counterbalanced by the almost diametrically opposite approach taken by all other schools of Rishonim.

R. Isaac Alfasi, seminal to all of Sephardic scholarship, established the basic alternative pattern by omitting entirely the dictum of Samuel from the codification of tractate Berakot. He thereby indicated, as was
duly noted by subsequent authorities, he that considered Samuel's law to have been rejected by the Talmud. Alfasi therefore recognizes no limitation on the permissibility of reciting the Shema while hearing a woman's voice. Consistent with his treatment of the sugya in Berakot, when Alfasi arrives at the passage in Kiddushin, he omits the first exchange between R. Judah and R. Nahman, thereby again eliminating Samuel's declaration that a woman's voice is sexually stimulating.

The Rif, however, does not totally eliminate the sequence of exchanges in which Samuel is cited. Of the three statements ascribed to Samuel by R. Judah, the Rif omits the first and the third, but allows the second to stand intact. The omission of the first statement, that "a woman's voice is a sexual incitement," is in accord with Alfasi's position in Berakot that there is no general prohibition of Kol 'Isha. The elimination of the third dictum, that "one must not inquire after a woman's welfare at all," even via her husband, is in accord with the conclusion of the Gemara in Baba Mezia that when inquiry is made "through her husband it is permitted."

The second law of Samuel cited by R. Judah, to which Alfasi grants Halakic authority, would prohibit inquiry after the welfare of a married woman (only) via a messenger. The implication left by the Rif is that the central concern of the Halaka is that a married woman not enter into any form of surreptitious relationship with another man lest it lead to adultery. It is certainly the character of the relationship rather than the woman's voice which is the subject of prohibition. Indeed, in this case of communication via messenger, the primary parties would not even be speaking to each other directly so as to raise any concern with sensuousness of the woman's voice.

Rashi likewise confirms that the core issue in communication via messenger is the quality of the social relationship which might result. He says: "lest through inquiry after her welfare they will become familiar with each other through their messenger, and come to love one another."

Even the Tosafists omit any treatment of Samuel's law of Kol 'Isha in its site in Berakot, and fail to introduce it in any way in their treatment of the sugya in Kiddushin. They likewise seem to follow a path parallel to the Rif by suggesting the character of the social relationship as the basis of the proscription of inquiring after the welfare of a married woman. The Tosafists do, however, give Halakic authority to the third statement in the sugya in Kiddushin.

Before proceeding with the Rambam and the balance of Sephardic scholars, we must look at the Rishonim of Provence, who seem to pursue a path which approximates more closely that of the Rishonim of Germany while responding to the implied objections of the Rif to that approach.

The Rabad of Poquiereau was seemingly the first of the Rishonim to attempt a complete reconciliation of the sugyot in Berakot and Kiddushin. In the process, he negates the two basic limitations of Samuel's law introduced by the German Rishonim, namely that the context of the prohibition is the recitation of Shema, and that only a woman's singing voice is of concern. Following primarily the more extensive ruling of R. Judah in Kiddushin, the Rabad posits the normal speaking voice of women as the subject of Samuel's restrictive ruling, and does not limit the proscription against hearing such a voice to the time of the recitation of Shema.

He does, however, make two limiting concessions, one in the direction of the Rabab, and the other in the direction of the Rif. In the context of the recitation of Shema, he concedes that the speaking voice of one's wife is not a bar to performance of the act since "he is accustomed to it, and it does not agitate him." However, her singing voice, or the speaking voice of some other woman, would bar the performance. The significance of the concession is his allowance, as the Rabab with him, of the operation of regilit, of accustomedness, to limit the applicability of Samuel's general law.

The second limitation suggested by the Rabad, following R. Judah's application of Samuel's dictum, is that the proscription of hearing a

27. Alfasi, Kiddushin ch. 4.
28. B. M. 87a.
29. Rashi, Kiddushin 70b, s.v. Ein shoalin bishlom isha.
30. Tosafot, Kiddushin 70b, s.v. Ein shoalin.
31. They resolve the apparent contradiction between Kid. 70b and B. M. 87a in two different manners. In Kid. 70a, s.v. Ein shoalin, they suggest that it is permissible to inquire, but not to send regards even via her husband. (Similarly R. Nissim, Hiddushei Ha-Ran B. M. 87a). In B. M. 87a, s.v. Al yedei ba'alah, they suggest that it is permissible to inquire as to her presence, but not as to her welfare even via her husband. Via. E. Urbach, Baueli Ha-Tosefot, Jerusalem: 1968. (1935), pp. 492-94, and 501-3.
32. Cited in Hiddushei Ha-Rashba, Berakot 23.
woman's speaking voice applies "only to her voice in issuing greetings or in responding to greetings, as was the case there [in Kiddushin], for in such cases there is expression of warm friendship." 33 Through this statement the Rabad indicated, as did the Rif before him, that the central concern is not the presumptive sensuousness of her voice per se, but rather the character of the relationship which might be established between them by means of their communication with each other. 34 Reflecting back, then, on the first concession of the Rabad, he implied that even as to the recitation of Shema it would only be a woman's singing, or her voice in greeting him directly, which would bar his performance of the act, but not simply the fact that he hears her speaking.

Given this second limitation, it is not at all clear that the Rabad would recognize the existence of a general ban to hearing the singing voice of a woman, other than in the case of recitation of Shema, in the absence of some special manifestation of warm friendship being expressed directly to the man listening to her.

We do, however, move closer to such a general ban in the writings of R. Menahem Ha-Meiri. After extensive citation of the position of the Rabad, the Meiri suggests, albeit hesitantly, a possible analogy between a woman's greetings and her singing voice. 35 The full implication of that analogy, not spelled out by the Meiri, is that Samuel's law not only proscribes at all times the warm exchange of friendly greetings, but also the hearing of a woman's singing voice. 36 Given the loss of his writings for some six hundred years, however, the Meiri's suggestion finds no echo in subsequent Halakic writings, though a similar conclusion is reached on other grounds.

While raising this possibly most severe of positions, the Meiri also suggests a line of thought allowing for great flexibility in the application of Samuel's law. In discussing the ban on warm exchanges of greetings, Meiri suggests that the stringency of Samuel's law may not be applicable "to a person who knows of himself that the character of his inclination is not such as to lead him to become habituated to sexual arousal through such matters. But concerning this and other such matters the Torah says 'you shall fear your Lord, I am God.'" 37 Despite the final note of warning, the Meiri has introduced an extensive subjectivity which would allow each individual to draw for himself the line beyond which he might not proceed.

This view of the dictum of Samuel not as binding law but as moral teaching to be applied by each individual as he deems most appropriate for his personal religious condition is carried even further among Spanish scholars, in particular by the Rifa, who applied this approach even to areas of sexual arousal other than a woman's voice. 38

An interesting parallel to this pattern is the position of R. Judah He-Hasid of Regensburg. In the Sefer Hasidim he suggests as one of the reasons that an unmarried man ought not be a teacher of young women, the law of Samuel, Kol b'isha eru'a. 39 The context clearly does not suggest that the female student might burst into song, and so we are left with a single German Rishon who applies Samuel's dictum to the speaking voice of women, as well as to a broader context than the recitation of Shema.

A further fascinating element of R. Judah's treatment of this issue is that he is first to propound a reciprocal restriction against women hearing the voices of men. 40 While his legal basis for this extension is exceedingly doubtful, 41 the resultant law of Kol 'Ish is certainly consistent with the law of Kol 'Isha as analyzed by Rif and Rabad. Since, according to them, the fundamental concern is not the voice per se but the character of the social relationship which might result, what difference should it make whether it is her voice or his which excites the interest in pursuing an illicit relationship?

33. Ibid.
34. In the course of his exposition, Rabad suggests why Rif might have concluded that Samuel's law had been rejected by the Gemara. Since the Gemara had previously concluded that contact with the nude backside of a woman did not bar recitation of Shema, then certainly hearing her voice would not bar it. Rabad suggests, however, that such physical contact with one's own wife, absent any visual stimulation, could indeed be less arousing than hearing a warm greeting from another woman whom he could also see at the same time.
35. Bet Habeirah, Berakhot 24a.
36. The fact that Meiri offers this analogy in the context of the sugya in Berakhot, but makes no reference to a woman's singing voice in his treatment of the sugya in Kiddushin, might, however, lead us to suggest that he agrees with Rabad as described above.
37. Bet Habeirah, Kiddushin 70b.
38. Rifa, end of Kiddushin, s.v. Wessiknah. Cited with approval by R. Solomon Luria, Yam Shel Shlomo, Kiddushin, chap. 4 din 'upshea 25.
39. Sefer Hasidim, Parma, sec. 835; Bologna, sec. 313.
40. Ibid., Parma, sec. 59, Bologna, sec. 614.
Turning now to the Rambam and the Spanish Rishonim, we find the clear predominance of the approach of Alfasi. The Rambam, like Alfasi, omits entirely the law of Samuel from his treatment of things that would bar the recitation of Shema. Rabbenu Asher specifically indicated that Samuel’s declaration, that a woman’s voice is sexually exciting, is inapplicable to the context of the recitation of Shema. Jacob ben Asher, author of the Tureim, following the unanimous opinion of his three primary authorities, Rif, Rambam, and Rosh, omits the law of Kol ‘Isha from the laws concerning the recitation of Shema.

In dealing, however, with the statements ascribed to Samuel in the sugya in Kiddushin, only the Rambam preserved intact the holding of the Rif. Using the same language as the Rif, he records as law only the second of the three dicta of Samuel, namely, “one may not inquire at all after a woman’s welfare, even via a messenger.” Rabbenu ‘Asher” and his son, Jacob b. Hai ha-Ri, departed from the position of the Rif in this area and held, in accord with Tosafot, that one may not send greetings to a married woman even via her husband, though asking after her welfare of her husband is permissible.

Thus far, Samuel’s declaration that a woman’s voice is eruwah, is a sexual stimulant, has had limited Halakic impact. For German Rishonim it has meant only a bar to the recitation of Shema while hearing a woman’s singing voice. For North African and Spanish Rishonim as well as the Tosafists it has meant limited restrictions on the exchange of warm greetings with married women. Only among Provençal scholars have both contexts, that of recitation of Shema and that of exchange of greetings with married women, been affected, and among them only in the Meiri is there any implication of the possibility of a more general ban on hearing the singing voice of women at all times.

The foundation for a radical extension of the applicability of Samuel’s law is laid by a further statement of the Rambam. Negative

commandment number 353 in the Rambam’s Sefer Ha-mitzvot begins as follows:

43. Rabbenu Asher, Berakhot, sec. 37.
44. Tur, O. H., chap. 75.
46. Rabbenu Asher, Kiddushin, chap. 4, sec. 4.
47. Tur, Eben Ha-azer, chap. 21.
48. Tosafot Kiddushin 70b, s.n. ein shoalin. Viz. above 25.

Kol ‘Isha

We are warned against approaching any of the ‘Arayot (women prohibited to us in marriage), even short of intercourse, by as embracing, or kissing, or other similar obscene acts, as it is said, “None of you shall approach to any that is near of kin to him, to uncover their nakedness.” [Lev. 18:6]. As he had said, You shall not approach through any nearness that might lead to forbidden union.

In his Code, Maimonides offers further examples of activities which are prohibited under this commandment lest they lead to forbidden acts of intercourse. He then lists a group of activities banned rabbinically for the same reason, and among them lists, “and even to hear the voice of an eruah (a woman prohibited in marriage) or to see her hair, is prohibited.”

Despite the similarity in language, it is critical to note that the Rambam here has still not adopted the law of Samuel, but continues in essence his agreement with Alfasi. Rambam has not declared a woman’s voice to be eruah (which was the essence of Samuel’s dictum Kol b’isha eruah); rather he has indicated that hearing a woman’s voice, similar to viewing her hair or ogling her body in a sensuous manner, is an activity which might lead to intercourse and is therefore banned in the context of the relationship to an eruah, a woman with whom intercourse is prohibited. Indeed, the Rambam specifically excludes from the full severity of this law both an unmarried woman, with whom marital intercourse would be permissible, and one’s wife while she is a niddah, since intercourse with her will soon be permissible. Rambam’s careful language, therefore, is that it is prohibited ishmaa Kol ha-eruah, “to hear the voice of an eruah.”

The Rambam thus agrees with Alfasi, firstly that the context of concern with a woman’s voice is not the recitation of Shema, but rather the social relationship between a man and woman prohibited to him in marriage. Secondly, he agrees with Alfasi that the voice at issue is not the singing voice but the normal speaking voice. He has, however, gone beyond the Rif in his specification of a woman’s voice as the focus of the

50. Id. at 21:2. The penalty for these is lashes by Rabbinic ordinance (Makkot mardud).
51. Id. at 21:3 and 4.
52. Id. at 21:2.
ban on the development of warm social relationships between persons married to others.

Definitive indication that for the Rambam, Kol 'Isha referred to the speaking voice is to be found in one of his Responsa.22 Upon being asked whether it is permissible to listen to Arabic music, Rambam fulminates against all music, whether instrumental or vocal. He lists five possible prohibitions applicable in various circumstances when music is heard.23 He says: "If the singer is a woman, there is a fifth prohibition, since they [the Sages] of blessed memory, said Kol bi’sha erwah, and a fortiori if she is singing."24 The use of the a fortiori clearly indicates that the dictum of Samuel, taken by itself, refers not to the singing voice, but to the speaking voice. This responsum likewise reinforces the Rambam's emphasis on social context. After all, he is speaking here of a woman singing obscene songs, with instrumental accompaniment, at a nonreligious festivity at which wine is being consumed.25

A subsequent citation of the view of the Rambam, however, led eventually to a completely different interpretation of his position. R. Jacob ben Asher, in an extensive paraphrase of this entire section of the Rambam's code, wrote, We-asur lishmoa kol erwah oh lirot sa’arah.26 While he omitted the definite article he prior to the word erwah, he was clearly using erwah in the same fashion as the Rambam, as referring to the woman, not as an adjectival description of the voice. The word erwah continues to function for R. Jacob as the subject of the next phrase oh lirot sa’arah, "or to see her hair," meaning the hair of the woman who is an erwah.

R. Joseph Karo, in his Shulhan 'Aruk,27 preserved the omission of the definite article, he, as he had found it in the Tur.28 Yet he too recognized clearly the fact that the Rambam follows Alfasi in the inapplicability of Samuel's law to the recitation of Shema.29 Indeed, Karo in the Bet Yosef asserts that the final Halakha is in accordance with Rambam in this regard. However, he adds, with a bow toward the Rabiah and other German Rishonim, "Nevertheless, it is initially best to avoid [Tob lizaher] seeing a woman's hair or hearing her singing voice while reciting the Shema."30 (emphasis added). In accordance with this reservation, he records in the Shulhan 'Aruk, "One should avoid [yesh lizaher] hearing a woman's singing voice during the recitation of Shema."31 The result of all this is that R. Joseph Karo records in his Shulhan 'Aruk three separate laws deriving from the initial statement of Samuel, each of which is the exclusive opinion of one or more separate Rishonim, but to all of which no prior Rishon had consented.

1. He follows the Tosafists, Rabbenu Asher, and the Tur in prohibiting the sending of warm regards to a woman, even via her husband.32

2. He follows the Rambam and the Tur in treating a woman's speaking voice as a possible "approach" to intercourse, therefore banning conversation with a woman who is an erwah to the particular man.33

3. He tends toward the position of the Rabiah and other German Rishonim in preferring the avoidance of hearing a woman's singing voice while reciting the Shema.34 The validity of each of these three laws depends upon totally different interpretations of the two basic sugyot in Kiddushin and Berakot. As well, they are reflections of interpretations of Samuel's law which are at total variance from each other both as to the context of its applica-

54. Jacob b. Asher, Tur, Orah Ḥaim, sec. 560, points out an apparent contradiction between this responsum and the position of Rambam in Massei Torah, Laws of Fast Days 5:14. In Massei Torah, Rambam prohibits singing accompanied by instruments only at a feast when wine is being drunk, while in the responsum he contends that singing is prohibited at all times. Indeed the very first of the five prohibitions, against listening to foolishness and obscenity, whether sung or merely spoken, tends to this entire responsum the sound of the moralist borrowing the precision and the formulae of the jurist. Viz. Guide to the Perplexed, Pt. 3, chap. 8.

59. The implication of the absence of the letter he in the text of the Rambam used by both the Baal Ha-Turim and Karo is emphasized by the quotation of the Rambam without the he by Karo in his comments to the Tur, Bet Yosef, E. H., chap. 21, s.v. Umah shekelekh. However, the Rome edition of Maimonides' Code includes the he as in our printed editions.
60. Bet Yosef, Tur, O. H., chap. 75, s.v. Kette ha-Rosh.
61. Ibid.
64. Id. at 21-1. Rabiah, other German Rishonim, and Rif disagree.
bility and as to the form of the voice which is the subject of concern. Despite all of this, the development of a thesis which reconciled all three of these laws and subsumed them under a unified Halakic principle was not long in coming, and when it came, it reshaped the entire understanding of Samuel’s law and gave it broader applicability than any Rishon had even conceived possible.

R. Joseph Karo had explicitly stated in the Bet Yoseph that the Halaka remains in accordance with the Rambam, that the law of Kol Isha is not restrictive on the recitation of Shema, although he advised following the more restrictive opinion of the German Rishonim. Yet, as noted above, in the Shulhan Aruk he omits reference to the Rambam’s position and records only his advisory opinion in the language of yesh lizaher, “one should avoid.” This apparently led R. Moshe Isserles, as well as almost all subsequent scholars, to assume that Karo had shifted his position and adopted fully the opinion of the Rabiah banning the recitation of Shema while hearing a woman’s singing voice. It is for that reason that the Rama does not take issue with Karo, but merely adds the additional note sounded throughout the writings of German Rishonim, that “a voice to which one is accustomed is not to be considered as eruwa.” In this fashion, Karo’s advice came to be treated as law.

A second critical development occurred in relation to Karo’s treatment of the Rambam’s position of voice as an “approach” to intercourse. In that context, neither the Rambam nor the Tur nor Karo had indicated any special status of the singing voice. On the contrary, the entire premise of the Rambam’s new suggestion was that even a woman’s speaking voice could cause the development of a social relationship which might lead to prohibited intercourse. The only context, even according to Karo, in which the singing voice raised any special problem was in regard to the recitation of Shema, and there, we have noted, he was following the German rather than the North African and Spanish schools. However, at this point, the omission by the Tur and Karo of the definite article he from the Rambam’s phrase kol ha-eruwa led to a radical reinterpretation of Karo’s intent and a major new restriction on hearing a woman’s singing voice.

68. Ibid.
69. Ibid. n. 43 and related text.

R. Joshua Falk, in the Perisha, his commentary on the Tur, is the first to indicate that there were now two alternative ways of interpreting the phrase kol eruwa. Firstly, eruwa is a noun and is the subject of Kol, to be translated as “the voice of an eruwa.” This interpretation would exclude an unmarried woman as well as one’s own wife. It was this meaning which was clearly intended by the Rambam as indicated by both his use of the definite article and his specific exclusion of unmarried women and one’s own wife even while a niddah from the consequence of this law. But the absence of the he in the Tur makes a second interpretation possible, namely, that the word eruwa is an adjective describing kol, to be translated as “a sexually stimulating voice.” Such a voice, suggests R. Falk, would be a singing voice as opposed to a mere speaking voice. Of course this interpretation would leave no room for the exclusion of an unmarried woman, nor even of one’s own wife since it is the voice which is designated as eruwa, not the person.

R. Falk proceeds unequivocally to indicate his preference for the first interpretation, since the general context of the law under discussion would produce, using the second interpretation, a total ban on the hearing of a woman’s singing voice, and, as R. Falk states, “why should it be prohibited for a man to hear the [singing] voice of his wife at a time other than prayers?”

Subsequent authorities, while preserving the specific objection of R. Falk to limiting a man’s hearing his own wife singing, nevertheless opt for the second interpretation of Kol eruwa. Thus R. Joel Jaffa Sirkis, while indicating the specific exclusion of one’s own wife,” emphasizes his having opted for the newer interpretation when he says, “One ought be severe as to a woman’s singing voice even as to the recitation of Shema.” (emphasis added). He has gone so far as to take the Tur’s statement Assur lishmoa kol eruwa as a general law banning the hearing of a woman’s singing voice, which is now to be applied to the more specific situation of recitation of Shema.

A further clarification of this new approach is made by R. Samuel...
Kol 'Isha

Equally engaging, now that the ban against women's singing was so total, was the question of the Song of Deborah the Prophetess. This problem lent itself, however, to a number of different solutions, primary amongst them either that she sang together with a male companion, Barak ben Abinoam, or that since her words were by divine inspiration, they simply did not constitute Kol 'Isha, the voice of a woman. 80

Up to this point, the singing voice of an unmarried woman is consistently excluded from the general proscription against hearing a woman's singing voice. 81 This final gap, however, was severely sealed by R. Joseph Te'omim, author of the Peri Megadim. Starting with the previously agreed upon position he states: "The singing of an unmarried woman, other than at the time of recitation of Shema, is permissible. But it seems logical that an unmarried woman who is a niddah is included in the category of eruwa."

Given the continuing practice of unmarried women not going to the mikwa, any girl having begun menstruating would remain in a state of niddah until her immersion just prior to marriage. In this manner, R. Te'omim has extended the general ban on hearing a woman's singing voice to include even unmarried women past the age of puberty.

It is striking that neither he nor subsequent authorities, who only rely on him as the source of this extension, seem disturbed by the implicit position of the Rambam 82 and the identical explicit position of R. Jacob Tam, 83 that a niddah is not included in the category of eruwa. Sustaining this latter position would have preserved the exemption for unmarried women, but the movement was instead in the more stringent direction.

This new status of the unmarried woman was further reinforced when R. Moses Sofer, establishing the pattern for all later Aharonim, interpreted the position of the Bet Shmuel in accordance with the caveat of R. Te'omim. R. Sofer explicitly reads the Shulhan 'Aruk as having banned the singing voice of any woman except, as he interprets the Bet Shmuel, an unmarried woman who is not a niddah. 84

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76. Bet Shmuel to Shulhan Aruk, E.H. chap. 21, sec. 4.
77. Ibid. Except at times of prayer.
78. Magen Abraham to Shulhan Aruk, O.H., chap. 75, sec. 6.
79. Zeidah Le-Derek Al Ha-Torah, Issakar Baer Eilenburg, cited in Responsa Bet David, no. 188.
80. Vina Otsar Ha-Posekim, Eben Ha-Ezer, vol. 9, p. 50.
81. Peri ha-Sheva, Bet Shmuel, and Magen Abraham to Shulhan Aruk, O.H., chap. 75.
82. Peri Megadim, Mishpatot Zehab, to Shulhan Aruk, O.H., chap. 75.
83. Vina Shabbat 64b and Responsa R. Isaac b. Sheshet, no. 425.
85. R. Jacob Tam, Sefer Ha-Yeheer, Responsa, sec. 80(1).
86. Responsa Hatam Sofer, Hoshen Mishpat, no. 190.
As indicated earlier in this article, the Ḥatam Sofer was also the first person to introduce into discussion of Kol ʿIsha the dictum of R. Joseph, in the Gemara Sojah," banning responsive singing by men and women together. It was logical for him to do so since the question submitted to him was whether the synagogue in Vienna could have a mixed choir at a reception it was to host during the Congress of Vienna in September of 1814.14 The inclusion of the dictum of R. Joseph added a further element to the new uniformity and consistency which the Aḥaronim had created.

These Aḥaronim, from R. Joshua Falk through R. Moses Sofer, shaped a whole new understanding of Samuel’s law, and an extensive new context for its applicability. As we had seen, for German Rishonim the dictum Kol bʾisha eruah meant only that the Shema could not be recited while listening to a woman singing, since that would be distracting and would prevent proper concentration. For the Rishonim of North Africa and Spain, Samuel’s law affected no restriction on the recitation of Shema, but contributed to a ban on such verbal communication as might lead to an illicit sexual relationship. For Provençal Rishonim both concerns were valid and both bans adopted with the inherent limitations of each kept intact.

For the Aḥaronim, however, neither distraction from due attentiveness nor the likelihood of illicit sexual intercourse resulting is the basic thrust of Samuel’s law. For them, Kol bʾisha eruah is a declaration that a woman’s singing voice, under all circumstances, is to be considered a form of nudity, to be exposed exclusively to one’s husband. In light of this proposition, it is understandable that the Aḥaronim virtually totally discard the limiting principle of accustomedness which the Rishonim used so extensively.15 One might suggest that being accustomed to a woman’s voice limits its distracting quality, or limits the likelihood of its arousing someone to perform an illicit act of intercourse. But the Aḥaronim, in effect, suggest that being accustomed to seeing a woman’s nudity in no way makes the act itself permissible.

The history of the new law of Kol ʿIsha since the time of R. Moses Sofer is largely the continuing extension of the applicability of the prohibition to additional situations in which a woman’s voice may be heard in song.16 There have, however, been three significant attempts among contemporary scholars to partially stem the tide toward ever increasing severity.

R. Moshe Feinstein, while acceding entirely to the position of R. Joseph Teʾomim and adopting the full implications of a woman’s voice as a form of nudity, fights a valiant battle to at least prevent the extension of the prohibition to girls over the age of nine, or possibly, as his questioner seemed to suggest, even to girls from the age of three.17 He does, however, concede that with the presumption of the onset of puberty being set at age twelve, the full prohibitions of Kol ʿIsha begin with girls at that age.18

R. Yehiel Weinberg, author of Seridei Esh, was asked by representatives of a Jewish school in France whether it was permissible for the male and female students to sing Zemirot together on the Sabbath.19 His permissive response was based on three arguments. The first was a technical argument based on the legal principle that “two voices are not heard” simultaneously. Thus, since the boys and girls would be singing together, there would be no singing out of girls, and therefore no prohibition would apply.20

For his second, more significant argument, R. Weinberg harks back partially to the Rambam and other Rishonim of the Spanish school to insist that the rationale for banning a woman’s voice at times other than the recitation of Shema is that it would arouse sensuous thoughts and provide sexual pleasure. That being the case, he argues, the singing of Zemirot certainly ought not be banned since “that arouses religious feelings, not thoughts of sin.”21 The importance of this position lies in the fact that it constitutes a major departure from the treatment of a woman’s singing voice as a form of nudity. It reinstates the traditions of the Rishonim, that the ban on a woman’s voice is functionally motivated and is related to the likelihood of its resulting in illicit sexual activity.

The final argument made by R. Weinberg is also a reversion to the

92. Id. at p. 70, vol. 2.
94. Of course this argument could likewise lead to the conclusion that anything but solo, even a duet of two women, would be permissible.
Rishonim, but this time to the Mordecai, the great compendium of the Rishonim of Franco-Germany. R. Weinberg suggests that even given the applicability of the prohibition of Kol 'Isha in this case, the ban should be overridden by the principle of Et la'asot la'hashem, "It is time to work for the Lord, they have made void Thy law." While recognizing the grave dangers involved in assuming such authority, R. Weinberg suggests that the lightness of the prohibition and the seriousness of the possible consequences commend this course to him nevertheless. Combining Halakic acumen and awareness of reality, he says:

However, in our case, since there is no absolute prohibition, but rather a righteous custom and practice of modesty, it is possible to marshal support and to permit the practice in France. For the situation of Jewry has arrived at a point of crisis, and if we do not grasp educational methodologies which are tested and crowned with success... the Torah will, God forbids, be forgotten among Jews."

He proceeds to cite precedent for this suspension of Kol 'Isha from the Mordecai, who acted similarly when the consequences might have been the suspension of learning in the academies. R. Weinberg concluded that despite the apparent dissimilarity between his concern and that of the Mordecai,

they are actually one and the same. In countries like Germany and France, women would feel disgraced and see it as a deprivation of their rights if we prohibited them from joining in the rejoicing over the Sabbath by singing Zemirot. This is obvious to anyone familiar with the character of women in these countries. The prohibition could drive women away from religion, God forbid."

Again the significance of this concluding argument by R. Weinberg lies not so much in the permissive conclusion as in the method of his arriving at the conclusion. Here, as in his second approach, R. Weinberg does not view the prohibition of Kol 'Isha as an absolute ban equivalent to other forms of nudity. Rather, he views it as "a righteous custom and practice of modesty," as a functional device designed to assure the highest possible standard of sexual morality. Where the attempt to enforce the supralegal standard would result in greater religiousity, but in the alienation of women from Judaism altogether, he feels that it is appropriate to suspend the enforcement of that standard.

Similar to this third argument by R. Weinberg is a brief suggestion made by R. Abraham Isaac Karelitz, known as the Hazon 'Ish. Dealing with the ban on hearing a woman's singing voice during Shema and during Torah study, the Hazon 'Ish cites the Mordecai and follows that with a quotation from the Tosefot Ri, "that if he can concentrate and not pay attention to the singing voice, it is permissible." He proceeds to extend these principles from hearing a woman's singing voice to seeing her hair, and concludes:

For these reasons it is possible to sustain the permission nowadays to preach publicly and to refer to Rabbinic passages although there are women with uncovered hair before him. Because of Et la'asot and because it is possible to rely on the opinion of the Tosefot Ri that since he does not pay attention to it, it is permissible."

Without entering into the problem of the analogy between a woman's singing voice and her uncovered hair, what is vital in R. Karelitz's treatment of Kol 'Isha is that he reintroduces the functional concerns of the Rishonim. Rather than treat a woman's singing voice as an absolute form of nudity, invariably barring the recitation of Shema, he concerns himself with the underlying issue of distraction from concentration and gives approval to a subjective resolution depending on whether distraction actually occurs or not. In this regard he reopens for our consideration the voluminous literature of the Rishonim propounding reguli, accustomedness, as a limitation of the ban on hearing a woman's voice."

Thus, while R. Moshe Feinstein was barring the floodgates to further severity, R. Yehiel Weinberg and the Hazon 'Ish were opening the possibilities for a substantial departure from the entire approach of the Aḥaronim and for a significant reversion to the mode of treatment of

90. Psalms 119:126. Id. at p. 16, col. 2.
91. Ibid.
92. Mordecai, Berakot, sec. 80.
94. Ibid.
96. Ibid.
97. See above n. 70.
this entire issue by the Rishonim. Such a return to the approach of the Rishonim will compel a reevaluation of the basic question which they posed. Firstly, is a woman’s singing voice a distraction from proper concentration on Shema, prayer and study? Secondly, is the singing voice of a woman under all circumstances productive of the type of social relationship which could result in illicit intercourse? And if the answer to the second question is only partially positive, how does the enforcement of that standard weigh in the balance with the possibility of substantial alienation from Judaism? These are the questions which the Rishonim faced, which the Aharonim obliterated, and which have now been reentered into consideration to shape the future consequences of Samuel’s dictum.