

Revealing the Hair of a Married Woman

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It is generally accepted by many *Aharonim* (post-medieval Halachic authorities) that the revealing of a married woman's hair is an objective Torah prohibition; that is to say a prohibition which is not affected by the common practice of a given time or place and not amenable to change.¹ In this essay we will point out that, specifically from the opinions of the *Rishonim* (medieval Halachic authorities), it seems that the prohibition is of a Rabbinic nature, the prohibition is subjective and amenable to change based on the norms of a specific time and place, and that many *Aharonim* in fact follow in the footsteps of these *Rishonim*.

A. Uncovering the Hair – A Law of Moshe or a Law of Jewish Women?

¹*Radbaz* Responsa Vol. 1, 445; *Hatam-Sofer Even Ha'Ezer* Vol. 1, 12; *Teshuvah-MeiAhavah* Vol. 1, 18; *Be'er Sheva* 18; *Maharsham* Responsa Vol. 7, 215; *Tzitz Eliezer* Vol. 6, 48 and Vol. 7, 48; *Minhat Yitzhak* Vol. 6, 106; *Igrot Moshe Even HaEzer* Vol. 1, 53 and 57; *Sridei-Eish* Vol. 3, 30; *Yehaveh-Da'at* Responsa Vol. 5, 62; *Yabia-Omer Even HaEzer* Vol. 3, 21 and Vol. 4, 3; Rabbi Shlomo Carlebach, "Sources for the prohibition for a woman to uncover her hair and the laws of wigs" in the compilation *Tzvi-LeDavid* (in honor of Rabbi D.T Hofman) pg. 218-247; see also *Otzar Haposkim Even HaEzer* 21, 4.

The beginning of the discussion is in a *Mishna* in *Ketubot* (Chapter 7, *Mishna* 6):

And these (women) are released (from marriage) with no *Ketuba*: One who transgresses the law of Moshe and of Jewish women. What is a law of Moshe? She feeds him food that was not tithed, and has relations with him when she is *Nidda*, and she does not take *Challa*, and she takes oaths and does not fulfill them. And what is a law of Jewish women? She goes out and her hair is uncovered, and she weaves in the market place, and she speaks to all people. Abba Shaul says also if she curses his parents in front of him. Rabbi Tarfon says also if she talks too loudly. What is considered talking too loudly? If she speaks in her own house and her neighbors can hear her voice.

The *Gemara* (72A) notices the inclusion of uncovering the hair under the definition the law of Jewish women and challenges:

"Her hair being uncovered is from the Torah! [*Rashi*: And why is it not referred to as a law of Moshe?] as it says (Numbers 5, 18): *U'phara et Rosh Ha'isha* (And he uncovers the woman's head).' And it was taught in the house of Rabbi Yishmael: "This is a warning for the daughters of Israel that they should not go out with their hair uncovered." The source of this adaptation is the *Sifri* (11 s.v. "*U'phara*"): "'and he uncover the woman's head' – 'The *Kohen* faces her back and uncovers her (head) in order to fulfill the commandment of uncovering' – the words of Rabbi Yishmael.² Another opinion: The verse teaches us that the daughters of Israel cover their heads, and though this is not a proof, a hint is found in the verse (Samuel II 13, 19): 'And Tamar placed ashes on her head'." From the words of the adaptation in the *Sifri* it is unclear if this is a proper Torah law as it is possible to claim that this is an *Asmachta*³ (a Rabbinic law which is connected to verses in the Torah though it is not truly derived from those verses), however, from the formulation of the adaptation in the Babylonian Talmud, the challenge to the *Mishna* is a serious one.

The *Gemara* answers: "From the Torah it is sufficient when it is *Kalata* (*Rashi*: A basket which has a receptacle on the bottom to fit on the head and a receptacle on top to place there flax and spindle); according to the law of Jewish women it is prohibited even in her basket." The *Gemara* continues "Rav Assi says in the name of Rabbi Yohanan: 'While wearing her basket she is not considered to be in violation of uncovering her hair'. Rabbi Zeira discussed this: Where is this true? If in the market place it is inappropriate according to the law of Jewish women, and if in

² It is interesting to point out that the *Sifri* does not bring this adaptation in the name of Rabbi Yishmael, on the contrary Rabbi Yishmael is brought as the author of a different adaptation.

³ Specifically since the adaptation is based on the story of Tamar.

the yard [*Tosfot*: And if in the yard. This means even without her basket she is not considered in violation of uncovering her hair, for if not so you have not left a single daughter of Avraham our father] then you have not left a single daughter of Avraham our father to stay married to her husband! Abayei and some say Rav Kahana said: 'From a yard to another yard through a *Mavuy* (side street)'."

The summary of the *Gemara*:

In the market place - it is prohibited based on the law of Jewish women (Rabbinic?) even in her basket; a complete uncovering of the hair is prohibited based on Torah law.

From a yard to another yard through a *Mavuy* – it is permitted in her basket but prohibited if her hair is completely uncovered.

In the yard – It is permitted even without her basket ("If not so then you have not left a single daughter of Avraham our father to stay married to her husband").⁴

In the Jerusalem Talmud (*Ketubot* 7, 6) there is a similar discussion (regarding the *Mishna*): "Her hair is uncovered – was said in the yard, and all the more so in a *Mavuy*. Rabbi Chiyah said in the name of Rabbi Yohanan: 'She who goes out in her *Kaplatin* is not considered to be in violation of uncovering her hair.' This is said about the yard, but in the *Mavuy* she is in violation of uncovering her hair. There is a yard that is considered like a *Mavuy* and a *Mavuy* that is considered like a yard; A yard that the masses go into is like a *Mavuy*, and a *Mavuy* that the masses do not go into is like a yard."

The Jerusalem Talmud distinguishes between a *Mavuy* and a yard, and eventually reaches the conclusion that the definition of a place as being permitted or prohibited to go out in a *Kaplatin*⁵ depends on the quantity of people that pass through there; If the masses pass through it is prohibited and if they do not it is permitted. In any case, the Jerusalem Talmud is more strict than the Babylonian as it demands wearing the *Kaplatin* even when going into the yard without the masses passing

⁴This is the letter of the law. The story told in the Babylonian Talmud *Yoma* 47A regarding *Kimhit*, that the walls of her house never saw the braids of her hair and therefore she merited having all seven of her sons serving in the role of the High Priest, is clearly beyond the letter of the law, as the *Tosfot Yeshanim* explained *ad loc.* she covered her hair "at a time where she was permitted to reveal it," and according to the letter of the law she could have uncovered her hair at night as is explicit in the *Yalkut Shimoni Breishit* 3, 27: "She only reveals her hair at night." Also see *Zayit Ra'anan* (authored by Rabbi Avraham Gombiner) *ad loc.*: "Nonetheless, it is a level of piety that a woman should not reveal her hair even at night as *Kimhit* said etc."

⁵It seems clear that the *Kaplatin* in the Jerusalem Talmud and the *Kalata* in the Babylonian Talmud are referring to the same situation – an incomplete head covering. It should be pointed out that in both places the author of the statement is identical: Rabbi Yohanan.

through, while the Babylonian Talmud demands no covering at all and it demands a full covering in a yard that the masses pass through while it is possible that the Babylonian Talmud would only demand covering with her basket in that situation.

The codification of Maimonides: (*Hilchot Ishut* 24, 11-12):

"These are the actions that if she does them she has transgressed the laws of Moshe: She goes into the market and her hair is uncovered... And what is the law of Jewish women? It is the custom of modesty that the daughters of Israel adopted... She goes to the market or an open *Mavuy* and her hair is uncovered and she is not wearing a shawl like all the women, though her hair is covered with a kerchief."

Amongst the actions prohibited based on the laws of Moshe, Maimonides counted having relations when she is *Nidda*, not taking *Challa* and feeding her husband food that was not tithed. In order to explain how a husband knows that his wife had relations with him while she was *Nidda* he explains that the wife tells her husband "This scholar permitted my stain" and later the scholar denies this. The prohibition of stains is of a Rabbinic nature.⁶ The obligation to tithe fruits and tithing in general in our day and taking *Challa* are a Rabbinic obligation according to Maimonides.⁷ Nonetheless, Maimonides counts them as some of the prohibitions that are from the laws of Moshe. It is not therefore improbable that the prohibition to go out with one's hair uncovered is of a Rabbinic nature.

The *Tur* (*Even HaEzer* 115) wrote differently than Maimonides. Instead of "permitted my stain" he wrote "permitted this blood". Instead of "this person took *Challa* from this dough" he wrote "this scholar made this pile permissible", and regarding tithing his opinion seems to lean (*Yoreh Deah* in the beginning of 331) to the possibility that the obligation of tithing is of a Torah nature even in our days. "Going out with her hair

⁶Maimonides differentiated in his wording between a woman who sees blood and a woman who see a stain, for example in *Hilchot Issurei Biah* 9, 3: "She only counts for her menstruation or for her stain from the time she saw blood or found the stain." Seeing blood is a Torah prohibition, while finding a stain is a Rabbinic one. Here he used the wording "he permitted my stain" implying a Rabbinic prohibition.

⁷The *Magid Mishne ad loc.* wrote that Maimonides explained that "when they said she feeds him food that is not tithed and all the more so other prohibitions, is due to the fact that tithing today is a Rabbinic obligation as mentioned in the first chapter of *Hilchot Terumot*."

uncovered" was not mentioned at all amongst the prohibitions of the laws of Moshe, just in the law of Jewish women,⁸ and there he wrote:

"What is the law of Jewish women? She goes out with her hair uncovered, even if it is not completely uncovered but she is wearing her basket – since she is not wearing a shawl she is released. Maimonides wrote: Even though she is covered with a kerchief – since she is not wearing a shawl like the all the women she is released with no *Ketuba*. And this is so specifically if she does so in a public domain or in an open *Mavuy*, or in a yard that the masses pass through; but in a closed *Mavuy* and in a yard that the masses do not pass through – she is not released."

It appears from the opinion of the *Tur* that the laws of Moshe include only Torah laws and therefore he did not count amongst them the uncovering of a woman's head. It is clear that also according to his opinion the prohibition is a Rabbinic one and not a Torah one.

In this matter the *Tur* goes in the footsteps of his father. In order to understand the opinion of the *Rosh* in depth we must begin with the *Gemara* in *Gitin* 90A: "There is a man who when a fly falls into his food he sucks it and eats it, this is the quality of a bad man, who sees his wife go out with her hair uncovered, and weaving in the market, and her clothing is ripped from both sides and she bathes with other people. Could it really be with other people?! Rather, in a place where other people bathe. It is a good deed according to the Torah to divorce a woman like this as it says (Deuteronomy 24, 1): "...for he found with her *Erva* (nakedness) etc. ...and he sent her from his house and she went and became the wife of another man."

The *Tosfot HaRosh* points to a contradiction between this issue and the issue in *Sota* 25A where the following is written: " They raised a query: If

⁸This is also the difference between the *Smak* (commandment 184) and the *Smag* (positive commandment 48). The *Smag* went in the direction of Maimonides, and counted uncovered hair amongst the laws of Moshe; the *Smak*, on the other hand counted it only amongst the laws of Jewish women. This same distinction exists between the *Orhot Haim* (*Hilchot Ketubot* 33) and the *Kol Bo* (*Hilchot Gitin*); the first went in the way of Maimonides and the *Smag*, while the second quotes the *Smak* word for word. See the *Ra'avya* (*Sefer HaRa'avya, Mishpitei HaKetubah* 919 s.v. "*KeDat Moshe Ve'Yisrael*"), who codifies the law by quoting the Mishnah as it is written. Similarly wrote the author of the *Ittur* (40, *Hilchot Mered, Sha'ar Rishon*). Additionally see in that section of the *Ittur*, that when he quotes the *Gemara*, he completely avoids the definition of the prohibition as a Torah one: "What are the laws of Jewish women? She goes out and her hair is uncovered. And it was established that even with her basket it is prohibited." Likewise one can conclude from the words of the *Ritva* in his comments to *Ketubot* 72B where he wrote, "And in the market even wearing her basket is (a transgression of) the laws of Jewish women," and one may derive "even wearing her basket," and certainly if her hair was completely uncovered it would be a transgression of the laws of Jewish women.

she transgresses the law and her husband wants to maintain her as his wife, is he permitted to do so or not? Do we say the Torah made it contingent on the husband's will and he does not mind or since it is a law - it is a law?" The *Rosh* asks "...If this is so then it is an obligation to divorce a woman who goes out with her hair uncovered, since she is transgressing the law of Jewish women!" The *Rosh* attempts to differentiate between the two cases as follows: "There (in *Sota*) it is Rabbinic and here (in *Gittin*) it is Torah law."⁹ It is clear from this source that the *Rosh* understands that the prohibition to uncover one's hair stems from the laws of Jewish women and is of Rabbinic origin.

The *Shulchan Aruch*, though he usually uses the precise language of Maimonides,¹⁰ here (*Even HaEzer* 115, 1-4) uses the language of the *Tur*, and he too did not count an uncovered head as part of the law of Moshe. Similarly, if he believed that uncovered hair was a Torah prohibition, this prohibition is incumbent only upon married women, when he in fact in *Even HaEzer* 21, 2 he included both of them together: "The daughters of Israel are not permitted to walk in the market place with their hair uncovered – whether single or married." It appears that the same prohibition that applies to a single woman (Rabbinic) applies to a married woman.

The *Bach* (s.v. "Ve'eizo") and the *Beit Shmuel* (9) point out the lack of inclusion of the uncovering of the hair amongst the prohibitions of the laws of Moshe, and raise the question from the *Gemara* that says the laws of Moshe prohibit uncovering hair at least in the market. The *Beit Shmuel* in fact disagrees with the *Tur* and *Shulchan Aruch*, and writes: "The rule regarding uncovered hair is: In a public domain when her hair is completely uncovered it is prohibited from the laws of Moshe, and if her hair is covered with her basket it is prohibited from the laws of Jewish women."

B. The Foundation of the Prohibition in Customs of Modesty

⁹ From the *Tosfot* in *Gittin* 90B (s.v. *Im Bnei Adam*) one can conclude that there are three situations – when there is reason to suspect that the woman is having an adulterous relationship (she bathes naked with other people) – there is a Torah obligation to divorce. When she is immodest in her actions (she weaves in the marketplace, her clothing is ripped from both sides, she bathes herself in a place where there are other people) it is recommended by the Torah to divorce her (but it is not an obligation). When she transgresses the laws of Jewish women – the recommendation to divorce is a Rabbinic one.

¹⁰See *Yad-Malachi* the rules of the *Shulchan Aruch* sections 7 and 11.

1. Modesty – Its Source is in the Common Practice

It is written in *Brachot* (24A): "Rabbi Yitzchak says: A handbreadth in a woman is *Erva* (nakedness). For what purpose is this? If it is regarding the prohibition to look at her – Rav Sheshet has said: 'Why did the Torah list external jewelry with internal jewelry? In order to tell you that anyone who looks at the pinky finger of a woman it is as if he was looking at the place of her genitals.' Rather it is referring to his wife and for the purpose of *Kriat Shma*. Rav Hisdah said: The thigh of a woman is *Erva* as it says (Isaiah, 47, 2): '...uncover your thigh, pass over rivers.' And it says (ibid, 3): 'Your nakedness will be revealed and also your shame will be seen...' Shmuel said: The voice of a woman is *Erva* as it says (Song of Songs 2, 14): '...for your voice is sweet and beautiful is your appearance.' Rav Sheshet said: The hair of a woman is *Erva* as it says (ibid 4, 1) 'Your hair is like a flock of goats.'¹¹

This *Gemara* is the main source in *Halacha* for modesty in general, and it is the second main source regarding the matter of head covering for women. The context of the *Gemara* is the prohibition to say *Kriat Shma* in front of *Erva*, or more precisely what is considered *Erva* with regard to the laws of *Kriat Shma*. The first question is: Were the laws stated by Rav Hisda, Shmuel, and Rav Sheshet also said with regard to *Kriat Shma*, or are they independent laws? This issue is a complicated one and we will focus here only on the issue of hair.

Rabbi Yehudah Sirlion writes in his commentary (s.v. "*Kol...Se'ar...*"): This is not referring to the issue of *Kriat Shma*, and we are not concerned about saying *Kriat Shma* in front of unmarried women whose hair is uncovered, this in opposition to the explanation of Rabbi Yoseph." Rabbi Yehudah claims that Rav Sheshet's statement is not connected to the laws of *Kriat Shma* and his proof is that we read it in front of the hair of unmarried women. This means that all hair in his opinion is considered to be *Erva*, even the hair of an unmarried woman, but for some reason it is permissible for an unmarried woman to uncover her hair,¹² unlike a married woman.¹³

¹¹ The basing of Rabbi Sheshet's ruling on a verse in the Bible ("Your hair is like a flock of goats") does not change the prohibition into a Torah one, especially since it is not a verse from the Torah, but from *ScripTures (Ketuvim)*.

¹² It is possible that Rabbi Yehudah believes that single women must reveal their hair in order to attract men's attention in order to get married.

¹³ In general in sources that are based on this innovation of *Rabbeinu Tam*, like this of Rabbi Yehudah Sirlion, there is no explicit mention of an obligation of a married woman to cover her hair, it can only be derived. However see in the formulation of Rabbi Eliyahu from Londrish in

The opinion of Rabbi Yehuda is brought in the *Or Zarua* (Vol. I – The Laws of the Purity of *Kriat Shma* and *Tefilla*, 133) in a special context: "Rav Meri said to Rav Papa: What is the law if hair is coming out of her clothing¹⁴? On this it is said: Hair, hair.' *Rabbeinu Hananel* explains: If hair was coming out of her clothing and her skin was covered this is not considered *Erva*, for this is hair and not skin. And this is what Rav Papa said to Rav Meri: 'Hair, hair' – in other words it is hair and not skin; similarly on this it is said: nation, nation – till here is the explanation of *Rabbeinu Hanael*. And the fact that Shmuel said: 'The hair of a woman is *Erva*, as it says: Your hair is like a flock of goats', my teacher *Rabbeinu Yehudah* son of Yitzhak explained that it is not referring to *Kriat Shma*, and we are not concerned with reading *Kriat Shma* in front of unmarried women whose hair is uncovered. And this is in opposition to Rabbi Yoseph who explained that it was said regarding *Kriat Shma*."

The *Or Zarua* begins his analysis of our issue with the explanation of *Rabbeinu Hananel* in the previous issue. *Rabbeinu Hananel* believes that hair cannot be considered *Erva* by its essential nature, because the meaning of *Erva* is skin which is meant to be covered. Rabbi Yehuda uses this logic to explain to us why it is impossible that the statement "The hair of a woman is *Erva*" is connected to the laws of *Kriat Shma*: The prohibition in the laws of *Kriat Shma* is on reading in front of an *Erva* and hair is not *Erva*. Nonetheless, Rabbi Yehuda believes that it is prohibited to look at uncovered hair, but this is connected to the laws of modesty and forbidden thoughts, not to the laws of *Kriat Shma*.

Similar ideas are found in the ruling of Rabbi Menahem Reikanati (26): "And the handbreadth in a woman is *Erva* refers to a handbreadth that is meant to be covered even if she is his wife. And what they said that the hair of a woman is *Erva* is referring to the prohibition to look not to reading, as we see from daily actions that we are not concerned with reading in front of the hair of unmarried women – this was the explanation of *Rabbeinu Tuvya* in the name of *Rabbeinu Tam*. Perhaps this is the explanation regarding 'a handbreadth in a woman is *Erva*' as well." The *Reikanati* here compares the statement of Rabbi Yitzhak

his commentary to the Mishnah in *Berachot* (3, 5) who writes: "The woman's entire body is *Erva*, even his wife's body, if she had on handbreadth uncovered – he should not read in front of her. However, even though it says in the *Gemara* that the hair of a woman is *Erva*, since he praised her, it appears that the prohibition refers to a married woman and not *Kriat Shma*, and therefore we do not refrain from reading in front of a single woman whose hair is uncovered."

¹⁴In our version "stick out of his clothing..."

regarding a handbreadth to the statement of Rav Sheshet regarding hair¹⁵. He presents two possible explanations: A. It is prohibited to read *Kriat Shma* in front of an uncovered handbreadth, but it is permitted to read it in front of the uncovered hair of an unmarried woman, yet it is prohibited to look at it. B. It is permitted to read *Kriat Shma* in front of an uncovered handbreadth, but it is prohibited to look at it. According to both explanations, there is a difference between the prohibition to look and the laws of *Kriat Shma*. It is possible that in the laws of *Kriat Shma* if one does not look and enjoy the *Erva* it is possible to read. This means that it is possible that the hair of an unmarried woman is considered an *Erva*, but since he is used to it, the knowledge of her standing in the room with uncovered hair does not inspire forbidden thoughts¹⁶.

In the *Orhot Haim* of Rabbi Aharon HaKohen from Lunil (The laws of *Kriat Shma* 36), The same source is brought with a slightly different explanation: "And the entire body of a woman is *Erva*, If he sees one uncovered handbreadth of it he should not read in front of it. However, her face, her hands, her feet, and her hair outside of her braid which she does not cover – there is nothing to be concerned about because he is used to them, but in another women he is prohibited from looking at them. And Rav Tuvia wrote in the name of *Rabbeinu Tam*: 'Specifically for the purpose of looking at it is it considered an *Erva*, but to read in front of her hair - is permitted, as we see in our daily actions that we are not concerned with reading in front of the hair of unmarried women' - till here is the quote."

According to Rabbi Aharon, one must clearly distinguish between the prohibition to look and the obligation to cover. There are places on a woman, like the hair outside of the braid, that woman are used to leaving uncovered, and it is permitted to read *Kriat Shma* in front of them as they do not lead to forbidden thoughts. And it appears that we must explain 'to look' and 'to see' as two different issues, and the prohibition to look at is based on the first statement of Rav Sheshet in Brachot.

The most well known expression for this idea, that the parameters for revealing the hair or skin of a woman is based on what is accustomed is found in the *Ra'avya* (*Brachot* 76) who writes regarding our *Gemara*:

¹⁵ The *Reikanati* explicitly accepts the explanation of *Rabbeinu Tuvia* in the name of *Rabbeinu Tam*, which apparently is the actual source that was the basis for Rabbi Yehudah Sirlion that was quoted previously.

¹⁶ According to the second explanation the same thing happens in a handbreadth that a woman regularly reveals.

"All matters [mentioned above] regarding *Erva* are referring to something that is not usually revealed, but from an unmarried woman who is used to revealing her hair we are not concerned, since there are no forbidden thoughts and so too is with her voice [for one who is used to it]."¹⁷ A similar statement is brought in the *Sefer Hasidim* (Regular edition 110): "The hair of a woman is *Erva* regarding revealing it, and all that is mentioned in *Shir Hashirim* like 'Your stomach is like a pile of wheat', 'His thighs are pillars of marble', 'Your two breasts etc.'¹⁸ And all that is usually covered is an *Erva* for a women to reveal."¹⁹

Rabbi Shmuel the son of Rabbi Meshulam Yarondi, in his book *Ohel Mo'ed* (5, 5) connects the two new notions of *Rabbeinu Tam* and the *Ra'avya* and explains them as one coherent idea: "An uncovered handbreadth in a woman in a place which is usually covered – is considered to be *Erva*, and even if she is his wife – it is prohibited to read *Kriat Shma* in front of her. The thigh of a woman is *Erva*. The voice of a woman if it is in greeting – is prohibited. The hair of a woman – is prohibited to look upon it, but to read *Shma* in front of it is permissible. And so wrote *Rabbeinu Ya'akov*: And it is daily occurrences that we read in front of the hair of single women. And we are not concerned about the

¹⁷This source is brought in the *Mordechai* (*Berachot* 80): And the *Ra'avya* wrote: All that we previously mentioned as *Erva* – it refers specifically to something that is not usually revealed, but a single woman who regularly uncovers her hair, we are not concerned, as there are no unclean thoughts." It is also brought in the *Agur* (*Brachot* 127): "And Rabbi Eliezer bar Yoel Halevi wrote that all that we previously mentioned as *Erva* – it refers specifically to something that is not usually revealed, but a single woman who regularly uncovers her hair, we are not concerned, as there are no unclean thoughts – *Mordechai Brachot* – and so wrote Rabbi Yitzchak *Or Zarua*." It is also brought in the *Hagahot Maimoni* (*Hilchot Kriat Shma* 3, 16) anonymously: "All that we previously mentioned as *Erva* – it refers specifically to something that is not usually revealed, but a single woman who regularly uncovers her hair, we are not concerned, as there are no unclean thoughts and likewise in a voice with which he is familiar."

¹⁸It is possible to explain this source in a different manner and claim that all that is mentioned in *Shir Hashirim* is considered *Erva* objectively, and anything else is defined as an *Erva* only if it is common practice to cover it, however, it seems more plausible that the expression "and everything" is explaining what was mentioned previously.

¹⁹Also in the book *Menorat HaMaor* authored by Rabbi Yisrael Ben Yoseph El Nekaweh (Chapter *Tefillah*, *Hilchot Kriat Shma*, pg. 108) is there a similar explanation: "It is forbidden to read *Kriat Shma* and pray in front of an uncovered handbreadth in a place which is usually covered even if she is his wife. Likewise if her thigh is uncovered – it is forbidden to read *Kriat Shma* and pray in front of it. But in front of single women who usually uncover their hair, it is permissible to pray even though their hair is uncovered."

hair coming out of her braid that is uncovered because that is usual for that hair. The voice of song, even if it his wife – is *Erva*.

It appears that according to the author of the book *Ohel Moed* that there are three levels. A. Parts that women do not usually cover at all are not considered to be *Erva*, and we are not concerned with them at all, neither regarding *Kriat Shma*, nor even regarding the prohibition to look, because men are used to seeing them and they do not lead to forbidden thoughts at all.

B. Parts that some of the women usually cover like hair, that married women cover and unmarried women do not cover: It is permitted to read *Kriat Shma* in front of them, but it is prohibited to look at. It appears that the explanation is as follows: Since for this specific woman her hair is not considered to be *Erva*, the prohibition to read *Kriat Shma* in front of an *Erva* is not relevant. However, since there are women that cover their hair, it is forbidden to look at the hair of these single women because we are concerned that looking will lead to forbidden thoughts.

C. Parts that all women cover – are considered *Erva* and it is prohibited to read *Kriat Shma* in front of them and obviously it is prohibited to look at them (if it is not his wife).²⁰

A source that connects this understanding in the *Gemara* in *Brachot* and the explanation of the issue in *Ketubot* is found in the book *Tzeidah Laderech* of Rabbi Menachem Ben-Aharon Ben-Zerah (First essay, 2,1). Regarding the *Gemara* in *Brachot* he writes: "It is forbidden to read in front of an *Erva*, and any part of the woman that is seen uncovered and is usually covered is *Erva* even if she is his wife." In the third essay (2,14) while explaining the *Gemara* in *Ketubot*, he writes: "What constitutes the laws of Jewish women? She who goes out immodestly to the public domain, or *Mavuy*, or a courtyard in which people congregate. Likewise, she who weaves in the marketplace and exposes her arms to people. And also while she is weaving she has makeup on her face like prostitutes do." Rabbi Menachem is stressing in his explanation of the *Gemara* in *Ketubot* that the actions of a woman transgressing the laws of Jewish women, including uncovering her hair, are actions that show that the woman is

²⁰In the *Or Zarua* (*ibid*) there is an interesting innovation with relation to the difference between his wife and another woman: "Therefore in front of a handbreadth from his wife's body that is uncovered in a place that is usually covered it is forbidden to read *Kriat Shma* until it is covered, and in front of another woman even if less than a handbreadth of her body is exposed in a place that is usually covered, it is forbidden to read *Kriat Shma* until it is covered."

immodest, something that by definition must be subjective. In other words both the definition of *Erva* and the definition of immodesty are based on the practice of women in a specific place and time.

With this information, we can understand the *Rosh's* position, the position that is the basis for the codification of the *Shulchan Aruch* and *Tur*. The *Rosh* in his rulings (*Brachot* 3, 37) stated that: "The hair of a woman is considered *Erva* in women who are accustomed to covering their hair, but in front of unmarried woman who are accustomed to uncover their hair it is permitted to read." In his explanation on the *Rosh – Divrei Hamudot – Rabbi Yom Tov Heller* writes *ad loc.*: "If so her arms are not considered part of her hands, and it seems logical that each and every location acts according to its custom as this is an issue with a reason behind it, therefore parts that she is accustomed not to cover are not considered *Erva* because they will not lead to etc."²¹ It is clear that the *Rosh* is derived from the same line of explanation that begins with the *Ra'avya* and has been demonstrated in this section constantly.

An additional opinion that apparently believes that the obligation for women to cover their hair is based on common practice is *Rashi*. In *Sota* 25A *Rashi* explains the words "she transgresses the laws" in the following manner: "A Jewess who is immodest, goes out with her hair uncovered and weaves in the marketplace and speaks to all people as it says in *Ketubot* in chapter *Hamadir* – she is divorced with no *Ketuba*." This means that *Rashi* understands the act of going out with uncovered hair is an act lacking in modesty. In *Ketubot* 72A, *Rashi* comments on the word 'warning': "From the fact that this is done to her to make her ugly as a measure for a measure for beautifying herself for her adulterer – we see that it is prohibited. Another possibility, since it says 'uncover' we see that at the time she was not uncovered – we can derive from this that it is not the custom of the daughters of Israel to go out with their hair uncovered. And this is the main explanation." From the second and

²¹But see in the *Tiferet Shmuel ad loc.* who writes: "The explanation is to exclude what is common for women to expose like the face, neck and hands, but it appears to me that in a place where it is common for women to expose there forearms and they are used to opening (their shirts) until close to their breasts, this is a bad practice and I call this not a good place and a handbreadth of a woman is *Erva*."

(main) explanation of *Rashi* it appears that there is no essential prohibition to go out with her hair uncovered, rather the prohibition is derived from the practice of women to not go out that way.

Rabbi Yerucham Perla in his commentary on *Sefer Hamitzvot* of *Rasag* (positive commandment 96 page 325) challenged this: "Just because this was the practice of the daughters of Israel we say there is here a Torah prohibition? Perhaps it is just a custom the daughters of Israel practiced of their own volition." He continues to prove from the language of the *Sifri* (quoted above) that it is not a Torah prohibition; rather the Torah teaches us that this was the practice. In his opinion the Torah prohibition is derived from the practice – since it is the practice of the daughters of Israel, as a result any deviation from this is an immodest action that may lead to prohibited relations. In his opinion, The *Gemara* in *Ketubot* that mentions a Torah prohibition is referring to uncovered hair as part of the prohibition of "Do not place a stumbling block before a blind person" (*Lifnei Iver*).

The obligation of head covering is therefore not some objective prohibition with no rationale; rather it is derived from the customs of modesty that the daughters of Israel practiced and any deviation from this practice is considered immodest.

An additional *Rishon* that understands the prohibition to uncover hair as a derivative of the laws of Jewish women and modest customs is the *Ritva*, who writes: "...that most of them (female) go into their yards with their hair uncovered since no one sees them there,...and there are three rules in this matter: In the yard even without her basket there is no transgression of her hair being uncovered. In the marketplace even in her basket (it is a transgression according to) the laws of Jewish women, and in a *Mavuy* it is appropriate with a basket but not without a basket..." From his words it may be learned that one who uncovers her hair in the marketplace even without her basket, only transgresses the laws of Jewish women.

His words here are parallel to his well known innovation in *Kiddushin* 82A s.v. "*Hakol Lefi Da'at Shamayim*":

"It is all according to how well a person knows himself. If it is appropriate to distance his evil inclination he should do so and then even looking at the colored garments of a woman is prohibited as it says in *Avodah Zara*. And if he knows that his evil inclination is surrendered and under his control and does not raise itself at all, he is permitted to look at and talk to a woman who is prohibited to him and greet a married woman. And that is the story with Rabbi Yohanan who sat at the entrance to the *Mikveh* and was not concerned with his evil inclination."

Similar ideas were written by the *Ravad* (brought in the *Rashba*, *Sefer Hashlama* and *Sefer Hame'orot ad loc.*) regarding the discussion in *Brachot*²²:

With regard to 'And a handbreadth in a woman is *Erva*' that was established as referring even to his wife with regard to *Kriat Shma*, the *Ravad* wrote: Specifically in a modest place and a thigh for a women is a modest place, but with regard to a man it is not a modest place. But there is no concern with her face and hands and the hair outside of her braid that she does not cover because he is used to them and they do not bother him. And with regard to another woman it is clearly forbidden to look at any part of her and even in her small finger and her hair. And it is forbidden to listen to her speech, as it says in *Kiddushin*, and even in a greeting. And today it is customary to greet and to speak about other necessary matters and it is all for the sake of Heaven as is written there.

Maharam Alshekar (Responsa 35) was asked "Does one have to be concerned with the women whose practice is to uncover their hair outside of the braid," and he responded:

There is nothing to be concerned about that hair at all since they are accustomed to uncover it, and even for *Kriat Shma*. And the source stating that hair in a woman is *Erva* is referring only to hair which a woman is used to covering... but something that is usually uncovered and he is used to is permissible and even (for *Kriat Shma*) as explained. And so too was written by the commentators of blessed memory, and so to wrote the *Ra'avya* of blessed memory, regarding all the issues that we mentioned (hair, thigh and voice) as *Erva* only in something that is

²²The quote is from *Sefer HaMeorot*, which appears to have the most complete version.

usually uncovered, but regarding a single woman who usually uncovers her hair we are not concerned as there are no unclean thoughts...and everything is based on the customs and the locations.

The *Aruch Hashulchan* wrote in *Orah Haim* (75, 7):

And now let us cry out about the immodesty of our generation in our great sins as it is many years that the daughters of Israel have been immodest in this sin and they reveal their hair, and any yelling about this does not help and is not useful, and now the plague has spread that married women walk around like single women – Woe to us that this has happened in our times. Nonetheless, legally it appears that that it is permitted for us to pray and say blessings in front of their uncovered hair since now most of them walk around like that and it is considered like uncovered parts of her body as the *Mordechai* wrote in the name of the *Ra'avya* and the end of the third chapter...and since in our parts the married women are like this as a result there are no unclean thoughts.²³

Similar ideas were written by Rabbi Eliezer Zilber in his book *Tzemach Erez ad loc.*:

It could be said, in any case that he does not see actual uncovered flesh and hair at all – there is no prohibition, since it is not actual *Erva*, what is not the case in the place of nakedness itself... Therefore, in any case, when there is great need which today is very common, that at the time of *Birkat Hamazon* a woman whose hair is uncovered is sitting in front of him, he should be careful not to see hair at all and he will say the blessing coupled with the fact that today most of them do not cover their hair and it is as if the laws of Jewish women were permitted to them, as we said regarding one who transgresses and repeats it, and since the main prohibition of a handbreadth of flesh is regarding what is usually covered, because in that situation unclean thoughts are more relevant when a part

²³See in the book *Mahatzit HaShekel* section 22 who appears also to codify the law like the *Ra'avya* and these are his words: "And the *Bach* wrote: From the fact that it says 'A warning to the daughters of Israel' and it does not say a warning for a married woman we can derive that the prohibition includes both married and single women. However, in the *Mordechai* in *Berachot*...he wrote in the name of the *Ra'avya* of blessed memory: All that we previously mentioned as *Erva* – it refers specifically to something that is not usually revealed...and it should not be explained as referring specifically to in the house or in the yard, but in the marketplace it is forbidden for her to go out."

of the woman that is covered is revealed, and so too with regard to hair is the basis of the prohibition, and since today it is not their practice to cover it – there is no issue with unclean thoughts, and there is no prohibition of mentioning G-d's name in *Birkat Hamazon* but with regard to *Kriat Shma* it appears that one should be more stringent.

2. Married Women, Single Women and Women who are Engaged to be Married

Since the prohibition is dependent on the common practice and what is usual, it is possible to understand the difference approach to the hair of a married woman as opposed to the hair of single women, even though there is no superficial difference between the two. So wrote Rabbi Yitzchak Halevi, the brother and teacher of the *Taz* in his Responsa (9): And with regard to what Rav Sheshet said that the hair of a woman is *Erva*, it could be said that it is referring to a married woman that is used to going out with her hair covered; but an unmarried woman that is used to going out with her hair uncovered, there is no concern for unclean thoughts, as the *Rosh* and *Mordechai* wrote in the name of the *Ra'avya* in the third chapter of *Brachot*. And though they wrote this with regard to *Kriat Shma*...nonetheless since they wrote that there is no concern for unclean thoughts in the uncovering of the hair of an unmarried woman, there is also no more prohibition to look at it as there is one reason for both issues.

In a similar vein wrote *Maharam ben Chaviv* (Responsa *Even HaEzer* 1) where he extends the permission to women who are engaged to be married. After he brings the opinion of those *Rishonim* that the prohibition of uncovering hair is "specifically in women who usually cover their hair, but single women who usually uncover their hair are permitted to do so," he writes:

And if you desire to say that there is no proof from here, as all of this was said regarding a single woman, but with regard to an engaged woman it is forbidden – this is not the case because one must go according to the rationale, for why did the *Rishonim* permit in the case of unmarried women – since he is used to her in this way; and so is true in our case.

And he added based on the comments of the *Ravad*, brought in the *Rashba* (*Brachot* 25A), that even with regard to a married woman a part that is not usually covered (like her face, hands legs, and her non-singing voice and her hair out of her braid) is not considered *Erva*.

For the same reason that the prohibition is dependent on the common practice, Rabbi Yehoshua Babad (the grandfather of the author of the *Minhat Hinuch*) in his *Sefer Yehoshua* Responsa (89), "That any part that is always seen and not usually covered and people are used to them is not considered *Erva*, and people do not permit with regard to them because they are used to them, in that case there is no Torah prohibition at all." But he adds:

But with regard to what is usually covered, when partially uncovered people are enticed by this, it is considered an *Erva* and prohibited from the Torah.

The issue is so dependent on the custom in his opinion, that "if the opposite was prevalent, and married women uncovered their hair and unmarried women covered their hair, the unmarried women would be prohibited and the married ones permitted." And therefore, in his opinion, there is no reason to compare engaged, married and single women because everything depends on the custom of the married women. We will further discuss these ideas later on (chapter G, 2) when we attempt to resolve the *Gemara's* question "Her hair being uncovered is from the Torah!" with what has been discussed until this point that the prohibition is of a Rabbinic nature.

C. Rabbinic Laws Are Included in the Laws of Moshe

Another explanation for the position of the *Tur* and *Shulchan Aruch*, who did not list uncovering one's hair as one of the laws of Moshe, is in what was mentioned earlier, that according to the position of Maimonides also Rabbinic prohibitions are included in the laws of Moshe (like seeing a stain, feeding him untithed foods, not separating *Challa*); and since according to their opinion only Torah prohibitions should be included in the list of the Laws of Moshe (and therefore instead of 'stain' they wrote 'blood' and according to their opinions tithing and separating *Challa* are Torah obligations), therefore they did not list amongst them uncovered hair.

As mentioned above the *Ritva* also lists uncovered hair amongst prohibitions based on the laws of Jewish women and not the Laws of Moshe. However, in his commentary on *Ketubot 72A s.v. "Ma'achilato"* the *Ritva* explains that it does not necessarily refer only to feeding him

untithed food, but rather "the same is true to all other prohibitions like feeding him meat that has not had the *Gid Hanashe* removed or **meat that was not salted properly** and similarly so." And the opinion of the *Ritva* is like the opinion of his teacher the *Ra'ah* who believes that the prohibition to eat unsalted meat is Rabbinic (see the introduction of the *Pri Megadim* to the laws of salting).

However, if this is so, what is the difference between "the laws of Moshe" and "the laws of Jewish women"?

The Talmudic Encyclopedia, *Dat Moshe*, defines that "the laws of Moshe include all the commandments written in or hinted to in the Torah. In this category (next to note 6), certain Rabbinic laws were listed as part of the laws of Moshe, however in the name of the *Rashba* (Responsa Vol. 5, 246) it is brought that 'the laws of Moshe' refer only to Torah laws and only when it says 'the laws of Moshe and Yisrael' it refers to Rabbinic commandments. Likewise, the *Ginat-Veradim* Responsa (*Even HaEzer* 4, 11) states: "The laws of Moshe refer to laws that are explicit in the Torah of Moshe... and the laws of Jewish women are acts of abstention and modesty that the daughters of Israel practiced, for example not to go out with their hair uncovered and the like."

A slightly different position comes up in the *Tzemach-Tzedek Hachadash* Responsa (*Even HaEzer* 151), where he initially extrapolates from *Rashi's* commentary that "a Rabbinic law is not categorized as the laws of Moshe." However and the end he concludes: "This is not truly so, as certainly a Torah law cannot be referred to as a law of Jewish women, since the laws of Jewish women are customs of modesty that the daughters of Israel practiced, but the laws of Moshe include Rabbinic laws that are not merely customs." In other words in his opinion it is possible for a Rabbinic law to be categorized as a law of Moshe, but it remains impossible for a Torah law to be called a law of Jewish women.

Similarly, from the definition of Rabbi Shlomo Chelma, the author of the *Mirkevet Mishne*, in his *Shulchan Aruch* (*Even HaEzer* 115, 1-3) it appears that Rabbinic laws can be included in laws of Moshe. He writes that in order to be categorized as 'the laws of Moshe' three conditions must be fulfilled:

1. "Any woman who caused her husband to perform a prohibited act.
2. "Any woman who does a prohibited act that the (heavenly) punishment for the transgression of the prohibition is the death of children even though she did not cause him to sin.
3. "Any woman who acts in a prohibited manner involving a lack of modesty in such a manner that there is concern for adultery.

There is no mention at all of the need for it to be a Torah prohibition, rather any prohibition that involves immodesty and that there is a concern for adultery. As a result uncovered hair, even if it is a Rabbinic prohibition, could be included in the laws of Moshe, since – as the *Rosh* wrote (earlier in the second section) – in certain places and times it is immodest and may be adulterous. Nonetheless, the *Tur* did not mention uncovered hair as a law of Moshe because in a place where this act is not considered to be adulterous, it will be categorized as a law of Jewish women.

D. What are 'the laws of Jewish women'?

If 'the laws of Moshe' include Rabbinic prohibitions as well, what is the criteria for being included in the laws of Jewish women which are one level below 'the laws of Moshe' in their stringency?

From *Rashi's* comments on the *Mishna* in *Ketubot* it appears that it refers to customs of the daughters of Israel, as he writes: "The laws of Jewish women – that were practiced by the daughters of Israel, even though it is not written." In his name it is written in the *Shita Mikubetzet*: "Issues that are not Torah prohibitions, but are the customs of the daughters of Israel for the general sense of modesty." Although "the customs of Israel are law" (Ramban's commentary to *Pesachim* 7B), this is certainly binding only while the custom is actually practiced; and when it stops from being practiced it ceases to be binding.

This is explicitly written in the Responsa of Rabbi Moshe Feinstein (*Igrot Moshe Even HaEzer* Vol. 1 69):

However, there is another prohibition regarding women that stems from the laws of Jewish women, not to act immodestly, in *Ketubot* 72A. From this perspective it is problematic when only she acts in this way; but when all the women in her city act in this manner it is not possible to consider this immodest. It makes no difference

that all the women in the city acted in this manner because of immodesty, since nonetheless this is the way they dress and go about it cannot be considered immodest and it cannot be prohibited for them, except for reasons of piety through extra modesty and a blessing shall be placed upon them.²⁴

E. Uncovered Hair – A Torah Prohibition or a Rabbinic One?

1. A Torah Prohibition

As mentioned, according to the simple meaning of the *Gemara* ("Her hair being uncovered is from the Torah") and according to what was derived in the house of Rabbi Yishmael from the verse, the prohibition of uncovered hair is a Torah prohibition. This is explicit in the ruling of the *Riaz* on the *Mishna* in the chapter *Hamadir*: "And if she did not have her basket on her head it is a Torah prohibition." The *Rashbatz* too in *Zohar Harkia* on the *Sefer Hamitzvot* of Rabbi Shimon ibn Gvirol (positive commandment 137) writes that a woman who does not cover her head transgresses a positive commandment from the Torah. So too wrote *Rabbeinu Yerucham* (23, 8): "It is simple that if completely uncovered it is even a Torah prohibition."²⁵ The *Rivan* (brought in the *Shita*

²⁴In a similar vein in the *Yabia-Omer* Responsa *Even HaEzer* 4,3: "Today the it has become common practice that G-d fearing women go out with only a kerchief or a hat and without a shawl and no one is critical. Therefore we are forced to conclude that a head covering is Torah law and is always necessary without regard to the time period, however the custom of Jewish women to act modestly – if the custom of the entire city is to be lenient, we act in accordance with the custom. And this is similar to what the *Maharam Elshaker* (35) wrote to permit in a place where it is the custom for women to go out with their hair outside of their braids." See also what my Rabbi and teacher Rabbi Willig wrote in his book *Am-Mordechai* 16, 3 (67-68), and in the article of Rabbi Yehudah Herzl Henkin in *Techumin* Vol. 13 pg. 297.

²⁵The *Zohar Naso* 77, 78 pg 125B was especially strict with regard to the prohibition of head covering and wrote: "Rabbi Hezekiah said let there be a curse on the man who allowed his wife to show her hair outside [of her head covering], and this is one of the ways for a woman to be modest in her house. And a woman who shows her hair outside in order to look beautiful brings poverty to her home and cause her sons not to be considered important in the generation and she causes something else (*Tzara'at*) to be in her home. What caused all of this? The fact that her hair was exposed outside. And if this is so in her house, all the more so in the market place and all the more so other brazen matters and for this reason it says 'Your wife is a fertile vine in the depths of your home.' Rabbi Yehudah said exposing a woman's hair causes other

Mekubetzet Ketubot 72A in the name of the first edition of *Rashi*) writes: "From the fact that the Torah regarding a *Sota* says to uncover her hair, we can derive that the rest of the women should not go around with their hair uncovered. We can learn from here that it is a Torah law, since it is derived from the Torah...that without her basket it is a Torah prohibition."

In the *Aruch (kalat)* it is written: "Even though in the marketplace with a head covering alone it is permitted from the Torah. Based on the laws of Jewish women she is prohibited in the marketplace."²⁶ Other *Rishonim* who learn that the prohibition is from the Torah are: the *Ramban*, the *Ran* on the *Gemara* in *Gitin* (90A) and the *Meiri* and *Rabbeinu Kreskas* on the *Gemara* in *Ketubot*.

2. Rabbinic

However, as mentioned previously shown the inclusion of the prohibition in 'the laws of Moshe' does not definitely imply a Torah prohibition. We saw that other Rabbinic laws are included amongst them. Maimonides writes the following law, "The daughters of Israel should not go to the marketplace with their heads uncovered" (*Hilchot Ishut* 21, 17) after along list of Rabbinic prohibitions (that began in law 11) and next to it are written two additional laws that are clearly Rabbinic prohibitions – the application of the prohibition to a single woman as well, and the prohibition for a woman to walk in the marketplace with her son behind her ("A decree lest they will catch her son...").

However, even in Rabbinic prohibitions there are varying levels and the author of *Trumat Hadeshen* (Vol. 1, 242) compared the prohibition of uncovered hair to the prohibition of being alone with a woman, which both according to Maimonides are a highest level of Rabbinic prohibitions (*Midivrei Kabbala*). Later he writes that according to the opinion of Maimonides, "Uncovered hair in a woman is only a Rabbinic stringency."

hairs to be revealed and to hurt her and therefore a woman must not allow even the walls of her house to see even one hair of her head all the more so outside."

²⁶This source is brought in the *Bach* as practical law, in opposition to the position of the *Shulchan Aruch* and *Rishonim* previously mentioned.

In the *Me'il Tzedaka* Responsa (61) he writes that the fact that it is a Rabbinic prohibition does not preclude its inclusion in 'the laws of Moshe' – "since it is hinted to in the Torah, it is considered part of the laws of Moshe."

Maimonides, and the majority of those who list the commandments (with the exception of the *Rashbatz* in *Zohar-Harakia*), do not list uncovering one's hair amongst the 613 commandments. Maimonides explained in the second section in *Sefer Hamitzvot* that the list does not include commandments that are derived from one of the thirteen principles (of derivations based on which the Torah is learned). So too, a commandment that is derived in an indirect manner should not be listed, and indeed, uncovered hair is derived in this manner, from the verse "And he uncovers the woman's head." In this manner the Mahardam in his commentary on *Sefer Hamitzvot* of Maimonides (positive commandment 175) wrote that Maimonides "accepts the second explanation in *Rashi* – from the fact that it is written 'And he uncovers' we can derive that at the time her hair was not uncovered, and therefore we can learn that the daughters of Israel are not accustomed to go out with their hair uncovered; *Rashi* pointed to this as the main explanation. And according to this explanation it is not a proper prohibition, but a custom of the daughters of Israel that is mentioned in the Torah and therefore it is not listed in the list of commandments."

An additional proof for the position that the prohibition is a Rabbinic one can be shown from the language of the *Sifri* (Numbers 5, 10):

"And he uncovers the woman's head" - The *Kohen* faces her back and uncovers her (head) in order to fulfill the commandment of uncovering' – the words of Rabbi Yishmael. Another opinion: The verse teaches us that the daughters of Israel cover their heads, and though this is not a proof a hint is found in the verse "And Tamar placed ashes on her head" (Samuel II 13, 19).

It is unusual to quote an explicit prohibition in the Torah, and support it with a 'hint' that it itself is not a sufficient proof and therefore it appears that both verses – the one from the Torah and the one from the Prophets - are pointing to a custom and not a Torah prohibition.

3. In the Yard, in the *Mavuy* and in the Public Domain

When the Babylonian Talmud answered the question "It is from the Torah", it distinguished, as mentioned previously, between the yard, which in it appears a woman is permitted to uncover her hair without a basket; in the *Mavuy* where she is permitted to wear just her basket but forbidden to uncover her hair completely; and in the public domain because the laws of Jewish women she is forbidden to go about only with her basket. The prohibition on these three levels led Rabbi David Yoseph Zintzheim (Minchat-Ani 45-46) to prove that in the yard there is no prohibition at all:

If in the public domain without her basket there was a Torah prohibition, then the Rabbis decreed in the yard as well lest one come to do so in a public domain. But if in the public domain itself it is merely a Rabbinic prohibition even without her basket, why then would they prohibit it in the yard – it is a decree upon a decree? Indeed, according to those who believe it is permitted for her to be in her yard without her basket it can be said that they believe that the prohibition is a Rabbinic one as the *Terumat-Hadeshen* believes according to Maimonides. Therefore there was no decree in the yard but only in the *Mavuy* which is a quasi public domain. This seems apparent from the *Beit-Yoseph* who only prohibited for her to be with a kerchief without a shawl in a yard that the masses are going through and in a *Mavuy*.²⁷

F. From the Simple Reading of the *Gemara* it Appears that it is a Torah Prohibition?

1. Something that is Mentioned in the Torah is referred to as 'From the Torah'
The positions that believe that even completely uncovered hair without a basket constitutes only a Rabbinic prohibition, face a challenge from the explicit *Gemara* that asks "it is from the Torah".

The house of Rabbi Yishmael derives the prohibition from the verse "And he uncovers the woman's head" and *Rashi* explained this in two ways:

²⁷His last words, comparing a yard that the masses go into and a *Mavuy* are based on the Jerusalem Talmud in *Ketubot* 7, 6. In any case, it is apparent from his words that there is no difference between the Jerusalem Talmud and the Babylonian Talmud with regard to the three levels that were mentioned inside. The addition of the Jerusalem Talmud is with regard to this equation between a yard that the masses go into and a *Mavuy*.

- A. From the fact that this is done to her to make her ugly as a measure for a measure for beautifying herself for her adulterer – we see that it is prohibited.
- B. Since it says 'uncover' we see that at the time she was not uncovered – we can derive from this that it is not the custom of the daughters of Israel to go out with their hair uncovered.

On the second explanation *Rashi* wrote: "And this is the main explanation. The *Netziv* (*Imkei HaNetziv* on *Sifri Bemidbar* section 11 s.v. "*Davar Acher Limeid*" etc.) explained that these two explanations in *Rashi* are connected to the argument between the *Ravad* and the *Rosh* regarding the uncovering of the head of a mourner. The disagreement is brought in the rulings of the *Rosh Moed Katan* (3, 13). "The *Ravad* believes that the uncovering of the head of a mourner is a Torah law from the fact that it is written regarding the sons of Aharon 'You shall not uncover your heads... and you shall not die' – one can derive from here that another person who does not uncover his head is punished by death from the heavens and this is like the second explanation. And the *Rosh* disagrees and writes that it is written for itself, they are forbidden to uncover but another person may uncover." This a fundamental disagreement as to whether the meaning of a positive commandment is to prohibit the action on one who is not commanded to do so or does the lack of a commandment render it permissible.

How can something that is permissible be "from the Torah?" A possible explanation can be derived from what Rabbi Moshe Ze'ev HaKohen wrote in his book *Tiferet-Moshe* (Vol. 2, 10 *Hadran Lemasechet Ketubot*) regarding the obligation of a *Ketuba* that many of the *Rishonim* believe to be a Torah obligation because the custom to write a *Ketuba* is mentioned in the Torah ("marriage price of virgins" – Exodus 22, 16). The *Rishonim* who believe that the *Ketuba* is a Rabbinic obligation will explain that although the *Ketuba* is mentioned in the Torah, it is mentioned as a custom and as something permissible, not an obligation. So too with regard to uncovered hair, that according to this is not a Torah prohibition, but rather it being mentioned in the Torah as a custom elevates its status to one of the 'laws of Moshe' and therefore the *Gemara's* question – "Her hair being uncovered is from the Torah?"

A similar phenomenon exists with regard to the laws of mourning. Many *Rishonim* believe that the obligation to mourn is Rabbinic though it is mentioned in the Torah.²⁸ However, we are not forced to assume that the position that believes that the laws of mourning are Rabbinic will believe that uncovering one's hair is also Rabbinic, and the proof is from Maimonides himself who believes that the obligation to keep the laws of mourning is a Torah one (*Sefer Hamitzvot* positive commandment 37 and *Hilchot Aveilut* 1, 1), while the prohibition of uncovered hair we previously saw (chapter E/2) that according to his opinion it is a Rabbinic obligation.

The *Shach* disagrees with this and according to his opinion (*Hoshen Mishpat* 28, 14) 'a Torah law' means a Torah obligation, and all the more so when the *Gemara* challenges "it is from the Torah" as is in the case regarding our issue. However the author of the *Sdei-Hemed* (4,19) teaches that 'from the Torah' is said also about issues that are not Torah laws and even issues that only have an *Asmachta* in the Torah are referred to as 'from the Torah.'

Indeed, in our case, as mentioned, there are *Rishonim* who believe that the prohibition for a married woman to uncover her hair stems from the laws of Jewish women (in other words a Rabbinic obligation), and they also believe that the obligation to mourn is a Rabbinic one.

2. When the Custom is to Cover something - it becomes a Torah Law

Rabbi Yehoshua Babad established in his book *Sefer Yehoshua* (89) "That anything that is always seen and is not usually covered and people are used to...there is no Torah prohibition at all." Only "what is customary to cover when some of it is uncovered causes arousal and then it is considered *Erva* and is a Torah prohibition." Based on this he explained the *Gemara's* question:

How can one say that uncovered hair is based on the laws of Jewish women?! Since women are accustomed to go out with the hair covered entirely, whether braided in their basket or covered in a shawl, then when they uncover their hair it is a Torah

²⁸See the Talmudic Encyclopedia in the article entitled *Aveilut* 31. Above this point is a list of opinions that only the first day of mourning is Torah law.

prohibition... The *Gemara* proves from "And he uncovers the woman's hair," that until now she was covering her hair, like all women were accustomed to do. And this in fact is true: The Rabbis in the *Gemara* knew that women covered all their hair with baskets and shawls. Therefore uncovered hair is *Erva* and is prohibited from Torah law and not from the laws of Jewish women.

There are those who believe that the status of such a custom, even if not a Torah law, is such that it cannot be permitted through the procedure of permitting vows.²⁹

3. A Torah prohibition from a different source.

To justify the use of the term 'from the Torah' we previously brought (C/1) in the name of Rabbi Yerucham Perla that the *Gemara* is referring to the prohibition of "*Lifnei Iver*" that she is causing others to sin. This being the case, there is one who suggested (Rabbi Moshe Turetzki's Responsa *Yashiv L'Moshe* "Modesty of women in front of non-Jews") that the prohibition to uncover one's hair applies only in front of Jews, since they are prohibited to sin and are commanded "And you shall be careful of all bad things" (See *Avodah Zarah* 20A: "That he should not think about it during the day and come to impurity at nights"), what is not the case with non-Jews.³⁰

Another possibility that could be the source for the prohibition to uncover one's hair is the prohibition to go in the ways of the non-Jews ("and in their ways you shall not go" - Leviticus 18,3), and this possibility is brought in *Midrash Rabba* (Numbers 9,16) as the *Kohen* would say to the woman after uncovering her hair: "You deviated from the path of the daughter's of Israel, who are accustomed to cover their hair, and you went in the ways of the idol worshippers who go out with their hair uncovered – here is what you wanted." It seems possible to say that the source of the prohibition is going in the ways of non-Jews.³¹

²⁹This was written in the *Vayashov-Yoseph* (Burla) Responsa in the name of Rabbi Matityahu Avraham Tzurmani (*Yoreh Deah* 1-3) based on the words of the *Pri-Hadash* 496, that customs that were established to keep away from prohibitions have no mechanism for permitting them.

³⁰See in the eighth chapter from the words of the *Ben-Ish-Hai* regarding the women of Europe.

³¹There are those who presented this reasoning: Rabbi Y. Hagiz in his book *Eleh-HaMitzvot* commandment 262; the *Gaon* of Vilna *Even HaEzer* 115, 4; Rabbi Perla on *Sefer Hamitzvot* of *Rasag* Vol. 1 pg. 650; *Otzar HaPoskim Even HaEzer* 21, 2, 1; *Yabia-Omer* Vol. 4, 3.

A third possibility for a Torah prohibition was suggested by Rabbi David Bunim (In *Dei Hashev Responsa Even HaEzer* 4). He suggests that the uncovering of the *Sota's* hair is a disgrace for her specifically because it is done while she is in the courtyard of the Temple in contrast to the obligation to be in awe and fear of the temple. As a result he challenges: "What proof can be brought from here? Perhaps it is always permissible to be with uncovered hair, but here since the ceremony of the *Sota* takes place in the courtyard of the Temple, therefore she is obligated to be in awe and fear of the Temple, because it is disgraceful to enter the courtyard with uncovered hair?...It appears that this prohibition is a Torah one as it says "And you shall fear my Temple"...certainly uncovering one's hair is included in the prohibition...therefore the verse comes to say and he uncovers the hair of the woman since it was covered upon her entry into the Temple." However, if this is true the Torah prohibition is only on the Temple Mount.³²

G. 'A Warning' – Is not necessarily a Torah Law

The terminology of what was taught in the house of Rabbi Yishmael – "A warning to the daughters of Israel that they should not go out with their hair uncovered" – can also prove that what is being discussed is not a Torah prohibition, but a Rabbinic one, as in several places this term appears (when not dealing with a warning to criminals like: a warning to the adulterer or a warning to the robber) and it refers to a Rabbinic obligation. This language – A warning to *Beit Din*, to the children of Israel, or the daughters of Israel appears only eight times in the Talmud and in each instance it is referring to a law which is not necessarily a

[It is also possible to explain that "a Torah law" refers to something famous and well known, and from this perspective it becomes a 'law of Moshe.' It is similar to the law "It is better they should do it accidentally rather than purposely" that initially the *Gemara* states with regard to it in *Beitza* 30A that it applies only to Torah laws and not Rabbinic ones, and subsequently it explains that it also does not apply to women who extend their meal before *Yom Kippur* and transgress the obligation to add onto *Yom Kippur* despite the fact that it is a Torah obligation. Despite this conclusion, the *Rema* codifies (*Orach Haim* 608, 2) in the name of the *Ran*: "And only when it is not explicit in the Torah even though it is a Torah law; but if it is explicit we challenge them." The explanation being that since the prohibition is not well known it is referred to as a Rabbinic prohibition and not a Torah one. So too here, the prohibition of uncovering one's hair is so well known, since all the daughters of Israel practiced it, it seems inappropriate to include it amongst the laws of Jewish women but as a law of Moshe. – Editor's note]

³²See also what Rabbi Yehudah Herzl Henkin wrote on this innovation in his article "The Guidelines for Head Covering for Women" *Techumin* Vol. 13 pg. 297 (5753).

Torah law, or a law that is not the source for the main law which is from the Torah, but just an extension of it to a new circumstance.

A. *Rosh Hashanah* 6A:

The Rabbis taught: "What comes out of your mouth" – this is a positive commandment; "You shall be careful" – this is a negative commandment; "and you shall do" – a warning to *Bei Din* that they should force you...

The source for the obligation on *Beit Din* to force all of Israel to fulfill the commandments is not from this verse, and the *Tosfot* wrote (*s.v. "Yakriv"*) that the derivation from the verse brought in the *Gemara* comes to teach us that the status of the laws of sacrifices is equivalent to the rest of the positive commandments with regard to *Beit Din* forcing their fulfillment, but there is no unique Torah law here, rather revealing the extension of an existing one. Therefore, Maimonides in *Sefer Hamitzvot* (positive commandment 94 and negative commandment 155) and *Sefer HaHinuch* (575) when they bring the derivation "What comes out of your mouth – this is a positive commandment", and "You shall be careful – this is a negative commandment" they omit "and you shall do" – a warning to *Beit Din* since it is only an extension of an existing law.

B. *Ketubot* 46A:

You shall not go about as a talebearer (Leviticus 19,16)...this a warning to *Beit Din* that it should not be soft to this one and harsh to this one.

The prohibition itself is learned from the verse "You shall judge your neighbor with righteousness" (*ibid* 19, 15) and as is brought in *Shvuot* 30A it was learned from this verse "it should not be that one is sitting and one is standing, one speaks all he has to say and the other is told to shorten his speech." This verse (16) only comes to reveal what was included in the previous verse (15).

C. *Sanhedrin* 7A:

"Listen between your brothers and judge" – Rabbi Chanina said: A warning to *Beit Din* that it should not listen to the words of one of the claimants before the other claimant arrives, and a warning to the claimant that he should not present his side to the judge before his fellow claimant arrives.

This law as well, like the previous one, is mainly derived from the verse "You shall judge your neighbor with righteousness" and the proof of this is *Rashi* in his commentary on *Sanhedrin* brings the laws that are brought in the *Gemara* in *Shvuot* that are derived from the verse "You shall judge your neighbor with righteousness": "When they are both together listen to their claims and do not listen to one's claim without the other because

he presents the lies as truths since no one is there to challenge them..." Though Maimonides (*Hilchot Sanhedrin* 21, 7) brings the verse from *Sanhedrin* ("Listen between your brothers and judge"), the *Kesef-Mishneh* points out that it is just an *Asmachta*.³³

D. *Sanhedrin* 8A:

It is written "And I commanded your judges at that time (Deuteronomy 1, 16), and it is written "And I commanded you at that time" (*ibid* 18) – Rabbi Elazar said in the name of Rabbi Simlai: A warning to the community that they must fear the judge, and a warning to the judge that he must tolerate the community.

Various verses warn the judge about his behavior towards the community (see Maimonides *Hilchot Sanhedrin* 25, 2) and the verse before us is just one of them. It is logical that the warning to the community is an extension of the Torah obligation "You shall not curse *Elokim*" (Exodus 22, 27) which is listed as a negative commandment (Maimonides negative commandment 315 and Chinuch 69).

E. *Sota* 5B:

What is the source for the warning to the pompous? Ravah said in the name of Zeiri: "Listen and give ear do not be proud" (Jeremiah 13, 15). Rabbi Nachman son of Yitzchak said from here: "And your heart will be lifted and you will forget" (Deuteronomy 8, 14) and it is written "Be careful lest you forget G-d" (*ibid* 11)."

Maimonides and the *Hinuch* did not list this prohibition as a Torah commandment,³⁴ even if the prohibition of being haughty is from the Torah it is certainly not derived from a verse in Jeremiah.

F. *Shvuot* 18B and *Nidah* 63B:

The Rabbis taught: "And you should separate the children of Israel from their impurity" – Rabbi Yoshiya said: From here a warning to the children of Israel that they should separate from their wives close to her expected menstruation. And how much before? An *onah*...

According to many *Rishonim* the obligation to separate close to her expected menstruation is a Rabbinic one,³⁵ and this despite the similarity between the language of the Torah "*Vehizartem*" (translated you should

³³See also the Talmudic Encyclopedia in the article entitled *Dinei Mamonot*, in the chapter *Hashva'at Ba'alei Hadin* (Vol. 7 pg. 318-319).

³⁴See Talmudic Encyclopedia in the article entitled *Ga'avah* sections 8-9.

³⁵ See Talmudic Encyclopedia in the article entitled *Veset* sections 59-70.

separate) and the language of Rabbi Yoshiya "*Azhara Livnei Yisrael*" (a warning to the children of Israel).

G. *Chulin* 87A:

The Rabbis taught: "And he shall spill and cover" – he who spilt, shall cover. He slaughtered and did not cover, and another saw it, from where is the obligation to cover it? As it says "And I have said to the children of Israel" – a warning to all of the children of Israel.

Here seems to be a weak point as according to all the *Rishonim*³⁶ this is a full fledged Torah law, however in the edition of the *Gemara* that the *Rishonim* had the words **a warning to...** do not appear. In the *Rif* the version is: **A commandment for all of Israel**; in the *Smag* – **A commandment to the children of Israel**; and in the *Rosh* – **This commandment will be incumbent on all of Israel**.³⁷

It is therefore logical that the statement of the house of Rabbi Yishmael that was formulated in the same manner ("a warning to...") is not referring to a Torah law that is learned from a full fledged derivation, but rather to a Rabbinic law, or to an expansion of an existing Torah law that is learned from a separate derivation.

H. Permitting Customs

We previously clarified (chapter B) that the foundation of the prohibition is modesty, and that modesty stems from and is defined based on the prevalent practice in a specific time or place. It is therefore not surprising to find *Aharonim* who permit even married woman to uncover their hair. So wrote the *Ben-Ish-Hai* in his book *Chukei HaNashim* (page 55):

Women, look at the people of Europe, there practice is not to hide from strangers, and nonetheless, their clothing is orderly, it does not show their bodies, just their faces and necks, their hands and heads. It is true that their hair is uncovered – and according to our law it is prohibited, but they have some sort of justification, as they say this practice does not fit with all of their wives – from their nation and outside of their nation and therefore the uncovering of the hair became like uncovering their faces and hands and does not cause inappropriate thoughts by looking at them.

³⁶ See Maimonides *Hilchot Shehitah* 14, 15; *Rosh ad loc.*; and see also *Taz Yoreh De'ah* 28, 8.

³⁷ See *Hidushei Ha'me'iri ad loc.* and *Dikdukei Sofrim*.

Similarly wrote the *Kaf-HaHaim* (75, 17-18), "That regarding the women of the cities of Europe that always uncover their hair, it is permitted to read in front of them since all the women do this," and even "the women who come from lands where it is not their practice to uncover their hair to a place where the practice is to uncover their hair, they may uncover their hair if they are not planning to return."

Rabbi Zalman Slotzky (*Eitz Ephraim* Responsa *Orah Haim* page 12) views the custom to go out with uncovered hair as an immodest one, but since it has become the custom, "It is like what the *Bach* wrote with regard to the cities that the people go about barefoot, that their feet are always uncovered" and it is permitted.

As a result Rabbi Yoseph Mashash ruled in *Mayim-Haim* Responsa (Vol. 2, 110):

In these days that all the women in the world stopped the previous custom and returned to the simple custom to uncover their hair, there is no lack of modesty heaven's forbid..."

He further excused the uncovered hair that was prevalent in Morocco after the French occupation:

The prohibition for married women to uncover their hair was a very severe one here amongst us...before the arrival of the French. And after their arrival for a short time, the daughters of Israel broke the boundaries, and a great scandal unfolded in the city...and now all of the women go out publicly with their hair uncovered...and therefore I decided to teach a justification for them because it is impossible to entertain the thought to return the practice to what it previously was...and therefore now, since all the daughters of Israel agreed that there is no modesty in covering their hair and all the more so there is nothing wrong with uncovering their hair...the prohibition is uprooted and it became permissible.³⁸

³⁸See also what Rabbi Simcha Ben Yoseph Dov Halevi wrote in his book *Yad-HaLevi*, a commentary on Maimonides' *Sefer Hamitzvot* (positive commandment 175), that at times that it was not common to see Jewish women going out with their head uncovered, then much commotion was made about it, but truthfully – in his opinion – the prohibition depends on the time and the location, and with regard to it there "is no commandment or prohibition neither from Torah nor from Rabbinic law." Rabbi Moshe Malka, The Chief Rabbi of Petah Tikvah (*Ve'Heishiv Moshe* Responsa 34-35) believed in the ruling of Rabbi Yoseph Mashash. However, his nephew Rabbi Shalom Mashash, the Rabbi of Jerusalem (*Tevu'ot Shamesh* Responsa *Even Ha'Ezer* 137-138) wrote against his uncle's ruling. See also *Reevivot Ephraim* Responsa Vol. 6 459-460.

It should be noted that Rabbi Yechiel Ya'akov Weinberg, the author of the *Sridei-Eish* Responsa (in an article in "*Hama'ayan*"¹⁴, 5725 page 1-8) after questioning whether the obligation to cover hair is legally based or custom based, he writes: "In practice it seems to me that from the perspective of Jewish ethics it is appropriate for a married woman to cover her hair. That is how she shows that she is not desperate to be favorable to other men." He added that this mark of modesty is a source for purity of thought.

I. Is *Priat Rosh* necessarily Revealing One's Hair?

The sections in the *Gemara* that deal with the *Sota* (*Sota* 8A and *Ketubot* 72A) talk about uncovering a woman's head. The *Braitah* in *Sota* states that "they undo her hair" and *Rashi* explains: "He multiplies her uncovering by undoing her braid." Ostensibly, it is possible to connect the two sections in *Sota* and *Ketubot* and explain that the warning to the daughters of Israel not to go out with their hair uncovered that is mentioned in *Ketubot* warns the daughters of Israel to comb and braid their hair, and not necessarily to cover it.

In the *Shvut-Ya'akov* Responsa (Vol. 1 103) he writes that uncovering the hair in this manner ("she undoes her braid and goes out into the market place") is prohibited even for single women. Therefore, the *Gemara* at the beginning of the second chapter of *Ketubot* states that a woman wearing a veil but her hair uncovered is a sign that she is single – it appears that even single women when their hair was uncovered were accustomed to go out with a veil. On this he added:

If not for being fearful... I would also explain... what it says "she goes out and her hair is uncovered is referring to undoing her braid... from the Torah the fact that daughters of Israel are prohibited to go into the marketplace with their hair uncovered refers to when their hair is not done up. But with *kalata* (her basket) - from the same etymology of *kliat se'ar* (braiding her hair) – it is permitted. But the custom and laws of Jewish women prohibit even if her hair is braided for her hair to be uncovered for both married women and women who have had sexual relations.

With this he explained why Maimonides wrote that the prohibition for the daughters of Israel to go out with their hair uncovered applies to both single and married women – because Maimonides only wrote what is prohibited by the letter of the law and not by the custom, and by having their hair uncovered he means hair that is uncombed and unbraided. So too wrote the *Magen Avraham* (75,3): "The meaning of hair uncovered that was written in *Even HaEzer* is undoing their braided hair and going into the marketplace – which is forbidden even for a single women."

A proof for this distinction between hair that is uncombed and hair that is uncovered can be brought from the changes in the language of Maimonides: Regarding the prohibition to all the daughters of Israel, both single and married (*Hilchot Issurei Biah* 21, 17) he wrote: "The daughters of Israel should not go out to the marketplace with **their heads uncovered** whether single or married. While regarding her divorce with no *Ketuba* (*Hilchot Ishut* 24, 11) he wrote: "She transgressed the laws of Moshe – (for example) she goes into the marketplace and **the hair of her head was revealed.**"

Based on this, it is possible to suggest that the *Gemara* in *Ketubot* challenged the *Mishna* that listed "she goes out with her head uncovered" as part of the laws of Jewish women: But with undone hair it is a Torah prohibition? The answer is if she goes out in *kalata* (meaning her hair braided) then the hair is considered combed and orderly even though it is not covered and in this manner it is permissible to go out according to Torah law; however according to the laws of Jewish women, or in other words the Rabbis, a woman is forbidden to go out even if her hair is orderly if it is not covered.³⁹

Rabbi Chaim Tzvi Teitelbaum explains in the *Atzei-Chaim* Responsa (*Orah Haim* 6) that the two explanations of *Rashi* in *Ketubot* that explain how the house of Rabbi Yishmael learned that the custom of the daughters of Israel is not to uncover their hair from the verse "and he uncover her head" (see previously G/1) differ on this distinction between disorderly hair and uncovered hair. The first explanation explains that the *Kohen* exacts on her a punishment of a measure for a measure – just like she undid her hair in order to be pretty for her adulterer so too is done to her; while the second explanation believes that what is done to the *Sota* is only uncovering her hair that was covered until now and this does not make her ugly or constitute a measure for a measure, rather a change from the customs of the daughters of Israel.

According to him, *Rashi* preferred the second explanation and wrote that it is the main one, because of the *Gemara's* challenge "but it is from the Torah" – because if the intention of the *Mishna* was that the laws of Jewish women obligate covering the hair, then there is no room for the

³⁹See in the book *Sanhedrai* (a compilation of essays and innovations of Rabbi Yisrael Sanhedrai, edited by Asher Veizer pg. 201-202), where he discusses the position of the *Shvut Ya'akov* at length, while adding the *Maharam Elshaker* and the *Arush HaShulchan*, he writes: "From all that was previously said I Turn my question to the Torah scholars and students, if today in our Holy Land, since many kosher women are accustomed to go out with their hair uncovered with a small head covering, is it permissible to depend on the Halachic authorities previously mentioned."

challenge, because it is possible that the Torah prohibition is on unbraided hair and the Rabbis prohibited hair that is uncovered.

Any way that we explain the *Gemara's* challenge, we will find that according to the conclusion we must differentiate between unbraided hair and uncovered hair – the first being a Torah prohibition and the second a Rabbinic one. However, in contradiction to this distinction between unbraided hair and uncovered hair are *Rashi's* words in *Sota* 8A who explained "*U'phara* – in all places has the meaning of uncovered" – uncovering and not undoing.⁴⁰

Rabbi Weinberg (*Sridei-Eish* Responsa Vol. 3 30) rejected the explanation of the author of *Shvut Ya'akov*, based on the words of the Jerusalem Talmud in *Ketubot* (7,6): "She who goes out in her *Kaplanton* is not considered to be in violation of uncovering her hair." It appears that *Kaplanton* is the equivalent of *Kalatah*. The *Aruch's* version is *Kaplitin* and he explains: "In the Roman language it means hair, and curls and a foreign wig." *Kalata* does not then act instead of a braid, or the ordering of the hair but is an object or piece of cloth that is placed on the woman's head and covers her hair. Rabbi Weinberg derives this from the *Rishonim* as well who in the place of the *Gemara* where it says "*Kalatah* is not considered to be in violation of uncovered hair" they write "in *Kalata*" (the *Rosh*) or *Kalata* that is on her head (*Tosfot Rid*).

J. Summary

- A. Though the *Gemara* asks with regard to uncovered hair "it is from the Torah", and even though it may be defined as 'the laws of Moshe', it appears that the majority of *Rishonim* believe that the prohibition is not a Torah one, but a prohibition that stems from the customs of the daughters of Israel.
- B. The foundation of the custom is the modesty according to which the daughters of Israel led themselves, and there is reason to changes in this custom based on place and time. Certainly in these times when many women uncover their hair, this cannot teach about a immodest character even though in the time of the *Mishna* and *Gemara* it was grounds for divorce with no *Ketuba*.
- C. With regard to *Kriat Shma*, which is prohibited to say in front of an *Erva*, many *halachic* authorities believe that this too dependent on

⁴⁰ See *Hatam Sofer* Responsa *Yoreh De'ah* Vol. 2 249, that *Priah* (uncovering) in the context of *Milah* means "revealing the top, like uncovering the head of a woman."

time and place, and when women in general permit themselves not to cover their hair, it is permitted to read *Kriat Shma* in front of them.

- D. There are those who explain that the prohibition relates only to disorderly hair which is not braided.

I wrote this article to excuse the custom of many modest daughters of Israel. There have been prior permissive Halachic rulings before me (see previously chapter H), and certainly there was a great need for this (see *Igrot Moshe Responsa Even HaEzer* Vol. 1 57).