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PREVENTION OF THE CLASSIC ‘AGUNA’

The problem of a spouse, whether the husband or the wife, refusing to sever the bonds of marriage in accordance with Jewish law even at the marriage’s end, is unfortunately all too common.

BY RACHEL LEVMORE

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These days when we meet an “aguna,” or express concern over our daughters’ futures, the general intent is actually focused on a victim of get-refusal. Indeed, the problem of a spouse, whether the husband or the wife, refusing to sever the bonds of marriage in accordance with Jewish law even at the marriage’s end, is unfortunately all too common.

Some remedies exist, even if not perfect. Men who are victims of get-refusal do have the option, through the Rabbinical Court, to begin a new family via a ruling of the court. Albeit, this is a long and arduous process, requiring the agreement of the Chief Rabbi of Israel to his remarriage, the signatures of one hundred rabbis and his depositing a “get” – writ of divorce – with the Rabbinical Court, thus freeing his recalcitrant wife to remarry as well. In fact, as was recently reported on these pages (“Man can marry second wife after first flees with child,” Jeremy Sharon, January 8, 2019), such was the solution proffered by the Rabbinical Court in Tel Aviv to a husband whose wife had left him six years earlier, taking their son abroad with her, so as not to be found.

For women victims of get-refusal, no such solution is offered. The wife is bound to her husband until he acquiesces to arrange a get. However, a preventative mechanism, which protects both husband and wife from possible future get-refusal, is easily put in place. An “Agreement for Mutual Respect”

which is a halachic prenuptial agreement for the prevention of get-refusal, based on a monetary mechanism, is readily available. Indeed it has been signed by thousands of Israeli couples in the past two decades and has saved a number of women.

Tragically, the “classic” aguna does not find a release from her situation. The woman whose husband has disappeared (as opposed to the wife’s disappearance) or who lies in a permanent vegetative state, is permanently bound to that husband. She is, what I call, a “husbandless wife.” This situation drives home the Jewish law principle that her marriage is dissolved via a get or the determination of death of the husband. In this situation there is no hope, no possibility of salvation. The existential angst is immeasurable and indescribable.

INSTABILITY AND unpredictability of life in today’s world are providing a wake-up call to both the layperson and the scholar of Jewish law. In recent history, the Jewish world has witnessed examples of classic agunot, which include: nine women whose husbands perished on September 11, 2001 in the horrific attack on the World Trade Center, who turned to the Beth Din of America to determine that they could remarry; four additional agunot who turned to other private Rabbinical Courts following that terrible tragedy; Israeli agunot whose husbands lie in a permanent vegetative state due to a traffic accident or a failed suicide attempt or whose husband disappeared in the waters of Lake Kinneret.

Instead of closing their eyes to a daunting possibility that any given woman could suddenly find herself an aguna, there are those who approach this problem with eyes wide open. One such expert in Jewish law who seeks to provide a preventative solution, precluding the problem of the “classic” aguna, is Rabbi Prof. Michael J. Broyde. Rabbi Broyde’s document, the “Tripartite Agreement” or in Hebrew “Heskem Hachut Hameshulash,” is signed just prior to the wedding ceremony with the explicit intent of protecting the woman. It contains a series of halachic mechanisms which build upon each other, such as conditional marriage, get-by-proxy and a communal ordinance – to be implemented when a seemingly classic aguna turns to a Rabbinical Court for salvation. If none of the conditions listed in the document come to pass, then the marriage is a binding union, as expected. However, if the husband disappears or is alive but incapable of giving a get, then the document signed by both the bride and the groom, spells out their intent that a Rabbinical Court should give the woman a get on the man’s behalf and/or annul the

sanctification of kiddushin, which took place under the bridal canopy.

As tens of couples have signed the “Tripartite Agreement” in the US and in Israel, this preventative solution is quietly entering the discourse in Jewish law. In recent years, a scholarly article co-authored by Rabbi Broyde and myself, was published in the leading Israeli journal of Jewish law, *Techumim*. Lectures and classes are delivered, illuminating the workings of the agreement. For example, the Shabbat of January 19 is dedicated by the International Young Israel Movement in the Central Rimon Synagogue of Efrat, to the study of the classic aguna problem and this specific solution.

Experience has shown that together with the twists and turns of Jewish life, it is a groundswell of educated laypersons that bring about solutions to problems, gradually bringing the rabbinic establishment to rise to the occasion. Our daughters’ futures depend on us.

The writer is the director of the Aguna and Get-Refusal Prevention Project of the International Young Israel Movement in Israel and the Jewish Agency. She holds a PhD in rabbinic law and is the first female rabbinical court advocate to sit on the Commission for the Appointment of Rabbinical Court Judges.



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