

## *Get-Refusal and the Agreement for Mutual Respect: Israel Today*

**By: RACHEL LEVMORE**

In December 1999 eleven rabbis who serve jointly as Roshei Yeshiva of the Rabbi Isaac Elchanan Theological Seminary, affiliated with Yeshiva University, published the following call:<sup>1</sup>

### **A Message to Our Rabbinic Colleagues and Students**

The past decades have seen a significant increase in the number of divorces in the Orthodox Jewish Community. In the majority of these situations, the couples act in accordance with Jewish law and provide for the proper delivery and receipt of a Get. Each year, however, there is an accumulation of additional instances in which this is not the case.

We are painfully aware of the problems faced by individuals in our communities tied to undesired marriages. Many of these problems could have been avoided had the couple signed a halakhicly and legally valid prenuptial agreement at the time of their marriage. We therefore strongly urge all officiating rabbis to counsel and encourage marrying couples to sign such an agreement.

The increase [*sic*] utilization of prenuptial agreements is a critical step in purging our community of the stressful problem of

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<sup>1</sup> See <[http://www.rabbis.org/Prenuptial\\_Agreement.cfm](http://www.rabbis.org/Prenuptial_Agreement.cfm)>. Published in *The Jewish Press* on Feb. 25<sup>th</sup>, 2000, p. 28; “Chained Women Could Have Used Prenuptial Pacts,” *Forward*, Feb. 25<sup>th</sup>, 2000.

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the modern-day Aguna and enabling men and women to remarry without restriction. By encouraging proper halakhic behavior in the sanctification and the dissolution of marriage, we will illustrate דרכיה דרכי נעם וכל נתיבותיה שלום, *all the Torah's paths are peaceful*. (Signed by the Roshei Yeshiva of the Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University: Rabbi Norman Lamm, Rabbi Zevulun Charlop, Rabbi Herschel Schachter, Rabbi Moshe Dovid Tendler, Rabbi Mordechai Willig, Rabbi Yosef Blau, Rabbi Michael Rosensweig, Rabbi Yaakov Neuburger, Rabbi Yonason Sacks, Rabbi Meir Goldwicht, Rabbi Jeremy Weider – December 1999; Tevet 5760)

These rabbis appealed to their colleagues to deal with the problem of *get*-refusal, an increasingly frequent phenomenon amongst Orthodox communities in the US, before the marriage takes place. The rabbis declared their empathy with the anguished individuals stuck in a failed marriage with a partner who refuses to divorce them, and urged all officiating rabbis to advise and encourage couples to sign a *halakhic* prenuptial agreement to prevent *get*-refusal.

In fact, Israeli and Diaspora rabbis alike have recognized for many years the power of a prenuptial agreement, formulated in accordance with *halakhab*,<sup>2</sup> to diminish the number of instances of *get*-refusal.<sup>3</sup> Several well-known rabbinical figures expressed approbation

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<sup>2</sup> One such important document, meant for use in the US, was drawn up by the Rabbinical Council of America. This agreement was brought before several senior *dayanim* by Rabbi Mordechai Willig, in February, 1992. The rabbis, from Israel and the United States, who expressed their endorsement by signing the text of the Agreement, were: Rabbi Zalman Nechemiah Goldberg, Rabbi Ovadiah Yosef, Rabbi Yitzchok Liebes, Rabbi Chaim G. Zimbalist, and Rabbi Gedalia Dov Schwartz.

<sup>3</sup> In June, 1993, the assembly of the RCA passed a resolution requiring member rabbis to ask marrying couples to sign the agreement. The same resolution was passed again about a year later. Six and a half years later, in December, 1999, the “Message to Our Rabbinical Colleagues and Students” was published by the above Roshei Yeshiva of Yeshiva University, urging that couples be advised to sign the agreement. See: *The Prenuptial Agreement: Halakhic, Legal and Pastoral Considerations* (ed. B. Herring & K. Auman), New Jersey 1996, p. 19; <[http://www.rabbis.org/pdfs/PNA\\_Booklet.PDF](http://www.rabbis.org/pdfs/PNA_Booklet.PDF)>, pp. 31-32 of the pdf file. The RCA passed yet another resolution on May 18, 2006, in the clearest language possible: **“RESOLVED** that since there is a significant agunah

for the fundamental principle upon which the prenuptial agreement is based, each in his own manner.<sup>4</sup> It is a given that in the Diaspora the

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problem in America and throughout the Jewish world, the Rabbinical Council of America declares that no rabbi should officiate at a wedding where a proper prenuptial agreement on get has not been executed.”

See <<http://www.rabbis.org/news/article.cfm?id=100772>>.

- <sup>4</sup> Rabbi Moshe Feinstein in *Iggerot Moshe, Even ha-Ezer*, part IV, *siman* 107, in his letter of response to Rabbi Yechiel Yitzchok Perr, dated 23 Cheshvan 5740, agreed to the fundamental principle upon which the prenuptial agreement is based. The responsum is translated as follows:

Concerning the addition to the “*tena'im*” document that if they should decide to separate, he will not delay giving a ‘*get*.’

23<sup>rd</sup> Cheshvan 5740, To my friend Rabbi Yechiel Yitzchok Perr ... Rosh Yeshiva Derech Ayson ... Concerning his question of whether it is proper to add the following language into a “*tena'im*” document: “If after the wedding they come to separate, heaven forefend, then the husband will not withhold the giving of a ‘*get*,’ and the wife will not refuse to accept it, once Beit Din *ploni* has ruled thus.” And by means of this addition, the civil courts will force both parties to obey the Beit Din.

This addition is permissible, and the *get* will not be considered a ‘coerced *get*.’ There is also benefit in saving [the woman] from the chains of an undesired marriage. However, it is advisable that one meet the groom and the bride and become familiar enough with them to sense whether, by virtue of their natures, such a condition would heaven forefend lead to dispute and arguments between them.

With friendship, Moshe Feinstein.

In Rabbi Yaakov Betzalel Zolty’s response on this issue to Rabbi Abner Weiss of Riverdale, New York, dated 27<sup>th</sup> Tishrei 5743, Rabbi Zolty (then Ashkenazic Chief Rabbi of Jerusalem) agreed to the idea of obligating a recalcitrant husband legally separated from his wife to pay alimony because of his wife’s inability to remarry on his account. Note the conclusion of his letter: “I would like to note that our previous suggestion is only a suggestion, and not a *halakhic* ruling in this matter, for this is up to the leading Torah sages in America, who deal with this on the *halakhic* and practical levels. In particular, it is up to the decision of my friend, the sage who is the glory of Israel, the rabbi for all of the American continent—the great sage Rabbi Moshe Feinstein, *shlita*. Whatever he decides, so it shall be.” In other words, Rabbi Zolty accepted the decision of Rabbi Feinstein. Rabbi Zolty’s letter was first published in “B’Inyan Takanat Agunot,” *HaPardes*, 57:7 (*Iyar* 5743), pp. 6–8, and can be found online at <<http://www.hebrewbooks.org/12461>>. The letter is reproduced in full in: Shlomo Riskin, *Women*

problem of *get*-refusal is a serious one, affecting specifically the Orthodox communities, where wedding ceremonies are conducted in accordance with *halakhab*, and divorce therefore requires a *get*. (Jews of other denominations may opt for civil marriages, with no halakhic *kiddushin*, such that no *get* is required for divorce.) In Israel, however, the problem is far more extensive. In the Jewish State, there is no distinction on the basis of a person's religious philosophy (or lack thereof). All Jews, notwithstanding their religious affiliation or lack thereof, who avail themselves of the services of the official Marriage Registrar, are married in accordance with *halakhab*. Thus, in every instance where a Jewish marriage ends up on the rocks, one or the other partner may become a victim of *get*-refusal.

### a. The Legal Situation in Israel

A problem inherent in divorce proceedings in Israel is the point of encounter between the rabbinical court and the civil court. The Jurisdiction of Rabbinical Courts Law (Marriage and Divorce) 5713-1953 grants exclusive authority to the rabbinical courts in matters of divorce for Jews who are citizens or residents of the country.<sup>5</sup> In other words, according to **civil** law, the civil court has no authority to

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*and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law. A Halakhic Solution.*, New Jersey 1989. A facsimile of Rabbi Zolty's letter can be found in: Rachel Levmore, *Min'ee Einyayich MeDimah: Heskemei Kdam Nissuin LeMeni'at Seiruv Get*, Jerusalem 5769/2009.

In the autumn of 5744, a committee of the RCA submitted its proposal for a prenuptial agreement. The leader of modern-Orthodox Jewry, Rabbi Yosef Dov Soloveitchik, expressed his approval. This was reported in an article that appeared in *Hamevaser*, a student publication published by the Jewish Studies Division of Yeshiva University—the institution then headed by Rabbi Soloveitchik. See “The RCA Commission: Solving the Problem of *Gittin*”, *Hamevaser*, Vol. 22 No. 2 (Oct 27, 1983). In July 2009, Rabbi Soloveitchik's endorsement of the prenuptial agreement was corroborated in a conversation I held with Rabbi Abner Weiss, who headed the RCA's Commission on Agunot in the 1980s. Rabbi Weiss had personally brought the prenuptial agreement before Rabbi Soloveitchik and received his endorsement.

<sup>5</sup> Jurisdiction of Rabbinical Courts Law (Marriage and Divorce), 5713-1953, Section I.

rule in matters of divorce or marriage. Only a rabbinical court, which follows religious law, can rule on the dissolution of a marriage. The law states further that marriage and divorce among Jews in Israel are to be conducted in accordance with Torah law. Thus, the law accepts—*inter alia*—the teaching of the Mishnah: “[The situation of] a man who divorces [his wife] is not the same as [that of] a woman who is divorced... and a man does not issue [the divorce] except by his own free will” (*Yevamot* 112b). Within Rabbinic law, the view of the Rambam regarding a recalcitrant husband, whom the Beit Din “beats until he says ‘I am willing,’” (“*makin oto ad sheyomar rotzeh ani*”)<sup>6</sup> is well known. Nevertheless, the later ruling of the Shach,<sup>7</sup> regarding the use of physical coercion, is the rule of thumb in contemporary times. The Shach explicitly stated: “There is no coercion by physical means.”<sup>8</sup> In fact, the Israeli Rabbinical Court has made it clear that “here we do not rule in accordance with the Rambam.”<sup>9</sup> Hence the great hesitancy in contemporary times in applying pressure that may be considered as coercion.<sup>10</sup> Should the man divorce his wife as a result of **unlawful** coercion, he is considered to have given a “coerced divorce” (*גט מעושה*) which, according to religious law, is invalid.<sup>11</sup> The ramifications of a *get* that turns out to be invalid are potentially catastrophic: adultery and *mamzerim* (progeny of a religiously forbidden union). Thus, in demanding a divorce from her husband, a woman is in an inferior position.

Even for a man seeking to divorce his wife, the situation today is not necessarily easy, owing to the Enactment of Rabbeinu

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<sup>6</sup> Maimonides, *Laws of Divorce*, 2:20.

<sup>7</sup> Rav Shabtai Cohen, 1621–1662, Poland and Lithuania.

<sup>8</sup> Shach, *Gevurat Anashim* 29.

<sup>9</sup> Appeal 139/1958 in the Supreme Rabbinic Court, before: Chief Rabbi Yitchak Nissim, Rav Shalom Yosef Elyashiv, Rav Yaakov Betzalel Zolty. See *Piskei Din Rabani'im*, 3, p. 201.

<sup>10</sup> An additional deterrent to physical coercion in modern times, both in Israel and the Diaspora, are civil rights laws in every democratic state that prevent such treatment. Neither in Israel nor the United States do the criminal courts resort to corporal punishment. In fact, a Rabbinical Court Judge who would whip a recalcitrant husband in accordance with the Rambam would be charged with assault and battery, as he would be breaking civil law.

<sup>11</sup> Even according to Maimonides, *Laws of Divorce*, 2:20.

Gershom.<sup>12</sup> The prohibition against polygamy, in accordance with that Enactment, was accepted as an enactment of the Chief Rabbinate of Israel at the National Rabbinical Conference held in 1950, “for the sake of peaceful relations and domestic harmony in Israel.”<sup>13</sup> **Thus, in modern-day Israel, neither party to a marriage may be divorced against his/her will.**

For the most part, then, divorce must be carried out with the agreement of both sides, and whichever party initiates the proceedings is burdened with obtaining the other’s agreement. However, for the man the obstacle is of rabbinical origin (*de-rabbanan*), whereas for the woman it is of biblical origin (*de-oraita*). Another fundamental difference between a man whose wife refuses to accept a *get* and a woman whose husband refuses to grant one, involves the woman’s biological clock. A woman whose husband refuses to grant a *get* is prevented from establishing a new family, and the passage of her years of fertility is a source of distress for her. A man whose wife refuses to divorce can more easily establish a new family outside of a married framework (on condition that his new partner is single and not married) since their children will not be *mamzerim*. Furthermore, a man remains fertile at an age when women are already unable to become pregnant, and in any case he is often more willing to relinquish the prospect of having more children.

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<sup>12</sup> *Shulhan Arukh* and Rema, *Even ha-Ezer* 1:10. In order to guarantee the efficacy of the prohibition against polygamy, Rabbeinu Gershom also forbade a husband from divorcing his wife against her will; see *Shulhan Arukh, Even ha-Ezer* 119:6, and *Responsa of the Chatam Sofer, Even ha-Ezer* 1. In the wake of the prohibition against polygamy, it became necessary for him to prohibit divorcing a wife against her will, since otherwise if a man wanted another wife he would simply divorce the first one. In the *Responsa* of the Rosh, rule 42, the Rosh explains the enactment of Rabbeinu Gershom as having been intended “to equalize the woman’s power with that of the man. Just as a man divorces his wife only of his own free will, so a woman can only be divorced in accordance with her will.” See Avraham Grossman, “*Chakhmei Ashekenaz ha-Rishonim*,” Jerusalem 5741, and Elimelekh Westreich, “*Masa Bein Mesorot*,” Jerusalem 5762.

<sup>13</sup> Chief Rabbinate of Israel, Permanent Enactments Governing Jewish Marital Relations, Shevat 5710.

As noted, secular law grants exclusive authority to the rabbinical courts to rule in matters of marriage and divorce in accordance with religious law. Nevertheless, in certain areas, such as division of property and child custody, the two legal systems—rabbinical and civil—share parallel jurisdiction. This situation gives rise to a “legal race” whereby each party quickly petitions whichever court he/she expects will produce the most favorable result, and the principle is then “first come, first served.” In other words, whoever’s petition is filed first grants the court in which it was filed the authority to rule on that case.

The “legal race” for divorce is unique to Israel, out of all democratic countries. It is easy to see how this legal situation exacerbates the tension between the two parties. It also leads to suspicion between married couples. A couple whose relations are somewhat troubled—even if they have agreed to seek marital counseling—cannot feel confident about one another. Each spouse is likely to suspect the other of acting behind his/her back with a view to granting authority to one court or the other, even though to all appearances they are cooperating. Clearly, it is extremely difficult to rehabilitate such a marriage. Thus, the law in Israel poses an obstacle to couples seeking in good faith to achieve marital harmony, and adds fuel to the fire of conflict.

The differences between the two court systems find concrete expression in their respective rulings, and reflect two different world views. One example concerns the division of assets that have accumulated over the course of the marriage, at the point of its dissolution. According to the Monetary Relations Between Spouses Law, 5733-1973, upon dissolution of a marriage, each spouse is entitled to half of the value of the assets that the couple has acquired during the marriage (with the exception of certain types of assets that are specified in the law). The rule in *halakhab*, on the other hand, is that “a woman’s acquisition becomes her husband’s acquisition.”<sup>14</sup> Based on these fundamentally different guiding principles, the religious and civil courts arrive at vastly different rulings on the division of property. Once again, awareness of this discrepancy adds further motivation for the “legal race” discussed above.

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<sup>14</sup> *Nazir* 24b; *Sanhedrin* 71a; *Gittin* 77a; *Shulhan Arukh Hoshen Mishpat* 33:3.

With regard to alimony or child support, the sum determined by the rabbinical court is generally lower than what the civil court would award.<sup>15</sup> On the other hand, when it comes to child support, the rabbinical court requires the father to support the children,<sup>16</sup> while the civil court examines the earning power of both parents and rules accordingly. This, too, exacerbates the situation.

## b. The Israeli Reality

Nearly a third of couples in Israel today end up divorcing.<sup>17</sup> In 2003, 9,249 divorces were finalized in the country's rabbinical courts.<sup>18</sup> This number has generally risen every year.<sup>19</sup>

Together with the rise in the number of couples who are in the process of divorcing, there has also been a steady rise in the number of “*get*-refusals” or, in more popular parlance, “*agunot*.”<sup>20</sup> The concept of a “woman who is denied a divorce” is defined in a number of different ways, depending—obviously—on who defines it. The narrowest definition is: a woman whose husband has been ordered by the rabbinical court to carry out his “obligation to divorce his wife,” but has nevertheless not divorced her. Unquestionably, this woman is being “denied a divorce.” However, women's organizations adopt a different definition.<sup>21</sup> To their view, whenever a man refuses his

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<sup>15</sup> Ariel Rosen-Tzvi, “Hilkhat ha-’Kerikha’ u-Merotz ha-Samkhuyot ve-Hashpa’atam al ha-Mishpacha ve-Dinei ha-Mishpacha,” *Iyunei Mishpat* 14 (1) (April 1989), pp. 67–99.

<sup>16</sup> In accordance with *Shulhan Arukh Even ha-Ezer*, *siman* 70.

<sup>17</sup> *Ma’ariv, Ha-Aretz, Ha-Tzofeh*, Jan. 25<sup>th</sup>, 2000

<sup>18</sup> Eliyahu Ben-Dahan, director of the rabbinical courts, in a press release: Jan. 19<sup>th</sup>, 2004.

<sup>19</sup> In 2002, 8775 divorce suits were filed—a slight decrease in comparison with previous years. The director of the rabbinical courts explained this decrease in light of the difficult economic situation at the time. People doubted their capacity for independent survival in the prevailing economy, and this made them hesitant to break apart the family unit.

<sup>20</sup> As noted above, Rabbi Moshe Feinstein employed the term “*aguna*” to refer to a woman whose husband was refusing to grant her a *get*.

<sup>21</sup> “Points for Discussion in Preparation for a Session on the Subject of Overall Systemic Treatment of Divorcing Couples,” Knesset Research and Information Center, presented to the Committee for Promotion of Women's Status, June 6<sup>th</sup>, 2004.

wife's request for a divorce, even where the rabbinical court has not addressed his refusal, or where he attaches various conditions to his agreement, the woman should be considered as being "denied a divorce." The conditions attached to the man's agreement set the woman up for coercion (whether at the very outset or after years of battle in the rabbinical court) to relinquish her rights in order to appease the husband so that he will agree to divorce her.<sup>22</sup> Often, the attachment of conditions is nothing more than a front: Once the wife has already capitulated to the conditions, she and the rabbinical court discover that the husband still refuses to grant the *get*. According to the Na'amat women's organization, if we adopt the broader definition of women who are "denied a divorce," there are thousands of women who fall into this category.

In the vast majority of divorce suits filed by women, much time elapses before the wife may be categorized as being "denied a divorce" in terms of the narrow definition of the rabbinical court. According to findings processed by the directorate of the rabbinical courts in September, 2003, a woman whose husband refuses to divorce her will wait between two and seven years (!)<sup>23</sup> before the court either "obligates" the husband to grant a *get* or "coerces" him to do so.<sup>24</sup> In other words, it may happen that a man whose wife has filed for divorce declares openly, at the outset, that he does not intend to divorce her; yet the woman will have to wait years for the court to obligate him, and only then will she be recognized as being "denied a divorce" according to the narrow definition. In fact, in some cases the rabbinical court simply does not reach such a ruling, despite the passage of several years.<sup>25</sup>

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<sup>22</sup> Conditions may concern monetary matters, ownership of a joint home, the level of child support, child custody, or ultimately any other issue that the recalcitrant husband may choose. Sometimes there is no stipulation of conditions, but simply a flat refusal to grant a divorce.

<sup>23</sup> According to data presented in response to a query by the "ICAR" coalition by the Directorate of the Rabbinical Courts, July, 2003.

<sup>24</sup> For an explanation of the levels of severity of rulings in such instances, the reader is referred to an article by Rabbi Ezra Batzri, Av Beit Din of the Special Rabbinical Court for Matters of 'Agunot': "Get Me'useh," *Sbnaton HaMishpat Ha'Ivri* 16-17 (5750-5751), pp. 535-553.

<sup>25</sup> It should be noted there has been significant positive development during the past decade in the Israeli state-run system of rabbinical

Moreover, where the rabbinical court has already obligated the husband to grant a divorce, a strange legal situation is created: as noted, according to the narrow definition a woman is “denied a divorce” when her husband refuses after she has filed for divorce and the court has ruled in her favor. Now, what becomes of the ruling? The claimant has brought her claim before the court; the panel of rabbinical judges has ruled in her favor; the defendant refuses to comply with the ruling; and the court has no power to enforce it! It is unable to implement the ruling<sup>26</sup> and end the couple’s marriage.<sup>27</sup>

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courts in the freeing of true *agunot* (whose husbands have disappeared) as well as in the administrative sphere. Nevertheless, our discussion addresses the essence of the law and the husband’s power to refuse to divorce his wife.

<sup>26</sup> In certain instances the court may resort to a number of legal actions to goad the husband to divorce his wife. However, after applying these measures the court may find itself at a loss in confronting a stubborn defendant. Examples of such actions are specified in the Rabbinical Courts Law (Execution of Divorce Rulings), 5755-1995. Section 2 of this Law entitles the court to curtail the rights of a man who has not obeyed a ruling to grant his wife a *get*: The court may, for example, revoke his right to leave the country, to receive a passport, to receive a driver’s license, to work in a licensed profession, to maintain a bank account, etc. Section 3 of the Law authorizes the court (with no intervention of any other bodies) to incarcerate him in order to get him to comply with the ruling. (The total period of imprisonment may not, however, exceed ten years.) The court may also instruct the prison services to keep him in solitary confinement. It is important to note that in general, it takes many years from the time the petition is filed until the court imposes such sanctions—if at all. Additional precious years in the lives of both spouses and their children may be wasted until these sanctions achieve the desired result.

<sup>27</sup> It is exceedingly difficult to pin down the number of such cases. In an editorial by Adv. Shalom Atali, “*Ha-Irgun le-ma’an ha-Agunot u-Mesuravei ha-Get Negged Beit ha-Din ha-Rabbani*,” on the website *Sanhedrin* <<http://www.sanhedrin.co.il>>, an attempt was made to investigate this matter. What became clear was that at the end of 1992, no more than 8,000 divorce cases that had been filed had not yet reached a final ruling. This figure tells us nothing about why the cases still remained open. In the same article, however, it was reported that the director of the rabbinical courts, Rabbi Eliyahu Ben-Dahan, claimed that the total number of *agunot* and women denied a divorce in Israel did not exceed

### **c. Reviewing the Facts**

A great number of obstacles stand in the way of a respectful, civilized divorce. Let us summarize some of those that are “built into” our current legal/*halakhic* system:<sup>28</sup>

1. The claimant (be it the wife or the husband) is at a disadvantage: The defendant in a divorce suit has the power to refuse. A man’s power, in this regard, is greater than that of a woman. He may actualize this power in the form of a simple refusal, or by means of inflated demands attached as conditions for his agreement. In such instances the woman filing for divorce has to “buy” her *get*.
2. Legal Race: The spouse who files first, in whichever court system he/she feels will rule most favorably from his/her point of view, thereby awarding the jurisdiction to rule in the case to his/her choice of court—“wins.” This automatically leads the other spouse to find that court’s ruling unjust. The “legal race” inherently encourages disagreement and an undignified divorce.
3. The demand for authority to be transferred to the rabbinical court: The demand that monetary and child custody claims be withdrawn from the civil court and transferred to the exclusive authority of the rabbinical court may issue from the rabbinical court itself or as a demand by an uncooperative husband seeking to neutralize a bargaining chip held by his wife. Either way, this decision conflicts with the need, perceived by the claimant, to maintain a separation between discussions pertaining to the divorce itself, and discussions concerning property and the children.

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500. In a response that appeared on the same website, Esther Sivan and Rivka Macayes—the legal team representing the Israel Women’s Forum—claimed that there are several hundred more women who are denied a divorce, yet are not included in the data published by the directorate of the rabbinical courts. From that point on there has been an ongoing debate between the rabbinical courts and the women’s organizations regarding statistics.

<sup>28</sup> Readers are referred to my Masters’ dissertation submitted to the Department of Talmud, Bar Ilan University, 5761: “Prenuptial Agreements to Prevent Get-Refusal at the End of the Twentieth Century.” Much of the present article is based on that dissertation.

4. Decisions of the court and their enforcement: In the event of disagreement between the spouses, at least one of them will regard the court's ruling as having been to his/her detriment. This feeling may lead that party to "flex his/her muscles" and to exercise whatever power he/she has—or, alternatively, to play the victim. The very need for a court decision that the couple must divorce, while that same court cannot create new legal grounds to terminate the marriage (instead, it remains mostly dependent on the man's wishes), actually gives one spouse greater power than the court, while the other spouse is dependent upon the court.

5. Foot-dragging: For the couple involved, every month that passes may be another month of nightmare. In practice, as noted, as a result of *get*-refusal, a divorce case can stretch on for years. Delays in resolution of a case may also be caused by the court's failing to issue a ruling—or, alternatively, urging the uncompromising couple to "come to an agreement." This sort of urging usually translates into pressure on the woman without relief until she submits to the man's demands.

6. Pressure on the man to divorce: Any attempt to influence the man may be interpreted as "undue pressure," rendering the divorce a "coerced" one (*get me'useh*) and hence invalid.

#### **d. Prenuptial Agreement As a Solution**

In Israel, the sphere of Jewish divorce—representing the nexus between the rabbinical court, which follows religious law, and the civil court, which follows civil law—is a conflict zone that is plagued by a number of fundamental problems. One possible way of solving these problems is by drawing up a prenuptial agreement that may address not only the problem of *get*-refusal, but also associated problems that arise from the conflict between the two court systems in Israel. All of this can be achieved while maintaining and respecting the *Ketubbah*, the family unit, and Jewish tradition in general. The challenge is to draw up the agreement in such a way as to integrate a modern life perspective with *halakbab*, such that the agreement will have both legal and *halakhic* validity.<sup>29</sup> Indeed, this was the intention

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<sup>29</sup> A signed prenuptial agreement in place at the time of a contested suit for a *get*, grants a Beit Din a halakhic tool that it ordinarily does not possess. Indeed an Israeli Beit Din can always obligate the recalcitrant

husband in high wife support, known as *mezonot me'ukevet mechamato le'binasei*, but for fear of *get me'useh* **will do so only after a ruling of *chiyuv get*** (obligation to give a *get*). For a Beit Din to reach this ruling much time has to pass while the Beit Din and the litigants undergo emotion-laden adjudication—usually measured in spans of years. Batei Din will not require a man to pay his wife high spousal support until the wife has proven serious faults in the husband as grounds for a ruling of *chiyuv* (obligation) or *kefiyah* (coercion). This process takes its toll in: a. the passage of time—certainly months, usually years; b. emotions running high as a result of “washing dirty laundry in public.” In fact, the need to prove grounds for a ruling for a *get* puts the woman in a catch-22—where she is working against herself no matter what she does. Her aim is to convince both her husband and the Beit Din to arrange a *get*. However, in order to convince the Beit Din that a *get* is in order, she must lay out in detail all of the husband’s serious faults. While she puts forth all of her claims and proves them, the woman is thwarting her goal of convincing the husband to cooperate. Indeed, the opposite result occurs. The husband is shamed before the Beit Din—having his most intimate faults exposed before others. This further enrages him, adding more fuel to the fire of vindictiveness and recalcitrance. Alternatively, in the case of a signed agreement, the immediate recognition of a potentially recalcitrant husband that he will be obligated to pay high spousal support, will not only uproot the urge to retaliate, it will prevent the slide into heightened emotions that bring about vindictiveness. Self-interest will provide an impetus to give the *get*, before suffering unnecessary financial loss. This occurs before a couple even reaches the Rabbinical Court, as opposed to entering into the adversarial process where the Beit Din cannot take immediate steps to obligate the husband in high spousal support without the initial voluntary acceptance of the timetable.

An additional *halakhic* tool is provided to the Beit Din when a prenuptial agreement is signed. In the quest to obtain a husband’s acquiescence to give the *get*, it is natural for the court to allow him to stipulate the conditions under which he will grant it. A Beit Din will always attempt to persuade the husband in this manner, thus inexorably linking familial matters to the giving of the *get*. Thus, other disputes such as custody and support of the children, division of the marital assets, etc. provide leverage for the husband against the arrangement of the *get*. If a severing of the linkage exists, however, as is defined in the prenuptial agreement, the Beit Din is free to relate to the issue of the *get* in a “pure” state.

underlying the development of the “**Agreement for Mutual Respect.**”<sup>30</sup>

A review of the Agreement for Mutual Respect shows that each of the six “obstacles” mentioned above is addressed fully:

1. The claimant’s disadvantage: Given the Agreement’s framework, the spouse who is sued for divorce comes to understand that it is in his/her interest to reach a divorce within the period specified from the date of a claim made until the deadline for enforcement of the agreement. The Agreement specifies that if one party seeks a divorce, a delay on the part of a recalcitrant spouse entails payment of increased spousal support at a specified level, for as long as the delay continues. Hence, it is in the defendant’s interests to approach negotiations in a serious, dignified manner with no attempt to impose unreasonable conditions, so that the *get* can be finalized before the specified period is over.
2. “Legal race”: There will be no point in rushing to file in one court or the other, since both courts will rule in accordance with the guidelines set out in the Agreement. Therefore they are likely to reach the same decisions, whether according to civil law or *halakhic* law (at least in financial matters, although not necessarily in matters of child custody).
3. Demand for transfer of authority to the rabbinical court: (a) Since both parties will seek to reach agreements on child custody and property in order to help complete the divorce within the specified time, they will refrain from submitting disagreements or claims in either the civil or the religious court. (b) If the couple is nevertheless unable to settle matters themselves, the Agreement ensures a separation between the divorce itself and the discussions pertaining

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The voluntary signing of a prenuptial agreement, in the taking on of an obligation of spousal support, its setting of a timetable for that support, as well as in the severing of the linkage to conditions external to the act of giving a *get*, allows for a different *halakhic* foundation upon which the Beit Din can build. This foundation does not exist without the voluntary acceptance of the couple of these conditions at the outset of the marriage.

<sup>30</sup> The “Agreement for Mutual Respect” can be found on the website of the Council of Young Israel Rabbis in Israel at <<http://www.youngisraelrabbis.org.il/prenup.htm>>.

to children and property. No attachment of conditions will be taken into consideration.

4. Decisions of the court and their enforcement: By signing the Agreement for Mutual Respect, the parties provide the rabbinical court with an accessible *halakhic* device to facilitate ruling in favor of divorce.

5. Foot-dragging: The Agreement sets forth a clear timetable. There is no possibility for foot-dragging on the part of either party, since any delay works against the interests of both spouses.

6. Pressure on the man to divorce: The mechanism of increased spousal support payments to which the man (as well as the woman) commits himself in the event of delay is not considered as pressure that brings about a '*get me'useh*.' It is a monetary obligation with no bearing on the religious laws pertaining to divorce. The Agreement has been drawn up with extensive attention to *halakha* so as to preclude claims of "lack of cognizance" ("*asmakhta*") or "*get me'useh*."

The true test of the effectiveness of the Agreement lies in the level of cooperation that the couple demonstrates in conducting divorce negotiations in an orderly and dignified manner.<sup>31</sup> The monetary obligation acts as a "wake-up call," keeping the defendant focused on his/her commitment, thus preventing him/her from being carried away by difficult emotions and a desire for revenge. It is our belief that it will rarely become necessary to resort to bringing the Agreement to the rabbinical or civil court. In these rare cases, it may

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<sup>31</sup> In the US, a prenuptial agreement of this sort—likewise based on the principle of increased alimony payments—has been widely available for several decades. According to a letter that I received from Rabbi Yona Reiss, then director of the Beth Din of America (affiliated with the RCA), dated Nov. 14<sup>th</sup>, 2000 (as well as verbal statements by him since then), well over 40 couples who had signed an agreement before getting married had appeared before the Beth Din seeking divorce. In every instance the "*get* was delivered in a timely fashion." In Israel, the prenuptial agreement started to gain popularity less than ten years ago, and there have already been several instances where a signed agreement has brought about a relatively speedy divorce, with a joint petition for divorce filed in the rabbinical court.

be assumed that the court will uphold the Agreement in accordance with its detailed instructions.<sup>32</sup>

**The Agreement for Mutual Respect anchors the modern view of mutual respect and full partnership in marriage, deeply within *halakha*. Should a couple that signs the Agreement join the thirty percent of couples in Israel that end in divorce, they will be able to end their marriage in a peaceful, dignified manner, in accordance with the rules that they established for themselves when they were still in love. They will be able to divorce without causing hurt to each other, to themselves, or to their children. Once a quiet divorce is final, both parties will be in a better emotional condition to recover and get on with their lives, building new and healthy family units. Solving the bitter and painful problem of *get*-refusal will ultimately contribute towards strengthening the family unit in Israel.**

## Conclusion

It is common for rabbis and laymen alike to balk at the idea of a prenuptial agreement. Their concerns may be based on *halakhic* principles<sup>33</sup> or may simply arise from their world-view. Some have questioned whether it is fair to ask a couple that is about to marry to think about divorce: will this in itself not spoil the relations between them?

Rabbi Chaim David ha-Levi responds as follows:<sup>34</sup>

“I have also heard others argue against agreements for monetary relations between the couple, [claiming] that it looks as though they are building their home with thoughts of divorce and death. I wonder at these claims: are all the laws of marriage documents that appear in *Even ha-Ezer*... not a lawful regulation of monetary

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<sup>32</sup> Should a regional rabbinical court (or, alternatively, a family court) rule, for whatever reason, that the Agreement is invalid, it may be assumed that the Supreme Rabbinic Court will uphold it.

<sup>33</sup> For an in-depth look at responsa specifically dealing with the subject of prenuptial agreements for the prevention of *get*-refusal, see Rachel Levmore, “Rabbinic Responses in Favor of Prenuptial Agreements,” *Tradition* 42:1 (Spring 2009), <<http://www.traditiononline.org>>.

<sup>34</sup> Chaim David ha-Levi, *Mayim Chayim Responsa, siman* 63.

relations between the couple? What difference is there between regulation by law and regulation on the basis of an agreement? ... For it is quite clear... that if the monetary matters are not well regulated, suspicion will prevail between the spouses, which may undermine their married life – for this is the nature of the world... **Everything is regulated in *halakha* with a view to the stability of married life, to prevent friction and suspicion between the spouses, and to have peace prevail in their lives.** However, nothing that our Sages set forth in *halakha* obligates the couple in any monetary matters, and **they are entitled to regulate the monetary relations between themselves as they wish;** this in actuality being an agreement for monetary relations between the couple. Not only is this not contrary to *halakha*, but the foundations for it are to be found in the *halakha*.”

We conclude by citing Rabbi Shear-Yashuv Cohen, Av Beit Din and the Chief Rabbi of Haifa, who describes as follows the “problem of the generation”:<sup>35</sup>

“Rabbinical court judges often hear the cry of women whose husbands abuse them for the sake of revenge, and who - out of meanness and wickedness - prevent them from divorcing and remarrying in accordance with the law of Moshe and Israel and establishing a Jewish home, to rebuild the ruins of their lives. These husbands brazenly rebel against court rulings obligating them to grant a *get* to their wives; they appeal against them in various courts, show scorn for the rabbinical courts, and take the hurt of these women lightly.”

The main thrust of the initiative towards this goal, of wiping away the tears of oppressed women and men, is currently coming from religiously observant members of the public. Now it is time for this initiative to arise from among the rabbis. It is specifically those rabbis for whom Jewish law is the basis of their lives, and who are also in touch with the reality around them, who must implement through their actions the view of the former Sefardic Chief Rabbi, the Rishon le-Tzion Rabbi Bakshi-Doron:<sup>36</sup>

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<sup>35</sup> Rabbi Shear-Yashuv Cohen, “Coercion of a ‘Get’ in Our Times,” *Techumin* 11, pp. 195–202.

<sup>36</sup> Rabbi Eliyahu Bakshi-Doron, “Divorce as One of the 613 Commandments,” *Torah she-be-al Peh* 27 [5746], pp. 75–83.

“The Torah’s intention is for a marriage to be a healthy one, for the benefit of the man and the woman alike; not an institution that binds the man and the woman. For the foundation of marriage is mutual understanding and a common will.”

The Agreement for Mutual Respect, which is a prenuptial agreement for the prevention of *get*-refusal, is intended to realize this intention of the Torah during the marriage and, where necessary, at its termination.

As the rabbis of Yeshiva University pointed out, by encouraging proper *halakhic* behavior in the sanctification of marriage as well as at its dissolution, we can truly give witness to the verse “Its ways are ways of pleasantness, and **all** of its paths are peace.” ❧