

A Woman Acquires [Freedom for] Herself in 3 Ways...*

by Susan Weiss

A woman is acquired [as a wife] in three ways and acquires [freedom for] herself in two ways. She is acquired with money, or with a document, or through marital relations ... She acquires herself with a bill of divorce or through the death of her husband.

KIDDUSHIN: CHAPTER 1: MISHNAH 1

This article describes the three, rather crude, methods that I feel the Israeli Rabbinic Courts have adopted in order to resolve disputed divorce cases, particularly those in which a husband refuses to give his wife a bill of divorce¹ (a *get*). I refer to these methods as: rigid formalism,² extortion, and violence. I argue that the Israeli rabbinic court judges (*dayanim*), are primarily responsible for the use of these often ineffective methods of divorce resolution-- not Jewish law (*halakha*), and not Jewish husbands. (Though I acknowledge that the law and the husbands contribute to the legal quagmire.) Finally, I claim that the *dayanim* instinctively promote these methods, rather than ones that reflect more modern notions regarding divorce, since they protect the *dayanim*'s cultural, social, and monetary interests. Unless those interests are seriously threatened, real change will not occur within the rabbinic courts and the interests of Jewish women in matters of divorce will continue to be compromised.

For reference purposes, I refer to both published rabbinic court cases, as well as to unpublished cases that I have overseen in my capacity as a private attorney, as well as the

¹ According to Jewish law, couples can divorce by consent, without need to show any cause for the break-up; and with no required separation period. This article focuses on the problems of Jewish *women* whose husbands do not agree to divorce them, and the not-very-effective ways that the Israeli rabbinic courts try to resolve those contested cases. Jewish *men* do not encounter the same problems as Jewish *women*, mostly because Biblical law allows them to take a second wife; and because children born to them as a result of sexual relations with unmarried women do not bear the stigma of *mamzer* (*infra*, note 10) . In general, women and men are held to a double standard under Jewish law. *See generally* Rachele Biale, *Women and Jewish Law* (1984) 70-101.

² *See* Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 36 *Hastings L. J.* 805,815 (1986-7). (“[F]ormalist jurisprudence sees the law as an autonomous and closed system whose development can be understood solely in terms of its ‘internal dynamic.’ This insistence upon the absolute autonomy of legal thought and action results in the establishment of a specific mode of theoretical thinking, entirely freed of any social determination.”) *See also* Peter Goodrich, *Reading the Law* (1986) (regarding “*exegesis*,” the equivalent of Bourdieu's “form.”).

founding director of Yad L'Isha (1997-2004), and the Center of Women's Justice (2004-present).

I. Background

In Israel, the rabbinic courts have exclusive jurisdiction over matters of marriage and divorce between Jews.³ If a Jewish woman wants a divorce from her Jewish husband and he does not agree to it, she must petition the rabbinic courts of the State of Israel to decide whether she has a cause of action for divorce. These courts serve as the official divorce courts of the state with respect to Jewish marriages and decide cases in accordance with the *halakha*.⁴

All Israeli rabbinic court judges interpret the *halakha* in accordance with Orthodox tradition. That tradition maintains that a Jewish marriage ends only when a husband gives his wife a bill of divorce,⁵ or dies.⁶ (What Man has rendered, only He can put asunder.) It denies the ability of a woman to give her husband a *get*; as well as the authority of any court of law, including the rabbinic courts, to declare a valid Jewish marriage over in the face of the husband's opposition to the delivery of the *get*.⁷ Furthermore, Orthodox lore maintains that a Jewish divorce is only valid if a *get* is given by a husband to his wife of his free will.⁸ A divorce that is given after applying pressure that impinges on a man's will is invalid (literally a forced divorce, a *get meuseh*) unless such pressure is applied by a Jewish court, within the limited parameters of the causes of action recognized by Jewish law.⁹ If a woman who is still married, or whose divorce is not valid for any other

³ §1 Rabbinic Courts Jurisdiction (Marriage and Divorce) Law 5713-1953 ("Matters of marriage and divorce of Jews in Israel, being nationals or residents of the State, shall be under the exclusive jurisdiction of rabbinic courts.")

⁴ *Id.* at §2 ("Marriage and divorce of Jews shall be performed in Israel in accordance with Jewish religious law.") All the judges who sit on the Israeli rabbinic court are Orthodox. Non-Orthodox rabbis are not authorized to conduct marriages or divorces under Israeli law. Although in the last few years, Conservative and Reform rabbis have conducted marriage ceremonies in the State of Israel, such ceremonies are theoretically in violation of the law and such marriages will not be registered by the Ministry of Interior.

⁵ Deuteronomy 24:1 ("A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her and sends her away from her house.") (J.P.S. translation).

⁶ M. Kidushin 1:1.

⁷ See Irving A. Breitowitz, *Between Civil And Religious Law* (1993) at 65; David Bleich, *Kiddushei Ta'ut, Annulment as a Solution to the Agunah Problem* 33:1 Tradition 90 (1998); Eliav Shochetman, *Annulment of Marriages*, 20 Shnaton Ha'mishpat Ha'ivri 349 (1995) (rejecting annulment of Jewish marriages as a means of circumventing requirement under Jewish law for husband to deliver a *get* to his wife) (in Hebrew).

⁸ M. Yevamot 14:1 (T.B. Yevamot 112b) ("A man who divorces is not like a woman who is divorced because the woman is divorced with her consent or against her will, while the man divorces only with his own free will."); Rambam, *Dinei Gerushin* (Laws of Divorce), Chapter 1, Laws 1 and 2.

⁹ T.B. Gitten 88b. See generally, Susan Weiss, *Sign at Your Own Risk: the "RCA" Prenuptial May Prejudice the Fairness of Your Future Divorce Settlement*, 6 Cardozo Women's L.J. 49 (1999) (discussing the *halakhic* rules that restrict the elasticity of Jewish divorce law).

reason, has a child with a man who is not her husband, that child, as well as his or her children, are stigmatized as *mamzerim* who cannot marry a fellow Jew.¹⁰

When faced with a contested divorce and a recalcitrant husband, the Israeli rabbinic courts have to decide whether or not Jewish law allows them to infringe upon the husband's free will-- and his concomitant hold over his wife's freedom. If they act outside of the limited parameters of the law, the *get* will be invalid and the children of the disputed divorcee will be ostracized. They act with caution.

II. Rigid Formalism

Hesitant to interfere in any way with a husband's free will, or to formulate new, modern grounds for divorce, the rabbis take the safest and most conservative tactic that enables them to stay within the confines of *halakha* and that is: they do nothing at all. If they make no decisions, they assert no pressure and rattle no sacred bones. By making no decisions at all, the rabbis hope that an angry wife, a ruthless lawyer, the civil courts, or time alone will convince the recalcitrant husband to relent.

And when the rabbis finally do make a decision, it will often be one with little legal punch, like: "We hereby decide that the couple should reach an agreement." Or: "We hereby decide that the couple should go to Rabbi X so that he can help them reach an agreement." Or: "We do hereby order the parties to engage in negotiations so that they can reach an agreement at the nearest possible time." These decisions are of no consequence at all; and are, more often than not, ignored by litigants and their attorneys. If the couple could reach an agreement, with the help of Rabbi X or otherwise, they would not be in court.

Sometimes the rabbinic court recommends (*al ha'baal*), or suggests that it is morally commendable (*mitzvah*), for a husband to give a *get*. Such rulings have the appearance of judicial weight; and, in fact, state law gives broad authority to the rabbinic courts to enforce such decisions, including incarcerating the *get* recalcitrant.¹¹ Nonetheless, most rabbinic courts refrain from taking any punitive measures against husbands who ignore such rulings, rendering them as fruitless as directives to negotiate.

In a recent case, the district rabbinic court of Ashdod effectively admitted to the insipidness of such decisions. *Seven years* after it had first *recommended* (*al ha'baal*) that a husband give a *get*, the court rejected the wife's request to put him in jail, and held:

¹⁰ See 11 Encyclopedia Judaica, 840 (1972) (" 'mamzer,' usually translated as 'bastard' ...is the issue of a couple whose sexual relationship is forbidden according to the Torah and punishable by *karet* or death ... [A] marriage between a *mamzer* (male or female) and a legitimate Jew is prohibited ... The offspring of a mamzer (whether male or female) and a legitimate Jew or Jewess are also *mamzerim*."); Deuteronomy 23.3 ("A mamzer shall not enter the congregation of the Lord."); M. Yevamot 8:3; M. Kiddushin 3:12.

¹¹ Rabbinic Courts Jurisdiction Law (Enforcement of Divorce Decrees) 5755-1995.

In June 2000, this court held, in accordance with the Rabbinic Court Execution of Judgments Law of 1995, that the husband should divorce his wife; and then suggested that he might be penalized for not doing so. Unfortunately, the husband is standing firm and refuses to give his wife a *get*...At this point the court can do no more than it has already done, and we ask the parties to show flexibility in their positions so that they can end this dispute by agreement. So at this juncture, we see no reason to set any further hearing...¹²

Even when a court issues directives that have more *halakhic* clout -- such as those that specifically "order" (*hiyuv*), or even "compel" (*kefiyah*), a man to give a *get* -- the rabbis often render such decisions only after many years of exhausting litigation.¹³ One case that comes to mind is that of a *haredi* husband who had abandoned his wife and 6 children for 10 years before the court ordered him to give a *get*.¹⁴ In yet another, a couple had lived apart for 6 years before the Supreme Rabbinic Court issued such an order, reversing a decision of the district court initially denying the *get*.¹⁵

Until 1997, it was almost impossible to convince a rabbinic court to issue a decision *ordering* or *compelling* a husband to give a *get* at all. During the years that I practiced family law as a private attorney (from 1986-1997) before focusing all my efforts on cause-lawyering (1997-present), I was able to convince a district rabbinic court only once to issue such an order. The Supreme Rabbinic Court overturned it.¹⁶ Colleagues that I interviewed in 1994 -- including those of greater standing than mine and those with

¹² File No. 068522192-21-1. *P vs. P* (Ashdod: Beeri, Katz, Levanon) (25.01.07) (unpublished decision available from author) (separated since 1998, still no *get*).

¹³ These rulings are not accompanied by any explanation as to why the court did not order the *get* at the outset of the case; or that the passage time is of any *halakhic* significance. Thus, one could argue that if the ruling was validly based, it could have been granted before the woman had spent so many more years of her life in court.

¹⁴ Appeal File No. 056578214-21-1 *K vs. K* (Sup. Rab. Ct.: Nadav, Bar Shalom, Ben Shimon) (24.01.02) (unpublished decision ordering *get* available from author) (separated since 1992, still no *get*); *See also* File No. 19270/03 *K vs. K* (Jer. Fam. Ct., HaCohen) (Dec. 21, 2004)

<http://cwjjsrael.googlepages.com/hacohendecisioninfullinhebrew.doc> (Hebrew);

<http://cwjjsrael.googlepages.com/Revisedhacohendecision-mar232005internet.doc> (English); 2(9) *DvD 7* (*Din ve Dayan: The Law and it's Decisor: Rabbinical Court Decisions in Family Matters*, published in conjunction with Rackman Center, Bar Ilan and Yad L'isha, OhrTorah Stone)(awarding damages against husband *K* for not giving the *get*).

¹⁵ Appeal File No. 023712268-21-3 *K vs K* (Sup. Rab. Ct.: Dichovski, Izerer, Sherman) (5.06.06) 14(5) *DvD 6*; revs'd File No. 023712268-21-3 *K vs K* (Jerusalem: Rozental, Sharabi, Heizler) (02.03.04)(unpublished decision available from author) (separated since 1998, still no *get*); *See also* File No. 006743/02 *K vs K* (Jer. Fam. Ct, Greenberger) (21.7.2008).

<http://cwjjsrael.googlepages.com/Greenberger2008.rtf> (Hebrew);

<http://cwjjsrael.googlepages.com/cwj2008tortprecedent> (English) (awarding damages against husband *K* for not giving the *get*). *Accord*, Appeal File No. 024612665-64-1. *T vs T* (Sup. Rab. Ct.: Dichovski, Nadav, Sherman) (2.05.00) and Appeal File No. *087-64-1 (3.05.01) (Sup. Rab. Ct.: Dichovski, Bar Shalom, Sherman) (unpublished decisions of Supreme Rabbinic Court ordering *get* despite opposition of Jerusalem district court available from author) (separated for 8 years, husband gave *get* after he was sued for damages in civil court); *See also* File No. 024612665-21-1, *infra* note 38.

¹⁶ File No. 055348486-21-1 *R vs. R* (Jerusalem: Algrabli, Heizler, Hagar) (15.12.1994); *reversed on* Appeal File No. 830/55 (Sup. Rab. Ct.: Tufik, Horovitz, Ben Shimon) (31.10.95), 1(1) *DvD 4* (separated for 7 years before husband gave *get* in exchange for money).

longer and larger legal practices --- reported similar statistics. In the years since my informal interview, the unrelenting demands and work of women's groups have helped improve those statistics significantly. The Executive Office of the Rabbinic Courts has reported that between the years 1997 and 2000, the number of such orders rose from 7 to 228; and has since hovered around that number.¹⁷ But this amount is of little significance when compared to the almost 10 thousand divorce cases brought each year before the courts.¹⁸ Why mess with the letter of the law?

The evasive, empty, and overdue decisions of the *dayanim* allow them to adhere rigidly to the formalism of the *halakha* – the internal coherence of the legal rules¹⁹ ---that established that a "forced divorce" is invalid²⁰; and that the grounds for divorce are few.²¹ If the rabbis render no decisions, or ambiguous ones, these rules remain uncompromised. Thus it should come as no surprise that most Israeli divorce cases are uncontested and resolve themselves by agreement,²² not by orders of the court.

Aside from silence and evasiveness, other examples of the rabbis' retreat into rigid formalism are those cases that deny a woman a divorce when her husband is missing or incompetent. Since Jewish law determines that a divorce occurs only upon the delivery of a *get* by a man to his wife, no divorce can occur if there is no man to give it -- *de facto*, or *de jure*. Rather than try hard cases that provoke their judicial dissonance, rather than search the law books for fictions and loopholes, rather than simply declare the marriage over, the rabbis stick consistently close to the strict letter of the law and lift up their hands in frustration when confronted with the fate of the woman forever anchored to her missing or incapacitated husband. No man, no divorce.

A particularly disturbing case I am familiar with was that of a woman whose husband, in the middle of their contested divorce, unsuccessfully tried to hang himself while awaiting arraignment on charges of domestic violence. He survived the suicide attempt but was left severely handicapped. It was not clear how well his brain functioned. He could not speak or feed himself. When asked to move forward with the pending case, the rabbis of the Haifa district court refused to convene a hearing to determine if the husband was fit to give a *get*. Such a hearing, they held obliquely, was pointless since there had been no prior decision obligating the husband to give a *get*. And since the husband could not come in to a hearing to determine if he was so obligated, the case was closed. Go home.²³

¹⁷ Dr. Ruth Halperin Kaddari and Inbal Karo, eds., *Women and Family in Israel*, Statistical Bi-Annual Report (2005); Email letter from Zalman Quitner, Executive Offices of the Rabbinic Courts, to Susan Weiss, CWJ, with Excel file (February 11, 2007).

¹⁸ Rabbinic Court statistics issued at press conferences, 2008 <http://www.rbc.gov.il/statistics/2008/2008.pdf> ; and 2007, <http://www.rbc.gov.il/statistics/2007/2007.pdf> (in Hebrew).

¹⁹ *supra*, note 2.

²⁰ M. Yevamot 14:1 (T.B. Yevamot 112b), *supra* note 8.

²¹ M. Ketuboth 7:10 (T.B. Ketuboth 77a) (listing the type of husbands the rabbis must compel to divorce their wives: lepers, those afflicted with boils, dung collectors, tanners, and copper welders).

²² Rabbinic Court statistics, *supra* note 17.

²³ File No. 011105293-64-1 *D vs. D* (Haifa: Atlas, Shahor, Nahari) (11.10.01) (unpublished decision available from author).

(Three years later, this case was resolved by a creative rabbinic pleader whose persistence resulted in the convening of a special tribunal that declared the witnesses to the marriage invalid, and hence the marriage void *ab-initio*.)²⁴

In another harrowing example of rigid formalism based on the “men only” rule, a rabbinic court sent a schizophrenic husband *at its own initiative* to the district psychologist to determine if he had the requisite mental capacity to give his wife a *get* (answer: no). The court then closed the file, informing the wife that she should not return to court until her husband had recuperated from his mental illness; and until the district psychologist issued a new opinion attesting to that newfound capacity.²⁵ (Again at the persistence of a creative rabbinic court pleader, a different tribunal later performed the *get* ceremony during one of the husbands’ intermittent lucid interludes.)

Rigid formalism also haunts those rabbinic courts that deny relief to women whose husbands are alive, well, have all their capacities in tact, and may even be at fault for the breakdown of the marriage. Because the Talmudic grounds for divorce are few, and greatly at odds with modern values, the rabbis hesitate to order a *get* – or will expressly deny the issuance of such an order -- when those narrow, formal ground have not been met.²⁶

A case that comes to mind is one in which a husband had beaten his wife, committed adultery, and forced her to have sexual relations with him -- grounds not specifically mentioned in the Talmud but developed hundreds of years later in the *halakhic* literature.²⁷ Bowing to modernity and *halakhic* development, a Jerusalem district rabbinic court ordered the man to divorce his wife. But the Supreme Rabbinic Court reversed, citing a decision of the Chacham Zvi (b.1660-d.1718), holding that the husband would not be obligated to give his wife a divorce unless a court had warned him that he should not beat her, or be unfaithful to her.²⁸

Or take the case of a woman who asked the Ashdod district rabbinic court to order her husband to give her a *get* because she “was repulsed by him for good reason” (*me'is alay be'amatlah mevureret*), a principle introduced by the Talmud²⁹ and supported by Maimonides (b.1194-d.1270),³⁰ but not by the majority of *halakhic* decisors. The

²⁴ 011105293-64-1 *D vs. D* (Special Tribunal: Amar, BarShalom, Boaron) (10.10.04) 8(6) *DvD* 8,9 (husband died a few months after decision).

²⁵ File No. *116-21-1 *D vs. D* (Rehovot: Izerer, Gortler, Sherman) (29.12.1998), 1(11) *DvD* 10.

²⁶ M. Ketuboth 7:10, *supra* note 20. There is a debate among the early decisors as to whether this list is exclusive Rosh (Rav Asher Ben Yehiel) b.1250-d.1327 (yes); Maharam Alshekar (RavMoshe Alshekar) b.1466-d.1522 (no);

²⁷ Ruth Halperin, *Adulterous Behavior on the Part of the Husbands as a Cause of Action to Coerce Him to Divorce His Wife*, 7 *Mehkarei Mishpat* 297-329 (1989) (in Hebrew) (charting the historical development of the *halakha* with respect to the adulterous husband); Mordechai Frishtik, *Physical and Sexual Violence by Husbands as a Reason for Imposing a Divorce in Jewish Law*, 9 *Jew. L. Ann.* 145 (1991) (charting the historical development of the *halakha* with respect to the abusive husband).

²⁸ File No. 055348486-21-1 *R vs. R*, *supra* note 16.

²⁹ T. Bavli, Ketuboth 63b, 64a.

³⁰ Rambam, *Dinei Ishut* (Laws of Personal Status), Chapter 14, Law 8.

woman testified that she was so afraid of her husband, that she would lock herself in the bathroom and sleep in a tub padded with towels. After living apart from her husband for 8 years, the district court finally gave a directive specifically *ordering* the husband to give a *get*. He appealed, and the Supreme Rabbinic Court reversed, adhering to the strict letter of the law, and stating:

Even if the facts of the case before us were tantamount to a claim of *me'is alay be'amatlah mevureret*, a matter of which we have great doubt, there is no place here for ordering the husband to divorce his wife. For as it is written in the *Shulhan Aruch, Even Ha'Ezer siman 97, seif b*: If a woman states that her husband is repulsive to her, he can agree, if he so desires, to divorce her without paying the amount stated in her *ketubah*, but he should not be obligated to divorce her against his will.³¹

Recently, a woman who has been living apart from her husband for 6 years tried to invoke *me'is alay* as grounds for ordering her husband to give a *get*. The Supreme Rabbinic Court denied her relief, holding firm to the rigid boundaries of the *halakha's* form, and stating that she had no *halakhic* grounds to demand a divorce from her husband:

With respect to the [wife's] claim that the husband is repulsive to her for good reason (*me'is alay be'amatlah mevureret*), this argument is contradicted by the testimony of the appellant herself who admitted that before she left the marital home she had sustained normal sexual relations with her husband, and similarly testified that she does not hate the respondent...And with respect to the argument that a 6 year separation is in itself grounds for divorce, we have not found [any basis for the claim] that the *halakha* accepts separation as grounds for obligating any of the parties [to divorce one another].³²

III. Extortion

If silence and procrastination do not achieve the desired ends, and if the court can't bring itself to order a husband to give his wife a *get*, the rabbis' next tactic is extortion. This method of divorce resolution, like rigid formalism, also enables the rabbis to avoid

³¹ Appeal File No. 009/54 *Natan Cohen vs. Rachel Cohen* (Sup. Rab. Ct.: Eliyahu, Tufik, Nadav) (27.11.94) (unpublished decision available from the author); *Contra* Appeal File No. 009/56 *Natan Cohen vs. Rachel Cohen* (Sup. Rab. Ct.: Eliyahu, Tufik, Nadav) (13.03.97) (unpublished decision available from the author) (upholding ruling of district court from 29.2.96 *ordering* the husband to give the *get*, in direct contradiction to 1994 decision) (separated for 13 years before husband gave *get*, and another 6 years until rabbinic court released divorce license to client). *See also* cases cited *infra*, notes 53,54.

³² Appeal File No. 034524637-21-1 *N vs. N* (Sup. Rab. Ct.: Sherman, Hashai, Algrabli) (04.11.07), 18(8) *DvD* 8,9 (separated since 2001, still no *get*); *But see* Appeal File no 011926961-21-1 (Sup. Rab. Ct.: Dichovski, BarShalom, Boaron) (23.10.07), 18(8) *DvD* 3 (*mei's alay* grounds for ordering *get*).

applying pressure on the intractable man. Enticing a man's free will to yield, rather than bending it until it breaks, is not considered invalid force.³³

Extortion has its explicit *halakhic* foundations.³⁴ One of the key source cited in support of this method of divorce resolution is the 16th century scholar, the Maharashdam (Rabbi Shmuel ben Moshe Di Medina, b.1506-d.1589). He maintained that even in those extreme cases that the Talmud would theoretically authorize the rabbis to compel a husband to divorce his wife, such compulsion is not permissible if the husband expresses his willingness to give a *get* on particular terms and conditions. He writes: "But if he expresses his willingness to divorce his wife, except that he asserts certain conditions for the *get*, it is certain that such a circumstance does not warrant unconditional compulsion...there is no doubt that unconditional compulsion generates *mamzerim*."³⁵

Though a series of court decisions can be cited in which the court either ignored the Maharashdam, or limited its scope (for example, to conditions that are reasonable and enforceable),³⁶ the spirit of the Maharashdam pervades almost all of the hearings in the rabbinic courts. Why bother to hear the facts of a case, if those facts are irrelevant? If the husband is willing to give the *get*, but just has certain demands in exchange for it, it does not matter what grounds there might, or might not, be for compelling a divorce.

³³ See HaRav Haim Shlomo Shaanan, *Ofanim L'Kfiyat Ha'Get* (Ways to Compel a Get), 11 Tehumin 203 (5750-1990).

³⁴ See B.S. Jackson, *Agunah and the Problem of Authority*, Melilah (2004/1) at 1-78, see §§1.4 (esp. n.16), 3.5.3 (Rabbenu Tam at n.145) and 5.3.3 (Rosh 35:2) at www.mucjs.org/publications.htm (visited on March 1, 2009).

³⁵ Responsa of the MaHarashdam, *Even HaEzer siman 41*.

³⁶ E.g., Appeal File Nos. 029612306-68-1, 053983847-53-4 (Sup. Rab. Ct.: Amar, Dichovski, BarShalom) (17.7.07), 19(3) *DvD* 4,5 (rejecting *Maharashdam* when husband demands custody of child, and attacking the cynical use of the Torah for personal interests); Appeal File Nos. 031411390-21-1 (Sup. Rab. Ct.: Amar, Dichovski, BenShimon) (11.1.06) 12(1) *DvD* 3-5 (rejecting *Maharashdam* when husband accused of extreme family violence moves to transfer marital disputes to the rabbinic courts); Appeal File No. 028055143-13-1 ? v? (Sup. Rab. Ct.: Bar Shalom, Sherman and Dichovski) (19.5.03) 5(5) *DvD* 10,11 (rejecting *Maharashdam* where husband asks for sum of money that woman cannot pay); Appeal File No. 059024273-21-1 *E vs. E* (Special Tribunal Sup. Rab. Ct: Eliyah, Mashash, Dichovski, BarShalom, Nadav) () (Sup. Rab. Ct.: BarShalom, Nadav and Dichovski dissenting) (18.12.2000) (unpublished decisions and letter from Rav Mashash available from the author) (limiting the *Maharashdam* to cases where the conditions can be met by the wife). See generally, David Bass, *Conditions Set By Husband Who is Obligated to Give a Get*, 25 Tehumin 149-163 (2005) (in Hebrew); Rav Mashash, *Compelled Get in Question* 23 Tehumin 122 (2003) (in Hebrew). Cf. File No. 2679/48 *Wife vs. Husband* (Jerusalem: Batsri, Shrem, Goldberg) (19.07.90) 18 P.D.R 81 (see opinion of R. Batsri); Appeal File No. 168/54 *E vs. E* (Sup. Rab. Ct.: Bakshi Doron, Lau, Dichovski) (17.11.94) 2(1)*DvD* 3 (abridged) (holding that visitation arrangements must be determined separately from the *get*); 024612665-64-1 *T vs. T* (Sup. Rab. Ct.: Dichovski, Nadav, Sherman) (2.5.00) 1(10) *DvD* 9,10 (stating that child cannot be held hostage for the *get*); Appeal File No. 022106561-21-1 *K vs. K* (Sup. Rab. Ct.:Dichovski, Nadav, Goldberg) (9.9.99) 1(6) *DvD* 7 (maintaining that it's the right of every citizen to sue in the court of her choice, and cannot condition *get* on transfer of jurisdiction to rabbinic courts); Appeal File No. 029004991-21-1 *B vs. B* (Jerusalem: Rabinivitch, Eliezrov, Elgrabli) (23.7. 01) (unpublished decision available from author) (claiming that husband makes impossible demands that do not have to be met); See also, Responsa of the Tashbetz, Ha'Khut Ha'Meshulash IV, *tur* 1, responsum 6, *ot* 2-3 and *Rashba* (maintaining that the *MaHaRahsdam* is not correct).

Examples of rabbinically authorized extortion abound. In exchange for the *get*, I have known husbands to request: cash³⁷; custody³⁸; more than their share of marital property, or all of it³⁹; the waiver of child support, or part thereof⁴⁰; the waiver of debts incurred for child support; that his children undergo DNA testing; that his wife take a polygraph test; the sale of the marital home before the *get* is given⁴¹; the return of his mother's earrings.

The rabbinic courts even have a special fund earmarked for paying off stubborn husbands known as the “*agunah* fund.” The Executive Offices of the Rabbinic Courts have claimed that the fund is financed both from donations, as well as with taxpayer money- public funds. I have been witness to the Beth Din paying out the following sums to recalcitrant husbands from the *agunah* fund: 7,000 NIS to an Ethiopian husband who raped his wife (he used the money for a trip abroad)⁴²; 10,000 NIS to a husband with a master's degree (he needed it to pay his parking tickets)⁴³; 5,000 NIS to a husband who was serving a prison sentence for assaulting his wife with a broken bottle (he needed the money for furniture)⁴⁴; 50,000 (fifty thousand) NIS to a criminal sitting in jail for murdering a fellow inmate (he needed to pay his attorney)⁴⁵; and \$5,000 to a man who moved to Morocco, converted to Islam, and married a Muslim woman.⁴⁶

³⁷ *E.g.*, cases cited *infra* notes 41-45.

³⁸ *E.g.*, File No. 024612665-21-1 *T vs. T* (Jerusalem: Levi, Elhadad and Basri, dissenting) (20.12.99) (holding that husband's request for child was reasonable); rev'd on Appeal File No. 024612665-64-1 *T vs. T* (2.5.00) (Sup. Rab. Ct, Dichovski, Nadav, Sherman), 1(10) *DvD* 9.

³⁹ *E.g.*, File No. 024415721-21-1 *A vs. A* (Haifa: Shahor, Naharai, Marveh) (1.2.07) (unpublished transcript available from author) (separated since 2005, still no *get*); 014504328-21-1 *T vs. T* (Jerusalem: Rabinovich, Eliezerov, Elgrabli) (11.6.2002) (women gives up rights to house in exchange for *get* after 13 years of litigation) (unpublished divorce agreement and decision available from author); File No. 058040221-25-1. *S vs. S* (19.07.95) (Jerusalem: Basri, Levi, Elhadad (court tries to convince wife to give in to husband's demand to transfer house to him in exchange for *get*; receives *get* in 2001 after 11 years of litigation) (unpublished affidavit of wife and drafts of divorce agreements available from the author).

⁴⁰ *E.g.*, File No. 057930760-64-2 *C vs. C* (28.01.08) (Jerusalem: Yifrach, Heizler, Scheinfeld) (unpublished transcript available from the author); File No. 012155131-21-1 *A vs. A* (5.09.02) (Ashkelon: Beeri, Katz, Zar) (unpublished transcript available from the author) ; File No. *221-25-1. *S vs. S* (19.07.95) (Jerusalem: Basri, Levi, Elhadad) (court tries to convince wife to give up child support in exchange for *get*; receives *get* in 2001 after 11 years of litigation) (unpublished affidavit of wife and drafts of divorce agreements available from the author).

⁴¹ *E.g.*, File No. 052644200 *M vs. M* (Jer. Rab. Ct.: Maletzki, Shapira, Cohen) (20.7.92) (unpublished decision available from the author) (received *get* 9 years later); Appeal File No. 062646849-21-1 *P vs. P* (Sup. Rab. Ct.: Dichovski, Bar Shalom, Sherman) (26.08.02) 4(7) *DvD* 7,8 (describing how woman was forced to sell house before *get*).

⁴² File No. 011930484-21-1 *B vs. B* (Jerusalem: Rabinovitch, Eliezerov, Elgrabli) (17.09.00) (unpublished decision available from the author).

⁴³ File No. 069092310-25-1 *M vs. M* (14.12.00) (Jerusalem: Yifrach) (unpublished decision available from the author) (separated for 7 years before husband gave *get*).

⁴⁴ File No. 312668569-21-1 *A vs. A* (Netanya: Rozental, Zamir, Shapira) (letters from Rav Rozental to Eli BenDaahan (21.7.99) and from Netanel Blumberger to Osnat Sharon (25.8.1999) confirming payment of 5,000 to husband/prisoner available from the author)(separated for 5 years before husband gave *get*).

⁴⁵ File No. 024197634-25-1 *B vs. B* (Jerusalem: Batzri, Levi, Elhadad) (07.03.99) (unpublished divorce agreement authorized by the court, and available from the author). In addition to commanding the payment of 50,000 NIS from the rabbinic court, the husband demanded and received the following in exchange for the *get*: 24,000 NIS from his wife which was to be paid in monthly installments of 1,000 NIS from minimum wage allowance from the National Insurance Institute; the withholding of his wife's

In addition to the *agunah* fund, other tax payer money is used to pay off recalcitrant husbands. This includes the waiver of child support owed by husbands to the National Insurance Office;⁴⁷ as well as the payment of guaranteed income allowances to divorced mothers who have waived their rights to child support in exchange for the *get*.⁴⁸ Rabbinic pleaders and attorneys describe hearings in which the rabbinic courts actively pressure mothers to waive child support and to collect minimum wage. After all, why should fathers pay for child support if the government -- you and I -- will foot the bill in his stead?

In 2006, the Center for Women's Justice petitioned the High Court of Justice to invalidate both the *agunah* fund as well as the waiver of child support debts by the National Insurance Office, arguing that those practices foster a culture of extortion. The High Court forced the Executive Office of the Rabbinic Courts to set up a committee to monitor payments from the *agunah* fund. The National Insurance Office already had such a committee. Since the filing of the petition, all outright payments to recalcitrant husbands must meet specific criteria. The final decision on CWJ's petition to ban this practice completely -- whether made by committee or otherwise -- is pending, though the outcome of that petition is far from certain. Extortion is the "common-sense"⁴⁹ method of divorce resolution in Israel. It works.

Extortion is so much part of the "common sense" that rabbinic tribunals often include extortion as part of their decisions, or in the transcripts of their hearings, without noticing that anything is amiss. In a decision set down in May 2002 by an expanded panel of 5 *dayanim*, the Supreme Rabbinic Court upheld a district court decision refusing to apply disciplinary measures against a husband who had been ordered to give his wife a *get*. Quoting the *Maharashdam*, the district court had held that it could not penalize the husband for refusing to give his wife a *get* so long as she refused to defer to what the court felt were his reasonable monetary claims. These included his request to relinquish claims to marital property awarded by the civil courts, as well as to adjudicate his claim

divorce certificate until she paid up the entire debt of 24,000 NIS; a promise from the court to hear his claim that his wife owed him another 16,000 NIS.

⁴⁶ File No. 054381942-21-2 *B v. B* (Haifa: Shear Yashuv Hacoheh) (03.03.02) (unpublished decision available from the author).

⁴⁷ *E.g.*, File No. 055739841-21-1 *K v K* (Haifa: Herzberg, Shahor, Blecher) (28.2.2005) (refusing to transfer *get* delivered by husband to wife until husband's debt to National Insurance Institute is waived) (unpublished decision available from author). 016690562-21-1 *C vs. C* (Jerusalem:) (08.08.99) (Dayan: Basri); Amounts of support payments waived officially each year by the National Insurance Office is unclear. In 2001, 257 million NIS went uncollected (e mail correspondence letter from Tamar Haran, NIO office dated 09.07.02)?

⁴⁸ In 2001, it would appear that over 859 million NIS are paid to divorced mothers in welfare payments (e mail correspondence letter from Tamar Haran, NIO office dated 11.07.02)

⁴⁹ See also: Pierre Bourdieu, *An Outline of the Theory of Practice* (Richard Nice, trans. from French) (Cambridge, England: Cambridge University Press 1977); also, Pierre Bourdieu and Jerry Eagleton, "Doxa and Common Life: An Interview," *New Left Review* 191 (Jan., Feb.1992), pp.111-121 (regarding *doxa*, the common-sense).

to be reimbursed for the child support that he had paid for 20 years. The husband – who is not religious – maintained that the civil court decisions dividing up the marital property and awarding child support were tantamount to theft (*gezel*) since they had not been issued in accordance with Jewish law. The district rabbinic court not only agreed with the husband, but felt that his extortionist claims were in fact, *just*:

Justice lies with the husband’s arguments, ie.: even though the husband has been ordered to give his wife a *get*... it is not appropriate to order him to divorce his wife so long as his wife is holding funds that do not belong to her in accordance with the laws of the Torah... It is not the husband who is anchoring the wife [to him] but she is anchoring herself because she refuses to litigate these matters in accordance with the laws of the Torah.” (emphasis mine- s.w.)⁵⁰

In a decision also quoting the Maharashdam, the Supreme Rabbinic Court held in 2004, with a further clarification in 2005, that it was a husband’s *right* to dictate the terms for a divorce, however egregious:

We will make it perfectly clear that the *right* [of a husband] to dictate the terms [of the divorce] is not only with respect to money matters, but also with respect to behavior, for example: that she should be prevented from eating certain foods, or wearing certain clothes. While the rabbinic court cannot order a woman to carry out these demands, such demands stand and are obligatory so far as they relate to the terms of the *get*, even in such circumstances that warrant obligating or compelling a husband to give a *get*. So long as these are conditions that the wife can fulfill, even though she may have not legal obligation to do so with respect to her ex-husband. (emphasis mine- s.w.)⁵¹

Not too long ago, the following transcript of a hearing held in the Jerusalem district rabbinic court came into my hands. The woman, a mother of 2 small children, wanted the court to hear her claim for a *get*. The court preferred to use the hearing to cajole the mother into agreeing to lower the amount of child support and to make up the difference by going on welfare. The court reporter unabashedly transcribed the entire hearing, as follows:

	In the presence of the Parties and the Wife’s Attorney, Mendele Friedman
Court:	Did you clarify things with the National Insurance Office?

⁵⁰ File No. 043255087-27-1 *B vs. B* (Tel Aviv: Fruber, Goldberg, Bibi) (09.07.00) 2(13) *DvD* 9,10 (abridged); *cf.*, Appeal File No. 082/61 *B vs. B* (Sup. Rab. Ct.: Goldberg, Ben Shimon and Tufik, Sherman and Bakshi-Doron, dissenting) (29.05.02) 2(13) *DvD* 9,10 (abridged) (sending the case back to determine if the wife could, in fact, meet the husband’s terms).

⁵¹ Appeal No. 022290027-21-1(Sup. Rab. Ct.: Tufik, Izerer, BenShimon) (29.8.04) 7(5) *DvD* 6; (Izerer) (1.2.05) 9(4) *DvD* 6,7.

Wife	Yes, The National Insurance Office informed me that if I lower the amount of support in this court, and I ask to collect the support award through them, they won't pay me [the full amount that I am getting now].
Wife's attorney:	The husband claimed he was willing to divorce his wife.
Court:	He says that the only problem he has is with the amount of child support.
Wife's attorney:	He doesn't pay it anyway [since it is being paid by the National Insurance Office].
Court:	They (the National Insurance Office – s.w.) will collect it from him. How much is the child support amount?
Wife:	2,500 NIS for 2 children.
Husband:	I can't pay that amount. If it is lowered, I can reach an agreement with the National Insurance Office [regarding my debt to the Office],
Husband:	I can't work. I owe the National Insurance Office 100,000 NIS [and they will offset that debt from my salary if I go to work].
Court:	How much do you want to pay for 2 children?
Husband:	1,500 NIS.
Court:	We suggest 2,000 NIS.
Wife:	I don't agree. I have expenses for the children
Court:	Get divorced. And you will get benefits as a single mother.
Wife:	I already have benefits as a single mother. I have the benefits of a divorced woman according to the law.
Court:	You are not divorced. And if you say you already have benefits as a married woman, so get divorced [in accordance with the terms we are suggesting].
Wife:	And what about child support? I am not about to get married. And I know that I am not divorced.
Court:	Do you work?
Wife:	I do not work,
Court:	What does the support decision refer to (alimony or child support—s.w.)?
Wife:	Child support
Court:	You can go on welfare [instead of getting child support payments that entitle the National Insurance Office to repayment from the husband].
Wife:	I can't.
Court:	Reach an agreement and let us know.

post-divorce extortion

A man's extortionist hold on his wife, and the rabbinic judges' active support of that practice, can continue even after a woman is divorced. This occurs, for example, when a husband expressly conditions his agreement to give a *get* upon the withholding of his wife's divorce certificate; or when he asks the court to invalidate the *get* because his ex-wife has, in his mind, breached their divorce agreement, or otherwise misbehaved. Without the divorce certificate, the wife cannot remarry or receive state benefits as a divorcee. If the husband asks to invalidate the *get*, or even just calls its validity into question, the wife's status under the *halakha* becomes uncertain⁵³ and transposes her back to her starting point – dependant on her husband for her freedom.

In one of the most egregious examples I know of, the court acceded to the demands of a convicted murderer and drug dealer and refused to deliver a civil divorce license to his wife until she had paid him in full for the *get*. The wife did not work and she had no savings. But she had promised to pay her husband 24,000 NIS in monthly installments of 1,000 NIS from the minimum wage allowance paid to her by the State. To make sure that his wife would not renege on her monthly payments, the husband/convict insisted that the divorce license be used as collateral until he was paid in full. The court met the husband's demands and withheld delivery of the license for 24 months.⁵⁴

In another case, a rabbinic court responded to a husband's request to invalidate the *get* by withholding the wife's divorce certificate, and issuing a series of decisions that both "suspended" the original *get* and maintained that the wife needed a second one.⁵⁵ The husband claimed bad faith when, subsequent to the *get*, his wife petitioned the Israeli Supreme Court to invalidate their divorce agreement.⁵⁶ The rabbinic court agreed and held that the wife should be punished, in those words, for turning to the civil courts for

⁵² File No. 057930760-64-2 *C vs. C* (Jerusalem: Yifrach, Heizler, Scheinfeld) (28.01.08) (unpublished transcript available from the author).

⁵³ *Shulhan Aruch* 154 *seif* 22.

⁵⁴ File No. 024197634-25-1, *supra* note 43. In this case, the state also paid 50,000 NIS to the convict/husband.

⁵⁵ Appeal File No. 041987009-64-2 *Cohen vs Cohen* (Sup. Rab.Ct.: Tufik, Nadav, Goldberg) (30.04.00) (suspending the *get*); File No. 041987009-24-1 *Avraham (Cohen) vs Cohen* (Haifa. Rab. Ct., Shlush, Herzberger, Gimzu) (25.11.03; 01.03.04) (requiring a second *get*) 12(5) *DvD* 8-11 (abridged); Appeal File No. 042233460-21-2 *Avraham vs Cohen* (Sup. Rab.Ct.: Metzger, Sherman, Izerer) (holding that the *get* was acquired under false pretenses and issuing an administrative order suspending the *get*) (21.10.04) (unpublished decisions and administrative order available from the author). *See also Cohen vs Cohen*, *supra* note 30.

⁵⁶ Bagat'z File No. 5548/00 *Avraham (Cohen) vs Sup. Rab. Ct., Cohen, and others* (Sup.Ct.: Matza, Turkle, Rivlin) (29.5.01)(decision published in *nevo* http://www.nevo.co.il/Psika_word/elyon/0005548a.doc;

relief. Six years after the woman received the first *get* from her husband, the rabbinic courts released the original divorce certificate to the wife, and held, in direct contradiction to their previous rulings -- and in response to the husband's adamant refusal to deliver the second *get* -- that she did *not* in fact need a second one.⁵⁷

In yet another disturbing case, a single district rabbinic court judge granted an ex-husband's ex-parte motion to: a) stay the delivery of a divorce certificate to his wife; b) delay the execution of the divorce agreement; c) enjoin his ex-wife from remarrying; and d) set down a hearing to question the *get's* validity. The husband's family thought that he had been too generous with his wife and they wanted to better the terms of the agreement.⁵⁸ Eventually, the Supreme Rabbinic Court reversed this decision on appeal, holding held that the *get* was valid and releasing the divorce certificate to her.⁵⁹

The Supreme Rabbinic Court has, on more than one occasion, invalidated decisions that threaten women even after the *get*,⁶⁰ but not all women have the money or energy to file such appeals. Moreover district rabbinic courts do not always see themselves as bound by the Supreme Rabbinic Court decisions.⁶¹ Thus, post-*get* maneuvers of withholding the divorce license and casting aspersions with regard to the *get* are formidable tools of control in both the hands of men,⁶² as well as in the hands of the rabbinic courts. In the

⁵⁷ Appeal File No. 041987009-24-1 *Cohen vs Cohen* (Sup. Rab.Ct.: Metzger, Sherman, Izerer) (22.10.06) (validating the first *get*) 12(5) *DvD* 8-11 (abridged).

⁵⁸ File No. 033641440-25-1 *D vs D* (Jerusalem: Atzur) (6.05.02; 7.05.02) (unpublished decisions available from the author).

⁵⁹ Appeal File No. 037219466-64-1 *D vs. D* (27.11.02), 12(6) *DvD* 11 (Sup. Rab. Ct.: Dichovski, Ben Shimon, Sherman). *See also*, Bagat"z File No. 825/03 *D vs. D* (Sup.Ct.:) () (rejecting the husband's appeal to the High Court of Justice in this matter) (unpublished decisions available from the author).

⁶⁰ *E.g.*, Appeal File No. *428-21-1 *X v X* (Sup. Rab. Ct.: Dichovski, Ben Shimon, Sherman) (5.9.02) reversing 297/ס"ח *X v X* (Tel Aviv: Sheinfeld, Abuzaglo, Riger) (20.02.02) (delaying woman's right to remarry after she sued to increase child support in the family courts) (unpublished decisions available from the author); Appeal File No. 059024273-21-1 *E vs. E* (Sup. Rab. Ct.: Dichovski, Bar Shalom, Nadav, Eliyahu with HaRav Mashash) (18.12. 00), reversing File No. 059024273-21-1 *E vs. E* (Jerusalem: Batzri, Levi, Elhadah) (9.7. 00) (rejecting claim the *get* was not valid); Appeal File No. 903-53-1 *E vs. E* (Sup. Rab. Ct.: Lau, Dichovski, Nadav) (12.12.00), 16(4) *DvD* 5,6, affirming File No.024651903-64-1 *E vs. E* (Natanya: (Shaanan, Shindler, Michael) (29.03.00) (unpublished decision available from the author) (majority held that could not question the validity of the *get* when wife, in violation of divorce agreement, sued in family court regarding visitation rights); Appeal No. 56006448-21-1 (Sup. Rab. Ct.: Doron, Dichovsky, BenShimon) (28.05.97) 7(10) *DvD* 11 , reversing File No. 56006448-21-1 (Ashdod: Cohen, Zarbib, Shemen) (02.01.97) (unpublished decision available from the author) ('withholding' the validity of the *get* when wife sued in High Court of Justice to overturn agreement regarding children's education) . *See generally*, Atara Konigsberg, "Invalidating the *Get* after it was Delivered," Bar Ilan University, unpublished seminar paper, October 2004. (Hebrew). *See also*, Rav Sha'anan, *Revocation of Get as Result Wife's Filing of Support Petition in Civil Courts* (Hebrew) 21 *Tehumin* 340 (5761- 2001).

⁶¹ *See* 012213525-21-1 (Petach Tikvah: Ohayon, Glick, Rozentel) (14.7.02) 2(15) *DvD* 10 (abridged) (invoking the *Marashdam* to deny wife who had been asking for a *get* for 21 years, and refusing to arrange *get* ordered by Supreme Rabbinic Court); T. Bavli *Baba Batra 138b* (rabbinic courts are not bound by precedent).

⁶² *E.g.*, Appeal File No. 0326759-21-1?v? (Sup. Rab. Ct: Amar, Dichovski, Boaron) (31.1.07) and File No. 036009322-29-1, 0326759-64-1 (Tel Aviv: Scheinfeld, Riger, Dompf) (19.3.06` 26.2.07) 16(5) *DvD* 6,7,8 (claiming that *get* was obtained under mistaken –fraudulent- circumstances when wife sued to

hands of men, the tools ensure that their ex-wives submit indefinitely to the deal they originally struck, whether reasonable or not. In the hands of the rabbinic courts, the tools ensure that the courts retain continued jurisdiction over contested divorce cases.

A Tel Aviv rabbinic tribunal recently issued a decision “casting doubts” (*motzi laaz*) on a *get* that an ultra-Orthodox man had given to his wife. In that case, the ex-wife had sued in the family courts to increase the agreed-upon child support payments. Family courts are known to award higher amounts of child support; and do not bind children to the amounts agreed to by their parents in the divorce agreement. The husband, and the rabbinic court, balked at the heresy involved and castigating decisions ensued. The wife appealed, alleging, among other things, that such decisions cast aspersions on the status of her children born subsequent to the divorce. The Supreme Rabbinic Court reversed, in a detailed decision, but not without warning as follows:

After studying the appeal and all the material brought before us, and taking into consideration all the circumstances of the case, we hold that raising doubts regarding the *kashrut* of the *get* would cause great damage and harm to the status of the woman and her children from her second husband. Thus we are obligated to find some way...not to question the validity of the *get*.

All this should in no way diminish the gravity of the behavior of the woman and her attorney who completely misled and defrauded the husband and this court when she gave her supposed agreement and signature, when in her heart she contrived to breach her agreement and in fact did this after the *get*. This type of behavior can lead to a breach of trust between the parties, and compound the problem of *get* refusal.⁶³

Violence

When rigid formalism can no longer be tolerated, and when extortion does not yield the necessary results -- either because the husband cannot be bought, or because the wife refuses to, or cannot, pay up — the only recourse left to the rabbinic courts is violence. Powerless as they are to define Jewish law in such a way as to declare the marriage over without the husband delivering a *get* to his wife, and desperate to prove that they are not completely powerless, the Israeli civil law gives the rabbinic courts the authority to issue orders that infringe on the basic human rights of persons in a democratic society. Such orders are meant to persuade a recalcitrant husband to give his wife a Jewish divorce of

increase child support payments in family court in violation of divorce agreement); File No. 022368369-29-1 ?v? (Tel Aviv: Sheinfeld Riger, Dompf) (19.6.06, 29.5.06) 15(3) *DvD* 5 (withholding the right of wife to remarry because she claimed that rabbinic court had no jurisdiction to hear her husband's claim to lower child support in violation of divorce agreement); *But see* Appeal file 054855317-64-2 ?v? (Sup. Rab. Ct.: Dichovski, Ben Shimon, Goldberg) 3(4) *DvD* 4,5 (6.1.02) (rejecting husband's attempt to cast aspersions on *get* when wife violated divorce agreement regarding visitation of children).

⁶³ File No. 040779225-64-3 *Plonit v Ploni* (Sup. Rab. Ct: Sherman, Chasgai, Elgrabli) (25.8.08) 20(9)*DvD* 9, 10.

his own free will. They include the suspension of such rights as: the right to travel outside of Israel; the right to hold a professional license; the right to drive a car; the right to hold a bank account; and, finally, the right to freedom. Since 1997, the Israeli rabbinic courts may incarcerate recalcitrant husbands for up to two five-year terms.⁶⁴ If the husband is already in jail, the rabbinic court can extend his term in prison, take away the prisoner's jailhouse privileges, and even put him into solitary confinement for up to 5 days at a time.⁶⁵

Infringements on human rights that fall short of imprisonment are not usually adequate incentives to counter *get* recalcitrance. Court suspensions of travel, banking, and driving privileges are usually more annoying than effective. Stubborn husbands will ignore, or work around, such orders. They won't give their wives a divorce because of them.

Sometimes the violent and crude wrenching of human rights, especially imprisonment, inspires a recalcitrant husband to give his wife a *get*. Sometimes even imprisonment will not persuade the stubborn husband to give his wife a *get*. Some men in jail for refusing to give a *get* have spent more time in jail than criminals who have stolen large amounts of money, raped their daughters, or even killed people.

On September 17, 2008, the Supreme Rabbinic Court issued a decision on the motion of an incarcerated husband to provide him with kosher food of the strictest rabbinic supervision; and on the motion of his wife to transfer him to a high-security prison and to deny him the right to sleep on a mattress. The husband had been in jail, in the words of the rabbinic court for "seven bad years" as a result of his refusal to obey an order compelling him to divorce his wife. With the public relations department of the Executive Office of the Rabbinic Court hailing the decision as a ground-breaking precedent, the court held:

Get recalcitrants should be detained with the most disreputable prisoners, in such manner that will curtail the motivation of the *get* recalcitrant to gird his obstinacy. We would add that should the *get* recalcitrant languish in his cell for more than a year, he should be placed in the wing of the prison reserved for security detainees!

When the rabbinic court orders the *get* recalcitrant to be held in solitary confinement, such confinement should be carried out in a manner that separates the prisoner from any accompanying pomp and ceremony. In the framework of such confinement, the *get* recalcitrant should not be entitled to read, write, and certainly not to watch television. And if we are already dealing with solitary confinement, the *get* recalcitrant should be given the type of cell that would encourage him to take the keys to the prison into his own hands by giving his wife a *get*....

⁶⁴ § 2(7) Rabbinic Courts Jurisdiction Law (Enforcement of Divorce Decrees) 5755-1995

⁶⁵ *But see* Bagat"z File No. 10042/01 *Sampson vs. Rabbinic Court* (petition filed on December 19, 2001, challenging the statute's legality and its application vis-à-vis men who were put into jail for *get*-refusal, as opposed to other reasons)(unpublished petition available from the author).

The *get* recalcitrant should know that prison is not a rest home!...

The administrator of the prison has the implicit authority to make use of various methods of persuasion to convince the husband to give the *get*. There is no justification for placing such a husband in the wing of the prison reserved for those prisoners who observe the [Torah] commandments. He should be placed in the wing reserved for security prisoners. There is room [for exercising discretion] to withdraw the right of a recalcitrant who is already in solitary confinement to sleep on a mattress. The Court asks that its directives be taken under consideration, and that the appropriate administrative orders be taken. If there is a need to amend legislation [in order to enforce these directives], such appropriate measures should be taken. The 10-year limitation placed on incarceration for [*get* refusal] in accordance with the Execution Law [of Rabbinic Courts Judgments] should be set aside.⁶⁶

V. Denial and Projection

Why is rigid formalism, extortion, and violence the preferred methods of divorce resolution among Jews in Israel? If rabbis were asked this question, I suggest that they would blame the following factors:

- “It’s the *halakha*. – which is, for the most part, progressive,” the rabbis might declare. “Jewish law defers to the maturity and wisdom of the couple. Most Jewish divorces are reached by amicable agreement with no interference from the court. But since, in accordance with Jewish law, a Jewish divorce occurs only when a husband gives his wife a *get*, these are the methods that are at our disposal when the system fails to operate at its optimum.”
- “It’s the price we pay for Jewish values. Jewish law protects family values. There are fewer divorces within the Orthodox community where Jewish law is the norm. The problem of the *agunah* and of *get* recalcitrance is the price we have to pay for the stability of the Jewish family.”
- “It’s the *halakha*, nothing we can do about it or change it. The problem of the modern day *agunah* is sad. But it’s like a fatal and incurable illness. It is God’s will and we do not understand His ways.”
- “It’s human nature. Husbands are cruel, devious, and greedy. So are wives. Divorce- even civil divorces- brings out the worse in people. If a spouse is angry, vengeful, or just selfish, they will exploit circumstances to hurt and extort. It’s

⁶⁶ Appeal No.8455-64-1 *Ploni vs Plonit* (Sup. Rab. Ct.: Dichovski, Sherman, Boaron) (17.09.08) (published in nevo, http://web1.nevo.co.il/Psika_word/rabani/rabani-8455-64-1.doc).

not unique to Jewish law. These are the ways of Man, not of the Torah or, Heaven Forbid, of God.”

- “It’s the divorce attorneys. They are the source of all evil . There is no problem with the rabbis or the law. The lawyers have lost all *tzelem elokim*.”
- “It’s state law that is the problem. Not the *halakha*. If only the state would let us beat recalcitrant husbands in accordance with Jewish law, like some hassidic sects do to this day, that would resolve all the problems.”

I have no doubt that most rabbis, when asked about the crude methods of Jewish divorce resolution in Israel, would both deny that they are at all responsible for this unacceptable state of affairs, and will project that responsibility onto the law, evil spouses, the state, evil attorneys- anybody, anything, except themselves.

Perhaps most disturbing is the response of the silent and secular majority of Israeli society. They too deny and project. They, like the rabbis, will deny that they are in any way at fault for this sad and cruel reality and will project responsibility for change, or lack thereof, onto others- the status quo, the law, politics, the lawyers, the spouses, and the rabbis as well. Denial and projection inhibit change.

VI. Capital

In order to accept responsibility for these crude methods of Jewish divorce resolution, in order to correct the great emotional and financial harm done to women in the name of God and His law, the rabbis, as well as the general secular silent Israeli majority, must acknowledge the interests – the pursuits, conceits, ambitions, and power- that undermine and obfuscate their clarity of vision.

a. Cultural Status

All the Israel rabbinic court judges are Orthodox and all of them have been swathed, coddled, nurtured, and conceived in Orthodox institutions. Most in fact are ultra-Orthodox. Like Harvard or Yale bred attorneys, *dayanim* who were trained at Brisk or The Mir Yeshiva take great pride in the institutions that have educated them. They are loyal to them. Most seek validation from the heads of those institutions. They will not agree consciously to reinterpret or, God forbid, reform the *halakha*, because notions of change and reinterpretation are antithetical to the Torah and to the *Halakhic* institutions and leaders (the culture) that gave those rabbinic court judges life, purpose, identity, and status. The rabbis will not challenge those institutions, or the leaders, or their values and

thereby risk in any way undermining the parameters of their cultural identity, as well as both the psychological and intellectual comfort and the status that their connections to those leaders and institutions give them.

I would like to suggest that the rabbinic court judges who are most likely to make innovative decisions are those who find alternative sources of status and comfort that sustain them. They too may have been educated by the elite ultra-Orthodox institutions, but they are sufficiently removed and independent of those institutions and their leaders, as well as supported by non-Orthodox constituents, to allow them to make decision that veer, at least minimally, from the fundamentalist mainstream positions of those cultural elements that formed them.

b. Social Connections

The cultural identity and status of the rabbinic court judges provides them with preferred and coveted social connections. The rabbinic court judges socialize with other persons who have studied at the elite institutions. They invite each other to family celebrations and to professional seminars. They accept each other's children into the elite institutions of learning. Their children marry one another. The judges will not put those social connections at risk for the people who litigate their matters before them- even when the litigants happen to be their own children and kind.

c. Capital

In addition, I would like to suggest that money motivates the rabbinic court judges. They have no intention of reforming the existing system and having it operate quickly, efficiently, or professionally. They are paid- three at a time- substantial wages to procrastinate and delay and not to make decisions. They do not adhere to a defined time schedule. Though paid like civil court judges who works from 8-3 and are expected to prepare in the afternoon for the next day's trials, as well as write learned opinions, the rabbinic court judges barely work from 9- 12. If a judge does not show up for work, his colleague covers for him. Some cases can take 20 years to end. Some never end, and the judges are not to blame. It is the *halakha's* fault. But meanwhile, they get paid for hearing the case.

Perhaps it is also money that prevents the Israeli public (read: men) from putting a stop to this absurd system of injustice and the crude methods of divorce resolution. *Get* extortion, in the end, results in financial gains for men.

d. Domination/ Power

Moreover, and finally, it is essential that the rabbis and general public acknowledge that the 3 methods of divorce resolution allow men to sustain relations of domination over women. The 3 methods protect the key rule that only men can divorce their wives and

that women cannot divorce their husbands, keeping women tethered to the bonds of holy matrimony until death do they part, or until their husbands agree to release them willingly, in exchange for benefits, or after violent interference.

The impact of these 3 methods is compounded by the zealous guard that the rabbis take over their jurisdiction. Rather than defer to the civil courts of Israel to do the justice that a rigid, formalistic interpretation of Jewish law does not allow them to do, the rabbis balk at any threat to their juridical power and use the 3 methods in ways that protect their power base, rather than the interests and needs of Jewish women, and children, even after the *get* is delivered.

Telling in its absence, and supportive of the thesis of this article, is the lack of narrative material in rabbinic court decisions. It is rare, especially in the district rabbinic court opinions, to find an extensive discussion of the facts at hand. We know little of the stories of the women whose claims the rabbis are dealing with. How old are they? How many children do they have? How long have they been married? How long have they been living apart from their husbands. Why have their marriages broken down? Are they observant, or not? What are the consequences the denying them the *get*? Are they suffering from loneliness, poverty? How are the children fairing? What is the policy of the courts in dealing with failed marriages in the 21st century? Instead, rabbinic decisions hover around the “men-only” rule -- its permutations and its practices and how to preserve them -- including those methods outlined here, without acknowledging that the result of that men-only rule is that only men rule, and women suffer.

Conclusion

Hoisted by the webs of significance that they themselves spin, and strangled by their threads, the rabbis, as described in this article, engage in methods of divorce resolution that reflect on a *halakha* that would appear narrow in scope, unimaginative, and violent. There are alternative *halakhic* traditions, as a close reading of the footnotes of this article will reveal.⁶⁷ But those alternative traditions—those that are sensitive to the elasticity of the legal word,⁶⁸ creative in their use of legal fictions and loopholes,⁶⁹ and empathetic to the consequences of legal determinations⁷⁰—are not the dominant ones in the Israel rabbinic courts, and often come too little, too late.

⁶⁷ E.g., *supra* note 24 (court can find reasons to declare a marriage void); *supra* note 25 (some tribunals are more flexible than others); *supra* note 27 (grounds for divorce have developed to include family violence and adultery on the part of husbands); *supra* note 30 (irretrievable breakdown of the marriage is grounds for divorce, Rambam *me'is alay*); *supra* note 36 (the litigimation of extortion by the Maharshdam is limited in scope); *supra* note 60 (can't invalidate *get* after it has been delivered).

⁶⁸ Cf., Moshe Halbertal, “Interpretative Revolutions in the Making: Values as Interpretative Considerations in Midrashei *Halakhah*,” (in Hebrew) (1997).

⁶⁹ Lecture by Susan Weiss, *Halakhic Fictions: Deceptions or Solutions to the Problem of Jewish Women and Divorce* (JOFA conference, February 11, 2007)

⁷⁰ E.g., Rabbi Avraham Haim Freiman, *The Marriage Ceremony in the Post Talmudic Era*, 21, 38, 67-80, 87-92 (1945) (in Hebrew) (claiming that the rabbis have the authority, instead of the husband, to declare that a marriage is over); Eliezer Berkovits, *Conditional Marriages and Divorces* (1967) (in Hebrew) (suggesting that marriage contracts can be entered into on conditions that would, if they occur, void the marriage bonds and preclude the need for a *get*) Meir Simha HaCohen Feldblum “The Problem of

The rabbinic court judges, as well as Israeli society that finances them, must acknowledge that the prevailing methods of Jewish divorce resolution – rigid formalism, extortion, and violence- are crude, ineffective, and injurious. These methods haunt the rabbinic courts and have become the “common-sense” that perpetuates a legal regime that is oppressive to women and causes them extreme emotional and financial harm. The judges, as well as Israeli society in general, must accept responsibility for the perpetuation of this harm. They must admit to the personal gains and interests that blind them to that responsibility; and they must refuse to project blame and responsibility onto other persons and institutions. If they can’t inspire the innovations, changes, and reinterpretations that are necessary to reform the way the existing regime and legal system operates, those who can and will make those reforms must replace them.

Agunot and Mamzerim- A Proposed Encompassing and General Solution,” 19 Dinei Yisrael 203-215, 212-3 (1997-8) (in Hebrew) (recommending a change in the marriage ceremony that would preclude the need for a *get* upon the dissolution of the marriage).