

VIOLENCE IN THE JEWISH TRADITION: THE CASE OF THE AGUNAH

Presentation to the IKETH Seminar 5-8 July 2012

Rabbi Daniella Kolodny

We have been asked to talk about violence against women in our religious traditions. We are horrified when we hear of physical violence but it is also psychological violence which can be equally insidious. What is difficult as well is when people misuse our religious traditions to justify their violence. Using the claim that civil authorities do not understand or appreciate our various religious traditions, they carry on battering, in one form or another, their victims, all along claiming that they are obeying God's will. Today, the subject of my talk is the *agunah*, the metaphorically "chained woman" who lives in a halachic (Jewish legal) limbo. She is "chained" because she is separated from her husband but not divorced from him. Married or "chained" to a man and a life which she wants to put behind her and because of the very structure of Jewish law, she is unable to move on. This limbo status when carried out for a long time can harm the woman, their children and her family through years of uncertainty. This is not a minor issue, for religious Jewish women around the world and for all women in Israel who want to get divorced, the category of *agunah* presents a legal obstacle for which there are remedies but none of which have been universally accepted in the Jewish world.

Before I immigrated to the United Kingdom, I served as a U.S. Navy chaplain at the Bethesda Naval Hospital just outside of Washington, DC. One evening, as I was walking out the door one of the Jewish civilian members of the hospital congregation approached me. He began to tell me his story of frustration. His adult daughter had married what they thought was a nice man. The couple had children but the marriage did not work out and after 19 years the couple were divorced by civil law. In Jewish law or *halacha*, the couple was separated but not divorced as the husband refused to give a "*get*" a Jewish bill of divorcement. He was only willing to do so, according to the father who spoke to me, if the family gave him tens of dollars to pay him off to give him a *get*. Neither the daughter nor her family had the money to pay off his extortion to free her from her marriage. As he confided in me the father also complained that rabbis of the rabbinical court, the *beit din*, seemed to side with the husband as his father was a member of a rabbinical court in another state. The *beit din* continued to encourage the husband and the wife to work it out for the sake of "*shlom bayit*" peace in the home. When it appeared that they could not work it out, the *beit din* issued a decree of *persona-non-grata* to all of the Jewish community stating that the husband was not welcome in synagogues and homes of the Jewish community but they placed no real sanctions on the husband to compel him to give the *get*. Because the husband also refused to provide support to his family, the daughter was forced to return with her children to her parents' home. When we spoke the situation had not been resolved and appeared to come to a halt. As I researched the case for this talk, it appears that 6 years later the couple are still not divorced in accordance with Jewish law.

Allow me to share two more cases that are more disturbing. The Agunah International web-site reports two agunah cases:

CASE #102

AH's husband never supported her or their three children. He was on drugs and beat her. She came

home from work and caught him in bed with another woman. He fled to Israel and refused to give her a get (Jewish divorce). Before she came to Rabbi Rackman no Beit Din was willing to free her despite the horror of her existence.

CASE #103

Six months after MZ married and had become pregnant with their child, her husband told her he's in love with another woman, but refused to give her a get. After months of psychologically abusing her, MZ's husband returned to his Israeli mistress, married her in Cyprus and had two children with her. He and his new family have been living unfettered in Israel for the past twenty years. In stark contrast, MZ had to raise her child herself and was doomed to a life of loneliness and despair.¹

Discussing the issue of agunah to this audience is a challenging one. First, because none of us like to “air our dirty laundry in public”. The myth that Jews like to tell themselves and the non-Jewish world is that we have wholesome tight-knit families that don't suffer from the family break down and violence that we see amongst the general public. Since Jews are a small minority of the world's population, internal issues like agunah, get little exposure to the outside world. It is only when consequences of exotic customs end up in the newspapers that issues like *agunah* get wider attention. For instance, recently a senior aide to a member of the U.S. Congress was accused openly and publicly by a watchdog group for refusing to grant his wife a religious divorce decree that the issue made the Washington, DC newspapers.² In this case the watchdog group was using the rabbinically sanctioned practice of public humiliation to encourage the man to give his wife a religious divorce. Sadly, the Jewish community does not always live up to our values internal myths. There is divorce in the Jewish community, there is violence in the Jewish community and there is psychological violence employed by recalcitrant Jewish husbands against the women to whom they remain married.

There is also a danger that in my critique of the *halacha*, it will be misunderstood as a condemnation of the Jewish legal system altogether. There was a time when Judaism was derided as “a religion of pots and pans”³; critics accused Judaism of being more concerned with “legalism” than it was with the “spirit” of the law. For Jews who are Halachically observant, this is not the case. The word *halacha* can be narrowly translated as “Jewish law” but it really is much more than a set of rules. *Halacha* comes from the word to walk and in that sense, *halacha* is a way of life. It is a way of seeing and living in the world. The constant concern for being aware of the details connotes a sense of spiritual mindfulness in which a Jew is attempting to bring greater sanctity into the world even for a moment and even with a simple act. In Leviticus 19:1 we learn “You shall be Holy, for I, the Lord your God, am holy.” The medieval philosopher Maimonides interpreted the verse as a commandment to walk in God's ways and emulate God's grace and compassion.

For the chief aim of man should be to make himself, as far as possible, similar to God: that is to say, to make his acts similar to the acts of God, or as our Sages

¹ www.agunahinternational.com/ads.htm. Retrieved 2 July 2012.

² Mak, Tim, “Dave Camp Pressed on Aide's Marital Woes,” *Politico*, 26 February 2012. Retrieved 2 July 2012.

³ Israel Zangwill, *Children of the Ghetto: A Study of a Peculiar People*, p. 844.

(Shabbat 133b) expressed it in explaining the verse “*Kedoshim tihyu*”: just as He is gracious, so be you also gracious; just as He is merciful, so be you also merciful.⁴

The Torah was given to us by God but it is human beings—and over the millennia almost entirely men—who have interpreted Torah so that we can fulfil God’s will. We are instructed in Deuteronomy 17:8-11 to present cases too difficult to decide before judges and magistrates in a court of law and that “You shall act in accordance with the instructions given you and the ruling handed down to you; you must not deviate from the verdict that they announce to you either the right or the left.”

LEGAL PROCESS OF JEWISH MARRIAGE

Jewish tradition has always prized marriage between men and women. Again and again the tradition prescribes that human beings should be married. The verse from Genesis, “It is not good for man to be alone; I will make a fitting helper for him.”⁵ led the rabbis to celebrate and commend human beings to live in partnership. Unlike the ancient Essenes or members of the Qumran sect which held up celibacy as a much preferred holy lifestyle, the Rabbis of the Talmud held celibacy to be unnatural. Moreover, marriage is holy and fulfils one as a human being, “R. Tanhum stated in the name of R. Hanilai: Any man who has no wife lives without joy, without blessing, and without goodness.”⁶ In the days when the Temple in Jerusalem stood, the High Priest could not perform his duties on the Day of Atonement if he was not married. Similarly, today, in traditional synagogues a Shaliach Tzibbur, a prayer leader and emissary of the congregation, may not lead services on the Day of Atonement if he is not married.

Marriage is called *Kiddushin*, or sanctification and it is considered a sacred relationship in which a woman is consecrated to her husband and forbidden intimate contact with all other men during the course of their marriage. It is important to note that the legal grounds on which a Jewish marriage is consecrated is unlike the Christian sacrament of marriage in that divorce, while regrettable, is a permissible end to a Jewish marriage.

In Jewish tradition marriages are effected by men, women can reject a suitor but it is the man who in Jewish law is the active initiator of a marriage. The wedding ceremony is preceded by the signing of a *kettubah*, the Jewish marriage contract. The main part of the *kettubah* “specifies the amount determined by law as the minimum that the wife is entitled to receive from her husband or his estate on the dissolution of the marriage.” The Jewish wedding ceremony is a joyous one; it is performed in front of two proper witnesses and in later tradition before at least a quorum of ten people. For the marriage to take effect, the groom states, in front of the two witnesses, “Behold, you are consecrated unto me with this ring, according to the Law and Moses and Israel.” By transferring the ring to the bride, the groom shows his intent to consecrate her exclusively to himself and when the bride takes the ring she signifies her consent to the marriage. The *kettubah* is her dowry that serves as a contract with the husband should the marriage end in death or divorce.

⁴ Moses Maimonides, *Guide to the Perplexed* 1:54

⁵ Genesis 2:18

⁶ *Yevamoth* 62b

DIVORCE IN JEWISH LAW

Just as marriages are effected by a husband, so too are divorces effected by men. Relying on Deuteronomy 24:1-4:

1 A man takes a wife and possesses her. She fails to please him because he finds something obnoxious (*ervat davar*) about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house; 2 she leaves his household and becomes the wife of another man; 3 then this latter man rejects her, writes her a bill of divorcement, hands it to her, and sends her away from his house; or the man who married her last dies. 4 Then the first husband who divorced her shall not take her to wife again, since she has been defiled — for that would be abhorrent to the Lord. You must not bring sin upon the land that the Lord your God is giving you as a heritage.

The rabbis of the Talmud recognized that only a husband can initiate a divorce: “The man who divorces is not like the woman that is divorced, for a woman is divorced with her consent or without it, but a man can divorce only with his consent.”⁷ Moreover, only a man can write a bill of divorcement.⁸

The Bible granted men alone the right to divorce and marry and that women are the passive subjects of the beginning and ends of marriage. Over time, the rabbis of the Talmud and the Middle Ages sought to rectify this injustice and gave women more and more rights to divorce. First, the Bible gave men marital obligations to their wives such as the obligation to food and clothing.⁹ By the time of the Mishnaic period, women had a right to divorce for various reasons. She has a right to divorce if she wanted to move to the Land of Israel and her husband refused.¹⁰ She has a right to divorce if her husband has a serious disease or if his occupation, such as tanning or dung collecting, means that he has a continual bad odour.¹¹ She has a right to divorce if her husband does not support her in the style in which she has become accustomed.¹² A woman also had a right to divorce if her husband failed to live up to the obligations of the Kettubah, the marriage contract. The rabbis of the Middle Ages also added two legal grounds for divorce: if a husband beats his wife and/or if he visits prostitutes.¹³ It was also in the early medieval period that Rabbenu Gershom of Mainz decreed that a woman could not be divorced without her consent.

How does a couple get divorced in Jewish law? The man must write a divorce document, called a *get*, or have a representative of the Jewish court do it for him. There is a very specific procedure as to how this document must be written, handled, witnessed and ultimately given to the man’s soon to be ex-wife.

⁷ *Yevamot* 14:1

⁸ *Gittin* 20a

⁹ Ex. 21:10

¹⁰ *Ket.* 110b

¹¹ *Ibid.*

¹² *Ket.* 5:8-9

¹³ *Sh. Ar., Hilchot Gittin* 154:3

The rabbis recognized the imbalance of power in marriage as laid out by the Bible and sought to remedy that imbalance by granting women more grounds on which women had a right to divorce. The Talmud scholar and rabbi, Judith Hauptman writes:

The changes that are made to improve a woman's lot require her to seek the assistance of a court, either to force her husband to write a get or to annul her marriage. Despite the improvement, she is still dependent upon others for resolving her marital difficulties. But these others are instructed to function on her behalf. If we judge the rabbis, not in terms of how close they came to eradicating all inequity, but in terms of how they improved the status quo, it is clear that they were aware of women's suffering and were in the process of alleviating it. The meta-message of the tractate is that the rabbis identify problems and provide solutions.¹⁴

A woman has the **RIGHT** to sue for divorce but it was always and remains, in Jewish tradition, a husband who initiates and carries out a divorce. This distinction is significant in Jewish law because it brings about the legal phenomenon of the *agunah* or the chained woman.

THE AGUNAH, A DIFFICULTY IN JEWISH LAW

The *Encyclopedia Judaica* defines an *agunah* as "a married woman who for whatsoever reason is separated from her husband and cannot remarry, either because she cannot obtain a divorce from him or because it is unknown whether he is still alive. This situation comes about because Jewish law recognizes only two ways for a marriage to end, either through the confirmed death of one of the spouses OR divorce."¹⁵

The problem of an unconfirmed death has been adequately been addressed in the halacha. It is said that before going off to war, King David's soldiers would write bills of divorce should they fail to return from the front. More recently, the rabbis ruled that after the Nazi holocaust, when it was known that a husband went to a concentration camp but it was not certain that he had died, the *beit din*, or Jewish court ruled that he was dead.

Today the real problem of *agunot*, or chained wives, are the recalcitrant husbands who refuse to give their wives, *gittin*, or bills of divorce. Jewish law maintains the position that it is the husband who initiates and grants a get, a bill of divorce, and not the court, as is true with many legal systems in the world. Moreover, the divorce must be done "with his full consent". (Yevamot 112b) This can mean that a woman married to a man who refuses to give a get, a document of divorce, is "chained" to her marriage even if the marriage has ended and the partners no longer share the same domicile. In traditional Judaism, a woman in this position cannot remarry in a synagogue. She cannot remarry because she remains married to her first husband; should she have sexual relations with another man, she is considered an adulteress and should she have children with a man who is not her husband, those children would be placed in the category of *mamzerim*, or illegitimate children. *Mamzerim* are not permitted to marry another Jew, nor are any of **their** children permitted to marry

¹⁴ Judith Hauptman, *ReReading the Rabbis: A Woman's Voice*, p. 126.

¹⁵ Ben Zion Schereschewsky, "Agunah" in *Encyclopedia Judaica*, ed. Michael Berenbaum and Fred Skolnik, p. 511.

another Jew. Under Jewish law, the *mamzer* is only permitted to marry a convert, another *mamzer* or someone who is not Jewish.

While a wife may also withhold her consent to a *get*, a bill of divorce, under certain conditions a man can legally pursue a relationship with another woman with the consent of the *beit din* or Jewish court. The legal penalties imposed on a woman if she co-habits with another man or has children with another man are not as severe for a man. Even though the medieval rabbi, Rabbenu Gershom, instituted a decree against polygamy, because polygamy is permitted to a man by Biblical law the penalties are not as severe.

Why does a man refuse to give a *get*? The reasons are many, including: demands for a pay-off to give the divorce, a better custody settlement, or for spite. Some say that some men refuse to give a *get* out of love as well, as they don't accept that their marriage is over.

DIFFERENT REMEDIES

The problem of the *agunah* has been addressed since the beginning of the Mishnah and the Talmud particularly with regard to issue of a missing husband who is presumed dead. Later, medieval rabbis in responsa literature and the legal decisor, Moses Maimonides specifically addressed the issue of the recalcitrant husband who withholds a *get*.

In some ways the *agunah* problem is a particularly acute side effect of modernity. Before the Enlightenment, Jews were not permitted to live amongst their non-Jewish neighbours and so the Jewish community was able to enforce communal norms including pressuring recalcitrant husbands to give their wives *gittin*, or divorce documents. Once modern society became free and Jews could mix with the non-Jewish community, the Jewish community was no longer able to coerce men (and women) into "free" submission to *halacha*.

The Jewish denominations have each sought their own remedy in concert with their philosophical understanding of the halachic system. The nineteenth century Reform movement prized ethical *mitzvot* and disregarded what they termed as ritual *mitzvot*; thus, in the area of *agunah* they believed that a civil divorce was sufficient for a woman to be remarried. Thus the American Reform movement and the Liberal movement in the UK do not require a *get* for re-marriage. The Reconstructionist movement of the United States uses the power of the *beit din*, the Jewish court to issue the *agunah*, a *shtar pitturin*, a document which declares the woman free to marry though she has no *get* and her marriage has not been annulled.

My movement, the Masorti movement, has sought a *halachic* solution through the offices of the Masorti Beit Din. In 1954, the movement invoked a *takkanah* or legal enactment, which added an additional clause to the *kettubah*. This enabled the Masorti Beit Din to act on behalf of the complainant to impose a *get*.

Due to internal Jewish politics, solutions found in the more liberal movements are not acceptable to many Orthodox rabbis and congregants and so a universal solution has not been established. In recent years, parts of the Orthodox world have responded to activist wings of the movement to act for the good of *agunot*. In the United States since the mid-1990's, the Modern Orthodox Rabbinical

Council of America has recommended that couples take out a pre-nuptial agreement before marriage. In this pre-nuptial agreement, the couple agrees in an event of a marriage failing and one partner desiring to end the marriage that they undertake financial or legal commitments to spur them on to a get. While this solution is gaining popularity in some circles, it has raised questions among halachic authorities about whether there is a risk of a coerced *get*.

In the United Kingdom, Jews have appealed to civil law to compel a get during civil divorce proceedings. Using the Divorce and Religious Marriages Act of 2002, a solicitor can make the granting of a get a condition of the civil divorce before finalization of a divorce.

In Israel, since the passage of 1995 "Upholding of Divorce Laws," the state Rabbinical Court can impose restrictions on a husband who withholds a get. Restrictions include: leaving the country, withholding a passport or extending its validity, holding or renewing a driver's licence, restrictions on appointments to statutory or elected positions, revocation of professional licences and withholding bank accounts. Of course, the rabbinical court has to be convinced that a litigant is indeed withholding the get and that the marriage cannot be resurrected. As many rabbis are concerned to maintain marriages and encourage the Jewish value of *Shalom Bayit* or peace in the home it can be difficult to get the court to recognise that a get is being withheld.

All of this is to say that there is a problem of using religion and religious values to reinforce systems of hierarchy and to enable those empowered by religious law to discriminate against those who are disempowered by the law itself.

The feminist Orthodox writer, Blu Greenberg used to say, "Where there is a rabbinic will there is a halachic way." She and many others challenged the rabbis to find solutions for the agunah problem. In her 1981 book, *On Women and Judaism*, she writes:

In view of the fact that the unfolding Halacha on divorce reflects an unmistakable pattern of limiting the husband's and expanding the wife's rights, the rabbis of today no longer can say they can not "work it out". To say their hands are tied, or to say they can resolve an individual problem but not find a global solution, is to deny their collective responsibility. Worse, it bespeaks a lack of rabbinic will to find a halachic way. What they are really saying is they are not worthy of the authority vested in them, for well they know that the only person whose hands are tied is the woman whose family must pay blackmail.¹⁶

In the last decades of the twentieth century, rabbis and the Jewish community have heard the cry of families who have been subjected to abuse through the misuse of Halacha. In the Diaspora, lawyers have used the civil code in divorce law to aid families to avoid the trap of the agunah. In the various Jewish movements rabbis have insisted on small modifications of the halachic process to limit the emergence of agunot although there remain rabbis who claim that their hands are still tied. There are always those who wish to manipulate a legal system for their own ends at the detriment and

¹⁶ Blu Greenberg, *On Women and Judaism: A View From Tradition*, p. 142.

cost of families. It is up to those who are leaders within our faith systems to prevent those who are intent on manipulating the system from doing so. It ensures justice for all parties involved but it also protects a system of faith and values that we hold dear. There are those who claim that our Halachic system is sacrosanct because it is God's will. We are the inheritors of the tradition, they say, we are not free to change it. Yet, from the Talmudic rabbis forward, the Halachic system has been able to expand and grow to protect those who need protection from the powerful. To ignore the obligation to side with the powerless is shirk the responsibility given to us by the Torah itself.