

Book 142

PROLOGUE

ANNULMENTS

Moshe Sis/sender

NO STIGMA MARRIAGES OF
CHILD OF AGUNAH
By RAY EMANUEL RACKMAN

From my father, of blessed
memory, I learned a basic Jewish
ethic: "One should always prefer to
be vilified rather than to be a villifier."

To all those who inquire of Rabbi
Moshe _____ and me as to
what we are doing - the how and the
why, we have made reply. And we
continue to function as often as we
can to liberate Agunot in accordance

with the views of the most respected Halachic authorities and texts.

One learned rabbi whom I love and admire did make inquiry and said that his opposition is based - in his very specific words - on a “post-Shulchan Aruch view of Jewish law.”

We confess that our position is not based on such a view. However, we do act on the basis of our mastery of

Jewish family law - its rules, its history, and its philosophy, as revealed in the Shulchan Aruch and its most authentic commentators.

Perhaps our age is one in which sterner measures must be taken to insure deeper loyalty to the Halacha. But I am one who does not want to accomplish the result by the suffering of chained women many of whom

entered into marriages before they were even eighteen years of age and then had to seek their freedom five and ten years later.

As a matter of fact, the way the agunot have been neglected by the rabbis is alienating Jews from Judaism instead of making them respect it and commit themselves to it.

This is a point that is too often overlooked. It is not the aguna alone who hates her chains but all her kin and friends share her hate. Thus our solution to the aguna problem will do more for the future of Halacha than the stringency of its mandates.

Is it true that some rabbis may hesitate to officiate at the marriages of the liberated and is there risk that

the children of such marriages will be Mamzerim (bastards)?

To these fears I must make reply because they have been expressed time and time again by those who oppose Rabbi ~~Mo~~^{SHÉ} and me even as we call them a “red herring.”

Indeed, in almost eighteen months since the establishment of our Beis Din not one former Aguna has found

it difficult to remarry because she could not find a rabbi to officiate. We have a list of rabbis world-wide who will recognize the dissolution of the marriages with regard to which we act.

Yet, a proper regard for my colleagues requires that I offer more.

Even if there be a rabbi who will dismiss the decisions of our Beis-Din

as a nullity he will not be so rash as to base any decision of illegitimacy on that fact. He might make himself liable to excommunication for ignoring an irreversible rabbinic decision.

Second, if he is an expert in this field he will know how to rid any alleged Mamzer of his or her stigma.

And lastly, and most important of all, since all Jewish marriages today have only rabbinic and not biblical status, there is no such possibility as Mamzeruth (bastardy). Even adultery is no longer a capital offense, and illegitimacy could only follow an adulterous or incestuous relationship.

And thus, those who oppose us should do so on the merits and not with imaginary fears.

Why are the existing marriages only rabbinic in status and not biblical?

For many centuries, starting with Maimonides, views were expressed that marriages consummated with a

gift from groom to bride were only rabbinic and not biblical in status.

Rabbi Professor Meir Feldblum has written on this view. The basis is that a biblical marriage involves a commitment that the wife's body is "sold" to her husband as in the case of a minor child "sold" to the master with a view to her marriage to him in her maturity.

Today this is simply untenable.
No modern woman feels that she
sold herself or was being sold.

Thus, on this premise the illusory
fear of any bastardy arising from a
rabbinic marriage is simply
nonsense.

I wish that we did not have to
spend so much time answering our
detractors. Then I would be able to

go from one rabbinic group to another and explain how simple it is to bring relief to the many yet in pain.

From at least a dozen texts we discover that many Halachic authorities held that if the state of the marriage is such that the husband can be ordered to give the Get, and if he refuses, physical force will be exercised upon him until he

consents, and if the state does not permit such exercise of force, or if he has left the jurisdiction in which the force was ordered, then a court may dissolve the marriage, or in effect dispense with the need for a Get, which is the same thing.

(See Feinstein, Igrot Moshe, Even Ha-Ezer, I: 79)

In New York City recently we learned that coercion is unavailable and therefore, the court can annul or dissolve the marriage. The term we use is not important. It is the ultimate effect that counts.

Rabbi Isaac Elchanan Spektor, in his, *Ain Yitzchak*, added a very significant factor.

If the circumstances are such that coercion is in order then a basic Talmudic presumption does not stand in the way of annulling the marriage. That presumption is that a woman prefers any kind of marriage to none - a presumption no longer true today.

Twenty years ago I suggested to my colleagues that they arrange a

poll to challenge that presumption. I did not then know that which Rabbi Spektor had written. In his day he was famous for liberating Agunot and was sad that he could not liberate three of the 158 cases that came before him.

(See Encyclopedia Judaica, article on his name).

I believe that our detractors and we differ on one basic approach.

They insist that a rabbi must search for the final ultimate view on the state of Jewish law but we, like Rabbi Moshe Feinstein, start with the drive that we must find a Halachic way of liberating the chained.

Ours is the more traditional course to pursue in the matter of Agunot. In

the case of Agunot there is leniency,
not stringency.

Rabbi Feinstern, in his day, was
resisted by the late Rabbi Henkin but
the rabbinic world adopted Rabbi
Feinstern's position. So do we.

Incidentally, this attitude applies only
to women, not the husbands. They
have an easy way out - they need
only give the Get.

The distinguished American jurist Professor Milton Konvitz, son and grandson of Halachic giants, wrote to me that the way must be found.

Rabbis found a way to permit the taking and giving of interest; a way to save our Chometz until after Passover, and a way to use a stroller on the Sabbath.

Women in chains deserve no less.

EMANUEL Rackman

CHAPTER II

Mamzarus

Problem

One of the red herrings thrown against our Bet Din is that the women are still married. Any children born from a second relationship are mamzarum - illegitimate.

Answer

First of all, all the women that we freed are not 100% free, but one million percent free. They are free to get married. We are following in the footsteps of: Aruch Hashulchon, Rav Moshe Feinstein, Rav Yitzchok Elchonen, Ein Yitzchok, Rav Eliyahu Klatzkin, Dvar Eliyohu, Rav Moshe Tzweig - Ohel Moshe, Rav Arye Leib Tz~~WZ~~ Meshivas Nefesh, The Meharsham, Rav Yitzchak Herzog - the Ohel Yitzchok, Shrideye Esh - Rav Yecho No Yaakov Weinberg, Rav Yudelowitz, Mahrik, Rashi, Tosphos, Rashba, Ohr Zeruah, Rambam, Ramban, Rabonen Sarbei, Gaonim, Bais Yosef, ~~RAMO~~ Shach T~~oz~~ Bais Shmuel, Pischei Tsuvo, Tzitz Eliezer, Minchas Yitzchok, Bais Ov, Shoel Umaisiv, Rav Shlomo Kluger - Tiv ~~To~~am Vdoas, Sdei Chemed, and a multitude of other authorities

cited in prior chapters.

Those so called holier than thou “Rabbis” are not only libeling us; but rather are libeling all the authorities we cited in our Responsa and English book Hatoras Agunos - Emancipating Chained Women. As such they are heretics, to say the least - Talmud Bavali Sanhedrin 99B. See Kesef Mishne Rambam on Laws of Repentance 3:8, 3:14 מאי אפיקוריס רב ורב חנינא אמרינן זה המבזה תלמיד חכם או מבזה חברו בפני תלמיד חכם סנהדרין צט:

“One who insults scholars is a heretic or one who insults his friend in front of scholars is a heretic and will not merit Olam Habo - Heaven.” These holier than thou individuals condemned us, acting as judges and jury without even speaking to us, they reached their biased opinions from heresay information. They thus violated Ramo Choshen Mishpat 28:15 and Even Hoezer Ramo 11:4. Consequently, these individuals are incompetent to be witnesses. See Aruch Hashulchan Yereh Dayoh 119:14. One who commits any sin, even inadvertently, is disqualified from acting as a witness (Chosen Mishpat 33:1). One who is disqualified from acting as a witness is disqualified from acting as a judge in a tribunal. See Choshen Mishpat 33:1. See Yereh Dayoh 243:6,7. One who insults Rabbinical scholars invokes upon himself the death penalty. He will not have Olem Habo and is liable to be excommunicated. He is called a heretic. See Kesef

Mishneh on Rambam Laws of Repentance 3:8, 3:14.
My master Rav Moshe Feinstein freed entire classes of marriages amounting to annulling hundreds of thousands of marriages. In his day, 80-90% of the Orthodox Rabbinate opposed him. Rav Henkin, a leading Posek, told me 35 years ago that every one of the women Rav Feinstein freed, was an Eshes Ish - a married woman. All her children from the new relationship are mamzarim - illegitimate. The other alternative, when the husband refuses to grant a Get - a Jewish Divorce, is to have him beaten up by thugs until he gives a Get. Again, many Rabbis argue that such a Get is defective and the children from a second relationship are Mamzarim. The Gitin given in Israel by the Rabbonut are not recognized by the Haredim. Children from a second relationship are labeled Mamzarim. What is the woman to do? Commit suicide? Yes. In Israel and in America they do this. Many recorded cases are in my files. If one Rabbi or a group of Rabbis will disqualify the Gitin of another Rabbi, then everyone is a Mamzer. 85% - 90% of all Jews are not practicing orthodoxy. Every relationship between a man and a woman is considered marriage. If a man lives together with a woman - without marriage - this is considered, Halachically, marriage. When they split, both cannot start a new relationship unless there is a Get or an annulment. The same applies to civil marriages

only, and no religious ceremony. The same applies to a religious ceremony officiated by a non-orthodox Rabbi. 50% of all relationships and marriages end in separation. There is no Get. These women remarry. 90% of orthodox women who are religious, when the husband refuses to grant her a Get, live with another man - without the Get and may have children from the other man. If the annulments are not recognized then everyone is a Mamzer. This is the full circle, the height of absurdity. Rabbenu Tam cited by Mordecai, end of Laws Gitin tractate Gitin #455 made a cherem with a death penalty - by heaven - to anyone who libels another Rabbi's Get. See Ramo Even Hoezer 154:22. We don't need anti-semites to destroy us. These holier than thou "Rabbis" are doing it. The Noda Beyahudoh expanded on this cherem and stated even if those Rabbis, who criticize another Rabbi's Gitin and libel them, be as tall as the Cedars of Lebanon, be great scholars, if they libel another Rabbi's Gitin they will be guilty of the sin of violating Rabbeim Tam's cherem carrying the gravity of the death penalty by Heaven. In 1768 Nodah Beyohudah warned the Bet Din of Frankfort of the death penalty invoked for slandering the Get of another Rav. Rav Moshe Feinstein reiterated the cherem Igros Moshe Even Hoezer. The prohibition of Mamzaras is considered from the point of view of Halacha, Jewish Law, as set apart from every

other Law of Torah. Every Law of the Torah is violated regardless if one knows about the violation or not. If one eats pork and is not aware that it is pork, one nevertheless violates the Law. True, it is not wilful and one may escape punishment, but one nevertheless violated the Law of eating pork. In the case of Mamzars, it is different. If people are not aware of the status of the child, the child is not a Mamzar (Aruch Hashulchon Even Hoezer 2:14). It is only when people become aware of his status that the stigma attaches. Thus, if the identity of the woman is hidden, the child is not a Mamzer. Furthermore, if any doubts exist about the status, of Mamzarus - doubt about the validity of the mother's prior marriage, then the child escapes the status of Mamzarus.

ממזר ודאי אבל לא ספק ממזר

Only one who is definitely illegitimate is prohibited from marrying another Jew or Jewess. However, one who only is possibly a Mamzer - doubts exist about the validity of the mother's prior marriage, such child is not a Mamzer meduraisa - by Divine Law. Only is a Mamzer by Rabbinical Law. Once you increase the number of doubts then such a child is not a Mamzer as far as Rabbinical Law either. See Aruch Hashulchun Yoreh Dayoh 110:99. This is true even according to Rashba who is strict about situations whose doubts exist. He holds that the prohibition is Divine. But in case of Mamzarus, Rashba

admits that in doubtful situations the child is not a mamzer from Divine Law; only from Rabbinical Law; Aruch Hashulchun Yoreh Dayoh 110:90 Torus Habayas Shaar 4. In case you increase the number of Doubts in the case, there isn't even a Rabbinical prohibition (see Aruch Hashulchon Yoreh Deyoh 110:99; see Bais Ov Book 7, chapter 11 from Rav Yudelowitz for same reasoning). In every one of our cases, we have 20-30 doubts . Therefore, it is impossible that, at the worst possible contingency, the child from the second relationship is a Mamzer. See Yabiah Omer Book 7, Chapter 6. See Igros Moshe Even Hoezer Book 6 Responsa 20. Furthermore, the women rely on our legal opinion. They are completely innocent. They are not in violation of any Law. See Even Hoezer Ramo end of chapter 17:58, Pischei Tsuvoh 17:175 and Rav Shlomo Klinger's commentary Chomas Shlomo 17: See also Even Hoezer chapter 178:3 Ramo Bais Shmuel 178:4, Pirchei Tsuvo Ibid. She therefore is permitted to return to her husband or marry the new man the Rabbis ruled she could live with even if they erred. For substantiation of what we said, see Yabiah Omer Book 3 Responsa 7:16. When the woman is not in violation of any Law, the child is not a Mamzer. See Oneg Yom Tov Book 2, Chapter 121. Therefore, even if what we ruled would be wrong - which it is not - one million percent - the woman relying on our rulings is not in violation of any

Law. Consequently, any children she has from another man are not Mamzarim. But the whole discussion is academic. I am a scholar who specialized in the Laws of Marriage and Divorce for the last 30 years. I studied under Rav Feinstein and Rav Piekarski for *OVER* 30 years. I have the approbation from Rabbi Piekarski on the Four Codes of the Shulchan Aruch. What Rav Rackman and myself are doing, we are one million percent sure. Over 30 Rabbis approve overtly; many Rabbis support us, but are afraid because of their livelihood to openly support us. Practically every lay person supports us. We freed over ~~180~~ women and men as of this writing.

Problem: Rabbis who oppose us threaten they will not marry the women we free.

Response: You don't need any Rabbi to get married. The groom recites the formula and they are married.

הרי את מקודשת לי בטבעת זו כדת משה וישראל

You are married to me with this ring in accordance with the Laws of Moses and Israel. This is recited in front of two male Jews over 13 who are competent to act as witnesses and the couple is married. In order to recite all the Seven Benedictions you need another ~~seven~~ *eight* adult males - even relatives count. If you do not have 10 male adults you can only recite the first and last of the

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Benedictions. The Ksuboh is already printed and available in English. All that is required is filling in the names of groom and bride and the date. The same procedure that you do not need any Rabbis to marry the couple applies to the children of the second union. They can get married without any Rabbis. Torah is life for living humans. No Rabbi can veto our procedure or decide with whom a woman is going to live with for the rest of her life. Not her ex-husband nor the Rabbis can veto her life. She is empowered to go on with her life. We have empowered her. No man can interfere. A woman is master of her body - not the ex-husband and not the Rabbis. This is true where Torah Law supports the woman like in the case of our annulments. This is true whether the husband and the Rabbis agree or not. They do not count. They are irrelevant. Case closed.