

The Millie Arbesfeld  
**Midreshet Yom Rishon**

Sunday Morning Learning Program for Women

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*The Agunah  
Crisis: Modern  
Answers to an  
Ancient Problem*



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## The Classic & Modern Agunah in the Talmud

### 1. דברים פרק כד

(א) כִּי יִקַּח אִישׁ אִשָּׁה וּבִעֲלָהּ וְהָיָה אִם לֹא תִמְצָא חֵן בְּעֵינָיו כִּי מָצָא בָּהּ עֲרוּת דָּבָר וְכָתַב לָהּ סֵפֶר פְּרִיטָת וְנָתַן בְּיָדָהּ וּשְׁלַחָהּ מִבֵּיתוֹ:

*If a man marries a woman and lives with her, and it will be that she will not find favor in his eyes, for he found in her a matter of immorality, and he wrote her a bill of divorce and presented it into her hand, and sent her from his house.*

### 2. תלמוד בבלי מסכת כתובות דף סג עמוד ב

היכי דמיא מורדת? אמר אמימר: דאמרה בעינא ליה ומצערנא ליה, אבל אמרה מאיס עליו - לא כייפינן לה. מר זוטרא אמר: כייפינן לה. הוה עובדא ואכפה מר זוטרא, ונפק מיניה רבי חנינא מסורא. ולא היא, התם סייעתא דשמיא הוה...

*What is understood [by the term] rebellious wife? Amemar said: She who says "I wish [to remain married] to him, but I want to cause him pain"; if she says, however, "He is repulsive to me," she is not forced. Mar Zutra said: She is forced. An incident once occurred, and Mar Zutra forced [the woman to remain married], and R. Haninah of Sura was born [from the continued relationship]. This, however, was not [the proper course of action]. In that case it was the intervention of Providence...*



### 3. תלמוד בבלי מסכת כתובות דף סד עמוד א

השתא דלא אתמר לא הכי ולא הכי, תפסה - לא מפקינן מינה, לא תפסה - לא יהבינן לה, ומשהינן לה תריסר ירחי שתא אגיטא, ובהנך תריסר ירחי שתא לית לה מזוני מבעל.

*Now that it has not been determined, either this way or that way [i.e. the law regarding the dowry garments has not been clarified]. If she seized the garments, we do not take them away from her, and if she did not seize them, we do not give them to her. We also make her wait twelve months for a divorce, and during these twelve months she receives no sustenance from her husband.*

- 12 month waiting period for the get • Husband not obligated to financially support his wife during that time

## Agunah in the Time of the Geonim and Rishonim

### 4. Rav Yehudai Gaon, Head of Sura, 760 C.E.

דכי בעיא איתתא לאגרושי שלא ברצון בעלה מדיחין לה י"ב ירחי, בגמרא דאף על פי. והאידינא לא קא עבדינן הכין, וכד מימרדא איתתא על בעלה ותבעה לאגרושי מחייבינן ליה לבעל ליגרשה, ואי לא עביד, משמתינן ליה עד דעביד, אבל כדי למיתבע שלמא בין איש לאשתו מדחינן לה שבתא ותרין.

*When a woman desires a divorce against the will of her husband, we put her off for twelve months in accordance with the Gemara of [chapter] "Even Though." But we do not act now in such a manner. When a woman rebels against her husband and desires a divorce, we obligate [the husband] to divorce her, and if he does not do so we place him under the ban until he does it. But in order to bring about peace between husband and wife we make her wait a week or two.*

- Husband must give her a get when she wants a divorce • We ban him until he gives her the get • One or two week waiting period

### 5. הלכות גדולות – ר' שמעון קיארא (9th Century)

והאידינא בבית דין הגדול תרתין מתיבתא הכין קא פסקין במורדת דאע"ג דתפישא מידעם מכתובתה קא מפקינן ליה ומהדינן ליה לבעל ויהבינן לה גיטא אלתר. והני מילי במאי דכתב לה בעל, אבל מאי דאיתא היא מבי נשא בין תפישא ליה כל מידעם דאיתיה בעיניה דידה הוא ויהבינן לה.

*And now, in the Great Court of these two academies, they rule regarding the rebellious wife that even though she seized something from the marriage contract, we take it away from her and return it to her husband, and we grant her a bill of divorce immediately. But this applies only to that which the husband contracted with her,*

but regarding that which she brought from her own home [into the marriage], whether she seized it or not, everything which is still in existence belongs to her and we give it to her.

- He must give her the *get* immediately • Anything she brought into the marriage is given back to her

#### 6. רב נטרונאי גאון (Mid 9<sup>th</sup> Century)

ואיהו יהיב לה גיטא לאלתר כדי שלא תצאנה בנות ישראל לתרבות רעה.

And he gives her a bill of divorce immediately, so that Jewish women should not stray towards lewdness and indecency.

#### 7. רב שרירא גאון (Late 10<sup>th</sup> Century)

ואחרי רבנן סבוראי בראותם שבנות ישראל הולכות ונותלות בגוים ליטול להן גיטין באונס...כופין אותן וכותב לה גט לאלתר ויש לה מנה מאתים.

And afterwards the Rabbanan Saborai saw that Jewish women were attaching themselves to the Gentiles to get divorces from their husbands by force...They forced him, and he must write her a bill of divorce immediately. She also receives one hundred or two hundred zuzim. In this manner do we conduct ourselves today, and have done so for three hundred years and more. So should you do, too.

- He is forced to give the *get* • She receives the alimony written into the *ketubbah*

#### 8. Heinrich Graetz, The History of the Jews, Vol. 3

"The ruling nation and the ruling religion operated upon the family life of the Jewish people in Babylon...[Since] the Koran improved the lot of woman in society, granting the wife the right to demand a bill of divorcement from her husband without losing her acquisitions."

#### 9. R. Shlomo Riskin, A Jewish Woman's Right to Divorce, p.75

"In pre-Islamic times, a wife could be repudiated by her husband by pronouncing the words anti talk ('you are divorced')...According to the teachings of the Fikh on talak, the husband has the right to pronounce it even without justifiable cause...However, nowhere is there any provision for a wife to declare talak and thereby repudiate her husband – even if there is an objective reason.

#### 10. תוספות מסכת כתובות דף סג עמוד ב

אבל אמרה מאיס עלי לא כייפינן לה - פי' בקונטרס לא כייפינן לה לעמוד תחתיו אלא יתן גט ויוצאה בלא כתובה וי"מ דכופין אותו להוציא ואין נראה לר"ת דניחוש שמא עיניה נתנה באחר וכו'.

But if she says, "You are repulsive to me, we do not force her [to remain in the marriage]" – Rashi explains that we do not force her to stay under him, rather he gives her a *get* and she goes out without a *ketubah*. Some explain it to mean that he is forced to let her out [of the marriage].

#### 11. R. Shlomo Riskin, *ibid.*, p. 110-111

"It is important to remember that unlike the Gaonic and Spanish authorities, who lived in Moslem countries, Rabbenu Tam lived in Christian France, where the prohibition against divorce was a major principle in Catholicism...At a time when the prevailing culture insisted upon the permanence of the marital bond, it would hardly have behooved the religious minority to appear lax in the matter...The practical result of his opinion was that from his time on, Jewish courts were to be prohibited from coercing a husband to divorce his wife on the basis of her claim, 'He is repulsive to me.'"

## Three Resolutions for the Modern Day Agunah

#### 12. שו"ת אגרות משה אבן העזר חלק א סימן עט (R. Moshe Feinstein, 20<sup>th</sup> Century)

בדבר האשה שניסת לבעל ומיד אחר החתונה נתברר שאין לו גבורת אנשים כלל ולא היה יכול לבעול ואף לא העראה שלא היה באפשרותו אפילו להתקרב לאותו מקום וברור שהיה זה גם קודם ... והאשה צעירה לימים וצריכה להנשא והבעל לא רצה לגרשה וברח מהעיר וא"א להשיג גט פטורין ממנו ... ומחמת שהוא ענין עגונה ששקדו לתקנתה נזדקקתי לעיין בזה אף כי מה אני ובפרט להכריע בדברי רבותינו והשי"ת יעזרנו שלא נכשל ח"ו בדבר הלכה ויורנו האמת להלכה ולמעשה...

...ולכן בעובדא דידן שאינו יכול לבעול ונתברר שהיה זה לפני הקידושין וא"א להשיג ממנו גט בשום אופן אין לעגנה ויש להתירה מטעם קידושי טעות. זהו הנלע"ד בעה"י, משה פיינשטיין

Regarding a woman who married a man and immediately after the wedding it became clear that he lacks the ability to engage in a sexual relationship in any way. He was known [to have this problem] even before the

*marriage...The woman is young and wants to marry again, however the husband does not want to divorce her and he fled the city making it impossible for him to give the get...Since this is an Agunah issue, I have been compelled to analyze it. Though, who am I to decide between the words of our rabbis? God should help me, that I shouldn't stumble, Heaven forbid, with a matter of halakha and He should show me the truth in theory and practice...*

*...Therefore with regard to our case where he is impotent and this was known to him even before the marriage and it's impossible to retrieve a get from him, we should not chain her, and we should free her on the basis of a mistaken marriage.*

### 13. Beit Din of America, Binding Arbitration Agreement

The parties agree to appear in person before Beth Din of America at the demand of the other party, and to cooperate with the adjudication of the Beth Din of America in every way and manner. In the event of the failure of either party to appear before the Beth Din of America upon reasonable notice, the Beth Din of America may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted. Furthermore, Husband-to-Be acknowledges that he recites and accepts the following:

*I hereby now (me'achshav), obligate myself to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons, at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index-All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings. Furthermore, I waive my halakhic rights to my wife's earnings for the period that she is entitled to the above stipulated sum, and I acknowledge that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have effected the above obligation by means of a kinyan (formal Jewish transaction) in an esteemed (chashuv) Beth Din as prescribed by Jewish law.*

However, this support obligation shall terminate if Wife-to-Be refuses to appear upon due notice before the Beth Din of America or in the event that Wife-to-Be fails to abide by the decision or recommendation of the Beth Din of America.

### 14. ספר הישר חלק התשובות סימן כד (Rabbenu Yaakov Tam of Ramerupt, 1100-1171)

אך אם כל רבותינו שוין בדבר תגזרו באלה חמורה על כל איש ואשה מזרע בית ישראל הנלוים אליכם, שלא יהו רשאים לדבר עמו לישא וליתן עמו להאריחו ולהאכילו ולהשקותו וללוותו ולבקרו בחלותו. ועוד יוסיפו חומר ברצונם על כל אדם, אם לא יגרש ויתיר אותו האיש את הילדה הזאת, שבזה אין כפייה עליו.

*If all of the rabbis feel similarly about this, they should enact a strict decree on every Jewish man and woman, that they are not permitted to speak with him, to do business with him, to invite him as a guest, to give him food or drink, to escort him, and to visit him if he becomes ill. And they should keep making it stricter if this man will not divorce and free this woman.*

### 15. רמ"א אבן העזר סימן קנד סעיף כא (R. Moshe Isserles, Poland, 16<sup>th</sup> Century)

ומכל מקום יכולין ליגזור על כל ישראל שלא לעשות לו שום טובה או לישא וליתן עמו, או למול בניו או לקברו, עד שיגרש. ובכל חומרא שירצו ב"ד יכולין להחמיר בכהאי גוונא, ומלבד שלא ינדו אותו.

*Nevertheless they are permitted to decree on every Jew not to do anything good for him, to do business with him, to circumcise his sons or bury him, until he divorces. And any additional stringency with Beit Din wills, they may enact it.*

### 16. שו"ת יביע אומר חלק ז - אה"ע סימן כג (R. Ovadia Yosef, Former Chief Sephardic Rabbi)

והוספנו על החומרות הנ"ל שעל כל גבאי בתי הכנסת בסביבות מקום מגוריו של הבעל שלא להושיבו בבית הכנסת, ושלא להעלותו לס"ת, ושלא לשאול בשלומו, ולא לחלוק לו שום כבוד, ולהתרחק מעליו ככל האפשר עד אשר יכנע לבבו וישמע לקול מורים ויתן גט לאשתו כדמו"י ולשחררה מעגינותה

*We added on to the above mentioned stringencies that all of the shuls in the area where the husband lives should not allow him into the shul, he should not be called up to the Torah, one shouldn't ask after his [health], or impart onto him any respect, and create as much distance from him as possible until his heart will be humbled and he will listen to the voice of the leaders and give a get to his wife in order to release her from the chains.*