

Rabba Sara Hurwitz

## Reflections of the Aggunah Crises

Ki Tetzeh, 5773

In 17761, in Germany, a young man named, Isaac, son of Eliezer Neiburg of Mannheim, was engaged to marry Leah, daughter of Jacob Guenzhausen of Bonn. In the week leading up to the wedding, Isaac seemed pre-occupied exhibiting some strange behavior. The wedding, however, took place in the groom's home town with much celebration, on the 8<sup>th</sup> of *Elul* 5526, August 14, 1766, and all seemed to bode well.

A week later, on Saturday night, after they had spent several days in Bonn, Isaac Neiburg told the community rabbi, that his life was in danger and that he must leave Bonn immediately, but in order not to leave his young wife an *agunah*, he wished to give her a divorce. He did admit that he had not found the bride to his liking, but noted that he was not divorcing her for this reason, rather because of the mortal danger threatening him. Rabbi Copenhagen's attempts to dissuade him were to no avail, and therefore it was agreed by both sides that Isaac Neiburg would divorce his wife. Financial matters were agreed to, including payment of expenses by the husband, and Isaac consented to everything. Since there was not a recognized rabbinical court in Bonn, it was decided to turn to the rabbinical court in Cleves, a city on the border between Germany and Holland.

The rabbi of Cleves, Rabbi Israel Lipschuetz, met with both parties, and sanctioned the divorce and also a written monetary agreement, determining that Isaac was firmly resolved to give his wife a divorce, and that if it were not done on the spot his wife might be left an *agunah*.

Several weeks later it became known to the father of the groom that his son had divorced his wife and left the country. The father was incensed both because in his opinion his son had been forced to give a get, despite, in his words, "his delicate emotional state, and because the

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<sup>1</sup> This historical story was told by Dr. Dov Levitan, Professor at Bar Ilan University, in an article called *Controversy of the Cleves Get*.

financial arrangements were to his disadvantage.” He turned to Rabbi Tevele Hess, who then turned to the rabbinical court of Frankfurt, a large and highly esteemed community, headed by Rabbi Abraham Abusch of Lissau, both of whom ruled that the get was indeed invalid.

What ensued was a 2 year heated and acrimonious debate that put two rabbinical bodies at odds with one another, with both Leah and Isaac, caught in the middle. Leah’s status kept changing, depending on the rabbinic ruling, from “divorced” to “possibly married,” and later to “certainly married.” And Isaac, at times was determined to be “of sound mind and therefore able to grant the get, and at other times, emotionally disturbed, and unable to authorize the writ of divorce. The fierce controversy was accompanied by accusations, insults and name-calling.

The battle did not subside until over two years later, with the death of the head of the rabbinical court of Frankfurt, Rabbi Abraham Abusch.

Today, there are hundreds and hundreds of disheartening and unjust stories of aggunot, women who are chained to unwanted marriages, of open cases that have found no resolution.

The source, for the procedure of divorce is found in our parsha. The Torah: (Devarim 24:1) says:

א כי-יקח איש אשה, ובעלה; והיה אם-ל' א תמצא-חן בעיניו, כי-מצא בה ערות דבר--ונכתב לה ספר פרישת ונתן  
ביתה, ושלחה מביתו.

“When a man takes a wife and marries her, and it comes to pass that she does not find favor in his eyes because he has found some unseemly thing, then he writes her a bill of divorce and gives it to her in her hands and sends her out of the house.”

The Torah places the power to decide to divorce solely on the husband. And in fact, during the period of the Mishnah and Talmud it was possible to divorce a woman against her will. Recognizing the inequity that a woman could be forcefully thrown out of her own home Rabbenu Gershom living in the 10<sup>th</sup> century enacted a *takkana*, a decree that prohibited divorcing a woman against her will. A woman must accept the get in her hand in order for the get to be valid. The *takkana* of Rabbenu Gershon sought to protect the rights of women,

however, there was one major flaw. Although a man can initiate a divorce, there is no parallel right for her to do so.

Therefore, if a woman demands a divorce and her husband refuses, her only hope is for the *beit din*, a court to compel him to divorce her, as stated in the *gemara*, Tractate *Yevamot* (106b): “Pressure is put on him until he says he is willing [to divorce his wife].”

For me, here in lies one of the problems. Much like Leah and Isaac, we too must rely on the *halakhic* wisdom and compassion of a *beit din*, a court of judges to dissolve the marriage and force the husband to give a *get*. And therefore, the *Get of Cleves*, as it has become to be known by scholars, is indicative of a deep flaw of the rabbinic court system.

It is true, the laws surrounding the circumstances of giving a *get* are quite complex. In our case, the issue at hand was whether Isaac was of “sound mind” at the time of the *get*. And since the *Get of Cleves*, and even before that, Rabbinic authorities, *aggunah* activists, and academics have sought to find solutions to solve the *aggunah* crisis. Many solutions have in fact been found and written about. I want to briefly lay out a few:

The most commonly accepted solution is the *halakhic* pre-nup, which stipulates that a husband must monetarily compensate the woman for each day that he refuses to give her a *get*. Today, most Modern Orthodox rabbis will not officiate at a wedding unless the couple agrees to sign a pre-nup.

Another solution is creating a *kiddushin tanai*, or conditional wedding ceremony, where the couple signs a document saying that if the couple should civilly divorce, and a *get* is given within 6 months, then the *kiddushin*, the marriage is valid. But, if the *get* is not granted within 6 months of the civil divorce, then the marriage is not considered valid, and a *get* becomes unnecessary.

Yet another solution is *kiddushin ta’ut*, a marriage entered into under mistaken assumptions, including lack of knowledge of a defect in the husband that pre-existed the marriage. A *beit din* may declare this marriage to have never been validly established, so the need for a *get* to end the marriage does not apply.

Another solution worth mentioning is Hafka'at Kiddushin, where the marriage is rendered invalid because of a technicality, such as witnesses who is not considered to be kosher. Here again, a get is rendered unnecessary.

With each of these solutions, there are challenges. What does it say about the sanctity of marriage, of kiddushin, if one is creating a condition for eventual divorce, or poking around for technical reasons to negate the marriage entirely. But, with healthy debate, I do believe that the solution exists.

So why then, are so many women (what is number of aggunot?) still aggunot? Why can we not once and for all, solve the aggunah crises?

Much like the Case of the Get of Cleves, the many existing rabbinic batei din cannot agree on a universal solution, let alone publicly accept the solutions available to them. But what stands out about the Get of Cleves, is the seemingly arbitrary force and power with which the beit din forces its rulings.

The rabbinical court in Frankfurt, brought its full weight to bare in order to impose its position and invalidate the divorce, even though the event did not take place within its area of jurisdiction and the Cleves rabbinical court was not subordinate to it. In addition, contrary to accepted practice, the court was unwilling to publicize the any of the testimonies it had taken, or the halakhic arguments for invalidating the *get*.

The Cleves *Get* episode rocked the Jewish and rabbinic world of 18<sup>th</sup>-century Europe, having far reaching ramifications in the rabbinical court systems of Germany, England and Poland. Each court, each rabbi, digging in their heels, and refusing to collaborate to find a solution, and save a young couple from pain, hurt, and public humiliation.

Something has to change.

At the end of June, JOFA in collaboration with the NYU Tikvah Center for Law & Jewish Civilization, convened a summit of rabbinic, academic, and community leaders from across the Jewish world to consider halakhic solutions to the problem. Most of the day, to be honest, I found to be rather depressing. There were 250 leading Modern Orthodox Rabbis and lay leaders sitting together, outlining the problems without an attempt to find any solution. There was a lot of talking. And then there was a glimmer of hope. In a session called “the role of the rabbi” Rabbi Asher Lopatin, the new president of YCT, got up and declared the need to form a new beit din. To actually assume responsibility and convene a beit din made up of Open Orthodox rabbis, who are serious both about halakha and finding a solution. It would be a Beit Din made up of courageous Open Orthodox rabbis who bring to bare an expertise in the halakhic analysis as well as deep compassion for women, and men, who are struggling through a potentially acrimonious situation. A court that has deep integrity and sense of justice, devoid of corruption. And on a case by case basis, they would work to apply one of the available solutions to not only free each and every aggunah, but to prevent women in the future from ever becoming chained to their unwanted husbands.

The creation of an Open Orthodox beit din is not a new call to action. Others, including Rivka Haut, have been advocating for such a court for 25 years. But I do believe that there is new energy around pulling the right Rabbis into place. I have heard conversations of who would qualify, and how quickly they can begin. That, is the first step.

And then, the tough work begins: an essential ingredient to sustaining such a beit din, as gaining community wide acceptance. Through a lot of advocacy work, Rabbi Lopatin suggested at the aggunah summit, we must commit to finding 100 community rabbis and scholars to support the decisions of the open orthodox beit din, to trust their public decisions of when to dissolve a marriage, and when to grant a get. To find a community of rabbis who will honor the gittin performed and agree to officiate at a women’s 2<sup>nd</sup> marriage. Who will accept the children into their schools and synagogues. These rabbis would work together to support the authority of an Open Orthodox beit din.

We have already come so far. The Torah’s principal of allowing a husband to willfully divorce his wife against her will was mitigated by the *takkana* of Rabbenu Gershom a millennium ago. It is now time to extend Rabbenu Gershom’s *takkana* one step further, by

creating a beit din that will ensure greater equity between the couple. A beit din that will forbid unnecessary extortion and suffering.

If the batei din of Frankfurt, Cleves, England and Germany in the 18<sup>th</sup> century had worked together towards accepting one another's solutions, much heartache and distress would have been avoided. And then, the intention of Rabbenu Gershom's takkana, of protecting the rights of women and families, will truly be upheld.

Women's Tefilah has the minhag to offer the tefilah of ana bakoach right before we put the Torah back in the aharon. I would like to offer that prayer this morning in the hope that the Leah's of our world will once and for all be free from unwanted marriages.

Please join me:

“Ana becho'ach, g'dulat yemincha, tatir tz'rura Kabel rinat amcha sagveinu, tahareinu nora”

We beg thee with the strength and greatness of thy right arm- Untangle our knotted fate. Accept your people's song, elevate and purify us.