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Gender issues in Jewish law

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Agunot

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Agunot

Questions and Reform Jewish Answers,
New York, 1992, # 234

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QUESTION: Should we marry women considered *agunot* by Orthodox rabbis? (Martin Cohen, Los Angeles, CA)

ANSWER: In the long span of Jewish history, aside from the normal problems and aggravated circumstances surrounding divorce, the chief issue has been that of the *agunah*, a status caused by the disappearance of the husband or by his refusal to provide a religious divorce (*get*) for his wife. The second problem has often been solved through communal pressure, which stopped short of actually forcing a *get*, as that would not be legally valid (Solomon ben Aderet *Responsa W* #40; Simon ben Zemah Duran *Responsa II* #68; *Tur* and *Shulhan Arukh Even Haezer* 134 and 154; *Responsa Reanana* #43; *Responsa Mabit II* #138; *Piskei Din shel Batei Hadin Harabanim*, vol. 2, pp 300 ff).

Much more difficult is the problem of a husband who disappeared. Usually in the past this condition occurred when the husband had disappeared in time of war or during a long journey to distant lands. Despite a presumption of death, as it could not be proven, the wife continued to be considered as married. During the period of heavy eastern European emigration to the United States and other western lands, some men were lost at sea or in the wild West, whereas others slipped away and thus relieved themselves of family responsibilities. In modern times, in addition to these cases of a *agunah*, we have thousands of Orthodox women whose husbands simply refuse to provide a *get* and leave their wives with no solution. After civil courts have dissolved the marriage, only moral persuasion can be exercised on the husband, and that is frequently difficult because of the hostility which exists between the individuals. Although some states, for example New York, now recognize the obligations of a *ketubah* and would enforce its provision until a *get* had

been given, this is only minimally helpful, as it is easy to escape its jurisdictions.

The problem of the *agunah* in modern times has been solved in a number of different ways. Our Reform method simply acknowledges civil divorce. For the Orthodox an annulment is possible, but very difficult. Some traditional Jews solve the problem when the original marriage was Reform or Conservative by not accepting the witnesses who signed the *ketubah* and so denying its validity. As no marriage has taken place in their eyes, no *get* is necessary (Moses Feinstein, *Igrot Moshe Even Haezer* #74, #75; David Hoffmann, *Melamed Lehoil Even Haezer* #20)

Although this path may be technically correct from an Orthodox point of view, it is insulting to all Reform and Conservative Jews; it also does not satisfy psychologically. One of the problems with this approach is the Jewish doctrine that Jews who engage in intercourse do so with serious intent; furthermore, individuals, who have lived together for a period of time and are recognized as husband and wife by the community in which they live, are so accepted (*Git* 81b). The Orthodox authorities who suggested the above mentioned solution claim that this ruling does not apply to sinners (Moses Feinstein, *Op Cit.*, #75; Jehiel Weinberg *Seridei Esh Even Haezer* #28).

A variety of modern proposals have incorporated some statement about divorce, or at least about the jurisdiction of the rabbinic court in the *ketubah* in order to solve the problem. The modern Orthodox scholar, Eliezer Berkovits, made such a proposal and urged the use of a conditional marriage; he subsequently defended it in his book *Tenai Benisuin Vehaget*. The rabbis of Turkey in 1924 made a similar proposal which was later rejected by Ben Zion Uziel of Israel (A. H. Freiman, *Seder Kiddushin Venisuin*, pp. 391 ff).

A most determined effort in this direction was made by Louis Epstein for the Conservative Rabbinical Assembly in 1930; he suggested that a conditional divorce be given at the time of marriage. This approach which is *halakhically* sound was rejected by the Orthodox rabbinate and Epstein's efforts to defend it failed. (I. Epstein *Hatzaah Lemaan Takanot Agunot; Lisheelah Ha-agunot*). Many considered it inappropriate to deal with divorce in the wedding document. The Conservative Rabbinical Assembly has added a clause to its *ketubah* which simply states that the

couple places itself under the authority of the Conservative *bet din*. This removes one of the objections to the document of Epstein (*Rabbinic Manual* pp 37 f) The effort of the Conservative Rabbinical Assembly was made under the guidance of Joshua Liebermann and has been incorporated in the *ketubot* used by the Conservative movement.

A more radical suggestion was made by the French Orthodox rabbinate in 1907, which urged that all *ketubot* include a clause that indicated that a civil divorce decree would annul the marriage and the woman would be released and subsequently free to marry according to Jewish ritual. This suggestion was attacked by Orthodox authorities in other lands (A. H. Freiman, *Seder Kiddushin Venisuin*, p. 390).

These efforts have tried to deal with the problem of *agunot* but largely to no avail, as the complications have usually led women who sought a second marriage to use a Reform rabbi who recognized a civil divorce or a "Document of Separation" (W. Jacob (ed.) *American Reform Responsa* #162) or to turn to the civil authorities. We should continue to perform such marriages of *agunot* as a way of helping the Jewish community with a difficult problem. We recognize civil divorce as sufficient. Our solution is within the range of those proposed by some Orthodox authorities and so is part of our effort to unite the Jewish community.