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Aging and the aged in Jewish law

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Pittsburgh, 1998

ALZHEIMER'S DISEASE

urn:nbn:de:kobv:517-vlib-10115

ALZHEIMER'S DISEASE

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QUESTION: A sixty-three-year-old man has been diagnosed as suffering from Alzheimer's Disease. In nine months he has deteriorated drastically and now needs constant skilled nursing care. His wife, a school teacher, has discovered that her insurance does not cover such expenses which are more than \$2,000.00 a month. The couple's savings will be entirely exhausted in a few years. Medicaid will not help until nothing except the house in which they live remains. The wife's lawyer has counseled her to seek a legal divorce, which will shield her resources so that she may have some income when she reaches retirement in a few years. Without such a step she will become dependent upon the charity of her children and the general community. If she takes this step she will, of course, feel that she has abandoned her husband. His condition has degenerated to such an extent that he is unaware of his surroundings and does not fulfill his marital responsibilities. (Rabbi D. D. Weber, Elyria, OH)

ANSWER: These circumstances which you have described are tragic. Unfortunately, as modern medicine progresses, an ever-increasing group within our population reaches an advanced age, and frequently one member is afflicted with an incurable debilitating disease which slowly destroys that life and drastically affects the life of the healthy spouse.

Let us see whether a marriage may be dissolved under these circumstances. Marriage, as the Hebrew designation *kiddushin* implies, is a sacred act which brings special sanctity to the relationship established between husband and wife. The blessings recited (*sheva berakhot*) indicate the sanctity of the status into which the couple entered. Marriage and all aspects of family life have been discussed at great length in Jewish literature since the Mishnaic period. Provisions have, of course, also been made for

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divorce (Deut. 24.1 ff) and the Talmudic Tractate *Gitin*, as well as discussions elsewhere, deal with causes and the subsequent implementation of divorce.

Among the reasons for divorce is the affliction of either party with an incurable disease which makes intercourse impossible or dangerous (*Shulhan Arukh Even Haezer*, 117.1 ff, 154.1 ff). A wife may also seek a divorce if the husband is squandering the family assets so that she feels that her maintenance is endangered (Ibid., 154.3). Although no age restrictions are mentioned in these discussions, marriages of the young or middle-aged are implied. In other words, these reasons were not intended to deal specifically with the problems of old age which may, naturally, lead to illness, impotence and unusual expenses.

We may approach the entire question from another point of view as noted by Professor Mark Washofsky, to whom I am indebted, and turn to the duty of one spouse to pay the other's medical obligations. *Shulhan Arakh Even Haezer* (69, 79) obliges the husband as part of the *ketubah* to provide medical care for his wife. In our Reform context we would, of course, extend this obligation to the wife. Paragraph one states that this obligation holds whether the illness is of a temporary or a chronic nature. Paragraph three deals directly with our problem. It provides an escape in the event of a long-term and expensive illness (*Yad Hil. Ishut* 14.17); the husband may set a limit for her medical bills; should she refuse this offer, the husband divorces her and she receives the *ketubah*. Rambam and Caro argue against this arrangement on ethical grounds (see also *Magid Mishnah*), but neither denies that the husband possesses this right. On the other hand, some authorities do deny this right; the Rabad limits the husband's power of di-

orce to a case where the wife is not terminally ill (Ran to Alfasi, *Ket.* 19a); Solomon Luria argues that in our day, when the *takanah* of R. Gershom forbids divorce without the wife's consent, the husband can not compel her to choose between these alternatives (Joel Sirkes to *Tur Even Haezer* 79). At any rate, whether a spouse possesses this right or not, it is definitely not in keeping with the spirit of marriage and its sanctity.

Just as the wife has the obligation to provide medical care for the husband, the husband is also obligated to provide economic sustenance to his wife. This is a *tenai bet din* (*Yad Hil. Ishut* 12.2 ff). The wife has the right to renounce this support; if she does, her husband no longer has any claim to her income. The wife in this instance could be encouraged to establish herself in a state of financial independence; under Jewish law she need not be divorced in order to gain control of her own finances (*Ketubot* 58b; *Yad Hil. Ishut* 12.4). In addition, the *bet din* is empowered to seize the husband's property in the event of his mental incapacity in order to fulfill her requirement of *mezonot* (*Ibid.*, 12.17). In this case, the husband's "property" would include the *ketubah* or its equivalent; under Jewish law the husband's estate is mortgaged in order to provide the required support for the wife. This also means that his children as his heirs are obligated to support his wife; this is not charity, but a debt which is owed her. These thoughts help us within the framework of *halakhah*, but not with the current requirement of American law.

We must balance these statements with our general view of *kiddushim* and see it in the light of this particular couple. There is nothing in the question which indicates that they have become estranged from each other. Only this debilitating illness has led to

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thoughts of divorce. They surely entered into marriage with the understanding that they would help each other irrespective of what the future might bring.

Although there might be some technical justification for a divorce from a halakhic point of view, it would be morally wrong to follow that route in order to preserve the estate. A divorce may affect the husband despite his current condition and would certainly affect the wife and children.

We should seek an alternative way to help her both now and in the future, especially as these questions arise frequently and the Social Security Administration is generally responsive to such efforts. Furthermore, *Halakhah* also encourages such practical solutions which will continue the marriage bond and avoid poverty.

The wife is dutybound to care for her husband even though there is no hope of recovery and although it may destroy her resources. We should seek alternative ways to help her both now and in the future. The lawyer in question should be encouraged to look for other ways to protect the resources of this client.

Walter Jacob, *Contemporary American Reform Responsa*, #86, (Central Conference of American Rabbis, New York, 1987).