

No Agunah Left Behind: A Proposal to Solve the Agunah Problem

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At the recent agunah summit, I submitted an outline for a solution to the *agunah/mesurevet gett* problem. Having sent this to a number of rabbis and agunah activists, I post here a revised version of that proposal. I will begin with an outline, then an annotated outline, and move on to some final observations.

Outline

- A. Create a network of rabbis and communities who are intent on solving the problem.
- B. Become self-sufficient when it comes to divorce.
- C. Agree to use only *batei din* and *mesadrei gittin* who see themselves as part of the network.
- D. All rabbis, who perform life-cycle events should be trained as *mesadrei gittin*.
- E. Ensure that our system is professional, transparent and user-friendly.
- F. In cases where an *agunah* situation does arise, the problem *will* be solved.
- G. When necessary, the *vaad* must be willing to bypass the husband entirely in finding a solution.

¹ Morethodoxy shut down, so I am posting my previously published articles as PDFs here. They have not been revised.

- H. The group is a *vaad* with an attached *beit din*, not just a *beit din*, because it must include lay members, pulpit rabbis, and community leaders of both genders.
- I. All rabbis in this network must agree to only perform marriages with prenuptial agreements—specifically (but not limited to) the [Tripartite Prenuptial Agreement](#) or, preferably my [Multipronged Halakhic Prenuptial Agreement](#).²
- J. The community at large should pressure their rabbis and their synagogues to be part of this network.
- K. The goal is to create a system that works and is accepted by a large community, despite the strong probability that many on the right will reject the solution.

Annotated Outline

- A. Create a network of rabbis and communities who are intent on solving the problem.

I suggest a motto of sorts for this community, styled after the famous pledge of the rangers: “No *agunah* left behind.” As I wrote about in a different [venue](#), solving the *agunah* crisis is the job of the rabbis, wielding their halakhic knowledge and authority.³

- B. Become self-sufficient when it comes to divorce.

One of the political difficulties emergency-style solutions—like the Rackman *beit din*—come up against is the fact that they only exist as emergency problem solvers. In other words, the vast majority of *gittin*, where there is no *agunah* issue, are done through the auspices of people or groups who may not subscribe to the “no

² This is an update, since I had not written this document until the year after this was published.

³ To be clear, I do not consider sending thugs to beat up on recalcitrant husbands as a legitimate solution or as an example of wielding halakhic authority.

agunah left behind” philosophy. This fact leaves the more left-wing Orthodox community open to the claim that when things are easy we go to the “real *batei din* and *mesadrei gittin*,” but when we don’t like what they say we create our own “fake *batei din*.”

- C. Agree to use only *batei din* and *mesadrei gittin* who see themselves as part of the network.

I suggest this not only for *agunah* cases, but for any case of divorce whatsoever. I imagine that this will mean a radical shift in the divorce process in our communities.

- D. All rabbis, who perform life-cycle events, should be trained as *mesadrei gittin*.

There is far too much emphasis on how complicated and technical *siddur gett* is, which I believe functions to obfuscate the process and place it into the hands of a select few. We should create a network of *soferim* and a core of people with training and experience who can show rabbis how to do the ceremony. After a while each rabbi in our network will be self-sufficient in presiding over the divorces in his own community with a direct connection to the *soferim*. If and when an *agunah* case arises, the rabbi will be the woman’s chief advocate.

- E. Ensure that our system is professional, transparent and user-friendly.

Part of doing this means that the power in the *vaad* cannot only be the *mesadrei gittin* themselves but there must be oversight from community leaders as well.

- F. In cases where an *agunah* situation does arise, the problem *will* be solved.

When the solution is unclear to the rabbi requested to do the *gett*, there will be a central body of rabbis, *posqim*, scholars, and lay-leaders (including and *especially* women) who will be the advisory committee for that rabbi on how to solve the

problem in each case. This body will help the rabbi and the woman explore the halakhic options, whether it be *qiddushei taut* (declaring the marriage invalid), *hafqa'at qiddushin* (annulment), or some other mechanism.⁴

- G. When necessary, the *vaad* must be willing to bypass the husband entirely in finding a solution.

With the *gett* hanging over the head of the woman, there are simply too many instances of abuse, where withholding of the *gett* is threatened or implied so that women give up many of their rights, whether financial or custody, in order to ensure receiving the *gett*. Additionally, a recalcitrant husband can cause delays and other unpleasantness. For this reason it must be made clear to all parties that the *vaad/beit din* will resort to solutions that totally bypass the husband if need be. He holds no power over her in our court.

- H. The group is a *vaad* with an attached *beit din* because it must include lay members, pulpit rabbis, and community leaders of both genders.

This is for two reasons. First, it is never safe to have only one interest group hold all the power. Even ignoring the possibilities of bias or corruption, every group sees matters through the lens of its own experiences. Having more than one type of person in the *vaad*/think-tank will facilitate a robust and honest process. Second, freeing agunot has accidentally slipped into magical thinking—as if some special rabbis have the “power” to free these women. Declaring a marriage invalid (I refer here to *qiddushei ta'ut*, not *hafqa'at qiddushin*) is not a *ma'aseh beit din* (rabbinic act)—the rabbi simply clarifies the *fact* that the marriage was invalid. This can and

⁴ I will explain more about this and other halakhic mechanisms in future postings.

should be done by the woman's rabbi, not by a third party *beit din* or *poseq*, even if said party is needed for a consultation. Additionally, although annulling a marriage (*hafqa'at qiddushin*) is a *ma'aseh beit din*—and the advisory committee should have members who can also form the *beit din*—there is no reason why the pulpit rabbi himself should not be part of this *beit din*, especially when the woman in question lives in his community and the decision effects his community.

- I. All rabbis in this network must agree to only perform marriages with prenuptial agreements—specifically (but not limited to) the [Multipronged Halakhic Prenuptial Agreement](#).

Although one may choose to use the RCA prenuptial—or some other version of this type of prenuptial—in addition to the Multipronged Agreement, nevertheless, all weddings should include this agreement as it creates the possibility of totally bypassing the husband if he is recalcitrant. The RCA prenuptial, in contrast, makes use of penalty clauses which require enforcement by secular authorities and the cooperation of the husband.

- J. The community at large should pressure their rabbis and their synagogues to be part of this network.

Furthermore, the community should pressure their synagogues to make having a prenuptial or postnuptial agreement a membership requirement for married couples, and to hire only rabbis who are part of the “no *agunah* left behind” network.

- K. The goal is to create a system that works and is accepted by a large community, despite the strong probability that many on the right will reject the solution.

The best is the enemy of the good here, and total consensus is impossible in the current climate. Nevertheless, our goal is to create a large enough network such that any *agunah/mesurevet gett* will have a place to turn. We must commit to these women that we will have them freed from their dead marriages, that we will perform their future marriage(s), and that we will defend their children from the pernicious claim of *mamzerut*.⁵

The Logic of the Proposal

⁵ Here is a schematic look at the outline:

1. Create a network of rabbis and communities who are intent on solving the problem.
2. Become self-sufficient when it comes to divorce.
3. Agree to use only *batei din* and *mesadrei gittin* who see themselves as part of the network.
4. Rabbis who perform life-cycle events should be trained as *mesadrei gittin*.
5. Ensure that our system is professional, transparent and user-friendly.
6. In cases where an *agunah* situation does arise, the problem *will* be solved.
7. When necessary, the *vaad* must be willing to bypass the husband entirely in finding a solution.
8. The group is a *vaad* with an attached *beit din*, not just a *beit din*, because it must include lay members, pulpit rabbis, and community leaders of both genders.
9. All rabbis in this network must agree to only perform marriages with prenuptial agreements—specifically (but not limited to) the Multipronged Halakhic Prenuptial Agreement.
10. The community at large should pressure their rabbis and their synagogues to be part of this network.
11. The goal is to create a system that works and is accepted by a large community, despite the strong probability that many on the right will reject the solution.

Imagine the world of Jewish marriage and divorce as a pyramid. If we start from a firm base we can build something vast. If we start from the pointy top and try and build backwards it will not work. To illustrate: There are many marriages in the Jewish world, there are less, but still many divorces, of those marriages that end there are some *agunot/mesuravot gett*. We cannot focus only on *mesuravot gett* to solve what is a systemic problem (rabbinic paralysis, and the weak position of women in the process.)

Similarly, there are many cases of *mesuravot gett*. Some can be handled by invoking a prenuptial (if there is one) or with a strong phone call from the man's rabbi. In cases where this does not work, many can be solved by a robust use of *qiddushei ta'ut*. Of those that cannot be solved by persuasion or *qiddushei ta'ut*, the rest can (must?) be solved by *hafqa'at qiddushin* (dissolving the marriage). However, for this chain of events to have practical effect, there must be “buy-in” from the beginning; the rabbinic and community participants must sign on to a marriage-divorce system that buys into this approach before matters come to a head.

Therefore, we must begin with a campaign of rabbis/congregations/lay leaders/*agunah* activists who are willing to say that we are solving this problem. Period. No *agunah* left behind. The benefit here is that the rabbis have skin in the game. Communities have skin in the game, and with a large base this *pesaq* will quickly become *minhag yisrael* in the Open Orthodox world.

Brief Summary

1. Every member of the group agrees to use the [Multipronged Halakhic Prenuptial Agreement](#) or some equivalent.

2. Rabbis in this group agree to learn *siddur gett*. This will contribute to ending the mystification of the divorce process at the expense of the average rabbi and his congregants.
3. The rabbi agrees to use *qiddushei ta'ut* when it works, and will consult with this group's *vaad* to learn how to *pasqen* these questions.
4. If there is no other way, the rabbi will join with members of the *vaad* to form a *beit din* to do *hafqa'at qiddushin* - as a last resort.

I hope that the larger Open Orthodox and even Modern Orthodox community will take this proposal seriously, and with that may we end this blight on our community and this desecration of God's name for all time. We must do what is right and, in the end, our community will be stronger for it and our Torah will again be a Torah of life. Hopefully our system will be a "light to the right" as well, and, speedily in our days, the problem will be solved for all Jewish women from any community.