

THE CENTER FOR WOMEN IN JEWISH LAW

JEWISH LAW WATCH

THE AGUNAH DILEMMA

NUMBER FIVE



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THE CENTER FOR WOMEN IN JEWISH LAW

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THE SCHECHTER INSTITUTE OF JEWISH STUDIES

The Schechter Institute of Jewish Studies in Jerusalem, with its Graduate School of Advanced Jewish Studies and Rabbinical School, is one of Israel's leading academic centers for modern Jewish learning. The school is affiliated with the Jewish Theological Seminary of America and the Masorti/Conservative Movement in Israel. Over 500 students, coming from secular, traditional and observant backgrounds, learn Jewish studies side-by-side within a pluralistic environment. The Schechter Institute is also responsible for the TALI Education Fund which provides enriched Jewish studies to 20,000 schoolchildren in over 100 state schools and kindergartens, and for Midreshet Yerushalayim which provides Jewish education to new immigrants from the FSU in learning centers throughout Israel.

THE CENTER FOR WOMEN IN JEWISH LAW

The Center for Women in Jewish Law was established at the Schechter Institute of Jewish Studies in Jerusalem in 1999 with the assistance of a grant from the Ford Foundation. The first purpose of the center – to study the status of women in the synagogue – is presented in my book *The Status of Women in Jewish Law: Responsa* published in 2001. The second purpose is to find halakhic solutions to the problem of modern-day *agunot* (anchored women) who are compelled to wait many years to receive a *get* (religious divorce) from their husbands. Since Jewish law requires that the husband must grant his wife a divorce, a shameful situation has developed whereby some greedy and vindictive husbands withhold their consent. In most *agunah* cases, the husband refuses to give his wife a *get* until she pays him a substantial amount of money. Should she be unable or unwilling to give the husband the cash or property he demands, the woman remains an *agunah*, or “anchored woman”, forbidden to remarry or have children with another mate until the husband agrees to release her.

The Center for Women in Jewish Law will present solutions to the problem of modern-day *agunot* in two ways: in a book entitled *Halakhic Solutions to the Agunah Dilemma in the Twentieth Century*, which will review all the halakhic solutions that have been suggested during the last century; and in the bi-annual *Jewish Law Watch*, which will examine actual *agunot* cases that have languished for years in the rabbinic courts without resolution.

The goal of the *Jewish Law Watch* is to pressure the rabbinic courts to publish their decisions in a timely and orderly fashion, much as civil court decisions are published, and to encourage rabbinic courts to use the halakhic tools which are at their disposal in order to free modern-day *agunot*.

As our Sages have taught: “the rabbis were lenient in order to prevent *agunot*” (*Yevamot* 88a). Maimonides ruled (Laws of Divorce 13:28) that “one does not examine the witnesses thoroughly in *agunah* cases because the Sages said to be lenient in order to release *agunot*”. Rabbenu Asher, the Rosh, stated that “it is worthy for every halakhic authority to examine all sides [of the case] in order to allow [an *agunah* to remarry]” (*Responsa of the Rosh* 51:2). These sources dealt with a husband who disappeared, but in our day there is a new type of *agunah* – women who are blackmailed by their husbands – and there is no doubt that the Sages and the rabbis would have examined all sides of each case in order to allow them to remarry. Indeed, that is one of the main goals of The Center for Women in Jewish Law.

THIS BOOKLET

In this issue of *Jewish Law Watch*, Prof. Michael Corinaldi, a well-known expert in Jewish marital law, presents a general solution for the problem of *agunot* (chained women): “the shunning measure of Rabbeinu Tam”. This method, developed in the twelfth century, applies indirect pressure on a recalcitrant husband so that he should release his wife from her chains and grant her a divorce. It was also included in “The Divorce Law, 1995” and is applied occasionally in Rabbinic Court decisions. We are publishing here “the shunning measure of Rabbeinu Tam” along with a number of Rabbinic Court decisions which have utilized it in recent years. Our goal is to spur the Rabbinic Courts to utilize this method, which is well-grounded in both Jewish and Israeli law, on a regular basis in order to free anchored women from their chains.

We thank Prof. Corinaldi for writing the booklet; Rabbi Richard Lewis for the initial editing and for translating Appendices A-B into English; Ms. Dahlia Friedman for the initial English translation of the rest of the booklet; and Prof. Alice Shalvi for correcting the English style.

Rabbi David Golinkin
Schechter Institute of Jewish Studies
Jerusalem
August, 2002

**A Halakhic Solution for Women Whose Husbands
Refuse to Grant a Divorce:
The Shunning Measure of Rabbeinu Tam**

by
Prof. Michael Corinaldi

Introduction

The purpose of this booklet is to draw public attention to a halakhic solution to the problem of *agunot* (anchored women) and women whose husbands refuse to grant them a divorce, which the rabbinic courts are reluctant to apply. At the outset, it is appropriate to cite the words of Judge Moshe Silberg:

... We recall that one of the main arguments of those calling for civil marriages... is that religious marriages subject the wife to the husband's whims when she comes to ask him for a divorce. This is not exactly so, but there is some truth to this argument and the case before us proves it. This chained status, and perhaps an even crueller one, is the fate that awaits every Israeli Jewish woman whose husband has left the country and disappeared or refuses to send her a bill of divorce. It is therefore incumbent upon us to consult and find a halakhic way to release the wife from her chained status, and in every case where circumstances categorically require that they be separated.¹

In addition to the cases cited in Judge Silberg's opinion, other difficult cases should be included, such as a mentally ill husband, a husband who is living with another woman in a "common law" marriage, a lengthy separation and other cases.

It should be stressed that in cases where there are halakhic grounds for compelling the husband to grant a divorce and a court ruling has been issued compelling him to grant a divorce (hereafter: "compelling a divorce"), almost all means are acceptable. Thus, the problem focuses on those cases where there is no halakhic justification for *compelling* a divorce, but only for *obligating* a divorce and a ruling has been issued against the husband requiring him to give his wife a divorce (hereafter: "obligating a divorce") and he refuses to obey the ruling (hereafter: "a recalcitrant husband"). The difficulty in enforcing rulings obligating a divorce, as opposed to rulings compelling a divorce, is that the

1 Civil appeal 164/67 220/67, The Attorney General *v.* Yehiye and Ora Avraham, 22 (1), P.D. 41.

halakhah rules out the use of various means of compulsion against the husband in rulings obligating a divorce for fear of a *get me'useh* (a forced divorce).² Although "a forced divorce issued by a Jewish court is valid..."³ the Gemara adds that: "Rav Nahman said in the name of Shmuel: a forced divorce issued by a Jewish court according to the law is valid; if it is not issued according to the law, it is invalid and it invalidates..."⁴ "According to the law" means that there is a halakhic justification for compelling a divorce. Therefore, when it comes to "obligating a divorce", the *halakhah* developed indirect ways of applying pressure to a recalcitrant husband. Indeed, rabbinic courts in Israel and abroad utilize halakhic solutions for this issue, but the use of indirect pressure is still controversial and some important rabbis express reservations about it and maintain that in cases where there is a ruling *obligating* a divorce, it is inappropriate to use indirect pressure on the recalcitrant husband for fear of a "forced divorce." On the other hand, no one disputes that in cases where there has been a ruling *compelling* a divorce, it is possible to take steps against the recalcitrant husband to get him to obey the ruling, even direct forms of compulsion, such as imprisonment.

In practice, however, the courts are reluctant to rule in favor of compelling a divorce and to implement the rules for doing so, either on the grounds that there is a chance of achieving *shlom bayit* (marital harmony) or because there is concern about a forced divorce. The result of this reluctance is that many women are left both without *shlom bayit* and without a *get* (divorce) and they are *agunot*. There are quite a few cases where the wife has sexual relations and children with another man without first obtaining a *get*, and the children born from such relationships are *mamzerim* (bastards).

In this booklet, we present an important source from the period of the *Rishonim* (ca. 1000-1500) which has yet to be adequately publicized. We are also including several unpublished rulings and decisions of the Rabbinic Courts in Israel which utilize this source in order to enforce a ruling which obligates a husband to grant his wife a *get*. It is our hope that this booklet will influence the rulings of the rabbinic courts and promote ways of resolving this matter.

2 The term "isui" (forced) is based on Ezekiel 23:3.

3 Mishnah Gittin 9:8. The Mishnah adds "... among the nations, they beat him and say to him: 'Do what they tell you' and that is valid". This means that the *get* is valid when the gentiles help carry out a ruling issued by a Jewish court to compel a divorce (see *Mekhilta*, Mishpatim 1, ed. Horowitz-Rabin, p. 246; Tosafot, Gittin 88b, catchword "u'b'ovdei kokhavim").

4 Bavli Gittin 88b. "Invalidates" means "from the priesthood because of the scent of divorce" – Rashi, *ibid*.

The Shunning Measure of Rabbeinu Tam

The shunning measure of Rabbeinu Tam (see Appendix A) is a decree which originated in a responsum of Rabbeinu Tam (France, d. 1171)⁵ which prevents any benefit from or social contact with a recalcitrant husband. His responsum related to a woman's demand that her husband be compelled to divorce her because of his faults and the claim that *ma'is alay* (he is repulsive to me). Rabbeinu Tam ruled that there is no room for compulsion in this case, out of fear of a forced divorce. Nevertheless, he added that it is appropriate to use the following shunning measure (which was later referred to as "the shunning measure of Rabbeinu Tam"):

However, if all the rabbis [of Paris] agree on the matter, you should make a decree with a severe curse against every man and woman from the seed of the House of Israel that they are not permitted to talk to him, do business with him, host him, feed him, provide him with drink, accompany him and visit him when he is ill.⁶

These are social sanctions mandating distancing oneself from the recalcitrant husband in a passive manner that is not considered compulsion, as opposed to active measures like banning and excommunication which are actual compulsion, as Rabbeinu Tam stated: "Because in so doing, there is no compulsion because... *he* will not suffer bodily [i.e. lashes] as a result of this shunning, but *we* will separate ourselves from him".

This shunning measure is not physical compulsion against the *husband*, but rather a directive to the *public* to distance itself from a recalcitrant husband, and indirect social pressure is not considered compulsion.⁷ Therefore, according to Rabbeinu Tam's approach, this method can be used even in cases where there is no justification for compelling a divorce. Some halakhic authorities, however, disagree with Rabbeinu Tam and see his shunning measure as a form of compulsion that should not be used in practice except when there is a reason for compelling a divorce.⁸

5 *Sefer Hayashar L'rabbeinu Tam*, ed. Rosenthal, Berlin, 1898, Responsa section, No. 24, pp. 39-42.

6 *Ibid*, p. 42

7 *Seder Eliyahu Rabbah V'zuta*, No. 13. On the distinction between shunning and compelling see also Y. Weinroth, *The Law of the Rebellious Wife*, Ph.D. thesis, Tel Aviv University, 5741, pp. 431-440; A. Be'eri, *The Husband's Obligation to Support His Wife in Jewish Law: the Rebellious Wife and Her Support*, Ph.D. thesis, Bar Ilan University, 5742, pp. 297-300; A. Be'eri, "Rabbeinu Tam's Shunning Measures", *Shnaton Hamishpat Haivri* 18-19, (5752-5754), pp. 65-106; A. Rosen-Zvi, *Dinei Hamishpaha B'Yisrael*, Tel Aviv, 5750, pp. 278-279.

8 See *Responsa of the Ribal*, part 2, Nos. 18-19; a responsum of the Rashba cited in the *Bet Yosef* on the *Tur*, *Even Ha'ezer*, 154; *Hazon Ish*, *Even Ha'ezer*, 108, 12 and see the other sources cited by Y. Weinroth, *ibid.*, pp. 435, 437-439.

The Rabbinic Courts Jurisdiction Law (Marriage and Divorce), 5713/1953 (hereafter: the Rabbinic Courts Jurisdiction Law)⁹ designates imprisonment as the primary legal means of compelling a divorce,¹⁰ but since the law was enacted, it has become clear that imprisonment was hardly ever used in practice. Therefore, public figures and Knesset members wanted to provide assistance in resolving the problem of *agunot* and recalcitrant husbands via legislation that would adopt other halakhic means, in coordination with the Chief Rabbinate of Israel. In 1989, MK Prof. David Liba'i (later the Minister of Justice) under the auspices of the Knesset, set up "a lobby for *agunot* and women whose divorces were delayed", whose members included representatives of women's organizations, public figures and experts. In the course of the lobby's discussions, various proposals were made to resolve the problem of *agunot*, the first of which was the proposal to implement "Rabbeinu Tam's shunning measure" via appropriate legislation. The proposal was presented to the Chief Rabbinate, and the Chief Rabbis at that time, Rabbi Avraham Kahana Shapira and Rabbi Mordechai Eliyahu, granted it halakhic approval. However, in the process of drawing up the legislation, which took about five years, reservations were voiced by various Knesset members who were concerned about granting the rabbinical courts the authority to exercise the sanctions stipulated in the new law. In the end, a broad consensus was achieved in coordination with the Chief Rabbinate, and the Rabbinic Courts Law (Upholding Divorce Rulings) 5755/1995 (hereafter: "The Divorce Law, 1995") was approved by the Knesset.¹¹ This law offers an innovative development in the means of compelling recalcitrant husbands to grant a divorce, and the passage of the law proved the influence that the public has as a moving force in the development of *halakhah* in our time.

The shunning methods as formulated in The Divorce Law, 1995 are referred to as injunctions and include an injunction against leaving Israel, a prohibition against obtaining an Israeli passport or driver's license, a prohibition against employment in the civil service and a ban on opening or maintaining a bank account.¹² Thus, The Divorce Law, 1995, implemented the sanctions stipulated in the *halakhah* of distancing a recalcitrant husband from the community by taking away various civil rights.

It should be noted that The Divorce Law, 1995 differs from the Rabbinic Courts Jurisdiction Law in that the injunctions are activated directly by the Rabbinic Courts, whereas imprisoning the husband, in accordance with a ruling to compel a *get* (as stipulated in the Rabbinic Courts Jurisdiction Law) is carried

9 *Sefer Hukim* 134, 5713, p. 165.

10 Section 6 of the Rabbinic Courts Jurisdiction Law.

11 *Sefer Hukim* 1507, 5755, p. 139.

12 The Divorce Law, 1995, section 2.

out via the civil court system.¹³ Another fundamental difference between the two laws is that imprisonment according to the earlier law (1953) is used only in cases where there is a final verdict to compel a divorce (i.e. that there is no appeal pending or that the appeal has been denied), whereas an injunction according to the second law (1995) is used even in cases where the divorce ruling is one that *obligates* a divorce and not one that *compels* a divorce.¹⁴

The Divorce Law, 1995, was, therefore, a turning point which is still in its early stages. Indeed, even before the enactment of this law, there were rare instances where the Rabbinic Courts in Israel or abroad utilized “Rabbeinu Tam’s shunning measure”. One such example is the ruling of the Supreme Rabbinic Court of Appeals (5747) which obligated a husband to divorce his wife within thirty days and added that “If he continues to be rebellious and does not obey the above directive, then Rabbeinu Tam’s shunning measure should be applied to him”, i.e.:

... that every Jewish man and woman must absolutely refrain from talking to him at all and they should not conduct business with him... and they should not engage in any financial transactions with him and they should not host him, feed him, offer him drink, visit him when he is ill, seat him in the synagogue, give him an *aliyah* during the reading of the Torah, ask after his well-being or honor him in any way, and they should stay as far away from him as possible, until he capitulates and listens to the voice of his teachers and grants his wife a *get* and releases her from status as an *agunah*.¹⁵

13 See section 6 of the Rabbinic Courts Jurisdiction Law, which states: “If a Rabbinic Court should order in a final ruling that a man be compelled to grant a divorce to his wife or that a wife be compelled to accept a divorce from her husband, the District Court may, after 60 days from the date the order was issued, at the request of the Attorney General, use imprisonment to compel adherence to the order”.

14 Compare section 1 (1) and (3) of The Divorce Law, 1995, to section 6 of the Rabbinic Courts Jurisdiction Law.

15 Appeal 5744/237. The unpublished ruling was issued on 25 Tishrei 5747, by a panel comprised of Rabbi Ovadia Yosef, Rabbi Yitzhak Kolitz and Rabbi Eliezer Shapira. See A. Rosen-Zvi (above, note 7), p. 278. See also the ruling issued by the Mahzikei Hadass Rabbinic Court in Antwerp, Belgium (with which Rabbi Nissim Karelitz, the *Av Bet Din* of the haredi rabbinic court in Bnei Brak, agreed). This ruling (whose main points are cited by A. Be’eri, above, note 7, pp. 95-96) imposed the following on a recalcitrant husband: “It is forbidden to have any contact or dealing with him; it is forbidden to allow him into all synagogues and houses of study; it is forbidden to talk to him, to take pity on him or to do any favors for him. It is forbidden to buy from or sell to him until he divorces his wife according to Jewish law with no conditions. And every Jew must distance himself from him until he once again acts properly as befits a Jewish man and stops chaining his wife”. The ruling adds that these shunning measures are directed at “all Jews, wherever they may be”.

However, only a few Rabbinic Courts in Israel (such as those in Haifa and Jerusalem) use the sanctions stipulated in The Divorce Law, 1995, whereas other Rabbinic Courts still refrain from utilizing the new law (especially in cases where there is no ruling compelling a divorce but only a ruling obligating one). Occasionally, the situation is rectified via an appeal to the Supreme Rabbinic Court, where a solution is found for difficult cases using the sanctions in The Divorce Law, 1995. Thus, for example, the Supreme Rabbinic Court of Appeals annulled a ruling of a District Court which made obligating a divorce contingent on the wife's cooperation in arranging regular paternal visits and added that "if the wife does not allow the son to visit his father, we do not obligate the parties to divorce". The Supreme Rabbinic Court determined that there is no connection between obligating a divorce and the son's visits and ruled that "the husband is obligated to divorce his wife immediately and all halakhic and legal measures should be utilized in order to do so".¹⁶ This ruling appears below as Appendix B. In fact, after the husband refused to obey this ruling, the Supreme Rabbinic Court issued a sweeping injunction, utilizing all of the sanctions stipulated in The Divorce Law, 1995 (except for imprisonment, which the court ordered at a later stage). This decision appears below as Appendix C.

It should be stressed that such injunctions promote a halakhic solution for the wives of recalcitrant husbands, because in order to issue an injunction in accordance with The Divorce Law, 1995, a ruling obligating a divorce is enough, even if the wording used is "obligation, commandment, proposal or otherwise".¹⁷ Indeed, the above-mentioned ruling (Appendix B) stated that "the husband is *obligated* to divorce his wife immediately". It should be noted that instead of sending the case for further discussion in the original court, the Supreme Rabbinic Court decided to carry out the ruling calling for a divorce using the sanctions in The Divorce Law, 1995. A greater willingness on the part of Rabbinic Courts to obligate a *get* and to utilize the sanctions in The Divorce Law, 1995, will lead, as in this case, to the resolution of a substantial number of the cases of recalcitrant husbands, which frequently drag on for years with no recourse for the unfortunate wives.

16 Ruling of the Supreme Rabbinic Court of 14 Kislev, 5755 [19.10.1994] in Appeal 54/168.

17 Section 1 (2) of The Divorce Law, 1995.

Appendix A

Rabbeinu Tam, *Sefer HaYashar: Responsa, No. 24*

In this responsum, Rabbeinu Tam is dealing with a case in which a woman wishes to receive a *get* from her husband on the grounds that she cannot abide living with him. The talmudic discussion on this issue in Ketubot 63-64 is not definitive. Rabbeinu Tam apparently understood that his grandfather, Rashi, understood the Talmud to be saying that this is an acceptable reason for forcing the husband to divorce his wife. Several hundred years before Rabbeinu Tam, the Geonim in Babylonia made an enactment allowing for compelling a divorce in such cases because otherwise the Jewish women would turn to the Islamic authorities to free them from their husbands and the results would be socially and religiously disastrous. Rabbeinu Tam's older brother, Rashbam, ruled according to the enactment of the Geonim.

For the greater part of this responsum, Rabbeinu Tam sets forth his reading of the talmudic discussion, according to which the *get* is invalid if the *Bet Din* (Rabbinic Court) forces a husband to give a *get* in these circumstances. Thus, he forbids the use of *nidui* (excommunication) as a means of compelling the husband to give a *get*, even in an emergency (*she'at hadhak*). At this point, however, Rabbeinu Tam offers a novel solution to the problem:

However, if all the rabbis [of Paris] agree on the matter, you should make a decree with a severe curse against every man and woman from the seed of the House of Israel that they are not permitted to talk to him, do business with him, host him, feed him, provide him with drink, accompany him and visit him when he is ill. And they may add whatever severities they choose against any man [who associates with the recalcitrant husband], unless the husband divorces and frees this young woman, for in this [curse against anyone who associates with him] there is no compulsion against the husband. For ... *he* will not suffer bodily [i.e. lashes] as a result of this shunning, rather *we* will separate ourselves from him. And all who are included in their decree and ours shall abide by it, but, if someone transgresses inadvertently, the curse will not fall on him...

Appendix B

A Decision of the Supreme Rabbinic Court (14 Kislev, 5755) written by Rabbi Shlomo Dichovsky

The facts in this case are clear. The parties have been separated for more than seven years. The wife left her husband's house shortly after the birth of the child. Since that time, the husband has not ceased to demand reconciliation, and the wife has not ceased to demand a divorce. Today, there exists a very powerful enmity between the woman and her husband: the mere mention of his name or talk of the possibility of re-uniting causes her entire body to tremble.

This was made clear to us during the course of the court proceedings. The uncouth behavior of the husband, also manifested in the District Court, certainly contributed to this situation. The husband repeatedly demands "to prove" the "rebelliousness" of his wife and insists that he will not give her a *get* until he is allowed to do so. The wife is prepared to be called "rebellious" and to relinquish all of her rights immediately, if this will result in the desired *get*. The husband refuses to say whether he will obey a ruling of the court which unambiguously obliges him to divorce his wife.

The decision of the District Court, which is the subject of this appeal, is odd. Paragraph 1 obliges the wife to allow visitation rights to the father. Paragraph 2 determines that after these visits have proceeded smoothly for two months, a date shall be arranged for the divorce proceedings and that the parties are obliged to be divorced. Paragraph 3 states that if the wife does not allow for the father's visits with his son, there is no obligation to execute the divorce.

It is difficult to fathom the opinion of the District Court. How is it that the obligation to divorce is mandatory, and yet is contingent upon the outcome of the visitation arrangements? What is the connection between the obligation to divorce and the father's visits with his child?

Apparently the court wished to influence the husband to give a *get* by ensuring an appropriate visitation procedure. But how does one arrive at a halakhic **obligation** to divorce which is dependent on visitation rights?

In the substance of the matter, we determine that **the husband is obliged to divorce his wife in any event**. The woman is absolutely repelled by her

husband. The situation is clear, and requires no documentation. In a previous decision we have explained at length that the necessity for a clear and convincing basis for the claim of a wife that she is repulsed by her husband is not because repulsion without explanation is insufficient grounds for divorce, but that there is always the concern lest the wife is using the claim of repulsion to be freed in order to consort with another man. But wherever the repulsion is evident to the court, even if there does not seem to be a convincing reason for it, it is considered as if there were a clear and convincing basis for it. This approach is supported by the *Hazon Ish*.

And this is especially so in our case where there is a clear connection between the aggressive and uncouth behavior of the husband and the wife's being repulsed by him.

In these circumstances, when a woman says that she is repulsed by her husband, it is proper to obligate the husband to give a *get*.

[At this point Rabbi Dichovsky quotes a responsum of the Rashbash (North Africa, fifteenth century). The latter says that in a case where it is known that a woman was pressured into marriage by her family against her will, then even according to the opinion of those who forbid compulsion of a *get* even where the woman has a convincing basis for her claim that she is repulsed by her husband, it is permissible to coerce the *get*. Rashbash explains that the only reason to prohibit compulsion is the concern that the woman is exploiting the claim of repulsion to consort with another man, but in a case where it is public knowledge that she was forced to marry him in the first place, there is no such concern.

Rabbi Dichovsky cites a string of later decisors who agree with the Rashbash, especially Rabbi Eliyahu Alfandari (Constantinople, ca. 1670-1717), who writes that – according to those opinions that permit the compulsion of a *get* where the woman provides convincing grounds for her claim of repulsion – we believe her without witnesses, even though we cannot know for sure the secrets of her heart. How much the more so when her behavior over a course of time demonstrates that she truly loathes him.

Rabbi Dichovsky then quotes from a responsum of Rabbeinu Asher (Rosh, Germany and Spain, ca. 1250-1327) who allowed compulsion of a *get* in a particular case in which a wealthy widow, allured into an inappropriate match, said she was repelled by her lower-class husband. This is surprising because elsewhere the Rosh is an adamant supporter of Rabbeinu Tam's interdiction against coercing divorce in such cases. Rabbi Dichovsky concludes that even the Rosh holds that the only reasons for prohibiting compulsion in such cases is

suspicion that the woman wishes to consort with another man, or that this will open a "Pandora's box", and no Jewish men will be left with their wives – neither of which reasons are applicable in the case of the widow. This is true all the more so where it is clear that the wife would never agree to live with her husband. We now continue with our translation:]

... In accordance with these precedents, it seems to me that in our case, in which it is known and evident that the husband is repulsive to his wife, and there is no suspicion that she merely wishes to consort with another man, and she has been sitting chastely in chains for a number of years, any reasonable person can see that it is not due to wickedness but to Providence that the match has not succeeded. There is no hope that she will return to her husband, and his entire intention is only to chain her in revenge. In light of all these considerations, the law allows us to compel the husband to divorce his wife, according to all opinions...

It should be noted that the District Court also ruled to obligate the *get*, only they made this contingent on visitation rights for the father. As we said above, this condition does not seem right to us, and so the appeal must be accepted along with the determination that **the husband is obliged to divorce his wife, and all measures allowed by the *halakhah* and by law should be utilized to that end.**

[Rabbi Dichovsky wrote the primary decision in this case. The other two members of the *Bet Din*, Rabbi Bakshi-Doron and Rabbi Lau, the current Chief Rabbis of the State of Israel, wrote shorter decisions concurring with Rabbi Dichovsky.]

Appendix C

A Decision of the Supreme Rabbinic Court (28 Tammuz, 5755)

State of Israel

Supreme Rabbinic Court Jerusalem

Case no.: 54/168

Panel of Dayanim:

The Rishon L'tziyon, Sephardi Chief Rabbi Eliyahu Bakshi-Doron – President

Ashkenazi Chief Rabbi Yisrael Meir Lau

Rabbi Shlomo Dichovsky

In the matter of the appellant
represented by Rabbi M. Mittelman,
rabbinic court pleader

vs.

The respondent

Decision

On 14 Kislev, 5755, we issued a decision which stated the following:

“The husband is obligated to divorce his wife immediately and all halakhic and legal measures should be used in order to implement this.”

Despite what was stated in the decision, the husband vehemently refuses to divorce his wife. Our court warned him that we would exercise against him the measures stipulated in the law. The husband was given an opportunity to voice his arguments and we tried to convince him that, after eight years of separation, he should agree to divorce his wife.

Despite everything, the husband refuses to divorce his wife.

After considering the circumstances of the case, we decided to exercise against the husband all of the measures in section 2 of the Rabbinic Courts Law (Upholding Divorce Rulings – Emergency Order 5755/1995) and all of its subsections.

JEWISH LAW WATCH

This ruling will take effect on 15 Elul 5755/10.9.95.

Issued on 28 Tammuz 5755.

Rabbi Eliahu Bakshi-Doron – President

Rabbi Yisrael Meir Lau

Rabbi Shlomo Dichovsky

Accurate copy of original.

Rabbi Reuven Sinai – Chief Secretary

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THE CENTER FOR WOMEN IN JEWISH LAW

Jewish Law Watch: The Agunah Dilemma, Case Study Number One, January 2000
(Hebrew and English)

Jewish Law Watch: The Agunah Dilemma, Case Study Number Two, September 2000 (Hebrew and English)

Jewish Law Watch: The Agunah Dilemma, Case Study Number Three, July 2001
(Hebrew and English)

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