

THE CENTER FOR WOMEN IN JEWISH LAW

JEWISH LAW WATCH

THE AGUNAH DILEMMA

CASE STUDY NUMBER TWO

THE SCHECHTER INSTITUTE OF JEWISH STUDIES

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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, Rabbinical School, and School of Jewish Education, 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 in order to study the status of women in the synagogue and 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 rabbinical courts without resolution. In most instances, the rabbinical courts have not written or published their decisions on cases brought before them. The decision we have presented here is not a halakhic decision in the formal sense, as the Center's staff did not sit as a rabbinical court and the parties did not appear before them for examination of their testimony or other evidence. We present, rather, "halakhic directions" which the rabbinical courts should have examined in order to free "Rivka", a modern-day *agunah*.

The goal of the *Jewish Law Watch* is to pressure the rabbinical courts to publish their decisions in a timely and orderly fashion, much as civil court decisions are published, and to encourage rabbinical 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.

THE METHOD

Sharon Shenhav, the attorney who represented “Rivka” at some of the hearings in the Israeli rabbinical courts, supplied the staff with biographical data about the parties as well as with court records and decisions of the rabbinical courts who heard the case.

Diana Villa and Rabbi Monique Süsskind Goldberg researched the case in depth under the guidance of Rabbi Richard Lewis and with the aid of bibliography which I supplied. Diana Villa wrote the case study in Hebrew and that version was corrected by Mr. Yisrael Hazzani and Prof. Alice Shalvi. The case study was translated into English by Dahlia Friedman and myself, and that version was corrected by Adv. Sharon Shenhav and Prof. Shalvi. I then edited both versions and saw the newsletter through the press.

It is our hope that the *Jewish Law Watch* will make public the anguish of modern-day *agunot* like Rivka and will spur rabbinical courts to free these women from their chains. We welcome the responses of rabbis, religious court judges (*dayanim*), judges, lawyers, scholars and the public at large to this case study.

Rabbi David Golinkin
Schechter Institute of Jewish Studies
Jerusalem
September, 2000

CASE STUDY NUMBER TWO

by

Diana Villa

THE FACTS

“Rivka,” a new immigrant from Georgia in the Former Soviet Union, settled in a town in the south of Israel. Her M.Sc. degree in chemistry qualified her to teach in the local high school. There she met “Shimon”, whose family had emigrated from Morocco, who worked in a garage.

On the surface, he seemed a calm, loving and supportive person and the young couple married in September 1978. Shimon’s brothers were drug addicts who were known to the police, but Rivka believed that her husband was different. She was unaware of the criminal record he had accumulated from the age of eleven up until two months before the wedding, which included convictions for assault, causing bodily injury, burglary, theft, disorderly conduct in a public place and even an indecent act with a child.

During a three-year period, Shimon earned a decent living and supported his family in a dignified way. Rivka gave birth to two children (in January and December 1980) and temporarily stopped working in order to take care of them; Shimon’s salary made that possible. However, problems arose when Shimon began acting as a drug courier for his brother-in-law and eventually became a drug addict himself, at first engaging only in occasional drug use and then becoming a hard-core addict with a daily habit. Shimon’s addiction changed his priorities; he spent most of his free time with his friends, spent his entire earnings on drugs and had trouble supporting his family.

After the birth of their third child, Rivka discovered that her husband was a drug addict. The violence that had begun earlier worsened – he beat her or locked her in one of the rooms in their home when she refused to give him money for drugs.

Rivka became a battered woman and finally, in late 1986, filed a complaint of assault with the police. Shimon had punched her in the head and face and he was sentenced to six months in jail. Upon his release, he was sent to a rehabilitation center, but very quickly returned to his old ways.

Rivka decided to leave her husband, but he locked her in a room with the three children, turned on the gas and left the house. The family was miraculously saved.¹

In May 1988, Rivka fled to a shelter for battered women. Shimon promised to rehabilitate himself and to attend counseling sessions, but in November he again hit his wife – who had in the meantime moved to another city with her mother – in the head and face and also assaulted his sister-in-law and attempted to assault his brother-in-law. For this incident he was given a six-month jail sentence plus a three-month suspended sentence.

While Shimon was in prison, Rivka sued for child support in Tel Aviv District Court. She began to receive child support payments in September 1988 from the National Insurance Institute, and, as a result, her husband accumulated a large debt to the Institute. In 1989, she opened divorce proceedings in the rabbinical court in Ashkelon. Throughout this entire period, Shimon continued to live in the couple's apartment.

At the rabbinical court hearings, Shimon admitted to his drug addiction and agreed to undergo another rehabilitation effort. The court recommended throughout that the couple should strive for *shlom bayit* (marital harmony).

In 1990, Rivka turned to Adv. Sharon Shenhav for legal counsel. In July of that year, Adv. Shenhav argued before the court that in this case a divorce should be compelled (*kefiyat get*) due to the violence and life-threatening situation involved. Because Shimon continued to claim that he wanted *shlom bayit*, the rabbis refused to compel him to grant his wife a divorce and ruled that the couple must reach an agreement. Even the fact that the couple had been living apart for three years and that the husband used drugs and did not work, did not convince the rabbinical court judges to hasten the granting of the divorce.

In late 1991, following the court's repeated attempts to get the couple to achieve *shlom bayit*, Adv. Shenhav requested that the case be transferred to a special bench, but because the rabbinical court thought that she had pressured Rivka to sue for divorce, the attorney advised Rivka to attend the next court hearing without her. During that session in January 1992, in the presence of the Ashkelon rabbinical court, Shimon assaulted her again and fractured her nose. The police were summoned and Shimon was again jailed for six months.

The rabbinical court ruled that "it is impossible to compel the husband to grant a divorce" and "despite the fact that the chances for achieving *shlom bayit* are slim", it decided that the parties must work out a divorce agreement between themselves.² As a result of the latest incident, Adv. Shenhav again

1 Reported in an article by Ilan Nimi in *Moked*, no. 81, p. 13.

2 Court Decision, 14 Adar I 5752, 18 February 1992.

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requested to transfer the case to a special bench for *agunot* (anchored women) and recalcitrant husbands, but the rabbinical court administration wrote to her that “it is advisable to first request an obligatory divorce (*hiyuv get*) before asking for a compulsory divorce (*kefiyat get*)” and that perhaps it was worth “submitting an appeal to the Supreme Rabbinical Court”.³

In the civil court, during a hearing on the criminal complaint Rivka filed against her husband following his assault on her in the rabbinical court, Shimon declared before the judge that he would grant a divorce to his wife. However, when he was asked to sign the divorce agreement while in prison, he refused.

Eventually, in April 1992, while still in jail, Shimon agreed to give his wife a divorce in exchange for the sole right to continue to live in their joint rented apartment in a public housing complex, a recommendation from his wife and her attorney to cancel his child support debts to the National Insurance Institute, and a promise that they would never sue him. The husband agreed that if he did go back to work, the matter of child support would be reviewed by the rabbinical court.

Due to heavy pressure from the rabbis, the wife agreed to terms that were detrimental to her: paying a large bill owed to the telephone company (while Shimon paid other debts related to the apartment), allowing the father to visit with the children twice a week (despite her concerns about violence) and also waiving the monetary rights granted to her in their *ketubah* (marriage contract).

In addition, the rabbinical court appealed to the Prison Service to shorten Shimon’s jail term because his consenting to the divorce “was a great sacrifice” and a reduction of his sentence would help him turn over a new leaf.⁴

In summary, Rivka lived apart from her husband for four years and tried to obtain a divorce from him for two-and-a-half years. The court was sensitive to the suffering of the husband, who felt lost without his wife and children. Despite his being a drug addict, violent and unemployed, it repeatedly consented to his requests for *shlom bayit*. Even after he fractured his wife’s nose in the presence of the rabbinical court judges, they refused to compel Shimon to grant a divorce. After numerous concessions by Rivka stemming from the divorce agreement worked out between the couple, Shimon finally agreed to release his wife from her chained status as an *agunah*.

3 Letter from 17 Adar II 5752, 22 March 1992.

4 Recommendation from 24 Nissan 5752, 27 April 1992.

OUR PROPOSALS

Given the serious dangers of living with a violent husband, we would like to suggest ways in which the court could have released the wife more quickly, when it was clear that there was no chance of restoring *shlom bayit* and that allowing the situation to continue placed the wife and children at risk.

1. COMPELLING A DIVORCE (*KEFIYAT GET*)

Our Sages determined that in certain situations the court may compel a husband to divorce his wife. The *Mishnah* enumerates a list of cases in which “they compel him to divorce his wife” (*Ketubot* 7:9-10): “a person afflicted with boils, one who has a *polypos*, a *mekametz*, a copper smelter, and a tanner...”⁵ and this ruling was codified by Maimonides (*Hilkhot Ishut* 25:11-12) and the *Shulhan Arukh* (*Even Ha’ezer* 154:1).

On the other hand, the Sages ruled that a *get me’useh* (forced divorce), which the husband gives against his will, is not valid. Therefore, if the court compels a husband to grant a divorce, this is ostensibly a “forced divorce”. The *Mishnah* (*Gittin* 9:8) had already clarified that a divorce that was forced by a Jewish court is valid, and that is also how Shmuel ruled in the Gemara (*ibid.* 88b). In a valid forced divorce, the reason for compelling it is accepted; in an invalid forced divorce, there is insufficient reason to compel the husband to grant a divorce.

Maimonides eliminates any doubt about the validity of a valid forced divorce. He explains why a properly forced divorce is valid, saying (*Hilkhot Gerushin* 2:20):

Therefore, a man who does not want to grant a divorce, inasmuch as he wants to be part of the people of Israel and wants to observe all of the commandments and to keep away from transgressions – it is only his evil inclination which has overwhelmed him – once he has been lashed until his evil inclination has been weakened, and he said “I consent”, it is as if he had divorced his wife voluntarily.

How can a husband be compelled to issue a divorce nowadays? Outside of Israel, there is no such possibility, because the rabbinical courts do not have the power of enforcement, but in the State of Israel, the rabbinical courts have the option of compelling a divorce. According to the Rabbinical Courts Jurisdiction Law (Marriage and Divorce) 5713-1953, the rabbis are authorized to compel a divorce by jailing the recalcitrant husband. Under the Rabbinical Courts Jurisdiction Law (Upholding of Divorce Rulings) (Emergency Order) 5755-1995, their authority

5 *Polypos* is a Greek word which refers to someone who has a growth in the nose, but the Gemara (*Ketubot* 77a) explains that it is someone who has “bad breath”. *Mekametz* refers to someone who collects the excrement of dogs for the purpose of processing animal hides (*ibid.*).

was broadened to include confiscating passports, freezing bank accounts, suspending drivers' licenses, prohibiting the appointment or election to or the holding of public office, prohibiting work in a profession that is regulated by law and prohibiting operation of a business that requires a license.

The basic question before us is: is the list of reasons for compelling a divorce in *Mishnah Ketubot* quoted above a closed and final list or can other reasons be added for doing so, such as violent behavior by the husband against his wife? Using violence as a reason for compelling a divorce has been a matter of dispute among halakhic authorities,⁶ but many venerable authorities have already ruled during the last eight hundred years that physical violence is indeed a good reason for compelling a divorce. We present below some of the important precedents.

1. The precedent-setting ruling of Rabbeinu Simhah of Speyer, one of the major halakhic authorities in Ashkenaz (died ca. 1230), is cited by many authorities:⁷

And a question was asked of my teacher and rabbi, *Rabbeinu Simhah of blessed memory*, and his response was that the husband is compelled to divorce his wife, and this is how he put it: ... Rabbi Yirmiya complained to us about his son-in-law who would regularly beat his [wife] and embarrass her by uncovering her hair in public, contrary to the Jewish religion "since she was given to him to live with him and not to suffer" (*Ketubot* 61a). And even someone who acquires a Hebrew servant woman is considered as one who acquires a master for himself (cf. *Kiddushin* 20a and parallels) and that applies all the more so to one's wife and with every blow he violates the prohibition of "lest being flogged further, to excess"⁸ and the punishment is greater than for one who beats his fellow

6 For halakhic authorities opposed to compelling a divorce in cases of violence, see *Otzar Hage'onim on Ketubot*, responsa section, parag. 428, pp. 169-170 and parag. 477, p. 191; *Terumat Hadeshen*, no. 418; *Responsa of the Radbaz*, no. 1228 (he objects to forcing a divorce, but suggests excommunicating, fining and jailing the husband until he grants a divorce of his own accord); *Beit Yosef on Even Ha'ezer* 154; *Responsa Binyamin Ze'ev*, no. 88. Some of the above rulings reflect an attitude towards women that is unacceptable in today's society; in other words, that the wife should endure the blows quietly.

7 A complete citation of his responsum appears in *Sefer Or Zarua*, part 3, *Bava Kamma* no. 161; *Responsa of the Maharam*, Prague edition, no. 927; *Responsa Binyamin Ze'ev*, no. 88. A synopsis of his responsum appears in the *Beit Yosef* op. cit. (note 6 above) as well as in *Hagahot Asheri to Bava Kamma*, chapter 3, parag. 10, Vilna edition, fol. 125d, who quotes the *Or Zarua*. We will quote here from R. Yitzhak ben R. Moshe of Vienna, the author of the *Or Zarua*, who was a student of Rabbeinu Simhah, with corrections from the other sources. Regarding Rabbeinu Simhah, see E. E. Urbach, *Ba'alei Hatosafot*, fourth edition, Jerusalem, 5740, pp. 411-420.

8 Deuteronomy 25: 3 says: "He may be given up to forty lashes, but not more, lest being flogged further, to excess, your brother be degraded before your eyes". Our Sages derived from this verse – which deals with the lashes that are given to certain criminals – a general prohibition against striking another person (*Kiddushin* 33a; *Sanhedrin* 85a) and that is what Rabbeinu Simhah is referring to here.

man... and if Yirmiya's words are true *issue the son-in-law a stiff fine, either one that is physical or monetary*, for what he has transgressed... and make peace between them... and if the husband is not able to uphold the peace and continues to beat and humiliate her, we agree with you that *he should be excommunicated... and he should be forced by the gentiles to issue a divorce "do what Israel tell[s] you to do" (Gittin 88b) because that is what I agreed with my colleagues that a divorce can be forced by gentiles according to the law...* but to hit and humiliate her, when this poor woman has been placed in his hands and we have no power to correct this situation – even Shmuel [who said in *Ketubot 77a* "until he is compelled to divorce, he should be compelled to support her"] admits that "one does not live in one basket with a snake" (ibid)... and if it seems to you that the suggestion to establish peace between them is not working, placate him according to your wisdom so that he will divorce her voluntarily, and he if does not consent, let justice take its course and *force him to divorce her and act [according to the Torah]...* Simhah son of Samuel.

Rabbeinu Simhah considers wifebeating a serious transgression and he gives the court precise guidelines on how to proceed: impose physical and monetary fines on the husband, make peace between them, excommunicate the husband and, if all else fails, compel him to issue a valid divorce with the help of the gentiles. Furthermore, Rabbeinu Simhah stresses that compelling a husband to issue a divorce with the help of the gentiles is not his opinion alone: "that is what I agreed with my colleagues that a divorce can be forced by gentiles according to the law".

2. Rabbi Yitzhak ben Moshe of Vienna (1180-1250), a disciple of Rabbeinu Simhah and the author of *Or Zarua*, agreed with him. Before citing the entire responsum above, he writes:

From this [= from the fact that a husband who hurts his wife while engaging in intercourse is obligated to pay damages – *Bava Kamma 32a*] it can be learned that a person is forbidden to strike his wife and also must pay for any damages if he hurts her. *And if he strikes her and humiliates her in public on a regular basis, he is compelled to divorce her.* And there was already a case of one who regularly struck his wife, and a question was asked of my teacher and rabbi, Rabbeinu Simhah...

3. Rabbi Yosef ibn Avitur (Spain, 10th-11th century) wrote a responsum that served as a precedent for the Rashba (see below). His responsum is quoted in *Sha'arei Tzedek* (part 4, gate 4, section 42, fol. 64a).⁹

R. Yosef ibn Avitur: Regarding the question of a woman who said "I do not want to remain with my husband, because he hits me and causes me to suffer" and this was verified and she asked him for a divorce – should he be compelled to divorce her or should she be compelled to live with her husband? And if he is causing her suffering for no reason, should she be compensated with the full amount specified in her *ketubah* or not? You should know that if he struck her once or twice while there were witnesses present, the court must remonstrate with him for this and say to him: "You should know that you are not allowed to strike her and if you repeat your wickedness, she shall be given a divorce along with the sum specified in her *ketubah*". And she is placed in his home¹⁰ with a trustee, and if he repeats his wickedness she shall be given a divorce with her *ketubah*, as our Sages said: "she was given to him to live with him and not to suffer with him" (*Ketubot* 61a)... and even if it was found to be true that he hit her once or twice as you stated, *we do not compel the husband to divorce her and to pay her the sum specified in the ketubah until the court and the elders of the community warn him and say: "You should know that you are bound by the ketubah to honor and support your wife as it says "ואנא מפלח ואוקיר ואיזון"* and when he receives the warning and is placed in his home with a trustee, *if the trustee testifies that he repeated his wickedness, the sum specified in the ketubah is collected for her.*

Rabbi ibn Avitur accepts the principle of compelling a divorce in cases of violence, but he asks for a warning to be issued to the husband and for him to be given a chance to mend his inappropriate ways before the court compels him to divorce his wife.

4. The Rashba, one of the most important halakhic authorities in Spain (Barcelona, 1235-1310), discussed the matter of divorce from a violent husband in two of his responsa. In one responsum (*Responsa of the Rashba*, part 5, no. 264) the wife wanted her husband to swear that he would stop beating her. The Rashba ruled that the husband should not be made to take an oath.

⁹ And from there it is quoted in *Otzar Hage'onim to Ketubot*, responsa section, parag. 476, p. 191. The responsum is also cited by the Rashba, part 7, no. 477, which is quoted below.

¹⁰ This is the meaning of *ומשירין*, an unusual Hebrew word.

Indeed, the *Ge'onim* wrote in their responsa regarding such incidents that we placate the wife once or twice and if she complains again, a trustee is placed among them, either a man or woman, and if that is not possible, we excommunicate whoever behaves in this fashion. And this matter and similar ones are subject to the discretion of the judges based on the time, the place and the people involved. And that is the custom in our country, in accordance with the rulings of the great and illustrious rabbis of France.

However, in part 7, no. 477,¹¹ he unequivocally ruled that the court:

admonishes him and chastises him and informs him that *if he wrongly strikes her, he is obligated [hayav] to divorce her and pay the amount specified in the ketubah*. Because even for other matters which do not cause her so much suffering, such as forbidding her to go to her father's house... he must divorce her and pay the *ketubah* sum – then all the more so when he strikes her and injures her and causes her physical anguish.

Further on, he also quotes Rabbi Yosef ibn Avitur.

The Rashba used the phrase “he is obligated [*hayav*] to divorce her and pay the amount specified in the *ketubah* ” and not “the husband is compelled [*kofin*] to divorce her”, but since he cites the words of Rabbi Avitur who explicitly ruled that a *divorce should be compelled*, it can be assumed that he does not differentiate between these two phrases. Indeed, the *Tashbetz* cited below also understood that the Rashba was referring to compelling a divorce.

5. R. Shimon bar Tzemah Duran (the *Tashbetz*), one of the most important halakhic authorities of North Africa (1361-1444), issued a ruling regarding a husband who starved his wife and caused her suffering (*Responsa of the Tashbetz*, part 2, no. 8):

In this case, he should divorce her and pay the amount stipulated in the *ketubah* because it is written that “she was given to him to live with him and not to suffer with him” (*Ketubot* 61a)... and if even regarding one who prohibits his wife from doing things which are not so distressing for her, we say that he should divorce her and pay the *ketubah* sum... how much the more so when he causes her suffering on a regular basis that we should say he should divorce her and pay her the amount specified in the *ketubah* because “one does not live in one basket with a snake” (*Ketubot* 77a)... “that which is crooked cannot be made straight” (*Ecclesiastes* 1:15)... and what good does a woman have whose husband causes her

¹¹ This responsum is found with minor changes in the *Responsa of the Rashba that are attributed to Nahmanides*, no. 102, without the quotation from Rabbi ibn Avitur at the end.

anguish by fighting every day? *And even compelling him to divorce her should be derived from a kal vahomer [an inference from minor to major] from a husband who has a polypos (Ketubot 77a), because if a man is compelled to divorce his wife because of bad breath, then shouldn't he be compelled to do so for causing her constant anguish that is worse than death...?! And the difference between "he should divorce her and pay the sum specified in the ketubah" and "he is compelled to divorce" is that when the Mishnah (Ketubot 7:1-5) stated "he should divorce her and pay the sum specified in the ketubah" it meant that he is not compelled to divorce her, but he is made to pay the ketubah sum and if he divorced her on his own, all the better, and if not he is called a criminal, but when they said "they compel" (Ketubot 7:9-10) they compel him even with lashes... And even though it says in some responsa of the greatest Aharonim (later authorities) that we do not force a husband to give a divorce at all, we are not mere reed cutters, and regarding matters that depend on reason, a judge has no choice but to decide based on what he sees,¹² and it is possible that the Aharonim were not referring to cases such as this where there is great anguish, and all the more so if he starves her, and if she were theirs, they would not have said so. And the Rashba z"l wrote in a responsum as we did.*

The *Tashbetz* is convinced that frequent suffering and hunger are justified reasons for compelling a divorce, because they cause more anguish than the classical reasons that appear in the *Mishnah*. He stresses that since this is a matter which depends on reason, the judge cannot rely on anything other than what he sees with his own eyes and it is possible to rule this way even without precedents from the "greatest Aharonim". Finally, he adds that if the suffering wife were theirs (apparently referring to a daughter) the judges would not have ruled leniently in this matter.

6. In our day, Rabbi Eliezer Waldenberg (Jerusalem, b. 1917) also rules that a violent husband should be compelled to divorce (*Responsa Tzitz Eliezer*, part 6, no. 41, chapter 3). He was discussing a case of a violent husband who even tried to kill his wife and her brother with a gun. Both were seriously injured and the husband was sentenced to five years in jail.

... There are, in my humble opinion, halakhic reasons to obligate the husband and also to compel him to give his wife a divorce, given the constant situation which the wife finds herself in as long as she is near

12 In other words, we are not simple people, but rabbis, and regarding matters that depend on reason, a judge needs to decide based on what he sees and there is no need for the consent of the great Aharonim.

him, due to his bad behavior and cruelty toward his wife and along the lines of “if a divorce is compelled because of the husband’s bad breath, then if the wife’s life is endangered, is there not all the more reason to force a divorce?” [= the *Tashbetz* quoted above].

Rabbi Waldenberg then adduces proof from Rabbeinu Simhah, *Darkhei Moshe*, the *Tashbetz*, *Responsa Mateh Lehem* and *Sefer Avnei Eford*. He continues:

Therefore in a case of a woman’s fear of death such as this, there is no room... *to be stringent and not to compel the husband to divorce her at the risk of endangering her life* and we have a well-established principle that “regulations concerning physical danger are more stringent than a ritual prohibition” (*Hullin* 10a) and to those who want to be overly pious and not to compel [the husband to divorce her] we say about them the words of the *Tashbetz* quoted above: “If she were theirs, they would not have said so”... Needless to say, in such a case the claim of “he is abhorrent to me” [*ma’ees alay*] by the woman is clear *and all authorities both rishonim and aharonim are of the opinion that you compel a divorce...* From all the above, in my humble opinion, *one should rule to compel the husband to divorce his wife with a get*, and he is also required to pay the sum specified in the *ketubah*.

The author of *Tzitz Eliezer* stresses the fact that things can easily get out of hand, to the point of murder. In such cases, one should not rely on a miracle, and even if there is some halakhic apprehension about compelling a husband to divorce, the principle of “regulations concerning physical danger are more stringent than a ritual prohibition” applies here and he is compelled. There are also disputes among the halakhic authorities regarding the possibility of the wife claiming “he is abhorrent to me” [that she can no longer tolerate living together with her husband and demands a divorce]. Rabbi Waldenberg rules that in cases of intense violence, no one would disagree that the husband should be compelled to divorce his wife.

However, despite the above precedents for compelling a divorce in a case where there is violence, some oppose it on the basis of the *Hatam Sofer* (*Even Ha’ezer*, no. 116), who wrote that a divorce can be compelled only when “it is clear to the one divorcing that the compelling is valid *according to all*”. If that is true, then it is impossible to compel a divorce in cases of violence because that is not the opinion of *all* halakhic authorities. Indeed, there are religious court judges who continue to suggest *shlom bayit* and, despite their good intentions, in an atmosphere of violence, the wife suffers much physical and psychological harm. The result is that the wife’s chained status is perpetuated. Therefore, this is not the solution.

A reply to the *Hatam Sofer's* argument can be found in the article "Compelling a Divorce in Our Day" by Rabbi She'ar Yashuv Cohen.¹³ He quotes from Rabbi Isaac Herzog (*Responsa Heikhal Yitzhak, Even Ha'ezer*, part 1, no. 1), who ruled according to Rabbi Isaac Elhanan Spector "that the husband, even though he knew that some rule that he should not be compelled, was reconciled because the court ruled that he should be compelled, because it is a *mitzvah* to obey the scholars of your generation". He also relies on the *Hazon Ish (Even Ha'ezer 69, 23)* who wrote: "The *Hatam Sofer's* ruling cannot be upheld, and therefore one should rely on those who rule that in cases where the wife says her husband is abhorrent to her, he should be compelled to divorce her. And the Rosh had earlier written in a responsum, regarding those who had ruled as much – what has already been done is done".

Based on the precedents cited, it is clear that the *halakhah* allows a rabbinical court to compel a violent husband to give a divorce. The Talmud listed reasons for compelling a divorce that were relevant in its time, and some of them are still relevant today. On the other hand, it did not discuss violence as a justified reason for compelling a divorce,¹⁴ but as we have seen, many illustrious halakhic authorities during the past 800 years have already considered these cases to be cases of "valid force". In the Diaspora, from the Emancipation onward, the rabbis lacked the tools to enforce such a ruling. Today, in the State of Israel, the rabbinic courts have such tools. All that remains is for them to be used in order to obtain the longed-for divorce.

In the case before us, there is no doubt that Shimon's violence towards Rivka caused her physical and psychological harm. Instead of repeated efforts to achieve *shlom bayit* which forced Rivka to return to a husband who maltreated her and endangered her life,¹⁵ the rabbinical court should have compelled Shimon to give Rivka a divorce on the basis of all of the precedents cited above.

13 *Tehumin* 11 (5750), pp. 200-201. Cf. further details in the Court Decision of Rabbi She'ar-Hashuv Cohen, Case 42/1530, 5742, *Piskei Din Rabaniyim* 15, pp. 145-163, who ruled that a violent husband can be compelled to divorce by incarceration.

14 It could be argued that domestic violence did not exist during the time of the Sages or at least not on the same scale as today. Alternately, it is possible that there was no awareness of the phenomenon or that women were more willing to put up with abuse, given a reality in which they could not support themselves and live independently. Therefore, today, this phenomenon should be seen as a kind of "defect" (as the *Mishnah* calls the shortcomings in a husband which are reason for compelling a divorce) which justifies compelling a valid divorce.

15 Rabbi Dr. Abraham Twerski, an ultra-orthodox rabbi and a psychiatrist, explains that every husband who refuses to give a *get* today was also an abuser during the marriage. In almost every case, the woman asked for help from rabbis and family members earlier in the marriage and they convinced her to return to the marriage for the sake of *shlom bayit*. The psychological result was that the abuser saw this as a triumph and refused to give his wife a *get*. See Abraham Twerski, *The Shame Borne in Silence: Spouse Abuse in the Jewish Community*, Pittsburgh, Pennsylvania, 1996, pp. 125-128.

2. THE BETROTHAL WAS “A MISTAKEN TRANSACTION”

We have already proved elsewhere¹⁶ that when a woman finds a “defect” in her husband only after the marriage, she can claim that “I did not betroth myself with this in mind” (*Bava Kamma* 110b). The betrothal was a mistaken one and there is no need for a divorce.

Rabbi Moshe Feinstein ruled in several cases that a betrothal should be annulled based on the claim that it was a mistaken transaction. In *Igrot Moshe, Even Ha’ezer*, part 1, no. 79, p. 182, he states:

Regarding a woman who was married to a man and immediately after the wedding it became apparent that he was impotent and could not consummate the marriage... for if she had known that he was not able to have sexual relations, she would certainly not have betrothed herself to him... therefore, we see that it is an absolute defect... and therefore we should rule this as a case of a mistaken transaction and annul the betrothal.

And so Rabbi Feinstein ruled in responsum no. 80, as follows:

Regarding a woman who marries a man and after several weeks he disappeared from her... because he has a mental illness that causes him to be afraid of people... and she has been an *agunah* for fourteen years and is asking the rabbis to try and correct her situation... and it is obvious that this mental illness is a major defect and makes him unfit to be anyone’s husband... it stands to reason that if she did not know her husband had this illness, and even if she did know but she thought he had been completely cured and only after the marriage did she discover he was ill and not completely cured,... this should be considered a mistaken transaction and the betrothal should be annulled.

Since Rivka did not know about her husband’s criminal record and about the violence that existed in his past for many years before the wedding,¹⁷ it can be argued that the betrothal was a mistaken transaction and there is no need for a divorce. Rivka did not marry out of a desire to suffer with a violent husband, and therefore the religious court could have determined that this was a mistaken transaction and annulled the betrothal.

16 This section is a summary of *Jewish Law Watch*, Case Study Number One, January 2000, pp. 12-13.

17 For the tendency of violent husbands to be violent during adolescence, see *ibid.*, note 6.