

DIVORCE AND THE JEWISH COMMUNITY BY RABBI MENACHEM ROSENFELD

In November 2010, I had the occasion to visit the new facility of Eretz Chemda, one of the foremost institutions of learning in Eretz Yisrael. The dean of the school, Rav Yosef Carmel, took my wife and me on a brief tour of the new facilities built for Bait Din activities. Rav Carmel pointed out that the Dayanim in most Batei Din sit on a raised platform during the deliberations. This was not the case with the construction of the Eretz Chemda Bait Din chamber. The Dayanim sit on the same level as the litigants. According to Rav Carmel, this encourages them to more easily relate to the litigants and the problems they present for adjudication. The Dayanim must never lose sight of the need to identify with those individuals who come to their Courts and seek a solution for the concerns.

One of the areas which requires special sensitivity from our community's Dayanim is that of Ishut. (i.e. marital status) One such area is that of the Agunah. Over the years, the Jewish community has written and discussed much about the problem of women whose husbands will not arrange for a proper Get (Jewish divorce) although the marriage has long ceased to be a viable one. Fortunately, our community has developed numerous organizations to deal with this problem, and the numbers of Agunot have been reduced over the course of time. Of course, even one Agunah is one too many. However, the problem of Agunah is being addressed and is not being ignored by our community.

There is, however, one aspect of Jewish divorce which is not being currently addressed in any organized fashion. The problem to which I allude is that divorce has become a process often accompanied by excessive bitterness and strife. In the typical divorce, attorneys battle, confrontations escalate, children suffer, and no one escapes unscathed. I refer to this problem as the lack of civility in the divorce process. (See more discussion at the website found at www.CivilDivorceCivilGet.com .) It seems that we expect our youth to enter into marriage as Bnai Torah but have no similar expectation should the dissolution of the marriage occur. While it might be true that this lack of civility is not unique to the Jewish community, surely we must expect more from a "Mamlechet Kohanim V'Goy Kadosh"?

Many articles have been written on the scarring effect that divorce has on children of the marriage. When we read of children at risk, we are mobilized into action and begin schools, programs, etc. We hear of the tragedy of sexual abuse, and we create organizational structures. The Orthodox divorce rate is estimated to be approximately 10%-17%. Younger couples divorce in larger numbers than do older couples. How many children will be harmed psychologically and socially from divorces that are marked by confrontation and enmity? Why are we not doing something to help such innocent children, who will likely experience years of trauma and hurt? Is the issue of civil divorce not worth our communal attention?

For a number of years, I have reached out to Jewish organizations and attempted to sensitize them to this growing social problem. The response has been one of mild interest in the short-term and measured indifference in the long-term. I maintain that this issue can be addressed and rectified by a partnership of rabbanim, professionals, and community activists. What is needed is not an influx of money nor the creation of yet more organizational structures. We need to acknowledge that the problem exists, direct our energies to work on solutions, and create shared dialogue within our community.

I will list a series of recommendations below in order to propose an agenda towards creating a model for "civil divorce". These proposals are easy to implement if we have the desire to find a constructive approach. If no other community has tried to "attack" this problem, so be it. As a people with the word "Yashar" attached to our name of "Yisrael", we are not excused from action by the "defense" that we are no worse than others in the manner in which we divorce. Yashrut demands much concerted action and effort on our behalf.

1. There needs to be a partnership between Batei Din, Rabbanim and Mental Health professionals on issues that are present in marital situations. There should be opportunities for these groups of “experts” to meet and discuss challenges that confront our community in marital matters and ways of finding solutions. Rabbanim need to know when to refer matters to Mental Health practitioners, and clinicians need to know which Rabbanim are most available, and suited, for referrals, when marital problems first appear. Training sessions should be planned where the different groups can meet together, get to know one another, and define strategies for dealing with the challenges that often confront Orthodox couples.

2. Rabbanim should be given specialized training in learning about the root causes of domestic violence, psychological pathologies, marital counseling, etc. Divorce Mediation , a procedure which allows a divorcing couple to plan their own divorce agreement, is an area of civil divorce in which Rabbanim should have at least some rudimentary knowledge and familiarity.

3. Baatei Din should consider having sessions for divorcing couples on such issues as raising children post-divorce, communicationg with an ex-spouse, dealing with depression, dealing with financial challenges, etc. Many states require such classes from divorcing couples. The Baatei Din should consider making such courses, with a halachic orientation, available for those who want/need it.

4. Local Vaadim should offer yearly classes on topics such as effective communication, Shalom Bayit, civil divorce, etc.

5. High Schools and Seminaries should offer mini-courses on topics that relate to the challenges of married life, with an emphasis on developing positive strategies that will promote proper marital relationships.

6. The community should be educated to consider Bait Din tribunals as proper arbitration vehicles to avoid the needless litigation that often accompanies divorce.

7. Baatei Din may make the Get process less threatening by having sessions for the public whereby attorneys, non-Orthodox individuals, and Mental Health professionals can come to the Bait Din and learn of its inner workings.

8. The use of the pre-nuptial agreement and post-nuptial agreement must be encouraged and become part of our educational schools’ curriculum.

9. Most importantly, Rabbanim need to teach that the same Shulchan Aruch that teaches how to conduct a proper married life, also teaches how to conduct oneself when divorce is inevitable. Enmity and vengeful behavior have no place in the Jewish community. Rabbanim need to decry the use of divorce for blackmail, revenge, infliction of pain, and personal attacks. A couple going through a divorce must learn how to close the door on their marriage in a way that allows both parties, and their children, to look forward to a future of opportunity and growth. The best way to accomplish this is to remember the old Yiddish expression : “L’Olam Yehai Adam...Always be a Mensch.”

Divorce can be civilized and dignified, even as it is painful for all concerned. As Rav Carmel reminds us, the Dayanim (and Rabbanim) will need to sit on the same level as the litigants so as to feel their pain and their disappointment. Divorce is the sad end of a chapter in the lives of two people. With the help of our Dayanim and Rabbanim, the couple can still go on and write the rest of their “Book”, if they possess the knowledge that they acted even in such circumstances as Bnai Torah and as individuals who embody both civility and dignity. Such people need the support of our Dayanim and Rabbanim. We need to be ready when they are ready to call upon us