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## Rabbis for Religious Freedom & Equality in Israel



“The State of Israel... will guarantee freedom of religion and conscience...”  
Israel's Declaration of Independence (May 1948)

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### Introduction

May 25, 2017  
29 Iyyar 5777

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Dear Friends,

This special edition of the RRFEI Newsletter features an original article by Orthodox Rabbi Michael Chernick, Professor Emeritus of Rabbinic Literature at HUC-JIR, New York, with responses from Rabbis Mark Washofsky, Elliot Dorff and Daniel Siegel. Rabbi Washofsky's affiliation is Reform; Rabbi Dorff's is Conservative and Rabbi Siegel is with Jewish Renewal.

We hope you will respond and air your voice also on this essential issue of egalitarianism and halakhah. (I want to note that we invited two women scholars to respond, and neither had the time; but we hope for responses from our women colleagues and

### Halakhic Pre-Nuptial Agreements: Why Are They Needed? How Do They Work? Do They Work Here and Abroad?

By Rabbi Michael Chernick

[Click HERE for the full article](#)

In its discussion of divorce in Deuteronomy 24:1-2 the Torah frames the entire procedure in the masculine form. The Sages of the Mishnaic and Talmudic period understood this to mean that the right of divorce was the husband's and not the wife's. Further, in the formative period of Jewish law, a husband divorced his wife at his discretion, but she could be divorced against her will (Mishnah Yebamot 14:1). In the eleventh century a takkanah ascribed to Rabbenu Gershom of Mainz prevented women from being divorced against their will. Nevertheless, the husband's agreement to divorce was still a sine qua non for the get to be legal.

Nevertheless, the problem of what I will call get-agunah, a woman being "chained" to a dead marriage for lack of a halakhic divorce, was not a practical problem. The Sages of the Talmudic period



a robust discussion of these ideas.)

As we all know, being a "chained" woman (agunah) causes untold suffering, and justice demands we create a solution to this oppression. You will see in today's article by Professor Michael Chernick an analysis of the problem, a review of the historical remedies and suggestions for moving forward.

In addition, we are bringing you responses from 3 current halakhic authorities: Rabbi Mark Washofsky, Freehoff Professor of Jewish Law and Practice at HUC-JIR Cincinnati; Rabbi Elliot Dorff, Chairman of the Rabbinical Assembly's Committee on Jewish Law and Standards; and Rabbi Daniel Siegel, Founding Director, Integral Halachah Institute.

Shall we stay within the halakhic system to resolve the issues, or turn to civil courts? What is the appropriate role for civil courts in the Diaspora, and what is their role in the Jewish State? Some believe there should not be civil courts in Israel, that all law must be according to halakhah. Some would have that law change in structure, for example: that women be able to not only receive a get but give one as well, that both parties in

recognizing the inequities inherent in Jewish divorce law developed two strategies for coping with divorces on a whim and recalcitrance. Divorces on a whim were impeded by the creation of the ketubah which put a high price on divorce for the husband. When it came to recalcitrance, the Sages handled it by allowing the courts to coerce the husband, physically if necessary, until he said, "I wish to divorce my wife." Despite the fact that this was not a freely willed decision, which was a required for a legal divorce, for the Sages the mere statement of "I want to divorce my wife" was enough.

The need for the husband's willingness to divorce is not the only complication for Jewish women. Though polygamy was outlawed among Ashkenazi Jews in the 10th century and subsequently by most Sephardic and Oriental Jewish communities, the basic law of Judaism, the Torah, allowed it. It did not, however, allow polyandry. The children of a man who sired children with a wife he married while halakhically married to another woman were perfectly "kosher" because his marriages to both women were legal. Children born to a woman without a get were the products of an adulterous relationship, which made them illegitimate mamzerim, prohibited by Torah law from marrying most other Jews.

None of this would be a problem if rabbinic courts in most modern nations had the power of coercion. But they don't...

...

## Three Points on the Halakhic Prenup

By Rabbi Mark Washofsky

[Click HERE for the full article](#)

Rabbi Michael Chernick, my colleague at Hebrew Union College-Jewish Institute of Religion, has offered a comprehensive and thorough summary of the issues surrounding the halakhic pre-nuptial agreement. I find in it absolutely nothing to critique and very little to add. I do, however, have three brief comments, which are based upon a recent entry in the blog of the Solomon B. Freehof Institute of Progressive Halakhah (<http://blog.huc.edu/freehof/2016/02/29/the-halakhic-prenup-a-great-idea-mostly/>).



a divorce should receive a divorce decree (get) from their spouse.

Clearly not only has the role of the streams of Judaism not been resolved in Israel, but the questions of which legal system to follow: civil or Jewish, who decides on halakhah, and how innovative can halakhah be in the modern context demand resolution.

RRFEI and Hiddush prefer a separation between religion and state, and in the case of marriage law, the possibility of civil marriage and divorce for those who choose. Clearly, as you will read in these articles, reasonable and reasoned rabbis may disagree, but all insist that injustice demands a workable solution. The Jewish people needs to hear your voice as well.

We hope you enjoy this week's special edition newsletter; and even more important, we hope you will join the discussion by sending your ideas and responses to:

david@hiddush.org, or see our FB group at [Rabbis for Religious Freedom & Equality in Israel](#).

Kol tuv, as we count our way to Sinai,

Mark

Rabbi Mark H. Levin  
RRFEI Editor

1. Don't Let the Perfect Be the Enemy of the Good. Even if it passes halakhic muster (and, as Rabbi Chernick notes, it has encountered strong opposition from the haredi rabbinical community), the halakhic prenup does not solve the agunah problem...

2. Don't Stop Working for a Real Solution. Let us not lose sight of this fundamental reality: the very existence of the agunah problem is an intolerable stain upon the reputation of Jewish law for equity and justice...

3. To My Fellow American Reform Jews. As long as I'm criticizing the performance of the Orthodox rabbinate on the agunah question, I should not overlook the fact that the Reform rabbinate in the United States, of which I am a member, has done away entirely with gerushin, the legal requirement of Jewish divorce as a prerequisite for remarriage...

...

## A Conservative Response to the Orthodox Prenuptial Agreement

By Rabbi Elliot Dorff

[Click HERE for the full article](#)

Rabbi Chernick has done a masterful job in describing the prenuptial agreement now in use in some segments of the Orthodox community, together with its strengths and weaknesses. To the extent that it has saved women from becoming agunot through the very threat of the husband being forced to pay a huge sum of money per day for refusing to give his wife a get, it is to be praised. In the United States, however, with a strong



separation of religion and state, I wonder whether the civil courts will honor a prenuptial agreement of the parties to use the Orthodox court to settle their monetary disputes once they realize that what is involved is not only a monetary dispute but confirming a divorce in a religious act. New York courts in the 1970s varied widely as to how they viewed such prenuptial agreements, ultimately resulting in the Avitzur case of the New York Court of Appeals in 1983 that upheld a Conservative ketubbah that required the couple to submit to the jurisdiction of the court of the Jewish Theological Seminary

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and the Rabbinical Assembly; but that decision was by a bare majority, and it has yet to be tested in the federal courts.

### The Conservative Ante-Nuptial Agreement

A much better way to prevent agunot, one that does not involve the civil courts at all, was created by the Conservative Movement's Committee on Jewish Law and Standards in 1969. It is the "Ante-Nuptial Agreement" (which follows), in which the couple (primarily the husband) agrees that if they divorce in civil court and the husband authorizes issuing a get within six months thereafter, then their marriage was valid. Otherwise, their marriage was not a marriage from the moment it was celebrated...

...

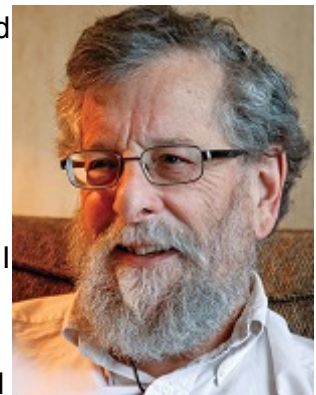
## My concerns with pre-nuptials and civil marriage in Israel as solutions

By Rabbi Daniel Siegel

[Click HERE for the full article](#)

As a new member of RRFEI, I am honoured by the opportunity to contribute to this learned discussion.

At first, I endorsed and used pre-nuptial agreements, seeing in them exactly what Rabbi Chernick sees. Over time, however, I became unsatisfied with this and the other options he lists. My concerns with seeing both pre-nuptials and civil marriage in Israel as solutions to the problem of divorce inequality and the agunah include:



- The objection from the Orthodox "right" that pre-nuptials turn to civil courts, is one which I share...
- I also agree with the asmakhta argument as well. When I encouraged people to sign a pre-nuptial, I often got pushback and outright refusal. In the end, there is no substitute for being able to work things out in the present...
- I once participated in the invocation of an annulment, really a Kiddushim Al T'nai. It felt uncomfortable to annul a marriage ex post facto and...

- Most fundamentally, Rabbi Chernick does not really deal with the objections from the “left” but rather suggests patience while others try to plug the remaining gaps. However, all three proposed solutions continue to rest on the same two assumptions...

...

## Resources

- [Vision of Hiddush and Rabbis for Religious Freedom](#)
- [Hiddush resources](#)
- [Courts - religious & secular](#)
- [Conversion](#)
- [Death & burial - ancient & now](#)
- [Diaspora-Israel](#)
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Rabbis for Religious Freedom and Equality in Israel represents a broad spectrum of Jewish belief and practice, and champions the values of religious freedom and equality fundamental to World Jewry, in partnership with Hiddush for the realization of these principles in Israel and the Diaspora.

Rabbis for Religious Freedom and Equality in Israel

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