

# Heter Meah Rabbanim

*Rabbi Gedalia Schwartz*

## Introduction

Rabbinic authorities throughout the ages have always been concerned with the welfare of the Jewish community, especially in regard to the difficult and sensitive situations affecting family relationships. The Talmud states: "The Sages were concerned with the welfare of the daughters of Israel."<sup>1</sup> This was especially evident in the matter of the *agunah*, i.e. a woman whose husband has disappeared and about whom there are vague reports of his death. Our Sages were very lenient in finding means to permit her remarriage, accepting even one witness confirming the death of the husband.<sup>2</sup>

The significance of finding a release or *heter* for an *agunah* to remarry is summed up by *Bach* (R. Joel Sirkes) who states, "whosoever releases an *agunah* is as if he rebuilt one of the destroyed buildings of Jerusalem."<sup>3</sup>

Our sages' concern was equally great for a husband who may

1. כתובות ב' ע"א

2. כתובות כ"ה ע"ב, צ"ג ע"א

3. This statement of *Bach* is cited by many authorities such as *Heichal Yitzchak* I. 24

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*Rabbi, Young Israel of Boro Park*

have come into a state of *igun* (tied to an “absent” wife) due to the mental breakdown of his wife or because of her rebelliousness (*moredet*). Rabbinic authorities sought ways and means of releasing him from the anguish and tension of his marital limbo. We shall trace their efforts from the sources in the Torah to the development of the *heter meah rabbanim*, and its application today.

### Polygamy

There is a fundamental difference in the situations of a man or a woman who are “bound” by marriages to spouses with whom they cannot or do not want to continue a relationship. According to the law of the Torah, a man can marry more than one wife, with no transgression attaching to this practice.<sup>4</sup> The Gemara quotes Rava who explicitly declares “a man is permitted to marry any number of women in addition to his [first] wife” with the proviso that he have the means to support them properly.<sup>5</sup> Rambam codifies this permissive regulation, adding that he may marry (a figurative) one hundred women either at one time or one after the other, while his wife cannot prevent the implementation of his plans.<sup>6</sup> The Talmud itself abounds with halachot that involve bigamous and polygamous marriages. The first series of *mishnayot* in Tractate *Yevamot* deal with a man who has more than one wife who falls into the position of *yibum* (levirate marriage) at the death of his brother, whose wife happens to be related to one of his wives.<sup>7</sup> Similarly, the first several *mishnayot* (and attendant Gemara) of Tractate *Ketubot* deal with the question (among others) of inheritance involving a husband who had more than one wife, the question depending upon who died first.<sup>8</sup> Thus, even if his marriage were unsatisfactory for some reason, the man could take an additional wife and live happily with her. However, a woman,

according to the Torah, may not be married to more than one man at a time.

Nonetheless, although polygamy is referred to constantly in the Mishna and Gemara, it is done so more in an academic and hypothetical sense rather than as a reflection of actual practice. In fact, historic accounts indicate that monogamy was the rule rather than the exception during talmudic times. One interesting exception in fact was that of the guardian of Agrippa the King who posed a question of R. Eliezer if he, possessing two wives, one in Tiberias and one in Sephorris, with a succah in each location, is permitted to alternate succot and yet fulfil his requirement in regard to the mitzvah of succah.<sup>9</sup>

### Cherem of Rabbeinu Gershom

It was not until the advent of Rabbeinu Gershom ben Yehuda (c. 960-1028) that what was practiced in fact was formulated into law. Many *takkanot* (constructive decrees) are ascribed to Rabbeinu Gershom, two of them relating to marital matters. One was a ban against a man divorcing his wife against her will<sup>10</sup> with excommunication the penalty for its violation; but this ban has little efficacy alone, for if the woman refuses to accept the *get*, the man could nevertheless marry someone else. Therefore, an

9. רבנו גר כ"ז ע"א.

10. By way of clarification, in regard to any discussion concerning the halacha involving a *get*, it should be understood that the husband must initiate the *get* procedure. The marriage bond can only be terminated either by the husband's cooperation in giving a *get* to his wife or by the death of either spouse. The former is based on the Talmud's interpretation of the Torah verse "... and he writes her a bill of divorce and gives it to her hand" (*Devarim* 24:1), the verse indicating that the husband must willingly give the *get*. Rambam, *Hilchot Gerushin* 1:2, emphasizes the first part of the verse which states "And it came to pass if she found no favor in his eyes ..." indicating that it depends upon the husband. See also Rashbam, *Bava Batra* 48A, for a different nuance in interpreting this principle. The latter, termination of the marriage bond by virtue of death, is derived either from the verse "...lest he die in battle, and another man take her" (*Devarim* 20:7) or "And if the latter husband hate her and write her a bill of divorce ... or if he die ..." (*Devarim* 24:3). *Kiddushin* 13B.

4. אכן העזר אטו: "נישא ארם כמה נשים..."

5. בכמות סיה ע"א.

6. פרק י"ד הלכות אישות ה"ב ג'.

7. בכמות פרק א' משניות א' ע"ד.

8. כתובות פרק י' משניות א' ע"ו, ראה גם קידושין פרק ב' משנה ה'; גיטין פרק ב' משנה

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additional ban against polygamy was simultaneously adopted by Rabbenu Gershom and the communities led by him.

In regard to the first prohibition, although the Talmud clearly states that a wife may be divorced even against her will,<sup>11</sup> nevertheless, Rabbenu Gershom prohibited such action without the wife's consent. Only in extreme cases of transgression or errant behavior was the *get* allowed to be delivered to her even against her will, since the *cherem* was not considered to be in force under such circumstances,<sup>12</sup> as will be explained hereinafter. These circumstances did not require any additional procedure other than writing and delivering the *get*. No *heter meah rabbonim* (rabbinic permission to take a second wife, as will be explained) was required in the instance where *get baal korchah*, a divorce against her will, was allowed. However, although the method of *get baal korchah* is halachically valid, as in the above described cases, most authorities have refrained from using this approach whether due to inaccessibility of the wife or an account of technical problems of the delivery of the *get* to her domain.<sup>13</sup>

A variety of reasons have been offered for Rabbenu Gershom's *cherem*. Some said that it was to protect women from being abused and exploited by powerful, unscrupulous and immoral individuals. Others suggested that it was to preserve domestic tranquility with one spouse rather than have quarrels amongst rivals in a polygamous household. Economic considerations were mentioned by other rabbinic authorities, since in the Diaspora the economic stability of the Jews was extremely precarious. Further, the fact that the non-Jewish society around them had banned polygamy was also stated as a cause for the *cherem*, in order not to jeopardize the state of wellbeing of the Jewish communities.<sup>14</sup>

It should be pointed out that Rabbenu Gershom's *cherem* was not accepted universally by all Jews, nor was it intended as a

permanent restriction. Only Ashkenazic Jews living among the Christians accepted the *cherem*, while the Jews who followed Sephardic law (primarily in Spain, North Africa, and other lands under Moslem dominion) did not. According to Rabbi Shlomo ibn Aderet, the great authority of medieval Spanish Jewry, the *cherem* was not accepted in Spain and other countries. Thus, historically, it became known that Sephardic Jewry did not adhere to the ban of Rabbenu Gershom. However, in actual practice, it seemed to be the prevailing *minhag* among many Sephardim that at the time of marriage, the husband would take an oath that he would not take another wife while married to his first wife. This made matters much less complicated in a situation where the wife became incompetent or unavailable for delivery of a *get*. The husband could approach the rabbinic court for permission to take another wife by the procedure of the dissolution of his oath, and the Beth Din would grant such permission after having thoroughly investigated the circumstances.<sup>15</sup>

Since no *cherem* of Rabbenu Gershom was in force within their communities, the Sephardic authorities have had no need to seek extraordinary remedies in situations where the ban needs to be circumvented.

Considerable debate exists about the severity which ought to be attached to the *cherem* of Rabbenu Gershom. Since the bans were accepted and regarded by the Jewish communities as exceptionally severe *issurim*, virtually on the level of an *issur* derived from the Torah itself, we must be very strict in its enforcement according to some authorities. However, others argue that the innovations enacted by Rabbenu Gershom and his assembly are no different than any other rabbinic strictures that have been instituted throughout our history. Thus, in case of doubt (*safek*), we should follow the accepted legal practice to be lenient with respect to application of rabbinic rules (*safek rabbanan le-kula*).

Further, it should be noted, even among those who accepted

11. משנה בימות קרי'א ע"ב.

12. עין רמ"א אבן העזר קט"ז:ד' וקיי"ט.

13. שבות יעקב א"קב.

14. אוצר הפוסקים אבן העזר א' י"ב.

15. הכלל יצחק J. כ"ו (ר' יצחק הרצוג) פסד יצחק, נושא "חרם רבנו גרשום".

his *cherem*, Rabbenu Gershom intended his *cherem*, to be in force only until *sof elef hachamishi*, the year 1240.<sup>16</sup>

Thus, there are those who maintain that adherence to the ban against taking two wives is, nowadays, only a *minhag* and does not have the force of a *cherem*. Others note that about a hundred years before the expiration of the ban, Rabbenu Tam, Rashbam, and an assembly of their colleagues the Tosafists, as well as other leading representatives of the Ashkenazic communities met and declared anew their acceptance of the various *charomim* promulgated by the assembly of Rabbenu Gershom. This renewal of the bans was accepted without any expiration date being stipulated; thus, most leading rabbinic authorities maintain that the *cherem* is indeed in full force today. However, since there are those who consider it only a *minhag*, this might be a factor in arriving at a lenient halachic ruling in case of dire necessity.

### Halachic Precedent For The Cherem

The introduction of a *cherem* such as Rabbenu Gershom's has halachic precedent and is within the acceptable bounds of halachic development. The Talmud presents us with a number of situations where the sages appear to uproot a law that is formulated in the Torah. Perhaps the most well-known of these situations are the rabbinic prohibition of sounding the *shofar* or of fulfilling the mitzvah of *lulav* should Rosh Hashonah or Succot occur on Shabbat. The reason for the restriction is quite popularly known: "lest he inadvertently carry the *shofar* (or *lulav*) four cubits in the public domain."<sup>17</sup> Thus, although the Torah ordained the mitzvah of *shofar* and *lulav*, the rabbis forbade its fulfillment on Shabbat.

### Problems Resulting From The Cherem

For all its demonstrable value, the *cherem* has created several problems. The *Otzar Haposkim* offers a fascinating overview of

the many questions that have been raised in the application of the bans of Rabbenu Gershom. We will consider some of the problematic situations.

Essentially the problems center about situations where the wife cannot or will not function as a wife, such as a woman who has become mentally incompetent (*shotah*)<sup>20</sup> or who refuses to act in a manner befitting a Jewish wife (*moredet*) or who simply disappears. Prior to Rabbenu Gershom's *cherem* the husband could, theoretically, marry a second time. But with Rabbenu Gershom's *cherem* in force this option is now denied to him. Should he ignore the *cherem* and marry another woman, halacha demands that he divorce one of the wives.<sup>21</sup>

To alleviate the plight of the husband in certain situations there was devised the *heter meah rabbanim*, a rabbinic release from the rabbinic ban against polygamy.

### Heter Meah Rabbanim

The *Kol Bo* writes:

The excommunication ban which Rabbenu Gershom decreed [not to marry more than one wife] is not to be lifted except with the approval of one hundred sages from three communities and from three countries such as Aragon, Lombardy, and France. They should not agree to remove it until and unless they see an unquestionable and clearcut reason for such leniency, and also that that particular case should be clearly defined. . . . And her *ketubah* should

16. בית יוסף אבן העזר א. שולחן ערוך שם א"י.

17. ראש השנה ביט ע"ב. סוכה מ"ב ע"ב. "ויורה שמא יטלנה ויעבירה ד' אמות ברשות הרבים."

20. How to determine what constitutes mental incompetency is another matter altogether. In general, the Beth Din would determine whether this incompetence has created a situation that has disrupted the normal marital relationship, although the woman did not display every one of the signs of *shotah* (mentally disabled woman) described in the Talmud (*Divrei Chaim* II:41; *Maharsha* I:21).

21. אבן העזר א. רמ"א י'.

be guarded and kept either in collateral or cash in the possession of a trusted individual.<sup>22</sup>

R. Joel Sirkes (*Bach*) writes in the name of his teachers and predecessors an opinion that is representative of the prevailing view, that whenever such problems develop between husband and wife they should first be referred to the leading rabbinic luminaries of the generation; if permission was given to take another wife it could only be enacted after the procedure of *heter meah rabbanim*.<sup>23</sup>

The general procedure for this *heter meah rabbanim* is as follows: The Beth Din first thoroughly examines the claims of the husband as to whether indeed his wife has degenerated to the point of *shotah* or whether she indeed has acted as a *moredet*. Further, in the former case they would have to determine that her illness is irreversible, and in the latter case that she is incorrigible. The details of the particular situation must be clearly recorded, together with the Beth Din's reasons why Rabbenu Gershom's *cherem* should be waived and the husband permitted to marry a second wife. All of this is then circulated among one hundred Torah scholars for their further examination and their endorsement of the step to be taken.

When situations of this kind are presented to these rabbis, they discuss and analyze every aspect and all the ramifications of the case before approving any ruling that would in any way contravene the very ban itself. After points of leniency are found they explain their arguments, which basically include that the very ban itself was subject to the statute of its own limitations, (i.e. to the end of the fifth millenium, the year 1240,) and further that Rabbenu Gershom did not intend his *cherem* to be in force in the unfortunate situation of the case at hand.<sup>24</sup> However, it should be emphasized that over the centuries careful scrutiny was applied to every aspect of every particular case in determining whether the

*heter meah rabbanim* could be utilized or not, or even in some circumstances, whether it was even necessary.

One of the first decisions which has to be made by the Beth Din is to determine which legal remedy to apply to the given situation. After all, there are two ways to help a man who has arrived at an irremedial impasse in his marriage—either he may be given permission to divorce his wife against her will (*get baal korchah*) or he can be allowed to marry a second woman while still married to the first. Both these avenues are open to him according to the Torah, and it is only the rabbi who forbade him to do either; therefore they can also release him from their ruling.

Some rabbis<sup>25</sup> have argued that it is preferable to allow him to divorce his wife against her will, since there is some basis for this in the Gemara; furthermore, the divorce is a one-time act of defiance of the *cherem* of Rabbenu Gershom, but if he were to take a second wife, then every single day he transgresses the *cherem* which forbids being married to two women at once. For this reason, they argue that if the Beth Din decides that he must be granted relief from his situation, it should be through a *get* issued without the woman's consent. However other rabbis<sup>26</sup> argue that halachically it would be preferable to grant him a *heter meah rabbanim*—they find that the other *cherem*, against divorcing a woman without her consent, has a wider range of acceptance and validity, because even Sephardic Jews more or less consented that they would not allow a man to divorce his wife against her will, while they never accepted the ban against two wives. Since the latter then is not a universal Jewish custom (*minhag she-pashat bechol yisrael*) it is technically easier to issue a waiver for it. Yet a third group of rabbis<sup>27</sup> finds no difference in either course and suggests that it all depends on the local custom which remedy is followed.

For what reasons might it be argued that Rabbenu Gershom,

22. כל בו קט"ו. וגם אוצר הפוסקים אבן העזר א"ח.

23. ב"ח סוף סי' ו'.

24. רכ"ב משנ"ה. הנהגתו לשיע' שם.

25. אוצר הפוסקים א. ס"ק ס"ח אות י"ב. Are there any people for whom no *heter* would be given? See ין העזר ר"ה.

26. שם.

27. שם בשם כמה אחרונים.

in promulgating a *cherem* against having two wives, never intended the *cherem* to apply to a particular case? That is, on what basis may a *heter* signed by one hundred rabbis be issued? There are a number of areas which are traditionally considered to be outside the intent of the *cherem*.

*Banim*: If the effect of the *cherem* is to prevent a man from fulfilling the biblical command to have children (which is an obligation primarily for the man, not the woman), then there is strong reason to excuse him. Already in the Gemara<sup>28</sup> the rabbis teach that if a couple is married for ten years and has no children, they should be divorced. If she refuses to accept the divorce, he will never be able to fulfill the mitzva of having children. In such a case, then, the rabbis will rule that the *cherem* was never intended here and allow him to override the *cherem* and divorce her against her will, or in some cases, issue a *heter meah rabbanim*, depending on the circumstance.

והיה בכל מקום שיש ריחוי מצוה כגון ששהה עם אשתו י שנים ולא ילדה, אמנם יש חילוקים וס"ל דחרם ר"ג נוהג אפילו במקום מצוה, ואפילו במקום יבום וגרוך לחלוין.

And this is the law in every situation where a mitzva cannot be performed, as for example, if he lived with his wife for ten years and she did not give birth. However some disagree and argue that the *cherem* of Rabbenu Gershom applies even in the case of a mitzva, even *Yibum*, and he has to make *chalitza*.<sup>29</sup>

*Yibum*: According to Torah law, if a man dies without issue, it is incumbent upon his brother to marry the widow and father a child with her. This is the mitzva of *Yibum*. What if the brother

28. יבמות ס"ד.

29. שם. ס"ק סי"ח אות י"ב, ררכי משה א"י, רמ"א א"י.

According to halacha, a man has not fulfilled the mitzva of having children until he has fathered a boy and a girl, but there are no halachic precedents for allowing him to circumvent the *cherem* if he has one child already, for even if he has not fulfilled the mitzva of having children completely, he is not given permission to override the ban of Rabbenu Gershom.

already has a wife? Although Ashkenazic Jews do not customarily allow *Yibum* but rather go through a release ceremony (*Chalitzta*), the Ramo records two opinions about what to do.<sup>30</sup> Basically, the question is, did Rabbenu Gershom intend his *cherem* where a mitzva is involved or not

*Issur*: The reverse situation of mitzva is *issur* – let us say that man and woman are married but actually, according to halacha, they are not allowed to be married; for example, a Cohen married to a divorcee. Now he repents and wants to divorce her, but she refuses to accept the Jewish divorce. Does the *cherem* of Rabbenu Gershom apply in this situation or do we permit him to divorce her against her will? This is one of the many situations which is discussed frequently in the halachic literature.<sup>31</sup>

There are other situations which also raise the question if Rabbenu Gershom ever considered that his *cherem* ought to apply, because actually a divorce is mandated by Jewish law in these cases. If a woman refuses to observe the Sabbath, or if she won't prepare kosher food for him, or other situations where he finds it impossible to live with her, there are many rabbis who see reason for issuing a *heter meah rabbanim* (if she refuses to accept a *get*) or to divorce her against her will.

Thus we find that the *cherem* of Rabbenu Gershom has never had the effect of a monolithic law in Judaism, overriding all other concerns. There are even those who argue that the *cherem* was only instituted for *perutzim*<sup>32</sup> (lowlifes) and was never meant to trap a man in a marriage with a woman with whom he cannot live a life of Torah and mitzvoth. This brings us to another important category of exemption from the *cherem*.

*Moredet*: The word "*moredet*" translates as a "rebellious wife", but halachically it indicates a woman who refuses to continue in a conjugal relationship with her husband and refuses to accept a *get* from him (*Mona-at mimenu tashmish*). In talmudic

30. א"ח.

31. אוצר הפוסקים אי"סק סי'ג אות ג.

32. שם.

times, such a woman was subjected to social or financial pressures (her recalcitrance was reported to the community, or she could be divorced without receiving the money owed from her *ketubah*). However, such recourse is no longer feasible, yet all agree that the man is entitled to find another wife. Some authorities<sup>33</sup> would even allow him to marry another woman without a *heter meah rabbanim*, arguing that the ban of Rabbeinu Gershom does not even apply in this situation. However, since this is not a universally accepted view, it is customary to give him a *heter meah rabbanim*.

The same is true of a woman who simply abandons her family, who is considered a *moredet*. But what should be done if, although she left him, he now knows where she is? Is he obligated to try to reconcile with her before getting a *heter meah rabbanim*, or, according to those who maintain that the *cherem* does not even apply, can he get remarried without even divorcing her? In other words, just because she has left him, has she automatically forfeited the protection given her by the *cherem*, not to be divorced against her will? Can she refuse to accept a divorce and perhaps return to her home, or is he automatically exempted from the *cherem* as soon as she leaves him?

A variation of the theme of *moredet* is the case of a woman who is not living with her husband due to a disagreement which they have; upon the resolution of the disagreement, she would be willing to continue as his wife. In order to resolve the disagreement, he asks her to appear with him before a rabbinic court (Beth Din) to resolve the matter. She refuses to go, which is in itself a transgression against Jewish law. Does that refusal place her in the category of a *moredet*? Is he thereupon entitled to receive a release from the hundred rabbis and take another wife, or does he have to continue to try to resolve the conflict between them? Just how much he is required to do to find a resolution to his marital problems is a subject often discussed in responsa

literature;<sup>34</sup> it is clear that a *heter meah rabbanim* is only issued after protracted efforts prove to be irredeemably futile.

In one case on record,<sup>35</sup> a husband and wife had gone to the Jewish court over some issue, and the court had ruled in her favor. Subsequently, the husband approached the court with new evidence and asked for a re-hearing. But the wife refused to come a second time. Nevertheless, the rabbi would not label her as a *moredet* or a sinful person for refusing to come, because they understood that she was acting only out of the mistaken belief that a person is not required to appear before a court after the case has been resolved. She is only a *shogeget* (mistaken), not a *moredet* (rebel).<sup>36</sup>

What emerges from this discussion is an awareness that if the woman refuses to listen to him, not out of spite but out of a genuine — even if mistaken — perception that she is within her rights, she cannot be labeled *moredet*, and the court generally tries to find some other way to reconcile the differences between the two partners other than overriding the *cherem* of Rabbeinu Gershom.

What if a woman is captured, and he doesn't want to pay the ransom? Can he be given a *heter meah rabbanim* on the claim that his wife is not living with him and he is entitled to take another? Of course not.<sup>37</sup> Similarly, if a woman is sick (whether physically or mentally) and cannot continue her conjugal relationship, but he does not want to pay for the medical treatment to cure her, he cannot approach the court for *heter meah rabbanim*. On the other hand, if her illness is irreversible and prevents them from having a normal married life, there are times when the Beth Din will issue a *heter meah rabbanim*; but a great deal depends on the circumstances.<sup>38</sup>

There are times that couples have irreconcilable differences,

34. שם פ"א אות ט"ז.

35. שם.

36. P. 310 בהשמטות ט"ז. שם בהשמטות ט"ז.

37. שם.

38. שם ע"ג אות ז"י.

33. רמ"א אבן העזר ע"ד כ.

but that is not usually sufficient cause for the Beth Din to grant a *heter meah rabbanim* if the woman refuses to accept a *get*. Some of the cases recorded in halachic literature include disputes as to where to live — he wants to move to another city where he can get a better job, but she won't go along. On the other hand, she won't accept a divorce because she wants to stay married to him. This is not a case where the rabbis are quick to grant a *heter meah rabbanim*; rather they advise the couple to work out their situation themselves.<sup>39</sup> Sometimes, a man wants to move his family to Israel, but she doesn't want to go. Despite his claim that she is preventing him from fulfilling the great mitzva of living in the Land, the rabbis do not give him a *heter meah rabbanim* in such a case, nor do they allow him to divorce her against her will, because they realize that it can readily be used as an excuse by anyone who wants to divorce his wife.<sup>40</sup>

Thus, although respecting the principle of the ban against polygamy, historically the *heter* has allowed the husband to marry another wife in instances where the first wife became mentally incompetent to accept a *get*, or where she was in the category of those whom it was necessary to divorce, such as an apostate, or in infrequent situations where rabbinic opinion judged that the *cherem* was never intended to apply.

Not all sages have been willing to employ the *heter meah rabbanim*. Rabbi Shlomo Kluger, although displaying much leniency in other areas of Jewish law, was very adamant in his refusal to participate in any *heter* involving the *cherem* of Rabbenu Gershom. His reasons were that he trembled at tampering with the stringency of "*divrei sofrim*," rabbinic prohibitions. Moreover, he felt that contemporary generations could not be trusted as to their sincerity and motivation in seeking to obviate the edict of Rabbenu Gershom.<sup>41</sup>

The selection of the figure one hundred as the number of *rabbanim* required to lift the *cherem* is a matter of discussion

among various authorities. Some<sup>42</sup> suggest it has its roots in the statement of the Talmud: "A hundred who sat in judgment,"<sup>43</sup> which represented the largest gathering of a judicial body or some form of Sanhedrin. Others cite the *Sifri* "...and all of the elders of that city, even a hundred..."<sup>44</sup> The use of the word "all" in close proximity to "even a hundred" implies, according to the Talmud and *Sifri*, that one hundred is equivalent to all. In a practical sense, it means that one hundred rabbis lifting Rabbenu Gershom's *cherem* is tantamount to all the rabbis of that generation agreeing to its removal.<sup>45</sup>

Some additional comments should be made here in regard to the issuance of the *heter meah rabbanim*.

1) In regard to the matter of mental disability, besides the *heter*, a *get* has to be written and transmitted to a person appointed as the wife's agent in the eventuality that she recover and thus be enabled to accept the *get*. This *get* has to be ordered and given to the agent *prior* to the issuance of the *heter*. If the wife should recover before her husband actually remarries, then quite obviously, the original *cherem* remains in force.<sup>46</sup>

2) Should the first wife recover fully from her disability after he husband received the *heter* and remarried, and should she at that time refuse to accept the *get*, there is a difference of opinion as to how to resolve this impasse. R. Yitzchak Elchanan of Kovno was of the opinion that the agent can deliver the *divorce baal korcha* (against her will) since under these circumstances, Rabbenu Gershom issued no ban on a *get baal korcha*.<sup>47</sup> Others have ruled that the *get baal korcha* should not be invoked, but rather that pressure should be brought to bear against her by various means such as withholding all financial support and maintenance.<sup>48</sup>

42. משיב רכב IV, 4. הובא באוצר הפוסקים שם.

43. הוריות ג' ע"ב.

44. ספרי, שופטים כא"י.

45. אבן זכרון II, 62. הובא באוצר הפוסקים שם.

46. פתחי תשובה אבן העזר א"ט"ז; אוצר הפוסקים י"ד.

47. עין יצחק ב'.

48. בית יצחק י"ג: י"ז; אבני נזר י"ז, אוצר הפוסקים י"ד.

39. שם.

40. שם.

41. האלף לך שלמה, אבן העזר ג'.

3) The issuance of the *heter* does not absolve the husband from any further responsibilities towards his first wife. The mentally-incapacitated wife has to be cared for by her husband and protected from abandonment. Proper financial arrangements have to be made for her welfare and support, either by a sufficient sum of money being placed in escrow by her husband or other member of the family or, according to many authorities, by confining her in a proper institution or hospital for her care and protection, and not necessarily in private, rented quarters.<sup>49</sup> In any case, such measures have to be clearly arranged and approved by the Beth Din.

4) On the matter of her *ketubah* (marital contract) the husband must also guarantee its payment. If he cannot produce the cash to be placed in escrow for the *ketubah*, a promissory note is considered to be acceptable as a guarantee of payment.<sup>50</sup>

### Some Representative Examples

Rabbi Moshe Sofer in the 19th century was presented with the case of a wife who, being mentally ill, was taken to some distant city for a possible cure. After a lapse of some time, a person came from that city to report to her husband that she had died. As a result, the husband was interested in remarrying on the basis of the testimony of this one individual. R. Sofer upheld a ruling of the *Beit Shmuel*<sup>51</sup> who affirmed the force of Rabbenu Gershom's *cherem* as "*itchazeik issura*," a full-fledged prohibitive state, which cannot be reversed by the testimony of one witness. R. Sofer observed that since the woman in question was mentally incompetent the option of the *heter meah rabbanim* was available. Therefore, he concluded, though it involved bother and effort, a *heter meah rabbanim* must be obtained rather than permitting the husband to remarry on the basis on the testimony of one person.<sup>52</sup>

Although the case of a rebellious woman (*moredet*) is one of the situations calling for a *heter meah rabbanim*, some rabbis have

held that in certain cases no *heter* at all was required, since the *cherem* itself did not obtain.<sup>53</sup> Rabbi Jacob Loberman of Lisa was of this opinion in the case of a woman who had abandoned her husband and had refused to accept a *get*. His ruling had the concurrence of R. Akiva Eger.<sup>54</sup> In referring to this responsum, R. Naftali Yehuda Berlin of Volozhin ruled that no *heter* was required in a similar case of abandonment, but he did require that a *get* be written and given to some individual designated by Beth Din to accept it on behalf of the wayward wife (*get al yedei zicui*), in order to spare her violating the severe halachot involving a married woman (*eshet-ish*).<sup>55</sup>

### Conclusion

There are literally dozens of cases scattered throughout the vast responsa literature that examine and probe all aspects of the *cherem*, its application, and the use of the *heter meah rabbanim*. What emerges from a careful study of such cases is the concern by our sages to reinforce the original intent of Rabbenu Gershom's decree, that is, the protection of the woman's rights and dignity within a monogamous family structure. The occasional comment of some within the Jewish community claiming that the use of *heter meah rabbanim* is merely a convenient tool in the hands of some dissatisfied husband runs totally counter to fact and to the entire functional halachic process. The Torah community has always relied on the most competent halachic authorities of the highest moral integrity to rule on these and other difficult and agonizing questions. Deep, abiding faith in the halachic process being capable of resolving many difficult situations has been and will continue to be the guide for Torah living.

53. רמ"א א"ח.

54. נחלת יעקב ו'.

55. משיב דבר, אבן העזר ה'.

49. אוצר הפוסקים שם ב"ד.

50. שם.

51. אבן העזר א', אות י"ג.

52. חתם סופר, אבן העזר ב'.