

Letter in Response to R. Lokshin in the Matter of the Applicability of *Yibbum*

May 20, 2007

To the editor,

I'd like to clarify a point in the interesting article about levirate marriage by Rabbi Martin Lokshin (JOFA Journal Summer 2007). Comparing to the *p'shat* of the Tora, Professor Lokshin states in his article that:

But the rabbis say that the law is in force only if a man dies without leaving a living *child* (see *Sifre* Deuteronomy 288, in which a woman is considered not subject to the law of the levir even if the only surviving descendant of the deceased is a daughter's daughter.)

He then rephrases this:

In other words, according to accepted rabbinic interpretation and all halakhic authorities, a widow who has a daughter but no son is not subject to the law of the levir. For such a woman, the law of Leviticus 18:16 would apply, and her dead husband's brother would not be allowed to marry her.

Rabbi Lokshin's rewording, though not incorrect, can be misleading (I'm sure not intentionally) in that it does not tell all the facts. That it is misleading becomes apparent in the following paragraph:

The rabbinic explanation that the law of the levir applies only to women who have no children, male or female, essentially undercuts the possibility of seeing the law in simplistic patriarchal terms. If unattached women with money represent a danger to the patriarchy, the law ought to apply even if the widow has a daughter. If the law is meant to protect unattached women from the abuses possible in a patriarchal society, surely the widow with a daughter and no sons would need at least as much protection as the childless widow!

It must be pointed out that whether the law applies is a matter of whether the deceased has any living offspring, male or female, from any Jewish wife – (any of) the current widow(s) or a previous wife (deceased or divorced), or from a casual non-marital relationship, even if the child is a *mamzer* (*Y'vamot* 22b). Thus, the current widow(s) may have no children and still not be subject to the law.

Indeed, this point furthers Rabbi Lokshin's excellent argument in the matter of the patriarchal nature of the laws of levirate marriage. However, my point is only to clarify the limitations of application of the law.

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