The Agunah Issue: Shifting the Balance of Power
Robyn Shames

Introduction:

The Agunah today is powerless to change her status. This is obviously a problem for each individual woman who finds herself in this situation, but it must be seen also as a much larger problem – as a blight on our religion and a problem of the entire Jewish people, who should always strive to be, “A light unto the nations.”

The core of the problem lies in the prevailing implementation of Halacha; that the husband has the power to withhold the Get in a Jewish divorce, as it must be given of his own free will. Rabbis today do not use the power they have within the confines of Halacha to promote available systemic solutions to the problem and the current rabbinical courts, at times, abuse the power given to them by the State (or the community) by forcing women to pay for their Get.

This paper is essentially about power; who has more, who has less, who may be abusing the power they have, and how do we shift and change this balance of power and powerlessness in order to promote a systemic solution to the problem?

As the executive director of ICAR* for the past 10 years, I have been party to various attempts to make such changes. My goal is to provide some insights as to what may be learnt from our experiences, those that were successful, and those that were less so, in order to apply them towards any future efforts. First, I will address some core differences between Israel and most countries in the Diaspora as they affect where the balance of power lies and who can bring about change.

The Diaspora and Israel

The main difference between most countries in the Diaspora and Israel is the fact that, in Israel, there is no separation between Religion and State. This has implications both on who suffers from this problem and on who has the power and responsibility for implementing systemic solutions.

In the Diaspora, many see the plight of the Agunah as an internal Orthodox problem as the Reform and Conservative Jews have implemented their own systemic solutions to the problem. In Israel on the other hand, all Jews must marry and divorce in the State Orthodox rabbinical courts, and thus it becomes a problem of the entire society. Consequently, the claim that the Agunah issue is a violation of basic human rights is much stronger in Israel, compared to in the Diaspora. Nevertheless, we are a very conservative and traditional society in Israel and I think it may actually be harder to play the human rights card here, as opposed to the Diaspora, and it may actually be easier and more acceptable to put forward such an allegation in the United States, due to cultural sensibilities. Given Israeli sensitivities regarding pressure from Jews overseas, this may indirectly encourage change here in Israel as well. This was a tactic used recently and successfully by the Women of the Wall.
The more important distinction between Israel and the Diaspora is with regard to who has the power to affect change, who can influence those decision makers, and who bears the responsibility for the fact that the Agunah issue has not yet been solved.

In the Diaspora, the Jewish communities choose and support their rabbis financially – it is a voluntary system. It seems, therefore, that the community has a lot of power and influence over their rabbis with regard to promoting and implementing systemic solutions to the problem, and that the community also bears the responsibility to do so, whereas the government has little or no power or responsibility at all in this matter.

In Israel, in addition to the power and responsibility of communities and their rabbis, the official bodies of the State can be held responsible for the fact that the Agunah problem has yet to be solved. These bodies include the civil legislature (the Knesset), the State Rabbinate and the courts – both civil and religious. These bodies have the power and legal means to implement change.

How do we influence those that have the power to implement solutions to the Agunah problem, whether in Israel or the Diaspora? I will concentrate on what ICAR has tried to do in Israel, with regard to the power given to the husband, the rabbis, the rabbinical courts, and the government in relation to the Agunah problem.

**The Power of the Husband to Withhold the Get**

My personal dream is to see this ultimate power given to the husband in a Jewish marriage redressed and solved within the confines of Halacha so that Jewish marriage will be based on the values of equality and mutual respect. Essentially all of the preventative solutions within Halacha, such as conditional marriage and a conditional Get as well as prenuptial agreements, are geared towards limiting and reducing this ultimate power of the husband. Admittedly, ICAR has done very little on this particular issue, and what we have done has had only limited success. While ICAR has promoted the signing of prenuptial agreements to avoid Get refusal through both education and public awareness campaigns, this does not change the core power of the husband to refuse to give the Get, and, in fact, very few couples in Israel actually sign such agreements to date. We have also supported legislative reforms aimed at giving the Knesset the right to revoke the marriage contract (Hafkaat Kidushin), but all attempts to gain support both from the public and the legislature have failed due to widespread opposition from both secular and religious factions.

There is little doubt that this particular imbalance of power lies at the core of the issue of the Agunah. I think that much thought and effort should go in to how we can change this in order to base the Jewish marriage at the outset on values of equality and mutual respect.

**The Rabbis’ Power to Implement Solutions**

We all know there are possible solutions out there, both preventive and after-the-fact solutions. Jewish scholars and some brave rabbis have written about them and how all, or some of them, can and should be implemented immediately. Why has this not happened? How can we make it happen?
Shifting the Balance of Power

Robyn Shames

Ultimately, rabbinical scholars, men and women, are the ones that have the power to promote these solutions in order for them to become acceptable and implemented by rabbis in the rabbinical courts. One possible change can be the establishment of independent rabbinical courts where the dayanim are committed to implementing these systemic solutions. Since it is currently illegal in Israel to establish private courts, ICAR has concentrated on advocacy to get dayanim who are more open to implementing these solutions appointed to the state rabbinical courts. In this, we have had some limited success. Some of the recent court appointees have implemented some solutions on a case-by-case basis, something I hope you will hear about in this conference from those involved in these cases.

There has been a great deal of opposition and many obstacles on this path. The appointment of dayanim is a very political process in Israel and the Ultra-Orthodox have most of the power and influence as court appointments bestow prestige, and, more importantly, financial security. Moreover, women in general have historically had little say in the matter of such appointments and only a few activists and politicians see this as a problem that needs fixing. Following are a few of the obstacles we have faced and some of the changes we have tried to make:

Women are currently excluded by law from being rabbinical court judges, and even from serving as senior executives in the rabbinical court administration. ICAR has supported the demand to allow women to apply for the position of Director General of the rabbinical courts, including support for petitions filed in the High Court and for legislative reform initiatives (that to date have been unsuccessful).

Both during the appointment process and during his tenure, there is less accountability than in civil court appointments. ICAR has raised awareness as to the importance of the identity of the particular dayan and his application of Halacha to the outcome of the divorce case and their overall approach to the issue.

The election process of the dayanim is very political and the Ultra-Orthodox religious establishment holds the balance of power. The ten-person committee that appoints the dayanim has a built-in majority of Ultra-Orthodox men (the recent committee was comprised solely of men) – ICAR has promoted the inclusion of women in this committee for many years with limited success. First through advocacy (in the Bar Association) and recently, through petitions to the High Court and legislative reforms (both of which are still pending).

Candidates who have publically written about the implementation of systemic solutions have been boycotted by the majority of the members of the appointment committee – ICAR is active in advocating for the appointment of suitable dayanim, and fighting against the appointment of dayanim that have a history of encouraging extortion and a hard line bias against women in the district rabbinical courts. Unfortunately, there is little interest in the public in this issue and we have to overcome the indifference to issues considered “religious.”

Whereas these may seem by some to be little steps that have done little good, I do not believe that is the case. It is important to remember that we are working within a very difficult and conservative environment and any change is a success.
The Rabbinical Courts' Abuse of Power:

I would like to state at the outset that many rabbinical courts and individual dayanim do a good job. They respect women’s rights, do not allow husbands to make unreasonable demands and conditions in order to agree to give the Get and reach decisions in cases in a timely fashion, including the issuing of a Chiuv to give the Get and ordering the implementation of legal sanctions against recalcitrant husbands.

Unfortunately, there are also some courts and dayanim that act in the opposite manner, not because they are evil, G-d forbid, but because they truly believe that according to their interpretation of Halacha, they are obligated to behave in such a manner and if an individual woman, here or there, is harmed, then that is price they are willing to pay. I will never forget a prominent dayan, standing up at a conference I attended, saying that his job was to, “Uphold Halacha,” and not to solve the plight of the poor woman standing before him, even though his heart went out to her. I put forward the proposition that such dayanim should not be appointed to sit on the State rabbinical courts and that they are abusing the power given to them.

As the rabbinical courts in Israel are fully financed by the government and as Israeli Jewish citizens are forced to go to these courts for their divorce, even if they marry in a civil marriage overseas, the power to implement changes in these courts is also in the hands of the Knesset. ICAR's main successes in promoting any type of systemic solution to the problem of the Agunah were not community based, but rather were those that forced changes and improvements on the state religious establishment by the Knesset and the government. Moreover, as the rabbinical courts are part of the legal system, the power to implement change is also in the hands of civil courts that can force implementation of certain civil laws and adherence to some basic values of equality and human rights.

Most of ICAR's efforts are geared towards limiting the power and jurisdiction of the rabbinical courts through legislative reforms. We have had some successes and are in the process of promoting additional legislative reforms in this area. We are optimistic for this new government but realize that we still face much opposition and many obstacles on this path as well. Following are a few examples of ICAR's efforts in this area (including those of our member organizations), some of the obstacles we have faced, and how we have tried to overcome them:

The High Court seldom intervenes in decisions made by the rabbinical courts - member organizations in ICAR continue to petition the Supreme Court evoking claims of human rights abuse, abuse of power, and so forth, and to raise the issue in professional conferences, all with limited success.

The High rabbinical court holds no power of precedent over the regional rabbinical courts so that each regional court is free to make independent rulings with no inherent consistency or accountability as exists in the civil court system. Member organizations in ICAR publish a magazine – The Law and its Decisor – with detailed cases from the rabbinical courts so that both good and bad decisions are made known to the public.

The rabbinical courts are often adversarial towards decisions rendered by the civil family courts and try to circumvent their decisions in the name of Halacha:
- ICAR has succeeded in disconnecting the Get from the division of the marital property through an historical legislative reform thus limiting the potential for extortion at the time of the Get.
- ICAR is working to end the "race for jurisdiction" between the civil and rabbinical courts that have parallel jurisdiction in matters ancillary to divorce, such as child support, child custody, and division of marital property. This too is geared towards limiting the jurisdiction of the rabbinical courts where women statistically receive less financially than in the civil courts.
- Removing incentives to turn to the rabbinical courts. The court fees in the rabbinical courts are considerably lower than the civil courts. We are working to equate the fees, again so that less couples will choose the rabbinical courts merely due to these fees.
- Preventing the rabbinical courts from changing civil family court decisions on issues of child support. ICAR is aware that women are often pressured into giving up their legal rights in order to receive their Get. Therefore, we are working on a legislative reform that will not allow the rabbinical courts to change the civil court’s decision, and will not allow the parties to the suit to agree to change the decision of the court, without going back to the court that rendered the decision.

Summary

The plight of the Agunah is a blight on all society and a "Hillul HaShem." It is not a "women's issue," and not "a religious issue," but rather that of the entire society. The fact that ICAR has succeeded in working together for so many years, uniting diverse organizations such as Reform, Conservative and Orthodox organizations as well as human rights organization and academic centers, is in of itself a success.

Working as a coalition has many advantages. It enables the involvement in the issue of many diverse organizations and institutions that the issue of Agunot may not be on the top of their list of priorities, but that are nevertheless deeply concerned and supportive. Moreover, it also enables us to reach and influence a wide and varied audience and to benefit from the advice and guidance of the top professionals in the field. The long-term existence of ICAR is in of itself a big success, but make no mistake – it is not easy and there are many challenges and obstacles to overcome.

I think it would greatly benefit us all to remember an African proverb, which may be useful to remember when planning our future steps to promote systemic solutions to the problem of the Agunah both in Israel and in the Diaspora:

“If you want to go fast, go alone. If you want to go far, go together.”