

The Husband's Grounds for Divorce

By Reuven P. Bulka

No Fault

The most elementary grounds for divorce is basically of the no fault variety. It is commonly assumed that no fault divorce is a late 20th century discovery, but this is not the case. Long before, Jewish law allowed for no fault divorce. If there were irreconcilable differences, if the couple was simply incompatible, and they decided, after all their efforts, that they could not make a life together, then divorce could be finalized.

It was not necessary to prove adultery, or any other serious charge of marital malpractice, in order for husband and wife to terminate their union. Thus, even though divorce is not a happy event, in situations of mutual agreement it can be relatively straight-forward.

Fault

Divorce becomes more complicated when only one of the partners wants the divorce, or demands the divorce from the other. This type of litigational complexity arises from charges by one or the other of the partners that the spouse has been derelict in marital responsibilities.

There is a precise *halakhic* (Judeo-legal) inventory of the circumstances when either the husband or the wife has the right to a divorce, a right which thereby obligates the other partner to cooperate. The majority of problems arise when the husband refuses to cooperate, and to a lesser degree when the wife, who now cannot be divorced against her will, refuses to cooperate. Rabbinical courts do have some muscle, but lack the real force of the Bet Din (Rabbinical Court) of yesteryear. Rabbinical Courts can impose sanctions, and in situations of husband or wife intransigence, it would be most helpful for the court to use all of its muscle to make sure that the couple cooperates.

Denial of Basics

The husband may demand the divorce if his wife denies him the benefits of conjugal visitation, what is termed in the Torah as *onah*. This is a fundamental ingredient of the marital union which, if deliberately distorted, destroys the marriage at its very root. Additionally, the wife's desertion without any just cause is also grounds for the husband demanding a divorce. In such instances, when it is clear that the wife is at fault, she also forfeits the *ketubah* (marital contract) settlement.

The *ketubah* settlement is the amount promised by the husband to the wife at marriage, should the marriage break up either through divorce, or the death of the husband. However, when it is the wife who precipitates the break, she is not allowed to gain materially from her causing the marriage's disintegration.

These instances of non-cooperation by the wife, either through denial of *onah* or desertion, give the husband the right to divorce his wife. However, it does not confer upon the husband the responsibility to divorce his wife. It is a right which he may choose not to exercise.

Adultery

The situation of adultery is different. When there are actual eyewitnesses who testify to the wife's adultery, the husband has no choice but to divorce his wife. He may no longer live with his wife, in the face of her own brazen contempt for the sanctity of the marriage, and her failure to protect the integrity of the marriage institution. And it can be nothing but brazen contempt if the adultery took place in the presence of two eyewitnesses.

It should be understood that although adultery is a grievous breach, the type of adultery that would necessitate divorce is a rare type, that which is carried out, after forewarning, in the presence of witnesses. That type of arrogant, contemptuous adultery hardly occurs.

When it does occur, such irresponsible behavior eats away at the very fabric of Jewish life and cannot be tolerated within the marriage. Since it is the community at large that suffers from this type of behavior, neither the husband nor the wife can place themselves above the community by ignoring or sanctioning such behavior. The community is bigger than any individual or any couple.

Not One-Sided

With regard to the denial of conjugal visitation by the wife, or her leaving, whilst the grounds seem to be clear and precise, this is not always the case. It is obvious that there may be legitimate grounds for the wife denying herself to the husband.

One such justification is that the husband abuses her physically or verbally, and she therefore has only contempt for him. The husband cannot then complain that his wife refuses to engage in sexual relations.

Likewise, if the wife leaves the household because she cannot tolerate the husband's continuing physical or verbal abuse, she cannot be blamed. The husband certainly does not have a right to argue for divorce as a consequence of behavior on the wife's part that was precipitated by him.

In this, as in most other instances of contentious issues relative to the suing for divorce, the matter must be adjudicated by a competent Rabbinical Court which is able, through careful and attentive listening, to apply Jewish law to the specific circumstances.

Adultery Different

However, adultery is another matter, for which there is no possible justification. One can understand why the husband's callousness and cruelty could make the wife feel utter revulsion for her partner in marriage, and why

she thus refuses to engage in any intimate expression. However, this does not explain or excuse the wife then sharing herself with another individual outside the marriage.

True, one can understand the wife's being turned off from her husband. But in such instances, the proper thing to do is to confront the issue, and either correct it, or leave the scene permanently via divorce. The sanctity of marriage remains intact even when the marriage itself is shaky. If it were left for each individual to arbitrarily decide at which point in time the marriage is shaky enough that extra-marital relations can be pursued, then understandably the sanctity of the marital union would be destroyed.

When there is suspicion of adultery, with no direct proof or actual eyewitnesses to the adultery, but with legitimate suspicion that the adultery actually took place, the situation is more complicated. Here, the husband has the right to divorce his wife, but he is not constrained to exercise that right.

There are other behaviors of the wife which would give the husband the right to divorce. They include a broad range of actions by the wife, including immodest conduct, the wife's cursing or insulting her husband, her insulting their children or the husband's parents in the presence of the husband, or the wife's hitting him.

Again here the matter is not as simple as it appears. The husband must show bad intentions on the part of the wife. He must be able to prove that her behavior was more than an isolated incident, or reaction to provocation, or even just a temper tantrum. He must be able to show that this was a calculated, well-thought-out, and pre-planned spiteful verbal or physical assault.

It is understood that if the wife's conduct in this manner is in reaction to the husband's being the instigator via his own verbal or physical abuse, or improper conduct, that he can-not then demand a divorce from his wife for behavior that he elicited.

Similarly, the husband may pursue divorce if his wife perverts him with regard to matters of Jewish law. This may pertain if she feeds him food which is not *kosher* (fit to be eaten according to Jewish law), or fools him into marital relations when she is still in a menstrual state.

Here too, the situation is not one-sided. The husband must be able to show that it was intentional religious subversion that was perpetrated by his wife. He must likewise be able to show that he really cares about these matters, that they are not merely an excuse whereby to gain divorce. Thus, a husband who digests a steady diet of cheeseburgers cannot legitimately claim that he wants a divorce because his wife gave him food that was not *kosher*.

Impediments

Another precipitant for which the husband may press for divorce is if the wife has a physical blemish which the husband finds so distasteful as to make it impossible to continue in the union.

However, here the husband may demand a divorce only if he was unaware and could not be aware of this blemish prior to the marriage. A blemish which develops only after the wedding cannot be used as grounds by

the husband to press for divorce.

If the husband and wife have lived together for ten years, and they have no children, he has the right to ask for divorce, so that he should be able to remarry and attempt to fulfill his obligation for procreation. In this instance, the husband is not obliged to pursue divorce. He has this right, and also the right to refuse to exercise it.

These are some of the major issues of contention that may arise in marriage, and for which the husband has the right to seek a divorce.

Spoiling the Meal

Mention should be made of another possible just cause for the husband seeking a divorce. This is the situation of the wife spoiling her husband's food. Obviously, the rate of divorce would be astronomically high, and married life would be a continual pressure cooker, if every spoiled supper or burned breakfast toast could be used by the husband as an excuse for divorce.

The language of the Talmud in this situation seems to focus on the element of spite. The language of this clause is, precisely, that "she spoiled his food" (*Gittin*, 90a). This means that her own food was not spoiled, but that his was spoiled. This would indicate that the wife deliberately spoiled her husband's food but made sure that her own meal was okay. Such culinary spite speaks of the wife's purposeful setting out to ruin her husband's meal, and indicates that the marriage has reached intolerable levels.

Again here, as in most of the other instances of the husband's right to divorce, the wife can counter-attack with legitimate reasons for why she spoiled her husband's food, such as that he used offensive and foul language to her, or abused her, and she was so mad that she took it out on the vegetables or the meat. One can assume that the Rabbinical Court would have nothing but admiration for her restraint, rather than imposing the husband's unwarranted desire for divorce upon her.

Divorce Not Instantaneous

Needless to say, just leaving the matter of an obviously conflicted marriage without intervening to get at the root of the problem would be unwise and irresponsible. When speaking of the husband having the right to seek a divorce, or of the wife's ability to counter the husband's desire for divorce, this does not imply that the Rabbinical Court will behave in a precipitous manner.

The very notion of a get procedure is to fore-stall the instantaneous termination of a marriage. The Rabbinical Court will deliberate, and the first point of deliberation will be to see if outstanding issues between the couple can or cannot be corrected. It is only after this avenue of approach has been explored and found to be futile that the court will entertain the matter of the legitimacy of the claims.

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