NEW *GET* LAWS, PRENUPS, AND SOCIAL MEDIA SHAMING: A GRASSROOTS SOCIAL MEDIA MOVEMENT'S PROPOSALS TO ASSIST WOMEN IN JEWISH DIVORCE

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ABSTRACT

*Due to structural disparities within Jewish law, many Jewish women become "*agunot,*" chained to a dead Jewish marriage due to their husband's recalcitrance to provide a "*get,*" a religious divorce document. Recently, there has been a grassroots movement led by individual Jewish women to assist* agunot*, mainly through advocacy on social media. The movement has primarily advocated for three types of changes to assist* agunot*: (1) passing new legislation, (2) implementing religious prenuptial solutions, and (3) shaming* get*-refusers on social media. This Article evaluates these approaches from Jewish law, secular law, and normative lenses. It concludes that legislative proposals do not help* agunot *due to First Amendment and Jewish legal concerns. On the other hand, carefully shaming* get*-refusers and advocating on social media for the increased use of religious prenups offers the most effective solution to*

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combat the agunah *problem within the bounds of secular and Jewish law.*

INTRODUCTION

Chava Herman Sharabani is civilly divorced and has been legally separated from her ex-husband, Naftali Sharabani, for over twelve and a half years.[1] However, as an Orthodox Jewish woman, Chava, a 33-year-old mother of two, cannot remarry or even date within her faith; Naftali has refused to granted her a *get*, a Jewish bill of divorce that is required to be given from husband to wife in order to end a Jewish marriage.[2] Chava is therefore considered an

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[1] Liana Satenstein, *How Orthodox Women Are Using Social Media to Liberate Each Other From Dead Marriages*, VOGUE (May 5, 2021), https://www.vogue.com/article/agunah-get-refusal-social-media-campaign-orthodox-women ("Herman Sharabani had been legally separated for a decade."); Billy Richling, *Orthodox Women Rally to Break the Chains of Unwanted Marriage, Using Social Media As a Bolt Cutter*, BKLYNER (Mar. 15, 2021), https://bklyner.com/orthodox-women-rally-to-break-the-chains-of-unwanted-marriage-using-social-media-as-a-bolt-cutter ("Chava Sharabani and her husband Naftali were legally divorced over a decade ago."); Avital Chizhik-Goldschmidt, *Is Social Media Fueling a Women's Rights Revolution in the Orthodox Jewish Community?*, RELIGION & POL. (Mar. 30, 2021), https://religionandpolitics.org/2021/03/30/is-social-media-fueling-a-womens-rights-revolution-in-the-orthodox-jewish-community (noting Herman Sharabani obtained a civil divorce); Sharabani v. Sharabani, 54890/2010, NYLJ 1202798565597, at *1, *16, (Sup. Ct. August 30, 2017) (noting Chava left marital residence and filed complaint in fall of 2010).

[2] Satenstein, *supra* note 1; Richling, *supra* note 1. See *infra* Section I.A. for further discussion on the Jewish laws and procedures regarding a *get*. This Article primarily focuses on the Orthodox Jewish legal system's understanding of Jewish law, since the issues raised are primarily

agunah, a Hebrew term which literally means "chained," due to her status as a woman stuck in a dead Jewish marriage.[3] But, recently, Chava's status in the Orthodox Jewish community has also transformed into something much more than just one of the many *agunot* within the community[4]—Chava has become the face of a rising grassroots social media movement[5] focused on fighting against the plight of *agunot*, mainly by pressuring *get*-refusers to grant their wives a *get* and their freedom.[6]

The movement began in February 2021, when Chava noticed a direct message conversation publicly posted on Instagram between a popular Texas-based Orthodox Jewish singer and social media influencer, Dalia Oziel, and Rifka

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limited to the Orthodox community. For a basic breakdown on the differences between different Jewish denominations' attitudes and requirements regarding marriage and divorce, see Lawrence Goodman, *A Feminist Guide to Jewish Divorce*, BRANDEIS NOW (Dec. 5, 2018), https://www.brandeis.edu/now/2018/december/divorce-judaism-fishbayn%20.html. See generally *Jewish Divorce and the Civil Law*, 12 DEPAUL L. REV. 295 (1963) for a discussion on the interplay between civil and religious laws in the context of Jewish divorce.

[3] *Abuse in the Jewish Community: What is an "Agunah?"*, https://www.womenslaw.org/laws/religious/jewish-get-law-divorce-law/basic-info-about-jewish-divorce-law/what-agunah (Aug. 7, 2018) (last visited Jan. 4, 2022); Satenstein, *supra* note 1.

[4] *Agunot* is the plural term for *agunah* in Hebrew. See *infra* note 82 and accompanying text for a discussion on the prevalence of *agunot* within the Orthodox Jewish community.

[5] This Article will sometimes refer to this movement as the #FreeAgunot movement, although that is not an official title.

[6] Satenstein, *supra* note 1; Richling, *supra* note 1; Chizhik-Goldschmidt, *supra* note 1.

Meyer, a Jewish wig salon owner based in London.[7] In the posted exchange, Mayer described to Oziel how she quietly fought for her *get* for almost 10 years, but only recently decided to speak out about her struggle in response to Oziel's #keepitreal campaign, which encouraged followers to share their authentic stories behind their "happy" social media presence.[8] "Because of you and your campaign I shared my story of being an Agunah for nearly 10 years," Meyer wrote to Oziel.[9] Meyer then described how an attorney who noticed her story reached out about representing her case and eventually managed to "get my ex to drop all his unreasonable . . . conditions." She had just received her *get*.[10] "[T]hank you for #keepingitreal and changing my life," Meyer exclaimed.[11] Already having felt like she exhausted all remedies, the public posting of this conversation inspired Chava to reach out to Oziel and explain her own story as an *agunah*.[12] Oziel then posted an Instagram story to her 34 thousand followers with a wanted-poster-like flyer, featuring an image of Naftali's face placed above the phrase "Get-Refusal is Domestic Abuse," with the hashtag #FreeChava

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[7] Satenstein, *supra* note 1; *see* Dalia Oziel (@daliaoziel), INSTAGRAM (Sept. 22, 2020), https://www.instagram.com/stories/highlights/17867354177085064.

[8] Oziel, *supra* note 7; Nadine Wojakovski, *A Year of Hope for Chained Wives*, JEWISH CHRONICLE (Dec. 23, 2020, 12:51 PM), https://www.thejc.com/family-and-education/all/a-year-of-hope-for-chained-wives-1.510095.

[9] Oziel, *supra* note 7.

[10] *Id.*

[11] *Id.*

[12] Satenstein, *supra* note 1.

accompanying the post.[13] #FreeChava and Chava's story quickly went viral and seemed impossible to miss[14] on Orthodox Jewish Instagram.[15]

Over the next few weeks, "the hashtag would explode into a rallying cry among young Orthodox women demanding their right to divorce, some demanding transparency and accountability in the Orthodox rabbinical system, with close to 1,500 posts and thousands more Instagram stories."[16] Teenagers, housewives, wig-makers, and food bloggers would dress in pink on #PinkThursdays to show solidarity with Chava and other *agunot*, some recounting stories of their own struggles in obtaining a *get*.[17] Word soon spread of names and narratives of other *agunot* across the Jewish community, from the Ultra-Orthodox to the Syrian Jewish community.[18] Like other social media movements, the online posts shifted to the streets, with protests against *get*-refusers rising in heavily Jewish-populated areas ranging from

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[13] Satenstein, *supra* note 1. *See* Dalia Oziel (@daliaoziel), INSTAGRAM, https://www.instagram.com/stories/highlights/17947654612424103 (containing image of poster).

[14] Satenstein, *supra* note 1; Chizhik-Goldschmidt, *supra* note 1.

[15] Avital Chizhik-Goldschmidt, *Banned from Print Media, Ultra-Orthodox Women Turn to Instagram*, FORWARD, (Aug. 2, 2017), https://forward.com/life/378917/banned-from-print-media-ultra-orthodox-women-turn-to-instagram (describing Orthodox Jewish Instagram culture and its notable popularity among Orthodox Jewish women).

[16] Chizhik-Goldschmidt, *supra* note 1.

[17] *Id.*; Satenstein, *supra* note 1.

[18] Esther Levy Chehebar, *Get Busters*, TABLET (Mar. 17, 2021), https://www.tabletmag.com/sections/news/articles/get-busters-agunot.

Brooklyn,[19] the upstate hamlet of Monsey, New York,[20] Lakewood, New Jersey,[21] Boca Raton, Florida,[22] and Naftali Sharabani's Los Angeles neighborhood.[23]

And not long after, some of the husbands whose names and faces spread rapidly on social media and drew the ire of protesters began giving *gets* to their chained wives after years of refusal.[24] Videos and photos showing the "palpable

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[19] Richling, *supra* note 1; Levy Chehebar, *supra* note 18; Shmiel Soiferman, *ELIZABETH IS FREE! Flatbush Agunah Receives Get As Momentum Builds To Support Trapped Women*, VINNEWS, (Mar. 11, 2021, 11:47 PM), https://vinnews.com/2021/03/11/elizabeth-is-free-flatbush-agunah-receives-get-as-momentum-builds-to-support-trapped-women.

[20] Caren Chesler, *'Unchain Your Wife': the Orthodox Women Shining a Light on 'Get' Refusal*, GUARDIAN (June 4, 2021, 3:00 AM), https://www.theguardian.com/world/2021/jun/04/jewish-orthodox-women-divorce-get-refusal; Dalia Oziel (@daliaoziel), INSTAGRAM (Mar. 21, 2021), https://www.instagram.com/p/CMs9rEHg7p6 (Instagram livestream of protest of a *get*-refuser).

[21] *VIDEOS: Boca Raton & Lakewood Community Make Strong Showing to Protest Get-Refuser Aaron Silberberg*, VINNEWS, https://vinnews.com/2021/03/16/videos-boca-raton-community-makes-strong-showing-to-protest-get-refuser-aaron-silberberg (Mar. 16, 2021, 9:15 PM).

[22] *Id.*

[23] @free_chava, INSTAGRAM (Mar. 9, 2021), https://www.instagram.com/p/CMnHu9egeLe (posting flyer for location of Los Angeles protest outside the synagogue where Naftali Sharabani would regularly pray).

[24] JITC Staff, *Record Number Of Agunahs Being Freed Through Social Media*, JEW IN THE CITY (Mar. 17, 2021), https://jewinthecity.com/2021/03/record-number-of-agunahs-being-freed-through-social-media; Levy Chehebar, *supra* note 18.

sense of joy" of now former *agunot* having just received their *get* were widely shared, further energizing the movement.[25] For some *agunot*, they received their *get* almost instantly after going public about their struggle following years of waiting in silence, sometimes even receiving their *get* within just one day of an initial online social media post about their husband's *get* refusal.[26] "Social media works. Activism works. Pressure works," posted Orthodox feminist activist Adina Miles Sash.[27]

While it was clear that the #FreeAgunot movement was making progress, there were varying opinions among the different activists propelling the movement over its goals. Many viewed it as merely a fight against *get*-refusers through online shaming and occasional in-person rallies.[28]

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[25] Levy Chehebar, *supra* note 18; *see, e.g.*, *BREAKING UPDATE: Jeff Hafif Gives Get After 17 Years, More Rallies Planned For Other Get Refusers*, VINNEWS, (Mar. 14, 2021, 2:45 PM), https://vinnews.com/2021/03/14/breaking-update-jeff-hafif-gives-get-after-17-years-more-rallies-planned-for-other-get-refusers; *JUST IN: ANOTHER Agunah Freed Thanks To Public Pressure Campaign!*, VINNEWS (Mar. 16, 2021, 4:40 PM), https://vinnews.com/2021/03/16/just-in-another-agunah-freed-thanks-to-public-pressure-campaign.

[26] *E.g.*, Jane Kaufman, *Social Media Campaign Helps Secure Get Woman Couldn't Get In 6 Years*, CLEVELAND JEWISH NEWS (May 6, 2021), https://www.clevelandjewishnews.com/news/local_news/social-media-campaign-helps-secure-get-woman-couldnt-get-in-6-years/article_da84ee86-ae62-11eb-840c-ef7e3d00f516.html.

[27] Chizhik-Goldschmidt, *supra* note 1.

[28] *Id.* Within this view, some only wanted to shame the individual *get*-refusers, while some also wanted to expose and shame others, such as family members and rabbinical courts who enabled *get*-refusers to weaponize the *get* process. *Id. See, e.g.*, Chesler, *supra* note 20 (noting

But others felt the movement should call for more sweeping changes by utilizing the legal system.[29] This included advocating for state legislatures to pass bills assisting *agunot*,[30] and using contract law by standardizing the signing of religious prenuptial agreements that protect women prior to all Jewish weddings.[31] These three objectives (social media shaming, legislative efforts, and prenuptial solutions) have formed the bulk of this grassroots social media advocacy movement's efforts, and the Orthodox Jewish world felt its revolutionary impact.[32]

This Article will explore and analyze each of the grassroot social media movement's three proposals. Before doing so, this Article will first give background on the *agunah* issue in Part I. It will discuss the cause of the *agunah* issue, with a focus on the Jewish legal system's role in the problem. As additional background, this Part will also address how *get* refusal is a form of domestic abuse and the importance of framing it that way. In Part II, this Article will examine the legal solutions that have been offered both previously and as part of the recent social media movement, including legislative proposals and contractual solutions. Next, in Part III, this Article will critically evaluate the

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rallies at the home and place of employment of a mother of a *get*-refuser); @gettingthegett, INSTAGRAM (Apr. 19, 2021), https://www.instagram.com/p/CN3hBy-Lsqr (posting of flyer announcing protest outside a rabbinical court).

[29] Chizhik-Goldschmidt, *supra* note 1.

[30] *Id. See infra* Section II.A (discussing legislative attempts and recent proposals to solve *agunah* issue).

[31] Chizik-Goldschmidt, *supra* note 1. *See infra* Section II.B (discussing contractual solutions).

[32] *See* Chizhik-Goldschmidt, *supra* note 1.

social media shaming aspect of the movement from legal and normative lenses. Finally, this Article will conclude with recommendations as to how the grassroots social media movement could be most effective at solving the *agunah* issue.

I. BACKGROUND: THE *AGUNAH* ISSUE

The *Agunah* issue is one of the most pressing problems facing the Orthodox Jewish community.[33] The problem originates from the structure of, and various principles within, the Jewish legal system. This Part will discuss what the *get* process looks like, Jewish law's free-will requirement for divorces, and the gendered implications on Jewish individuals who end their marriage without going through the *get* process. Taken together, these Jewish legal principles help lay the groundwork for the *agunah* issue to exist. Finally, as additional background, this Part will discuss why *get* refusal should be considered a form of domestic abuse and the importance of framing it that way.

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[33] NISHMA RSCH., THE NISHMA RESEARCH PROFILE OF AMERICAN MODERN ORTHODOX JEWS 17 (Sept. 27, 2017), http://nishmaresearch.com/assets/pdf/Report%20-%20Nishma%20Research%20Profile%20of%20American%20Modern%20Orthodox%20Jews%2009-27-17.pdf (finding that modern Orthodox Jews rated the *agunah* issue as the second biggest problem facing the Jewish community, ahead of other issues such as antisemitism and the cost of maintaining an Orthodox home).

A. Jewish Legal Principles and the Agunah *Issue*

1. The *Get* Process

There are two ways to end a valid Orthodox Jewish marriage: through the death of a spouse, or through the granting of a *get* from a husband to wife.[34] The civil divorce process runs parallel to the religious *get* process, and has no bearing on the religious marriage from an Orthodox Jewish perspective.[35] The word "*get*" is an Aramaic term, which literally means document.[36] The *get* contains template Aramaic language about how the husband is releasing his wife from the barriers imposed by marriage and is carefully written in Hebrew calligraphy by a trained scribe and signed by two witnesses, using black ink and a goose quill.[37]

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[34] Irving Breitowitz, *The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment*, 51 MD. L. REV. 312, 319 (1992).

[35] *Id. Cf.* Aron Hirt-Manheimer & Simeon J. Maslin, *Yes, There Is a Reform Divorce Document*, UNION FOR REFORM JUDAISM, https://reformjudaism.org/yes-there-reform-divorce-document (last visited Jan. 5, 2022) ("Today, the Reform Movement in the United States accepts civil divorce as completely dissolving the marriage and permitting the remarriage of the divorced persons. No get or any substitute form of religious divorce is required.").

[36] Breitowitz, *supra* note 34, at 319.

[37] Breitowitz, *supra* note 34, at 319–20; *Get: The Ritual Confirmation of a Divorce*, JEWISH MUSEUM BERLIN, https://www.jmberlin.de/en/get-ritual-confirmation-divorce (last visited Jan. 5, 2022); Yona Reiss, *Issues in Jewish Divorce*, FAM. ADVOCATE, Fall 2019, at 30, 30. See Breitowitz, *supra* note 34, at 319–20 for a rough translation of the templated language used in a get. The *agunah* issue typically only presents itself in traditional Jewish heterosexual marriages, since same-sex marriages are not recognized by Orthodox Jewish law. *Stances of Faiths on LGBTQ Issues: Orthodox Judaism*, HUM. RTS. CAMPAIGN FOUND., https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-orthodox-

Technically, the execution of the *get* does not need any rabbinical supervision (beyond the scribe and witnesses) and is just a private act between the husband and wife.[38] But because there are many formalities and technicalities relating to the writing and transfer of the *get*, a *beth din* (rabbinical court) is invariably involved with the process in a supervisory role.[39] The ceremony itself can be accomplished in under an hour.[40] The husband is asked questions to confirm his willingness to grant the *get*.[41] All names of the couple, including commonly-used nicknames, are confirmed since the *get* needs to be specifically written for each individual couple, with precise spelling and inclusion of all names.[42] A mistake in the writing of the *get*, including the names, location, or date, can render the *get* invalid.[43] After the husband appoints the scribe and the *get* is written, the wife is asked questions to confirm she is accepting the *get* willingly.[44] The *get* is then folded, and the husband (or a proxy he appoints) physically places it onto the wife's cupped hands while proclaiming that he is releasing her from the marriage, again in the presence of witnesses.[45] Upon the *get's*

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judaism (last visited Aug. 29, 2022) ("No Orthodox body approves of any religious ceremony for same-sex weddings."). This Article will therefore make traditional references to a husband and a wife when describing Jewish couples and the *agunah* issue.

[38] Breitowitz, *supra* note 34, at 320.

[39] *Id.*

[40] *Id.*

[41] *Id.; see infra* Section I.A.2.

[42] Reiss, *supra* note 37, at 30.

[43] *Id.*

[44] Breitowitz, *supra* note 34, at 320–21. *See infra* Section I.A.2.

[45] Breitowitz, *supra* note 34, at 321.

delivery to the wife, the marriage is officially terminated and the couple is free to remarry.[46] This relatively simple process is all that is required in a standard Jewish divorce proceeding when both parties are willing to complete the *get* ceremony. However, if one party is unwilling to go through with the *get* process, there are Jewish laws that complicate matters and create the potential for an *agunah* situation.

2. Free-Will Requirement

It is commonly believed that it is the husband's exclusive power to decide whether a couple may get divorced in Jewish law.[47] But that is only partially true. Based on Biblical and Talmudical law, a husband did "have an absolute right, or at least power, to divorce his wife at will for no reason at all and without her consent."[48] However, the

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[46] *Id.* (but noting some limited marriage restrictions for a divorced woman).

[47] *See, e.g.*, Emily Harris, *In Israel, Jewish Divorce Is Granted Only By Husband's Permission*, NPR (Mar. 1, 2015), https://www.npr.org/sections/parallels/2015/03/01/389873594/in-israel-jewish-divorce-is-only-granted-by-husbands-permission; Jennifer Medina, *Unwilling to Allow His Wife a Divorce, He Marries Another*, N.Y. TIMES (Mar. 21, 2014), https://www.nytimes.com/2014/03/22/us/a-wedding-amid-cries-of-unfinished-business-from-a-marriage.html ("According to the intricate religious laws dictating marriage and divorce, only the husband has the power to grant a divorce."); Goodman, *supra* note 2 ("Under Jewish law, it's the husband's actions that created the relationship . . . . Only his actions can terminate it. That's the essence of the problem with Jewish marriage."); D. KELLY WEISBERG, MODERN FAMILY LAW: CASES AND MATERIALS 521 (7th ed. 2020) ("Under traditional Jewish law, a religious divorce . . . is necessary to end an Orthodox Jewish marriage, and only a husband may grant a *get*.").

[48] Breitowitz, *supra* note 34, at 322 (citing to the Babylonian Talmud).

husband's absolute right regarding divorce significantly changed in the tenth century, when Rabbeinu Gershom, the widely acknowledged leader of European Jewry at the time, enacted a decree prohibiting divorce against a wife's will.[49] From that point on, Jewish law mandated that the "husband must willingly give, and the wife must willingly receive" the *get*.[50] If either party were under duress while the *get* was given, the divorce would be null and void.[51] As such, unlike civil divorce, where divorce is granted by the state, divorce in Jewish law is solely an act of the parties.[52] Therefore, it is possible for either party to be held hostage to the other's recalcitrance.[53]

This free will requirement is a crucial aspect of the *agunah* issue and is taken very seriously by Orthodox Jewish law. For example, if a husband only gives the *get* to avoid a

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[49] *Id.* at 323 ("When [Rabbeinu Gershom] saw how the generation was abusive of Jewish daughters insofar as divorcing them under compulsion, he enacted that the rights of women be equal to those of men . . . [so that they could get] divorced only willingly.") (quoting RABBI ASHER BEN YECHIEL (d. 1480), TESHUVOT ROSH 42:1).

[50] *The Agunah Problem*, BETH DIN OF AMERICA, https://theprenup.org/the-agunah-problem (last visited Jan. 5, 2022).

[51] Breitowitz, *supra* note 34, at 331; Naftali Silberberg, *The Agunah*, CHABAD, https://www.chabad.org/library/article_cdo/aid/613084/jewish/The-Agunah.htm (last visited Jan. 5, 2022).

[52] Young Israel of Brookline, *Keshet Starr, Esq. – "Get Refusal in the Time of Covid: The Issues Today"*, YOUTUBE (Aug. 27, 2020), https://www.youtube.com/watch?v=Fz09u-5eNL0.

[53] Breitowitz, *supra* note 34, at 325. *But see infra* Section I.A.3 (discussing Jewish law imbalances against women, leading to far more women *agunot* than men.).

financial penalty,[54] a debt obligation,[55] a prison sentence,[56] or to comply with a court order,[57] the *get* would be deemed invalid because of a lack of free will. While a *beth din* can technically force the husband to give a *get* if it establishes that there are specific grounds for divorce,[58] in the U.S, a *beth din* typically does not have the legal authority to enforce rulings on these issues without consent of the parties.[59] Therefore, no matter how sympathetic rabbis or a *beth din* were to a woman whose husband was refusing to grant a *get*,

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[54] Breitowitz, *supra* note 34, at 331.

[55] *Id.* at 332.

[56] *Cf. Id.* at 335 (describing permissible case where prison sentence is unrelated to the *get* refusal).

[57] Reiss, *supra* note 37, at 31 (applicable only when there is no prior order from a *beth din* to give a get).

[58] *See* Breitowitz, *supra* note 34, at 333, n. 80 (noting specific fault-based grounds for divorce, including refusal to cohabitate, physical or verbal abuse, and habitual infidelity). See *id.* for a discussion on the parameters of a *beth din*'s coercive power.

[59] *Id.* at 334, n. 81. In the U.S., parties would need to sign an arbitration agreement to grant a *beth din* authority to hear a case. Itamar Rosensweig, *How Does A Beit Din Acquire Jurisdiction To Hear A Case?*, JEWISHPRUDENCE (July 31, 2019), https://bethdin.org/how-does-a-beit-din-acquire-jurisdiction-to-hear-a-case. This is in contrast with the Israeli court system, where *beth dins* have legally recognized sanction power, including the right to ban a *get*-refuser from leaving the country, hold a driver's license, manage a bank account, impose penalties on attorney enablers, or even order imprisonment. Tzvi Joffre, *In First, Rabbinical Court Rules Lawyers of Get Refusers Can Be Sanctioned*, JERUSALEM POST (July 1, 2021, 8:27 PM), https://www.jpost.com/judaism/in-first-rabbinical-court-rules-lawyers-of-get-refusers-can-be-sanctioned-672519.

they are often not left with many options.[60] "The will of the husband, as opposed to notions of justice or a determination by a court of law, is the determinative factor in deciding whether a Jewish woman remains married to her husband."[61] According to Jewish law, "[n]o court, third party or even God . . . can free a woman" from her religious marriage.[62] A wife seeking a *get* can only "be freed of the bonds of an unsuccessful marriage . . . when her husband decides that he is willing to release her."[63] Therefore, because Jewish law mandates this free-will requirement, the *agunah* issue is able to exist.

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[60] Akiva Levy, *Navigating the Agunah Crisis: A Shiur by Rabbi Yona Reiss*, COMMENTATOR, (Nov. 22, 2020) https://yucommentator.org/2020/11/navigating-the-agunah-crisis-a-shiur-by-rabbi-yona-reiss. *But see generally* SUSAN ARANOFF & RIVKA HAUT, THE WED-LOCKED AGUNOT: ORTHODOX JEWISH WOMEN CHAINED TO DEAD MARRIAGES (2015) (arguing that unsympathetic rabbis and *beth dins* play a major role in the *agunah* issue). Unlike other Jewish denominations, the tenets of Orthodox Judaism do not allow modern-day rabbis to change many Jewish laws, and this is a significant aspect of the Orthodox Jewish faith. *See Orthodox Judaism*, NEW WORLD ENCYCLOPEDIA, https://www.newworldencyclopedia.org/entry/Orthodox_Judaism (discussing basic doctrines of Orthodox Judaism). A discussion on the parameters of when rabbis have authority under Jewish law to change and adapt restrictions is beyond the scope of this Article. For an in-depth analysis of the development of Jewish law, see generally CHAIM N. SAIMAN, HALAKHAH: THE RABBINIC IDEA OF LAW (2018).

[61] Susan Weiss, *Divorce: The Halakhic Process*, JEWISH WOMEN'S ARCHIVE https://jwa.org/encyclopedia/article/divorce-halakhic-perspective (last visited Dec. 18, 2020).

[62] *Id.*

[63] *Id.*

Finally, while the free-will requirement is taken very seriously by Jewish law, there are certain types of pressure that are not considered coercive enough to void a *get* according to Jewish law. "[E]mploying psychological pressure, organizing boycotts (even with economic impact), and posting signs" would not render the *get* invalid, even in the absence of a *beth din* finding grounds for divorce.[64] Accordingly, the social media campaigns and protests discussed throughout this Article are generally permissible according to Jewish law.[65]

3. Unequal Gender Rules Within Jewish Law Regarding Jewish Divorce

While Jewish law now requires both the wife and husband's consent to undergo a valid *get* ceremony, there are other Jewish laws in place that significantly stack the weight of the *agunah* problem against women. First, a woman suffers greater consequences from a Jewish law standpoint if she does not receive a *get* compared to a man failing to give his wife a *get*. This stems from Jewish law's gender-imbalanced concept of adultery. According to Biblical Jewish law, if a married women commits adultery, she, and the man she cohabits with, are both guilty of a capital offense.[66] Any

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[64] Breitowitz, *supra* note 34, at 335.

[65] *See infra* Section III.A.

[66] Breitowitz, *supra* note 34, at 323 (citing Deuteronomy 23:22). It should be noted that liability for a capital offense in Judaism has extremely limited practicality in modern times, as no modern day *beth din* has authority to carry out capital or even corporal punishment. *Id.* at 323–24, n. 47. Even historically, when Jews did have autonomy and authority to carry out capital punishments, its use was extremely limited. *Id.*

children resulting from an adulterous relationship would have the status of a *mamzer*, or illegitimate child, which limits the child's ability to marry within the Jewish faith and carries a negative social stigma within the community.[67] So even if an *agunah* did not personally care about the Jewish legal consequences affecting her if she were to enter a relationship with another man without having received a *get*, she still may consider the negative impact it has on her children, and thus feel beholden to the will of her husband regarding the *get*.[68]

In contrast, the consequences are less severe for a married man who commits adultery or bigamy. Under biblical law, there is no crime if a married man has sexual intercourse with another woman (unless she herself is married), and any resulting child from such a union is not considered a *mamzer*.[69] And regarding polygamy, there is

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[67] Breitowitz, *supra* note 34, at 324 (describing Jewish legal implications relating to marriage for a *mamzer*); Reiss, *supra* note 37, at 30–31; *see* Rivkah Lubitch, *It's Time To Destigmatize Mamzers. Here's How*, FORWARD, (June 8, 2014), https://forward.com/opinion/199686/its-time-to-destigmatize-mamzers-heres-how (discussing stigma associated with *mamzer* status).

[68] In addition, an *agunah* may have to leave the Orthodox community if she publicly disregards a major prohibition such as adultery. And for an Orthodox Jewish woman, "leaving her religious community would mean leaving behind her family, friends, professional network and, in many cases, a large part of her identity" making it immensely difficult to just ignore the Jewish laws, as unbalanced as they may be. Keshet Starr, *Scars of the Soul: Get Refusal and Spiritual Abuse in Orthodox Jewish Communities*, 31 NASHIM: J. JEWISH WOMEN'S STUD. & GENDER ISSUES 37, 46 (2017).

[69] Breitowitz, *supra* note 34, at 324, n. 51 ("[T]he marital status of the male is simply irrelevant" when it comes to the biblical prohibition of

only a *rabbinical* prohibition against a married man marrying another woman that stems from another decree of Rebbeinu Gershom, which does not have equal Jewish legal consequences in comparison to a wife's polygamy, a *biblical* prohibition.[70] Therefore, while the Jewish community may still shun a male *get*-refuser who marries or develops a relationship with another woman,[71] he would not face the significant Jewish legal hurdles that a woman would face.

On top of that, there is another gender distinction within Jewish law that significantly affects the *agunah* issue. Under Jewish law, it is not possible for a married woman who never received a *get* to marry another man (absent death or a rare nullification of the marriage).[72] On the other hand, when Rabbeinu Gershom instituted the ban on polygamy for husbands, he also implemented a legal loophole known as a *heter me'ah rabbanim* ("Permission of 100 Rabbis") along with the ban.[73] This allows, under limited circumstances, for a *beth din* to gather 100 Rabbis' approval to annul a husband's previous marriage without the issuance

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adultery.). It should be noted that while fornication is generally frowned upon in Jewish law, it is not considered adultery and has no bearing on a potential child's status as a *mamzer*. *Id.* at 324.

[70] Breitowitz, *supra* note 34, at 324–25. See *id.* at 314, n. 4, and SAIMAN, *supra* note 60, for an in-depth discussion on the basic structure of Jewish law and the differences between biblical and rabbinical laws.

[71] *See* Medina, *supra* note 47 (describing social condemnation of a *get*-refuser who subsequently married another woman).

[72] Breitowitz, *supra* note 34, at 325.

[73] *Id.*

of a *get*.[74] While this loophole is granted infrequently[75] by *beth dins* and many rabbinical authorities are very reluctant to participate in the process,[76] it still is occasionally used,[77] and sometimes even abused[78] by *get*-refusers. Therefore, the mere possibility of a rabbinic dispensation from the marriage often grants unfair leverage to a husband when a Jewish

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[74] *Id.* at 325, n. 54 for the grounds upon which a *beth din* may grant this rabbinic dispensation. *See also*, Yair Hoffman, *The Phony Heter Meah Rabbonim*, 5TJT (Aug. 16, 2018), http://www.5tjt.com/the-phony-heter-meah-rabbonim (discussing the requirements for granting a *heter me'ah rabbanim* and its history).

[75] MICHAEL J. BROYDE, MARRIAGE, DIVORCE, AND THE ABANDONED WIFE IN JEWISH LAW: A CONCEPTUAL UNDERSTANDING OF THE AGUNAH PROBLEMS IN AMERICA, 25 (2001) (noting rarity of the practice and how "there are no more than two or three such cases per year in the United States.").

[76] Breitowitz, *supra* note 34, at 325.

[77] *See, e.g.*, Jenni Frazer, *Why A Hundred Rabbis Had to Give Permission for Israel's Showbiz Wedding of The Year*, JEWISH CHRONICLE (Nov. 19, 2021, 6:21 PM), https://www.thejc.com/news/uk/why-a-hundred-rabbis-had-to-give-permission-for-israel-s-showbiz-wedding-of-the-year-1.522825 (noting a *heter me'ah rabbanim* was granted to the Netflix hit *Shtisel* actor, Shuli Rand, to permit his remarriage in Israel).

[78] *See* BROYDE, *supra* note 75, at 24 (noting a *heter me'ah rabbanim* is only allowed to be granted in situations "where the woman will not or cannot accept a *get*."). However, there are well-documented situations where the loophole has been granted by corrupt *beth dins*, even in situations where the wife is willing (often begging) and mentally capable of consenting to receive a *get*. *See* Medina, *supra* note 47 (describing abuse of *heter me'ah rabbanim* by Israel Meir Kin, a well-known *get*-refuser in Orthodox Jewish circles); Hoffman, *supra* note 74 (describing a situation where a "phony" *heter me'ah rabbanim* was granted when a "wife was begging for a Get for the past nine years and the husband [] refused to give it.").

couple is in the process of divorce.[79] This, coupled with the other gender-imbalanced Jewish legal principles discussed above, is a major contributor to the *agunah* issue and the large gender disparity in the amount of *agunot*.[80]

B. Get *Refusal as a Form of Domestic Abuse*

As mentioned, there are Jewish legal principles that enable the *agunah* situation and these laws are heavily imbalanced from a gender perspective.[81] While it is not entirely clear how many *agunot* there currently are,[82] these

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[79] Even if a husband does not receive a *heter me'ah rabbanim* in a divorce situation, he can still threaten his wife to accept his demands on end of marriage issues by claiming he will leave the marriage without giving his wife a *get*. A wife may not even realize that such a dispensation is rarely granted, or she may feel he will receive one through unethical means. *See supra* note 78. The stakes are also lowered "for husbands whose wives are uncooperative in divorce proceedings," which significantly affects the balance of power. Josefin Dolsten, *Aussie Woman Refuses Husband's Jewish Divorce*, TIMES OF ISRAEL (June 19, 2017, 4:51 AM), https://www.timesofisrael.com/can-a-woman-refuse-to-give-her-husband-a-get-it-just-happened-in-australia.

[80] *See infra* notes 66–71 and accompanying text.

[81] *See supra* Part I.A.3.

[82] The Beth Din of America, the most active *beth din* in the United States, has said that in a given year, only about ten out of the 350 divorce cases they handle are unresolved *agunah* situations. Jewish Week Editors, *Agunot: 462 Too Many*, N.Y. JEWISH WEEK, (Oct. 25, 2011, 12:00 AM), https://www.jta.org/2011/10/25/ny/agunot-462-too-many. However, that is just one *beth din* and there are many *beth dins* that operate in the U.S. and deal with *agunah* situations. *See, e.g.*, ARANOFF & HAUT, *supra* note 60 at 39–52 (surveying different U.S. *beth dins'* policies regarding the *get* process). Estimates have ranged from 150,000 in New York alone to 50 at a given time. Breitowitz, *supra* note 34, at 315–316; Beverly Siegel, *Sign on the Dotted Line*, TABLET (Mar. 6, 2005),

Jewish laws have the practical effect of creating an enormous gender disparity in the number of women *agunot* compared to men: *Agunah* advocates estimate that 98% of victims of *get* refusal are women.[83] While the major gender gap can be partially explained by the fact that many women simply do not realize that they can refuse to accept a *get* from their husband,[84] the unequal Jewish laws are a major factor in the gender disparity.[85] On top of that, "[t]he pervasively unequal laws of Jewish divorce . . . set the framework for fundamentally unequal bargaining power in negotiations,"

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https://www.tabletmag.com/sections/community/articles/sign-on-the-dotted-line (noting study found 462 women in the United Stated and Canada that were *agunot* between 2005–2010). See Breitowitz, *supra* note 34 at 316, n. 6 for a discussion for why the 150,000 estimate is likely a typographical error and misleading). Keshet Starr, the CEO of the Organization for the Resolution of Agunot ("ORA"), a well-known advocacy group that assists *agunot*, has said that, on average, the organization works on 75 *agunah* cases at any given time, with another 300 cases that they assist with at an earlier stage before an outright *get* refusal situation. *Keshet Starr: How Should We Advocate for Agunot?*, 18FORTY (Apr. 12, 2021), https://18forty.org/podcast/keshet-starr-how-should-we-advocate-for-agunot [hereinafter *Starr Interview*]. The disparity in the estimates can be a function of how one classifies who is an *agunah*, such as whether there is outright *get* refusal or just a threat of *get* refusal. *See* Pamela Laufer-Ukeles, *Negotiating Jewish Divorce*, 18 INT'L J. CON. L. 920, 920–21 (2021) (making similar observation for disparity in *agunah* number estimates in Israel).

[83] Dolsten, *supra* note 79.

[84] *See id.* ("[P]art of it [is that] a lot of women don't know that they can refuse to receive a get."); *see also supra* note 47 and accompanying text (discussing common belief that only men have right to control *get* process).

[85] *See* Laufer-Ukeles, *supra* note 82, at 923–24 (describing how Jewish law negatively impacts women in divorce).

potentially undermining every woman's power in all Orthodox Jewish divorces, even if the *agunah* threat is not explicitly invoked.[86]

And when *get* refusal is invoked, it should be considered a form of domestic abuse. *Get*-refusing husbands often use the unfair leverage as a bargaining chip to extract what they want from their wife regarding marital property, financial support, or child custody in exchange for agreeing to participate in the *get* process.[87] In other words, they are extorting the *get*.[88] Whether a *get*-refuser is motivated by money, custody or visitation rights, spite, and/or a desire for control,[89] he is always trying to use his power to control his

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[86] *Id.* at 921. This is because all negotiations are bargained "in the shadow of the law," and when a husband and wife have an unequal legal status, it affects their respective bargaining positions for the entire divorce negotiation, since the law sets the framework and default positions of every negotiation. *See id.* at 924–26 (citing Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L. J. 950 (1979)).

[87] Yael C.B. Machtinger, A Socio-Legal Investigation of 'Get' Jewish Divorce Refusal in New York and Toronto: Agunot Unstitching the Ties that Bind, 55 York University (2017), https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/34525/Machtinger_Yael_CB_2017_PhD.pdf?sequence=2&isAllowed=y (quoting Suzanne Last Stone, The *Intervention of American Law in Jewish Divorce: A Pluralist Analysis*, 34 ISR. L. REV. 170, 171 (2000)).

[88] *Id.*

[89] *See* Aviva Vogelstein, *Is ADR The Solution? How ADR Gets Around the Get Controversy in Jewish Divorce* 14 CARDOZO J. CONFLICT RESOL., 999, 1003 (2013) (summarizing a lecture given by Rabbi Jeremy Stern, former executive director of ORA and noting the primary motivations of *get*-refusers).

wife's future, freedom, and prospects of remarriage.[90] This can be categorized as multiple forms of domestic abuse, including coercive control,[91] or spiritual abuse.[92] Not

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[90] *Starr Interview*, *supra* note 82 ("[W]hat's common to every [*get* refusal case] is that it's really about power and control."). An illustration of the lengths some *get*-refusers would go to control their spouses can be seen from the case of Zabulon Simantov, who was the "last Jew in Afghanistan" and decided to remain in the country, despite the Taliban's takeover, rather than move to Israel, where he would be subject to legal repercussions for not giving a *get* to his wife, an *agunah* of over 20 years. Cnaan Liphshiz, *Afghanistan's Last Jew Still Won't Leave The Country (Or Divorce His Wife)*, TIMES OF ISRAEL (Aug. 19, 2021), https://www.timesofisrael.com/afghanistans-last-jew-still-wont-leave-the-country-or-divorce-his-wife.

[91] Shelley Flannery, *A Guide to Coercive Control*, DOMESTICSHELTERS.ORG (Aug. 4, 2021), https://www.domesticshelters.org/articles/identifying-abuse/a-guide-to-coercive-control ("Coercive control refers to any pattern of behavior an abuser uses to dominate their partner and limit their freedom."); Simon Rocker, *Get Refusal Recognised as Domestic Abuse*, JEWISH CHRONICLE (Mar. 12, 2021, 10:39 AM), https://www.thejc.com/news/uk/refusing-to-give-a-get-to-be-recognised-as-domestic-abuse-government-confirms-1.513033 (noting how *get* refusal is recognized as a form of domestic abuse under a UK coercive control law); Tristan Cummings, *A Novel Approach To Get Refusal: The Use Of The Offence Of Coercive Control To Obtain A Religious Divorce*, OXFORD HUM. RIGHTS HUB (Feb. 4, 2020), https://ohrh.law.ox.ac.uk/a-novel-approach-to-get-refusal-the-use-of-the-offence-of-coercive-control-to-obtain-a-religious-divorce.

[92] Adetokunbo Arowojolu, *How Jewish Get Law Can Be Used as a Tool of Spiritual Abuse in the Orthodox Jewish Community*, 16 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 66, 72 (2016) ("Spiritual abuse is defined . . . as 'any attempt to impair the woman's spiritual life, spiritual self, or spiritual wellbeing.'") (internal citation omitted); Starr, *supra* note 68, at 47–48 (noting how *get* refusal is a form of spiritual abuse because it prevents a woman from carrying out acts of spirituality by keeping her

surprisingly, around 95% of *agunot* experience numerous other types of abuse within marriage.[93] "The *get* is often the last vestige of control an abuser has over his victim, and the husband's refusal to issue a get is the final act in a long series of abusive behaviors."[94] When viewed within the context that the *get* refusal is part of "a pattern of controlling behavior in which the husband repeatedly asserts his power and control over his wife" it is undoubtable that *get* refusal is a form of domestic abuse.[95]

It is important to characterize it in such a way for several reasons. First, many *get*-refusers believe *get* refusal is *generally* bad but justify it in their specific case as an exception tied to unique circumstances, such as complex custody or financial disagreements.[96] But it is crucial, on a policy level, never to allow that notion to be accepted, as we would never give special dispensations for other kinds of abuse. Second, and similarly, in almost every *agunah* situation, there are invariably third parties who claim there may be two sides to the story and speculate that the wife may not be so innocent, so people shouldn't judge the *get*-

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separated from the traditional Jewish family structure and because husbands manipulate Jewish concepts to justify their view).

[93] *Starr Interview*, *supra* note 82.

[94] Keshet Starr, *GET REFUSAL: When There's Only One Side to the Story*, TIMES OF ISRAEL (Nov. 25, 2014, 7:44 AM), https://blogs.timesofisrael.com/get-refusal-when-theres-only-one-side-to-the-story.

[95] *Id.*

[96] Young Israel of Brookline, *supra* note 52, at 22:10–23:23.

refuser.[97] Turning to the comparison of other forms of abuse again, there would never be "two sides" to validate a husband physically beating his wife—so there should not be such validation for this type of abuse as well. Additionally, if there is a genuine dispute relating to custody or finances, there are "ample forums [for] a fair and just resolution of the issues" such as "[*beth din*], litigation, arbitration [or] mediation,"—*get*-extortion is no such avenue and should be separated from all other end-of-marriage issues.[98] Third, calling it abuse makes it "accessible" to those outside the Jewish community, particularly secular courts who may be wary of evaluating religious matters.[99] When *get* refusal is framed as abuse, it makes it clearer for those who do not know the intricacies of Jewish law to see it for what it is and treat such behavior accordingly. As such, it is important to label *get* refusal as domestic abuse.

II. LEGAL SOLUTIONS AND PROPOSALS FOR THE *AGUNAH* ISSUE

Throughout the last century, many have been disturbed and disheartened by the *agunah* issue and have proposed various legal solutions to solve the problem. These legal solutions include legislative and contractual resolutions. The recent grassroots social media movement has called for similar or updated proposals to these legal

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[97] *See* Starr, *supra* note 94. (noting how rich the author would be if she received a penny for every time someone told her "but there are two sides to every [*get* refusal] story").
[98] Starr, *supra* note 94.
[99] Young Israel of Brookline, *supra* note 52, at 23:23–44.

solutions. The next Part will evaluate both the previous and current legal solutions that have been offered.

A. Legislative Solutions

1. Previous Legislation—The New York *Get* Laws

New York, the state with the largest Jewish population,[100] is so far the only state to pass legislation specifically relating to the *agunah* issue, and currently has two statutes in place designed to assist *agunot* in divorce.[101] The first *get* law ("*Get* Law I"), passed in 1983, mandated that no final judgement of divorce may be ordered unless the party who filed the divorce action provides a sworn affidavit that they have taken "all steps solely within his or her power to remove any barrier to the defendant's remarriage . . .."[102] This facially neutral law, designed to avert constitutional scrutiny,[103] was passed with the *agunah* issue in mind[104] and

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[100] *See Jewish Population in the United States by State (1899–Present)*, JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/jewish-population-in-the-united-states-by-state (last visited Jan. 10, 2022).

[101] Lisa Zornberg, *Beyond the Constitution: Is the New York Get Legislation Good Law*, 15 PACE L. REV. 703, 706 (1995).

[102] N.Y. DOM. REL. LAW § 253 (2021). The statute defines "barrier to remarriage" as "any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act." *Id.* § 253 (6).

[103] *See infra* notes 114–120 and accompanying text.

[104] *See* Zornberg, *supra* note 101, at 728–730 (describing Orthodox Jewish groups designing of *Get* Law I and the law's legislative history).

its practical application is confined to Jewish divorce cases.[105] As a result of this law, if the plaintiff does not testify that they "removed the barrier" of ending the Jewish marriage, they would not be entitled to a civil divorce.[106] It has two provisions that guard against the filing of false affidavits. The first holds a plaintiff criminally liable for the intentional filing of a false statement[107] and the second permits the minister who solemnized the wedding to assert that the plaintiff has failed to "remove all barriers to the defendant's remarriage."[108]

The obvious loophole in *Get* Law I is that it applies only to plaintiffs.[109] An *agunah* would not be helped if the *get*-refuser simply does not file for divorce or does not assert a counterclaim in the case.[110] In 1995, with this loophole in mind and following a high-profile Orthodox Jewish divorce case,[111] New York passed further legislation to help *agunot*

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[105] *Id.* at 731.

[106] *Id.* at 731, n. 137 (explaining how the "removing barriers" language excludes Catholic divorces from the statute).

[107] DOM. REL. § 253(8).

[108] *Id.* § 253(7).

[109] Zornberg, *supra* note 101, at 733.

[110] *Id.*

[111] *See id.* at 734 (describing lobbying efforts by Rabbi Sholom Klass, a former publisher of the Jewish Press, after his daughter's ex-husband refused to give a *get* for several years); *see also* Peter Hellmann, *Playing Hard to Get*, N.Y MAG., Jan. 25, 1993, at 40–45 (describing bitter divorce of Rabbi Klass's daughter, Naomi Schwartz, and the subsequent passing of *Get* Law II). Many believe that *Get* Law II is merely codifying the ruling of the high-profile case, *Schwartz v. Schwartz*, 583 N.Y.S.2d 716 (Sup. Ct. 1992), *aff'd* 652 N.Y.S. 616 (App. Div. 1997), which considered the husband's *get* refusal within the equitable distribution's "catchall" provision that allowed a court to consider "any other factor which the

("*Get* Law II"), this time authorizing a court to factor either party's "barrier to remarriage" when determining equitable distribution of marital property.[112] The law applies regardless of whether the *agunah* is a plaintiff or defendant, thus alleviating the plaintiff loophole problem.[113]

While the *Get* Laws were designed with noble intentions of solving the *agunah* issue, many have criticized each law on multiple constitutional grounds after their respective passages.[114] Since *Get* Law I's enactment, it has been assailed as a violation of the Due Process Clause of the Fourteenth Amendment,[115] and a violation of the First

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court shall expressly find to be just and proper.". Zornberg, *supra* note 101, at 735.

[112] N.Y. DOM. REL. LAW § 236B(5)(h) (McKinney 2021). The statute references DOM. REL. § 253's definition of barrier to remarriage. *See id.* and *supra* note 102.

[113] Zornberg, *supra* note 101, at 733.

[114] *Id.* at 706, 745.

[115] Marc Feldman, *Jewish Women and Secular Courts: Helping a Jewish Woman Obtain a Get*, 5 BERKELEY WOMEN'S L.J. 139, 159–60 (1990) (arguing *Get* Law I violates Due Process Clause of the Fourteenth Amendment because it gives no opportunity for husband to rebut rabbi's claim that barriers have not been removed).

Amendment's Establishment[116] and Free Exercise[117] Clauses. *Get* Law II has been criticized for similar reasons as well.[118] Many of these constitutional issues primarily turn on

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[116] *See* Lawrence C. Marshall, Comment, *The Religion Clauses and Compelled Religious Divorces: A Study in Marital and Constitutional Separations*, 80 NW. U. L. REV. 204, 235–257 (1985) (arguing the statute violates all three parts of the previously effective long-standing *Lemon* test, since it was not passed with a valid secular purpose, it does not have primary secular effect, and requires courts to become excessively entangled with religion); Feldman, *supra* note 115 (same); Edward S. Nadel, *New York's* Get *Laws: A Constitutional Analysis*, 27 COLUM. J.L. & SOC. PROBS. 55, 83–90 (1993) (arguing the *Get* Laws both violate all three prongs of the *Lemon* test and newer approaches to the Establishment Clause); Suzanne M. Aiardo, *Avitzur v. Avitzur and New York Domestic Relations Law Section 253: Civil Response to a Religious Dilemma,* 49 ALB. L. REV. 131 (1984) (arguing the statute creates excessive involvement by a religious group in secular affairs by requiring a religious body to be involved in removing the barriers of remarriage). See also Zornberg, *supra* note 101, at 706 for more articles arguing the law violates the Establishment Clause. *But see* Breitowitz, *supra* note 34, at 385–393 (arguing *Get* Law I does not necessarily violate Establishment Clause).

[117] *See* Marshall, *supra* note 116, at 212–234, 256–257 (arguing *Get* Law I violates Free Exercise Clause by forcing a spouse to participate in a religious divorce against their will). *But see* Breitowitz, *supra* note 34, at 394–396 (arguing that spouses' Free Exercise rights are not truly impaired by *Get* Law I since the statute does not directly order the plaintiff to do anything, the plaintiff tacitly consented to take part in religious marriage dissolution when they sought religious marriage, and because the vast majority of *get*-refusers are not motivated by religious beliefs).

[118] *See* Nadel, *supra* note 116, at 93–99 (arguing *Get Law* II also violates Free Exercise Clause since it compels a *get* to be given in violation of Jewish law); Zornberg, *supra* note 101, at 755 ("[T]he 1992 *get* amendment to New York's equitable distribution statute represents an

whether the *agunah* problem is considered a religious or secular problem, and whether the execution of a *get* is considered a religious or secular act.[119] While there is a near consensus among academic scholars that the *Get* Laws are unconstitutional,[120] the statutes were enforced against *get*-

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even greater violation of First Amendment principles than its 1983 predecessor.").

[119] Zornberg, *supra* note 101, at 738–742 (ultimately concluding the answer to both questions is likely religious and thus the *Get* Laws violate the Religion Clauses). *But see generally* Stephen H. Barclay, *The Religion Clauses After* Kennedy v. Bremerton School District, IOWA L. REV., 2097 (2023) (discussing Religion Clause jurisprudence after the *Kennedy* decision's declaration that the long-standing *Lemon* test and its offshoots are no longer the governing legal standard).

[120] *See supra* notes 115–117 and accompanying text.

refusers many times by New York courts,[121] all while being left undisturbed constitutionally for close to 25 years.[122]

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[121] In many of the instances of either *Get* Law's enforcement, the constitutionality of the law was not discussed at all by the court. *See* R.I. v. T.I., 2018 NY Slip Op 51235(U) (Sup. Ct. 2018); Sharabani v. Sharabani, 54890/2010, NYLJ 1202798565597, at *1, *97–*99 (Sup. Ct. August 30, 2017); Mizrachi v. Mizrachi, 919 N.Y.S.2d 392 (App. Div. 2011); Pinto v. Pinto, 688 N.Y.S.2d 701 (App. Div. 1999); Megibow v. Megibow, 612 N.Y.S.2d 758, 759 (Sup. Ct. Apr. 27, 1994) (holding that husband was required to give a *get* despite his claim that a *get* was not required since couple got married in a Reform Jewish ceremony); Friedenberg v. Friedenberg, 523 N.Y.S.2d 578 (App. Div. 1988). In another case, the constitutionality was not discussed beyond a mere sentence. *See* Mizrahi-Srour v. Srour, 29 N.Y.S.3d 516, 518–519 (App. Div. 2016) ("The provision increasing the durational maintenance award to the plaintiff by $100 per week to adjust for the adverse economic consequences which would result to her from the defendant's refusal to [] grant her a Get was proper and was not an impermissible interference with religion."). And in other cases, the constitutionality was not considered based on lack of jurisdiction, mootness, or because the issue was not raised. *See* Kaplinsky v. Kaplinsky, 603 N.Y.S.2d 574, 575 (App. Div. 1993) ("The issue as to whether Domestic Relations Law § 253 is unconstitutional is unpreserved for appellate review, and we decline to reach that issue in the exercise of our interest of justice jurisdiction."); Becher v. Becher, 667 N.Y.S.2d 50, 51–52 App. Div.1997) ("In this case, because the wife waived her rights to have the husband's [] failure to deliver a Get considered on the issues of equitable distribution and maintenance, there is no dispute between the parties which must be resolved . . . [and thus] does not qualify as an exception to the mootness doctrine."); S.A. v. K.F., 880 N.Y.S.2d 226 (Sup. Ct. 2009) (concluding, after touching upon the constitutionality of the statute, that such a question is beyond the inquiry of the court since "[t]here is no challenge to the statute asserted nor can the court, or a court on its own initiative, raise such an issue.").

[122] *See* Zornberg, *supra* note 101, at 745 (noting the statutes have enjoyed "nearly uninterrupted operation, despite a consensus (at least among

That is until 2017, when a New York State Supreme Court ruled in *Masri v. Masri* that the *Get* Laws violated a husband's First and Fourteenth Amendment rights.[123] The court explained a distinction between refusing to provide a *get* for "wrongful" reasons and withholding for religious purposes.[124] If a husband withholds the *get* to unfairly extract concessions from the wife,[125] the *Get* Laws could constitutionally apply since "by so unambiguously subordinat[ing] his religion to purely secular ends, [the husband] may properly be said to have forfeited" his First Amendment rights and be subject to the secular remedies imposed by the *Get* Laws.[126] However, where the husband claimed he was withholding the *get* for religious reasons, as the husband claimed to be doing in *Masri*, it would be a plain interference with his free exercise of religion by applying coercive financial pressure to induce him to perform a religious act.[127] A more recent case, involving the rare

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academics) that it is unconstitutional"); Michael A. Helfand, *Did a New York Judge Just Order Orthodox Women To Stay in Unwanted Marriages?*, FORWARD (Jan. 25, 2017), https://forward.com/opinion/361210/get-out-of-here-did-a-ny-court-just-force-orthodox-jewish-women-to-stay-in (noting that the *Get* Laws were not considered unconstitutional in the courts through 2017). See Zornberg, *supra* note 101, at 745–749 for a discussion as to why the statute was left untouched for so many years.

[123] 50 N.Y.S.3d 801, 810 (Sup. Ct. 2017).

[124] *Id.* at 807–810.

[125] *See supra* note 86 and accompanying text.

[126] *Masri*, 50 N.Y.S.3d at 807.

[127] *Id.* at 807–810 (explaining that the husband claimed to withhold the *get* because the wife went to secular court, thus waiving her rabbinical arbitration rights concerning the *get* based on his interpretation of Jewish law).

situation where the wife was the one who was refusing to accept the *get* on religious grounds, also made this distinction.[128] The same court also declined to inquire as to whether the wife falsely testified that she removed all barriers, explaining that is "an issue of religion, not within the Court's purview."[129] As such, New York Courts are beginning to match the skepticism of academic scholars regarding the *Get* Laws' constitutionality, at least in cases where a *get*-refuser is withholding on religious grounds.

Constitutional commentators and recent New York judges are not the only ones averse to the *Get* Laws—many Orthodox rabbinical authorities also take issue with *Get* Law II from a Jewish legal perspective. Jewish law is very concerned about a party participating in the *get* process without their own free will.[130] If a husband is only participating in the *get* process because of a judicial order or to avoid a financial penalty, the *get* could be considered to

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[128] A.W. v. I.N., 117 N.Y.S.3d 527, 529–31 (Sup. Ct. 2020) (describing how wife refused to accept a *get* because the couple only had a civil marriage since she did not want to participate in any religious divorce rituals).

[129] *Id.* at 531 (describing how wife asserted that because she was married in a civil ceremony, her refusal to accept a *get* is not a barrier to her husband's remarriage). Other recent New York courts have additionally clarified that *Get* Law I does not enable a judge to order a defendant to provide a *get* to his wife. Cohen v. Cohen, 102 N.Y.S.3d 616, 618 (App. Div. 2019); *see* Esther M. Schonfeld & Alexandra Weaderhorn, *'Cohen v. Cohen': Adding Confusion to Religious Divorce*, N.Y. L.J. (June 11, 2019), https://www.law.com/newyorklawjournal/2019/06/11/cohen-v-cohen-adding-confusion-to-religious-divorce (describing case and expressing surprise as to why *Get* Law II was not invoked by court in such a situation).

[130] *See supra* Section I.A.2.

have been given under duress and thus invalid.[131] *Get* Law I, which was proposed by Orthodox advocacy groups,[132] avoids this issue since the statute's consequence—not being entitled to a civil divorce—is not considered to cause coercion under Jewish law.[133] On the other hand, *Get* Law II, opposed by some Orthodox groups from its outset,[134] presents a Jewish legal challenge, since it is deprives a husband from receiving part of the marital property that he otherwise would presumably have been entitled to receive.[135] And because of the potential direct financial consequences for the husband's failure to give a *get*, many Jewish legal scholars consider a *get* invalid if given to avoid the ramifications of *Get* Law II.[136] Some even have gone so far as to say that any

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[131] *See supra* notes 54–57 and accompanying text.

[132] *See supra* note 104.

[133] Zornberg, *supra* note 101, at 749 ("The court isn't telling you to give a get. The court is only telling you that if you want the civil divorce, you have to give a get. But that's [the husband's] decision.") (quoting Rabbi Kenneth Auman, an Orthodox Rabbi); Breitowitz, *supra* note 34, at 396–397 (describing "unanimous consensus among leading Talmudic scholars that *Get* Law I is valid under Jewish law because for purposes of a Jewish legal determination over whether a *get* is considered coerced, the "denial of a benefit—a civil divorce—is not the same as an imposition of a cost.").

[134] Zornberg, *supra* note 101, at 756 (describing the ultra-Orthodox group Agudath Israel's opposition).

[135] *See supra* note 112 and accompanying text.

[136] *See* Zornberg, *supra* note 101, at 757 ("Opponents declare that by enabling a secular court to deprive a man of financial assets on the basis of his failure to give a get, the 1992 get law nullifies the man's free will and renders any get he delivers to avoid the law's financial ramifications *halachically* invalid."); Chaim Z. Malinowitz, *The 1992 New York Get Law: An Exchange*, 31 TRADITION 23, 26 (1997) ("[T]here is no logical way

get given after the bill's passage is presumptively invalid because of the potential influence of the law on a husband's free will.[137] While some Jewish legal commentators have argued that the law is not as problematic as opponents claim and that a *beth din* can work around it,[138] the law "[tore] apart the [Jewish legal] community."[139] And if there is no consensus among Jewish legal authorities, that is problematic for *agunot*. If a women received a *get* "under [the] cloud" of *Get* Law II,[140] people may cast doubt on the validity of her *get*, causing issues within the community for her and her potential children.[141] Therefore, even if there are

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to consider the coercion of the Get bill indirect. It directly, explicitly extracts a Get from a husband under a threat of monetary loss.").

[137] *See* Zornberg, *supra* note 101, at 758 (describing position of Rabbi J. David Bleich).

[138] Rabbi Gedalia Dov Schwartz, *Comments on the New York State, "Get Law"*, 27 J. HALACHA & CONTEMP. SOC. 26 (1994), https://www.jlaw.com/Articles/get_law1.html ("A competent Bet Din, alert to all possibilities of a possible [forced Get] will continue to function in supervising Get procedures, since the Get law does not provide for direct coercion by the secular courts."); Michael J. Broyde, *The 1992 New York Get Law*, 29 TRADITION 5, 7–10 (1995) (providing nine Jewish legal rationales and three empirical observations that limit scope of Jewish legal problem); Reiss, *supra* note 37, at 31 ("One resolution from a Jewish-law perspective is for a party to invoke the provisions of the second Get law only when specifically authorized to do so by a Beth Din.").

[139] Zornberg, *supra* note 101, at 756 (quoting Dovid Zweibel, Counsel to Agudath Israel).

[140] Chaim Malinowitz, *The New York State Get Bill and its Halachic Ramifications*, 27 J. HALACHA & CONTEMP. SOC. 5, 19 (1994), https://www.jlaw.com/Articles/getart1.html.

[141] Zornberg, *supra* note 101, at 764 ("The crucial question, therefore, is whether the 1992 get law—or any get law—can be considered "good"

some authorities who believe *Get* Law II does not present a major Jewish legal problem, all would agree that the lack of consensus among Jewish legal authorities is a substantial impediment to an *agunah* availing herself of the law against her husband in a divorce proceeding.[142]

2. Recent Legislative Proposals

Despite the rabbinical apprehension and the recent judicial scrutiny over the *Get* Laws, there have still been more recent efforts to strengthen the current *Get* Laws and to pass new laws to help *agunot*. Like the *Get* Laws, advocates focus their efforts on New York, likely because of its significant Jewish population.[143] One such proposal would require both parties (rather than just the plaintiff) to "remove any religious or conscientious barrier" to remarriage within 90 days of filing for divorce and would impose sanctions on recalcitrant spouses of $2,500 per week until the barriers are removed.[144] While this law would certainly add teeth to the current *Get* Laws, it likely has even more significant issues from a constitutional and Jewish law perspective. By imposing direct sanctions on a spouse's recalcitrance, it is even more likely to be considered a Free

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absent [Jewish legal] consensus. The answer must be no."); *see supra* notes 65–67 (discussing consequences on a woman and her potential children if she gets divorced without a valid get).

[142] *See, e.g.*, Broyde, *supra* note 137, at 6 ("[E]ven supporters of the general [Jewish legal] validity of this Get law must realize that using secular law to solve part of the aguna problem, when the secular law's [Jewish legal] validity [is] contested by a significant number of Jewish law decisors, creates an extremely problematic precedent.").

[143] *See supra* note 100 and accompanying text.

[144] A.B. 215, Leg. 2023–24 Sess. (N.Y. 2023).

Exercise violation than the prior *Get* Laws,[145] which imposed more indirect consequences.[146] And Jewish legal authorities would also take issue if this were passed. Since this is a direct financial penalty for *get* refusal, a *get* resulting from the sanction could be considered to have been given under duress and invalid.[147] Therefore, because of the constitutional and Jewish legal issues, this proposal would likely not help *agunot* as much as it intends.

A second proposal, which has been more popular within the recent grassroots social media movement, has a broader domestic abuse focus and is not specifically designed to help *agunot*, unlike other legislation that has been discussed. Outside the context of the *agunah* issue, domestic violence advocates around the country, including in New York,[148] have been seeking to legally recognize coercive control as a form of domestic abuse and have been successful in passing legislation in some states.[149] Coercive control is

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[145] *See supra* note 117. The only commentator arguing *Get* Law I was not a constitutional violation only did so because it was an indirect consequence, which is not the case here. *See id.*

[146] *See supra* notes 102–113 and accompanying text.

[147] *See supra* note 54–57 and accompanying text.

[148] *Breaking News: New York Is The First State In The USA to Introduce a Coercive Control Bill*, END COERCIVE CONTROL, http://www.coercivecontrol.us/breaking-news-new-york-is-the-first-state-in-the-usa-to-introduce-a-coercive-control-bill (last visited Jan. 12, 2022) ; *see also* Sophie Nieto-Munoz, *Lawmakers Advance Package of Bills to Protect Domestic Violence Victims*, N.J. MONITOR (Mar. 10, 2023, 11:15 AM); https://newjerseymonitor.com/2023/03/10/lawmakers-advance-package-of-bills-to-protect-domestic-violence-victims (last visited Oct. 6, 2023).

[149] Allison Mahoney & Lindsay Lieberman, *Legally Recognizing Coercive Control Can Help Abuse Victims*, LAW360 (May 16, 2021, 8:02 PM),

defined as "a strategic course of oppressive behavior designed to secure and expand gender-based privilege by depriving women of their rights and liberties and establishing a regime of domination in personal life."[150] These domestic violence advocates have been seeking either to recognize it as a form of domestic abuse for purposes of obtaining a restraining order, or to recognize it as a crime, which New York activists have been pushing for.[151] The New York proposal, with identical bills in the State Senate and Assembly, seeks to establish coercive control as a Class E felony and would be applicable when a perpetrator "engages in a course of conduct against a member of his or her same family or household . . . without the victim's consent, which results in limiting or restricting [of] the victim's behavior, movement, associations or access to or use of his or her own finances or financial information."[152] A New Jersey bill with similar language was passed by the state assembly and advanced to the state senate, as of this writing.[153] Women

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https://www.law360.com/articles/1380900/legally-recognizing-coercive-control-can-help-abuse-victims (noting Hawaii and California have already passed legislation adding coercive control provisions to their laws that relate to orders of protection.)

[150] *Id.* (quoting EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007)); *see also* Flannery, *supra* note 90 ("Coercive control refers to any pattern of behavior an abuser uses to dominate their partner and limit their freedom.").

[151] Mahoney & Lieberman, *supra* note 149.

[152] S.B. 6695, 2023–24 Leg. Sess. (N.Y. 2023); A.B. 2707, 2023–24 Leg. Sess. (N.Y. 2023).

[153] A. 1475 220th Leg. (N.J. 2023) ("coercive control means a pattern of behavior against a person protected under this act that in purpose or effect unreasonably interferes with a person's free will and personal

associated with the #FreeAgunot movement, particularly Amber Adler, a former *agunah* and New York City Council candidate, believe a coercive control law can be utilized by *agunot* to assist them in obtaining a *get*.[154] The logic behind this is likely that when a husband is refusing to give his wife a *get*, it restricts the wife's "behavior, movement, [or] associations" since she is not allowed to remarry as a result of the refusal.[155] And if a husband is threatened with

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liberty and . . . includes . . . [c]ontrolling, regulating or monitoring the person's movements, communications, daily behavior, finances, economic resources or access to services.")

[154] Emma Goldberg, *Running for Office Isn't Easy. Try Entering the Race as an Orthodox Woman*, N.Y. TIMES (July 28, 2021), https://www.nytimes.com/2021/07/28/us/amber-adler-running-for-office.html; Jacob Henry, *Fed Up with Get Refusals, Orthodox Women Seek Changes to Domestic Abuse Laws in New York*, N.Y. JEWISH WEEK (Apr. 5, 2022, 4:28 PM), https://www.jta.org/2022/04/05/ny/fed-up-with-get-refusals-orthodox-women-seek-changes-to-domestic-abuse-laws-in-new-york. Similar hopes have been raised in California and New Jersey, in response to their versions of a coercive control law. *See* Esther Macner, *Coercive Control: A Legal Definition of 'Get' (Jewish Divorce) Abuse*, JEWISH J. (July 21, 2020), https://jewishjournal.com/commentary/opinion/319253/coercive-control-a-legal-definition-of-get-jewish-divorce-abuse (noting how a coercive control law can deter *get* refusal); Eliana T. Baer, *New Bill – A1475 – Offers a Potential Avenue for Legal Relief to Victims of Get Refusal*, N.J. FAM. L. BLOG (Apr. 17, 2023) https://njfamilylaw.foxrothschild.com/2023/04/articles/general-new-jersey-family-law-news-updates/new-bill-a1475-offers-a-potential-avenue-for-legal-relief-to-victims-of-get-refusal ("Under the proposed amended domestic violence statute, lawyers and litigants may be able to argue that *Get* refusal is likewise the type of coercion that would give rise to an actionable claim by an *agunah* against her recalcitrant husband.").

[155] S.B. 6695; A.B. 2707.

criminal prosecution, he is much less likely to refuse the *get*. A recent legislative change in the United Kingdom to include *get* refusal as part of its criminal coercive control law also likely inspired these efforts among some *agunah* activists.[156]

However, using the coercive control bill in the context of *get* refusal may pose several issues. First, unlike in the United Kingdom, where statutory guidance specifically includes *get* refusal as an example of domestic abuse, is not entirely clear that *get* refusal would fit neatly into the text of the coercive control bill.[157] Without statutory guidance that clarifies that *get* refusal is included, which is unlikely to happen as lawmakers are wary of specifying religion in statutes because of First Amendment concerns, prosecutors, law enforcement, and judges may not end up categorizing *get* refusal as coercive control.[158] They may believe it is simply a religious dispute which they have no business getting involved in.[159]

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[156] *See* Domestic Abuse Act 2021, c. 17 (UK), https://www.legislation.gov.uk/ukpga/2021/17/section/84#section-84-1-b-i (ordering statutory guidance for domestic abuse laws); Home Office, Domestic Abuse: Draft Statutory Guidance Framework (Oct. 19, 2021), https://www.gov.uk/government/consultations/domestic-abuse-act-statutory-guidance/domestic-abuse-draft-statutory-guidance-framework (giving case study of an *agunah* to define spiritual abuse as part of guidance for coercive control law); 810 Parl Deb HL (5th ser.) (2021) cols. 1318–1334 (UK) (discussing how new proposal can help *agunot*); *see also* Simon Rocker, *New Law Will 'Deter' Get Refusers*, JEWISH CHRON. (Sept. 14, 2021, 7:16 PM), https://www.thejc.com/news/news/new-law-will-deter-get-refusers-1.520414 (describing changes to law).

[157] *See supra* note 156 and accompanying text.

[158] *See supra* note 103 and accompanying text.

[159] Many abuse survivors already feel that law enforcement fails to investigate domestic violence cases effectively. NATIONAL DOMESTIC

Second, even if *get* refusal fits within the statute, there would also likely be constitutional issues like the other legislative efforts.[160] While it can be argued that a court may make a similar distinction to the *Masri* decision and only apply the law when the *get* refusal is being used for wrongful extortive purposes and not religious reasons, there are several potential problems that may arise.[161] First, *Masri* and the other New York Courts that made this distinction were all lower courts. It is possible that a higher court may go a step further than *Masri*. A higher court may rule, as many commentators have argued, that *any* law that penalizes a husband for refusing to give a *get*, be it by denying him a civil divorce, factoring his refusal in equitable distribution, or through imposing criminal liability, is *always* considered a violation of the First Amendment, and not just when he claims he is refusing on religious grounds.[162] That remains a possibility, and criminalizing *get* refusal with a coercive control law may also make it more likely that a lawyer challenges such a law directly, since indigent criminal defendants facing felonies are provided with counsel by the government, unlike in divorce

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VIOLENCE HOTLINE, WHO WILL HELP ME? DOMESTIC VIOLENCE SURVIVORS SPEAK OUT ABOUT LAW ENFORCEMENT RESPONSES 2 (2015) http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf. If law enforcement already fails at handling "traditional" domestic violence, it would be difficult to imagine they would properly handle and understand *get* refusal and notice that it is abuse.

[160] *See supra* notes 114–120 and accompanying text.

[161] *See supra* notes 123–128 and accompanying text.

[162] *See supra* notes 114**Error! Bookmark not defined.**–120 and accompanying text.

proceedings.[163] Additionally, a *get*-refuser being charged under a coercive control law could simply claim he is refusing for religious reasons, which would likely be considered a valid defense[164] and would probably be asserted frequently.[165]

Third, just like *Get* Law II and other legislative proposals, using a coercive control bill against *get*-refusers would raise Jewish legal concerns.[166] Indeed, after efforts to expand coercive control laws for *get* refusal situations were announced in the United Kingdom, the Federation Beit Din in England warned that women would be less likely to be able to receive a *get* if they utilize the new law because of the concern of a *get* given under duress.[167] As it stands, there is

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[163] *Compare* Gideon v. Wainwright, 372 U.S. 335 (1963) (establishing Sixth Amendment right to counsel for indigent criminal defendants), *with In re* Smiley, 36 N.Y.2d 433 (1975) (holding that there is no constitutional right for state to provide counsel to indigent individuals going through divorce). Providing a *get*-refuser with a lawyer makes it more likely that he would challenge the law than if they do not have one, simply because of the likely lack of legal knowledge a pro se *get*-refuser would have that would be needed to challenge a law constitutionally.

[164] *See supra* notes 123–128 and accompanying text.

[165] *See* Starr, *supra* note 68, at 48 ("In cases of get refusal, recalcitrant husbands often tell their spouses that they are acting in full accordance with Jewish law and look for fringe rabbinical figures to justify their points of view.").

[166] *See supra* notes 143–147 and accompanying text.

[167] Jenni Frazer, *Rabbis Refuse Divorces for Women Who Take Their Fight to Court Claiming Coercion*, JEWISH CHRON. (July 1, 2021, 2:02 PM), https://www.thejc.com/news/uk/rabbis-refuse-divorces-for-women-who-take-their-fight-to-court-claiming-coercion-1.518260 ("A letter from the Federation Beit Din says that because a get has to be given 'entirely of their own free will' by a husband, if a prosecution is initiated by an

nothing in the current New York coercive control proposal that would alleviate any rabbinic concerns. Therefore, because the currently proposed coercive control law would apply a direct penalty on a *get*-refuser for his recalcitrance, it is not likely to help *agunot* any more than other *Get* Laws and other proposals that have similar Jewish legal issues.[168]

B. Contractual Solutions

While legislative solutions pose constitutional and Jewish legal issues, private agreements between parties on issues relating to the *get* offer a more promising way to assist *agunot*. That is because courts have generally been open to enforcing contracts within this realm, which avoids many of the constitutional and Jewish legal issues that have hampered legislative efforts. There are three different types of contractual solutions that have been offered in the past, including implied contracts, express agreements upon contemplation of divorce, and prenuptial solutions. The implied contract theory of solving the *agunah* problem faces significant constitutional and Jewish law issues. The express contract theory seems constitutionally valid, although that

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aguna [] then it will be . . . 'almost impossible' [according to Jewish law] for the wife to receive a get.").

[168] Rabbinical authorities may be more comfortable with a coercive control law being utilized against *get*-refusers if New York followed a similar model to Hawaii and California, where coercive control allows a woman to obtain a restraining order as opposed to directly criminalizing coercive control, since the law would not directly impose a sanction on the husband for *get* refusal. *See supra* note 149. Such a law would be more akin to *Get* Law I since the consequence (issuing a restraining order against the husband) is more indirect than a financial penalty or a criminal sanction. *See supra* note 133.

approach may also face some Jewish law issues. Finally, the prenuptial approach, while not perfect, offers the most promising solution to the *agunah* issue and has been embraced by many within the #FreeAgunot movement.

1. Implied Contracts

One way that *agunot* have tried to obtain a *get* from their husbands is by claiming in secular court that the *ketubah*,[169] the marriage document given from husband to wife at a traditional Jewish wedding, is an implied contract to dissolve the marriage according to Jewish law.[170] The crux of the argument is that by the husband giving the *ketubah* to the wife and by participating in the traditional Jewish wedding ceremony through declaring that the marriage is to be in "accordance with the laws of Moses and Israel," he is in effect agreeing that he will get divorced with the *get* ceremony if the marriage functionally ends.[171] Courts have treated the "ceremony-*ketubah*" argument with mixed results.[172] Some courts have agreed with such an argument, and have ordered by specific performance that the husband

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[169] The *ketubah* (literally translated as "writing") is a standard document written in Aramaic setting out the obligations of a husband toward his wife. Breitowitz, *supra* note 34, at 343, n. 119. "The ketubah is executed and signed by two witnesses immediately before the wedding ceremony and remains the wife's property. The ketubah is also publicly read at the wedding ceremony, though usually left untranslated, so that few in the audience know what they are hearing." *Id.*

[170] *See id.* at 343 (explaining that the first case of a spouse making such an argument was the Canadian case of *Morris v. Morris*, 36 D.L.R.3d 447, rev'd, 42 D.L.R.3d 550 (1973)).

[171] *Id.*

[172] *Id.*

either needs to grant his wife a *get*[173] or submit to a *beth din*'s jurisdiction on the issue.[174] For these cases, when it came to evaluating constitutional issues, courts either ruled that giving a *get* is not a religious act,[175] or that a husband compromised any free exercise claim based on evidence of his willingness to give a *get* for a lump sum payment.[176] Other courts, on the other hand, have declined to treat a *ketubah* as an implied contract to give a *get*, based on their inability to interpret a *ketubah* in such a way or on First Amendment grounds.[177]

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[173] *See In re* Marriage of Goldman, 554 N.E.2d 1016, 1021 (Ill. App. 1990) (ordering a husband to comply with one of four options relating to the *get*, including giving the wife a valid *get*, and appearing before an Orthodox *beth din* to give the necessary information and authorization for a valid *get* procedure); Minkin v. Minkin, 434 A.2d 665, 667 (N.J. Super. Ct. Ch. Div. 1981) ("Relying upon credible expert testimony that the acquisition of a *get* is not a religious act, the court finds that the entry of an order compelling defendant to secure a *get* would have the clear secular purpose of completing a dissolution of the marriage."); *see also* Breitowitz, *supra* note 34, at 343–44 (discussing Stern v. Stern, 5 Fam. L. Rep. (BNA) 2810 (N.Y. Sup. Ct. Aug. 7, 1979) (ordering husband to give wife a *get*)).

[174] *See* Burns v. Burns, 538 A.2d 438, 441 (N.J. Super. Ct. Ch. Div. 1987) ("[T]his court orders the plaintiff to submit to the jurisdiction of the 'Bet Din' to initiate the proceedings for a 'get.'").

[175] *See, e.g.*, *Minkin*, 434 A.2d at 668 (noting the order had a "clear secular purpose" of completing the process of dissolution).

[176] *See, e.g.*, *Burns*, 538 A.2d at 440 (noting in case where a husband offered to accept the *get* for $25,000, that a "true religious belief is not compromised as the amount of money demanded is increased").

[177] *See, e.g.*, Tilsen v. Benson, 299 A.3d 1096, 1115 (Conn. 2023) (holding Establishment Clause precluded lower court's enforcement of *ketubah*); Mayer-Kolker v. Kolker, 819 A.2d 17, 21 (N.J. Super. Ct. App. Div. 2003) (affirming lower court order to not compel the husband to give a *get*

These latter courts declining to find an implied contract from a *ketubah* were correct on contractual, constitutional, and Jewish law grounds. From a contractual perspective, it is extremely unlikely that a given Jewish couple getting married has the required intent at that moment to obligate themselves to provide a *get* if they get divorced. The *ketubah*, a boilerplate document written in difficult Aramaic,[178] discusses obligations that a husband promises to his wife, such as how he will honor her and provide financial support.[179] Beyond the discussion of payment of alimony upon a divorce, there is nothing written about what happens if the couple separates, and no mention of any *get* being given.[180] Couples are unlikely to read or understand what the words of the document *actually* say, let alone have in mind something not written in the document.[181] It is also given or signed by the parties moments before or during their wedding ceremony, with guests and photographers present, so couples are far more

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because of a lack of necessary factual context relating to the *ketubah*); Aflalo v. Aflalo, 685 A.2d 523, 531 (N.J. Super. Ct. Ch. Div. 1996) ("To engage even in a 'well-intentioned' resolution of a religious dispute requires the making of a choice which accommodates one view and suppresses another."); Victor v. Victor, 866 P.2d 899, 902 (Ariz. Ct. App. 1993) ("If this court were to rule on whether the ketubah, given its indefinite language, includes an unwritten mandate that a husband under these circumstances is required to grant his wife a get, we would be overstepping our authority and assuming the role of a religious court.").

[178] *See supra* note 169.

[179] Breitowitz, *supra* note 34, at 347.

[180] *Id.* (discussing promises made in a *ketubah*).

[181] *Id.*

likely to believe the *ketubah* is just a symbolic part of the wedding ritual and nothing more.[182] It is therefore highly unlikely a marrying couple would be intending to agree to give or receive a *get* at an indefinite time down the line if they were to divorce and so there would not be a proper meeting of the minds to form a valid contract.

Constitutionally, this approach is also problematic. A court trying to resolve the obligations of the *ketubah* based on ambiguous language, such as what it means to get married "in accordance with the laws of Moses and Israel," runs afoul of the Establishment Clause because it creates excessive entanglement with religion.[183] Additionally,

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[182] Zornberg, *supra* note 101, at 724; *see also In re* Estate of White, 356 N.Y.S.2d 208, 209–210 (Sur. Ct. 1974) (finding that *ketubah* is a ceremonial, not legal, document).

[183] Breitowitz, *supra* note 34, at 357 (noting that "while enforcement of a specific nonliturgical undertaking should be allowed even where it is an act of religious significance, courts should avoid inferring and enforcing agreements based on nothing more than generalized commitments to obey Jewish law."). See *id.* at 352–356 for a discussion as to how the other prongs of the *Lemon* Establishment Clause Test would not have been a constitutional issue because the state has several secular purposes for ordering a *get* to being given (such as wife's ability to remarry and to avoid extortion) and because the effect of such an order could also be considered secular since "it does not require a profession of faith or any act of homage to a Deity, nor does it even necessitate the personal participation of the spouses" since it can be given through a proxy. *But see* Aflalo v. Aflalo, 685 A.2d 523, 528–529 (N.J. Super. Ct. Ch. Div. 1996) (finding that participating in a *get* ceremony is primarily a religious act). *See* Lemon v. Kurtzman, 403 U.S. 602, 612–13 (1971) (discussing previous long-standing test for an Establishment Clause violation) (abrogated by Kennedy v. Bremerton, 142 S.Ct. 2407, 2428 (2022) (holding the Establishment Clause must be interpreted by referring to "historical practices and understandings.")) (internal citations omitted).

accepting the "ceremony-*ketubah*" argument also may be a violation of the Free Exercise Clause. In *Aflalo v. Aflalo*, the court conveyed how the "[t]he spectre of [the husband] being imprisoned or surrendering his religious freedoms because of action by a civil court is the very image which gave rise to the First Amendment."[184] While such an argument may apply only when a husband is basing his refusal on religious grounds,[185] it would likely apply in many cases, since *get*-refusers often claim religious reasons for their refusal.[186]

From a Jewish law perspective, this is also problematic. This is because most Jewish law scholars would never consider a *ketubah* as an agreement to give a *get*.[187] Therefore, if the husband refused and a court ordered him to give a *get* based on an implied agreement, it would be

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While the *Lemon* Establishment Clause Test is no longer applicable in light of *Kennedy*, interpreting ambiguous language in a *ketubah* would likely still be an Establishment Clause violation due to historical concerns of the government's excessive entanglement in religious affairs. *See* Barclay, *supra* note 119, at 2105 (describing how government involvement and entanglement in religious doctrine and affairs would still likely pose Establishment Clause issues under the updated doctrine).

[184] 685 A.2d at 530.

[185] In *Aflalo*, the husband claimed his refusal was based on a desire for reconciliation and that he wanted a pursue that avenue through *beth din*. *Id.* at 524. *See also supra* notes 123–128.

[186] *See supra* note 165. *But see* Breitowitz, *supra* note 34, at 357–359 (arguing that civil enforcement of an implied agreement to give a *get* should not be precluded by the Free Exercise Clause).

[187] *See* Breitowitz, *supra* note 34, at 346–350 (discussing issues in concluding that *ketubah* is a promise to give a *get* based on Jewish contractual laws).

considered a *get* given under duress and be invalid, with all the accompanying consequences.[188]

2. Express Agreements Upon Contemplation of Divorce

Agunot have also tried to obtain a *get* from their husbands by seeking enforcement of express contracts that were made upon the couple's separation. These express contracts can be formed in different ways. Some are oral declarations made in open court,[189] while others are part of a broader written settlement agreement.[190] The contracts can be a direct agreement to give or accept a *get*,[191] or an

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[188] *See supra* notes 55–63 and accompanying text.

[189] Pal v. Pal, 356 N.Y.S.2d 672, 674 (App. Div. 1974) (Martuscello, J., dissenting); Marguiles v. Marguiles, 344 N.Y.S.2d 482, 484 (App. Div. 1973).

[190] Satz v. Satz, No. A-3535-21 (App. Div. Aug. 18, 2023); Fischer v. Fischer, 655 N.Y.S.2d 630, 630 (App. Div. 1997); Kaplinsky v. Kaplinsky, 603 N.Y.S.2d 574 (App. Div. 1993); *In re* Scholl, 621 A.2d 808, 809 (Del. Fam. Ct. 1992); Waxstein v. Waxstein, 395 N.Y.S.2d 877, 878 (Sup. Ct. 1976); Rubin v. Rubin, 348 N.Y.S.2d 61, 63 (Fam. Ct. 1973).

[191] *Satz*, No. A-3535-21 at 4–5 (parties agreeing to submit to a *beth din* and respond promptly to its summons); *Fischer*, 655 N.Y.S.2d at 630 ("husband promised to submit to the jurisdiction of a rabbinical court and voluntarily give the former wife a Jewish divorce known as a 'get'"); *In re Scholl*, 621 A.2d at 809 ("Husband shall forthwith cooperate with Wife in allowing her to obtain a Jewish Divorce known as a [*get*]."); *Waxstein*, 395 N.Y.S.2d at 879; *Marguiles*, 344 N.Y.S.2d at 484 ("[D]efendant voluntarily agreed to 'appear before a Rabbi to be designated for the purposes of a Jewish religious divorce.'"); *Rubin*, 348 N.Y.S.2d at 63 (noting a provision of agreement was that "each of the parties was to co-operate in securing a Jewish divorce").

agreement to submit to a *beth din*'s jurisdiction on the *get* issue.[192] In terms of enforcement, courts have upheld these express agreements but have done so in different ways. Some courts have fined husbands for not holding up their end of the bargain[193] or awarded attorney fees.[194] Other courts have found *get*-refusers in contempt of the court for breaking their agreement.[195] For agreements made within a larger settlement agreement, some courts have refused to uphold the other portions of the party's contract, such as an financial arrangements or an agreed-upon visitation schedule.[196] And

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[192] *Pal*, 356 N.Y.S.2d at 673 ("[E]ach of the parties . . . submit themselves to a Rabbinical Tribunal on the question of whether the [husband] shall be directed to take all steps necessary to grant a [*get*] and the parties shall be bound by the decision of said Rabbinical Tribunal.") (Martuscello, J., dissenting).

[193] *Marguiles*, 344 N.Y.S.2d at 484 (vacating an imprisonment order but upholding a fine imposed on husband for failure to honor stipulation to provide *get*).

[194] *Satz*, No. A-3535-21 at 20.

[195] *Fischer*, 655 N.Y.S.2d at 630–31 (holding the husband in contempt and committing him to jail); *Kaplinsky*, 603 N.Y.S.2d at 575 (imposing term of imprisonment for contempt).

[196] *Kaplinsky*, 603 N.Y.S.2d at 575 (withholding all economic benefits of agreement to husband until he purged himself of contempt); *Waxstein*, 395 N.Y.S.2d at 881 ("This court may also condition enforcement of other provisions in the separation agreement upon the defendant's co-operation in securing the 'Get' . . . and the stock and the deed to the marital residence . . . shall not be turned over to the defendant until he has obtained a 'Get.'") (internal citation omitted); *Rubin*, 348 N.Y.S.2d at 67 (refusing to enforce the support provisions of the parties' separation agreement until the wife fulfilled her contractual obligation to cooperate in obtaining a religious divorce); *Pal*, 356 N.Y.S.2d at 673 (dismissing the husband's motion to hold his wife in contempt for failure to comply with the visitation provisions in the judgment of divorce).

other courts have ordered specific performance for the husband to give the *get* within a stipulated period of time[197] or required them to comply with explicit provisions of a marriage settlement agreement relating to the *get*.[198]

Unlike courts' evaluations of implied contracts,[199] not one court evaluating an express agreement found any constitutional issue with requiring the husband to give a *get* or imposing consequences for failure to do so.[200] This makes sense. When analyzing the potential issue, courts have relied on "neutral principles of law" to interpret these contracts.[201] Courts are able to do this because when there is an express agreement to give a *get*, there are no vague religious references that a court would be required to interpret based on religion; it should be no more complicated for a court to understand the basics of a *get* procedure and require its performance than to understand and require an engineer to design a building's electrical wiring based on a contract, for example. This is in contrast with the implied contract line of cases, in which judges try to interpret what it means to get married "in accordance with the laws of Moses and Israel," a vague religious phrase that creates an excessive entanglement with religion for any court attempting to

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[197] *In re Scholl*, 621 A.2d at 813 (directing husband to obtain an Orthodox *get* within sixty days); *Waxstein*, 395 N.Y.S.2d at 881.
[198] *Satz*, No. A-3535-21 at 17–18.
[199] *See supra* note 177 and accompanying text.
[200] *See supra* notes 193–197; *see also* A.W. v. I.N., 117 N.Y.S.3d 527, 530 (Sup. Ct. 2020) (noting courts routine enforcement of contractual agreements to cooperate with a religious divorce).
[201] *In re Scholl*, 621 A.2d at 810.

interpret it.[202] Additionally, courts have noted that participating in the *get* procedure is not a religious activity, but rather a "severance of a contractual relationship between two parties," which does not affect an individual's "religious feelings."[203] Further, some have argued that if a court denied enforcement of a contract to participate in a *get* ceremony, the denial could be considered a violation of the Free Exercise Clause because it would be rejecting the parties' freedom to contract based solely on religion.[204] Therefore, from a constitutional perspective, courts should be allowed to enforce these express agreements.

From a Jewish law perspective, however, there still can be issues with a court enforcing such express contractual agreements. Even "self-imposed duress" can present an issue for the execution of a *get* because it can be considered a *get* given without free will.[205] This is especially the case when a court would find a husband in contempt and levy a fine against him[206] or sentence him to prison.[207] One way a court can potentially circumvent this issue is to require the husband to submit to the jurisdiction of a *beth din* so that they can decide whether a *get* is required[208] instead of

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[202] *See supra* note 183 and accompanying text.
[203] *In re Scholl*, 621 A.2d at 811 (presumably referring to the severance of the original wedding contract).
[204] J. David Bleich, *Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement*, 16 CONN. L. REV. 201, 228 (1984).
[205] Breitowitz, *supra* note 34, at 359.
[206] *See supra* note 193.
[207] *See supra* note 195. Breitowitz, *supra* note 34, at 360.
[208] Breitowitz, *supra* note 34, at 361.

directly ordering a husband to give a *get*.[209] This would potentially get around the coercion problem, as, according to Jewish law, a *beth din* is allowed to order a husband to give a *get*, while a secular court is not.[210] Some have claimed that such an approach may still be problematic, since it "imposes an obligation that does not follow the actual language of the agreement (which only promises to give a get)."[211] While one can argue that an implication of an agreement to give a *get* is also to submit to a *beth din*'s jurisdiction,[212] deciding which *beth din* panel a party appears in front of can pose issues, especially with an obstinate husband who does not agree to one.[213] Moreover, if a husband is not going to agree to give a *get*, he is also unlikely to sign an agreement when the marriage is breaking down that expressly requires him to give a *get*. Therefore, while court enforcement of express agreements to give a *get* upon the completion of a civil

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[209] *See, e.g.*, Burns v. Burns, 538 A.2d 438, 441 (N.J. Super. Ct. Ch. Div. 1987) ("[T]his court orders the plaintiff to submit to the jurisdiction of the 'Bet Din' to initiate the proceedings for a 'get.'").

[210] *See supra* note 58 and accompanying text.

[211] Breitowitz, *supra* note 34, at 360.

[212] After all, a *beth din* is involved in every *get* ceremony and always asks the husband whether he is giving the *get* willingly to determine whether the *get* is being given under his own free will. *See supra* note 41. Accordingly, a *beth din* decides whether a *get* is allowed to be given as part of the *get* ceremony, so in essence, an agreement to participate in a *get* ceremony is also an agreement to submit to a *beth din*'s jurisdiction.

[213] *See* Yona Reiss, *ZABLA Panels and Courts*, JEWISHPRUDENCE (Dec. 24, 2020), https://bethdin.org/zabla-panels-and-courts (discussing potential problems when a specific *beth din* is not named by the parties in an arbitration agreement); *see also* Pal v. Pal, 356 N.Y.S.2d 672, 673 (App. Div. 1974) (noting that a secular court lacks authority to convene a rabbinical tribunal without express agreement from the parties).

divorce may offer a promising solution to the *agunah* issue in some cases, it would still not help many *agunot*.

3. Prenuptial Agreements

Prenuptial agreements appear to be the most effective legal solution to the *agunah* problem and many women within the #FreeAgunot movement have advocated for its increased use.[214] Courts have upheld prenups relating to the *get* for a long time. In *Koeppel v. Koeppel*, a couple signed a prenuptial agreement requiring both parties to "appear before a Rabbi or Rabbinate" to take part in a Jewish divorce proceeding upon either spouse's request.[215] The court rejected the husband's motion to dismiss his wife's suit to enforce the prenup and his arguments that doing so would interfere with his religious freedom.[216] While the appellate court ultimately ruled that the wife was not entitled to relief in this case since she already remarried and it was not clear from their prenup if the parties agreed to appear before a *beth din* in such circumstances, the principle remained that a couple can agree before the marriage either to participate in a *get* ceremony or appear before a *beth din* to decide whether they need to do so.[217]

This principle was then validated by the New York Court of Appeals in 1983. In *Avitzur v. Avitzur*, a husband

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[214] *See supra* note 31 and accompanying text.
[215] 138 N.Y.S.2d 366, 370 (Sup. Ct. Queens Cnty. 1954).
[216] *Id.* at 373 ("His appearance before the Rabbinate to answer questions and give evidence needed by them to make a decision is not a profession of faith. Specific performance herein would merely require the defendant to do what he voluntarily agreed to do.").
[217] Koeppel v. Koeppel, 161 N.Y.S.2d 694, 695–696 (App. Div. 1957).

refused to provide his wife a *get*.[218] The couple was married in a Conservative Jewish wedding ceremony, and, in accordance with that denomination, signed a *Ketubah* which included a "Lieberman Clause."[219] This additional clause to the traditional *ketubah* is an agreement between the couple to recognize the *beth din* of the Rabbinical Assembly[220] to have the authority to resolve end of marriage disagreements and to impose compensation on a party for disregarding the tribunal.[221] When considering the validity of the clause in light of the husband's constitutional objections, the court ruled that since it could interpret the clause based on "neutral principles of law," there was no constitutional barrier to judicial enforcement.[222] The court noted that since the husband was being asked to perform only a "secular obligation to which he contractually bound himself," the court did not need to decide any doctrinal issues, and there would be no "interference with religious authority" as a result of the decision.[223] Accordingly, the court upheld the

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[218] 446 N.E.2d 136, 137 (N.Y. 1983).

[219] Linda S. Kahan, *Jewish Divorce and Secular Courts: The Promise of Avitzur*, 73 GEO. L.J. 193, 212 (1984); *Lieberman Clause*, RITUALWELL, https://www.ritualwell.org/ritual/lieberman-clause (last visited Jan. 16, 2022).

[220] *About Us*, THE RABBINICAL ASSEMBLY, https://www.rabbinicalassembly.org/about-us (last visited Jan. 18, 2022) ("The Rabbinical Assembly is the international association of Conservative rabbis.").

[221] Kahan, *supra* note 219, at 212, n. 132.

[222] *Avitzur*, 446 N.E.2d at 114–15 (citing Jones v. Wolf, 443 U.S. 595, 602 (1979)).

[223] *Id.* at 115.

provision and the husband was required to appear before the *beth din*.[224]

The constitutionality of such prenuptial agreements follows a similar analysis to the express agreements to provide a *get*.[225] Even those who generally oppose judicial enforcement of religious arbitration agreements agree that Jewish prenuptial agreements should not run afoul of the Establishment Clause since they can be enforced like any other agreement.[226] Because the terms are explicit in a binding arbitration agreement to appear before a *beth din*, courts would not have to become excessively entangled with religion to enforce the terms of such an agreement.[227] There is a government interest in allowing parties to remarry and enforcing valid contracts, so there is a secular purpose to its enforcement.[228] Additionally, the effect of such agreements

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[224] *Id.* at 116.

[225] *See supra* notes 196–201 and accompanying text.

[226] *See, e.g.*, Sophia Chua-Rubenfeld & Frank J. Costa Jr., *The Reverse-Entanglement Principle: Why Religious Arbitration of Federal Rights Is Unconstitutional,* 128 YALE L. J. 2087, 2118 (2019) ("Under the reverse-entanglement principle, a court can compel a vindictive husband to go before the beth din by enforcing the contract like any other prenuptial agreement.").

[227] Michelle Greenberg-Kobrin, *Civil Enforceability of Religious Prenuptual Agreements*, 32 COLUMBIA J.L. & SOC. PROBS. 359, 382 (1999). *See* Tilsen v. Benson, 299 A.3d 1096, 1108, n. 8 (Conn. 2023) (noting that recent "sea changes to the United States Supreme Court's establishment clause jurisprudence [do not] affect the continuing vitality of the neutral principles of law doctrine.").

[228] Greenberg-Kobrin, *supra* note 227 at 380–81.

is to require spouses to appear before a specific tribunal[229] and giving the *agunah* the ability to remarry, both of which can be categorized as secular.[230] Therefore, prenups relating to a *get* are constitutional.

Perhaps the most important feature of the prenuptial solution, however, is that, unlike other legal solutions, it is both enforceable and constitutionally valid in U.S. courts *and* acceptable according to a large percentage of Orthodox Jewish legal authorities. While there are various versions of prenuptial agreements relating to the *get*,[231] the most widely used is the one recommended by the Rabbinical Council of America[232] and administered by the Beth Din of America[233]

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[229] Additionally, some agreements may impose financial obligations on a party, another secular effect. *See, e.g.*, *infra* notes 235–236 and accompanying text.

[230] Greenberg-Kobrin, *supra* note 227, at 381. *See also id.* at 382–84 (discussing how prenuptial solutions also pass other conceptions of the Establishment Clause than the *Lemon* Test).

[231] *See* Michael J. Broyde, *The Effectiveness of (Rabbinic) Prenuptial Agreements in Preventing Marital Captivity*, 18 INT'L J. CON. L. 944, 945–48 (noting five prenuptial models used within the Orthodox Jewish community in North America); *see also infra* note 255 and accompanying text; Susan Metzger Weiss, *Sign at Your Own Risk: The RCA Prenuptial May Prejudice the Fairness of Your Future Divorce Settlement*, 6 CARDOZO WOMEN'S L.J. 49, 69–79 (1999) (describing different prenuptial solutions that have been offered).

[232] *Who We Are*, RABBINICAL COUNCIL AMERICA, https://rabbis.org/about-us (last visited Jan. 18, 2022) (The RCA is "the leading membership organization of orthodox rabbis in North America.").

[233] The Beth Din of America is a *beth din* founded in 1960 by the Rabbinical Council of America. *About*, BETH DIN OF AMERICA, https://bethdin.org/about (last visited Jan. 18, 2022).

("RCA/BDA Prenup").[234] The RCA/BDA Prenup, originally drawn up in the early 1990's by Rabbi Mordechai Willig, contains two chief components.[235]

The first component solves a jurisdictional issue. A common problem in many *agunah* situations is that the parties cannot agree on which *beth din* should resolve a dispute relating to the *get*, often creating a stalemate between the parties or a husband insisting on appearing before a *beth din* with a "pro-husband" reputation.[236] The RCA/BDA Prenup solves this problem by specifically naming the Beth Din of America as the rabbinical tribunal responsible for arranging a panel of judges to resolve issues

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[234] Rachel Levmore, *Preventing Get Refusal: From the Beth Din of America to the Israeli Agreement for Mutual Respect*, RABBINICAL COUNCIL OF AMERICA (Aug. 23, 2013), https://www.rabbis.org/pdfs/Preventing_Get-Refusal_6.13.pdf.

[235] Shlomo Weissmann, *Ending the* Agunah *Problem as We Know It*, ORTHODOX UNION, (Aug. 23, 2012), https://www.ou.org/life/relationships/ending-agunah-problem-as-we-know-it-shlomo-wiessmann; *Origins of the Prenup*, BETH DIN OF AMERICA, https://theprenup.org/origins-of-the-prenup (last visited Jan 16, 2022); *What Does The Prenup Say?*, BETH DIN OF AMERICA, https://theprenup.org/explaining-the-prenup/what-does-the-prenup-say (last visited Jan 16, 2022).

[236] *See* Medina, *supra* note 47 ("The rabbinical court system is such an ad hoc system where any man is able to call himself a rabbi and any three rabbis are able to call themselves a court, so that even if it's not accepted by anyone, he is able to hide behind this . . .."); Orthodox Union, *The Role of the Beth Din in Preventing and Resolving Agunah Cases*, YOUTUBE (Jan 2, 2015) (43:52) (noting how a husband may try choosing a *beth din* that may be more sympathetic to his desire to delay the giving of the *get*).

relating to the *get*.[237] Thus, there can be no dispute as to which *beth din* would decide a disagreement relating to the *get*.

The other component is an enforcement mechanism, and states that if the couple separates, the Jewish legal obligation of the husband to support his wife[238] is legally formalized, so that he is obligated to pay $150 per day (indexed to inflation), from the date he receives notice from her of her intention to collect the sum until the date a *get* is obtained.[239] This provides an "incentive for the husband to abide by decisions of the rabbinical court, and give a [*get*] to his wife once the marriage is over and there is no hope of reconciliation."[240] Importantly, because the enforcement mechanism is structured as a support obligation based on the husband's already-existing responsibility from the *ketubah* to financially provide for his wife, a *get* given under such conditions would not be considered to have been given

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[237] *What Does The Prenup Say?*, *supra* note 235; Greenberg-Kobrin, *supra* note 227, at 393–94 ("[Prenups] initiate the first crucial step towards getting the parties before a *Beit Din*.").

[238] *See supra* note 179 and accompanying text.

[239] *What Does The Prenup Say?*, *supra* note 235. This is an explanation of the "Standard Version" of RCA/BDA Prenup, where the support obligation only applies to the husband. There are other RCA/BDA Prenup versions available, one of which mandates a reciprocal support obligation on the wife as well. *See Signing the Prenup*, BETH DIN OF AMERICA, https://theprenup.org/the-prenup-forms (last visited Jan. 16, 2022) (containing a reciprocal "California Version" of the RCA/BDA Prenup, among others).

[240] *What Does The Prenup Say?*, *supra* note 235.

under duress, according to many prominent Jewish legal authorities.[241]

At the same time, the enforcement mechanism is structured in such a way as to grant the *beth din* the power to administer their rulings, alleviating a common authoritative issue that *beth dins* had previously suffered.[242] Because the RCA/BDA prenup is written in a way that it can be interpreted through "neutral principles of law,"[243] civil courts should be able to enforce any *beth din* arbitration award against a husband without any constitutional

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[241] *See* Michael J. Broyde, *An Analysis of Rabbi Moshe Sternbuch's Responsa (Teshuwah) on the Beth Din of America's Prenuptial Agreement*, in THE JEWISH FAMILY, JEWISH LAW ASSOCIATION STUDIES XXVIII 41, 42 (Harry Fox, ed., 2020) ("The BDA Prenup is structured this way so as to not directly coerce or even legally pressure a husband to give his wife a *get*, and instead formalizes and enforces the husband's preexisting but civilly unenforceable Jewish law obligation to provide his wife with a reasonable standard of living."); *Rabbinic Endorsements*, BETH DIN OF AMERICA, https://theprenup.org/explaining-the-prenup/rabbinic-endorsements (last visited Jan. 16, 2022) (containing list of prominent Jewish legal authorities who have endorsed the RCA/BDA Prenup). While some prominent Jewish legal authorities in Israel believe a *get* given under such conditions is invalid because of duress, see *Broyde*, *supra*, for a response to one such objection; *see also* Jeremy Stern, *A Failed Attempt to Challenge the Halakhic Prenup*, LEHRHAUS, (July 24, 2017) https://thelehrhaus.com/commentary/a-failed-attempt-to-challenge-the-halakhic-prenup (responding that objections to the RCA/BDA Prenup are primarily based on misunderstandings of how the enforcement mechanism operates and how the cost-of-living for Orthodox Jews in the U.S. differs from those in Israel).

[242] *See supra* notes 58–59and accompanying text (discussing *beth dins*' traditional lack of power and authority in the U.S.).

[243] *See supra* note 222 and accompanying text.

issue.[244] And that is precisely what has happened. In 2013, a Connecticut court became the first to evaluate the validity of the RCA/BDA prenup and ruled that it posed no constitutional issues.[245] After the ruling, the wife in the case, Rachel Light, received her *get* and a substantial financial settlement.[246] Since then, other courts in various jurisdictions have also enforced the RCA/BDA prenup, finding it free of constitutional issues.[247]

Due to the RCA/BDA prenup's ability to balance the fine line between incentivizing a husband to give a *get* and avoiding coercion prescribed under Jewish law, all while posing no constitutional issues,[248] many have heralded it as

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[244] *See supra* notes 225–230 and accompanying text.

[245] Light v. Light, No. NNHFA124051863S, 2012 Conn. Super. LEXIS 2967, at *19 (Conn. Super. Ct. Dec. 6, 2012) ("Determining whether [Husband] owes the [Wife] the specified sum of money does not require the court to evaluate the proprieties of religious teachings. Rather, the relief sought by [Wife] is simply to compel [Husband] to perform a secular obligation, i.e., spousal support payments, to which he contractually bound himself."); Paul Berger, *In Victory for 'Chained' Wives, Court Upholds Orthodox Prenuptial Agreement*, FORWARD (Feb. 8, 2013), https://forward.com/news/170721/in-victory-for-chained-wives-court-upholds-o.

[246] Talia Lavin, *For Many Agunot, Halachic Prenups Won't Break Their Chains*, JEWISH TELEGRAPHIC AGENCY (Nov. 27, 2013), https://www.jta.org/2013/11/27/united-states/for-man-agunot-halachic-prenup-wnt-break-their-chains (noting the prenuptial solution can only assist those *agunot* who have signed such an agreement).

[247] *See, e.g.*, Esther L. v. Chaim L., 2020 NY Slip Op 50318(U) (N.Y. Cnty. Mar. 4, 2020).

[248] Michael Helfand, *Enforcing the "Jewish Prenup"*, L. & RELIGION F. (Mar. 29, 2013), https://lawandreligionforum.org/2013/03/29/enforcing-the-jewish-prenup.

the best solution to solve the *agunah* issue.[249] About thirty years after it first emerged, the RCA/BDA prenup appears to be extremely successful.[250] This is especially the case for communities within the Orthodox Jewish landscape that have collectively embraced the prenuptial agreement as a solution, and have seemingly eliminated the problem within their midst in recent years.[251]

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[249] *See, e.g.*, Weissmann, *supra* note 235; Greenberg-Kobrin, *supra* note 227, at 393 ("Prenuptial agreements seem to be the best means to prevent future *agunot* within the Jewish community.").

[250] Shlomo Weissmann, *America is Leading The Charge To Solve The Agunah Crisis*, TIMES OF ISRAEL (Mar. 20, 2019, 5:42 AM) https://blogs.timesofisrael.com/america-is-leading-the-charge-to-solve-the-agunah-crisis ("The document works dramatically. Virtually every case at the BDA in which a prenup has been presented has been resolved with a timely and unconditional get."); *Understanding the Halachic Prenup*, ORA, https://www.getora.org/faqs-about-the-prenup (last visited Jan. 17, 2022) ("The *halachic* prenup has worked 100% of the time in preventing cases of get-recalcitrance, so long as the prenup was properly signed and a copy was available.").

[251] Jeremy Sharon, *Halachic Prenups Increasingly Common in the US; Israel Lags*, JERUSALEM POST (Mar. 20, 2019, 8:13 AM), https://www.jpost.com/diaspora/halachic-prenups-increasingly-common-in-the-us-israel-lags-583940 (noting 84% of Modern Orthodox rabbis in the U.S. ensure the couples whose weddings they officiate sign a religious prenup in advance of the wedding); Weissmann, *supra* note 250 (noting that, as a group, Modern Orthodox couples who married after the RCA/BDA prenup's increasing popularity "stick[] out and seem[] always able to arrange a *get* early in the process and with minimal friction . . . and have effectively vanquished a problem that once seemed unsolvable and that continues to vex so many Orthodox Jewish communities."); Jeremy Stern, *We've Solved the Agunah Crisis*, TIMES OF ISRAEL (May 1, 2018, 7:16 PM) ("[T]he number of *agunah* cases that we receive from the Modern Orthodox community has dropped precipitously in the past few

However, it is not a perfect solution. For one, it works only for couples who utilize it. In Orthodox communities that have not embraced prenuptial solutions, the *agunah* issue remains significant.[252] One of the main reasons those in the ultra-orthodox community have not embraced prenuptial solutions is a concern that focusing on divorce at the beginning of marriage is not conducive to a healthy marriage.[253] However, a study found that couples signing a Jewish prenuptial agreement had higher levels of marital satisfaction and no significant difference in tendency to consider divorce compared to those couples who did not sign.[254] While, recently, there have been encouraging signs that prenuptial solutions are beginning to be implemented in more ultra-orthodox communities, it remains to be seen if they will be widely implemented.[255]

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years. We have zero new cases of women who were married in the past few years by Modern Orthodox rabbis.").

[252] Lavin, *supra* note 246 ("The problem is in the . . . haredi community, where they don't have prenups or rabbis don't agree to enforce the idea of having a prenup.") (quoting Stanley Goodman, director of an organization known as GET – Getting Equal Treatment).

[253] *Id.* ("There is a concern that introducing and focusing on the possible dissolution of a marriage when it is just beginning is not conducive to the health of the marriage . . .") (quoting Rabbi Avi Shafran, Spokesman, Agudath Israel America).

[254] Chana Maybruch, Shlomo Weissman & Steven Pirutinsky, *Marital Outcomes and Consideration of Divorce Among Orthodox Jews After Signing a Religious Prenuptial Agreement to Facilitate Future Divorce*, 58 J. DIVORCE & MARRIAGE 276, 285 (2017).

[255] Avrohom Neuberger, *Dividing Lines*, MISHPACHA, (Dec. 4, 2019) https://mishpacha.com/dividing-lines-2 (describing recent efforts in Ultra-Orthodox community to institute different versions of the prenup); Allison Josephs, *The Halachic Prenup Has Finally Come To the Haredi*

(Ultra-Orthodox) World, JEWINTHECITY (Sept. 1, 2020), https://jewinthecity.com/2020/09/the-halachic-prenup-has-finally-come-to-the-haredi-ultra-orthodox-world (same). One such prenup, enacted by the Vaad Hadin V'Horah, empowers that *beth din* to resolve all end of marriage disputes, including the *get*, but does not spell out an enforcement mechanism within the agreement in the same way the RCA/BDA Prenup does. Neuberger, *supra*. *See Arbitration Agreement (Pre-Nuptial)*, VAAD HADIN V'HORAAH, https://vaadhadinvhoraah.org/wp-content/uploads/2020/08/Prenup-1.14.20.pdf (last visited Jan. 18, 2022). However, the head of this *beth din* has explained that his *beth din* can fix a support obligation contingent on the financial norm for each individual couple, as opposed to the fixed $150/day (indexed to inflation) that the RCA/BDA Prenup obligates. Neuberger, *supra*. Another agreement, produced by the Yashar Initiative, allows the couple to name the specific *beth din* that they choose to adjudicate end of marriage disputes, so long as they follow the agreement's guidelines. Josephs, *supra*. Like the Vaad Hadin V'Horah Agreement, it also does not contain any enforcement mechanism in the agreement. Additionally, it states that the *beth din* will determine whether reconciliation between a couple is a viable option, and that both parties agree to raise their children in a home that adheres to Orthodox Jewish tradition, including Sabbath observance and kosher dietary laws. *Heskem Agreement Highlights*, YASHAR INITIATIVE, https://yasharinitiative.org/index.php/agreement/highlights (last visited Jan. 18, 2022). This religious upbringing clause may not be legally enforceable, however, based on First Amendment Concerns. *See* Kendall v. Kendall, 687 N.E.2d 1228, 1236 (Mass. 1997) (not enforcing oral agreement that children will be raised in the Jewish faith); *In re* Marriage of Weiss, 49 Cal. Rptr. 2d 339, 346–47 (Cal. Dist. Ct. App. 1996) (not enforcing written prenuptial agreement regarding religious upbringing of child); Zummo v. Zummo, 574 A.2d 1130, 1140, 1144 (Pa. Super. Ct. 1990) (not enforcing oral agreement that children will be raised in the Jewish faith). *But see* Martin v. Martin, 123 N.E.2d 812, 813 (N.Y. 1954) ("This sort of prenuptial agreement is enforcible[sic] like any other, unless and until its enforcement is shown to be harmful to the child. 'Agreements between parents for a particular sort of religious

A prenuptial solution also may fail to work if the document is not signed properly or if the prenup is misplaced.[256] Some also fear that it may not be effective in situations where a husband is "judgement proof" and apathetic to a monetary support obligation being issued against him.[257] Moreover, the agreement can be costly to

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upbringing have in general been held valid in this country.'") (citation omitted). For further discussion on whether religious upbringing agreements are valid, see generally Karel Rocha, *Should Religious Upbringing Antenuptial Agreements Be Legally Enforceable?*, 11 J. CONTEMP. LEGAL ISSUES 145 (2000); Martin Weiss & Robert Abramoff, *The Enforceability of Religious Upbringing Agreements*, 25 J. MARSHALL L. REV. 655, 656 (1992).

[256] *See, e.g.*, *In re Marriage of* Greenberg, 2021 IL App (1st) 210325-U (Ill. App. Ct. Sept. 10, 2021) (allowing lower court to determine whether arbitration agreement exists between parties in case where RCA/BDA prenup was allegedly signed at wedding but lost). Additionally, if the arbitration award is finalized without ruling on the *get* issue, a *get* provision in a prenuptial agreement would not be effective. *See* Bierig-Kiejdan v. Kiejdan, No. A-2945-20 (App. Div. Feb. 16, 2023) (per curiam) (holding that a Lieberman-like clause in *ketubah* was unenforceable after the parties' marital arbitration award was already finalized since the parties did not explicitly agree in writing to arbitrate the *get* issue post-judgment); Eliana Baer, *Appellate Division Rules That A Court Cannot Compel Arbitration on Get Issue Absent Agreement*, N.J. FAM. L. BLOG (Feb 19, 2023), https://njfamilylaw.foxrothschild.com/2023/02/articles/general-new-jersey-family-law-news-updates/appellate-division-rules-that-a-court-cannot-compel-arbitration-on-get-issue-absent-agreement (analyzing the *Bierig-Kiejdan* case).

[257] Legal Information Institute, *Judgment-proof*, CORNELL L. SCH., https://www.law.cornell.edu/wex/judgment-proof (last visited Jan.18, 2022) ("People are judgment-proof if they lack the resources or insurance to pay a court judgment against them. . .. Even if you sued him and won, you could not recover anything because the thief is judgment-proof.");

litigate, which may deter an *agunah* from enforcing it against her husband.[258] Although there is valid criticism of the RCA/BDA prenup and it does not solve every case, it still appears to be the best existing legal solution to the *agunah* problem. As Rabbi Shlomo Weissmann, the director of the Beth Din of America has said, "[I]t is an entirely different problem, communally, when you have a problem that affects a few people, then when you have systemic problem that affects many."[259]

III. SOCIAL MEDIA SHAMING AND PRESSURE AS A SOLUTION

The predominant aspect of the grassroots social media movement is the use of social media shaming and pressure against *get*-refusers. This Part will first give some important Jewish legal and historical background on shaming a *get*-

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Orthodox Union, *supra* note 236 at 1:00:30–1:02:10 (describing fear of a "judgement-proof" husband and inability of RCA/BDA Prenup to "solve every last case.").

[258] Lavin, *supra* note 246 (noting that a case of an *agunah* who has a prenup can still take a "long time [and] cost a lot of money and ultimately d[oes] not guarantee that her husband would grant her a Jewish divorce — only that he would have to pay if he didn't."). This is especially a problem, as a study found that many *agunot* live in extreme poverty. *See* Jewish Week Editors, *supra* note 82 (noting study found 23 percent of *agunot* reported an income of less than $20,000). One solution for this issue would be for the launch of a communal fund or organization that is dedicated to litigating the enforcement of the prenup on a pro bono basis. Some have also criticized the RCA/BDA Prenup as merely a leverage tool and noted that the Beth Din of America may not award the wife the support money she is entitled to if the husband ends up giving the *get*. ARANOFF & HAUT, *supra* note 82, at 191 (2015).

[259] Orthodox Union, *supra* note 236 at 101:58–1:02:10.

refuser, followed by a discussion about the secular legal issues that can arise when one engages in social media shaming and protest. Finally, this Part will normatively evaluate social media shaming and pressure in the context of assisting *agunot*.

A. Beth Din *and The* Seruv *Power*

Before any *agunah* case appears on social media, a *beth din* will most likely be involved in the case.[260] This is because Jewish divorces are conducted through the supervision of a *beth din*.[261] For most couples, where both parties agree to participate in the *get* ceremony, the process is relatively straightforward and is simply a matter of scheduling an appointment.[262] However, when the couple

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[260] *See Bari Mitzmann: Social Media and Agunah Advocacy*, 18FORTY (Apr. 12, 2021), https://18forty.org/podcast/bari-mitzmann-social-media-and-agunah-advocacy [hereinafter *Mitzmann Interview*] (discussing how Instagram posters were in touch with *beth dins* before publicly posting details about *agunah* cases).

[261] *See supra* note 39 and accompanying text.

[262] *See* Jewish Week Editors, *supra* note 82 (with one *beth din* reporting that less than three percent of their cases become an *agunah* situation); *Gittin (Jewish Divorce)*, BETH DIN OF AMERICA, https://bethdin.org/gittin (last visited Jan. 20, 2022) (noting the standard *get* process takes just 90 minutes); Carly Stern, *Getting Divorced in the Pandemic Is Complicated. For Orthodox Jewish Women, There's an Additional Obstacle*, LILY (Aug. 3, 2020) https://www.thelily.com/getting-divorced-in-the-pandemic-is-complicated-for-orthodox-jewish-women-theres-an-additional-obstacle ("With cooperation, the process is straightforward."); *Rabbi Shlomo Weissmann: The Rabbinic Will and Agunot*, 18FORTY (Apr. 12, 2021), https://18forty.org/podcast/shlomo-weissmann-the-rabbinic-will-and-agunot [hereinafter *Weissmann Interview*] (describing a straightforward

does not agree about the timing of when in the divorce process a *get* should be given (such as whether it should be given before or after the civil divorce is completed) or if it should be given at all, a *beth din* will send a *hazmana*, or summons, to the other spouse to appear before the *beth din* to decide whether and when a *get* should be given.[263] The *beth din* will send up to three summonses to a party before taking further action.[264] The respondent can either agree to resolve the dispute at the *beth din* that sent the *hazmana* or elect to participate at another *beth din* forum.[265] However, if the party refuses to appear before any *beth din* or refuses to obey its order to give a *get*, the rabbinical court may issue a *seruv*[266] (order of contempt) against the refusing party.[267]

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get process as just booking the time and coming to the office to participate in the ceremony).

[263] *Weissmann Interview*, *supra* note 262.

[264] *See, e.g.*, Itamar Rosensweig, *Beit Din Procedure: The Hazmana Process*, JEWISHPRUDENCE (Aug. 13, 2019), https://bethdin.org/beth-din-basics-the-hazmana-process (describing the Beth Din of America's *hazmana* process); Dovid Englander, *'Order in the Court!': Is There?*, BAIS HAVAAD HALACHA CENTER, https://baishavaad.org/order-in-the-court-is-there (last visited Jan. 20, 2022) (describing another *beth din*'s similar *hazmana* process).

[265] Rosensweig, *supra* note 264.

[266] Literally means "refusal."

[267] *See* Zornberg, *supra* note 101, at 711. When a husband refuses to grant his wife a *get* after a *beth din*'s order to do so, a proclamation of *Harchakos De'Rabbeinu Tam* is announced instead of a *seruv*, although they have similar consequences. *See* Michael Zylberman, *Communal Pressure in the Get Process: Harchakot d'Rabbenu Tam*, JEWISH LINK (Aug. 20, 2015), https://jewishlink.news/features/9230-communal-pressure-in-the-get-process-harchakot-drabbenu-tam (explaining that the measures leveled against someone for refusal to appear before *beth*

If someone has a *seruv* issued against them, there could be social consequences depending on the specific community. According to Jewish law, members of the community are barred from partaking in many activities with a *m'sarev*.[268] One cannot speak with him, do business with him, host him, give him a meal, visit him when sick, and some commentators even say he should not receive a Jewish burial.[269] A *seruv* also allows the community to apply social pressure, be it through online or in-person protests.[270] However, unlike previous eras of Jewish history, when a *beth din* played a central authoritative role, in more modern times, the power of the *seruv* really depends on the community. Ever since the French Revolution, when Jewish communal cohesiveness became more fragmented, the influence of a *beth din* has diminished and *beth dins* no longer have coercive power.[271] In current times, the *seruv*

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din is similar to a situation in which a *beth din* has ruled that a husband should give his wife a *get*).

[268] Literally translated as a "refuser" and refers to someone who has a *seruv* issued against them by a *beth din*.

[269] Zylberman, *supra* note 267. See *id.* for a discussion as to why these communal sanctions do not render a
get given to avoid or escape these conditions invalid due to lack of free will.

[270] Michoel Zylberman, *From the Beth Din Files 12: Social (Media) Pressure and the Get Process*, YUTORAH ONLINE (May 24, 2021), https://www.yutorah.org/lectures/lecture.cfm/1001958/rabbi-michoel-zylberman/from-the-beth-din-files-12-social-(media)-pressure-and-the-get-process.

[271] Breitowitz, *supra* note 34, at 326. Interestingly, the story of the decline in *beth din*'s coercive power is similar to the decline in public shaming in colonial America, where the industrialization of society led to the elimination of close-knit communities that were a staple of the

will have an effect only if the refuser's community recognizes and obeys the *seruv* and the *beth din* which issued it.[272] Often, though, the *get*-refuser and his friends ignore the *seruv*, claiming the *beth din* is corrupt, or he moves to a new Jewish community which does not enforce the *seruv*.[273]

However, in recent years, the significance of the global online community has increased.[274] New technology and the increase in globalization have served as powerful tools in the fight against *get* refusal.[275] "E-shaming" makes it harder for husbands to hide within new communities, since the internet cuts across boundaries and networks of affiliation, "effectively chaining husbands to their decision to chain their wives."[276] Instagramers can post pictures of *get*-refusers on the run, and an *agunah* can widely share a voice-note over WhatsApp of a secret recording of a *get*-refuser abusing those in his home.[277] A YouTube video of men not allowing a

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colonial era. *See* Lauren M. Goldman, *Trending Now: The Use of Social Media Websites in Public Shaming Punishments*, 52 AM. CRIM. L. REV. 415, 421–23 (2015).

[272] Greenberg-Kobrin, *supra* note 227, at 368.

[273] *Id.* Breitowitz, *supra* note 34, at 326–27, n. 62. *See, e.g.*, *Mitzmann Interview*, *supra* note 260 (describing how Naftali Sharabani moved to Los Angeles, where a synagogue welcomed him with open arms).

[274] Manuel Castells, *The Impact of the Internet on Society: A Global Perspective*, OPENMIND BBVA, https://www.bbvaopenmind.com/en/articles/the-impact-of-the-internet-on-society-a-global-perspective (last visited Sept. 21, 2023).

[275] Yael Machtinger, *Insta-Shaming is Not Enough, We Need a Solution For Agunot*, JERUSALEM POST (Mar. 29, 2021, 9:56 PM), https://www.jpost.com/judaism/insta-shaming-is-not-enough-we-need-a-solution-for-agunot-663537.

[276] *Id.*

[277] Chizhik-Goldschmidt, *supra* note 1.

get-refuser to pray with them can go viral.[278] *Seruvs* issued against a husband by a *beth din* can be broadly disseminated and a "wall of shame" can be posted for all to see on the web.[279] Accordingly, the internet has given the *seruv* some of its power back, allowing the #FreeAgunot movement to take root.

B. Legal Issues Relating to Social Media Pressure

The increase of a *seruv*'s power from the internet and the use of social media to pressure and expose *get*-refusers brings potential legal challenges. The next Section will discuss some of the legal issues that may arise when activists within the social media movement shame or pressure a *get*-refuser online or through in-person protest.

1. Defamation and Other Tort Claims

Perhaps the biggest prospective legal hurdle for someone engaging in social media pressure against a *get*-refuser is a claim of defamation, but defamation's falsity requirement and some courts' (sometimes erroneous) reluctance to rule on defamation claims involving *get* refusal on religious grounds would likely protect most social media posts shaming *get*-refusers. A communication can be considered defamatory if it tends "to harm the reputation of

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[278] *See* ORAgunot, *ORA Staff Removes Yechiel Friedman from a Minyan in YU*, YOUTUBE, (FEB. 4, 2015) https://www.youtube.com/watch?v=i9c_53NaAn4.

[279] *See* Oziel, *supra* note 13; *Recalcitrant Parties*, ORA, https://www.getora.org/recalcitrant-parties (last visited Jan. 20, 2022) (listing individuals who had a *seruv* or a decision from a *beth din* to give a *get* issued against them).

another as to lower [the subject of the communication] in the estimation of the community or to deter third persons from associating or dealing with him."[280] To successfully bring a defamation claim, the plaintiff must prove the following elements: "(1) the defendant published a defamatory statement; (2) that was false; (3) that was of and concerning the plaintiff; (4) the defendant had some degree of fault; and (5) the statement damaged the plaintiff."[281]

When one posts an online flyer with information about a *get*-refuser, for example,[282] there is a risk of a defamation claim if the post is false. An allegation that a husband was deemed a *m'sarev* because of *get* refusal could certainly harm his reputation and deter others from associating with him, as he could receive social sanctions within the community.[283] However, there would only be a potential defamation claim if the posted information is false.[284] If an Instagram influencer posted *accurate* information that a *seruv* was issued against a *get*-refuser, that would not be defamation,

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[280] RESTATEMENT (SECOND) OF TORTS § 559 (AM. LAW INST. 1977).

[281] Cory Batza, *Trending Now: The Role of Defamation Law in Remedying Harm from Social Media Backlash*, 44 PEPP. L. REV. 429, 442 (2017) (citing RESTATEMENT (SECOND) OF TORTS § 558).

[282] *See, e.g.*, Oziel, *supra* note 13.

[283] *See supra* note 269 and accompanying text; *see, e.g.*, *In re* Herman Pachman, No. 09-37475, 2010 W.L 1489914 (Bankr. S.D.N.Y. Apr. 14, 2010) (alleging that a *seruv* issued by a *beth din* led other members of the community to avoid doing business with the plaintiff and the refusal to marry off their children to the plaintiff's children); Abdelhak v. Jewish Press Inc., 985 A.2d 197, 201-03 (N.J. Super. Ct. App. Div. 2009) (alleging that plaintiff doctor lost the patronage of his Orthodox Jewish clientele because of a false posting of a *seruv* in a Jewish newspaper).

[284] *See supra* note 281 and accompanying text.

as harmful as that may be to the *get*-refuser's reputation.[285] Therefore, it is extremely important for anyone involved in posting online about a *get*-refuser to vet the information carefully and ensure its accuracy. When parties are involved in a very contentious divorce, it is not difficult to imagine an individual trying to harm their spouse by making a misleading claim that the other is refusing to give a *get*. Similarly, while it may be easy to verify whether a *seruv* was issued if the *seruv* document is accessible to the activist, other information about a divorce, such as allegations of an affair or abuse, would be harder to verify. As such, it would be prudent for online posters to focus on the facts of the *get* refusal itself, rather than on other information about the divorce that may be more difficult to authenticate.[286] In a world of social media in which it takes seconds to post something and where misinformation thrives and can be hard to notice, to avoid a defamation claim, it is extremely important for posters to make sure that all allegations are substantiated before sharing.[287] It appears that many individuals leading the #FreeAgunot movement have been in

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[285] *See* Kristine Gallardo, *Taming the Internet Pitchfork Mob: Online Public Shaming, the Viral Media Age, and the Communications Decency Act*, 19 VAND. J. ENT. & TECH. L. 721, 731 (2017) ("[C]riticizing someone for his or her actions[] does not equate to uttering a falsehood about someone.").

[286] Of course, if there are well-documented allegations of other wrongful conduct, posting such wrongful conduct may help an *agunah*'s case and may be beneficial to post online in certain circumstances.

[287] *See* Chris Meserole, *How Misinformation Spreads on Social Media—And What To Do About It*, LAWFARE (May 9, 2018), https://www.lawfareblog.com/how-misinformation-spreads-on-social-media-and-what-to-do-about-it.

touch with *beth dins* to ensure that *seruv* and *get* refusal information is accurate, which is important to avoid a valid defamation lawsuit.[288]

The falsity requirement would not be the only legal challenge a *get*-refuser would face when bringing a claim for an online post about his *get* refusal or a *seruv* issued against him. Courts are reluctant to even consider defamation claims when they involve religion, since such cases often involve delving into religious doctrine. In *Klagsbrun v. Va'ad Harabonim*, a husband refused to provide his wife a *get*, and a *seruv*-like notice was published against him by a local rabbinical organization after he remarried and claimed to receive a *heter me'ah rabbonim*.[289] The husband sued the rabbinical organization, claiming their notice was false and defamatory because the statements implied he committed bigamy and failed to comply with the orders of a *beth din*.[290] The Court held that determining whether such statements were false would require the court to improperly "inquire

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[288] *See Mitzmann Interview*, *supra* note 260 (Orthodox Jewish Instagram content producer describing how leaders of the movement, such as Dalia Oziel, "w[ere] in touch with legal teams as well as [*beth dins*] to do the right thing according to Jewish law, and in what she could share and how she could share it."). *But see infra* note 345 (noting case where individuals leading a campaign against a husband were not as cautious).

[289] 53 F. Supp. 2d 732, 735–36 (D.N.J. 1999); *see supra* notes 73–78 and accompanying text (discussing *heter me'ah rabbonim*).

[290] *Klagsburn*, 53 F. Supp. 2d at 736, 740–41. Plaintiff alleged that the Defendants' statement that he never gave his wife a *get* and that the husband "has since remarried, claiming that he has the necessary permission form a rabbinical court to do so" amounts to an allegation of bigamy against him. *Id.* at 740–41.

into areas of ecclesiastical concern."[291] The Court reasoned that deciding whether the husband committed bigamy under Orthodox Jewish law would necessitate a determination about "the nature of a *get*, how and under what circumstances it may or may not be given, . . . who has the authority to grant a *get* . . . and the nature and propriety of any special dispensation concerning a person's right to remarry without first giving a get to his wife."[292] Similarly, the court explained that a review of whether the husband had violated the rabbinical court order would also impermissibly require it to evaluate religious doctrine and practice, such as questions about whether the failure to submit to a *beth din*'s jurisdiction should lead to punishment of shunning under Jewish law.[293] Other courts have similarly held it would be impermissible under the First Amendment to inquire whether a *seruv*[294] or *heter me'ah rabbonim*[295] was properly issued by a *beth din*. Therefore, the Religion Clauses would be an added protection for someone posting online about a *get*-refuser, since such cases often involve delving into religious doctrine.

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[291] *Id.* at 741.
[292] *Id.*
[293] *Id.*
[294] Neiman Ginsburg & Mairanz, P.C. v. Goldburd, 684 N.Y.S.2d 405, 407 (Sup. Ct. 1998).
[295] Sieger v. Union of Orthodox Rabbis of the U.S. & Can., Inc., 767 N.Y.S.2d 78, 80 (App. Div. 2003) ("The allegedly defamatory statements which would require an examination of religious doctrine or practice, or an inquiry into the methodology of how the rabbinical tribunal arrived at its conclusions concerning questions of religious doctrine, such as whether plaintiff failed to respond to the summons of the rabbinical tribunal . . ..").

This Religion Clause protection may even extend to situations in which it should not apply: A New Jersey Court ruled the First Amendment is still a barrier to evaluating a defamation claim even when the alleged defamatory statement was undisputedly false. In *Abdelhak v. Jewish Press Inc.*, an Orthodox Jewish obstetrician sued a Jewish newspaper for defamation because it published his name among a list of *get*-refusers who had a *seruv* issued against them.[296] The newspaper did so after a *beth din* had recently ordered the husband to give a *get*.[297] While that was true, the husband did not have a *seruv* issued against him.[298] The newspaper writers were erroneously told over phone by an unnamed *beth din* employee that a *seruv* order had been issued, but the *beth din* had merely directed the husband to provide a *get*.[299] The newspaper noted this error in a later edition, after the husband ended up giving the *get*.[300] However, the husband claimed his communal reputation and his medical practice were severely harmed by the newspaper's erroneous report that a *seruv* was issued against him, and he sued.[301]

Somewhat surprisingly, the court dismissed the plaintiff's claim, ruling that allowing the claim to proceed

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[296] Abdelhak v. Jewish Press Inc., 985 A.2d 197, 201 (N.J. Super. Ct. App. Div. 2009).
[297] *Id.* at 201–02.
[298] *Id.* at 202.
[299] *Id.* at 201–02. The distinction here is that the *seruv* would have imposed social sanctions on the husband, while the order to give the *get* did not yet reach the point where social sanctions were to be imposed.
[300] *Id.* at 202.
[301] *Id.*

would impermissibly require the court to engage in religious doctrine, citing *Klagsbrun v. Va'ad Harabonim* as similar precedent.[302] However, there is a crucial distinction between these two cases. Unlike in *Klagsburn*, there was no dispute about the falsity of the defamatory statement in *Abdelhak*. All parties agreed that the husband never had a *seruv* issued against him.[303] Therefore, the court did not need to determine any religious doctrine such as the nature and religious consequences of a *seruv* or a *get*. Resolving the defamation claim would not require evaluating the truth of the newspaper's purportedly defamatory statement because it was undisputedly false.[304] The court explained, though, that determining whether the plaintiff suffered any reputational harm within the community would be impermissible religious entanglement, and calculating an award of damages would "require a jury to place a monetary value on the shame and ostracism experienced by a person named in a *seruv* listing."[305] The court claimed this was impossible to accomplish by applying "neutral principles of law."[306] But that should not be true. Such determinations would merely require the jury to assess an empirical review of the *social* perceptions of particular conduct within a given community.[307] In this case, they would evaluate "how an

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[302] *Id.* at 202–03.
[303] *Id.* at 202.
[304] Michael A. Helfand, *Litigating Religion*, 93 B.U. L. REV 493, 518 (2013).
[305] *Abdelhak*, 985 A.2d at 207–08.
[306] *Id.* at 208.
[307] Michael A. Helfand & Barak D. Richman, *The Challenge of Co-Religionist Commerce*, 64 DUKE L.J. 769,

Orthodox Jew would view such an event."[308] In another case, a jury may evaluate how someone from an ethnic minority group or someone from the LGBTQ+ community would view the social effects of a defamatory statement in order to determine communal reputational harm. Why should the fact that the minority community is religious in this case make any difference if they would only be assessing a sociological evaluation? Such an assessment "is a standard fact-finding inquiry that juries routinely are asked to make in predicting the market consequences of certain events, based on expert testimony and submitted evidence."[309] By conflating religious doctrine with sociological assessments, the Court erroneously extended First Amendment protection to defamation claims where it should not have applied.[310] As such, the First Amendment is a significant shield against defamation claims for those shaming a *get*-refuser online. Nevertheless, it would still be advisable for posters to ensure accurate *seruv* and *get* refusal information in the event another court disagrees with *Abdelhak*'s ruling.

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810 (2015).

[308] *Abdelhak*, 985 A.2d at 208.

[309] Helfand & Richman, *supra* note 307, at 810 (comparing such a fact-finding role to the routine inquiry juries perform in obscenity cases, where they determine communal standards of decency). For context to appreciate the error of this reasoning, other New Jersey courts have ruled that it is not considered excessive entanglement with religion to determine there is an implicit contract for a husband to give his wife a *get* based on ambiguous religious terms in a *ketubah*. *See supra* Section II.B.1. There, religious doctrine was clearly being evaluated by the Court, while here, it was merely a sociological inquiry and was ruled excessive entanglement into religious doctrine.

[310] *Id.*

Plaintiffs who bring other tort claims against online posters would likely also encounter barriers similar to what they would face in defamation claims because of significant burdens to meet the elemental thresholds of the case and the religious issues involved. For example, a claim for intentional infliction of emotional distress (IIED) would require a court to consider whether publishing a *seruv* or information about a husband's *get* refusal is considered "extreme and outrageous" within the Orthodox Jewish religion.[311] As a threshold issue, it would be difficult for a husband to argue that someone posting about their *get* refusal is "so severe that no reasonable man could be expected to endure it" when there are plenty of examples of husbands who choose to refuse to give a *get* knowing they will likely be subjected to such treatment within the community.[312] Courts would also likely be reluctant to assess such a claim on religious grounds.[313] Determining whether

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[311] RESTATEMENT (SECOND) OF TORTS § 46 (1) (AM. LAW. INST. 1977) ("One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress . . .."); *Abdelhak*, 985 A.2d at 210.

[312] RESTATEMENT (SECOND) OF TORTS § 46 cmt. j; *see* FREQUENTLY ASKED QUESTIONS REGARDING JEWISH DIVORCE, BETH DIN OF AMERICA, http://s589827416.onlinehome.us/wp-content/uploads/2015/07/FAQDivorce.pdf (last visited Feb. 13, 2023) ("After three summonses have been issued . . . the Beth Din will issue a hasra'as seruv, a letter warning of the forthcoming issuance of a contempt order, . . . [which] declares the spouse to be "recalcitrant" and subject to public ostracism and condemnation, calling upon the community to take appropriate action.).

[313] *See* Scott C. Idleman, *Tort Liability, Religious Entities, and the Decline of Constitutional Protection*, 75 IND. L.J. 219, 236, n. 47 (2000)

publishing a *seruv* in a given situation is "extreme and outrageous" would likely compel a court to impermissibly determine religious doctrine. For example, in furtherance of an IIED claim, a husband may claim to have valid religious reasons for refusing to provide a *get*, and/or that a *seruv* was improperly issued or published against him. Examining such arguments would require a court to consider religious doctrine, such as when a *get* is legitimately allowed to be refused on religious grounds, or when a *beth din* has the power to issue a *seruv*. Doing so would be an invalid government entanglement with religion, because it would require a court to assess the reasonableness of the conduct based on religious measures and standards.[314] It would also be an infringement upon a religious community's "independence from secular control."[315] A similar evaluation would be applicable for other tort claims, such as invasion of privacy or false light claims.[316] Therefore, tort claims

(noting cases where courts rejected claims of intentional infliction of emotional distress on religious grounds).

[314] Jared A. Goldstein, *Is There a Religious Question Doctrine – Judicial Authority to Examine Religious Practices and Beliefs*, 54 CATH. U. L. REV. 497, 523–24 (2005); *see Abdelhak*, 985 A.2d at 210 (rejecting IIED tort claim for a *seruv* listing because to assess such a claim would require determining whether such conduct would be viewed as "extreme and outrageous within the Orthodox Jewish community.").

[315] Kedroff v. St. Nicholas Cathedral of Russ. Orthodox Church, 344 U.S. 94, 116 (1952).

[316] *See Abdelhak*, 985 A.2d at 211 (rejecting such a claim because it would require a jury to determine "whether the accusation of withholding a *Get* would be objectionable to a person of Orthodox Jewish faith without analyzing tenets of Orthodox Jewish doctrine."). Other potential tort claims for online behavior can include harassment, public discourse of private fact, and privacy torts. *See* DANIELLE KEATS CITRON, HATE

brought by *get*-refusers against individuals who shame them online would likely fail.

However, even if they would ultimately fail, lawsuits may still be filed by *get*-refusers against *agunah* activists, who would have to spend time and money defending the claims. In fact, some *get*-refusers who were the subject of recent online protests recently filed pro-se lawsuits against many in the Jewish community who spoke out against them.[317] The family of Israel Meir Kin, well-known *get*-refuser, also recently tried suing Lonna Ralbag, a long-time *agunah*, for defamation.[318] As such, *agunah* activists should be aware of the potential legal risks and tort claims when posting against *get*-refusers.

2. Criminal Violations

i. Issuing a Seruv

In general, there would be no criminal violation when a *beth din* issues a *seruv*. In *Grunwald v. Bornfreund*, a plaintiff alleged that a *beth din* and its affiliated rabbinical organization and rabbis threatened to excommunicate the plaintiff and his counsel through a *seruv*-like

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CRIMES IN CYBERSPACE 121 (2014). For discussion regarding a harassment claim, see *infra* Section III.B.2.iii.

[317] *See* Henry, *supra* note 154 ("Brooklyn resident Dibo Hafif sued dozens of people last month, including rabbis, [and] community activists, for "malicious harassment" . . .. The defendants were all involved in efforts to convince Hafif to grant his ex-wife, Evet Balas, a get or a religious divorce, which he had withheld for 17 years."); Hafif v. Mansour et. al., No. 1:22-cv-01199 (E.D.N.Y. 2022); Hirsch v. Miles et al., Civil Action No. 21-12246 (FLW); Civil Action No. 21-13718 (FLW), 2022 U.S. Dist. LEXIS 23098 (D.N.J. Feb 9, 2022).

[318] Kin et al. v. Ralbag, No. 030022/2023 (N.Y. Sup. Ct. Aug. 1, 2023).

proclamation.[319] He claimed they did this to pressure them to move their RICO claim from a secular court to a *beth din* forum.[320] A federal court ruled that it could not provide a remedy for excommunication.[321] Citing a line of Supreme Court cases, the court stated that "where a religious body adjudicates relations among its members, courts will not interfere with the decisions of those bodies made in accordance with those bodies' rules."[322] The rationale behind this hands-off approach is that participating in a religious organization is voluntary, and the organization is in the best position to interpret its own rules.[323] The court noted that it would have only been able to hear the case only if the defendants had threatened the plaintiff with a "legally cognizable harm" in trying to coerce him to go to a *beth din*.[324] However, "the mere expulsion from a religious society, with the exclusion from a religious community, is not a harm for which courts can grant a remedy."[325]

What emerges from this is that a stand-alone *seruv* or excommunication threat would not be subject to criminal liability. However, if individuals or a *beth din* went beyond an expulsion threat, criminal liability is certainly possible. There are several ways this can appear in practice in the context of pressuring a husband to give a *get*.

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[319] 696 F. Supp. 838, 839 (E.D.N.Y) (1988).
[320] *Id.*
[321] *Id.* at 840.
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.* at 840–41.

ii. Physical Violence and In-Person Protests

One way is if physical intimidation or kidnapping is involved. In one extreme and well-publicized example, a group of rabbis were convicted of kidnapping and physically beating *get*-refusing husbands with electric cattle prods to force them to give their wives a *get*.[326] A federal court rejected a Religious Freedom Restoration Act (RFRA) claim that prosecuting the group violated their religious rights, holding there were non-violent methods available to free *agunot* which the defendants did not pursue.[327] Additionally, the court noted that the government has an interest in uniformly applying punishment for violent crimes such as kidnapping, and that RFRA should not be a legitimate shield for such actions.[328] Therefore, at the risk of stating the obvious, individuals engaged in pressuring *get*-refusers should avoid doing so violently if they wish to avoid criminal liability.

Criminal liability can also apply to people pressuring *get*-refusers at any in-person protest. This is relevant to the #FreeAgunot movement, since activists organized many physical demonstrations against *get*-refusers and their enablers.[329] There are many potential legal issues that can

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[326] Reuven Blau, *Brooklyn Rabbi Gets 10 Years For Leading a Gang of Men Who Beat Up Jewish Husbands Reluctant to Divorce Their Unhappy Wives*, N.Y DAILY NEWS (Dec. 15, 2015, 3:33 PM), https://www.nydailynews.com/2015/12/15/brooklyn-rabbi-gets-10-years-for-leading-a-gang-of-men-who-beat-up-jewish-husbands-reluctant-to-divorce-their-unhappy-wives.

[327] United States v. Stimler, 864 F.3d 253, 268 (3d. Cir. 2017).

[328] *Id.*

[329] *See supra* notes 19–23 and accompanying text.

arise at such events.[330] Such examples can include trespassing if protesting on private property,[331] disorderly conduct for blocking traffic,[332] or assault or battery for throwing things, such as bottles or eggs.[333] While the large majority of rallies against *get*-refusers are lawful and peaceful, it is not difficult to imagine individuals crossing a legal line at a demonstration where rage is understandably palpable.[334] Therefore, as is the case for any type of rally or protest, it is important for protesters to understand what is legally allowed and disallowed.

iii. Harassment, Cyber Crimes and Doxing

Posting a threatening communication can also risk criminal liability, but the First Amendment would likely protect most social media posts typical to the #FreeAgunot movement.[335] In a recent case, a lower court found a woman

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[330] *See, e.g.*, *Protesters*, ACLU SOUTHERN CAL., https://www.aclusocal.org/en/know-your-rights/protesters (last visited Jan 23, 2022) (explaining what protestors legally can and cannot do at a rally).

[331] *See, e.g.*, Armes v. Philadelphia, 706 F. Supp. 1156, 1163–65 (E.D. Penn. 1989) (holding First Amendment does not protect anti-abortion protestors from trespassing on private property charge).

[332] *See, e.g.*, State v. Jackowski, 915 A.2d 767 (Vt. 2006) (finding anti-war protestors who blocked traffic intersection liable for disorderly conduct).

[333] *See, e.g.*, United States v. Guerrero, 667 F.2d 862, 868 (10th Cir. 1981) (holding that throwing eggs at a member of Congress is not constitutionally protected by the First Amendment from an assault statute).

[334] *See, e.g.*, Levy Chehebar, *supra* note 18 (observing that an egg was thrown at a *get*-refuser's home window at a rally).

[335] This analysis would also be similar for civil liability for posting a threatening communication.

liable for harassment and granted a restraining order against her for posting a video in which she pleaded for the public to "press my husband to give . . . me the get."[336] Around the time the video was posted, the husband received many anonymous phone calls from third parties, including one where a caller threatened to protest at his house and told the husband "you know what happen[s] otherwise if you don't give a get."[337] Similar to other grassroots campaigns to assist *agunot*, the husband's photograph with a message describing him as a *get*-refuser circulated around WhatsApp and said that "if you see him, tell him to free his wife. #FREE[L.B.B.]"[338] The lower court held that wife's post of the video was "a clear intrusion into []his expectation of privacy and safety" intended to provoke violence from the Jewish community and the judge rejected the wife's free speech claims.[339]

However, in *S.B.B. v. L.B.B*, the New Jersey Appellate Division overturned the restraining order and held the wife was allowed to post the video since it was posted so that she could receive her *get* and not intended to provoke violence against the husband by the Jewish community.[340] The court also said posting the video was protected First Amendment

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[336] S.B.B. v. L.B.B., No. A-0305-21, 2023 N.J. Super. LEXIS 95, at *2, *7 (N.J. App. Div. Sept. 6, 2023). The wife was also ordered to pay $10,035 in compensatory damages. *Id.* at *17.

[337] *Id.* at *8–*9.

[338] *Id.* at *5–*6.

[339] *Id.* at *12–*13.

[340] *Id.* at *39–*40. The lower court erroneously thought that it is common for *get*-refusers to be imprisoned or beaten by the Jewish community. *See id.* at *13.

speech. The court compared it to other cases involving boycotts and campaigns from the civil rights movement, threatening speech from Ku Klux Klan rallies, as well as a criminal defendant's publication of a website with the goal of spreading awareness of his case and seeking information about individuals involved, some of which contained images with "wanted" captions in bold, red letters.[341] As the court noted, "to qualify as incitement and lose First Amendment protection . . . a communication must be both 'directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action'"[342] and the video contained "no overt call for or reference to violence."[343] Contrasting the case with the electric cattle prod case discussed above, the court said that "disseminating the names of get refusers 'so that the reading public will hold them in disrepute,' and otherwise taking steps to 'shun and embarrass a recalcitrant husband . . . do[es] not violate the criminal laws of the United States.'"[344] Therefore, the First Amendment would protect most typical #FreeAgunot communications such as wanted-like posters and other posts informing the public about *get*-refusers. However, the fact that the lower court ruled that the mere posting of a video with an *agunah*'s plea for help to pressure her husband should serve as a warning that posters should be cautious to ensure that it is clear the intent of their

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[341] *Id.* at *27–*33.
[342] *Id.* at *38 (quoting Brandenburg v. Ohio, 395 U.S. 444, 447 (1969)).
[343] *Id.*
[344] *Id.* at *35–*36 (quoting United States v. Stimler, 864 F.3d 253, 259 (3d Cir. 2017), *aff'g* United States v. Epstein, 91 F. Supp. 3d 573, 582 (D.N.J. 2015), *rev'd in part on other grounds sub nom.* United States v. Goldstein, 90 F.3d 411 (3d Cir. 2018).

messages is for the *agunah* to receive a *get* and that there are no imminent threats of violence in the posts.[345]

Similarly, there is also potential for other criminal violations in the online space.[346] Most states and the federal government have, to some extent, banned cyberstalking and cyber harassment.[347] In recent years, some state legislators have sought to criminalize doxing, the online public disclosure of an individual's identity, address, or other personal details.[348] If such proposals were to pass, the online posting of an individual's name or address could be

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[345] *See* Michael A. Helfand, *Social Media is a Powerful Tool to Lobby for Jewish Divorce. A Court Nearly Took it Away*, FORWARD (Sept. 15, 2023), https://forward.com/opinion/561111/social-media-jewish-divorce-agunah. Notably, it appears that there was no *seruv* issued against the husband in this case and the pressure campaign against the husband was not done in coordination with a *beth din*. *See S.B.B.*, 2023 N.J. Super. LEXIS 95, at *6–*7. This is in contrast with many other campaigns led by many individuals leading the #FreeAgunot movement where the organizers were more cautious in their approach. *See supra* note 288.

[346] The husband in *S.B.B.* had also claimed cyber harassment as a predicate act for the restraining order against the wife, but the lower court did not address that claim since it had found the husband had proven harassment. 2023 N.J. Super. LEXIS 95, at *13–*14.

[347] CITRON, *supra* note 316, at 104.

[348] Eugene Volokh, *Utah 'Anti-Doxxing' Bill Would Outlaw Mentioning a Person's Name Online 'With Intent To Offend,'* WASH. POST (Feb. 8, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/08/utah-anti-doxxing-bill-would-outlaw-mentioning-a-persons-name-online-with-intent-to-offend; *see, e.g.*, 217. H.B. 225, 61st Leg., Gen. (Utah 2016), https://le.utah.gov/~2016/bills/static/HB0225.html; S.B. S7646, 245th Leg. Sess. (N.Y. 2022) ("Establishes the crime of doxing of an individual where a person knowingly makes restricted personal information about an individual publicly available with certain intent.").

considered a criminal violation, so long as a jury finds it was posted with intent to "annoy," "abuse," or "offend."[349] While such a proposal would be unlikely to withstand First Amendment scrutiny,[350] it may be possible to craft a constitutional anti-doxing statute through introducing heightened mens rea requirements, narrowly defining doxing to apply only if harassment follows, and including First Amendment exception clauses.[351] Given the many calls and proposals for legislative solutions to doxing, it is very possible that some version will pass in the near future.[352] Therefore, it is important for online posters to proceed with caution when exposing and pressuring *get*-refusers online.

To achieve this, as discussed above in the context of *S.B.B.*,[353] it is important to post in a way that cannot be interpreted as a "true or imminent threat," as the government is allowed to prosecute speech if they are

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[349] *Id. See* Alexander J. Lindvall, *Political Hacktivism: Doxing & the First Amendment*, 53 CREIGHTON L. REV. 1, 4–5 (2019) (proposing a criminal anti-doxing statute that is more likely to withstand First Amendment scrutiny).

[350] *See* Volokh, *supra* note 348.

[351] *See* Lindvall, *supra* note 349, at 5–6.

[352] *See, e.g., id.*; Julia M. MacAllister, *The Doxing Dilemma: Seeking a Remedy for the Malicious Publication of Personal Information*, 85 FORDHAM L. REV. 2451, 2480–83 (2017) (proposing the adoption or amendment of state criminal laws criminalizing malicious doxing under the true threat exception to the First Amendment); Hannah C. Mery, *The Dangers of Doxing and Swatting: Why Texas Should Criminalize These Malicious Forms of Cyberharassment*, 52 ST. MARY'S L.J. 905 (2021) (calling for Texas to criminalize doxing); Emma Marshak, *Online Harassment: A Legislative Solution*, 54 HARV. J. ON LEGIS. 503, 523–28 (2017) (proposing two-tiered model state statute).

[353] *See supra* notes 341–345 and accompanying text.

protecting individuals from intimidation and fear of violence.[354] Therefore, people trying to assist *agunot* online should not post online threats of bodily harm or show a willful and malicious "course of conduct" meant to cause emotional distress.[355] While posting a *get*-refuser's name or address online by itself would likely be permitted under the First Amendment, if it is accompanied with encouragement to intimidate, harass or physically harm the *get*-refuser, there is a greater risk of criminal liability.[356] Therefore, to avoid criminality, it is important for posters to focus on the objective of publicizing the *get* refusal instead of posting primarily to incite harassment against the *get*-refuser.

C. Normatively Evaluating Social Media Shaming Movement

The next Section will normatively evaluate the use of social media pressure as a solution to the *agunah* issue. It will first discuss the positives of using social media pressure, followed by critiques of such an approach.

1. Arguments in Favor of Social Media Shaming to Fight Against *Get* Refusal

There are many arguments in favor of using social media pressure as a solution to the *agunah* issue. Comparing and contrasting the use of social media pressure within the

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[354] Virginia v. Black, 538 U.S. 343, 362–63 (2003) (noting states can ban acts done with "intent to intimidate").

[355] *See* CITRON, *supra* note 316, at 123–24.

[356] This concern can often be applicable in social media mediums that allow anyone from the public to comment since such threads can take a violent turn if another poster incites or threatens violence.

agunah movement to other movements and systems that use social media shaming could help elucidate why such an approach could be beneficial for solving the *agunah* problem.

Within the criminal justice system, public shaming punishments are occasionally used as an alternative to a prison sentence for punishing offenders. For example, in *United States v. Gementera*, the Ninth Circuit upheld a probation condition requiring a defendant to publicly wear a signboard for eight hours that stated "I stole mail. This is my punishment[]" after the defendant pled guilty to mail theft.[357] Scholars have argued there are several arguments in favor of such a public shaming punishment when compared to a prison sentence: It is more cost effective, it prevents a defendant's indoctrination into the criminal culture of the prison system, it expresses appropriate moral condemnation, and it accurately reflects society's values.[358] These latter two arguments can also be used in favor of shaming *get*-refusers. As discussed, *get* refusal is a form of domestic abuse.[359] By publicly calling out a *get*-refuser for his abuse, it supplies "an unambiguous and dramatic sign of the wrongdoer's disgrace."[360] This can serve as a "general deterrent to the entire public by reinforcing the community's norms" and sending a message that such behavior is not to be tolerated.[361] In fact, anecdotal reports suggest that

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[357] 379 F.3d 596, 607 (9th Cir. 2004).

[358] *See* Goldman, *supra* note 271, at 428–31. See *id.* at 440–46 for an evaluation of using public shaming sanctions through social media websites based on various penological justifications.

[359] *See supra* Section I.B.

[360] *See* Goldman, *supra* note 271, at 430 (internal citation omitted).

[361] *Id.* at 431.

husbands have been deterred from refusing to give a *get* for fear of a potential online backlash.[362] The public shaming would also show that the *get* refusal is not just a private dispute between the husband and wife. Rather, the whole community is against the husband for engaging in such disgraceful behavior. This is particularly important for *agunot*, who for so long have felt the community tolerates *get* refusal.[363]

The achievements of the #MeToo movement can also help provide arguments in favor of using social media in the fight against *get* refusal. The #MeToo movement provided women the opportunity "to share their personal experiences and make public the prevalence of sexual harassment, assault, and violence against women."[364] The movement sparked tangible legal, political, and social changes for women.[365] These achievements were facilitated by social media, which enabled the movement to "recruit participants and organize campaigns" and help connect individuals with similar circumstances and grievances to work together to

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[362] *See* Levy Chehebar, *supra* note 18 (noting stories of how husbands have been granting their wives a *get* preemptively for fear of public shaming).

[363] *See, e.g.*, Machtinger, *supra* note 87, at 216 ("I really felt abandoned . . .. The bottom line is, when communities cease to tolerate wives being agunot, the problem will cease to exist.") (quoting an *agunah*).

[364] Jamillah Bowman Williams, Lisa Singh & Naomi Mezey, *#MeToo as Catalyst: A Glimpse into 21st Century Activism*, 2019 U. CHI. LEGAL F. 371, 371 (2019).

[365] *See id.* at 379–393 (providing empirical analysis to indicate the social, legal, and political changes occurring offline that have been inspired by the online activity).

promote change.[366] Social media also created "vital social visibility for injuries that were previously invisible" to "increase awareness . . . of a pervasive societal problem."[367] The *agunah* issue has benefited in similar ways. Within the Orthodox Jewish community, women often feel "invisible."[368] Whether by choice,[369] or not,[370] women in this religious group are often left without a "seat at the table" for communal policy discussions and their struggles are often ignored.[371] This is certainly the case regarding the *agunah* issue.[372] Through using social media in the struggle of *agunot*, women are now able to center their concerns and press the issue by using their own voice, without many of the communal gate-keeping constraints imposed by male leadership.[373] Social

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[366] *Id.*

[367] *Id.*

[368] Levy Chehebar, *supra* note 18; Chizhik-Goldschmidt, *supra* note 1 (noting parallels between *agunah* issue and some Orthodox Jewish publications erasing pictures of women in communal publications).

[369] Zornberg, *supra* note 101, at 716–17 ("[M]ost Orthodox women prefer to keep a low profile and 'stay out of the limelight.'") (internal quotation omitted).

[370] *See* Chizhik-Goldschmidt, *supra* note 15 (describing how Orthodox women's pictures are often banned from Jewish publications).

[371] Levy Chehebar, *supra* note 18 ("Women are not given seats at the table in the rooms where these cases are resolved and communal policy considered."); Zornberg, *supra* note 101, at 717 (describing how women are angry about the *agunah* situation, but do not know how to express their displeasure since they have no control or power in the community).

[372] *See supra* note 371.

[373] *See* Richling, *supra* note 1 ("[W]omen are pushing ourselves in the spaces where we can. No one can kick us off . . . social media."); Chizhik-Goldschmidt, *supra* note 1 (describing how social media has given

media has also facilitated a connection between different *agunot*, their allies, and community activists.[374] This allows women to work together to organize campaigns, rallies, and publicly express support for one another, allowing the movement to go viral and flourish.[375]

The #MeToo movement can also serve as a lens to show another positive aspect of the social media shaming movement: Despite being an online movement, there are typically procedures in place to give all sides the opportunity to be heard. The #MeToo movement has informal norms and procedures in place that provide a fair process for the accused. For example, reporters breaking stories of prominent figures committing sexual harassment are required by journalistic standards to verify facts, seek both sides of the story, and attribute information to their sources.[376] And after a story is brought to light, negative consequences, such as being fired by an employer, typically occur after corroboration and a formal, independent investigation undertaken by the employer.[377] Scholars have argued that such standards show there is procedural justice within the #MeToo movement, which is a critical factor in its success.[378] The same could be said about the #FreeAgunot movement. Before posting online about a *get*-refuser, social

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marginalized women the ability to expose their struggles with fewer gatekeepers).

[374] *See supra* notes 7–18 and accompanying text.

[375] *See supra* notes 16–27 and accompanying text.

[376] Jessica A. Clarke, *The Rules of #MeToo*, 2019 U. CHI. LEGAL F. 37, 54–60 (2019).

[377] *Id.* at 60–64.

[378] *See, e.g.*, *id.* at 84.

media posters verify the details of the *agunah*'s story, such as confirmation that a *seruv* has been issued against the husband.[379] While some have criticized the #MeToo movement's informal procedures as unenforceable and a violation of due process principles, including the lack of notice and fair hearing for the accused,[380] the #FreeAgunot movement is not as susceptible to those criticisms. Before a *get*-refuser has a *seruv* issued against him and he is publicly shamed, he would have had the opportunity to respond in front of a *beth din*.[381] At a *beth din*, a husband could offer his perspective in front of a neutral panel of three rabbis to explain why he thinks it is not appropriate to give a *get* at that time, and they would offer an unbiased decision.[382] Essentially, the *beth din* would be the court process that critics say the #MeToo movement lacks.[383] And while there are some issues with the *beth din* system, especially when no specific *beth din* panel is agreed upon,[384] the deck is still stacked in the husband's favor since *beth dins* use all male panels to decide its cases.[385] Any complaint that the husband is being shamed without due process is misguided if a *seruv* was issued against him, since he had the opportunity to present his side of the story in front of a panel composed exclusively of his gender. Therefore, a positive aspect of the

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[379] *See supra* note 288 and accompanying text.
[380] *See* Clarke, *supra* note 376 at 64–83 (responding to such objections).
[381] *See supra* notes 260–267 and accompanying text.
[382] *Weissmann Interview*, *supra* note 262.
[383] *See supra* note 380.
[384] *See supra* note 213 and accompanying text.
[385] *See, e.g.*, BETH DIN OF AMERICA, *supra* note 233 (featuring only male arbitrators).

social media shaming movement is that a *get*-refuser is given due process before he is publicly shamed.[386]

Another argument in the #FreeAgunot movement's favor is that the shaming is done with a specific purpose and goal in mind—to pressure the husband to give a *get* and stop him from harming his wife. And when that goal is accomplished and the husband rectifies his abuse by giving the *get*, the movement allows the opportunity for the husband to be reintegrated into the community.[387] This is in stark contrast to the much-criticized internet "pitchfork mobs" that are part of current internet culture.[388] This refers to when a group of online harassers target an unpopular figure through shaming, hate speech and threats, in response to reported news, opinion or images attributed to the targeted figure.[389] Often, the target of the mob was previously an average, private citizen before going viral and the public either misidentified or misinterpreted the target's

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[386] Of course, if someone is shamed before a *seruv* is issued or without information being checked carefully, this argument would falter. *See, e.g.*, *supra* note 345 (noting case where individuals campaigned against a husband before a *seruv* was issued).

[387] *See, e.g.*, Efrem Goldberg, *Let My People Go* (Apr. 6, 2012), https://www.rabbiefremgoldberg.org/let-my-people-go (community rabbi explaining how he "hope[s] and pray[s]" that [*get*-refuser] will do the right thing so that he and [agunah] can go on with their lives in peace and prosperity.").

[388] Kristine L. Gallardo, *Taming the Internet Pitchfork Mob: Online Public Shaming, the Viral Media Age, and the Communications Decency Act*, 19 VAND. J. ENT. & TECH. L. 721, 723-24 (2017).

[389] *Cybermob*, DICTIONARY.COM, https://www.dictionary.com/browse/cybermob (last visited Feb. 14, 2022).

statement or image.[390] Other times, while the target did not specifically harm anyone, they did something improper, such as making an off-color or inappropriate joke. In these cases, the ensuing backlash is very often still disproportionate to the "wrong," and the consequences include the target getting fired, the loss of their ability to get a new job, and a massive stream of harassment against them, causing emotional harm.[391] In this internet phenomenon, there is no specific end-goal in mind other than the shamer expressing outrage and ruining the target's life.[392] There is also no opportunity for the target to rectify their misdeeds and rejoin society in good standing.[393] Therefore, any efforts to lump online shamers of *get*-refusers with the "internet pitchfork mobs" are misguided, since online shaming of *get*-refusers is done with a specific goal in mind, the *get*-refuser is actively committing harm, and there is an opportunity for the *get*-

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[390] *See, e.g.*, Harmon Leon, *How Internet Mob Justice Can Easily Destroy Innocent Lives*, OBSERVER (May 31, 2019, 9:00 AM), https://observer.com/2019/05/internet-mob-justice-innocent-lives (describing story of man incorrectly identified as a Neo-Nazi who attended Charlottesville rally).

[391] *See generally* JON RONSON, SO YOU'VE BEEN PUBLICLY SHAMED (2015) (describing stories of private individuals who all had their "lives ruined" by internet shaming in response to their off-color, but harmless humor going viral); *see also* Batza, *supra* note 281, at 439 (noting individuals who lost jobs and suffered emotional harm as a result of internet shaming).

[392] *See generally* RONSON, *supra* note 391.

[393] Batza, *supra* note 281, at 466–67 (explaining how the average target of an internet shaming would not have any self-help remedies available to even respond to accusations made against them).

refuser to rejoin the community in good standing after he gives a *get*.

Finally, one last argument in favor of using social media shaming in response to *get* refusal is simple: It works. Shortly after the #FreeAgunot movement began, at least seventeen women received their *get*, many of whom had been waiting for many years.[394] The mere possibility of being the subject of a shaming also helps potential *agunot*, as a husband would be less likely to entertain the idea of *get* refusal when he knows he could suffer reputational harm as a result.[395] Therefore, especially in a case where legislative or contractual solutions would not help an *agunah*,[396] using social media to shame the *get*-refuser might be the best available solution.

2. Criticisms of Social Media Movement

While there are many positive aspects of using social media to assist *agunot*, there also are valid arguments against the social media movement. There are two primary critiques: First, the movement is not so innovative and is only a band-aid solution that will not fully address the *agunah* problem. And second, the social media movement has many negative consequences and risks.

i. Non-Innovative Band-Aid Solution

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[394] *See supra* notes 24–27 and accompanying text.
[395] *See supra* note 362 and accompanying text.
[396] *See supra* Part II.

Some, such as Yael Machtinger, argue that the #FreeAgunot movement is not "as distinct, revolutionary and unprecedented" as it is made out to be and it is not the first time Jews have used media and protest to pressure husbands of *agunot*. In the early 1900's, *Der Forverts* (now known as the Forward), the leading Yiddish newspaper in the United States at the time, published a "Gallery of Missing Husbands" to pressure and publicly shame the husbands into supporting their wives and children they had deserted.[397] Decades later, in 1980, protests against *get*-refusers began, organized by women such as Rivka Haut.[398] Such women-led mass demonstrations would occasionally occur throughout the 1980–90's, protesting both against *get*-refusers and what many perceived as an overly passive rabbinical leadership.[399] This continued through the turn of the turn of the century, with organizations such as ORA organizing rallies on a case-by-case basis against *get*-

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[397] Machtinger, *supra* note 275 (explaining this was an example of a "classic" *agunah* situation, where the wife could not receive a *get* because the husbands' whereabouts were unknown); Machtinger, *supra* note 87, at 250–51; Michael Morgenstern, *The Forward: A Gallery of Missing Husbands (1908-1914)*, JEWISHGEN, https://www.jewishgen.org/databases/usa/missinghusbands.html (last visited Jan. 27, 2022).

[398] Jennifer Medina, *Rivka Haut, Dies at 71; Championed Rights of Orthodox Jewish Women*, N.Y. TIMES (Apr. 12, 2014), https://www.nytimes.com/2014/04/13/us/rivka-haut-dies-at-71-championed-rights-of-jewish-women.html.

[399] Breitowitz, *supra* note 34, at 330, n. 71 (internal citation omitted); *see, e.g.*, Hellmann, *supra* note 111, at 42 (telling of a Brooklyn protest against a *get*-refuser); ARANOFF & HAUT, *supra* note 60, at 28–38 (describing a New Jersey protest against a *get*-refuser in the late 1980's).

refusers.[400] Since 2010, with the advent of social media, ORA has also led online shaming campaigns against *get*-refusers, with recalcitrant husbands' names and faces "plastered across Facebook and Twitter" to pressure them to give a *get*.[401] And for many years, the Jewish Press, an Orthodox

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[400] *See* Rebecca Spence, *Protesters Rally Outside a Home as Debate Continues Over Best Get Tactics*, FORWARD (Mar. 11, 2009), https://forward.com/news/103844/protesters-rally-outside-a-home-as-debate-continue (noting ORA's founding in 2002 and the organization's philosophy of taking action on a case-by-case basis); *see, e.g.*, Mark Oppenheimer, *Religious Divorce Dispute Leads to Secular Protest*, N.Y. TIMES (Jan 3. 2011), https://www.nytimes.com/2011/01/04/us/04divorce.html (describing protest against *get*-refuser who was tax counsel to the U.S. House of Representatives Ways and Means Committee); Medina, *supra* note 47 (describing rally against *get*-refusing husband who remarried without giving a *get* to previous wife); Lindsey Bridwell, *Woman's 11-Year Get Battle Comes to an End*, BALTIMORE JEWISH TIMES (Feb. 5, 2015), https://www.jewishtimes.com/womans-11-year-get-battle-comes-end (noting that ORA organized at least a dozen rallies against a specific *get*-refuser, who eventually gave his wife a *get* after an 11-year battle); Michelle Tedford, *Agunah Rally Impassioned, Respectful*, DAYTON JEWISH OBSERVER (Nov. 13, 2015), https://daytonjewishobserver.org/2015/11/agunah-rally-impassioned-respectful (describing ORA-organized rally in Ohio); Yossi Zimilover, *YU Agunah Advocacy Club Joins ORA in Rally Against Get-Refuser*, COMMENTATOR (Dec. 13, 2017), https://yucommentator.org/2017/12/yu-agunah-advocacy-club-joins-ora-rally-get-refuser; Lindsay Van Dyke & Jaclyn Skurie, *It Took a Protest at the Husband's House to Get a Jewish Woman Her Divorce*, VICE NEWS (Aug. 22, 2019), https://www.vice.com/en/article/pa7bv7/it-took-a-protest-at-the-husbands-house-to-get-this-jewish-woman-her-divorce (documenting ORA-organized protest in Florida).

[401] Allision Kaplan Sommer, *Internet Shaming is New Weapon Against Get-Refusing Husbands*, FORWARD (Nov. 2, 2015),

Jewish weekly newspaper, has published a list of *get*-refusers with a *seruv* issued against them,[402] while ORA has maintained a list of recalcitrant spouses on its website.[403] Therefore, some have argued that the Jewish community has been down this road of shaming and protest before, yet the *agunah* issue has persisted.[404] After all, there are still many *agunot* around today.[405]

But while it is clear this movement stands on the shoulders of the many individuals and organizations who preceded them,[406] there are unique features to this current movement. Perhaps the most distinguishing aspect is that it is mostly led by individual women who would not be considered "activists" in any other way.[407] In previous

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https://forward.com/life/323855/internet-shaming-is-the-new-weapon-against-get-refusers.

[402] *See supra* note 296 and accompanying text; Machtinger, *supra* note 87, at 252; *Seruv Listing*, JEWISH PRESS (Sept. 27, 2013), http://jewishpress.newspaperdirect.com/epaper/viewer.aspx?issue=8637201309270000000001001&page=89&article=bad8e676c806475fbc3b2c6e29b1cbfa&key=XXOh84sxOVTSAqn4bxC4w==&feed=rss.

[403] *See Recalcitrant Parties*, *supra* note 279.

[404] Machtinger, *supra* note 275.

[405] *See supra* note 82.

[406] Machtinger, *supra* note 275 (listing some of the individuals and organizations whose work the current movement is founded upon).

[407] *See, e.g.*, Chizhik-Goldschmidt, *supra* note 1 (describing how Dalia Oziel, a leader of the movement, is "no seasoned social justice warrior" and was better-known for her singing, "ubiquitous bean beanie plopped on top of her long wig . . . and her sales of long-lasting lipstick."); Chesler, *supra* note 20 ("These women aren't known for taking on the rabbinate [or] political issues. They're known for posting pictures of the dinners they make or the cute hats they're wearing, and suddenly they're going into this. That's the shift.").

movements, women did lead the protests. But they were self-described "bad girls" and would take on the rabbinic establishment in other areas as well by advocating for causes such as women's prayer groups and increased involvement in other rituals.[408] Or, it was organizations, such as ORA, Agunah, Inc., GET (Getting Equal Treatment), or International Coalition for Agunah Rights (ICAR) leading the protests.[409] The sole purpose and mission statement of these organizations was to advocate for *agunot*.[410] In the current movement, though, the individual women leaders "typically toe the Orthodox female line," spending most of their time selling wigs, cozy blankets, and Sabbath-compliant lipstick—not leading protests or taking on hot-button political and social issues.[411] These women have also made sure to get the backing of rabbis when posting and organizing, lending it legitimacy and credibility within the community.[412] Additionally, the Instagram influencers are

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[408] Zornberg, *supra* note 101, at 716; Medina, *supra* note 398.

[409] *See* Zornberg, *supra* note 101, at 716, n. 66; ARANOFF & HAUT, *supra* note 82, at 30–31 (noting that GET and Agunah, Inc. organized protests); *supra* note 400 and accompanying text (listing protests organized by ORA); Sonia Zylberberg, *International Coalition for Agunah Rights (ICAR)*, SHALVI/HYMAN ENCYCLOPEDIA OF JEWISH WOMEN (June 23, 2021), https://jwa.org/encyclopedia/article/international-coalition-for-agunah-rights-Grar.

[410] *See supra* note 409 (describing different *agunah*-advocacy organizations).

[411] Chesler, *supra* note 20.

[412] *Id.*; *Mitzmann Interview*, *supra* note 260; *cf. supra* note 408 (noting previous movements' leaders' contentious relationship with the majority of the Orthodox rabbinate). *But see* Lauren Hakimi, *Sex Strike for Agunah Stirs Controversy, Elicits Disapproval From Prominent Rabbi Hershel Schachter*, SHTETL (Mar. 13 2024. 3:00 PM),

not part of any official organization that organizes against *get*-refusers. It is a truly grassroots movement led by individual women on the ground with rabbinic backing, which gives it more potential for success.[413]

Still, despite the potential that comes from being a true grassroots movement, it is only a band-aid solution for the symptoms and not a cure for the cause of the *agunah* issue.[414] Social media shaming will not work in many cases. For example, if the *get*-refuser does not use the internet, as is the case for many in the Ultra-Orthodox community,[415] or

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https://www.shtetl.org/article/sex-strike-agunah-controversy-disapproval-hershel-schachter (describing backlash from rabbis and Orthodox Jewish community after online activists organized a communal "sex strike" intended to pressure men to support a Hasidic *agunah*'s plight).

[413] Chesler, supra note 20; Chizhik-Goldschmidt, *supra* note 1 ("What's happening on social media is the start of a grassroots movement.") (quoting Leslie Ginsparg Klein, historian of Orthodox gender history). "The value of [grassroots] advocacy is that it is driven by the people. It is grounded in the belief that people matter and that their collective voices are powerful in influencing," thus allowing helping the cause to gain momentum. Billie Hall, *Giving Voice: The Power of Grassroots Advocacy in Shaping Public Policy*, GRANT MAKERS IN HEALTH (Nov. 15, 2010), https://www.gih.org/files/usrdoc/Grassroots_Advocacy_Sunflower_Foundation_November_2010.pdf. The grassroot aspect, which gives the movement individual and collective power, coupled with the rabbinic backing, which gives the movement communal legitimacy, allows this movement to have more potential for success than previous *agunah*-advocacy efforts.

[414] Machtinger, *supra* note 275.

[415] *See* Jennie Rothenberg Gritz, *It's Not Just Porn: Why Ultra-Orthodox Jews Fear the Internet*, ATLANTIC, (May 23, 2012), https://www.theatlantic.com/national/archive/2012/05/its-not-just-porn-why-ultra-orthodox-jews-fear-the-internet/257561. *See also Ultra-*

if they are not part of an online community, they will be less likely to be affected and deterred by an online shaming campaign.[416] And even if they are online, *get*-refusers can always pick and choose their own social community.[417] In fact, *get*-refusers have already created their own online communities and platforms, including "Men's Rights" Facebook groups,[418] and YouTube channels with over a thousand subscribers.[419] *Get*-refusers can therefore avoid many of the online spaces that shame them and create their own "echo chambers," alleviating some of the *agunots'* advantages provided by the ubiquity of the internet.[420] This applies offline as well, where *get*-refusers can find communities that tolerate their behavior.[421] Therefore, as

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Orthodox Jews in Israel Gradually Entering Internet Age in 2021, JERUSALEM POST (Dec. 30, 2021) (finding only 64% of Ultra-Orthodox Jews in Israel used Internet in 2021, and that Ultra-Orthodox "use of the Internet appears to be much more functional, rather than social or recreational.")

[416] *See* Goldman, *supra* note 271, at 442–43 (describing how success of internet shaming depends on how "community" is defined and if the person being shamed has a significant online community).

[417] *See id.* ("The person himself creates this community by picking and choosing with whom to associate.")

[418] Frum Men's Right's, FACEBOOK, https://www.facebook.com/FrumMensRights (last visited Sept. 20, 2023); ORA Watch, FACEBOOK, https://www.facebook.com/ORAWatch (last visited Sept. 20, 2023); Zekhut Avot זְכוּת אָבוֹת , FACEBOOK, https://www.facebook.com/groups/zekhutavot (last visited Sept. 20, 2023).

[419] Meir Kin, YOUTUBE, https://www.youtube.com/user/israkin/videos (last visited Sept. 20, 2023).

[420] *See supra* notes 268–279 and accompanying text.

[421] *See supra* notes 272–273 and accompanying text.

long as there are communities that accept *get*-refusers, be it online or offline, internet shaming will be limited in its effectiveness as a solution to the *agunah* issue.

On top of that, the movement is part of social media—where trends can often dissipate quicker than they rise.[422] Since the first few months after beginning of the recent social media movement in February 2021, social media posts about *agunot* have gone down and it does not appear to have as much momentum.[423] While there are several possible reasons for the drop-off in posts,[424] the "fadness-factor" is

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[422]Antonia Malchik, *The Problem With Social-Media Protests*, ATLANTIC (May 6, 2019), theatlantic.com/technology/archive/2019/05/in-person-protests-stronger-online-activism-a-walking-life/578905 ("Online movements can burn out faster than campaigns that spend months or even years forging in-person connections."); Sander van der Linder, *The Surprisingly Short Life of Viral Social Movements*, SCIENTIFIC AMERICAN (Feb. 15, 2017), https://www.scientificamerican.com/article/the-surprisingly-short-life-of-viral-social-movements ("Social media charity campaigns spread like wildfire but burn out fast.").

[423] *See, e.g.*, INSTAGRAM, https://www.instagram.com/explore/tags/freechava (last visited Sept. 20, 2023); INSTAGRAM, https://www.instagram.com/explore/tags/agunah (last visited Sept. 20, 2023); INSTAGRAM, https://www.instagram.com/explore/tags/getrefusalisabuse (last visited Sept. 20, 2023) (showing decline in postings about *get*-refusers on Instagram since the movement began and that many of the more recent postings are from accounts trying to delegitimize *agunot* and *agunah* advocates).

[424] For example, one possible reason may be the mental toll the social media movement was taking a mental toll on the activists. *See infra* note 450. Another possibility is that many of the individual *agunot* who were being posted about made progress in their negotiations with their husbands to secure a *get* and decided to hold off on online pressure. *See, e.g.*, @flatbushgirl, INSTAGRAM (Apr. 19, 2021),

likely a significant cause. Since the movement is led by individuals who are not experienced in social justice causes,[425] it is understandable that as time moves on, the influencers "return to promoting their products,"[426] and post less about *agunot*. After all, many of them only got involved in the *agunah* issue by chance interactions,[427] and are on social media for other reasons.[428] They cannot be expected to carry the momentum on their own, a very difficult task for any social media movement.[429] And while it is possible to regain the momentum again,[430] restarting a social media movement is typically more difficult than starting it from the beginning.[431] Therefore, social media pressure should be viewed as a band-aid solution and not as a mechanism that would bring long-lasting change to a systemic issue.

ii. Negative Consequences and Risks of Social Media Shaming

https://www.instagram.com/p/CN3cr0ksPJu (explaining a pause in posting about a *get*-refuser's family and a tentative cancelation of a rally because the [husband's family] "made a serious commitment to . . . secure the Get" by working with a *beth din*.).

[425] *See supra* notes 407–413 and accompanying text.

[426] Machtinger, *supra* note 275.

[427] *See, e.g.*, *supra* notes 7–15 and accompanying text.

[428] *See supra* note 411 and accompanying text.

[429] *See supra* note 422.

[430] *See, e.g.*, Berel Solomon, INSTAGRAM (Dec. 9, 2021), https://www.instagram.com/p/CXSRSaZtIBG ("Here is my message to any men withholding a get . . .. The agunah movement is not over. We will restart it on the drop of a hat. This time with much more force. Do yourself a favor. Give the get before it gets ugly again.").

[431] *See* van der Linder, *supra* note 422 (describing difficulty of reviving the "Ice Bucket challenge" and other movements on social media).

In addition to only being a band-aid solution, social media shaming could also lead to many negative consequences and it carries risks. While many of the activists verify information, are strategic about when they post, and confer with the *agunot* they are posting about,[432] some may not be as cautious.[433] There is no formalized fact-checking process.[434] And because it is a social media movement, there is little control over who joins. Anyone can decide to post something using the #FreeAgunot hashtags and blend right in with the cause. This lack of control could lead to many negative consequences. Without consulting rabbis, posters could violate Jewish law by pressuring a husband when a *seruv* has not been issued or take other actions that cause the movement to lose communal credibility.[435] An online activist can be accused of cyber harassment, doxing, defamation, or other tort claims.[436] Even if all laws are followed, the activists could still be sued by obstinate *get*-refusers, which can be costly to defend.[437] At

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[432] *See supra* note 288 and accompanying text.

[433] For example, one individual who regularly posted during the rise of the movement admitted he had "no idea what [he was] doing." Levy Chehebar, *supra* note 18. The same individual has also been criticized for inviting *get*-refusers to livestream interviews "to give their side of the story." *Id.*

[434] Chizhik-Goldschmidt, *supra* note 1.

[435] *See supra* Section III.A; *see, e.g.*, *see supra* note 345 (noting campaign against a husband before a *seruv* was issued); Hakimi, *supra* note 412 (describing backlash from rabbis and Orthodox Jewish community after online activists organized a communal "sex strike" intended to pressure men to support a Hasidic *agunah*'s plight).

[436] *See supra* Section III.B.

[437] *See supra* note 317 and accompanying text.

intense rallies, which some have described as feeling "like being in a pressure cooker one millisecond after release," a rowdy crowd can cross a legal line.[438] If not careful, the pressure and shaming could lead to criminal violations, or turn into rioting or mob justice.[439] These are all legitimate possibilities. And if legal lines are crossed by anyone, the entire movement could lose its communal credibility and effectiveness.

Social media shaming can also potentially harm an *agunah*'s personal situation. A shaming campaign would usually be an *agunah*'s last weapon in her toolkit. There is a risk that once you pull the shaming lever, you lose the more powerful tool, which is the *anticipation* and *fear* of a rally or social media campaign.[440] Once the *get*-refuser's face is plastered all over social media, the husband may dig-in to his *get*-refusing position and become even more obstinate in his refusal.[441] At that point, the online postings are "likely never going to go away" because of the permanence of the internet.[442] Therefore, in order to maximize her leverage, an *agunah* and her allies need to be very careful about when to implement the shaming weapon. Similarly, even after a campaign is launched, if an *agunah* and a *get*-refuser are

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[438] Levy Chehebar, *supra* note 18.

[439] *See supra* notes 329–334 and accompanying text; Goldman, *supra* note 271, at 435 (describing how public shaming punishments can improperly incite the public due to a lack of control over others).

[440] *See Starr Interview*, *supra* note 82 ("[T]he anticipation of pressure is worse than the pressure itself.").

[441] *Id.* (explaining that a *get*-refuser can often feel empowered after a rally).

[442] *See* Goldman, *supra* note 271, at 443.

making progress in negotiations, for example, a well-intentioned shaming post by an activist against the *get*-refuser can easily rock the boat of the negotiations and harm the *agunah*'s chances of receiving a *get*. Therefore, to avoid these types of issues, it would be advisable for leaders and posters in a campaign to consult organizations such as ORA, who have experience with navigating these thorny issues.[443] In addition, ORA also has expertise on legal and Jewish law issues that may arise during social media campaigns and protests,[444] which can also help avoid some of the risks discussed above.[445]

But even if posters consult with ORA and follow the above advice, there are still additional costs to social media shaming. For the *agunah*, going through a social media shaming campaign would require her to go public about her divorce, an unpleasant process.[446] Most *agunot* would probably prefer to keep these personal details private,[447]

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[443] *See Starr Interview*, *supra* note 82 (describing how ORA uses public protests as a last resort and tries to solve issues privately before going public).

[444] The organization is led by Keshet Starr, an attorney. *See id.* They also receive rabbinic guidance from leading rabbis from Yeshiva University. *Our Mission*, ORA, https://www.getora.org/about-us (last visited Mar. 24, 2022).

[445] *See supra* notes 432–439 and accompanying text.

[446] *See* Chizhik-Goldschmidt, *supra* note 1 ("The line of questioning that is going on, the need for women to reveal personal information about their situation, I think, is not ideal. It minimizes women . . .") (quoting a former *agunah*)).

[447] *See, e.g.*, Shannon Levitt, *Advocating for Agunot Using the 'Push-Pull' of Social Media*, JEWISH NEWS (Apr. 23, 2021), https://www.jewishaz.com/community/advocating-for-agunot-using-the-push-pull-of-social-media/article_59d1e4fe-a47d-11eb-b375-

especially when they come from more traditional Orthodox circles.[448] Going public subjects the *agunah* to potential harassment from people sympathetic to the *get*-refuser's side.[449] The social media influencers are also harassed and even receive death threats, which can take a toll on them mentally.[450] Therefore, because of the risks and negative consequences that come as part of the movement, even those who lead the social media campaigns would likely agree that social media shaming is a "suboptimal" strategy.[451]

IV. CONCLUSION

As of this writing, Chava Herman Sharabani unfortunately remains an *agunah*. It is a tragedy that she and many other Jewish women are left in such a difficult position. Thankfully, there is a dedicated group of individual women using social media who are willing to make personal sacrifices to advocate on behalf of these *agunot*; this is

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9722b303b802.html (describing how a recently freed *agunah* did not like being in the public spotlight during social media campaign).

[448] *See* Sarah Maslin Nir, *A Glimpse Inside the Hidden World of Hasidic Women*, N.Y. TIMES (Sept. 18, 2018), https://www.nytimes.com/2018/09/19/nyregion/a-glimpse-inside-the-hidden-world-of-hasidic-women.html.

[449] *See, e.g.*, Levitt, *supra* note 447 (noting that, following a social media campaign, a recently-freed *agunah* "dealt with its dark side and was harassed by those taking [her ex-husband's] side.").

[450] *See, e.g.*, Dalia Oziel, INSTAGRAM (Aug. 9, 2021), https://www.instagram.com/p/CSX-pdNN09a (describing the mental toll and anxiety she felt from receiving multiple death threats a day from *get*-refusers and their "minions.").

[451] Chizhik-Goldschmidt, *supra* note 1.

certainly a positive development.[452] There is a lot of potential that can come from this grassroots social media movement, and its leaders should aim to bring lasting change.[453] But certain advocacy efforts of the #FreeAgunot movement would be more effective than others. Focusing on implementing new legislation is not a productive use of their social capital, as *Get* Laws are problematic from a constitutional and Jewish law perspective.[454] On the other hand, advocating through social media for the increased use of prenuptial agreements is a far more effective strategy.[455] While it is not a perfect solution,[456] the RCA/BDA prenup has had a great deal of success.[457] Similar to a vaccine, it can act as a preventative measure and block *agunah* situations from happening in the first place.[458] If prenups are normalized at every Jewish wedding, there would be far less *agunot*.[459] And if the *agunah* issue can transform from a systematic issue that affects many to a problem that only affects a few, it

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[452] *See, e.g.*, *supra* note 450 and accompanying text; *see supra* Section III.C.1.

[453] *See supra* notes 406–413 and accompanying text.

[454] *See supra* Section II.A.

[455] *Weissmann Interview*, *supra* note 262 ("I think something like . . . the current grassroots movement, momentum behind the agunah issue will in fact move the needle on [the prenup]. . . . I'm confident [and] optimistic[] that greater awareness of the problem and greater awareness of potential solutions out there will lead to communities beyond the traditional constituency of the prenup to adopt it.").

[456] *See supra* notes 252–259 and accompanying text.

[457] *See supra* notes 248–251 and accompanying text.

[458] *See* Broyde, *supra* note 231 (comparing prenuptial solution to a vaccine).

[459] *See supra* note 251 and accompanying text.

would be a much easier situation to tackle.[460] By using their social media platforms to advocate for prenups, online activists can help educate the public about how *get* refusal is a form of domestic abuse.[461] They can help create a world where hearing about an *agunah* situation would be shocking due to its rarity. In such a world, social media shaming would likely be even more effective than it is today, as the public would view a *get*-refuser as even more of an outcast under such conditions. But even before that point is reached, influencers should continue to engage in social media shaming against *get*-refusers, while proceeding with caution and heeding the advice given throughout this Article.[462] A band-aid solution[463] is better than no solution. And helping any individual *agunah* is obviously an important thing to do, even if such a strategy comes with costs and would not help all *agunot* overall. Therefore, the social media movement should continue to shame *get*-refusers, while increasingly using their platforms to push for and educate the public about the increased use of prenups. Hopefully, by doing this, the grassroots social media movement could bring lasting change and eradicate the *agunah* issue from the Jewish community.

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[460] *See supra* note 259 and accompanying text.
[461] *See, e.g.*, Shely Esses, @shelyrachel.lmft, INSTAGRAM (Mar. 16, 2021), https://www.instagram.com/p/CMfDBngrOMK ("Get Refusal [is a] form of domestic abuse. Get Refusal is often about controlling the wife, even after the marriage is over. What can we do about it? prenuptial [sic] agreements with the help of a lawyer and a rabbi. You can still do this now even if you are already married."); *see supra* Section I.B. (explaining how *get* refusal is domestic abuse and why that is important).
[462] *See supra* Section III.C.2.ii.
[463] *See supra* Section III.C.2.i.