Rabbinical courts keep blacklist of allegedly ‘adulterous women’

Presents obstacle to state-recognized Jewish marriage, divorce in Israel.

By [Yair Ettinger](http://www.haaretz.com/misc/writers/yair-ettinger-1.626) | Apr. 24, 2015 | 4:31 AM |  4

The Torah is unequivocal: If a man commits adultery with a married woman, both man and woman shall be put to death. The modern State of Israel, in contrast, has no laws against adultery, so adulterers can live freely. But what they can’t do is marry the person they committed adultery with in an official Jewish ceremony. That is prohibited by Jewish law, which governs Israel’s rabbinical courts, which in turn govern state-recognized Jewish marriage in the country.

The issue gained prominence recently because of a case now being heard in the Jerusalem Rabbinical Court. It began with a divorce granted by the rabbinical court more than 10 years ago. Though the divorce was consensual, the proceedings led the judges to suspect that it was sparked by an affair between the woman and Mr. X.

Recently, the woman sought to remarry, this time to Mr. X. But when they went to the religious council to register their marriage, the records showed a potential problem, so the registrar sent them to the rabbinical court for clarification. The court then informed them that to hold a Jewish wedding, they must prove they hadn’t committed adultery.

The woman claims her relationship with Mr. X. was platonic during the time of her first marriage, and only years after her divorce did they become lovers. But the court demanded proof. And to the couple’s astonishment, it invited the woman’s ex-husband to testify at the hearing.

**Sent for clarification of 'potential problems'**

Cases like this one, in which a woman must prove that she isn’t an adulteress, are rare. But it isn’t at all unusual for a couple seeking to register their wedding to be sent to a rabbinical court to clarify some other potential problem.

The rabbinate lists more than 5,000 Israelis as potentially presenting problems. The reasons include doubts about whether they are really Jewish and doubts about the validity of their divorces. But while people in those categories are barred from marrying any Jew, suspected adulterers can marry almost anyone – except the person they’re suspected of committing adultery with.

In 2012, another woman suspected of adultery petitioned the High Court of Justice against the rabbinate’s maintenance of this blacklist, noting that she appeared on it even though no legal forum had ever investigated whether she in fact committed adultery. Her petition was joined by several women’s organizations, which argued that the practice exceeds the rabbinate’s authority, violates basic human rights and discriminates against women, since under Jewish law, married men are considered adulterers only if they have an affair with a married woman, whereas married women are adulterers even if the man they had the affair with was single.

The state countered that Jewish law incontrovertibly bans adulterers from marrying each other, so as long as Israeli law states that Jewish marriages must be conducted in accordance with Jewish law, the rabbinate has no choice but to maintain these blacklists and perform the necessary checks to ensure it isn’t approving a forbidden marriage.

A three-justice panel of the High Court agreed unanimously, saying it had no legal authority to intervene in the powers the legislature gave the rabbinical courts. But the sides also conducted lengthy out-of-court negotiations, which eventually convinced Chief Rabbi Yitzhak Yosef, president of the rabbinical courts, to issue new instructions to these courts to ease some of the concerns the justices raised.

The new rules state that people can’t be listed as suspected adulterers without evidence, and that all the affected parties – husband, wife and suspected lover – must be given a chance to rebut this evidence. High Court President Asher Grunis, writing for the court, wrote that these orders “bear non-negligible similarities” to the petitioners’ demands.

But Dr. Susan Weiss, executive director of the Center for Women’s Justice and the lawyer who represented the woman in this petition, disagrees. She believes the court acted out of “fear” and accuses it of allowing the rabbinate to “turn the state into the Inquisition.”

In 2013, a state comptroller’s report on the rabbinical courts noted that contrary to the rabbinate’s rules, “dozens of cases were found in which rabbinical courts ordered the Rabbinical Courts Administration to include [on the blacklist] even relatives of the litigants who weren’t parties to the case and weren’t registered for marriage at all.” This was done “without informing them and without enabling them to appeal the decision,” thereby “severely harming their basic rights.”

Moreover, the report found, the rabbinate didn’t protect the privacy of people on the blacklist. At the Jerusalem Religious Council, for instance, personal details of people on the list were accessible to every council employee.

Today, according to data submitted to the High Court by the Rabbinical Courts Administration, suspected adulterers represent less than a thousandth of the names on the blacklist – only 17 people as of the end of 2013, out of almost 21,000 divorces approved by the rabbinical courts during the previous two years.

But the low number doesn’t allay Weiss’ concerns. “The State of Israel has an official list of adulterers,” she said. “They tried to tell me this isn’t so terrible, it’s just a few women. I have no complaints against the rabbinical courts, but against the High Court, which authorizes the state to pry into whom I’ve slept with. Why is that their business? It isn’t.”

**'High Court's job to defend human rights'**

What does she think about the court’s argument that the petitioners should work to change the law that enables rabbinical courts to rule on marriage and divorce to begin with? “Who if not the High Court should defend human rights?” Weiss retorted.

“Let’s say the Knesset were to pass a law requiring every male Jewish baby to be circumcised,” she continued. “There has to be a body that would protect against the legislature’s use of its power. There’s no circumcision law, but there is a law that enables the state to pry into our beds, and there’s a law that enables them to investigate converts to see if they observe Shabbat and kashrut. The Supreme Court apparently doesn’t want to touch this, but we must sober up and understand that this is what’s happening. I have no complaints against the rabbinical court judges, who answer only to God, but against the High Court, which allows them unbridled power to enter into the most intimate details of our lives.”

Of course, this is true only for those who want an official wedding registered by the state, like the woman seeking to marry Mr. X. And that’s fairly unusual: Most couples in their situation would skip the rabbinical court hearing and either hold a private wedding unrecognized by the state or live together without marrying.

Attorney Nitzan Caspi Shiloni of the Center for Women’s Justice, who represents that woman, said the hearing has already taken place. At it, the woman’s “ex-husband brought pictures of her sitting with this man [Mr. X.], and the court invited him to testify and sought to discover, ‘How did you meet her? Did you touch her?’ It was very unpleasant.”

Moreover, Shiloni said, the High Court’s ruling could make divorce even harder for other women in the future. “Until now, this was hidden from the public,” she explained. But now, “everyone will know it’s possible to make allegations about adultery. That’s another way to inject vengeance into the divorce file, to threaten the woman that she’ll be put on the blacklist.”