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An Agunah-Free World

How the Yashar Coalition Seeks to Reach This Critical Goal

By Shulamit Ben-Shachar

A few years ago, Martin Friedlander was leaving court after discussing a divorce case that was headed to Bes Din. Mr. Friedlander had told the judge that he would need about ten days to finish the arbitration agreement and that he believed that the whole case would be withdrawn. He was making his way out of the courtroom when a law secretary approached him and asked, "Are you sending them to the cattle prods?"

After 28 years working in matrimonial law, and having appeared in both batei dinim and courts, Martin has had a front-row seat to the ravages of divorce. This comment drove home a point that had been bothering him for a long time. "I realized that the perception of our system needs to be changed," he says.

This interaction outside the courtroom spurred Martin to get more involved with an initiative posed to him months earlier. He and a frum law professor had been discussing the recent spate of contentious divorces. The professor suggested it was time for a halachic pre-nuptial agreement that could be accepted and used by everyone in the Torah community and asked Martin to help him. At the time, Martin agreed but with a condition: "I told him I'm happy to get involved but not if people will say its *k'negged da'as Torah*, and not if it will start a *machlokes*. If you are willing to make sure we will get *haskamos*, I will put in time to develop it."

Some time passed without the project getting off the ground. Spurred by the sharp comment by the law secretary, Martin decided the time was right for change. Thus, the Yashar Coalition was born.

The Yashar Coalition is dedicated to providing a halachic, legal solution to address the possibility of marital problems before they come up. According to the initiative, "The Yashar Coalition provides a framework for healthy marital conflict resolution. Our 'Premarital Agreement between Chasson and Kallah' facilitates honest discussion about the relationship and provides common ground acceptance between the parties. The document builds trust between couples through a frank discussion of the facts. The premarital agreement is a contract, written in accordance with *halacha*, that has been accepted by North American *Gedolei Yisroel*. It is a pragmatic document, legally binding, and state specific."

This framework is the result of years of work by Martin, Eli Goldbaum, and many others who worked together to craft a respectable halachic prenuptial agreement that is acceptable to the entire Orthodox community. Something so robust and so comprehensive is not developed in an instant. The process took many years and a lot of effort to come to fruition.

One of the first steps taken by the coalition was drawing on the experience of frum mental health professionals to find a deeper understanding of the issues that cause marriages to disintegrate. They consulted with

eminent psychologists and social workers including Dr. David Pelcovitz, Lisa Twerski, LCSW, and Dr. Benzion Twerski. This allowed the Yashar Coalition to draft shalom bayis protocols with the community's needs in mind.

"The concept is, we're not limited to just the *get*. We're trying to be an all-encompassing healthy dispute resolution platform," Martin asserts. "It's gender-neutral and is designed to help both men and women, and the whole family."

The coalition also commissioned a study, led by Dr. Pelcovitz and overseen by the Albert Einstein School of Medicine, to try to quantify the psychological damage wrought by contentious divorces. According to Martin, "The point of the study was to explain to the community and the rabbanim what the issues are with divorce and how they affect families that go through it. We put together a proposal and had them do a first-of-its-kind a survey of kids for whom the *get* was an issue in their house, that the mother was not given a *get* or had it delayed. We surveyed children and adults who had experienced this as children. We are in the process of publishing the results, but the preliminary findings show that the effect of these situations on children is comparable to children who grow up in homes where there is domestic violence."

After these steps were taken, the coalition moved into a new phase and began drafting the halachic prenup itself.

The idea of the prenup was to view all the issues that have come up in the past with contentious *get* cases and

address the elements that cause delays and conflicts. The document was developed "to ensure a forum to address conflict for a Jewish family in a healthy environment under halacha," says the Yashar website. "The agreement will be signed before the marriage takes place. First, the *zabla* process with all of its inherent conflict is waived. Second, a sitting Beis Din is chosen at the time of the signing with a mechanism for a replacement if necessary. Third, that a session of Beis Din is required within two weeks of a request."

Martin explains that a *zabla beis din* is one of the main culprits in dragging out divorce cases.

A *zabla beis din* refers to an arrangement where each side picks one *borer* (dayan), and then the 2 *dayanim* pick a third.

"At minimum, the *zabla* process causes months, or even a year-long delay," Martin shares. "To address this issue, Yashar stipulates a sitting beis din, not one put together for a particular divorce case. The couple can pick the beis din when they are engaged, so that there will be no dispute, and provisions are made for the possibility of the beis din changing in the future. This takes away so much of the gamesmanship that happens in our community. We have cases where the parties are married less than six months, and the divorce takes three years. We want to prevent situations like that."

In addition, Martin points out that convening the beis din within two weeks of the request will not only prevent delays and bitterness in the divorce but can actually save the marriage.

Another element of the Yashar prenup is that it is not signed the day of the wedding, in accordance with the ruling of Rav Eliyashiv, *zt"l*. As Martin points out, the halachic prenup is a legally binding and exhaustive document, covering divorce proceedings, financial matters, child support, and even custody in some cases. It needs to be read, examined, and understood before the wedding, and both sides need time to do that.

Martin illustrates this point a shocking story: "I had a case where I was called to deal with a couple who were in middle of sheva brochos. It turns out the boy that had been ambushed and forced into signing a prenup the day of the wedding. He had not been told about it before, and the mesader kiddushin told him he had to sign or else the wedding would not go forward.

"After the wedding, the boy was not allowed to see the document. He was from out of town, it was the day of his wedding, he didn't know what he was signing. He felt that he had been strong-armed and duped, and he didn't want to go to sheva brochos unless he had a document saying the prenup was null and void."

Although Martin was able to successfully mediate that case, he says that this story illustrates potential pitfalls of the process.

"It may have been a well-intentioned overcorrection in the other direction to prevent agunos, yet it created more issues. That's why Yashar's prenup is neutral and meant to protect both parties. It's not a one-way street; everybody can get a clear resolution."

Despite all the hard work and thought that went into the Yashar coalition's work, they still faced a major obstacle. The idea of a halachic prenup is not a new one, but previous iterations of the idea had not caught on among the right-wing yeshiva community. In Martin's view, there are several ideas and attitudes prevalent in the community that Yashar had to confront in order to make their case.

One issue is that of acceptability.

Martin is quick to point out that he is trying to serve all groups, not criticize anyone else's work.

"If people were happy to use other prenups, that's good," he says. "Yashar is not coming to replace anything. But many rabbanim were not using the existing prenups, and the outcome is that the marriage goes forward without one. We aren't coming to attack or criticize anybody or say 'ours' is better. We're just trying to get it to people who aren't being served."

A second factor in people's hesitation when it comes to a halachic prenup is that it may seem new and strange. They say, "It's not out min-hag; it's not our *mehalech*." In a com-



Eli, Martin and Rav Shlomo Miller

are hesitant to discuss a prenup at a wedding, I make the case to them this way: How many chassanahs do you have in your community? Daily, monthly, yearly; what are the numbers? Unfortunately, how many end

"It's like life insurance: you don't want to use it, but you have it to protect yourself."

munity where mesorah and tradition are so highly prized, it can be difficult to make the case for innovation, no matter how potentially needed or useful it might be.

A third reason for opposition is that people claim a halachic prenup puts the concept of divorce in people's minds, making it an ill-fitting element of pre-wedding plans. Discussing the possibility of a marriage's dissolution seems out of step with the atmosphere of a wedding, with a Chosson and Kallah starting their lives together. But, as Martin points out, "The kesuba discusses the same eventualities as our prenup. In fact, Rav Moshe Feinstein, *zt"l*, has a teshuva where he allowed terms that we would normally put in a prenup to be added to the kesuba."

In response to these concerns and others, Martin says he often suggests people view things with a realistic perspective.

"When I encounter rabbanim who

in divorce? Those numbers are the reality we have to deal with, even if you don't want to talk about it by the wedding.

"My friend Eli Goldbaum always says that it's like life insurance: you don't want to use it, but you have it to protect yourself."

To fully address these concerns, and to make sure that their work would be able to serve the community, the Yashar Coalition sought out the support, insight, and approval from leading poskim in the community at every stage of the process. Rabbi Hillel David had been with them since the beginning, even writing a *haskama* for their work, something he has never done before.

Martin, Eli Goldbaum, and others spent countless hours working alongside Harav Shlomo Miller of Toronto, making sure every detail was fully aligned with halacha. Martin recalls, "First we spoke to Harav Miller on the phone, then we flew up to his house in

Toronto. We spent hours with him at his living room table. Every word was examined and looked over. We had more meetings, more conversations. The drafting process took years until finally Harav Miller was ready to give a full written *haskama*."

Following Rav Miller's approval, Rav Yaakov Forchheimer of Lakewood also signed a *haskama* for the Yashar Coalition.

These rock-solid *haskamas*, from some of the most eminent halachic minds of our generation, are both a vote of confidence in the Yashar Coalition's work and a sign of how seriously they take this issue.

Martin says that his ultimate goal is for the Yashar prenup to become the standard, offered to students to opt in while they are still in *beis medrash* or seminary, much like Dor Yesharim blood tests have become de rigeur for the community. However, while he knows that step is still far away, he is proud of the work the organization has done so far and is eager for it to make an impact.

Yashar planned on getting their message out to the community earlier this year but, like everything else, that plan was derailed by the coronavirus crisis.

Now, Martin is anxious to get the word out so that this vital issue can be addressed.

"This issue has been bothering me for a long time – that frum people couldn't figure out a prenup that would be accepted by majority," he says. "The fact that judges see us in this negative light, that we can't handle these situations for ourselves, and that every divorce case turns into World War III is an unfortunate *chillul Hashem*.

"We believe that our work will fundamentally change things and bring healing to our community." ♣

For more information about the Yashar Coalition's work, please visit <http://www.yasharcoalition.org/>. Martin Friedlander can be reached at his office at (212) 321-7092 or via email at MEF@mflawer.com.