

# Jewish Wedding Vows: Do Nedarim have a Place in the Jewish Wedding?

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The typical wedding, as depicted in popular culture, has as its central element the exchange of marriage vows. This element is notably absent from the traditional Jewish wedding. Instead, the closest equivalent is the giving of a ring by the groom to the bride while reciting “*Harei at mekudeshet li b-ta’baat zo k’dat Moshe v’Yisrael*” (“Behold you are consecrated to me with this ring, according to the law of Moses and Israel”). Traditionally, the bride remains silent.

For some time now, there has been a search by couples to add greater mutuality to the halakhic wedding ceremony. Among the practices that some have instituted are a statement by the bride that she accepts the ring given by the groom or the actual giving of a ring by the bride to the groom at some point in the ceremony.<sup>2</sup> Both of these features have met with limited but growing acceptance.

But there is another aspect of Jewish marriage, not addressed by these ceremonial innovations, that remains deeply troubling for couples who see marriage as an equal partnership: the lack of parity between spouses’ commitments to sexual exclusivity. Under Jewish law, a wife who commits adultery violates a major biblical (*d’oraita*) prohibition, in theory punishable by the death penalty (for both the wife and her

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<sup>1</sup>Some of the ideas in this article were introduced to me by Rabbi Zev Farber and Rabbi Mike Moskowitz as part of the Halakhah in Action program of Yeshivat Maharat. I would like to thank Rabbi Mike Moskowitz, Rabba Wendy Amsellem, Rabbi Avigayil Halpern, and Rabbi Jeff Fox for their comments on earlier drafts of this article.

<sup>2</sup>For a discussion of these and other practices that give the bride a more significant role in the wedding ceremony, see Rabbi Dov Linzer, “*Ani L’Dodi v’Dodi Li: Towards a More Balanced Wedding Ceremony*,” *JOFA Journal* (Summer 2003).

adulterous lover).<sup>3</sup> By contrast, polygamy by the husband was permitted both biblically and during Talmudic times. It was prohibited (for Ashkenazi Jewry) only by a rabbinic decree (*takkana*) generally ascribed to Rabbenu Gershom in the 11th century, which declared it punishable by *cherem* (excommunication).<sup>4</sup> Marital infidelity by the husband is not viewed as a capital offense under Torah law. It is, however, subject to the lesser prohibition of *yichud*, which prohibits any man and any woman from being secluded together unless they are married (or in certain other limited circumstances). The *poskim* disagree as to whether this is a Torah-level or rabbinic-level prohibition.<sup>5</sup> Rambam holds that sexual intercourse outside the marital relationship is prohibited by the Torah and subject to the punishment of lashes (*malkot*), but others disagree.<sup>6</sup> In order to address this inequality, couples and their rabbis have begun to consider whether biblical vows – *nedarim* – can be used to create greater parity in the relationship by elevating the groom’s obligation of fidelity in marriage to a clearly biblical level, on par with that of the bride.

### The Nature of *Nedarim*

The basic structure of a *neder* is a declaration that a specified thing is forbidden to the person making the *neder* as if that thing had been

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<sup>3</sup> After the abolition of capital punishment, the husband was required to divorce an adulterous wife; she lost her property rights under her *ketubah*; she was not allowed to marry the man she had committed adultery with; and any child born of an adulterous relationship with another Jewish man was a *mamzer* who was precluded from marrying within the Jewish community except for a convert or another *mamzer*. See Sanhedrin 41a; Rambam, *Mishneh Torah, Laws of Women (Hilkhot Ishut)* 24:6,10; Shulhan Arukh, *Even HaEzer* 115:5, 6.

<sup>4</sup> See Henry Abramson, Henry Abramson, “Rabbenu Gershom and the Ban on Polygamy in the 11th Century.” Youtube.com. 3 May, 2023. <https://www.youtube.com/watch?v=zujcj2QiSvI>.

<sup>5</sup> See Rabbi Chaim Jachter, “The Yichud Prohibition–Part One: To Whom Does it Apply?” *Kol Torah*, vol. 12, Halachah, May 22, 2002, <https://www.koltorah.org/halachah/the-yichud-prohibition-part-one-to-whom-does-it-apply-by-rabbi-chaim-jachter>.

<sup>6</sup> See Rambam, *Mishneh Torah, Laws of Women (Hilkhot Ishut)* 1:4 and comment by Ra’avad.

consecrated to the Temple.<sup>7</sup> The declaration typically begins with the word “*konam*,” signifying that the thing being forbidden will be treated as if it were a *korban* (Temple sacrifice). The thing that is forbidden can be a particular action (such as eating ice cream), or it can be receiving benefit from a particular person. The declaration can be phrased so that the restriction is effective immediately, only takes effect upon occurrence of a specified condition, or only for so long as certain conditions are satisfied. In the context of a marriage, the thing being declared forbidden would be sexual relations outside the marriage, and typically the prohibition would remain in effect from the time of the marriage ceremony until such time as the marriage is dissolved or the couple are living apart for a specified period of time.

Jewish tradition has mixed views about the desirability of making *nedarim*. The Mishna in Avot 3:13 states Rabbi Akiva’s view that a *neder* can serve as a way to help people avoid sin. For example, it can either add an additional basis of prohibition and thereby strengthen a person’s resolve to resist the prohibited conduct, or, by broadening the category of prohibited things, can prevent inadvertent violation of the actual biblical or rabbinic prohibition.

By contrast, a *baraita* in Nedarim 60b compares a person who makes a *neder* to one who builds a *bama*, a forbidden personal altar, and compares one who keeps his *neder* to one who brings *korbanot* (sacrifices) on that altar. In other words, this *baraita* sees *nedarim* as a way of creating a personal set of obligations and prohibitions, tantamount to creating one’s own religion.

The concern raised by this *baraita* is particularly acute where the purpose of the *neder* is to circumvent the traditional double standard of halakhic marriage. Nevertheless, the Torah expressly provides for

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<sup>7</sup>The punishment for intentionally using or benefitting from consecrated property is death by the hand of Heaven (*mitah b’yedei shamayim*) according to some authorities and by lashes (*malkot*) according to other authorities. See Rabbi Adin Steinsaltz, *The Talmud: A Reference Guide*, First American Edition (Random House, 1989), 220. See Nedarim 2a; Rambam, *Mishneh Torah*, Laws of Vows (*Hilkhot Nedarim*) 1:16.

*nedarim* in great detail,<sup>8</sup> and they may be appropriate where communal ideas of marriage have shifted from those of Talmudic times.

### ***Nedarim* by Heterosexual Couple**

In the case of a heterosexual couple, since the bride already has a biblical prohibition of adultery, parity of biblical obligations can be achieved by having the groom make a *neder* that sexual relations outside of the marriage will be forbidden to him during the life of the marriage. Adultery by him would then be a violation of his *neder*, which would constitute violation of a biblical prohibition. For example, the groom might say, “I hereby obligate myself to live with you in marriage and take this *neder* that, for as long as we are married according to halakhah, sexual relations with any woman other than you shall be forbidden to me.”

Although not necessary to create parity, if the couple wants to create a more parallel ritual, the bride can take a similar *neder*.<sup>9</sup> The couple can also choose to include more emotional commitments, such as to love and respect each other as is common in non-Jewish wedding vows, but these are outside the scope of the *neder* formula and thus have no halakhic import as *nedarim*.<sup>10</sup>

Today, violation of a *neder* is not enforceable under Jewish law, but neither is adultery by the bride. Under secular law, the legal consequences of adultery are the same for both spouses. So having the groom take a *neder* of marital fidelity is essentially a matter between him and God, and adding it to a wedding ceremony is a symbolic statement that, under Jewish law, the obligation of fidelity within the marriage is equal for both

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<sup>8</sup> Bamidbar 30:3 provides that a man who takes a vow (*neder*) or an oath (*shevua*) shall not break his word and shall carry out all that he has said. Bamidbar 30:4-16 requires a woman to carry out any vow (*neder*) she has made or any self-imposed obligation (*esar*) she has assumed, subject to her father’s or husband’s right to annul it in limited circumstances.

<sup>9</sup> See below for a discussion of additional considerations when the *neder* seeks to duplicate an existing Torah or rabbinic prohibition.

<sup>10</sup> See below for a discussion of such commitments in the context of *shevuot* (oaths).

parties.<sup>11</sup> The addition of a *neder* to the marriage ceremony does not eliminate the need for a *get* to effectuate a halakhic divorce.

### ***Nedarim* by Same-Sex Couple**

The concept of *nedarim* can also be utilized by same-sex couples. The considerations regarding the use of *nedarim* in these cases are somewhat different. Here, there is no need to create parity between the two members of the couple, as is the case with the heterosexual couple. Rather, the purpose of the *nedarim* would be to add a Jewish element to a marriage or commitment ceremony. Since such a ceremony is not contemplated by halakhah, the couple has even more flexibility to design a ceremony that meets their needs than does a heterosexual couple. Some couples may choose to follow the format of a traditional Jewish wedding ceremony as closely as halakhically possible while others may choose to design a ceremony that looks completely different.

The making of mutual *nedarim* by which each partner publicly commits to an exclusive relationship with the other is one way of imbuing the ceremony with holiness by formulating their commitment to each other in halakhic terms. The form of such a *neder* could be that sexual relations with persons other than their partner will be forbidden to them (until termination of the relationship).

One issue of particular concern for same-sex couples is whether such a *neder* even works in their circumstances. Assuming that sexual relations between same-sex partners is either biblically or rabbinically forbidden,<sup>12</sup> the question is whether a *neder* can be effective if it merely duplicates the prohibition.

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<sup>11</sup> Even this symbolic statement has its limitations since the husband can, by utilizing the halakhic mechanism of *hatarat nedarim* described below, unilaterally annul his *neder* without the wife even knowing about it.

<sup>12</sup> The extent to which this assumption is correct is beyond the scope of this article. However, there is growing acceptance of queer people in the Orthodox community and of the desirability to find halakhic ways to accommodate them. See Rabbi Jeffrey Fox, *Nashim Mesolelot: Lesbian Women and Halakha—A Teshuva with Responses* (Ben Yehuda Press, 2024).

The Rishonim (medieval rabbinic scholars) disagreed over the effectiveness of such a *neder*. Rashi<sup>13</sup> and Ramban<sup>14</sup> state that a *neder* prohibiting to oneself something already forbidden by the Torah would be effective. So, for example, a person who made a *neder* that pork was forbidden to them would have made an effective *neder*. If that person then ate pork, they would be violating both a Torah prohibition and their *neder*. Tosafot,<sup>15</sup> Rosh,<sup>16</sup> and Baal HaMaor<sup>17</sup> take the opposite view: that such a *neder* is not effective since one cannot add a prohibition on top of an existing prohibition.

There may be an additional basis for upholding a *neder* if the self-imposed prohibition covers some things that are not already forbidden in addition to the things that are already forbidden. The argument is derived by analogy to the laws dealing with *shevuot* (oaths). The general rule regarding *shevuot* is that a *shevua* to refrain from doing something prohibited by the Torah is not effective. However, if the *shevua* covers both prohibited and non-prohibited things, such as a *shevua* to refrain from eating both kosher and non-kosher meat, the *shevua* is effective even regarding the non-kosher meat.<sup>18</sup> By analogy to this law, a *neder* to refrain from sexual relations with both members of the same and the opposite sex – other than with each other – should be effective even with respect to members of the same sex.

Thus, while there are conflicting views on the issue, there is a basis for the position that a *neder* under which the members of a same-sex couple forbid to themselves sexual relations with persons other than their partner would be effective under halakhah. The position would be strengthened if the *neder* were broad enough to prohibit sexual relations with both members of the same and of the opposite sex.

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<sup>13</sup> Rashi on Shevuot 20b, s.v. *hachi garsinan*.

<sup>14</sup> *Milchamot Hashem, Masechet Shevuot, dapei haRif* 12b.

<sup>15</sup> Tosafot on Shevuot 20b, s.v. *d'chi lo nadar*.

<sup>16</sup> Rosh on Nedarim 20a.

<sup>17</sup> Baal HaMaor, *Masechet Shevuot, dapei haRif* 12b.

<sup>18</sup> Shevuot 23b; Rambam, *Mishneh Torah, Laws of Oaths (Hilkhot Shevuot)* 5:10; Shulhan Arukh, *Yoreh De'ah* 238:6.

Another approach to a ceremony for same-sex couples is built more on the concept of *shevua* than *neder*. By contrast to a *neder*, in which the person making it declares some external thing forbidden to them, a *shevua* requires its maker to either do or refrain from doing a particular action.<sup>19</sup> So while a *neder* is typically phrased as a negative, a *shevua* can be a commitment to take positive actions.

Under this approach, the members of the couple could create a written declaration of mutual promises, such as to live together as a couple; to be faithful to each other; to do their best to love, cherish, respect, and support each other; and other similar commitments they find meaningful. This would be followed by a *shevua*, perhaps linked to the exchange of rings, to fulfill the commitments in the declaration. (Since an absolute promise to constantly love, support, etc. one's partner is likely unattainable, and a *shevua* should not be taken lightly, the declaration of promises should include language acknowledging that certain of these promises are statements of intention and that some lapses may occur.) The couple could choose to specify an end date to the *shevua*, such as upon obtaining a secular divorce. Alternatively, when either member of the couple wishes to end the relationship, that person could utilize the existing mechanism of *hatarat nedarim*, in which they ask a *beit din* (rabbinic court) to nullify their *neder* or *shevua*. In order to justify such nullification, the person seeking it must demonstrate that they regret having made the *neder* or *shevua* and would not have made it had they known then what they know now.<sup>20</sup>

The formulation of a *shevua* may be seen as coming closer to the essence of *kiddushin* since, like *kiddushin*, its focus is on the fact that the couple has chosen each other as their partner. By contrast, the focus of a *neder* is on all other potential sexual relationships, which are declared off limits. However, there is a sense that a *shevua* is more serious than a *neder*,<sup>21</sup> and, as a result, the use of *nedarim* seems to be more prevalent than the use of *shevuot* in the wedding context.

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<sup>19</sup> Mishna Shevuot 3:1.

<sup>20</sup> Shulhan Arukh, *Yoreh Deah* 228:1, 7.

<sup>21</sup> See, e.g., *Nedarim* 18a.

As in the case of *nedarim*, a *shevua* is not enforceable under Jewish law and is a matter between its maker and God. Making such a *shevua* in a public ceremony is a way of imbuing the ceremony with holiness by formulating the mutual commitments in halakhic terms.

### **Nedarim by Heterosexual Couple Instead of Kiddushin**

Another theoretically possible approach to equalize marriage commitments is for a heterosexual couple to use mutual *nedarim* or *shevuot* as a substitute for traditional *kiddushin*. The rationale for such an approach could be that the couple finds the unequal power dynamic of traditional *kiddushin* offensive, even if tempered by adding *nedarim* and otherwise adapting the ritual to minimize the inequality of the traditional ceremony. However, for a heterosexual couple, *kiddushin* is currently the only form of halakhic marriage, so a ceremony consisting solely of mutual *nedarim* or *shevuot* would not constitute a halakhic marriage.

### **Conclusion**

*Nedarim* could be added to a traditional *kiddushin* ceremony as a way of increasing parity in the relationship by making the bride's and groom's obligations of fidelity in the marriage more similar. Same-sex couples, for whom *kiddushin* is not halakhically available, could incorporate mutual *nedarim* or *shevuot* into their marriage or commitment ceremony as an alternative to *kiddushin* that nevertheless formulates their commitments to each other in halakhic terms. However, use of mutual *nedarim* or *shevuot* by a heterosexual couple instead of *kiddushin* is not currently acceptable as halakhic marriage.

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