

TEARS OF THE **FORUM**
OPPRESSED

Solutions to the Mamzer Problem



Position Paper

The Tears of the Oppressed Forum is a think tank founded to facilitate in-depth discussion about the modern-day mamzer problem, with the goal of finding and promoting a comprehensive, fundamental, halakhic solution to this painful and challenging problem.

The forum is attentive to the suffering of persons stigmatized as mamzerim (plural of mamzer) and is aware of their inability to speak openly about their plight. As such, the forum seeks to serve as their mouthpiece and allow their voices to be heard.

It is the forum's belief that finding a solution to the mamzer problem is the moral imperative of our day and constitutes tikkun olam.

What is a mamzer?



A mamzer is a halakhic term denoting the offspring of biblically forbidden kinship rules. For example: offspring from relations between first-degree family members, or between a halakhically married woman and a Jewish man who is not her husband. Often, the concern of mamzer status arises in instances of children born to women who are *agunot*—women unable to obtain a religious writ of divorce (*get*) from their husbands, and who have been living apart from their husbands for years. The mamzer label also applies to children born from other consanguineous (blood) and non-consanguineous (in-law) familial relationships, such as a man and his aunt, or a man and his ex-wife's sister (as long as the ex-wife is living). The label applies even if these children were conceived as a result of rape. A child conceived via sperm donation may be suspected by a rabbinic court of being a "possible mamzer." This is because he is a *shtuki*, a person who is silent—*shotek*—when asked the identity of his father. Further, all future generations born to those branded as mamzerim bear the status of mamzer as well.

Ramifications of mamzer status in Israel



1

Under Israeli law, the state rabbinate holds exclusive legal authority to register marriages for Jewish citizens. As such, if state rabbinic authorities brand a person as a mamzer, such a person is legally restricted by the state from marrying in Israel (and can only marry another mamzer or a convert).

2

The state rabbinate maintains a secret, computerized blacklist of men and women who are “disqualified from marriage.” This state blacklist includes categories for mamzerim as well as suspected mamzerim, who are restricted from legally marrying.

3

Israeli law requires a woman’s legal husband to go on record as the father of her child, even when it is clear and public knowledge that he is not the child’s biological father. This is ostensibly in accordance with the halakhic principle of “*rov be’ilot achar haba’al*”—“the majority of sexual relations are attributable to the husband.” Israeli law also requires children born within 300 days of a woman’s divorce to be registered automatically as children of the ex-husband (also referred to as the “marital paternity presumption”). It is almost impossible to overcome this presumption. If a mother refuses to register her ex-husband as the child’s father, the child will be listed as having no father, irrespective of the mother’s or biological father’s attestation to paternity. By prohibiting children from being registered under the name of their biological fathers, the state seeks to “spare” children from inclusion on the state’s own blacklist, but, nonetheless, as a result, it causes immense suffering to the children and their families in the following ways:

► **Encourages Lying:** In cases where the biological father wants to be involved in his child’s life, despite the state’s non-recognition of him as the legal father, the family must lie on all official documentation in their day-to-day life: at school, at the health clinic, at the hospital, at the Ministry of Interior and in any other setting that requires the family to list the father’s name. Ironically, the explanations the family must constantly provide as to why they must lie on official forms only serve to highlight and entrench, rather than obscure, the child’s mamzer status in his community.

► **Facilitates Alienation:** In cases where the biological father wants to be part of his child’s life but the mother refuses to coparent with him, the state facilitates the mother’s parental alienation of the father.

► **Denies Support and Inheritance Rights of Child:** In cases where the biological father does not want to be part of his child’s life and the legally registered husband is willing to accept the child as his own, the child arguably benefits. However, this reflects a minority of mamzer cases. In most cases, the registered (often ex) husband wants nothing to do with a child that is not his. Consequently, the child is left with no father figure, no inheritance, and no child support. The mother is rarely willing to sue the registered (ex) husband for child support on behalf of a child that is not his. Moreover, she has no way to claim child support from the biological father; the state will try to thwart any attempt to sue for child support or inheritance from the biological father,

arguing that such a lawsuit threatens the (precarious) status of the child. In addition, without a court judgment for support, the child is unable to collect payments from Israel’s national social security agency.

► **Increases Risk of Extortion and Abuse:** The man who is falsely listed as the child’s father (the mother’s ex-husband, who is not the child’s biological father) holds legal power that is rife for abuse: he can impede any process that requires consent of both parents, such as authorizing medical treatment or obtaining a passport for the child. As a form of revenge against the mother, he can also interfere in her child’s life: he can pick the child up from school and even abduct the child to his home, leaving the mother with little legal recourse since he is considered the child’s legal guardian. Consequently, the mother faces a constant risk of extortion.

► **Leaves Children in Precarious Status:** Despite the state’s attempts to spare the child from the mamzer label by denying his biological father paternity rights, there is no guarantee that the child will actually be safe from mamzer status down the line. If the child ever registers for marriage via the state rabbinate’s marriage registrar, the child’s paternity will be investigated anyway. It is likely that he or she will be restricted from marrying and entered onto the state blacklist as a result, especially if he or she is registered as having no father. In practice, the state has created a new class of “potential mamzerim,” who live under the constant shadow of being branded as a mamzer.

Mamzerim and potential mamzerim suffer in silence, unable to share their impossible predicament with others. They live in terror that they will be publicly “outed” as mamzerim, which would be devastating for themselves, their families and their future descendants. In some cases, people are unsure as to whether they or their loved ones are mamzerim or whether they are included on the state blacklist. They refrain from seeking clarification or solutions for their questions, however, due to the substantive fear of flagging themselves as mamzerim or landing themselves on the state blacklist. Paradoxically, turning to the very people who can resolve their status issues carries the risk of exacerbating their situation further, ruining their lives and those of their children. As such, these people are relegated to silence, unable to talk about their problem, unable to identify others who share their suffering, and unable to protest their plight.

This forum seeks to be their voice and make their cries heard.

The forum's platform

The commandment, “Do not stand idly by while your neighbor bleeds” (Leviticus 19:16) serves as the guiding principle of this forum. The forum refuses to stand on the sidelines and do nothing while enabling the suffering, social ostracization and violation of basic rights of people in the Jewish community. The forum also seeks to prevent the desecration of God’s name that results from the mismanagement of the mamzer problem.

The forum seeks to find a fundamental, comprehensive solution to the mamzer problem, rather than settle for localized solutions on a case-by-case basis. The Torah teaches us to do what is right and just, commanding us to practice charity, uphold justice and prevent the desecration of God’s name. In this spirit, the forum seeks to promote a halakhic solution that will use halakhic tools on the basis of halakhic principles. Rabbinic tradition and generations of halakhic decisors have made a conscious effort to avoid labeling people as mamzerim at all costs, in recognition that the mamzer stigma inflicts significant harm that is not in concert with foundational values and guiding spirit of the Torah. The forum calls for the continued tradition of halakhic methodology used by the sages throughout the

generations, in which harsh laws are reassigned as purely theoretical precepts whose value lie in inspiring torah study rather than in their real-life application: “It never happened and it will never happen, so why was it written? So that you may expound upon new understandings of the Torah and receive reward for your learning” (Sanhedrin 71a), for the Torah’s “ways are ways of pleasantness, and all of its paths are peace” (Proverbs 3:17).

Likewise, the forum strives to present a civil proposal for mamzerim that reflects the values of democracy, equality and human dignity. The mamzer, by definition, is the product of his parents’ actions. He pays an unbearable price for choices he did not make and that were not within his control. The violation of people’s civil rights on this basis runs contrary to democratic values. The forum calls on the state of Israel to implement the principles of the United Nations Convention on the Rights of the Child, and allow every child to know the identity of his or her parents and have a relationship with them. The forum stipulates that even if a rabbinic court acts in accordance with its own interpretation of religious mamzer laws, the state must not impose this interpretation on the citizens of Israel by force.



Rivkah Lubitch,
founder of the forum

The forum's call to action

The halakhic arena

The forum calls on halakhic experts to find a halakhic solution for the mamzer problem, as follows:

- ◆ To refrain from labeling people as mamzerim in practice.
- ◆ To clear the status of those already branded as mamzerim.
- ◆ To declare that the state's computerized blacklist stands contrary to Jewish tradition.
- ◆ To permit DNA testing for the purpose of civil paternity in a manner that does not trigger any halakhic ramifications for those involved; and to consider all aspects of a child's best interest in each case in order to determine whether such a test is warranted.

The civil arena

The forum calls on the state to make civil determinations regarding the child's best interest based on democratic and liberal considerations, as follows:

- ◆ To register the child's biological father as their legal father when this is in the child's best interest.
- ◆ To allow children to know the identity of their biological father.
- ◆ To obligate the biological father to financially support his child and to acknowledge the child as his legal heir.


**We, the undersigned, are members of the
Tears of the Oppressed Forum
and endorse this position paper:**

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**פורום דמעת
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The forum is under the auspices of the Center for Women's Justice