



Re-Envisioning Jewish Commitment and Marriage for the 21st Century

Unit 3: The Dynamics of Power and Abuse in Jewish Divorce

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In the previous Unit, I argued that over the last two millennia Jewish traditional marriage has become more progressive in its treatment of and protections afforded to women. Tragically, the same assertion cannot be made with respect to Jewish divorce law, which leaves women powerless, trapped and vulnerable in the face of recalcitrant husbands.

A Thin Biblical Law

Biblical law provides sparse details about how marriage and divorce should be administered:

A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorce, hands it to her, and sends her away from his house; she leaves his household and becomes the wife of another man. Deuteronomy 24: 1-2

These isolated verses provide the entire biblical basis for determining divorce law. The rabbis mine every word in order to derive numerous laws, including everything from the legitimate causes for divorce to the requirement of a *get*, or writ of divorce, which permits her to be with another man.



The Husband Takes Leading Role

What immediately stands out about these verses is the extreme imbalance of power between man and woman. If this was a scene taking place on stage, only the husband would have a speaking part. He is the only subject, while the woman is merely an object, acted upon by her husband. Note also that any outside entity, such as a court of law, is completely absent from the scene. The central component of divorce is a *get* which has to be written and delivered by the husband. The [Rambam](#)'s summary of divorce law reflects the way the Torah's description becomes prescriptive:

1. A woman may be divorced only by receiving a bill [of divorce]. This bill is called a *get*.
The Torah establishes ten principles as fundamental [for a divorce to be effective]. They are:

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- a) That a man must voluntarily initiate the divorce;
- 2. What are the sources that indicate that these ten requirements stem from Scripture itself? [They are derived from [Deuteronomy 24:1](#), which] states: "And if it comes to pass that she does not find favor in his eyes, and he will write a bill of divorce for her, place it in her hand and send her from his home." "If... she does not find favor in his eyes" - this indicates that he divorces her only on his own initiative. If a woman is divorced against her husband's will, the divorce is invalid. A woman may, however, be divorced either voluntarily or against her will. *Rambam, Laws of Divorce 1: 1-2*

The Rambam brings our attention to a central stumbling block for women in the divorce process. Not only is the *get* written and delivered by the husband, but this must be done of his own free will. If the court, the woman, or any other party forces the delivery of the *get*, it is of no legal value. Without a valid *get*, the woman remains officially married, and any intimate relationship with another man is deemed an act of adultery.

Divorce is a tough process for a couple under any circumstances, and it often does not bring out the best in either party. However, the inordinate power that Jewish law grants to the male partner in the marriage, combined with the grave consequences of disobedience for the woman, clearly opens a door to abuse by the husband.

From the Husband's Free Will, to Compelling the Husband Until He Wants to Divorce

Despite the exclusive power of agency granted the husband, the court manages to carve out a small



supporting role in the drama. Under extreme circumstances, Jewish tradition justifies asserting the authority of the court and forcing the husband to provide a *get* to his wife, even beating or punishing the husband until he says "I want to give a *get*." The [Mishnah](#) lists particular situations in which the court is both empowered and commanded to compel a husband to "voluntarily" divorce his wife:

A Scene from [Gett: The Trial of Viviane Amsalem](#)

And these [are the cases in which] they compel him to divorce [his wife]: one stricken with leprosy; or one afflicted with polypus; or one who gathers dogs' dung; or a copper-smelter; or a tanner. Whether [these circumstances] existed before they were married or after they were married. And with regard to them all, Rabbi Meir said, "Even though he stipulated with her [in advance], she may say, 'I thought I could accept it, but now [I realize that] I cannot.'" But the Sages say, "She must accept it against her will, except for one smitten with leprosy, because [intercourse will] enervate him."

Mishnah Ketubot 7:10

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This very short list of cases contains two basic categories:

- 1) Situations in which the husband's physical condition prevents him from fulfilling his conjugal duties; and
- 2) Cases in which the husband has a smell which his wife may deem intolerable.

Is this list all-inclusive or just exemplary? For example, if body odor is grounds for compelling divorce, then is it not obvious that physical or emotional abuse should be considered as well? What if a woman simply cannot bear to willingly remain in a relationship with her husband? Can she be forced to live with someone she despises? Jewish law divides precisely around this point. In discussing the laws of "rebellious spouses" who are penalized by the court for refusing to fulfill their conjugal duties to one another, the Talmud relates the following with respect to a rebellious wife:

What are the circumstances in which the halakha of a rebellious woman applies? Ameimar said: The case is where she says: I want to be married to him, but I am currently refusing him because I want to cause him anguish due to a dispute between us. However, if she said: I am disgusted with him, we do not compel her to remain with him, [as one should not be compelled to live with someone who disgusts her.] Mar Zutra said: We do compel her to stay with him. It is related: There was an incident in which a woman rebelled, claiming that she was disgusted with her husband, and Mar Zutra compelled her to stay with him. And from this couple issued Rabbi Hanina of Sura. [This demonstrates that even such coercion can cause a blessing. However, the Gemara concludes:] That is not so. That case should not serve as a precedent, as there the positive outcome was due to heavenly assistance. [Ordinarily, nothing good results from conjugal relations that the wife does not desire.] Talmud Ketubot 63b

While the Rambam declares categorically "We force him immediately to give a get, because she is not like a captive who has to be raped by a man she hates" ([Laws of Marriage 14:8](#)). Interpretations of this Talmudic disagreement have generally become more restrictive over the centuries. For example, Rabbi Yosef Karo of the *Shulkhan Arukh*, representing the Sephardi tradition, suggests that we can abstract from the Mishnah's list, so that simply claiming "My husband disgusts me" is grounds for divorce, but not necessarily enough for the court to coerce it. Rabbi Moshe Isserles, representing the Ashkenazi tradition is even less [accommodating](#). To this day, in most cases, [the modern rabbinic court resists](#) using the relatively limited tools in their hands to force a get.

The Grave Consequences of Risk-Taking

So what motivates these stringent interpretations?

We have already mentioned that a woman who has relations with another man before obtaining a get is considered to have committed adultery, which violates the Ten Commandments and is a capital crime. In addition, any offspring produced by such a union is considered by Jewish law to fall into a category called [mamzer](#). Being a *mamzer* is much worse than what was once referred to as being an "illegitimate child," a "bastard," or child "born out of wedlock" (children born from unmarried parents are not stigmatized significantly

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in Jewish law). Children can only be classified as a *mamzer* if they are the product of an adulterous or incestuous union, but the Torah prohibits all “legitimate” Jews from marrying a *mamzer* or their descendants indefinitely, even if the transgression was unintentional. This cruel punishment against innocent children who themselves have done nothing wrong has preoccupied the rabbis for centuries, but the [rule remains intact](#).

The fear of enabling adultery and *mamzerut* has a chilling effect on rabbis, who are unwilling to risk helping women when the consequences of mistakes are so severe. While rabbis are empowered to force a recalcitrant husband to “voluntarily” write a *get* in certain circumstances, they fear the disastrous consequences that if they overstep their mandate, the *get* may in actuality be invalid. In such a situation, that “freed” woman who remarries and has children in what she believes is a legal second marriage, is actually committing adultery and giving birth to *mamzerim*. No wonder over the centuries the rabbis have been increasingly conservative about when they will “force” a *get*, and have instead adopted the doctor’s oath of [“Do no harm.”](#)



The Problem of the Agunah or Refused Woman

Women seeking divorce are also held captive as a result of these potentially terrible consequences. They are painfully aware of the grave need for a proper *get* before starting a new life after a failed marriage.

The unfortunate combination of exclusive power in the hands of the male partner, and the desperate need of the female, leads to situations that are ripe for abuse. Men leverage their power advantage in divorce proceedings in various ways. Sometimes this manifests itself in [outright blackmail](#)—demands for better financial or child custody arrangements. Other times, a man simply holds his (former) wife hostage by refusing to free her under any circumstance for years and even decades.

Technically speaking, women whose husbands disappear without divorcing them are called *agunot*, or chained women. Women with husbands whose location is known but who refuse to give a *get* even when the marriage has failed are called *musaravot get*, or victims of *get* refusal. Often, however, the term *agunah* is used broadly to include both categories. The problem of *agunot* and *musaravot get* is an ancient problem that has proven intractable and unsolved to this day.

In the modern era, many of the social tools and mechanisms of coercion that were once used to protect women are no longer available. This puts women living in the diaspora in an even more vulnerable position than they were in previous centuries. The modern state of Israel, with its religious court system, poses both advantages and disadvantages. Because rabbinic courts are able to act in ways that are not possible in a non-Jewish state, including prohibiting the husband from leaving the country, freezing his bank account or credit cards, depriving him of his driver’s license, and even sentencing him to jail, they have reduced the frequency of the most abusive cases. On the other hand, rabbinic courts are [notoriously vulnerable](#) to the financial

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pressure of recalcitrant husbands, and because rabbinic courts currently hold a monopoly on marriage and divorce in Israel, a woman has no option of circumventing their authority. Women who have children without obtaining a religious divorce are at risk of having their children blacklisted as *mamzerim*.

From 2012-2016, according to their own statistics, Israeli rabbinic courts administered [56,000 divorces](#), the vast majority uncontested. [6,950 cases were contested](#), by either the male or female party. While most of these cases were settled relatively quickly, 809 cases were not settled in the five-year period, and 70 of these resulted in some amount of jail time for the husband, with one still refusing after being incarcerated for 14 years. In the United States, the Organization for the Resolution of Agunot (ORA) [says](#) it deals with more than 150 cases of agunot per year. While these numbers are not huge, they are significant, and any situation in which religion is harnessed as a tool for abuse is intolerable.

Summary and Conclusions

A single scriptural passage is the basis of Jewish divorce law which gives exclusive power to the husband to dissolve a marriage. In contrast to the husband, the court is nearly powerless, and the wife is even more so. At the same time, a woman who begins a new life without a proper *get* faces grave consequences. This terrible power imbalance leaves an opening for severe injustice that casts a shadow over the beauty of Jewish marriage and the steady improvements in women's status. This iniquity must be addressed on multiple levels. The following unit suggests ways that women can protect themselves from becoming victims and, in doing so, also put pressure on the rabbinic establishment to change their policies.

Issues for Further Study:

To read more about how the issue of divorce plays out in the modern state of Israel, I recommend Susan Weiss's book, "[Marriage and Divorce in the Jewish State: Israel's Civil War](#)." In addition, prominent women's rights lawyer, Sharon Shenhav wrote a series of reports for ICJW on the subject. They can be obtained by request, [here](#).

To raise awareness about this issue, hold a screening of the award-winning film [Gett: The Trial of Viviane Amsalem](#). This compelling drama painfully and realistically portrays how an abusive husband can torture his wife, with the complicity of the rabbinic court system in Israel.