

The Wife's Right to Divorce in Jewish Law: History, Dogmatics and Hermeneutics

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The problem of *agunot* (i.e. "chained wives", whose husbands refuse to give a writ of divorce [*get*], and cannot remarry according to Jewish Law) is one of the major challenges for Jewish Family Law in modern times. Possible solutions such as terminative condition or retroactive annulment of marriage have been intensively and emotionally discussed by Jewish Law Scholars up to the present day.

The paper takes the discussion back in time, to its earliest post-Talmudic roots. The paper analyzes two old traditions which enabled unilateral divorce upon wife's demand. It seeks to clarify the actual reality of these traditions and to expose what legal constructions were at their basis. But the theme of the paper is not purely historical. These traditions were interpreted in later literature in various ways, reflecting several approaches towards wife's right to divorce. This hermeneutical phenomenon leads to an important dogmatic discussion, namely should these traditions serve as a basis for approving unilateral divorce upon wife's demand in present Jewish Law, and how.

Some Background of the discussed cases. Two related traditions have developed two different halakhic institutions for a single object: enabling the wife to obtain a unilateral divorce even against her husband's will. The first is a Palestinian tradition, according to Cairo Genizah *ketubbot* dated to the 10th–11th centuries CE. The second is the Geonic tradition in Babylonia approximately at the 7th–11th centuries CE. In the Palestinian tradition the right in question was a contractual right: the couple stipulated explicitly in the *ketubbah* that the wife is entitled to a unilateral divorce. According to the Babylonian tradition this right was based on the positive law, i.e. the law of the rebellious wife (*moredet*). Some scholars however argue that the two traditions had much more in common. According to this view, the constitutive authority of *bet din* to annul the marriage (*hafka'at kidushin*) played a significant role in these cases, and might even be regarded as the essential legal basis of both of them.

The paper thus examines at first stage the several legal constructions which might have been the basis of these traditions: marriage annulment, *ketubbah* conditions and the laws of *moredet*. Historically, as the paper argues, there probably was no link between these traditions. Nevertheless, a fascinating interaction between them is revealed at a different level. Later in time some halakhic writers connected the two traditions on the basis of either *ketubbah* conditions or marriage annulment. This link, one may argue, although historically doubtful, strengthen the dogmatic weight of the discussed cases as relevant precedents for the present day.

But can these traditions serve as a legal support for the wife's right to divorce? Or, in other words, what should be the status of these precedents in the contemporary seek for a remedy to the problem of *agunot*? At this stage the paper turns to examining the relevance of these constructions for the modern wife's demand for a unilateral divorce. Modern Jewish Law scholars have proposed several solutions to the problem of the '*agunot*'. Based on analysis of a few proposals the paper sees the modern solutions as a natural continuation of the earlier precedents for wife's right to divorce.