

## The Travesty of *Agunot*:

### How a Good Law Was Hijacked and Turned into an Instrument of Oppression

*R. Yitz Greenberg – [ygreenberg@hadar.org](mailto:ygreenberg@hadar.org)*

#### Parashat Ki Teitzei 5781

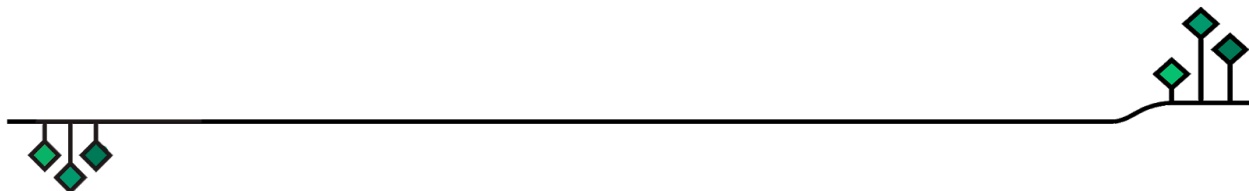
Parashat Ki Teitzei contains 74 commandments out of the traditional 613 in the Torah.<sup>1</sup> These include: the requirement to build a parapet on your roof so no one can fall off;<sup>2</sup> to give asylum and not return a fugitive slave to his master; not to take interest on a (non-business) loan being used for food or personal maintenance; not to oppress a poor worker but to pay his wages immediately because he needs the money; to return a cloak being held as collateral every night lest the borrower be cold (and unable to sleep);<sup>3</sup> not to judge wrongfully or unfairly in the case of outsiders or orphans (i.e. the weak and vulnerable); to leave over crops—such as grain, olives, and grapes—for the poor to collect; and to use honest weights and measures. I regret not expounding on these uplifting ethical *mitzvot* and instead focusing on a law which is being exploited to abuse countless women. However, it is urgent that this evil be stopped now.

---

<sup>1</sup> Roughly twelve percent of the total!

<sup>2</sup> This is generalized in *halakhah* to protect against any life endangering features in a home, such as today's unsealed live electrical outlets.

<sup>3</sup> The equivalent today would be not to evict people too impoverished to pay the rent or mortgage.



The Torah portion instructs the husband to write a bill of divorce (called in Mishnaic Hebrew: a *get*)<sup>4</sup> to end a failed marriage. Initially a form of protection for the wife, in the past century, this commandment has been turned into a source of abuse of women in failed marriages.

The typical *agunah* (chained wife) over most of Jewish history was the result of the rare case of husbands who disappeared. In the 20<sup>th</sup> century, recalcitrant husbands have used their exclusive halakhic power to issue the *get* to withhold it, thereby turning the document into a lever for extortion and entrapping countless wives in broken marriages. What is worse, these husbands have been aided and abetted in this crime by rabbinic courts.

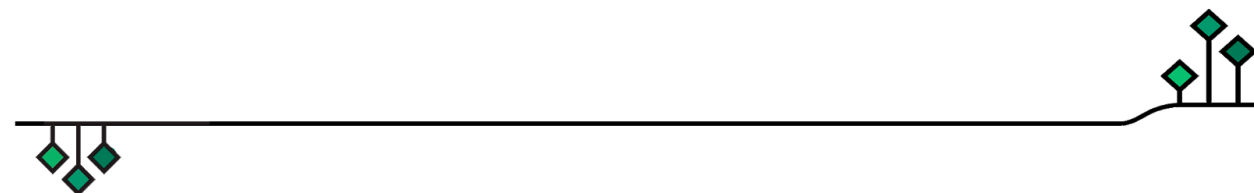
This law is part of Deuteronomy's emphasis on human rights, and was intended to upgrade women's rights. In many traditional cultures, the husband had the absolute right to banish his wife irrevocably by calling her to the door and orally declaring the mantra, "I divorce you, I divorce you, I divorce you." The wife would have to depart immediately, leaving children behind, and herself without support for the future. By requiring a legal process, the Torah filtered out impulsive and thoughtless actions of rejection, and assured that a woman could prepare for divorce. Furthermore, the Rabbis later established the *ketubah* (marriage contract) which guaranteed that, in case of a divorce, the husband must provide the wife with a minimum settlement of 200 *zuzim* (silver coins).<sup>5</sup> This placed her above the poverty line, allowing her to pursue some dignified life.

How did a commandment with noble intentions go wrong? First, the Rabbis interpreted the

---

<sup>4</sup> In the Torah: *sefer keritut*, literally "a scroll of severance" (Deuteronomy 24:1).

<sup>5</sup> This sum is for a woman's first marriage. The minimum settlement for other women was 100 *zuzim*; it might be expected that a divorcée from her second marriage would have some assets of her own left over from her first *ketubah*.

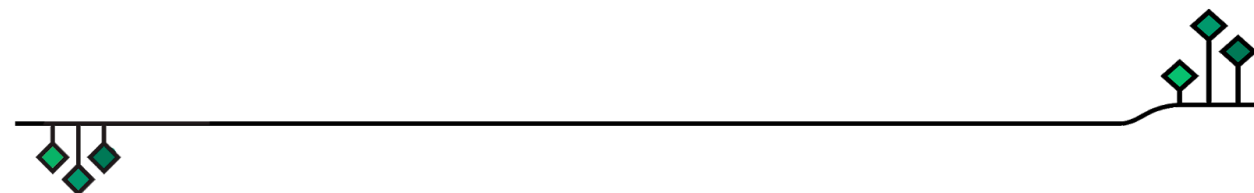


Torah's direction "he shall write to her a bill of divorce" (Deuteronomy 24:1) to mean that **only he** can write a *get*, and that he must do so of his own free will. In the 20<sup>th</sup> century, unscrupulous husbands (or their lawyers) decided to refuse the *get* so that the woman would be chained, unable to go free from her husband. The husband then would demand either financial payoffs, less than equal divisions of property, or concessions on custody and control of the children.

In talmudic times, the Rabbis would not tolerate such abuse. If a husband was recalcitrant, the Rabbis ruled that he should be forced to issue the *get*. The husband would receive *makkat mardut*, the beating given to those who rebel and disobey Rabbinic law, until he said publicly, "I want [you to issue the *get*]" (Babylonian Talmud Yevamot 106a).

Maimonides offers a justification of this process (Mishneh Torah, Laws of Divorce 2:20). We assume, he says, that the husband wishes to do the right thing for his wife and children, in accordance with the Torah. If so, why is he refusing the *get*? Because the evil urge has seized control of him, like what later Jews would call a dybbuk. Instead of letting her go, he is holding her up for money or custody or plain spite. Therefore, says Maimonides, we beat him until the pain neutralizes the baleful influence of this evil urge. After this, he speaks what a good-hearted husband should say: I really want to free her and end the misery between us.

In the 20<sup>th</sup> century, the divorce rate rose. Divorced women had more options of employment and self-support, so wives were less willing to stay in bad marriages and suffer. Moreover, when unscrupulous husbands grasped the opportunity to extort their wives, the judges of the rabbinic courts went along with this demand. They claimed that the husband's absolute right was granted by the Torah (i.e. God) and that they could do nothing about it. They typically

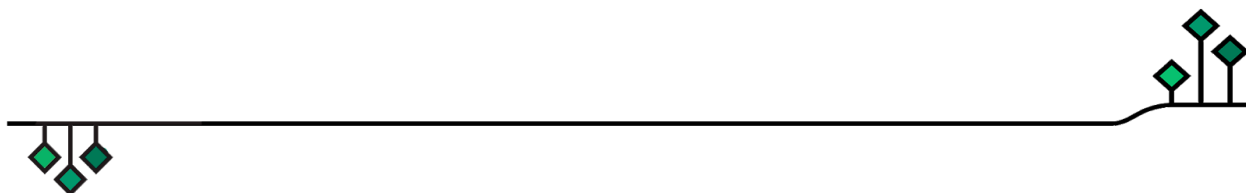


advised the wives to grant the husband's demands, or face years of suffering in limbo. Thus twisting a noble law launched thousands of extortions, and the extortionists got their way.

Thousands of women paid up to get their *gets*. Tens of thousands of children received less or limited financial support and often suffered from poverty and deprivation. Thousands more women were put in limbo, their lives constrained or ruined. Since in Israel, the rabbinic courts were given monopoly control of personal status, tens of thousands of secular, non-observant wives were thrust into this unjust situation. Many secular women gave up on getting a *get*. Many ended up with a second family or husband whom they would live with or marry civilly—although children of such marriages would be considered *mamzerim* (illegitimate) and would be non-marriageable by Orthodox law. Observant women trapped in this tortuous situation suffered the most. They could not move on. They could not start new lives. Many made the financial and custodial pay-offs and accepted deprivation as the price of freedom. Still others were held up by husbands out of spite and were anchored for many years in ruined marriages.

Why did the rabbis go along with this injustice? Many of the judges believed that God had given the husband this power over his wife, since women were subordinate to men. Still others rationalized that they were delaying the issuance of a *get* and thus protecting the institution of marriage against rising divorce rates (never mind that the marriage was hopelessly fractured). Overall, rabbinic culture fell behind the general culture which had by this time concluded that women should have the right to end a marriage just as much as men.

In America, the rabbis of Yeshiva University and centrist Orthodoxy came up with the idea of a prenuptial agreement, in which the husband agreed to pay a daily amount of “wife support” if



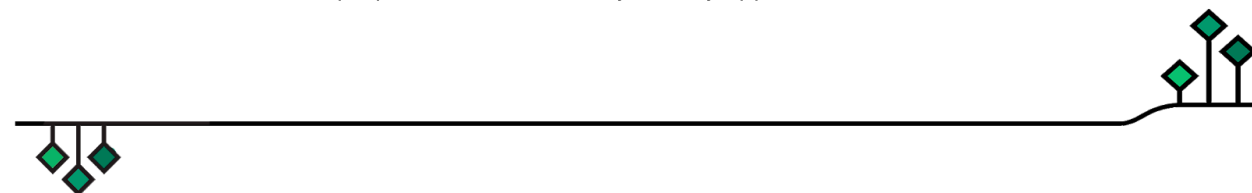
the *get* was delayed. These rabbis also sponsored an organization, the Organization for the Release of Agunot, which organizes public demonstrations to shame the recalcitrant husbands into issuing a *get*. Sometimes this pressure works, sometimes not. This halakhic prenup seems to have significantly reduced *get* abuse, but did nothing for the thousands of women who are already chained in failed marriages. In Israel, the use of prenuptial agreements is far behind the United States. The result is an unfair *get* process.

A survey done by the Rackman Center for Women's Rights of Bar Ilan University showed that one third of all women who went through the divorce process in Israel were threatened at one point or another with withholding their *get*. Among Orthodox women, 50 percent were threatened with *get*-withholding. Thus, the vast majority of women who get their *get* negotiate the terms under threat of the husband's absolute right—so their settlements are not truly an equal division, arrived at fairly. All this adds up to widespread mistreatment of women and deprivation of their rights in the name of religion.

In the last generation, Rabbi Elieser Berkovits wrote a halakhic treatise pointing out the surge in *iggun* (anchoring by recalcitrance). He urged rabbis to invoke the power to nullify marriages when the husband arbitrarily refuses to issue the *get*. *Hafka'ah* (nullification) is affirmed in the Talmud (e.g. Gittin 33a, Yevamot 110a). All valid halakhic marriages are embedded in rabbinic law and the rabbis' consent. In a failed marriage where the husband is refusing a *get*, the rabbis can withdraw their consent, thereby invalidating the marriage.<sup>6</sup>

---

<sup>6</sup> Berkovits' treatise is called *Tenai be-Nissuin ve-Get* (Jerusalem: Mossad HaRav Kook, 1966). Despite its vast learning and just proposals, it was blocked by political opposition from ultra-Orthodox Jews. Rabbi Shlomo Riskin, in our generation, proposed *hafka'ah* as the solution to the spread of deliberate infliction of *iggun* on women in his PhD thesis. His proposal has also been stymied by opposition.



In 2013, New York University Law School and the Jewish Orthodox Feminist Alliance (JOFA) convened a conference on the problem of *iggun*. In the main scholarly presentation, Rabbi Dr. Gerald Blidstein, z”l,<sup>7</sup> showed that, historically, there were several methods of ending a marriage without a *get*. These powers, if exercised, could end the problem of *iggun*. One of these powers is *hafka’ah*, as discussed. A second is *kiddushei ta’ut* (mistaken betrothal), where the husband has some serious flaw, which, if the wife had known in advance, she would not have married him.<sup>8</sup> This technique is in limited use by courts today, but mostly under the radar to avoid criticism from more hardline rabbis. A third is *get zikkui* (a *get* through agency), where the court acts on behalf of the husband to write the *get* when he is physically indisposed. Where he is wrongfully withholding the *get*, the court could act on his behalf to end his status as a wicked person abusing his wife.

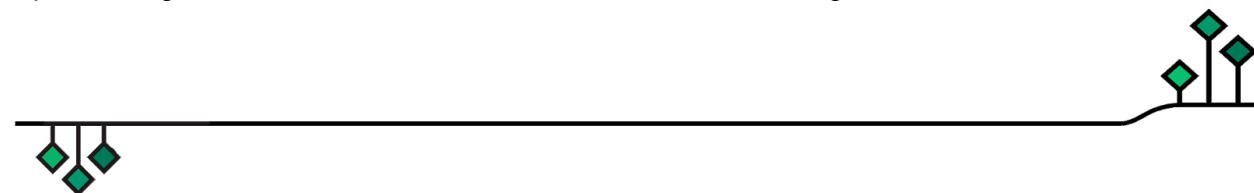
This conference resulted in the formation of the International Beit Din for Agunot (IBD), promising to apply some of these alternative methods to free women and end the blight of *iggun* throughout the Jewish world. Despite the deep historical roots of these methods of marriage dissolution—and the IBD being run by well-respected *talmidei hakhamim* (traditional rabbinic scholars)<sup>9</sup>—the political opposition to this organization was so fierce that they could only ever use one of the methods, *kiddushei ta’ut*. Although the IBD continues to free significantly more women from *iggun* than a typical rabbinic court, the general run of

---

<sup>7</sup> A leading rabbinic scholar and ordained by Rabbi Joseph B. Soloveitchik.

<sup>8</sup> The husband’s recalcitrance in giving a *get* is often connected to other serious flaws in his character or emotional disturbances. Another example of *kiddushei ta’ut* would be if there was some fatal impropriety in the performance of the marriage ceremony, e.g. if one or more of the witnesses were invalid.

<sup>9</sup> Notably, Rabbi Simcha Kraus, a student of Rabbi Isaac Hutner and Rabbi Joseph B. Soloveitchik, became Av Beit Din. He was recognized in the establishment as an eminent Rosh Yeshiva and past president of the Religious Zionists of America, and still was unable to resolve the issue—due to politics—before his retirement. Rabbi Y. Aryeh Warburg still serves as *menahel* (director) of IBD, and Rabbi David Bigman is the current Av Beit Din.



Orthodox courts continue to allow *get*-refusal to go on.<sup>10</sup> The Orthodox establishment largely opposes the IBD and treats the would-be liberators of chained wives as the enemy, instead of the recalcitrant husbands.

The Orthodox public continues to stand by as the blood and lives of innocent women are spilled. Modern Orthodox Jews push prenuptial agreements, but fail to challenge our rabbis to end the injustice of *iggun*. Out of ignorance and “go-along” psychology, they mostly accept the repeated—but false—claim that nothing can be done to end the problem systemically. The non-Orthodox public and philanthropists have also been guilty of bystanding—out of unfamiliarity with the issue or because they dismiss this as a problem limited to the Orthodox world. They would not ignore systematic abuse of women in other countries and religions on the grounds that this is the other’s problem. They fail to take responsibility to act and/or support ameliorating initiatives, as if *iggun* is not a moral stain on Judaism as a world religion.

The God Who, in the words of Psalms (146:7), “does justice for the oppressed,” weeps while His Torah—originally intended for the improvement of women’s lives!—is hijacked by recalcitrant husbands, enabled by important rabbis, and turned into an instrument of oppression and impoverishment of women and children who deserve better. The law of divorce with dignity will be restored when we end human-inflicted *iggun*. It is time for the whole Jewish community to wake up, wise up, and end this shameful injustice.<sup>11</sup>

---

<sup>10</sup> This is an informed estimate. Most rabbinic court proceedings are not transparent and there is no centralized repository of reliable statistics in this area.

<sup>11</sup> Full disclosure notice: my wife, Blu Greenberg, is active in the International Beit Din for Agunot (whose operations I strongly support). However, all statements in this dvar Torah are strictly the personal views of the author—not of the IBD, nor Hadar, nor any other institution.

