Compelling a Divorce?
Early Talmudic Roots of Coercion in a Case of Moredet

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1. Introduction

The purpose of this paper is to expose the deep roots of coercion of a get in the case of the moredet (the rebellious wife) in tannaitic and amoraic sources. The relevant Talmudic sources will be discussed and interpreted. It is in the very nature of this kind of source that alternative interpretations are possible, which in our case differ inter alia as regards coercion. However, the interpretation here suggested has important advantages compared to the others, as will be shown at length below.1

This study argues that the roots of the well known gaonic tradition regarding coercion are to be found already in the tannaitic and amoraic sources. Several parts of this study are based on Rashi’s interpretation of the Babylonian sugya, which is compatible with the gaonic tradition, but more far reaching in the way it legitimates coercion on the basis of Talmudic interpretation.

These interpretative conclusions are supported by the variant of MS Leningrad-Firkovitch of Amemar’s opinion in the Babylonian sugya, which mentions coercion explicitly. This variant was described in past researches as supporting the gaonic tradition. However, according to the present paper, the basis for coercion is not only MS LF’s variant of Amemar’s opinion, but also earlier sources.

The argument that follows has both historical and dogmatic importance: historical insofar as it supports the claims (i) that coercion was implied, even where it was not explicit, already in tannaitic and amoraic sources, and (ii) that the gaonic measures were based on Talmudic interpretation; dogmatic insofar as it points to a body of opinion (here exemplified in the interpretation of Rashi, 2 his predecessors3 and successors4) amongst the Rishonim which

1 The paper focuses on the hermeneutic considerations which are the basis of the dispute regarding coercion in a case of moredet. Nevertheless, this dispute reflects also different conceptual models of marriage and divorce in Jewish Law; see Michael J. Broyde, Marriage, Divorce and the Abandoned Wife in Jewish Law, Hoboken, NJ: Ktav, 2001, pp. 15-28.
2 Ascribing this view to Rashi is accepted by many commentators, both Rishonim (Sma’g, Lavin 81; Ritva, 63b, s.v. Moredet; Hagahot Maymoniot, Ishut, 14: 6), and Acharonim (Pne Yehoshua, 63b, end of s.v. Moredet), as well as by academic researchers (E. Westreich and A. Grossman, see note 3 below).
supports the view (despite that attributed to Rabbenu Tam, which was accepted by main halakhic authorities and largely followed since) that coercion was authorized by the Talmud in the case of the *moredet*.

2. Background of the Dispute Regarding *Moredet*

Rabbenu Tam’s main argument is that coercion could not be found in the Babylonian Talmud, and the Geonim had no authority to introduce it as a *takkanah*. Indeed, many Rishonim agree that coercion is a *takkanat ha-Geonim*, and they debate whether the Geonim had the authority for it. However, Friedman and Brody maintain that the Geonim themselves regarded it as a Talmudic law, based on the conclusion of the sugya: “כפייה לי ויהי סמיך לי, בא ותריסר לי (...they forced me, which could hardly be understood other than coercion of a get).”

This view was adopted by some Rishonim, who treat coercion as a Talmud-based law rather than *takkanat ha-Geonim*. Amongst them are Ramban and Rashi.

In many cases new manuscript discoveries shed light on the text of the Talmudic sugya. In this context, MS Leningrad-Firkovitch explicitly supports the gaonic tradition in that Amemar’s opinion in a case of *moredet* who claims “மாசா சுட்டு” (“I repulsive to me”) is stated as “குறிக்கோள் க்யூட்”, i.e. ”we forced him”, which could hardly be understood other than coercion of a get.

However, this surprising support for the gaonic tradition is not without problems. A preliminary reading of the talmudic sugya reveals an intensive discussion on the financial...
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aspects of moredet with no explicit mention of a get. Thus, if we accept MS LF, we must ask why was it only in the era of Amemar that the get became an issue for the amoraim?12

Interestingly, Rashi, although having the traditional text of Amemar, integrates into his interpretation of the sugya the rule that the husband must give a get, and probably understands this as authorizing coercion (where necessary). In fact, although the sugya deals with financial aspects, Rashi mentions the existence of a get four (!) times, sometimes requiring that it be given immediately, elsewhere later.13 Accordingly, MS LF’s variant of Amemar appears not to be the only talmudic source for coercion. There appear to have been broader interpretative advantages supporting this view, beyond the specific dispute in the memra of Amemar. These will be described in the sections that follow.

3. Tannaitic and Amoraic Sources Regarding Moredet

3.1. Tannaitic Sources

According to the Mishnah, in a case of moredet we act against her by decreasing the value of her ketubbah in a gradual process (conversely, the Mishnah adds, in a case of mored we increase the value of the ketubbah). The Tannaim in the Mishnah argued about the exact weekly sum and the limits of this process. According to both opinions in the Mishnah it is a long process. Take for example a basic ketubbah with a value of 200 denarii (or: 200 dinarim): according to Tanna Kamma, decreasing the ketubbah can take more than half a year (200 / 7 denarii in a week = 28.57); according to Rabbi Yehuda more than a year;14 and according to R. Yose it can take forever.15 In fact, it is a much longer process even according to Tanna Kamma and Rabbi Yehuda, if we take into consideration other property which according to the Mishnah's commentators was also subject to the mishnaic decrease process.16

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12 Rabbi Shlomo Riskin regards the stage of Amemar as a turning point, claiming that in earlier generations the moredet was not interested in divorce: see Shlomo Riskin, Woman and Jewish Divorce, Hoboken, NJ: Ktav, 1989, pp. 40-42 (hereinafter: Riskin, Divorce). Nevertheless, divorce was a consequence of the tannaitic laws of moredet (Riskin, ibid, pp. 17-18). Below I suggest a different view of coercion in the earlier sources.

13 Rashi's commentators usually point to s.v. א"ל יבוסל ח"ל as a source for coercion in his commentary (see for example Resp. Maharam, Prague Print, 946, 135a), but in fact Rashi repeats it several times: (1) 63a s.v. ויהי והלך תשלמה: "scribe ירחי הא"ל שבחם, רבי יהודה א"ל: שבחו תשלמה, ויהי והלך תשלמה: ברו י onActivityResult: לשלכו הו חותﳏ והולך. שמא תשלמה הל ירושת מפקד א"ל, וירחי ריבונה ממנה."

If a wife rebels against her husband, her ketubbah may be reduced by seven denarii a week. R. Judah said: Seven tropaeics. For how long does he reduce it? Until the ketubbah is exhausted. Rabbi Yose says: he may reduce it for ever in case she inherits property, from which he may claim it. (M. Ketubbot 5:7)

14 A trapē'ik ("שרפעיק") is half a dinar and the amount of decrease per week is thus 3.5 dinars, half that of the Tanna Kamma.

15 "ליעל" i.e. we continue decreasing from her property as an "overdraft", in case she might get an inheritance and her husband would be able to collect from it.

16 The additions to the ketubbah, husband's gifts, dowry (נסמ כץ) צור and נסמי מלד (or: 200 denarii) etc. might also be reduced according to the mishnaic rule of "דמשהין תרפעיקין". The exact belongings that are subject to this process are disputed by the Geonim and Rishonim. See for example Ramban, 63b, s.v. ויהי והלך תשלמה ה"ל: ותשלמה רבמט והודר; Rashba, 63a, s.v. ויהי והלך תשלמה ה"ל: ותשלמה רבמט והודר; далש מותר משל שחון בלפל תשלמה... יח מיספיש ... ובדיל ולבן[...].
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The tannaitic attitude of reducing the ketubah in a gradual process, which is unanimously agreed in the Mishnah (but disputed in its specific details), was changed in a later tannaitic generation. The later opinion is found in the Tosefta (Ketubbot 5:7), which comments on the Mishnah:

"If a wife rebels against her husband…" This is the first Mishnah. But our Rabbis enacted that (a court) should warn her four or five consecutive weeks, twice a week. [If she persists], even if her ketubbah is a hundred maneh, she has lost it all.

According to the Tosefta, there is no gradual process, but rather only a few weeks of warning, and after that the moredet loses her entire ketubbah. This enactment introduces the prospect of a defined and rapid end to this process.

The difference between these two tannaitic approaches is that between an almost endless story (Mishnah Rishonah) on the one hand, a story with a clear and sharp end (Rabbotenu) on the other. The goal of the first opinion is to lead the wife to end her "rebellion", and the process is designed to influence her finally (and voluntarily) to change her mind. But this was probably not enough for Rabbotenu, who apparently adopted a more coercive approach.

Footnotes:
1. The words "a court", "five" and "twice a week" are not accepted by all variants of the Tosefta, see supra, notes 17-19.
2. This is the most widespread explanation of the Tosefta. For an exceptional approach which integrates a gradual process into Rabbotenu’s rule (as in the Mishna) see Meiri, 63a, end of s.v. לחם מלחם, in the name of Meiri. Meiri rejects that view, following the Yerushalmi, which mentions explicitly an act of losing the ketubbah: ול imageData[1].
3. The cause for this move is not explicit in the Tosefta. I assume that the character of the moredet has changed between the Mishnah and Rabbotenu. Maybe it was a move from a domestic moredet (or even if the wife is forced by her husband), which forced Rabbotenu to enact a process which would be effective almost immediately. Those two kinds of moredet are mentioned in a later generation in an amoraic dispute (see Babli, Ketubbot 63a, and implicitly in Yerushalmi, Ketubbot, 30b, 5:8, see Shitah Mekubetset, 63a, s.v. משלוש בעכתות משלוש בעכתות). However reasonable this explanation, we cannot prove it from the texts of the Mishnah and of the Tosefta, nor from their context: while the previous Mishnah and previous Halakah of the Tosefta deal with sexual relations, what follows deals with financial aspects. See also Riskin, Divorce, pp. 4-9 (discussing the definition of moredet) and pp. 12-14 (explaining the cause for Rabbotenu’s rule as "the increasing number of rebellious wives").
with the prospect of a more immediate loss of the ketubbah,\textsuperscript{24} and is thus thought to operate more efficiently than the Mishnaic process.\textsuperscript{25}

However, explaining the very goal of Rabbotenu as inducing the wife to end her "rebellion" by providing a more drastic sanction is problematic. The takkanah of Rabbotenu is indeed more radical than the Mishnaic rule. But assuming its goal is to induce the wife to finish her meridah, is it really more efficient than the rule of the Mishnah? According to Rabbotenu, loss of the ketubbah\textsuperscript{26} occurs in a single action against the wife, and then, after only four weeks, there are no further possible sanctions, whereas the mishnaic process envisages a long period of time in which the required impact can be created. Thus, if our goal is to influence the wife to finish her meridah, it would be more practical to use a lesser sanction over a longer period of time, rather than using the maximal sanction almost immediately, where the moredet has been "in rebellion" for only four weeks.\textsuperscript{27}

On this analysis, the rationale of Rabbotenu may not have been deterrence but rather something different, namely to put an end to the conflict as quickly as possible,\textsuperscript{28} whether by bringing the couple back together or by leading to a complete separation between them. The choice here is in the wife's hand: preferably she may decide to withdraw her rebellion; however, if she insists, she is entitled to a divorce,\textsuperscript{29} but must forfeit her ketubbah.

This explanation is supported by the Yerushalmi. Another version of the baraita appears in the Yerushalmi and introduces Rabbotenu as follow (Ketubbot, 5:7, 30b):

> בִּית דִּין שֶׁאָסִיאָרָה; מַחְלִיתָנוּ מִבָּא אֶבֶן שֶׁבָּחַת חֵזֶר שֶׁבָּרַת חֵזֶר וּלְשֵׁנָה.

The later court [enacted that we]\textsuperscript{30} warn her four weeks (after which) she cancel her ketubbah debt\textsuperscript{31} and leave.

Comparing the Yerushalmi and the Tosefta, there is a significant addition in the Yerushalmi: "and leave" ("והיא"), which means that after losing the ketubbah she receives a get.\textsuperscript{32}

\textsuperscript{24} In the parallel Babylonian baraita there is an additional element, a process of public announcement, which is actually a process of humiliation designed to end the rebellion. However, the public humiliation does not exist in the Tosefta (compare Tosaftot, 63b, s.v. שֶׁלֶשֶׁי) or in the Yerushalmi (see below, section 3.3.), and therefore I refer here only to the financial aspects of Rabbotenu's ruling.

\textsuperscript{25} Riskin, supra, note 23.

\textsuperscript{26} The humiliation does not exist in the Tosefta, see supra, n. 24.

\textsuperscript{27} The term "marginal deterrence" is used by modern researchers to describe a legal system which imposes different measures of sanctions for different kind of offences, in order to create an efficient deterrence for each offence. Accordingly, the sanction would be enhanced as a function of the severity of the offence, the number and extent of offences etc. (see George J. Stigler, "The Optimum Enforcement of Laws", The Journal of Political Economy, 78 (1970), pp. 527-528: "If the offender will be executed for a minor assault and for a murder, there is no marginal deterrence to murder"; see also Steven Shavell, "A Note on Marginal Deterrence", International Review of Law and Economics, 12 (1992), pp. 345: 351-352). On this view, it is more efficient to use a low sanction for a rebellion which is at its beginning and to enhance the sanction when the rebellion becomes more severe, rather than using the high level sanction each time.

\textsuperscript{28} This might be a response to a social change, see n. 23 supra.

\textsuperscript{29} In this case the husband is compelled to give a get, by a physical coercion if required, see Rambam, Ishut, 14: 8: "וכיסא אתא ליג_itr על שומרת " and regarding moredet ma'es alay (nevertheless, the halakhic implications of the different kinds of moredet are in regard to financial aspects and questions of timing, as discussed at length below, and not regarding the character of coercion, see for example below, end of section 3.2, text to note 82-86. The same applies to the mored, coercion of whom is compared to coercion in a case of moredet, see below, notes 56-57).

\textsuperscript{30} This does not refer to the warning (i.e. warning is done by the later bet din) since the word ק//==================================================ש//י/// is used here only for compulsion or physical coercion (Tosefta) or הבש (Bavli).

\textsuperscript{31} "Shoveret" means "writes a receipt" (shovar) for her ketubbah (see Bavli, Sotah, 7a; Ya'akov N. Epstein, Mavo Le-nusah Ha-Mishnah, Jerusalem: Magnes, 2001, p. 616. A parallel term in Tosefta, Ketubbot, 9:1, is clearer: "רשותך על רשותך"), acknowledging that she received her ketubbah payments, or more accurate: canceled her husband's debt.
According to the explanation of Rabbotenu, which focuses on deterrence, this addition is not explained. But according to the second suggested interpretation it is meaningful. "רבתנעה" is the completion of the whole process and also represents its goal, i.e. to lead to a separation between the couple. Get, according to this explanation, is a necessary condition for ending the story and thus an integral part of Rabbotenu's teaching. The version of Rabbotenu in the Yerushalmi can therefore shed light on their goal and rationale in the Tosefta.

The view of Rabbotenu here suggested accords with Rashi's interpretation of the Babylonian sugya, and in the next section I will point out at its advantages as against other possible interpretations. Supporting this view by Rashi's interpretation is not only a historical argument, which seeks to find the most reasonable understanding of tannaitic sources. As indicated earlier, it also has a dogmatic importance, by pointing to later opinion which supports the view that coercion was authorized by the Talmud in the case of the moredet.

Yet, Rashi takes a further step. According to the Mishnah, what shall we do after the moredet has lost her ketubbah? At this moment there are no more sanctions against the wife and so she is not likely to agree to go back to her husband. Would she receive a get?

Rashi suggests that after losing the ketubbah the wife receives a get both in the mishnaic rule and in that of Rabbotenu. As noted above, Rashi repeats this point four times:

1. According to Tanna Kamma, the mishnaic gradual process of decreasing the ketubah is "חיראך כך נמי המורה" (until the ketubah is exhausted; 63a). Rashi adds here: "גיטת lah וצרירות נחל המורה" i.e. afterwards he gives her a get and she goes out (=divorced) without receiving her ketubah;

2. On 63b Rashi interprets "הממשית את נמה והוחトップות" (she is to be consulted) as: "עליה כתובה בה" (we hold back her get and try to make her change her mind).

3. A similar interpretation is given for "הכי רמא מנדחתת" (what is to be understood by "a rebellious woman"?): "לחייבים אתה, למששים להות מנדחתת המורה, i.e. we force her [by] holding back her get and reducing the ketubbah.

Quotations (2) and (3) will be discussed at length below. For the moment, we may already draw two important conclusions: (a) the mishnaic gradual process of reducing the ketubbah does not deny a get but only postpones it, and after this process is ended she will receive a get, as mentioned explicitly in quotation (1); (b) Without the mishnaic gradual process (for example: according to Rabbotenu of the Tosefta), her get is not delayed, but she receives it

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32 See Friedman, Jewish Marriage, p. 322. There are also two other important differences between the Yerushalmi and the Tosefta: (i) Rabbotenu are replaced by "the later bet din" (see supra, n. 17 and n. 30); (ii) there is no mention of twice a week (see supra, note 19, and below, text to note 53).

33 This view differs from Riskin's suggestion that divorce in the tannaitic stratum is a final penalty for the wife, who really does not want it, see Riskin, Divorce, pp. 17-18.

34 A quite different reading is possible: Rabbotenu of the Tosefta still had the object of coercing the wife back into the marriage, as in the Mishnah, but by a sharper financial sanction. Only in the Yerushalmi has the goal changed and became the quest for ending the conflict, "one way or the other", and this is reflected by the addition: "ירדניא". However, I prefer the explanation suggested above. A "revolution" in our case is mentioned explicitly in the move from the Mishnah to Rabbotenu, while the alternative reading finds a more radical distinction between the Tosefta and the Yerushalmi. In fact, the Tosefta, Yerushalmi and the Babylonian baraita are three parallel versions of one turning point, while these sources differ from one another in a few elements that are discussed in this paper. It is less likely that there was a significant but implicit change between the Yerushalmi and the Tosefta, while the sources explicitly point to Rabbotenu as the turning point of this sugya.

35 As argued below, Rashi creates a parallelism between all sections of the Babylonian sugya. Therefore, Rabbotenu's enactment is described also as "לא י@implementation הלא" (we don't force her). It is hard to understand it as a rule whose goal is to increase the deterrence on the moredet, since the words "לא י@implementation הלא" are in her favor (the same argument is found in Ra'avad's interpretation of "אמרlias", see below, text to note 58). We can conclude therefore that the goal of Rabbotenu, in Rashi's view, is not deterring the moredet but rather bringing a quick end to the conflict – here by accepting the wife's demand for divorce (after trying to convince her, even by public humiliation, as in the Bavli) and "not forcing her to stay with her husband".

36 See above, section 1.

37 Yet, get is not an essential part of the mishnaic rule of moredet, contrary to Rabbotenu's rule.

38 See supra, note 13.
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immediately (or: after four weeks). This conclusion is explicit in the fourth appearance of get in Rashi's commentary:

(4) According to Amemar, moredat ma'es alay (see at length below) is not regarded as a moredat, but rather, i.e. we do not force her, or: no pressure is to be brought to bear upon her. This is interpreted by Rashi as follow: "ללא מיסתן הלשהנתה, אלא "לפיי נמי הל שלнерשה".15 נייח הל ט ישראלませ דרכי רבי מירא המוות, i.e. we do not hold her back, but he gives her a get and she is to be divorced without receiving her ketubbah.

It is hard to understand these four repetitions as no more than a description of a contingent event, which occurs only when the husband is willing to grant the get. It is much more plausible to understand it, following Rashi, as an integral part of the halakhic rules of moredat.

Rashi thus appears to endorse the view that the marital dispute must not remain static, without any movement towards a solution, and therefore that after loss of the entire ketubbah the husband is coerced to give a get. Hence, receiving a get is a required stage both according to Rabbotenu and according to the Mishnah, after the end of the process of losing the ketubbah. In addition, a broader consideration is involved here: a positive rule, ascribed in the Bavli to Rabbi Meir, requires a Ketubbah to be in existence. The result of accepting this rule is that a get must be given after total loss of the ketubbah.

Can coercion be considered as the peshat of these sources? Although it is not explicit, it is a reasonable explanation. Moreover, the interpretation here suggested has the following significant advantage. It provides us with a harmonious view, which ties together systematically the tannaitic and amoraic sources. I shall argue that the Talmudic sugya has a logical structure, in which two different options (already apparent in the tannaitic sources) are in tension in each of its sections, and that coercion is an integral issue throughout. Nevertheless, this systematic and logical structure, most clearly elaborated by Rashi, is opposed by competing interpretations of the sugya (notably that of Rabbenu Tam). We now turn to the Talmudic sugya and its interpretation by the Rishonim.

3.2. The Babylonian Sugya of Moredat

This section explores the Babylonian sugya of moredat, focusing on Rashi's interpretation compared to that of his opponents. The analysis exposes Rashi's advantages in every section of the sugya. However, its persuasiveness is attained by introducing a harmonious and systematic structure into the sugya as a whole. This fascinating structure, based on our previous conclusions (which found coercion already in the tannaitic sources), enables us to find coercion in attributed amoraic sources as well as in the anonymous late Talmudic stratum.

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91 Some Rishonim explained Rashi in this way. See Tosaftot, 63b-64a, s.v. Rabba; Rashba, 63b, s.v. Rashi, and Acharonim explained Rashi as suggested in this paper, see supra, note 2.

90 This is the explanation of Rashi and Rambam found in Pne Yehoshu'a, Ketubbah, 7b: "לכל מתנה אפילו יקנסו ליסתו, הלשנתה" (Rashba quoted Rashi that the husband gives a get, but with an addition: "if he wants to"). But other Rishonim and Acharonim explained Rashi as suggested in this paper, see supra, note 2.

91 See Bavli, Bava Kamma, 89a, ascribed to R. Meir of Mishnah, Ketubbah 5:1: "אפילו ולא יאכלו שישה עדים סומחו לום (It is prohibited for any man to keep his wife without a ketubbah even for one hour. But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her).

92 See Riskin, Divorce, p. 18.

93 I define here "amoraic" as attributed rather than anonymous sources. This distinction is significant here since the final development of the Talmudic law of moredat is found in an anonymous stratum which belongs to the last generations of the Babylonian Amoraim or may even be a savoraic passage; see below, text to notes 67-70, and note 102. The distinction between attributed sources and anonymous sources has a general importance in Talmudic research, see Shama Y. Friedman, "Perek Ha-isha Rabba Ba-Bavli Bezeruf Mavo Kelali Al Derech Heker Ha-sugia", Mehkarim U-mekorot, 1 (1978), pp. 275-441. Friedman's view is criticized by Brody: see Y. Brody,
coercion is an integral part of the Talmudic sources on the one hand, and by pointing to a group of opinions amongst the Rishonim who accepted this view on the other.

The first part of the sugya deals with the content of the merida, i.e. whether it is a rebellion regarding sexual relationships (" rhetorisch" or regarding domestic duties ("מלואות").

The next part of the sugya is composed of a number of sections. At its beginning, the sugya cites a baraita, which parallels the Tosefta with a few changes. The baraita leads to a discussion of aspects of moredet. The sugya continues as follows (bt Ketubbot, 63b):

[Rami b. Hamma stated: The announcement concerning her is made only in the Synagogues and the houses of study. Said Rava: This may be proved by a deduction, it having been taught, 'Four Sabbaths consecutively.' This is decisive.

Rami b. Hamma further stated: [The warning] is sent to her from the court twice, once before the announcement and once after the announcement.

R. Nahman b. R. Hisda stated in his discourse: The halakhah is in agreement with our Masters. Rava remarked: This is senseless. Said R. Nahman b. Isaac to him, 'Wherein lies its senselessness? I, in fact, told it to him, and it was in the name of a great man that I told it to him. And who is it? R. Jose the son of R. Hanina!'

Whose view then is he following? – [The first of the undermentioned:] For it was stated: Rava said in the name of R. Shesheth, 'The halakhah is that she is to be consulted', while R. Huna b. Judah stated in the name of R. Shesheth, 'The halakhah is that she is not to be consulted'.

"Stam Ha-Talmud Ve-divre Ha-Amoraim", Proceedings of the Fourteenth World Congress of Jewish Studies (forthcoming). However, Brody's main criticism is chronological rather than in regard to the basic distinction between attributed and anonymous sources, see Westreich, Dissertation, pp. 14-15.

See supra, note 23.

See Supra, note 24. Additional changes are discussed below.

The baraita states here that the same law is applicable to a woman betrothed or married, even to a menstruant, sick, or a woman "waiting for levirate" ("אישה שבנה, אישה נדה, אישה בקרבה, אישה שבתת מר櫃", "אשתת ילואית אשתת מר櫃") The case of menstruant is than discussed between R. Hiya bar Yosef and Shmuel. This discussion is a comment on the baraita and not part of the progression of the sugya. For that reason, I do not define it as a separate section.
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What is to be understood by ‘a rebellious woman’? —Amemar said: [One] who says, ‘I like him; but wish to torment him’. If she said, however, ‘He is repulsive to me’, no pressure is to be brought to bear upon her. Mar Zutra ruled: Pressure is to be brought to bear upon her. Such a case once occurred, and Mar Zutra exercised pressure upon the woman and [as a result of the reconciliation that ensued] R. Hanina of Sura was born from the re-union. This, however, was not [the right thing to do]. [The successful result] was due to the help of providence.

The verb ממלכים means trying to convince the wife to change her mind. This is done by the mishnaic gradual process of reduction of the ketubbah. On the other hand, ממלכים means that we don't use this process of convincing her, but the wife loses her ketubbah at once, and, as Rashi adds in his commentary, receives a get (similar to our conclusion above in regard to the Tosefta).

The above explanation follows Rashi's interpretation. Its simplicity and clarity are discernible, but it was not accepted by many Rishonim, including Rabbenu Tam. I assume that Rabbenu Tam's objection to Rashi's interpretation of these sections is not only as a result of local interpretative considerations. Rashi's interpretation takes a harmonious view of the complete sugya, whose conclusion is the need of coercion, as will be shown hereafter. It was therefore necessary for Rabbenu Tam to suggest different interpretations of almost every section of the sugya.

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47 See Rashi, 63b, s.v. ממלכים: (we hold back her get and try to make her change her mind, and in the mean time we reduce her ketubbah by seven denarii a week). ממלכים is thus exactly the mishnaic rule, and consequently this is Rava's opinion. The dispute between Rav Nahman bar Rav Hisda and Rava is therefore between determining the law in accordance with Rabbotenu and in accordance with the Mishnah (see Tosafot, 63b, s.v. ממלכים).

48 Riskin, Divorce, pp. 38-40, accepts Rabbenu Tam and rejects Rashi's interpretation. Riskin's main argument is that according to Rashi, Rava on section (c) rejects Rabbotenu, but on section (b) supports R. b. Hamma's interpretation of Rabbotenu's teaching. This argument can easily be met by viewing Rava as interpreting Rabbotenu without following them le-halakhah.

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49 See Rashi, 63b, s.v. ממלכים: (we hold back her get and try to make her change her mind, and in the mean time we reduce her ketubbah by seven denarii a week). ממלכים is thus exactly the mishnaic rule, and consequently this is Rava's opinion. The dispute between Rav Nahman bar Rav Hisda and Rava is therefore between determining the law in accordance with Rabbotenu and in accordance with the Mishnah (see Tosafot, 63b, s.v. ממלכים).
Rabben Tam suggests a different interpretation of the sugya. According to him, Rami bar Hamma in section (b) makes some additions to Rabbotenu. Rav Nahman bar Rav Hisda's determination of the law following Rabbotenu at section (c) does not refer to the tannaitic dispute. His statement opposes Rami bar Hamma by accepting the original law of Rabbotenu without any additions. This last view was condemned by Rava as רמא.

This interpretation is problematic. Rami bar Hamma does not argue with Rabbotenu. I would even say that Rami bar Hamma does not even make additions to Rabbotenu, as it is described by Tosafot, but only interprets them: the baraita mentions two verbs (‘‘מכריעי’’ and ‘‘שלאשלתי’’), and Rami bar Hamma's two statements refer respectively to these verbs, integrating probably even earlier than Rif: see Halakhot Gedolot, 36, s.v. שלחתי.

Babylonian mentions public announcement in synagogues and in 55 54 52 51 50 49 48 47 46 45 44 43 42 41 40 39 38 37 36 35 34 33 32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55)

Accordingly, interpreting '‘הכרזה ידברין’’ as rejecting Rami bar Hamma, who is understood as an opponent of the original meaning of Rabbotenu, while ignoring the Tosefta, as Tosafot suggest, is less likely. In fact, Rami bar Hamma does not oppose Rabbotenu; thus determining '‘הכרזה ידברין’’ by Rav Nahman b.R. Hisda has no implication for Rami bar Hamma's own statements. Rav Nahman b.R. Hisda should have said for example: '‘אך הלודג זרמי יטמא’’. Rashi's interpretation of '‘הכרזה ידברין’’ as referring to the dispute between Rabbotenu and the Mishnah is much more probable.

There is another advantage to Rashi's interpretation. According to Tosafot, '‘אמרו לא ימי למלכי’’ at (d) supports Rami bar Hamma's teaching, and its meaning is that the bet din send messages to the wife both before their announcement and afterwards. But this verb, '‘אמרו לא ימי למלכי’’, appears earlier, according to Tosafot, 63b, s.v. אדריא.

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49 See Tosafot, s.v. אדריא. A few more interpretations will be mentioned below.
50 Compare Riskin, Divorce, pp. 15-16, who sees the baraita as a result of a later redactor's work, in order to make the Tosefta consonant with Rami bar Hamma's rule of announcement.
51 See supra, note 21.
52 This is the variant of Vine MS and others; see supra, n. 19.
53 One could argue that this variant is a correction of the original text, influenced by the Bavli's tradition of Rami bar Hamma and is not the source for his teaching; see Lieberman, Tosefta Kifshuta, p. 268. Nevertheless, if this were the case, we would expect to find it as MS Erfurt's variant, which was more influenced by the Bavli than MS Vine (see supra, note 17). I prefer therefore to view this variant as the original basis for Rammi bar Hamma and not as a consequence of his teaching (as to MS Erfurt, see Tosafot, 63b, s.v. אדריא).
54 Accordingly, '‘אמרו לא ימי למלכי’’ in Rami bar Hamma's second memra refers exclusively to the Tosefta. See Talmidey Rabben Yonah, in shita mekubetset, 63b, s.v. ימי. Also according to Tosafot, ibid; Rashba, s.v. יש and more. Tosafot connect these different interpretations to questions of girsa at section (d): '‘אמרו לא ימי למלכי’’
55 Accordingly, '‘אמרו לא ימי למלכי’’ can also be accepted by Rabbotenu. Following this view, many Rishonim (Rif and others probably even earlier than Rif: see Halakhot Gedolot, 36, s.v. אמרו למלכי) determined the halakah both according to Rabbotenu and '‘אמרו לא ימי למלכי’’, while according to Rashi these are conflicting approaches (see Tosafot, ibid; Rashba, s.v. אמרו לא ימי למלכי and more). Tosafot connect these different interpretations to questions of girsa at section (c), who follows the Mishnah, or '‘אמרו לא ימי למלכי’’ according to Rashi (also in most MSS), which refers to Rava at section (c), who follows the Mishnah, or '‘אמרו לא ימי למלכי’’ according to Rashi (also in most MSS), which refers to Rava at section (c), who follows the Mishnah, or '‘אמרו לא ימי למלכי’’.
in the first part of the sugya (on 63a) and its meaning there is totally different.\(^{56}\) Here again, Rashi follows the peshat, and interprets the verb consistently in its two appearances.\(^{57}\)

It should be mentioned that Rashi's and Tosafot's interpretations are not the only ones. A third meaning of מדרד is suggested by Ra'avad:\(^{58}\) the moredet has the option to choose either the mishnaic rule of decreasing the ketubbah or the rule of Rabbotenu.\(^{59}\) Following this understanding we can interpret מדרד in 63a in a similar way, although it depends on questions of text.\(^{60}\) However, Rashi's interpretation is more simple and reasonable.\(^{61}\)

We now turn back to the progress of the sugya of moredet. Like earlier stages, the dispute in section (e) continues the basic tension of the sugya. Basically, both Amemar and Mar Zutra follow the Mishnah regarding moredet. As Rashi interprets: יריי רמא מר מרדד: Dương� איה וגו. משמשת זה פוחתין|h9051 איה וגו. משמשת זה פוחתין, i.e. the law of moredet involves forcing her by making her wait for her get (again, an interpretative addition of Rashi) and decreasing her ketubbah, exactly the mishnaic rule. Amemar and Mar Zutra agree to apply this law in a case of נמוכין היינו מודד, (I like my husband but wish to torment him) but disagree in applying it to a case of מכושל (he is repulsive to me). According to Amemar, in this case we should not follow the mishnaic rule of moredet. Thus, the alternative option from earlier stages of the sugya arises: the rule of the Tosefta. Rashi therefore interprets Amemar's זו כמשהין לא, לאמלי, ישה פוחתין as if from Tosafot, which refers to Rami bar Hamma and Rava, who according to Rabbenu Tam both follow Rabbotenu.\(^{62}\)

\(^{56}\) At 63a the sugya deals with aspects of moredet (a rebellious husband). One kind of moredet is a financially rebellious husband, who refuses to support his wife and according to Rav is coerced to divorce her and pay the ketubbah: see Shmuel's response to Rav, Ketubbot, 77a. \(^{57}\) Rashi interprets יריי רמא מר מרדד: Dương� איה וגו. משמשת זה פוחתין as follows: יריי רמא מר מרדד: Dương� איה וגו. משמשת זה פוחתין, i.e. rather than coerce him to divorce her let him be coerced to maintain her; see also Mordechai A. Friedman, "Divorce upon the Wife's Demand as Reflected in Manuscripts from the Cairo Geniza", JLA, 4 (1981), pp. 103-104 (hereinafter: Friedman, Divorce).

According to the mishnaic rule of moredet we increase the value of the ketubbah. The Talmud then confronts this gradual process with Rav's immediate rule of ל злоון, see for example Rashba, s.v. ל злоון, i.e. before the ketubbah is a financially rebellious husband, who refuses to support his wife and according to Rav is coerced to divorce her and pay the ketubbah: see Shmuel's response to Rav, Ketubbot, 77a. \(^{58}\) Ra'avad agrees with Rashi that Rav Nahman, who determines the halakah in accordance with Rabbotenu, means not according to the Mishnah (see Ritva, 63b, s.v. עליה ל злоון). His argument is on the meaning of "ל злоון" (see below) and accordingly concerns the interpretation of Rava's exact opinion.

\(^{59}\) See Ramban, 63b, s.v. עליה ל злоון. It is difficult to explain what would cause the moredet to choose the rule of Rabbotenu and lose immediately all her ketubbah, especially according to those opinions which deny coercion of a get in this case. See Ritva's explanation (63b, s.v. ל злоון).\(^{60}\) At 63a (the case of moredet) the Rishonim (see for example Rashi, s.v. ל злоון) introduce another variant ל злоון, (compare the traditional text, supra note 57: "ל злоון") which means that the wife is given a choice between two halakhist options, similar to the interpretation of this phrase in 63b (but on 63a, since it is a case of moredet, her choice is between immediate divorce while receiving her current ketubbah and delaying the divorce but increasing the ketubbah, whereas on 63b her choice is between divorce without ketubbah and decreasing the ketubbah, see notes 59 and 61). It should be remarked that most MSS take the traditional text, despite MS Vatican 130, whose original text was "ל злоון" but was corrected above the line to the traditional text. Interestingly, according to shiitat mekabetset, "ל злоון" was Rashi's text in the first edition of his commentary (see 63a, s.v. התרע), and it is also the text of "Rosh and all of Acharonim" (ibid, end of s.v. התרע). I am therefore still doubtful whether Rashi in his last edition chose his text because of its advantages (see also next note), or maybe this text is a result of his correction of the Talmudic text, which was done in order to make his interpretation consistent with those two parts of the sugya.

\(^{61}\) The main argument against Ra'avad's interpretation is that it is not explained why the choice either in moredet or in moredet is given to the wife. Rashi on the other hand is systematic also on this point: in a case of moredet we are "ל злоון", with him, while in the case of moredet we are "ל злоון". For more argument against Ra'avad's explanation see supra, n. 59. There is at least one more explanation of this passage: see Rashba's explanation of Rif (63b, s.v. שון), which seems to integrate Rashi and Rabbenu Tam.
Coercing a *get* is thus not unique to Amemar’s teaching. It is part of an entire approach, whose roots are much earlier, in *Rabbotenu* of the Tosefta or even in the Mishnah. This approach is to be found, according to Rashi, at each section of the *sugya*, which consistently oppose the two approaches. However, at section (e), following Rashi’s interpretation, we now have MS LF which raises explicitly the rule of coercion.63

One comment should be made here. As we have seen, the dispute regarding *ma'es alay* at section (e) is equivalent to the dispute between the Mishnah and Rabbotenu, and to the dispute between “*רבא קייפין ל゚ה נמלכין*” and “*רבא ממלכין וה*” at section (d). However, the rhetoric is quite different. “*חריפה*” at section (d) has a positive orientation, probably from the viewpoint of the husband or *bet din*. “*חריפין ל゚ה*” at section (e) on the other hand, although having the same meaning, has a negative orientation, and probably reflects the viewpoint of the wife.64 This fact may reflect diverse conceptions of different generations or of the sources of each part of the complete *sugya*. However, the redactor of the *sugya* integrated them into one complete *sugya*.65 Following him, Rashi, as we have shown, interprets it in a clear and harmonious way.

The Rishonim who rejected coercion opposed Rashi also in their interpretation of (e), sometimes in a too complicated way. Thus, for Rabbenu Tam, it is not completely clear whether “*חריפין ל゚ה*” of *moredet ba'ena leh* is according to the Mishnah or Rabbotenu. It probably can be according to both of them. However, it seems that Rabbenu Tam prefers to interpret it following Rabbotenu, according to whom the *halakhah* is fixed. On the other hand, “*לאחריפין ל゚ה*” of *moredet ma'es alay* is neither according to the Mishnah nor according to Rabbotenu. Its meaning is an immediate loss of the *ketubbah* and immediate divorce, depending of course on the husband’s will, without any four weeks of warnings, announcements or other waiting periods.66

At section (f) the *sugya* continues discussing aspects of *moredet*, mainly financial ones.67 Finally, it reaches the following conclusion (64a):

We also make her wait twelve months for her divorce, and during these twelve months she receives no maintenance from her husband.

This passage belongs to a late Talmudic stratum, *amoraic* or even *savoraic*.68 It determines a waiting period of 12 months before receiving a *get*. The exact meaning of this passage is a matter of great dispute between Talmudic interpreters, following the basic attitude of each commentator to the interpretation of previous stages of the *sugya*. The Geonim, according to Brody’s conclusions, referred to this passage as a late Talmudic *takkanah*, which determined coercion after 12 months of *merida*, whereas the Geonim themselves applied coercion immediately.69 Rashi does not mention coercion explicitly. However, I assume that Rashi, as a continuation of his interpretation of the whole *sugya*, of which coercion is an integral part at every point, integrates coercion of a *get* at this stage as well. Rashi explicitly deals here with

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62 Rashi does not refer explicitly to the question whether it is done after announcement, as it is in the *baraita*, or immediately. Since the other elements of this rule are similar to the *baraita*, it is a reasonable understanding to apply here the missing element (the announcement) too.

63 MS LF follows Rashi also in section (d): “*ואחרי המה מנלי*”, see supra, note 55, although there it is not unique – at that point the majority of MSS follow Rashi.

64 See Riskin, Divorce, p. 41.

65 In this *sugya* the Rishonim show awareness of the redactor’s work but in a different section. See Ritva, 63b, s.v. *להשהות* כלו ליהו, regarding Rav Huna bar Yehuda’s opinion in section (d).

66 See Tosaftot, 63b-64a, s.v. *לתא*.

67 Whether she lost parts of her *nedunya* (״בלאותיה״) or not, this being the significance of the silk cloak.

68 See Friedman, Jewish Marriage, p. 323 n. 37.

69 See supra, note 8.
the timing of the rule of moredet,⁷⁰ which was earlier interpreted by Rashi as coercion of a get.

Contrary to the Geonim and Rashi, Rabbenu Tam and his followers denied coercion here, in the same way as at every point in the sugya. There are a few versions of the interpretation of this passage according to Rabbenu Tam's school. Their common denominator is that the Talmud teaches here that the husband is not allowed to divorce his wife, even if he wants to, because she might change her mind during this period. However, after 12 months the husband may divorce his wife.⁷¹

An important question is which kind of moredet this passage refers to, ma'es alay or ba'ena leh. The Rishonim and Acharonim usually follow Amemar, who makes a distinction between ma'es alay and ba'ena leh.⁷² Thus, to whom does this passage refer? Three possible options are mentioned by the Rishonim: ma'es alay, ba'ena leh and both.⁷³ Rashi at this point is not clear, and in what follows we will complete our previous discussion on his commentary of the sugya by explaining his view of this passage.

The previous part of the sugya deals with a story about Rav Zevid's daughter in law, which Rashi interprets as a case of moredet ma'es alay.⁷⁴ We may conclude that the present passage continues that case, i.e. moredet ma'es alay.⁷⁵ We have argued that Rashi interprets the whole sugya as a logical and systematic structure, which divides its parts between two basic concepts: the mishnaic on the one hand and Rabbotenu on the other hand. Interestingly, when describing the Mishnah and its followers, Rashi uses the terminology of delaying,⁷⁶ the same as is used by the Talmud in our passage: "וּמְשַׁמֵּש נַחֲלוּ...". If indeed Rashi deals here with ma'es alay, the fact that the terminology used here is the mishnaic one means that there is at this point a withdrawal from the earlier approach regarding ma'es alay. According to Amemar's original teaching we do not force moredet ma'es alay ("לא יפריע"), i.e. in this case we would not use the mishnaic rule and delay her get, but her husband must divorce her, probably according to Rabbotenu's rule.⁷⁷ Here, on the contrary, we impose a delay for giving the get, and according to Rashi this is in order to give her the option to change her mind.⁷⁸ It is a conceptual withdrawal from the strict approach of Rabbotenu, whose goal was the bringing to an end of the conflict as quickly as possible, towards an attempt to make it possible for the wife to change her mind, as in the mishnaic rule.⁷⁹ However, it is not a complete withdrawal, but a sort of combination of the two approaches. On the one hand "לא יפריע" i.e. we would not use the decreasing process of the Miahnah, but on the other hand she would receive her get not immediately (or after four weeks) but only after 12 months.⁸⁰ In the meantime,
according to Rashi, she has a chance to change her mind. Thus, if she does change her mind, she probably would not lose her ketubbah.\footnote{81}

To sum up Rashi's view, the final stage of the talmudic sugya imposes a waiting period of 12 months. The interpretation of this conclusion depends on the interpretative path of the sugya, especially as regards the legitimation of coercion. According to Rashi, here too coercion plays an important role: the final Talmudic conclusion delays coercion for 12 months in a case of moredet ma'es alay. Yet, whether in ma'esi alay or in ba'ena leh, at the end of the halakhic process, the wife can demand a get, and her husband is coerced to divorce her.\footnote{82}

The application of this late Talmudic conclusion to moredet ma'es alay is a matter of dispute between Rishonim. Opposing Rashi, some Rishonim apply this rule to both kinds of moredet, while others apply it only to moredet ba'ena leh.\footnote{83} Amongst the latter are Rambam, Rashbam and Rabennu Tam,\footnote{84} according to whom the law of moredet ma'es alay is as originally determined by Amemar. But at this point Rambam and Rashbam differ from Rabennu Tam. While the latter rejects coercion, the former accept it, and according to their view moredet ma'es alay loses her ketubbah and receives a get immediately.\footnote{85} In regard to coercion, therefore, there is an important group amongst the Rishonim which is in favor of it and puts it within the core of the Talmudic sugya.\footnote{86}

### 3.3 Palestinian Talmud: Coercion in a case of moredet and Rabbi Yoseh’s Condition

The Yerushalmi discusses different aspects of moredet. As elsewhere, there are variations between the two Talmudim, the Babylonian and the Palestinian, either in citing tannaitic or amoraic sources or in the literary and conceptual development of the sugya. In our case, the Yerushalmi cites Rabbotenu differently and thus can shed light on their goal and rationale, as already discussed. In short, the baraita in the Yerushalmi varies on two significant points: (a) by mentioning divorce according to Rabbotenu, which is explicit in the Yerushalmi but not in the Tosefta and the Bavli,\footnote{87} and (b) in the absence of public humiliation, similar to the Tosefta but contrary to the Bavli.\footnote{88} Accordingly, Rabbotenu’s goal is to lead to a separation between the couple and (where appropriate, coerced) divorce is a necessary condition for it, and therefore an integral part of Rabbotenu's teaching.\footnote{89}

Another part of the sugya is the question of the character of moredet, whether domestic or from sexual motives. These two options are raised implicitly in the Yerushalmi when

\footnote{81} See Ritva, 64a, s.v. כלכלה. There are Rishonim who argue that the wife loses her ketubbah even if she changes her mind during the 12 months waiting period, see Ritva, ibid. As to Rashi, since this takkanah sounds in favor of the wife, I prefer the first explanation.

\footnote{82} The last takkanah of 12 months does not refer to ba'ena leh, as discussed above. Thus, the law here is the basic mishnaic law, agreed by both Amemar and Mar Zutra, and defined as: "כפיוט מה". According to Rashi, at the end of the mishnaic law, as mentioned a few times in this paper, she receives a get.

\footnote{83} Supra, note 73.

\footnote{84} See Rambam, Ishut, 14: 11-14; Shiltey Giborim, 27a, A; Tosaftot, 63b, end of s.v. אברכים.

\footnote{85} See the famous halakhah of Rambam, Ishut, 14: 8: "יאוסרל חתת טמא המרדה... אברך אברך" writes Rambam, together with the set of halakhot of his sugya. The translation of this translation is that it imposes a waiting period of moredet before the action of bet din can be taken. However, the Bavli declines this approach and instead decides that bet din can act even in moredet, and only other halakhot must be heeded.\footnote{86}

\footnote{86} See supra, text to notes 30-34.

\footnote{87} See Rambam, Ishut, 14: 8: בדינו, מפרשים עליה "מפרשים עליה". The different types of moredet and the dispute between the Mishnah and Rabbotenu concerning the proper halakhic process do not relate to the character of coercion, which is the basic physical one: see supra, note 29.

\footnote{88} The Yerushalmi uses the term "מפרשים עליה" while the Bavli uses "מפרשים עליה", see supra, note 24. Two more differences between the Yerushalmi and the other sources are mentioned above, note 32.

\footnote{89} See supra, section 3.1.
explaining the differences between the moredet and the mored. In the Bavli on the other hand these options are the core of an explicit dispute between two amoraim, one of whom, Rabbi Yose bar Hanina, is mentioned also in the Yerushalmi.

The following passage is of the greatest importance:

R. Yoseh said: For those who write [a stipulation in the marriage contract]: ‘if he grows to hate her or she grows to hate him’, it is considered a condition of monetary payment, and their condition is valid.

R. Yoseh legitimates a condition in a case of hatred between the couple by referring to it as a monetary condition. But the exact content of the condition is not clear, and it is greatly disputed in both rabbinic and academic sources. Those sources usually deal with two main questions: First, what is the exact content of R. Yoseh’s condition – is it only in regard to financial aspects, for example: rejecting the mishnaic process of decreasing the ketubbah in a case of moredet, or is it also in regard to the marriage itself, enabling a coerced divorce in such a case? Second, suppose the condition refers to the marriage, how is it used in practice – by coercing the husband to give a get or by a judicial act of the bet din itself? These questions are discussed at length as part of the Agunah Research Unit’s papers. In this section, I would like to propose a view suggested by the previous analysis.

In a case described later in the Yerushalmi, a similar condition is mentioned. A man kissed a married woman (“He kissed his wife”). The amoraim did not regard her as a sotah (adulteress), which would mean that her husband should divorce her and she loses her ketubbah, but treated the case as one of hatred. Accordingly, they applied here the condition which was found in her ketubbah:

If this So-and-so (fem.) hates this So-and-so, her husband, and does not desire his partnership, she will take half of ketubbah.

The amoraim in this case discuss mainly the financial aspects of the condition: whether she is entitled to receive at least part of her ketubbah. However, these aspects were probably accompanied by divorce, and this presumes that it includes unilateral divorce on the part of the wife. This argument is based on the clause: “והלא תצבי בשヶ月יה,” i.e. she would reject...
being in a partnership with him, which means that the wife has the right to a coerced divorce.95

One possible interpretation is that the wife's entitlement to a coerced divorce is achieved by the quoted condition. If that is correct, the term "תניי ממון" (a monetary condition) in R. Yoseh's condition (which supplies its legitimation) includes stipulating the right to a unilateral divorce. "תניי ממון" has therefore a wide meaning: "monetary stipulations' include agreements to forfeit a right or benefit assured one by law" (M.A. Friedman).96

Yet, divorce is not the main legal consequence of the condition. Divorce is only part of the protasis (the "if" part of the condition) while the apodosis (the "then" part of the condition) is the financial aspect, which is also the core of the amoraic discussion that follows. So why does divorce seem to be less significant in the conditions of the Yerushalmi?97

As we have argued, a get was an integral part of the law of moredet already in tannaitic sources, and in particular is part of Rabbotenu's rule in the Tosefta, as is explicit in the Yerushalmi's version of the baraita. Demanding a divorce therefore did not have to be based on any condition, but was based rather on the law of moredet itself. Accordingly, the reason why the amoraim do not discuss the right to demand divorce is that it was already known and accepted, rather than this being the "point of the innovation" of the condition. The same conclusion applies to the missing apodosis of Rabbi Yoseh's condition: it might have mentioned the coerced divorce, but its core is monetary, i.e. to regulate the financial terms of the tannaitic coerced divorce.98

R. Yoseh merely adds a financial aspect, which overrides the tannaitic rule of moredet. Namely, although a moredet loses her ketubbah, if the couple has stipulated that she would not lose it, the condition is valid since it is a "שבממון תנאי". The right of the moredet to receive a get may appear in this sort of condition, but its basis is not the condition but a more stable one: the basic tannaitic law of moredet.99

4. Conclusions

Coercion of a get in a case of moredet is a matter of great dispute between Talmudic commentators, whether Geonim, Rishonim or Acharonim. One most influential view was that of Rabbenu Tam, who strictly rejected coercion. Opposing the gaonic view, Rabbenu Tam argued that coercion has no basis in Talmudic sources. However, this paper has explored a wide basis for coercion in tannaitic and amoraic sources, as well as in later anonymous Talmudic discussions.

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95 Riskin, Divorce, pp. 31-32. The right for unilateral divorce appears more explicitly later in conditions in Palestinians ketabbot from the gaonic period found in the Cairo Geniza ("and if this Maliha hates this Sa'id, her husband, and desires to leave his home, she shall lose her ketubbah money… and she shall go out by the authorization of the court"), see Friedman, Jewish Marriage, pp. 327-346; Jackson, Directions, pp. 7-8.

96 Friedman, Jewish Marriage, pp. 319-320. See also Jackson, Preliminary Report, pp. 4-5.

97 Accepting the explanation above, that the entitlement to divorce is based on the condition, requires one to assume that "the text that is quoted omits... the wife's exit from the marriage, the divorce itself which resulted from her 'hating' her husband" (Friedman, Jewish Marriage, p. 318). Below I suggest a different view, based on the previous analysis of tannaitic and amoraic sources, which does not require such an assumed omission.

98 This interpretation of R. Yoseh's condition is briefly suggested by Friedman, Jewish Marriage, p. 320, as a second interpretative option. The present research supports this option and puts it in a wider context.

99 Meiri's teachers' teachers argue that R. Yoseh's condition is the basis for the gaonic takkanah of moredet (Meiri, 63b, end of s.v. מחברים וגדולי). This claim is historically doubtful (see Friedman, Jewish Marriage, pp. 325-327; Friedman, Divorce, p.105; Riskin, Divorce, pp. 81-84; and compare Lieberman, Hilkhot Ha-Yerushalmi, p. 61 n. 7), but important from a dogmatic point of view (see Jackson, Preliminary Report, p.6). According to the analysis above, this connection is limited to financial aspects, i.e. the authority of the Geonim to override the tannaitic rule of losing the ketubbah. Interestingly, a close reading of the Meiri may suggest that this was his own objective when citing his teachers, i.e. finding in R. Yoseh's condition a support to the monetary aspects of the gaonic takkanah of not losing the ketubbah. But there is a significant difference: Meiri rejects coercion in both early and late sources while the analysis above accepts it but ascribes it to earlier generations.
Talmudic Roots of Compulsion in Cases of Moredet

Justifying coercion in a case of moredet is mainly a question of interpretation of Talmudic sources. The interpretative option suggested here is a legitimate — we would even say: preferable — way of interpretation, with the significant advantages of clarity, simplicity and consistency. Furthermore, it creates a logical structure which holds together the Mishnah, the Tosefta and every stage of the Talmudic discussion. Not surprisingly, it was chosen by Rashi and some other commentators when interpreting the sugya.

One methodological comment should be raised here. Rabbenu Tam's objection is based primarily on broader considerations, i.e. harmonizing all Talmudic sources, and not on the peshat of this specific sugya. His main argument is supported by some tannaitic sources, in which moredet is not mentioned amongst cases of coercion. The Rishonim deal with those sources in accordance with Rashi's approach, for example: solving the difficulty above by making a distinction between a case of coercion when the wife receives the amount of her ketubbah, as in the cited Mishnayot, and coercion without receiving the ketubbah, as in moredet.

Explaining Rashi's view in this way is based on a dogmatic approach. Nevertheless, we may suggest a historical view: contradictory sources may be explained synchronically, as sources in a dispute ( divisoria halakah), or, as may be more accurate in our case, diachronically, as a developing tradition. That is to say, at an early tannaitic stage moredet was indeed not amongst the cases of coercion, but this changed during the generations, and the sources discussed in this paper reflect this change in varying measures. This halakhic process is influenced by sociological changes, which characterise the case of moredet. As briefly described by Pne Yehosuah:

Even without that, we find a number of enactments regarding moredet, corresponding to changing circumstances: talmudic law, saboraic law, which was cited by Tosafot, and the law of metivta (=the gaonic law), which was cited by Rif and Rosh z"l.

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100 For example: Mishnah Ketubbot, 7:7. See Tosafot, 63b, s.v. אבל; Ramban, 63b, s.v. הלכתא וכולה.
101 See Ritva, 63b, s.v. היכי דמיא_moredet_. Actually, Ritva rejects this distinction, see ibid.
102 For example, comparing moredet in the Tosefta and in the Mishnah, coercion in the Tosefta is an essential part of the halakah and not only a possible outcome of losing the ketubbah as it is in the Mishnah (see supra, section 3.1), which may be the reason for not mentioning it amongst the mishnaic cases of coercion. Yet, both sources focus on the ketubbah while divorce is still not explicit. It becomes explicit only in late amoraic generations, Amemar according to MS Leningrad-Firkovitch or the final determination of late Talmudic stratum: יהסלוץ... halakhic stratum: יהסלוץ... halakhic stratum: יהסלוץ... halakhic stratum: יהסלוץ... halakhic stratum: יהסלוץ...

103 See Pne Yehosuah, 63b, s.v. בנסחא גרא (emphasis added). The context of Pne Yehosuah's statement is his question: "ינאא מילג את אמא ברייתאحام לפני האбел. (How could Rava be in a dispute with the baraita and describe their view so negatively?). His possible answer is that after Rabbotenu the Sages changed their mind again and moved back from Rabbotenu to the Mishnah as a result of changing circumstances (literally: "changing times").
5. Bibliography

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