**Shaming in Rabbinical Court Rulings**

**:A Modern Commentary on Medieval Rabbinic**

**Sanctions in Divorce Cases[[1]](#endnote-1)**

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**Introduction**

Jewish law treats the knotty issue of women whose husbands refuse to grant them a divorce (*mesoravot get*) and suggests various mechanisms for addressing this problem. If the court orders him to grant a divorce and he resists, it has various means to pressure him at its disposal. In addition to extreme measures, such as imprisonment, and other legal maneuvers that facilitate the unilateral termination of a marriage, there are court-imposed economic or social sanctions that restrict his civil rights. These sanctions are based on the *harḥakot de-rabbenu tam,* which are sanctions defined by leading twelfth-century rabbinic authority Rabbenu Tam *(Sefer hayashar, “*Teshuvot*,”* chap*.* 24) and prescribe the husband’s excommunication (*niddui*) and ostracism (*ḥerem*).

In this article, I will analyze the various interpretations and implementations of these sanctions from the twelfth century to the present. Then I will focus on the contemporary practice of shaming and explore whether it can be considered an outgrowth of Rabbenu Tam’s regulations. My question is whether the use of shaming to enforce divorces is an appropriate implementation of the medieval rabbinic sanctions.

The case of Oded Gez was one of the most difficult ever heard by the rabbinical courts in Israel. The saga of Gez, a well-known recalcitrant husband unwilling to provide a Jewish bill of divorce (a *get)* to his wife, began in the rabbinical court in Petach Tikva[[2]](#endnote-2), was referred to the Supreme Rabbinical Court in Jerusalem[[3]](#endnote-3), and then sent back to the district rabbinical court in Haifa[[4]](#endnote-4). From the very start, the rabbis who dealt with the case suspected that Gez was an obstinate type who was willing to go very far in making his wife’s life miserable, even at the cost of great misery to himself. They had no idea how right they were. When all their efforts to get him to grant a divorce failed, the court invoked a new sanction—“shaming.”[[5]](#endnote-5)

The use of shaming represents an updating of Rabbenu Tam’s sanctions to suit the era of social media. Within two days after the Court issued its ruling, there was almost no one in Israel who had not heard the name of the Ph.D. in physics from Bar-Ilan University. When the judges threatened to tighten the screws on Gez, he fled from Israel just before he was to be arrested and sent to jail. The Chief Rabbinate’s division that deals with *agunot—*“chained” women whose husband has vanished, or is unwilling to grant them a divorce—launched a transcontinental pursuit after him. In order to understand the drama and the dilemmas involved, we should pause briefly and return to where it all started.

It is sad and tragic, but it happens: A couple’s relationship falls apart and the partners decide to divorce. Jewish law sees the family as a sanctified institution, based on both a religious covenant and a contract between husband and wife. However, Jewish law is far from the Catholic approach that no man may put asunder what God has joined together. Instead, it endeavors to provide the parties a practical way of untying the knot when one or both of them have concluded that the relationship has no future.[[6]](#endnote-6)

The halakhic method for severing the sacred knot is a special religious ceremony in which the husband gives the wife a writ of divorce. The Torah calls this writ *sefer keritut.*[[7]](#endnote-7) (“bill of divorcement”); the Talmudic texts call it a *get*.[[8]](#endnote-8) According to the Talmud the husband must give the *get* of his own free will otherwise it is deemed a “forced *get*” and is invalid.[[9]](#endnote-9)

But Jewish law recognizes various circumstances in which the court can order the husband to divorce his wife; There is a first list of such grounds in the Mishnah,[[10]](#endnote-10) a supplementary list in the Talmud that is inferred from it,[[11]](#endnote-11) and a list based on “estimation,” meaning situations where, in the court’s assessment, a rational and normal woman would not be willing to continue the marriage.[[12]](#endnote-12) In the Middle Ages, some authorities took the fact of living apart for a protracted period—a year[[13]](#endnote-13) or a year and a half[[14]](#endnote-14):—as a good indication that the relationship is dead.[[15]](#endnote-15)

**What happens when the husband refuses to divorce his wife? How can the rabbis enable a wife to exit the marriage bond when the husband imposes difficulties?**

The Talmud defines two levels of compulsion, depending on the circumstances.[[16]](#endnote-16) If the court has ruled that the husband mustdivorce his wife (the Talmudic term is *kofin legaresh* and in the court ruling, (*kfiyat get*) and he refuses, he can be flogged until he agrees to do so. Later, flogging was no longer practiced and was replaced by imprisonment.[[17]](#endnote-17)

But when the court ruling is phrased only as a directive, such as “he will divorce her and pay her *ketubbah*”(marriage settlement), and in court ruling is phrased*: "chiuv get*,” physical force is not employed[[18]](#endnote-18). But according to Rabbenu Tam, the court can employ various other means, known collectively as Rabbenu Tam’s Sanctions.[[19]](#endnote-19) In brief, these consist of social penalties imposed on the recalcitrant husband.[[20]](#endnote-20)

Rabbenu Tam defined a number of ways to ostracize the recalcitrant husband and exclude him from all social intercourse.[[21]](#endnote-21) The court is to issue a decree, supported by “a strict oath, that no one speak with him, do business with him, host him, serve him food or drink, accompany him and associate with him, or visit him when he is ill, along with other sanctions the court might deem appropriate.”[[22]](#endnote-22)This was later expanded to include not circumcising his sons, not burying him (which are not customary today),[[23]](#endnote-23) not calling him to the Torah, or other issues with respect to prayer,[[24]](#endnote-24) along with other sanctions the court might deem appropriate.[[25]](#endnote-25)

To modern eyes, this is tantamount to a ban or ostracism, but Rabbenu Tam himself cautioned that the sanctions he prescribes do not include full excommunication. Here we should note that the terms *ban* and *excommunication* have been given diverse definitions and interpretations over the generations. It is possible that Rabbenu Tam’s

Sanctions were meant as a mild interdict, rather than a strict ban based on compulsion and proscription. which would mean his total exclusion from Jewish society.

במדינת ישראל חלים חוקי המשפט העברי על ענייני המעמד האישי [[26]](#footnote-1)

במהלך השנים נוספו בחקיקה תיקונים שונים הבאים לתת מענה לבעיות של סרבנות גט ועגינות שעלו מן השטח ונוצרו בעקבות פניה מתוך המערכת הרבנית עצמה (היועמ"ש של בתי הדין הרבנים; הרבניים הראשיים, רבנים בתפקידי מפתח ברחבי העולם; או פסיקה של בתי הדין הרבניים).

Eight centuries after Rabbenu Tam’s Sanctions were formulated an attempt is being made to adapt them to the reality of our generation. In 1995,

בעקבות הידברות בין הרבנים הראשיים, מנהל בתי הדין הרבניים דאז – הרב בן דהאן, וחוקר המשפט העברי- ד"ר ויינרוט

new penalties were defined on the basis of the original enactment. Since then, there have been no fewer than seveneight different amendments to Israel law and halakhic precedents, a good indication of the great need to update and adapt the law and halakhah to the challenges of modern life.

**Why have Rabbenu Tam’s sanctions been altered from their original format? I believe that two significant new features of our current way of life are responsible:**

The first factor is modern modes of transportation. In the past, when a husband was ostracized by his community, leaving home and moving to a distant place where no one knew him and he would not be shunned required a long and arduous journey and many dangers. These difficulties constituted a strong incentive for him to comply with the court’s ruling and divorce his wife. Today it is much easier for a recalcitrant husband to fly off to a country where he is unknown and will not be shunned.

The second modern development is the role that society plays in the life of an individual. The collective no longer exerts the same force as in the past. In the legal arena, the focus is on protecting individuals’ and minorities’ rights to dignity, liberty, well-being, and freedom of expression and protest. Social pressure is simply not as important as it once was. In fact those who reject societal norms are often admired.

Hence, Rabbenu Tam’s Sanctions have taken on new forms in recent decades, The first new development was an amendment passed by the Knesset in 1995, which gave rabbinical courts the authority to impose restraining orders on a recalcitrant husband: these could bar him from leaving the country; prevent him from receiving or renewing a passport; suspend his driver’s license; disqualify him from gainful employment in almost any job in the public and private sectors; and restrict his dealings with banks.[[27]](#endnote-26)

סנקציות אלה וכל ציוני הדרך בחקיקה שאציין להלן מתבססים על הרחקות דרבנו תם ויונקות את כוחן מן המילים הנזכרות בסופן: "ועוד יוסיפו חומר ברצונם על כל אדם אם לא יגרש". [[28]](#footnote-2) מילים אלה מייפות את כוחם של הדיינים בכל הדורות לנקוט בדרכים שונות שעל-פי אומדן דעתם יהוו לחץ שאיננו נכנס לגדר כפיית גט אבל עשוי להביא למתן הגט,[[29]](#footnote-3)

We can see that these restrictions continue two aspects of the medieval sanctions, in that they isolate and shame the recalcitrant husband. They constrict his freedom in precisely the domains where modern society has made it easier for him to defy the court. They impede his mobility (by barring him from leaving the country and depriving him of his passport and driver’s license). They restore a measure of social control by not allowing him to hold a job, and restrict his dealings with banks. By these means he is returned, to the extent possible, to the situation of a recalcitrant husband in medieval society.

The second major development came in 2016. The Supreme Rabbinical Court ruled that public shaming of the recalcitrant husband Dr. Oded Gez was permissible.[[30]](#endnote-27) The court allowed his wife to publish his name and picture, called on his employer to fire him, and asked the public to refrain from giving him honors in the synagogue and elsewhere. The court stated that these sanctions, and the accompanying shaming, derived from Rabbenu Tam’s Sanctions. When the shaming order was published, Gez fled the country using a forged passport, but was eventually arrested in Belgium for extradition to Israel. I will return to the end of this episode later.

Also in 2016 the Knesset passed a law that deprives imprisoned recalcitrant husbands of certain privileges, most of them related to religious observance: assignment to the “Torah-observant” wing of the prison; participation in Torah study programs there; being served food that adheres to the most stringent standards of kashrut (glatt); and possession of writing implements and cellphones.[[31]](#endnote-28)

ציון דרך זה הגיע בעקבות פסיקה של בית הדין הגדול שדן בעניינו של אסיר סרבן גט והביע מורת רוח מן התופעה שסרבני גט דורשים הטבות על רקע דתי ונענים בחיוב על ידי שירות בתי הסוהר על אף שהם ממשיכים לסרב לתת גט לנשותיהם, בניגוד לפסק דין שחייב אותם לעשות כן.[[32]](#footnote-4)

Next, religious court rulings began to impose restrictions on family members who assist and encourage a recalcitrant husband (in the case before the court, his parents), including a ban on their leaving Israel and incarceration.[[33]](#endnote-29) After this,

בעקבות פנייה של היועץ המשפטי של בתי הדין הרבניים, הרב שמעון יעקובי.

the Attorney General gave his backing to the rabbinical courts and decided that if the recalcitrant husband[[34]](#endnote-30) or other persons are dominant forces behind his intransigence they can be the object of a criminal investigation.[[35]](#endnote-31)

In 2018 the Knesset passed a law that authorizes the rabbinical courts to provide remedies to “chained women” all over the world, even if neither partner is an Israeli citizen.[[36]](#endnote-32) This law views the State of Israel as the nation-state of the Jewish people, empowered to enforce restraining orders imposed on recalcitrant husbands outside its borders.[[37]](#endnote-33)

חקיקה זו באה כתוצאה מפנייה של הרב פסח גולדשמידט נשיא ארגון רבני אירופה (CER) ורבה של מוסקבה שהצביע על תופעה הולכת ומתרחבת של סרבני גט יהודים ברחבי העולם הנפרדים מנשותיהן באופן אזרחי בלבד ואינם נותנים להן גט. הוא התריע על כך שבשל העדר סמכות שיפוט לבית הדין המקומי בחו"ל לאכוף את פסקי הדין לחיוב או כפיית גט, נשים רבות בעולם נותרות עגונות ללא אפשרות להינשא מחדש.

ההתפתחות הבאה

on this front is the 2019 bill proposal to revoke of the right of recalcitrant husbands to use a credit card.[[38]](#endnote-34) The most recent development on this front is

רישום של הסרבן ברשימה של סרבני גט במרשתת של בתי הדין הרבניים, והטלת עיצומים כספיים על הסרבן לטובת האישה (ולא רק לאוצר המדינה כפי שנעשה עד היום).[[39]](#footnote-5)

Although I believe that all these innovations maintain the original intent of Rabbenu Tam’s sanctions—which is to isolate and shame the recalcitrant husband—in this article I want to focus on shaming. Shaming is the most powerful form of these sanctions, a classic product of the technological advances of the early twenty-first century. Shaming stretches Rabbenu Tam’s Sanctions to the extreme, has a vast and immediate effect, creates a strong impression and remains etched in the public’s mind forever, but in addition to its advantages it also has many disadvantages.

When the rabbinical court ruling that Oded Gez should be publicly shamed spread -through the electronic and print media, one newspaper published two opinion pieces that presented opposing viewpoints. I will review them as an introduction to my discussion of the pros and cons of the use of this weapon in the war against spouses who refuse to grant a divorce.

Rabbi Yuval Cherlow, a yeshiva dean, thought that shaming is not an appropriate interpretation of Rabbenu Tam’s Sanctions. His concern was that their revival could be dangerous and unsuitable at present. He warned that we must be vigilant that its damage does not exceed its benefits. He compared the use of shaming based on the sanctions to driving in reverse, which is subject to three rules: First, it must be essential: you may drive in reverse only when it is impossible to drive forwards. Second, the extent of the need to do so: Even when you have to back up, you can do so only as far as is unavoidable. You can’t say that because you had to back up to leave a parking space, you can continue to drive in reverse until you reach your destination; Third, because you are doing something irregular, you must keep looking in the rearview mirror and make sure you are doing everything necessary to avoid danger.[[40]](#endnote-35)

The opposite viewpoint was argued by Dr. Yehuda Yifrach (the legal affairs editor of the *Makor Rishon* newspaper), who wrote that Rabbenu Tam was “smiling in his grave” because his sanctions had again become relevant and enforceable. An antiquated halakhic remedy (Rabbenu Tam’s Sanctions) had deteriorated into an anachronistic and almost toothless tool in the modern world, in which the power of the community was much weaker than in the past.[[41]](#endnote-36) But the advent of social networks had turned the situation on its head. Anyone who failed to see the post on Facebook or WhatsApp would soon encounter it on the major television channels. Later in the article, Yifrach noted that shaming is an excellent tool for extreme cases.

What, in fact, are the advantages and disadvantages of this incredibly powerful tool?

The advantages are clear:

First it breathes new life into a tool that had become outdated and transforms it into an instrument relevant for the technological generation. In the contemporary context, public shaming can cause offenders to change their behavior,

Second, the punishment reflects society’s values. By shaming recalcitrant husbands, society proclaims its abhorrence of a man who refuses to give his wife a divorce.

Third, it adds a new weapon to the armory that can be employed against recalcitrant husbands.

Fourth, given its intense power, public shaming can deter potential recalcitrant husbands from taking this route.

Fifth, as Dr. Yehuda Zoldan has written, public exposure of such despicable behavior can be of special benefit to the weaker links in a society, who lack the power and means to deal with those abusing them. During the delicate process of divorce, even wealthy women find themselves in such a disempowered state.[[42]](#endnote-37)

Sixth and last, publicizing these men’s cruelty does not violate the Torah prohibition against defamation, which applies only to ugly and unwarranted gossip. Shaming is “warranted gossip” that usually produces a remedy to the situation, because of the immense power of public pressure.

But public shaming also has many drawbacks:

Its target may be driven to commit suicide, as often happens in incidents of shaming that do not involve a recalcitrant husband. Second, it transfers a heavy responsibility to society. But it is not clear whether society deserves such responsibility, given that we all are aware of the masses’ deplorable eagerness to turn out for the modern equivalent of public hangings.

Third, it is possible that shaming does not correspond with the gradual movement from minor to major sanctions that guides Jewish law and rabbinical courts when they are confronted by recalcitrant husbands.[[43]](#endnote-38) Staining a person’s name is in many ways more severe than physical punishment, whether this is flogging, as in the past, or incarceration, as practiced today. I even think that Rabbenu Tam himself saw excommunication as a more severe punishment than flogging. In the same responsum quoted earlier, he warns against any punishment in the case on which he was consulted. Quote: “Should someone say, ‘we will not compel them with whips, but we will compel them with bans and excommunications’—that is not the way … for it is more severe than flogging**.**”[[44]](#endnote-39) In other words, the social penalty is far worse than the physical punishment.[[45]](#endnote-40)

Fourth, it is possible that shaming may be counterproductive: the husband may remain intransigent because he feels that he has nothing more to lose. He has been deprived of his reputation and his job, he has been ostracized by society, his wife is no longer interested in him, and he has been pilloried in public view. He has lost his entire world. And if he has nothing left to lose, why should he sign the divorce papers and free his wife?!

Fifth, it is unclear whether public shaming is an appropriate implementation of Rabbenu Tam’s Sanctions, even though they have been cited as its halakhic justification.[[46]](#endnote-41) Rabbenu Tam warned that his sanctions must not be extended into excommunication. Isn’t shaming tantamount to social excommunication today? In the fifteenth century, Rabbi Joseph Colon (known as the *Maharik*) explained that after the sanctions have achieved their objective, the culprit is to be welcomed back to the fold, fully healed of his blemish.[[47]](#endnote-42) But can the status quo ante be restored today, after a person has been subjected to public shaming? Will Bar-Ilan University rehire Dr. Gez? Will other institutions give him a job?!

Another concern relates to slander, humiliation, and libel—not in the legal sense but in the moral sense. The Jewish legal texts take a grave view of embarrassing people in public, which they compare to murder.[[48]](#endnote-43)

In addition, shaming cannot prevent a person from running away. By the time shaming is employed, the conditions usually already exist for imprisoning the offender. Rabbi Maimon, head of the rabbinical court’s special Unit to Release Agunot, told an interviewer that in retrospect it was clear that Gez could have been sent to jail before the shaming sanction was imposed.[[49]](#endnote-44)

Eighth, the unbearable lightness of shaming a person today and the mass circulation of his disgrace mean that it is effectively impossible to maintain control of the publicity and delete it later. In most cases it is also impossible to reinstate the recalcitrant husband to his former position. Those who have personal grievances with him, or feel they can derive some benefit the situation, without reference to the divorce issue, can and do take advantage of his public disgrace.

An additional disadvantage in implementing shaming procedures against recalcitrant husbands is that in many cases shaming the husband has caused him to perform counter-shaming against his wife, so that a campaign of mutual shaming is ultimately performed which also harms the wife and the couple’s children, as Advocate Katz- Peled demonstrated in her lecture on this topic.[[50]](#endnote-45)

Finally, shaming accustoms the public to the use of a devastating tool that has far-reaching ramifications. The public may not distinguish between public shaming as a result of a court order and the use of shaming in other circumstances where the public sees fit. Even when it stems from a court order, its use dilutes our sensitivity to the damage that shaming causes.

**Perhaps the bottom line relates to the effectiveness of shaming. Does it indeed procure the intended result?**

And here I would argue that we cannot point to a single case of shaming that has induced a recalcitrant husband to grant his wife a divorce.

Let us return for a moment to the example I provided earlier:

In the case of Dr. Gez, when he fled the country he was quoted as saying that even if he were given 5,000 lashes he would not grant his wife a divorce.[[51]](#endnote-46) In parallel to the shaming process, and far from the public eye, the Haifa rabbinical court, headed by Rabbi Shloush, looked for another halakhic solution to dissolve or annul the marriage without the husband’s consent or presence. In a precedential ruling, the judges invalidated the couple’s wedding ceremony (*kiddushin*) after finding grounds to disqualify one of the required two witnesses.[[52]](#endnote-47) The court ruled that the *kiddushin* had never taken effect and recognized the wife as unmarried. It was not the shaming that freed her, but the court’s decision.

During the same year that the court allowed the public shaming of Dr. Gez, the identical remedy was prescribed in the case of a recalcitrant husband named Sharon Ben Haim.[[53]](#endnote-48) He and Dr. Gez unsuccessfully petitioned the High Court of Justice against the shaming imposed against them, on the grounds that it deprived them of their freedom.[[54]](#endnote-49) For years Mr. Ben Haim continued to refuse to divorce his wife. In this case, too, the shaming order issued by the rabbinical court in Israel did not move him to submit.[[55]](#endnote-50)

In another case in 2018, the shaming ordered by the rabbinical court against recalcitrant husband Yaron Attias, as well as the suspension of his driver’s license, proved ineffective.[[56]](#endnote-51) What finally impelled Attias to grant the divorce was his arrest and subsequent developments. The rabbinical court discovered that Attias had been driving his car despite the suspension of his license and sentenced him to a short jail term for contempt of court. Once again, what produced the desired result was not the shaming, but the rabbinical court’s threat, after the shaming, that if Attias continued his intransigence it would rule that he must grant a divorce and he would be imprisoned for as long as he refused to do so.[[57]](#endnote-52) It can, of course, be argued that the continued pressure of the shaming and Attias’s jailing for contempt of court together wore him down and thus played a part in persuading him to grant the divorce. But the main factor, as mentioned, was his fear of prolonged incarceration as a result of the court’s decision that he must grant the divorce. Similar cases have ended in the same way. So another problem with shaming is that it has not proven to be very effective.

בניגוד לחו"ל, ששם ככל נראה, התמונה שונה.[[58]](#footnote-6)

**In this situation, is it worthwhile to employ shaming against recalcitrant husbands?**

Shaming as a means of exerting pressure to put an end to some undesirable activity was employed in antiquity on many matters. The Talmud, for example, notes the practice of shaming a father who did not support his young children.[[59]](#endnote-53) or a wife who rebelled against her husband.[[60]](#endnote-54) Libson has demonstrated that ostracism and excommunication were used for various purposes.[[61]](#endnote-55) Grossman referred to the custom of delaying the public reading of the Torah in the synagogue and first announcing the names of debtors, as an incentive to get them to pay up.[[62]](#endnote-56)

In our own day, the government uses shaming to highlight regulatory problems, as shown by Dr. Yadin.[[63]](#endnote-57) The Environmental Protection Ministry issues “red lists” of the worst polluters.[[64]](#endnote-58) The Finance Ministry publishes an annual ranking of insurance and pension companies (in various categories, including time to answer phone call). The Health Ministry has announced that it will publish a ranking of restaurant hygiene, highlighting the filthiest eating places. It has also begun publishing data about hospitals where exposure to infection is greatest. Prof. Shinar has written about shaming in the banking industry. [[65]](#endnote-59)

To return to our topic, the impression is that an increasing number of rabbinical courts are employing shaming as a way to deal with recalcitrant husbands.[[66]](#endnote-60) However, some courts refrain from invoking it, for one of two opposing reasons. Some are concerned that the tool is so powerful and aggressive that it may be deemed compulsion of the sort that invalidates a subsequent *get*. Conversely, other courts are afraid that shaming is no longer effective, because the public has become inured to the daily reports of sexual misconduct, corruption, theft, and other severe actions, so that the refusal to grant a divorce is no longer shocking. Recalcitrant husbands, too, may believe that their refusal vanishes among all the other negative phenomena people are hearing about.

On the other hand, those who support the use of shaming hold that precisely today, when individuals document their every action out of a desire to be loved and admired, and when many people want to establish as many relationships as possible, even if only online, this tool can be very effective, because people have become very sensitive to the way they are seen in public and will do everything to avoid disgrace.

The Chief Rabbi and several rabbinical judges with whom I spoke about this issue say that the answer is complex. They weigh the use of shaming as a function of the details of each case and the recalcitrant husband’s personality.[[67]](#endnote-61) Some recalcitrant husbands are likely to be affected by shaming, but others will become even more intransigent. Another rabbinical judge said that the success of shaming depends on the nature of the husband’s social group. It can be effective against members of closed groups—like the Ultraorthodox today. Such individuals are bound more strongly by the community’s authority, more sensitive to social norms, and more concerned with how they are perceived by their neighbors. It is also possible that individuals abroad who are dependent on the Jewish community in many areas of life would feel threatened by shaming, making it more effective against them. Obviously, an ethical and involved community will make life harder for a recalcitrant husband than a society that pays less attention to individuals’ ethics and tend to maintain a hands-off attitude towards what other people do.

**To conclude, the key question in the discussion of whether shaming should be employed against recalcitrant husbands is the one I began with: Is shaming an appropriate interpretation of Rabbenu Tam’s Sanctions?**

On the one hand, I have shown that shaming embodies two elements of Rabbenu Tam’s Sanctions. On the other hand, it is unclear whether shaming complies with the conditions Rabbenu Tam set for the use of his sanctions. In particular, he held that they can be imposed because they are less severe than compulsion.[[68]](#endnote-62) Various explanations of this statement have been offered, some of them by Rabbenu Tam himself and others by rabbis and rabbinical courts that imposed them later:

They are less than compulsion because they leave the husband with a choice—he can grant the divorce or decide not to do so.[[69]](#endnote-63) They do not cause physical distress, unlike flogging and incarceration,[[70]](#endnote-64) They do not impair mobility, since the man can move to a different place where he is not known and will not be shunned.[[71]](#endnote-65) The pressure is indirect (exerted by society) rather than direct (on the husband).[[72]](#endnote-66) The husband is not penalized, but only subjected to pressure;[[73]](#endnote-67)The sanctions deny the man benefits only in the social realm, and in fact are addressed to the public rather than to him.[[74]](#endnote-68) [[75]](#endnote-69) Finally, when they achieve their objective, the sanctions are withdrawn and the previous situation is restored.[[76]](#endnote-70)

Do these conditions also apply to public shaming? Do they leave the recalcitrant husband a choice in the matter? Do they enable the husband to move to a different place, given the universal reach of the internet today? Will the status quo ante be restored after he divorces his wife? We would think that the answer to all these questions is “no.” Hence shaming would not be an appropriate implementation of Rabbenu Tam’s Sanctions. But reality suggests otherwise: Shaming does not deprive the man of a choice in the matter, for we repeatedly see that recalcitrant husbands continue in their stubborn refusal, despite the extensive and severe disgrace to which they are exposed.

Rabbi Yavetz proposed that in order to preserve the husband’s free choice, without surrendering the important tool of shaming, the shaming should start small, in terms of geography, and be expanded gradually.[[77]](#endnote-71) To begin with, the husband should be shamed where he lives. If he then moves somewhere else, he should first be allowed a free choice there. In this manner, every time he relocates to a place where he is not shunned, he has an opportunity to rethink his behavior. Rabbi Shlomo Dichovsky (a retired rabbinical judge and former director-general of the Israeli rabbinical courts) countered that this is not necessary. Shaming allows the man to retain his free choice even though the disgrace expands rapidly, because there will always be places to which he can escape where people will not know that he is supposed to be shunned.[[78]](#endnote-72) We can add that although shaming in geographical waves looks good on paper, it is impractical, because today it is difficult if not impossible to control the spread of information. Nevertheless, it may not be a bad idea to try it. Perhaps instead of expanding geographically, shaming can be cranked up step by step with regard to the information published. Shaming need not start with all the gory details. The first stage could simply be publicizing the court’s decision that the husband should grant a divorce. The full account of the circumstances and harsher shaming might be held back until after all lesser efforts have failed and the husband has already been sent to jail.

שכן השיימינג נמשך במקרים לא מעטים, גם לאחר שהבעל כבר הוכנס לכלא מכוח כפיית גט.

סוגיה נוספת שרלוונטית לשאלה האם שיימינג הוא אינטרפרטציה ראויה ל'הרחקות דרבינו תם' או שמא הוא חורג מהן ושייך לגדר כפיית גט? -נוגעת לביזיון הנגרם לסרבן כתוצאה מן השיימינג. לפי הרב משה זילברמן, דיין וסגן מנהל בית דין באמריקה- השאלה אם ההרחקות מאפשרות ביזוי של הבעל או לאו, נוגעת, לבירור הגרסה הנכונה בדברי הרשב"א שבהן מוזכרות ההרחקות. על-פי גרסה אחת בדברי הרשב"א[[79]](#footnote-7) כשנוקטים הרחקות דרבינו תם, "יכולין בית דין לאיים עליו בדברים בלבד שלא ינדוהו **ולא יבזוהו** ולא יצערו אותו בגופו" - נראה ששיימינג חמור מהרחקות דרבנו תם בשל הביזיון הנגרם לבעל, ולא ניתן לנקוט אותו מכוחן. אבל לפי גרסה אחרת בדברי הרשב"א[[80]](#footnote-8)- ההרחקות אינן כוללות אזהרה שלא לבזות את הבעל אלא רק הוראה ש"לא ינדה ולא יכה ולא יצער אותו בגופו ובממונו"- ואז השיימינג אפשרי.[[81]](#footnote-9)

In sum, having traced the different interpretations of Rabbenu Tam’s Sanctions, we can say that the authorities’ accurate interpretation of the changes worked by time have produced important and effective sanctions to help women overcome recalcitrant husbands. It seems, however, that shaming requires additional thought. This could help us find modes of shaming that are appropriate to our day. It is the task of contemporary legal and rabbinic authorities to address this challenge. The many advantages and significant potential of shaming requires that they do so.

If we are talking about exegesis, the fact that Hebrew has adopted the English word “shaming” means that the two languages, taken together, fully express the substance of the process. The English word “shame” invokes the disgrace, while its homophony with the Hebrew *sheim,* which means “name,” emphasizes that the victim’s reputation is indelibly stained.

Appendix

חלקים מהרחקות דרבנו תם שאינם נוהגים היום בישראל

הרחקות דרבנו תם כוללות סנקציות נוספות, כגון: עיכוב קבורתו של הסרבן וקבורת קרוביו ועיכוב מילת ילדיו שאינן נוהגות כמעט בישראל בעת הזו.

Rabbi Binyamin Zeev, (Binyamin Zeev responsa, 88) rules on the basis of an “Old Pamphlet in the name of Rabbeinu Yom Tov” that a husband who breaches the decision of rabbinic regulation and does not divorce his wife notwithstanding the obligation to do so, “is forced to divorce … as Rabeinu Tam ruled... They will not circumcise his son and not teach him Torah and not bury him if he does not divorce his wife.” Based on this the Rema rules in his comments on the Shulchan Aruch, Even Ha-Ezer, 154.21 that the RTDR can be implemented on a husband does not comply with the instruction of the Sages to grant an obligatory *get.* The court can impose the decree on all of Israel not to grant him any advantages/favors with him *or circumcise his son or bury him, until he divorces.*

These measures can be adopted on the grounds, as noted earlier, that he breached a ruling or regulation decreed by the Sages as learned from the Nimukei Yosef on Bava Kama (ch. Hagozel Uma’achil, 4.2) in the opening, where the Rif is presented in the name of Rav Paltoi Gaon: “That a man who was found liable in judgment and refuses to comply, and violates the rabbinic court’s decree, Jewish communities are written to [in the following manner]: So and so was found liable in judgment and refused to comply, and we have excommunicated him, so he not pray in ten or dine in three, and you may not circumcise his son or bury his dead, and you should remove his sons from school, and not teach them Torah, etc. until he accepts judgment.*”*

This responsum of Rav Paltoi Gaon is mentioned (according to Rabbi Ovadiah Yosef, Yabi’a Omer Responsa, Even Ha-Ezer, 25) in the old Geonim responsa (Mantoba press, 41), in Hageonim Shaarei Tzedek responsa (4.14, 75a), in Hageonim responsa (Musafiya, 10), in Orchot Haim, 2 (Hilchot Shevu’ot, 17, 504).

Notwithstanding the capacity to impose the measures on a recalcitrant husband, Rabbi Ovadiah Yosef ruled in Yabi’a Omer Responsa, 8, Even Ha-Ezer, 25 that one should not remove the sons of the refuser from school in our day or avoid burying his sons or circumcising them, for two main reasons: a) These measures are perceived as strange acts in our times; b) as in Rivash’s response, 173 adopting these measures is only possible in cases where decrees of the Geonim were not complied with, since owing to their status, breaching their words was akin to breaching the words of the Sanhedrin while refrain from complying with contemporary rabbinic courts is not attributed the same degree of severity, and therefor does not accommodate these drastic measures. In contrast, non-compliance with rulings of contemporary rabbinic courts is not considered similarly severe and does not allow taking such dramatic steps "our banning is as their rebuke.” Therefore, in contemporary times, we can only impose the RTDR in the manners mentioned in Rabeinu Tam and Maharik responsa and which include matters of prayer such as not allowing him to participate in a minyan, recite mourner’s prayer (*kadish),* etc.

we can say that the words of Rabbi Ovadiah Yosef reflect the general mindset in Rabbinic courts and indeed in recent decades, the option delaying circumcision or burial, or removing his children from school in these cases is rarely discussed and contrary to the frequent use made of 1995 sanctions in appropriate cases, and contrary to the increasing use of shaming against get refusers, rabbinic courts avoid the measures of delaying circumcision and burial and removing the refuser’s children from school, in cases where the get is obligatory). And this, as I understood from senior rabbinic judges in our day, primarily because they are not considered effective pressure tactics against these recalcitrant husbands who by the time they can be obligated to give a get, are often separated from their families and do not care whether their sons are circumcised, their relatives buried, or their children in school. Therefore, employing such means will not be effective at all and will not achieve the target. These steps are rarely taken and when these measures are imposed it is usually in cases where a get can be forced, and not in cases of obligatory gets. For example. sixteen years ago, the rabbinic court issued an arrest warrant against a husband to force a get. Section 2 there stated: “The rabbinic court orders that after his ‘hundred and twenty’ [i.e., upon death] he will not be given a burial lot within the graveyard or outside it. The rabbinic court is taking such a serious measure based on the words of Rabbeinu Tam in answer 24 of Sefer Hayashar allowing the taking of this measure **even where there is no coercion** and all the more so where there is coercion. The rabbinic court once again calls upon the husband to consider his path.” Also written there, already a year earlier (4th Heshvan, 5765) it was ruled that the husband must give a get and that he can even be coerced to do so.[[82]](#footnote-10)

In another case, published in 2019, Chief Rabbi David Lau ruled that the burial of a get refuser’s mother can be delayed until he gives a get to his wife. The husband apparently gave a commitment to give the get which led to this delay being lifted. Some reports tell of the husband providing a financial guarantee committing him to give a get after his mother is buried, and according to others no guarantee was given, only a commitment to give a get. Either way, after the burial, the husband who has already returned back to the United States where he lives, said that the get is deposited with an American rabbinic court, however ultimately it appears he did not deposit the get.

The third case I will mention occurred recently (3/12/2020). In Jerusalem DRC 1/1068491, a chained woman named Esti Sompo (short for Sompanlinski) appealed to the Jerusalem regional Rabbinic Beit Din and the hevra Kadisha asking that her husband’s famous grandfather, Rabbi Aharon Hadash, among the senior Lithuanian Rabbis who served over fifty years as the spiritual supervisor of Mir Yeshiva, have his burial delayed. This appeal was aimed at increasing the pressure on her recalcitrant husband (who was the oldest grandson of Rabbi Hadash) to give her a get and end her suffering. In requesting this injunction, she noted Rabbi Lau’s ruling when sitting as President of the Chief Rabbinic Court a year ago, noted above, who delayed the burial of the American refuser who chained his wife for 10 years. According to various sources[[83]](#footnote-11) and according to interviews she gave, the injunction request was preceded by a rabbinic court ruling ordering the shaming of a get refuser. This ruling did not lead to the get being granted, and the woman’s request to delay the burial was rejected. We can assume that this case was more complex and it was harder to accede to the request, as aside from the assessment that there was a low likelihood that burial delays would be an effective means to pressure the husband to give a get, as it was not clear if the refuser who was residing in Gibraltar in an unknown location and living a very different lifestyle than his grandfather would care about his grandfather’s burial. He certainly did not care about what would happen to his name, his wife, and his children. One might surmise there was an additional problem here. The person whose burial was to be delayed was a more distant relation than even the level mentioned in the Binyamin Zeev responsa, as this was the grandfather of the refuser and not his father, wife, or children.

It’s important to note that the delaying circumcision of the refuser’s son, postponing burial, or removing his children from school are not measures that those who fight for chained women’s rights are comfortable with and who are genuinely interested that as many legal tools as possible be used. Not only are the prohibitions of not delaying burial and circumcision central commandments, but also since these methods raise two primary problems: 1) Avoiding burial or circumcision, and removing children from school are contrary to Torah commandments (circumcision; the prohibition on delaying burial, the commandment of teaching Torah and educating children (Deuteronomy 11:19; Mishna Kiddushin chap. 1, Mishna 7: “The commandments of the father towards the son”); 2) Avoiding burying his relatives, circumcising his children, and removing them from school harms the innocent – victims of the refuser – through no fault of their own. The first question has been given a number of answers in jurisprudence. The first I will note is by Rabbi Ovadiah Yosef in Yabia Omer Responsa, Even Ha-Ezer, 25. As we learn from the Yevamot 90b, the Sages have the authority to nullify a Torah commandment, to preserve Torah fulfillment in its entirety. Delaying the commandments of circumcision and burial can prevent the chaining of a woman, “To safeguard the matter, the rabbinic court has the authority to uproot a positive commandment as is said in Yevamot 90b that the rabbinic court lashes and punishes not based on the Torah but in order to guard the Torah.” Likewise, the Rashba in the response, attributed to the Ramban, 244, was questioned about practically applying the measures of postponing burial, circumcision etc. and responded that to guard the matter they can uproot a law of Torah to protect the Torah, citing the aforementioned source (Yevamot 90b), a rabbinic court can lash and punish to protect the Torah. A second solution to this question can be found in the words of Rabbi Eliyahu Alfandari in Seder Eliyahu Rabbah Vezuta, 13 (1995) which explains that circumcision and burial can be avoided since the RTDR are directed towards the community, and it can determine its own conduct towards the recalcitrant husband and does not require the permission of the sages to withhold advantages from him: “We ourselves fence our paths with stone not to confer any benefit to that man. And we have no need for the sages to permit us to do so, but we may do it ourselves. For though we are commanded by the Torah to not deny favor to our friends, as it says ‘Love your fellow as yourself’ and ‘You shall not stand on your fellow’s blood,’ this is when he is your fellow in commandments, but one who did not do good among his people, to chain a daughter of Israel, the commandment protects us to push him away so that he returns from his bad ways and to save the poor woman he is oppressing.” Avoiding circumcision and burial and the like can save a woman from being chained, the husband from the sin of refusal, and also society from conduct unbecoming, as when society denies rights from the refuser, it avoids observing the commandment of “Love your fellow” and “You shall not ignore [your fellow]” towards the refuser, but it manages to prevent chaining.

A third answer to this question is that burial and circumcision are not cancelled, only delayed until the husband gives the get, as the Maharshal states in Yam Shel Shlomo on Bava Kama, ch. 10, p. 112b, section 13: “And I saw strange things in this answer of Rabbi Paltoi Gaon who wrote that these commandments can be avoided as He is forced in these, until he repents, and then circumcision and burial occurs”. The same emerges from the Maharshal, Yam Shel Shlomo, Bava Kama chapter 10, 112b, sec. 13 mentioned below.

The second central problem created by avoiding circumcising the son of a recalcitrant husband, delaying the burial of his relatives, or removing his sons from school as noted, is that innocent people are harmed through no fault of their own. And indeed, it is for this reason that there were jurists who argued that this instruction should not be followed. The aforementioned Maharshal states this explicitly: “And I also saw strange things in this answer of Rabbi Paltoi Gaon, who wrote: 'The child is removed from the school,' God forbid, where the whole world is not maintained but by children, we should cancel this?! And it is one thing to speak of circumcision where the main commandment is on the father, and it is his honor, as well as to bury his dead, he is tasked with not delaying the burial, and it is his honor, he is forced in these until he repents, and then circumcision and burial happens, but the Torah study of babes … it is absolutely simple that there is no reason for this: “Even what he wrote to remove his wife from the synagogue is not clear. If he sinned, what sin did she commit? ... Not to shame a daughter of Israel! ... It is simple that we do not do this to her, and to remove his sons from the beit midrash, or from the yeshivah, God forbid.” The Maharshal adds that this was his policy in practice and that he did not remove the sons of one who was excommunicated from the yeshiva despite the instructions of “an elder in his generation of stature” and he did not obey it: “And so once a case came to me in my youth that one sage who was an elder in his generation of stature, that ordered me to remove the son of the excommunicate from the yeshiva and I took no heed at all from him.”

So, various jurists did not obey these rulings due to harm to other people through no fault of their own. The question remains in force regarding those who believe that we should prevent his son’s circumcision, remove him from school, and delay the burial of his relatives – how will they explain the harm to his innocent relatives?! One of the senior rabbinic judges I consulted with offered a wonderful explanation: The RTDR are imposed on society, and society has the power to make many decisions regarding its own affairs – some of them even regarding the life and death of a person. For instance, society can decide whether to depart for a war of authority or a war of mitzvah, even though some people will die in battle and not return home. And if this is so regarding life and death, then this is certainly the case when it comes to the chaining of a woman. Rabbinic courts sometimes operate at the behest of all of Israel (=as the voice of the community) who are tasked from the outset by one duty or another like those laid out in the Hatam Sofer responsa, Hoshen Mishpat, 177, 3.

בניגוד למדינת ישראל, שבה לא נמצא כמעט פסקי דין לחיוב גט שבהם מצויה אזהרה לסרבן שאם לא ייתן גט לאשתו הוא או קרביו לא ייקברו בקבר ישראל, נמצא פסקי דין כאלה בדרום אפריקה, אנגליה, ובמקומות נוספים. הרב קורצאג, אב"ד בדימוס מדרום אפריקה, שלזכותו ניתן לזקוף תיקונים חשובים לטובת עגונות ומסורבות גט שנעשו בחוק הגירושין האזרחי בדרום אפריקה, טען בשיחה עמי, שסנקציה זו מביאה במקרים לא מעטים למתן הגט, ואף האיום שתוטל סנקציה זו מביא פעמים רבות לתוצאה זו, שכן סרבני גט ברחבי העולם מייחסים חשיבות רבה לקבורה בקבר ישראל.

בכנס הדיינים סיפר הרב קורצטאג שבית דינו הטיל חרם על סרבן גט שחתם על הסכמה על בוררות בפני בית הדין בעניינים הכספיים שהיו במחלוקת ביניהם,. אבל מאוחר יותר סירב לעמוד בהתחייבויות אלה.

הרב קורצטאג ובית דינו אמרו לו שאם לא יעמוד בהסכמים אלה ולא ינהג על-פי מה שפסק בית הדין יהיה עליו חרם שלא ולא ייקבר בבית קברות יהודי.

שם המשפחה שלו היה: "טיילור"(=שמשמעותו 'חייט') ו"עשינו לו חרם מחויט לפי המידות שלו", מספר הרב קורצטאג. "שלחנו את המכתב ביום חמישי, ואמרנו לו שאם לא ייתן גט , החרם יפורסם. ביום ראשון הגיע עורך הדין שלהם עם צו שאני מוזמן לבית המשפט לעצור את החרם....השופט היה גוי. אנחנו טענו שכמו שכשאדם חבר באגודה או מועדון יש כללים שאם הוא רוצה להיות חבר במועדון הוא חייב לעמוד בהם, כך גם אם הוא רוצה להיות חבר ב'מועדון היהודי', הוא חייב לשמור על הכללים. השופט קיבל את עמדתנו, אמר שיש לנו רשות להחרים ופסק גם הוצאות משפט נגדו....נמצא שבית המשפט נתן לנו רשות להטיל חרם על מישהו. מכל העולם ביקשו שנשלח להם את הפסיקה".[[84]](#footnote-12) הקביעה לפיה זכותה של קהילה להחליט להוקיע ולבייש את אחד מן העמיתים בה במקרה שהוא עובר על הכללים המנחים את הליכותיה או ערכיה, זכתה, א"כ, להכרה גם בערכאות של גויים והיא נזכרת במאמרים משפטיים רבים.[[85]](#footnote-13)

1. **Notes**

   This article is based on a lecture delivered by the author, “Shaming in Rabbinical Court Rulings: A Modern Commentary on Medieval Rabbinic Sanctions in Divorce Cases,” at the British Association for Jewish Studies (BAJS) Conference at Oxford University, “What is Commentary?” July 21-24, 2019. [↑](#endnote-ref-1)
2. Petah Tikvah DRC 907872/1. [↑](#endnote-ref-2)
3. GRC 975433/1. [↑](#endnote-ref-3)
4. Haifa DRC 907872/1.

   [↑](#endnote-ref-4)
5. GRC 975433/1. [↑](#endnote-ref-5)
6. Zilberg, *Personal Status in Israel,* 102-103; Schereschewsky, *Family Law*, 280-281. [↑](#endnote-ref-6)
7. Deuteronomy 24:1.

   [↑](#endnote-ref-7)
8. Maimonides, *Commentary on the Mishna*, Gittin, chapter 5, mishna 2.

   [↑](#endnote-ref-8)
9. Gittin 88b; Mishne Torah, Divorce Laws, 5:20; Tur Shulhan Aruch Even ha’Ezer,134.5-7; Tur Shulhan Aruch Even ha’Ezer, 154.21. A *get* can be classified as coerced if physical or economic force is imposed on the recalcitrant husband which are not aligned with directives of Jewish law. See Kaplan and Perry, “Tort Liability,” 773-869; Rabbi Uriel Lavi, “Arranging a *Get,*” 160-162; Dykowski, “Financial Enforcement,”173-179; Rabbi Yosef Goldberg, “Rabbeinu Tam”, 265 onwards. [↑](#endnote-ref-9)
10. The central list of claims for compelling a husband to grant a divorce is found in Mishna Ketubot, chap. 7, mishna 10, which is mentioned in Ketubot 77a; Tur Shulhan Aruch, Even ha’Ezer, 154.1-20. [↑](#endnote-ref-10)
11. PT Gittin chap. 9, halacha 9; Rosh in Ketubot chap. 7, siman 29; the Rosh Responsa, 42.1; the Tashbez Responsa, 2, 8; The Maharit Responsa , 1, 113: Rabbi Alexandri Hacohen (Maharzach), Sefer Hagudah, Yevamot 65b; Rabbi Eliezer Waldenberg, Tzitz Eliezer Responsa, 6, 42, Orhot Hamishpatim, 3; Rabbi Waldenberg in *Piskei Din Rabaniyim*, 8, 216, conclusion 4; Warhaftig, “A Collection of Rulings,” 79-81; Elizur, “Rosh’s Approach,” 125-153; Shochetman, “Infidelity,” 256-302; Halprin Kaddari demonstrates, “Infidelity,” 298-300; 305. [↑](#endnote-ref-11)
12. The approach of Maimonides (Mishne Torah, Hilchot Ishut, 14.8) according to which the claim “he is repulsive to me” is sufficient to coerce a *get* was not accepted as halacha, since the majority of *Rishonim*, and at their head Rabbeinu Tam dispute this view and compel divorce only for “concrete proven grounds.”( *amatla mevoreret)* This is the prevailing procedure today in most rabbinic courts. See RC 965171/1. [↑](#endnote-ref-12)
13. Rabeinu Yerucham, Meisharim, native 23, part 8. [↑](#endnote-ref-13)
14. Rabbi Haim Falaji, Hayim Veshalom Responsa, 2, 112. [↑](#endnote-ref-14)
15. See GRC 382/54 mentioned in Haifa DRC 1073218/1,: “Absent any chance for reconciliation and domestic harmony, the rabbinic court has no choice but to impose divorce on both parties. *The issue is not one-sided blame, but the factual determination that the marriage reached its end and there is no purpose to deal with artificially reviving dead corpses it"*. Also see the appeal of GRC 810538/2 (published in Nevo, 28/4/2011; Weistreich, *Right to Divorce,* 11-95, for an in-depth study of the “dead marriage” claim including its roots, developments and revival in the modern period as a claim for obligating a *get* in rabbinic rulings; Hacohen “Rescuing the Oppressed,” 35-41; 68-71; Zilberger and Redziner “Revival,” 134-135; Ibid. 115 note 5, who cite many examples demonstrating that Rabbeinu Yeruham’s approach is increasingly referenced in divorce discussions in Rabbinic courts and mark an important and dominant claim; Ibid. 117, note 17: In several rabbinic rulings it is even designated as a “custom of the rabbinic court.” [↑](#endnote-ref-15)
16. . [↑](#endnote-ref-16)
17. On converting flogging to prison sentences, see Hacohen, “Rescuing the Oppressed,”43, on the words of Dykowski in GRC 8455-64-18455. [↑](#endnote-ref-17)
18. see Rabbi Shaul Yisraeli, “Coercion and Will,” 32-38; Warhaftig, “Coercing a *Get*,” 172-175; See Halperin Kaddari, “Infidelity”, 298-300. [↑](#endnote-ref-18)
19. There are rabbinic courts that enforce Rabbeinu Tam’s Distancing Rules [RTDR] even absent a ruling “it is obligatory to give a get” (*chiyuv get*) but only determining it is “proper” that the husband divorce her (*raauy sheyegaresh*) or a “*mitzva”* for him to divorce. This option – to impose the RTDR even absent a ruling obligating a *get* is also mentioned in Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, clause 1b. . According to the Gra (Even Ha-Ezer, 154.67) the ability to impose the *harhakot* even where there is no legal requirement to divorce is grounded in the factor that the husband breached rabbinic regulation. see Rabbi Hagai Isirer, “Obligatory *Get*,” 117-118; Rabbi Yitzhak Meir Yaabetz, “Conducting Shaming,” 310. [↑](#endnote-ref-19)
20. Rabeinu Tam, *Sefer Hayashar*, *Helek Teshuvot*, 24, Vienna, first edition, 1811. [↑](#endnote-ref-20)
21. On this issue see Rabbi Hagai Isirer (above note 19), 117. [↑](#endnote-ref-21)
22. Rabeinu Tam, above n. 20; Maharik Responsa, 102, 135; Mahara Biton, Lehem Rav responsa, 31*;* Rema, Even Ha-Ezer, 154.21; the Gra, ibid. 67; Rabbi Ovadiah Yosef, Yabia Omer Responsa, 8, Even Ha-Ezer, 25, which notes many jurists who applied the RTDR from the *Rishonim* to the last *Acharonim* in modern jurisprudence [↑](#endnote-ref-22)
23. See Rabbi Binyamin Zeev, Binyamin Zeev responsa, 88; Rema in his comments on the Shulchan Aruch, Even Ha-Ezer, 154.21; Rabbi Ovadiah Yosef, Yabi’a Omer Responsa, 8, Even Ha-Ezer, 25; **Appendix** [↑](#endnote-ref-23)
24. Rabbi Ovadiah Yosef, Yabia Omer Responsa, 7, Even Ha-Ezer, 23, Yabia Omer ibid. 8, Even Ha-Ezer, 25; Appeal to Great Rabbincal Court 975433/1 . [↑](#endnote-ref-24)
25. ראו לעיל ה"ש [↑](#endnote-ref-25)
26. בהתאם לסעיף 1 בחוק שיפוט בתי דין רבניים (נישואין וגירושין) תשי"ג 1953, שלפיו: "ענייני נישואין וגירושין של יהודים בישראל אזרחי המדינה או תושביה יהיו בשיפוטם הייחודי של בתי דין רבניים". [↑](#footnote-ref-1)
27. Rabbinical Courts Law (Execution of Divorce Judgments), 1995. [↑](#endnote-ref-26)
28. רבינו תם, ספר הישר, תשובות סימן כד [↑](#footnote-ref-2)
29. עיינו בעניין זה בתזכיר חוק בתי דין רבניים (קיום פסקי דין של גירושין) (תיקון מס 9) התשפב- 2021: "בתי הדין רואים בדברי רבינו תם מקור הלכתי חשוב לרשימה לא סגורה ("ועוד יוסיפו חומר ברצונם") של הוראות שיכול בית הדין להודיע לציבור".

    [↑](#footnote-ref-3)
30. Great Rabbinical Court 975433/1. [↑](#endnote-ref-27)
31. Rabbinical Courts Law (Execution of Divorce Judgments), 1995, (Amendment no. 8), 2017. [↑](#endnote-ref-28)
32. תיק (גדול) 8455 ( נבו 17.9.2008)

    <https://www.nevo.co.il/psika_html/rabani/rabani-8455-64-1.htm> [↑](#footnote-ref-4)
33. Tel Aviv-Yafo DRC 927170/6 (2016).

    The question of whether a sanction can be imposed on a third party by force of the contempt Ordinance was already decided by the Supreme Court in 1980 in the “Taxi Case” (CA 371/78 Hadar Taxis Ltd. v. Biton, ruling 232(4)34 (24/6/1980). Imposing sanctions against third parties is permitted in Jewish Law, as demonstrated by Nahon, “Contempt of Court,”<http://www.daat.ac.il/mishpat-ivri/skirot/skira.asp?id=285> [↑](#endnote-ref-29)
34. General Attorney Guideline No. 2.24 – Policy of prosecution and punishment for non-compliance with a judicial order of the Rabbinical Court for granting or receiving a divorce, Sections 9-13.

    [http://www.justice.gov.il/Units/StateAttorney/Guidelines/02/24.pdf](http://www.justice.gov.il/Units/StateAttorney/Guidelines/02/24.pdf%0d) [↑](#endnote-ref-30)
35. General Attorney Guidline No. 2.24 – Policy of prosecution and punishment for non-compliance with a judicial order of the Rabbinical Court for granting or receiving a divorce, Sections 14-17. [http://www.justice.gov.il/Units/StateAttorney/Guidelines/02/24.pdf](http://www.justice.gov.il/Units/StateAttorney/Guidelines/02/24.pdf%0d) [↑](#endnote-ref-31)
36. Rabbinical Courts (Marriage and Divorce) Judgment Law (Amendment No. 4 and Temporary

    Order),2018. [↑](#endnote-ref-32)
37. Rabbinical Courts (Marriage and Divorce) Judgment Bill (Amendment No. 4) (International Jurisdiction in Divorce Claim), 2018. [↑](#endnote-ref-33)
38. The bill Rabbinical Courts (Execution of Divorce Judgments) (Amendment – Restriction of the Use of Credit Cards for Refusal to Divorce), 2018 (/5068/20P). [↑](#endnote-ref-34)
39. תזכיר חוק בתי דין רבניים (קיום פסקי דין של גירושין) (תיקון מס' 9), התשפ"ב-2021;

    Shmueli, “Sticks,”1-27. [↑](#footnote-ref-5)
40. Rabbi Yuval Cherlo, "Halachik Compass,” 4-5. [↑](#endnote-ref-35)
41. Yifrach, "Cursed Villians,” 8-9. [↑](#endnote-ref-36)
42. Zoldan, “Public Shaming,” 295. [↑](#endnote-ref-37)
43. Zilberger and Radziner, “Dead Marriage Claim,” 68-113, n. 2 which references Unger and Almagor-Lotan, *Get Refusal in Israel*, 4; 7; 11; Halperin Kaddari, Goldstein and Horowitz, “Women and Family,” 77-78. [↑](#endnote-ref-38)
44. Rabeinu Tam, above n. 20. [↑](#endnote-ref-39)
45. The position expressed here, does not reflect the dominant halachic view or the current policy among rabbinic courts in practice. They hold fast to the view that physical coercion is more severe than RTDR which allows them to be employed even when Jewish Law does not allow the coercion of a get. *However, I find support for my position in a minority view expressed by four jurists. Three of these rabbinic figures maintain the reason Rabbeinu Tam applied the distancing rules even when circumstances do not allow forcing a get but only obligating it is since the RTDR were deemed less harsh than coercion. They determine RTDR should not be implemented in later generations as the situation was now reversed and the RTDR deemed more severe than coercion). This position was initially expressed by Mahari Ben Lev responsa, 2, 79; 3, 102: “we do not impose harhakot as Rabbeinu Tam and the Smak and Mahari Kolon wrote…it may be that the reason is because in these generations distancing is deemed more harsh than excommunication … And wherever we do not force with lashes and excommunication – we also do not impose distancing measures.”*

    Rabbi Shabtai Meir Hacohen (Shach) in Gvurat Anashim, 72 mentions the view of Mahari Ben Lev and there ruled: “it is good to be stringent”(= and not impose the RTDR) ; The Pitchei Teshuvah, Even Ha-Ezer, 154.30, also mentions the Shach (ibid.) quoting the Maharibal: “Presently the distancing measures are considered as excommunication, we should not impose any distancing measures against him, only we say to him that we can call him a criminal. And he wrote that it is good to be stringent.”

    The fourth figure, *, Rabbi Eliyah Alfandari, Seder Eliyahu Rabbah Uzuta,* 13, claims that even in Rabbeinu Tam’s time, the RTDR were deemed more severe than lashes and excommunication*:* “*it is more coercive to force a man with distancing measures than excommunication,* *for who could tolerate that people not engage in transactions with them and not confer him any benefits, and there is no doubt that one who is distanced in this way, will immediately be coerced and will do what is asked of him against his will, to be spared the suffering produced by the harhakah* , *as people always suffered from being isolated more than being whipped or banned*.”and nevertheless Rabbeinu Tam enacted them because they are not coercion for two other reasons.” [↑](#endnote-ref-40)
46. See Appeal to GRC 975433;

    תזכיר חוק בתי דין רבניים (קיום פסקי דין של גירושין) (תיקון מס' 9), התשפ"ב-2021 [↑](#endnote-ref-41)
47. Appeal to GRC 975433/1. The Great Rabbinical Court ruled in the matter of Oded Guez that after the shaming achieves its purpose and the *get* is given, the shaming measures will be ended “and he will be healed” (“*veshav verafa lo*”). This concept according to which after he gives a *get,* things will return to their prior state and all the restrictions will be lifted, is based on the Maharik’s responsa, 102, in reference to one who refuses to release his deceased brother’s wife from levirate marriage (*chalaza*). According to the Maharik, if Rabeinu Tam imposed RTDR for the divorce claim “he is repulsive to me,” the RTDR certainly can apply to a levirate bond which is a lesser prohibition; Rabbi Ovadiah Yosef, Yabia Omer Responsa, Even Ha-Ezer, 8, 25. [↑](#endnote-ref-42)
48. Cf. Bava Metzia 58b; Sefer Hassidim, Jerusalem (1957), Margaliyot ed., 54; Rabeinu Yonah, Shaarei Teshuvah, 3. 139; Yehudah Zoldan, “Public Shaming,” 295-297, regarding the severity of shaming a person in Jewish sources. [↑](#endnote-ref-43)
49. Rat, “Until He Says” in *Makor Rishon* 25 (November 24, 2017. [↑](#endnote-ref-44)
50. See the conference summary on shaming organized by Professor Zeidman on July 2-3, 2017 at the IDC in Herzliyah. <https://www.idc.ac.il/he/whatsup/pages/shyming-conference.aspx> [↑](#endnote-ref-45)
51. Ifergen, “Gaz: Even if I am Condemned to 5000 Lashes I will Not Give a *Get*.” *Mako Magazine* (September 22, 2016). [↑](#endnote-ref-46)
52. Haifa DRC 907872/1 (2018). [↑](#endnote-ref-47)
53. Haifa DRC 1078402/11(2017). [↑](#endnote-ref-48)
54. HCJ 5185/13 Anonymous v. Chief Rabbinic Court of Jerusalem; HCJ 1031/16 Oded Guez v. Great Rabbinical Court in Jerusalem (2016). [↑](#endnote-ref-49)
55. Tragically, and despite the efforts of a private rabbinical court, the case remains open. [↑](#endnote-ref-50)
56. Haifa DRC 1078402/1. Also see Sheleg, “There is No Guarantor for Divorce,” 14; Rabbi David Stav, “Not a Solution,” 795 <https://www.inn.co.il/news/373932>: Shaming will not bring salvation for the problem of *get* refusal. Get coercion needs to be ruled more often, along with encouraging the use of premarital agreements of the Zohar organization. [↑](#endnote-ref-51)
57. Haifa DRC 1078402/1. The *get* was given on Sunday (3/6/18), after Supreme Court President Hayut signed an arrest warrant issued by the rabbinic court on the previous Thursday (31/5/2018) against Atias on the authority of the ruling “a *get* is coerced”. The Supreme Court President wrote: “I have concluded that there is no room for intervening in a decision of the rabbinic court which exercised its authority. The defendant refrained from complying with the rabbinic court ruling for a long period, which instructed him to give a *get*. ” [↑](#endnote-ref-52)
58. עיינו למשל, הרב משה קורצטאג, (אב"ד בדימוס בבית הדין ביוהנסבורג והמדינה, בדרום אפריקה, ואחד מן הפעילים הבולטים בוועדות השונות ששמות להן למטרה לסייע למסורבות גט ועגונות באמצעות שינויים בחקיקה האזרחית בדרום אפריקה ובמדינות נוספות ברחבי העולם), "התמודדות בתי הדין בחו"ל", עמ' 6-1 שהעיד על כך שהשיימינג שנעשה לסרבני גט בדרום אפריקה, בארה"ב, באנגליה באמצעות פרסום פס"ד בעיתונות היהודית, או באמצעות הפגנות, **משיג את מטרתו**, והבעל נותן את הגט ובמקרים שבהם הסרבן בורח למדינה אחרת, יוצרים קשר עם בית הדין במדינה שבה הוא נמצא ומפעילים שם חרם שהוא לא יוכל להשתתף בקהילה כחבר פעיל בקהילה, וזה עוזר. בלא מעט פעמים אפילו האיום בשיימינג, עוזר, והבעל נותן את הגט עוד לפני שהחרם ננקט בפועל; הרב מיכאל זילברמן, דיין וסגן מנהל בית דין באמריקה, "הרחקות דרבינו תם והפגנות נגד מסרבי גט", עמ' 131-136, שמעיד על הצלחה "במידה מסוימת" של השיימינג. [↑](#footnote-ref-6)
59. Ketubot 49b; Mishne Torah, Hilchot Ishut, 12.14; Shulchan Aruch, Even Ha-Ezer, 71.1. [↑](#endnote-ref-53)
60. Ketubot 73b; Mishne Torah, Hilchot Ishuht, 14.9; Shulchan Aruch, Even Ha-Ezer, 77.2. [↑](#endnote-ref-54)
61. Libson, “Excommunication Claims,” 292-342. [↑](#endnote-ref-55)
62. Grossman, “Delaying Prayer,” 211-219. [↑](#endnote-ref-56)
63. Yadin, “Regulatory Contract,” 27-68, especially 42; Yadin, “Expressive Space,” 1, 31-48. Also see Yadin, “Regulatory Shaming,” 407; 29-31;40-41; Yadin, “Shaming Big Pharma,” 131; Yadin, “E-Regulations,” 101-152. [↑](#endnote-ref-57)
64. [www.sviva.gov.il/subjectsEnv/BusinessLicensingIndustry/EnvironmentalRatingPublicCompanies/Pages/Enviromental-Impact-Index2016-GIS.aspx](http://www.sviva.gov.il/subjectsEnv/BusinessLicensingIndustry/EnvironmentalRatingPublicCompanies/Pages/Enviromental-Impact-Index2016-GIS.aspx) [↑](#endnote-ref-58)
65. Flatto-Shinar, “Regulatory Shaming,” 44. [↑](#endnote-ref-59)
66. This orientation stands in opposition with the orientation that was customary about 25 years ago in the policy of rabbinic courts which was deterred from implementing even the RTDR (prior to shaming). See Beeri, “Distancing Rules,” 18-19, 93-95.

    [↑](#endnote-ref-60)
67. [↑](#endnote-ref-61)
68. This seems to be the plain meaning of Rabeinu Tam, above n. 20, which explains that one can enact the RTDR in cases where the husband was obligated to give a get but did not, for “[in the *harhakot*] there is no coercion on him, for a few reasons**:** 1. In spite of the RTDR he still has a choice; 2. The RTDR are not a physical punishment of lashes; 3. They are not imposed on the husband but on the community. These explanations demonstrate that the pressure the RTDR impose on the recalcitrant husband are lighter, and therefore are not considered coercion of the type to transform the *get* into a coerced *get* and invalidate it, rather are viewed only as a pressure tactic to cause him to give a *get*. This concept also emerges from the words of the Mordechai on Gittin, Hagahot Mordechai, 456; 469; Maharik responsa, 135; and ibid., 102; Binyamin Zeev responsa, 88; The Shulchan Aruch and the Rema, Even Ha-Ezer, 154.2. *and*  *is expressed most strongly in the Mahari Ben Lev responsa, 2, 79; 3, 102;* Rabbi Shabtai Meir Hacohen (Shach) in Gvurat Anashim, 72; The Pitchei Teshuvah, Even Ha-Ezer, 154.30. See above n.40. [↑](#endnote-ref-62)
69. Rabbeinu Tam, above n. 20: “There is no coercion on him in this since if he wishes, he can make it so…” [↑](#endnote-ref-63)
70. Rabbeinu Tam, ibid.: *“And there is no coercion on him in this … And he will not be stricken on his body from this banning*”; Maharik, Responsa, 102, 135: *“*…*and he will not be lashed for this excommunication* rather we will separate ourselves from him”; Benyamin Zeev Responsa, 88: “*It may be learnt from Rabbeinu Tam’s response that if he is not actually forced by imprisonment to give a get, but we refrain from helping him, it does not constitute coercion.”*; Rabbi Eliyahu Alfandari, Seder Eliyahu Rabba U’Zuta, 13: “Rabbeinu Tam prohibited excommunication and permitted distancing, for grounds specified by Rabbeinu Tam himself: *excommunication oppresses the husband’s body, like a smiting rod, while this distancing does not oppress the husband’s body* rather we ourselves avoid conferring benefits upon that man”; Biur HaGra, Ibid, 67: *“and so long as we do not act on his body, it is not considered oppression*.” [↑](#endnote-ref-64)
71. Maharik Responsa, 135 explains that imposing the RTDR on the recalcitrant husband is possible even in cases wherein by law it is not possible to coerce him to divorce, since “If he wishes he will find himself a place.” This is also mentioned in the Beit Yosef, Even Ha-Ezer, 154, in the name of Rabbi Meir Hacohen; Maharshadam responsa, Yoreh De’ah, 132: “There is no compulsion since he can go elsewhere.”; Bi’ur HaGra ibid., 67**:** “And in any event –*he can be saved from RTDR by going to another town***.”;** Rabbi Ovadiah Yosef, Yabia Omer Responsa, 8, Even Ha-Ezer, 25 points to various jurists who viewed the refuser’s freedom of mobility as an indication that he is not being forced to give a get when subject to *RTDR;* Rabbi Yosef Goldberg, “Distancing Rules,” 265-334, considered freedom of movement to be a necessary condition to avoid coercion which is why he thought a sweeping injunction against leaving the country should not be imposed in every case of refusal, as if the refuser is required to travel abroad for work or for the sake of his health, such a denial by virtue of the 1995 sanctions based on the *RTDR* become coercive in these specific circumstances and void the get. [↑](#endnote-ref-65)
72. Rabbeinu Tam, above n. 20 : “Decree a severe oath *on each and every man and woman of Israel that they not be permitted to speak with him* **…**, rather *we will separate ourselves from him*.”; Maharik Responsa, 135: “*That each person shall not be permitted to speak*…”; Knesset Hagedolah, 154; Beit Yosef, Even Ha-Ezer, 154 in the name of Rabbi Meir Hacohen; Rabbi Eliyahu Alfandari, Seder Eliyahu Rabbah Vezuta, 13 brings it as the first of two arguments why *harhakot* are not like excommunication, and are therefore not considered coercion: As opposed to banning which afflicts the body of the husband, with *RTDR*, “*We ourselves fence our paths with stone not to benefit that man*”. [↑](#endnote-ref-66)
73. See Zoldan, “Public Shaming, 294-306

    [↑](#endnote-ref-67)
74. Denying benefits is feature of all the *RTDR*– not to speak with him, not to negotiate with him, conduct business with him, etc.: Mordecai on Gittin, Hagahot Mordechi, 456; 469: “Rabbeinu Tam also said that if a man betrothed a woman and she does not wish it, he should not be forced to divorce but if he is caught for tax or something else, they can tell him we will not help you to leave your captivity until you inasmuch as divorce that this is not coercion, as nothing is done to him, only people avoid helping him.” “Denial of a favor” is emphasized and stressed in particular in the Maharik responsa, 135, which describes the RTDR and adds the prohibition not to “profit him anything” *(leharvico)*; Binyamin Zeev responsa, 88**:** “…*if they stand aside and do not help him, this is not coercion*”*; Knesset Hagedolah, Even Ha-Ezer, 154 in the name of Binyamin Zeev:* …*and not confer any favors upon him”; Rabbi Eliyahu Alfandari, Seder Eliyahu Rabbah Vezuta, 13: “We ourselves fence our paths with stone to not benefit that man*…“ *and one of the reasons the distancing measures are not considered coercion is that “excommunication is considered an active evil, while distancing [harhakah] is denying benefits.”; Rema on Shulchan Aruch, Even Ha-Ezer, Gittin, 154, 21*; *Darchei Moshe Ha-Aroch on Even Ha-Ezer, 154: “And so, Binyamin Zeev wrote … for this is not coercion as he is only not done favors;* Haifa DRC 1078402/1, the Rabbinical Court imposed *harhakot* on Atias and adds: “*the public is not obligated to care for his wellbeing*.”

    [↑](#endnote-ref-68)
75. By contrast see Rabbi Yosef Goldberg (above note 65), 237, 238, and 260, esp. 265 where he states that sometimes denial of benefits is considered coercion, e.g., where denial of a favor to this particular person is pressure he cannot bear, that particular distance rule cannot be applied to him, since denying the benefit constitutes coercion and is forbidden: “*And one going through the RTDR will see that they are rights given to any man coming to live in his city, then every man coming to live in the city has the right to circumcise his sons and bury his dead and speak with the residents and engage in transactions with them, etc. and when they come to take this from him, they are taking rights he possessed, and this would be coercion if he could not flee to another place*. However the Rema did not expressly treat the situation of denying a benefit that was not yet in his hands – whether this is considered coercing a get or not. this issue requires further study.” [↑](#endnote-ref-69)
76. Mahari Ben Lev responsa, 2, 18, explains that according to Rabbeinu Tam “We will separate ourselves from him in every manner until he divorces and *he shall repent and be healed*.” Also, Mahari Ben Lev, 2, 79: “until he divorces, and *he shall repent and be healed”*. One hundred years prior, we find the phrase “*and he shall repent and be healed*” in the Maharik responsa, 102, concerning a man who was banished for his refusal to perform a levirate marriage (and free his sister-in-law). And the condition is that the moment the refusal to perform the leviratate marriage ends, the excommunication ceases, and all matters resume their prior state “*and he shall repent and be healed”*. Likewise, in GRC of Oded Guez: once the shaming achieves its target, and the get is issued, everything will return to its prior state: “we will remove all the limitations from him *and he shall repent and be healed.”* [↑](#endnote-ref-70)
77. Rabbi Yitzhak Meir Yavetz, “Using Shaming,” 312. [↑](#endnote-ref-71)
78. Ibid., 311, note 4.

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79. שו"ת הרשב"א המיוחסות לרמב"ן, תיד; ב"י, אבה"ע, סימן קנד, [↑](#footnote-ref-7)
80. שו"ת הריב"ש, קכז [↑](#footnote-ref-8)
81. הרב משה זילברמן, **"** הרחקות דרבינו תם והפגנות נגד מסרבי גט", עמ' .136. [↑](#footnote-ref-9)
82. see a ruling of the Rabbinic court in Ashkelon DRC 062393533-68-1 (2005) determined by Rabbi Binyamin Beeri, Rabbi Aharon Katz, and Rabbi David Dov Levanon [↑](#footnote-ref-10)
83. such as http://rotter.net/forum/scoops1/669920.shtml [↑](#footnote-ref-11)
84. הרב משה קורצטאג, "התמודדויות בבית הדין", עמ' 4-3;

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