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DOI: 10.15290/mhi.2024.23.01.07

MARRIAGE AND DIVORCE IN JEWISH SOCIETY IN THE EIGHTEENTH AND NINETEENTH CENTURY ISTANBUL

Abstract

The article discusses different aspects of the marriage institution as practiced in the eighteenth and nineteenth century Istanbul by the Jewish community, which first and foremost adhered to the Jewish law but at the same time also followed the Romaniote customs embraced by the local Sephardic community from the sixteenth century and on. The article devotes extensive attention to the old Romaniote custom of betrothal gifts (*sivlonot*) and deals with the monogamy condition, the age of marriage of men and women, which had social and economic meaning. The article discusses the patterns of divorce among the city's Jewish society and deals with some patterns of the family life of Istanbul's Jews. It also includes information on women's status in the Jewish community. The article will mainly deal with the following topics: Betrothal and marriage; Conditional *kiddushin* and *kiddushin* by proxy; Divorce methods and prominent grounds for divorce; Remarriage; Levirate marriage, halitzah, and Agunah status. Throughout the article, the model of the patriarchal family in Istanbul is emphasized. We also learn that the family used to arrange the marriage, and it was rare to marry for love, and choices based on romantic love were usually not considered legitimate. The article also discusses the application of Jewish women to the Muslim courts for divorce. The information for the article was gleaned mainly from the Responsa literature written in the community, *ketubot* (marriage contracts) and Jewish court records.

Key words: Stanbul, Romaniote customs, Sephardic community, Betrothal, Marriage, Kiddushin, Divorce, Remarriage, Levirate marriage, halitzah, Agunah

1. Introduction

The purpose of the article is to discuss different aspects of the marriage institution as practiced in eighteenth and nineteenth century Istanbul by the Jewish community, which first and foremost adhered to the Jewish law but at the same time also followed the Romaniote customs embraced by the local Sephardic community from the sixteenth century and on.¹ The article will devote extensive attention to divorces among the city's Jewish society but it will not address the differences between the local Jews and their Muslim and Christian neighbours regarding marriage and divorce. A large amount of information is provided on the family life of Istanbul's Jews and on women's status in the Jewish community. An issue that is not treated in the article regards the significant changes in the nature of the Jewish family and of Jewish women in Istanbul from the First World War period and particularly from 1917.²

The information for this article was gleaned mainly from the extensive Responsa literature written in the community, which included many questions on the issues of marriage and divorce, as well as the lists of *gittin* (divorce certificates) granted in the community's courts, *ketubot* (marriage contracts) and court records.³

The largest Jewish community in the Ottoman Empire lived in the capital. At the close of the seventeenth century between 25,000–30,000 Jews were living in Istanbul. In the eighteenth and nineteenth centuries the Jewish population was organised by neighbourhood, and most Jews lived in the districts of Balat, Hasköy, Piri Paşa, Galata, Üsküdar, Ortaköy and Kuzguncuk. In the 1790 they numbered about 30,000 and in the nineteenth century around 42,000–55,000. Jewish cemeteries have survived in Hasköy, Kuzguncuk, Ortaköy and Kuruçeşme. In the eighteenth century most of the city's Jews were of Sephardic descent. The Romaniotes (Greek-speaking Jews) numbered several thousand. In the sixteenth century they had constituted the majority

¹ For more information on the Jewish family in Istanbul in the eighteenth and nineteenth centuries see: L. Bornstein-Makovetsky, *The Jewish Family in Istanbul in the 18th and 19th Centuries as an Economic Unit*; Idem, *Divorce and Remarriage in Jewish Society in the Ottoman Empire in the 18th and 19th Centuries*; M. Rozen, *Of Orphans*.

² On the transitions in this period see M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 423–443.

³ The responses below will be marked as follows: the number of the response will be marked as “no.” and the symbol # will designate the section in the response. Many Responsa books are divided into four parts: *Orach haim*; *Yore de'ah*, *Even ha'ezer* and *Hoshen mishpat*.

of the community but from the seventeenth century and on they gradually diminished, a trend that continued in the eighteenth and nineteenth centuries as well as most of them had become assimilated among the Sephardic Jews. There was also a group of *francos* who enjoyed many economic privileges and who were protected by foreign ambassadors.

The nineteenth century saw a strengthening of the Ashkenazi community following the migration of Ashkenazi refugees to Istanbul from Romania and Eastern Europe, particularly in the last quarter of the century.⁴ However, in the eighteenth and nineteenth centuries the local rabbis and the courts maintained the Romaniote custom of betrothal gifts (*sivlonot*) that was practiced from the sixteenth century to the mid-20th century.⁵

Jewish courts of law operated in these neighbourhoods, while the “high court” in the district of Balat was responsible for granting divorce certificates. Although Jews engaged in a variety of professions, most were from the middle and lower class; the wealthy were involved in commerce and banking and a few occupied positions in the Ottoman government and military systems.⁶ Modern currents began to be felt in the Ottoman Empire as early as the eighteenth century and all the more so in the nineteenth, but in most spheres conservative approaches dominated.⁷ In the second half of the nineteenth century modern and secular trends reached the Jewish community as well, but the lifestyle mostly remained conservative. Even the Jews who studied in Christian schools or in those of the Alliance Israélite Universelle, as well as those sent as children

⁴ See M. Rozen, *A History of the Jewish Community in Istanbul*; Idem, *Studies in the History of Istanbul Jewry*; U. Heyd, *The Jewish Communities of Istanbul*; J. Hacker, *Istanbul Jewry 1750–1870*; J. Barnai, H. Gerber, *Jewish Guilds in Constantinople in the Late Eighteenth Century*; J. Barnai, *Lines to the History of the Congregation of Constantinople in the Eighteenth Century*; L. Bornstein-Makovetsky, *The Inheritance Regulations of Constantinople Community*; Idem, *Constantinople Court Record in Matters of Ritual and Ethics*; Idem, *Remnants*; I. Karmi, *The Jewish Community of Istanbul*.

⁵ See M. Rozen, *A History of the Jewish Community in Istanbul*, pp. 99–196; Idem, *Of Orphans*; M. Glazer, *The Dowry as Capital Accumulation*.

⁶ See the studies above and also: Y. Tsur, *Notables and Other Jews in the Ottoman Middle East*; Y.(S) Ecker, *Jews, Pashas and Janissaries*; L. Bornstein-Makovetsky, *Protestant Missionaries*; Idem, *Jews in the Economic Life*.

⁷ Research exists on the modernisation of the Ottoman Empire. See: R. Murphey, *Westernization*; S.A. Somel, S. Kenan, *Introduction*; U. Makdisi, *Ottoman Orientalism*; S.A. Somel, *The Modernization of Public Education*; J.L. Arnaud, *Modernization of the Cities*.

to study in Europe, continued to marry and divorce within the strictures of Jewish law, as in the past.⁸ Most of the marriages in the community were among Sephardic Jews and between them and the Romaniotes. Marriages between Ashkenazi and Sephardic Jews were quite rare, as evident from the lists of divorces.

2. Betrothal and marriage

The customary process of engagement between couples in Istanbul included a betrothal (*shidduch*) ceremony. A betrothal agreement was written, containing details and commitments, including a monogamy condition where the groom undertook to refrain from marrying another woman so long as his wife is alive, and the fines that would be applied to any party who would renege on the betrothal without sufficient reason were noted.⁹ In the betrothal ceremony, the groom and his family gave the bride gifts called *sivlonot*, interpreted in Istanbul by the Sephardic and Romaniote Jews as an act of *kiddushin* (sanctification), and the bride was considered sanctified for him until the wedding ceremony that included a *huppah* (bridal ceremony), handing over the *ketubah*, and reciting the seven blessings. Only after the wedding ceremony, held in the presence of witnesses, when the bride was given the *ketubah* and the marriage blessings were recited, did the couple begin their shared life.

The Sephardic Jews embraced the Romaniote custom as early as the sixteenth century to prevent the development of a situation where they would not be able to marry each other, and they persevered in this for hundreds of years until the mid-twentieth century. The betrothal gifts were usually gold and silver jewelry.¹⁰ The marriage was

⁸ A. Rodrigue, *French Jews, Turkish Jews*; Idem, *The Beginnings of Westernization and Community Reform*; I. Karmi, *The Jewish Community of Istanbul*; R. Kastoryano, *From Millet to Community*; On the Christian schools and those of the Alliance Israelites Universelle see also: L. Bornstein-Makovetsky, *Protestant Missionaries*, pp. 177–238; M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 411–413.

⁹ When a betrothal was cancelled, the side of the groom and the side of the bride compromised regarding the amounts of the fines and then a ruling was given on the validity of the betrothal gifts. For instance: L. Bornstein-Makovetsky, *Remnants*, pp. 100–101.

¹⁰ M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 44–45; A. H. Freiman, *Seder Kiddushin ve-Nisu'in*, pp. 151–163, 239–241; E. Westreich, *Transitions*. The betrothed man was also called an *arus*, including in the synagogue when called up for the Torah. See Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 32.

consummated several months later or sometimes several years later (particularly if the bride was young) and included a *huppah*, blessings, and a *ketubah*.¹¹ Because the betrothed women had been sanctified, in cases when the betrothal was cancelled they had to be granted a divorce.¹² Cancelled betrothals were very common in the city, constituting 15–25 percent of all divorces.¹³ Upon the cancellation of a betrothal, the parties settled their accounts with regard to the expenses and commitments determined in the betrothal agreement.¹⁴ The courts allowed betrothals, including of young girls, with no need for a divorce of the betrothed, when it was clear that betrothal gifts were not a cause for concern.¹⁵ Rozen extensively discusses 17 cases

¹¹ On the amounts noted in the *ketubah* see L. Bornstein-Makovetsky, *The Jewish Family in Istanbul in the 18th and 19th Centuries*.

¹² A.H. Freiman, *Seder Kiddušin*, pp. 80–83, 151–163. An example of the wording of betrothal agreements in Hebrew and Ladino from the eighteenth and nineteenth centuries: Rabbi Y. Elnkave, *Shevitat yom tov*, Even ha’ezer, no. 3; MS Jewish Theological Seminary, 3149, pp. 9a, 29 [32]; L. Bornstein-Makovetsky, *Remnants*, pp. 99–100, nos. 6–7; Rabbi E. Di Toledo, *Mishnat rabbi Eliezer*, vol. 2, Even ha’ezer, nos. 11, 37.

¹³ Of the 392 divorces of residents of Istanbul granted in the community’s courts from 1740–1777, including 26 divorces releasing female slaves, 79 were of betrothed women and 17 of betrothed girls. Of the 473 divorces from the late eighteenth century granted in the court of R. Yaakov Danon, 46 were of betrothed women (including one given by an apostate groom and one “due to a bad reputation”) and 15 of betrothed girls. Of the 92 divorces granted by R. Yitzhak Lahmi in the mid-eighteenth century, 12 were of betrothed women and 2 of betrothed girls. Of the 343 divorces granted at the court of R. Shmuel Haim from 1812–1842, 33 were of betrothed women and 13 of betrothed girls. Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, nos. 3–5; Rabbi S. Haim, *Shemen hamischa*, Gitin laws, no. 142. For the wording of a divorce granted to a betrothed woman in the sixteenth century: R. S. Yaffe, *Tikkun sofrim*, p. 29b. On the betrothal and marriage of young girls see: Rabbi A. Meyuchas, *Benei avraham*, Hoshen mishpat, no. 29; Rabbi M. Presco, *Yadav shel moshe*, Even ha’ezer, nos. 2–3; Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, nos. 4, 6–7, 11, 37; L. Bornstein-Makovetsky, *Remnants*, p. 83 no. 17. For information on the refusal of a betrothed girl see: Rabbi A. ben David, *Tiferet adam*, Even ha’ezer, no. 20. R. Bornstein-Makovetsky, *Remnants*, p. 98 no. 4.

¹⁴ L. Bornstein-Makovetsky, *Remnants*, pp. 100–101; records for Wednesday from 1873–1941, Istanbul, microfilm in the Ben Zvi Institute in Jerusalem no. 2669, p. 42b, and many other sources in the Responsa. The betrothal conditions predicated that the groom is forbidden from betrothing and awarding betrothal gifts to another, and so also the father of the bride who undertook to pay a monetary fine if he were to receive betrothal gifts for her and betroth her to another. See for example: Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 37. The betrothal agreement also included the time of marriage, otherwise it was considered faulty. See for instance MS. 3149, pp. 9a; 29 [32].

¹⁵ Bornstein-Makovetsky, *Remnants*, pp. 99–100, nos. 6–7; Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 6.

of cancelled betrothals of young girls in the city over 30 years in the first half of the nineteenth century based on documentation from the community's courts, and notes that if the girl's relatives or her father had not received for her *kiddushin* until age 10 she did not require a divorce for the betrothed. From age 10 to 12 and a half, when she was considered a mature woman, she would receive a divorce from the groom.¹⁶ For example, the betrothed girl Dona daughter of Abraham cancelled her betrothal to the groom, a resident of Edirne (Adrianople). The envoy brought him the ruling of the local judges on laws of the permitted and the prohibited, written sometime between 1808 and the summer of 1826 in Edirne.¹⁷ Another case was that of a young girl from Istanbul who was betrothed to a boy from Bursa but there was a rumour that she had been sanctified earlier by another person from one of Morea's cities. The ruling in the matter was written by the judges on laws of the permitted and the prohibited sometime from 1825–1831 and confirmed by the town rabbi, R. Eliyahu Anav.¹⁸

In many cases, the party who wanted to cancel the betrothal tried to argue that in fact no betrothal gifts had been given, with the aim of circumventing the need to grant a divorce, pay a fine, or receive *halitzah* from the groom's brother. For example, in the eighteenth century we learn of the betrothal of a young woman whose groom sent her jewelry three months later but there were no witnesses. The groom died and the father of the betrothed woman claimed that the former had never sanctified his daughter or sent any betrothal gifts, rather only the above mentioned with no witnesses. In doing so he wished to prevent the need for a levirate marriage or *halitzah*.¹⁹ There were also cases of deceit aimed at preventing the woman from becoming an *agunah* (i.e., chained, unable to remarry) when the groom disappeared. For example, in the first half of the eighteenth century a divorced woman was sanctified by means of betrothal gifts and the groom travelled to distant parts. The woman's mother, who saw that her daughter had become an *agunah*, deceived a sage and said that her daughter had

¹⁶ M. Rozen, *Of Orphans*, pp. 149–176.

¹⁷ L. Bornstein-Makovetsky, *Remnants*, p. 93; M. Rozen, *Of Orphans*, pp. 154–155.

¹⁸ L. Bornstein-Makovetsky, *Remnants*, p.96; M. Rozen, *Of Orphans*, p. 156.

¹⁹ Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 13. *Halitzah* is a process in which the widow makes a declaration, takes off her brother-in-law's, and spits on the floor. Through this ceremony, the brother and any other brothers are released from the obligation of marrying the woman for the purpose of conceiving a child which would be considered the progeny of the deceased man. The ceremony of *halitzah* renders the widow free to marry whomever she desires, except for a Cohen. Regarding the *halitzah* in Istanbul see also M. Rozen, *Of Orphans*, pp. 158–9.

already received a divorce from the betrothed man, showing him the divorce agreement from the previous husband, after which she became sanctified to a third via betrothal gifts, as was the local custom. On the eve of the wedding ceremony the town rabbis discovered the deceit. They forbade the wedding ceremony and separated the bride and groom. The woman was required to receive a divorce from the two previous grooms as well.²⁰

The age of betrothal and marriage had social and economic meaning. In most cases of betrothal to young girls, the wedding was held after they reached sexual maturity. The marriageable age of men and women seems to have been on the rise in the eighteenth and nineteenth centuries, but in the nineteenth century most women still married at the age of 15–17 and men at about the age of 20. It is very possible that in the early twentieth century the marriageable age of men and women increased, similar to the process in Muslim society in Istanbul.

The fact that the betrothal gifts formed ties of sanctification was evident in an alimony claim submitted by a betrothed woman when her fiancé refused to marry her in the year after the engagement.²¹ Residents of Istanbul who married in another town, where betrothal gifts were not considered problematic, sometimes argued that betrothal gifts should be considered a cause of concern. Sometimes a predicament was formed, for instance when the betrothed man disappeared from town and in the meantime the woman became betrothed to another and after some time the first man appeared and claimed that her second betrothal is invalid. In such a case the rabbis of Istanbul and of other communities would free the betrothed woman with no need for a divorce.²²

In Istanbul the ceremony of receiving the betrothal gifts was conducted in public by a rabbi who declared the granting of the betrothal gifts to the bride.²³ The presence of a rabbi at the ceremony was customary in the community and was even anchored

²⁰ Rabbi Y. Ben David, *Divrei emet*, no. 5.

²¹ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 12.

²² For information on this matter from the eighteenth century: Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, nos. 9, 31.

²³ A.H. Freiman, *Seder Kiddušin*, pp. 239–240. On the presence of a rabbi at the betrothal ceremony see Rabbi A. Ben Avigdor, *Zachor le'avraham*, Even ha'ezer, no. 6; Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 4.

in the consent of its rabbis on 5 December 1725.²⁴ Betrothals of minors were also arranged by a rabbi, who had the betrothed man promise not to betroth and sanctify another woman.²⁵

In 1902 the Istanbul rabbinate posted an injunction in the Jewish press warning betrothed women and their families that accepting an engagement ring could be considered *kiddushin* and in order to prevent *aginut* for concern of *kiddushin* the rabbinate asks betrothed women to avoid accepting gifts directly from their fiancés, but rather to do so only through a relative.²⁶

The parents of the bride and groom were also usually those who initiated the engagement; in the absence of parents – grandparents, brothers, or other relatives arranged for the betrothal of the orphans. In most cases, the spouses agreed to choose their mate in this way.²⁷ Even in the case of second marriages, the family had a major role in choosing the future mates. Men who remarried sometimes initiated the match themselves, usually through matchmakers.²⁸ The matches were determined mainly according to the social and economic status of the families. In the eighteenth and nineteenth century, the trend of marrying cousins continued in the local Jewish society, and there was also a less prevalent phenomenon of uncles who married their nieces.²⁹

In her study, Rozen analyses 17 cases of betrothal cancellations that were debated by the Istanbul court throughout 30 years, including 5 cases of orphan minors, of whom 4 refused to marry the husband that their late father or relatives had chosen for them

²⁴ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 4.

²⁵ Rabbi A. Ben Avigdor, *Zachor le'avraham*, Even ha'ezer, no. 6.

²⁶ El Tiempo, 71, 2 June 1902, p. 782.

²⁷ See M. Rozen, *Of Orphans*, p. 150.

²⁸ On eighteenth century matchmakers who made efforts to find a match for a widower see Rabbi A. Ben Avigdor, *Zachor le'avraham*, Even ha'ezer, no. 2.

²⁹ On matches between cousins in the eighteenth and early nineteenth century see Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 32; see also the above discussion in M. Rozen's study on cancelling the *kiddushin* of minor girls, including those married to cousins. On an orphan who married her uncle in the nineteenth century see Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 13. On an eighteenth century grandfather who wished for his orphan granddaughter, the daughter of his son, to marry his other son in the future, see MS 3149, p. 27 [30]. In the sixteenth century as well, marriages between cousins were common in the city. See M. Rozen, *A History of the Jewish Community in Istanbul*, pp. 124–127.

because they were not in favour of the groom for the lack of affection or perhaps an older member of the family, probably a grandmother or aunt, had entreated them to cancel the betrothal. For example, Bono the daughter of Abraham Halevy was betrothed as a young girl to the young man Mordechai Afnaim the son of Emanuel. An envoy on her behalf appeared before the court for the laws of the permitted and the prohibited and claimed “that mentioned bride is not interested in the said match for a reason known to her”. The court ruled that there is no question of betrothal gifts and that she is entitled to marry at will. The court forbade the father from arranging her match and giving her a bride price “as is the custom of the virgins” because he had made an oath to the groom and undertaken to pay a fine to the groom at the time of the betrothal. The court decided that the minor’s grandfather, the judge David Yerushalmi, would arrange her match and give her an appropriate dowry.³⁰ The match was probably not to the liking of the grandfather and the court had received the impression that the father was not suited to find an adequate match for his daughter.

M. Rozen shows that the father or another relative, such as a grandmother, clearly wanted to marry the minor orphan to a cousin to grant her security. But she demonstrates that sometimes the minor orphan chose to object to this plan and conducted a refusal rite in the court, which gave its approval to cancel the *kiddushin* and freed her to marry whomever she wished. This was the case of Rivka the daughter of the late Menahem Zalman whose father had arranged for her marriage to his nephew Matityahu Zalman, called Bechor ben David. On 25 December 1816 she declared her refusal in Ladino before the court of Balat and brought 2 witnesses that she is younger than 12. The court cancelled her *kiddushin* and she was permitted to marry anyone of her choice.³¹

In another case, the wife of Yisrael Gabai arranged for a match between her nine-year-old daughter Luna from her previous marriage and Yitzhak Gabai, the son of her current husband, and gave him a significant amount as a bride price. She also undertook to provide her daughter with additional amounts until the daughter should marry at the age of 12. Yisrael Gabai died and the widow was to receive her *ketubah*, which was a considerable amount, but she reached a compromise and it seems that her top priority was the desire to promise her daughter a secure marriage both financially and socially.³²

³⁰ L. Bornstein-Makovetsky, *Remnants*, pp. 99–100.

³¹ *Ibidem*, p. 96; M. Rozen, *Of Orphans*, pp. 156–157.

³² See M. Rozen, *Of Orphans*, pp. 159–161.

Another case was that of an orphan girl younger than 12, both of whose parents had died. The father, Avraham Hacoheh, was a wealthy man. Her maternal grandmother Khursi raised her in the home of the mother's sister, who was married to Ezra Motola. The girl's guardians were his brothers Yisrael Motola and Avraham Motola, the son of Ezra. The grandmother and other relatives signed an agreement to match the young orphan with Ezra, Avraham Motola's son, but the second guardian, Yisrael, wanted her to marry his grandson. The family preferred the first match and the court that debated the case between 14 and 24 December 1841 confirmed this decision. The judges did not explain their choice. It seems that the cousin was preferred because he was a blood relation.³³

Then again, we learn of a case where the cousin, Mordechai son of Michael and Clara Matias, who was older than 13 and orphaned by his father, living with his uncle Moshe Matias probably because the latter wanted him to marry his daughter, cancelled his betrothal to his younger cousin Sarah. The court determined that there was no question of betrothal gifts and at Mordechai's request gave a written ruling that he can marry another woman.³⁴ Rozen reached the conclusion that the custom of endogamy was still widely practiced even in the mid-19th century.

It was rare to marry for love and choices based on romantic love were usually not considered legitimate. Even when the marriage was motivated by affection, efforts were made to maintain the appearance of an arranged marriage and the parents or relatives negotiated the betrothal terms. When the parents or other relatives objected to a proposed marriage, the couple normally bowed to the parents' opinion. One exceptional case was the refusal of a seventeen-year-old girl in the first half of the nineteenth century to marry a man who had been arranged for her six years previously, despite her parents pleas. She even threatened to commit suicide if her parents would force her to marry him, and she did not consent even after being beaten twice by her father. R. Eliezer di Toledo, who mentions the affair, writes that the father is in charge of arranging the betrothal of his sons and daughters and they should not have the audacity to seek their own matches.³⁵ In another case that occurred in 1900 the parents of the bride desired a separation, while the groom made efforts to persuade

³³ M. Rozen, *Of Orphans*, p. 166.

³⁴ *Ibidem*, pp. 167–171.

³⁵ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Yore de'ah, no. 37.

his father-in-law to set a wedding date.³⁶ In yet another case the bride cancelled the match, although she had willingly agreed to the *kiddushin*.³⁷ It can be assumed that such cases were common in the city.³⁸

In a not inconsiderable number of cases matches were probably cancelled because one of the sides reneged on their financial obligations. Other fundamental reasons included: a richer or more respectable match offered to one of the sides, a fault revealed with the potential spouse, and others.³⁹ The reasons for calling off the match were not always mentioned. For example, the custom of giving preference to cancelling a betrothal over a future divorce, after the couple had already started a family, is common in the Istanbul community to this day.⁴⁰ It seems that calling off a match was not accompanied by a negative stigma, particularly since it was only the betrothal that was cancelled, before the couple began living together. Clearly, the declared reasons for cancelling the match were not always the true reasons, as it was necessary to try and bring acceptable claims to avoid paying a fine for unjustified breach of the betrothal contract. The reasons brought by women for cancelling betrothals can be distinguished from those brought by men for the same purpose. It can be seen that betrothed women sometimes brought claims that involved the groom's character and abject behaviour.⁴¹

We have information about a betrothed woman aged thirteen and a half who had been betrothed three years previously and asked to call off the betrothal due to a fight with the groom. In this case, the court allowed her to marry another with no need for a divorce.⁴² The dispute between the betrothed couple or between the families was probably lengthy, as she could have married him a year previously, at age 13 and a half. Similar justifications were probably at the bottom of quite a few cases of cancelled

³⁶ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 19.

³⁷ Rabbi S. E. Alfandari, *Saba kadisha* vol. 1, Even he'ezer, no. 27.

³⁸ In 1917, however, the father was no longer able to object to his daughter's choice of a husband. See M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 424–425.

³⁹ Rabbi S. Haim, *Shemen hamishcha*, no. 72; Rabbi Y. Elnekave, *Shevitat yom tov*, Even ha'ezer, no. 3; Rabbi M. Ashkenazi, *Em haderech*, Even ha'ezer, no. 19.

⁴⁰ M. Glazer, *The Dowry*, p. 378.

⁴¹ On obliging a groom to grant a divorce for this reason see: Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 32. We also learn of the cancellation of a minor girl's betrothal because her father had discovered that the groom is dishonest. Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 7.

⁴² Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Hoshen mishpat, no. 6.

matches. A demand to cancel the match was always made when the betrothed converted to another faith.⁴³

In some known cases the groom indeed gave an oath at the time of the betrothal that he would not betroth or marry another, but when his brother died, he demanded to perform a Levirate marriage with his late brother's fiancé.⁴⁴ In one case from the eighteenth century, a betrothed man wanted to cancel the betrothal, claiming that the woman has masculine traits. She was examined by women, who found that she had all the signs of being a woman aside from menstruation and breasts.⁴⁵ In another case a betrothed man cited the dangers of travelling as a reason for cancelling his betrothal, as he was concerned of traveling to the betrothed woman's town in order to marry her there. This was clearly an excuse, as he became betrothed to another even before receiving the bride's answer, he seems to have been ready to come to his town for the wedding.⁴⁶

Notably, in the eighteenth and nineteenth century Muslim Istanbul as well, couples did not marry for love. Indeed, influenced by French literature and later by Turkish

⁴³ In one case, a court for laws of the permitted and the prohibited (*Issur ve-heter*) that primarily addressed ritual questions accepted the marriage refusal of an orphan minor girl under 12, who was betrothed, because her fiancé had converted and was unwilling to divorce her. The refusal was acceptable because she had married through her mother and relatives. It was ruled valid even when one witness testified that she was already considered a mature woman, had reached the age of 12, and was "in her 13th year". Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 4. On the refusal see B. Shereshevsky, *Family Law*, p. 50. For information on refusals in the 18th century: Rabbi M. Amarillio, *Devar moshe*, vol. 2, no. 113; Rabbi E. Navon, *Machane ephraim*, marital laws, no. 1; L. Bornstein-Makovetsky, "Remnants", p. 98. In 1835 the minor married girl Miriam daughter of Gershon Alaluf expressed a refusal after being widowed of Raphael Halfon Castroniano, so that she would not have to wait for her minor brother-in-law to reach maturity and perform a Levirate marriage. Rabbi H. Moda'i, *Meimar Haim*, vol. 2, Even ha'ezer, no. 39 # 41. This case appears in another record as well, with no identifying details for Miriam aside from her given name. M. Rozen, "Of Orphans", pp. 158–159.

⁴⁴ An instance from the 18th century. Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 41.

⁴⁵ In this case the betrothed man was barred from marrying another due to the communal bans of Rabbi Gershom and due to his oath. He was probably an Ashkenazi man. Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 39. We learn of a case that occurred in Bursa, where a bride passed out when she saw the groom due to a "fistula" on his face. The father-in-law demanded that the betrothal be cancelled with no fine for breaching the betrothal contract and the groom claimed that the disability had not existed at the time of the betrothal. The ruling was that no fine was required for breach of contract. Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 8.

⁴⁶ Rabbi Y. Elnkave, *Shevitat yom tov*, Even ha'ezer, no. 3.

literature, the idea of marrying for love began to enter Muslim society, but it has already been shown that the influence of this literature on the marriage institution in Istanbul was extremely marginal. It can be assumed that marrying for love occurred infrequently also in the advanced parts of the Istanbul Jewish society, namely among those who had acquired a western education at Christian schools and schools of Alliance in the nineteenth century, but the large majority of Jewish society, including the westerners, continued to marry according to the conservative outlook. Muslim society, and apparently also Istanbul's Jewish society, saw marriage based on romantic love as a danger to the family and to society. In Muslim society, marrying for love was legitimized after 1908.⁴⁷ It can be assumed that a similar process occurred at that time in Jewish society as well.

3. Conditional *kiddushin* and *kiddushin* by proxy and their cancellation

Sometimes grooms performed a conditional marriage in order to avoid a Levirate marriage in the future or, alternately, to prevent a situation of *aganut*. The need for a conditional marriage increased in a case that involved a brother of the betrothed man who had converted, whereupon R. Moshe Frisco (died 1807) explicitly instructed that a conditional marriage should be performed, but it is not clear to what extent this instruction was carried out in Istanbul. The same source noted that such a marriage is known from Izmir.⁴⁸ In 1924, after the Turkish Republic was founded, the rabbis of Istanbul instituted a regulation regarding conditional marriage, but it was not carried out in practice and many women remained *agunot*. The phenomenon of *aganut* spread in the town already in the First World War due to the enlistment of Jewish soldiers.⁴⁹ R. David Pifano of Sofia (died in 1924) wrote at the time with regard to this regulation that, due to their situation, some of these women convert to Christianity or behave as prostitutes.⁵⁰

⁴⁷ A. Duben & C. Behar, *Istanbul Households*, pp. 87–105.

⁴⁸ Rabbi R. H.B. Peretz, *Zochreno lechaim*, vol. 2, Even ha'ezer, letter 100 #1.

⁴⁹ M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 429–430.

⁵⁰ Rabbi D.A. Pifano, *Chagor ha'efod*, no. 34. On the practice of conversion to Christianity and on the practice of adultery see below. On prostitution in the Ottoman Empire and in Jewish society see J.E. Baldwin, *Prostitution, Islamic Law and Ottoman Societies*; M.D. Wyer, *Selling Sex in Istanbul*; R. Bali, *The Jews and Prostitution in Istanbul*; M. Rozen, *Studies in the History of Istanbul Jewry*, pp. 423, 431. See also H. Yıldız, *Non-Muslim Prostitutes*.

It seems that *kiddushin* by proxy were not common in Istanbul, which was a very large city where most people married within the community. In one such incident in the nineteenth century the envoy did not give the ring to the bride, so the groom took advantage of the opportunity and sanctified another woman.⁵¹ In many cases items on divorce certificates presented by an envoy indicate that a husband had abandoned his wife and gone to live in another city, and sometimes we hear of a wife who moved to another city, probably to her family's place of residence, and demanded a divorce, or in an extreme case even immigrated to the land of Israel without her husband.⁵²

4. Polygamy

From time immemorial the local custom forbade marrying several women.⁵³ The condition that prohibits polygamy was mentioned in the betrothal agreement, and later in the *ketubah*, and even when no such condition was included, the custom was to disallow it. This custom is mentioned by R. Moshe Benveniste in the seventeenth century. The wording in the *ketubah* was that "he shall not marry another woman so long as she is alive and he shall not divorce her without the permission of the court".⁵⁴ Nevertheless, in some cases the courts allowed a man to marry another woman in addition to his current wife.⁵⁵

In August 1915, the court in Istanbul deliberated concerning the case of a woman who had claimed in court that she was pregnant with a certain man's baby. The court permitted him to marry her, and he assumed the obligation to feed and provide for the prospective newborn. When it became known that the man was already married,

⁵¹ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 5.

⁵² One such item was that of a man in 1763 who was in Jerusalem and sent for his wife who was in Istanbul: Rabbi Y. Halevi, *Rov dagan*, Even ha'ezer, no. 3 # 296. In the Responsa literature and in the above divorce lists there is a great deal of information on writs of divorce given through an envoy.

⁵³ See E. Westreich *Transitions*.

⁵⁴ MS 3149, p. 26 [29]. See also Rabbi M. Benveniste, *Penei moshe*, vol. 3, no. 3.

⁵⁵ Such as testimonies from the nineteenth century: Rabbi H. Palage, *Hayim veshalom*, vol. 2, Even ha'ezer, no. 21; Rabbi M. Fresco, *Yadav shel moshe*, Even ha'ezer, no. 5. See also in the discussion below on divorce due to the wife's insanity.

the court forbade him to marry the woman in addition to his first wife, who refused to be divorced. Upon hearing this, the man attempted to deny his paternity.⁵⁶

In one incident, a wife gave her husband permission to marry another woman under duress.⁵⁷ In 1895 the court approved the request of Yaakov son of Shmuel, who asked to travel to the land of Israel and was known to be sickly, to marry another wife in addition to his current wife who refused to join him on the trip, because he needed a wife to care for him. He was about to marry a widow and left his wife alimony.⁵⁸ The court also allowed Ephraim Formon, whose wife Zinbul left the faith, to marry another woman although he had not divorced his wife.⁵⁹

If a woman did not bear her husband children for ten years of marriage, the husband was entitled to demand the right to marry another woman for the purpose of performing the precept to be productive and multiple.⁶⁰ Most of Istanbul's women objected to this practice, claiming that the condition stated in the *ketubah* protects them from such an act. In these cases, the courts ruled in favour of the husband but allowed the first wife to receive divorce and to paid the full sum of her *ketubah*. In such a case most wives preferred a divorce, as we shall learn below. It appears that polygamy was a marginal occurrence in the Istanbul Jewish society. Notably, polygamy was not common in the nineteenth century Muslim Istanbul society as well.⁶¹

⁵⁶ Rabbi D. Pifano, *Nose ha'efod*, vol. 2, no. 5.

⁵⁷ Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 52

⁵⁸ Records of the court in Istanbul, 1894–1962. P. 11a. On the infrequency of polygamy in the nineteenth century Istanbul see Sir E. Pears, *Turkey and Its People*, pp. 152–156.

⁵⁹ Records of the court in Istanbul, 1894–1962, p. 28. In July 1896 it was related that an Ashkenazi man named Meir Heilprin married another wife in addition to his current wife and left her an *aguna* in another city. Records for Wednesday, p. 27b.

⁶⁰ See L. Bornstein-Makovetsky, *Procreation*.

⁶¹ On polygamy in the Muslim society in the late nineteenth century Istanbul see A. Duben & C. Behar, *Istanbul Households*, pp. 148–158. The 1895 census indicates that only 2.51% of local Muslim men were bigamists, and the 1907 census indicates only 2.16%. In a few cases one man had three wives concurrently. It appears that there were no cases of polygamy with four wives. *Ibid.*

5. Divorce

In many cases, divorce was avoided despite tensions in the family's life, for economic and social reasons. The courts too made efforts to prevent divorce, though it appears that it was fairly common in Istanbul and bore no negative stigma. Only rarely did the initiative for divorce come from both sides.⁶² When the court did not manage to reconcile the couple, this was stated explicitly.⁶³ A common phrase used by the judges to describe the conflict between spouses prior to a divorce was “and the flame of the dispute between them grew until culminating in a divorce”.⁶⁴ The average duration of marriage among young and older couples who divorced cannot be determined from the sources. There were also incidents of divorce when the woman was pregnant, such as that of the wife of Yosef Koronil in the Balat court in 1839. He undertook to pay alimony of 30 grosso a month for the two years when she would breastfeed the child.⁶⁵

5.1. Causes for divorce

Jewish law allows and sometimes obliges a man to divorce his wife for different reasons.⁶⁶ The sources on the Jews of Istanbul normally do not note the reason for a divorce, aside from cases of a terminally ill person, conversion to another faith, *aginat*, a bad reputation, and adultery. Obviously, cases of mutually consensual divorce were not noted in the sources. Sometimes we learn about different causes of divorce indirectly.

Similarly to the cancellation of betrothals, the officially noted reason for a divorce was not always the actual cause. Hence, caution must be taken when reaching conclusions

⁶² For example, see L. Bornstein-Makovetsky, *Remnants*, p. 67, no. 3, and p. 70, no. 2.

⁶³ L. Bornstein-Makovetsky, *Remnants*, pp. 99–101, no. 10.

⁶⁴ *Ibidem*, p. 67.

⁶⁵ *Ibidem*, p. 66. The grosso was a European silver coin used in the Ottoman Empire, and particularly the Asadi grosso, which is the Dutch dollar (the loewenthaler) that replaced the place of the Spanish dollar in the eighteenth century and was considered a stable currency. In Hebrew sources it was also called a lion due to the shape stamped on it, and also was called, a real and finally a piastre. In the Ottoman Empire the grosso was being issued beginning from 1686. From circa the beginning of the eighteenth century the grosso was worth about 40 pares.

⁶⁶ B. Shereshevsky, *Family Law*, pp. 348–444.

regarding the full social meaning of the declared causes for divorce. For example, a man who wanted to divorce his wife in order to marry another would avoid specifying this reason and would instead note that she behaves maliciously towards him or would falsely accuse her of having disabilities, not following the Mosaic traditions, and so on. Women too raised different arguments to avoid being considered “rebels” against their husbands and losing the right to receive the amount stated in the *ketubah*.

Notably, in most cases of betrothal with young girls, the actual wedding took place only once they had reached maturity, after the age of 12 and a half. It is evidenced in the low number of divorces granted by the community’s courts to married minors, namely to the girls younger than 12, in less than 1.5 percent.⁶⁷ Such cases of divorce may have been caused by the objection of the married minor to have intercourse with her husband, as learned from one case explicitly. In this case, the court ruled that she is to be considered a rebel and her husband is entitled to divorce her but he must pay her *ketubah*.⁶⁸

5.2. Divorce by a dying man

A divorce granted by a dying man who had no offspring was written in order to enable his wife to avoid the need for a Levirate marriage or *halitzah*. This characterised some 2–3% of all divorces in the community.⁶⁹

5.3. Divorce due to a bad reputation, “no prohibition”, and engaging in prostitution

According to the Jewish law, a woman who intentionally causes her husband to transgress the religious laws, such as by feeding him non-kosher food or having

⁶⁷ Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, no. 3 # 353 and 386; no. 4; Rabbi S. Haim, *Shemen hamishcha*, Gitin laws, no. 142. The wording of a divorce granted to a minor and a discussion regarding it: Rabbi R.M. Bula, *Get mekoshar*, p. 10a.

⁶⁸ Rabbi M. Fresco, *Yadav shel moshe*, Even ha’ezer, no. 3.

⁶⁹ The list of divorces from the years 1740–1777 includes 9 of dying men, one of which was conditional. Another list of 473 divorces from the court of R. Yaakov Danon has 5 given by dying men. R. Yitzhak Lachmi’s list of 92 divorces indicate 2 cases of dying men. In one of the cases the man who gave the divorce recovered and betrothed his fiancé anew. R. Shmuel Haim’s list of 342 divorces has 8 divorces of dying men. See Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, nos. 3–5; Rabbi S. Haim, *Shemen hamishcha*, Gitin laws, no. 142. The community’s records also contain information on these divorces. For instance, see MS 3149, p. 34.

intercourse with him while a *niddah* and concealing from him that she is a *niddah*, and there are witnesses to this and the husband warned her but she did not change her behaviour, is called a “transgressor of the Mosaic faith” and there is room to oblige her to divorce. If the husband proves that his wife regularly transgresses the customs of modesty or behaves wantonly and as a result claims that he should not be required to continue living with her, she is a “transgressor of the Jewish faith”. The latter criterion relates not only to wantonness but rather also to a wife who curses and insults her husband, or who insults his parents in his presence, or beats him, and so on. Only if the woman persists in offenses that constitute a “transgression of the Jewish faith” is the husband entitled to demand her divorce. Then again, the husband may also forgive her, and if he did so – he can’t renege on this subsequently and demand a divorce for these past deeds.

The sources before us, that discuss the Istanbul community, include claims for divorce “by reason of a bad reputation”, meaning due to the wife’s bad deeds, such as grave circumstantial suspicions that she committed adultery, even in the absence of witnesses. The husband is required to present the court with two valid witnesses to prove the bad deed in order to receive a ruling that he may divorce his wife. However, he is not obliged to divorce her and she is not forbidden to him, rather he may forgive her and continue living with her, although he is not advised to reconcile with her. The husband may divorce her in this case even against her will and she will lose her *ketubah* and is prohibited from marrying the man with whom she is suspected of having sinned.

When a woman committed adultery willingly and there are two valid witnesses to this, or if she admitted to having committed adultery, the husband is obliged to divorce her and may not forgive her, and he is also exempt of any financial commitments towards her. He is also entitled to divorce her against her will or to take another wife in addition to her. In the case of prostitution, the woman may not marry the man who had intercourse with her. In the sources discussing the Jewish family in Istanbul such a divorce is called “by reason of prostitution”.

By law, if the marriage was forbidden, such as a Cohen who married a divorced woman or one who had experienced *halitzah*, the claim for divorce is justified at any time and by any side. In this case the court rules that a divorce is necessary even against the will of the other side, and a divorce can also be enforced via incarceration. It is only

logical that such cases were rare, because the community avoided marriage prohibited by Jewish law. The list of divorces designates such cases as occasioned by “no (word of) prohibition”. Sometimes these reasons were dropped from the divorce lists when these were prepared for printing. For example, in the list of divorces in the community’s courts from 1740–1777, which includes 392 divorces, this reason was not given for any of the divorces. In another list of 473 divorces, we learn of eight cases where the reason for the divorce was “no prohibition” and one case where “prostitution” was mentioned explicitly as a cause for divorce.⁷⁰

In that list, ten divorces were cited as given due to a “bad reputation”. In R. Yitzhak Lahmi’s divorce list from the mid-eighteenth century, which included 92 divorces, we learn of 3 cases of divorce due to “bad reputation” (3.26%).⁷¹ In R. Shmuel Haim’s list of divorces from the first half of the nineteenth century, of 343 divorces we learn of 8 cases of divorce due to no prohibition and one case of divorce due to a “bad reputation”.⁷² The Balat court record from 1839 indicates a woman whose future husband was concerned that she would have intercourse with him when *niddah*, as she said she had done in her previous marriage. The woman denied this accusation adamantly.⁷³ One case of a woman who committed adultery was also discussed.⁷⁴

False accusations of adultery were often made against betrothed women. Thus, we learn that in 1758 Jewish leaders of a village in the Istanbul area ordered the beating of a woman engaged to be married; she was suspected of sexual relations with the son

⁷⁰ Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, no. 4 and no. 4 # 39. In one of the cases it was revealed that a Cohen had mistakenly married a woman who had received *halitzah*. Loc. cit, no. 4 #320.

⁷¹ Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, no. 5.

⁷² Rabbi S. Haim, *Shemen hamishcha*, Gitin laws, no. 142.

⁷³ L. Bornstein-Makovetsky, *Remnants*, pp. 101–102.

⁷⁴ L. Bornstein-Makovetsky, *Remnants*, p. 103. On adultery in Jewish Ottoman society see: L. Bornstein-Makovetsky, *Extramarital Relations among Jews in the Ottoman Empire*; Idem, *Ottoman and Jewish Authorities Facing Issues of Fornication and Adultery*; Idem, *Adultery and Punishment Among Jews in the Ottoman Empire*. On an adulterous woman who gave birth to a mamzeret see: Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 17; Rabbi S. Haim, *Shemen hamishcha*, Gitin laws, no. 144. About the divorce of a woman who had converted to another faith and then returned to her husband and to Judaism but continued to commit adultery with gentiles see Rabbi N.H.M. Moda’i, *Meimar haim*, vol. 2, Even ha’ezer, no. 39 #41.

of her employer but was not handed over to the Ottoman authorities. Subsequently, both she and the suspected man denied having had intercourse, and the midwives who checked her claimed that she was, indeed, a virgin.⁷⁵

In 1839 those in charge of laws of the permitted and the prohibited investigated a false accusation of a married woman whereby she had had intercourse with another man and had committed adultery. The court ruled that she is a trustworthy and modest woman.⁷⁶ We also learn of a Balat court that heard testimonies on 25 September 1725 by three men who brought the testimonies of their wives about Jamila the wife of Yaakov son of Elhanan Ashkenazi, who while separated from her husband, became pregnant from a gentile and aborted the foetus. She told her neighbours and the court that she had been raped at her home by the gentile. The court ruled that she was permitted to her husband.⁷⁷

We also have a testimony from 1839 regarding a betrothed man who raised a suspicion that his betrothed had committed adultery, as had her mother previously. Those appointed to deal with ritual questions in the community reported, after receiving the testimony of the midwives who examined the girl, that she was a virgin.⁷⁸ There is also an item from the eighteenth-century regarding women's testimony on the matter of a woman's bad deed.⁷⁹

In the available sources from the eighteenth and nineteenth centuries I found no evidence of a woman's demand for a divorce due to her husband's immoral behaviour, or for causing her intentionally to transgress the religious precepts, such as forcing her to eat non-kosher food or having intercourse with her while *niddah*, and so on. It is to be assumed that such claims existed, as we find them in previous generations in Istanbul, as well as in other Ottoman communities in the eighteenth and nineteenth centuries, but these are unusual.⁸⁰

⁷⁵ Rabbi H. Moda'i, *Haim le-olam*, vol. 2, Even ha'ezer, no. 3.

⁷⁶ L. Bornstein-Makovetsky, *Remnants*, pp. 103–4.

⁷⁷ Rabbi E. Navon, *Machanee ephraim*, Laws prohibiting *biya*.

⁷⁸ L. Bornstein-Makovetsky, *Remnants*, p. 103.

⁷⁹ Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 19.

⁸⁰ L. Bornstein-Makovetsky, *Divorce and Remarriage*, pp. 124–127.

5.4. Divorce occasioned by the husband's conversion

The husband's conversion to another faith resulted in his exclusion from the Jewish society and in fact in the severing of his religious ties, and usually also his social and economic ties, with his Jewish family members and the Jewish community. According to Islam, a Jew who converted to Islam is entitled to live with his Jewish wife or to marry a Jewish woman. Such cases are known, for instance that of Moshe Joklil who was executed in Istanbul in 1705 by order of the sultan and his body was thrown into the Bosphorus. He had Jewish wives whom he married after his conversion, and they lived as Jews. R. Eliyahu Alfandari permitted their marriage.⁸¹ But in many cases the Jewish wife petitioned the Jewish court for a divorce from her converted husband, as without a divorce she could not remarry a Jew and was in fact in the status of an *agunah*.

A Jewish woman who converted to Islam without her husband had to leave him, as Islam forbade her from being married to a Jew. In Istanbul only few Jews converted to Christianity, and couples who did not do so together, subsequently separated. We learn of a divorce for this reason in 2.1% of Istanbul's list of divorces for 1701–1705,⁸² 1.8% of the divorces in the town's divorce lists from 1740–1777⁸³ and in 3.2% of the divorces in another list from the mid-eighteenth century.⁸⁴ In total the proportion of divorces granted by converted husbands to their wives in Istanbul was 3–7% of all the divorces.⁸⁵ The family and the community made great efforts to obtain a divorce

⁸¹ Rabbi E. Alfandari, *Seder eliyahu raba vezuta*, no. 1.

⁸² Rabbi H. Moda'i, *Haim le'olam*, vol. 2, Even ha'ezer, no. 31. The list contains 91 *gittin* from the pinkas of Rabbi Yosef Gandor.

⁸³ Rabbi Y. Halevi, *Rov dagan*, Even ha'ezer, no. 3.

⁸⁴ Ibidem.

⁸⁵ Of the 392 divorces from 1740–1777, 6 were granted by converted husbands; of the 473 divorces in R. Yaakov Danon's lists, there were 26 divorces of converted men; of R. Yitzhak Lahmi's 92 divorces, 4 are of converted men; of the 343 divorces granted in 1812–1840, 19 were by converted men. Rabbi Y. Halevi, *Rov dagan*, Even ha'ezer, nos. 4–5; Rabbi S. Haim, *Shemen hamishcha*. Gitin laws, no. 142. Other items on divorces by converted men appear in Rabbi H. Moda'i, *Haim le'olam*, vol. 2, Even ha'ezer, no. 9; Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, nos. 30, 49; see also L. Bornstein-Makovetsky, *Jewish Converts to Islam and to Christianity in the Ottoman Empire*; Idem, *Jewish Converts to Islam and Christianity in the Ottoman Empire in the Nineteenth Century*; Idem, *Protestant Missionaries*, pp. 60, 62, 74, 76, 112.

and sometimes the woman and her family paid the converted husband to divorce her.⁸⁶ In such cases divorce by proxy was also common. For example, in 1899 the court deliberated on the case of an *agunah* from the village of Piri Paşa, Kalo the daughter of Moshe Aseo, whose husband Avraham Halevy son of Moshe had abandoned her and disappeared eight years previously. He had converted to Islam and moved to Bulgaria. Efforts were made to receive a divorce from him via an envoy.⁸⁷

In the first half of the nineteenth century we learn of the divorce of a converted man that arrived by messenger from Iasi to Istanbul. The divorcing couple were from Iasi and in this case the messenger was the wife's father.⁸⁸ In another case the convert Yitzhak son of Shmuel, originally from Salonika, sent a divorce (letter) to his wife Simcha daughter of Yosef, who was living in the district of Hasköy in 1839, through his envoy, Yosef Varsano.⁸⁹ R. Haim Menachem writes in the late nineteenth century that in his time it is customary "on a daily basis" for the local courts to send the divorce documents of converted Jews via a messenger.⁹⁰

Conversion by Jewish women was less common than that of men. This is evident in the small number of testimonies regarding the divorce of converted women. The eighteenth-century divorce lists have only one case of divorce by a woman who converted to another faith and had an intimate relationship with a gentile.⁹¹ In another

⁸⁶ In one case a father-in-law paid his son-in-law 1250 grosso to divorce his wife. In 1897 (5657) 400 grosso were given in this way. L. Bornstein-Makovetsky, *Remnants*, p. 67; Rabbi H. Menachem, *Mate lehem*. Even ha'ezer, no. 50. In 1829 a convert refused to divorce his fiancé and declared that he would not divorce her in return for the money paid by her relatives. Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 4. In this case the ruling was that the refusal of the betrothed woman is valid. Financial concessions by the wife were included in agreements with the husbands, which noted the final *ketubah* sums of the women at the time of their divorce. For example: Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 37. From the eighteenth century we have a financial arrangement between a dying man and his wife, where the woman committed to supporting the husband if he should remain alive, even for thirty years. MS 3149, p. 34.

⁸⁷ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 30. In this case it was necessary to verify that this was indeed the same husband, and the question was whether two witnesses should be sent to him from Istanbul to clarify his identity.

⁸⁸ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 46.

⁸⁹ L. Bornstein-Makovetsky, *Remnants*, pp. 89–90, document a.

⁹⁰ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 30.

⁹¹ Rabbi Y. Halevi, *Rov dagan*, Even ha'ezer, no. 4 # 134.

case, the wife of Nissim Susi, who was living with a Christian, converted to Christianity in 1898. The court allowed her husband to marry another woman in her stead.⁹²

We also have an item on the divorce of Rasha the daughter of David Musaji from her husband, Shlomo the son of Moshe. A year earlier she converted, but then returned to her husband. Because she persisted in having intimate relations with gentiles, he divorced her.⁹³

5.5. Divorce due to poverty

It seems only logical that poverty was at times a reason for divorce, however the sources rarely mention poverty as the cause for divorce, since the couple had to present the court with causes for divorce that followed the Jewish law. There is one explicit testimony of a divorce due to poverty. In 1897 a couple in Istanbul were forced to divorce due to poverty, and the divorce ceremony took place with many tears. In this case there was no recourse but to divorce as the husband wished to travel overseas and did not want to leave his wife an *agunah*.⁹⁴ This item joins the testimonies of husbands who left their families in Istanbul in order to seek a living in other towns or even countries, leaving their wives *agunot*.⁹⁵

5.6. Divorce due to impotence and the claim that the husband is unable to have children

A known justification for a woman's claim for divorce was that her husband is impotent. The husband usually denied this claim and the court had to reach a decision. R. Tuvia Hacoheh, the physician who lived in Istanbul from the late eighteenth century until he settled in Jerusalem in 1714, noted in his medical compilation "Ma'ase Tuvia" quite a few remedies for treating impotence, particularly using plants. This treatment is mentioned in other Jewish Ottoman sources as well. Moreover, other remedies used in the Jewish society to solve the problem of impotence are known from the Ottoman Empire.⁹⁶

⁹² Wednesday records, p. 29a.

⁹³ Rabbi N.H.M. Moda'i, *Meimar haim*, Even ha'ezer, no. 39 # 41.

⁹⁴ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 70.

⁹⁵ Rabbi D. Pifano, *Chagor ha'efod*, no. 34. See below in the discussion regarding the *agunot*.

⁹⁶ See T. Buskila, *Jewish Popular Beliefs*.

Most Muslim adjudicators allowed women to divorce in these cases, based on their right to have children. According to the Hanafi interpretation, it was necessary to wait one year before applying the legal permit to divorce, and during this year the husband's sexual capacity was examined.⁹⁷ This was the basis for appeals of Jewish women to the Shari'a court in Jerusalem, and it was probably the case in Istanbul as well.⁹⁸

In contrast, the customary halakhic ruling in these cases in Jewish courts was that if the husband denies that he is impotent, the woman has to bear the burden of proof and present her claim to the court. This is also true of women's claim of a divorce due to the husband's infertility. The woman is not considered reliable in this claim if in addition to the divorce she also demands her *ketubah*, as there is a concern that the claim is not due to her husband's incapacity but because she wishes to marry another man. In this case, if the husband denied her claim, there was a dispute between the adjudicators on whether she is entitled to receive the amount owed her according to the *ketubah*.

According to Jewish law, a husband who admits that he suffers from impotence must grant his wife a divorce and he can be forced to do so, and he should also pay the *ketubah* and the dowry and his profits from it. There is also an exceptional item from the eighteenth-century regarding an impotent man whose wife agreed to live with him.⁹⁹ From an item in the first half of the nineteenth century we learn about the third wife of a resident of Istanbul, who due to her love of her husband did not disclose that "he is not so sexually potent". However, the husband falsely accused her, as he did his two previous wives, that she is unable to have marital relations with him. R. Eliezer Di Toledo ruled that the husband cannot divorce her against her will and that he must pay her alimony and her *ketubah*.¹⁰⁰ It is only logical that in most cases of impotence the husband agreed to divorce his wife and therefore the sources contain less mentions of this cause for divorce, compared to others.

⁹⁷ See S. Verskin, *Barren Women* pp. 78–86; J. Tucker, *In the House of the Law*, p. 81.

⁹⁸ See T. Buskila, *Jewish Popular Beliefs*.

⁹⁹ Rabbi Y. Navon, *Din emet*. no. 26.

¹⁰⁰ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 36.

5.7. Divorce due to disabilities of one of the spouses or due to the woman's infertility

Men and women demanded a divorce due to disabilities they discovered in their spouse that were not known to them before the marriage and that were not formed after the marriage. One of the conspicuous disabilities was epilepsy. The husband and wife could demand a divorce due to these disabilities and the husband was entitled to a divorce also when the woman had severe gynaecological problems. It can be assumed that some of these cases involved false accusations.

From the eighteenth century we have “a marital deed for a young woman, whereby if she shall have a sickness afterwards (after the wedding), she shall divorce”. It seems that this was a familiar deed in the city. We learn from this case that after a young woman's betrothal the groom heard from slanderers that she had had epilepsy for many years. He refused to marry her and did not accept her father's oath that this was a libel. Finally, he compromised with her that she would commit in a deed and oath that if she should have an epileptic fit even once from the day of their marriage or over the next eighteen months, she would be obliged to accept a divorce with no objection on her part and to return to her father's house. In this case the man would only be obliged to give her back what she had brought from her father's house and the *medudim* (contanti) that her father had received after the betrothal. After eighteen months of marriage the deed and all its implications would be voided and she would have all the rights of any married woman.¹⁰¹

We also learn of a case that occurred in 1839, when a betrothed man in Istanbul refused to marry the woman betrothed to him (a divorcée or a widow) because of a rumour that she had four disabilities: she urinates, i.e., is incontinent, has a *netek* in her head,

¹⁰¹ MS 3149, p. 9. The *medudim* (kontanti) was a cash amount that the father-in-law paid the groom immediately after the betrothal for the purpose of financial investment or to learn a trade. Sometimes the groom received real estate or a piece of gold jewelry from which he could profit instead of the cash. Sometimes the groom even received the right to join a guild. The *medudim* and the profit accruing from it always remained with the husband, even in the case of a divorce. It was very customary for the groom to send jewelry to the bride in return for the *medudim* he received. It was also common to buy clothes and linens with half the *medudim*. Widows who remarried also gave their husbands *medudim*. See L. Bornstein-Makovetsky, *The Jewish Family in Istanbul in the 18th and 19th Centuries as an Economic Unit*, pp. 324–325.

had intercourse with her previous husband when *niddah*, and goes mad when giving birth. The woman denied this gossip and made a commitment under oath and on pain of losing her *ketubah* that if either of the two first disabilities would be found true in the first six months of the marriage, she would receive a divorce immediately; and if she had intercourse with him while *niddah* in the first year, he would be able to divorce her immediately, and so also regarding going mad after giving birth.¹⁰² There is also a complaint of another husband that his wife is incontinent and for this reason he became despondent and wanted to divorce her.¹⁰³ In yet another case it was claimed that the reason for the divorce was that the bride is afflicted by an illness that resembles leprosy.¹⁰⁴

It seems that these were often false accusations brought by the husband. In one case in the second half of the nineteenth century, when a husband who was a resident of Rhodes invented a claim that his wife had a disability, the judge R. Haim Menachem wrote that there is no doubt that before the marriage she was completely healthy and that in Istanbul it is always common knowledge whether a young woman is healthy or not.¹⁰⁵

It was common in the city for a man to demand the court's permission to marry another wife, in the claim that his first wife had not born him any children for ten years. In most cases, the wife objected and claimed that he had made a commitment in her *ketubah* to refrain from taking a second wife. It is to be assumed that in most of these cases the wife preferred to divorce rather than allow her husband to take another wife. Among Ashkenazi Jews in the town, due to their commitment to the communal bans of Rabbi Gershom against having several wives, the husband would demand a divorce. In the nineteenth century, an Ashkenazi couple in Istanbul reported that they had been married for a lengthy period and had had no children. Since the wife was fifty years old, the husband wanted to divorce her and marry a wife who could bear sons, because he had not yet performed the precept to be fruitful and multiply. The wife objected to the divorce and even claimed that less than ten years previously she had had

¹⁰² L. Bornstein-Makovetsky, *Remnants*, pp. 101–102.

¹⁰³ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Hoshen mishpat, no. 44.

¹⁰⁴ Rabbi S.E. Alfandari, *Saba kadisha*, vol. 2, Even ha'ezer, no. 16. It is not clear whether this case occurred in Istanbul or elsewhere.

¹⁰⁵ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 17.

an abortion of a five-month-old fetus but did not share this with her husband to avoid sorrowing him. R. Yosef Alfandari ruled that the Ashkenazi man may divorce his wife against her will. All this in theory and not in practice, until they shall both come before the high court of the community that will reach a decision.¹⁰⁶

5.8. Divorce occasioned by the wife's insanity

The term *Isha shota* or *Isha shenishtateta* (meaning a woman who is or behaves as a fool) encompasses a woman's strange behaviour, post-natal depression, and madness, sometimes temporary. In the late eighteenth or early nineteenth century it is related that a married woman in Istanbul lost her mind and her husband wanted to marry another woman or to divorce her.¹⁰⁷ In the case described above, from 1839, a betrothed man refused to marry his betrothed, who had been married previously, because of a voice that said that she had four disabilities, including that she would go mad when giving birth.¹⁰⁸ We have various testimonies of permission given to take a second wife following the madness of the first. Thus, in 1902, Yaakov Soncino was permitted to take another wife, as his first wife had been mentally ill for nearly eight years "and she was sitting in the madhouse" operated by the government.¹⁰⁹

5.9. Divorce because the husband had developed an aversion to his wife

Various items indicate husbands who wanted to divorce their wives because they had developed an aversion for them. This appears to have been a common cause for a divorce. Some of these men met the halakhic criterion of a "rebellious" husband, because they stopped having intimate relations with their wife. In this case, the wife was entitled to demand a divorce and to collect her *ketubah*. The following are several testimonies on this motivation for divorce. In one case from the eighteenth century a local resident became engaged to an orphaned woman and after the engagement people told him that she was ugly. After some pleading, he married her, "and he immediately did not like her and had no contact with her and did not speak to her,

¹⁰⁶ Rabbi Y. Alfandari, *Porat yosef*, Even ha'ezer, no. 6.

¹⁰⁷ Rabbi M. Fresco, *Yadav shel moshe*, Even ha'ezer, no. 5.

¹⁰⁸ See above.

¹⁰⁹ Wednesday records, p. 32a. On this place in Istanbul see also Rabbi S. Arditi, *Divrei shmuel*, Even ha'ezer, no. 12.

treating her like a distant woman”. She remained with him for a while, but once she saw his attitude to her, she returned to her mother’s house and her family demanded that he pay her alimony in her mother’s house. The husband’s relatives suggested that he should divorce her, but her family said that she did not want a divorce. In this case the ruling was that she could not prevent him from divorcing her, but he had to pay her *ketubah*.¹¹⁰

In another case, a husband was repelled by his wife and her father supported her refusal of a divorce, claiming that she was the wife of his youth. In this case too the ruling was that he was entitled to divorce her but he had to pay her full *ketubah*.¹¹¹ In yet another case, a husband claimed that he wished to divorce his wife because of his hatred for her, while she refused in the claim that she loved him. The wife returned to her father’s home and demanded alimony from her husband. In a compromise, the following conditions were set: If the husband wishes to divorce her at the end of a full year, the wife must receive the divorce promptly; if she becomes widowed within the year, she cannot claim “that she wants to sit with the respect of her husband”, i.e., that she refuses to remarry and wishes to subsist from the husband’s assets, rather she will be compelled to accept a certain sum from her husband’s heirs. The husband reneged on this compromise after several days and excluded his wife from all his assets before he died. The widow complained that she was still young and bemoaned his hatred of her. The court ruled that the widow’s claims were justified and that the husband’s reneging on the compromise was invalid.¹¹²

Another item from the nineteenth century mentions a widower from a prominent family, a Torah scholar, who wished to cancel his betrothal to a young woman who was the daughter of an important Torah scholar. Ultimately, he married her unwillingly and then wanted to divorce her because she was not to his liking. He became depressed because he was repelled by her and in order to placate him she agreed to limit the duration of the marriage to another three years, when he would be permitted to take another wife notwithstanding the oath of monogamy. The woman’s father objected to his daughter’s consent, claiming that she had been forced to sign.¹¹³

¹¹⁰ Rabbi M. Fresco, *Yadav shel moshe*, Even ha’ezer, no. 8 [= Rabbi N. Gabai, *Pe’at negev*, Even ha’ezer, no. 17].

¹¹¹ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 48.

¹¹² Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 1, Hoshen mishpat, no. 90.

¹¹³ Rabbi Y. Alfandari, *Porat yosef*, Even ha’ezer, no. 60.

In another case from the nineteenth century, a man who had unwillingly married a young woman he had raped, threatened to convert to another faith if she refused to divorce him. The community asked the woman to agree to the demand, in the reasonable concern that he would carry out his threat.¹¹⁴ An outstanding case occurred in the nineteenth century when a husband wanted to divorce his wife after she harassed the mother of his daughter-in-law because she was jealous and wrongly suspected that this woman was having an affair with him. The wife tried to poison her and the husband was concerned that she would poison him too.¹¹⁵

5.10. Divorce due to the wife's malice

Only one source, from the second half of the nineteenth century, notes the husband's wish to divorce his wife due to her malice and bad virtues. This was a well-known rabbi in the city, who married late in life, choosing a woman reputed to have bad virtues. Others denied this, so before the wedding he set a condition that he would not be obliged to give her anything in the first two years of their marriage. He then wanted to divorce her within this time when it became clear to him that she was a quarrelsome woman who would curse him and would make his life miserable. The wife objected to the divorce and demanded alimony or her entire *ketubah*. A disciple of that sage, R. Shalom Hacoen, ruled that he was entitled to divorce her without paying her *ketubah*.¹¹⁶ Usually, in order to demand a divorce without paying the entire *ketubah* the husband had to bring more weighty reasons than claims regarding the woman's bad virtues. However, in this case the husband was able to divorce her on these grounds and not to pay her entire *ketubah* due to the deal he made with her before the marriage.

5.11. Divorce due to the wife's abhorrence of her husband and due to a dispute and fight

There are few cases when the wife demanded a divorce in the claim that she was repelled by her husband, although it can be assumed that this was one of the main causes for divorce. However, for the purpose of the official procedure most wives did

¹¹⁴ R, H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no 28.

¹¹⁵ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 38.

¹¹⁶ Rabbi S. Hacoen of Istanbul, *Rabbi Shalom Hacoen's Responses*, no. 5.

not dare to make such a claim to avoid losing their rights, as a woman who is repelled by her husband, is considered a rebellious wife if she intentionally refuses to have intimate relations with him. Nonetheless, it is necessary to distinguish between two types of rebellious women:

- A. A wife who claims that she has no complaints against her husband but she wishes to hurt him by refusing to have intimate relations with him, until such time as he will divorce her and pay her *ketubah*.
- B. A wife who claims: “I am repelled by him”, meaning that she cannot have intimate relations with him for reasons that the court considers justified. In this case she usually does not demand payment of her *ketubah*.

For example, we learn of a woman in the nineteenth century Istanbul who divorced her husband because she did not like him. She insisted on a divorce although the husband and other prominent people pleaded with her not to get divorced.¹¹⁷ From about the same time there is an item regarding another woman who could not stand her husband and wanted a divorce but he refused to grant it, claiming that she was the wife of his youth, that he wanted to have his revenge on her because of her rebelliousness, and that he wanted the court to allow him to take a second wife. The wife’s father spoke against the husband and the wife said that she was repelled by him and that he could marry another only after he had divorced her. The ruling was that he had to divorce her.¹¹⁸

Another case involved a court debate on a woman who had rebelled against her husband for two years. The court sent two envoys to her and they warned her that if she would continue to rebel, she would lose her entire *ketubah* and they would allow the husband to take a second wife. The woman eventually agreed to accept the divorce on condition that her *ketubah* would be paid with an addition.¹¹⁹

Elsewhere it was noted in a response of R. Nissim Nathan from Istanbul, from circa the early nineteenth century, that in Istanbul a husband whose wife had rebelled against him was allowed to marry a second wife because they did not adhere to the communal bans of Rabbi Gershom.¹²⁰ We also hear of women’s demands for a divorce

¹¹⁷ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 36.

¹¹⁸ Ibidem, no. 47.

¹¹⁹ Rabbi S. Haim, *Shemen hamishcha*, marriage laws, no. 83.

¹²⁰ Rabbi H. Palage, *Hayim veshalom*, vol. 2, Even ha’ezer, no. 21.

because their husbands curse, swear, humiliate, and beat them.¹²¹ In one case from the late nineteenth century the wife left home and went to live with her relatives. The wife's representative demanded alimony, claiming that she could not stay with her husband "because of his bad behaviour towards her as he curses her and swears at her and beats her for no reason". The husband's representative denied these claims completely, but because they had no neighbours, the court was unable to find out who was right. This affair probably ended in a divorce.¹²²

Marital disputes are often addressed without leading to a demand for a divorce, such as the deliberation in the Hasköy court in 1839 concerning a dispute between Moshe Alharap and his wife Zinbul, which began following a conflict between the wife and her mother-in-law who lived in the same house. The woman returned to her mother's home and demanded that her husband would give them a separate wing to live in. The court required the husband to pay his wife 15 grosso of alimony a week, and another 60 grosso retroactively. The court noted that if the husband did not obey the sentence, the leaders of the Hasköy district would enforce it.¹²³

We also learn of a woman who complained that her husband was not earning enough and that she was unwilling for them to live with his father. She returned to her father's home and demanded alimony. The court accepted her claims.¹²⁴ Notably, in several cases when women complained that their husbands did not earn enough, the chance of the marriage ending in a divorce is not clear to us. It is to be assumed that most complaints of this type were not documented.

5.12. Lack of virginity

It seems that a divorce due to the lack of virginity was uncommon because girls' modesty was strictly maintained. Hence, the local Jews arranged for a deed that attested to being "harmed by a tree" (for women who lost their virginity by receiving a blow etc.).¹²⁵ We have an unusual item from the eighteenth century concerning

¹²¹ An item from 1862 on the matter of Sultana, the wife of David Levy: Pinkas (minutes book) of the Istanbul Jewish Rabbinical Court for the years 1851–1871. no. 2653, p. 104a.

¹²² Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 24.

¹²³ L. Bornstein-Makovetsky, *Remnants*, p. 65.

¹²⁴ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 25.

¹²⁵ L. Bornstein-Makovetsky, *Remnants*, pp. 97.

a young man who married a young woman who was supposedly a virgin, but he did not find her to be a virgin. The entire city was in an uproar; it was said that the woman had had intimate relations with others in her father's house that served as a gathering place "for young men and for laughter" and apparently had a secret abortion. She admitted to her husband that she had intimate relations with someone else. The husband wanted to divorce her without paying the *ketubah* and an addition (*Tosefet ketubah*).¹²⁶ Above, we learned of an examination of a betrothed woman in 1839, performed by midwives who claimed that she was a virgin, after her fiancé raised a concern that she had been promiscuous.¹²⁷

5.13. Divorce from a violent husband

The sources do not contain many discussions of a divorce following a husband's violence towards his wife. Violence by the husband was considered improper behaviour that obliged him to grant his wife a divorce when so demanded. Thus, in 1861 a court for laws of the permitted and the prohibited deliberated on a demand for a divorce by Sultana, the wife of David Halevy, from her husband who cursed her and humiliated her although he made a commitment in the past to avoid doing so. The husband and his son would beat her. In this case the court ruled that if the husband would persist in his deviant ways, he would grant her a divorce. In the meantime, until the divorce, he should pay her alimony.¹²⁸

In another case involving Shlomo son of Yitzhak Matalon, the husband and wife had been living separately for some time due to their fights. We learn that the husband had hit the wife and had even threatened her with a knife. The court reached the conclusion that the couple's marriage was irreparable, because the woman was completely fed up with her husband. The wife's family promised the husband 300 grosso in return for a divorce, and he divorced her.¹²⁹ Even in cases of violence, the courts did their best to reconcile the spouses.¹³⁰

¹²⁶ Rabbi A. Ben David, *Tiferet adam*, Even ha'ezer, no. 4.

¹²⁷ L. Bornstein-Makovetsky, *Remnants*, p. 103.

¹²⁸ Minutes for the years 1851–1871, p. 104a. In Hasköy there are the headstones of David Halevy, the "old man", who died on 9 December 1891, and of David Halevy who died on 14 October 1892.

¹²⁹ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 50

¹³⁰ *Ibidem*, Hoshen mishpat, no. 41.

5.14. Forced divorce, divorce employing devious means, and conditional divorce

At times the court allowed the husband to divorce his wife against her will for reasons given in the ruling. Another item from the nineteenth century tells of a husband who, after receiving such a ruling, arranged a divorce by proxy and gave it to her deviously against her will, saying: “Here is the divorce that your husband sent you so that you will be divorced from him and permitted to any man”. The woman threw the *get* on the ground and ran to her relatives’ house and fainted from sorrow. The relatives tore up the *get* without reading it.

An urgent debate was held in the court on the validity of the divorce and it became clear that the grandfather of the divorcing man, a “Jewish leader”, had threatened the witnesses to the act of handing over the divorce that they would lose their source of subsistence, which depended on him if they did not witness the delivery of the divorce and testify to it. One of the witnesses even stated that he had received from the *gvir* 500 grosso for this. The court ruled that there was no need for another divorce and that the woman was divorced.¹³¹ Another example of employing devious means is an item from 1848 from the Bursa community regarding a woman whose husband had threatened to abandon her and then she would become an *agunah*, whereby she consented to his proposal to receive a *get zman* as well as *medudim* and alimony for two months only. However, after the *get* was given, the wife found out that her husband had deceived her and had not left town at all, and had even confirmed to a rabbi that he had planned all this deviously.¹³² It can be assumed that such cases of deceit existed in Istanbul as well.

In rare cases there was a need for a conditional divorce in order to prevent the wife from becoming an *agunah* when her husband left on lengthy travels. Sometimes such a *get* served as a solution for a woman whose husband refused to grant her a divorce but agreed to give a conditional *get* that would become valid only after a defined period of time determined in the *get*. The woman agreed to return to her husband if he would return by the stated time. In this case the husband was hopeful that his wife, who was barred from marrying another in the interim, would return to him within the time set in the *get*, while the woman ensured her divorce if the husband would not return.

¹³¹ Rabbi Y. Alfandari, *Porat yosef*, Even ha’ezer, no. 5.

¹³² *Ibidem*, no. 7.

5.15. Divorce in Muslim courts and the effect of the widespread divorce in the Muslim society

We learn that some Jewish women appealed to the Shari'a court in Istanbul and sued for a *khul'* divorce. *Khul'* (Arabic: خلع), also called *khula*, is a procedure through which a woman can grant a divorce to her husband in Islam, by returning the dower (*mahr*) or something else that she received from her husband or without returning anything, as agreed by the spouses or Qadi's decree, depending on the circumstances. For example, in 1731 Nisa, the daughter of Lazari, and her husband Musa, son of Shalom, who resided outside the gate of Balat, came to the Islamic court with Jewish witnesses to register her *khul'* divorce by giving up her bride the price of 3,000 kuruş and all her rights of maintenance for herself and their daughter under her care until puberty. This Jewish woman exercised an Islamic type of divorce in which women gave up all financial claims in return for their freedom to obtain a divorce, which would have been more difficult in the Jewish courts.¹³³

Jewish women could later apply pressure on the Jewish court to help them obtain a divorce there as well. According to the Jewish law, only the husband can divorce his wife. In this case, the husband probably refused to grant her a divorce in the Jewish court, so she appealed to the Muslim court for a divorce.

6. Remarriage

There is a large amount of information in the sources on second and even third marriages, and this is discussed particularly in the sources on wills and inheritances. Jewish society objected to the possibility of men and women remaining single and encouraged second marriages and even third marriages following widowhood or divorce. There appears to have been a higher rate of remarriage among men. Men needed a wife to manage the household and raise their children. In contrast to the men, who hastened to marry after becoming widowed or divorced, women had to care for their own children and preferred to raise them independently. Also, in many cases these women, particularly if they were poor, could not find a husband

¹³³ F. Zarineba, *Intercommunal Life in Istanbul During the Eighteenth Century*, p. 84. The *kuruş* was a silver coin minted in 1690. The piaster and the *kuruş* had the same value.

who would agree to raise their children. However wealthy women could easily marry for the second or third time.

Thus, we learn of a widow in the city who had a young daughter; she married a widower with two older sons, named Yisrael Gabay, and had another daughter with him, as well as another son after he died. She betrothed her 9-year-old daughter to her husband's son and gave him a bride price. The widow's *ketubah* was very high, amounting to 7102 kuruş, but she compromised on one thousand kuruş in cash and a full wardrobe amounting to 300 kuruş. In addition, the widow committed to breastfeed the child she had born for two years. Namely, she would not marry again for two years. It was clear that she would then remarry, in the third year, because she owned property. That is also why she preferred to separate from her husband's family and plan her own independent life after collecting her *ketubah*.¹³⁴ This woman was widowed twice but was not concerned of being unable to marry a third time, as the town's rabbis saw no danger in marrying a woman who had been widowed twice ("deadly woman").

In another case Confrada, also called Siniora, the widow of Yosef Kaziz, collected the amount due her from her *ketubah* in court in 1839 via the guardian of their young orphan daughter left by her husband. She immediately granted her orphan daughter 500 grosso from the assets of her *ketubah*, on condition that if the daughter too should die before marrying, these 500 grosso shall be returned to her. Now, in 1839, the widow had become betrothed, and made a condition with the groom that he would support this orphan until she marries, to the sum of 42 grosso each month. In addition, she granted her 2500 grosso and made a condition that if she should die, the amount shall revert back to her. We learn that the commitment stated that the orphan would be supported even for 15 years, indicating that she was an infant at the time the agreement was written. Those 42 grosso were in fact financed by the woman herself. Hence, we learn that even in this case a widow with means could find a match for herself while also caring for her orphan daughter.¹³⁵

There were also those, however, who were concerned by the marriage of a woman who had been widowed twice, such as the elderly widowed scholar who wanted to marry a widow but when he found out that she had been widowed twice before,

¹³⁴ M. Rozen, *Of Orphans*, pp. 159–161.

¹³⁵ L. Bornstein-Makovetsky, *Remnants*, pp. 78–79.

was afraid of marrying her. The widow, on her part, claimed “Why is there such a big and unprecedented outcry, go out and see the people’s custom”.¹³⁶ Notably, there were women who divorced while still engaged, sometimes when still minors, and then divorced as married women.¹³⁷ There is an item concerning a man who divorced twice in a short period, married a divorced young lady for the third time, and sought to divorce her as well.¹³⁸ The multiple cases of remarrying after a divorce are evident from the community’s divorce lists, where we learn that about 2–6 percent were cases of twice-divorced men, while the percentage of twice-divorced women in the different lists ranged from 1–4 percent.¹³⁹ In most cases we learn that one to five years passed between the two *gittin*.

7. Levirate marriage and *halitzah*

The Responsa and the court records cite cases of Levirate marriage and of *halitzah*, both of betrothed and of married women. Levirate marriage with betrothed women originates from the custom of perceiving the betrothal as a sanctified marriage.

Some married men wanted to perform Levirate marriage, declaring that they wished to observe the precept of Levirate marriage, and the late man’s parents usually wanted one of their sons to perform a Levirate marriage with their daughter-in-law.¹⁴⁰ The sources indeed do not mention the economic interests underlying the wish to prefer Levirate marriage over *halitzah*, i.e., to prevent the bride from collecting the sum of her *ketubah*

¹³⁶ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha’ezer, no. 15.

¹³⁷ On the divorce of engaged women see above in the discussion of the betrothal gifts and the reasons for cancelling betrothals. See the divorce lists mentioned above.

¹³⁸ Note above.

¹³⁹ In the divorce lists from 1740–1777, encompassing 392 *gittin*, 22 twice-married men and 55 women are mentioned. In R. Yaakov Danon’s divorce list, encompassing 473 *gittin*, we learn of 18 twice-divorced men. This list has only one twice-divorced woman and another who divorced three times. In a list, of 92 *gittin*, we learn of only one case of a twice-divorced woman. In a list from 1812–1842 we learn of 16 twice-divorced women and 20 men (in two cases the men remarried their ex-wives and then divorced them again) and one woman who divorced three or even four times. See: Rabbi Y. Halevi, *Rov dagan*, Even ha’ezer, nos. 4–5; Rabbi S. Haim, *Shemen hamishcha*, Gitin laws, no, 142.

¹⁴⁰ Such as a testimony from the eighteenth century: Rabbi E. Ibn Sanji, *Dat vadin*, no. 14. On the wish of a local resident to perform a Levirate marriage in 1892 see: Wednesday records, p. 22b.

or part of it after the *halitzah*. But these interests undoubtedly had a no less crucial role than the religious issue of commemorating the deceased. A woman waiting to marry her brother-in-law (waiting for Levirate marriage or *halitzah* by her brother-in-law who was younger than 13) was entitled to subsist on her husband's assets or her brother-in-law's assets until such time as she would undergo *halitzah* and collect the amount of her *ketubah*.¹⁴¹ It may be indicated that women objected to their husband's Levirate marriage with his brother's widow and saw this as a breach of the monogamy oath.

In the eighteenth century we learn of a local woman who was widowed at the age of 24 from her husband Eliya, son of the physician Yosef Alkalay, and she waited 6 or 7 years for her minor brother-in-law to reach puberty. When she reached the age of 30, she appealed to the court to instruct that she should receive subsistence from the assets of her husband or from the assets of her brother-in-law, as she had remained destitute. The brother-in-law had not yet reached the age of 13 and could not perform *halitzah*. In this case, it was determined that the precept of *halitzah* precedes Levirate marriage and that she may collect property in return for her dowry.¹⁴² Another item from the same period mentions one of the brothers of a deceased man who performed Levirate marriage with the widow and then divorced her.¹⁴³

In the eighteenth century the matter of a widow who needed the intervention of two married brothers, of whom the oldest was impotent, was discussed.¹⁴⁴ One response discussed the matter of a widow who had two potential brothers-in-law capable of performing Levirate marriage. R. Avraham Meyuchas discusses this case in separate laws – if both want to perform Levirate marriage, if both want to perform *halitzah*, if the younger brother wants to perform Levirate marriage while the older one wants neither Levirate marriage nor *halitzah*.¹⁴⁵ In the nineteenth century a matter discussed in the yeshiva of R. Eliezer Di Toledo was the case of a woman whose husband had died while she was pregnant and she gave birth and then the baby died in the first 30 days of his life. He ruled that she had to ask her husband's brothers to perform *halitzah*.¹⁴⁶

¹⁴¹ On a woman waiting for her brother-in-law to reach puberty who subsequently died see: Rabbi A. Meyuchas, *Benei avraham*, Hoshen mishpat, no. 48.

¹⁴² Rabbi E. Ibn Sanji, *Dat vadin*, no. 14.

¹⁴³ Rabbi A. Meyuchas, *Benei avraham*, Even ha'ezer, no. 1.

¹⁴⁴ *Ibidem*, no. 48.

¹⁴⁵ *Ibidem*, no. 35.

¹⁴⁶ Rabbi E. Di Toledo, *Mishnat rabbi eliezer*, vol. 2, Even ha'ezer, no. 36.

In 1723 the Istanbul court discussed the matter of a young woman, daughter of the late sage Yaakov Ibn Porna. It appears that when she was a minor, she was in a corner with her father and there, not in the presence of her father and observed by only one witness, she kissed the hand of the mother of Mordechai Firmon who gave her a ring silently, with no mention of marriage or of betrothal gifts. Mordechai died and she waited for his 5-year-old brother to grow up and perform Levirate marriage. She grew up and asked the court to cancel the concern of betrothal gifts and to allow her to marry whoever she wanted. The court approved the request. Otherwise she would have had to wait until the brother reached the age of 13.¹⁴⁷

In 1874 the matter of a local Ashkenazi woman who required Levirate marriage was also discussed.¹⁴⁸ We also hear of agreements between a widow who required *halitzah* and her father-in-law, when the financial arrangements were determined until the *halitzah* that was to take place in some time.¹⁴⁹ There was also an incident when a married brother-in-law refused to perform *halitzah* until the father of the betrothed woman paid a debt owed to his father.¹⁵⁰ Despite this information, we are unable to determine the prevalence of Levirate marriages, but the sources give the impression that in most cases the option of *halitzah* was chosen over Levirate marriage, due to the widow's objection to Levirate marriage. It appears that in most cases of a married brother-in-law he immediately agreed to perform *halitzah*, as he could not take a second wife because of the monogamy oath.

8. *Agunah* status

The gravest state that a married woman could reach was that of an *agunah*. This was very common in the Jewish society and the courts and communities were occupied with it, doing the best they could to release these women from the chains of the *agunah* status.¹⁵¹ A woman became an *agunah* when her husband abandoned her and did not

¹⁴⁷ Rabbi E. Navon, *Machane ephraim*, Marital laws, no. 4.

¹⁴⁸ Rabbi H. Menachem, *Yismach lev*, vol. 2, Even ha'ezer, Halitza laws, no. 5.

¹⁴⁹ MS 3149, p. 13b [15].

¹⁵⁰ An item from the nineteenth century: Rabbi M. Fresco, *Yadav shel moshe*, Even ha'ezer, no. 16.

¹⁵¹ There is a lot of information about releasing *agunot* at the local courts, both in the Responsa literature and in the court records. For example, L. Bornstein-Makovetsky, *Remnants*, pp. 95–96.

send her a *get*, or when he left home for purposes of commerce etc. and did not return, as he had probably died but there were no testimonies of his death.

In 1765 testimonies were given in court concerning the death of the betrothed Eliezer Profita, who was engaged to be married to the young lady Siniro via betrothal gifts and all trace of him had disappeared long ago.¹⁵² We learn of a woman's fear that her husband will run away and leave her an *agunah* from a court deliberation regarding a violent husband. The court arranged the *get* on Friday for fear that the husband would flee.¹⁵³ We also learn of the case of a long-time *agunah* whose husband sent her a *get* from Istanbul to Edirne and there was a concern that her husband would leave her an *agunah*, so in this case as well the *get* was granted quickly.¹⁵⁴ In 1765 testimonies were given on the death of Eliyahu Bonjoah, a resident of Istanbul who had died in the town of Demotika at the age of sixty after leaving Istanbul about ten years previously due to his recalcitrant son. The purpose of the testimonies was to release his wife from her status as an *agunah*.¹⁵⁵

9. Conclusions

The following are a few of the conclusions that emerge from this paper: the Jewish society in Istanbul in the eighteenth and nineteenth centuries was a traditional society, where marriage adhering to all the halakhic rules was part of the patriarchal system, as customary in the medieval Jewish society. The public obeyed the rulings of the judges in all matters pertaining to marriage and divorce. The number of boundary breachers who refused to comply with the rabbis' rulings in these issues was very minimal. In the second half of the nineteenth century as well, when the Jewish society began to engage in the process of secularisation, the marriage institution maintained its traditional character and the public made no demands for any changes in the patterns of this institution. The information presented in the article raises the problems

¹⁵² Rabbi A. Ben Avigdor, *Zachor le'avraham*, Even ha'ezer, no. 1; Rabbi N. Gabai, *Pe'at negev*, Even ha'ezer, no. 1. We learn of women's *agunah* status also from the divorce lists. For example, Rabbi Y. Halevi, *Rov dagan*, Even ha'ezer, no. 4 # 12.

¹⁵³ Rabbi H. Menachem, *Mate lehem*, vol. 1, Even ha'ezer, no. 50.

¹⁵⁴ *Ibidem*, no. 62.

¹⁵⁵ Rabbi A. Ben Avigdor, *Zachor le'avraham*, Even ha'ezer, no. 3.

formed with regard to marriage and divorce in the light of the social and economic circumstances of the Jewish society in these centuries, and we also learn of a certain degree of flexibility within the courts' rulings with the aim of solving problems, such as invalidating the sanctified marriage in quite a few cases of minor betrothed or married women or conceding in a certain way to allow a poor woman to marry even though it hasn't been three months since her divorce.

Preserving the traditional patterns of the marriage institution with almost no changes throughout such a lengthy period, despite its social, cultural, and economic transformations, indicates the traditional character of the Jewish society in Istanbul. We learn that divorce bore no negative stigma, but it is clear that in many cases divorce was avoided despite the tensions within the family, due to social barriers and economic considerations. In order to obtain a *get* the plaintiff brought justifications that made it possible to receive court approval of the divorce according to the Jewish law and to avoid financial damages. The courts were aware of the meaning of the different justifications for obtaining a *get*, and in many cases they ruled that the woman should receive the main part of her *ketubah*. There is also an impression that although this was a traditional society, in everything pertaining to divorce and its family and economic outcomes, those demanding the *get* were not averse to employing lies and false accusations.

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► SUMMARY

Marriage and Divorce in the Jewish Society Eighteenth and Nineteenth Century Istanbul

The article discusses many aspects of the marriage and divorce as practiced in the eighteenth and nineteenth century Istanbul by the Jewish community, which first and foremost adhered to the Jewish law, but at the same time also followed the Romaniote customs. A large amount of information is provided on the family life of the Istanbul's Jews and on women's social and economic status in the Jewish community. We learn that the local rabbis and the Jewish courts maintained the old Romaniote custom of betrothal gifts (*sivlonot*). Most of the marriages in the community were among Sephardic Jews and between them and the Romaniotes. Marriages between Ashkenazi and Sephardic Jews were quite rare. The article relates to the customary process of engagement between couples in Istanbul which included a betrothal (*shidduch*) ceremony in which an agreement was written, including the monogamy condition; following the ceremony, the bride was considered sanctified for the groom until the wedding ceremony, and in cases when the betrothal was cancelled, the bride had to be granted a divorce. We learn about the halachic' economic and social consequences of canceling the betrothal.

The author of the article discusses the age of betrothal and marriage which had social and economic meaning. We supposed that in the nineteenth century most women still married at the age of 15–17 and men at about the age of 20. We learn about the way the couple met, which was usually through family members and matchmakers, and that still in the 19th century, the model of the patriarchal family continued in the Jewish society. There is extensive reference to the status of minor orphans (under the age of 12) in the family and that it was customary to marry them off to relatives. It was rare to marry for love and choices based on romantic love were usually not considered legitimate. It was legitimate to cancel engagement because one of the sides reneged on their financial obligations. We brought the consequences of the groom's oath of monogamy, among them the demand made by him to perform a Levirate marriage with his late brother's fiancé, the husband's demand to marry another woman for having sons, and other reasons.

It seems that the Jewish courts in the city used to approve, almost without exception, bigamy, when the husband claimed that he did not fulfill the mitzvot of fertility. In such a case most wives preferred a divorce. It appears that divorce was fairly common in the Jewish society and bore no negative stigma. The article provides in detail the various causes for divorce in the Jewish society in Istanbul, mainly a physical or mental illness of the husband or of the woman, husbands who abandoned their wives, violence on the part of the husband, verbal violence and malice on the part of the wife, conversion of the

husband or of the woman to Islam or to Christianity, moral delinquency of the woman, etc. The article discusses the divorce suit of women due to impotence and to infertility, and how the courts ruled in these cases.

There is also a discussion about forced divorce and conditional divorce that existed in Istanbul as well. We also learn that Jewish women seldom appealed to the Shari'a court and sued for a *khul'* divorce. There is a large amount of information in the sources on the second and even third marriages, and we study that the Jewish society objected to the possibility of men and women remaining single and encouraged remarriage of men and women. The Responsa and the court records cite cases of Levirate marriage and of *halitzah*, and we learn that women objected to their husband's Levirate marriage with his brother's widow and saw this as a breach of the monogamy oath. The sources give the impression that in most cases the option of *halitzah* was chosen over Levirate marriage. The article discusses likewise the activities of the Jewish courts in the community to release women from the chains of the *agunah* status.