

Revolutionism and Conservatism in the Rulings of the Israeli Rabbinical Courts: The Enforcement of Divorce on the Grounds of *Ma'is Alay*

Avishalom Westreich; Amihai Radzyner

One of the challenging—and fascinating—institutions of Jewish divorce law is the complex set of laws of the rebellious wife (*moredet*). One of its central notions is the claim: *ma'is alay*, usually translated as “he is repulsive to me,” which might justify (according to certain opinions and in certain circumstances) unilateral divorce upon the wife’s demand.

Halakhic family law in Israel, as our article argues, has significantly changed in recent years. Regarding one of its main aspects, causes for divorce, we are witnessing a real revolution which cannot be overlooked. In Israeli rabbinical court rulings, we find a tendency to abandon the classic fault-based causes for divorce as the basis for obliging a recalcitrant spouse to divorce, in favor of justifying divorce on the basis of the much more subjective claim, close to concepts of no-fault divorce: *ma'is alay*.

The acceptance of *ma'is alay* as a legitimate ground for divorce is based on creative interpretations of classic halakhic sources, from the Talmud, through classic post-Talmudic halakhic codes, to modern halakhic responsa and court rulings, but not without debate. This tendency is censured by a group of halakhic judges (*dayanim*), mainly those of the “old school” of *dayanim*, who criticize the revolutionary aspects of this trend, and the fact that it deviates from the classic approach of the Israeli rabbinical courts.

Alongside issues of halakhic authority, the interpretative dispute occupies a central place within this debate. The very transformation of *ma'is alay* from a physical (and sexual) rejection to an abstract legal claim lies in fact at the center of the interpretative dispute. One school of *dayanim* (which we identify as more conservative in their divorce rulings) adheres to the original, literal meaning of *ma'is alay* as representing real physical (and particularly sexual) rejection, while the second school (which we identify as more progressive in their divorce rulings) expands the conceptual meaning of *ma'is 'alay* to a general claim, based on the husband’s misconducts, including forms of behavior which apparently do not involve any physical implications. This last opinion opens the gates to a revolutionary approach, close to a (moderate) concept of no-fault divorce, which provides rabbinical courts with legitimacy and authority to face new challenges posed by the modern state and society.