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## THE 1992 NEW YORK GET LAW

If a husband and wife separate and he no longer desires to remain married to her and she desires to be divorced from him, in such a case divorce is a mitzvah [obligation] and commanded by Jewish law . . . . One who withholds a Jewish divorce because he desires money for no just cause is a thief. Indeed, he is worse than a thief as his conduct violates a sub-prohibition (*abizrayhu*) related to taking a human life.

Rabbi Yosef Eliyahu Henkin<sup>1</sup>

### INTRODUCTION

The 1992 New York State *Get* Law directs the courts of New York to consider the withholding of a Jewish divorce as one of the many factors to be balanced by the courts when it determines the equitable distribution of marital assets in the context of a divorce.<sup>2</sup> This law has been criticized by many halakhic decisors (*poskim*), as it improperly diminishes the capacity of the husband and wife to offer and receive a *get* with free will, a requirement of Jewish law.<sup>3</sup> Simply put, the threat of economic penalty undermines the free will needed by Jewish law.

### THE PROBLEMS WITH THE 1992 LAW

Jewish law mandates that ideally, a *get* be given with no coercion present at all. This law introduces a significant amount of economic coercion in some cases, as the wife can seek to use the penalty provisions of the *Get* law to impose financial penalties on a recalcitrant husband.

Indeed, there are three distinctly different problems with the 1992 *Get* Law:

## TRADITION

(1) The law permits economic coercion by the secular authorities to induce the issuing of a *get* in cases where Jewish law does not allow coercion or encourage divorce;

(2) Even in cases where Jewish law directs that a *get* must be issued, this law makes no distinction between the various categories of obligation to issue a *get*. In some cases of obligation, coercion is not allowed according to Jewish law;

and finally,

(3) The law does not require any participation of a *bet din*; thus, even in cases where coercion perhaps should be ordered, no such order ever issues from a *bet din*.<sup>4</sup>

Others have replied to these objections by noting that while these allegations are correct, the law is still a good law because where illicit coercion is present, *bet din* will decline to write the *get*.<sup>5</sup> In other situations, supporters of the *Get* law argue, the law can be an effective tool to curtail instances where a *get* is improperly withheld.<sup>6</sup>

However, even supporters of the general halakhic validity of this *Get* law must realize that using secular law to solve part of the *aguna* problem, when the secular law's halakhic validity and prudence are contested by a significant number of Jewish law decisors,<sup>7</sup> creates an extremely problematic precedent for the use of secular law to decide internal Jewish law disputes. Coercive secular regulation to enforce Jewish law—in a way that does not allow those who disagree with the particular understanding of Jewish law found in the law to opt out of the law—should only be sought to enforce Jewish law norms that are accepted by (nearly) all members of the halakhic community. This should be true for secular kashruth enforcement laws<sup>8</sup> and secular Jewish autopsy laws, as well as secular *Get* laws. For this reason alone, in this author's opinion, the 1992 *Get* law is at the very least a bad idea, even as its intentions are laudable and its goals commendable, as noted by the late Rabbi Shlomo Zalman Auerbach in his discussion of this law.<sup>9</sup>

It is not the role of secular authorities to determine whether a particular form of governmental interference is permitted according to Jewish law. Indeed, secular interference in the internal workings of Jewish law has been profoundly discouraged throughout Jewish history.<sup>10</sup>

## HALAKHIC CONSIDERATIONS

The 1992 *Get* law remains the law in New York State, and similar laws have been passed in other countries and proposed in other states.<sup>11</sup> Repeal of the law in New York seems extremely unlikely, and retroactive repeal is not even under consideration. Couples are still divorcing and Jewish divorces are still being written. Divorced individuals are seeking to marry again. Thus an examination of the after-the-fact ramifications of the law is needed. This short note will address whether it is possible that Jewish divorces issued since 1992 are halakhically valid in jurisdictions with such a law and if so under what circumstances.

Nine distinctly different rationales can be advanced that incline one to rule that a *get* given in the shadow of the 1992 law might be valid, even if the law itself is fundamentally unwise.

First, Rabbi Moshe Feinstein states that there is no problem of “coerced divorce” (*get me’use*) in a situation where it is clear that the husband actually wishes to end the marriage and be divorced and is only contesting the fiscal details of the divorce, but has no desire to remain married to his wife.<sup>12</sup> Similar sentiments may be intended by Rabbi Abraham Isaiah Karelitz, *Hazon Ish*, who states that even when there is illicit coercion, if the husband really does want to give the *get* and be divorced, the *get* is still valid, as the true desire of the husband is to be divorced.<sup>13</sup> This appears to be accepted, in modified form, by Rabbi Yitshak Isaac Herzog as well, who states that coercion does not invalidate a *get* that is halakhically commanded even if it cannot be halakhically compelled.<sup>14</sup>

Second, the *Get* law is only problematic if it takes the husband’s property away from him to induce his issuing a *get*. If halakha recognizes secular law’s equitable distribution of marital assets as valid through *dina de-malkhuta*, then there is no illicit coercion, as nothing is taken from the husband that he owns; rather, a “bonus” is withheld from him in order to induce his issuing of a *get*<sup>15</sup>—since secular law rules that equitable distribution assets belong individually to neither partner in the marriage. Such an approach is adopted by Rabbi Yitshak Isaac Leibes.<sup>16</sup> Additional support for the proposition that secular law’s rules related to equitable distribution can be incorporated into halakha through *dina de-malkhuta dina* can be found in other authorities.<sup>17</sup>

Third, Rabbi Joseph Kolon (*Maharik*) rules that there is no problem of a coerced *get* in a case where the husband can pay the monetary penalty and the penalty is reasonable (as penalties under the *Get* law normally are). Small economic sanctions of the type typically used in

this law are permissible.<sup>18</sup> This position is cited by *Rema* and other authorities as a significant factor after the fact.<sup>19</sup>

Fourth, it is possible that any given case under the *Get* Law involves a situation where coercion is permissible according to halakha because of misconduct by the husband or wife which would lead one to classify the divorce as a situation where divorce is either mandatory or a *mitsvah*.<sup>20</sup> According to some opinions, the resulting *get* (even if coerced) is valid.<sup>21</sup> In such a case the presence of the coercion does not void the *get* according to halakha so long as there is a ruling to that effect by a *bet din* prior to the writing of the *get*.

Fifth, Rabbenu Yeruham is of the opinion that economic duress never creates a situation of a coerced *get*.<sup>22</sup> According to this approach, the 1992 *Get* law would thus always be permissible. Rabbi Yoab Weingarten uses this as one side of a multi-faceted case of doubt (*sefek sefeka*) to validate a *get* that might be considered coerced.<sup>23</sup> More significantly, Rabbi Elijah of Vilna appears to categorically accept the ruling of Rabbenu Yeruham and rule that any time physical force is not threatened or used, there is no problem of a coerced *get*.<sup>24</sup>

Sixth, Rambam rules that coercion is acceptable in any case where the woman states that her husband is repugnant to her.<sup>25</sup> Many divorces currently fit that bill; this is even more so for divorces initiated by the woman, which is where the *Get* law is otherwise most problematic. The 1992 *Get* law would thus be permissible according to this approach in most cases when there is an order from a *bet din*. Rabbi Isaac Herzog uses this as one side of a multi-faceted case of doubt (*sefek sefeka*) to validate a *get* that might be considered coerced.<sup>26</sup> More significantly, in a case where the woman's claim of repugnancy toward her husband is based on reasonable and provable grounds (*amatla mev'u'eret*), many authorities accept Rambam's rule that coercion is permissible, at least after the fact; some even rule this way *ab initio* (*lekhathila*).<sup>27</sup> Perhaps most, and certainly many, divorces fall into this category.

Seventh, for marriages entered into after the *Get* law took effect and with (presumed) knowledge of the law, the penalties of the 1992 *Get* law become a voluntarily, pre-agreed-on penalty for withholding a *get*, which is (at least after the fact) permitted by many authorities.<sup>28</sup> The same can perhaps be said for anyone who continues to reside in New York, even if married prior to 1992, and is aware of the *Get* law, particularly if *dina de-malkhuta dina* appropriately governs the finances of the case.

In addition, even if the *Get* law creates a situation of illicit coercion because the coercion comes from a secular court, the *get* might not

be void. Rabbi Yitshak Elhanan Spector rules that so long as the illicit coercion from a secular court is not used directly to compel the actual writing of the *get*, but is separated in time and manner from the husband's ordering the *get* to be written, and the husband at the time of the writing of the *get* states to a *bet din* that his actions are voluntary, and it appears that there is no imminent coercion present, the *get* is not void.<sup>29</sup> That is exactly the case of the *Get* law.

## THE REALITY OF DIVORCE

Added to these many halakhic rationales are three empirical observations that also vastly reduce the scope of the problem:

First, there are many Jewish divorces issued where there is no coercion in fact presented by the *Get* law, as the couple have settled their claims independently of any secular law including the *Get* law. These divorces are completely halakhically non-problematic. Many uncontested divorces are of this type.

Second, even when a penalty is explicitly imposed by the judge under the *Get* law for withholding a *get*, if the amount of the penalty is clearly related to the wife's support needs, and is comparable to the amount which a *bet din* could have ordered as maintenance (*mezonot*) for the wife, then there is no halakhically improper coercion.<sup>30</sup>

Finally, it is important to note that determining the factual reality is made vastly more complex by the nature of secular divorce law. There are many cases where a husband will consent to the imposition of a significant penalty because he knows that he will give (or has already given) the *get* of his own will and thus void the penalty. There are many cases where people agree to such a penalty provision merely to convince their spouse of their genuine desire to issue a *get* and avoid *aguna* problems. This creates a significant factual problem in determining whether coercion is present in any given case, as the mere presence of a penalty provision in the judicial divorce decree is *not* evidence of illicit coercion. So too, the absence of a penalty provision in a judicial divorce decree does *not* mean no coercion was present, as the mere existence of the law in the legal code can sometimes create coercion in the negotiations that is not reflected in the public record documentation.<sup>31</sup> Indeed, in reality it is nearly impossible for any outside observer to distinguish cases where coercion is present in the settlement negotiations from cases where it is not, thus creating significant factual doubt as to the presence of coercion in the issuing of the *get* in most cases.

## TRADITION

## CONCLUSION

Secular interference in internal matters of Jewish law which are contested within the Jewish community should generally be discouraged and opposed. Thus, the 1992 *Get* law is not a positive development and raises the possibility of illicit coercion in Jewish divorces. Ideally, Jewish law requires that one investigate every single case of possible coercion to determine the facts on a case-by-case basis and not rely on generalizations.<sup>32</sup>

On the other hand, there is a very strong halakhic policy which considers all Jewish divorces which come from recognized arrangers of divorce (*mesadrei gittin*) as valid. Few rabbis arrange Jewish divorces; those who do are experts in the field, and an attestation of a proper divorce from one of them thus deserves a very strong presumption of validity.<sup>33</sup> This is even more so in the face of the numerous halakhic rationales and factual realities discussed above.

Balancing these conflicting mandates is particularly difficult in the area of divorce law, since the Talmudic Sages recognized two distinctly different core values—the importance of not leaving women chained to expired marriages (*takanat ha-agunot*) and the strictures of adultery (*humra de-eshet ish*)—as worthy of consideration before resolving divorce issues. These two values are in considerable tension and normative halakhic rulings in this area require a balance of them. So too, as with all cases where a multiplicity of reasons are needed to justify a post-fact deviation from the norms of Jewish law, it is important to understand that not all of these possible rationales are of equal halakhic force or applicability in every case. It is quite possible to create a case of divorce that has a significant coercive penalty and lacks any of the permissible characteristics discussed above. Thus, the difficult task of precisely balancing the various factors in close cases under the 1992 *Get* Law must be left for another time, although it is clear that there are many cases where a *get* given in the shadow of the 1992 *Get* Law is valid according to Jewish law.

NOTES

*My thanks to Rabbi Howard Jachter for his review of an earlier version of this article. This article is an appendix to a forthcoming book about the relationship between Jewish and secular law.*

1. Rabbi Yosef Eliyahu Henkin, *Edut le Yisrael* 143-144, reprinted in *Kol Kitvei haRav Henkin* 1:115a-b.
2. Domestic Relations Law §236B(5) states:  
In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subsection six of section two hundred and fifty three of this article, on the factors enumerated in paragraph (d) of this subdivision.  
Section 253(6) limits “barriers to remarriage” to situations where a *get* is withheld.
3. For a review of this area, and of the various criticism of the law, see Irving Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society*, pages 209-238.
4. See Responsa of Rabbi Yosef Shalom Elyashiv, 1 Elul 5752, and Breitowitz, *The Plight of the Agunah*, pages 230-236.
5. In addition, some argue that the law as written exempts from its application those cases where Jewish law would not allow an economic penalty. For more on this line of reasoning, and an extremely thorough reply, see Breitowitz, *The Plight of the Agunah*, pages 233-238.
6. Rabbi Gedalia Dov Schwartz, “The 1992 New York *Get* Law,” 27 *Journal of Halacha & Contemporary Society*, pp. 26-34 (1994).
7. See, e.g., Rabbi Yosef Shalom Elyashiv, as cited in Breitowitz, *The Plight of the Agunah*, pages 230-231.
8. See, e.g., *Ran-Dav’s County Kosher, Inc., v. New Jersey*, 608 A.2d 1353 (N.J., 1992), (stating that New Jersey may not, as a matter of constitutional laws, permit only one standard of kosher, and prohibit tenably kosher institutions adhering to a lower standard, to claim to be kosher).
9. Rabbi Auerbach’s letter (dated 28 Av, 5754) concludes that “this law is dangerous and it can cause, heaven forbid, bad results. It would be better if the law had been never passed.” It is worth noting that Rabbi Auerbach’s decision does not appear to agree with the specific halakhic conclusions that Rabbi Elyashiv reaches, perhaps because of the many possible uncertainties present. Rather, Rabbi Auerbach writes in a “public policy” vein.
10. See, e.g., Menachem Elon, *Jewish Law: History, Sources, Principles*, pp. 50-51, 1914-1917 (JPS, 1994).
11. See Breitowitz, *The Plight of the Agunah*, pages 163-179.
12. Rabbi Moshe Feinstein, *Iggerot Moshe, Even haEzer* 3:44. Rabbi Feinstein is hesitant to rely on this rationale alone. The rationale for Rabbi Feinstein’s ruling is very simple. He argues that the prohibition of a compelled *get* is limited to situations where the compulsion is used to divorce a couple that actually wishes to remain married. Compulsion in a case where

- divorce is truly desired does not create a *get me'use*. For an alternative rationale, see note 14.
13. Rabbi Abraham Isaiah Karelitz, *Hazon Ish, Even haEzer* 99:2.
  14. Rabbi Yitshak Isaac Herzog, *Otzar haPoskim* 2:11-12 (appendix) and *Hekhal Yitshak* 2. The ruling that coercion does not invalidate a *get* when divorce is genuinely desired can perhaps be also explained by combining the rulings of Rabbis Henkin and Herzog discussed above. First, one must realize that there is an obligation to have a Jewish divorce once there is an irreconcilable separation, and that this is commanded by Jewish law, as Rabbi Henkin states above. Second, Rabbi Herzog rules that coercion does not invalidate a Jewish divorce that is an obligation (*mitsvah*) even if not judicially compelled (*kofin*). Thus, since all cases where the husband genuinely desires divorce is an irreconcilable separations, one comes to the conclusion that once there is a desire to end the marriage, and only disagreement on terms, coercion does not invalidate the *get*, since the *get* is obligatory.
  15. For a full discussion of these issues, see Rabbi J. David Bleich, *Contemporary Halakhic Problems* II:94-103 and *Piskei Din Rabaniyyim* 10:300-08.
  16. Rabbi Yitzhak Isaac Leibes, *Bet Avi* 4:169.
  17. See Rabbi Yehuda Leib Grauburt, *Havalim beNeimim, Even haEzer* 55, which rules, in the alternative, that secular law provides a woman with financial rights against her husband (or his estate). Such can also be found in Rabbi Joseph Trani (*Mabit*), *Responsa* 1:309.
  18. Rabbi Joseph Kolon (*Maharik*), *Responsa* 63.
  19. See *Rema, Even haEzer* 134:5 and *Pithei Teshuva* 134:11-12.
  20. Either a *kofin* or *yotzi* situation; see *Shulhan Arukh, Even haEzer* 119 for more on this. Even in a situation where no ruling from a *bet din* was sought and coercion was applied, the resulting *get* is valid according to Torah law and only rabbinically invalid according to many authorities; *Rambam, Gerushin* 2:20. For a further extension of this, see Rabbi Spector, cited *infra* in note 29.
  21. See Rabbis Herzog and Leibes, cited in notes 10 and 11.
  22. Rabbeinu Yeruham, *Sefer Toledot Adam veHava, Netiv* 24, *Helek* 1.
  23. Rabbi Yoab Weingarten, *Helkat Yoab, Dinei Ones* 5.
  24. Rabbi Elijah of Villna, *Biur ha Gra, Even ha Ezer* 154:67.
  25. *Rambam, Ishut* 14:8.
  26. Rabbi Herzog, *supra* note 10.
  27. See the many sources cited in Rabbi Ovadia Yosef, *Yabia Omer, Even ha Ezer* 3:18, where he quotes many authorities who accept that economic coercion may be used in a case of reasonable and provable repugnancy (either *post facto/be-di-avad*, or *ab initio/le-kha-thila*), including Rabbi Yosef himself. See also note 20 for a discussion of the status of coercion in a case where *bet din* was not consulted.
  28. Rabbi Shimon Duran, *Tashbetz* 2:168, Rabbi Yom Tov Ishbili (*Ritva*) as quoted in Rabbi Joseph Karo, *Bet Yosef, Even haEzer* 154, *Rema, Even ha Ezer* 134:5; Rabbi Abraham Isaiah Karelitz, *Hazon Ish, Even haEzer* 99:2.
  29. Rabbi Yitshak Elhanan Spector, *Be'er Yitshak* 10(8).
  30. See Rabbi Moshe Feinstein, *Iggerot Moshe, Even haEzer* 4:106 (at the end) and 1:137. It is important to realize that Rabbi Feinstein (in 4:106) does



not require that the secular award be lower than that mandated by Jewish law, only comparable. This assumes that the support provisions of the 1992 *Get* law are truly support provisions and not merely penalty clauses masked in the guise of support. Their proper understanding is disputed by various secular legal scholars; see Breitowitz, *The Plight of the Agunah*, pages 213-229, particularly notes 634, 636, 640, 643 and 662 of that superb book.

31. In the economic literature, this is referred to as “negotiating in the shadow of the law.”
32. See Rabbi Shabbetai ben Meir haCohen (*Shakh*), *Yore De’a* 98:9, who states that correctable gaps in one’s factual knowledge do not create legally significant “doubt” in Jewish law.
33. Rabbi Moshe Isserles (*Rema*), *Even haEzer* 154 (*Seder haGet*), introduction to the appendix.