Gender issues in Jewish law

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Reform Judaism and Divorce

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QUESTION: What is the traditional Jewish attitude toward divorce? What is the Reform attitude toward divorce? Is a *get* necessary before remarriage can occur?

ANSWER: Judaism looks upon divorce with sadness (*Git.* 90b; San. 22a), but recognizes that it might occur. It makes divorce easy and simple when the parties are no longer compatible, in keeping with the Biblical statement (Deut 24:1–2). According to the Talmud, divorce could be given by a man for virtually any reason, even the most minor one (*Git.* 90a). This was subsequently restricted according to the decree of Rabbenu Gershom (Finkelstein, *Jewish Self-Government in the Middle Ages*, pp. 29ff; *Shulhan Arukh, Even Ha-ezer* 119.6). A divorce always originated with the husband, and the wife accepted the document. A court could force the husband to give a divorce, and a man might be punished and imprisoned for his refusal to give a divorce; this remains true in in modern Israel. If he remains unwilling after punishment, nothing further can be done (*B.B.* 48a; *Yad, Hil. Erusin* 2:20; Amram, *Jewish Law of Divorce*, pp. 57ff; Schereschewsky, *Dinei Mishpahah* 285ff). There are also certain circumstances under which a court may demand a divorce, although neither one of the parties involved has requested it. The detailed reasons for a divorce have been codified in the various early codes and in the *Shulhan Arukh, Even Ha-ezer* (1.3; 11.1; 39.4; 70.3; 76.11; 115.5; 134; 154.1–7, etc.). The actual procedure and the document of divorce have been surrounded by many restrictions in order to ensure their complete validity. The

procedures have been prescribed in greatest detail (*Shulhan Arukh, Even Ha-ezer* 119ff). The various problem areas have been treated extensively by Rabbinic law; for example, the mental incapacity of the husband or wife, the disappearance of the husband, or his presumed death. In these instances and in ordinary divorce, Orthodox law has found itself in a difficult position, for only the man can actually grant a divorce, and if he is unwilling or unavailable there is little that can be done.

As divorce proceedings frequently involve a great deal of bitterness, the husband may be unwilling to provide a religious divorce (*get*) along with the civil divorce unless a large payment or some other concessions are made. Sometimes a religious divorce is stipulated as part of the arrangement in a secular divorce. The Conservative movement has sought to remove itself from this predicament by including a special statement in its marriage document. It provides for authority of a rabbinic court to grant a divorce in cases where the husband is unwilling to do so or if he becomes unavailable (Isaac Klein, *A Guide to Jewish Religious Practice*, pp. 98f). This kind of ante-nuptial agreement, as well as other possible solutions, have been suggested by various traditional scholars (Freiman, *Seder Kiddushin Venisuin*; Berkovits, *Tenai Benisu-in Uveget*), but they have met strong opposition among other Orthodox authorities.

The limitations of the Orthodox procedure for granting a divorce are, therefore, quite clear. In theory, divorce should be easy to obtain; in practice, the stipulation that only a male may initiate the proceedings, the lack of enforcing power of the Jewish court and the many details necessary for the procedure make the *get* virtually unobtainable for many women.

The Reform Movement, since its inception, has concerned itself with the problems of both marriage and divorce. The matter was raised at the Paris Sanhedrin in 1806, when it was asked whether divorce was allowed and whether civil divorce would be recognized. It was clearly stated that a religious divorce would only be given if a valid civil divorce had preceded it (M.D. Tama [Kirwan tr.], *Transactions of the Parisian Sanhedrin*, 807, pp. 152ff). This statement weakened the status of religious divorce, although that was not the intent of the respondents.

The Brunswick Conference of 1844 appointed a committee to look into all the questions connected with marriage and divorce. They reaffirmed the Paris statement that marriage and divorce were subject not only to Jewish law, but to the laws of the land in which Jews reside. Although various reports and motions were presented to the rabbinic conference in Breslau in 1846, as well as to that of Leipzig in 1869, none of these resulted in any definite action. In 1871, in Augsburg, another commission was appointed to study the matter and to bring definite recommendations to a further meeting (*CCAR Yearbook*, Vols. 1, 2, 3). Holdheim had earlier suggested that divorce be eliminated entirely from the set of Jewish proceedings and that civil divorce simply be accepted (Holdheim, *Über die Autonomie der Rabbinen*, pp. 159ff). This was the point of view the Philadelphia Conference of 1869 accepted, with only Sonnenschein and Mielziner expressing the sentiment that the *get* should not be entirely abolished, but should be modified in some form (Mielziner, *The Jewish Law of Marriage and Divorce*, p. 135), a view Geiger also held (S.D. Temkin, *The New World of Reform*, p. 61). The resolution of the Philadelphia Conference remained somewhat unclear, as it permitted the rabbinic court to look into the decree of the civil court and reject some grounds for divorce.

The discussion of divorce continued at later rabbinic conferences, but without any formal action being taken. Generally, the civil decree was simply accepted (*CCAR Yearbook*, Vol. 23, p. 154; Freehof, *Reform Jewish Practice*, vol. 1, p. 106). One might say that this is in keeping with at least one talmudic decision, as quoted by Ezekiel Landau when he stated that the *get* is really a matter of civil law (*Dinei Mamonot* in *Noda Biyehuda*, *Even Ha-ezer* 114, based on Yev. 122b). Kaufmann Kohler, in his discussion of the problems of marriage and divorce and their relation to civil laws, recommended that civil divorce be recognized as long as the grounds for such divorce were consonant with those provided by previous rabbinic tradition (*CCAR Yearbook*, Vol. 25, pp. 376ff). His recommendations were heard by the Conference, but not accepted in any formal manner. Technically, of course, the child of a woman (and possibly a man) that has remarried without prior religious divorce would be considered illegitimate (*mamzer*). Such a child would, according to Orthodox law, be

considered unlawful and akin to one born of an incestuous or adulterous relationship (*Mishnah, Kid.* 111.12; *Kid.* 49a; *Shulhan Arukh, Even Ha-ezer* 4.2). This was the attitude taken toward Karaites until recently. In fact however, nothing the Reform or Conservative Jews do can avoid this possible predicament. It does not matter to the Orthodox authorities whether we simply recognize civil divorce or proceed to initiate our own form of *get*. The latter would also not be recognized by them.

The entire matter of divorce has come up a number of times again more recently. Several Canadian congregations have decided that they would provide a *get* in a somewhat modified form, as have the Reform (not the Liberal) congregations of Great Britain. Petuchowski has suggested that an appropriate *get* be instituted by the Reform Movement in keeping with the spirit of Jewish tradition, i .e., both the consecration of marriage and its dissolution should have religious forms. Others have stressed the psychological value of a religious divorce.

At the present time, the Central Conference of American Rabbis makes no provision for a religious divorce and civil divorce is recognized as dissolving a marriage by most Reform rabbis.