Gender issues in Jewish law

Jacob, Walter

New York, 2001

A Reform Get

urn:nbn:de:kobv:517-vlib-9891

A Reform *Get*

Walter Jacob, Questions and Reform Jewish Answers, New York, 1992 # 233

Walter Jacob

QUESTION: Should Reform Rabbis issue a formal document of divorce *(get)*? Should we consider the document in the new *Rabbis Manual* to be a *get*? (Morton Cohen, Los Angeles, CA; Karen Silverman, New York, NY; Michael Smith, Pittsburgh, PA)

ANSWER: An earlier responsum entitled; "Reform Judaism and Divorce" (W. Jacob (ed) *American Reform Judaism* # 162), provided the historical background of the divorce proceedings. It did not, however, deal with the technical problems of a *get*. This decision should supplement the previous responsum.

The *get* became important traditionally because of the question of *mamzerut*. In other words, the child of a union with a "married" woman or one otherwise forbidden would be placed in jeopardy and it is important for such an offspring to assume the status of its parent's marriage.

As we look at the entire area of divorce in the North American Jewish Community, we must ask ourselves what alternative paths are open to us. We can simply follow the procedure of the past, acknowledge civil divorce. This will continue to be appropriate for a large number of individuals, however, some individuals now desire a religious act to finalize the separation. It is religiously and psychologically satisfying to both parties

We might seek a uniform solution for all groups, Reform, Conservative, and Orthodox so that the document would be universally recognized. That is a praiseworthy goal, but with the current mood of the Orthodox community may be unattainable. Perhaps some liberal Orthodox would be willing to work out a compromise, but it would not satisfy the rest and so it hardly seems worth the enormous effort.

It might be easier to establish a common basis for divorce with the Conservative movement or a mutual recognition of

each others documents. This process would best be initiated in specific communities. That would provide working models and might lead to a greater understanding of the actual needs rather than satisfying the theoretical claims of each movement.

As we return to summarize the history of divorce within the Reform movement, we see that various rabbinical conferences and synods of the last century in Germany and in the United States tried to deal with the question of divorce alongside other problems. In the Paris Sanhedrin of 1806, the decision of those assembled was that no religious divorce would be granted unless a valid civil divorce had preceded it (N. D. Tama (ed.) Kirwan (tr.) *Transactions of the Parisian Sanhedrin* 1807, pp. 152 ff.). This decision has been adopted by all groups within Judaism in every modern country. The Liberal synod, which gathered in Leipzig (1869), passed a number of other resolutions on this issue. They were favored by most of those present including Abraham Geiger. It was agreed that the religious divorce needed to be simplified and that (a) it should be given as soon as a civil divorce had been settled; (b) rabbis should make an effort at reconciliation before a civil divorce is filed; the document of the divorce should be brief, in the vernacular, and presented to both parties; (d) the religious divorce should be granted even if one of the parties objected; (e) the woman may remarry even if she has no divorce; (f) a divorcee may marry a *kohen* as may a proselyte. *(Yearbook Central Conference of American Rabbis* vol. 1, pp. 106 ff.) The question of the equality of the sexes in matters of divorce was to be discussed at a later synod (Ibid. 108).

The synod held in Augsburg in 1871 established a committee to deal with divorce. It was to report at a future meeting, and one of the concerns expressed was the equal treatment of both sexes. No later meeting was held.

In the United States, divorce was discussed at the Philadelphia Conference of 1869 which declared that divorce was a purely civil matter and needed no religious steps whatsoever. Therefore, a *get* was not necessary. A rabbinic body should, however, investigate the conditions under which a divorce had been given to ensure that they also meet the criteria for a Jewish divorce. At that meeting in Philadelphia two rabbis, Sonnenschein and Mielziner, felt that the *get* should be modified rather than completely abolished, a point of view expressed somewhat earlier by Geiger.

It has been the general position of the Central Conference of American Rabbis to follow the stand taken by Kaufmann Kohler who recommended that civil divorces be recognized as long as the grounds for such a divorce were in keeping with the rabbinic tradition *(Central Conference of American Rabbis Yearbook,* vol. 25 pp. 376 ff.). The matter, however, never came to an official vote within the Conference.

The Orthodox rabbinate of France in 1907 suggested that a civil divorce decree annulled the marriage and the woman would be released and free to marry according to Jewish ritual subsequently. This suggestion, which was attacked by Orthodox authorities throughout the world, is much akin to Reform Jewish practice (A. H. Freiman, *Seder Kidushin Venisuin,* p. 390).

In 1924 the Orthodox rabbis of Turkey proposed a "conditional marriage" to solve the problems of divorce and a husband's unwillingness to procure a *get.* This was subsequently rejected by Ben Zion Uziel of Israel (A M. Freiman, *Seder Kidushin Venisuin,* pp. 391 ff.).

The mood among both rabbis and members of our congregations has changed, especially as the number of divorces have increased. Some individuals now seek a religious resolution to the end of their marriage. This has led to the creation of the Document of Separation *(Seder Peredah).* in the new *Rabbis Manual.* Others have been willing to obtain an Orthodox or Conservative *get* despite the hardships involved and the secondary status given to the woman in those proceedings.

As we look at the problems connected with a Reform *get,* let us look at the traditional *get.* The original requirements connected with it were rather simple, and a divorce was easily obtained. The husband prepared for the divorce by asking a *sofer* (scribe) to write the document for him and indicated that he wished to divorce his wife. The specific name of the husband and the wife were given in the document; the city in which it was prepared was also indicated. No reason for the divorce was mentioned in the document itself.

This document was then signed by two adult male Jewish witnesses who were unrelated to either party or to each other. It was then given to two other witnesses or perhaps to the same individuals who delivered it to the woman. Upon her acceptance

the divorce became effective. The witnesses to the signature and to the delivery of the document could subsequently attest to the fact that everything had been accomplished by the law.

This document, therefore, depended entirely on the husband and its acceptance by the wife. A rabbinical court *(bet din)* had no real standing in this matter unless a further dispute arose. It may or may not have supervised the various stages of the document, i.e., the proper composition, witnessing and delivery, but that was not essential. The court did not initiate the procedure nor did it provide any kind of hearings in the matter.

These proceedings were straightforward and uncomplicated until questions of custody and financial control were raised. As such issues are nowadays settled by the civil courts, we need not be troubled by them.

Throughout the centuries, questions have been raised about the names of the individuals in the documents, the fitness of the individuals who were witnesses, the state of mind of the author of the document and the state of mind of the recipient, the qualifications of the scribe, etc. Eventually this simple document became rather complex. Its Hebrew or Aramaic text was fitted into precisely thirteen lines. The names of each of the individuals involved had to be spelled absolutely correctly, and there were frequent discussions about the precise name of the individuals, nicknames, etc. Furthermore, even the city involved had to be spelled properly, often in order to locate it precisely; a river or stream flowing through the city was also mentioned. If it was the first *get* written in a location, then each subsequent *get* had to be written in the same manner. The delivery of the *get* had to be properly attested, and since the decree of Rabbenu Gershom (1000 C.E.) a *get* could not be given to a woman against her will. Delivery had to be established through the woman's actual acceptance of the document; it could not be deposited with her. A vast literature deals with each of these questions in every century.

Most of the issues involved that troubled previous generations are of no concern to us as the civil court has already dealt with them in its own way and in a manner acceptable to us. At this time, therefore, we have accepted civil divorce.