

Judaism

History, Belief and Practice

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Divorce

The Get

"On the ____ day of the week, the ____ day of the month of ____ in the year ____ from the creation of the world according to the calendar reckoning we are accustomed to count here, in the city ____, which is located on the river ____, and situated near wells of the water, I, ____, the son of ____, who today am present in the city ____, which is located on the river ____, and situated near wells of water, do willingly consent, being under no restraint, to release, to set free and put aside thee, my wife ____, daughter of ____, who art today in the city of ____, which is located on the river ____, and situated near wells of water, who has been my wife from before. Thus do I set free, release thee, and put thee aside, in order that thou may have permission and the authority over thy self to go and marry any man thou may desire. No person may hinder thee from this day onward, and thou are permitted to every man. This shall be for thee from me a bill of dismissal, a letter of release, and a document of freedom, in accordance with the law of Moses and Israel."

Figure 85 Jewish Bill of Divorce, or *get*.

Biblical law specifies the procedure for divorce. According to the Book of Deuteronomy, "When a man takes a wife and marries her, if then she finds no favour in his eyes because he has found some indecency in her, he writes her a bill of divorce and puts it in her hand and sends her out of his house" (Deut. 24:1). This verse stipulates that the power of divorce rests with the husband, and the act of divorce must be in the form of a legal document. Among early rabbinic scholars there was disagreement as to the meaning of the term 'indecency': the School of Shammai interpreted it as referring to unchastity, whereas the School of Hillel understood the term more widely. Nonetheless, in two instances it was not permitted for divorce to take place: (1) if a man claimed that his wife was not a virgin at the time of marriage and his charge was disproved (Deut. 22:13–19); or (2) if he raped a virgin whom he later married (Deut. 22:28–29). Conversely, a man

was not allowed to remarry his divorced wife if she had married another person and had been divorced or widowed (Deut. 24:2–4). Nor could a priest marry a divorced woman (Lev. 21:7).

In the Talmudic period, the law of divorce underwent considerable development, including the elaboration of various situations under which the court could compel a husband to divorce his wife if she remained barren over a period of ten years, if the husband contracted a loathsome disease, if he refused to support her or was not in a position to do so, if he denied his wife her conjugal rights, or if he beat her despite the court's warnings. In such cases the *Talmud* states that the husband is coerced by the court only to the extent that he would in fact want to divorce his wife.

The bill of divorce (*get*) is to be drawn up by a scribe following a formula based on mishnaic law. This document is written almost entirely in Aramaic on

parchment. Once it has been given to the wife, it is retained by the rabbi who cuts it in criss-cross fashion so that it cannot be used a second time. The husband then gives the wife a document (*petot*) which affirms that he has been divorced, and may remarry. The wife is permitted to remarry only after ninety days, so as to ascertain whether she was pregnant at the stage of divorce. This document must be witnessed by two males over the age of thirteen who are not related to each other or to the divorcing husband and wife.

The traditional procedure is based on the *Code of Jewish Law*. The officiating rabbi initially asks the husband if he gives the bill of divorce (*get*) of his own free will without duress and compulsion. After receiving the writing materials from a scribe, he instructs the scribe to write a *get*. The *get* is written, and the witnesses must be present during the writing of the first line; the witnesses as well as the scribe then make a distinguishing mark on the *get*. When the *get* is completed and the ink is dry, the witnesses read the *get*. The rabbi then questions the scribe to ensure that the document was written by him on the instruction of the husband. Turning to the witnesses, the rabbi asks if they heard the husband instruct the scribe to write the *get*, as well as observed him writing it. In addition, the rabbi questions the witnesses about their signatures on the bill of divorce. Finally, the rabbi asks the husband if the *get* was given freely. The wife is then asked if she freely accepts the *get*.

Rabbi: 'Are you accepting this *get* of your own free will?'

Wife: 'Yes.'

Rabbi: 'Did you bind yourself by any statement or vow that would compel you to accept this *get* against your will?'

Wife: 'No.'

Rabbi: 'Perhaps you have unwittingly made such a statement that would nullify the *get*. In order to prevent that, will you kindly retract all such declarations?'

Wife: 'I revoke all such statements that may nullify the *get*, in the presence of the witnesses.'

The rabbi tells the wife to remove all jewellery from her hands and hold her hands together with open palms upward to receive the bill of divorce. The scribe

holds the *get* and gives it to the rabbi. The rabbi then gives the *get* to her husband; he holds it in both hands and drops it into the palms of the wife and states: 'This be your *get* and with it be you divorced from this time forth so that you may become the wife of any man.'

When the wife receives the bill of divorce, she walks with it a short distance and returns. She gives the *get* to the rabbi who reads it again in the presence of the witnesses; the rabbi then asks the scribe and the witnesses to identify the *get* as well as the signatures.

Following this, the rabbi states: 'Hear all you present that Rabbenu Tam has issued a ban against all those who try to invalidate a *get* after it has been delivered.'

The four corners of the *get* are cut, and it is placed in the rabbi's files. The husband and wife receive written statements certifying that their marriage has been dissolved in accordance with Jewish law.

It is customary for the husband and wife to be present during the divorce proceedings, but if this is not possible Jewish law stipulates that an agent can take the place of either party. The husband may appoint an agent to deliver the *get* to his wife; if this agent is unable to complete this task, he has the right to appoint another one, and the second agent yet another. The wife can also appoint an agent to receive the *get*. Thus it is possible for the entire procedure to take place without the husband or wife seeing one another; this is sometimes done to avoid the emotional strain of the husband and wife meeting each other if a bitter divorce has occurred.

In certain instances a *get* of benefit (*get zikkui*) may be arranged. Jewish law stipulates that the woman's consent to a divorce is not necessary, and the *get* can be given to her against her will. However, the ordinance of Rabbenu Gershom (tenth to eleventh century) prohibits divorcing a woman without consent.

According to Talmudic scholars, a benefit can be conferred upon an individual even when that person is not present. That is, if the procedure can bring about a benefit for an individual, it is logical to assume that this person would give his or her consent if he or she knew about it. In the case of civil divorce, it can be assumed that if the husband and wife have already obtained a divorce from the secular authorities, she has given consent to divorce. In such a case, the rabbinical court (*bet din*) can appoint an agent to receive the *get* for her even without her consent. Here the wife would be

receiving a benefit because she would be able to remarry according to the *halakhah* without risking being considered an adulteress. In such instances the procedure of divorce is the same, except that instead of giving the bill of divorce to the wife, the husband gives the *get* to an agent who is appointed by the court.

Throughout history a number of modifications have been made to divorce legislation. In the Middle Ages Rabbenu Gershom brought about a fundamental change in the law of divorce among Ashkenazim as well as some Sephardi communities. In an enactment (*takkanah*), he decreed that a husband may not divorce his wife without her consent. This *takkanah* in essence made the rights of the wife nearly equivalent to those of the husband: from this time forth divorce could only be by mutual consent. Later *halakhists* strengthened this enactment by stating that any writ of divorce issued in violation of this ruling was null and void. Some time later Jacob Tam decreed that in certain emergencies the *takkanah* requiring mutual consent could be set aside, such as in the case of a woman who apostatized and left the Jewish community.

Yet despite such modifications, certain difficulties still remain about the granting of a *get*. Since it is the husband who must give the bill of divorce to his wife, if he cannot be located, this presents an insurmountable obstacle. Similarly in the diaspora rabbinic scholars have no authority to compel a husband to comply with their instructions. In both cases the wife has the status of being an *agunah* (a 'tied' woman) who is not able to remarry according to traditional Jewish law. In order to vitiate this difficulty the Rabbinical Assembly of the Conservative movement proposed a *takkanah* calling for the insertion of a clause in the marriage contract whereby both groom and bride in grave circumstances agree to abide by the decision of the religious court (*bet din*) of the Conservative movement:

And both together agreed that if this marriage shall be dissolved under civil law, then either husband or wife may invoke the authority of the *bet din* of the Rabbinical Assembly and the Jewish Theological Seminary of America or its duly authorized representatives, to decide what action by either spouse is then appropriate under Jewish matrimonial law, and if either spouse should fail

to honour the demand of the other or to carry out the decision of the *bet din* or its representatives, then the other spouse may invoke any and all remedies available in civil law and equity to enforce compliance with the *bet din's* decision and this solemn obligation.

Another solution proposed by the Conservative movement involves an antenuptial agreement signed by the bride and groom:

On the . . . day of . . . , 20 . . . , corresponding to . . . 57 . . . , in . . . , the groom, Mr . . . , and the bride, Mrs . . . , of their own free will and accord entered into the following agreement with respect to their intended marriage.

The groom made the following declaration to the bride:

I will betroth and marry you according to the laws of Moses and Israel, subject to the following conditions: (a) If our marriage be terminated by decree of the civil courts and if by expiration of six months after such a decree I give you a divorce according to the laws of Moses and Israel (a *get*), then our betrothal (*kiddushin*) and marriage (*nissuin*) will have been valid and binding. (b) But if our marriage be terminated by decree of civil court and if by expiration of six months after such a decree I do not give you a divorce according to the laws of Moses and Israel (a *get*) then our betrothal (*kiddushin*) and marriage (*nissuin*) will have been null and void.

This document gives authority to the *bet din* to annul the marriage *ab initio* in the case where there is a refusal to authorize a *get*.

In a later enactment the Rabbinical Assembly of the Conservative movement invoked the power that the Talmudic rabbis had to annul marriages. The formula ('You are betrothed unto me with this ring, according to the laws of Moses and Israel') is interpreted by the rabbis in the *Talmud* to imply that every bride and groom contract a marriage subject to the approval of rabbinical authorities. If the rabbinical authorities remove their approval then the marriage is null and

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void *ab initio*. Since this power was invoked in ancient times when the husband acted in an unjust manner, it was felt that in later times the power could be invoked again to resolve the problem of the *agunah*.

Within Reform Judaism the traditional practice of

granting a bill of divorce has been abandoned. Instead civil divorce is regarded as valid. For this reason there has been no attempt within Reform Judaism to formulate a policy dealing with the status of the *agunah*.

SOURCES

Bill of Divorce

A typical bill of divorce is as follows:

On the . . . day of the week, the . . . day of the month of . . . in the year . . . from the creation of the world according to the calendar reckoning we are accustomed to count here, in the city . . . which is located on the river . . . and situated near wells of water, I . . . the son of . . . who today am presently in the city . . . which is located on the river . . . and situated near wells of water, do willingly consent, being under no restraint, to release, to set free, and put aside you, my wife . . . daughter of . . . who is today in the city of . . . which is located on the river . . . and situated near wells of water, who has been my wife from before. Thus I do set free, release you, and put you aside, in order that you may have permission and the authority over yourself to go and marry any man you may desire. No person may hinder you from this day onward, and you are permitted to every man. This shall be for you from me a bill of dismissal, a letter of release, and a document of freedom, in accordance with the laws of Moses and Israel.

(In JF, p. 202)

DISCUSSION

1. Are women treated unfairly in a Jewish divorce?
2. Discuss the problems regarding the position of an *agunah*.

FURTHER READING

- Brody, Michael, *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America*, KTAV, 2001.
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- Heschel, Susannah, *On Being a Jewish Feminist*, Random House, 1995.
- Jaffe-Gili, Ellen, *The Jewish Woman's Book of Wisdom: Thoughts from Prominent Jewish Women on Spirituality, Identity, Sisterhood, Family and Faith*, Citadel Press, 1998.