

Comments on the New York State "Get Law"

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Much controversy and confusion have been generated in regard to the enactment of the 1992 Amendments to Section 236B of the Domestic Relations Law, known as the "Get Law."* Because the 1992 law amends the Equitable Distribution Law of 1980 and allows the court to consider a "barrier to remarriage" in ruling upon the disposition of marital property and establishing maintenance, there are certain rabbinic authorities who understand the new law as coercing the husband to give a *get* out of fear of financial penalties. They consider that the new law authorizes the court to directly compel the husband to give a *get* under the threat of monetary penalties. Under Jewish law, a *get* given under compulsion is not valid. Thus, if this evaluation of the new law is correct, it would have serious consequences in the granting of religious divorces in N.Y. state.

Before reviewing the actual law itself, it is important to understand the source of the background material regarding the matter of a "*get me'usseh*, or coerced *get*."

It is a basic principle in the laws of *gittin* (religious divorce),

*A *get* is a divorce recognized by the Jewish religion, issued by a rabbinic court (Bet Din).

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that the husband must give the *get* of his free will without compulsion.¹ Consequently, interference with the husband's free will involvement in the *get* procedure would raise the question of a *get me'usseh*, a coerced *get*.

There are certain specific cases where the halacha prescribes coercion as a legitimate means of effecting a *get* in order to remove the wife from an intolerable situation.² In regard to the proper use of coercion in such situations, the Gemara³ discusses and establishes the guidelines for the exercise of this method for the executing of a *get*. It is required that the Bet Din first deliberate and rule that the husband is in the category of one who must be compelled to give the *get*. Only then is compulsion employed.

After due deliberation, the Bet Din may employ even physical methods for compliance, and even non-Jews may act as its agents. They are to state to the recalcitrant spouse: "Do what the Jewish court has told you to do!" These procedures are discussed in the Gemara,⁴ and are considered legitimate and effective, as long as there is adherence to the guidelines applicable in the specific case. The principle of permissible coercion must be initiated and decided by a Bet Din *before* employing non-Jews to carry out the *get* procedure. If it is initiated by non-Jews without the ruling of a Bet Din; even if such a ruling were in favor of a *get*, the *get* would be considered "*pasul*" (invalid).

In a situation where Bet Din has determined that a coerced

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1. Mishnah, *Yevamot*, Chap. XIV, 1.
 2. Mishnah, *Ketubot*, Chap. VII, 10; *Shulchan Aruch, Even Haezer*, 144.
 3. *Gittin* 88b, *Baba Bathra* 48a.
 4. *Gittin* *ibid*.

get is proper, and non-Jews are carrying out their ruling, there is a difference of opinion whether the non-Jews must clearly state, "Do what the Bet Din of Israel are telling you!"

According to R. Meir Halevi,⁵ if they do not mention the Jewish court, the *get* is *pasul* even if the Bet Din has ruled that he must be coerced. However, the Rosh disagrees and rules that the *get* is valid even if the non-Jews made no mention of the Bet Din's ruling, as long as that ruling permitted coercion.⁶

In regard to the method of coercion which may be employed, there is a controversy whether actual physical force may be used in a case where the Talmud only used the expression "*yotsi*," i.e. the husband *should* divorce his wife, or whether he is to be told that he is *obligated* by law to divorce his wife and if he refuses he may be called an "*avaryan*", a law-breaker. Because of this dispute the Ramo rules that physical force should not be used in these cases, in order to avoid a possible *get me'usseh*.⁷ But where the relationship is forbidden, he states that physical force may be used to compel the giving of a *get*.⁸

In situations where physical force is not permitted, the Bet Din can declare sanctions against the husband which amount to virtual excommunication and ostracism.⁹ Although Rabbenu Tam ruled that in the case of "*mavis alai*," (i.e. the wife claims, "My husband is repulsive to me") the husband should give a *get* but Bet Din cannot use direct

5. Tur, *Even Haezer* 134.

6. *Shulchan Aruch*, *ibid*, par.8,9.

7. *Bet Yosef* 134; Ramo, *ibid*.

8. *Ibid*.

9. *Shulchan Aruch*, *Even Haezer* 154: 21; Ramo, *ibid*.

physical force, he favored all sorts of community sanctions and ostracism against the husband until he gave a *get*. Nor did he consider this in the category of a "*get me'usseh*" since the man had an option to go to another community that did not have such sanctions.¹⁰

Are threats of possible monetary sanctions or penalties considered as coercion to render a *get me'usseh*? If there is a self-imposed monetary penalty for not giving a *get*, some authorities have ruled that such a *get* is not a *get me'usseh*, but others rule that it is.¹¹ The ruling of the Ramo in the *Shulchan Aruch* is that *ab initio* the possible fine should be removed before the *get* procedure; however, if it were carried out without its removal, the *get* is valid since he was not directly coerced for the *get*.¹² Consequently, in any *Sidur Haget* (Jewish divorce proceedings), statements are made by the husband in order to remove even the remotest possibility of compulsion in the *get* process. There should not be even a tinge of a *get me'usseh*. However, it is quite clear from the above ruling of Ramo that if *b'dieved*, a *get* was issued because of any monetary fine, etc., the *get* is valid.

The question of any implicit monetary coercion or coercive actions (*oness*) taken against others, which may indirectly influence the husband's decision to cooperate in the *get*, occupies a great deal of space in the *Bet Yosef's* commentary on the above section of *Even Haezer*. The prevailing current opinion does not consider such indirect pressures as being in the category of a *get me'usseh*.¹³ This is reflected in the above-cited passage in Ramo, who excepts

10. *Bet Yosef* 134 and Ramo, *ibid*.

11. *Ibid*.

12. *Ibid*. Ramo, *ibid*, 40.

13. Ramo, *ibid*.

only the case of pressures which are exerted on a father in order to compel the son to give a *get*. Otherwise, as defined by *Tashbatz*,¹⁴ it is not considered as an "*oneses*" (involuntary) if it is not directly applicable to the husband.

The Gaon R. Yoav Weingarten discusses the problem of *oneses mammon*, possible monetary pressures on the husband. He cites the Rabbenu Yerucham,¹⁵ in the case of a woman who seized notes due to her husband, whereupon the husband gave a *get* which Rabbenu Yerucham ruled was kosher. After an analysis of the concept of "*ratzon*" (will), the *Chelkat Yoav*, following the guidelines of the Torah,¹⁶ explains that where no direct reference is made to the *get*, but the husband understands that he can avoid the possible loss by voluntarily giving the *get*, then it is not considered an *oneses* and the *get* is valid.¹⁷

In a series of responsa, the late gaon Harav Yitzchok Isaac Halevy Herzog,¹⁸ discussed in depth the question of possible coercion as far as a *get me'usseh* is concerned. In view of the practice of rabbinic tribunals in Israel to compel a recalcitrant husband to pay *mezonot* (support) to his wife who is demanding a *get*, the decision on this point has serious halachic implications. It might seem that the husband is under compulsion to give a *get* in order to be relieved of the burden of payments; however, since the husband cannot remarry because of the "*Cherem* of Rabbenu Gershom" (a medieval enactment which forbids a man to be married to two women at the same time) this latter factor could possibly

14. No. 1; also cited in *Bet Yosef, Even Haezer*, 134.

15. *N'tiv* 24, *Chelek* 1.

16. *Gittin* 134, 4.

17. *Chelkat Yoav, Dinei Oneses*, 5.

18. *Haichal Yitzchak*, 1, 1-5.

be the reason for his voluntary cooperation in giving a *get*, since he clearly states that he is giving the *get* of his own free will. (In other words, the husband can be considered to be giving the *get*, not because of the financial pressure but because of the permissible rabbinic pressure which prohibits his own remarriage unless he divorces his first wife). He finds basic support for this approach in the analysis of the *Oneg Yom Tov*:¹⁹ the very fact that he wants to be free to marry is in the category of "*onseh dinafshei*," self-imposed coercion, which is not considered a true *oneses*, inasmuch as the coercion is not directed towards giving a *get* but rather to freeing himself from being attached to his wife so that he may marry another woman.

Also the ruling of Rambam²⁰ is utilized by Rav Herzog: In a case where the woman finds it intolerable to live with her husband because she finds him repulsive, the Rambam rules that the husband can be physically coerced; this opinion is mentioned and considered where monetary sanctions are being invoked by the Bet Din. Although the ruling in the *Shulchan Aruch* does not condone any physical coercion, following the opposition of Tosafot,²¹ nevertheless, this situation was joined with the other concepts if not directly forcing the *get*.²² Consequently, Harav Herzog rules that in the case of extreme *igun* and possibility of promiscuity, *mezonot* (support) should be mandated by the Bet Din.

In regard to a question concerning a government ruling not to grant a civil divorce if a *get* is not being given, Hagoan R. Moshe Feinstein, *z"l*, addressed the matter of *mezonot*

19. 149.

20. *Hilchot Ishut* Chap XIII, 8.

21. *Ketubot* 63b.

22. *Viz: Haichal Yitzchak*, *ibid*, 2,1.

(sustenance) being imposed by the secular court.

"With regard to your... question, if a secular judge imposes upon the husband, when he refuses to give a *get*, to make a payment of money to her for her *mezonot* and all her needs, is such a *get* considered a *get me'usseh*? Behold until he divorces his wife, he is responsible for her *mezonot* and all of her needs according to the *Din* (Jewish law), and she is even permitted to petition the secular courts for an order to compel him to provide her with *mezonot* and all of her needs. Even though the secular courts will order more than would a Bet Din, because those courts will compel him to support her even if she works and profits, when those courts order him to provide her with *mezonot* and with all of her needs under any circumstances, it is evident that if he divorces her in order to rid himself of this responsibility, that such a *get* is not considered a *get me'usseh* and that it is a "kosher" *get*, *l'chatchilah*.²³

In a direct response to the establishment of the proposed amendment to the original "Get Law", Harav Hagaon R. Yitzchok Liebes, Head of the Bet Din of the Igud Harabbonim, published a *teshuva* (responsum) in his *sefer Bait Avi*,²⁴ in which he rules that the law does not intrude in the problem of *get me'usseh*. In his extensive discussion of the background sources, he emphasizes the approach of the *Torat Gittin*, that since the possible pressure created is not directly directed towards the actual *get* process, but rather towards the husband's choosing to unburden himself from a financial

obligation by giving a *get*, then it cannot be considered as a *get me'usseh*. Although he writes there are *poskim* who consider monetary coercion in the category of *ones*, not like the opinion of Rabbenu Yerucham, he feels that the critical issues of *igun* and its consequences ("*Shaat Hadechak*"), allow for leniency in this very serious situation.

As to the objection raised that the amended *get* law would give power to the secular courts directly to coerce a husband to give a *get*, it has been pointed out by legal experts that the language of the statute states that the removal of a "barrier to remarriage" is by the voluntary act of the husband. The court will *not* directly coerce the husband to give a *get*, especially if a Bet Din has ruled for whatever reason that he is being denied a *get*.²⁵

As in the past, nowadays every competent and qualified *mesader gittin* in the Bet Din setting is careful to rule on the cooperation and willingness of the husband in following the *get* process. One has to remember that even absent the existence of the *Get* Law, every Bet Din is faced with the need to determine the husband's free-will cooperation. Who knows what type of pressures or threats may exist for each participant in the *get* procedure? It comes down to the principle of "*Ain L'dayan elah ma sh'einov ra'ot*," it is up to the perception of the judge. Consequently, the *Get* Law does not serve as a vehicle of non-halachic issuance of *gittin*. Rather, it is concerned with the plight of *agunot* who have been placed in an untenable position in regard to their family life and financial stability. Any alleviation of this situation is an important constructive step.

23. *Iggerot Moshe, Even Haezer* Vol. 4, 106. See also Vol. 3, 44. For further discussion in regard to *Ketuba* and *Mezonot* in the case of a recalcitrant husband, see *Chikrei Halacha* (p. 261-282) by Harav Shear Yashuv Hacohen, Rav of Haifa.

24. Vol. V, 169.

25. For a complete legal analysis of the "Get Law," see the memorandum of Marvin E. Jacob, Esq., dated June 14, 1993, published in the Jewish Press.

A competent Bet Din, alert to all possibilities of a possible *get me'usseh* will continue to function in supervising *get* procedures, since the *get* law does not provide for direct coercion by the secular courts. Placing financial responsibility on the husband when not terminating the marriage does not, as illustrated above in the *Iggerot Moshe*, cause concern for a *get me'usseh*. Consequently, the *Get Law* will serve as a facilitator in many cases of *igun*.

In conclusion, the controversy engendered by the law serves as a continuing reminder to every qualified Bet Din to be aware of the demands of the halachic standards of proper *get* procedure and to heighten consciousness for its legitimate and complete implementation.