

The New York State *Get* Bill and its Halachic Ramifications

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Introduction

In 1980, the New York State legislature passed what has become known as "the old New York State *Get* Bill."¹ This was in response to a perceived, ever-growing problem of spouses whose partners refuse to give/accept a *Get*, leaving them in a state of *Igun*. *Igun* – being chained – classically refers to a woman whose husband's whereabouts are unknown; hence, she is unable to remarry, nor does she have a husband. Of late, our community has come to know of the "modern-day *agunah*", when a husband refuses – for any reason (including mean-spirited ones) – to give his wife a *Get* in a situation that the wife would describe as a dead marriage.² This at times also leads to extortionist demands

1. DRL 253.

2. Actually, as many a *Bet Din* can attest, the further "right" one goes on the religious spectrum, the more frequently this problem exists for men as well. That is to say, their wives are refusing to accept *Gittin*, and the men are in a state of *igun* due to Rabbenu Gershom's ban against bigamy. Although a man has an option unavailable to a woman – a *Heter Meah Rabbonim* (the procedure through which a man is granted permission to marry a second wife if his wife refuses to accept a *Get*) – that procedure is drawn-out, costly, and, many times, ultimately unsuccessful.

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being made in "return" for a *Get*. This situation has worsened, in part, due to the lack of a sense of community where a strong central Bet Din's order to give a *Get* would almost automatically be listened to, as well as the lack of societal cohesiveness to ostracize the recalcitrant party.

The 1980 bill in New York essentially stated that the party initiating a divorce proceeding in the civil courts must certify that he or she has removed any "barrier to remarriage," as defined in that law. This effectively conditioned the procuring of a civil divorce for the party enlisting the aid of the courts upon the giving/receiving of a *Get*. The bill won the support of a broad spectrum of *Poskim*, who held that it was in no way coercive or otherwise problematic; with the approval of those who decide areas of Jewish Law, the law was passed.

However, this statute is obviously limited: for example, it only withholds a civil divorce but cannot compel a *Get*; it applies only to the plaintiff in the suit; it requires only an affidavit that the condition has been met. Yet these limitations helped to give impetus to rabbinic approval – for the court never directly ordered a party to give/receive a *Get*, nor is there any provision for the recalcitrant party to be penalized in any way. (There is no halachic problem in withholding from a person something that he is requesting (and is not necessarily due him) unless he gives a *Get*.)³

Contrary to popular wisdom, there are stringent grounds which must exist for a *Heter Meah Rabbonim* to be granted – merely the wife's refusal to take a *Get* is most definitely *not* one of them. However, the plight of women who are *agunot* is doubtlessly more in the public eye, and this article therefore generally addresses the perspective of women *agunot*.

3. *T'shuvot Rivash* 127 and countless other responsa dealing with coercion.

Given these limitations, however, pressure continued to grow for a better *Get* Bill. And so in 1992, without benefit of public hearings or input from a range of *Poskim*, a second *Get* Bill was passed.⁴ This "new *Get* Bill" directs the courts, when determining the distribution of marital assets, to take into account a "barrier to remarriage" (as defined in the first *Get* Bill). There are thirteen factors which a judge is directed to take into account when determining this distribution, and this bill tells a judge to weigh the effects of a "barrier to remarriage" upon all of these factors. The bill then goes on to direct a judge to do the same regarding the eleven factors presently taken into account when deciding an amount for "maintenance" (alimony). And since a judge must specify his reasons for setting these awards, a situation was created where the husband can now suffer a financial loss explicitly for his refusal to give a *Get*.

Canada also has passed a *Get* Law⁵ – to this writer's knowledge, unapproved by *Poskim* – which contains all of the problems of the New York State law, and to a much greater degree. In England there are rumblings about some sort of legislative remedy for *agunot*, as there are in many other jurisdictions. This article points out the fundamental halachic concerns with the New York State bill, and, it is hoped, can serve to help evaluate other potential legislative "solutions".

In the view of this writer, the problems with the New York State *Get* Bill are so many and varied, that the wonder is not the opposition it has met, but rather that it has any support whatsoever. Many contend that the Jewish community is immeasurably better off without the bill than

4. DRL 236 B.

5. Act of June 12, 1990, Ch. 18, I Statutes of Canada (1990).

with it since, as we shall see, the bill represents a dangerous time-bomb to the validity of many *Gittin*. Hence, ultimately, it endangers the sanctity of the Jewish family.

In addition, ironically, the bill may actually be counter-productive. The halachic process, which, under most circumstances solves *Igun* problems when followed through, is undercut by "solutions" such as these. By encouraging people to avoid a *Bet Din* and avoid having to justify their demands by the standards of halacha, it only helps frustrate Rabbanim and Rabbinic Judges who seek halachic solutions. It teaches litigants to ignore the *Bet Din* process and rulings and, indeed, to second-guess them. The overwhelming majority of *Igun* cases, after all, are solved – by rabbinic leadership along with community pressure. If the public is taught by well-meaning and not-so-well-meaning activists that the halachic route is to be avoided and ignored, then although there may be a few *agunot* helped by (one hopes) valid *Gittin*, there will be many many more who find their problems compounded.

Section One

Apart from the bill's flaws with respect to the validity of *Gittin*, there are three other anti-halachic effects. In the opinion of this writer, these effects are so manifest, so incontrovertible, that it is mystifying that any Orthodox Rabbi, much less any rabbinic institution, can be in favor of it.

I. The first basic flaw in the *Get* Bill is that it is intended to aid in procuring a *Get* – even if there is no reason according to Jewish law to assume a *Get* to be appropriate.

Halacha does not sanction a *Get* on demand. True, by biblical law, a man can divorce his wife against her will, without giving any reason whatsoever (although it is religiously

forbidden for him to do so until he has "due cause").⁶ The woman, on the other hand, cannot initiate the act of divorce, although she can claim to have certain specific grounds for a divorce. In other words, she can become the plaintiff in a *Din Torah* (a legal suit before a *Bet Din*), claiming that a *Get* is due her. If she wins her case, the *Bet Din* will order the husband to give a *Get*.

However, about one thousand years ago, the famous *Cherem* (a decree under penalty of ban) of Rabbeinu Gershom was instituted, stating that a woman cannot be divorced without her consent.⁷ Thus, the "playing field" was evened. As Rabbeinu Asher states in his famous dictum,⁸ "The Rabbis acted to equalize the woman's power with the man's." Now, for all practical purposes, neither side in a marital dispute is entitled to a *Get* unless there exist very specific grounds for one. To procure a *Get* without mutual consent, a litigation process has to be undertaken – a *Din Torah* – and the *Bet Din* ultimately rules if a *Get* is legitimately "deserved," and whether or not there is a basis for obligating or, at times, for compelling, the husband/wife to give/receive a *Get*. The parties have the right, indeed the obligation, to bring their proofs, testimony, claims and counter-claims to the *Bet Din*. They may want to submit "legal briefs" – halachic responsa why their "case" calls for a *Get*. This is usually done through a rabbinic lawyer. This article is not intended to explore those grounds: they can be as varied as non-support, social behavior which adversely affects the spouse, or lack of fulfillment of other marital obligations.⁹ The halacha is not uniform in

6. *Shulchan Aruch Even Ha'ezer* 119:3,4.

7. *Ibid*, *Ramo*, Paragraph 6.

8. *T'shuvot HaRosh* 42:1.

9. Other grounds can be found in various places in *Shulchan Aruch Even Ha'ezer* from Chapter 66 to Chapter 154.

respect to all of them. Sometimes the halacha is merely that a divorce is appropriate; at times it describes divorce as a *mitzva*; sometimes as an absolute obligation – and, at times, even calls for forms of coercion to be used, or a “*Heter Meah Rabbonim*” to be obtained by the husband.¹⁰ Thus, at the present time, the lack of “*Get* upon demand” is true both for the wife demanding a divorce and a husband wanting his wife to take one.

Without this halachic process, no one is justified in assuming that a *Get* is obligatory or even appropriate. Halachically, the marital state cannot be rent asunder on a mere whim, or because of boredom or lack of excitement or inconveniences. Rather, there must be halachic grounds for a *Get*.

[The above is true in the absence of mutual consent. If there is mutual consent, halacha always allows for a *Get*, although Judaism traditionally frowns upon divorce. This is in contrast to many other legal systems, Western ones included, where a long, often costly process to establish responsibility for the dissolution of a marriage is the norm.]

These laws which govern the grounds for a *Get* are the same as all Torah laws which govern our lives: Just as the laws governing *Tzitzit*, *Tefillin*, *Shabbat*, *Lulav* and business dealings are those dictated to us by *Shulchan Aruch*, so, too, are the halachic rules which concern grounds for divorce. Anyone purporting to live a life governed by halacha must orient his/her thinking in this direction. Therefore, action

10. See footnote 2. In most cases, grounds for a *Heter Meah Rabbonim* are simply the grounds under which the woman is obligated to take a *Get*. See *Shulchan Aruch, Even Ha'ezer* 1:10, 115, and 119:6. And, if the situation would be reversed, the husband would be obligated, and at times compelled, to give a *Get*: *ibid*, Chapter 154.

taken by anyone to facilitate a *Get* for a man/woman if the *Get* is halachically unjustified, even if that action does not halachically invalidate the *Get*, is anti-halachic. [This does not refer to friendly persuasion. Surely an outsider, considering it irrational for a spouse to continue a marriage when the other spouse wants a divorce for any reason, would consider it correct to advise a party to take/receive a *Get*. But any action beyond such friendly persuasion is morally wrong.]

Lack of appreciation of this basic premise – that a *Get* is not to be obtained merely because one wants one – explains much of the erroneous thinking of the proponents of the *Get* Bill. Nothing in the bill limits its effects to where a competent halachic authority – a *Bet Din* – has found a *Get* called for. Surprisingly, the proponents of the bill have not felt a need to address this issue, although it seems that it is a call for “*Get-on-demand*” – an anti-Halachic statement! (Try to imagine a bill passed in the New York State legislature which mandates that A pay B money, even when their monetary dispute is unresolved – and A maintains vehemently that he owes no such money!)

At first, the proponents of the “new *Get* Bill” claimed that a responsum from Rabbi Yitzchak Liebes *sh'lita*,¹¹ the head of the *Bet Din* of Igud Harabbanim, justified and validated such a law: what was completely ignored was that this responsum is based on the premise that there is a pre-existing verdict of a duly constituted *Bet Din* obligating the husband to give a *Get*.

The *Get* Bill is constitutionally suspect as well. By inviting civil courts to impose financial consequences for the failure of a spouse to remove a religious barrier to remarriage, the law usurps the substantial body of religious law concerning

11. *Beit Avi, Even Ha'ezer* 169.

when and under what circumstances a *Get* is appropriate. This is an encroachment upon religious law, and represents an erosion of our religious rights. For example, the husband may be entirely justified according to halacha in not giving his wife a *Get* and withholding support if the wife left the household *without due cause*.¹² (This, then, is entirely different than the first *Get* Bill, which limited its effects to withholding the relief of the courts (i.e., a civil divorce) from a recalcitrant party who is himself or herself requesting it, an area obviously within the province and discretion of the secular courts.) Should a civil court judge be issuing a ruling designed to elicit an uncalled-for *Get*?¹³

II. Furthermore, resorting to the secular courts to resolve disputes is strictly forbidden in Jewish Law.¹⁴ This transgression is described by the *Shulchan Aruch* as akin to blasphemy and "taking up arms" against the Torah.¹⁵ The *Rashba*¹⁶ warns against confusing this prohibition with the dictum *Dina D'malchuta Dina* ("the law of the land is law").¹⁷ Even if both parties agree to go, and in fact stipulate in writing

12. *Shulchan, Aruch Even Ha'ezer* 70:12; 77:2,3.

13. It is indeed ironic that *Chazal* (*Gittin* 88b) disqualified an otherwise valid *Get* because of fear it would lead to women enlisting the aid of civil authorities to procure a *Get* from their husbands. And in modern times, in New York State, part of the Orthodox world cheers a secular law which is designed to do exactly that!

14. *Shulchan Aruch, Choshen Mishpat*: Chapter 26.

15. *Ibid*, Paragraph 1.

16. *T'shuvoth Rashba*, cited by *Bet Yosef* in *Tur, Choshen Mishpat*, Chapter 26.

17. *Dina D'malchuta* has specific, limited applicability to certain monetary rights, and a *Bet Din* would rule on its applicability to a specific case. It has nothing to do with utilizing the secular courts, which is described as a monumental *chillul Hashem*.

that they will utilize the civil court system, it remains forbidden by halacha.¹⁸ And this is true even if the secular courts would rule exactly as a *Bet Din* would – that is to say, if their law exactly matched ours concerning the rules of evidence, procedural matters, and the verdict itself based on the particular circumstances.¹⁹ [There are certain circumstances which allow for utilizing the civil courts, but permission must be granted by a *Bet Din* which has ruled that these circumstances exist.]²⁰

This prohibition is a most severe one, no matter how lackadaisical an attitude people have towards it. It hardly behooves the Orthodox community, its institutions and its organizations, to take steps which encourage people to transgress this prohibition, which is, of course, exactly what this bill does. It approves of – no, it prods – people to utilize the civil courts for their monetary disputes and advises people how to turn this forbidden action to one's advantage in obtaining a *Get*. (A *Get* that one may not be entitled to according to halacha!)

This issue has not been addressed by the bill's proponents. It is the height of irresponsibility for anyone to advocate or even to implicitly approve of such actions.

III. As we have noted, the prohibition of resorting to the secular courts holds true even if every court action happens to follow all the rules of the *Shulchan Aruch*. If there are any differences, the additional issue of out-and-out theft arises, if the courts award money or privileges to either party.²¹ (Even in circumstances where one had received

18. *Shulchan Aruch, Choshen Mishpat* 26:3.

19. *Ibid*, Paragraph 1.

20. *Ibid*, Paragraph 2.

21. *T'shuvoth Tashbatz* II, 290.

permission from a *Bet Din* to "use the courts" one is prohibited from keeping any monies he is not entitled to according to halacha.²²)

The *Get* Bill encourages a woman to use the civil courts to set rates of maintenance and "equitable distribution" despite the fact that she might not be entitled to that money according to Jewish law. For example, let us say a woman has no due cause (halachically) for a *Get*, but has opened a case as the plaintiff in the civil courts for a divorce. Rabbi Akiva Eiger discusses just such a case,²³ and compares this woman to a classic *Moredet* (a rebellious wife) who is not entitled to receive any support whatsoever. Certainly, too, "equitable distribution" has no halachic equivalent, but is merely the transference of property from one party to the other by state fiat; this money, then, does not belong to the acquiring party *al pi din*.²⁴ (The chances of "equitable distribution" being covered by the rule of *Dina D'malchuta Dina* are almost nil.

The *Ramo*²⁵ refers to such "laws":

.....because that rule (*Dina D'malchuta Dina*) is only said when the King benefits, or when it is for the general welfare, but it was never meant to blindly follow their rules, for, if so, that would mean the end of Torah Law.

22. See *N'tivot to Shulchan Aruch, Choshen Mishpat* 26:8; see *Aruch Hashulchan*, *ibid* 26:2.

23. *T'shuvot*, Vol. II, 82.

24. In the event that a prenuptial agreement (which can certainly be encouraged) does not exist, there is no obligation after a *Get* to support one's former wife (besides the *Ketubah* payment). Full child support is, of course, halachically mandated. Also, there is ample room for a properly empowered *Bet Din* to ensure that a former spouse not be left poverty-stricken and helpless after a *Get*.

25. *Shulchan Aruch, Choshen Mishpat* 369:11.

Many *Poskim* simply limit *Dina D'malchuta Dina* to matters concerning monetary relations between the authorities and the public.²⁶ In addition, the arbitrariness with which equitable distribution money is parcelled out probably would preclude its inclusion in this rule²⁷ – every single case involves thirteen factors which are quite subjective and up to the individual judge. In addition, there is no law which *mandates* "equitable distribution" – it is merely the state's distribution of property in the absence of any other arrangement. Surely that cannot be construed as permission to ignore Torah rulings on these matters! At the very least, it would take the jurisdiction of a duly-constituted *Bet Din* to conclude that *Dina D'Malchuta* applies in any particular individual's case.

Can the Jewish community accept a law which encourages a husband's being forced to give money to his spouse which she may not be entitled to according to Jewish law? Encouraging the use of "equitable distribution" or maintenance awards without a *Bet Din* ruling to that effect – for any purpose – is plainly wrong.

Section Two

The above problems, troubling as they are, pale in significance in comparison with the bill's effect upon the very validity of *Gittin* issued in the State of New York. The bill states, in effect, that a judge may, when determining maintenance and/or "equitable distribution", take into account the fact that a barrier to remarriage still exists, i.e., the husband/wife is not giving/receiving a *Get*. As originally

26. See *T'shuvot Maharik* 187. See *Shach, Choshen Mishpat* 73:39, for other reasons for its inapplicability.

27. Based on *Rosh, Nedarim* 28a.

understood by all, and, as the proponents of the bill intended, (judging by the outpouring of kudons from various women's organizations²⁸) this has the bottom-line effect of costing the spouse who is refusing to give/receive a *Get* a not inconsiderable amount of money, thus prodding him/her into acquiescence. Whether this is characterized as a penalty, an inducement, or as a practical way of dealing with a tragic situation is not relevant. The point is that a spouse's continued refusal can result in a substantial loss of money.

The need to give a *Get* or to face substantial loss of money, or the threat thereof, constitutes "coercion" according to Jewish law and, on a biblical level, invalidates a *Get* given as a result of such coercion. This requires some elaboration:

A most basic rule in *Hilchot Gittin* is that a *Get* must be given (and received by the wife, post-*Cherem d'Rabbeinu Gershom*) of one's own free will.²⁹ If the husband is coerced, the *Get* is invalid.³⁰ The oft-quoted dictum *kofin osoh ad sheyomar rotzeh ani* – "we coerce him until he states 'I want to'" applies *only* in cases when (a) specific grounds for that verdict exist, (b) the *Bet Din* renders a verdict of *kofin* (we force him), and (c) the coercion is carried out by the *Bet Din* or others implementing its verdict.

28. *Jewish Press*, July 24, 1992.

29. Rambam, *Gerushin* 1:1,2.

30. *Shulchan Aruch, Even Ha'ezer* 134:5. See *T'shuvot Maharam Mintz* 17, *Nodah BiYehudah* II,129 and Ramo, *Even Ha'ezer* 119:6, for discussions of the validity of a *Get* received by a wife against her will post-*Cherem d'Rabbeinu Gershom*.

31. The exception to this is when a *Bet Din* has ruled, based on the facts and evidence presented, that the husband may be coerced into giving a *Get*. The reason it is valid in such a case is explained by the Rambam, *Hilchot Gerushin*, 2:20.

Various types of invalidating coercion include physical punishment,³² physical restraint (jail),³³ monetary loss,³⁴ or threats of any of the above.³⁵ Any of these coercive situations which brings about a *Get* without a verdict of *kofin* invalidates that *Get*. (Even in a case where the coercion is self-imposed, i.e., where the husband has willingly and legally bound himself to be penalized if he doesn't give a *Get*, the consensus of *Poskim* is that if he subsequently tells us that he is giving the *Get* only due to the penalty, he is viewed as being coerced – by himself! In these cases, most authorities view his previous state of mind as now being an "external" force upon his present wishes, and hence coercive in nature.³⁶)

The halacha discusses many forms of invalidating coercions: in all these situations, by definition, there is no "free will." "Free will," it should be noted, is a legal halachic term – not what you or I might characterize as "he wanted to do it." If, for example, A threatens to do significant bodily harm to B unless B gives him something, we might say that given these circumstances, B certainly wants to perform that act; however, halacha does not view the motivation as free will, and the act is totally invalid, the result of an invalidating coercion. Conversely, a husband or wife may not "want" to

32. Based on Mishnah *Gittin* 88b, and from countless sources discussing coercion.

33. Based on sources discussing coercion: *Rivash* 127, *Mabit* I 22, and countless others.

34. *Choshen Mishpat* 205:7, *T'shuvot Rabbi Betzalel Ashkenazi* 15; also from cases in *Shulchan Aruch, Even Ha'ezer*, Chapter 134.

35. *Torat Gittin* on *Even Ha'ezer* 134:5 and others. Actually, every case of coercion is in reality merely a threat that the future holds more of the same.

36. Ramo, *Even Ha'ezer*, 134:5, and commentaries.

get divorced – yet, realizing the marriage is over, agree to the *Get*. This represents no halachic problem at all, because if no coercion exists, ultimate acquiescence is deemed "free will".

Thus, if a husband/wife appears before a *Bet Din* stating that he/she wants to give/receive a *Get*, that statement, and any actions that follow in its wake, are totally meaningless if brought about by a coercive action or the threat of one. The statement "I want," even if true in a certain *practical* sense, is halachically meaningless as long as coercion exists. And since the *Bet Din* merely oversees the giving of the *Get*, its lack of knowledge of possible coercive circumstances obviously is not relevant. Therefore, if at any time in the future, (even after a subsequent marriage, G-d forbid) it becomes clear that a halachically-invalidating coercion existed, the *Get* is retroactively invalid!

As long as a coercive situation exists, the halacha assumes that "free will" does not. In such a case, any "will" which may exist on the husband's part would be deemed *D'varim Sheb'lev Aynom D'varim* (unperceived intentions are not recognized in Jewish law as having any legal standing) and hence halachically meaningless. Every *Get* procedure also contains in it a statement by the husband (and sometimes by the wife as well) nullifying any statement he may have ever made affecting the validity of the *Get*.³⁷ This is known as *Bitul Moda'ot* – the husband's nullifying any statements he may ever have made claiming he is under duress; obviously, *Bitul Moda'ot* is meaningful only if there is in fact no coercion! A *Moda'a* – statement of duress – would invalidate a subsequent *Get* even if no actual coercion

37. *Shulchan Aruch, Even Ha'ezer* 134:1.

existed.³⁸ For that purpose, the husband is told by the *Bet Din* to nullify any such possible statements. But his statement of "I want to give the *Get*" and his nullification of *Moda'ot* are meaningless if any coercion *does* exist!³⁹

Consequently, if a *Get* is given in circumstances where it is even just *plausible* that coercion is a factor, it would be under a cloud until its validity could be determined beyond any doubt. In other words, a *Bet Din* would have to make a thorough determination that no coercive situation ever existed. Such a task would be difficult if not impossible, due to the many subtleties and subjective factors which exist regarding halachic coercion – in certain cases, it might even depend on the character of the coercee!⁴⁰

Superficially, though, the *Get* Bill might be construed as "indirect coercion". Indirect coercion occurs when the party is being coerced for a different matter, and the giving of the *Get* can free him from that coercion. This is not deemed coercion on the *Get*, and hence the *Get* would be valid.⁴¹ In our case, it could be argued that the transfer of money from husband to wife in accordance with a court's ruling in a divorce proceeding is not a direct threat to produce a *Get*; rather, the husband's giving the *Get* will indirectly free him from having to pay that "extra" money. However, upon reflection, it is clear that this is not so. All *Poskim* agree that the above rule about indirect coercion applies' only if the coercion for that "side matter" is in and of itself halachically

38. *Ibid*, Paragraph 2.

39. *Ibid*, Paragraph 7; see also *Pitchei T'shuva* 134:4.

40. See *Pitchei T'shuva*, *Even Ha'ezer* 134:15 where he discusses the unbearable burden placed on *Rabbanim* in just such instances.

41. *T'shuvo* *Rivash* 127.

justifiable.⁴² If, however, the coercion for that "side matter" is halachically not justifiable, then the coercion is tantamount to coercion directly on the *Get*, and invalidates it.

Even if the equitable distribution aspect of the New York State law is a sincere attempt to have a woman in this situation be self-sufficient, that does not diminish the fact that "equitable distribution", especially in such a forum, has no halachic basis (see Section One). Also, there is no objective formula to determine a woman's actual needs and link them to her being awarded a specific amount of money. Furthermore, as we have explained, the maintenance award is halachically suspect as well: When a wife is a plaintiff in secular court demanding a divorce from her husband, until a *Bet Din* can determine the facts and the halacha, we must suspect, if not assume, that there is no halachic obligation for support. Although in many cases the woman may be entitled to support, the burden of proof before a *Bet Din* is upon her. In the absence of a *Bet Din* ruling that the husband must give her this money, we have, then, what is *halachically* deemed coercion on the *Get* itself. This situation, then, where the courts might decide to award a woman considerable alimony or "equitable distribution" money unless she receives a *Get*, is considered coercion according to Jewish law and might invalidate all *Gittin* given under such implicit threats.

For the first months after the bill's passage, the fact that the *Get* Bill created a coercive situation was vehemently denied. It was suggested that the wording "where appropriate" that appears in the bill refers to a *Bet Din* ruling that coercion is called for.⁴³ It was also suggested that monetary loss does

42. Ibid; see also *Tashbatz* I, 1.

43. Actually, HaRav Elyashiv states in a letter disseminated

not constitute an invalidating coercion. When confronted with clear-cut halachic rulings that it does, it was suggested that at least the part of the bill which deals with maintenance could be justified, since the husband, if no *Get* was forthcoming, is halachically obligated to support his wife. (This argument, as shown above, is also wrong.) In any event, no steps were ever taken to amend the bill so that it would deal only with maintenance, and not "equitable distribution".

Some of the bill's proponents claimed to be relying on a responsum from Rabbi Yitzchak Liebes, *Sh'vita*,⁴⁴ (written many years ago) that seems to validate a *Get* given in such circumstances (not dealt with are the problems raised in Section One.) It was never publicized that (a) In Rabbi Liebes' case there was a clearcut *Bet Din* verdict that the husband was obligated to divorce his wife (the *Get* Bill has no such qualification) and (b) Rabbi Liebes, realizing the innovative ruling he was propounding, (that monetary penalties of this nature might not invalidate a *Get* a person was obligated to give, even in the absence of a verdict of *kofin*) concluded his responsum by stating emphatically that he refuses to rely on his own conclusion in the absence of the concurrence of other *Poskim*.

It can also be argued that as long as the *Get* Bill remains law, any couple coming to a *Bet Din* for a *Get* might have problems procuring an "unclouded" one. The possibilities of coercion, after all, are varied. An obvious case would be if the couple's case is already in the civil courts and they are awaiting the judge's verdict regarding monetary matters.

to *Poskim* in America that even following a verdict of *kofin*, utilizing the *Get* Bill would constitute coercion, since the secular courts do not mean to fulfill the *Bet Din*'s verdict but are carrying out their own mandate.

44. See footnote 11.

There are other, more subtle, possibilities. A husband just being threatened with the consequences of this bill is likely to acquiesce; hence, once again, invalidating any subsequent *Get*. (As stated above, the halacha views even threats of coercion, when likely or possible, as an invalidating factor.) What about a letter from the wife's lawyer to the husband's *before* any case is opened in court, gently "reminding" him of the bill's provisions? What about an angry woman telling an unwilling-to-divorce husband "see you in court"? What about the expenses involved in hiring a lawyer and getting involved in a debilitating court case? Surely any of these potential scenarios are a distinct possibility; in a contested divorce, an outright probability. How could a *Bet Din* determine with certainty that these scenarios did not occur?

At best, the bill creates a situation where every *Bet Din* would have the burden of investigating the motivation of any husband who is involved in, or has been threatened with, civil divorce proceedings. Hopefully, this theoretically could be done. But is this the purpose of the bill? What does it solve if, when it functions as provided for, it creates invalid *Gittin*? At the very least, the law creates a situation where spouses will be tempted to be devious with the *Bet Din* which is processing the *Get* in attempting to procure an (invalid) *Get* by misstating their true motivations.

In all-too-many situations, it will be impossible to prove the facts in a conclusive way. This may place all New York *Gittin* under a cloud, and thereby create a whole new class of *agunot*! We are dealing with something that potentially affects the entire Jewish community in a very serious way. If women receive Jewish divorces of questionable validity, their subsequent marriages might be adulterous and their subsequent offspring might be *mamzeirim*. These possibilities are indeed horrifying. Although the bill's purpose is commendable – to try to help *agunot* – it blunders into pitfalls without any regard to the consequences: an unfortunate

triumph of style over substance.

The *Get* Bill has another quixotic twist to it. Granted that a *Get* given as a result of economic duress is halachically invalid, the bill, by placing the threat of what are in effect financial sanctions over the heads of the litigants, thereby creates a situation where "free will" can no longer be determined to be existing. Paradoxically, then, the barrier to remarriage, which the bill seeks to obviate, cannot halachically be removed – by virtue of the coercion of the bill itself! This cruel "Catch-22" situation is a reason to have hope that the bill, upon challenge, will be overturned in the courts. As long as it has not been, though, and remains law, the bill obviously *does not* reckon with halachic will: Otherwise, it would be a self-contradictory joke, for it calls for willful action in a way which *halachically* produces coercion. (Any coercive action taken to produce a *Get*, after all, obviously does not reckon with halachic will – otherwise, the coercive action would be futile and pointless.)

Proponents of the bill have of late incorporated some of the above reasoning and have done an about-face (following a clear-cut ruling from two halachic giants of our generation, Rav S.Y. Elyashiv, *Sh'lita*, and Rav S.Z. Auerbach, *Sh'lita*, [in a letter disseminated to *Poskim* and other *Rabbanim*] that the "new *Get* Bill" represents invalidating coercion). After months of claiming that the bill did not represent an invalidating coercion, a new, but sophistic, interpretation was suggested: Granted the bill does create a coercive situation, the bill still represents no problem – precisely because it coerces the husband to give a *Get*! Since the law defines "a barrier to remarriage" as one that can willingly be removed, the husband (or wife) to whom the bill would apply need merely go to *Bet Din*; the *Bet Din* (presumably) will refuse to arrange the *Get*; and the party can then go back to the court and claim that he/she wants to remove the barrier – but the *Bet Din* will not let them! The court will

surely realize, the argument goes, the strength of this claim, and the bill's provisions will be aborted; true, no *Get* will have been procured, but at least the husband/wife will come to a *Bet Din*, who will then attempt to resolve the issue.

This approach is highly specious:

A: As a matter of principle, does it make sense to have a law which results in an invalid *Get* if it works as written, while we pin our hopes on its *not* working? Would we agree to legislation calling for printed *Tefillin* and *Mezuzot* to be sold as being halachically valid, with the expectation that our learned scribes and expert Rabbis will "catch" the invalid ones?

B: The claim that a judge will view the bill as coercive in determining whether or not the barrier can be removed willingly is absurd. No legal system views fulfilling its dictates as being unwilling and hence invalid. When a judge orders a contract to be drawn up under threat of contempt of court, can the litigant claim afterwards that the contract is invalid, drawn up without consent due to his fear of imprisonment?

C: As a practical matter, isn't it naive to assume that the husband will inform the *Bet Din* that he is being coerced by the bill? Wouldn't his lawyer, who certainly must consider that a judge would order maintenance and marital property based on the de-facto "undivorced" situation, advise him not to do anything that would obstruct the *Get* proceedings? A person being coerced to give a *Get* would obviously cooperate and just tell a *Bet Din* "*Rotzeh Ani* – I want to give the *Get*." Consider this case: If A threatens B to give a *Get* to his wife or he will be physically assaulted, and B believes him – would B go to the *Bet Din* and announce the threat, then go back to A and say "I tried to give the *Get* but the *Bet Din* wouldn't let me?" Or would he make sure to keep quiet and cooperate fully with the *Bet Din* proceedings?

D: The coercive effects of the bill can be very subtle and might have been utilized without the parties being aware of the halachic problem of coercion that exists. One example: Many months previously a wife may have threatened her husband to give her a *Get* or else she would take him to court and utilize the *Get* Bill. Will the *Bet Din* be able to make a proper determination if such an event indeed occurred? Remember that a halachically-coerced person honestly *feels* that he *does* want to give the *Get* – but that feeling has been produced by coercion and is *halachically* invalid.

It is puzzling that those who believe in this convoluted interpretation of the *Get* Bill absolutely *refuse* to support an amendment which would clarify that the purpose of the bill is indeed merely to have the parties submit their *Get* dispute to a *Bet Din*. (An amendment has been proposed many months ago which would do exactly that.)

They might also consider, in order to remove "a stumbling block", informing the various activist groups who have been so vociferous in hailing the bill's ability to procure a *Get* from a recalcitrant spouse, that the bill's only accomplishment is to transfer the entire matter to a *Bet Din*. One suspects that were these groups to be so informed, there would no longer be anyone objecting to repeal of the entire bill.

In summary, the "new *Get* Bill" represents an ever-present danger. It is, in fact, a convincing argument for those who proclaim the danger of having secular laws come to the "aid" of our community's halachic problems. Every day it remains law is a day too long.