

# A Wrong Solution of The Divorce Problem

By JACK J. COHEN

With much publicity, the Rabbinical Assembly and the Jewish Theological Seminary of America have announced the insertion of a new clause in the traditional *ketubah*, or certificate of marriage, which, it is claimed, will "strengthen Jewish home life through marriage counselling, inculcate a profound sense of family responsibility, and protect the wife from abuses current at the present time." (*Seminary Bulletin*, November 22, 1954.)

The clause reads as follows:

"And in solemn assent to their responsibilities and love, the bridegroom and bride have declared: As evidence of our desire to enable each other to live in accordance with the Jewish Law of Marriage throughout our lifetime, we, the bride and bridegroom, attach our signatures to this *ketubah*, and hereby agree to recognizing the *Bet Din* of the Rabbinical Assembly and the Jewish Theological Seminary of America, or its duly appointed representatives, as having authority to counsel us in the light of Jewish tradition, which requires husband and wife to give each other complete love and devotion, and to summon either party at the request

of the other, in order to enable the party so requested to live in accordance with the standards of the Jewish Law of Marriage throughout his or her lifetime. We authorize the *Bet Din* to impose such terms of compensation as it may see fit for failure to respond to its summons or to carry out its decision."

**The Background**  
What led up to the *Takkanah* (rabbinical decree), which was formulated by Professor Saul Lieberman, distinguished Talmudist of the Seminary faculty?

In a case of divorce, *halakha* (Jewish law) requires the husband to issue the *get* (bill of divorce-ment). While the wife must accept the *get* in order for the divorce to

take effect, she herself lacks the power to divorce the husband. Under the traditional code, if she is aggrieved, she can come to a rabbinical court which will, if her grounds are deemed adequate, try to force the husband to grant the divorce. Such pressure was effective in the closely knit Jewish communities of Eastern Europe, in which the authority of a rabbinical court could actually be exerted on the husband. However, even this measure of control has broken down under the

conditions of extreme mobility in American society. Rabbinical authority is at a low ebb, with the added complication of the sectarian splits in the rabbinate itself. The fact that the Reform movement requires no *get* at all works havoc upon the whole procedure of traditional divorce law. The result has been that many cases occur in which husbands, having received a civil divorce, refuse to grant a Jewish divorce, thereby making it impossible for their former wives to remarry in accordance with Jewish

tradition. Where the woman has opportunity to remarry, insurmountable difficulties arise if either or her intended bridegroom wishes to live within the framework of Jewish law. If neither party pays attention to *halakic* considerations, however, they can be remarried by some Conservative rabbis.

The *takkanah* deals with the problem by establishing a contractual relationship between bride and groom signed at the time of the marriage, that would necessitate

their referring any contemplated divorce to the *Bet Din* of the Rabbinical Assembly and the Jewish Theological Seminary. The *Bet Din* would then either urge a reconciliation or force the husband to grant the *get* or the wife to accept it. In this way, the wife, in particular, would be protected from a recalcitrant husband whose refusal to comply with the court's order could result in his having to pay a sizeable fine or other penalty.

It is assumed by the backers of the *takkanah* that the *ketubah* will be treated by American courts as a civil contract. In this way, the power of the *Bet Din* will be upheld. If the power would thus be deemed sufficient to force either party to comply with its ruling, the *takkanah* deserves serious analysis by everyone eager to strengthen Jewish family and community life. This paper will treat the subject in terms of its bearing on Jewish law, on the status of women, on the internal structure of the Jewish community, and on the relationship between the American Jewish community and the larger American democratic society.

From the standpoint of Jewish law, it would seem that the *takkanah* does nothing more than provide a means of buttressing the power of the *Bet Din*. In traditional law, the *Bet Din* could force the husband's hand by restoring to community pressure. As we have stated, such pressure is totally lacking in American society, and only a voluntary agreement by the

couple to submit any future marital problems to arbitration can provide the necessary communal authority. Despite Orthodox opposition, the Conservative view seems to be well founded *halakically*, since no change is made in the actual divorce procedure. The husband still issues the *get*, with the *Bet Din* merely provided with a device to exert pressure upon him.

In traditional law, the *Bet Din* is obligated to try to reconcile the parties before granting a divorce. Under conditions of American life, however, the Jewish court has rarely seen a couple until after the civil divorce has been granted. The *takkanah* does provide an arrangement, therefore, whereby the attempt at reconciliation can be made before any civil divorce action. The only question that can be raised concerning this aspect of the *takkanah* is

whether compulsory counselling is desirable or not. This subject is worthy of treatment but will not be attempted here.

A serious question is raised by the *takkanah* concerning the degree to which traditional law will actually be applied by the *Bet Din* in settling disputes between husband and wife. Suppose one of the parties decides after marriage to live in accordance with the strict letter of Rabbinic law. The husband, for example, may want the wife to visit the *mikvah* (ritual bath) regularly, as required by *halakha*. Will the

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