

Withholding Religious Divorce Recognised As Abuse-The Domestic Abuse Act 2021

In both Islam and Judaism in order to remarry a woman must obtain a religious decree of divorce; under Jewish law, the *Get*, and under *Shari'a* a *Talaq*, *Khul* or *Mubaraat*. If the woman is not religiously divorced, she will remain married under religious law and in the eyes of her community. As a result any marriage under civil law is regarded as adulterous and future offspring will be considered illegitimate.

Capricious Muslim husbands might divorce their wives under English law but will not pronounce *Talaq* thus preventing their wives from remarrying which is often known as a '*limping marriage*'. In Judaism a recalcitrant husband may refuse to give his wife a *Get* preventing the Jewish marriage being dissolved resulting in what is known as 'chained wife'. These husbands weaponise divorce to grant or withhold divorces in order to negotiate favourable financial settlements, or contact and custody issues relating to children of the family.

The Divorce (Religious Marriages) Act 2002, inserted a new section into the Matrimonial Causes Act, 1973, which came into force in 2003. This new section recognises 'limping marriages' within the Jewish community. Section 10A allows either party to the marriage to apply for the decree absolute to be made only after steps have been taken to deliver the *Get*. The purpose of this is to ensure that a person who obtains a divorce in the civil courts is also regarded as divorced by his or her religious community, and therefore free to remarry and therefore no longer 'limping' or 'chained'.

Other religions may seek to be 'prescribed' within the legislation. To achieve such prescription the Lord Chancellor must issue an order after prior consultation with the lord Chief Justice, and such an order must be made by a statutory instrument. To date, however, Islamic divorce is not included.

The Domestic Abuse Act 2021 was given Royal Assent in April 2021. The draft statutory guidance on domestic abuse published in July 2021 recognises withholding a religious divorce as constituting a form of domestic abuse, namely "controlling or coercive behaviour".

The Guidance under the heading Religious marriage and divorce sets out the following:

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66. A form of spiritual abuse may include the withholding of a religious divorce, as a threat to control and intimidate victims. In some cases, it will be accompanied by other manifestations of abuse within the marriage.

67. In Judaism this concerns the Get, and instances whereby a recalcitrant husband may refuse to give his wife a Jewish bill of divorce (or a wife may unreasonably refuse to accept a Jewish bill of divorce). Unreasonably preventing a religious Jewish marriage being dissolved often includes the imposition of such conditions.

68. The ability to refuse to give a Get provides abusive husbands with power and control and will be used often to exert leverage in relation to other aspects of the divorce. The refusal will have a significant impact on the wife's wider living conditions: She will often be severely restricted in her social and personal life. It affects her ability to re-marry and directly affects the status of any children she may have in the future.

69. In Islam this can involve the refusal of a Muslim husband to grant his wife a religious divorce, talaq, which is the annulment of a nikkah, as a way of prolonging the process of divorce. The threat of talaq being uttered and the arbitrary use of this by perpetrators may also often be cited by some victims.

It is hoped that the effect of these new provisions is that women who are trapped in a marriage as a result of their husbands refusing to grant them divorce are recognised as victims and the Act provides some steps towards redress and opens the door for further changes in legislation and understanding of 'limping marriage'. In practice it remains to be seen how these provisions will be received and work in practice once the Act is fully in force.

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