Criminal Proceedings Against a Jew in a Non-Jewish Court for Get Refusal: The Effect on the Validity of the Get

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Part 5 of the U.K. Serious Crime Act 2015, entitled "Protection of Children and Others," contains a section on Domestic Abuse. Article 76 of that section which came into force on December 29, 2015, addresses coercive control or controlling behavior in an intimate or family relationship.[1]

In other words, violence perpetrated towards a spouse is not limited to physical violence and emotional and verbal abuse. Violence towards a spouse is also characterized by the attempts of the abuser to control the wife and to limit her actions. Manifestation of control in general, and prevention of the formation of contacts outside the family, criticism of the way a wife dresses, prevention of access to financial information and demanding that she account for herself in particular, cause tension, shouting, cursing, and trading insults at a higher rate than that typical of couples who live together without violence.

Controlling relationships are defined by Professor Evan Stark, as quoted in an English judgment, as follows:[2]

> In coercive control, abusers deploy a range of non-consensual, non-reciprocal tactics, over an extended period to subjugate or dominate a partner, rather than merely to hurt them physically. Compliance is achieved by making victims afraid and denying basic rights, resources and liberties without which they are not able to effectively refuse, resist or escape demands that militate against their interests.

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1 In light of the above legislation on February 21, 2022, for the first time a man who refused to give his wife a *get* (i.e., a writ of Jewish divorce) has been convicted on a charge of coercive control. Despite the threat that he would be sentenced to imprisonment, the husband refused to give his wife a *get* and on April 1, 2022, he was sentenced to be imprisoned for eighteen months.
A similar legislative proposal (A347) is pending in front of the New York Standing Committee on Codes.

2 Regina v. Challen (2019), EW CA 916, Court of Appeal.

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Insofar as an English court decides in a particular case that *get* (i.e., a writ of Jewish divorce) refusal constitutes an instance of coercive control on the part of the husband, and sentences him to a set period of imprisonment in accordance with the above legislation, does the criminal process against the *get* refuser affect the validity of the executed *get*? In other words, seemingly the threat of prosecution would result in a coerced *get*.

The question emerges: is the execution of a *get* under these conditions deemed halakhically a coerced *get*?

It is well known that if a husband gives his wife a *get* under coercion, the *get* is void.[3] Therefore, if he is imprisoned until he gives the *get*, and he gives it in order to secure his release from prison, the *get* is void.[4] Apparently, on the basis of the above, if the court in England sentences a person to prison due to a conviction for the criminal offense of coercive control vis-à-vis his spouse and he then gives the *get*, the *get* will be null due to the coercion! In other words, the Jewish husband and Jewish wife must consent to divorce. Consequently, if a husband gives his wife a *get* against his will in order to be released from imprisonment (i.e., coercion) or if *he was threatened to be imprisoned* and gives the *get* to avoid incarceration, the *get* is null.[5]

The question arises: Is there a halakhic (a Jewish legal) basis for compelling a *get* by means of a criminal process of a non-Jewish court?

In accordance with the Biblical passage (*Devarim* 24:1), "…he writes her a bill of divorce and gives it in her hand, and sends her out of his house," the *Mishnah* (the restatement of Yehudah ha-Nasi, redacted about 200 C.E.)[6] and the authorities[7] state that a man may not divorce his wife except of his own free will. It is clear that the *get* must be given with the

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3 *Mishneh Torah, Hil. Gerushin 1:1; Shulḥan Arukh, Even ha-Ezer* 134:7. For additional authorities, see this writer's *Rabbinic Authority*, vol. 3, p. 30, note 11.

4 *Resp. Rashba* 2:276; *Resp. ha-Rivash* 232; *Resp. Mas'at Binyamin* 22. There is a *mesorah* that if a *beit din* threatened to imprison him or threatened to extradite him to the government where there is a fear they will imprison him and he gave the *get* to avoid incarceration, the *get* is null and void. See *Resp. ha-Rashba*, op. cit.; *Arukh ha-Shulḥan Even ha-Ezer* 134:22; *Resp. Rabbenu Bezalel Ashkenazy* 15.
A fortiori (*kal ve-ḥomer*) if the government would threaten to prosecute him if he doesn't give a *get*.

5 *Gittin* 88b; *Shulḥan Arukh, Even ha-Ezer* 134:7; *Beit Shmuel*, ad. loc. 13; *Rashba*, supra n. 4; *Resp. Rabbenu Bezalel Ashkenazy* 15; *Arukh ha-Shulḥan Even ha-Ezer* 134:22.

6 *M. Yevamot* 13:1.

7 *Mishneh Torah, Hil. Gerushin* 1:1–2; *Rashbam, Bava Batra* 48a, s.v. *ve-ken atah omer*.

agreement of the spouse, and that a *get* that is given without the husband's volition is void.[8]

On the other hand, the *Mishnah* expounds:[9]

> A *get* compelled by a Jewish court is valid, but by [if he was compelled by] gentiles [it is] invalid. But with regard to the gentiles, they may beat him [at the request of the *beit din,* a rabbinical court] and say to him, Do what the Jews are telling you, and it is a valid [divorce].

And the *Talmud* (the *Mishnah* and the discussion of the *Mishnah* by the scholars of Babylonia) states:[10]

> And similarly you find [this *halakhah*-norm of Jewish law] with bills of divorce, [that when the Jewish court rules that he must divorce his wife] they coerce him until he says, I want [to divorce my wife]. [The *Talmud* rejects this proof as well]. But perhaps there it is different, because it is a *mitzvah* (a religious duty) to listen to the instruction of the Sages.

In other words, although under certain conditions the husband is compelled to give his wife a *get*, his consent to accept the judgment of a *beit din* is effective for the purpose of considering the *get* to have been given "of his own free will."

Maimonides's explanation is well known and incisive:[11]

> When a man whom the law requires to be compelled to divorce his wife does not desire to divorce her, the *beit din* should have him beaten until he consents, at which time they should have a *get* written. The *get* is acceptable. This applies at all times and in all places.
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> Similarly, if gentiles beat him while telling him: "Do what the Jews are telling you to do," and the Jews have the gentiles apply pressure

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8 There is a controversy amongst the decisors as to whether a coerced *get* is biblically or rabbinically invalid. According to the majority of authorities a coerced *get* is null and void. See this writer's *Rabbinic Authority*, vol. 3, p. 30, note 11. However, there is a minority opinion, that *be-diavad* (ex post facto) the execution of the *get* under duress is valid. See *Mishneh Torah*, *infra* n. 11; *Ḥiddushei ha-Ran, Bava Batra* 48a; *Resp. Be'er Yitzḥak, Even ha-Ezer* 1:10(3); *Resp. Ḥatam Sofer, Even ha-Ezer* 2:174; *Resp. Ma'aseh Ḥiyah* 24.

On the other hand, according to biblical law, a woman may be divorced against her will. See *Tosefta Ketuvot* 12:3; *Gittin* 78a. As is known, in pursuance to Rabbenu Gershom's medieval enactment, a wife may be divorced only if she consents. See *Resp. Rosh* 42:1.

9 *M. Gittin* 9:8.

10 *Bava Batra* 48b.

11 *Mishneh Torah, Hil. Gerushin* 2:20.

> upon him until [he consents] to divorce his wife, the divorce is acceptable…
> Why is this *get* not void? For he is being compelled—either by Jews or by gentiles—[to divorce] against his will [and a *get* must be given voluntarily].
> Since the concept of being compelled against one's will applies only when speaking about a person who is being coerced and forced to do something that the Torah does not obligate him to do, e.g., an individual who was beaten until he consented to a sale or to give a present. If, however, a person's evil inclination persuades him to negate [the observance of] a *mitzvah* or to commit a transgression, and he was beaten until he performed the action he was obligated to perform, or he disassociated himself from the forbidden behavior, he is not considered to have been forced against his will. On the contrary, it is he himself who is forcing [his own conduct to become debased]. With regard to this person who [outwardly] refuses to divorce [his wife]—he wants to be part of the Jewish people, and he wants to perform all the *mitzvoth* (religious duties) and eschew all the transgressions; it is only his evil inclination that persuades him. Therefore, when he is beaten until his [evil] inclination has been weakened, and he consents [to the divorce], he is considered to have executed the divorce willfully.

It is emphasized in Maimonides's ruling that in a case in which the husband is compelled to give his wife a *get*, he must say, "I want it." Even though there are circumstances in which the halakhic system allows for the *get* to be coerced,[12] succumbing to the pressure is halakhically construed as consent to give a *get*.[13]

In short, a *get* compelled by a *beit din* is valid, but compulsion of the *get* by a non-Jewish court is invalid.

In the event that the *beit din* ruled to compel the *get* in a particular case, does compulsion of the *get* by non-Jewish courts invalidate it? *Tur, Even ha-Ezer* 134 cites a medieval dispute between his father (the Rosh) and Ramah dealing with the law in the case of a non-Jewish court that compels a man to give a *get*, when the *beit din* did not state, "Do what the Jews are

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12 *M. Ketuvot* 7:9–10.

13 And others concur with Maimonides's ruling. See *Tosafot, Bava Batra* 48a, s.v. *alima maha*; *Rashbam, Bava Batra* 48a, s.v. *dilma*; *Resp. Or Zarua* 754; Resp. *Maharaḥ Or Zarua* 126; *Resp. Tashbetz* 2:68; *Resp. Yakhin u-Boaz* 2:21; *Resp. Mabit* 1:76; *Resp. Ein Yitzḥak* 2:46; *Resp. Ḥavot Yair* 55; *Shulḥan Arukh, Ḥoshen Mishpat* 205:1. Compare *Ḥiddushei ha-Ramban, Yevamot* 53b, s.v. *ho de-amar Rabbah*; *Ḥiddushei ha-Ritva, Ketuvot* 64a; *Resp. Ridvaz* 4:1228; *Resp. Maharik*, *Shoresh* 63.

telling you." Under such circumstances, is the *get* valid or not? Tur expounds:

> If a *beit din* compels him through the non-Jewish court, and they say to him, Do what the *beit din* tells you, and they compel him, then the *get* is valid, and Ramah wrote that they must use those words, but if the non-Jews compel him and say to him, Give a *get*, even though they have been told by a *beit din* to compel him, the *get* is invalid. And it is unclear to my father, the Rosh, that because the *beit din* instructs the non-Jewish court to compel him, even if the non-Jewish court says, "Give a *get*," the *get* is valid.

The focus of the disagreement between the Rosh and Ramah is elucidated by Dayan Uriel Lavi, presiding *dayan* of the Jerusalem Beit Din:[14]

> Ramah and Rosh were in disagreement concerning a case in which a *beit din* ruled that the husband is compelled to divorce, and subsequently the non-Jewish court compelled him to give a *get* by virtue of their law, doing so independently, and not in order to comply with the ruling of a *beit din*. Ramah opines that since the non-Jewish court is not compelling the husband as an agent of the *beit din*, the *get* is invalid. According to the Rosh, however, because prior to the compulsion the *beit din* had already ruled that he is to be compelled to divorce (in accordance with Jewish law—AYW), then whoever enforces the compulsion, including the non-Jewish court, will be considered the long-arm of the *beit din*, even if they have not said as much.

To state it differently, according to Ramah it is possible for a non-Jewish court to enforce the ruling to compel the *get* issued by a *beit din*, on the condition that the former says, "Do what the Jewish court rules." On the other hand, according to Rosh, it is sufficient that the non-Jewish court compel, on its own initiative and unrelated to the judgment of the *beit din*, provided that the *beit din* handed down a decision to compel the *get*.[15]

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14 File 622918, Jerusalem Regional Beit Din, 4 Sivan 5777.

15 The position of Rosh dovetails with the general principle in *Ḥoshen Mishpat* (the restatement of the Jewish law of commercial relations) that it is permissible to enforce a judgment issued by a *beit din* via a non-Jewish court. See *Resp. ha-Ḥadashot* 204; Tur, *Ḥoshen Mishpat* 2; *Drishah* ad. loc.; *Sefer Me'irat Einayim, Ḥoshen Mishpat* 26:5; *Beit Yosef, Ḥoshen Mishpat* citing *Sefer ha-Terumot*; *Resp. Ḥatam Sofer*, *Ḥoshen Mishpat* 3; *Bi'ur ha-Gra, Ḥoshen Mishpat* 26:2; *Resp. Maharsham* 1:89; *Resp. Ha-Elef Lekha Shelomo* 4, *Ḥoshen Mishpat* 3; *Resp. Beit Avi* 4:169; *Kovetz Teshuvot* 1:180; File no. 846913, Haifa Regional Beit Din, 18 Sivan 5777 citing Rabbis

R. Yosef Karo, author of the *Shulḥan Arukh* (a classic restatement of Halakhah) resolved the controversy in the following fashion:[16]

> And if the *beit din* compelled him through the Cuthites (Samaritans) and the Cuthites whip him and say, 'Do what the court (*beit din*—AYW) tells you,' it is considered as if the *beit din* compelled him.

From the plain language of R. Yosef Karo, it appears that his ruling is in consonance with Ramah's posture.[17] However, the glossators of the

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Elyashiv and Shlomo Zalman Urbach. In other words, a *hekesh* (an analogy) may be drawn between the halakhah relating to divorce and the halakhah concerning a civil matter. In other words, regardless if a *beit din* ruling is handed down regarding a matter of ritual law or a monetary matter, we may utilize the services of a non-Jewish court to enforce the judgment. See *Beit Yosef, Ḥoshen Mishpat* ad loc.; *Bi'ur ha-Gra, Ḥoshen Mishpat* ad loc. Cf. *Resp. Be'er Yitzḥak, Even ha-Ezer* 10.

To state it differently, Halakhah distinguishes between employing an agent regarding the performance of a religious obligation, concerning the performance of an undertaking (*kinyan*) or a sale where one requires an agent and agency for the purpose of enforcing a *beit din* ruling such as *get* enforcement which is viewed like "the act of a monkey" (*ma'aseh kof*). See *Shulḥan Arukh, Ḥoshen Mishpat* 188:1; *Resp. Ḥatam Sofer, Oraḥ Ḥayyim* 201; *Resp. Ḥelkat Yoav* 3; *Resp. Iggerot Moshe, Even ha-Ezer* 1:256; *Kefiyah be-Get,* p. 99. Regarding the former type of agency, a non-Jew cannot serve as an agent for a Jew. See *Gittin* 23b, *Kiddushin* 41b; *Responsa ha-Ritva* 39. On the other hand, the second type of agency may be employed by a non-Jew for a Jew.

Consequently, we therefore can understand why R. Maharil Diskin and R. Shmuel Gartner argue that formally speaking, the non-Jewish court does not serve as an agent for the *beit din*. See *Resp. Maharil Diskin*, *Pesaḥim* 52(5); *Kefiyah be-Get,* pp. 96–99.

Alternatively, there is the opinion that the woman is the agent of the *beit din*. See *Kefiyah be-Get,* pp. 85–86, n. 54. Since agency may be established by verbal agreement between the principal and the agent (see *Shulḥan Arukh, Ḥoshen Mishpat* 182:1), in our situation there ought to be communication between the *beit din* and the woman concerning directing the non-Jewish court to address *get* coercion in accordance with its laws.

Finally, as R. Meir Arik notes, the non-Jewish court addresses the matter upon its own initiative and in effect becomes the agent of the *beit din*. It is as *if* the *beit din* directs the court to coerce the husband to give a *get*.

See *Kefiyah be-Get,* p. 85. The implicit premise of this position is that the principal, namely the *beit din*, may authorize the court to be its agent in its absence. See *Shulḥan Arukh, Even ha-Ezer* 120.

16 *Shulḥan Arukh, Even ha-Ezer* 134:9.

17 This is also the opinion in *Resp. Rabbenu Bezalel Ashkenazy*, *supra* n. 4; *Resp. Rid* 55; *Resp. Rashbash* 339; *Resp. Oneg Yom Tov* 128 citing several *Rishonim* (early authorities).

Shulḥan Arukh understood that R. Karo was in fact ruling in accordance with Rosh, and that his mention of the declaration of the Cuthites was not necessarily the ruling he adopted.[18]

The emerging question is whether according to the approach of Rosh, every compulsion of a *get* carried out by the non-Jewish courts by virtue of their governing law (i.e., that *get* refusal is an example of coercive control) will be considered as compulsion on the part of the *beit din*.

A reply to this question may be found in the words of R. Joseph Feigenbaum, who decided in accordance with the opinion of Rosh:[19]

> It is clear… according to the words of Rosh and those who support his view, the *get* is not valid. This is because the civil authorities compel him to divorce; this is not due to the laws of Israel (Jewish law—AYW) but is rather in accordance with their own conventional state law.
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> Based upon the foregoing, if a *beit din* compels the husband to give a *get* to his wife, the *get* is not valid if the non-Jewish court compels him to do so by virtue of their own laws. Said conclusion applies even if the non-Jewish court says, "Do what the Jewish court orders according to Jewish law" and any ensuing *get* is invalid.

Disagreeing with R. Feigenbaum's position is R. Meir Arik, author of *Resp. Imre Yosher* and *Miḥat Pittim*, who argues:[20]

> If the wife wants to be judged in a *beit din* in accordance with Halakhah… and the husband refuses to appear, nevertheless, *the beit din* may say to him that he is obligated to appear in *beit din*… and he will be coerced to give a *get* by a *beit din*… Surely, the *beit din* may designate the wife herself to be an agent, who will compel the husband through the non-Jewish courts, and in that case, the *get* would be valid because she is an agent of the *beit din*, and what she does is as if the *beit din* did it. Therefore, the *beit din* should issue a ruling that the matter be considered by the state court, and if what she says is true, he is obligated to divorce her, and it is valid because the state compulsion is due to the wife being an agent of the *beit din*.

R. Ya'akov Shor concurred with R. Arik and stated the following:[21]

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18 *Beit Shmuel*, *Even ha-Ezer* ad loc. 15; *Sema, Even ha-Ezer* 26:5. In contemporary times, R. Shmuel Tzvi Gartner is of the opinion that "the decisive majority of *Rishonim*" endorsed the view of the Rosh. See *Kefiyah be-Get*, pt. 14, p. 145.

19 *Kovetz Sha'arei Torah*, pt. 3, *kuntres* 11:63, pp. 173 ff.

20 *Kovetz Sha'arei Torah,* pt. 4*, kuntres* 15, pp. 25 ff.; *Kovetz Sha'arei Torah,* pt. 4, 34:2, pp. 68ff.

21 *Kovetz Sha'arei Torah*, pt. 4, 34, pp. 68ff.

> It is clear to me that in fact, as long as the *beit din* orders that he must divorce his wife, and they warn him that if he does not comply they will allow the wife to sue him under their [non-Jewish] laws to force him to divorce her, then even though their compulsion is not by virtue of the orders of the *beit din,* but by virtue of conventional state law, the *get* is a valid compelled *get* under Jewish law, and it is acceptable *ab initio* as if he divorced her in a *beit din*… And if he is coerced by a *beit din*, [the *get*] is kosher.

In accordance with the position of R. Arik and R. Shor, together with the adoption of Rosh's approach, prior to proceeding to a non-Jewish court to have a *get* coerced in accordance with the norms of state law, a *beit din* must examine the case and arrive at a judgment that there are grounds to compel a *get* in pursuance to Halakhah.[22] Given that in the Diaspora, a *beit din* is legally and therefore halakhically unable to engage in *get* coercion,[23] a *beit din* must arrive at the conclusion that there are grounds for *get* coercion, issue a decision of obligating a *get,* and acknowledge that the court is resolving the matter in accordance to their law in general and their norms of coercion in particular.[24]

In light of our foregoing presentation and in accordance to Rosh and his adherents and the contemporary views of Rabbis Arik, Shor, Gartner, Liebes, Lavi, Tam, and Malka,[25] in order to eliminate the possibility that a *get* that is given due to a criminal proceeding in a non-Jewish court will be deemed a coerced *get* and therefore void, bringing charges against a *get* refuser ought to be pursued only in the cumulative circumstances as described below:

1. From a procedural point of view, a *beit din* is permitted to decide on a matter of divorce with the participation of both spouses or in the presence of a wife alone, on condition that the husband

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22 File no. 622918/19, Jerusalem Regional Beit Din, 4 Sivan 5777 (R. Uriel Lavi's opinion) in the name of Rabbis Arik and Shor.

23 *Kefiyah be-Get* in the name of Rosh, *Ketzot ha-Ḥoshen, Netivot ha-Mishpat* and *Ḥatam Sofer*, pp. 99, 105, 108.

24 Implicit in said conclusion is that handing down of a judgment of obligating a *get* fails to run afoul of the strictures of a *get me'useh* (a coerced *get*). See *infra*, note 27. Our conclusion is reflective in the *get* enforcement decisions handed down by the Israeli *battei din* under the Chief Rabbinate. As aptly noted by Israel's Chief Rabbi, R. Yitzhak Yosef, if it is clear in a particular case where the authorities determine that there are grounds for a divorce, it is proper to direct the husband that he is obligated to give a *get*. See *Resp. ha-Rishon le-Tzion Even ha-Ezer* 17 (end).

25 See *supra* notes 20–21; *Kefiyah be-Get*, pt. 14, *Resp. Beit Avi* 14, 169:14; *supra* note 22.

was summoned to the *beit din* and refused to appear at the proceeding.[26]

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[26] *Resp. Rashbash* 46; *Resp. Maharashdam ha-Ḥadashot, Zikhron Aharon* ed., 5775; *Resp. Ramah me-Fano* 86; *Resp. Mabit* 1:76, 2:138; *Resp. Lev Mavin*, *Even ha-Ezer* 130; Resp. *Mishpatim Yesharim* 1:436; *Resp. Maharsham* 6:161; *Resp. Avnei Nezer*, *Even ha-Ezer* 238; R. Yo'ezer Ariel, *Laws of Arbitraton* (Heb.), p. 302; R. Dr. Eliav Shochetman, *Procedure in the Rabbinical Courts* (2 ed., Heb.) pp. 521–522; R. Abraham Debaremdiker, *Book of Procedure* (Heb.) 1:59; this writer's *Rabbinic Authority*, vol. 4, p. 216, note 2. Cf. the opinion of Rabbis Elyashiv and U. Lavi who contend that the convening of a *beit din* proceeding for matters of marriage and divorce require the presence of both parties. See R. Gartner, *Keftyah be-Get*, *Introduction*; *Kovetz Teshuvot* 1:181, 3:202; File no. 865704/1, Safed Regional Beit Din, 12 Iyar 5777. A review of the above rulings will demonstrate that we can conduct a hearing in the absence of a husband for two reasons. First, in a matter of personal status (*ishut*), we may convene a hearing in the absence of a party. Secondly, in a situation of *igun*, we may conduct a *beit din* proceeding in the absence of the husband. See R. Lavi, *Resp. Ateret Devorah* 3:87.

Furthermore, in the absence of the husband at a hearing, a *beit din* may hear the submission of evidence by witnesses insofar as it relates to matters of personal status. See *Resp. Ohalei Ya'akov* 27 in the name of Meiri and Ridvaz; *Resp. ha-Rivash ha-Ḥadashot* 14 in the name of Ramah; *Resp. ha-Rashba* 4:200; *Resp. Tashbetz* 2:19; *Resp. ha-Rashbash* 46, 287; *Resp. Maharshal* 33; *Resp. ha-Ridvaz* 70; *Resp. Avnei Nezer Even ha-Ezer* 30, 123, 124; *Resp. Noda be-Yehudah*, *Mahadura Kamma*, *Even ha-Ezer* 72 (Cf. with no. 92); *Resp. Karnei Reim* 1:4; *Yeshuot Ya'akov Even ha-Ezer* 42; *Resp. Ḥelkat Ya'akov, Even ha-Ezer* 1:4; *Resp. Ḥatam Sofer, Even ha-Ezer* 1:84; *Resp. ha-Maharnah* 1:68; *PDR* 6, 266, 281.

In the event that one deals with an *agunah*, the situation characterized as "an hour of emergency" and as such is halakhically viewed ex post facto and therefore, evidence in matters related to personal status may be submitted in the absence of the husband. See Maharnah, op. cit.

Cf. *Rema*, *Shulḥan Arukh Even ha-Ezer* 11:4, *Ḥoshen Mishpat* 28:15; *Resp. ha-Rema* 17; *Beit Shmuel*, *Shulḥan Arukh, Even ha-Ezer* 11:16; *Resp. Maharshal* 11; *Resp. Mas'at Binyamin* 106; *Resp. Panim Meirot* 1, *Even ha-Ezer* 104; *Resp. Maharashdam Even ha-Ezer* 21, 27; *Resp. R. Akiva Eiger* 99. For further discussion, see S. Shilo, "Testimony in the Absence of a Party in Matrimonial Matters," (Hebrew) 5 *Shenaton Ha-Mishpat ha-Ivri* 321 (1978).

Whether it is essential to turn to a *beit din* or whether a scholar(s) who is an expert in *Even ha-Ezer* and *Ḥoshen Mishpat* may issue a ruling regarding marriage and divorce such as coercing and obligating a *get* is subject to debate amongst the authorities. See *Yam Shel Shelomo, Bava Kamma* 3:9; *Ketzot ha-Ḥoshen* 3:1–2; *Netivot ha-Mishpat, Ḥoshen Mishpat* 3:1; *Resp. Yehudah* (Gordin), *Even ha-Ezer* 51:2; *Resp. Ma'aseh Ḥiya* 24; *Resp. Ḥatam Sofer, Even ha-Ezer* 2:64–65, *Ḥoshen Mishpat* 177; *Resp. Avnei Nezer, Even ha-Ezer* 167:1; R. Z.N. Goldberg, *Lev Mishpat* 1:149–150; this writer's *Rabbinic Authority*, vol. 5, p. 232, note 1.

2. The lack of authority of rabbinical courts in the Diaspora does not prevent the *beit din* from arguing on theoretical grounds that there is a basis for coercing a *get*. In other words, a precondition for submitting a claim to civil court is contingent upon the beit din in the Diaspora arriving at the conclusion that there are grounds to coerce a *get*, issue a decision of obligating a *get* and acknowledge that the court will follow their law is general and their norms of coercion in particular. Given the legal and therefore halakhic impossibility to coerce a *get* in the Diaspora, the second precondition for submitting a claim to civil court is contingent upon the *beit din* in the Diaspora arriving at the conclusion that there are grounds to obligate a *get*.[27]
3. Assuming the above conditions have been obtained, if the husband gave the *get* in order to prevent an incarceration under the above law, the *get* is valid.

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[27] In the Diaspora where, generally speaking, rabbinical courts refrain from issuing a ruling of obligating the giving of a *get*, our presentation demonstrates the significance of a *beit din*'s acute need to issue this type of ruling in order to address the plight of the *agunah* who is seeking relief via the services of a non-Jewish court.

There is a minority of authorities who argue that rendering a judgment to obligate the giving of a *get*, similar to coercing a *get*, runs afoul of the strictures of a coerced *get* (a *get me'useh*). See *Ḥazon Ish EH* 99:2; *Teshuvot Yabia Omer* 2 *EH* 10; R, Shimshon S. Karelitz, *Teshuvot Ateret Shlomo* 1:32 (6) in the name of Rashba and Rivash; *Piskei Din Rabbanayim* (hereafter: PDR) 7:201, 204 (Rabbi Elyashiv in the name of Rosh); File no. 8211227/2, Jerusalem Regional Beit Din, December 12, 2013; File no. 1083672/1, Haifa Regional Beit Din, January 25, 2018.

However, the majority of authorities including but not limited to the majority of the Israeli rabbinical courts under the network of Israel's Chief Rabbinate issue decisions of obligating a *get*. Consequently, the rabbinical courts in the Diaspora should follow the procedure adopted by the above Israeli rabbinical courts as well as by numerous decisors. *See Tosafot, Ketubot 70a,* s.v. *yotzi* in the name of Rabbeinu Ḥananel*; Tosafot, Yevamot* 64a, s.v. *yotzi*; *Piskei ha-Rosh, Yevamot* 6:11; *Resp. Maharam of Rothenberg,* Prague ed., 946; *Ḥiddushei ha-Ran, Ketubot* 77a; *Resp. ha-Rashba* 7:477; *Resp. ha-Rivash* 127; *Resp. Tashbetz* 2:68; *Semag*, *Positive Mitzvah* 48 (end); *Ḥiddushei ha-Ritva, Ketubot* 77a; *Tur and Beit Yosef, Even ha-Ezer* 70, 154; *Shulḥan Arukh, Even ha-Ezer* 70:3, 154:3, 21; *Rema, Yoreh De'ah* 228:20, *Even ha-Ezer* 154:21; *Arukh ha-Shulḥan, Even ha-Ezer* 154:20; Shakh, *Gevurat Anashim* 29; *Pitḥei Teshuvah, Even ha-Ezer* 154:15; *Resp. Maharit* 1:113; *Resp. Noda be-Yehudah*, *Mahadura Tinyana* 90; *Resp. Nosei ha-Ephod* 32:18; *PDR* 1:141 (R. Elyashiv's opinion). See further, this writer's *Rabbinic Authority*, vol. 5, pp. 306–324.

In light of the above, on one hand, should a non-Jewish court work without the assistance of a *beit din*, the resulting execution of a *get* under these conditions would be invalid.[28] On the other hand, should the non-Jewish court operate according to their law, then any ensuing *get* is valid.[29]

To state it differently, a judgment issued by a *beit din* together with enforcement through the initiation of a criminal process in the English courts may save Jewish women living there from the state of *igun* (a chained woman in marriage) and may prevent serious violations of Halakhah pertaining to married women as well as preventing the proliferation of *mamzerim* (bastards under Halakhah) in our community.

May Hashem (God) save us!

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[28] *Mishneh Torah*, *supra* n. 11; *Tur, Even ha-Ezer* 134; *Shulḥan Arukh, Even ha-Ezer* 134:5.

[29] See *Tur, Even ha-Ezer* 134; *supra* text accompanying notes 14, 20–21.

Addendum 1

A new law on coercive control (California Family Code 6320) became effective on January 1, 2021. According to the new law, among the remedies available to victims of domestic violence is that the courts may consider such behavior as a factor in determining child custody and visitation privileges as well as calculating the amount and duration of spousal support.[30] Prior to a court's determination that *get* recalcitrance is an example of coercive control; a *beit din* must have ruled that in theory the circumstances dictate that a *get* ought to be coerced. However, in practice, given that legally and therefore halakhically the imposition of *get* coercion is an impossibility, the *beit din* must have handed down a ruling that the husband is obligated to give a *get* and acknowledge that the court is following their law. In effect, with the existence of such a rabbinic judgment, a civil court order will not impact the integrity of any subsequent execution of a *get*. See R. Tobol, *Resp. Mar'ot Yesharim* 29. As we explained earlier, in effect the civil court is serving as a *shaliach,* an agent of the *beit din*. For further discussion, see *Kefiyah be-Get*, *supra* note 18, pp. 85, 87, 99–100.

Finally, whereas we are dealing with the halakhic validity of *get* coercion by a non-Jewish court, the NY *Get* Law 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. However, this statute is limited, for it only withholds a civil divorce but cannot compel a *get*. As such, we have refrained from examining the NY *Get* Law in our presentation.

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[30] Prior to adjudicating matters of spousal support, child support and parenting arrangements in a non-Jewish court, one is required to receive "*heter arkha'ot,*" permission to proceed to non-Jewish court to deliberate end-of-marriage issues. Whether one must receive halakhic permission from a *beit din* or whether a *hora'ah* (an instruction) of a scholar who is an expert in *Even ha-Ezer* and *Ḥoshen Mishpat* suffices in order to be permitted to litigate in a non-Jewish court is subject to debate. See *Shulḥan Arukh, Ḥoshen Mishpat* 26:2; *Resp. Maharil Diskin* 13; *Resp. Shevet ha-Levi* 4:183. See further, this writer's *Rabbinic Authority*, vol. 1, p. 154, note 160.

Addendum 2

Below is a sample *beit din* decision which can serves as a vehicle for a wife to file a claim pursuant to the coercive control legislation without running afoul of the strictures of a coerced *get*.

Avraham v. Miriam

Facts of the case

Avraham and Miriam were married on July 3, 2001. Since October 2018 the couple has been separated. To date, Avraham refuses to give Miriam a *get*. We convened a hearing with the parties.

Discussion

Based upon information submitted at the hearing, there are no prospects for *shalom bayit*, marital reconciliation. Given that Avraham and Miriam have been separated for more than 18 months, Avraham is obligated to give a *get* to Miriam. R. Pelaggi, a renowned Sephardic authority, rules:

> In general, … when *Beit Din* realizes that they are separated for a long time and there is no way… we have to make an effort to separate them from each other and he should give a *get* in order that they not sin grievously… And my time frame, in case of dispute [between] wife and husband… and 18 months have passed... *Beit Din*… should force him to give a divorce...

We concur with R. Pelaggi, that there are grounds to coerce a *get* (see also *Piskei Din Rabbaniyim* 9:145, 152). However, in contemporary times in the Diaspora we cannot coerce a *get*. **Therefore, we obligate Avraham to give a *get* immediately**. See also *Iggerot Moshe, Yoreh De'ah* 4:15(2).

Should Miriam file a claim against *get* recalcitrance as an example of coercive control in marriage under English law, in accordance to Rabbi Meir Arik, Rabbi Yaakov Shor and others, we acknowledge that the court in general is following their law and their norms of coercion in particular, and the ensuing *get* will be valid. See *Kovetz Sha'arei Torah*, Section 4, *Kuntres* 15, 34, pp. 69ff: File no. 622918/19, Jerusalem Regional Beit Din, May 29, 2017; File no. 846913/2, Haifa Regional Beit Din, June 12, 2017. ☙