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THE prospect of divorce cases in Britain being settled by sharia and religious courts has been opened up by a landmark legal decision.
A Jewish couple have had their divorce settlement under beth din (rabbinical law) approved by the British High Court -- a first in British legal history.
Lawyers said the judgment could clear the way for other couples to seek a divorce in a religious court. The decision was welcomed by the Muslim Council of Britain. A spokesman said: ``If it leads to the eventual acceptance of sharia court divorces then Muslims will be very encouraged.''
Judge Jonathan Baker cited the former Archbishop of Canterbury, Rowan Williams, and his lecture on sharia in 2008, in which he said that ``citizenship in a secular society should not necessitate the abandoning of religious discipline''.
The case involved a couple of observant orthodox Jews in their 20s. They married in 2006 in a Jewish ceremony and initially lived in Israel, returning to London for the birth of their first child. They had planned to move to Toronto, but the marriage began to break down and they separated in 2009, shortly after the birth of their second child. There were disputes over access to the children and the father began proceedings under the Hague Convention on child abduction.
But before the abduction case came to court in London, the couple decided to refer their disputes to a senior rabbi in the New York Beth Din and asked if the judge would agree. Justice Baker was persuaded by the couple's arguments that arbitration in their own religious court would be better than litigation, and in line with their beliefs.
Justice Baker said he had examined the principles used by the beth din and ensured that they were in line with the laws in England and Wales.
``The parties' devout beliefs had been respected,'' he said. ``The outcome was in keeping with English law, whilst achieved by a process rooted in Jewish culture to which the families belong.''
The judge also made clear that the ruling by the beth din was not binding, as that would oust the jurisdiction of the courts.
The mother's lawyer, James Stewart, said: ``There's no doubt that (the decision) is bound to open things up. This is the first occasion that a family court has effectively delegated some of its authority to a religious court for arbitration.'' It was also significant, Justice Baker had chosen to quote Dr Williams. ``The judge has adopted the creative and culturally sensitive approach advocated by the archbishop in 2008. I believe Islamic courts would be afforded similar courtesy and respect.''
Justice Baker also stipulated that the husband had to give his wife a ``get'' -- a Jewish divorce -- or he would not approve the settlement the couple had agreed.
Without the get, a Jewish woman cannot remarry and becomes a social pariah.
Men have the right of unilateral divorce under classical sharia. A Sunni Muslim divorce is effective when the man tells his wife that he is divorcing her. In practice, unilateral divorce is common in only a few areas of the Islamic world.

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