

KHUL & A CASE STUDY

Fatemolla

“[Q: 4.19], Allah says, "O people who believe! It is not lawful for you to inherit, or take possession of, women against their will, and do not straighten them in order that you may take part of what you have given them.....".

No person, no authority and no organization have the right to ask a Muslim husband the reason of divorce or stop him from divorcing. He has the absolute legal right to divorce his wife/wives

1. Instantly in one of two different ways, Talak and Leyan (allegation to wife for adultery, proven or unproven).
2. In three sequential stages (for slave-wives it is two stages), or conditionally.

LAW FOR MUSLIM MEN.

- “If a man says to his wife, “You are (under) divorce” or “You are divorced by divorce” or “You are divorced according to divorce” without any particular intention, or intending thereby one divorce, or two divorces, a single divorce reversible takes place; and if his intention be three divorces a triple divorce takes place accordingly.” - Hanafi Law.
- “Expressions such as “The wife is divorced”, or “The divorce is effected” mean just one of the three times necessary to finalize it unless the husband thereby intends a two- or threefold divorce or repeats the word three times” – Shafi’i Law.

LAW FOR MUSLIM WOMEN.

- “In law it signifies an arrangement entered into for the purpose of dissolving a connubial connexion, in lieu of a compensation paid by the wife to her husband out of her property” – Hanafi Law.
- “A release for payment means a separation in return for remuneration given to the husband”- Shafi’I Law.

VIOLATION OF THE QURA’AN

In verse 4.58, He commands us that **when we judge, we should judge with justice**. He urges us that **we should give full measure and weight with justice** (6.152). And, finally, verse 49.9 tells us, **"...surely, Allah loves those who act equitably."**

By logic and commonsense, the wife, in the case under our consideration, is no doubt subjected to gross injustices.

Moreover, in verse [Q: 4.19], Allah says, " **It is not lawful for you to inherit, or take possession of, women against their will, and do not straighten them in order that you may take part of what you have given them.....**". There is no question of son, brother or father choosing such a relationship of "possession" against the woman's will. Moreover, mention of "**take part of what you have given them**" means bride-money. Logically therefore the verse 4.19, could only mean the women's husbands, as also proven in the Daily Inqilab:-

INQILAB ON KHUL
04 JANUARY 2006

কিন্তু দুঃখজনক হলেও সত্য যে, আব্বাহর এ হুকুমটা অধিকাংশ ক্ষেত্রেই গুরুত্বহীন। যদিও পাত্রী পক্ষের অনুরোধে একটা মোহরানা নির্ধারণ করা হয় তবে অধিকাংশ বিবাহ অনুষ্ঠানে মোহরানার একটা অংশ আদায় করা হলেও মোহরানার মোটা অংক অনাদায়ী থেকে যায়। আর যে অংক আদায় করা হয়ে থাকে তা নির্ধারিত অংকের একটা নগণ্য অংশ মাত্র। মূল কথা বিবাহ অনুষ্ঠানের শুরুতেই সুকৌশলে স্ত্রীর প্রাপ্য অধিকার থেকে বঞ্চিত করা হয়। কেননা, কাজী সাহেব বিবাহ আসরে আনুষ্ঠানিক যে ঘোষণা দেন তা বেশীরভাগ ক্ষেত্রে কোন দিন আদায় হয় না। আর পাত্রীও জানে তার নির্ধারিত মোহরানা আদৌ কোন দিন তার হস্তগত হবে না, যা নিঃসন্দেহে সূরা নিসার ১৯নং আয়াতের হুকুমের পরিপন্থী অর্থাৎ হারাম কাজ।

The verse therefore clearly forbids a believer to retain any woman as his wife against her will.

CASE STUDY:-

>From: Mohammad Shafi <mjaga@mtnl.net.in>
>Subject: Islam Open Forum Divorce at Wife's Request - A Case Study
>Date: Wed, 02 Nov 2005 20:07:46 +0530
>
>Divorce at Wife's Request - A Case Study

Divorce at Wife's Request - A Case Study

The case cited is not a product of fiction. It is a true life story. A wife is not happy with her marriage and desires separation. Efforts at reconciliation fail. But the husband refuses to divorce her and the wife files a petition to a Shariah Court for annulment of her marriage. **The Court fails to grant her request for over a year on the plea that they have not received any response from the husband to the notices they sent him. The husband in the meantime marries another woman, but the wife cannot seek another husband as she is neither divorced by her present husband, nor has the Shariah Court ordered annulment of her marriage.**

Now, in this scenario, the questions that arise for consideration here are:

1. Is it a clear case of injustice to the wife?

2. If yes, then does Islam permit or tolerate such injustice?
3. Does Islam give the husband the authority to refuse divorce?
4. Is the Shariah Court justified in prolonging the matter indefinitely?
5. What should the Court have done, in the circumstances, in the interest of justice?

Marriage is a mutually approved contract between two persons. It can subsist only at the simultaneous pleasure of both the parties. If a husband has the right of unilateral decision to legally separate from his wife, the wife too must have the same right. Any pretension to being a just system vanishes into thin air, the moment the system helplessly watches the husband marry again while he effectively prevents his first wife to marry another man.

In view of verse 4.19, the Shariah Court had no alternative but to accede to the wife's request to annul the marriage. It was not necessary at all for them to wait indefinitely for the husband to give his reply. They could have at most given 3 months for both the parties to explore the possibility of a rapprochement. And if it did not happen during that period, they should have annulled the marriage ex-parte, on the basis of the wife's request.

One may say that all the right things are there in the Qur'an, but lament that the right things are not implemented. I would say that the failure at implementation is largely because of the lack of general, first-hand awareness of what the Qur'an contains. Most Muslims remain blissfully content with what others say the Qur'an contains. They find no time to get the first-hand information from the Qur'an itself. They are also fed by vested interests with the false notion that the Quran is beyond their comprehension.

Taking this particular case for example, few people are aware of the specific provision in the Qur'an, by virtue of which a husband is obliged to divorce his wife if she insists on the separation. And the tragic fact is that even the high-profile men constituting the Shariah Court are unaware of this provision. Had they been aware, they would not have waited for such a long time for the husband's response. After allowing a 3-month period for a possible reconciliation between the 2 parties, the Court would have annulled the marriage ex-parte on the wife's petition. And had the husband in the case been aware of this Quranic provision, this case would not have arisen at all!

Mohammad Shafi <<mailto:mjaga@mtnl.net.in>>
(www.islam-n-interest.com)