

What is Khula in Islamic Shariah

Before we understand Khulah in Islamic Shariah, we better understand Nikah or wedlock in Islamic jurisprudence.

Nikah comes from Nakha, meaning a truce, agreement and contract. This contract according to the civil law of marriage is a distinguished contract because it is derived from the Qur'an and the tradition of the Prophet Mohammad (Peace be upon him) but is not a sacred matrimony. According to Shariah, is sunnah of the Prophet. Nikah is not mandatory. If one, either a woman or a man prefers to remain single, there is no harm or wrong doing. However, if a man or a woman decides to marry, they will gain reward from Allah (SWT) because Nikah is strongly emphasized by the Prophet (PBUH). It is sunnah Mu'akada . In this agreement, both husband and wife have the right to nullify this contract. If a woman asks for divorce that is called Khula.

Background of Khula in Islam:

A woman came to the Prophet (PBUH) and said that her husband does not have any defect but in order to not commit sin, she asks for divorce. The Prophet (PBUH) said: Did you receive any Mahr (dowry)? She replied in affirmative indicating a small garden. The Prophet (PBUH) then asked her can you return that garden back? She said Yes. The Prophet (PBUH) then called the man and had his garden returned and divorced the woman.

Analysis of the story according to Islamic Jurisprudence:

- 1-The Prophet (PBUH) did not ask the woman the reason for her divorce. This means a judge or mediator between the husband and wife or family counselor is not supposed to ask the reason for divorce. It may be an issue between the husband and wife that is not appropriate to disclose.
- 2- The woman admitted that her husband did not have any defect. That means that for some reason she was not happy. Again, the reason was not disclosed. This means she has the right for her freedom as she please without question asked.
- 3- The Prophet (PBUH) asked her about a dowry if she received it and if she can return that. This means a woman must return her dowry upon asking for khula. However, the dowry can only be returned if there is no wrong doing from the husband. The woman confessed that her husband did not have any defect. In this case she should return her dowry. But if she is abused, or deprived from her rights, and any sort of abuse is proven, since Islam is a deen of justice, the judge should rule to not return her dowry. According to the Qur'an and Islamic jurisprudence, both men and women have rights based on justice. The Qur'an says: Women are attire to men and men are attire to women. This means within the family, they are equal partners.

Conclusion:

If a woman asks for divorce, the husband should divorce her immediately without question. This is when all mediations, consultations or communications is failed. No one has the right to deprive a woman from her freedom and liberty. If a husband is not issuing divorce, then the judge, or in western countries the Masjid's Imam or institutions working for family Islamic counseling must issue the divorce certificate.

It is important to be mentioned that Muslims living in non-Muslim countries can dissolve their marriage in the court of law. The decision of the court of law in non-Muslim countries is honored by Islam. Also, if a couple married in a Muslim country, they can dissolve their marriage in a non-Muslim country without going to their own country or resort to an Islamic court.

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