

# KHULA TIES THE MUSLIM CLERICS IN KNOTS

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File photo of members of the All-India Muslim Personal Law Board after a meeting in Lucknow. | Photo Credit: RAJEEV BHATT

A formidable section of Muslim clerics is once again leading the community to the cliff with their loud and lopsided pronouncements on Khula, a Muslim woman's inalienable right to divorce. In a step that reeks of patriarchy, the ulema feel a Muslim woman, once she enters into a nikah with a man, has no way to dissolve the contract unless the man divorces her or agrees to her proposal for Khula. The third way is faskh or judicial divorce. Even if the man inflicts violence, tortures her for dowry, and stops her from meeting her parents or fulfilling her professional dreams, she cannot end the marriage unless he consents to Khula.

The ulema's interpretation of women's right is questionable, even provocative, just as it was with instant triple talaq, before the Supreme Court stepped in to restore paramountcy of the Quran over the perceived decision of Caliph Umar. In the talaq case too, the maulanas had insisted on the right of men to end a marriage with the pronouncement of triple talaq at one go. That dozens of Muslim countries did not approve of this method of divorce did not matter to many Indian clerics. And that the Quran, which talks of divorce options and procedure through select verses of Surah Al-Baqarah and Surah At-Talaq, does not mention instant triple talaq anywhere was cast aside as a matter of interpretation. It was left to the court to invalidate instant triple talaq in 2017. The judges quoted verses from the Quran and works of Islamic scholars to buttress their point. The ulema squirmed, but fell in line.

The judiciary may have to draw the ulema's attention to the Quran and Hadith all over again as the wise scholars seek to resume their hold over religion with their take on Khula. Virtually turning Islam into a monopoly of men, where every action, right and privilege of women is dissected and scrutinised by the ulema, the All-India Muslim Personal Law Board (AIMPLB) recently opposed the Kerala High Court's verdict on Khula. On a review petition, the court said, "In the absence of any mechanism... to recognise the termination of marriage at the instance of the wife when the husband refuses to give consent, the court can simply hold that Khula can be invoked without the conjunction of the husband... This is a typical review portraying that Muslim women are subordinate to the will of their male counterparts... [it] appears to have been fashioned... by clergies and the hegemonic masculinity of the Muslim community who are unable

to digest the declaration of the right of Muslim women to resort to... Khula, unilaterally." This verdict was reminiscent of an essay, 'Extra-Judicial Khul Divorce in India's Muslim Personal Law', in which Sylvia Vatuk wrote, "The 1917 Ottoman Law of Family Rights was the first to enable women, under certain circumstances, to obtain divorce in a court of law. Since then, most countries that apply a version of Hanafi law... have loosened, modified, or struck down those provisions that require a wife to obtain her husband's permission to divorce him. India did this in 1939 with the passage of Dissolution of Muslim Marriage Act which allows a Muslim woman to divorce an unwilling or unavailable husband in a court of law."

To the AIMPLB, the Kerala High Court judgment amounted to the court exceeding its brief of merely being an interpreter of the Muslim Personal Law (Shariat) Application Act, 1937. The man, the AIMPLB reiterated, reserves the right to accept or reject a Khula proposal mooted by his wife. In other words, a woman cannot leave an unhappy or abusive marriage unless the man lets her go.

This reasoning is removed from the ground reality in India. Here, most Khula cases are moved when the woman has either been asked to leave her matrimonial home or moves in with her natal family to avoid the harassment that comes with living with an estranged spouse. In both cases, the man has little incentive to give his consent to Khula as he can simply marry another woman. If denied release through Khula, such women could simply be abandoned.

It is precisely to put an end to unhappy or violent marriages that the Quran outlines a clear divorce procedure, whether initiated by a man or a woman. Through Verse 229 of Surah Al-Baqarah, the Quran gives woman the right to end a marriage if she gives something in lieu of her freedom. In other words, she has to surrender her mehr for divorce through Khula. In Islamic history, there is a well-documented case of a woman, Jameela, seeking the Prophet's advice to end her nikah with Sabit Bin Quais merely because she didn't like his looks. The Prophet asked her to give the man something in return. She surrendered her garden upon which the Prophet asked the man to give his consent. The Prophet did not seek the man's permission or give him the option of saying no. Importantly, while in a case of talaq, the spouses are instructed to live together after the first and second pronouncements so that there is a chance of reconciliation, the woman has to leave her husband's house immediately in the case of Khula. This is done to avoid any assault by the man who is no longer her spouse.

Apart from the AIMPLB, scholars of Imarat Shariah too reiterate the idea of a man's veto over Khula. It is this insistence on male superiority that has driven many woman members of the AIMPLB away from its portals, and left other women of the community in the lurch. The holy book and the Hadiths might offer evidence to the contrary, but the ulema are in no hurry to let women exercise their rights in matrimony and divorce. Khula has tied the Muslim clerics in knots.

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