

Is Divorce or Khula Justified when a Man is Impotent

Question: A man has been married for four years when it was discovered that he was impotent. The girl is young and has been with her parents for the past two years. Her father is demanding a divorce, but the husband is asking for another two years grace. The father maintains that despite two years treatment, there has been no difference and no sign of recovery. How much longer must this be allowed to continue? The father is worried about the consequences of his daughter falling into sin because of her young age. He now intends to take the matter to court. Please enlighten us with the view of the Shari'ah before this happens.

Answer: Khula should be the first option to try in this case, meaning that the balance of the dowry be waived in exchange for a divorce. If the husband still refuses, the wife may refer the matter to a Qaadhi or a Muslim ruler. If these people are not available, it should be referred to a Muslim (judicial) committee that is headed by an Aalim or that acts according to the directives of an Aalim.

If a non-Muslim government has granted a Muslim the right to hear and pass judgement in such matters. it may be referred to him. The couple may also refer the matter to an Aalim they both approve of. The person to whom the matter is referred will then investigate the matter thoroughly and allow a year's grace for treatment if impotency is proven. If nothing works? after the year, the person has the right to annul the marriage if the husband still refuses to divorce. Hadhrat sa'eed bin Musayyib RAH. has issued this Fatwa, as quoted in the Mu'atta of Imaam Malik (Pg.214) The same is stated in Qudoori (Pg.166).

An annulment of marriage enforced by a non-Muslim judge is not valid in the Shari'ah. If this is enforced, recourse must still be made to a Muslim committee to have the marriage annulled. And Allaah knows best what is most correct.

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