

DILEMMA OF MUSLIM WOMEN REGARDING DIVORCE IN SOUTH AFRICA

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Summary

On a daily basis people enquire about the dissolution of Islamic marriages, in terms of South African law In South Africa. There exist no legal grounds for obtaining a divorce in a South African court, for persons married in terms of the Islamic law only. The reason for this is due to the fact that Muslim marriages are currently not recognised as valid marriages in terms of South African law. The courts have stated that the non-recognition of Islamic marriages is based on the fact that such marriages are potentially polygamous.

In South Africa, marriages may be dissolved by the death of one of the spouses or by divorce. In terms of the *Divorce Act*, a decree of divorce will be granted by a court of law.

Islam grants the husband the right of divorce and also grants the wife the right to request and apply to dissolve the marriage through what is known as *Khula*, the woman also has the right to a delegated divorce. If the husband dissolves the marriage by divorcing his wife, he cannot retrieve any of the gifts he has given her. Islam further makes provision for the "reasonable maintenance" of divorced women.

The non-recognition of Islamic marriages has the effect that a person married in terms of *Shari'ah* only, has no right to approach a court of law for a decree of divorce and, unless a husband divorces his wife in terms of the *Shari'ah*, the wife is trapped in a marriage, even if the marriage has broken down irretrievably. Thus a custom in South Africa has developed, whereby Muslim husbands refuse to divorce their wives in terms of Islamic law, so as to punish the wife. The wife in turn cannot make use of the South African

judiciary to obtain a divorce, because of the non-recognition of her marriage. This is a burden, which is in direct conflict with Islamic law.

In 2000 a Bill was drafted by the South African Law Commission. This act will recognise Islamic family law within a constitutional framework. This article deals with the dilemma that a Muslim woman is faced with in South Africa with regards to divorce.