

STATUS OF WOMEN'S RIGHTS IN KHULA UNDER SHARIAH AND PAKISTAN'S LAW

Pages: 1– 12

Vol. III, No. II (Fall 2024)

p- ISSN: 3078-3666

e- ISSN: 3078-3283

Behram Khan Advocate High Court at Peshawar High Court Peshawar, email: behramkhan1234@gmail.com

Javed Iqbal: LLB. MA Political Science, MA Islamiyat, MA English, M Phil Political Science, Diploma in Sharia and Law.

Doi: 10.70540/ijlss.2024(III-II).05

Doi Link: [https://doi.org/10.70540/ijlss.2024\(III-II\).05](https://doi.org/10.70540/ijlss.2024(III-II).05)

Contents

1. Introduction
2. Khula
3. Khula Exercised in Courts
4. Khula: The Right of Women in Sharia
5. Khula in the Holy Quran Verses
6. 'Fa-in-khifum' Means State
7. Khula under the Light of Hadith
8. Analysis of the Views of Different Schools of Fiqh
9. Khula in Hanafi School
10. Khula in Shafi School
11. Khula in Hanbali School
12. Khula in Shia School
13. Khula in Maliki School
14. Status of Khula Right in Pakistan Law
15. Khula Before 1959 in Subcontinent
16. Judicial Ijtihad in Pakistan
17. Statutory Provisions on Khula
18. Federal Shariat Court and Khula
19. Conclusion
20. Recommendations
21. References

Abstract: This study examines the status of women's rights in khula under both Sharia law and Pakistani statutory law, highlighting its legal development, procedural framework, and implementation challenges. Although khula is recognized in Islamic law as a legitimate form of divorce, initiated by the wife, typically involving the return of mahr, the issue of husband's consent and procedural obstacles have frequently created confusion and impediments in its execution. The right of a woman to seek separation through khula is a crucial legal and religious provision in Islamic Jurisprudence, and its application within Pakistan's legal system reflects ongoing efforts to balance religious principles with contemporary concepts of gender justice.

Keywords:

Khula; Women's Rights in Islam; Shariah Law; Pakistan Family Law; Dissolution of Marriage; Islamic Jurisprudence; Quran and Hadith; Schools of Fiqh; Fidyah; Federal Shariat Court; Judicial Ijtihad.

1. INTRODUCTION

The contract of marriage is made with the purpose to secure the mutual interests of the spouses and society, in terms of protection against illicit relations, subsistence of generation, division

of family labor, social harmony and social moral health. If there arises any situation when parties to the wedlock seem it difficult to continue under matrimonial bond or there seems any fear between the spouses that the very objects of marriage are going to be defeated due to certain uncongenial circumstances, then the doors of separation are open to the parties although abhorred but permissible under Sharia. Talaq, khula, lian, mubarat and faskhare the gates of separation to contract of nikkah at the option of parties. If the husband wants to annul the marriage bond he is empowered with the option of Talaq (divorce). On the other hand if wife just wants to get herself separated, she can use khula through court by giving back mahr to her husband.

The literal meaning of khula is to annul, to free, or to rescind. The detailed definition of Khula is that it is an option of separation to the wedlock, being given to the wife to secure divorce by returning the amount of mahr. In Subcontinent Section 2 of Dissolution of Muslim Marriages Act 1939 provided women with the right to go to court for divorce on certain grounds which includes imprisonment of husband for seven or more years, Disappearance for four years, impotency, insanity, cruel treatment and others. This statutory right for women to get themselves separated proved non working due to certain reasons. In all the times, due to the nature of right

under section 2 of DMMA 1939, woman, as a complainant, had to prove his case by evidence. For this she was unable to establish his case in the court because of insufficient evidence. Due to the nature of conjugal disputes between the spouses, privacy is attached to it and it is impossible to bring witnesses and as a result evidence in the court. Khula as the right of women in the Pakistan law came as to cure the previous family law lacunas, in which women only has to establish before the court that the continuance of marriage will lead the spouses to violate, the bilateral conjugal rights and limits prescribed by Allah Almighty whereby court will pronounce decree of separation with condition to payback compensation to husband.

On the other hand in Islamic fiqh, the khula is still complicated on the issue of consent of husband which will be discussed in detail in successive pages. The Lahore High court given landmark decision in 1959 in Balqis Fatima case and held that consent of husband is not necessary in khula separation. This verdict was later on upheld by Supreme Court of Pakistan in 1967 in case of Khurshid Bibi.

Khula

The literal meaning of term “khula” is as “Pull out oneself”. Alauddin al- Kasani said khula is al-naz which means the separation of one thing from other. (Kasani, 2000). So

technically it means the conjugal separation and is the act of securing compensation from wife for matrimonial release. According to Ibn Rushd, the terms khula,, fidya, şulḥ and mubara“a are of the same meaning, which is a transaction in which wife pays compensation for securing her divorce. (Ibn Rushd,). Imam Abu Hanifa explained khula as conditional agreement on the part of husband and compensation from the wife but Imam Yousaf and Imam Muhammad Bin Al Hassan hold that it is mutual agreement¹. In Islamic personal law Khula is a controversial right among the different schools of fiqh and in state legislation of Pakistan as pertaining to its procedure, conditions and other miscellaneous issues like consent of husband

The Balqis Fatima and Khurshid Bibi cases, according to some, are the best illustrations of judicial legislation protecting women's rights in Pakistani personal law. The courts have ruled that when the husband is to blame for marital strife, he should not be compensated, and that the wife's mere filing of a khul' suit by the courts indicates that her hatred and aversion have reached a level that justifies granting her the separation she is requesting by using her khul' right. It is highly commended that Pakistani courts have changed their interpretation of clause 10(4) of the West Pakistan Family Courts Act, 1964.²

Khula exercised in Courts

According to Article 2(IX) of the Dissolution of Marriages Act of 1939, judicial Khul' is practiced in Pakistani courts. Here, the question of whether the khul' constitutes a divorce (Talaq) or the dissolution of a marriage (faskh-e-nikah) emerges. Khul is regarded as Talaq, and the husband has just two other choices for divorce that do not amount to Talaq mughalaz, according to the majority of Islamic jurists (Jamhor). However, contrary to the views of the majority of jurists (Jamhor), it is not regarded as Talaq in Pakistani courts, and this has to change. Another issue that has come up in Pakistani law is the possibility for a wife to separate from her husband on the grounds of temperamental incompatibility under section 2(ix) of the 1939 statute. The majority of Islamic jurists believe that this law is unconstitutional.³

Khula: the right of women in Sharia

This concept of Muslim personal law is being debated since long time and still subject to

¹ Al-Fitawa Al-Hindiya, late 17th century

² Munir A. (2017), *The Law of Khula in Islamic Law and Legal System Of Pakistan*, Islamabad Shariah Academy International Islamic University, pp. 61 & 62

³ [Mehmood](#) M. I. (2015), *Khula in Pakistani Law*, Saarbrücken, Germany, LAP LAMBERT Academic Publishing, p.127

interpretations by Islamic scholars. Jurists from different schools explained their narratives by interpreting the Quran and Hadith.

Khula in the Holy Quran Verses

The Holy Quran has expressly defined khula as mode of repudiating marriage in verse no: 229 of Surah Al Baqarah Divorce happens twice. Then, either maintain [her] in a respectable manner or treat [her] well before releasing [her]. And unless both of them worry that they won't be able to keep [within] Allah's bounds, it is not permissible for you to take anything from what you have provided them. However, if you are concerned that they won't abide by Allah's restrictions, then neither of them should be held responsible for how she ransoms herself. Do not overstep Allah's bounds; they are listed here. And those who violate Allah's boundaries are the ones who are doing evil.⁴

In the above mentioned verse of holy Quran who is being addressed by the words 'fa in khiftum'? Jurists make different attributions as this effect.

1. The fundamental question on the table is whether state (Hukkam) as represented by the courts or the spouses themselves are addressed by this verse?
2. Another most important question is who will ascertain or resolve that the spouses are transgressing the limits as rightly ordained by Allah Almighty? Whether it is the obligation of court or up to the partners to settle it out by their own.
3. Further what does constitute "fear" as mentioned in the verse 229 of Surah Al Baqarah?

'Fa-in-khiftum' mean State

- I. Imam Qurtabi given his opinion as that the majority of Islamic jurists interpreted the words 'Fa-in-khiftum' as the address to the state because the same words 'Fa-in-khiftum' have been used in verse no: 35 of Surah-Al-Nissa to address the state. (Qurtabi, 2003)

If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is ever All-Knower, Well-

⁴ (Qur'an, Verse:2:229).

Acquainted with all things.⁵

According to Abdullah Ibn Abbas, Mujahid in the same verse the words “in yuridaislaha” address the state that if they wanted reconciliation Allah will cause reconciliation between the spouses.

- II. Muhammad al-Tahira Tunsinian scholar commented that if the spouses would have been addressed by the word “tum” then the phrasing of words would be “fa in khiftumaullatuqimu aw ullatuqima” which mean “If it is feared that you cannot keep”.
- III. Imam Qurtabi further asserted while interpreting the above mentioned verse that the arbitrators will ascertain who has made violation of God’s limits and then after determination may dissolve the marriage through khula. Arbitrators should be from the families of the parties but may be outsiders if state thinks fit. (Qurtabi, 2003) It is the duty of the arbitrators to make attempts of reconciliation and if they convinced leave them and if they remain reluctant, separate them and this decision shall be enforced even against the verdict of court. (Qurtabi, 2003)
- IV. Ibn Ashur is of the opinion that according to verse 35 of Surah An Nisa it is the authority of state to appoint the arbitrators because the word “ab,athu” address the state. (Ibn Aushur, 2006)

In few words, the concept of khula as rightly explained in the holy Quran is that it is mode of repudiation of marriage and it is open to both the spouses to go for khul if they fear that they will be unable to fulfill and respect the mutual rights and limits established by Allah Almighty. By the Quranic interpretation to the majority of Muslim jurists, it is the courts that will be responsible to ascertain the disdain hate spirit and discord between the spouses. As far as the husband’s consent is concerned for court to deliver its duties, no clear answer is found in the text of Quran which ultimately lead the Islamic jurists to make recourse to the holy traditions. It is the Maliki school of thought which has further interpreted the Quranic verses and held that the court will appoint arbitrators and their reward will be binding on the spouses and even court cannot annul it later on. The compensation is required on the part of women under the light of verse 2:229. According to Imam Abu Hanifa if husband is responsible for discord then he is not entitled to receive any consideration from.

⁵(Al-Quran, 4:35)

Khula under the light of Hadith

After the Quranic verses the second most important source of Islamic law is Sunnah of Holy Prophet (PBUH). In the Islamic legal history two most important event regarding khula happened before Holy Prophet(PBUH). The case of Habiba bint Sahil the, wife of Thabit bin Qays, has been reported in many hadith books including four from SihahSitta.

- I. Al-Bukhari is his authentic collection al-jami-al-ṣaḥīḥ on khula narrated the event of Thabit in following words: Al-Bukhari noted from Ibn Abbas that Habiba approached Holy Prophet and said “I have no problem with Thabit conduct or his religious character, but I don’t like ingratitude in Islam”. The Holy Prophet (PBUH) replied “Are you willing to give back to him his garden”? She said “yes”. Afterwards Holy Prophet asked Thabit “accept his garden and divorce her”.⁶

In the second and third version of the same hadith it is reported that the Holy prophet (PBUH) had ordered Thabit to divorce his wife. In the second and third version the reporter Ikrama has named the wife of Thabit as Jamila.

- II. Imam Nasai reported the same incident as the Jamila bint Abdullah the wife of Thabit bin Qays approached the Holy Prophet (PBUH) when her limb was broken after being beaten up by his husband. Holy Prophet (PBUH) called Thabit asked him to “take some of your money and separate from her” he replied “is it allowed” Holy Prophet said “Yes”.⁷
- III. Abu Dawood narrated also the same story in his book but the only difference is of name which Hazrat Aisha reported Habiba bint Sahil the wife of Thabit.⁸
- IV. Ibn Maja reported this hadith on the behalf of Ibn Abbas in the same way but with the trifle difference that the Holy Prophet ordered Thabit not to take back more than garden.⁹
- V. Imam Ahmad bin Hnbal reported the same hadith on the behalf of Sahil bin Abi Hathma that Habiba bin Sahil was wife of Thabit who was man with ugly look. She went to Holy Prophet (PBUH) and said “Prophet (PBUH) if I would not fear by Allah I would spit over his face whenever he tries to touch me”. Holy Prophet(PBUH) inquired that “will you give back his garden”. She said “yes”. There by Holy Prophet

⁶ Al-Bukhari, 1979

⁷ Al-Nasai,

⁸ Abu Dawud,

⁹ Maja,

(PBUH) separated them.¹⁰

Analysis The of Views of Different Schools of Fiqh

Jurists from different school agree on common terms that the khula is a permissible mode of Repudiation of marriage but they differ on the conditions and process of its execution under own interpretation of primary sources the Quran and Sunnah. The difference of opinion is explained as follows:

Khula in Hanafi School

All the Hanafi jurists agree with and accept the tradition of Habiba and Thabit as not overruled by the Quran but give to husband a central role in the execution of khula. As explained earlier Al-Jassas, a prominent jurists from Hanafi School, said that the ascertaining of Holy Prophet from both husband and wife infer that khula is consensual because husband is in the center point otherwise Holy Prophet(SAW) could have overlooked him and divorced her on his own behalf as court. (Jassas,2001).

“Just like all other contractual transaction in khula the consent of both parties is required for its validity”.(Sarakhsi, 2002). Imam Kasani stated that the court has no power to force the parties to enter into contract of khula.¹¹ All the Hanafi jurists are agreed on the assertion raised by the khula is irrevocable and may be occurred out of court. Iman Abu Hanifa commented on the khula as the offer of khula initiated by the husband cannot be revoked until its rejection by the wife because it is governed by the oath rules. On the other hand a wife can retract her offer before acceptance because it is an offer of sale and purchase and the wife is purchasing her freedom from the husband. In few lines, according the Hanafi School the consent of husband is necessary as veto in the execution of khula transaction.¹²

Khula in Shafi School

Imam Shafi first of all put the khula on the same footing as Talaq and said khula will be ineffectual without husband consent. Imam Shafi reported the case of Habiba in two different versions one from the Imam Malik and other from Ibn Uyayna. According to Imam

¹⁰Hanbal

¹¹Kasani Abū Bakr ibn Masud, (1986), *Kitab badai' al-sanai' fi tartib al-shara*,

¹²Gangrade K. D, (2001), Social legislation in India, New Delhi, India, Concept Publishing, p 26

Shafi khula is like Talaq and can be executed out of court by paying compensation to husband.¹³

KhulainHanbaliSchool

In Hanbali School of fiqh, Ibn al Qaiyam derived rules pertaining to khula with reference to versions by Bukhari, Nasai, Abu Dawood and Al Dar Qutni of Habiba case ruling in following words:

- I. That the khula is permissible mode of repudiating marriage
- II. That the khula may be executed out of court
- III. That the khula is irrevocable divorce because the “fidya” ransom is used in the Quran and there would be no ransoming for women after paying to husband, if khula would have been revocable.
- IV. That the khula is consensual transaction because it includes the “fidya” or compensation.
- V. Ibn Al Qaiyam said the fidya may be more or less than the dower amount by interpreting the words of Quran “*..falājunāhā, alihīmā fīmā aftadat bihi*”. Ibn Al Qaiyam further reported two incidents from the companions Hazrat Umar (R.A) and Hazrat Uthman (R.A). He noted that Hazrat Umar (R.A) said to the husband to take from his wife even she let you her rings as khula consideration. On the other hand Hazrat Uthman (R.A) allowed the payment of all the belongings of wife to husband in return of khula.
- VI. But that according to Imam Ahmad bin Hanbal fidya more than dower is reprehensible (makru)

According to Imam Muhammad bin Hazam for the validity of khula transaction there are three material conditions, if not fulfilled khula is not valid

- I. The consent of husband
- II. The consent of wife
- III. The compensation from wife to husband

¹³Al-Shafi Abu Abdullah Muhammad ibn Idrīs, (2003), *Kitab al-umm, hadith* no 183 & 179, Beirut, Lebanon, Dar Kotaiba, Vol. 11

KhulainShiaSchool

As apart from all Sunni school of thoughts a prominent scholar Hilli from Shia school also defined khula by giving his observation that the khula transaction can only be effective when specific words containing the word khula are used by the husband. Another opinion from the same schools is that the word khula must be used with word Talaq. Not Hilali but the editor of his book defined khula as, a transaction of ending the marriage in return for compensation from the wife when she detests her husband. According to Shia school, in khula the wife will make offer and it is up to the husband to accept or reject it. If separation occurred that will be irrevocable on the part of husband but revocable on wife's end when she make reconciliation in iddah period by paying fidya.

KhulainMaliki School

One has to pay an active heed to completely grasp the concept of khula as defined by Maliki school of thought. The ambiguity pertains to the consent of husband. Imam Malik while commenting on khula interpreted verse 4:35 and Habiba case and said that the arbitrators will be having the power to separate the spouses by khula or by Talaq and such award from the arbitrators shall- be binding on the parties and even against the court.

When any matter of khula is presented before the court the court shall first make an inquiry to search out the party from spouses responsible for discord and attempt for reconciliation. The court will cause decree for khula without the consent of the parties if found husband at fault and Talaq when found wife at fault.¹⁴

Ibn Juzi while interpreting the verse 4:35 stated that: "In the verse Allah has defined the ways to deal with the obedient and disobedient. Then there is another situation whenreas on behind discord between the spouses is not known two arbitrators shall be appointed who will decide the matter after investigation and dispose the matter through khula or divorce in binding terms without the consent of husband."

Imam Abdul Bar Al-Qurtabi famous scholar from Maliki School concluded khula in the following word while interpreting verse 4:35 of Holy Quran:

"There shall be two arbitrators one from each spouse being appointed without the authority of court, who will simply dissolve the marriage if the husband is the cause of discord and no

¹⁴Juzi. I. (1973), Al-Tashil, Baghdad, Iraq, Dar al-Kutub al-Hadith_a, Vol.1, pp.190-191

compensation shall be required from the wife to that effect. On the otherhandifthewifeisresponsiblefordiscordanappropriatecompensationwillbe imposed and marriage shall be dissolved through khula”. A third situation when both the spouses are equally responsible for discord, the marriage shall be dissolved and no there will be compensation to husband.

Imam Malik, the proponent of Maliki School, gives an abeyant opinion on the issue of husband consent. He indirectly stated that the consent of husband is not necessary. But the other jurists from Maliki School have held in explicit terms that the consent of husband is not necessary. The most relevant assertion of Imam Malik in which an indirect expression is inferred that husband consent is not necessary is as follows; “If it is possible for the arbitrators to have reconciliation between the spouses they should reconcile and if not they should dissolve the marriage without the permission of the court. The arbitrators can impose compensation of wife for the husband for the execution of khula separation”.¹⁵

According to another Maliki scholar Abdul Wahab: “If the spouse responsible for discord is known then directly it should be eliminated but when such spouse is not known then two fair arbitrators with legal wisdom one from each party shall be appointed with the power to dispose of the matter in the best interest of spouses by way of reconciliation, separation or any other appropriate solution which shall be binding even court agrees or not”.

Ibn Rushd has defined the right of khula in indirect but interesting way as that the man has the right of Talaq which he can use to pressurize women and women possesses the right of khula by which he can pressurize man. It means that the right of Talaq and khula are equal in nature according to Ibn Rushd but he did not specifically comment on the consent of husband. In the 20th century a famous jurist is from Maliki School Taquidin–al-Halaisaidthat“the jurists are of different opinions regarding the appointment and power of arbitrators. Jurists hold two opinions from which the first one is favored by the majority (that the award of arbitrators shall be binding without husband”sconsent)becauseofverse4:34. So the apparent meaning of verse is the arbitrators can rule out the matter without the consent of spouses.”¹⁶

By the perusal of above given arguments it is clear that the Maliki school has assigned a vital role to arbitrators to decide the matter without the consent of the husband. In Maliki School, khula is considered as Talaq transaction. While discussing the amount of fidya, Ibn Rushd said that according to Imam Malik and other jurists the fidya from the wife may be more than what

¹⁵Al-Tahir M. (1984), *Al-tahrir* Tunis, Tunisia, Dar Sahnun, Vol.5, p.46

¹⁶Rushd. A. (1990), *Al-Bidāya*, Beirut, Lebanon, Al-Maktaba al-Taqaifiya, Vol.2, pp. 80-81

husband has given to her.

Status of Khula Right in Pakistan Law

Khula Before 1959 in Subcontinent

The first and foremost case of khula separation is Munshi Bazul-ur-Raheem vs Lutfatoon Nissawhich was decided by the Privy Council in 1861. Privy Council endorsed the Hanafi jurists opinion and held that the khula cannot be executed without the consent of husband. This precedent was later on followed by the Divisional Bench of Lahore High court in 1945 in case of Umar Bibi v Mohammad Din by rejecting the appeals demanding khula from the court without the consent of husband. Full bench of the same court in 1952, in case of Sayeeda Khanam vs Mohammad Sami, upheld its decision in the Umar Bibi case. The court held that the consent of husband is necessary by interpreting the hadith of Habiba as the Holy Prophet did not dissolve the marriage by own but asked to the husband as lawgiver and not as judge.

Judicial Ijtihad in Pakistan

In case of Balqis Fatima v Najm-ul-Ikram Qureshi the Full bench of Lahore High court adopted complete departure from its already established precedent law and held that the consent of husband is not necessary for the repudiation of marriage through khula. The court, by interpreting the verse 2:229, further held that the woman is entitled to right of khula by passing back to what she has received from her husband. In the history of subcontinent this decision for the first time bestowed to women the right of khula which was not dependent and conditional on husband's move as against the traditional Hanafi version of interpretation. Court further clarified by commenting on the above mentioned verse that whether husband's consent is necessary or not after the woman's claim of khula by paying back fidya in following words: Justice Kaikaus, one of the judges from the bench, said that by the expression of word "you" in the verse 2:229 the state as represented by the court is addressed. It is always the husband is not willing when the matter of khula is presented to the court. So it is the job of the court to determine that whether the spouse will remain in limits as prescribed by Allah Almighty or not. The reference to the court would be fruitless if it would not have

any power to dispose of the matter without the consent of the parties.¹⁷

The court provided independent judicial interpretation without following the worthy opinion of classical jurists on the verse 2:229 by making direct recourse to Quran and Hadith. The court held that the role of Holy Prophet (PBUH) in the Jamila khula was as a judge, so He (PBUH) ordered the husband and not sought his consent. Court further added that the nature of khula is as of Talaq and not faskh so women has to pay back to husband what he has given to her.

Eight years after the landmark decision of Lahore high court in 1959, the Supreme Court of Pakistan, in case of Khurshid Bibi v Muhammad Amin in 1967, endorsed the views held in Balqis Fatima while interpreting the verse 2:229 of Holy Quran. In Khurshid Bibi case the relations between the spouses became tensed due to the second marriage of husband whereby first wife went to court for repudiation of marriage by khula. The honorable five judges of Supreme Court unanimously held the same version of khula as in Balqis Bibi case by Lahore High Court in 1959 that the consent of husband is not necessary for repudiation of marriage by khula. The Supreme Court further commented that in the eye of Islamic law, both the spouses have equal rights as rightly enriched in Holy Quran and Sunnah. Justice S.A Rehman said “Under the light of Quran and sunnah, the wife is entitled to khula even in the situation where she has an incurable aversion to her husband and in this case the court has the power to separate the spouses without the consent of husband. The Quranic verse clearly bestows to wife the right to ransom or release herself. He also marked difference between faskh and khula. In khula wife is not required to prove the fault of husband like in faskh where she has to prove the alleged fault of husband as provided in section 2 of dissolution of Muslim Marriage act 1939. The court will only enquire as from the wife that the parties will be unable to remain in limits prescribed by Allah Almighty. The supreme court although provided an important condition on the demand of khula by the wife, which will be observed by the court. It is the duty of the judge to ascertain that the parties will really become unable to live in limits. This necessary condition was also highlighted by the Lahore high court in its decision in 1959 that the court will apprehend the situation between the spouses that whether they will obey the God by living together or not. The wife is not entitled to have divorce on each and every trifle impulse.” (Balqis Begum vs Najm-ul-Ikram, 1959) After the judgment of Honorable Supreme Court in Khurshid Bibi case Mufti Taqqi Usmani wrote his book “The Reality of Khula in Islam” in response to court’s verdict on khula. Mufti Taqqi Usmani in his book explained the

¹⁷Shabir A., Kaikus Z.B, Masud A. (1959), Balqis Fatima vs NjamulIkram, PLD 1959 Lahore 566

khula right, its rules and requirements by referring to opinions of different Islamic jurists. He said that the consent of husband is necessary because the khula agreement should be based on willingness of the spouses and court cannot dissolve the marriage on its own.¹⁸

Justice Carrol commented that the apprehension of the court as to ascertain discord between the spouses must be supported by material evidence. (Carol, 1996) Justice Javed Iqbal said that the judge will first try to reconcile between the parties and if he get to apprehend that the wife is not willing and the further relation between the parties will result in hateful union then he should dissolve the marriage through khula.¹⁹

In few words the Lahore High Court summarized three principles on khula as held by the judicial precedents of Superior judiciary in Shah Begum Case²⁰ as follows:

- I. Balqis Bibi(Balqis Begum vs Najm-ul-Ikram) case noted the principle that women is entitles to khula and she cannot be forced to live in matrimonial life if she convince the court in this regards that there union of spouses will severe the aversion
- II. Khurshidbibi(, Khurshid Bibi vsMuhammad Amin, 1967) case held that the incurable aversion between the husband and wife is sufficient for khula
- III. Finally in Shahid Javed (Shahid Javed vs Saba Jabeen, 1984) case it was held that the khula is an independent right and even if wife is unable to prove the grounds other than khula, the right of khula shall not be vanished.

The Supreme Court of Pakistan upheld its stance on khula law again in 2000 in Muhammad Rafiq case²¹ that khula is not conditional right,when it was contented before the court that the wife is not entitled to seek khula on the mere grounds of dislike, aversion, hatred between the spouses. Once again in Naseem Akhtar case, Supreme Court endorsed its previous khula version and held that in khula separation the consent of husband is not necessary.²²

Statutory Provisionson Khula

Section 10(4&5) of Family Courts Act 1964 was amended in 2002 to provide the speedy disposal of dissolution of marriage case. In the amendment it was directedtothecourtsthatafterthefailureofreconciliationbetweenthespouses,to pass decree of

¹⁸Usmani, T. (2005), Reality of *khulaa* in islam, Karachi, Memon Islamic Publishers, p. 33

¹⁹Javed. I. (1983), Muhammad Yasin v Rafia Bibi, PLD 1983 Lahore pp.377-382.

²⁰Nasira J. I. (1995), Shah Begum vs District Sialkot PLD 1995 Lahore 91

²¹Rehman J. H. (2000), Muhammad Rafiq vs KaneezFatema SCMR 2000

²²Naseem Akhtar vs Muhammad Rafiq, PLD 2006 SC 293

dissolution of marriage after back provision of dower to the husband from the wife in suit for dissolution of marriage.

Federal Shariat Court and khula

In *Saleem Ahmad v. The Government of Pakistan*, this change was contested before the Federal Shariat Court as being against the Quran and Sunnah, arguing that such court orders would be faskh on the name of khula. *Saleem Ahmad v. Pakistani Government*, 2014 According to the FSC, the amendment is not in conflict with the Holy Quran and Sunnah, and laws cannot be deemed to be against Islamic law based solely on the judgments and fatwas of jurists. *Saleem Ahmad v. Pakistani Government*, 2014 The court said, "The courts are to settle conflicts between the parties of all kinds, whether these are marital dissolution on specific grounds or khula..

The Federal Shariat court, in case *Saleem Ahmed Government of Pakistan*, removed the controversy regarding consent of husband in khula separation in the court²³. The Shariat court did not follow the Hanafi jurisprudence on khula and held that the consent of husband is not necessary under the light of Holy Quran and Sunnah. FSC used its own reasoning and adopted the principle settled by Lahore High court in *Khursheed bibi* case that the court is not bound to follow the explanations of Islamic jurists of Quran and Sunnah on matters of public policy, equity, justice and good conscience. Supreme Court also upheld this principle in the words that the opinions of the Islamic jurists are not on higher footing and courts are not bound to follow them if they are in confrontation with primary sources. FSC said that it is job of the court to interpret the Quran and Sunnah by using *ijtihad* to address the contemporary need and problems and the role of jurists is only as *amicus courai*. FSC adopted purposive approach rather than *Taqlidi* approach while commenting on khula and concluded that the purpose of the marriage would be defeated if against the will of the women she is forced to live with husband.

The superior courts in Pakistan have taken direct inspiration from the Quran and Sunnah rather than adopting the views of the Shia, Hanafi, Hanbali, and Maliki schools. Instead, they have embraced judicial *ijtihad*. While interpreting and explaining the Shariah, however, recognized principles of interpretation and explanation of the Holy Qur'an and Sunnah shall be followed, and the expositions and opinions of recognized jurist so *flslam* belonging to widely practiced

²³Fida. M. (2014), *Saleem Mahmood vs Govt of Pakistan*, PLD 2014 FSC 43

Islamic schools of jurisprudence may be taken into consideration. This is stated in section 2 of the Enforcement of Shariat Act. (1991 Shariah Enforcement Act) The phrase "may be taken into consideration," as used in section 2, indicates that the court is not required to do anything and that it may do so.

Fidya (Compensation) and Cruelty from Husband

A key principle accepted by both Islamic and Pakistani legal systems is that when the husband causes strife or acts cruelly, the wife is not bound to return the dower to her husband as part of the fidya ritual. According to the well-known Hanafi law commentary book Radd al-Muhtar, if khula is requested because of the mistreatment of the husband, the woman is not entitled to compensation. According to Imam Muhammad, a wife is not compelled to make restitution when her husband causes a khula separation. This notion was also recognized in the precedent-setting Balqis Bibi case, which ruled that no wife was required to return her dower when her husband died.

Quantum of Compensation in khula

As far as the quantum of compensation is concerned, no certain amount is mentioned in any law and case law but it depends on the circumstances of the case by following a few rules established in this regard. The amount of khula compensation may range from dower to any acceptable amount between the parties. If there comes any disagreement, then the court will decide the right amount according to the circumstances of the case. In the case of Razia Begum, the court observed that it is not necessary that the wife will have to return all the benefits which she has received from her husband during the continuance of marriage but the circumstances and facts of each case shall be perused. (Razia Begum vs Saqir Ahmed, 1982) In the case of Saqlain Zaheer, the court held that the services of wife in terms of rearing of children, housekeeping and living together may be considered as set-off to benefits received by the wife from the husband. (Saqlain Zaheer vs Zaibu Nisa, 1988) In another case of Khalid Mehmood, the Honorable court established the principle that the wife and husband can settle the amount of compensation by mutual agreement and if the husband is reluctant to accept the amount offered by the wife, the court can intervene.

and pronounce decree of khula by specifying an adequate amount of compensation.²⁴

²⁴Khalid Mehmood vs Anees Bibi, PLD 2007 Lahore High Court

Recommendations

1. Codification of khula procedures in all jurisdictions:

To minimize inconsistent educational interpretation and guarantee equitable and effective processing of women's separation requests, uniform qualification and procedural clarity regarding Khula and Pakistan's family chords are required.

2. Campaigns to raise awareness of women's legal rights:

In order to inform women about their legal rights under Pakistani and Syrian law, including the right to khula, the government bar consults and civil society should start national awareness efforts, particularly in rural areas.

3. Judicial training in family law:

To avoid patriarchal or culturally biased decisions that impede women's access to justice, judges and family court employees should receive specialized training on the Islamic and statutory basis of hola, including seminal rulings like Balqis Fatima and Khurshid Bibi.

4. Elimination of Superfluous Evidentiary Burdens:

By acknowledging the wife's remark as adequate justification for khula, as already established by case law, the court should take a less combative and more rights-based stance, easing the burden of presenting proof in issues that are fundamentally private.

5. Legal Aid and Support Services:

Women seeking Khula should have access to free or heavily discounted legal aid services, as well as psychological therapy and shelter support, particularly for those in precarious socioeconomic circumstances.

6. Harmonization of statutory and religious interpretations:

To ensure that fiqh-based interpretations of khula are in line with modern legal norms that support women's agency, dignity, and access to justice, legal experts and religious authorities should work together.

7. Monitoring and accountability mechanism:

Establish independent bodies to monitor how family courts handle khula petitions, ensure decisions are consistent with constitutional and Sharia Principles, and address procedural delays or bias in court processes.

Conclusion

To conclude, the right of khula is recognized by all the schools of fiqh under the light of verse 2:229 and tradition of Habiba. The difference of opinion as between the fiqh schools comes as to the consent of husband for the validity of khula. Majority of the Islamic schools of fiqh except Maliki School are of the view that the consent of husband in the execution of khula in court is as necessary as in other contractual transaction because khula is also a mutual agreement between the spouses like nikkah. They further opine that the court or the state cannot give consent on the behalf of husband. On the other hand, Malikis establish their opinion under the authority of verse 34 of Surah AnNissa rather verse 2:229 of Holy Quran. They hold that the arbitrators have the complete authority to reconcile or separate the spouses according to the circumstances even without the consent of husband and wife their reward shall be binding. In Pakistan law and judicial practice the consent of husband is not necessary for khula execution in the court. Section 10(4) of West Pakistan Family Courts Act 1964 empowers family court to pronounce khula in suit for dissolution of marriage by the wife if efforts for reconciliations fail. Federal Shariat Court has ruled out that the Section 10(4) of WPFCA 1964 is not against the Islamic injunctions when it was challenged soon after its insertion in the above mentioned Act after amendment in 2002. Moreover Superior Courts in Pakistan have developed the principle that the opinions of worthy Muslim jurists are not binding on the courts and courts will conduct independent judicial ijtehad whenever they require in any case. In 2009 Council of Islamic Ideology gave its opinion that husband is bound to pronounce divorce within 90 days after demand by the wife otherwise marriage shall stand dissolved after the expiration of 90 days period. In 2015 Council of Islamic Ideology under the chairmanship of Moulana Shirani completely departed from its previous opinion and endorsed the traditional Hanafi version of khula that consent of husband is necessary in khula and courts in Pakistan are pronouncing faskh on the name of khula.