



Khula in Pakistan: A Legal Examination of Women's Right to Marital Dissolution and the Husband's Discretion

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ABSTRACT

This research paper examines the concept of khula in Islamic law with particular emphasis on the wife's inalienable right to seek dissolution of marriage. Islam considers marriage a relationship based on love, mercy, and mutual respect; however, when the marital relationship becomes unbearable and the spouses are unable to maintain the limits prescribed by Allah, Islamic law provides mechanisms for separation. Khula serves as a means through which a wife may seek release from the marital bond. The study explores the Qur'anic and Prophetic foundations of khula and analyzes the interpretations of the major Sunni schools of jurisprudence regarding its nature and conditions. Special attention is given to the debate concerning the requirement of the husband's consent and the role of judicial authority in granting khula. The paper argues that Islamic legal principles support the recognition of khula as an inherent and independent right of the wife, ensuring justice, dignity, and fairness within the framework of Islamic family law.

Keywords: Khula, Divorce, Islamic Law, Husband's consent, Judicial Khula, Wife Inalienable Right, Pakistan Legal System.

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INTRODUCTION

Family life begins with marriage. Marriage is a central institution that facilitates the organization, stability, and proper conduct of family life. The core purpose of the marital bond is for the spouses to live together in lifelong peace and harmony. Marriage is considered the strongest and most enduring bond, intended for one's entire worldly life. The Quran explicitly describes purpose of marriage as love and mercy. The fundamental objective of marriage is that the spouses live happily with one another and continue their marital relationship in a healthy and fulfilling manner. Islam strongly dislikes the termination of marriage. Whenever a dispute arises between husband and wife, Islam encourages arbitration and mediation so that the continuity of marriage may be preserved. (Rizvi, 2011) Marriage is a civil contract, similar to other ordinary contracts

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such as sale or partnership agreements. However, a valid marriage requires numerous essential conditions, far more than those needed for ordinary contracts. Similarly, the methods of dissolving a marriage are distinct and significantly different from those applied to ordinary contracts.

Islam is a balanced and moderate religion that advocates moderation in all aspects of life. This principle is clearly reflected in Islamic family laws. When conflicts and disputes arise between spouses and the relationship deteriorates to the extent that fulfilling the divinely ordained responsibilities becomes difficult, Islam grants both men and women the right to seek separation. While a man may exercise the right of divorce, a woman is entitled to seek dissolution of marriage through khula. Islam does not endorse the continuation of marital life marked by coercion, hardship, or persistent suffering for either spouse. (Nadeem, 2022; Khan et al., 2023) Khula is a fundamental concept in Islamic family law through which a wife may seek dissolution of marriage, as the process of separation is initiated by her. Just as a husband is permitted to pronounce divorce if he experiences disobedience or incompatibility from his wife, similarly a wife is entitled to seek khula if she finds her husband objectionable or if he subjects her to oppression. This right has been granted to women in Islam on the basis of Islamic moral values, justice, equity, and fairness. (Muhammad Zul Qarnain, 2025; Khan et al., 2022) Nevertheless, the right of khula should be exercised only as a last resort and not as a means of gratifying changing desires, for divorce, despite being lawful, is regarded as the most disliked of permissible acts in the sight of Allah. In this context, the Prophet Muhammad ﷺ warned that a woman who seeks khula from her husband without a valid reason incurs the displeasure of Allah, the angels, and the people at large.

ALLAH Says in Surah An-Nisa verse no. 34

Men are the protectors and maintainers of women because Allah has made one of them excel over the other and because they spend out of their possessions (to support them. (Tafheem, 2025)

This underscores that a husband should conduct himself in a manner that ensures the marital relationship remains harmonious and enduring. Should he fail in this regard and the relationship deteriorates into persistent discord or irreconcilable conflict, the husband possesses the right to initiate divorce. Similarly, when a wife encounters such circumstances and the marital bond becomes irretrievably strained, she ought to request her husband to dissolve the marriage by mutual consent. Whether the dissolution occurs through divorce or khula, it is preferable that the process is carried out with mutual agreement, thereby minimizing hardship and preserving justice for both parties. (Saddique, 2022; Javed et al., 2021) In Islamic law, the right of divorce is vested in the husband as an absolute right, which he may exercise when circumstances so require. However, Islam does not endorse the continuation of a marital relationship when mutual harmony has ceased to exist, the objectives of marriage remain unfulfilled, and the marital bond has transformed into a source of hardship and distress. When spouses are compelled to live together under coercion and the very purpose of nikah stands defeated, dissolution of the marital bond becomes a necessity. Accordingly, Islam permits the husband to pronounce divorce and grants the wife the right to seek separation through khula in such circumstances. If the husband is convinced that reconciliation is no longer possible, he is encouraged to promptly release his wife from the

marriage rather than prolong a relationship marked by suffering and injustice. (Maududi S. A., *Huqooq ul zaujain*, 1943).

LITERATURE REVIEW

The concept of khula has received considerable attention in Islamic jurisprudence and Pakistani family law because it represents one of the principal mechanisms through which a Muslim woman may seek dissolution of marriage. Classical and contemporary scholarship has examined khula from several interconnected perspectives, including its Qur'anic and Prophetic foundations, its legal nature, the requirement of the husband's consent, the authority of the judge, the issue of compensation or return of dower, and its development within the Pakistani legal system. The existing literature demonstrates that although there is broad agreement on the legitimacy of khula as a means of marital dissolution, significant disagreement persists regarding whether the husband's consent is an essential condition for its validity and whether a court may grant khula when the husband refuses to consent (Khan et al., 2021).

Classical Islamic jurisprudence generally derives the legal foundation of khula from Qur'an 2:229 and the well-known incident involving the wife of Thabit ibn Qays. The Qur'anic provision recognizes the possibility of separation where the spouses fear that they will be unable to maintain the limits prescribed by Allah, while the Prophetic precedent demonstrates that a wife may seek release from a marriage by returning the garden given to her as dower. The literature cited in the present study therefore treats khula as a recognized Islamic mechanism of marital dissolution rather than as a purely modern statutory creation. Classical jurists also discuss khula in contractual terms, particularly in relation to the offer of compensation by the wife and acceptance by the husband. Ibn al-Humam, al-Kasani, Ibn Rushd, al-Sarakhsi and other jurists have contributed to the development of this jurisprudential understanding. The present manuscript similarly identifies khula as a mechanism through which a woman may seek release from the marital bond where continuation of the marriage becomes unbearable or where the spouses are unable to maintain the limits prescribed by Islamic law (Khan et al., 2020).

A major theme in the literature concerns the divergent positions of the four Sunni schools regarding the role of the husband's consent. Hanafi, Shafi'i and Hanbali jurists have traditionally treated the husband's acceptance as an important element of khula, emphasizing its contractual character and the exchange between compensation and dissolution. The Hanafi position, in particular, regards khula as involving an offer by the wife and acceptance by the husband. The Shafi'i and Hanbali approaches similarly emphasize the husband's participation in the transaction. In contrast, Maliki jurisprudence provides a broader basis for judicial intervention where marital discord becomes irreconcilable. The literature therefore reveals that the question of consent cannot be reduced to a simple consensus within Islamic jurisprudence; rather, it reflects a substantive disagreement concerning the nature of khula, the authority of the judge, and the extent to which the protection of marital rights permits judicial dissolution without the husband's agreement (Khan et al., 2020).

The role of judicial authority constitutes another important strand of the literature. Qur'an 4:35 directs that arbiters may be appointed when a breach between spouses is feared, providing an

important basis for reconciliation and dispute resolution. Classical commentators such as al-Qurtubi and Ibn Ashur have been relied upon to argue that public authority or judicial institutions may intervene when marital discord threatens the objectives of marriage. The case of Thabit ibn Qays is also significant because the Prophet ﷺ instructed the husband to accept the return of his garden and release his wife. On this basis, some scholars have argued that judicial intervention is justified where a wife demonstrates that continuation of the marriage would prevent the parties from maintaining the limits established by Allah. The manuscript under review relies particularly on the interpretations of al-Qurtubi, Ibn Ashur, al-Jassas and other jurists to support the proposition that judicial authority has a legitimate role in resolving marital disputes where reconciliation has failed (kanwel et al., 2020).

The historical development of khula in the Indian subcontinent demonstrates a significant transformation in judicial interpretation. Earlier judicial decisions, including *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum*, *Umer Bibi v. Muhammad Din* and *Sayeeda Khanam v. Muhammad Sami*, reflected a position under which the wife's ability to obtain khula was closely associated with the husband's consent. The judicial approach changed substantially with *Mst. Balqees Fatima v. Najm-ul-Ikram Qureshi* in 1959, where the Lahore High Court recognized khula as a right available to the wife without requiring the husband's consent. This development was subsequently reinforced by the Supreme Court in *Khurshid Bibi v. Baboo Muhammad Amin* in 1967. The cases therefore constitute a critical transition from a consent-dependent understanding of khula toward judicially enforceable dissolution initiated by the wife (Khan et al., 2026).

Subsequent scholarship has extensively examined this judicial transformation. Munir characterizes Balqis Fatima and Khurshid Bibi as significant examples of judicial law-making through which Pakistani courts expanded the protection of women's rights in Muslim personal law. His analysis emphasizes that the courts treated the existence of intense hatred or aversion between spouses as sufficient to justify separation and further developed the interpretation of the Family Courts framework concerning judicial khula. Similarly, Abbasi's analysis of reported Pakistani judgments from 1947 to 2017 describes a gradual transformation from fault-based judicial dissolution (faskh) toward no-fault-based khula, arguing that the superior courts used Qur'anic and Prophetic sources to remove the requirement of the husband's consent. These studies demonstrate that Pakistani jurisprudence did not merely apply a fixed classical rule but progressively reinterpreted Islamic sources in response to the practical difficulties faced by women seeking marital dissolution (Ahmad & Haider, 2027).

The literature nevertheless remains divided over whether the Pakistani judicial approach is fully consistent with classical Islamic jurisprudence. Munir argues that the Pakistani courts relied on the Prophetic Sunnah to depart from the positions of the majority of Hanafi, Shafi'i and Hanbali jurists and thereby developed a more accessible remedy for women. At the same time, he notes that the jurisprudential basis of the Pakistani position requires careful examination because the courts moved away from the conventional requirement of husband's consent. Siddique's comparative study likewise identifies the husband's consent as one of the most contested issues in both Islamic jurisprudence and Pakistani law. His study compares the positions of classical and contemporary jurists with Pakistani case law and concludes that husband's approval is not

ultimately required under the Pakistani legal framework. More recent scholarship continues to revisit this controversy, indicating that the question remains legally and academically significant rather than conclusively settled at the level of Islamic interpretation (Haider, 2027).

Another important area of scholarship concerns the relationship between khula and the statutory framework governing Muslim marriage dissolution. The Dissolution of Muslim Marriages Act, 1939 (DMMA) expanded the grounds through which Muslim women could obtain judicial dissolution, including desertion, failure to maintain, imprisonment, impotence, insanity, cruelty and other legally recognized grounds. The literature identifies the Act as an important departure from the restrictive application of Hanafi law in British India and notes its substantial reliance on Maliki principles. The manuscript similarly explains that the statutory framework was introduced partly because fault-based grounds of dissolution were difficult for women to establish in practice, particularly where cruelty and ill-treatment occurred within the private sphere of the household. Contemporary research continues to identify the DMMA and subsequent Family Courts legislation as central components of the Pakistani legal framework governing women's access to marital dissolution (Haider, 2025).

The issue of compensation or return of mahr represents a further area of disagreement within the literature. Classical discussions generally associate khula with compensation offered by the wife, but jurists differ regarding the amount, circumstances and necessity of such compensation. The literature cited in the manuscript indicates that where marital discord results primarily from the husband's misconduct or oppression, requiring the wife to surrender her dower may be legally and morally problematic. Conversely, where the wife seeks separation because of her own aversion or inability to continue the marital relationship, classical jurists have discussed the return of dower as part of the khula arrangement. This issue remains significant in contemporary Pakistan because the financial consequences of khula can directly affect women's ability to access the remedy. Recent scholarship has also identified uncertainty surrounding equitable compensation and settlement as an ongoing practical issue within Pakistani courts.

Recent studies have increasingly moved beyond the purely doctrinal question of whether khula is permissible and have examined its practical operation in Pakistan. Research has identified procedural delays, legal expenses, judicial discretion, social stigma and patriarchal interpretations as factors that may affect women's effective access to khula despite its formal legal recognition. This literature indicates that recognition of khula as a legal right does not necessarily guarantee its equal or effective exercise in practice. Consequently, the study of khula requires attention not only to the formal rule but also to the relationship between Islamic jurisprudence, statutory law, judicial interpretation and the practical position of women seeking dissolution.

METHODOLOGY

This study adopts a qualitative doctrinal and analytical methodology to examine the concept of khula in Islamic law and its development within the Pakistani legal system, with particular emphasis on the wife's right to seek dissolution of marriage and the role of the husband's consent. The research is based on documentary analysis of primary and secondary sources, including the Qur'an, Prophetic traditions, classical Islamic jurisprudential texts, Pakistani legislation, reported judicial decisions, scholarly books, research articles, and dissertations.

Particular attention is given to Qur'an 2:229, the Prophetic precedent concerning the wife of Thabit ibn Qays, the interpretations of the Hanafi, Maliki, Shafi'i and Hanbali schools, the Dissolution of Muslim Marriages Act, 1939, the Muslim Family Laws Ordinance, 1961, and significant Pakistani cases including *Mst. Balqees Fatima v. Najm-ul-Ikram Qureshi* and *Khurshid Bibi v. Baboo Muhammad Amin*. The study comparatively analyzes the different juristic positions regarding the legal nature of khula, the necessity of husband's consent, the authority of the court, and the issue of compensation or return of mahr. Pakistani case law and statutory provisions are further examined to trace the historical transformation from a consent-dependent approach toward recognition of judicial khula without the husband's consent. The collected material is analyzed thematically to determine whether khula constitutes an independent and judicially enforceable right of the wife and to assess how Islamic principles, classical jurisprudence, legislation, and judicial interpretation interact in contemporary Pakistani family law. The study is doctrinal in nature and therefore does not employ empirical methods such as interviews, questionnaires, or statistical surveys.

THE CONCEPT OF KHULA IN ISLAMIC LAW

The term khula is derived from the Arabic root khala'a, which linguistically signifies the act of removing or taking off something.

As stated in the Quran, Allah addresses Prophet Musa (peace be upon him) in Surah Taha 'It is truly I. I am your Lord! So take off your sandals'. This verse clearly illustrates the linguistic meaning of the root khala'a, which denotes the act of removing or taking something off.

In its technical and juristic sense, khula refers to the process through which a woman seeks release from the marital bond by offering compensation to her husband. The Quran articulates the intimate nature of marriage in Surah al-Baqarah stating: They are garments for you, and you are garments for them. (Maududi S. A., 1943)

On the basis of this linguistic and metaphorical foundation, Muslim jurists employ the term khula to describe a woman's voluntary disengagement from marriage, analogous to the removal of a garment from the body.

Khula in Islamic law refers to the right of a woman to seek the dissolution of her marriage by returning the dower, or offering other agreed compensation to her husband, when the marital relationship becomes unbearable due to harm, persistent discord, or fundamental incompatibility.

According to the Hanafi jurist Allamah Ibn al-Humam, the abolition of milk-i-nikah in exchange for compensation through khula is valid. (al-Huamam, 1970)

According to Ibn Rushd, khula and mubarat are conceptually synonymous, both constituting a contractual transaction in which a woman offers compensation in exchange for her divorce. Likewise, Imam Abu Hanifa characterizes khula as a conditional agreement, wherein the dissolution of marriage is affected by the husband, while the obligation of compensation rests with the wife. (Qadri D. T., 2025)

A woman may obtain release from her husband through two distinct mechanisms. The first is dissolution by mutual consent, whereby the wife returns the dower or provides agreed compensation, and the husband consents to terminate the marriage. The second mechanism operates through a judicial decree, in which the woman approaches the court by filing a suit for dissolution or khula and the court, upon due consideration of the facts and legal grounds, grants a decree in her favor. (Sadique, 1984)

Islamic law provides numerous remedies to a Muslim wife in case where harm to her has been established to the satisfaction of a judge. In 1939 Dissolution of Muslim Marriage Act was introduced. Section 2 of the Dissolution of Muslim Marriage Act provides certain grounds upon which a wife may seek divorce at her discretion. Nevertheless, these provisions did not result in substantial improvement in the condition of women, as the grounds under the DMMA were fault-based. Matrimonial offenses such as ill-treatment and cruelty typically occur within the confines of the home, making it difficult to substantiate such claims in court. Consequently, there was a pressing need for a no-fault based remedy. While khula provided such a remedy, the juristic interpretations rendered its practical application extremely challenging. (Munir, 2020)

In Pakistan, the rights of a wife to seek khula have evolved significantly since the pre-independence era. Prior to independence, the strict interpretation of Islamic law mandated that a wife could obtain khula only with the husband's consent. This interpretation was upheld by the judiciary until 1959. However, in the landmark *Mst. Balqees Fatima vs. Najm-ul-Ikram Qureshi* case the Lahore High Court ruled that khula constitutes an unconditional and absolute right of the wife, enabling her to obtain dissolution of marriage without requiring the husband's consent.

HISTORICAL BACKGROUND OF KHULA IN SUBCONTINENT

In the history of the subcontinent, the first notable case concerning khula was that of *Munshi Buzul-ul-Raheem*⁴ in 1861, where the Judicial Committee of the Privy Council ruled that khula could not be granted without the husband's consent. In 1944, the Lahore High Court dismissed two appeals by women in the case of *Umar Bibi v Muhammad Din*⁵, who had sought khula on the ground of incompatibility in temperament. The court rejected the petitions on the basis that the husband's consent was absent. Similarly, in 1952, in the case of *Sayeeda Khanam v Muhammad Sami*⁶ the wife filed petition for khula, but the court denied her request as it was not sanctioned by the husband.

In its judgments, the court consistently adhered to the principle that the Prophet Muhammad ﷺ did not personally divorce Jamila, but rather instructed Thabit to pronounce the divorce on her behalf. (Rasool, 2016)

⁴ *Munshi Buzul-ul-Raheem v Luteefutoon-Nissa* (MIA) 1861.

⁵ *Umer Bibi v Muhammad Din* (ILR) 1944 Lahore 25.

⁶ *Sayeeda Khanam v Mohammad Sami* (PLD) 1952 Lahore 113.

In 1959 the Lahore High Court in the case of *Bulqees Fatima vs. Najm-ul-Ikram Qureshi*⁷ held that khula constitutes a wife's right, which she may claim without the consent of her husband, and that this right should be accessible to her. This position was subsequently upheld by the Supreme Court in 1967 in the *Khurshid Bibi v. Baboo Muhammad Amin* case.⁸

The Concept of Khula in Quran

Khula is a legal mechanism recognized under Islamic Sharia and civil law, whereby a woman may seek the dissolution of her marriage by offering compensation to her husband. This compensation is typically in the form of the dower (mahr) or another agreed-upon amount. The legitimacy of this practice is established in the Quran and Hadith, with Quran 2:229 considered a foundational verse underpinning the law of khula.

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا ءَاتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

Divorce is twice; then either to retain in all fairness, or to release nicely. It is not lawful for you to take back anything from what you have given them, unless both apprehend that they would not be able to maintain the limits set by Allah. Now, if you apprehend that they would not maintain the limits set by Allah, then, there is no sin on them in what she gives up to secure her release. These are the limits set by Allah. Therefore, do not exceed them. Whosoever exceeds the limits set by Allah, then, those are the transgressors. (Usmani, 2007).

This ayah is considered to be the foundation of the concept of khula in Islamic law. The Quran provides a comprehensive understanding of khula indicating that when both spouses fear they are unable to fulfill their marital obligations as ordained by Allah, the wife may secure her release from the marriage by offering compensation to her husband.

Additionally, the Quran stipulates that a husband, even if willing to grant khula cannot coerce the wife into accepting it merely for the sake of receiving compensation, including the dower regardless of whether he has already provided her with a reasonable sum. (Maududi A. A., 1943)

Allah states in verse 4:19

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good.

The most notable example of khula is the case of Thabit ibn Qays, in which his wife sought dissolution of marriage. His wife Jamila was dissatisfied with Thabit's appearance. She

⁷ Mst. Balqees Fatima vs. Najm-ul-Ikram Qureshi PLD 1959 Lahore 566

⁸ Khurshid Bibi v. Baboo Muhammad Amin (PLD 1967 SC 97)

approached the Prophet Muhammad ﷺ and stated: By Allah, if it were not for the fear of Allah, I would have spat him when he came to me. By Allah, I do not dislike him for his religion or character, but I find his appearance unattractive. The Prophet ﷺ heard her complaint and instructed her to return the garden that had been given to her. She replied, ‘Yes, O Messenger of Allah, if he desires more, I will give him.’ The Prophet ﷺ then summoned Thabit and instructed him: Accept your garden and divorce her. (Qadri D. T., 2025)

This Hadith provides the legal basis for khula establishing that a wife may seek divorce by offering compensation. Notably, even in the absence of any fault on the part of the husband, the wife retains the right to obtain release from the marital bond through khula.

There was a man Mughiz, who deeply loved his wife, but she sought separation because she disliked him due to his appearance. He would wander the streets of Madina, distraught and heartbroken. The Prophet (peace be upon him) felt sympathy for him one day and asked his wife, “Would you like to return to your husband?” She asked in reply, Is this an order for me? The Prophet (peace be upon him) replied, I am only interceding on behalf of Mughiz. However, the woman refused. (Qadri D. T., 2025)

A wife came to Hazrat Umar (RA) seeking khula from her husband. Hazrat Umar (RA) advised her to remain together, but she did not obey. He confined her in a room filled with filth. After three days, he released her and asked about her condition. She said, By Allah, I found comfort in these three nights. Upon hearing this, Hazrat Umar ordered the husband to grant her divorce, even if it cost him his earrings. (Maududi S. A., Huqooq-ul-Zaujain, 1943)

Rabee bint Mu’awaz ibn Afra sought khula from her husband in exchange for all her property, but the husband refused. Hazrat Usaman (RA) ordered the husband to free her. (Maududi S. A., Huqooq-ul-Zaujain, 1943).

INTERPRETATION OF KHULA IN MAJOR SCHOOLS

Hanafi jurists base khula on Surah Al-Baqarah 2:229 and the hadith of Thabit bin Qays, considering khula a fully Sharia compliant act. However, according to hanafi jurists, the husband’s consent is required. If the husband does not agree, the wife cannot take khula. They believe khula has two elements: the wife offers compensation for her freedom, and the husband accepts and grants her divorce.

Imam Kasani states that even if a third party decides on khula and determines who is at fault, the husband’s consent is still necessary. He further states that khula has two elements: offer and acceptance. Since divorce is in exchange for compensation, the husband’s consent is a condition. (Al-Kasani, 1986)

Maliki states that if the wife is wronged and it is feared that the responsibilities set by Allah will not be fulfilled properly, ulu al-amr is given the authority to terminate the marriage. He may grant khula. If the husband is at fault, no compensation is required to be paid him. If both husband and wife are equally at fault, no compensation is required from the wife. Ibn Rushd states that divorce is under the husband’s authority, while khula is under the woman’s. The woman may exercise this right without the husband’s consent. (Rushd, 1996)

According to Hanbali jurists if a woman feels that she cannot fulfill the responsibilities assigned by Allah Almighty, she may separate from her husband with his consent. For khula, the consent of the husband is considered necessary, meaning the husband must agree to grant the khula. There are two conditions for this: first, compensation from the wife, and second, the consent of the husband. If these two conditions are fulfilled, then the khula is valid. If conditions are not fulfilled, the khula is invalid. (Hazm, 1997)

According to Imam Shafi, khula is like divorce. A wife cannot be released without the husband's consent. (Tahir, 2011)

THE ROLE OF HUSBAND'S CONSENT

In Islamic law, juristic opinions regarding the husband's consent in khula are divided into two groups. According to one group, the husband is encouraged to accept the compensation offered by his wife and grant her a divorce. However, this is not obligatory. Under this view, the husband retains the discretion to either accept or reject the wife's offer of divorce. The second group allows a woman to seek khula at her discretion, without requiring the husband's consent. In such cases, she must provide compensation to secure her release from the marital bond.

In my view, based on the strength of the supporting arguments, the second opinion appears to be more preferable and well-founded.

Imam al-Qurtubi explains that in the first part of verse 2:229, the term *an yakhafa* signifies that both parties) husband and wife (experience fear, applying directly to both spouses. In the subsequent part, 'in khiftum', the fear is not limited solely to the spouses but may also pertain to a third party. This third party refers to the *ulu al-amr*, either the authorities themselves or individuals designated by them. Should they fear that they will be unable to maintain the prescribed limits, *ulu al-amr* is empowered to adjudicate between them. (Qurtubi, 2003)

Explaining verse 2:229, Imam Ibn Hamam states that in *khiftum* specifically refers to the *ulu al-amr*, that is the authorities and judges. (Qadri D. T., 2025)

Allama Tahir-ul-Qadri states that Allah has indicated that if the authorities or judges fear that both spouses the husband and wife may violate the limits prescribed by Allah and fail to fulfill their obligations, then the authorities or judges are responsible for adjudicating and resolving the matter. (Qadri D. T., 2025)

Al-Jasas states that the authority to grant khula may be exercised subsequent to the intervention of the ruler or governing authority.

Allah says in the Holy Quran in verse 4:35

If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.

Imam al-Qurtubi, in his exegesis of the verse, states that individuals appointed by the state will determine who is at fault and attempt mediation between the parties. If they conclude that

reconciliation is not possible, they are authorized to terminate the marriage through khula. (Qurtubi, 2003)

Ibn Ashur explains that when a dispute arises between spouses, the *ulu al-amr* is commanded to appoint two arbiters. The term *iba'as* is used here, meaning 'appoint.' This directive is not for the spouses themselves but for the *ulu al-amr*, so that they can designate mediators to resolve the issue. If the spouses were to appoint the arbiters themselves, the intended meaning of the term would be incorrect. (Ashur, 1984)

In the case of Thabit ibn Qays, Thabit's role was entirely passive. The Prophet ﷺ, acting as a judge, issued the ruling and instructed Thabit to divorce his wife and, in return, reclaim his garden. (Maududi A. A., 1943)

It would be entirely unreasonable to claim that the Quran provides no means for a woman to be released from the marital bond, particularly when the husband refuses to grant her separation. In such cases, a judge may intervene to ensure that the woman's rights are upheld. Khurshid bibi

Imam Malik is considered most lenient jurist on behalf of khula. He is of the opinion that no arbitrator is required and nor permission of spouses. The qazi has the authority to pronounce khula on behalf of husband. (Mst. Balqees Fatima vs. Najm-ul-Ikram Quresh, 1959)

The fact that women brought claims of khula before the Prophet ﷺ and the Rightly Guided Caliphs, and that these claims were personally heard, serves as evidence that when spouses cannot reach an agreement regarding khula, the woman should approach a judge. In the transmitted decisions of the Prophet ﷺ and the Rightly Guided Caliphs, the husband was commanded to release his wife and grant her a divorce.

DISSOLUTION OF MUSLIM MARRIAGE ACT

The Dissolution of Muslim Marriages Act, 1939 also has an interesting historical background. In 1949, Maulana Ashraf Ali Thanvi issued a fatwa stating that if a wife adopted Christianity, the marriage would be automatically dissolved. At that time, it was not possible for a wife to obtain freedom without the husband's consent, leading some women to resort to changing their religion. When a significant number of women began converting, Maulana amended his fatwa accordingly. In 1939, Maulana Ashraf Ali Thanvi advised member of parliament Muhammad Ali Kazmi to present a bill on this matter in the parliament.

After extensive debates, the bill was finally passed in the Assembly in 1939. It was largely based on the principles of the Maliki school and incorporated various protective measures for Muslim women, adopted from the Maliki jurisprudential framework. (Mehmood, 2015)

This Act also did not fully resolve the issues faced by women, and there were three primary reasons for this. The first reason was that the procedure was extremely complex. In the courts of British India, formalities were extensive, and it often took five to six years for a case to be concluded. The second reason was that the process of khula was being introduced for the first time, and in the local culture, it had previously received no acceptance whether Hindu or Muslim judges, they themselves considered it undesirable and displayed little sympathy for the petitioner. The

third reason was that the grounds provided in the Act were fault-based, meaning that proving them to dissolve a marriage was a difficult task, and achieving a favorable judgment in court was far from easy.

The Fatima case represents a significant milestone in the liberation of Muslim women. It was the first decision to formally recognize the protection of women's rights in court. The judgment affirmed that a wife may claim khula as an inherent right, and that a marriage could be dissolved solely on the basis of the wife's objection. If a woman feels that she cannot live within the prescribed limits with her husband, she may return the dower and exit the marital contract.

Philosophy behind Khula

The philosophy behind this is that just as the authority of divorce has been placed in the hands of the man, in the same way khula has been placed in the hands of the woman. If a woman suffers harm from the man, she has the option of khula and if a man suffers harm from the woman, the Law Giver has granted him the authority of divorce.

Reimbursement of Compensation

Khula is often criticized on the grounds that, in order to be released from the marital bond, a wife is generally required to pay some form of compensation. This financial requirement is not feasible for economically disadvantaged women, while comparatively wealthy women may find a viable avenue through it.

In societies such as Pakistan, where women already occupy a disadvantaged economic position, this requirement further aggravates their difficulties. Particularly in cases where a wife is unable to afford such compensation, she becomes dependent upon the discretion and willingness of her husband to grant divorce. If the husband agrees to do so, only then is she relieved of the marriage.

All schools of Islamic jurisprudence permit khula, citing Quranic verses and Hadith as its primary evidentiary basis. According to the Maliki school if the cause of dispute lies with the husband the wife may obtain khula without returning the dower. However, if the cause of dispute lies with the wife she must return the mahr in order to secure release from the marriage. (Rasool, 2016)

For khula, the return of the dower is not a condition, although some scholars cite evidence from Surah Al-Baqarah, verse 229 to justify taking dower from the wife in exchange for khula. However, Sheikh-ul-Islam Dr. Tahir-ul-Qadri has explained this verse in detailed. The phrase *la junaha* mean it is not sinful if she returns something. According to the Quran and Arabic linguistics, *la junaha* is not a command obligating a woman to return the dower when seeking khula. Rather, a woman may demand khula out of fear that the limits set by Allah cannot be maintained. (Qadri M. M., 2012)

The Quran does not specify the exact amount or type of compensation to be given in the case of a wife opting for khula, nor does it make it obligatory on the wife to provide compensation. According to this verse, if a wife wishes to be freed from her husband through khula, there is no

sin in her giving some compensation to the husband in order to gain her freedom. (Maududi A. A., 1943)

According to Imam Marghinani if the disobedience is from the husband, it is makruh for husband to take anything back from the wife but if the disobedience is from the wife, the husband is not allowed to take more than what he originally gave her. Scholars agree that if the husband is at fault and oppresses the wife, then the return of the mahr is not the wife's responsibility. Some jurists have declared it haram or makruh-i-tahrimi to forcibly take the dower back from the wife. (Qadri M. M., 2012)

With regard to determining compensation for khula, Allah Almighty has not imposed any fixed limitation. Khula may be concluded upon whatever compensation both spouses mutually agree to. However, the Holy Prophet ﷺ expressed disapproval of husbands demanding back the dower as khula compensation and Hazrat Ali (RA) also regarded this practice as makruh. Jurists are unanimous that if a woman seeks khula due to the oppression or unjust conduct of her husband, it is makruh for the husband to accept compensation from her. (Qadri G. H., 2016)

If the woman seeking khula proves her husband's misconduct before the judge or presents a reason that the judge considers reasonable, she will be granted khul' in return for a reduced dower or a portion of it. If she is unable to do so, she must return the full dower. (Maududi A. A., 1943)

This position is further supported by the statement of Hazrat Urwah bin Zubair (RA), who said that it is unlawful for a husband to demand compensation from his wife in exchange for khula, except in cases where some harm has been apparent from the wife's side. (Muhammad Bin Jarir al-Tibari, 1992)

In the light of Pakistan's family laws, the dower was traditionally taken from the woman as compensation for khula. However the judicial decisions made in recent have provided women with this facility that, if she proves in court that she is not at fault in seeking khula and that she was compelled to do so, then in such a situation she is not required to return the dower.

DIFFERENCE BETWEEN ṬALAQ KHULA FASAKH -e-NIKAḤ AND MUBARAT

Ṭalaq (Divorce by the Husband):

When a husband believes that it is no longer possible to continue marital life harmoniously, he may, of his own discretion, pronounce divorce and thereby dissolve the marriage bond.

Khula (Divorce at the Wife's Instance):

When a wife feels that marital life with her husband can no longer continue, she may request dissolution of marriage by offering compensation or returning the dower to the husband. This form of dissolution is termed khula.

Fasakh-e-Nikaḥ (Judicial Dissolution):

When a court or judicial authority terminates the marital relationship between husband and wife on legal grounds, it is referred to as fasakh al-nikaḥ.

Mubarat (Mutual Dissolution):

When both husband and wife mutually agree to terminate the marriage contract by mutual consent, the dissolution is called mubarat.

NATURE OF KHULA

The jurists hold same opinion regarding the legal nature of khula. According to Imam Abu Hanifa khula constitutes an irrevocable form of divorce. When a wife pays compensation in order to regain her personal freedom from the marital bond and the husband pronounces divorce in return such dissolution is classified as an irrevocable divorce. (Nyazee, 2016)

According to the Maliki School of jurisprudence, dissolution of marriage through khula also amounts to an irrevocable divorce. (Rahman, 2015) The Shafi'i and Hanbali schools likewise hold that khula is an irrevocable divorce. If the spouses remarry after khula, the husband still retains his remaining right to pronounce divorce twice. However, if after remarriage the husband subsequently gives two divorces, the divorce becomes talaq-e-mughallazah (absolutely irrevocable). (Janbaz, 2017)

In Fatawa al-Alamgiri, khula is explicitly described khula as a form of divorce. Burhan ud-Din Marghinani in his book al-Hidayah also states that khula constitutes a talaq ba'in and places upon the wife the obligation to provide compensation. (AL-Sarakhi, 1913)

From the above discussion, it becomes evident that, from a legal standpoint, khula falls within the category of irrevocable divorce (talaq ba'in). In the case of talaq raj'i (revocable divorce), the woman remains bound within the marital tie during the iddah period, whereas compensation is only relevant and applicable in the case of talaq ba'in.

Observance of Iddah

Khula is fundamentally a form of divorce. Therefore, in the case of khula, it is obligatory for the woman to observe the iddah period, just as she is required to do in the case of divorce. The duration of iddah in divorce is three menstrual cycles or three months, and the same iddah period applies in the case of khula as well.

DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939

In 1939, the Dissolution of Muslim Marriages Act was enacted, which expanded the grounds on which a woman could seek judicial dissolution of marriage. This law was primarily based on the principles of Maliki jurisprudence. The Act significantly strengthened and broadened a woman's right to divorce (faskh of marriage). Its fundamental objective was to reinforce Muslim personal law and to provide women with an effective legal mechanism for the termination of marriage. (Johnson, 2011)

The primary objective of this law was to provide effective legal relief to a woman trapped in an unhappy marriage. Section 2 of the Dissolution of Muslim Marriages Act sets out the grounds on which a Muslim woman may apply to the court for judicial dissolution of marriage, commonly referred to as khula or judicial divorce.

Section 2 of the DMMA set out the grounds upon which a Muslim woman could apply to the court for a divorce. This includes the husband's desertion for four years, the husband's neglect or failure to pay maintenance for two years,⁹ the husband's imprisonment for seven years or more,¹⁰ his impotence,¹¹ insanity, or contraction of a virulent disease,¹² and the option of puberty.¹³ Cruelty by the husband is another ground, which is defined through six further elements: mental and psychological cruelty,¹⁴ the husband's immoral conduct,¹⁵ disposal of the wife's property¹⁶, obstructing her observance of her religion¹⁷ and inequitable treatment of wives in a polygamous marriage.¹⁸ The final ground that a woman may rely upon is contained in S. 2 (ix). This states that she may rely on any other ground which is recognized as valid for the dissolution of marriages under Muslim Law.

MUSLIM FAMILY LAW ORDINANCES IN 1961 (MFLO)

After the independence of Pakistan, in 1955 the Rashid Commission was established under the chairmanship of Chief Justice Abdul Rashid. The commission was entrusted with the responsibility of conducting a comprehensive review of Pakistan's family laws and proposing reforms aimed at providing greater legal remedies and protection for women within their marital lives. In 1956, the commission submitted its detailed report along with recommendations. However, these recommendations faced strong criticism from religious circles and were declared un-Islamic. Nevertheless, Field Marshal General Ayub Khan implemented several of the commission's recommendations through the Muslim Family Laws Ordinance. (Rahat, 2009)

This is key legislation governing family law in Pakistan which introduced several reforms such as compulsory registration of marriages and divorces, and restrictions on polygamy. The MFLO remains a cornerstone of Pakistani family law, although it has been subject to various interpretations and amendments over the years. (Malak, 2024)

PROCEDURE OF KHULA IN PAKISTAN

Khula (Divorce Initiated by Wife): For khula, a wife can file a suit in the Family Court. Once a khul' plaint is drafted and submitted, the court must set a date for the hearing, requiring the defendant's husband to appear. If the husband fails to arrive, the court has discretion to hear the case ex-parte. If a husband does arrive during one of the court hearings, then the court will ascertain the exact nature of the dispute and shall attempt to affect a compromise or reconciliation between the parties, if possible. If reconciliation fails, the court will

⁹ S.2(ii) DMMA 1939.

¹⁰ S.2(iii) Dissolution of Muslim Marriages Act 1939 (DMMA).

¹¹ S.2(v) DMMA 1939

¹² S.2(vi) DMMA 1939

¹³ S.2(vii) DMMA 1939

¹⁴ S.2(viii) (a) DMMA 1939

¹⁵ S.2(viii) (b) DMMA 1939

¹⁶ S.2(viii) (d) DMMA 1939

¹⁷ S.2(viii) (e) DMMA 1939

¹⁸ S.2(viii) (f) DMMA 1939

order the wife to return the dower (mahr) or any agreed compensation and pass a decree of dissolution of marriage.

Grant the divorce decree/Judicial Khula: The process of khula through the court is known as "judicial khula." It can be granted without the husband's consent if the court is satisfied that the wife genuinely seeks to end the marriage.

Role of family court: Family Courts in Pakistan play a crucial role in handling cases of divorce and khula. Established under the Family Courts Act of 1964, these courts are responsible for hearing cases. They hear cases related to marriage, divorce, maintenance, and custody of children. They also attempt to reconcile the parties before granting a divorce or khula. They pass judicial orders for divorce, maintenance, and custody based on Islamic and statutory law.

CONCLUSION

The present study concludes that khula is a recognized mechanism of marital dissolution in Islamic law through which a woman may seek release from a marriage that has become impossible to continue within the limits prescribed by Allah. The Qur'anic foundation of khula, particularly Surah al-Baqarah 2:229, together with the Prophetic precedent of the wife of Thabit ibn Qays, establishes its legitimacy as a means of resolving irreconcilable marital discord. The examination of the major Sunni schools demonstrates that jurists have differed, particularly regarding the necessity of the husband's consent and the role of judicial authority. While the Hanafi, Shafi'i and Hanbali approaches traditionally emphasize the husband's acceptance in khula, the Maliki approach provides greater scope for judicial intervention where continuation of the marriage becomes harmful or incompatible with the objectives of Islamic family law. The historical development of Pakistani jurisprudence represents an important shift in this debate. The decisions in *Mst. Balqees Fatima v. Najm-ul-Ikram Qureshi* and *Khurshid Bibi v. Baboo Muhammad Amin* established a significant judicial principle that a wife may obtain khula without the husband's consent, thereby strengthening women's access to marital dissolution.

The study further finds that Pakistani legislation, particularly the Dissolution of Muslim Marriages Act, 1939 and the Family Courts framework, has provided additional legal mechanisms through which women may seek dissolution of marriage. However, the issue of compensation or return of mahr remains an important concern, particularly where women seek khula because of circumstances beyond their control or because of the husband's misconduct. Overall, the study supports the view that khula should be understood within the broader objectives of Islamic family law, namely justice, dignity, fairness, and the prevention of continuing marital hardship. In the Pakistani legal context, the judicial recognition of khula without requiring the husband's consent provides an important safeguard for women whose marital relationships have become irretrievably strained. Nevertheless, the application of khula should continue to respect the principles of reconciliation, fairness and equitable treatment of both spouses. The study therefore concludes that the wife's ability to seek judicial khula constitutes an important protection within Pakistani family law and that the husband's refusal alone should not operate as an absolute barrier to the dissolution of a marriage that can no longer fulfill its fundamental legal and ethical objectives.

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