

KHUL' IN THE PRESENCE OF THE HUSBAND

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ABSTRACT

Objectives: The purpose of this research is to clarify the legal position of judicial khul' and its application within the Sharia courts in Palestine especially in the Palestinian Authority areas.

Method: This research followed the descriptive approach, using the inductive and deductive methods.

Results: Islamic law has allowed for the dissolution of the marital bond; in the event the continuation of the marital life becomes impossible or where it encounters significant obstacles. Both spouses are granted the right to terminate this relationship; the husband has the right to initiate a divorce (Talaq), and on the other hand, the wife has the right to seek the dissolution of the marital bond through khul' or other legitimate reasons that hinder the marital relationship. It is not necessary for the reason for khul' to be severe harm to the wife, absence, or non-support. These reasons give the wife the right to terminate the marital bond by filing for divorce from the court without the husband's consent and without paying him any financial compensation.

Conclusion: The research concluded that the family and social interest requires defining this right, and setting controls for its implementation, based on the principles of Islamic jurisprudence and the laws prevailing in Palestine and some Arab countries.

Keywords: khul', islamic legal system, regulatory controls

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الملخص

أهداف: بيان الموقف الشرعي من الخلع القضائي الذي تجريه المحاكم الشرعية، لا سيما في مناطق السلطة الفلسطينية.
المنهجية: سار هذا البحث وفق المنهج الوصفي، مستعينا بالمنهج الاستقرائي.

النتائج: الخلع حق ونظام اسلامي أصيل، جاء به مصدرا الشريعة: الكتاب، والسنة، والمصلحة الأسرية والاجتماعية تقتضي ضبط هذا الحق، منطلقين من مبادئ الفقه الاسلامي، وهو يقابل الحق في الطلاق الذي يمارسه الزوج لإنهاء الحياة الزوجية.

الخلاصة: إذا تعثرت الحياة الزوجية بين الزوجين، ولم تجر على وفق ما يراد بها، فإن الشريعة الإسلامية أجازت حلها، ومنحت كل واحد من الزوجين الحق في إنهاء هذه العلاقة: الزوج بالطلاق، والزوجة بالخلع، أو سواء من أسباب انحلال الرابطة الزوجية المشروعة.

وقد عالج البحث الموقف الشرعي والقانوني من الخلع، وبين أنواعه والمفاضلة بين هذه الأنواع تمهيداً لاختيار ما يناسب المجتمع والأسرة ويحقق الأمن للزوجين وأطفالهما، ويزيل الشك والتخوف حول نظام الخلع الذي تم تفعيله مؤخراً في فلسطين.

كلمات مفتاحية:

الخلع، أبو وهدان، الرجوب.

Introduction

Islam has honored women, raising their status as mothers, sisters, wives, and daughters. She is the educator of generations, the maker of men, the builder of the family. Women constitute half of society, if not the entire society itself. In our perspective, women are not to be viewed through a narrow, instinctual, or animalistic lens that belittles their essential purpose. Nor should they be regarded as inferior beings, subordinate to men, or as lacking in intellect, willpower, or competence. How can such beliefs be reconciled with the fact that we have chosen to spend our lifetimes with them, as wives and life partners? No matter how advanced people become in their knowledge, they will never be more capable of securing their own interests than their Creator, Allah. In His holy Quran, Allah has shown us one of His signs: "And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are indeed signs for a people who reflect." (Surah Ar-Rum, 21). He has established a strict and organized family, social, and legal system, which he began with the righteous upbringing of children and the good selection of spouses, then going through the stage of engagement, which is a stage of legal acquaintance, then concluding the marriage, which must include the availability of essential conditions aimed at establishing a marital relationship on sound foundations. Marriage is the strongest bond that can unite two individuals, and the relationship must be built on what will sustain marital life (Al-Sabouni, 2006).

Despite all these measures that aim to create a healthy and sound marital life, the Islamic Sharia has recognized the possibility of dissolving the marital bond in the event of the impossibility of continuing the marital life between the spouses; Allah said, "The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness." (Al-Baqarah, 229). It is not reasonable to maintain a marital relationship characterized by discord and conflict because the consequences and repercussions of such a situation can be detrimental to both the individual and society as a whole. Islam has given the husband the right to divorce, but it has also given the wife the right to demand that the court dissolve the marital bond. The wife also has the right to request khul' from her husband, which is a right that is established in the texts of the Quran and the Sunnah of the Prophet. The research aims to clarify the legal and religious position of khul', and address its types. This is to choose what is suitable for society and the family and to

achieve security for the spouses and their children, and to remove doubt and fear about the khul' system that was recently implemented in Palestine. The problem statement revolves around how to deal with the wife's right to initiate the dissolution of the marital bond through khul'. Does she have the right to do so without any restriction or condition, or does the family and social interest require the regulation of this right in a way that achieves the desired interests? Are there insights from Islamic jurists and legal texts that can help us regulate Khul', or are these matters set in stone with no room for discussion, debate, or the development of ideas regarding what is mentioned in them? The researchers have chosen to conduct a comparative study by comparing the circular of the Head of the Palestinian Higher Council of Shari'a Jurisdiction to apply the khul'¹ law in all of the Ottoman Personal Status Law, the Jordanian Personal Status Law of 1976, the Egyptian Personal Status Law, in addition to the Palestinian Personal Status Draft Law and some Arab laws. To address this topic, the researchers first define the concept of Khul' in the first section and then examine the stance towards Khul' in the second section.

Definition of Khul':

To be able to determine the position on Khul', it is essential to define the meaning of Khul'. The terminological meaning is inseparable from its linguistic roots. Therefore, we will provide a definition of Khul' in language, then in terminology, and finally, a legal conceptualization of Khul'.

Linguistic and Sharia Definitions of Khul'

Arabic is a language rich in the meanings of words, which have many implications and indications that may overlap with the meaning intended for them in Islamic law, and it may have another unique and distinct meaning.

The linguistic definition:

Khul' linguistically means taking off or removing something, like stripping it away or detaching it. However, in Khul', there is a waiting period involved. Some have equated khul' with removal. It is said that the man divorces his wife with khul' if he dissolves her marriage, and in doing so, the woman divorces with Khul' her husband. If she offers something in exchange for her release from the marriage, it is referred to as Khale' (Ibn Manthur, 1998). It is named Khul' because Allah has made women a garment for men and men a garment for women. During Khul', it is as if each of them is removing the garment of the other, and "Khal'" with a Fatha sound implies the removal of the garment and physically taking it off (Al-Rbayi'a, 2003).

The definition of "Khul' by Muslim jurists:

The definition of "Khul'" varies among Islamic Sharia jurists. The Hanafi school defines it as "the removal of the husband's ownership of the marriage contract, which is dependent on the wife's consent, through the use of the word 'Khul' or similar expressions (Amin, 2005). The Maliki school defines it as "divorce in exchange for compensation, whether it is initiated by the wife or by her representative or someone else." In their view, Khul' can be with or without compensation (Al-Dusuqit). On the other hand, the Shafi'i school considers Khul' as "the dissolution of the marital bond with compensation, using the words of divorce or Khul', such as a man saying to his wife, 'I divorce you' or 'I free you' upon certain conditions" (Surat al-Nisa'). Similarly, the Hanbali school regards Khul'

as "the separation of the husband from his wife with compensation, using specific expressions, and it can be with or without compensation" (Zouin, 2005). In "Kashf al-Qina'," it is described as "the wife's release from the marriage in exchange for something of value that she gives to her husband, or it is a dissolution with compensation intended for the husband, using the words of divorce or Khul' (Al-Bahuti). The Hanafi and Maliki schools consider Khul' as a form of divorce and the removal of the husband's ownership of the marriage contract. As for the Shafi'i and Hanbali schools, they require that Khul' be pronounced using divorce words or intentions explicitly or with specific expressions in order to be considered a divorce (Abi Ahmad, 1405). From the foregoing, it becomes apparent that there are differences among jurists regarding the concept of Khul'. For example, the Hanafi school includes in its definition the phrase "dependent on her acceptance," which suggests Khul' is consensual, or at least, it requires the husband's agreement to the proposed financial compensation by the wife. On the other hand, the Maliki school regards it as a form of divorce, and divorce is typically initiated by the husband's will. This difference opens up the possibility of considering the husband's stance on Khul' or, at the very least, regulating Khul' based on the principles outlined earlier (Al-Takaruri).

The legal definition of Khul'

The law defines Khul' as "a claim brought by the wife against her husband when she detests living with him, and there is no way to continue the marital relationship. If the wife fears that she may transgress the limits set by Allah due to this detestation, she is allowed to seek the termination of the marital relationship through Khul'. In return, the wife redeems herself by returning the dowry and waiving all her legal rights (Circulation of the application of khul' in Palestine issued by the Chief Judge Bureau, 2012). It is noteworthy that some laws that have defined Khul' have focused on consensual Khul', which occurs with the mutual agreement and intent of both spouses. An example of this is the Jordanian law, which defines consensual Khul' as "the husband divorcing his wife in exchange for compensation, mutually agreed upon, using the words Khul', divorce, Acquittal, or any equivalent expressions" (The Jordanian Personal Status Law, No. 36, 2010). The Iraqi law defines Khul' as "the dissolution of the marital bond using the word 'Khul' or its equivalent, and it is established through mutual consent before a judge" (the Iraqi Personal Status Law No. 188, 1959). The Libyan law defines Khul' as "divorce by the mutual will of the spouses, in exchange for compensation provided by the wife using the words 'Khul' or divorce" (the Libyan Personal Status Law, 1984). As for the Palestinian Judicial Khul' before consummation, it defines it as "a lawsuit filed by the wife against her husband when she detests or dislikes him and fears that she will not be able to observe Allah's limits, and there is no way to complete the marriage and establish a marital life. She has to compensate (return) what she received or her representative received as a dowry at the time of the marriage contract, or what was paid as the dowry account, as well as any gifts that are documented, and what the husband spent for the purpose of the marriage" (Circulation of the application of khul' in Palestine issued by the Chief Judge Bureau, 2012). From the foregoing, it appears that these laws have defined consensual khul', not judicial khul'. There is no disagreement over consensual khul', but there is disagreement over judicial khul', which was adopted by the sharia courts. It was

therefore necessary to provide a clear definition for it, in line with the generalization of the implementation of the khul' law in Palestine.

The wisdom of khul':

Islam has ordained marriage to achieve peace, tranquility, affection, and love between spouses. If these sentiments are not realized, it is more appropriate to consider terminating the marital life, and to allow it to be dissolved to prevent stability from turning into destruction, mercy into hardship, and love into animosity (Al-Buhuti). The Islamic Shari'a gives the husband the sole right to dissolve the marital bond through divorce. This right comes within the framework of a comprehensive family system; the husband is the one who bears the financial costs; therefore, he is obligated to provide for the wife and children, as Allah Almighty said: "Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means" (verse 34 of Surah An-Nisa). The Islamic Shari'a has taken into account the nature of the two parties to the marriage contract and has established rulings based on that. The nature and composition of women make them tend to prioritize emotions over reason, as they are affected by their psychological state and the changes that occur in their physical structure. Women menstruate, become pregnant, give birth, and undergo hormonal changes that affect their psychology and choices. This led the Shari'a to give women the right to request the dissolution of the marriage bond, but within specific conditions, in special cases, including:

1. Al-'Ismah (Marriage Dissolution Authority): A woman may stipulate for herself the right to retain the request to divorce herself.
2. Filing a lawsuit for divorce, where the court will rule in favor of the wife if she has strong grounds for her request, such as if it is impossible to continue the marital life due to the husband's inability to fulfill his marital duties, or his committing of reprehensible acts that harm the marital life. For example, if the husband is sentenced to punishment for committing an immoral act, and after the judge confirms that one of these cases exists, he will rule for divorce.
3. Divorce by mutual consent, where the spouses may agree to dissolve the marital bond by mutual agreement, in which case the husband divorces his wife in exchange for what has been agreed upon.

In addition to the aforementioned situations, Islamic Sharia and man-made laws have granted the wife the right of khul' where she can seek a divorce by offering a financial settlement to her husband. This right corresponds to the husband's unilateral right to initiate divorce without the wife's consent or knowledge, and without a specific reason. The divorce is granted after paying the wife's financial rights (Abu Saif, 2009). Khul' is initiated in the case where the wife fears that she is unable to fulfill her marital duties and fears that she will not fulfill her husband's rights. When there is an urgent need for the wife to terminate the most sacred human relationship that all laws have worked to protect, or when there is a need to prevent a greater harm from continuing within the marital relationship, such as the wife committing a serious criminal or moral offense against the husband, then khul' can be the appropriate solution to prevent this impending harm. It is also important to emphasize that khul' did not come contrary to the philosophy of Islamic Sharia, but rather it is in line with the guidance of Islamic Sharia for a man to divorce his wife if she hates him, and if no good comes from preaching to her, leaving

her, beating her, or arbitration. On the other hand, it is important to note that Islam has directed women not to ask for divorce or separation if they do not have a strong reason that drives them to do so. It is narrated that the Prophet (peace be upon him) said: "Any woman who asks her husband for divorce without a legitimate reason is forbidden from the scent of Paradise" (Al-Albani). This hadith confirms that dissolving the marital bond is not something whimsical, as the marriage contract is a sacred contract because it establishes the foundation for building a family and a community. Therefore, the decision to destroy the family should not be a hasty or emotional decision. Islamic Sharia has made the ruling of khul' to be a Baena Divorce, not a revocable divorce. This is to ensure that the woman benefits from this divorce, and so that the husband does not return to his wife, who has sought to divorce from him.

Distinguishing Khul' from Other Methods of Dissolving the Marital Bond

There are various ways to dissolve a marital bond. Some are initiated by the husband, while others are initiated by the wife. Since khul' is a specific method initiated by the wife, what distinguishes this method of dissolving the marital bond from others?

Khul' and Divorce:

Divorce, in its essence, refers to the termination of the marital bond and the release of the wife from that bond. Divorce is the husband's right, and it can be exercised at his sole discretion within a valid marriage contract, whether consummated or not. Divorce is permissible in the Quran, as it is stated in Surah Al-Baqara (229): "The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness" (Al-Baqarah, 229). Divorce, as an act, may be disliked or permissible. There must be a clear and unambiguous statement or intention for divorce to take effect, and it can be expressed in various forms or words that convey the intent of divorce (Al-Ramli). Divorce is initiated by the husband at his sole and absolute discretion, unlike khul', which is initiated by the wife when she fears that she may not be able to fulfill her marital obligations within the boundaries set by Allah. Additionally, the husband may divorce his wife after reaching an agreement with her to terminate the marital relationship and settling all their marital rights through mutual consent. This case differs from khul' in that khul' involves the wife offering a financial settlement to obtain the khul', and the reason for khul' is the wife's fear of not fulfilling her husband's rights.

Khul' and Tafriq (Divorce) for Dispute and Discord

The term "tafriq" refers to the termination of the marital relationship by a court order for one of the reasons specified in Islamic law and legal regulations. Tafriq can be initiated when the husband fails to provide financial support to his wife, in which case the court may order tafriq if it finds that maintaining the marriage would harm the wife (Al-Jaafra). Tafriq can also occur due to harm that makes marital life impossible, whether it is physical harm such as causing injury or harm or emotional harm such as unbearable verbal abuse. It is not necessarily required for the harm to be repeated as long as it makes coexistence impossible between the spouses. In this case, the court may order tafriq after attempts to reconcile between the parties have failed (Al-Dasouki's). Due to the difficulty of proving harm, which often occurs between spouses in the marital home, a circular was issued by the Palestinian Chief Judge Bureau giving the Sharia judge the right to exercise his discretionary power to determine the existence of dispute and discord. Tafriq can also occur due to desertion and confinement, with the purpose of protecting the wife from

harm. Islamic jurisprudence has stipulated a time frame for this, which can range from six months to two years. The husband must be informed of the necessity of bringing his wife back to him or else she will be divorced. However, the Hanafi and Shafi'i schools do not allow divorce for desertion or confinement (Al-Hasakfi).

Tafriq may also occur due to a physical defect or ailment that prevents the achievement of the goals of marriage, such as impotence, leprosy, or blindness that cannot be cured, provided that the other party was not aware of it at the time of the marriage contract and did not consent to it after becoming aware. In such cases, the judge may rule for tafriq (Al-Shafi'i, 1961). It is clear from the above that there are multiple ways to terminate a marriage that were decided to protect the wife from harm caused by the continuation of the marriage. These methods are limited to the circumstances outlined, and a judge cannot judgewith tafriqwithout the presence of one of these specified conditions. Khul', on the other hand, is initiated by the wife and can be requested for reasons other than those specified for tafriq.

Khul' as an Islamic legal system that is in line with the interests of society:

To form an informed perspective on khul' not only requires highlighting its meanings and benefits and distinguishing it from other forms of dissolution but also necessitates a review the basic source on which khul' was based, which is Islamic Sharia, and what was endorsed by the Prophet (peace be upon him) and practiced by the Companions, may Allah be pleased with them. Additionally, it's essential to examine the extent to which the laws applied in family courts align with Islamic Sharia in understanding and applying khul'. Through this analysis, we can then elucidate the need for khul'.

Legal Evidence on Khul':

When we seek to understand the rulings of Islamic Sharia on a particular matter, it is essential to first refer to the Quran and then to the Sunnah of the Prophet.

The Quranic Evidence

Muslim jurists base their application of khul' on the verse "Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah- it is those who are the wrongdoers" (Al-Baqara). Ibn Kathir considered that the intended meaning of the verse is that it is not permissible for men to harm or to straighten women (that they be obliged to leave their house), or by which women ransom themselves by what men have given them in terms of dowry. Allah said: "And do not make difficulties for them in order to take [back] part of what you gave them" (Al-Nisaa 19). As for if the woman gives something to her husband of her own free will, there is no harm in that, for Allah Almighty said: "But if they give up willingly to you anything of it, then take it in satisfaction and ease" (Al-Nisaa 4). When the husband and wife have disputes, the woman has not fulfilled her obligations towards her husband, they dislike each other, and she cannot maintain a marital relationship with him, then she is allowed to redeem herself from him by returning what

he has given her. There is no harm upon her for doing so, and there is no blame on him for accepting it from her (Al-Dimashqi, 2002).

As for the clarification of the meaning of the verse: "unless both fear that they will not be able to keep [within] the limits of Allah" the message here is directed to both spouses. Both of them may fall short in obeying the commands of Allah regarding their duties towards each other. The wife may show defiance and resentment towards her husband, to the extent that there are fears she might neglect her obedience to Allah regarding her obligations towards her husband's rights. On the other hand, there is concern that he will neglect his wife in fulfilling his duties towards her (Al-Tabari, 2005). If the husband is not obstructing her from her rights and duties prescribed by Allah, and she fears that she may hinder him from his rights and fulfilling the rights of Allah, then redemption becomes permissible for her, and he is allowed to accept it from her. Hence, the verse states that there is no blame upon either of them concerning that by which she ransoms herself. If the husband is not fulfilling his obligations towards his wife and is not treating her kindly, he is not entitled to take financial compensation from her because he is the one who has failed to fulfill his marital duties, and he has not met his obligations towards his wife. Therefore, as Allah says, "And do not make difficulties for them in order to take [back] part of what you gave them" it is not permissible to coerce women into seeking Khul' in order to obtain money from them (verse 19 Surah An-Nisa).

The legal evidence from the Sunnah

The incident involving the wife of Thabit bin Qais considered the first case in which the Prophet Muhammad, peace be upon him, issued a ruling of "khul'." However, there are various narrations of this incident, which have led to different interpretations and explanations of the concept of khul' and how it was implemented. In the narration of al-Bukhari from Abdullah from Ibn Abbas, it is reported that the wife of Thabit bin Qais came to the Prophet (PBH) and said, "O Allah's Messenger, I do not find fault with Thabit bin Qais (RA) in respect of character or religion, but I dislike (and fear) that I might commit an act of Kufr fil-Islam (that which is contradictory to Islamic behavior)." Allah's Messenger (ﷺ) asked her, "Will you give him back his garden?" And she replied, "Yes," so Allah's Messenger (ﷺ) said to him, "Accept the garden and divorce her, with one pronouncement (of divorce) (Sahih al-Bukhari, 1422). Ibn 'Abbās (may Allah be pleased with him) also reported: The wife of Thābit ibn Qays was separated from her husband by a Khul' during the time of the Prophet (may Allah's peace and blessings be upon him). So, the Prophet (may Allah's peace and blessings be upon him) ordered her to observe a waiting period of one menstrual cycle (Al-Tirmidhi, 1420).

In another narration, it is mentioned that the woman in question was Um Habibah, daughter of Sahl al-Ansariyyah: She (Habibah) was the wife of Thabit ibn Qays ibn Shimmas. The Messenger of Allah (ﷺ) came out one morning and found Habibah by his door. The Messenger of Allah (ﷺ) said: Who is this? She replied: I am Habibah, daughter of Sahl. He asked: What is your case? She replied: I and Thabit ibn Qays, referring to her husband, cannot live together. When Thabit ibn Qays came, the Messenger of Allah (ﷺ) said to him: This is Habibah, daughter of Sahl, and she has mentioned (about you) what Allah wished to mention. Habibah said: Messenger of Allah, all that he gave me is with me. The Messenger of Allah (ﷺ) said to Thabit ibn Qays: Take it from her. So he took it from her, and she lived among her people (relatives) (Al-

Muwatta, 1406). Narrated by Aisha, UmmulMu'minin: Habibah daughter of Sahl was the wife of ThabitibnQaysShimmas He beat her and broke some of her part. So she came to the Prophet (ﷺ) after morning, and complained to him against her husband. The Prophet (ﷺ) called on Thabit ibn Qays and said (to him): Take a part of her property and separate yourself from her. He asked: Is that right, Messenger of Allah? He said: Yes. He said: I have given her two gardens of mine as a dower, and they are already in her possession. The Prophet (ﷺ) said: Take them and separate yourself from her (Abu Dawood). It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "HabibahbintSahl was married to Thabit bin Qais bin Shammas, who was an ugly man. She said: 'O Messenger of Allah, (ﷺ) by Allah, were it not for fear of Allah when he enters upon me I would spit in his face.' The Messenger of Allah (ﷺ) said: 'Will you give him back his garden?' She: said: 'Yes.' So she gave him back his garden and the Messenger of Allah (ﷺ) separated them." In another narration, it is reported that Jameelabint Abdullah ibnAbi was married to Thabit ibn Qais ibn Shamas, and she disliked him while he loved her. She went to the Messenger of Allah, peace be upon him, and said, "O Messenger of Allah, neither I nor Thabit can stand being together. I swear by Allah, I do not find fault in his character or religion, but I detest disbelief in Islam. I cannot bear to be with him. I lifted the corner of the tent and saw him in a state of impurity, being the darkest and shortest of them in complexion, and the ugliest of them in appearance." It was mentioned that he had given her a garden, so she separated from him by returning the garden to him. This was the first case of khul' in Islam (Al-Kashshaaf).

From the previous narrations about the Prophet Muhammad (PBUH), there appears to be a contradiction in some of the details, such as the name of the wife. Is she HabibabintSuhayl or Jamilabint Abdullah ibnAbi? As the disagreement occurred, did the wife complain about her husband conduct or not? Did he inflict harm on her by beating her or not? and whether any such incident occurred after she expressed her dislike for him and raised the matter with the Prophet (peace be upon him) or before that?

The following can be inferred from the previous narrations; The ruling of khul' was not known to this Companion; he asked the Prophet Muhammad (PBUH), " Is that right?". Some of the narrations mentioned beating. If the reason why the Prophet Muhammad (PBUH) asked the husband to divorce her is because he beat her, then the judge must make sure that there is harm, as a condition for khul', in order to rule in favor of the wife. This means that khul' is only allowed after the harm is established, which is something that no jurist has said. Some of the narrations indicate that he was ugly, which made her dislike him. This suggests that there might have been a reason for her dislike, such as her fear of not being able to fulfill her obligations towards him, which could be inferred as a potential cause for seeking Khul'. From these narrations, it can also be inferred that the Prophet (peace be upon him) requested the husband to divorce his wife, which means he instructed him to pronounce the divorce, but he did not explicitly end the marital relationship himself. Due to the strong obedience of the companions to the Prophet of Allah (peace be upon him) and their commitment to his commands, Qais proceeded to divorce her, indicating that Khul' can be initiated with the husband's consent. Khul' revolves around two differing opinions within Islamic jurisprudence. One view considers it permissible in cases where a woman fears that she may transgress the limits set by Allah and dislikes her husband, even if the husband fulfills his marital

obligations. Another opinion deems Khul' as disliked (makruh) if the wife requests it without a specific and known reason, essentially ending the marriage without a clear cause. The default position is that marriage should remain intact. It is not permissible to trivialize the sacred bond of marriage into a passing whim. However, even though it is disliked, Khul' may be allowed to prevent a greater harm, such as enmity and hatred between the spouses, which can have serious consequences for both the spouses and their children (Al-Jaafar, 2006). In reality, there is a general tendency in Islamic jurisprudence towards allowing Khul', as long as divorce is done with the husband's consent. Khul' allows the wife to redeem herself and gain her freedom by offering a monetary compensation to her husband al-Qurtubi, 1985). The importance of khul' lies in the need for it. If a woman hates her husband and fears temptation in her religion (Al-Rabayaa, 2003). Khul' is valid in cases where the woman hates living with her husband; they agree to end the marital life in return for her returning to him what she took from him, which is known as khul' by mutual consent. It is also possible to grant judicial Khul' before consummation, even if the husband refuses, as long as the wife returns everything she has received from her husband. This is because the harm resulting from terminating the marital life before its actual commencement is minimal, especially when there are no children involved. Additionally, terminating the marriage during this period is better than building a troubled family that has been strained from the very beginning.

The Legal position on Khul':

Based on what has been discussed previously, we understand that Khul' is an Islamic system aimed at achieving the principle of justice and creating a state of balance between spouses in granting rights. However, there is an ongoing debate about the scope, boundaries, cases, and types of Khul', which is evident in legislation subject to comparison. Legislation has been divided into those that allow only consensual Khul' and those that allow both consensual and judicial Khul' concurrently.

Laws that Allowed Consensual Khul'

Consensual Khul' is the type of Khul' that occurs through mutual agreement between the spouses, provided that the wife pays a financial settlement or returns what she has received from her husband to him.

The Jordanian Personal Status Law No. 61 of 1976.

The Jordanian Personal Status Law regulates Khul' in articles 102-112. The most important aspect of this law is that it addresses the subject of Khul' and provides detailed provisions for many of its aspects. Notably, for a Khul' to be valid according to this law, the husband must be legally capable of initiating divorce. This implies that the law is primarily concerned with consensual Khul', where both spouses, especially the husband, agree to it. The law stipulates that the husband must be legally capable of initiating divorce and not be coerced, insane, or lacking the capacity to make a decision. As a confirmation of what was mentioned earlier, the Jordanian law stipulates that both parties have the right to retract their consent to Khul' before the other party accepts it. This is another indication that the intention is for Khul' to be consensual, where both parties express their willingness, and the will of each party is considered binding as long as it is known to the other party. Therefore, it addresses consensual Khul', which is not a matter of dispute as long as the spouses have mutually agreed to it and have regulated their family relationship after Khul'. However, this law does not explicitly mention judicial

Khul', which is issued by a judge when requested by the wife, as legislations that explicitly adopt judicial Khul' do. This implies that judicial Khul' is not regulated or allowed under this specific law.

The Ottoman Personal Status Law:

The Ottoman Personal Status Law regulated consensual Khul', particularly in cases of discord between spouses and the fear of transgressing Allah's boundaries. Notably, this law considered the result of Khul' to be a Baena divorce. The law also granted both spouses the right to retract their consent to Khul' before the other spouse agrees to it. This is another indication that the intention is for Khul' to be consensual.

The Iraqi Personal Status Law:

The Iraqi law adopted consensual Khul' by defining it as a process that requires both the occurrence of offer and acceptance before a judge for it to be valid (Al-Sultani, 2012).

The Moroccan Family Code

The Moroccan law has adopted consensual Khul' and regulated its provisions. However, it also addresses cases where the wife insists on Khul' while the husband rejects it. In such cases, the provisions related to marital discord (tafriq) can be applied. The law allows either spouse to file a lawsuit for fear of marital discord between them, and if reconciliation becomes impossible, the judge may grant a separation (tafriq) between them. What is noticeable here is that the Moroccan law allows judicial Khul' after exhausting attempts at reconciliation. This is implicitly understood from the provisions of this law. Additionally, the Moroccan law does not distinguish between Khul' before consummation and Khul' after consummation; both cases are subject to the same provisions.

The Unified Gulf Personal Status Law:

This law regulated consensual Khul', where the wife pays compensation in exchange for the dissolution of the marital bond. However, it did not regulate judicial Khul' or Khul' before consummation. This means that the law does not explicitly mention or implement judicial Khul'.

Laws that Allowed Judicial Khul':

The Temporary Jordanian Personal Status Law No. 36 of 2010.

This law explicitly repealed the Personal Status Law of 1976 (Article 328 of the Jordanian Temporary Personal Status Law No. 36, 2010). The law added Article 102 to the khul' provisions, which defines consensual khul'. Article 114 was also added, which regulated two cases: The wife's request for tafriq before consummation, after returning what the husband has paid and lost. This is after the husband refuses the wife's request for tafriq, and the reconciliation does not work, and the arbitrators from her family and his family fail to reconcile within thirty days, then the court rules to dissolve the contract between the husband and the wife (Article 114 of the Jordanian Temporary Personal Status Law No. 36, 2010). It is evident from the above that Jordanian law allows for judicial Khul' before consummation, even if the husband objects and does not agree to dissolve the marital bond (Jordanian Legal Appeal No. 64056/2006, Case No. 51). Moreover, the Jordanian law does not impose any conditions for the wife to request Khul' or Tafriq, such as the husband's misconduct or her fear of not fulfilling the obligations of the marriage according to Islamic principles. This position can be justified

by the notion that not establishing a family in such circumstances and at this stage is better than living in discord and conflict. Therefore, the legislator has made the conditions for obtaining a Khul' relatively easy. The second case that the Jordanian legislator added is the case in which the wife requests Tafriq after consummation, provided that she demonstrates her aversion to living with her husband and that there is no way for the marital life to continue between them. She fears that she may not be able to fulfill her religious obligations due to this aversion. She redeemed herself by waiving all of her marital rights and returning the dowry to her husband. If the court attempts reconciliation between them and fails, it appoints two arbitrators for reconciliation within a period not exceeding thirty days. If the reconciliation is not achieved, the court rules to dissolve the marriage contract between them. It is evident from the above that Jordanian law also adopts judicial divorce after consummation when the wife declares her aversion to living with her husband and her inability to continue the marital life with him. Even if all attempts at reconciliation fail, despite the husband's insistence on maintaining the marital relationship, the judge rules in favor of the wife and dissolves the marital bond between them.

Khul' in Egyptian Law:

Egyptian law recognizes the right of spouses to resort to consensual Khul'. If no agreement is reached, and the wife declares that she hates living with her husband, fears that she may not fulfil the boundaries set by Allah, and the wife waives all her financial rights and returns the dowry to him, the court will rule for the divorce of the wife from her husband, after attempting to reconcile and appointing arbitrators and giving them a three-month period to reconcile between them. It is worth noting here that Egyptian law does not differentiate between the request for Khul' before or after consummation; it provides a single judgment for both cases. Additionally, Egyptian law distinguishes itself from Jordanian law by extending the period during which arbitrators attempt to reconcile between the spouses, allowing up to three months as the maximum duration. In contrast, Jordanian law sets it at thirty days. We support the approach of Egyptian law because extending the duration may provide an opportunity for emotions to settle, and for careful consideration of the resolution to end the marital life, taking into account the fate of the children after the dissolution of the marital bond.

The Algerian Family Code:

The Algerian legislator clearly and unambiguously adopted judicial khul' when he allowed the wife to divorce her husband without the husband's consent in exchange for money, she pays him. He did not specify any restrictions or conditions for this, except for what can be taken from the context of other cases of dissolving the marital bond, which require an attempt to reconcile between the spouses.

Tunisian Personal Status Code:

The Tunisian law did not regulate the provisions of khul', but it equalized the rights of spouses in the right to request divorce. The wife has the right to request divorce in court, as is the right of the husband to request divorce, provided that the party who requests divorce has to compensate for the financial and in-kind damage that has been suffered by the other party. Thus, the Tunisian law has equalized the rights of spouses in the right to request divorce.

UAE Personal Status Law:

Palestinian Personal Status Draft Law:

Circulation of the application of khul' in Palestine issued by the Chief Judge Bureau:

The need for khul':

Khul' is a right for the wife:

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the spouses to terminate their marital life in a way that guarantees their interests and the interests of their children. This form of khul' is agreed upon in all the comparative laws under study.

The other form of khul' is judicial khul', which is granted by the judge to the wife after the fulfillment of certain conditions and without the consent of the husband. This khul' may be before or after consummation. Khul' before consummation achieves the objectives of khul', as terminating the marital life at the request of the wife at this stage is less harmful, and perhaps more beneficial. Therefore, the circular of the Palestinian Higher Council of Sharia Jurisdiction came in line with this goal, in accordance with the Qur'anic texts and the Sunnah, and taking into account the interests of people. Requiring the husband's consent for khul' in all cases, despite the harm to the wife, is unjust to her. If the husband refuses khul' or divorce, this means that the wife will continue to suffer, and she will be forced to live a marital life that she does not want, love, or even despise. This is the worst kind of harm, and Allah has forbidden us from doing this, as Allah said: "And do not harm them." Closing the door for the wife to escape from a marital bond in which she experiences injustice and discomfort poses significant risks and concerns for both the individual and society. Forcing the wife to provide reasons or justifications in order to obtain khul' from her husband can harm either the husband or the children.

Commentary on Judicial Khul' after Consummation

Consummation between spouses is a real turning point in marital life, where the building of a home, a family, and expenses are established. Therefore, granting the wife the right to terminate the marital life without the consent of the husband needs to be reviewed and scrutinized. It is possible that there is a need to approve judicial Khul' after consummation, which is what both the Jordanian and Egyptian laws have stipulated in explicit terms. However, it is necessary to make the following observations:

1. The requirement of the laws is not merely a statement from the wife expressing her lack of desire to continue the marital life and her fear of not fulfilling the boundaries of Allah. It should not be a passing whim from the wife, but rather the judge should have the authority to assess the reason and justification. If the wife's request is justified, the judge shall grant it; otherwise, he shall reject her plea. The judge's experience enables him to balance between the wife's request to terminate the marital life or the possibility of its continuation. In all cases, the judge shall listen to the husband to assess the seriousness of the reasons.
2. The role of the arbitrators must be activated to give them the authority to discuss the reasons and justifications presented by the wife for seeking Khul'. They shall be allowed to submit recommendations to the judge regarding the acceptance or rejection of these reasons. In addition, it is necessary to extend the period granted to the arbitrators for reconciliation between the spouses to six months as a mandatory step before issuing a divorce (Khul') judgment. This extension will provide sufficient opportunity for reconciliation efforts and emotional calm.
3. Granting the right to the wife shall be an exception, not a rule. Consequently, as long as the wife has other means to dissolve the marital bond, she shall not resort to khul' as a first option. These alternative methods may be less costly for her.
4. It is necessary for khul' to involve a financial settlement paid by the wife. It's worth noting that some argue this condition may deprive impoverished wives of

- the ability to seek khul'. However, we shall not forget that the husband will also be affected by her decision to seek khul' because he is the one who paid the dowry and covered the wedding expenses. He will bear these expenses again if he intends to remarry. In addition, the principle of reciprocity requires this, as the husband is obligated to pay the wife all her financial rights when he unilaterally initiates the divorce of his wife. Therefore, to those who believe that requiring financial compensation for khul' is a waste of the wife's right and prevents her from exercising it, they shall be aware that khul' is not a trump card in the woman's hand that she can use whenever she wants without any consequences.
5. It is important to tell those who fear khul' that wives will not rush to seek khul' and destroy their homes. In Egypt, after three years of the implementation of the khul'a law, the number of registered cases was 5,000, which is a small number compared to the population. In addition, the weak social ties and the low economic level make the wife think twice before asking for khul'. If she asks for it, it will be the least harm to her (The Law of Khul' in Egypt).
 6. We shall not use the misuse of this right by some women as an excuse to prevent it. Khul' remains a merciful option for wives who are suffering from the continuation of marriage and the husband's abuse.
 7. It is better to estimate the value of the amount paid at the time of khul', not at the time of marriage, so that it has a real value, which is the actual losses incurred by the husband.

Results

1. Khul' is an Islamic system that is based on verses from the Quran and the Sunnah of the Prophet Muhammad (peace be upon him). It corresponds to the right of divorce that a husband exercises to terminate the marital bond.
2. There are various narrations regarding the incident in which khul' was based during the time of the Prophet Muhammad (peace be upon him), which allows for discussions about different cases and forms of khul'.
3. It is in the best interest that khul' exists, allowing a wife who is unhappy in her marriage to terminate the marital bond with her husband.
4. Requiring the husband's consent for khul' may often harm the wife.
5. The reason for khul' may not be the severe harm that has befallen the wife, such as absence, abandonment, or non-support. This is because these reasons give the wife the right to terminate the marriage by filing for divorce from the court without the husband's consent and without having to pay him financial compensation.

Recommendations

1. It is necessary to include khul' in the law in all its forms, "consensual and judicial, before or after marriage consummation." This is because khul' is a right for the wife who dislikes to stay with her husband, whether before or after consummation.
2. Khul' shall be restricted to conditions and justifications to prevent khul' from becoming a means of destroying the family rather than protecting the wife.
3. Avoid rushing into issuing a khul' verdict and instead provide sufficient time for both spouses to consider the future of their marital life.

4. Khul' shall have a valid reason. It is not permissible for the marital, family, and social relationship to be terminated by the wife's unilaterally decision and without justification that the judge can consider. The judge shall assess the compelling reason for khul' and the wife's need for it.
5. There is no need to impose specific conditions or restrictions on the judge's approval or rejection of khul'. Instead, it shall be left to the judge's discretion and expertise to determine what is in the best interest of the family.

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