

Khul'(Redemption) in Islamic Law and Its Practice in Pakistani Courts, A Legal Critical Analysis

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Abstract

Khul' is the proposal given to the husband by the wife for divorce. Divorce is the absolute right of the husband and no one other than the husband can use that right. Like divorce consent of the husband is necessary in khul'. In Pakistani courts this right is used by the judge which is against the opinion of majority of Islamic Jurists and also violates the absolute right of husband to pronounce talaq (divorce). Judicial Khul' is exercised in Pakistani courts, according to Article 2(ix) of dissolution of Muslims Marriages Act 1939. Khul' is considered talaq(divorce) and according to majority of Islamic Jurists (Jamhor) the husband has only two more options of divorce for constituting talaq mu'alaz. But in Pakistani courts it is not considered as talaq, which is contrary to the opinion of majority jurists (Jamhor) and there is need for the reformation. In this research detailed discussion is undergone to point out draw back in Article 2(ix) of dissolution Muslims marriages Act 1939 and recommendations are proposed for the amendments of this Act.

Keywords: Khul'(Redemption), Talaq (Divorce), Mubara'at (Mutual Freeing), Faskh-e-Nikah (Dissolution of Marriage), Qazi (Judge), Mahar (Compensation).

1. Introduction

The contract of marriage is intended to secure the interests of this world, including the protection of women and procreation as well as interests of the next world. The objective of the marriage is the creation of a perfect and happy life by the conduct of the spouses and such a life can only be created if there be mutual love and affection and if the limits imposed by God be observed (Nyazee, 2012). If for some reason, however, this does not seem possible, the objective of marriage is considered to have been defeated and it then becomes necessary to open the door of separation for the parties.

Separation in a marriage relationship can be achieved, *inter alia*, through *talaq*, *Khul'*, *Li'an*, and *Faskh*. Islamic law recognizes unilateral and extra-judicial divorce at the initiative of the husband in the form of *talaq*. It also recognizes extra judicial divorce by mutual consent of the spouses in the form of *mubara'at* and another form of separation known as *khul'*(Carroll, 1996). In situations where a woman can no longer remain in the bond of marriage with her husband, the ideal solution would be for the wife to obtain a divorce from the husband. If the husband, determine that the marriage is unsuccessful and there is no hope for reconciliation, he should pronounce one divorce according to the prescribed method in *Shari'ah*. However, in the case where the husband refuses to utter a divorce, wife may persuade her husband to enter into an agreement of *khul'*

Like other agreements and transactions, an agreement for *khul'* will also come into effect by offer and acceptance (Kasani, 1328 h). Allah almighty ordains: "but if you intend to take one wife in place of another, even if you had given the latter a whole treasure for dower, take not the least bit of it back. Would you take it by slander and a manifest wrong? And how could you take it when you have gone into each other, and they have taken from you a solemn covenant?"(Al-Qur'an).

In this Article we will analyze the concept of *khul'* according to our all school of thoughts and the procedure of

courts followed. Another main issue which will be discussed as whether *qazil/court* have authority to announce *khul'* if the husband did not agree to give divorce? Now two issues will arouse from this as if the woman would be permitted to get judicial *khul'* on the ground of disliking then the society and stability in homes will not be administered. On the other hand if she is not permitted then how they will live in a comfortable life. All these aspects will be covered in this research and there will be analyses of these aspects of our Jurists.

2. Literature Review

Khul' is the right of woman, which is constituted with the consent of the husband but in Pakistan courts it is granted by the court without the consent of husband. There are different books and articles written on this issue. In Pakistani courts there are too long debate conducted by the Jurists and Judges on this issue.

Lucy Carroll (1996) elaborate that Islamic law recognizes unilateral, extra-judicial divorce at the initiative of the husband in the form of *talaq*(divorce). It also recognizes extra judicial divorce by mutual consent of the spouses in the form of *mubara'at* and another form of judicial separation is known as *khul'*. He further commented that There are many questions arose here while giving the decision by the courts i.e. whether a divorce on the basis of *Khul'* can be decreed by the court in the face of the husband's opposition and whether Muslim Law recognized incompatibility of temperament as a ground for divorce? According to him the Act of 1939 was not a totally satisfactory answer to the problem of the Muslim women trapped in an unhappy and oppressive matrimonial situation. Women who sought divorce under the statute faced three major difficulties.

Imran Ahsan Khan (2012) gives the literal meaning of *khul'* is removing or taking off, like taking off a glove or shoes. Ibn Human (1999) define *Khul'* as "To remove the union of marriage in exchange for a financial settlement with the word of *Khul'* ". Keith Hodgkinson(1984) utters that *talaq* is the unilateral repudiation of a wife by her husband, while *Faskh-e-Nikah* is the dissolution of marriage by judicial decree. Al-Kasani(1328 h) proclaim that similar to other agreements and transactions, an agreement on *khul'* will also come into effect by offer and acceptance.

Abul Aala Maudodi(1981) elaborates that if the agreement is done by mutual consent then the compensation decided will be considered. But if the case is referred to court, then the court will investigate the reason behind the matter. If the court came to the conclusion that there is no way out expect the dissolution then the court will decide the compensation and the husband will pronounce divorce. He declares that the word "if you fear" addressed to a judge, or the head of the State. According to him *khul'* is synonymous with one irrevocable divorce, that is, after it the husband does not retain the right to turn his wife during the waiting period. But if a woman enters into second marriage with him, she can do so, for this is not final divorce, which entails the condition of *tahlil*(dissolution).

Asif A.A.Fyzee (1999) differentiate *khul'* from *mubara'at*. In the case of *khul'* the wife begs to be released and the husband agrees for a certain consideration which is usually a part or the whole of *maher*(compensation). While in *mubara'at* apparently both are happy at the prospect of being rid of each other

Muhammad Taqi Usmani (2001) clarify that *Khul'* is like *talaq* and it will be lawful on the conditions if it is fulfilled like *talaq* (divorce). The conditions and requirement of *khul'* is like that of *talaq*(divorce). He further clarify the interpretation of *Imam Shafi* in his book as *khul'* is *talaq*(divorce) and in another place he views that *khul'* is *faskh-e-Nikah*. *Imam Shafi* in his last saying declares that *khul'* is *talaq*(divorce). Habib urahman (2001) is of the opinion that *khul'* is *talaq*. *Umer* (Allah be pleased with him) and *Usman* (Allah be pleased with him) are also on the same opinion. If the spouses remarry after conducting *khul'* the husband will have two chance of divorce. After *khul'* if the husband pronounces two *talaq* (divorce) it will be considered *Talaq-e-Mualaz*.

K.N.Ahmad (1972) states that it is not essential for dissolving the marriage under *khul'* that the husband should be at fault. The case of *Jamila* fully establishes this view. The wife may not be able to live happily in such a case. Does Islam force her to live a miserable life and provide no relief for her? Can it be said that the unhappiness of the wife is no concern with Islamic law and it would rather let the wife adopt an undesirable code of conduct than to dissolve the marriage. The Quranic duty is to keep them with kindness requires that if mutual love cannot work, husband should release the wife from the bond of marriage.

2.1 Hypotheses

We will cover the following main issues in this Article:

- Whether the court can announce divorce on behalf of husband in the face of husband opposition?
- Whether the *khul'* is considered as *faskh-e-nikah* (dissolution of marriage) or *talaq* (divorce)?

- Whether incompatibility of temperament constitutes ground for *khul'*?
- Whether the courts of Pakistan are following Islamic norms while conducting dissolution of Marriage?

3. Research Method

In this article we have followed qualitative method. We have collected different material regarding this issue. There are a lot of books written by Islamic jurists regarding the procedure of *khul'* and then we have discussed these books in context of its implication in Pakistani courts. First of all we have discussed the legality of *khul'* from the primary sources of Islamic Law *Qur'an* and *Sunnah*. After that conditions for the *khul'* is discussed and it is stated that whether the female can dissolve her marriage with the plea that her husband is ugly. In Pakistani courts there is procedure that dissolution of marriage is conducted without the consent of husband. We have consulted the books of Islamic scholars to conclude the matter. There are different articles written which is consulted about this issue.

3.1 Scope of the Research

Judicial *khul'* is an important issue faced to the courts of Pakistan. Pakistan following as a *Hanafi* school has restriction in judicial *khul'*. These restrictions are given in the Dissolution of Marriage Act 1939 which does not constitute all the grounds faced by the wife while getting her *khul'* (divorce). Human rights defenders have also raised an issue that the man have the authority to announce divorce while woman has no authority to get rid from the contract of Marriage. Another main issue which will be discussed in this research as whether Qazi/court have authority to announce *khul'* if the husband did not agree to give divorce? Abu-Hanifa is of the opinion that court have restricted to some extent as given in the dissolution of marriage act. As disliking of the wife towards her husband does not constitute dissolution of marriage. The court has authority to announce the dissolution of marriage if her husband did not want to do so (Maudodi, 2010).

Now two issues will arouse from this as if the woman would be permitted to get judicial *khul'* on the ground of disliking then the society and stability in homes will not be administered. On the other hand if she is not permitted then how they will live in a comfortable life. All these aspects will be covered in this research.

4. Critical Analyses

Family is the oldest and most resilient institution of society. From the beginning of human life, people have grouped themselves in the families to find emotional, physical and communal support. Marriage is the basic tool to form family. The contract of marriage is intended to secure the protection of women and family. A number of interests pertaining to this world and the next are associated with this contract. It is a means for the increase in the human population (Nyazee, 2012). Basic purpose of marriage is that both husband and wife live with love and affection, so that rights and duties prescribed by Allah should fulfilled. In Islamic Family Law this relation of Love between both is to be strengthened (Maudodi, 2010).

When marital relations are poisoned to a degree which makes a peaceful home life impossible and both fear that they may not be able to keep within the limits prescribed by Allah. In this case permission has been given to both male and female to release from the bond of marriage. This is the right given by Allah al-mighty to the spouses. If this right is exercised by the husband it is called *talaq* and in case it is claimed by the wife it is called *khul'*. *Khul'* is a kind of facility provided to the wife in securing divorce from her husband by returning a part or full amount of the *mahar* (Siddiqi, 1985). The lexical definition of *khul'* is "to remove the union of marriage in exchange for a financial settlement with the word of *khul'*" (Humam, 1999). Similar to other agreements and transactions, an agreement on *khul'* will also come into effect by offer and acceptance (Kasani, 1328 h). The right of *khul'* is provided to the wife by Allah Al-mighty through Qur'an and different *Ahadees* (Saying of Prophet), in which she can demand the divorce from the husband against compensation which is dower according to Islamic jurists. If the desire to separate emanates from the wife it is called *khul'*, if the divorce is affected by mutual aversion it is known as *mubara'at* and when commenced by judicial process is termed *fasakh* (judicial rescission)

Judicial *khul'* is exercised in Pakistani courts, which means that if a wife does not want to live with her husband she can file an application for *khul'* in court of law and the Judge will ask the husband to give her divorce against compensation. If the husband refuses then the court will give the divorce after six months on behalf of husband. Here some questions arises that (i) whether a divorce on the basis of *khul'* can be decreed by the court in the face of husband opposition (ii) whether the *khul'* is considered as *faskh-e-nikah* (dissolution of marriage) or *talaq* (divorce) (iii) whether

incompatibility of temperament constitutes ground for divorce under Islamic law. We will discuss these issues in detail.

4.1 Whether the court can announce divorce on behalf of husband in the face of husband opposition?

Verse of Qur'an about *khul'* states that "And it is lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits Of Allah, in that case it is no sin for either of them if the women ransom herself" (Al- Quran).

Islamic Jurists have explained this verse differently. It is an agreement by the wife to pay compensation for terminating the contract of marriage. If the agreement is done by mutual consent then the compensation decided will be considered. But if the case is referred to court, then the court will investigate the reason behind the matter. If the court came to the conclusion that there is no way out expect the dissolution then the court will decide the compensation and the husband will pronounce divorce (Maudodi, 1981). *J. A Rahman* states that the words "if you fear" being addressed to the state, they can only mean that the state authorities is entitled to pass an order even though the husband does not agree. Islam does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation. If the dissolution is due to some default on the part of the husband, there is no need of any restitution. If the husband is not in any way at fault, there has to be restoration of property received by the wife and ordinarily it will be of the whole of the property but the Judge may take into consideration reciprocal benefits received by the husband and continuous living together also may be a benefit received (Serajuddin, 2011).

The verse is classified in three parts as 'if they fear that the limits prescribed by Allah will not be observed' 'it is lawful if you take the compensation which you have paid' 'there is no sin on you'. All these three parts of verse shows that there will be mutual understanding among the spouses for the conclusion of *Khul'*. And *khul'* is not announced without the consent of the male. If the case comes to the court then the Judge can give his suggestion for the *khul'* but the *khul'* will be announce on mutual understanding. At the time of Prophet (peace be on him) the People used to come to *Hakim(ulol-ul-amar)* for consultation of their problems and not only for decision of their matter. So in this verse it is stated that if someone consult you on any matter, you can give your opinion for *khul'* but cannot decide the *khul'* on the husband opposition (Usmani, 2001).

At the time of Prophet (Allah be pleased with him) famous leading case regarding *khul'* was that of *Thabit Ibn Qais*. The fact of the case is partly discussed in different *Ahadees*. *Jamila bint Ubi bin salool* hated the physical ugliness of her husband. She presented her case to the Messenger of Allah (peace and blessing be upon him) in the following words: "O Messenger of Allah! Nothing can ever unite his head with mine. When I raised my veil I saw him coming in the company of a few men and he was the darkest, shortest and ugliest of them. by God I do not dislike him because of any defect in his faith or morality .I just hate his ugly looks. By God! If I did not fear Allah, I would have spat on his face when he came near me". It is interpreted as 'the messenger of Allah (peace and blessing of Allah be upon him) held that the complaint of the women that her husband was ugly and loathsome was adequate ground for granting *khul'*. When it is manifest that a man hates his wife or the wife hate her husband, Divorce and *khul'* are perfectly justified and valid measures, for the consequences of religion, morality and civilization of keeping a man and women forcibly yoked together are for worse than the consequences of Divorce and *Khul'*. The court has authority to pronounce *talaq* (divorce) on behalf of the husband, if husband refuse to give *talaq* (divorce). As the women right of *khul'* is parallel to man's right of divorce (Maudodi, 2010).

Another interpretation of this Hadith is given as 'prophet (peace be on him) said to the *Thabit* to get compensation and pronounce *talaq*(divorce). *Thabit* agreed and replied that he will enunciate. This shows that the *Thabit* agreed and the *khul'* can be conducted if the husband has no objection. All the jurists are concluded that this was not the order of the prophet but was suggestion for the *Thabit* and he validated his proposal (Usmani, 2001). If the *qazi* has authority to pronounce *khul'* then prophet will not consult *Thabit* on this matter but will issue order of *khul'*. In *li'an* the *qazi* has authority to separate the spouses without their consultation. If prophet have ordered of *khul'* without any consultation with *Thabit*, it will be considered that *qazi* has authority like that of *li'an* to order *khul'* (Jasas, 1347 h). *S.A Rahman* in case of *Syeeda khnam* interpret *Hadith* of *Jamila* as 'after the wife had spoken her mind, the husband put forward a claim for return of the garden which he had given her, it should be noticed that he did not protest against his wife behavior, and indeed, by asking for consideration, he must be deemed to have expressed willingness that the marriage bond should be broken in return for an advantage to be received by him. It only remained for the holy prophet to discover whether there was agreement on the part of the wife to the proposition offered by the husband, and the tradition makes it clear that the Holy Prophet did so and finding that there was a consensus between the parties, he gave a direction which stands as

guidance for all other Muslim married couple for all time(Carroll, 1996). Thus from this Hadith it is shown that the *khul'* is matter of husband and wife and it is conducted on mutual understanding.

At the time of *Umar* (Allah be pleased with him) a case of women was brought. Woman wanted to take *khul'* from his husband as she was not pleased with him. *Umar* (Allah be pleased with him) advised the women to be patient and suggested that she should continue to live with her husband. The women refused, whereupon he shut her up in a room full of garbage. He released her from this prison after three days and asked; How was these days?" She replied, "By God, these were the only nights that I passed in peace. "On hearing this *Umar* (Allah be pleased with him) ordered her husband: "Give her *khul'*, even of you obtain only her ear-rings" The order of *Hazart Umer* shows that the *qazi* has authority to announce *khul'* on behalf of husband. (Maudodi, 2010). *Ibn Rushd* writes that divorce is the right of man and the *khul'* is the right of female, if husband dislike his wife, he pronounce *talaq*(divorce) and if the wife dislike husband, she has the right of *khul'*(Usmani, 2001).

Islamic Jurists(*fuqaha*) have different views about the consent of husband in *khul'*. *Imam Abu Hanifa* says that consent of the husband is necessary in *khul'*. *Sarakhsi* elaborate *khul'* in *Mabsut* , 'it is permissible in *khul'* to consult the court and also permissible to terminate *Nikah* by mutual consent in home. In *khul'* it is necessary that the two parties will agree on separation. Requirement for *khul'* is that the husband will announce *talaq* (divorce) and wife will give compensation. *Imam Malik* is of the opinion that no arbitrator are required and nor (further) permission of spouses. The *qazi* (judge) have the authority to pronounce *khul'* on behalf of husband. According to *Imam Malik* when there is a dispute between the parties to a marriage, the judge should appoint two *Hakims* or arbitrators from the family of each, as is laid down in the Holy Qur'an, and if these *Hakims* fail to bring about a compromise, the Judge has the power to dissolve the marriage on such terms as he considers just and fair." *Imam shafi* is of the opinion about the consent of the husband is that *khul'* is like *talaq* (divorce) and no any other person (without husband) has right to pronounce *talaq* (Judge). The right of *talaq* cannot be used by other person other than his husband. The *qazi* cannot divorce his wife without his consent. *Imam Shafi* writes that *khul'* is *talaq* and no any other person can divorce her. He further mentions in his book that her father, *Hakim* and *qazi* cannot divorce her on behalf of the husband. *Imam Ahmad Bin Hanbal* also support the views of *Imam Shafi* that the *khul'* is a contract like *talaq* and there is no need of *qazi* to interfere. The absolute right of *khul'* is with the spouses and the *qazi* cannot dissociate the husband and wife without the consent of husband(Usmani, 2001). *Alama Maufiquddin Ibn Qadama Hanbali*(R.A) writes *khul'* is dissolution of contract with compensation; therefore there is no need of *qazi*. It is like *talaq* and there is no need of *qazi* in *talaq*. Muhammad (peace be on him) called the *khul'* as *fidya*, so it is cleared that there is compensation in *khul'* and the consensus of both the spouses is necessary. If a person want to do contract it is necessary that the other party is agreed upon the terms of the contract because he has to pay in response of that contract. Majority of jurists consider the permission of husband necessary for *khul'*. *Imam Malik* has another saying about *khul'* that the wife will be forced back to go with her husband if the husband does not want to be separated through *khul'*(Waleed, 1324).

4.2 Whether the *khul'* is considered as *faskh-e-nikah* (dissolution of marriage) or *talaq* (divorce)?

Talaq (divorce) is the unilateral repudiation of a wife by her husband, while *Faskh-e-Nikah* is the dissolution of marriage by judicial degree(Hodkinson, 1984). It refers to the power of *qazi* (judge) to annul a marriage on the application of the wife (Fyzee, 1997). It is a great topic of debate that *khul'* is *talaq* or *faskh-e-nikah*. Different Jurists have diverse views about *khul'*, as it will be considered *talaq* or *faskh-e-nikah*. It is necessary to distinguish that if *khul'* comes under the definition of *talaq*(divorce) then the husband has two more options to utilize the power of *talaq*(divorce) while if it is considered as *faskh-e-nikah* then the husband can exercise his three options of *talaq*(divorce).

Imam Abu Hanifa is of the opinion that *khul'* is *talaq*. *Umer* (Allah be pleased with him) and *Usman* (Allah be pleased with him) are also on the same opinion. If the spouses remarry after conducting *khul'* the Husband will have two chance of divorce. After *khul'* if the husband pronounces two *talaq* it will be considered *Talaq-e-Mualaz* (Habib urahman, 2004). In *Fitwa Alamgiriya* it is stated that *khul'* is like *talaq* and it will be lawful on the conditions if it is fulfilled like *talaq*. The conditions and requirement of *khul'* is like that of *talaq*. *Sarakhsi* writes that *khul'* can be conducted by the *qazi*(judge) and also permissible without *qazi* (judge), basic requirement of *Khul'* is consent of both parties and compensation from the wife. The husband has the power to pronounce *talaq*. *Khul'* is considered as *Talaq-e-Bayin* and the wife will be bound to give compensation (Tanzil Urahman, 1984). It shows that *khul'* is like *talaq* (divorce). It cannot be conducted like *Faskh-e-Nikah* (Sarakhsi, 1324 H)

Imam Shafi interprets that *khul'* is *talaq* and in another place he views that *khul'* is *Faskh-e-Nikah*. In his last saying he says that *khul'* is *talaq* (Usmani, 2001). *Tavos* and *Dare Qutni* are also on the opinion of *Imam Shafi*. *Abdul*

Razaq says that if a person pronounces two *talaq* and after that dissolve his marriage by *khul'*, that person can remarry her without *halala*. According to their opinion *khul'* is not like *talaq* and the male has the third option of *talaq*. *Ibn Qayim* writes that *Usman* and *Ibn-e-Umar* are on the finding that *khul'* is not in the category of *talaq* but it is *faskh*.

Imam Ahmad Bin Hanbal says that *khul'* is not considered as *talaq* but it comes in the category of *Faskh-e-Nikah*. So from concluding *khul'* the man's right of three *talaq* (divorce) will not be affected. (Tanzil Urahman, 1984). It is concluded that legally *khul'* falls in the category of *talaq-e-bayin*. In *talq-e-rajghi* the wife will be in the bond of *nikah* up to the *iddat* and in *khul'* there is complete separation of spouses, the husband compensation from the wife. The complete separation will be considered if there is *Talaq-e-Bayin*. The wife give compensation to rid from the complete matrimonial relation and it will be possible if she considers that there is no chance of return from the Husband side. The most appropriate example is that of *Jamila* as the Prophet said '*khal sabeelaha*' to leave her path, it denotes *talaq-e-bayin*.

4.3 Whether incompatibility of temperament constitutes ground for *khul'*?

This is important issue that if wife dislike her husband, she can demand for judicial *khul'*? There are different opinions of jurists about incompatibility of temperament as valid ground for demanding and valid measures, for the consequences to religion, morality and civilization of keeping a man and women forcibly yoked together are far worse than the consequences of *khul'*. In case of *Jamila*, she hated her husband *Thabit* with intense hate. She came to prophet and said "effect separation between me and him as I hate him I saw him, from the side of my veil, coming amongst people. He was of the shortest stature, the ugliest in face and blackest in complexion. I do not prefer infidelity after accepting Islam". *Thabit* addressed the Prophet as "O prophet of Allah, order that she should return the garden I gave her. *Jamila* returned the garden to *Thabit*. It was contended on behalf of the women that if the prophet of Islam, functioning in a judicial capacity, had dissolved a marriage simply on the wife's plea that she hated her husband for no other reason than his physical unattractiveness, then a marriage could be dissolved by the *qazi* (judge) the instance of the wife (Carroll, 1996).

Abu Hanifa and other Islamic jurists says that the women cannot take *khul'* on the ground that her husband is ugly. If Islam allow this then every women will seek divorce through *khul'*. In case of *Syeeda Khanam* (1952), Lahore High court rejected the notion of *Jamila's* divorce that she had been granted by the Prophet in a judicial capacity. To be sure, *Muhammad* (peace be on him) had ordered *Thabit* to divorce his wife, and given the reverence with which the Prophet of Islam was held by his contemporaries, it would have be impossible for *Thabit* to have disobeyed such an order. Nevertheless, the important point was that even Prophet did not take it upon himself to dissolve the marriage; he had only ordered the husband to do so. The prophet's role in this affair was not that of Judge at all, the court concluded, but of law giver and the law which was established and exemplified by the episode was the law of *khul'* (Carroll. 1996).

5. Summary

The position of women at the time of advent of Islam was worst. Muhammad (peace be on him) introduced significant reforms to improve the status of women. He gave power of divorce to the husband and at the same time also give the right of *khul'* to the wife. Qur'an mention authority of *khul'* as "If is not lawful for you to take from them anything of what you have given them, unless both fear that they cannot keep within God's bounds. So if you fear that you cannot keep within God's bound, there is no crime in you both about what she ransoms herself with".

Khul' in its literal sense means "to draw off or dig up", and in law it signifies an agreement between the husband and wife, with a view to dissolve the contract of marriage in lieu of compensation paid by the wife to her husband. All jurists are of the opinion that *khul'* is permissible in Islam. *Imam Abu Hanifa* declares *khul'* on the condition when there is variance between the spouses at the extent that the limits prescribed by Allah are not followed. *Khul'* is permissible on that situation. *Ibn Hazam* says that if there is difference created among each other, they should go for reconciliation. If the matter is not been resolved then they should go to court to adjudicate the matter.

There is difference between dissolution of Marriage by mutual consent and dissolution by court. If the desire to separate emanates from the wife it is called *khul'*. But if the divorce is affected by mutual aversion it is known as *mubara'at*. At the time of Prophet (peace be on him) famous leading case regarding *khul'* was that of *Thabit Ibn Qais*. His wives came to Prophet (peace be on him) and complained about his Ugliness. And Prophet (peace be on him) declared *khul'* for them. A case of women was brought before *Umar* (Allah be pleased with him). Woman wanted to take *khul'* from his husband as she was not pleased with him. *Umar* (Allah be pleased with him) ordered her husband: "Give her *khul'*, even of you obtain only her ear-rings. Another case was brought before *Usman* (Allah is pleased with him) who ordered the husband: 'take even the tiniest hair of her head and give her *khul'*'.

Judicial *khul'* is exercised in Pakistani courts, which means that if a wife does not want to live with her husband she can file an application for *khul'* in court of law and the Judge will ask the husband to give her divorce against compensation. There is time limit of six months for the husband to clarify his stance. If the husband refuses or fails to come in front of judge then the judge pronounce divorce after six months on the behalf of husband. here some questions arises that whether the Qazi/judge has the authority to enunciate divorce on behalf of husband?

There is different opinion of Jurists about the consent of the husband. *Imam Abu Hanifa* says 'wife cannot get her *khul'* without Consent of her Husband'. *Imam Malik* is of the view that *qazi* have the authority to pronounce *khul'* on behalf of husband. *Imam shafi* is of the opinion about the consent of the husband is that *khul'* is like *talaq* and no any other person(without husband) has right to pronounce *talaq*. *Imam Ahmad Bin Hanbal* also support the views of *Shafi* (Allah be pleased with him) that the *khul'* is a contract like *talaq* and there is no need of *qazi* to interfere. It shows that all Jurists are divided on the issue of consent of husband. In my view *Imam Abu Hanifa* gives detailed proof that *khul'* is like *talaq* and the right of *talaq* is only with the husband.

Another issue is that *Khul'* is whether *Talaq* or *Faskh-e-Nikah*. *Imam Abu Hanifa* is of the opinion that *khul'* is *talaq*. *Imam Shafi* interprets that *Khul'* is *Faskh-e-Nikah*. *Imam Ahmad Bin Hanbal* says that *khul'* is not considered as *talaq* but it comes in the category of *Faskh-e-Nikah*. So from concluding *khul'* the man's right of three *talaq* will not be affected. It is concluded that legally *khul'* falls in the category of *talaq-e-bayin*. In *talq-e-rajghi* the wife will be in the bond of *nikah* up to the *iddat* and in *khul'* there is complete separation of spouses, the husband compensation from the wife. The complete separation will be considered if there is *Talaq-e-Bayin*. The wife give compensation to rid from the complete matrimonial relation and it will be possible if she considers that there is no chance of return from the Husband side. The most appropriate example is that of *Jamila* as the Prophet said '*khal sabeelaha*' to leave her path, it denotes *talaq-e-bayin*.

This discussion elaborate that *khul'* is *talaq* and the husband has only two more options of divorce. But in Pakistani courts it is not considered as *talaq*, which is contrary to the opinion of majority jurists (*Jamhor*) and there is need for the reformation of these laws.

6. Concluding Remarks

In forgoing discussion an attempt was made to highlight the already existing work in the injunction of Islam. Although this work will bring fruits only when steps are taken to raise awareness about the subject in society while utilizing the religious text for the purpose to complement other ongoing efforts. The task of endowing men and women with their due rights is the task of society as a whole; nevertheless, continuous efforts are needed at different level by all institutions. It is recommended that the contract of marriage is intended to secure the protection of women and family. A number of interests pertaining to this world and the next are associated with this contract. To fulfill this contract at every level man and women should understand the rights and duties bestowed upon them according to the teaching of Islam. Everyone should respect others rights so that the families are strengthen and more.

Basic purpose of law is to secure the rights of every individual of society. There are different legislations made to protect the rights of women. *Khul'* is the right of women like that of men right of *talaq* (divorce). In Pakistani law it is dealt in dissolution of Muslim Marriages Act 1939 under sub section 2(ix), which states that any other ground which is recognized as valid for the dissolution of marriage under Muslim Law. There is no specific section for *khul'*. Therefore a separate section should be added for *khul'* in Dissolution of Muslim Marriages Act 1939 to safe the women right of *talaq*.

Khul' is the proposal given to the husband by the wife for divorce. Divorce is the absolute right of the husband and no one other than the husband can use that right. Like divorce consent of the husband is necessary in *khul'*. In *Pakistani courts* this right is used by the judge which is against the opinion of majority of Islamic Jurists. There is need to review this law of dissolution of marriages. This law violates the absolute right of husband to pronounce *talaq*.

Laws are made to secure the interest of man and women and amended with the intension so that others rights are not affected. *Khul'* is considered *talaq* (divorce) and according to majority of Islamic Jurists (*Jamhor*) the husband has only two more options of divorce for constituting *talaq mu'alaz*. But in Pakistani courts it is not considered as *talaq* (divorce), which is contrary to the opinion of majority jurists (*Jamhor*) and there is need for the reformation of these laws.

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