



Research Article

Khul'i As Mechanism To Preventing Murder Of Husband In Nigeria

Abubakar Ibrahim Adamu¹, Hamidu Ardo²

1. Federal University, Gashua, Nigeria; abubakardmg@ysu.edu.ng
2. Yobe State University, Damaturu, Nigeria; hamiduardo76@gmail.com

Copyright © 2023 by Authors, Published by LECTURES: Journal of Islamic and Education Studies. This is an open access article under the CC BY License <https://creativecommons.org/licenses/by/4.0/>

Received : September 16, 2023

Revised : October 25, 2023

Accepted : November 19, 2023

Available online : December 21, 2023

How to Cite: Abubakar Ibrahim Adamu, & Hamidu Ardo. (2023). Khul'i As Mechanism To Preventing Murder Of Husband In Nigeria. *LECTURES: Journal of Islamic and Education Studies*, 2(4), 193-201. <https://doi.org/10.58355/lectures.v2i4.66>

Corresponding Author, Email: abubakardmg@ysu.edu.ng (Abubakar Ibrahim Adamu)

Abstract. Khul'i (right of redemption) is a right accorded to a wife to get a divorce from her husband from the bond of marriage either by initiating a divorce proceeding in a court or by a mutual consent of both parties and their representatives. Khul' is a form of divorce in which the wife releases herself (from the marriage tie) by paying consideration to the husband. If the husband does not consent to the divorce, a woman often goes to a mediating third party, such as an imam. Only a person versed in Islamic law i.e. a qadi, or Islamic Sharia court judge, can grant the khul' without the husband's consent. When petition for khul' is taken to the Sharia courts, a judge is permitted to substitute the husband and annul the marriage. This process of judicial annulment is also commonly referred to as faskh, which typically occurs when the husband refuses to consent to the wife's decision to divorce. This paper is aimed at providing a clear and true picture of "Khul'" based on the Qur'an and Sunnah of the Prophet Muhammad (SAW) instead of murdering the husband. Analytical research methodology has been used in preparing this paper. Data are drawn from books, articles, scholarly journals etc.

Keywords: Khul'i, Mechanism, Preventing Murder, Husband.

INTRODUCTION

Khul'i (right of redemption) is a right accorded to a wife to get a divorce from her husband from the bond of marriage either by initiating a divorce proceeding in a court or by a mutual consent of both parties and their representatives. There are divergent views among the Islamic Scholars regarding the quantum or amount to pay by a wife to her husband either in kind or cash.

The Islamic jurists give different definitions of Khul'i. Imam Malik is of the view that Khul'i is a divorce by given something in return. Similarly, Imam Shafi'i defines it as a separation sought with something in return and with the pronouncement of the word Khul'i or divorce. While Imam Hannafi defines Khul'i as the termination of the contractual relationship between the spouses with the utterance of the word Khul'i or something similar to it. Imam Hanbal is of the view that, Khul'i is a separation of the husband in lieu of some consideration realized by him.¹

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 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 is mutual love and affection and if the limits imposed by God were observed. 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.

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 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'.

2. Concept of Khul' in Islam

Khul'i is derived from the Arabic word Khala'a al Thaub meaning releasing or removing a cloth from the body, due to the fact a woman is regarded as a cloth or dress to a man as stated in the holy Qur'an.² The Holy Qur'an provides that:

هُنَّ لِبَاسٌ لَّكُمْ وَأَنْتُمْ لِبَاسٌ لَّهُنَّ ۚ

"They are your dress and you are their dress".³

¹ Ibrahim, A. (1972). Islamic Law in Malaya. Singapore: Malaysian Sociological Research Institute Ltd, p.220

² Doi, A.R.I. (1997). Sharia the Islamic Law. London: Ta Ha Publishers, p.192.

³ Qur'an 2:187

Literally, the term khula'a means 'extracting oneself. According to 'Alauddin Mas'ud al-Kasani, '[t]he khul' is lexically, 'al-naz' and 'al-naz' is to pull out/extract something from something.' Thus, 'khala'ha means that he has removed her from his marriage.' Imran Ahsan Khan gives the literal meaning of khul' is removing or taking off, like taking off a glove or shoes.

In the technical sense, it is used for marital 'extraction', and is the act of accepting compensation from the wife in exchange for her release from the marital tie. Ibn Hajar defines it as 'separation of the husband from his wife for money consideration to be given to the husband. According to Ibn Rushd, 'the terms khul' refer to a transaction in which wife pays compensation for obtaining her divorce.⁴ Ibn Human define Khul' as "ending or terminating the union of marriage in exchange for a financial settlement by the wife with the word of Khul'".

Khul'I is a procedure through which a woman can divorce her husband in Islam by returning the dower (Mahr) or something else that she received from her husband, as agreed by the spouses or Qadi's (court) decree.⁵ Based on traditional Fiqh, and referenced in the Qur'an and Hadith, Khul'I allows a woman to initiate a divorce.

Abul Aala Maududi elaborates that if the agreement is done by mutual consent then the compensation. 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).

Khul'i refers to circumstances where a wife initiates the divorce proceeding and it is in form of a recompense given to a husband by his wife who requests for separation or divorce.⁶ As soon as the husband accepts to divorce, his wife will return some money or dowry, the divorce is known as Talaq. Divorce by Khul'i is made by means of proper words spoken or written by the couples or their representatives on the understanding that the wife offers a compensation to the husband in order to release her from the marital rights.⁷ That is, it means compromise by a husband his marital rights over his wife for an exchange from her a compensation either in kind or cash to release her from the bond of marriage.⁸

⁴ Umar Sulaiman Abbo Jimeta et al. (2017). Khul'i (Right of Redemption) under Sharia Courts Rules

of Bauchi State, Nigeria, 2013: Issues and Challenges. Hasanuddin Law Review 4(1): 30-40

⁵ Nasir, J. J. (2009). The Status of women Under Islamic Law and Modern Islamic Legislation. Brill. Pp. 129

⁶ Ciroma, A. (2009). Al-Khul': The Woman's Choice. Available online at <http://al-amin-ciroma.blogspot.my/2009/10/al-khul-womans-choice.html> Retrieved 10th October, 2020

⁷ Umar Sulaiman Abbo Jimeta et al. (2017). Khul'i (Right of Redemption) under Sharia Courts Rules

⁸ Ajijola, A.A.D. (1989). Introduction to Islamic Law. New Delhi: International Islamic Publishers, p. 171

In the wordings of Abdu, the unwillingness of a wife to perform or fulfill her conjugal duties, wishes to be divorced from the bond of marriage by her husband, she can do so by forfeiting her dowry if unpaid or recompense her husband with the dowry or property if the dowry was paid and such is called Khul'i.⁹

In a nut shell, Khul'i means a separation of the couples from the bond of marriage upon the payment of money or refund either in kind or cash by the wife which may be equivalent to the dowry or more or lesser than the dowry.

Khul' in the Qur'an

There are many Qur'anic verses which explains more about Khul' in Islam, Allah said in the Qur'an:

وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ (229)

"And it is not lawful for you (men) to take back (from your wives) any of your Mahr (dowry given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah. Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul'i (divorce) Q2:229

While discussing khul', fuqaha' and commentators, which states: Qurtubi mentions that according to 'Atta b. Abi Rabah, 'Khul' and taking (compensation for the husband) become legal when the woman says to her husband: I hate you and do not like you or something similar.'

Muhammad Abu Zahra (d. 1974) argues that the situation in which both the partners cannot keep within the bounds set by God, arises in two ways: first, if the woman is nashizah (violates her marital duties), disobedient, or coerced, such as the wife of Thabit b. Qays b. Shamas Al-Ansari (d. 11/632); second, when the man has a problem such that marital life with him is not possible anymore.¹⁹

Qurtubi argues that 'the majority of jurists are of the opinion that the addressees in the words of the Exalted 'wa in khiyum' (And if you fear) are the hukkam (state authorities). And the statement [of the Exalted] 'if they both want to set things right' [4:35] means the arbitrators according to [Abdullah] Ibn 'Abbas, Mujahid and others; that is, if the arbitrators wanted reconciliation, Allah will bring about reconciliation between the spouses.'

Khul' in ḥadīth

Many collections of ḥadīth have referred to the case of Ḥabība bint Sahl-wife of Thābit. The incident is described in four of the six authoritative compendia of the Prophetic reports. According to the report of Al-Bukhārī in his al-jāmi' al-ṣaḥīḥ (The Authentic Collection) section on khul':

⁹ Abdu M. O. A. (1978). Islam as a Religion (Faith and Duties). Nigeria: Islamic Publications Bureau, Lagos, p. 43

*It is reported from Ibn 'Abbas that the wife of Thābit b. Qays came to the Prophet (peace be upon him), and said: "I see no fault with Thābit's conduct or his religious demeanour, but I dislike ingratitude in Islam." The Prophet (peace be upon him) said: "Will you return his garden to him?" "Yes", she answered. The messenger of Allah said: (to Thābit): "Accept (iqbil) your garden and divorce her [ṭalliḡha (once)]."*¹⁰

It is not a contested fact that during the lifetime of the Holy Prophet Muhammad (S.A.W), He ordered a wife to pay her husband what the husband gave her as a dowry. This is reported in the following hadith:

*The wife of Thaabit ibn Qays ibn Shammaas (may Allah be pleased with him) came to the Prophet (SAW) and said, "O Messenger of Allah, I do not find any fault with Thaabit ibn Qays in his character or his religious commitment, but I do not want to commit any act of kufr after becoming a Muslim." The Prophet (peace and blessings of Allaah be upon him) said to her, "Will you give back his garden?" Because he had given her a garden as her mahr. She said, "Yes." The Prophet (peace and blessings of Allaah be upon him) said to Thaabit: "Take back your garden, and divorce her."*¹¹

Compensation

Most Islamic schools of law agree that the husband is not entitled to more than the initial amount of dower (Mahr) given to the wife. However, some interpretations suggest that the husband is entitled a greater compensation, while other interpretations suggest that the husband is not entitled to any compensation.¹² According to some interpretations, Khul' demands that the dower (mahr) already paid be returned along with any wedding gifts. Many imams interpret this law only to apply if there is no fault on the husband. Men sometimes prefer and pressure their wives to demand a khul' instead of the husband pronouncing a talaq so that the husband can demand the return of the mahr. Another scenario that rarely arises in khul' is that the husband will request an unreasonable financial compensation. This can effectively constrain her from seeking khul' because they have no means to support themselves financially with the loss of their mahr and other wedding "gifts."¹³

Consent of the husband

Concerning the consent of the husband, most schools agree that husband's agreement is a basic procedure and essential to the granting of divorce, unless extenuating circumstances apply. While other interpretations suggest that the husband does not have to consent if the grounds of divorce are valid, such as cruelty (darar) or impotence (if undisclosed to bride at time of marriage). In addition, if a husband cannot provide his wife with basic marital obligations, such as shelter or maintenance, a woman may be granted khul'.¹⁴ If the woman is underage, then

¹⁰ Sahih al-Bukhari: Chapter of Divorce

¹¹ Narrated by al-Bukhari, 5273

¹² Asghar Ali. (1992). The Rights of Women in Islam. St. Martin's Press: New York. Pp 137-138

¹³ Macfarlane, J. (2012). Islamic Divorce in North America: A Shari'a Path in a Secular Society. Oxford University Press. Pp 195-196

¹⁴ Asghar Ali. (1992). The Rights of Women in Islam. St. Martin's Press: New York. Pp 137-138

consent must be given from the guardian of her property.¹⁵ The laws of khul' in particular cannot be found in the Qur'an directly, so a Sharia court judge must discern from Hadith and Islamic jurisprudence historical cases what they believe to be valid reasons for divorce.¹⁶

Conditions for a Wife Seeking Khul'

There is consensus among the schools that a wife seeking khul' should be a sane adult. They also concur that the khul' of a stupid (safih) wife is not valid without the permission of her wali (guardian). The schools differ regarding the validity of khul' where the guardian has granted her the permission to seek khul'. The Hanafis observe: If the guardian undertakes to pay the consideration from his own personal assets, the khul' is valid; otherwise, the consideration is void, while the divorce takes place according to the more authentic of two traditions (Abu Zuhrah).¹⁷

The Maliki schools state: With the guardian's permission to her to pay the consideration, the khul' is valid by payment from her wealth not his.¹⁸

The Shafi'i and the Hanbali schools consider the khul' of a stupid wife as invalid irrespective of the guardian's permission. The Shafi'i school allows one exception to the above opinion, wherein the guardian fears the husband's squandering her wealth and grants her permission to seek a khul' from him for the protection of her property. The Shafi'is then add: Such a khul' is invalid and the divorce is revocable. The Hanbalis say: Neither the khul' nor the divorce will take place except when the husband intends a divorce through khul' or if the khul' takes place in the words of a divorce.¹⁹

If a woman seeks khul' during her last illness, it is considered valid by all schools. But they differ where she pays as consideration more than a third of her wealth or more than the husband's share to be inherited from her on assumption of her death during the 'iddah. As said above, they inherit from each other in this situation. The Shafi'i schools state: If she seeks khul' for mahr al-mithl, it is valid and the consideration is payable from her undivided legacy. But if it exceeds mahr al-mithl, the excess will be deducted from one-third of her legacy.²⁰

Conditions for a Husband Granting Khul'

Excepting the Hanbali, all the other schools concur that a husband granting khul' requires to be a sane adult. The Hanbalis state: Khul' granted by a discerning minor (mumayyiz) is valid, as is a divorce given by him. The Hanafis permit a divorce pronounced in jest, under duress, or in a state of intoxication, and the Shafi'i and the Maliki schools concur with them concerning divorce pronounced in jest. A khul' granted in a state of rage is valid if the rage does not eliminate the element of

¹⁵ Nasir & Jamal, J. A (2009). *The Status of women under Islamic Law and Modern Islamic Legislation*. Netherlands: Brill Pp. 131

¹⁶ Macfarlane, J. (2012). *Islamic Divorce in North America: A Shari'a Path in a Secular Society*. Oxford University Press. Pp 168-169

¹⁷ Muhammad, J. M. (2020). *Al-Khul (Farq al-Zawaj)*. Digital Islamic Library.

¹⁸ al-Jawahir and al-Fiqh 'ala' al-madhahib al-'arba'ah

¹⁹ Muhammad, J. M. (2020). *Al-Khul (Farq al-Zawaj)*. Digital Islamic Library.

²⁰ Muhammad, J. M. (2020). *Al-Khul (Farq al-Zawaj)*. Digital Islamic Library.

intention. There is consensus among the schools concerning the validity of a khul' granted by a stupid (safih) husband. But the consideration will be given to his guardian, and its being given to him is not valid.²¹ Regarding a khul' granted by a sick husband on his death bed, it is undoubtedly valid, because when his divorcing without receiving any consideration is valid, a divorce along with consideration would be more so.²²

The Pronouncement of Khul'

The four schools permit the use of explicit words – such as derivatives of al-khul' and al-faskh (dissolution) – in the pronouncement, as well as implicit words (such as "bara'tuki" [I relinquish you] and "abantuki" [I separate myself from you]). Similarly the Shafi'i school accepts the validity of a khul' pronounced with the word al-bay'. The Hanafis allow the conditional khul', the khul' by exercise of an option, and the khul' in which the pronouncement and the payment of consideration is separated by an extended time interval (such as, where a husband is away from his wife and it reaches him that she has said, "I seek a khul' for so much," and he accepts it). Similarly the Malikis also do not consider the time factor an impediment. Khul' is valid according to the Hanbali school even without an intention if the word used is explicit (such as al-khul', al-faskh and al-mufadat); but it requires that the pronouncement and payment take place simultaneously and unconditionally.²³

Role of the Court

The court and judge varies across schools. If the husband does not consent to the divorce, a woman often goes to a mediating third party, such as an imam. Only a person versed in Islamic law i.e. a qadi, or Islamic Sharia court judge, can grant the khul' without the husband's consent. When petition for khul' is taken to the Sharia courts, a judge is permitted to substitute the husband and annul the marriage. This process of judicial annulment is also commonly referred to as faskh, which typically occurs when the husband refuses to consent to the wife's decision to divorce.²⁴

Nigeria makes rules to regulate all the proceedings before Shari'a Courts in the State. Based on the above provision, the Grand Khadi of Bauchi State signed the Bauchi State Shari'a Courts Civil Procedure (Amendment) Rules, 2013 on the 2nd day of October, 2013. The new rules is a momentous achievement because it brought a lot of modifications which among others include; a provision on prescription (Hauzi), Redemption (Khul'i), Custody of Children, Maintenance (Annafaqa), Maintenance of a Divorce Wife and others which were not part of the old rules.

However, based on the above development, Order 21 of the New Shari'a Courts Rules, 2013 provides the right of redemption to the wife by giving something to her husband to get a divorce. Order 21 provides as follows:

a) A wife can redeem herself from the bond of marriage by:-

²¹ Muhammad, J. M. (2020). Al-Khul (Farq al-Zawaj). Digital Islamic Library.

²² Muhammad, J. M. (2020). Al-Khul (Farq al-Zawaj). Digital Islamic Library.

²³ al-Jawahir and al-Fiqh 'ala' al-madhahib al-'arba'ah

²⁴ Judith E. T. (2008). Women, Family and Gender in Islamic Law. Cambridge University Press.

- 1) Returning the full dowry or
- 2) Maintenance of pregnancy or
- 3) Maintenance of self during Iddah period or
- 4) Maintenance of her child

b) If a wife opts for redemption by maintenance of her child and the child died, the father will not be entitled to anything for the remaining period of the maintenance.²⁵ In case of Maryam Sanda who Murder her husband in Nigeria and sentenced to death by hanging on 24th November, 2017.²⁶

CONCLUSION

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). Khul' is a form of divorce in which the wife releases herself (from the marriage tie) by paying consideration to the husband instead of murdering the husband. In a nut shell, Khul'i means a separation of the couples from the bond of marriage upon the payment of money or refund either in kind or cash by the wife which may be equivalent to the dowry or more or lesser than the dowry.

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 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 is mutual love and affection and if the limits imposed by God were observed. 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 Khul', talaq and others.

REFERENCES

- Abdu M. O. A. (1978). Islam as a Religion (Faith and Duties). Nigeria: Islamic Publications Bureau, Lagos
- Ajijola, A.A.D. (1989). Introduction to Islamic Law. New Delhi: International Islamic Publishers
- Al-Jawahir and al-Fiqh 'ala' al-madhahib al-'arba'ah
- Asghar Ali. (1992). The Rights of Women in Islam. St. Martin's Press: New York.
- Ciroma, A. (2009). Al-Khul': The Woman's Choice. Available online at <http://al-amin-ciroma.blogspot.my/2009/10/al-khul-womans-choice.html> Retrieved 10th October, 2020
- Doi, A.R.I. (1997). Sharia the Islamic Law. London: Ta Ha Publishers

²⁵ Umar Sulaiman Abbo Jimeta et al. (2017). Khul'i (Right of Redemption) under Sharia Courts Rules

of Bauchi State, Nigeria, 2013: Issues and Challenges. Hasanuddin Law Review 4(1): 30-40

²⁶ <https://allafrica.com/stories/202001280574.html> Retrieved on 28th July, 2020

- Judith E. T. (2008). *Women, Family and Gender in Islamic Law*. Cambridge University Press.
- Macfarlane, J. (2012). *Islamic Divorce in North America: A Shari'a Path in a Secular Society*. Oxford University Press.
- Muhammad, J. M. (2020). *Al-Khul (Farq al-Zawaj)*. Digital Islamic Library.
- Nasir & Jamal, J. A (2009). *The Status of women under Islamic Law and Modern Islamic Legislation*. Netherlands: Brill.
- Sahih al-Bukhari: Chapter of Divorce
- Umar Sulaiman Abbo Jimeta et al. (2017). *Khul'i (Right of Redemption) under Sharia Courts Rules of Bauchi State, Nigeria, 2013: Issues and Challenges*. Hasanuddin Law Review 4(1): 30-40
- <https://allafrica.com/stories/202001280574.html> Retrieved on 28th July, 2020