DISSOLUTION OF MARRIAGE THROUGH KHUL' IN ISLAMIC LAW: A STUDY OF KANO STATE

 \mathbf{BY}

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APRIL, 2021

DECLARATION

I hereby declare that this thesis has been written by me and it is a product of my personal research work. It has never been presented elsewhere or in any previous application for a higher degree by anybody to the very best of my knowledge.

All ideas and views paraphrased or quoted are acknowledged and their sources are accordingly shown by means of footnotes.

AbdulRahman Sagir SULAIMAN	DATE

CERTIFICATION

This thesis entitled "Dissolution of Marriage through Khul' in Islamic Law: A Study of Kano State" meets the regulations governing the award of the degree of Masters of Laws (LL.M) by Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to the *Ahlul-bait*, the wives and the *Sahaba* (Companions) of our most beloved Prophet: Muhammad Sallallahu Alayhi Wasallam.

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All praise and gratitudes are due to Allah (S.W. T) the creator of all who made the completion of this work and the programme in general successful. May the blessings of Allah descend upon the prophet (S.A.W.), his companions, household and those who follow his path till the Day of Judgement.

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ABSTRACT

Marriage in Islamic Law is special contract develops through love that brings compassion between the spouses among others. However, circumstances may arise where the couple cannot live together in harmony anymore in their marital relationship; its continuance is, therefore, no longer considered desirable. Divorce is permitted as solution for the avoidance of greater evil, which may result from the continuance of the marriage. In Islamic law, men have direct power to effect divorce whereas the womenhave similar power;through Khul' (Self-redemption) which requires her to redeem herself in lieu of the separation. The assessment of the amount of consideration to be paid by the wife remains an issue of bitter controversy even among the judges of Shari'ah Court of Appeal in Kano State, Muslim scholars and legal practitioners in Kano state. For instance, the court in its judgment awards the quantum of the consideration of Khul equal with the Sadaq paid whereas on the other cases it awards the quantum that is higher than the Sadaq paid even though, all the cases have the same fact and circumstances and the court usually does so without giving any justification. Therefore, the yardsticks used by the Shari'a Court of Appeal Judges of Kano State for the determination of the quantum of Khul payable by the wife remains uncertain and unclear. More so, the growing rate of dissolution of marriages in Kano state through the process of Khul is conspicuously alarming. These anomalies provoke this research with objectives to find out the yardsticks used by the Shari'ah Court of Appeal to assess the payable consideration of Khul, to find out the level/degree of the growing rate of Khul' in Kano state and to proffer recommendations to tackle the problem(s) discovered therein. The work combines the two types of methodologies: Doctrinal (text-based method) and Empirical (involves administration of questioner and courts records' observation). This work found that, though the judges of the Shari'ah Court of Appeal of Kano State do comply with provision of Shari'ah but they do not have standard yardstick used in respect thereof. For instance in most judgements studied the quantum were increased by the court without giving a justification for the increment. It is found that, the rate of Khul in Kano state between the years 2014 to 2016 is rising though in a fluctuating pattern. The work therefore, recommends for the Grand Khadi of Kano State to make it part of the rule of the court that all the judges shall state in their judgment the factor they considered and evaluated in dertermining the quantum awarded.

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ABBREVIATIONS

C.A Court of Appeal

C.V) Civil

J.C.A Justice of the Court of Appeal

K.C Kano Central

K.N Kano North

V.S Vurses

K.S Kano South

P.B.U.H Peace be Upon Him

Q Qur'an

R.A Radiyallhu 'anhu

R.T.A Radiyallhu Ta'ala'anhu

S.A.W Salallahu Alaihi Wa Sallam

S.W.A. Subhanahu Wa Taala

TETFUND Tertiary Education Trust Fund

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Ajnabiy An alien, a person who is not related to another person Al-hakamain Two arbitrators, who arbitrate matrimonial dispute between the spouses Al-irthi Inheretence is a principle of the distribution of estate of a deceased person to his legal heirs according to Islam. Al-iwad Means an exchange and in business contracttransaction it means consideration Paradise Aljannah Al-mufadaatu compensation **Embezzlement** Attabziyr The severe (Irrevocable Divorce) Ba'in Baynunah Kubrah Ba'in Baynunah Sughrah The minor (Irrevocable Divorce) Dharar: Harm Fidya Compensation Ghaibah Missing person Gharar Uncertainty Ghayru Mumaiyazah" A minor who cannot distinguish Hadana Custody of children Hadith Means the tradition of the (His sayings) prophet Muhammad (SAW)

Haram Forbidden/unlawful Hudud Is a plural form of *Hadd*. It means punishment in criminal matters. Ibadaat: Act of worship Iddah Waiting period within which a divorced woman or a widow should wait before she can re-marry Concensus of Muslim Jurists. Ijma'a Ila'i Vow by the husband that he will abstain from sexual intimacy with his wife for a period. Pre-islamic period Jahiliyyah Khul Termination of marriage at the instance of the wife in lieu of a consideration payable to the husband Kitabiyyah People of the booksuch as Chritians or Jewish Li'an Is a mutual causing through an oath. Maal Wealth or property Detestable Makrouh Mandoub Recommendable Mansukhatun" Abrogated Maradul-mawt Death Sickness Mazahib: Is a plural form of *mazhab* meaning Islamic school of thought Special contract *Mithaqun Ghalith:*

Muamalat: Transaction based on Islamic principle. Mubah Permissible/ Lawful Muharram Prohibited/ Forbidden Mumaiyizah Minor who can distinguish Nafaqah Maitainance Qadi AShari'ah judge Slander *Qazf* Shari'ah Court Judges Quddah Raj'ah Right of revocation Rida'ah: Suckling Sadaq: Dower/Dowry Sadaqul-mithli Proper dower Sahaba Prophet's companions Shari'ah: Shariah: A system of religious law followed by Muslim. Suknah Shelter Tabarrui Gift Talaq: Divorce Contra-sunna divorce Talaqul Bidi'i Sunni divorce Talaqus-sunniy Tarjih: To weigh some thing, especially between two or more authorities/reasons given with a view to choose the best or most

convincing one.

Thuluth - One-third

Urf - Custom/tradition of a given society

Wajib - Obligatory

Wasiyyah - Bequeath

Zihar - injurious dissimulation

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Backgorund to the Study

One very unique attribute of Islamic law that makes it different from the other so-called laws is its comprehensiveness. It covers all aspect of human life ranging from the act of worshiping (*Ibadaat*),socialtransaction(*Muamalat*) and other matters/disciplines to which marriage is inclusive. For instance, Islam among other things lays down the rules that regulate the conduct of marriage contract, family settlement as well as its dissolution where it becomes necessary.

Marriage institution in Islamic law is among the most important institution that is accorded considerable regard, being a lawful avenue for emotional and sexual gratification, mechanisms of tension reduction and control, legitimate procreation of children and as a means of effecting love, peace and tranquillity among the respective spouses.¹ Other wisdoms or objectives behind marriage include protection of morals, socialization and value-orientation and motivation for effort and sacrifice.² Allah in Qur'an 30 verse 21 says:

Qur'an 30 verse 21 says:

Qur'an 30 verse 21 says:

And of His Signs is that He created for you from yourselves that you may dwell in tranquillity with them; and He has put love and mercy between your (hearts) ... "(3)" This position has been judicially buttressed by the Court of Appeal in Usman vs Usman(2003)NWLR (pt. 830) held thus: "The institution of marriage in Islam is of great importance, it is meant to promote love, peace, tranquillity, kindness, unity, harmony, tolerance progress and prosperity within the family. It discourages

¹Abd-Al-Ati,H., The Family Structure in Islam, Islamic Publication Bureau, Lagos (1082).P54

² Ahmad K., Family Life in Islam. 1974 second edition published by the Islamic foundation no. 223 London road, printed by Derbyshire print. Pp 19, 21 and 26.

³ Ali A.Y., (1998) Modern Translation of the Qur'an Meanings & Commentary, Manar International, Kansas city, U.S.A., P. 859

disunity, disrespect, molestation, dispute, intolerance, cruelty et cetera." It is obvious in any marriage/matrimonial settlement; there might have been differences of opinion, thought, feeling, behaviour, temperamentetc among the spouses, many occasions, such differences occasion dispute, which consequently makes the matrimonial settlement unbearable. Then, *Islam* enjoins the respective spousesto either find a solution or amicably dissolve the contract. Thus, where the unbearability of the matrimonial settlement becomes so overwhelmed to the extent that the primary objectives of marriage are not achived, then its continuance is no longer considered desirable. *Islam*, in the circumstance provides for divorce as inevitable solution.

Under the *Shari'ah*, the power to effect *Talaq*is primarily vested in the husband. However, the wife has a similar right to seek for the dissolution of Marriage through other means such as through the intervention of court to terminate same at her instance. The circumstances in which the wife is empowered by *Shari'ah* to seek for dissolution of marriagethrough the court intervention includes among others; case of absent husband/person (*Ghaibah*), Maltreatment (*Dharar*), Self-redemption (*Khul*). In other word, both the husband and the wife can seek and obtain the dissolution of marriage but the channels or procedures differ. Some channels are perculiar to husband and some for women and some both with or without court's intervention.

Khul arises where the wife dislikes her husband and she cannot remain with him. Thus she may seek for her release upon the payment of certain amount of consideration to him so as to free herself out of the marriageunion. The basis of this kind of divorce can be seen in the primary source of *Shariah*that is in Q. 2: 229, with

.

⁴P.133 Pragraph C and D.

⁶ Ibid pp.123-124

⁵ El-Imari M.T., (N.D) *Personal Status in Islamic Law (According to Maliki System)*, Centre for Islamic Legal studies, institute of administration, Ahmadu Bello University, Zaria Nigeria, p.122

regard to the tradition of the Prophet (S.A.W) can be seen in the case of *Jamilah bnt Abdallah bn Ubyy bn Sahal* the wife of *Thabit Ibn Qays*. That during the life time of the Prophet Muhammad Peace Be upon Him. It was reported that, one day she went before the Prophet (Peace be upon him) and complained to him that, she hates and dislikes her (then) husband and she cannot tolerate to live with him as husband and she wants not to transgress the boundaries set by Allah. The basis of the hatred who not an the ground of any depravity in his religious practice or morality but she finds him to be very ugly and while she was beautiful lady. The prophet finally, directed her to return to him (the husband) his garding (*Sadaq*) which she accepted and then instructed *Thabit* to divorce her upon the return of the *Sadaq*.

For the purpose of introduction, this *Hadith* laid the background of the dissolution of marriage by way of *Khul* though, the detail of its Islamic injunctions are extensively discussed in the subsequent chapter.

Khul is therefore a right accorded to women under Islamic law. Its practice and administration is usually occasioned by some problems more especially in our communities for instance Kano State being a study area of this work. In Kano State the prevailing number of widows whose marriges dissolved through Khul is always increasing leading to more problems to the society. In fact, this problem and more others provoked the research of this work.

1.2 Statement of Research Problem

It is undisputable fact that, Islam permits either of the spouses to desolve the marriage, when it is discovered that the matrimonial harmony or peace and tranquility cannot be realized thereof. The wife in this circumstance is permitted under shariah to

seek for the dissolution of the marriage union upon the payment of a consideration usually the *Sadaq* to the husband.

However, nowadays some husbands indirectly tend to deny their wives such power of seeking *Khul* by way of fixing an exorbitant amount to be paid to them beyond the wives' monetary capacity. In many instances, some husbands do calculate all sort of expenditure expended to their wives, right from the betrothal gift to the last day of their stay in the matrimonial home covering medical, feeding, clothing and other social expenses. Some husbandsare often very categorical that, the wife/wives should be responsible financially for their subsequent marriage with another woman of equal or above the class of the former. Moreover, the wives, in many instances, go to court and seek for *Khul* by reason of being subjected to cruelty and other forms of maltreatment by their husbands. This cruelty however, if established by the wife stands as a good and independent ground for the dissolution of marriage without any payment by the wife thereof.

Similarly, the growing rate of dissolution of marriages in Kano state through the process of *Khul* is conspicuously alarming!Moreover, the yardstick or method being used by the *Shari'ah* judges for the determination of the (justifiable) payable quantum of *Khul* by the wife remain controvertial, in the sense that one may finds some cases having same facts and circumstances but in its judgemnet, the court awards, in one case, a quantum that is equal to sadaq paid while in the other one it awards quantum that is more than the *Sadaq* paid. The problem is, the court does not give any explanation in its judgement, on how it arrives at that confusion.

1.3 Research Questions

In view of the foregoing the following research questions are formulated thus:

- 1. What is the level of the womens' knowledge/awareness on *Khul*, in Kano State?
- 2. What is the growing rate of the dissolution of marriage through *Khul*in Kano state?
- 3. What is the method used by the shariah judges for the dtermination of payable quantum?

1.4 Aim and Objectives of the Work

AIM: The aim of this work is to examine the rate of dissolution of marriage through *Khul*in Kano State and the attitude of the Kano State Shariah Court of Appeal judges in the determination of the quantum of *Khul*. Therefore, the followings are the objectives sought to be achieved by this work;

- 1. To find out the womens' level of awareness on *Khul*' the level of their requisite knowledge on *Khul* and its acceptability in Kano state.
- 2. To find out the rate of dissolution of marriage via *Khul* in Kano state.
- 3. To find out the extent to which the *Shari'ah* Court of Appeal of Kano State applies Islamic principles of Maliki school in deciding the cases of *Khul'* and the yardstick(s) used by the Court towards the assessment of the quantum of *Khul*.
- 4. To proffer recommendation(s)orsolution(s) to the problem(s) found out in the work, for the proper practice and the application of the principle of *Khul* under Islamic law in Kano State.

That all the problems discovered would be highlighted and addressed accordingly by making possible recommendations in respect thereof.

1.5 Justification of the Research

This research work is of eminent importance for the purpose of educating the general public more especially the spouses, on the laid down principles regulating the termination of marriage by way of *Khul* and the appropriate quantum to be paid. Similarly, the work will be of more relevance to the judges of the *Shari'ah* court (*Quddah*), legal practitioners, students more especially law students, as the work set out in a lucid manner, the Doctrine, principles and the applicability of the rules governing *Khul* and the assessment of its payable quantum.

1.6 Scope and Limitation of the Research

For the purpose of this work, the scope of this work is geographically limited to Kano State and analysis of cases from 2014-2016 and it elicit information through the administration of questionnaire to some selected women in Kano State in order to examine the level of their knowledge in respect thereof.

1.7 Methodology of the Research

In conducting this work, the researcher combines and uses both the Doctrinal and Empirical methodologies.

Doctrinal Method is one among the type of research methodologies that a researcher pays excessive attention to the theory instead of a practical aspect. Most of the materials often consulted under this type are books, statutes, cases etc. The information so gathered here would be analyzed with view to make findings and necessary recommendations.⁷

⁷Aboki Y., (2013), *Introduction to Legal Research Methodology*, Ajiba Printing Production, SS 17, Jemaa Road, Kaduna, 3rd Edition, p. 3

Empirical research on the other hand, is another type of research methodology which involves the collection of data by means of interview, questionnaires, observation etc., from a target group. The data so obtained will later be analyzed usually in the office or chamber for the purpose of finding a genuine result. In gathering the relevant data, the researcher consults the primary and secondary documents.

Primary documents, are those documents that are classified as the most authoritative or having the highest authority. Therefore, the researcher will consult authorities such as; *Qur'an* and *Hadith*, then other materials includes the legislations, decisions of superior courts of record and other related materials ranking in parri passu.

Secondary document on the other hand, are those materials classified as the next ranking class to the primary ones. In other words, they are not as authoritative as the primary documents. It includes the books written by scholars, journals, magazines, periodicals etc.¹⁰ Therefore, the work equally considers the various works written by Islamic jurists, experts, practitioners, journals from internet source where the need arises.

The data so gathered both from the Doctrinal and Empirical ones will be analyzed critically with a view to arrive at a clear position of the law in respect of the problem at hand. These methodologies are more relevant to the study, as it will enable the researcher to obtain relevant information from the population or its sample through the use of questionnaire and observation.

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⁸Ibid pp., 2-3

⁹Ibid., p.15

¹⁰Ibid., p.17

Questionnaire is an instrument designed for the data collection, the results of which are used to answer the research questions. It is also a useful way of collecting information of a large sample of people, ¹¹ while observation on the other hand, is defined to mean the process of watching or supervising an experiment, exercise, event, activity or occasion and or taking note or records of some sort. ¹²

1.7.1 Population of the Study

The Population of the study means a group of individuals taken from the general population who share common characteristics such as age, sex etc¹³. It is also defined to mean the entire area that the research is expected to cover, looking at the area specified in the topic. ¹⁴The population of this study comprises of some selected adult females of Kano State. Females were chosen as the target population because the subject matter of the work that is "*Khul*," is a Doctrine that relates exclusively to them.

1.7.2 Sampling Technique and Sample Size of Respondents

It is a common knowledge that, it is hard for a researcher to use the whole population in a study, hence sampling method becomes necessary, especially where the research population is very large and extensive such that it is impossible for the researcher to reach and obtain information from each and every member of the population.

Sampling is the process of selecting elements from the population in such a way that the sample elements selected represent the population.¹⁵ The area covered in

¹¹ Key, J.P. (2007) *Research Designed in Occupational Education*, Oklahoma State University (ex, IRB, Thesis Handbook), p. 32

¹² AbdulMalik, Y. O. (2006) Research Methodology in Business and Social Sciences, Abuja; Almalik and Company, P. 27.

¹³Kauru A. i., A Handbook for Writing Project Reports, Theses and Journal Articles, (2015), sponsored by Tertiary Education Trust Fund (TETFUND) P. 63

¹⁴Olaofe I. A. Research Writing for Academic Growth, op. Cit P. 90

¹⁵Ibid

this work is Kano state of Nigeria. For this purpose, the state is divided into three senatorial zones namely:

- i. Kano Central¹⁶
- ii. Kano North¹⁷
- iii. Kano South¹⁸

The procedure followed in sampling/selecting the Local Governments to be used for study (from each of the senatorial districts) is **Systematic Sampling.** ¹⁹Systematic Sampling is based on the arrangement of the study population according to some ordering scheme and then selecting elements at regular interval through that ordered list. ²⁰In view of this, all the Local Governments from the three senatorial districts were arranged in alphabetical order and the fourth element in each category were then selected. See table 1.0

Table 1.1: Kano State Showing Senatorial Zones with Respective LGAs

S/No.	Senatorial Zones	Local Govt. Areas
		Dala
		Dawakin Kudu
		Fagge
		Garun-Malam *
		Gezawa
		Gwale
		Kano Municipal
		Kumbotso *
1	KANO CENTRAL	Kura
		Madobi
		Minjibir
		Nasarawa *
		Tarauni
		Ungogo
		Warawa

¹⁶Which has 15 Local Governments

¹⁷Which has 13 Local Governments

¹⁸Which has 16 Local Governments

¹⁹Systematic sampling is chosen because it minimizes bias chances.

²⁰Kauru A. I., A Handbook for Writing Project Reports, Theses and Journal Articles, Op. cit p. 67

		Bagwai
		Bichi
		Danbatta
		Dawakin-Tofa*
		Gabasawa
		Gwarzo
		Kabo
2	KANO NORTH	Kunchi*
		Makoda
		Rimin-Gado
		Shanono
		Tofa*
		Tsanyawa
		Ajingi
		Albasu
		Bebeji
		Bunkure*
		Doguwa
		Garko
		Gaya
2		Karaye*
3		Kibiya
	KANO SOUTH	Kiru
	KANO SOUTH	Rano
		Rogo*
		Sumaila
		Takai
		Tudun-Wada
		Wudil*

Source: Field Survey, 2016 and NPC, 2006

That from the above table, ten (10) Local Governments were sampled out, as study areas:Garin Malam, Kumbotso, Nassarawa, Dawakin Tofa, Kunci, Tofa, Bunkure, Karaye, Rogo and Wudil Local Governments.

That with respect to population size, the number of population in Kano state based on 2006 census is Nine Million Three Hundred and Eighty Three Thousand Six Hundred and Eighty Two (9,383, 682). **See APPENDIX 1A** and table 1.1 below:

Table 1.2: Kano State Showing Senatorial Zones with Respective LGAs

S/No.	Senatorial Zones	Local Govt. Areas	2006 Males Pop.	2006 Females Pop
		Dala	231190	187587
		Dawakin Kudu	110693	114696
		Fagge	107889	90939
		Garun-Malam *	58176	58318
		Gezawa	138341	143728
		Gwale	204618	157441
		Kano Municipal	198794	166731
1		Kumbotso *	149447	146532
	KANO CENTRAL	Kura	76389	68212
		Madobi	70697	65926
		Minjibir	106685	107109
		Nasarawa *	318712	277957
		Tarauni	111688	109679
		Ungogo	193433	176224
		Warawa	66216	62571
		TOTAL	2,142,968	1,933,650
		Bagwai	83546	79301
		Bichi	139921	137178
		Danbatta	104875	103093
		Dawakin-Tofa*	127249	120626
	KANO NORTH	Gabasawa	108096	102959
		Gwarzo	94320	89667
		Kabo	74604	79224
2		Kunchi*	55999	55019
		Makoda	112612	109787
		Rimin-Gado	54508	50282
		Shanono	70344	70263
		Tofa*	49838	47896
		Tsanyawa	80760	76920
		TOTAL	1,156,672	1,122,215
		Ajingi	88006	86131
		Albasu	96452	93701
		Bebeji	96165	92694
		Bunkure*	86289	84602
		Doguwa	78046	73135
		Garko	82599	79901
		Gaya	102489	98527
	W. A. N. G.	Karaye*	71549	69858
	KANO SOUTH	Kibiya	70197	66539
		Kiru	138575	126206
		Rano	74967	70472
		Rogo*	114872	112870
		Sumaila	128318	125343
		Takai	101983	100760
		Tudun-Wada	116621	115121
		Wudil*	97360	87829
		TOTAL	1,544,488	1,483,689
		GRAND TOTAL	4,844,128	4,539,554

Source: Field Survey, 2016 and NPC, 2006

That since our target population is females; the figure of the females shall be our concern. Based on the census report conducted in 2006, there were Four Million Five Hundred and Thirty Nine Thousand, Five Hundred and Fifty Four (4, 539, 554) number of females in Kano state. Therefore, since Nigerian population data suffers inadequacy, as it cannot cover period beyond 2006, then the use of population projection to fill up the inadequacy is recommended. The following Geomatric formula is used in the projection.

```
Pt = Po (1 + r)^n
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Where: Pt = population of the year i.e. 2016 =

Po = previous population i.e. 2006 = 4,539,554

1 = is constant

 \mathbf{r} = growth rate i.e. 3%

 \mathbf{n} = interval between $\mathbf{Pt}(2016) \& \mathbf{Po}(2006)$ i.e. 10 years

pt= 4, 539, 554 (1+3)¹⁰ pt= 4, 539, 554 (1+0.03)¹⁰ pt= 4, 539, 554 (1+03)¹⁰ pt= 4, 539, 554 (1.03)¹⁰ pt= 4, 539, 554 (1.3439163793) pt= 4, 539, 554 x 1.3439163793 pt= 4, 539, 554 x 1.344 pt = 6, 101, 160

Based on the above method, the projected population of the study area for the year 2016 is Six Million One Hundred and One Thousand, One Hundred and Fifty Six(6,101,160)females in Kano State. See table 1.2.

Table 1.3: Senatorial Zones with Respective Females Population Based on the LGAs

			Females Population B	
S/No.	Senatorial Zones	Local Govt. Areas	2006 Females Pop.	2016 projected Pop.
		Dala	187587	252117
		Dawakin Kudu	114696	154151
		Fagge	90939	122222
		Garun-Malam *	58318	78379
		Gezawa	143728	193170
		Gwale	157441	211601
		Kano Municipal	166731	224086
1		Kumbotso *	146532	196939
	KANO	Kura	68212	91677
	CENTRAL	Madobi	65926	88605
		Minjibir	107109	143954
		Nasarawa *	277957	373574
		Tarauni	109679	147409
		Ungogo	176224	236845
		Warawa	62571	84095
		TOTAL	1,933,650	2,598,824
		Bagwai	79301	106581
		Bichi	137178	184367
		Danbatta	103093	138557
		Dawakin-Tofa*	120626	162121
		Gabasawa	102959	138377
	KANO NORTH	Gwarzo	89667	120512
		Kabo	79224	106477
2		Kunchi*	55019	73946
		Makoda	109787	147554
		Rimin-Gado	50282	67579
		Shanono	70263	94433
		Tofa*	47896	64372
		Tsanyawa	76920	103380
		TOTAL	1,122,215	1,508,256
		Ajingi	86131	115760
		Albasu	93701	125934
		Bebeji	92694	124581
		Bunkure*	84602	113705
		Doguwa	73135	98293
		Garko	79901	107387
		Gaya	98527	132420
		Karaye*	69858	93889
3	KANO SOUTH	Karaye* Kibiya	66539	89428
		Kiru	126206	169621
		Rano	70472	94714
		Rogo*	112870	151697
		Sumaila	125343	168461
		Takai	100760	135421
		Tudun-Wada	115121	154723
		Wudil*	87829	118042
		TOTAL	1,483,689	1,994,076
	E' 11C	GRAND TOTAL	4,539,554	6,101,160

Source: Field Survey, 2016 and NPC, 2006

Therefore, the projected population of the ten (10) local governments sampled out can be seen in table 1.3 below.

However, using the Krejcie and Morgan (1970) method of determination of the sample size who recommend that for a population size of between 1,000,000 and above, a sample size of 384 questionaires should be administered. See appendix 2. The questionnaires are to be administered to the respondents based on the population size as shown in Table 1.3. In other words, the number of questionnaires to be administered will be in proportionate to the population size of each Local Government, using this formula:

Proportion
$$=\frac{n}{N} \times sample \ size = 384$$

Where: $\mathbf{n} = \text{population of the area}$

N = total population of the areas

Garun malam= 78379÷1,426,664×384 = 0.054×384= **21**

Table 1.4: Senatorial Zones with their Selected Areas and Sampling Size

S/No.	Senatorial Zones	Selected Areas	2016 Projected Pop.	Sampling Size
	KANO	Garun-Malam	78379	21
1	CENTRAL	Kumbotso	196939	53
		Nasarawa	373574	101
2	KANO NORTH	Dawakin-Tofa	162121	44
		Kunchi	73946	20
		Tofa	64372	17
		Bunkure	113705	31
		Karaye	93889	25
3	KANO SOUTH	Rogo	151697	41
		Wudil	118042	32
		TOTAL	1,426,664	384

Source: Field Survey, 2016 and NPC, 2006

Therefore, the total of **384 questionaires** would be administered to the respondents in the Ten Local Governments selected thereof.

1.7.3 Administration of Research Instrument

The instruments to be used in this work are Questionnaire (see Appendix 2,) and observation. This is in order to collect data relevant to the study. The nature of the instrument is self developed and validated by the supervisors. These techniques are basically chosen to generate information about the Wife's Right to seek Dissolution of Marriage by Way of *Khul* in Kano State.In the course of administering this instrument, (questionnaire) two research female assistants from each of the three senatorial districts will be employed, trained and assigned to administer the instrument so as to guide the respondents in answering the questions.

With respect to the other instrument (observation), the work will focus on the Ten Local Governments selected earlier. An observation will be carried out in respect of the *Shari'ah* courts' records; Case Register Books²¹ and Courts' Books of proceeding.²² These records are relevant indeed to this study, as it provides information regarding the rate of the *Khul* as well as the ground(s) relied upon by the wife/wives when seeking for *Khul* in Kano state from 2014-2016. Similarly, some of the decided cases of the *Shari'ah* Court of Appeal of Kano State²³ will be examined and observed from 2014 to 2016. This is relevant in order to collect relevant information as to the extent to which *Shari'ah* judges apply or comply with the provisions of *Shari'ah* in the determination of the cases of *Khul* and the mechanism used by them to determine the payable quantum of *Khul* by the wife.

²¹This is a court's book that registers all the cases filed before the court including the nature of case.

²²This book records all the proceedings took place before the court right from the claim up to the stage of judgment. It is usually in different volumes.

²³The court is chosen being the apex *Shari'ah* Court in Kano state and constituted by more learned personals in Islamic law (*Shari'ah*).

1.8 Literature Review

For the purpose of this work, it is necessary to refer and examine the available literatures written on *Khul* with particular reference to Kano State. It is not in dispute that, there are available literatures on Islamic family law covering several topics including *Khul*. Among these literatures so consulted, there are primary and secondary sources. The primary sources are *Qur'an and Sunnah*.

The secondry sources consulted includesseveral decisions of Court of Appeal covering the classical and other celebrated ones in which several principles of Islamic laws relating to *Khul* including the determination of its quantum were judicially analyzed thereon. Some of these cases include *Indo Alhaji Ibrahim vs Danladi Ali*²⁴*Husaina vsTsiriko*, ²⁵*Salisu vsLawal*²⁶, *Bulumkutu vsZangina*²⁷, *Jimoh vsAdunni*²⁸, *Usman vsUsman*²⁹, *and Wapanda vsWapanda*³⁰ among others. Others are books, journals, articles etc. written by many jurists and the respective contemporary scholars. The most comprehensive write up in all the available books consulted, were those written in Arabic version. These works have adequately discussed *Khul* and all the principles related therewith. The following are some of the literature so reviewed;

A. A. Qadri in his Book: *Muslim Personal Law*³¹" discusses some principles of *K hul*briefly.He only writes on definition of *Khul* and its legal effects in two pages only. This provesit quite inadequate and there is nothing written on the quantum of compensation for *Khul*.

²⁴(1977) Law Report, *Shari'ah* Court of Appeal Plateau and Benue, Jos p 13

²⁵(1991)1 NWLR(pt 167)

²⁶(1986)2NWLR(pt23) 435

²⁷(1997)11 NWLR(pt. 529)

²⁸(2001)14 NWLR (pt. 734)

²⁹(2003)11 NWLR (pt. 830)

³⁰(2008)1 NWLR (pt. 1068)

³¹Oadir .A.A. Muslim Personal Law.

Abdulrahman Al-Jazriyin his book *Kitab-Al-Fiqh Ala Mazahibul-Arba'a.* The author discusses the principle of *Khul* very extensively. As the name of the book implies the author brings the views and arguments canvassed by all the *Mazahib* on any particular issue. One beautiful thing with his work is the kind of examples he cites in some places to ease understanding. On *Khul*, the book discusses the definitions, legal basis, juristic arguments and all the principles related to *Khul*. The work in addition, explains in detail on the principle of *Al-iwad* (Compensation) and the related dispute that may possibly arises in relation thereto. His write up on *Khul* covers up to 29 pages from page 298 to327. It must be stated that, upon all the available literature consulted so far, this is most academically comprehensive write-up. However, the work does not study the practice of *Khul*'i in a particular community as a case of study.

Abdurrahman I. Doi.,in his book titled "Women in Shari'ah (Islamic law)³³", discusses issues related to women based on the Qur'an and the Sunnah, women in society, marriage and sexual relation etc. He discusses Khulbriefly with a note on the compensation and Iddah for Khul' in few pages. The work is proven inadequate as it skips many principles in relation to Khul'. Moreso, the few principles of Khul'dicussed in the book were treated or dicussed at superficial level.

Abdurrahman I. Doi.,in his other book "Shari'ah the Islamic Law"³⁴, he dedicated the whole of Chapter 12 to Khul, providing definition, guidance from the Quran and the Sunnah, the legal implication of Khul sought by a woman in death sickness, and also the compensation or it's quantum. The inadequacy remains same as above.

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³²Jazriy A., (1979), *Kitab-Al-Fiqh Ala Mazahibul-Arba'a*, Maktabatul Tijariyya Al-Kubra, Misra.

³³ Doi. A.R. (1984), Women In Shari'ah. (Unpublished)

³⁴ Doi. A.R. (1984), *Shari'ahThe Islamic Law*. Taha Publishers, London.

Abi Hasan Aliyu bn Abdussalam Attasuliyin his book: Albahjah fiy Sharh Attuhfah 35 The book gives comprehensive commentary on the book of Tuhfatul hukkam. It is based on Maliki jurisprudence. The author cites different opinions of the Maliki jurists on certain issues. With regard to Khul, he fairly does justice to the work. He starts with definition, legal basis and nearly all the principles related to Khul. In the introduction part of the book he categorically makes it clearer that, Khul compensation needs not be paid instantly it may remains a subject of credit/loan. Meaning Khul takes effect the moment parties reached a consensus to that effect. He discusses Khul in almost 13 pages from page 644-656. The work does not consider the submissions made by the jurists from other mazaahib (Sunni Schools).

Abi Zaidil kirawaniin his book *Samaraddani Sharhurrisala*, ³⁶The author discuses the concept of *Khul* very summarily. This is perhaps due to the fact that, the author of the main book of *Risalah* discusses *Khul* in one and a half line. The author discusses the doctrine and principles of *Khul* in line with *Maliki* view and in a just page, that page 468.

Abubakar Ibn Hassan Al-Kashanawiy, in his book *As'halul-Madariki*, *SharhuIrshadussaliki*³⁷ discusses Divorce generally and its kinds. With respect to *Khul* he defines it and explains the basic principles of *Khul* though in precise form. The author restricts his work to *Maliki* jurisprudence alone. But the entire work was done in just 3 pages from 157 to 159 which has proven quite inadequacy.

Al-imam Jalaluddin AbdulRahman Assuwiydiy Asshafi'iy, in his book Tanwiril Hawalik Sharh Muwadda Malik 38 The author comments on the

³⁶Kirawani A., (1998), *Samaraddani Sharhurrisala*, Darul-Fikir, Beruit Lebanon.

³⁷Al-Kashanawiy(2000), As 'halul-Madariki, SharhuIrshadussaliki, Darul-Fikir, Beruit

³⁵ Attasuliv, A. A., (1991), Albahiah fiy Sharh Attuhfah Vol. 1, Darul-fikr

³⁸ Asshafi'iy, A. A., (2012), *Tanwiril Hawalik Sharh Muwadda Malik* Vol. 1,Dar el-fikr, Beruit Labanon.

renowned book written by *Imam Malik; Muwadda*. He restricts his work to the submissions of *Maliki* jurists. With regard to the *Khul*, the author does not add anything new to the main writing/work of *Imam Malik*.

Aminu Muhd Gurin in his book "An Introduction of Islamic Family Law ³⁹" discusses *Khul* in chapter 11, he discusses among others the consideration of *Khul*' and brought up some decided cases on the quantum of compensation to be paid by the women. His work though relevant to this work but does not focus or study the practice of *Khul* in a given community in Nigeria.

Sahih Al Fawzan; in his book "A Summary of Islamic Jurisprudence", ⁴⁰ discusses briefly on Khul'i. He supplied numerous Quranic provisions in support of Khul and the condition for the validity of release in lieu of payment. The book eventhough, dicusses Khul' but leaves out many important principles of Khul'. This is an enough proof of inadequacy.

Hammuda Abd Al Ati in his book " *The Family Structure in Islam*⁴¹", succeeds in only giving the definition and the Islamic injunction on the subject matter He treats the whole of *Khul* in merely two pages.

Ibn Jauziyin his book *The Family Structure in Islam*⁴² he discusses the principle of *Khul* at superficial level in just one page that, in page 201. This is enough to show inadequacy in respect thereto.

Ibrahim Ahmad Aliyu in his Ph.D Thesis: termination of marriage and its legal consequences under Islamic law, discusses the various ways by which marriage

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³⁹ Gurin .A.M. op cit.

⁴⁰ Dr.Al Fawzan. S.A (2005), Summary of Islamic Jurisprudence Vol 2 Al Maiman Publishing House, Saudi Arabia Rivadh.

⁴¹ Abdal Ati .H. (1982), *The Family Structure in Islam*, American Trust Publication.

⁴²IbnJauziy,(N.D), *Qawaninul-Fiqihiyya*, Darul-Fikir, Beruit, Labanon

can be terminated or dissolved under Islamic law. The work explains in details the various principles of Islamic law related to termination of marriage and the juristic arguments canvassed in accordance with the four Sunni Schools. Interestingly enough, the work dedicated a whole chapter on *Khul* and discusses its principles comprehensively. The work discusses *Khul* and makes differences from other terms such as *Mubara'ah*; other principles discussed are: the legal basis of *Khul*, light position of *Khul* ground of *Khul* and the compensation of *Khul*. However, notwithstanding of the comprehensiveness of the work, the work does not make any imperical approach/finding on any given community/state of Nigeria⁴³.

Ibrahim Na'iya Sada 1983 in his LL.M Thesis: dissolution of marriage in Islam case study of concept and practice in northern Nigeria, discusses the various ways and principles for the dissolution of marriage in Islam. The work discusses the justice arguments in respect thereof. The work even though makes an imperical survey on the concept and practice in northern Nigeria, it is deemed however desirable to make an imperical work 8 on a things particular State: Kano State to determine among other the rate of dissolution of marriage through *Khul*⁴⁴.

K.N. Ahmedin his book titled "Muslim Law of Divorce⁴⁵"The book examined in detail, the different types of divorce as well as the principles governing the same, according to the four sunni schools as well as the decided cases and legislations passed by various Muslim countries. However, notwithstanding of the comprehensiveness of the work, the book does not make any recourse to our situation

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45 Ahmed .K.N. op cit.

⁴³ Aliyu I.A. (1996). *Termination of Marriage and its Legal Consequences under Islamic Law*, (Ph.D Thesis Ahmadu Bello University, Zaria).

⁴⁴Sada I.N. (1983). *Dissolution of Marriage in IslamCase Study of Concept and Practice in Northern Nigeria*. (LL.M Thesis Ahmadu Bello University, Zaria).

here in Nigeria and Kano precisely, as all the cases cited were that of Pakistan, Morocco and nearby countries.

M. A. Ambali; In his book "The Practice of Muslim Family Law in Nigeria⁴⁶" he does not work extensively on Khul' rather he only discusses it at a superficial level. He talks only on the background of Khul' and some juristic opinions. The book skipes most of the important aspects or principles of Khul'.

Muhammad Abdulsalam Muhammad Saleh, in his book Al-Itqani Wal-Ahkam; Commentary on Tuhfatul Hukkam⁴⁷ The author of this book writes a comment on the renowned book of Tuhfatul Hukkam. He discusses the concept of Divorce generally and its classifications. With regard to the Khul, the author defines the term and gives a briefed explanation on the principles of Khul generally. The work moreover, is designed based on Maliki jurisprudence.

Muhammad Ibn Ahmad Ibn Rushidin his book *Al-ItqaniWal-Ahkam;* Commentary on TuhfatulHukkam⁴⁸ The author discusses some principles of Khul ranging from definition, some Islamic injunction on Khul as well as other related principles thereof. The work looks very brief though in a precise and lucid manner.

Muhammad Ibrahim Al-Hafanawiyin his book *Al-Dalaq*, Maktabatul-Aiman⁴⁹asthe name of his book implies, he discusses *Talaq* generally and its principles extensively. With regard to the *Khul*, the author discusses it in detail from definition, legal basis and all the related principles. The author emulates the writing style of Sayyid bn Sabiq *Fiqhus-Sunnah* where he considers all the other *Mazahib* and he relies on most of the authorities cited by bn Sabiq as well. One interesting thing

⁴⁶ Ambali .M.A. (1997), *The Practice of Muslim Family Law in Nigeria*, Tamasa Pub. Co.Ltd Zaria Kaduna.

⁴⁷Saleh. M.A., (2011), Al-ItqaniWal-Ahkam; Commentary on TuhfatulHukkam, Darul Hadith, Egypt

⁴⁸IbnRishid, M.A., *Bidayyatul-MujtahidWa-nihayatulMuqtasid*, DarulFikir.

⁴⁹Al-Hafanawiy, M.I., (2005), *Al-Dalaq*, Maktabatul-Aiman, Egypt

with the work is that the author gives different juristic submissions on certain issues raised. Another interesting thing with the work is that, the points are presented briefly and precisely. He discusses the principle of *Khul* in almost Twenty Two pages from 289 to 311.

Alaeddin Kharofa in his book titled 'Islamic Family Law; A Comparative Study With Other Religions⁵⁰, discusses Khul in Chapter 11, he gives a precise definition of Khul the evidences of the practice, the wisdom behind Khul, legal basis or conditions of validity and the legal judgment.

Y.Y. Bambale⁵¹ among others wrote an Article⁵² where he discusses *Khul* in relation to the attitude of *Shari'ah* courts and the problems or challenges facing. He finally proffers solutions in respect threrof. Though the writeup is precise and relevant but the paper remains so brief and therefore need elaboration.

Safia Iqbal in her book titled "Woman sand Islamic Law⁵³", discusses divorce, *Khul* and judicial separation. She narrates the first incidences of *Khul*, the Quranic provisions supporting it and suggests for codification of laws pertaining to *Khul* in order to raise the status of women. Sadly enough she failed to discuss the compensation of *Khul* or the quantum.

Sayyid Sabiqin his book *Fiqhus-Sunnahl*. ⁵⁴The author discusses the Doctrine of *Talaq* generally and its classifications. He considers the divergent positions or submissions advanced by the jurists of other *mazahib* (Sunni schools) and finally

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⁵⁰ Kharofa .A. (2004), *Islamic Family Law, A Comparative Study with other Religions*. Int Law Book Series, Malaysia.

⁵¹As he then was an LLM holder

⁵²Bambale Y.Y., "Khul": The Right of a Woman to Institute Divorce Proceeding: Nature, Problems And Solution, ABU Law Journal (1993-98), Vols 11-16, pages 59-68.

⁵³ Iqbal.S. Woman and Islamic Law Adam Publishers and Distributors, New Delhi, 2004.

⁵⁴ Sabiq, S.,(2000) *Fighus Sunnahl*, vol 2, Darul –turath

makes "Tarjih" (to weigh and choose the best submission out of others). The book discusses Khul extensively, precisely and in seriatim. For instance, the author traces the occurrence of Khul right from Jahiliyyah period down to the period of Islam when the matter was brought to the notice of the Prophet. He discusses the principle in detail. In fact most of the subsequent writers copy and adopt his work style. The work even though, appears to be richer, yet it does not study any particular community in Nigeria as a case of study in respect of Khul.

Sayyidi Muhammad Ahmad Miyaridin his book *Sharh Miyaratul-Farisi*Ala Tuhfatul Ahkam, ⁵⁵The work is designed based on Maliki jurisprudence. It gives more explanation on the book of Tuhfatul Hukkam. The author discusses the concept of Khul briefly and precisely though from pages 342 to 344.

Finally, all the literature so far examined above, one may find out that, the works in one way or the other have one or more gap(s) to fill in, as almost none of the work is written exclusively on *Khul* with particular reference to the contemporary situation in Kano State. This work will *Insha* Allah fill in the gap by examining the rate of divorce through *Khul* in Kano State and the attitude of the *Shari'ah* Court of Appeal of Kano State toward the application of *Shari'ah* in its judgments in respect of *Khul* and the yardstick it uses in the assessment the quantum of *Khul* from 2014-2016.

Moreso, these literatures so far reviewed are not definitely exhaustive, but will serve as the background literatures as in the course of this work more literatures from varied sources will be accessed for the proper conduct of the work.

⁵⁶As to the rate of divorce in Kano State by means of *Khul*'i from 2010 to 2014

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⁵⁵Miyarid, M.A., Sharh Miyaratul-Farisi Ala Tuhfatul Ahkam, Darul-fikir Beruit Lebanon

1.9 Organizational Layout

This work is chaptered into five chapters as follow;

Chapter one deal with general introduction. Its commences by making a general introductory note on the principles of *Khul*. It then dicussess the statement of problems, research questions and justification. The chapter also, discusses aims and objectives of the work, scope of the work and the methodology(ies) intends to use in the course of carrying out. The chapter finally reviews some literature available that are helpful to this work.

Chapter twoon the other hand dicussess *Talaq* (divorce) as an instrument used by the husband to effect divorce. It defines the basic terminologies related to *Talaq*, the Islamic injunctions on *Talaq*, capacity of the parties to talaq classifications and the legal effect of *Talaq*.

Chapter three dicussess centers on *Khul*under Islamic law. It defines and differentiates between *Khul* and other related terminologies. It also discusses the Islamic injunctions on *Khul*and other related principles of *Khul*more importantly the compensation of *Khul*.

Chapter four discusses the presentation, analysis and interpretation of data and observation carry out in the work. It also dicussess the analysis of some cases decided by the Shariah Court of Appeal Kano State.

Chapter five being the concluding chapter discusses the summary of the major issues in the work, the findings to be made on the corresponding recommendations to profer solution to the findings (to be made).

CHAPTER TWO

TALAQAS INSTRUMENT FOR THE DISSOLUTION OF MARRIAGEIN ISLAMIC LAW

2.1 Introduction

Marriage contract in Islamic law accords an important position having regard to its philosophy. Islam considers it not as a mere or ordinary social contract but a special one described as "Mithagun Ghaliz". In view of this, Islam takes a realistic and justifiable approach to human affairs by attaching great importance to the happiness of each of the spouses via marriage union. This is in line with Qur'an verse which states; "And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts). Verily in that are signs for those who reflect". 58 Therefore, every attempt should be made to maintain the contract for the lifetime of the spouses. This can be achieved only where there is mutual love, affection and respect among the respective spouses.⁵⁹

But, where it is proven that, either the husband or the wife or both cannot live happily together then, Islam in such situation enjoins the couples to bear with each other and find means for reconciliation and understanding.

However, if the situation (hatred and misunderstanding) is persistently increasing to the extent that it renders the relationship between the couple so unbearable that the primary objects of marriage are not achieved, then its continuance

 $^{^{57}}$ Sabiq, S. (1998) Fiqhs-Sunnah, Darul-Fikr, Beirut Lebanon, Vol.2, P. 162 58 Q. 30:21

⁵⁹Sabiq, S. (1998) Fighs-Sunnah, Darul-Fikr, Beirut Lebanon, Vol.2, Pp. 199-200; Ahmed K.N., (1981) Muslim Law of Divorce, Kital bhavan, New Delhi, p.1

is no longer considered desirable. In a situation like this, Islam prescribesDivorce (*Talaq*)as an inevitable solution to the disputing couples. The Court of Appeal in relation to this held thus⁶⁰; "The institution of marriage in Islam is special, but when marital relations have been poisoned to a degree which makes peaceful home life impossible then Islam permits that such relationship be determined for the best interest of the estranged couple in particular and the society in general".

It has to be cautioned that, even though Islam permits for divorce between the disputing couple but such permission is not left vague that could lead to its abuse. It is reported in various *Ahadith* of the Prophet Muhammad, Peace be upon him, that he admonishes Muslim community (*Muslim-umma*) to abstain or shun from rampant and unreasonable termination of marriage.⁶¹

2.2 Defination of *Talaq*

The word *Talaq* is an Arabic word that literally means "to untie a knot", "to release a knot" or "to free". Technically, *Talaq* means "dissolution of marital relationship" or "release from the marriage union." ⁶²Therefore, one can simply define *Talaq* to mean, termination of marital relationship between the couple who are living under a validly subsisting marriage-tie usually pronounced by the husband (using some acceptable expression denoting same) or in exceptional circumstance initiated by the wife.

2.2.1 Philosopy Behind Talaq

Ibn Sina, in his book *Shifaa* says; " ... الفرقة سبيل ما ... ⁶³يمبغي أن يكون إلي الفرقة سبيل ما ... transaction entered, (between parties) there shall be a way of terminating it. This principle is of general application to which marriage transaction is not an exception.

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⁶⁰Usman v Usman (2003) NWLR Pt. 830, pp. 119-120

⁶¹Infra P. 30 of this work.

⁶²Sabiq, S. (1998) Fighus-Sunnahl, Op cit. p. 162

⁶³Ibid p. 164

Under Islamic law, marriage is institutionalized to achieve certain objectives that are exclusively enjoyable therein. It in return bring happiness, joy, love and satisfaction between the couples, to mention but few. In Quran⁶⁴ Allah (S.W.A.) says;

"And among His Signs is that He created for you mates from among yourselves that you may dwell in tranquillity with them; and He has put love and mercy between your (hearts).

Therefore, where these noble objectives are not achievable in marital union then, its continuance will yield and adverse outcome against the objectives of marriage as set out by *Shari'ah* such as hatred, cruelty, havoc and transgression hence, its termination is more desirable.⁶⁵

Another rationale behind *Talaq* can be seen in the light of Quranic verse⁶⁶, where Allah (S.A.W.) says He makes our religion (*Islam*) simple. ما جعل الله عليكم في الدين من Thus: ".... He has imposed no difficulty on you in religion....". Thus where the noble objectives of marriage are not achievable, the continuence of such marriage yields difficulties between the couples. Therefore, in line of the above said authorities, it is wiser and reasonable to leave the door open for *Talaq* where it appears necessary, than to denyit.

Finally, even though Islam permits divorce, couples are yet cautioned and enjoined to develop or inculcate the attitude of tolerance, patience and accommodation in their matrimonial setting and use the instrument of *Talaq* only as a last resort.

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⁶⁴O. 30:21

⁶⁵ Sabiq S., (1998) Fiqhus-Sunnah, Opcit, pp. 163-164

⁶⁶O.22: 78

2.3 Islamic Injunctions of *Talaq*

The position of *Talaq*is provided by *Shari'ah*, commonly found in the primary sources of *Shari'ah* i.e. *Our'an* and *Sunnah*.

2.3.1 Qur'anic Injunctions on Talaq

There are many Qur'anic verses on *Talaq*, but some of them⁶⁷ are as follws:

"When you divorce women, and they (are about to) fulfill the term of their (*Iddah*), either take them back on equitable terms: but do not take them back to injure them (or) to take undue advantage; ...

وإذا طلقتم النساء فبلغن أجلهن فأمسكو هن بمعروف أوسرحو هن بعمروف ولاتمسكو هن ضرار لتعتدوا.......1...

"But if you decide to take one wife in place of another, even if you had given the latter a whole of treasure for dower, take not the least bit of it back:"

وإن أرد تم استبدال زوج مكا ن زوج وءاتيتم إحد هن قنطا رًا فلا تأخذوا منه شيئا....

"O Prophet when you divorce women, divorce them at their prescribed periods and count (accurately) their prescribed periods..."

يها النبى إذا طلقتم النساء فطلقو هن لعد تهنو أحصوا العدة

The Prophetic traditions are as follow: The Prophet (P.B.U.H) said: "The lawful thing which Allah (S.W.A.) hates most is divorce" 68

In another *Hadith*, the Prophet is reported to have said: "Marry, do not divorce, for God does not like men and women who relish variety in sex matters." ⁶⁹

The Prophet is further reported to have said: "Forbidden is the fragrance of paradise to her who demands divorce from her husband without genuine reasons.⁷⁰

⁶⁷ O. 2:231, 4: 20 and O 65:01 respectively

⁶⁸As-sanani M. I., (1996), *Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances*, Dar-us-salam Publications, Riyadh, Kingdom of Saudi Arabiya, p.375.

⁶⁹Alhafanawi, M. I., (2005), Ad-dalaq, Maktabatul-iman, Jami'atul-azahar, p. 17

⁷⁰Ibid

By virtue of the authorities mentioned above, one may conclude that, though divorce is permissible it is always resorted to when it became necessary. In other words divorce is resorted only as a cure or remedy to avoid greater evil.

2.3.2 The Legal Position of Talaq

Muslim jurists expressed divergent opinions as to the position of Talaq under Shari'ah. However, it is classified as follows: 71

- 1. Obligatory (Wajib)
- 2. Permissible/ Lawful (Mubah)
- 3. Recommendable (Mandoub)
- 4. Prohibited/ Forbidden (*Muharram*)
- 1. **Obligatory** (Wajib): Talaq is said to be Wajib where the marriage is affected by any of the following circumstance(s)
- thetermination Where of marriage is recommendedby Al-hakamain a. (Arbitrators) who were appointed by a judge to check the dispute between the couples and make recommendation as to whether or not the marital relationship between them shall be terminated or otherwise. If the arbitrators recommend the marriage to be terminated then, that is final and it is Obligatory to effect same. This is in line with authority that says;⁷²

Meaning that if the obitrataors reach a decision that is final and no excuse should be entertained from the spouses.

The Court of Appeal applied this principle in its decision, ⁷³ where it held thus;

 $^{^{71}}$ Ibid, Pp. 162-3 72 Alkafiy, M. Y., (2012), *Ihkamul-ahkam ala Tuhfatul Hukkam*, Dar El Fikr SA. L., Beruit, Lebanon, p. 89

⁷³Wapanda v Wapanda (2008)1, N.W.L.R. (pt. 1068) p. 364

The position of the "*Hakamaini*" (Arbitrators) in matters of marriage is akin to that of a real judge. Their decision binds the judge and must be implemented. Thus, whatever "*Hakamaini*" (Arbitrators) appointed by the court decides about the marriage—should be executed and no excuse should be entertained from the spouses....

- b. Another circumstance where a *Talaq* is effected as *Wajib* can be seen in the case of *Ila* where the husband continues to abstain from having sexual intercourse with his wife after the expiration of the prescribed period of four Month in line with Qur'anic versethat says; "For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, Allah is Oft-Forgiving, Merciful.

 But if their intention is firm for divorce, Allah hears and Knows all things". 74

 So, in this case, theabandoned wife shall take the matter before a judge and the husband would be forced to effect divorce otherwise the court effects it on his behalf.
 - **2. Permissible** (*Mubah*)*Talaq* may be considered permissible due to the wife'sintolerable misconduct or where she is creating serious problems to the husband to the extent that he finds it intolerable to continue living with her as wife. For example where the wife is of the habit of insulting the husband's parent or beating him and alike.⁷⁵
 - **3. Recommended** (*Mandoub*): *Talaq* is said to be recommended when the wife appears to be unchaste or not religious despite all the repeated effort made to draw her attention to the religious obligations but yet neglects. This arises where the wife for

⁷⁴Q. 2: 226-7

⁷⁵Sabiq, S. (1998) Fighus-Sunnah, Op cit. p. 163

example, fails to observing her religious Wajib (Obligations) for instance where she desists from observing daily prayers, Ramadan-Sawm (without cogent excuse) e.t.c.⁷⁶

With respect to the unchaste wife, it is also recommendable that the marital relationship be terminated for a reason of uncertainty as to the paternity of the child/children born or to be born.⁷⁷

4. Forbidden (*Muharram*): *Talaq* is said to be forbidden where the husband divorces his wife when she is observing her menstruation. This act of Talaq directly violates both *Our'an* and the *Sunnah*. Quranic verseprovides thus: "O Prophet (S.W.A.) when you divorce women, divorce them at their prescribed periods and count (accurately) their prescribed periods... 78, Similarly, in a Hadith reported by Ibn Umar (R. T. A.), that he (Ibn Umar) divorced his wife during her period. The Prophet was very annoyed when he heard this and ordered him to take back his wife and if he likes divorce her or sleep with her when she is in the state of purity⁷⁹.

In addition however, a *Talaq* is said to be forbidden when the husband divorces his wife, though she is not at fault and without any justifiable reason for effecting same. Talaq of this nature is opined to have been akin to reckless wastage or wasteful spending of one's money which amount to embezzlement (Attabziyr). By virtue of Qur'anic verse state thus: "And render to the kindred their due rights as (also) to those in want, and to the wayfarer: but squander not (your wealth) in the manner of a

⁷⁶Ibid p. 164 ⁷⁷ Ibid.

⁷⁹Al-asqalani, I., (2002), *Bulugul-maram*, Dar El Fikr, Beirut-Lebanon, p. 190

spendthrift. Verily spendthrifts are brothers of the *Satans*. And the Satan is to his Lord (Himself) ungrateful".⁸⁰.

The above classification is enough to infer that, Muslim husbands are discouraged from divorcing their wives without any reasonable grounds and without making any attempt of conciliation. It is very unfortunate nowadays that, this basic principle has been lost as *Talaq* is given capriciously and without any justification.

2.3.3 Husband's Power and Capacity to Divorce

As a matter of general rule, husbandsare empowered by *Shari'ah* to effect divorce on the wifewithout the intervention of a third party, provided he is of full legal capacity.

All the Muslim jurists are unanimous on this. In holding this view, they rely on the following authorities:

1. That most of the Qur'anic verses categorically empowers the husband(s) to dissolve the marriage. They rely on the following Qur'anic provisions:

"O Prophet when you divorce women, divorce them at their prescribed periods ..."81

"So <u>if a husband divorces his wife</u> (irrevocably), he cannot after marry her until after she has married another husband......"

"82

"When you divorce women, and they (are about to) fulfill the term........83"

2. Secondly, the *Hadith* of Jamila the wife of Thabit bn Qays is also relevant. The Prophet (Peace be upon Him) is reported to have said:

"Will you return to him his orchard which he had settled upon you as dowry?" She replied in affirmative, the Prophet (P.B.U.H) then asked Thabit to take back his orchard and divorce his wife which he did.⁸⁴

⁸¹O. 65: 01

⁸⁰Q. 17: 26-27

⁸² O 2·230

⁸³ O. 2:231

2.3.4 Wisdoms Behind Vesting the Power to Divorce in the Husbands

Indeed there is no clear provision of *Shari'ah* in this respect. However, most of the effort made by the jurists remains an analogy. The following are some of the wisdoms;

Economic expenses; it is argued that, husbands generally shoulder economic expenses during the formation of marriage contract. For example, he has to pay *Sadaq* to the would-be-wife, provide shelter for her. This is apart from the betrothal gifts (expenses) that are customarily given out to the would-be wife depending on the type of custom(*Urf*) prevailing in a particular society. Similarly, during the subsistence of the marriage and/or after revocable divorce before the expiration of the *Iddah* period, the husband has to maintain the wife and all these expenses so expended are generally not refundable in the event of divorce. This is unlike the position of female/wife who does not incur such expenses.

In view of the foregoing, the husband must think twice before he effects divorce on his wife. On this premise Maududi fascinatingly explains the wisdom (by way of Analogy) why *Shari'ah* vests the power of divorce in the husband. He says:

The right could not be given to the wife. If she were to be given this right, she would grow over-bold and easily violate the man's rights. It is evident that if a person buys something with his money, he tries to keep it as long as he can. He parts with it only when he cannot help it. But when a thing is purchased by one individual, and the right to cast it away is given to another, there is little hope that the latter will protect the interest of the buyer who invested the money.⁸⁵

Maududi, A. A. (1983), *The Law of Marriage and Divorce in Islam*, Islamic Book Publishers, Kuwait, P. 27

⁸⁴As-sanani M. I., (1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, Op cit. p. 374.

1. The Psychological Differences between the Spouses; it is observed generally that men, by their disposition are more tolerable and composed than the women counterpart. Similarly, women, due to their psychological nature are emotional. For instance, females are usually of full of worries and distress during their menstruation or when they conceived. Therefore, if the power to effect divorce is vested in the women they may effect it merely on trivial conflict. In view of these weaknesses, the unilateral power to effect divorce is placed in the husband and not the wife. ⁸⁶

2. **Age differences**; it is a common fact that in most of the marriage contracts nowadays, husbands are usually older than the wife. It is therefore, presumed that husbands would be more intellectual than the wife/wives and as such the power is invested in them.

2.3.5 Legal Capacity to Divorce

Having examined the husband's power to terminate the marriage yet, for such termination to be valid and effective, the husband himself must possess certain legal qualities thus;

- i. He should be sane
- ii. He should be of full age
- iii. He should effect it voluntarily⁸⁷

Divorce so pronounced by any person as husband contrary to the above mentioned qualities is not in order and contradicts the following traditions of the Prophet(Peace be upon Him) thus:

Nana Aisha, reported the Prophet (Peace be upon him) said:⁸⁸

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⁸⁶ Musawi, M. R., (N. D) Western Civilization Through Muslim Eyes, P. 101

⁸⁷Sabiq, S. (1998) *Fighus-Sunnah*, Op cit. p. 166

⁸⁸ As-sanani M. I.,(1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, Op cit, Pp.381-382.

"There are three people whose actions are not recorded: a sleeping person till he is awakes up, a minor till he is grown up, and a mad person till he recovers his senses." 89

Ibn Abbas (R.T.A) reported the Prophet(Peace be upon Him) to have said: 90

Allah the most High has forgiven the wrong actions done by my followers under mistake, forgetfulness and what they are forced to do against their will.⁹¹

In line of the foregoing, it is relevant to look briefly at the Juristic arguments as to the validity or otherwise of divorce effected under the following forms; Divorce by a drunkard, Divorce under Compulsion, Divorce pronounced in Excessive Anger, Divorce in jest, and Divorce pronounced by a Person Suffering from *Maradul-mawt* (Death Sickness).⁹²

2.3.5.1 Divorce by a Drunkard

This refers to a situation where a husband divorces his wife while he is in the state of intoxication. Note that intoxication may be voluntarily or involuntarily and each circumstance has its legal effect under *Shari'ah*.

Muslim jurists are unanimous as to the ineffectiveness of a divorce effected under the influence of involuntary intoxication. They view that, any person who gets drunk involuntarily⁹³ and divorces his wife, in this instant, such a person will be considered as an insane, as such his divorce is not effective. In holding this view they rely on the *Hadith* where the Prophet(Peace be upon Him) says "There are three

⁸⁹ Hadith no.927

⁹⁰As-sanani M. I.,(1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, p.380.

⁹¹Ibid, *Hadith* No. 922, but Ibn majah and Al-Hakim; Abu Hatim said that the *Hadith* is not an established one.

⁹²There many forms a part from the above mentioned ones.

⁹³For instance, where he is forced to take it against his will or takes it under necessity and alikes.

people whose actions are not recorded: a sleeping person till he is awakes up, a minor till he is grown up, and a mad person till he recovers his senses."94

However, with regard to voluntary intoxication, Muslim Jurists differ. According to majority, where a person becomes intoxicated voluntarily⁹⁵ and divorces his wife in that state then, the divorce is effective being a punishment of his wrong deed. But to Caliph Usman, is of the view that any pronouncement of divorce uttered in the state of intoxication whether or not voluntarily such divorce will not be considered provided that such person became intoxicated at the time of the pronouncement⁹⁶. In holding this view they rely on Quranic verse that state"O you who believe! Approach not prayer in a state of intoxication until you can understand all that you say..."⁹⁷They conclude that, this principle shall be extended to the cases of divorce.

2.3.5.2 Divorce by Compulsion

Just like divorce pronounced in the state of intoxication, Muslim jurists differ as to the validity or otherwise of a divorce pronounced under duress or by compulsion. Majority of the jurists championed by Caliph Umar, Aliyu bn Abi Talib, Ibn Abbas to which Maliki, Shafi'I and Hambali subscribed to, opined that, divorce made under compulsion should not be counted.⁹⁸ In holding this view, they rely on the following authorities:

⁹⁴As-sanani M. I., (1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, p.380.

⁹⁵Where he took an alcoholic substance willingly without being forced and became intoxicated.

⁹⁶Sabiq, S. (1998) Fighus-Sunnah, Op cit. p. 167

⁹⁸ Sabiq, S. (1998) *Fighus-Sunnah*, Op cit. p. 167

Thus provides: "Anyone who, after accepting faith in Allah, utters Unbelief, except under compulsion, his heart remaining firm in faith.........99,"

They explain further that whoever is compelled to divorce his wife against his will then such divorce is ineffective. In upholding this opinion they further rely on the Tradition of the Prophet(Peace be upon Him) where he is reported to have said, "Allah the Most High has forgiven the wrong actions done by my followers under mistake, forgetfulness and coercison". ¹⁰⁰

However, the other group of jurists,including Hannafi School opine that any divorce uttered under compulsion is valid and effective. ¹⁰¹In holding this view they rely on a weak authentic *Hadith* that a person came to the Prophet (Peace be upon him) and stated that his wife while he was sleeping sat on his chest and threatened to cut his throat unless he divorced herThree times which he did for the sake of his life. The Prophet held the divorce effective. ¹⁰²They further support their position with an analogy that, the issue of divorce is entirely an issue of necessity thatleaves the husband with two evil alternatives; whether he chooses (lesser evil)that; to free himself from the apprehension by divorcing the wife or chooses not to divorce her but suffer the apprehension or pain resulted from the continuanceof the marital relationship.

From the foregoing, one can note that, the position held by the majority is more sound and reasonable as they rely on the authentic injunctions. For instance,

⁹⁹Q. 16: 106

As-sanani M. I.,(1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, p.380.

¹⁰¹Sabiq, S. (1998) *Fighus-Sunnah*, Op cit. p. 167

¹⁰²Ibid

they rely on Q. 16: 106 and an authentic *Hadith*of the Prophet and inaddition their position is in line with the consensus of the Companions of the Prophet.¹⁰³

2.3.5.3 Divorce Pronounced in Excessive Anger

Muslim jurists have expressed different opinions as to the effectiveness or otherwise of the divorce pronounced by the husband under excessive anger. The majority view is developed by Maliki, Shafi'I and Hambali that, if a husband divorces his wife in a state of anger to the extent that he could not understand his action then such divorce cannot stand as such is not effective ¹⁰⁴. In holding this view they rely on the *Hadith* of the Prophet that says; "There is no divorce or emancipation in the state of an extreme anger or compulsion or insanity". ¹⁰⁵ Note that the degree of the anger or state of mind must be one that renders one not capable of understanding the legal consequence of his action.

2.3.5.4 Divorce Pronounced in Jest

Muslim jurists are not unanimous as to the legal effect of divorce pronounced in jest. According to the majority such divorce is considered valid ¹⁰⁶. In holding this viewthey rely on the *Hadith* of the Prophet (Peace be upon Him) that says; "There are Three things which whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and revocation of divorce" ¹⁰⁷.

This position is in line with the warning that Allah (S.W.A.) has made to those who are handling Qur'anic verse jokingly. Quranic verse provides thus: "...say: was it at Allah and His Signs and His Messenger that you were mocking? Make no excuses:

¹⁰³ Ibid

¹⁰⁴Ibid

¹⁰⁵ Ibid PP. 167-8

¹⁰⁶Ibid P. 168

¹⁰⁷As-sanani M. I.,(1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, p.379.

you have rejected faith after you had accept it...." So it shall be just and reasonable to extend the application of this verse to the cases of divorce uttered in jest in order to deter others from mocking religious issues.

Somejurists however, disagree with above view and opine that, any divorce pronounced in jestshall be considered ineffective for want of requisite intention. In holding this view, they relyon quranic verse where it says thus: "But if their intention is firm for divorce, Allah hears and Knows all things." They further rely on the *Hadith* of the Prophet that says: "All actions are to be judged according to intention." The later view eventhough rely too on Qur'anic verse and *Hadith* but the former is sounder as it clog up the possibilities of mocking the marriage institution.

2.3.5.5 Divorce Pronounced by a Person Suffering from Maradul-Mawt (Death-Sickness)

There is no clear provision either in the *Qur'an* or *Sunnah* concerning the divorce pronounced by a person suffering from death-sickness. However, all the *Sahaba* (Prophet's companions) by their consensus consider it effective and all the Muslim jurists subscribed thereto.¹¹¹

However, they expressed divergent opinions as to whether or not the divorced wife is entitled to inherit him. According to Maliki jurists the divorced wife is entitled to inherit him whether the divorce is revocable or irrevocable one and whether or not he dies during her *Iddah* provided he dies as a result of that sickness. Moreover, the divorced wife is still entitled to inherit him even when she contracts another marriage with different person provided that he (the death sick-husband) dies in that very

¹⁰⁸Q.9:65-6

¹⁰⁹Q.2: 227

¹¹⁰Sabiq, S., (1998), *Fiqus-Sunnah*, op cit. p. 168

¹¹¹Sabiq, S., (1998), Fiqus-Sunnah, op cit. p. 189

¹¹²Al'azhariy, S. A., (1996), Samaraddani Sharhur-risala, Darul-fikr, Labanon, p. 463.

sickness¹¹³. Conversely, the death -sick husband can inherit his late divorced wife, if she predeceases him.But this is so, wherethe divorce is revocable and she dies while observing her *Iddah*.¹¹⁴

To Hannafi Jurists however, are of the view that, the divorced-wife is entitled to inherit the death-sick husband whether or not the divorce is irrevocable one provided that it is not effected at the instance of the wife such as *Khul*. To them, she can inherit him if he dies during her *Iddah* period¹¹⁵. In holding this view, they rely on the case of the Companion of the Prophet, AbdulRahman bn Awf, who divorced his wife during his death-sickness in which he eventually died during her *Iddah* period. The matter was later brought to Caliph Usman, who held that she was entitled to inherit him.¹¹⁶

2.4 CLASSIFICATIONS OF TALAQ

Muslim jurists classified *Talaq* into various types defending upon the manner and number of the pronouncement(s) made. In view of this *Talaq* is categorized into:

- a. Sunni divorce (Talaqus-sunniy) and Innovative divorce (Talaqul Bidi'i)
- b. Revocable (Raj'iy) and Irrevocable (Ba'in)

2.4.1 *Sunni* divorce (*Talaqus-sunniy*):

This is a type of *Talaq* pronounced in line with Islamic principles laid down by *Qur'an* and *Sunnah*. A divorce is said to be *Sunniy* where a husband divorces his wife in a single pronouncement, during her (the wife's) state of purity and at the time of interval without having immediate sexual intercourse¹¹⁷. This type of divorce is in line

¹¹⁵Sabiq, S., (1998), Figus-Sunnah, op cit. p. 189

¹¹³ Alkafiy, M. Y., (2012), *Ihkamul-ahkam ala Tuhfatul Hukkam*, Op cit. P.104

¹¹⁴Ibid

¹¹⁶Ibid

¹¹⁷Al-jaza'iriy, A. J.,(1990), *Minhajul-muslim*, Darul-Fikr, Beruit, p. 370

of the with following quranic verses says; "Divorce is only permissible twice; after that, the parties should either hold together on equitable terms or separate with kindness...". ¹¹⁸In another verse, provides thus: "O Prophet when you divorce women, divorce them at their prescribed periods ..." ¹¹⁹. When these verses are read conjunctively together, one will understand that the only divorce recognized as lawful by *Shari'ah* is a single pronouncement made at once or at different intervals after revocation of the former. Similarly, the wife shall not be divorced again for the second or third time except after the expiration of her menstrual period before having sexual intercourse ¹²⁰.

With respect to the tradition of the Prophet (Peace be upon Him), it was reported that Abdullahi Ibn Umar had divorced his wife while she was menstruating and the matter was brought to the Prophet (Peace be upon Him) by Umar, the Prophet (Peace be upon Him) commanded him to take her back and keep her till she is purified. After then, if he wishes he may keep her or divorce her before having an intercourse with her. ¹²¹ Therefore, any divorce made in contravention of these conditions or stipulations is considered as innovative not *Sunni* divorce.

2.4.2 Innovative divorce (Talaqul Bidi'i):

This classification of divorce can be defined as any divorce effected in contravention of the principle of *Shari'ah* as stated above. It involves the following four main elements:

a. To divorce a wife during her menstruation.

¹¹⁸Q. 2: 229

¹¹⁹Q. 6:01

¹²⁰Riyadh, S. I., *The Qur'an Arabic Text with Corresponding English Meanings*, op cit. foot note no. 1571, P. 806

¹²¹As-sanani M. I., (1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, pp. 375-376.

- b. To divorce a wife immediately after having sexual intercourse with her.
- c. To divorce a wife during her postnatal bleeding.
- d. Triple pronouncements of divorce at once or three different pronouncements made consecutively. 122

Note that this type of divorce is unlawful and the husband, who does so, is considered as transgressor/sinner. With respect to the effectiveness of this type of divorce, the majority of the jurists are of the opinion that it is effective like *Sunniy* divorce. In holding this opinion, they rely on the tradition of the Prophet that says; there are three things which whether undertaken seriously or in jest, are treated or considered as serious: Marriage, divorce and taking back a wife in revocable divorce However, the minority of the jurists are of the view that such divorce (*Bidi'i*) is not effective because it is not recognized by *Shari'ah*. In holding this view they rely on the *Hadith* that Abdullahi bn Umar divorces his wife during her menstrual period but the Prophet returned her back to her matrimonial home and he does not count it. 125

2.4.3 Revocable Divorce (Talaqul-Raj'iy):

This is another classification of divorce which is defined to mean a termination of marriage by way of single pronouncement in which the husband reserves the right to take back his wife without contracting a new marriage, before the expiration of the *Iddah*. It may happen that the husband had previously divorced the wife (single pronouncement) prior to the later one, in all these circumstances the divorce is

¹²²At-tasuliy, A. A., (1991), *Bahjatu Fiy Sharhit-tuhfatu*, Darul-Fikr, Beruit, p. 631, At-tijjaniy, M. M., (2010) *Fathul-jawwad fiy Sharhil Irshaad*, Darul-Hikmah, Kano, p. 225, Assuyudi, J. A., (2012) *Tanwirul Hawaliki Sharhul- Muwadda Maliki*, Darul-fikr, Beruit, Labanon, P. 361

¹²³Al-jaza'iriy, A. J., (1996), *Minhajul-muslim*, Op cit. p. 380

¹²⁴As-sanani M. I.,(1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, op cit, p.379.

¹²⁵Sabiq, S., (1998), *Figus-Sunnah*, op cit. p. 179

revocable and does not terminate the marriage-union, until after she completes her *Iddah* period. As such, the husband reserves the right to take back his wife by revoking the divorce he pronounces and nothing more. The authority in this respect can be seen from Qur'anic verseprovides thus; ".... And their husbands have better right to take them back in that period...". 126This connotes that, the husband is entitled to take back his wife even if it is against her will provided it is before the expiration of the *Iddah*. 127

Irrevocable Divorce (Talagul-Ba'in) 2.4.4

Means a divorce in which the husband's right to revoke the divorce (to take back the wife) is lost or exhausted. This classification terminates the marriage-tie completely unless a new/fresh marriage is contracted, if she likes. 128 It is further sub-divided into:

a. Ba'in Baynunah Kubrah (The severe)

b. Ba'in Baynunah Sughrah (the minor)

Ba'in Baynunah Kubrah (The Severe): This is a sub classification of irrevocable divorce in which the irrevocably divorced-wife is not permissible to the husband until she contracts another (valid) marriage with a different person as husband and same is consummated and then divorced. This sub-classification is based on quranic versesays: "So if a husband divorces his wife (irrevocably), he cannot after that, remarry her until after she has married another husband and he has divorced her...,"129. It is also narrated by Bukhari 130 on the authority of Aisha (R.T.A.), said that, the wife of Rifaqatu approached the Prophet(Peace be upon Him) and informed

¹²⁷Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, op cit., p. 371

¹²⁸Ibid pp. 370-371

¹³⁰Albukhariy, M. I., (2004), Sahihul-bukhariy, Muassasatul-mukhtar, Alkahirah, Misra, P. 575.

him that, her husband (Rifaqatu) had irrevocably divorced her and she has married another person AbdulRahman Ibn Zubair, but she found him sexually weak. The Prophet then asked her whether she wanted to go back to her former husband (Rifaqatu)? She answered "Yes". The Prophet after then said "no! You cannot, until he tastes (consummates) you and you taste (consummate) him". ¹³¹

Conditions That Qualifies an Irrevocable Divorce to be Considered as *Baynuna Kubrah*

- a. Where a triple divorce is effected in a single pronouncement or in Three consecutive pronouncements. According to the majority of the jurists.
- b. Where the pronouncement is for the third time ¹³².

Ba'in Baynunah Sughrah (the Minor): This is another sub classification of an irrevocable divorce. It connotes a termination of marriage in which the husband cannot take back the divorced-wife unless they contract fresh marriage among themselves. Here the divorced-wife needs not to contract a fresh marriage with somebody else. ¹³³

Conditions that Qualifies an Irrevocable Divorce to be Considered as *Baynunah*Sughrah

- a. Where the husband fails to take back his wife, in a revocable divorce, until after the expiration of her *Iddah* period.
- b. Where the divorce is effected before the consummation of the marriage.
- c. Where the divorce is effected by way of *Khul*. 134
- d. Where it is effected by Al-Hakamani (Arbitrators)¹³⁵.

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¹³¹Ibid, *Hadith* No. 1845

¹³²Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, op cit., pp. 370-371

¹³³This type unlike the *Baynuna Kubrah*, does not require the wife to marry another person as husband before they could resume their marital relationship.

¹³⁴For more detail on *Khul'*I, see chapter three of this work.

Other types of method for the dissolution of marriage includes:

- 1. *Ila'i* (vow)
- 2. Li'an (Invoking curses)
- 3. *Khul*(Self-redemption)¹³⁶
- 1. *LIAN*: Is a type of divorce that results from the accusation of the commission of adultery laid by the husband against his wife without solid proof. So if the wife denies the allegation, the husband has to swear four times repeating the allegation and the fifth one shall be an oath that the curse of Allah be fall on him if he is liar. Likewise the wife will do the same as the husband did. Once the oath is effected, then the marriage stand irrevocably divorced for life. The authority of this type can be found in Our'an 24 verse 6-9.¹³⁷
- **2.** *ILA'I*: This arises where a husband vows to refrain from having any conjugal relationship with his wife or wives for a while which may extend to not more than Four months¹³⁸.

The authority of this type can be found in Quranic verse says: "For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, Allah is Oft-Forgiving, Merciful. But if their intention is firm for divorce, Allah hears and Knows all things. 139," Note that, upon the expiration of the stipulated period and the husband yet refuses to resume sexual inter course with the wife, then she should report the matter to a judge if she wishes. The court will ask him to resume so and if he refuses the court will

¹³⁵Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, op cit., p. 371

¹³⁶ On *Khul* see next chapter on this work.

¹³⁷ Alqurdubiy I., (2001) *Bidayatul Mujtahid wa Nihayatul Muqtasid*, Vol. 2, Darul-fikr, Beruit Lebnon, Pp. 98-99.

¹³⁸Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, Darul-Fikr, Beruit, p. 375; As-sanani M. I.,(1996), *Bulugh Almaram Attainment of the Objective according to Evidence of the Ordinances*, Dar-us-salam Publications, Riyadh, Kingdom of Saudi Arabiya, p. 383

¹³⁹Q. 2: 226-7

ask him to divorce her and still if he refuses then the court will effect the divorce on his behalf. 140

Muslim jurists however, expressed divergent opinions as to the effect of Li'an where the husband has subsequently retracted his accusation. According to the majority, the position remains as it is, that the marriage is irrevocably dissolved and the parties are permanently barred from remarrying themselves. In holding this opinion, they rely on the *Hadith* of Abdullahi bn Abbas as reported by Baihaqi who said that, couple divorced by Li'an shall never be remarried (to themselves) after the separation. ¹⁴¹To minority, including Hannafi argue that where a husband after the Li'an retracts the accusation, the husband shall be punished for Qazf(slander) by given eighty lashes and the divorce is revocable so that the couple could remarry themselves thereafter. 142

2.5 Legal Effects of Talaq Under Islamic Law

It is a common fact that whenever divorce occurs between the couple such Talaqresults some immediate effects; of either terminating the entire marital relationship 143 or diminishes the number of the marital knot from three to two or to one knot 144 as in the case of revocable divorce. These can be seen as follow:

- a. Dissolution of Marriage: this is primary effect of *Talaq* under Islamic law. Once it is effected then the subsisting marriage seizes to exist.
- b. Raj'ah (right of revocation): This is a right of a husband that emerges or exists after a revocable divorce is pronounced or effected by him before the expiration of

¹⁴⁰At-tijjaniy, M. M., (2010) Fathul-jawwad fiy Sharhil Irshaad, Darul-Hikmah, Kano, p. 236

¹⁴¹ Isma'il M. B., (1997), Alfiqh Alwadih Minal Kitab WasSunnahl ala Almazahibul Arba'a, Vol. 2, Darul Manaar, Cairo, P. 152

¹⁴² ibid

¹⁴³This is in case of irrevocable divorce. The couple cannot remarry back until the wife has validly marries somebody else and same is consummated.

¹⁴⁴In every marriage under Islamic law, the husband is given up to three numbers (knot) of pronouncement to divorce his wife for the purpose of terminating the marriage.

the wife's *Iddah*. In exercising the right the husband needs not to have the wife's consent. This right is enshrined in Quranic verse says: ".... And their husbands have better right to take them back in that period if they wish for reconciliation... ", 145

- c. *Iddah* (waiting period): The divorced-wife shall observe *Iddah* after *Talaq* is effected. She is forbidden to contract new marriage with another man without observing and completing her *Iddah*¹⁴⁶. The duration of *Iddah* varies from one woman to another depending on the nature and circumstance of each case. For instance a menstruating woman, who is divorced, shall observe three menstruating circles as her waiting period as provided in Quranic verse says; "Divorced women shall wait concerning themselves for three monthly periods..." while, a non menstruating woman (probably due to her old or under age) who is divorced, should observe three months as her *Iddah* period and in the case of divorced pregnant-woman, her *Iddah* period shall be for a term when she gives birth. This principle is provided in Quranic versethus: "Such of your women as have passed the age of monthly courses, for them the prescribed period, if you have any doubts, is three months, and for those who have no courses (it is the same): for those who are pregnant, their period is until they deliver their burdens "148
- d. *Sukunah* (shelter): This is a right of a divorced-wife. it arises immediately after divorce. That she is entitled as of right to remain in her husband's matrimonial home and observe her *Iddah* therein. Muslim jurists are unanimous as to this right of a divorced-woman in case of revocable divorce. In holding this view, they

¹⁴⁵O 2: 228

¹⁴⁶Alhafanawi, M. I., (2005), Ad-dalaq, Op cit. p. 411

¹⁴/Q. 2:228

¹⁴⁸Q. 65:4

relyon Quranic verse that says; "Let the women live (in *Iddah*) in the same style as you live, according to your means" 149.

However, with respect to irrevocable divorce, Muslim jurists differ. According to Aliyu bn Abi-talib, Ibn Abbas, Jabir, Dawus, Hanabila and Zahiriyya, a triply divorced woman is not entitled to Sukunah whether or not she is pregnant. In holding this opinion, they rely on the *Hadith* of Fadimatu bnt Qays, where her husband divorced her for the third time. She reported the matter to the Prophet but the Prophet (Peace be upon Him) did not order for her shelter and maintenance. They conclude that, Sukunah and Nafaqah are enjoyable only where the divorce is revocable. ¹⁵⁰To Hannafi Jurists on the other hand, a divorced-wife is entitled to Suknah whether or not the divorce is revocable unless where the divorce is at the instance of the wife. In holding this view, they support their view with a report made by Darul-qudniy, that Caliph Umar had challenged the efficacy of the *Hadith* relied by the aforesaid group. He (Caliph Umar) reported to have argued that, they had heard a *Hadith* from the Prophet(Peace be upon Him) says a triply divorced woman is entitled to Sukunah and Nafagah. The group submits that the Qur'anic verse¹⁵¹ mentioned above, does not provide any specification as to the type of divorce; whether revocable or irrevocable divorce. 152

The third group consists of *Malikiyyah*, *Shafi'iyyah*Schools and the majority of Salaf opine that, a triply divorced-woman is entitled to *Sukunah* whether or not she is

¹⁴⁹Q. 65: 6

¹⁵⁰Alhafanawiy, M. I.,(2005), *Ad-dalaq*, op cit, p. 412

¹⁵¹O 65:6

¹⁵²Alhafanawiy, M. I., (2005), Ad-dalaq, op cit, pp. 413-4

pregnant. With respect to Nafaqah, the group opines that she is entitled to Nafaqah only, if she is pregnant. 153

Nafagah(Maintenance): This is also another effect that arises after divorce. Muslim jurists are unanimous that a divorced wife is entitled to Nafaqah as of right if the divorce is revocable, provided her term of *Iddah* has not expired. However they are not unanimous in the case of irrevocable divorce. The predominant view is the one hold by Malikiyyah, Shafi'iyyahSchool and majority of Salaf, that a divorced woman (in the case of irrevocable divorce) is entitled to *Nafaqah* only if she is pregnant. ¹⁵⁴In holding this view, they rely on Quranic verse that says; "Let the women live (in *Iddah*) in the same style as you live, according to your means"155, they further rely on the Hadith of Fadimatu bnt Qays where the Prophet said to her "you are not entitled to Nafaqah unless if you are pregnant" 156. This last view is the preponderance as it is more just and equitable. 157

- e. Hadana (custody of children): The issue of custody arises where divorce had occurred. Muslim jurists are of the view that the right of custody of children, after the termination of marriage, is vested in the children's mother provided she does not contract another marriage. 158 The right is vested in her not withstanding whether she is free, slave, Muslim or Christian. 159
- f. Al-irthi (Inheretence): Muslim jurists are unanimous that, couples via a lawful marriage are entitled to inherit each other in the event of death of one of them. for

¹⁵³Ibid p. 414

¹⁵⁴Ibid p. 414

¹⁵⁵Q. 65:6

¹⁵⁶Alhafanawiy, M. I., (2005), *Ad-dalaq*, op cit, p. 414

¹⁵⁷Ibid pp. 415-6

¹⁵⁸Khalil, M., (2008) Tarjamatu Kitabul Irshaadus-salik fiy Ilimil Fiqhi ala Mazhabi Imami Maliki, Kano Printing press, p. 275; At-tijjaniy, M. M., (2010), Fathul-jawwad fiy Sharhil Irshaad, Darul-Hikmah, Kano, p. 252 ¹⁵⁹Al'azhariy, S. A., (1996) *Samaraddani Sharhur-risalah*, Darul-fikr, Labanon, p. 491.

instance, where a husband divorces his wife (revocable divorce) and he dies before her *Iddah* term expires, then all Muslim jurists agreed that the wife shall inherit him whether or not the marriage has been consummated and vice versa but where the divorce is irrevocable, the wife shall not inherit him. However, if it is proven that the deceased husband had divorced his wife while in a state of dying sickness (*Marad-almaut*) and he dies in that illness, the wife is entitled to inherit him whether or not the divorce is revocable. However, If It is proven that the deceased husband had divorced his wife while in a state of dying sickness (*Marad-almaut*) and he dies in that illness, the wife is entitled to inherit

Finally, this chapterexamines *Talaq*, its principles, classifications and the extent to which the power of *Talaq* is squarely vested in the hand of the male (husband) and its rationale. Therefore, the relavant question to ask is; whether this right of *Talaq* vested in the husband is exclusive? Do the wives have similar right? For detail of the answer, see the next (chapter three) of this work.

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 $^{^{160}}$ Al-jaza'iriy, A. J., (1990), $\it Minhajul-muslim$, Op cit. P. 386 161 Ibid.

CHAPTER THREE

KHUL (SELF-REDEMPTION) AS A CHANNEL FOR A WIFE TO SECURE DISSOLUTION OF MARRIAGE

3.1 Introduction

As mentioned earlier the power of *Talaq*is primarily vested in the husband. However, there is an exception to this general rule, because there are instances one of which the wives are given the right under *Shari'ah* to initiate divorce through the intervention of court. One of these exceptions is for instance; divorceby way of *Khul*. The basis of this right is provided in Quranic verse thus: "...if you (judge) and indeed fear that they would be unable to keep the limit ordained by Allah. So there is no blame on either of them if she gives something for her freedom ..." 162

In view of the above cited authority, a situation may arise where a wife may develop hatred and dislike against her husband to the extent that she could not tolerate him and fears not to offend Almighty Allah. Then *Islam*gives her the right to seek for the termination of the marriage under the principle of *Khul*. Therefore, this chapter intends to discuss the Doctrine of *Khul* by examining the available literatures and some judicial pronouncements¹⁶³ of the courts with a view to examining the extent to which the courts comply with the principles of *Shari'ah*.

3.2 Definition of *Khul*

Literally, the word "Khul" is an Arabic word which has been derived from the verb "Khala'a", which means "to put off" or "to remove". This word is used in

¹⁶²O. 2: 229

¹⁶³ It has to be noted that, judicial pronouncement under Islamic law, is not a binding authority as it is not among the source of *Shari'ah* (either primary or secondary source).

Qur'an 164 where Allah said to Prophet Musa: "Verily I am your" "Verily I am your" لني أنا ربك فاخلع نعليك "Verily I am your Lord! Therefore, put off your shoes …."

This terminology has been adopted because spouses are generally considered as a dress to each partner, Quranic verse thus provides; "... They are your garments and you and you are their garments..." This verse has been judicially adopted by the Court of Appeal where it held thus: "Khul is derived from Khulal-thaub releasing or removing the dress from the body, because a woman is a dress of a man and vice versa confirmed in the Holy Qur'an Ch. 2:187 thus: 'The women are your dress and you are their dress'". 166

Technically, the term *Khul* has been defined as follows:

According to Sayyid Sabiq in his book¹⁶⁷ says*Khul*is a termination of marriage at the instance of the wife in lieu of consideration¹⁶⁸." It is also defined as dissolution of marriage for a consideration payable by the wife or her guardian to the husband.¹⁶⁹ It is further defined as the redemption from the marriage union by the wife against her disliked husband by giving him some amount of property to free herself.¹⁷⁰

Judicially: The Court of Appeal has defined it as: "... dissolution of marriage granted by a husband on the basis of financial consideration offered by the wife, commonly the return of the dower, "Sadaq" and the acceptance of it by the husband..."¹⁷¹

¹⁶⁵Q. 2: 187

¹⁶⁴ Q. 20:12

¹⁶⁶ Husaina V. Tsiriko (1991), NWLR (pt. 167) @ p. 364, para. G

¹⁶⁷Sabiq, S. (1997) Fiqhus-Sunnahl op cit. P. 200

¹⁶⁸Ibid

¹⁶⁹At-tijjaniy, M. M.,(2010) Fathul-jawwad fiy Sharhil Irshaad, Darul-Hikmah, Kano, p. 222

¹⁷⁰Al-jaza'iriy, A. J.,(1990), *Minhajul-muslim*. Darul-Fikr, Beruit, p. 374.

¹⁷¹ Jimoh vs Adunni (2001)14 NWLR (Pt. 734) ratio 1, p. 521

It can therefore be said that, *Khul* is a form of dissolution of marriage at the instance of the wife in which she gives to the husband a valuable consideration (whether in cash or kind) as a ransom to free herself from the marriage union in lieu thereof.

3.2.1 Differences between Khul, Mubara'aandFidya:

It was reported that, Imam Malik was one time asked on the differences between *Khul*, *Mubara'a* and *Fidya*. He replied as follow:

Thus:

- 1) *Mubara'a*: is another means of dissolution of marriage at the instance of the wife in which she, before the consummation of the marriage, offers to pay back the *Sadaq* paid to the husband.
- 2) *Khul*: is a mean of dissolution of marriage at the instance of the wife. The wife, after the consummation of the marriage, offer to redeem herself with anything she has.
- 3) *Fidya*: is another means of dissolution of marriage at the instance of the wife, in which she offers to pay back some portion/part of the dowry paid, to the husband.

3.3 The General Principle of Khul

Under this sub-heading, the work discusses the general principle of *Khul* which comprises the legal basis of *Khul*, its permissibility or otherwise, mode and time of effecting same and other related issues.

¹⁷²Alkafiy, M. Y., (2012), *Ihkamul-ahkam ala Tuhfatul Hukkam,* Dar El Fikr SA. L., Beruit, Lebanon, p. 105

3.3.1 Legal Basis of Khul

The legal basis of *Khul* can be found in the primary source of *Shari'ah* that is; Qur'an and *Sunnah*. The most commonly referred Qur'anic verse that serves as the foundation of *Khul* is the Quranic verse that provides thus "...if you (judge) and indeed fear that they would be unable to keep the limit ordained by Allah. So there is no blame on either of them if she gives something for her freedom ..." By the above Qur'anic verse it is clear that, when the husband and the wife have a course to apprehend that the objectives of marriage are not likely to be achieved in the continuation of their union the wife then may release herself by offering a compensation to the husband.

With regard to the *Sunnah* of the Prophet (Peace be upon Him), the famous *hadeeth* on *Khul* is the one that Imam Ahmad reported from Sahal bn Abi Haythama that the first tradition in respect of *Khul* is the *Hadith* of *Jamilah bnt Abdallah bn Ubyy bn Sahal* the wife of *Thabit Ibn Qays* ¹⁷⁴. That during the life time of the Prophet Muhammad Peace Be upon Him. It was reported that, one day she went before the Prophet (Peace be upon him) and said:

O messenger of Allah! I and Thabit can never live together. I saw him coming from the other side with some men. I found that he had the smallest stature, was the blackest and ugliest among them; I swear by God that, I do not dislike him on the account of any religious or moral turpitude, but I dislike him on the account of his ugliness. I swear by God that if I did dot fear God I would spit on his face when he comes to me (meaning that she hated his very sight). O messenger of Allah! You can see how beautiful I am while Thabit is an ugly person. I do not blame him for any depravity in his religious practices or morality, but I fear that I may be guilty of transgression of the injunctions of Islam." The Prophet (peace be upon) asked her if she would return the orchard given by Thabit to her as dower. She replied, "Yes and if he demands more, then I am ready to give him more than that." The messenger of Allah (peace be upon him) said,

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¹⁷³Q. 2: 229

¹⁷⁴As-sanani M. I., (1996), *Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances*, Dar-us-salam Publications, Riyadh, Kingdom of Saudi Arabiya, p. 374.

"No: not more than what he had given to you." He then asked Thabit to take back the orchard and to release her from the marriage-tie by divorcing her which he did. (175)

From the above authorities, it is understood that *Khul* as a form of divorce occurs where the wife finds it not interested to remain in the marriage home and she agrees to ransom herself by payment of compensation to the husband.

3.3.2 Juristic Opinions Regarding the Position of Khul

Muslim jurists differ on the position of *Khul* under Islamic law. Majority of the jurists are of the opinion that, *Khul* is a valid means of dissolution of marriage. They rely on the textual authorities cited above. While according to minority including Bikr bn Abdullahi Al-muzniy, opine that *Khul* is not a valid means of divorce. He argue that, the commonly referred verse of *Khul* (relied upon by the majority) that Qur'an 2 verse 229, the verse is abrogated (*Mansukhatun*) by another Qur'anic verse thus Q. 4:20 which provides that; "But if you decide 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 sin?" He explains that the latter was abrogated and replaced the former. In view of this, he concludes that, it is not lawful for a husband to take away from the wife what he has already given to her. 178

Imam At-tabariy responded to the submission of the minority that, the argument of Bikr bn Abdullahi Al-muzniy alone cannot stand because Bikr's view is a lonely dissenting opinion contrary to the majority's consensus "*Ijma'a*". Similarly, there is no even contradiction between the two verses which may lead to abrogation.

¹⁷⁵ Quoted from: Ahmed, K. N., *The Muslim Law of Divorce*, Islamic Research Institute, Islamabad, Pakistan(1972)pp. 224-225

¹⁷⁶Alhafanawi, M. I., (2005) *Ad-dalaq*, Op cit. P. 291

¹⁷⁷ Ali A.Y., (1998) Modern Translation of the Qur'an Meanings & Commentary, Op cit. p 163

¹⁷⁸Alhafanawi, M. I.,(2005), *Ad-dalaq*, Op cit. P. 291

He concludes that Qur'an 2 verse 229 addresses both the couples (the husband and the wife) while Qur'an 4 verse 20, addresses the husband alone. 179

3.3.3 Mode of Expression in Khul Divorce

The mode of expressing *Khul* can either be express or implied¹⁸⁰. It is express where any of the following term is used or included; "*Khul*", "*Fidyah*" for instance; "*Khaala'atukiy*" (I divorce you by way of *Khul*): in this expression the word *Khul* is mentioned or "*Al-mufadaatu*" derives from "*Fidya*" (compensation) as it is used in Qur'an 2 verse 229¹⁸¹ and alike. Therefore, any expression used which does not expressly contain the term *Khul* or any of its derivatives (provided the parties intend to separate via *Khul*) then is considered as implied expression. ¹⁸²

Note that, there is no clear provision of *Shari'ah* that provides for a specific mode of expression to effect *Khul*. In the *Hadith* of Jamila the Prophet (Peace be upon Him) had asked Thabit to divorce his wife single divorce using the word *Talaq*. ¹⁸³ Therefore, any expression can be used to warrant *Khul* provided that payment of compensation by the wife ismanifested between the couples.

3.3.4 When *Khul* Takes Place

Muslim jurists are not unanimous as to when a marriage between the spouses is said to be terminated by way of *Khul*. According to Imam Al-hafanawi, *Khul* takes effect the moment the parties (couples) reached an agreement to terminate the marriage by way of *Khul*. This is notwithstanding whether or not the amount of compensation to be

¹⁷⁹ Ibid

¹⁸⁰Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba'I, Darul-Afaaqil Arabiyyah, Alqahirah, P. 326

¹⁸¹Alhafanawi, M. I., (2005) Ad-dalaq, Op cit. P. 297

¹⁸² Ibid 208

¹⁸³ Sabig, S. (2000) Fighs-Sunnah, Darul-Turath, Al-gahira, Vol.2, P. 190

¹⁸⁴Alhafanawi, M. I. *Ad-daaq*, (2005), Maktabatul-iman, Jami'atul-azhaar, p. 309; Sabiq, S. (2000) *Fiqhs-Sunnahl*, Darul-Turath, Al-qahira, Vol.2, P. 192

given is agreed upon by them.¹⁸⁵ This principle has been adopted by the Court of Appeal¹⁸⁶ and held thus; "... in the instant case, the moment the appellant brought his cross-petition for *Khul* and the release is agreed to by both parties, the respondent was completely separated from the appellant even though no compensation had been fixed or agreed to."

However, some Muslim jurists are of the opinion that, *Khul*as a divorce takes effect only when the wife returned back to the husband what they have agreed upon as the compensation. That is to say, the agreed compensation must be given to the husband by the wife before the divorce takes place¹⁸⁷. To others, the mere agreement and the return or payment of the compensation to the husband by the wife are not enough to effect *Khul*. The husband shall in addition makes the pronouncement. In holding this view, they rely on the *Hadith* of Jamila the wife of Thabit and argue that, even when she agrees to return his garden to him, the Prophet Peace be Upon Him, directed Thabit to pronounce a single divorce after he had taken back his garden from her.

3.3.5 Period of Pronouncing *Khul*:

It has been the consensus of the Muslims jurists that, *Khul* as a form of divorce can be pronounced at any time during the subsistence of marriage between the couples. This is not withstanding the wife is or is not in the state of purity or after having sexual intercourse or even during her*Iddah*period, provided the divorce in question is revocable. This is because such marriage is subsisting in the eyes of *Shari'ah*... ¹⁸⁸In holding this view, they rely on Quranic verse Q. 2: 229 and argue that it does not

¹⁸⁵At-tijjaniy, M. M.,((2010) Fathul-jawwad fiy Sharhil Irshaad, Op cit. P. 233

¹⁸⁶ Jimoh V. Adunni (2001)14, NWLR. (Pt. 734), p. 521

¹⁸⁷Al'azhariy, S. A., (1996), *Samaraddani Sharhur-risala*, Darul-fikr, Labanon, p. 468

¹⁸⁸Sabiq, s. (2000) *Fiqhs-Sunnah*. Darul-Turath, Al-qahira, Vol.2, P. 192: Al-hafanawiy, (2005) *Ad-daaq*. Maktabatul-iman, Jami'atul-azhaar, p. 302

specify a particular time within which *Khul* is to be effected. Similarly, in all the *Ahadith* regarding to *Khul*, the Prophet has never been reported to have inquired or asked whether or not the wives were in the state of purity.¹⁸⁹

3.3.6 Legal Capacity of the Couple under Khul:

On the Capacity of the Husband; Muslim Jurists are of the opinion that, before *Khul* is considered valid and effective, the husband must be of full legal capacity thatis he must be of full age, sane and must have acted voluntarily. Therefore, any *Khul* effected by a minor or an insane or compelled to pronounce it, such divorce is ineffective. ¹⁹⁰

With respect to the wife, the jurists are of the view that, for *Khul* to be effective, she must have legal capacity. Thus; she must be adult, sane and must be of understanding the legal effect of her action (*Khul*) otherwise it shall be considered ineffective. ¹⁹¹To *Maliki* School, any divorce effected by way of *Khul* in respect of a minor or an insane wife such *Khul*' is ineffective but it is an irrevocable divorce and the wife shall not pay the compensation and if paid, the husband must return same to her. ¹⁹² Hannafi School on the other hand, classified the minor (wife) into "*Mumaiyizah*" (Minor who can distinguish) and "*Ghayru Mumaiyazah*" (a minor who cannot distinguish). With respect to *Mumaiyizah*, where she is divorced by way of *Khul* the divorce is effective but she will not pay the compensation. ¹⁹³In the case of

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¹⁸⁹Q. 2:229

¹⁹⁰Alhafanawi, M. I.(2005), Ad-daaq, Maktabatul-iman, Jami'atul-azhaar, p. 297

¹⁹¹Sabiq, S. (2000) Fiqhs-Sunnah, Darul-Turath, Al-qahira Op cit. p. 194

¹⁹²Al-jaziyriy, A. M., (2006) Fiqh ala Mazahibul Arba'I Op cit. P. 309

¹⁹³Sabiq, s. (2000) *Fiqhs-Sunnah*. Darul-Turath, Al-qahira, Vol.2, P 194;Al-jaziyriy, A. M., (2006),*Fiqh ala Mazahibul Arba'I*, Darul-Afaaqil Arabiyyah, Alqahirah, P.Pp. 306-7

"Ghayru Mumaiyizah" however, Khul cannot be effected on her because she is legally incompetent to seek for or accept it. 194

Moreover, where the minor wife is *Mumayyizah* but not *Rashida* (a prudent woman who can deal with her properties) the divorce is effective but shall not pay the compensation.¹⁹⁵ One important question to ask is; can a father or guardian seeks for *Khul* on behalf of his minor or insane daughter? The position is, the *Khul* if effected, is effective but the payment shall be made out of her father's or guardian's property. This is a view of Maliki to which ibn Qudamah subscribed to.¹⁹⁶

3.3.5.1 Khul Obtained under Compulsion by the Husband:

The general position of *Shari'ah* is that, it is *Haram*(forbidden) for the husband to force his wife to seek *Khul*, for an unjust course for instance, by way of threatening or maltreating her or refuse to maintain her or even abstain from sleeping with her and other forms of deprivations. Where any of these happened, the *Khul* is void and the compensation shall not be given to the husband and if given to him same must be taken back to her. This is the position of Maliki, Hambali, Hannafi and Shafi'I schools to which Ibn Qudamah subscribed to.¹⁹⁷ In holding this view, they rely on the following Qur'anic authorities;

Q. 65: 02 ".... Either take them back on equitable terms or part with them on equitable terms...." 198

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¹⁹⁴Ibid

¹⁹⁵Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba'I, Darul-Afaaqil Arabiyyah, Alqahirah, P. 308

¹⁹⁶Alhafanawi, M. I. (2005) *Ad-daaq*, Maktabatul-iman, Jami'atul-azhaar, pp. 296-7: Al-jaziyriy, A. M., (2006), *Fiqh ala Mazahibul Arba'I*, Darul-Afaaqil Arabiyyah, Alqahirah, P.Pp. 307-8: Sabiq, S. (2000) *Fiqhs-Sunnahl*, Darul-Turath, Al-qahira, Vol.2, P. 194

¹⁹⁷Sabiq, S. (2000) *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 192;Al-jaziyriy, A. M., (2006), *Fiqh ala Mazahibul Arba'I*, Darul-Afaaqil Arabiyyah, Alqahirah, Pp. 303-5;Alhafanawi, M. I.(2005), *Ad-daaq*, Maktabatul-iman, Jami'atul-azhaar, p. 301.

¹⁹⁸Ali A.Y., (1998) Modern Translation of the Qur'an Meanings & Commentary, Op cit. p. 1265

Q. 4: 19; "O' you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the dower you have given them ..." and

Q.4: 20; "But if you decide to take one wife in place of another even if you had given the latter a whole treasure for dower takes not the least bit of it back: would you take it by slander and a manifest sin?" ²⁰⁰

However, some Muslim jurists are of the opinion that, it is in order for the husband to compel his wife to seek for *Khul*, if she apparently dislikes and in the habit of disobeying him. In this situation, the *Khul* feffected, is valid and the compensation shall be paid to him. In holding this view, they rely on the *Hadith* reported by Bayhaqi in his book Sunan-al-baihaqiy, ²⁰¹ where Caliph Umar ordered a man to compel his wife to seek for *Khul*, as Umar observed that, the wife dislikes and disobeys the husband. ²⁰²To Maliki and Shafi'iy schools, it is only permissible for a husband to compel his wife to seek for *Khul*, if she appears to be a sinner (that is if she is of the consistent habit of transgressing the limit set by Allah). ²⁰³For example where she is not observing daily prayers or that she is not chaste. In holding this opinion they rely on the proviso of the aforementioned Quranic verse that provides: "O' you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the dower you have given them, except where they have been guilty of open lewdness…"

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¹⁹⁹Ibid P. 163

²⁰⁰Ibid

²⁰¹ Quoted in Alhafanawi, M. I.(2005), *Ad-daaq*. Maktabatul-iman, Jami'atul-azhaar, p. 294.

²⁰²Ibid.

²⁰³Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba'I, Opcit., P. 304

²⁰⁴Q. 4: 19

3.3.5.2 Khul Obtained During Death Sickness

All the Muslim jurists agree that, a wife suffering from death-sickness can seek for *Khul*. However, they differ as to the amount of the consideration payable. Their divergences arise due to the apprehension that the wife might have been attempted to deprive the husband from inheriting her. ²⁰⁵

Imam Malik and Hambali Schools opine that the amount of the consideration payable shall not exceed what the husband is entitled to inherit from her estate, but if given in excess then, it is valid but the excess should be remitted to her²⁰⁶. Similarly, it is in order if the quantum given, is below the amount he is entitled to inherit from her estate.²⁰⁷To Shafi'iJurists, it is in order for the wife to seek and obtain *Khul* based on the consideration equal to her *Sadaqul-mithli* (proper dower). But if given in excess of her *Sadaqul-mithli*, the excess shall be considered as part of the *Thuluth* (one-third) of her estate which she reserves the right to make *Wasiyyah* (bequeath). Therefore, the excess shall be counted as *Tabarrui* (gift).²⁰⁸

To Hannafi Jurists, such a wife can obtain *Khul* provided the compensation shall not exceed one-third of her estate and shall be considered as gratuitous gift. This is because; *Tabbarru* in a state of dying-sickness is regarded as *Wasiyya* which must be of one-third of the estate. It is given to an "*Ajnabiy*" (an alien) such as the husband in this case. To these Jurists, in situation where the sick-wife dies during her *Iddah* period, the husband is entitled to either one of the following categories of shares:

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²⁰⁵Alhafanawi, M. I.(2005), *Ad-daaq*. Maktabatul-iman, Jami'atul-azhaar, p. 305; Sabiq, s. (2000) *Fiqhs-Sunnah*. Darul-Turath, Al-qahira, Vol.2, P. 194.

²⁰⁶Sabiq, S. (2000) Fiqhs-Sunnah, Darul-Turath, Al-qahira, Vol.2, P. 142; Alhafanawi, M. I., (2005) Ad-daaq. Maktabatul-iman, Jami'atul-azhaar, p. 305: Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba'I, Darul-Afaaqil Arabiyyah, Alqahirah, P. 309

²⁰⁷Al-jaziyriy, A. M., (2006), *Fiqh ala Mazahibul Arba'I*, Darul-Afaaqil Arabiyyah, Alqahirah, P. 309; Sabiq, s. (2000), *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 194; Alhafanawi, M. I., (2005), *Ad-daaq*, Maktabatuliman, Jami'atul-azhaar, p. 305

²⁰⁸Sabiq, S. (2000) *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 195; Alhafanawi, M. I.*Ad-daaq*, (2005), Maktabatul-iman, Jami'atul-azhaar, p. 305

- a. The consideration of *Khul*'
- b. One-third of her estate.
- c. The husband's legal share of the wife's estate. 209

3.3.5.3 The Role of Court inKhul'

Majority of Muslim Jurists opine that *Khul* can be effected without resorting to the *Shari'ah* judgeprovided that the spouses have reached an agreement as to the terms of the *Khul*.²¹⁰In holding this view, they rely on analogy that, *Khul* is akin to commercial transaction or marriage contract that can be contracted freely without resorting to *Qadi*.²¹¹ They explain that, the matter can be resorted to court only where the spouses could not reach a consensus as to the terms of the *Khul*.²¹² Similarly, where the husband compels his wife to seek for *Khul* and she has nothing to pay the consideration, then in this circumstance she should have recourse to the court²¹³. To Hasanulbasiriy and Ibn Sirin however, are of the opinion that *Khul*isineffective without recourse to a judge.²¹⁴They argue that all the precedent cases of *Khul'* were reported to the then authorities, right from the life time of the prohphet down to the time of the Companions of the prophet. This view appears sounder, as there is no reported case of *Khul*, from the available literature since from the life time of the Prophet to the *Sahaba*, that was granted without a recourse to an authority/ judge.²¹⁵

²⁰⁹Sabiq, S. (2000) *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 195; Alhafanawi, M. I., (2005) *Ad-daaq*. Maktabatul-iman, Jami'atul-azhaar, p. 305.

²¹⁰ The author does not disclose the names of the Jurists.

²¹¹Alhafanawi, M. I., (2005) Ad-daaq, Maktabatul-iman, Jami'atul-azhaar, p. 302

²¹²Sabiq, S. (2000) Fighs-Sunnah, Darul-Turath, Al-qahira, Vol.2, P. 192

²¹³Alhafanawi, M. I., (2005) *Ad-daaq*. Op cit. P. 302.

²¹⁴ Ibid n 303

²¹⁵ All the cases of *Khul* were reported to the Prophet(Peace be upon Him) or the *Sahaba* during their life time to judge over the matter.

3.4 The Essential Conditions for aValid *Khul*

Under Islamic Law, Khulis held valid, where the following conditions exist:²¹⁶

- 1. Parties (the wife and the husband)
- 2. Subsistence of a valid marriage,
- 3. Proposal and acceptance,
- 4. Consideration
- 1. The Parties (the wife and the husband): As mention earlier²¹⁷, the position of *Shari'ah* is clear that both the husband and the wife must satisfy almost same conditions (as to the legal capacity) just as in the case of general divorce.²¹⁸
- 2. Subsistence of Valid Marriage: It is the principle of *Shari'ah* that for a valid *Khul*to take effect, the parties must be living within the lawful and subsisting marriage tie as husband and wife notwithstanding whether the marriage has been consummated or not. The philosophy is that, only a valid marriage relationship confers rights and/or obligations to the respective spouses to which the right to effect divorce/*Khul* is inclusive whereas void or invalid marriage does not²¹⁹.
- 3. Offer and acceptance: It is a basic condition for a valid *Khul*, the presence of proposal (offer) by one of the parties and its acceptance by the other. Acceptance may be made expressly or impliedly. It is implied where the husband accept the consideration paid by the wife²²⁰. Note that it is usually the wife that makes an offer for dissolution of the unsuccessful marriage through the process of *Khul*to the husband. The husband shall, in return, either accept the offer made by the wife or rejected it.

²¹⁶Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba'I, vol. 4, Op. cit P. 357

²¹⁷ Infra Pp. 61-62

²¹⁸Alhafanawi, M. I.,(2005),*Ad-daaq*, Op cit. P. 296

²¹⁹Ibid

²²⁰Ibid

4. Consideration: This will be discussed shortly below²²¹:

3.5 Khulas a Right of the Wife

As mentioned earlier, the right of *Talaq* is generally vested in the husband. Therefore, husbandis legally empowered to effect divorce on their wives, without the intervention of Third party or court. The power shall be exercised for a just course or where the husband dislikesthe continuation of the marital tie with the wife or that the husband wants to replace one wife with another, which is in line with Quranic verse says "But if you decide 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 sin?",222. However, a situation may arise where a wife may develop hatred against her husband to the extent that she cannot tolerate him anymore and the husband may not be willing to effect divorce on her. Then Islam empowers the wife to seek for Khul through the intervention of the Shari'ah court. This is in line with Qurani verse says: "... And women shall have rights similar to the rights against them"223. This is provided in order to curtail or limit the husband's power on divorce.

Finally, it has to be noted that, Khul is a form of divorce recognized by Shari'ah at the instance of the wife. In other words, where the wife for one reason or the other found it intolerable to remain in the marriage home, she is entitled as of right to seek for Khul irrespective of her grievance(s). The right is granted principally to curtail or limit the husband's power to avoid cruelty. The women on the other hand, have been warned by the Prophet (peace be upon him) not to abuse this medium by

²²¹Infra p. 88 ²²²Q. 4: 20

seeking Khul on a baseless ground. The Court of Appeal in the case of Bulumkutu V. Zangina Per COMMASSIE JCA worned in the following words: 224

... Even though Khul is recognized in Shari'ah as a legal right of a woman such right should not be unduly abused. ...In Islamic Law seeking for Khulby a woman on an unreasonable ground is *Haram*(prohibited). Such demand would prevent her from smelling the fragrance of Aljannah (paradise). There is enough warning and discouragement of the unbridled use of it

3.6 Ground of Khul

The position of Shari'ah regarding to the ground of Khul' is that Khul itself is a right accorded to women and they shall never be subjected to any introgation as to the efficacy of the ground upon which a wife relies thereof. In other words, Khulis just a matter of wishes and contentment; it suffices for a ground of Khul that the wife alone feels not comfortable with the marital-tie, to the extent that she cannot keep within the boundaries set by Allah. This is in line with the Hadith of Habibah bnt Qays with Thabit, reported by Bukhari, who was reported to have said to the Prophet (peace be upon him) that:

"Oh Apostle of Allah I do not want to desert him on ground of bad behavior or laxity in religion ..."225. This position has been beautifully captured and adopted by the Court of Appeal²²⁶ where it held thus:

A Qadi cannot compel a wife who seeks the dissolution of her marriage through "Khul' to explain her reason for

²²⁴(1997), 11 N.W.L.R. P. 535 Para F-G

²²⁵ Supra Chapter One of this work

²²⁶Usman vs Üsman supra P. 115

seeking a divorce. It is purely a matter of contentment. Thus, once the wife is discontented with the marital life in relation to her husband to the extent that it appears to the Qadi that harmonious co-existence between the couple is no more feasible and the couple would transgress the bounds of Allah, then dissolution of the marriage ... through the process of *Khul*' is the only answer.

3.6.1 Juristic Arguments on Ground of Khul

Some muslim jurists dissented and argued as to whether *Khul* can only be effected based on a valid ground or not. Thus;some of them are of the view that, for any *Khul* to be valid there must be a genuine ground on the part of the wife. And this must be one that shows a kind of defect as to the husband's appearance and that the wife fears that she cannot keep within the limit of Allah.²²⁷To these jurists, any *Khul* sought and obtained without any just ground is considered as *Makrouh* or *Mahzour* (detestable) and the wife, who sought and obtained it, is considered "Hypocrite".²²⁸In holding this view they rely on the *Hadith* reported by Abu-hurairah in which the Prophet(S. A.W.) was reported to have said "Any woman who seeks for *Khul* without any just course is a hypocrite".²²⁹According to Shafi'iyyah, it is *Makrouh* to effect *Khul* without a just course.²³⁰

To others like Ibnul-munzir, Dawus and Sha'abiy, are of the opinion that *Khul* can validly be effected with or without any ground. *Khul*, according to them, is just a matter of wishes and contentment. To them the only ground for a valid *Khul* is where

²²⁷Sabiq, S. (2000) Fighs-Sunnah, Darul-Turath, Op. cit P. 192

²²⁸Sabiq, S. (2000) *Fiqhs-Sunnah*. Darul-Turath, Al-qahira, Vol.2, P. 192;Alhafanawi, M. I.,*Ad-daaq*, (2005), Maktabatul-iman, Jami'atul-azhaar,Pp. 292-3.

²²⁹Alhafanawi, M. I., *Ad-daaq*, (2005), Maktabatul-iman, Jami'atul-azhaar, P. 293: Sabiq, s. (2000) *Fiqhs-Sunnahl*, Darul-Turath, Al-qahira, Vol.2, P. 192

²³⁰Al-jaziyriy, A. M., (2006) Figh ala Mazahibul Arba'I, Op. cit P. 305

the spouses collectively fear that, they cannot observe the limit set by Allah²³¹. In holding this view, they rely on Quranic verse which provides that:

"...if you (judges) and indeed fear that they would be unable to keep the limits ordained by Allah. There is no blame on either of them if she gives something for her freedom ..."232

They argue that the key-words in the above verse are: "when both parties fear that they would be unable to keep the limits ordained by Allah". To them, Khul is permissible only where it is found that, both the wife and the husband are not comfortable with the marital relationship and cannot therefore; live within the limits of Allah. In other words, it means that they cannot perform the duties or fulfill the obligations incumbent on them or either of them. They hold that, this verse does not contemplate any other ground(s) apart from the one stated above.

According to Imamusshaukani and Imamuddabarani, it is not a condition precedent for a ground of Khul that both the wife and the husband must be dissatisfied with the marriage union. To them, it suffices for a ground of *Khul* that the wife alone is not comfortable with the marital-tie, to the extent that she cannot keep within the boundaries set by Allah. It is not necessary that the couple must be at the level of discomfort each as held by Ibn Munzr. ²³³They rely on the *Hadith* of Habibah bnt Qays mentioned earlier.

From the above arguments canvassed, it appears that most of them have understood is addressing either the ... is addressing either the

 $^{^{231}{\}rm Sabiq,\,S.}$ (2000) $Fiqhs\text{-}Sunnahl,\,$ op cit. p. 203 $^{232}{\rm Q.}$ 2:229

²³³Sabiq, S. (2000) *Fighs-sunnah*, op cit. p. 203

spouses or the wife alone. But on a careful examination the phrase of the verse is addressing the people in the authority (Muslim umma). Because the phrase فإن خفتم means "if you (judges) and indeed fear that…" the plural form used is not addressing two or one person but the plural of three persons to above.

3.7 The Nature and Effect of Separation Based On Khul'

Muslim jurists differ on the nature or legal effect of a marriage dissolved by means of *Khul'*. The divergences border on whether *Khul*is a *Talaq*(Divorce) or *Faskh* (annulment). To some Jurists including Maliki, Abu Hanifa and Shafi' its legal position is *Talaq-ba'in* (irrevocable divorce) in which case the couple could not resume or revoke the *Talaq* unless they re-contract new marriage. ²³⁴In holding this view they rely on the *Hadith* of Thabit where the prophet is reported to have said "Take the garden and divorce her by a single *Talaq*." On this the Court of Appeal held thus "...once it is occurred it becomes an irrevocable form of divorce." It should be noted that, the wife's consent must be sought and obtained before re-contracting another marriage, since she has already ransomed/freed herself from the marriage union through the process of *Khul*. However, some jurists ²³⁶, are of the opinion that, before re-contracting the new marriage, the husband must remit to the wife all the consideration (of *Khul*) he had earlier received from her and must be in the presence of witnesses ²³⁷.

However, to *Ibn* Abbas, Abdullahi bn Umar to which Ahmad bn Hambal subscribed; *Khul'* is a *Faskh* (annulment). In holding this view, they rely on the *Hadith*

The author of the book: *Addalaq*, does not disclose the names of the jurist who develop this view.

²³⁴Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, Darul-Fikr, Beruit, p. 374: Alhafanawi, M. I., (2005), *Ad-daaq*, Maktabatul-iman, Jami'atul-azhaar, P. 303: Sabiq, S. (2000) *Fiqhs-sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 193

²³⁵ In *Usman vs Usman* supra P. 126 para. H.

²³⁷Alhafanawi, M. I., (2005), Ad-dalaq, Maktabatul-iman, Jami'atul-azhaar, P. 303: Sabiq, S. (2000) Fiqhs-sunnah, Darul-Turath, Al-qahira, Vol.2, P. 193

of Thabit too. Their argument is based on the anology that, the then Thabit's wife was ordered by the Prophet to observe her *Iddah* One menstrual circle. To them, had *Khul'* is a Talaq the prophet would have ordered her to observe *Iddah* of Three Mensrual circles.

3.8 The Iddah of a Divorced Wife through the Process of Khul

Muslim jurists have divergent opinions regarding the *Iddah* of a divorced woman through *Khul*. Thus according to some of them including Caliph Usman bn Affan, Ibn Abbas and Ibn Umar, Ibn Al-qayyum and Ibn Taymiyyah, the *Iddah* period of such woman is one menstrualcycle. In holding their view they rely on the *Hadith* of Thabit earlier quoted in which the Prophet (S.A.W.) ordered Jamilah to observe one menstrual cycle²³⁸.

However, according to the Majority, the *Iddah* of such divorced woman shall be three menstrual cycles. In holding this opinion they rely on the Quranic verse which provides thus: "Divorced women shall wait concerning themselves for three periods....".

The first group of Jurists responded to the majority that, the objective of extending the *Iddah* period to be three cycles, in other forms of divorce as provided in Qur'an, is to give room for conciliation. But, in the case of *Khul* the objective is not achievable. Therefore, its main objective in case of *Khul* is only to determine paternity.²⁴⁰

²³⁸Sabiq, S. (2000) *Fiqhs-sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 196: Alhafanawi, M. I., (2005), *Ad-dalaq*, Maktabatul-iman, Jami'atul-azhaar, P. 307

²³⁹Q. 2: 228

²⁴⁰Alhafanawi, M. I., (2005), *Ad-dalaq*, Op Cit. P. 307

3.9 Compensation of *Khul*'

In this segment, the work will look at the various aspects of compensation for *Khul*, ranging from its legal basis and the general principle. As mentioned earlier, the work would have recourse to some judicial pronouncement by the superior courts so as to appreciate the extent to which these courts are applying the principles of Islamic law in their decision.

3.9.1 Meaning and Legal Basis of Al-Iwad (Compensation)

The word Al-iwad is an Arabic word which literally means "to substitute". Technically, it is defined as the property given out by the wife to regain her freedom from the marriage union. ²⁴¹It is also defined as the Maal (wealth or property) given to the husband (by the wife) in order to dissolve the marriage union. ²⁴² The payment of compensation is the basic aspect of Khul. This is because if the compensation is not contemplated then the doctrine of Khul is not manifested. ²⁴³

3.9.2 Legal Basis of (Al-iwad) Compensation

The legal basis for the payment of *Khul* can be traced from Qur'anic verse²⁴⁴ earlier mentioned that says: "...concerning that by which she ransoms herself...". Similarly in the *Hadith* of Jamila the wife of Thabit, the Prophet is reported to have asked her: "Will you give him back his garden?" She replies "Yes".

Muslim jurists differ as to whether *Khul* can be considered effective without the compensation. According to Shafi'iyyah School, *Khul* cannot be effective without payment of the compensation by the wife.²⁴⁵ To Hannafiyyah and Malikiyyah

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²⁴¹Sabiq, S. (2000), Fighs-sunnah, Darul-Turath, op cit, p. 190

²⁴²Al-jaziyriy, A. M., (2006), Fiqh ala Mazahibul Arba I, Op. cit P. 306

²⁴³Sabiq, S. (2000), Fighs-sunnah, Darul-Turath, op cit, p. 190

 $^{^{244}\}Omega$ 2. 229

²⁴⁵Alhafanawi, M. I.,(2005), *Ad-dalaq*, Op Cit. P. 298

however, the payment of compensation is not a condition precedent for a valid *Khul*. ²⁴⁶ To them, the essence of the *Khul* here is to repudiate the marriage and nothing more.

It should be noted that, the position of *Shari'ah* in respect of the compensation for *Khul*, is that anything lawful, ascertainable and economically valuable in the eye of the *Shari'ah*, worth of being accepted as *Sadaq*, can be accepted as a compensation for *Khul*. This is the view of Hannafi School.²⁴⁷Maliki School however, subscribes to the view of Hannafi school but stipulates however that, the compensation must be a lawful property as any unlawful consideration like alcoholic substances, pig or any property that is unlawfully obtained or seized cannot be accepted as compensation of *Khul*.²⁴⁸This view remains the views of Shafi'I and Hambali.²⁴⁹

It is clear from the above explanation that, Muslim jurists are unanimous that compensation for *Khul* is only payable with a lawful property. However, where the compensation is paid with unlawful property, they unanimously agree that, the *Khul* is valid but, the unlawful property shall not be used but destroyed and the husband not entitled to anything.²⁵⁰

It should be noted that compensation of *Khul* is payable if the action is initiated at the instance of the wife and the husband was not at fault. If it is proven however, that the husband was at fault, the wife shall not pay anything to him as compensation for *Khul*'. To *Maliki* School, such *Khul* if granted stands automatically as ordinary divorce and not *Khul*. This is in line with Q 4:19 earlier mentioned. This position has been beautifully adopted by the Court of Appeal where the court held thus:

²⁴⁶Ibid p. 299.

²⁴⁷Al-jaziyriy, A. M., (2006), *Fiqh ala Mazahibul Arba'I*, Op. cit Pp. 312-3

²⁴⁸Ibid p.315

²⁴⁹Ibid pp. 317-9

²⁵⁰Ibid PP. 313, 315-6,318

... Where the husband is at fault, he is barred from laying claim on separation through the process of "Khul". Where the wife pays any consideration for release from the marital ties and there were faults established against the husband, such as cruelty, lack of maintenance, abstinence from conjugal relation, bringing the wife to disrepute by using abusive language on her or on her parents, any form of cruelty by subjecting her to unlawful beating etc, then she is entitled to take back her consideration paid to him. She is also entitled to a decree of divorce from the court on the ground of maltreatment. This is so in order to prevent a husband from indirectly instigating his wife to seek divorce through the process of Khul' by maltreating his wife.....²⁵¹

3.9.3 The Nature of the Compensation for *Khul*

On the nature of the compensation for *Khul*, and in reference to the above explanation, one can simply understand that, the compensation can be paid in cash or in kind provided it is a lawful property that is ascertainable or even with an unascertainable property such as unborn animal in the womb, missing animal, unriped crops and alike. Where *Khul* is agreed by the spouse in this nature, then the husband shall bear the outcome of the *Gharar* (uncertainty) as the case may be. This is the view of *Maliki* School.

Compensation of *Khul* can be the following:

a. *Nafaqah* (Maitainance): According to Imam Malik, it is in order, for apregnant wife to seek and obtain *Khul* in lieu of undertaking that, she will maintain herself during pregnancy until she delivers the pregnancy. If she later became insolvent that she cannot maintain herself, then the husband shall intervene to maintain her

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²⁵¹ Usman vs Usman (2003)11, N.W.L.R. (pt. 830) at 109, pp. 113-4

for the sake of the pregnancy. Whatever, he has expended in maintaining her, in the circumstance, shall be a loan incumbent on her to settle.²⁵²

With respect to the maintenance of the child or children as a compensation for *Khul*, Hannafi School opine that, it is permissible for the wife to seek*Khul* in lieu of maintenance of the child or children. This agreement must be ascertainable as to the period of time within which the undertaking shall cease. Where the child under maintenance died, before the expiration of the stipulated period, the wife shall remit to the husband the equivalent amount (balance) in respect of remaining days (which the child was not fed) otherwise, the husband is entitle to claim same unless the spouse make a stipulation to the contrary²⁵³.

b. Payment for Suckling of the child (*Rida'ah*):It is right under Islamic law, for a wife to seek *Khul* from the husband in lieu of her wages (payment) for suckling the child. However, where the child dies before the expiration the period of suckling, the mother shall not remit anything to the father unless their "Urf" custom stipulates otherwise. But if it was the mother that died or that her suckling milk becomes exhausted any more, then the father is entitled to claimfor the equivalent balance of the remaining unfed days from the estate of the mother.²⁵⁴

3.9.4 The Quantum of the Compensation

Quantum of the compensation refers to the amount of the consideration payable by the wife in order to get herself free from the marriage union. Majority of Muslim jurists including Maliki are of the opinion that, the quantum of the compensation may be equal, less than or greater than what the wife had received as her *Sadaq* from the

²⁵³Ibid 315

²⁵²Ibid 316

²⁵⁴Ibid 217

husband.²⁵⁵ They argue that the verse does not stipulate the limit of the quantum. The verse: Quranic verse read thus: "...then there is no blame on either of them <u>if she give something for her freedom</u>..."²⁵⁶. They argue that, the clause "if she gives something for her freedom" does not specify for the minimum or maximum amount; as such it can be anything. In the case of *Salisu V. Lawal*²⁵⁷ supra, the Court of Appeal per *Wali J.C.A* (as he then was) held thus:

With due respect to the learned counsel, verse 299 of chapter 2 permits a wife to salvage her freedom... by making an offer of some lawful valuable consideration to the husband. This consideration may be of the value of the exact amount of dower paid by the husband; it may also be more or less...

Similarly,in the book of *Risalah*, the author, says:

Meaning that, it is in order for a woman to ransom herself from her husband by refunding her dowry or with anything more or less than the dowry.

Some jurists however, argue to the contrary that, the quantum of *Khul* shall not be more than what the wife had received as *Sadaq* during the marriage contract. That, it is unlawful for the husband to receive from the wife as consideration anything, more than the *Sadaq*he had given to her. In holding this view they rely on the *Hadith* of Thabit bn Qays where the Prophet asked him to collect back only his (compensation) garden which he had paid to his wife (Jamilah) during the marriage contract²⁵⁹. They further rely on the *Hadith* of Caliph Umar; that a woman, during his

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²⁵⁵Alhafanawi, M. I.,(2005) *Ad-daaq*, Op Cit. P. 299

²⁵⁶Q. 2:229

²⁵⁷At p. 440, para C-D

²⁵⁸Al-Qirawaniy, I. A., (1997),*Al-Risalah*, Darul-Fikr, Beruit, Labanon P. 97

²⁵⁹Al-jaza'iriy, A. J., (1990), *Minhajul-muslim*, Darul-Fikr, Beruit, p. 374: Alhafanawi, M. I., (2005) *Ad-daaq*, Maktabatul-iman, Jami'atul-azhaar, P. 300: Sabiq, S. (2000) *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 193.

reign, approached him and sought for *Khul* against her husband. He asked her to refrain from such step but she remained persistent. Umar later confined her for Three days in a dirty stable. He then asked her again whether she had given up her desire for separation. She replied thus: "I swear by God that, I have never slept better than during these three nights." On hearing this, caliph Umar called the husband and said to him: "Divorce her with anything that she can afford to even if is her very earrings"

This view has been the most predominantly adopted by our superior courts in Nigeria. In the case of *Bulumkutu V Zangina*²⁶¹ the Court of Appeal held categorically that: "... the compensation could be the same as or less than the dowry (*Sadaq*) given to her by the husband at the time of the marriage <u>but not more than the dowry</u>". In *Jimoh V Adunni*²⁶² the Court of Appeal Ilorin Division, ²⁶³ held thus: "In a *Khul* under Maliki school of Islamic Jurisprudence only what he has settled upon her and that is the dowry should be paid as compensation."

However, the majority argue that, there is no sin if the wife ransoms herself from the marriage union by giving to her husband more than what she had received from him as dowry. According to Imam Malik, it is lawful for a wife to free herself from the marriage union via *Khul* by paying more than what she had received from the husband. In holding this, they rely on the *Hadith* of *Safiyyah bnt Abi-ubaid* where

²⁶⁰ Quoted from: Ahmed, K. N., (1972), *The Muslim Law of Divorce*, Islamic Research Institute, Islamabad, Pakistan, Pp. 229-230.

²⁶¹(1997)11, N.W.L.R (P.T. 529) at P. 528.

²⁶²(2001)14, N.W.L.R.(P.T. 734)at P. 522

²⁶³ In this case, the Respondent (wife), filed a suit for divorce through *Khul* before the trial court by returning to him his exact dowry N 1, 650 he had paid to her, Appellant conceded the divorce via *Khul*but, filed a counter claim for all the expenses he had expended to her before and during the marriage contract including the medical bills all as part of the dowry totalling the sum of N 14, 482. At the end the trial court awarded the sum of N 9, 192. Dissatisfied, the respondent appealed before the *Shari'ah* Court of Appeal where it finally reduced the quantum to the sum of N 1, 650 as admitted by the respondent. Dissatisfied, the appellant appealed before the court of Appeal, where it dismissed the appeal and affirmed the quantum of N 1, 650 as decided by the lower court.

she ransomed herself with all that she had possessed and Abdullahi bn Abdul'azeyz did not object it.²⁶⁴

Whatever be the case, it is more just to conclude that, the quantum agreed or to be paid must be affordable to her. The Court of Appeal in *Husaina vs Tsiriko*²⁶⁵ held thus: "... The consideration becomes due from the wife provided that she can afford it...". The court understood the clause in Q. 2:229 to mean "...what the wife may afford to give up (to her husband) in order to free herself...".

3.9.5 Duration for the Payment of Compensation

With regards to the duration for the payment of consideration of *Khul*, there is no clear provision either from *Qur'an* or *Sunnah* that stipulates a specific time within which the payment shall be made. This presupposes that, once the couple reached a consensus to terminate their marriage through the process of *Khul*, then the time of payment is not of essence. In the *Hadith* of Jamila the wife of Thabit for instance, the Prophet peace be upon him asked Thabit to take back his orchard without specifying the duration of the payment. According to Abil- Hassan Aliyu ibn AbdulSalam Altasuliy in his book²⁶⁶ opine that:

That the compensation for *Khul*need not be paid instantly.

However, where the couple voluntarily agree as to the time of payment then, in this circumstance the time of payment is of essence as such same shall be paid within the agreed period otherwise be enforced by the court of law. This is in line with Qur'anic

²⁶⁴ As-suwudiy, A., *Tanwir-alhawalik Sharhu Muwadda Malik*, Darul-fikr, Beruit, Labanon, P. 367.

²⁶⁵Supra p. 367, per Muhammad J. C. A. (as he then was)

²⁶⁶ Al-tasuliy, A. A., () *Albahjah Sharh Al-tuhfah*, Vol. 1, Darul-Fikr, Beruit, Labanon, P. 644

provision:²⁶⁷"O you who have believed, fulfill (all) your contracts…". It is also reported the Prophet(S.A.W.) to have said All conditions agreed upon by Muslims are binding except the condition which seeks to legalize the illegal or makes illegal what is legal.

3.9.6 The Effect of Non-Payment of Compensation

As highlighted above, the effect of non-payment of compensation of *Khul* depends on the views forward by the particular Jurists or the stipulations entered during the divorce (*Khul*) by the spouse.Shafi'i, is of the view that, the payment of compensation is a condition precedent for a valid *Khul*, therefore by this view where there is no payment, there is no *Khul*as such, the marriage is still subsisting.²⁶⁸To maliki jurists and others, hold that the payment is not a condition precedent for the validity of *Khul*. Therefore to them, the nonpayment does not in any way affect the validity of the *Khul*. The unpaid compensation however, shall be considered as credit/debt incumbent on her.²⁶⁹

However, where the couplesmake a stipulation to the effect that,unless the wife pays the compensation to the husband the marriage is still subsisting pending she pays same²⁷⁰. But, where such condition is not entered, then the *Khul* takes effect and the payment remained incumbent on the wife as debt.

This chapter discusses *Khul* as a right of the wife to seek divorce. By the provision of Qur'an and *Sunnah* a woman has the right to seek for *Khul* just as a matter of contentment without disclosing her ground(s) once she declares that she dislikes the

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²⁶⁷O, 5:01 supra.

²⁶⁸Infra p. 73 of this work.

²⁶⁹Ibid

²⁷⁰Al-jaziyriy, A. M., (2006), Figh ala Mazahibul Arba'I, Op. cit P. 311

husband and fears not to transgress the limit set by *Shari'ah* then it is enough to obtain same.

CHAPTER FOUR

DATA PRESENTATION, OBSERVATION, ANALYSIS AND

INTERPRITATION

4.1 Introduction

This chapter is divided into three sections. The first section deals with the presentation, analysis and interpretation of result of the data collected from the questionnaires filled up by the respondents. The responses were presented in table of frequencies and percentages. The analysis of the data was conducted in line with research questions and objectives of the study.

The second section on the other hand deals with data obtained from an observation made or conducted from the various *Shari'ah* courts of Kano state from the 10 selected Local Governments with a view to find out the rate of *Khul* in Kano state. The findings were presented in a tabular form and then translated into a bar chat form.

Lastly, the last section but not the least, concludes with the analysis of some cases decided by the *Shari'ah* Court of Appeal of Kano State. The analyses of the cases were conducted in line with research objectives that; to find out the extent to which the court applies the provision of *Shari'ah* in cases of *Khul* and the yardsticks used by the *Shari'ah* Court Judges (*Qudda'a*) to determine the payable quantum.

4.2 Analysis of Questionnaires

This segment deals with the analysis and the interpretation of the data obtained from the questionnaires filled up by the respondents. The responses were presented in frequency tables and percentages. Below is the analysis of data presented in line with the research objectives.

4.3 Response Rate

A total of 384 copies of questionnaire were administered but only 313 copies were returned. See table 4.3.1.

Response Rate	Frequency	Percentages
Administered	384	100%
Returned	313	81.5%
Not Returned	71	18.5%

Table 4.3.2 Personal Information of the Respondents

Age	Frequency	Percent
18-24 years	61	19.5
25-30	119	38.0
31-35	78	24.9
36 and above	50	16.0
Total	308	98.4
System	5	1.6
	313	100.0

Table 4.3.2 reveals the age range of responses, which shows that majority of the respondents that 119, representing (38.0%) are within the age of 20-30. While 78 of the respondents representing (24.9%) are within the age of 31-35. This is followed by 61 of the respondents representing (19.5%) who are between the ages of 18-24 years old. It is only 50 of the respondents representing (16.0%) who are between the age of 36 years and above. However, 5 of the respondents representing (1.6%) decline to state their age range. The results showed that most of the women participated in the study were within the age of 25-30 years of age.

4.3.3 Marital Status

Marital status	Frequency	Percent
Single	90	28.8
Married	114	36.4
Widow	57	18.2
Divorcee	41	13.1
No response	11	3.5
Total	313	100.0

The distribution of responses by marital status in Table 4.3.3 shows that out of the three hundred and thirteen (313) respondents, 114 of the respondents representing (36.4%) are married while single (bachelor) are 90 women representing (28.8%) of the total respondents. This followed by 57 of the respondents representing (18.2%) who were widow and 41 of the respondents represent (13.1%) indicates that they are divorcee. Similarly, 11 of the respondents representing (3.5%) decline to indicate their marital status. This result shows that more married women were captured during the administration of the questionnaire than unmarried counterparts.

Table 4.3.4: If married, how long?

Less of the marriage	Frequency	Percent
Less than one year	61	19.5
1-3 years	77	24.6
4-6 years	123	39.3
6 and above	52	16.6
Total	313	100.0

Based on the table 4.3.4, respondents were asked to please indicate the length or duration of their marital experience. Majority of the respondent, about 123 representing (39.3%) indicate 4-6 years as the length or duration of their marriage. This is followed by 77 of the respondents representing (24.6%) who indicate 1-3

yearsas the duration of their marriages. About 61 of the respondents representing (19.5%) indicate less than one year. It is only 52 of the respondents representing (16.6%) who are married between 6 and above years. The result shows that, more married women of 4-6 years of marital experience were captured.

Table 4.3.5: Educational Qualifications

Educational qualifications	Frequency	Percent
Secondary School Leaving Certificate	77	24.6
Diploma	66	21.1
Nigeria Certificate in Education	68	21.7
Degree	29	9.3
Others specify	73	23.3
Total	313	100.0

From table 4.3.5, the respondents were asked to indicate their educational qualifications. 77 of them representing (24.6%)have secondary school leaving certificate as their qualification. This followed by 73 of the respondents representing (23.3%) other type of qualifications mainly primary certificates and the usual Qur'anic and Islamiyya School attendants. Then68 of the respondents representing (21.7%) have Nigeria Certificate in Education as their qualification. Then 66 respondents representing (21.1%) have Diploma as their qualification. It was only 29 of the respondents representing (9.3%) have Bachelor of Degree as their highest qualification.

Table 4.3.6: Do you know the ways by which marriage can be dissolved under Islamic Law in Kano State?

	Frequency	Percent
Yes	230	73.5
No	78	24.9
No response	5	1.6
Total	313	100.0

Respondents were asked to indicate their awareness in respect of the ways through which marriage can be dissolved under Islamic law in Kano state. 230 of the respondents representing (73.5%) claimed to have known the ways by which marriage can be dissolved under Islamic Law In Kano State, while 78 of them representing (24.9%) of the respondents responded that they do not know the ways by which marriage can be dissolved under Islamic Law In Kano State. other 5 respondents representing (1.6%) decline to respond whether they are aware with the ways or not.

Table 4.3.7 Which of the following are you aware of, as a means by which marriage can be dissolve under Islamic Law in Kano State?

Which Of The Following Are You Aware Of, As A Means By Which Marriage Can Be Dissolve Under Islamic Law In Kano State?	Frequency	Percent
Divorce by husband	210	67.1
Dissolution of marriage by court	86	27.5
Divorce in lieu of compensation (Khul)	177	56.6
Death of spouse	28	9.0
No response	14	4.5

Here the respondents were asked to indicate which of the following ways are they aware of, as a means by which marriage can be dissolved under Islamic Law in Kano state? The respondents can fill all the options that they have known. About 210 of the respondents, representing (67.1%) knowdissolution of marriage by husband. This is followed by 177among the respondents representing (56.6%) who indicate their awareness/knowledge of divorce in lieu of compensation (*Khul*) then about 86 of them representing (27.5%) knowdivorce through the process of court, while 28 representing (9.0%) knowthe death of a spouse as means by which marriage is naturally dissolved under Islamic law in Kano state. However, 14 of them that is

(4.5%) decline to indicate their awareness of the means by which marriage can be dissolved under Islamic law in Kano state.

Table 4.3.8: Are you aware that wife may initiate divorce process in court when she dissatisfies with her marriage under Islamic Law?

Are you aware that wife may initiate divorce process in	Frequency	Percent
court when she is dissatisfied with her marriage under		
Islamic Law?		
Yes	205	65.5
No	102	32.6
No response	6	1.9
Total	313	100.0

Table 4.3.8 above indicate that majority of the respondents that about 205 of the respondents representing (65.5%) are aware that a wife may initiate divorce process in court when she dissatisfies with her marriage under Islamic law. While 102 of them that (32.6%) do not aware that wife may initiate divorce process in court when she dissatisfies with her marriage under Islamic law. However, 6 of them representing (1.9%) do not respond to this question.

Table 4.3.9: Are you aware that a wife can get her marriage dissolved by paying back her *Sadaq* to the husband?

Awareness	Frequency	Percent
YES	277	88.5
NO	36	11.5
Total	313	100.0

Table 4.3.9 above indicate that 227 of the respondents representing (88.5%) are aware that a wife may get her marriage dissolved by way of *Khul* upon the payment of consideration (usually *Sadaq*) to the husband and 36 of them; (11.5%) claimed not aware of that.

Table 4.3.10: Under what ground (reason) do you think is appropriate for a wife to seek to ransom herself from the marriage union?

Under What Ground (Reason) Do You Think Is Appropriate For A Wife To Seek To Redeem Herself From The Marriage	Frequency	Percent
Union?		
Dissatisfaction with marriage	219	70.0
Interference by the husband relatives	62	19.8
Lack of maintenance	6	1.9
Beating by husband / cruelty	11	3.5
Others	15	4.8
Total	313	100.0

The respondents were asked to indicate the ground or reason under which they think is appropriate for a wife to seek to ransom herself from the marriage union. That, about 219 of the respondents representing (70.0%) chose dissatisfaction with marriage as a reason under which a wife can seek to ransom herself from the marriage. Then about 62 of them representing (19.8%) chose interference by the husband relatives. This is followed by 15 of the respondents representing (4.8%) who regard other reasons as an appropriate ground for a wife to seek to ransom herself from the marriage union. Moreover, 11 respondents representing (3.5%) consider beating by husband/cruelty as a reason under which a wife can seek to ransom herself from the marriage union.

Table 4.3.11: Do you consider Khulas a right vested in a woman/ wife under Islamic Law (applicable in Kano)?

Do you consider Khulas a right vested in a woman/ wife	Frequency	Percent
under Islamic Law (applicable in Kano)?		
YES	173	55.3
NO	55	17.6
NOT SURE	84	26.8
No response	1	.3
Total	313	100.0

From the table above, 173 of the respondents representing (55.3%) are aware that *Khul* is a right vested in a woman/ wife under Islamic law (applicable in Kano), while 84 of the respondents representing (26.8%) are not sure whether or not *Khul* is a right vested in a woman/ wife under Islamic law (applicable in Kano). About 55 of the respondents representing (17.6%) are of the understanding that *Khul* is not a right vested in a woman/ wife under Islamic law (applicable in Kano).

Table 4.3.12: A wife may pay back her husband his lesser, higher or exact *Sadaq* as compensation to ransom herself from the marriage union

A Wife May Pay Back Her Husband His Lesser, Higher Or Exact Sadaq As Compensation To Reedem Herself From The Marriage Union	Frequency	Percent
True	150	47.9
Not True	46	14.7
Not Sure	117	37.4
Total	313	100.0

Table 4.2.12 indicates that 150 of the respondents representing (47.9%) are aware that a wife may pay back her husband his lesser, higher or exact *Sadaq* as compensation to ransom herself from the marriage, while 117 of the respondents representing (37.4%) are not sure whether or not a wife may pay back her husband his lesser, higher or exact *Sadaq* as compensation to ransom herself from the marriage. However, 46 of the respondents representing (14.7%) are of the understanding that a wife cannot pay back her husband his lesser, higher or exact *Sadaq* as compensation to ransom herself from the marriage union.

Table 4.3.13: If the husband and wife cannot agree on the amount to be paid, does the court has power to decide for them

If The Husband And Wife Cannot Agree On The Amount To Be Paid, Does The Court Have Power To Decide For Them	Frequency	Percent
True	173	55.3
Not True	36	11.5
Not Sure	104	33.2
Total	313	100.0

The data presented in table 4.3.13 indicates that 173 of the respondents representing (55.3%) are aware that if the husband and wife cannot agree on the amount to be paid, the court has power to decide for them, while 104 of the respondents representing (32.2%) are not sure whether the court has the power to decide for them. However, 36 of the respondents representing (11.5%) indicate that the court cannot decide the payable quantum for the disputing parties.

Table 4.3.14: If your answer to the above is true, which court do you think has the power to entertain the matter in Kano State?

If Your Answer To The Above Is True, Which Court Do You Think Has The Power To Entertain The Matter In	Frequency	Percent
Kano State?		
High court	75	24.0
Magistrate court	30	9.6
Shariah court	162	51.8
None of the above	46	14.7
Total	313	100.0

It can also be seen from table 4.3.14 that, majority of the respondents of about 162 representing (51.8%) of the respondents know that the court that has jurisdiction to entertain cases on *Khul* is a *Shariah* court. This is followed by 75 of the respondents representing (24.0%) think that it is the High court that has the power to entertain the

matter in Kano state. Then other 46 of the respondents representing (14.7%) opine that none of the above courts has the power to entertain the matter in Kano state. However, 30 of the respondents representing (9.6%) think that it is the Magistrate court that has the power to entertain the matter in Kano state.

4.3.15: Do you consider that ransoming herself (Wife) by returning or paying the husband back his *Sadaq* is a good option?

Do You Consider That Redeeming Herself (Wife) By Returning Or Paying The Husband Back His Sadaq Is A Good Option?	Frequenc y	Percent
Yes	216	69.0
No	66	21.1
No response	31	9.9
Total	313	100.0

Based on table 4.3.15 above, majority of the respondents of about 216 representing (69.0%) of the respondents consider that ransoming herself by returning or paying the husband back his *Sadaq*as a good option, while 66 of the respondents representing (21.1%) do not consider it as a good option whereas 31 of the respondents representing (9.9%) remain silent in respect thereof.

Table 4.3.16: If the answer above is affirmative, would you exercise the same measure (action) when faced with similar situation

If The Answer Above Is Affirmative, Would You Exercise The Same Measure (Action) When Faced With Similar Situation	Frequency	Percent
Yes	204	65.2
No	77	24.6
No response	32	10.2
Total	313	100.0

Table 4.3.16 indicates that 204 of the respondents representing (65.2%) are willing to exercise the same measure (action) when faced with similar situation. However, 77 of the respondents representing (24.6%) opined they would not exercise it when faced

with similar situation whereas 32 respondents representing (10.2%) decline to respond.

4.3.17: Do you think it is appropriate to legislate (make law) on *Khul* in Kano State

Do You Think It Is Appropriate To Legislate (Make Law) On Khul In Kano State	Frequency	Percent
Yes	233	74.4
No	80	25.6
Total	313	100.0

Based on the data presented on table 4.3.17 above indicates that 233 of the respondents representing (74.4%) are in support of having a legislation (law) to regulate *Khul* in Kano state, while 80 of the respondents representing (25.6%) opine that it is not appropriate to legislate (make law) on *Khul* in Kano state.

4.4 Analysis Of The Data Obtained From Observation

Introduction

This segment intends to examine some courts' records; Books of proceeding and case register books in the Ten Local Governments with a view to find out the rate of *Khul* in Kano state and ground(s) rely upon by the litigants.²⁷¹In the process of conducting the observation, an introductory letter was written to the Chief Registrar Kano State Judiciary to furnish the researcher with the number of the courts in the ten selected Local Governments as earlier discussed in chapter one of this work. **See appendix A**. They replied that there are total of Fourteen *Shari'ah* Courts threin thus; 6 in Kano Central, 3 in Kano North and 5 in Kano South. See **Appendix B**. More so, a letter of permission "To Whom it May Concern" is issued to the researcher to present it before the courts under study. **See Appendix C**.

In the course of making the observation, a prescribed form was designed; containing columns for total number of cases of *Khul* conducted by each court, and ground relied upon, from 2014 to 2016. A provision was made for the name of the judge, court and signature of the judge to authenticate the genuiness of the finding. **See Appendix D**. That the observation was conducted and the findings were reported in Appendix D. **See Appendixes D1-D14**. The findings were presented and analysed in tabular and bar chart forms.

4.4.1 Analysis of Observation

A careful observation of the *Shari'ah* Courts' records of Kano state from 2014 to 2016 was carried out, essentially to find out the rate of *Khul* in Kano State and the ground upon which it was sought from 2014-2016. The data from the observation was

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²⁷¹ Being a part of the objective of this work.

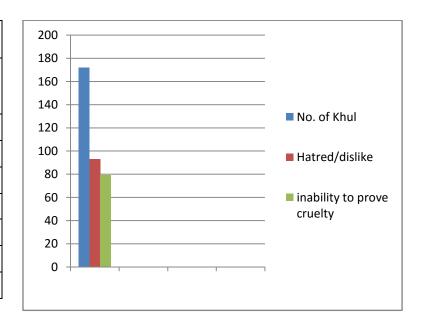
obtained from three senatorial zones of Kano Central, Kano North and Kano South.

The result is presented in tabular and pictured into a Bar-chart form.

In Kano central, the result of the 6 courts²⁷² visited were arranged from 1 to 6.²⁷³ See Appendixes D1-D6. The result is presented in the following tables and diagrams;

See table 4.4.1

KAN	KANO CENTRAL SENATORIAL ZONE 2014							
Court	No. of	No. of Hatred Inability						
S/N	Khul	/ dislike	to proof					
			cruelty					
1	12	3	9					
2	48	28	20					
3	54	30	24					
4	44	24	20					
5	NIL NIL NIL							
6	14	8	6					
Total	172	93	79					



As indicated in the table 4.4.1 above, a careful observation was carried out, in 6 courts from Kano central senatorial zone on *Khul* in the year 2014. The table reveals that **172** cases of *Khul* were received by the 6 *Shari'ah* courts in 2014. That out of **172** cases, **93** cases were filed and decided on the ground of hatred/dislike. Meaning that the plaintiffs (wives) were no longer loved their respective husbands. Similarly, **79** cases were initially filed for the dissolution of marriage (not for *Khul*) for the reason of cruelty and/or related forms but, when the plaintiffs (wives) failed to prove the claim before the court, they switched to *Khul*.

Note that court number 5 which represents Kwana-Hudu Sharia Court, in table 4. 18 above, was not in existence/ established then in 2014.

²⁷³ 1 represents Garin-Malam Shari'a Court, 2 for Kumbotso Shari'a Court, 3 for Gwagwarwa Shari'a Court, 4 for Jigirya Shari'a Court, 5 for Kwana-Hudu Shari'a Court and 6 for Yankaba Upper Shari'a Court.

The Bar-chart diagram translates the findings contains in the table 4.3.1 It shows essentially that, the *Khul* sought and obtained on the ground of hatred/dislike is higher than those that resorted to it (*Khul*) due to their inability to prove cruelty as they had claimed.

Table 4.4.2

	KANO CENTRAL						
SE	NATORI	AL ZON	E 2015				
Court	No. of	Hatred	Inability				
S/N	Khul	/	to proof				
		dislike	cruelty				
1	4	2	2				
2	50	30	20				
3	22	10	12				
4	29	19	10				
5	48	27	21				
6	6 13 6 7						
Total	Total 166 94 72						

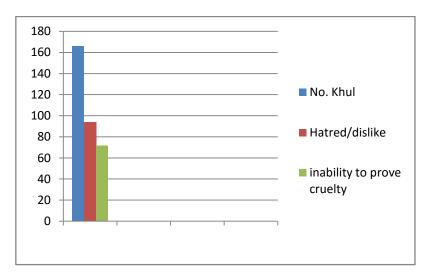


Table 4.4.2 above, indicates that, an observation was carried out, in 6 courts from Kano Central Senatorial Zone on *Khul* in the year 2015. The table reveals that the total of **166** cases on *Khul* was filedin the 6 *Shari'ah* courts in 2015. That out of **166**, **cases,94** wives sought *Khul* on the ground of hatred/dislike while 72 of the wives opted *Khul* due to their inability to prove cruelty as they had earlier claimed.

The Bar-chart diagram translates the findings contains in table 4.3.2 It shows essentially that, the *Khul* sought and obtained on the ground of hatred/dislike is higher than those that resorted to it (*Khul*) due to their inability to prove cruelty.

Table 4.4.3

KANC	KANO CENTRAL SENATORIAL ZONE 2016					
Court	No. of	Hatred	Inability to			
S/N	Khul'	/	proof			
		dislike	cruelty			
1	8	3	5			
2	40	22	18			
3	25	22	3			
4	35	25	10			
5	88	64	24			
6	17	10	7			
Total	213	146	67			

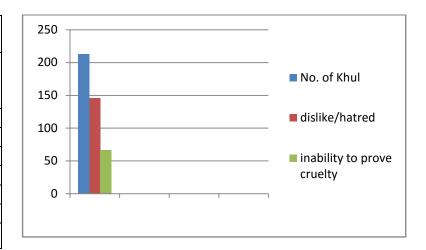


Table 4.4.3 above, indicates that, an observation carried out, in 6 *Shari'ah* courts from Kano Central Senatorial Zone on cases of *Khul* in the year 2016. The table reveals that the total of **213** cases on *Khul* was filed in the 6 *Shari'ah* courts in 2016. That out of these **cases** (213), **146cases**,werefiled and determined on the ground of hatred/dislike while the remaining **72** cases were initially filed on the claim of cruelty, but the plaintiffs (wives) laterchanged for *Khul* due to their inability to prove cruelty.

The Bar-chart diagram pictures the findings in table 4.3.3 It shows essentially that, the *Khul* sought and obtained on the ground of hatred/dislike is higher than those that changed to it (*Khul*) due to their inability to prove cruelty.

KANO NORTH

With respect to Kano North Zone, there is only one *Shari'ah* Court in each Three Local Governments under study. Therefore the result of each court is arranged in tabular and Bar-chart forms. Court 1 represents Dawakin-tofa *Shari'ah* Court, 2 for Kunchi *Shari'ah* Court and 3 for Tofa *Shari'ah* Court. See Appendixes D7-D9. The results are as follow;

Table 4.4.4

KAN	KANO NORTH SENATORIAL ZONE 2014							
Court No. of Hatred / Inability to prove cruelty								
1	42	22	20					
2	2 54 21 33							
3	3 27 17 10							
Total	127	60	63					

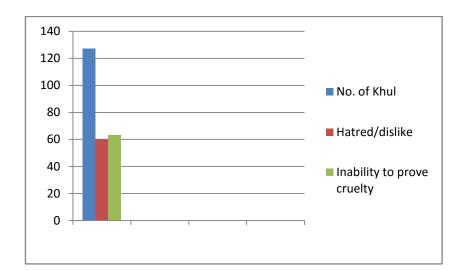


Table 4.4.4 above, indicates, an observation carried out, in 3 courts from Kano North Senatorial Zone on *Khul* in the year 2014.²⁷⁴ The table reveals further that the total of **127** cases on *Khul* was filed before the 3 *Shari'ah* courts in 2014. That out of **127**, cases,60cases, (*Khul*) were filed on the ground of hatred/dislike while 63 cases were initially filed for the dissolution on the claim of cruelty but later the wives opted for *Khul* as alternative, due to their inability to prove cruelty before the court.

The Bar-chart diagram translates the findings in table 4.3.4 It shows that, the *Khul* sought and obtained on the ground of hatred/dislike is lesser than those that changed to it (*Khul*) due to their inability to prove *Khul*, in the year 2014 in Kano North Senatorial Zone.

Note that, in the whole of Kano North Senatorial Zone, based on the sampling made there are only three Sharia court. That one in each Local Governments of; Dawakin-tofa, Kunchi and Tofa Local Governments.

Table 4.4.5

KAN	KANO NORTH SENATORIAL					
	ZO	NE 2015				
Court	No. of	Hatred /	Inability to			
S/N	Khul'	dislike	prove			
1	26	17	9			
2	27	16	11			
3	3 12 5 7					
Total	Total 65 38					

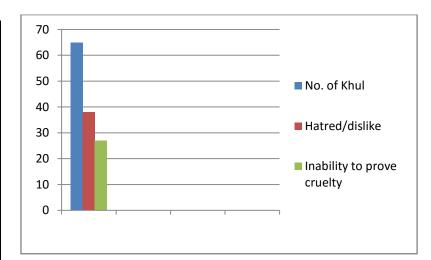


Table 4.4.5 above, shows, an observation carried out, in 3 courts from Kano North Senatorial Zone on *Khul* in the year 2015. The table reveals further that the total of **65** cases on *Khul* filed in the 3 *Shari'ah* courts in 2015. That out of **65**, **cases**,in**38 cases**, the wives sought *Khul* on the ground of hatred/dislike while 27 of the wives even though filed the cases initially for dissolution on the claim of cruelty but later substituted for *Khul* because of their inability to prove cruelty before the court.

The Bar-chart diagram translates the findings in table 4.3.5 It shows essentially that, the *Khul* filed and obtained on the ground of hatred/dislike is greater than those that later changed to it (*Khul*) due to their inability to prove cruelty.

Table 4.4.6

KANO NORTH SENATORIAL ZONE					
		2016			
Court	No. of	Hatred /	Inability to		
S/N	Khul'	dislike	proof cruelty		
1	20	10	10		
1	30	18	12		
2	35	13	22		
3	28	18	10		
Total	93	49	44		

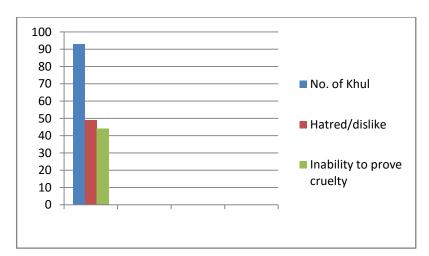


Table 4.4.6 above, indicates, an observation carried out, in 3 courts from Kano North Senatorial Zone on *Khul* in the year 2016. The table reveals that the total of **93** cases on *Khul* was filed before the 3 *Shari'ah* courts in 2016. That out of the **93** cases, were filed and sought on the ground of hatred/dislike while 44 cases were initially filed for the dissolution for want of cruelty, but the plaintiffs (wives) at the end opted for *Khul* as alternative, due to their inability to prove cruelty before the court.

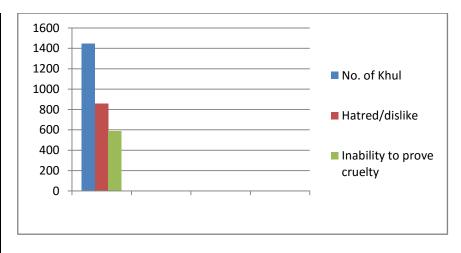
The Bar-chart diagram translates the findings contain in the table 4.3.6 It shows that, the *Khul* filed and obtained on the ground of hatred/dislike is higher than those that later changed to *Khul* due to their inability to prove the alleged cruelty.

KANO SOUTH

In Kano South Zone, the results of the 5 *Shari'ah* Courts visited were arranged²⁷⁵ (See Appendixes D10-D14) as follow;

Table 4.4.7

KAN	KANO SOUTH SENATORIAL ZONE					
		2014				
Court	No. of	Hatred /	Inability to			
S/N	Khul	dislike	proof cruelty			
1	30	17	13			
2	412	200	212			
3	797	500	297			
4	94	40	54			
5	5 111 100 11					
Total	1,444	857	587			



²⁷⁵ Court 1, represents Bunkure Shari'ah Court, 2 for Karaye Shari'ah Court, 3 for Rogo Shari'ah Court, 4 for Zarewa Shari'ah Court under Rogo Local Government and 5 for Wudil Shari'ah Court.

Table 4.4.7 above shows an observation carried out in five courts within Kano South Senatorial Zone on cases of *Khul* for a period of 3 years i.e from 2014 to 2016. Table 4.4.7 reveals that out 1,444 cases filed in the five *Shari'ah* courts in 2014, 857 of the cases were filed on *Khul* on the ground of Hatred / dislike as what motivated them to seek for it whereas, 587 cases were filed for the dissolution of marriage on the claim of cruelty but later, resorted to *Khul'* due to their inability to prove cruelty.

The Bar-chart diagram translates the findings contain in table 4.4.7 It shows essentially that, the *Khul*' filed and obtained by the wife/wives on the ground of hatred/dislike is higher in number than those that changed to it (*Khul*') due to their inability to prove cruelty.

Table 4.4.8

KAN	KANO SOUTH SENATORIAL ZONE						
		2015					
Court S/N	No. of Khul'	Hatred / dislike	Inability to proof cruelty				
1	25	15	10				
2	391	200	191				
3	639	439	200				
4	66	30	36				
5	5 222 22 200						
Total	1,343	704	637				

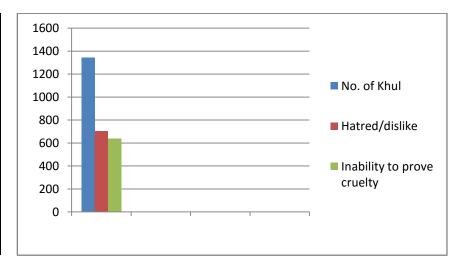


Table 4.4.8 above, shows the result of an observation conducted in the 5 *Shari'ah* courts within Kano South Senatorial Zone in respect of the year 2015. It indicates that, the total of 1,343 cases was filed before the five *Shari'ah* Courts therein. Out of it (1, 343), Seven Hundred and Four (704) cases on *Khul'* were filed on the ground of hatred/dislike. Then Six Hundred and Thirty Seven (637) cases were filed though for

separation for the reason of cruelty, but the plaintiffs (wives) later opted for *Khul*' as they cannot prove their claims of cruelty.

That the Bar-chart diagram on the other hand, represents the tabular findings. It shows diagrammatically that, the rate of *Khul'* decided in Kano South Senatorial Zone in respect of 2015 on the ground of hatred/dislike is higher than those obtained following the plaintiffs inability to prove cruelty.

Table 4.4.9

KAN	KANO SOUTH SENATORIAL ZONE 2016				
Court S/N	No. of Khul'	Hatred / dislike	Inability to proof cruelty		
1	35	25	10		
2	392	150	242		
3	692	300	392		
4	121	80	41		
5	434	234	200		
Total	1,674	789	885		

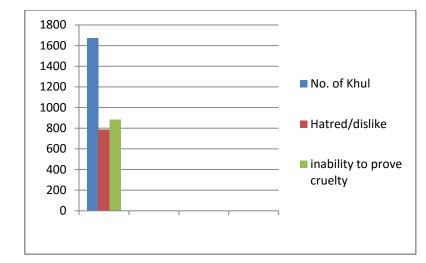


Table 4.4.9 above shows an observation conducted in the 5 *Shari'ah* courts of Kano South Senatorial Zone in 2016. It indicates that, 1, 674 cases were filed on *Khul'* before the five *Shari'ah* Courts therein. Out of it (1, 674), Seven Hundred and Eighty Nine (789) cases were filed on the ground of hatred/dislike. Then Eight Hundred and Eighty Five (885) cases were filed though for separation by reason of cruelty, but the plaintiffs (wives) at the end changed to *Khul'* as they cannot prove their claims of cruelty.

That the Bar-chart diagram on the other hand, represents the tabular findings. It shows diagrammatically that, in 2016, the rate of *Khul*' decided in Kano South Senatorial

Zone by reason of the plaintiffs' inability to prove cruelty is higher than those cases determined on the ground of hatred/dislike.

The overall observations results of the *Shari'ah* courts Kano state from year 2014 to 2016.

Table 4.4.10

		OVERAL OBSERVATION RESULT,OF SHARI'A COURTS OF KANO STATE IN 2014					
YEAR	~-	ENATORIAL ONES	No. of Khul'	Hatred / dislike	Inability to proof cruelty		
2014		ENTRAL ORTH	172 123	93	79 63		
	S	OUTH	1, 444	857	587		
	To	otal	1739	1010	729		

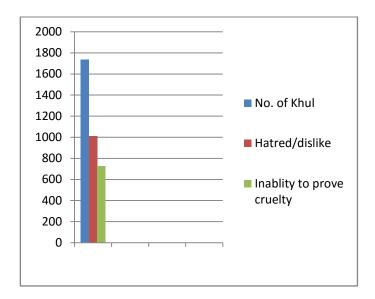


Table 4.4.10 above, shows the aggregate of the observation results conducted on the records of the *Shari'ah* courts across the three senatorial zones in the year 2014 which reflect the entire of Kano state. That the table shows the total number of One Thousand Seven Hundred and Thirty Nine (1, 739) cases on *Khul'* were filed and determined before the fourteen (14) *Shari'ah* Courts sampled from the 3 zones. Out of this number, (1,010), One Thousand and Ten cases were filed on the ground of hatred/dislike. Then Seven Hundred and Twenty Nine (729) cases were filed though for separation by reason of cruelty, but the plaintiffs (wives) at the end resorted to *Khul'* as they cannot prove their claims of cruelty.

That the Bar-chart diagram on the other hand, illustrates the tabular findings. It shows diagrammatically that, in 2014, women/wives in Kano state mostly sought for *Khul* on

the ground of hatred/dislike than those who subsequently opted for it, by reason of the plaintiffs' inability to prove cruelty.

Table 4.4.11

	OVERAL OBSERVATION RESULT,OF SHARI'A COURTS OF KANO STATE IN 2015				
YEAR	SENATORIAL	No. of	Hatred	Inability	
	ZONES	Khul'	/	to proof	
			dislike	cruelty	
2015	CENTRAL	166	94	72	
	NORTH	65	38	27	
	SOUTH	1, 341	704	637	
	Total	1572	836	736	

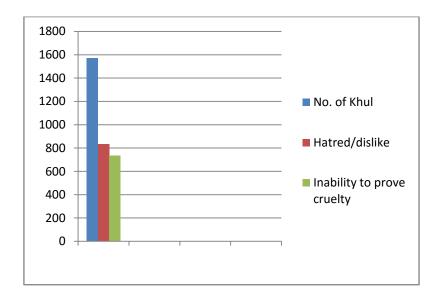


Table 4.4.11 above, shows the aggregate of the observation results conducted on the records of the *Shari'ah* courts across the Three Senatorial Zones in the year 2015that reflect the entire of Kano state. That the table shows the total number of One Thousand Five Hundred and Seventy Two (1, 572) cases on *Khul'* were filed and determined before the fourteen (14) *Shari'ah* Courts sampled from the 3 zones. Out of this number, (836), Eight Hundred and Thirty Six cases were filed on the ground of hatred/dislike. Then Seven Hundred and Thirty Six (736) cases were filed though for separation by reason of cruelty, but the plaintiffs (wives) at the end changed to *Khul'* as they cannot prove the alleged cruelty.

That the Bar-chart diagram on the other hand, translates the tabular findings. It demonstrates that, in 2015, more women/wives in Kano state have relied on the

ground of hatred/dislike to seek for *Khul* than those who obtained same following their inability to prove cruelty.

Table 4.4.12

	OVERAL OBSERVATION OF SHARI'A COURTS OF KANO STATE IN 2016				
YEAR	SENATORIAL ZONES	No. of Khul'	Hatred / dislike	Inability to proof cruelty	
2016	CENTRAL	213	146	67	
	NORTH	93	49	44	
	SOUTH	1, 674	789	885	
	Total	1980	984	996	

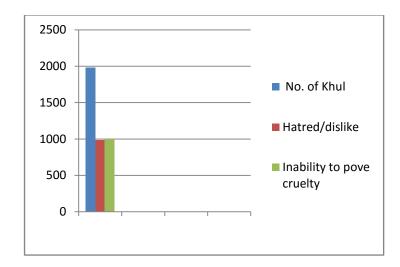


Table 4.4.12 above, indicates the aggregate observation results conducted on the records of the *Shari'ah* courts across the Three Senatorial Zones in the year 2016 that reflect the entire of Kano state. The table shows the total number of One Thousand Nine Hundred and Eighty (1, 980) cases on *Khul'* were filed and determined before the fourteen (14) *Shari'ah* Courts sampled from the 3 zones. Out of this number, (984), Nine Hundred and Eighty Four cases were filed on the ground of hatred/dislike. Then Nine Hundred and Ninety Six (996) cases were filed though for separation by reason of cruelty, but the plaintiffs (wives) at the end opted for *Khul'* as they cannot prove their claims of cruelty.

That the Bar-chart diagram however, translates the tabular findings in Kano state in the year 2016. It demonstrates that, majority of women/wives went to the court for the dissolution of marriage for the reason of cruelty but later opted to *Khul*' when they

failed to prove the alleged cruelty. In other words, the *Khul*' obtained on this basis is higher than those obtained it primarily on the ground of hatred/dislike.

TABLE 4.4.13

YEAR	OVERAL OBSERVATION RESULT ON GROUND OF KHUL' SOUGHT IN KANO STATE 2014- 2016	
	Hatred/dislike	Inability to prove cruelty
2014	1010	729
2015	836	736
2016	984	996
Total	2830	2461

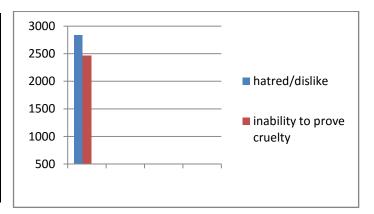


Table 4.4.13 above shows that, women approaching court for the dissolution of marriage by way of *Khul*' on the ground of hatred/dislike are higher in number in Kano state than those coming to court for the dissolution initially on the claim of cruelty but later turned to *Khul*' due to their inability to prove *Khul*'.

Table 4.4.14

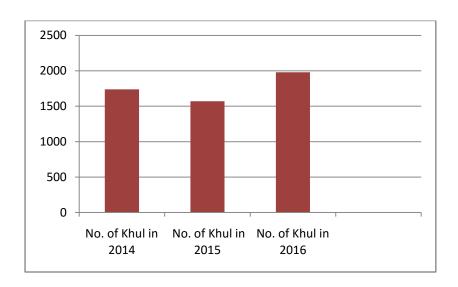
YEAR	OVERALL NO. OF CASES ON KHUL' IN KANO STATE
2014	1,739
2015	1,572
2016	1,980
Total	5,291

Table 4.4.14 indicates the overall rate of *Khul*' in Kano state. That in 2014, the total number of cases on *Khul*' determined by *Shari'ah* court in Kano state is; **One Thousand Seven Hundred and Thirty Nine** (1,739). In 2015 however, the total of **One Thousand Five Hundred and Seventy Two** (1,572) cases on *Khul*' were determined in Kano state. Finally, in 2016 the total of **One Thousand Nine Hundred**

and Eighty (1980) cases on *Khul*' were determined by the *Shari'ah* courts in Kano. This gives the overall total number of cases on *Khul* decided in Three years in Kano State by the *Shari'ah* Courts to; Five Thousand Two Hundred and ninety One (5, 291)

On the rate of *Khul*' in Kano state, one may conclude that though, it is fluctuating intermittently yet it is rising. This is because; even though the cases determined in 2014 are higher than those determined in 2015 but, the cases determined in 2016 are highest than those decided in 2014 and 2015 respectively.

The Bar-chart below shows clearly and diagrammatically the fluctuating pattern of the rate of *Khul*' in Kano state;



4.5 ANALYSIS OF CASES DECIDED BY SHARI'AH COURT OF APPEAL OF KANO STATE

Introduction

This segment intends to examine some of the cases determined by the *Shariah* Court of Appeal of Kano State with a view to find out the extent to which the court applies Islamic principles in its judgments and the yardstick(s) if any used by the *Quddad* towards the assessment of the Quantum of *Khul*' consideration. ²⁷⁶In the course, the work will be restricted to the principle of *Malikischool* being the applicable law in the Nigerians courts and Kano State in particular. This is in line with Supreme Court decision in the case of *Alkamawa V. Bello* ²⁷⁷per Wali JSC (as he then was) held thus: "The applicable Muslim law in Area courts in Nigeria is the <u>Islamic law of the</u> Maliki school…"

For the purpose of the analysis the cases were arranged as follows:

4.5.1Yusuf Muhammad Tal'udu vs Sumayya Abubakar

Before the presiding judges:

- 1. Hon. Kadi Alh. Abdullahi Waiya
- 2. Hon. Kadi Alh. Shehu Ibrahim Matawalle
- 3. Hon. Kadi Alh. Sani Mu'azu
- 4. Hon. Kadi Alh. Tijjani Yusuf Yakasai

SCA/KN/CV/300/2013

This appeal emanated from the judgment made by Kurna *Shariah* Court No. 7 having case number CV/494/2013. The plaintiff now respondent filed an action for dissolution of marriage by way of *Khul*' against the defendant now respondent on the ground of cruelty as he disgraces and sometime beats her. The defendant applied for

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²⁷⁶ The examination is aimed to address the last objective stated in chapter as contained in page seven of this work.

²⁷⁷(1998)8 NWLR (pt 561) at 182 paras G-H

²⁷⁸Underline mine

more time to enables him reconcile with his wife. At the next adjourned date, the plaintiff insisted on the termination of the marriage and the defendant offered to ransoms herself by waving her right of *Hadana* (custody of children) in respect of their two children Maryam aged 4 years and Fatima aged 2 years. The plaintiff conceded thereto.

The trial court delivered the judgement by dissolving the marriage by way of *Khul*' in lieu of the children's custody. The court remitted the children back to the custody of their mother on the ground that the term/condition agreed in lieu of the compensation though is permissible but unenforceable under *Shari'ah*. The court relied on the authority in the book of *Al-dalaq* written by *Al Hafanawiy*.

The defendant being dissatisfied with the judgment appealed before the Upper *Shari'ah* Court of Appeal Gyadi-gyadi. The court still upheld the lower courts judgment. The defendant/appellant further appealed before the *Shariah* Court of Appeal Kano. His main ground of appeal was that the lower court erred in law when it held that children shall be under the respondent's custody.

The appellant finally urged the court to bring the children back to his custody as earlier agreed upon or else be paid the sum of One Hundred Thousand Naira in lieu thereof. The respondent offered to pay him the sum of Ten Thousand Naira only. At the end all the parties agreed to the sum of Fifty Thousand Naira only. The court entered the judgment by directing the respondent to pay to the appellant the said sum of Fifty Thousand Naira only as they voluntarily agreed upon.

Analysis

For the purpose of analyzing this case, under study, it is relevant to examine the following sub-headings:

- a- The free consent of the wife in respect of the payment.
- b- The Ground for seeking the Khul'
- c- The nature of the consideration/compensation.
- d- The Quantum of the payment.
- e- The yardstick used by the court toward the assessment of the quantum.

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUSGMENT:

Free Consent of the Wife: Under Maliki law, divorce generally must be pronounced voluntarily, free from any vitiating elements, *Khul*' is no exception²⁷⁹. Where it is discovered that the wife paid the *Khul*' compensation to the husband under compulsion or other related vitiating factors, the husband will be forced to return same, as he is not entitled to any compensation being he is faulty.²⁸⁰

In the instant case, the fact that, the plaintiff/respondent was before the lower court on the ground of cruelty but, it is apparently clear that she has voluntarily agreed to terminate their marriage by way of *Khul*', the *Shariah* Court of Appeal was right in its decision when it upheld the separation by way of *Khul*' by virtue of the parties' agreement. The court rightly relied on the authority: والخلع يكون بتراض الزوج that *Khul*' takes effect where there is mutual consent between the husband and the wife. This principlehas been judicially blessed by the Court of Appeal per Okunola JCA in *Husaina V. Tsiriko*held thus: "Khul' is based on the principle of offer and acceptance and the divorce takes place the moment the mutual agreement is reached…"

²⁷⁹ Alhafanawi, M. I. (2005), *Ad-daaq*, p. 297, op cit.

²⁸⁰ Sabiq, s. (2000) *Fiqhs-Sunnahl*, Darul-Turath, Al-qahira, Vol.2, P. 192; Al-jaziyriy, A. M., (2006) *Fiqh ala Mazahibul Arba'I*, Darul-Afaaqil Arabiyyah, Alqahirah, Pp. 303-5; Alhafanawi, M. I. (2005),*Ad-daaq*, Maktabatul-iman, Jami'atul-azhaar, p. 301.

²⁸¹Sabiq, S. (2000) Fighs-sunnah, op cit. p. 203

²⁸²(1991)1 NWLR (pt167) at p. 358 Supra.

Ground upon which the *Khul*' was Sought: the position of *Shariah*, in respect of *Khul*' is very clear that mere dislike/hatred is a sufficient ground upon which a wife can seek and obtain *Khul*'. In the instant case the ground upon which the respondent (wife) sought for *Khul*' was not dislike/hatred. This is because the case was filed before the trial court on the claim of cruelty. Therefore the possible ground relied upon to dissolve the marriage was by consensus of the parties. The appellate court was right when it upheld the dissolution of the marriage via *Khul*' having regard to the mutual consensus of the parties to that effect. The judgment is also in line with court of appeal decision in the case of *Jimoh V. Adunni*²⁸³, the Court of Appeal per *Okunola*, *JCA*, held thus: "The divorce takes place the moment the mutual agreement is reached and it is not deferred until the payment by the wife of the agreed consideration ..."

Nature of the Consideration: Muslim jurists are of the opinion that all lawful things in the eyes of *Shariah* can be a subject of consideration for *Khul*'. That it can either be in kind²⁸⁴ or in cash²⁸⁵. For example, in the *Hadith* of Thabit, the Prophet ordered Jamila to pay back the dower given to her (suggesting payment in kind). Court of Appeal in the case of *Salisu vs. Lawal*²⁸⁶ per **Wali J.C.A** held thus: "...there is nothing to show that she tried to obtain her release from the bondage of marriage by offer of monitory or any valuable consideration²⁸⁷ to the husband which he refused..."

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²⁸³(2001) 14 NWLR (pt 734) @ p. 521.

²⁸⁴ Al-jaziyriy, A. M., (2006) Fiqh ala Mazahibul Arba'I, Op. cit Pp. 315-6

²⁸⁵ The nature of the consideration to be paid is a question of fact, dependent on what had been paid as *Sadaq* during the marriage ceremony. That is to say where the *Sadaq* is paid in cash then in the event of divorce by *Khul*', the payment shall be in cash likewise if it has been paid in kind or else as agreed by the parties. However, is dependent on the parties' agreement.

²⁸⁶(1986)2 NWLR (pt 23) at p. 440, para F-G

²⁸⁷ Underline mine

In the instant case, the *Shariah* Court of Appeal of Kano State was right when it directed the respondent to pay the monetary compensation to the tune of Fifty Thousand Naira (N 50, 000.00) only.

Quantum of the Consideration: Under Islamic law more especially Maliki jurisprudence, holds the opinion that, the quantum of *Khul*' consideration may be equal or less than or exceed the amount of the dower given by the husband.

In the instant case, the Appellant insisted that, he should hold the two children under his custody as earlier agreed upon or else the respondent should pay him back the sum of One Hundred Thousand but at the end the parties were able to resolve and agree the sum of Fifty Thousand Naira in lieu thereof. Therefore, the *Shariah* Court of Appeal was rightwhen it upheld the judgment of the trial court with little modification as to the nature of the consideration to be monetary instead in kind. This is notwithstanding that the amount agreed upon exceeded the quantum of dower paid by the appellant to the respondent.

The Yardstick for the Assessment Applied by the Court: the position of *Shari'ah* is clear that, assessment of the quantum of *Khul'* is determined in two ways thus:

- (1) By the agreement of the parties
- (2) By the *Qadi*.
- a. By the agreement of the parties: This is the first procedure, where the parties voluntarily agreed as to the term or amount of consideration of *Khul*' that is final, binding and worthwhile.²⁸⁹ This principle is in line with Prophetic *Hadith* thus

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²⁸⁸ Al-Qirawaniy, I. A., (1997), *Al-Risalah*, Op cit, P. 97

²⁸⁹Alhafanawi, M. I., (2005) *Ad-daaq*, Op cit. P. 302.

"All conditions agreed upon by Muslims are binding except the condition which

seek to legalise the illegal or make illegal what is legal"

b. By the *Qadi* (Shari'ah Judge): this arises where the disputing parties were unable

to resolve their differences amicably. In a circumstance like this, the Qadi would

intervene to determine the reasonable amount to be paid as consideration.²⁹⁰

In the instant case, the first procedure is adopted as the parties agreed

amicably the payment of Fifty Thousand Naira in lieu of the marriage. Therefore, the

Shariah Court of Appeal was right when it judicially upheld the parties' consensus.

4.5.2 Fatihu Mukhtar Warure vs Zubaida Bashir Jakara

Before the Presiding Judges:

Hon. Grand- qadi Dahiru Rabiu

Hon. Oadi Muhammad Khalil

Hon. Qadi Musa A. Zakirai

SCA/KN/CV/197/2013

Date 29/4/2014

This case emanated from the upper Shari'ah court Goron-dutse Kano. The plaintiff

now respondent filed an action for dissolution of marriage against the defendant now

appellant on the ground of cruelty. The dependant denied the claim and the court

adjourned the matter to enable the defendant/ parties to reconcile.

On the adjourned date, the parties were not able to reconcile. The defendant/appellant

claimed that since the plaintiff was not willing to go back to her matrimonial home,

she was free to ransom herself. He brought to the court the bill of expenses of the

items he had expended to her. He urged the court to direct the respondent to pay to

him the expenses in lieu of the marriage. The bill is as follow:

²⁹⁰ Ibid

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- 1. Pre-wedding gift
- 2. Courtship gift
- 3. Engagement gift
- 4. Dower = N 20,000.00

The plaintiff/respondent in her argument urged the court to do justice for her and she is ready to concede to the finding of the courtand the defendant/appellantsaid same. The court finally entered judgment in favour of the plaintiff by directing her to pay back the *Sadaq* being the sum of Twenty Thousand naira as demanded by the defendant/appellant. With the respect to the other 3 kinds of gift demanded by the appellant the court declined on the ground that, Kano State Gazette of 1988 prohibits such Betrothal gifts in Kano State.

Dissatisfied with the decision, the defendant/appellant appealed before the *Shari'ah* court of Appeal Kano State on the following two grounds:

- a. The trial court erred in law when it dissolved the marriage by way of *Khul'* without given opportunity to the party to determine the quantum by themselves.
- b. The judgment is unjust.

The appellate court after hearing the submissions of the parties upheld the decision of the lower court. The court referred the parties to the record of the lower court where all the parties submitted themselves to the justice/conclusion of the court in respect of the quantum to be paid and that all the gifts sought by the appellant are prohibited by a subsisting law in Kano state.

The court upheld further that, since the parties agreed to separate by *Khul*', the marriage stand dissolved whether or not the consideration is prescribed or paid.

Analysis

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUSGMENT:

Free Consent of the Wife: The position of *Shari'ah* with regard to the consent of a wife in respect of *Khul'* is clear. That it must be at the wife's instance freely and voluntarily.

In the instant case, the plaintiff/respondent was before the lower court for the dissolution of marriage on the claim of cruelty but at the end she swapped and opted for *Khul*' mechanism as she cannot prove the alleged cruelty. The *Shari'ah* Court of Appeal was therefore right in its decision when it upheld the *Khul*' effective by virtue of the parties' agreement. The judgment is in line with the authority thus: 291 والخلع بكون "..." that *Khul*' takes effect where there is mutual consent between the husband and the wife. This principle has been judicially adopted by the Court of Appeal per Okunola JCA in *Husaina vs. Tsiriko*held thus: 292 "*Khul*' is based on the principle of offer and acceptance and the divorce takes place the moment the mutual agreement is reached..."

Ground upon which the *Khul'* was sought: The position of *Shari'ah* in respect of the ground for *Khul'* is clear that, dislike/hatred is a sufficient ground upon which a wife can seek and obtain *Khul'*. In the instant case the wife is discontented with the matrimonial relation as such she opts *Khul'*. The appellate court was right when it upheld the dissolution of the marriage via *Khul'* having regard to the mutual consensus of the parties to that effect. The judgment is also in line with court of appeal decision in the case of *Jimohvs. Adunni*²⁹³, the Court of Appeal per *Okunola*, *JCA*, held thus: "The divorce takes place the moment the mutual agreement is

²⁹¹Sabiq, S. (2000) *Fiqhs-sunnah*, op cit. p. 203

²⁹²(1991)1 NWLR (pt167) at p. 358 Supra.

²⁹³(2001) 14 NWLR (pt 734) @ p. 521.

reached and it is not deferred until the payment by the wife of the agreed consideration ..." Similarly, in the case of *Bulumkutu vs Zangina* supra, the Court of Appeal held thus: "The wife can without having to prove any of the known acts ... of the husband, demand for *Khul*'. She can on her own volition say that she can no longer tolerate her husband, that she is ready to return the dowry..." 294

Nature of the Consideration: The position of *Shari'ah* with respect to the nature of the compensation for *Khul'* is that, all lawful items in the eyes of *Shari'ah* is a subject of consideration for *Khul'* 295. Therefore it can either be in kind or in cash.

In the instant case, the *Shari'ah* Court of Appeal of Kano State was right when it directed the respondent to pay monetary compensation to the tune of Twenty Thousand Naira (N 20, 000.00) only. Court of Appeal in the case of *Salisuvs*. *Lawal*²⁹⁶ per **Wali J.C.A** held thus:"...there is nothing to show that she tried to obtain her release from the bondage of marriage by offer of monitory or any valuable consideration²⁹⁷ to the husband which he refused..."

Quantum of the Consideration: The law is clear that, the payment of the amount of *Khul*' can be equal, less or more than the dower given. ²⁹⁸

In the instant case, the *Shari'ah* Court of Appeal **was right** when it upheld the judgment of the lower court and directed the respondent to pay the exact amount of *Sadaq* paid to her by the appellant that is Twenty Thousand Naira only. The judgment is in line with decision of Court of Appeal in of *Salisu vs Lawal*³⁰⁰ Wali (JCA) (as he

²⁹⁸ Alhafanawi, M. I., (2005) *Ad-daaq*, Op Cit. P. 299

²⁹⁴ P. 535 para E-G

²⁹⁵ Al-jaziyriy, A. M., (2006) Fiqh ala Mazahibul Arba'I, Op. cit Pp. 312-3

²⁹⁶(1986)2 NWLR (pt 23) at p. 440, para F-G

²⁹⁷ Underline mine

²⁹⁹ Al-Qirawaniy, I. A., (1997), *Al-Risalah*, Op cit, P. 97

³⁰⁰ At p. 440, para C-D

then was) held thus: "this consideration may be of the value of the <u>exact amount of</u> dower paidby the <u>husband</u>; it may also be more or less....."³⁰¹.

The Yardstick for the Assessment Applied by the Court: As explained earlier that the assessment of the quantum of *Khul*' may be determined in two ways thus:

- (3) By the agreement of the parties
- (4) By the Qadi.

In the instant case, the second procedure of determining the payable quantum was adopted as the parties were not able to reach a consensus among themselves.

The yardstick used by the appellate court to uphold the payment of the sum of Twenty Thousand Naira as compensation is reasonable. That, the appellant sought for the payment of 4 items as compensation thus: a- pre-wedding gift, b-Courtship gift, c-engagement gift and d- Twenty Thousand Naira paid as dower³⁰². There is a subsisting written law³⁰³ in Kano state that prohibits the payment of some betrothal gifts before and during the marriage contract which includes the items/gifts demanded by the appellant in a, b, and c, above respectively. On this ground, the appellate court declined to order for the payment of same but only the dower which is Twenty Thousand Naira. Section 5 of the law is here by reproduced;

"5. The following marriage practices and expenses are hereby prohibited 304:-

- a. Gaisuwar Uba da Uwa;
- b. Kayan Zance;
- c. Kayan Lefe;
- d. Kayan Baiko;
- e. Kayan Adala;
- f. Kudin Aure;
- g. Kudin Kunshi;

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³⁰¹ Underline mine, for emphasis

The monetary value Items a,b and c have not been stated in the record of proceeding.

³⁰³Marriage (Customary Practice Control) of 1988 Cap.91.

³⁰⁴ For more on this law see next chapter.

- h. Kudin Rigar Mijin Baya;
- i. Kayan budai kai;
- j. Kudin budar kai;
- k. Kudin Alibidi;
- 1. Kudin yan-mata
- m. Sayen Fura;
- n. Zaman Ajo;
- o. Sayen Baki;
- p. Kudin Kama Hannu;
- q. Garar Aure;
- r. Garar Haihuwa;
- s. Yinin Biki." ³⁰⁵

It can be concluded that, the yardstick used by the appellate court in upholding the sum of Twenty Thousand Naira as the payable compensation is just, fair and reasonable.

That it is observed in the case under study³⁰⁶ that there is a subsisting written law in Kano state thus; "Marriage (Customary Practice Control) of 1988 Cap.91" that prohibits the payment of certain pre-marital gifts before or during the marriage contract as produced above.

Section 8, of the Law provides for the punishment against any person violates its provision. The section provides thus:

"Any person who is found guilty of any offence by the Matrimonial Arbitration Court, or who contravenes any provisions of this Edict shall be liable on conviction to a fine not exceeding two hundred naira or a term of imprisonment not exceeding two months or both."

That section 5 of the law is our main concern. The section when critically observed, it creates hardship and/or undue disadvantage to the women. Under Islamic law, there is

³⁰⁵ See Table of Glossory for the interpretation.

³⁰⁶ Especially in the case of Hauwa Khalid Vs Aliyu Abdullahi

no clear authority that prohibits betrothal gifts. In fact, in the renowned book of "*Tuhfatul-hukkam*", ³⁰⁷ the author has prescribed certain procedures by which a dispute in relation to the betrothal gift can be resolved. By implication, it is permissible under *Maliki* Law being the applicable law in Nigeria and Kano in particular.

Moreover, *Sadaq* itself has been described to include all sorts of gift(s) or item(s) given to the wife to be, before or during the marriage contract or any form of betrothal gift(s) rooted or supported by a given custom of the community. In other words, all these sorts of betrothal gifts given are considered as *Sadaq*; ³⁰⁸ " ولو شرط " ولو شرط " "The writer further interprets the above authority that;

Therefore, any attempt to prohibit these gifts or any part thereof, it amount to the denial of women's' marital privileges and entitlements enshrined by Islam. Therefore such an attempt has no place under Islamic law.

It is not however, the intention of this work to rationalise the marriage customary practices obtainable nowadays where some of these gifts are regarded as an obligatory requisite without which marriage is uncontractable. It is submitted that, the gift shall be left as discretionary gratuitous incentive dependent on one's will and afforded financial capability.

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³⁰⁷ Opcit. pp 84-86

³⁰⁸ Alkashnawiy, A. B., (2014) *As-halul madarik; Sharh Irsadussaalik fiy Fiqh Imamul-aimmatul Malik* Vol. 2, Darul Fikr Beruit, Lebanon. P. 110 ³⁰⁹ Ibid

4.5.3 Zainab Usman Aliyu vs Rabiu Inuwa Fagge

Before the presiding judges:

1. Hon. Grand-Qadi Alh. Dahiru Rabiu- Presiding Judge

2. Hon. Kadi Alh. Musa Zakirai – Who wrote the Judgment

3. Hon. Kadi Alh. Ibrahim Y. Umar – Judge S.C.A

SCA/KN/CV21/2014

Date: 21/1/2015

This appeal emanated from the judgment made by hon. Judge Abdu Abdullahi Waiya

of Waje Sharia Court No. 7 in a case number CV/261/2013.

The plaintiff now appellant brought an action before the said court for the dissolution

of their marriage through Khul'. Her groundthat she is no longer loves the defendant,

her then husband. The plaintiff offered to pay back to the defendant now respondent,

the sum of Fifty Thousand Naira being his paid Sadaq. The Defendant conceded to

dissolve the marriage by means of Khul' but claimed the sum of Two Million Naira

(2,000,000) as the consideration. The court after hearing the arguments form the

parties, entered judgment by dissolving the marriage by means of Khul' and ordered

for the payment of one hundred and fifty thousand naira to the defendant as the

compensation.

Dissatisfied with the judgment, the defendant appealed before the upper Shari'ah

Court of Appeal Kofar-Kudu. The court after hearing the appellant's grounds of

appeal and the respondent's response, the court set aside the judgment and all the

orders made by the lower court and directed Upper Sharia Court Fagge to re-try the

case.

The court (Upper Shari'ah Court of Appeal Kofar Kudu) has set-aside the judgment

of the trial court on the following grounds:

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- 1. The plaintiff's "Da'awa" (claim) is incompetent in the sense that, the plaintiff now respondent did not disclose the reason why she disliked the husband/defendant.
- 2. That the trial judge did not furnish any convincing reason as to why he increased the consideration to one hundred and fifty thousand naira instead of fifty thousand naira advocated by the plaintiff.

Dissatisfied with the decision/judgment, the plaintiff now appellant, appealed to the *Shari'ah* Court of Appeal Kano. The appellant filed a sole ground that, the lower court erred in law when it set aside the judgment of the trial court without relying on any relevant authority. The appellate court after hearing all the arguments and submissions for and against, the court allowed the appeal and set aside the judgment and all the orders made by the lower court and affirmed the judgment and all the orders pronounced by the trial court with little modification as to the quantum. The appellate court now ordered for the payment Two Hundred Thousand Naira (Naira Court (150,000.00)) instead of One Hundred and Fifty Thousand Naira ordered earlier by the trial court (150,000.00).

The appellate court responded against the grounds to which the lower court (Upper Sharia Court of Appeal Kofar Kudu) relied and based its judgment as follows:

1. With respect to the issue of the incompetency of the plaintiffs *Da'awa* (claim) the appellate court held this. The *Da'awa* (claim) is intact and competent. The court relied on the *Hadith* of the Prophet in respect of Jamila bnt Sahal and Thabit. The court argued that,the Prophet had never asked her to explain the reason why she wanted to ransom herself a part from her sole ground which is dislike.

2. With respect to the second ground, relied by the lower court to set aside the decision of the trial court, that the inability of the trial judge to furnish convincing evidence why he increased the sum of the consideration from № 50,000 to № 150,000. The appellate court held that, the trial judge was right because Khul' is akin to commercial bargaining. The court relies on the authority in Ihkamul Ahkam(the commentary of Tuhfatul Hukkam) page 102.

The court further argues that, by the nature of the claim, the plaintiff now appellant claim for *Fidya* in which case she would only return some part of what has been expended to her.

Analysis

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: in the instant case, it was the appellant (the wife) who sought to dissolve their marriage with respondent (husband) via *Khul*'. Therefore, there is a free consent of the wife, as such; the appellate court was right when it upheld the dissolution of the marriage by way of *Khul*'. This position is in line with the decision of Court of Appeal held thus:

... Where the husband is at fault, he is barred from laying claim on separation through the process of "Khul'. Where the wife pays any consideration for release from the marital ties and there were faults established against the husband, such as cruelty, lack of maintenance, abstinence from conjugal relation, bringing the wife to disrepute by using abusive language on her or on her parents, any form of cruelty by subjecting her to unlawful beating etc, then she is entitled to take back her consideration paid to him. She is also entitled to a decree of divorce from the court on the ground of maltreatment. This is so in order to prevent a husband from indirectly instigating his wife to seek divorce through the process of Khul' by maltreating his wife..... 310

³¹⁰Usman vs Usman (2003)11, N.W.L.R. (pt. 830) at 109, pp. 113-4

Ground upon which the *Khul***' was sought**: as mentioned earlier in this work, a mere dislike/discomfort is a sufficient ground to warrant a valid ground for *Khul*'³¹¹.

Therefore in the instant case the *Shari'ah* Court of Appeal was right when it upheld the decision of the trial court on the ground that, the appellant dislikes her then husband.

The appellate court was also right when it set aside the decision of the lower court and upheld the reasoning of the trial court that, a wife in a case of *Khul*' is not duty bound to explain her ground to the court. The mere dislike/discomfort is enough without more. This decision was in line with the *Hadith* of Thabit in which case the Prophetdoes not ask Jamilah to explain any additional reason in respect thereof. This principle was applied by the court of appeal³¹² held thus;

A *Qadi(Shari'ah* Judge) cannot compel a wife who seeks the dissolution of her marriage through "*Khul*" to explain her reason for seeking a divorce. It is purely a matter of contentment. Thus, once the wife is discontented with the marital life in relation to her husband to the extent that it appears to the *Qadi* that harmonious co-existence between the couple is no more feasible and the couple would transgress the bounds of Allah, then dissolution of the marriage ... through the process of *Khul*' is the only answer.

The Nature of the Consideration:- as rightly observed earlier, a consideration can take any form provided that, it is lawful and economically valuable in the eye of *Shari'ah*. In the instant case, the *Sharia'h* court of appeal was right when it upheld the decision of the trial judge and consequently ordered for the payment of monitory consideration. The judgment is in line with the principle of *Shari'ah*³¹³ and the decision of the court of appeal in Salisu vs Lawan supra³¹⁴.

³¹¹ Sabiq S., (2000) figh-Sunnahl, op cit p. 315

³¹²Usman vs Usman op cit. p. 115

³¹³Al-jaziyriy, A. M., (2006) Fiqh ala Mazahibul Arba'I, Op. cit Pp. 312-3

³¹⁴ P. 440

The Quantum of the Consideration: The position of *Shari'ah* is clear with respect to the amount of *Khul'* consideration payable. The amount may be equal, less or **more** than the amount paid by the husband as $Sadaq^{315}$.

In the instant case, the appellate court was right when it directed the appellant to pay the sum of Two Hundred Thousand Naira as the compensation. This is notwithstanding that; the amount of *Sadaq* paid by the respondent (husband) was the sum of Fifty Thousand Naira only.

AREA WHERE THE COURT DOES NOT COMPLY WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

The Yardstick Used by the Court to Determine the Quantum: Even though the judgment of the appellate court satisfies many requirements or principles of *Shari'ah* however, the appellate judges, with due respect, erred in law on this segment. It is evident that, the court adopted the second procedure of determining the payable quantum (as explained earlier) since the parties were not able to reach consensus. On this, *Shari'ah* requires judges to intervene and use their (*Ijtihad*) discretion judiciously towards the assessment of the quantum. In so doing, the judges are required to have a look at certain factors of consideration such as the parties (their class), the current economic condition, the market price, the period and the environment etc. The principle provides thus:

³¹⁵ Al-Qirawaniy, I. A., (1997), *Al-Risalah*, Op cit, P. 97

³¹⁶Abubakar M.M., *Ihkamul AhkamArabic Commentary of Tuhfatul Hukkam* op cit., p.120

Meaning that, in the determination of any matter that requires the use of the Qadi's

discretion, regard shall be given to among others; the parties (their class), the current

economic condition, the market price, the period and the environment.

In the instant case, the appellate court in its judgment, increased the payment of the

quantum to the sum of Two Hundred Thousand (N200, 000. 00) instead of N50,

000.00 offered by the appellant. The appellate court failed to provide a justifiable or

scientific explanation as how it came to the conclusion of such amount. What factors

or yardstick does the court consider to determine that quantum? Is not known! It shall

be concluded that the decision in this respect is vague for want of scientific

explanation in respect thereof.

4.5.4 Hauwa Khalid vsAliyu Abdullahi³¹⁷

The case was decided before

1- Qadi Shehu Ibrahim Matawalle (presiding Qadi)

2- Qadi Musa Adamu Zakirai

3- Qadi Mukhtar Muh'd Kunti

SCA/KN/CV/307/2014

Date: 22/4/2015

FACTS OF THE CASE

The plaintiff now the appellant filed an action for Khul' before the trial court of

Upper Shari'ah Court Yankaba against her then husband: the defendant³¹⁸. The

plaintiff now appellant offered to ransom herself by paying back her Sadaq to the

defendant now respondent as the consideration. The defendant though agreed, but

demanded for the payment of certain expenses which he expended to her before their

marriage. The expenses includes: cash gifts to the bride's parent, Courtship gifts, gifts

for bride's friend and bride's price. In response, the plaintiff's counsel argue that they

317SCA/KN/CV/307/2014

318 CV/118/14

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would only pay back the respondent's dowry (N 30, 000.00) because, all the betrothal gifts claimed by the defendant/respondent are prohibited by a subsisting law in Kano state. He cited section five of **Marriage** (**Customary Practice Control**) of 1988 Cap.91 among others.

The trial court delivered an interlocutory ruling ordered the defendant to come up with the total amount of all the expenses in addition to the N 30, 000.00 paid to her as dowry with view that the plaintiff shall pay it back in lieu thereof. Dissatisfied with the ruling, the plaintiff now appellant appealed before the *Shai'ah* Court of Appeal Kano State. The court after examining the record and the submission made, it allowed the appeal and set aside the ruling and all the orders made by the trial court and ordered the Appellant/plaintiff to pay only N 30, 000.00 being the exact dowry paid to her by the Respondent/defendant. With respect to issue of the betrothal gifts, the court declined on the ground that such giftsdemanded by the respondent are prohibited by law³¹⁹ in Kano state.

The court in its judgment relied on section five of Marriage (Customary Practice Control) supra. The court concludes that, it was in order for the appellant to pay back the dower only to the husband. The court relies on the *Hadith* of Thabit as cited by the appellant's counsel. Similarly, the law cited above, remained effective and operational in Kano state as it has never been repealed or amended.

With respect to the validity of the *Khul*', the court held the *Khul*' effective as both the appellant and respondent agreed to that effect. The court relies on the book of *Fawakihud-dawan* Vol. 2, page 56-57 and *Tuhfatul Hukkam* Vol. 1, page 223;

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³¹⁹Marriage (Customary Practice Control)of 1988 Cap.91

ANALYSIS OF THE CASE

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: Under Islamic law, *Khul*' shall be sought voluntarily at the instance of the wife. Where it is uncovered that, the wife was forced by the husband to obtain same under compulsion or other related vitiating factors, the *Khul*' shall be considered void and the husband will be forced to return same, as he is not entitled to any compensation being he is at fault. 320

In the instant case, the fact that, the parties were voluntarily agreed to dissolve their marriage by way of *Khul*', the *Shari'ah* Court of Appeal was therefore right in its decision when it upheld the dissolution via *Khul*' by virtue of the parties' agreement. The court rightly relies on the authority: والخلع يكون بتراض الزوج والزوجة "... that *Khul*' shall be effective where there is mutual consent between the husband and the wife. This principle has been judicially blessed by the Court of Appeal per Okunola JCA in *Husaina V. Tsiriko* held thus: 321 "*Khul*' is based on the principle of offer and acceptance and the divorce takes place the moment the mutual agreement is reached..."

Ground upon which the *Khul***' was sought**: As mentioned earlier in this work, a mere dislike/discomfort is a sufficient ground to warrant a valid ground for *Khul*^{'322}.

Therefore in this case under study, the plaintiff/appellant went to the court on the ground of dislike. Therefore, the court was right to uphold same. This is in line with court of Appeal's position in Usman v Usman supra. 323

³²² Sabiq S., (2000) figh-Sunnah, op cit p. 315

³²⁰ Sabiq, S. (2000) *Fiqhs-Sunnah*, Darul-Turath, Al-qahira, Vol.2, P. 192; Al-jaziyriy, A. M., *Fiqh ala Mazahibul Arba'I* (2006), Darul-Afaaqil Arabiyyah, Alqahirah, Pp. 303-5; Alhafanawi, M. I. *Ad-daaq*, (2005), Maktabatul-iman, Jami'atul-azhaar, p. 301.

³²¹(1991)1 NWLR (pt167) at p. 358 Supra.

The Nature of the Consideration: As mentioned earlier that consideration or compensation for Khul' can be any lawful thing in the eyes of Shari'ah. In the Hadith of Thabit for example the Prophetdirects Jamila to pay back the dower given to her which was in kind. Court of Appeal in the case of Salisu vs. Lawal³²⁴ per Wali J.C.A held thus: "...there is nothing to show that she tried to obtain her release from the bondage of marriage by offer of monitory or any valuable consideration 325 to the husband which he refused..."

In the instant case, the Shari'ah Court of Appeal of Kano State was right when it ordered that the payment be made in cash thus in the sum of Thirty Thousand Naira (N 30, 000.00) only.

The Quantum of the Consideration: As mentioned above that, the quantum of Khul' consideration may be equal or less than or exceed the amount of the dower given by the husband.

In the instant case, the Shari'ah Court of Appeal was rightwhen it set aside the interlocutory ruling of the trial court and ordered for the payment of Thirty Thousand Naira without more, being the exact amount of dower paid by the husband.

The Yardstick for the Assessment Used by the Court: As it has been noted earlier that determination of the quantum of Khul' can be done in two ways; by the party's agreement or by the Qadi's Discretionanalogy of the judge. In the instant case, the second procedure was adopted as there was a dispute between the parties as to the amount to be paid. Therefore, the Shari'ah Court of Appeal was right when it considered and used the provision of section 5, of the Marriage (Customary Practice Control) in the determination of the payable quantum. Moreover, the court arrived at

³²⁴⁽¹⁹⁸⁶⁾² NWLR (pt 23) at p. 440, para F-G

the quantum of Thirty Thousand Naira being the only lawful item demanded by the

respondent as compensation.

4.5.5 Abubakar Abubakar vs Khadija Auwal

SCA/KN/CV/317/2015

Date: 17 - 02 - 2016

This appeal emanated from the judgment of the Upper Shari'ah Court Shahuci Kano.

The plaintiff now the respondent filed an action for termination of marriage on the

claim of cruelty. The defendant now the appellant denies the claim/allegation. The

trial court asked the plaintiff/respondent to bring witnesses to substantiate the

allegation but admitted that she had no witnesses. In view of this, the

plaintiff/respondent opted to ransom herself with sum of N50, 000 in lieu thereof. The

defendant now appellant agreed to release her but counter claim the sum of 350,000.

The trial court finally delivered its judgment and ordered the plaintiff to pay the sum

of 150,000 as compensation in lieu.

Dissatisfied with the judgment the defendant appealed against the decision

before the Shari'ah Court of Appeal. After the appellate court examined the record,

the grounds and the submissions of the parties, the court affirmed the decision of the

lower court (in respect of the termination via Khul) but modifies the quantum

awarded. The court now ordered the respondent to pay back N200, 000.00 instead of

N150,000.

The court entered its judgement by relying on the book of Muwatta of Maliki

Jurisprudence in which they relied on the *Hadith* of Thabit. They further relied on the

book of Tuhfa:

والخلع سائغ و لا فتداء فلا فتداء بالذي تشاء

That Islam empowers a wife to free herself from the marriage bond if dislike the

husband.

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ANALYSIS OF THE CASE

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: It has to be noted that free consent of the wife is a condition precedent for a valid *Khul*'. In the instant case there is a free consent of all the parties to dissolve their marriage by way of *Khul*'. Therefore, the *Shari'ah* Court of Appeal was right when it upheld it (the *Khul'*) effective. This is in line with authority

والخلع يكون بتراض الزوج والزوجة ..."

Ground upon which the *Khul*' was Sought: It is a settled principle of *Shari'ah* that, it suffices for a wife to seek for *Khul*' on the ground of dislike/discomfort. In the instant casethe respondent sought seeks*Khul*' on the ground of discomfort. This can be understood when she initially sought for the dissolution of marriage on the ground of cruelty. But when failed to establish/prove her claim and being discomfort with her matrimonial relation, she finally opted for *Khul*'.

The Nature of the Consideration: it is settled principle of *Shari'ah* that, consideration for *Khul'* can either be in cash or kind. In the instant case, the *Shari'ah* Court of Appeal was right when it upheld the payment of the consideration in cash (\$200,000.00).

The Quantum of the Consideration: The position of *Shari'ah* is very clear that, quantum of *Khul'* may be equal less or more than the dower given depending on the circumstance of each case. In the instant case the Sharia Court of Appeal was right when it increases the quantum from \upmathbb{N} 150,000 to \upmathbb{N} 200,000 more than the dower paid.

AREA OF WHICH THE COURT DOES NOT COMPLY WITH THE

PROVISON OF SHARIAH IN THE JUDGMENT:

The Yardstick Used by the Court toward the Determination of the Quantum: it

is clear from the case that, the parties were not able to reach agreement as to the

amount of consideration to be paid. The appellant claimed for the payment of the sum

was right when it applied and used its discretion to determine the payable amount.

Although the decision of the court is in compliance with principles of *Shari'ah*

especially under Maliki Jurisprudence however, the court fails to apply a judicious

guiding principle toward the assessment of the quantum of Khul'. In other words, the

decision failed to come up with a justifiable explanation as what were the factors

considered by the court to draw the conclusion of arriving at the sum of \$\mathbb{N}\$ 200,000 as

consideration.

Under Islamic law, there are certain guiding principles provided for the judge before

he could exert his judicial discretion to decide a particular matter before him. For

example, the judge is obliged to consider the nature of or the status of the parties,

price, period, environment among other things³²⁶.

In the instant case, the Shari'ah Court of Appeal of Kano State does not provide any

explanation as to their point/ground of consideration to arrive at such amount.

4.5.6 Aminu A. Garba vs Sa'adatu Umar Gano

Before the Presiding Judges

Hon. Kadi Tijiani Yusuf Yakasai

Hon. Kadi Abubakar Ismail Kankarofi

Hon. Kadi Ibrahim Ya'u Umar

 $^{326}\,$ Abubakar M.M., Ihkamul Ahkam Arabic Commentary of Tahfatul Hukkam P. 120 op cit.

This appeal emanated from the judgment of the *Shari'ah* Court Warawa. The plaintiff now the respondent files an action before Warawa *Shari'ah* court for *Khul'* on the ground that she does not love her husband anymore and she was ready to return to him his dower. The defendant on the other hand claimed for all the expenses he had paid to her. The trial court dissolved the marriage by way of *Khul'* and directs the plaintiff to pay back the sum of Eighteen Thousand Five Hundred and Fifty Naira (¥18, 550.00) to the defendant now appellant in lieu thereof.

Dissatisfied with the judgement, the appellant appealed before the Upper Shari'ahCourt of Appeal Bompai. The court, after hearing all the parties, upheld the decision of the trial court (Warawa Sharia Court) but increased the quantum to the sum of Thirty Thousand Naira (N 30,000). Dissatisfied with the decision of the lower court (Upper Shari'ahCourt Bompai) the appellant appealed before Shari'ahCourt of Appeal Kano challenging the quantum of N30, 000 awarded to him by the lower court. The respondent on the other hand admits to bring additional Ten Thousand Naira to the appellant. The appellate court finally entered judgment and upheld the decision of the lower court since the appellant consented to the separation by way of Khul'. With regard to the quantum of the Khul', the appellate court modifies the quantum. The court now increased it to the sum of Fifty Thousand Naira.

ANALYSIS OF THE CASE

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: The position of *Shari'ah* with regard to the consent of a wife in respect of *Khul'* is clear. That it must be at the wife's instances. In other words, there shall be her consent free from any vitiating element.

In the instant case, there was a free consent of all the parties to separate/dissolve the marriage by way of *Khul*. The *Shari'ah* Court of Appeal was therefore right when it upheld the *Khul'* effective by virtue of the parties' agreement. The judgment is in line with the authority thus: "...". It is also in line with the Court of Appeal judgment supra per Okunola JCA in *Husaina V. Tsiriko*. 327

Ground upon which the *Khul*' was Sought: The position of *Shari'ah*, in respect of the ground for *Khul*' is clear that mere dislike/hatred is a sufficient ground upon which a wife can seek and obtain *Khul*'. In the instant case the appellate court was right when it upheld the dissolution of the marriage via *Khul*' on the ground of dislike. The judgment is in line with Court of Appeal decision in **Usman vs. Usman**supra, where **Per I. T. Muhammad J.C.A.** states thus:

... its own peculiar nature allows that <u>if the wife is unhappy in</u> <u>her marriage and the relationship between her and the husband</u> <u>becomes so strained that a harmonious union between them</u> <u>becomes impracticable, but for no overt fault or guilt of the</u> <u>husband, she may seek a divorce from him.</u> She shall surrender to him the dowry and where necessary, other marital gifts, to compensate for his marital and or moral losses.

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³²⁷(1991)1 NWLR (pt167) at p. 358 Supra.

³²⁸ (2003) 11 NWLR (pt 830) at p. 115 paras E-G

Nature of the Consideration: Under Islamic Law, all lawful items in the eyes of Shari'ah can be a subject of consideration for Khul'. 329

In the instant case, the Shari'ah Court of Appeal of Kano State was right when it directed the respondent to pay compensation in cash to tune of Fifty Thousand Naira (N 50, 000.00) only. Court of Appeal in the case of Salisu vs. Lawal³³⁰ per Wali **J.C.A** held thus:"...there is nothing to show that she tried to obtain her release from the bondage of marriage by offer of monitory or any valuable consideration³³¹ to the husband which he refused..."

Quantum of the Consideration: The law is clear that, the payment of the amount of *Khul*' can be equal, less or more than the dower given. ³³²

In the instant case, the Shari'ah Court of Appeal was rightwhen it directed the respondent to pay the amount more than the dower paid thus; the sum of Fifty Thousand Naira. The judgment was in line with the decision of Court of Appeal in of Salisu vs Lawal³³³ Wali (JCA) (as he then was) held thus: "this consideration may be of the value of the exact amount or dower paid by the husband; it may also be more³³⁴ or less....".

AREA OF NON-COMPLIANCE

The Yardstick Used by the Court toward the Determination of the Quantum: it is clear from the case that, the parties were not able to reach agreement as to the amount of consideration to be paid. The Shari'ah Court of Appeal Kano delivered its judgment and increased the quantum to the tune of Fifty Thousand Naira instead of

³²⁹ Al-jaziyriy, A. M., (2006) Fiqh ala Mazahibul Arba'I, Op. cit Pp. 312-3

³³⁰(1986)2 NWLR (pt 23) at p. 440, para F-G

³³¹ Underline mine

³³² Alhafanawi, M. I., (2005) *Ad-daaq*, Op Cit. P. 299

³³³ At p. 440, para C-D

³³⁴ Underline mine, for emphasis

Thirty Thousand Naira (N 30,000), without giving any reason(s) or explanation to that effect. As rightly observed earlier, a judge in the course of exercising his discretion in determining the payable quantum, he shall consider certain factors as explained earlier in this work. Conclusively, the judgment failed to come up with a justifiable explanation as what were the factors/guidelines considered by the court to draw a

conclusion of or arrive at the sum of \aleph 50,000 as the consideration.

4.5.7 Abdulwahab Yusuf vs Fatima Usman Tukuntwa

Before the Presiding Judges

Hon. Abdullahi Waiya

Hon. Tijjani Yusuf Yakasai

Hon Muntari Muhammad Kunti

SCA/KN/CV/406/2016

Dated 8th June, 2017

The appeal emanated from the judgment of the Upper Shari'ah Court Shahuci Kano. The plaintiff now Respondent filed an action for the dissolution of marriage by Khul and offers to pay back his Sadaq N20,000 due to the cruelty she was subjected to by the appellant and she couldn't bring any witness in support of her claim. The Appellant denied and apply for more time to enable him reconciled with the respondent. After several adjournments the conciliation proved abortive. The defendant/appellant offered for the wife/respondent to pay him the sum of N194,500. The figure includes the amount of Sadaq N20,000 and others were expenses on premarital gifts. The lower court in its judgment dissolved the marriage through Khul and awarded the sum of forty Thousands Naira to be paid to the husband/appellant.

Dissatisfied with the judgment, the appellant appealed before the Shari'ah court of appeal Kano. After hearing the parties, the court affirmed the judgment of the

lower court with modification on the quantum of the consideration. The court reduces the quantum from N40,000 to N20,000 being the paid Sadaq as offered by the respondents. The court relied on the authority of the Book: Fighul-wadih, vol. 2 p. الخع يكون بتراض والزوج والزوجة قاذا لم بتم التراض منها، فللقاضي الزام بالحلع133

ANALYSIS OF THE CASE

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: As noted earlier, the free consent of the wife is a condition precedent for a valid Khul'. In the instant case there is a free consent of all the parties to dissolve their marriage by way of Khul'. Therefore, the Shari'ah Court of Appeal was right when it upheld it (the Khul') effective. This is in line with authority thus:

Ground upon which the Khul' was Sought: It is a settled principle of Shari'ah that, it suffices for a wife to seek for Khul' on the ground of dislike/discomfort. In the instant case the respondent sought seeks Khul' on the ground of discomfort. This can be understood when she realized that she could not bring witness to prove her claim as such she finally opted for Khul'.

The Nature of the Consideration: it is settled principle of Shari'ah that, consideration for Khul' can either be in cash or kind. In the instant case, the Shari'ah Court of Appeal was right when it upheld the payment of the consideration in cash Twenty Thousand Naira (N20,000.00) only.

Quantum of the Consideration: The position of Shari'ah is very clear that, quantum of Khul' may be equal less or more than the dower given, depending on the circumstance of each case. In the instant case the Sharia Court of Appeal was right when it reviewed and reduced the quantum from N 40,000 to N 20,000 being the exact amount of dower paid.

AREA OF WHICH THE COURT DOES NOT COMPLY WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

The Yardstick Used by the Court toward the Determination of the Quantum: it is clear from the case that, the parties were not able to reach agreement as to the amount of consideration to be paid. The appellant claimed for the payment of the sum of N 194,500 while the respondent insisted on 20,000 naira only being the paid Sadaq. Therefore, the court was right when it applied and used its discretion to determine the payable amount.

Although the decision of the court is in compliance with principles of Shari'ah especially under Maliki Jurisprudence however, the court fails to apply a judicious guiding principle toward the assessment of the quantum of Khul'. In other words, the decision failed to come up with a justifiable explanation as what were the factors used by the court to draw the conclusion or arriving at the sum of N 20,000 as consideration.

In the instant case, the Shari'ah Court of Appeal of Kano State held that Khadi of Shariah court has no power to increase or reduce the amount of quantum offered by the wife but no reason to that effect is stated.

4.5.8 Abubakar Shitu vs Aisha Habibu T/Murtala

Before the Presiding Judges

Hon, Kadi Alh, Mukhtari Muhd Kunti

Hon. Kadi Alh. Ahmad Muhd Gidado

Hon. Kadi Alh. Mustapha Abubakar Lalloki

SCA/KN/CV/16/2018

Dated: 15/10/2018

This appeal originated from the decision of the Trial Court Post-Office No. 2 whereby

the plaintiff now respondent filed an action of the dissolution of marriage through

Khul on ground dislike. She offers to pay back to the husband/appellant his paid

dower thirteen Thousand Naira N 13,000 naira. The court after hearing all the parties

dissolved the marriage through Khul and ordered plaintiff to pay the sum of Twenty

Thousand naira N20,000.00 to the appellant.

Dissatisfied with the judgment, the appellant appealed before the Upper Shariah Court

Hausawa where it affirmed the decision. Hence the appellant further appealed before

the Shariah Court of Appeal Kano. After hearing all the parties, the court affirmed the

judgment of the trial court on the reliance of the authority of the book of Rishlah:

وللمر أةأنتف تديمنز وجهابصداقهاأو أقلأو أكثر

It provides that a wife/woman can redeem herself with quantum: equal, less or more

than the paid dower.

AREAS OF WHICH THE COURT COMPLIES WITH THE PROVISON OF

SHARIAH IN THE JUDGMENT:

Free Consent of the Wife: As noted earlier, the free consent of the wife is a

condition precedent for a valid Khul'. In the instant case there is a free consent of all

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the parties to dissolve their marriage by way of Khul'. Therefore, the Shari'ah Court of Appeal was right when it upheld it (the Khul') effective. This is in line with authority thus:

Ground upon which the Khul' was Sought: It is a settled principle of Shari'ah that, it suffices for a wife to seek for Khul' on the ground of mere dislike. In the instant case the respondent seeks for Khul' on the ground of dislike. This can be understood from her claim.

The Nature of the Consideration: it is settled principle of Shari'ah that, consideration for Khul' can either be in cash or kind. In the instant case, the Shari'ah Court of Appeal was right when it upheld the payment of the consideration in cash Twenty Thousand Naira (N20,000.00) only.

The Quantum of the Consideration: The position of Shari'ah is very clear that, quantum of Khul' may be equal less or more than the dower given, depending on the circumstance of each case. In the instant case the Shariah Court of Appeal is right when it upheld the judgment of the Trial and Lower Courts and affirmed the payment of the quantum Twenty Thousand Naira N20,000 more than the amount of the paid dower.

AREA OF WHICH THE COURT DOES NOT COMPY WITH THE PROVISON OF SHARIAH IN THE JUDGMENT:

The Yardstick Used by the Court toward the Determination of the Quantum: it is clear from the case that, the parties were not able to reach agreement as to the amount of consideration to be paid. It is in record that the appellant paid thirteen thousand naira N13,000 as dower. However, both the trial, lower and the appellate

Court increases the quantum to sum of Twenty Thousand Naira N20,000 without given any reason for the increment. It should be noted that this work is not contesting the Qadi's power to modify the quantum however, in so doing the judge must state in his judgment the factors or the surrounding circumstance that he considered in the determination of the arrived quantum.

Conclusively, one can say that, the *Shari'ah* Court of Appeal of Kano state in its judgments under study, do comply with the provisions of Shari'ah especially with regard to the issues related to; the wife's consent towards the Khul', the ground relied upon to seek for Khul', the nature of the compensation and the amount/quantum awarded in respect thereto. The only area of non compliance is with regard to the yardstick used in the assessment of the amount/quantum by the judges. It is observed through the analysis that, the court complies with provision Shari'ah only were the parties voluntarily reached a consensus or where the husband demanded, as part of the compensation, the return of some pre-marital gift(s) contemplated by Marriage (Customary Practice Control) of 1988 Cap.91. For instance, in the case of Yusif Muhammad Tal'udu Vs Sumayya Abubakar³³⁵ the parties agreed the sum of Fifty Thousand Naira as compensation and the court rightly upheld same. Similarly, in the cases of Fatihu Mukhtar Warure Vs Zubaida Bashir Jakara³³⁶ and Hauwa Khalid Vs Alivu Abdullahi³³⁷ the husbands in the cases, apart from the dower, demanded for the return/repayment of some pre-marital gifts that are prohibited by law in Kano state. The appellate court in its judgment rightly declined to uphold such payment of gifts being illegal by law. The court in this circumstance awarded the dower paid only. For

³³⁵ SCA/KN/CV/300/2013

³³⁶ SCA/KN/CV/197/2013

³³⁷SCA/KN/CV/307/2014

example, the court awarded Twenty Thousand and Thirty Thousand respectively being the exact dower paid.

The controversial area is where the husband demand amount exceeded the dower given (not pre-marital gift) and no consensus is reached between the parties. The appellate court usually increased the quantum beyond the dower paid without giving any reason to that effect which is contrary to provision of Shari'ah. For instance, in Zainab Usman Aliyu vs Rabi'u Inuwa Fagge, 338 Abubakar Abubakar vs Khadija Auwal³³⁹ and Aminu A. Garba vs Sa'adatu Umar Gano³⁴⁰the appellate court increased the quantum to Two Hundred Thousand, Two Hundred Thousand and Fifty Thousand Naira respectively without given any justification to that effect.

³³⁸ SCA/KN/CV/21/2014

³³⁹ SCA/KN/CV/317/2016 340 SCA/KN/CV/151/2016

CHAPTER FIVE

SUMMARYAND CONCLUSION

5.1 SUMMARY

The work has combined the use of both the doctrinal and empirical methodologies to examined the extent of wife's right to seek dissolution of marriage by *Khul'* with particular reference to Kano Sate as a case study area

Khul' is one of the types of methods/channels where dissolution of marriage can be obtained at the instance of the wife. The dissolution of marriage by or through Talaq is vested in husband not the wife. His power is direct as he needs no intervention of a third party before he can affect it provided he is of full legal capacity. The wife however, is given a right to seek for the dissolution of marriage through the process of Khul' by returning the dower paid. This right is given to the wife whom she (the wife) develops hatred against her husband to the extent that she could not remain and obey him anymore and she does not want to transgress the limit set by Allah.

Khul' is an Arabic word drives from the verb "*Khala'a*", "to put off" or "to remove" as it used in Qur'an 20:12. Technically is defined to mean a form of dissolution of marriage at the instance of the wife in which she gives valuable and lawful consideration to the husband in order to get, herself, free from the marriage union. The legal basis of *Khul'* is found in Q:2:229 and the *Hadith* of Thabit.

One important and unique feature that differentiates *Khul'* and other firms of *Talaq* are: in the former it is done at the instance of the wife and it is based on the payment of consideration usually the *Sadaq* to the husband. The quantum payable remains topic of discussion among the Muslim jurists. Maliki school however is of the

opinion that quantum *Khul*' can be equal, less or more that the dower paid. It always depends on the circumstances of each case and the discretion of the judge to determined so.

Kano state being an area of study is, for the purpose of this work, divided into 3 senatorial zones. The total of Three Hundred and Eighty Four (384) questionnaires was administered to the various respondents from the selected Local Governments to represent Kano State. The result shows, among others, that majority of women in Kano State have the requisite knowledge on *Khul'* and in fact many of them representing 55.3% are aware that *Khul'* is a right given to them by Shari'ah. More so about 75.4% are ready to exercise same when faced with unbearable situation in their marital homes.

An observation was carried out in the fourteen Shari'ah Courts of the selected Local Governments to represent Kano State. The observation was carried out in respect of:1-Courts'Records of Proceeding and 2- Case Register Books. The result of the observation shows that from 2014 -2016: 5,291 marriages in Kano state were dissolved via the instrument of *Khul'*. Majority of the wives about 2,830 who sought for *Khul'* relied on hatred as a ground for seeking the *Khul'* whereas 2,461 cases were initial filed for the dissolution on the claim of cruelty or ill-treatment by the wives but later opted for *Khul'* due to strictest burden requires by the standard or proof which they could not established.

Finally, some decided cases of the *Shari'ah*Court of Appeal of Kano State from 2014-2016 were examined and analyzed for the purpose of determining the extent to which the *Shari'ah*Court of Appeal of Kano State complies with the position of *Shari'ah* in the determination of the cases on *Khul'* and the yardstick used by the

judges to determine the appropriate quantum to be paid. The work shows that the court does comply with position of *Shari'ah*in the determination of the cases. However, it does not comply with the provision of *Shari'ah* when it comes to the determination of the payable quantum. In this regard the court usually fixes the quantum without given a reason or justification to that effect which is of course against the fail trail.

5.2 FINDINGS

The following findings were made:

- 1. That the majority of women in Kano State have the requisite knowledge on *Khul*' as their right and that about 65.2% of them are ready to exercise same if faced with unbearable situation in their marital settings.
- 2. That, the rate of *Khul*' in Kano state is rising up (though in a fluctuating pattern see table 4.3.14). And the wives rely more on ground of hatred or dislike. That the growing/increasing rate of *Khul*' in Kano state cannot be unconnected with the rigorous requirements of standard of proof put forward or set by *Shari'ah* in cases of dissolution of marriage on the claim of cruelty/maltreatment. The option of Oath administration in this case is not available to the claimant For instance in table4.3.13; OUT of 5, 291 cases determined on *Khul*' by the *Shari'ah* Courts, almost **half of the cases** to the tune of **2, 461** were initially filed for the dissolution of marriage on the claim of cruelty/maltreatment but, later opted for *Khul*' as the claimants could not bring 2 witnesses to prove their cases.
- 3. That the *Shari'ah* Court of Appeal of Kano state does not usually comply with the provisions of *Shari'ah* in respect of the yardstick used for the assessment/determination of the payable quantum especially where there is

dispute between the parties. The court usually fixes the quantum haphazardly without giving any reason (in their judgement) for the increment or otherwise³⁴¹.

5.3 RECOMMENDATIONS

In view of the foregoing findings, the following suggestions were proffered as recommendations:

- 1. Even though majority of women in Kano state have the requisite knowledge on *Khul*' as their right yet, they need to be admonished, by Islamic scholars, to exercise the right (of Khul') in good faith. This recommendation is necessary guided by the Hadith of the Holy Prophet that: any woman who sought for divorce, without a just cause fragrance of paradise is prohibited to her³⁴².
- 2. That the standard of proof requirement in cases of dissolution of marriage on the claim of cruelty/maltreatment should be adjusted or rather expanded to allow an option of Oath administration where the claimant cannot probe her claim (by producing 2 unimpeachable witnesses) of cruelty. This minimizes the claimant's possibility to choose an option for *Khul* which will ofcourse be a double punishment to her (the claimant).
- 3. The Grand Qadi of Kano State shall incorporate into the Shariah Court of Appeal's Rule of Kano State (Rule of the Court) guidelines or procedure for the assessment of the quantum of Khul. The Quddain the course of determining the payable quantum shall have a regard to the class/position of the couples particularly the wife, the cost of living among other things. And this must be captured boldly in the judgement.

³⁴¹ As held in the cases of Zainab Usman Aliyu vs Rabi'u Inuwa Fagge SCA/KN/CV/21/2014, Abubakar Abubakar Vs Khadija Auwal SCA/KN/CV/317/2015 and Aminu A. Garba Vs Sa'adatu Umar Gano SCA/KN/CV/151/2016 under study. 342 This recommendation addresses the finding made in 5.2.1. above.

Finally and most importantly notwithstanding the above mentioned recommendations, the couples should be God-fearing in dealing with their respective marriage partners. This call is necessary because issues related to marriage management are very sensitive and delicate ones. The more one tries to enact/codify (man-made) law in respect thereto, the more problems he creates.

BIBLIOGRAPHY

A. BOOKS

- Abdal Ati .H. (1982), The Family Structure in Islam, American Trust Publication.
- AbdulMalik, Y. O. (2006) Research Methodology in Business and Social Sciences, Abuja; Almalik and Company.
- Aboki Y., (2013), *Introduction to Legal Research Methodology*, Ajiba Printing Production, SS 17, Jemaa Road, Kaduna, 3rd Edition.
- Ahmad K., (1974), *Family Life in Islam*. Second edition, Islamic Foundation No. 223 London Road.
- Al Fawzan. S.A (2005), *Summary of Islamic Jurisprudence* Vol 2 Al Maiman Publishing House, Saudi Arabia Riyadh.
- Al'azhariy, S. A., (1996) Samaraddani Sharhur-risalah, Darul-fikr, Labanon.
- Al-asqalani, I., (2002), Bulugul-maram, Dar El Fikr, Beirut-Lebanon.
- Albukhariy, M. I., (2004), Sahihul-bukhariy, Muassasatul-mukhtar, Alkahirah, Misra.
- Alhafanawi, M. I. (2005) Ad-daaq, Maktabatul-iman, Jami'atul-azhaar.
- Ali A.Y., (1998) Modern Translation of the Qur'an Meanings & Commentary, Manar International, Kansas city, U.S.A.
- Aliyu I.A. (1996). Termination of Marriage and its Legal Consequences under Islamic Law, (Ph.D Thesis Ahmadu Bello University, Zaria).
- Al-jaza'iriy, A. J., (1990), Minhajul-muslim, Darul-Fikr, Beruit.
- Alkafiy, M. Y., (2012), *Ihkamul-ahkam ala Tuhfatul Hukkam*, Dar El Fikr SA. L., Beruit, Lebanon.
- Alkashnawiy, A. B., (2014) As-halul madarik; Sharh Irsadussaalik fiy Fiqh Imamulaimmatul Malik Vol. 2, Darul Fikr Beruit, Lebanon.
- Al-Qirawaniy, I. A., (1997), Al-Risalah, Darul-Fikr, Beruit, Labanon
- Alqurdubiy I., (2001) *Bidayatul Mujtahid wa Nihayatul Muqtasid*, Vol. 2, Darul-fikr, Beruit Lebnon.
- Ambali .M.A. (1997), *The Practice of Muslim Family Law in Nigeria*, Tamasa Pub. Co. Ltd Zaria Kaduna.
- As-san'ani M. I., (1996), Bulugh Al-maram Attainment of the Objective according to Evidence of the Ordinances, Dar-us-salam Publications, Riyadh, Kingdom of Saudi Arabiya.

- Assuyudi, J. A., (2012) *Tanwirul Hawaliki Sharhul- Muwadda Maliki*, Darul-fikr, Beruit, Labanon.
- At-tasuliy, A. A., (1991), Albahjah fiy Sharh Attuhfah Vol. 1, Darul-fikr Beruit, Labanon.
- At-tijjaniy, M. M., (2010) Fathul-jawwad fiy Sharhil Irshaad, Darul-Hikmah, Kano.
- Badamasuiy .J. (2001), Status and Role of Women Under Islamic Law, Jodda Press Ltd Zaria.
- Doi. A.R. (1984), Shari'ahthe Islamic Law. Taha Publishers, London.
- Doi. A.R., (1984), Women in Shari'ah. (Unpublished).
- El-Imari M.T., (N.D) *Personal Status in Islamic Law (According to Maliki System)*, Centre for Islamic Legal studies, institute of administration, Ahmadu Bello University, Zaria Nigeria.
- Garner, B. A., (2004), *Black's Law Dictionary*, West Publishing Company, United State of America, (8th Edition).
- Ibn Jauziy, (N.D), *Qawaninul-Fiqihiyya*, Darul-Fikir, Beruit, Labanon.
- Ibn Rushd, M.A., Bidayyatul-MujtahidWa-nihayatulMuqtasid, DarulFikir.
- Iqbal .S. (2004), Woman and Islamic Law Adam Publishers and Distributors, New Delhi.
- Isma'il M. B., (1997), *Alfiqh Alwadih Minal Kitab WasSunnahl ala Almazahibul Arba'a*, Vol. 2, Darul Manaar, Cairo.
- Jazriy A., (1979), *Kitab-Al-Fiqh Ala Mazahibul-Arba'a*, Maktabatul Tijariyya Al-Kubra, Misra.
- Kauru A. i., A Handbook for Writing Project Reports, Theses and Journal Articles, (2015), sponsored by Tertiary Education Trust Fund (TETFUND).
- Key, J.P. (2007) *Research Designed in Occupational Education*, Oklahoma State University (ex, IRB, Thesis Handbook).
- Khalil, M., (2008) Tarjamatu Kitabul Irshaadus-salik fiy Ilimil Fiqhi ala Mazhabi Imami Maliki, Kano Printing press.
- Kharofa .A. (2004), *Islamic Family Law, A Comparative Study with other Religions*. Int Law Book Series, Malaysia.
- Kirawani A., (1998), Samaraddani Sharhurrisala, Darul-Fikir, Beruit Lebanon.
- Ladan M.T. (2006), *Introduction To Jurisprudence*, *Classical and Islamic*. Malthouse Series Ltd, Lagos Nig.
- Mahmud, B.A., (N. D), Supremacy of Islamic Law, Hudahuda publishing Company, Zaria.
- Marriage (Customary Practice Control) of 1988 Cap.91.
- Maududi, A. A. (1983), *The Law of Marriage and Divorce in Islam,* Islamic Book Publishers, Kuwait.

- Miyarid, M.A., Sharh Miyaratul-Farisi Ala Tuhfatul-hukkam, Darul-fikir Beruit Lebanon
- Musawi, M. R., (N. D) Western Civilization Through Muslim Eyes.
- Riyadh, S. I., (1997), *The Qur'an Arabic Text with Corresponding English Meanings*.

 Abulgasim Publishing House (Al-muntada Al-islami) Riyadh
- Sabiq, S. (1998) Fighs-Sunnah, Darul-Fikr, Beirut Lebanon.
- Sada I.N. (1983). Dissolution of Marriage in IslamCase Study of Concept and Practice in Northern Nigeria. (LL.M Thesis Ahmadu Bello University, Zaria).
- Saleh. M.A., (2011), Al-ItqaniWal-Ahkam; Commentary on TuhfatulHukkam, Darul Hadith, Egypt.

B. ARTCILE IN JOURNAL PUBLICATION

- Bambale Y.Y. Divorce under Islamic Law; The Very Last and Most Detestable Recourse in Journal of Islamic and Comparative Law Vol. 23, 2003.
- Bambale Y.Y., "Khul": The Right of a Woman to Institute Divorce Proceeding: Nature, Problems and Solution, ABU Law Journal (1993-98), Vols 11-16, pages 59-68.
- El Imairi. M.T. Islamic Personal Status. Sudan Khartoum. University Press, 1978.
- Fawzan. S.A. A Summary of Islamic Jurisprudence Vol. 2.Al Maiman Publishing House, S.A. Riyadh 2005.
- Gurin A.M. An Introduction to Islamic Family Law, Centre for Islamic Legal Studied.ABU Zaria 1985.
- Ibn Nujaym, Bahr Raiq, Darul Kutubul Al Arabiyya, Cairo, Vol. 4.
- Ibn Rushd,Bidayatul Mujtahid ,English Translation by Imran Ahsan Nyazee, Garnet Publishing Ltd U.K.1996
- Iqbal S. Woman and Islamic Law, Adam Publishers and Distributers, New Delhi, India 2004
- Ismail.N.S., Abdullah M.S. Islamic Personal Law and Practice in Nigeria, Jos, Genesis press. 1999
- Kharofa. A. Islamic Family Law, A Comparative Study with other Religious. Int. Law Book Series, Malaysia 2004.
- Ladan.M.T. Introduction to Jurisprudence, Classical and Islamic, Malt house Series Ltd, Lagos 2006.
- Maneei .A.S. Some Controversial Issues in Divorce. In ADL Journal, Ministry of Justice Saudi Arabia, Issue No. 49 year 13 Muharram 1432 A.H.
- Maudoodi.A.A. Laws of Marriage and Divorce in Islam, Islamic Book Publishers.

- Nazimabad Karachi Pakistan. 1980.
- Nchi. S.I. Islamic Personal Law and Practice in Nigeria, Oracle Publishing co ltd, First edition 1999.
- Noriani Nik B.S. Marriage and Divorce under Islamic Law. Int. Law Book Series India, 1998.
- Oussama A., The Dawning of the Third Millenium on Shariah or Women May Divorce at Will. Arab Law Quarterly Vol. 16 No. 1 2001.
- Qadir A.A. Muslim Personal Law, Aligarh University Press India, 1963.
- Rapoport. Y. Marriage, Money and Divorce in Medieval Islamic Society Cambridge University Press, U.K. 2005
- Tanzil ur Rahman .A Code Of Muslim Personal Law Vol. 2 Islamic Publishers North