# *Khul':* between Past and Present

Mida R. Zantout

Institute of Islamic Studies
McGill University
Montreal, Quebec, Canada
July 2nd, 2006

A thesis submitted in partial fulfilment
of the degree of Master of Arts

*Your file Votre référence*
*ISBN: 978-0-494-28586-2*
*Our file Notre référence*
*ISBN: 978-0-494-28586-2*

ABSTRACT

This thesis investigates past and present understandings and applications of *khul'*, synthesizing existing scholarship on the subject as well as Ḥanafī juristic doctrines. As *khul'* is part of a larger concept, namely, divorce initiated or approved by women, attention will also be given to the other options that Islamic law – or, on some points, cultural practices – grants women in order to obtain release from the marital bond. A comparative analysis between the application of marriage and divorce laws under the Ottomans and in contemporary Egypt will then be conducted with a view to shedding light on the effect that the rise of the nation-state has had on gender inequality.

# RÉSUMÉ

Ce mémoire a pour but d'explorer le passé et présent du *khul'* à travers une synthèse des ouvrages contemporains et de la doctrine Ḥanafite en la matière. Cependant, *khul'* faisant partie intégrale du divorce – plus précisément celui initié ou approuvé par la femme, un intérêt singulier sera porté aux options que le droit Islamique – ou parfois même la culture sociale – met a la disposition des femmes souhaitant rompre le lien matrimonial. Une analyse comparative quant à l'application des lois du mariage et du divorce sous le règne Ottoman ainsi qu'en Egypte contemporaine sera effectuée, avec pour but d'établir que la naissance de l'état nation a en fait engendré un sérieux déclin dans le domaine des droits de la femme.

ACKNOWLEDGMENTS

I owe an immense debt of gratitude to Dr Wael Hallaq, for without his painstaking efforts supervising my work, not to mention his patience, kindness and support, this thesis would not have been possible. I am also extremely grateful to him for making my learning experience a valuable one. My sincere appreciation goes to my co-supervisor Professor Malek Abisaab for his constant guidance and to Professor Rula Abisaab for her continuous support. I genuinely thank the library staff for their assistance, Salwa Ferahian for her affectionate care and constant encouragement, and express my utmost gratitude to Wayne St. Thomas for lending me his precious support. To Steve Millier, I am particularly grateful for his help and patience in editing my thesis. I also thank the Institute of Islamic Studies' directors Professor Eric Ormsby and Professor Robert Wisnowsky, as well as Ann Yaxley, Kirsty McKinnon, and others on the Institute's staff for their help, kindness and constant guidance. My appreciation extends also to Walter Young and Fahad Alhomoudi for their genuine support and for reading this entire thesis, making valuable suggestions. To the family and friends I left behind, who have provided me with understanding and support, I owe special thanks. Words are not enough to express my gratitude to my mother, Majida, for her sacrifice and invaluable support, or to my father Rafik for his infinite patience, love and understanding. As for my sister Mira, her husband Azmi, and my brother Marwan, it is their continuous support that made it all possible. A loving thank you goes to Nada and Taha, who have been my inspiration all along.

*To my Nana*

# TABLE OF CONTENTS

ABSTRACT ..... ii
RÉSUMÉ ..... iii
ACKNOWLEDGMENTS ..... iv
DEDICATION ..... v
TABLE OF CONTENTS ..... vi
LIST OF FIGURES ..... vii
TRANSLITERATION TABLE ..... viii
Introduction ..... 1
Chapter One: *Khul'*: A Historical Survey ..... 4
1.1 The Historical Origins of *Khul'* ..... 4
1.2 A Diachronic Account and Analysis of the Ḥanafī Literature ..... 8
1.3 Initiation and Consent ..... 14
1.4 Circumstances Leading to *Khul'* ..... 17
1.5 Compensation and its Limits ..... 21
1.6 The Function of *Mahr* ..... 26
1.7 Conclusions ..... 29
Chapter Two: The Ottoman Application of *Khul'* ..... 31
2.1 The Relevance of Ottoman Court Records ..... 31
2.2 The Marriage Contract ..... 32
2.3 The Additional Stipulations ..... 38
2.4 The *Khul'* Records ..... 45
2.5 Concluding Remarks ..... 54
Chapter Three: The Modern Understanding & Application of *Khul':* The Case of Egypt ..... 57
3.1 Introduction ..... 57
3.2 Family Law Reform ..... 58
3.3 Law 1 of 2000: The Ultimate Challenge? ..... 64
3.4 Concluding Remarks: Efficacy of the Egyptian Reform ..... 71
Conclusion ..... 74
Selected Bibliography ..... 78

# LIST OF FIGURES

Figure 1: Collection of Advance *Mahr* ..... 35
Figure 2: Comparative Analysis between the Marriage and Remarriage Stipulations ..... 43
Figure 3: *Khul'*-Related Compensation ..... 52
Figure 4: Contemporary Egyptian Legislation ..... 70

# TRANSLITERATION TABLE

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| b | = | ب | z | = | ز | f | = | ف |
| t | = | ت | s | = | س | q | = | ق |
| th | = | ث | sh | = | ش | k | = | ك |
| j | = | ج | ṣ | = | ص | l | = | ل |
| ḥ | = | ح | ḍ | = | ض | m | = | م |
| kh | = | خ | ṭ | = | ط | n | = | ن |
| d | = | د | ẓ | = | ظ | h | = | ه |
| dh | = | ذ | ‘ | = | ع | w | = | و |
| r | = | ر | gh | = | غ | y | = | ي |

# Introduction

Islamic law grants a husband the right to terminate his marriage contract unilaterally, at will and without litigation. The wife's approval is immaterial. What he is required to do, however, is – provided she has not violated the code of marriage and become disobedient (*nāshiz*) – compensate her with the unpaid remainder of her dowry and maintenance, befitting her social and economic status. Should it be the wife who desires to break the marriage contract, she has at her disposal one of two options. In cases where the husband is himself *nāshiz* or mistreats her, the wife can turn to the judge (*qāḍī*) and provide him with valid and legally acceptable reasons justifying such an action. If she succeeds in proving her case, she is granted a judicial separation, and the husband becomes liable to remuneration. As for the wife who fails to prove that her husband is *nāshiz* or who simply wishes to leave a husband who is not at fault, she can have recourse to judicial separation only with some compensation on her part. The second option may arise when the two spouses mutually agree on the dissolution of their marriage, which may often imply an initiative on the part of a wife who wishes to separate herself from a husband who is not at fault. In this case, she must in effect ransom herself following a procedure known as *khul'*.

*Khul'* originates from the root *kh-l-'*. The verbal noun *khal'* refers to the act of extraction, removal, detaching or tearing out. In its "real sense" (*al-lafẓ al-ḥaqīqī*), *khal'* is generally associated with things or objects, such as vestments or garments. In the

legal context, *khul'* is the technical term used for a marital "extraction,"[1] and is defined as the act of accepting compensation from the wife in exchange for her freedom from the marital relationship. A look at Ottoman court records however, reveals that women had yet another option available to them, whereby they could insert stipulations into their marriage contracts. As a result – in order to accommodate the needs of his future wife – the husband bound himself to such conditions, of which any breach on his part allowed the woman to request a divorce.

This thesis will investigate past and present understandings and applications of *khul'*, not only synthesizing existing scholarship on the subject but also examining – while avoiding the biases of "modern" assumptions – juristic doctrines from the time of Abū Ḥanīfa (d.150-767) through to the early nineteenth-century scholar Ibn 'Ābidīn (d.1252/1836). The Ḥanafī doctrine will be used as a standard of comparison, as it was essentially relied upon under the Ottomans and has largely influenced Egyptian contemporary divorce laws. Indeed, a comparative analysis between the application of *khul'* under the Ottomans and in contemporary Egypt[2] (where reform aimed at providing wives with additional rights has recently been undertaken) will be conducted with a view to shedding light on the generally negative effects of the rise of the nation-state. The project of the nation-state, while purporting to accommodate women and

[1] Many of the Ḥanafī *fuqahā'* whose works will be analyzed here dwelled on the roots and origins of the term, distinguishing between the "real" (*ḥaqīqī*) and "metaphorical" (*majāzī*) uses of *kh-l-'*. See Badr al-Dīn Maḥmūd b. Aḥmad al-'Aynī, *al-Bināya fī Sharḥ al-Hidāya*, ed. Muḥammad 'Umar, 12 vols. (Beirut: Dār al-Fikr, 1990), 5:291; Muḥammad Amīn b. 'Umar Ibn 'Ābidīn, *Radd al-Muḥtār*, 8 vols. (Beirut: Dār al-Fikr, 1979), 3:439; al-Shaykh Niẓām et al., *al-Fatāwā al-Hindiyya*, 6 vols. (Diyār Bakr: al-Maktaba al-Islāmiyya, 1973), 1:488.

[2] *Khul'* and judicial separation will both be assessed as options made available to women who wish to terminate an undesirable marriage.

their rights to the fullest extent allowed by Islam has had the general effect of reducing women's rights.

As *khul'* is part of a larger concept, namely, divorce initiated or approved by women, consideration will also be paid to judicial separation, as well as marriage stipulations. Such stipulations – common to Ottoman marriage contracts – will be used as a critical element when juxtaposing the Ottoman with the more "modern" attempts (or lack of attempts) shaping marriage and divorce laws in order to fit women's needs. A goal of this thesis is therefore to present a comprehensive assessment of the options that women have been granted in order to leave undesirable marriages, with particular consideration given to *khul'*.

# Chapter One: *Khul'*: A Historical Survey

## 1.1 The Historical Origins of *Khul'*

The *khul'* procedure is an integral part of Islamic jurisprudence; indeed, most *fuqahā'* have devoted a separate and entire section to *khul'* in their chapters on divorce.[3] Though the understanding of *khul'* differs from one school of law to another,[4] all schools agree that it is a type of lawful divorce whereby the wife ransoms herself to secure a way out of *nikāḥ* (marriage). The Qur'ān makes no direct reference to *khul'* nor does it even mention the term. All that we find is a reference to a ransoming procedure in Q.2:229,[5] which, along with numerous prophetic *ḥadīth*s, serves as the core of a much elaborated law of *khul'*. Most of the prophetic reports refer specifically to the case of Ḥabība – the wife of Thābit – who was granted *khul'* by the Prophet himself.[6]

---

[3] This chapter is based on a survey of the works pertaining to the following Ḥanafī jurists: al-'Aynī, Ibn 'Ābidīn, Ibn al-Humām, Ibn Māza, Ibn Nujaym, al-Jaṣṣāṣ, al-Kāsānī, al-Marghīnānī, al-Mūṣilī, al-Qudūrī, al-Samarqandī, al-Sarakhsī, al-Shaybānī, al-Ṭaḥāwi, and al-Zayla'ī. Most of these jurists devote a separate section to *khul'*, with the exception of al-Ṭaḥāwī and al-Samarqandī who, their works being summaries, discuss *khul'* in their sections devoted to *ṭalāq*. Al-Kāsānī, on the other hand, assigns a substantial part of his section on divorce to discussing *khul'*. The systematic presence of *khul'* in the juristic works attests to its importance in Islamic jurisprudence.

[4] This point that will be discussed in due course.

[5] This, and all subsequent Qur'ānic verses are from the translation of al-Muntadā al-Islāmī. Q.2:229 reads: "Divorce is twice. Then [after that], either keep [her] in an acceptable manner or release [her] with good treatment and it is not lawful for you to take anything of what you have given them unless both fear that they will not be unable to keep [within] the limits of *Allāh*. But if you fear that they will not keep [within] the limits of *Allāh*, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of *Allāh*, so do not transgress them. And whoever transgresses the limits of *Allāh* – it is those who are the wrongdoers [i.e., the unjust]."

[6] Thābit's wife, in the *ḥadīth* reports surveyed, is generally referred to as Ḥabība, see Aḥmad b. Shu'ayb al-Nasā'ī, *Sunan al-Nasā'ī bi-Sharḥ al-Ḥāfiẓ Jalāl al-Dīn al-Suyūṭī*, ed. Ḥasan Muḥammad al-Mas'ūdī, 8 vols. (Cairo: al-Maktaba al-Tijāriyya al-Kubrā, 1930), 5:169; Abū Dāwūd Sulaymān b. al-Ash'ath al-Sijistānī, *Sunan Abī Dāwūd*, ed. Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd, 4 vols. (Beirut: al-Maktaba al-'Aṣriyya, 1980), 2:268-69. While Ibn Māja refers to her as Jamīla, see Muḥammad b. Nāṣir al-Dīn al-Albānī, *Ṣaḥīḥ Sunan Ibn Māja*, ed. Zuhayr al-Shāwish, 5 vols. (Beirut: al-Maktab al-Islāmī, 1988), 1:350; she is simply Thābit's wife in other reports, see Muḥammad b. Ja'far al-'Asqalānī, *Fatḥ al-Bārī bi-Sharḥ*

This episode is reportedly the first case of *khul'* in Islam,[7] and is recorded in four of the six major *ḥadīth* works.[8]

The ultimate origins of *khul'*, however, can be traced back to the ancient Near East.[9] Muslim jurists themselves acknowledge that the concept of *khul'* was known to the pre-Islamic Arabs as an amicable agreement between the father of the bride and her husband.[10] It was upon returning the dowry that the former ensured a release of his daughter from *nikāḥ*.[11] Long before, as seen in fifth century B.C.E. Aramaic marriage contracts from the Jewish community in Elephantine, Egypt, divorce clauses were added to marriage contracts.[12] These clauses granted the wife – who under Jewish law is not entitled to initiate a divorce and can be divorced by her husband regardless of her consent – the power to instigate such separation. As a result, either party was allowed to terminate the marriage by declaring hatred or repulsion towards the other, but with the proviso that the instigator would have to compensate the other party.[13] Generally, in such cases the woman took back everything she brought with her into the marriage and

---

*al-Imām Abī 'Abd Allāh Muḥammad b. Ismā'īl al-Bukhārī*, ed. 'Abd al-Raḥmān Muḥammad, 17 vols. (Cairo: Maktabat wa Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1959), 9:327; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269. For more on the different names that Thābit's wife was given, see al-'Asqalānī, *Fatḥ al-Bārī*, 9:328; al-'Aynī, *al-Bināya*, 5:292; Muḥammad b. 'Abd al-Wāḥid Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr*, 10 vols. (Beirut: Dār al-Fikr, 1990), 3:204. In this thesis, the name Ḥabība will be used when referring to the wife of Thābit.

[7] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:325; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:204.

[8] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:325-30; al-Albānī, *Ṣaḥīḥ*, 1:349-50; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:168-70; al-Sijistānī, *Sunan Abī Dāwūd*, 2:268-69. For further discussion on the matter, see Oussama Arabi, "The Dawning of the Third Millennium on *Shari'a*: Egypt's Law No.1 of 2000, or Women May Divorce at Will," *Arab Law Quarterly* 16,1 (2001): 19-20.

[9] Mordechai A. Friedman, "Termination of the Marriage upon the Wife's Request: A Palestinian Ketubba Stipulation," *American Academy for Jewish Research* 37 (1969): 30-34.

[10] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:325.

[11] Ibid.; also see Robertson W. Smith, *Kinship and Early Marriage in Arabia* (Oosterhout: Anthropological Publications, 1996), 112-13; Abū Hilāl al-Ḥasan b. 'Abd Allāh al-'Askarī, *al-Awā'il* (Beirut: Dār al-Kutub al-'Ilmiyya, 1987), 49-50.

[12] Friedman, "Termination of the Marriage," 30-34.

[13] Ibid.

renounced either her deferred dowry,[14] half of the original dowry, or its entirety, depending on the agreement.[15] As found in one marriage contract, the fact that the woman could not leave without the permission of the court implies not only the need for a rabbi to approve of her decision, but also that an unhappy wife could in fact leave the marriage despite having failed to secure her husband's consent.[16] Similar ancient forms of *khul'* may have been a source of inspiration to the Prophet who, when Ḥabība found her way to his door, freed her from her *nikāḥ* in return for surrendering her garden to her husband.

In all four *ḥadīth* narrations surveyed, Ḥabība appears before the Prophet alone, unescorted. She either complains of the impossibility of getting along (*ijtimā'*)[17] with her husband, or asserts that – despite her husband's irreproachable behavior – she still wishes to separate from him.[18] The Prophet then secures her agreement to return the garden given to her by way of dowry (*mahr*) and commands Thābit to accept the garden and divorce her upon her approval.[19] That the garden in question constituted the whole *mahr* is not explicit in most *ḥadīth* versions. Yet the statement of Ḥabība in one of the versions, however, attesting that she still had everything she was given, points to the fact that it may have constituted the totality of her *mahr*.[20] Thus, it seems that her ransom was equal to, or possibly less than, her *mahr*, but certainly did not exceed it in

---

[14] Further details on the dowry will follow in due course.
[15] Friedman, "Termination of the Marriage," 40-41.
[16] Ibid., 42.
[17] Al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269.
[18] Al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-'Asqalānī, *Fatḥ al-Bārī*, 9:328-29; al-Albānī, *Ṣaḥīḥ*, 1:350.
[19] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:329-30; al-Albānī, *Ṣaḥīḥ*, 1:350; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269. In one of the accounts of Abū Dāwūd, the compensation is equivalent to two gardens instead of one.
[20] Al-Sijistānī, *Sunan Abī Dāwūd*, 2:269. In that same version, Thābit is given a voice, and asserts that the two gardens constitute the full *mahr*.

value. The Ḥanafī jurists fully acknowledge this fact: they systematically refer to the version where Thābit is deterred – by order of the Prophet – from asking for an amount in excess (*ziyāda*) on the garden.[21] Thābit in most accounts seems to be innocent of any wrongdoing and it is his own wife who clears him by asserting that he is in no way at fault.[22] Thus, it seems that Ḥabība had developed an aversion towards Thābit, a dislike that prevented her from having sexual relations with him, thus compelling her to fail in her wifely duties.[23] Be that as it may, Thābit is extraordinarily passive in all the *ḥadīth* versions: not only does Ḥabība go to the Prophet without him, but Thābit's opinion is not even judged pertinent, since the Prophet orders him to accept his decree as just and to leave Ḥabība.[24] Yet despite this clear example of the husband's role as passive, whether in the initiation of *khul'*, validating the ransom, or the procedure itself, the jurists (*fuqahā'*) unanimously assigned a decisive role to the husband in all phases of *khul'*. Indeed, in the view of al-Jaṣṣāṣ, that Thābit was asked to divorce his wife – even if such was an order – placed him at a central point in the debate since the Prophet could

---

[21] Al-Albānī, *Ṣaḥīḥ*, 1:350; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:204; 'Alī b. Abī Bakr al-Marghīnānī, *al-Hidāya: Sharḥ Bidāyat al-Mubtadī*, ed. Muḥammad Muḥammad Tāmir and Ḥāfiẓ 'Āshūr Ḥāfiẓ, 4 vols. (Beirut: Dār al-Fikr, 1990), 2:598; 'Alā' al-Dīn Abī Bakr b. Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, 7 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1982), 3:145; Aḥmad b. 'Alī al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 3 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1978), 1:394.

[22] In one of Abū Dāwūd's versions, Ḥabība complains of suffering from some physical pain. Even so, Thābit seems to have acted within acceptable norms since, had he been unfair to her, she presumably would have complained about it to the Prophet, see al-Sijistānī, *Sunan Abī Dāwūd*, 2:269. In his discussion on the Mālikī understanding of *khul'*, Oussama Arabi relates a version in which Ḥabība suffered physical pain as a result of Thābit's mistreatment, see Arabi, "Dawning," 13.

[23] For more on the wife's duty to provide sexual gratification to her husband, see al-Kāsānī, *Badā'i'*, 2:334; Muwaffaq al-Dīn Ibn Qudāma, *al-Mughnī*, 12 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1983), 8:129-31; Abī Zakariyya Yaḥyā b. Sharaf al-Nawawī al-Dimashqī, *Rawḍat al-Ṭālibīn*, 8 vols. (Damascus: al-Maktab al-Islāmī, 196?), 7:369-70.

[24] For the use of "accept" in the imperative form (*iqbal*), see al-'Asqalānī, *Fatḥ al-Bārī*, 9:369; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169. "The Prophet ordered him" (*amarahu al-rasūl*), is used by Ibn Māja, see al-Albānī, *Ṣaḥīḥ*, 1:350; while the use of "take" (*khudh*) in the imperative form, is found in al-Sijistānī, *Sunan Abī Dāwūd*, 2:269; and in another version of al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169.

have dismissed him completely and divorced Ḥabība himself.[25] Works of Ḥanafī jurisprudence (*fiqh*) wholeheartedly insist that not only can the husband initiate *khul'*, but that, at the very least, should the wife take the first step, his consent must be obtained.[26] Ḥanafī legal discourse thus boldly differs from the *ḥadīth*, and to some extent from the Qur'ān to varying degrees depending on whether it treats the initiation of *khul'*, its legality, limits on compensation, or approval of the husband. This departure from the texts – a matter that will be discussed later in this thesis – follows a clear pattern, and is generally a uniform and explicitly justified digression.

### 1.2 A Diachronic Account and Analysis of the Ḥanafī Literature

*Khul'* is broadly defined in the *fiqh* works as putting an end to marriage (*izālat milk al-nikāḥ*).[27] This *izāla* (removal) generally occurs in exchange for a substitute (*badal*) that the wife offers her husband,[28] subject to a major condition: namely, the

---

[25] Al-Jaṣṣāṣ, *Aḥkām*, 1:394-95.

[26] Al-Kāsānī, *Badā'i'*, 3:144-45; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:199; Fakhr al-Dīn 'Uthmān b. 'Alī al-Zayla'ī, *Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq*, ed. Aḥmad 'Azzū 'Ināya, 7 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), 3:182-83; al-'Aynī, *al-Bināya,* 5:291; Aḥmad b. Muḥammad al-Qudūrī, *Mukhtaṣar al-Qudūrī*, ed. Kāmil Muḥammad Muḥammad 'Uwayḍa (Beirut: Dār al-Kutub al-'Ilmiyya, 1997), 163; Maḥmūd b. Aḥmad b. 'Abd al-'Azīz b. 'Umar Ibn Māza, *al-Muḥīṭ al-Burhānī fil-Fiqh al-Nu'mānī*, ed. Aḥmad 'Azzū 'Ināya, 11 vols. (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 2003), 3:501; Muḥammad b. Aḥmad al-Sarakhsī, *al-Mabsūṭ*, 24 vols. (Cairo: Maṭba'at al-Sa'āda, 1913), 5:171-72; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:439-41; Zayn al-'Ābidīn Ibn Nujaym, *al-Baḥr al-Rā'iq*, 8 vols. (Cairo: al-Maṭba'a al-'Ilmiyya, 1894), 4:77-78; Muḥammad b. al-Ḥasan al-Shaybānī, *al-Jāmi' al-Ṣaghīr* (Beirut: 'Ālam al-Kutub, 1986), 215-16; 'Abd Allāh b. Maḥmūd al-Mūṣilī, *al-Mukhtār al-Fatwī*, ed. Markaz al-Buḥūth wal-Dirāsāt bi-Maktabat Nizār Muṣṭafā al-Bāz (Riyadh: Maktabat Nizār Muṣṭafā al-Bāz, 1997), 192-93; al-Jaṣṣāṣ, *Aḥkām*, 1:391-92.

[27] Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:439.

[28] It should be noted that the substitute – as will be discussed in due course – is not required to have financial value as long as both parties agree on the matter. For more on *khul'* without compensation, see Linant Y. De Bellefonds, "Le 'Hul'' sans Compensation en Droit Hanafite," *Studia Islamica* 31 (1970): 185-90.

wife's approval.[29] Thus, in its juristic sense, *khul'* is indeed a rupture of the marriage contract where the wife compensates her husband for breaking the agreement, in the same way that she was compensated by him upon entering the *nikāḥ*. Unlike *ṭalāq*, however – where a husband wishing to separate from a wife not at fault must compensate her – the financial obligations imposed on the wife in the case of *khul'* compel the *fuqahā'* to require her consent. The validity of *khul'* seems to have only been contested by al-Muzanī (d.264/878), who is often referred to as the one scholar (*'ālim*) holding the opinion that a husband should not accept any compensation from his wife.[30] Though his argument is mentioned in a number of *fiqh* works, his reasoning is always discredited and his doubts "remedied".[31] Al-Muzanī argues that the concept of *fidā'* (ransoming) found in Q.2:229 was abrogated by Q.4:20,[32] whereby a husband is forbidden to accept any compensation from his wife in the case of exchange - of one wife for another (*istibdāl*). The jurists counter-argue, asserting that abrogation does not take place since *fidā'* does not depend on the wrongdoing (*nushūz*) of the husband. While Q.2:229 clearly refers to a fear of failing to respect the limits ordained by God for both parties, al-Muzanī seems to assign the choice of *khul'* to the husband alone, arguing that an unfair husband who wishes to rid himself of a blameless wife should not accept any compensation from her, yet leaving no room in his argument for a woman who – like Ḥabība – is herself compelled to seek a way out of *nikāḥ* due to an aversion for her blameless husband.

---

[29] Ibn 'Ābidīn, *al- Muḥtār*, 3:439; al-Shaykh Niẓām et al., *al-Fatāwā al-Hindiyya*, 1:488; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:199; al-'Aynī, *al-Bināya*, 5:291; Ibn Nujaym, *al-Baḥr*, 4:77; al-Zayla'ī, *Tabyīn*, 3:182.
[30] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:325; al-Zayla'ī, *Tabyīn*, 3:182; al-'Aynī, *al-Bināya*, 5:292; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:199.
[31] Ibid.
[32] Q.4:20 reads: "But if want to replace a wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?"

In contrast with the dominant opinion of the Shāfi'ī and Ḥanbalī schools, who view *khul'* as an annulment (*faskh*), the Ḥanafīs and Mālikīs classify it as an irrevocable divorce.[33] For al-Kāsānī (d.587/1191), the term *khul'* itself signifies divorce since, linguistically, *khul'* is defined as a tearing out or detachment, hence a removal from the marriage.[34] In addition, he asserts that *faskh* entails that the amount exchanged to legalize the contract be returned in full,[35] which is not the case with *khul'* where the value of the compensation may or may not equate that of the *mahr*. The Ḥanafī school allows annulments in cases involving the option of puberty (*khiyār al-bulūgh*) and absence of social parity (*'adam kafā'a*).[36] Indeed, Ḥanafī law allows a male or female minor who has been married by a guardian (*walī*) – other than the father or paternal grandfather[37] – to contest the marriage (upon reaching maturity) by requesting its annulment.[38] A *walī* in turn is entitled to annul a marriage if the husband's social background is not in harmony with that of his protégée.[39] A *nikāḥ* that has the status of *tamma* (i.e., concluded) cannot be annulled and instead it is *qaṭ'* (interruption) that should here apply;[40] hence the classification of *khul'* (applicable to a marriage that was

---

[33] Early Shāfi'ī opinion and a preponderance of the major Ḥanbalī jurists, have favored *faskh*. However, a detailed discussion on the position of these schools of law is beyond the scope of this paper. For more, see Ibn Māza, *al-Muḥīṭ*, 3:501.

[34] Al-Kāsānī, *Badā'i'*, 3:144.

[35] Ibid., 145.

[36] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200. For a detailed discussion on *khiyār al-bulūgh*, see Mahmoud Yazbak, "Minor Marriages and Khiyār al-Bulūgh in Ottoman Palestine: A Note on Women's Strategies in a Patriarchal Society," *Islamic Law and Society* 9,3 (2002): 396-409.

[37] Both minor males and females who have not reached maturity, if involved in legal matters, are required to be represented by a *walī* (guardian) so as to ensure their rights.

[38] Ron Shaham, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts, 1900-1955* (Leiden: Brill, 1997), 113.

[39] Ibid., 43.

[40] Al-'Aynī, *al-Bināya*, 5:295; al-Sarakhsī, *al-Mabsūṭ*, 5:173.

properly concluded) as a type of *ṭalāq*.[41] Indeed, *faskh* is applicable to the two above-mentioned cases precisely because the *nikāḥ* has not been properly concluded. As for their rejection of any similarity between *khul'* and *ṭalāq*, the *fuqahā'* who view *khul'* as *faskh* point to Q.2:229, which refers to the two revocable divorces preceding the third and last irrevocable one. The debate revolves instead around whether *khul'* can take the place of the third divorce. Some Shāfi'īs and Ḥanbalīs – basing themselves on a *ḥadīth* attributed to Ibn 'Abbās (d.68/687) – oppose such a view, arguing that *khul'* would thus constitute a fourth divorce, thereby discrediting the whole Ḥanafī reasoning on the matter.[42] The Ḥanafīs however unanimously insist that nothing in the Qur'ān or elsewhere prevents *khul'* from being the third divorce and they refute the position of Ibn 'Abbās, claiming that he himself later reversed his own opinion.[43] Based on these arguments, the separation that occurs subsequent to *khul'* takes, in the Ḥanafī view, the form of *ṭalāq* rather than *faskh*.

As for the nature of the *ṭalāq*, Ḥanafī jurisprudence – out of concern for the wife who has agreed to compensate her husband – qualifies *khul'* as an irrevocable divorce.[44] A wife who ransoms herself by compensating her husband in order to leave the marital relationship is obviously one who no longer wishes to stay with him. Consequently, and in order to gain total control over her own self, the wife should be granted full freedom from the marriage tie; hence the irrevocability of *khul'*.[45] The (now extinct) Ẓāhirī

---

[41] Al-Sarakhsī, *al-Mabsūṭ*, 5:173; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200; al-'Aynī, *al-Bināya*, 5:295; al-Zayla'ī, *Tabyīn*, 3:183; Ibn Māza, *al-Muḥīṭ*, 3:501.

[42] Wizārat al-Awqāf wal-Shu'ūn al-Islāmiyya, *al-Mawsū'a al-Fiqhiyya*, 41 (to date) vols. (Kuwait: Dār al-Ṣafwa lil-Ṭibā'a wal-Nashr, 1990-), 19:237-38; al-Jaṣṣāṣ, *Aḥkām*, 1:238; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:202.

[43] Ibid.

[44] Al-Sarakhsī, *al-Mabsūṭ*, 5:171-72; al 'Aynī, *al-Bināya*, 5:295.

[45] Al-Zayla'ī, *Tabyīn*, 3:182; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:439; al-Marghīnānī, *al-Hidāya*, 2:598.

school is the only one to have attributed a revocable nature to *khul'*.[46] In their view, the wife – if taken back by the husband – ought simply to be re-credited with whatever amount she offered him. Such reasoning is considered unjust in the Ḥanafī view, as the wife – once she has compensated her husband – should not risk being retrieved by a husband she no longer wants to be with.[47] In *al-Hidāya*, a wife is only obliged to deliver the property (*māl*) she is willing to disburse, at which point she is granted full control over herself.[48] Hence, the husband has no right over the person of the wife who, though she had agreed to grant him sexual access through *nikāḥ*, is now paying to leave the contract and thus from that service. This is qualified by the Ḥanafī jurists as an equitable method, since the husband is entitled to compensation while his wife is allowed in return to regain control of her own person.[49] Unlike a case of revocable divorce, where the husband is allowed to take his wife back even against her will, an irrevocable divorce requires him to offer her a new contract and consequently a new *mahr*. As for the legitimacy of *khul'*, it has been argued that *khul'* is only valid if undertaken in the presence of the local ruler (*sulṭān*).[50] This claim, however, received little support, and the official Ḥanafī position on the matter is that the presence of a *sulṭān* is no more necessary on the termination of a *nikāḥ* than it is upon its inception.[51]

As far as marital rights are concerned, Abū Ḥanīfa – in contrast with his two disciples Abū Yūsuf (d.182/798) and Shaybānī (d.189/804) – holds the view that all

---

[46] Abū Muḥammad 'Alī b. Aḥmad b. Sa'īd, Ibn Ḥazm, *al-Muḥallā bil-Āthār*, ed. 'Abd al-Ghaffār Sulaymān al-Bindārī, 12 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1988), 9: 511; al-'Aynī, *al-Bināya*, 5:293.
[47] Al-Sarakhsī, *al-Mabsūṭ*, 5:171-72; al-'Aynī, *al-Bināya*, 5:295.
[48] Al-Marghīnānī, *al-Hidāya*, 2:597.
[49] Al-Kāsānī, *Badā'i'*, 3:145; al-Sarakhsī, *al-Mabsūṭ*, 5:172.
[50] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:199; al-Jaṣṣāṣ, *Aḥkām*, 1:395-96; al-Kāsānī, *Badā'i'*, 3:145.
[51] Ibid.

marital rights automatically cease on both sides when *khul'* takes effect.[52] What remains is any previous debt (other than unpaid maintenance (*nafaqa*)) and the maintenance of the waiting period (*'idda*).[53] The *'idda*, though not a part of the *nikāḥ* agreement, is deemed necessary upon its termination. Both the *'idda* and unpaid *nafaqa* can, however, be dissolved by mutual agreement should the husband and wife both consider them part of the compensation offered by the wife.[54] Also, a husband is required to provide his wife with housing for the duration of her waiting period.[55] As for the nature of *khul'*, Abū Ḥanīfa's opinion is once again different from that of his disciples, for he qualifies it as an oath on the part of the husband and a compensation on the part of the wife. Abū Yūsuf and Shaybānī, on the other hand, view it as an oath on both sides.[56] The opinion of Abū Ḥanīfa, however, prevailed for both points mentioned, and was relied upon by later jurists.[57] Consequently, the husband is governed by the rules for oaths: should he propose *khul'* to his wife, he cannot retract his offer before her acceptance or rejection. She, in turn, having to submit to the rules of compensation (*mu'āwaḍa*) is allowed to retract her offer before his response. Abū Ḥanīfa's reasoning is based on the principle that *khul'* is a *bay'* (sales transaction) on the part of the wife, as

---

[52] Al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 164; Abū Ja'far Aḥmad b. Muḥammad b. Salāma al-Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, ed. Abū al-Wafā al-Afghānī (Cairo: Maṭba'at al-Kitāb al-'Arabī, 1950), 191.

[53] Al-Sarakhsī, *al-Mabsūṭ*, 5:173; al-Shaykh Niẓām et al., *al-Fatāwā al-Hindiyya*, 1:488; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 164; al-Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 191.

[54] The *'idda* to be observed in case of *khul'* follows the same principle as in divorce, whereby a divorced woman has to abstain from sexual relations (and is consequently forbidden to re-marry) for a duration of three menstrual periods. The husband is responsible for her maintenance during this time.

[55] Al-Sarakhsī, *al-Mabsūṭ*, 5:173; al-Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 191.

[56] Al-Zayla'ī, *Tabyīn*, 3:182; al-Kāsānī, *Badā'i'*, 3:145, 151; Ibn Māza, *al-Muḥīṭ*, 3:501-02; Abū al-Layth al-Samarqandī, *Fatāwā al-Nawāzil fil-Fiqh al-Ḥanafī*, ed. Ghulām al-Murtaḍā (Hyderabad: Maṭba'at Shams al-Islām, 1937), 131; al-Sarakhsī, *al-Mabsūṭ*, 5:173; Fakhruddīn Ḥasan b. Manṣūr al-Ūzjandī al-Farghānī, *Fatawa-i-Khazee-Khan: Relating to Mahomedan Law of Marriage, Dower, Divorce, Legitimacy, and Guardianship of Minors, According to the Soonnees*, trans. and ed. Mahomed Yusoof Khan Bahadur and Wilayat Hussain, 2 vols. (New Delhi: Kitab Bhavan, 1986), 2:149; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 164.

[57] Al-Kāsānī, *Badā'i'*, 3:145; Ibn Māza, *al-Muḥīṭ*, 3:501; al-Samarqandī, *al-Nawāzil*, 131; Ibn Nujaym, *al-Baḥr*, 4:78; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:442.

she is buying back control over her own self – hence the validity of her retraction.[58] Abū Yūsuf and Shaybānī disagree and refuse the deferral in both cases as they view it as an oath on his part and an acceptance of a condition on hers.[59] Nevertheless, while a difference in opinion exists over the nature of *khul'* and the marital rights due as a result, the Ḥanafī position on the initiation and consent to *khul'* is uniform.

### 1.3 Initiation and Consent

In addition to his unquestioned right to repudiate an unwanted wife, the jurists have granted the husband the possibility of initiating *khul'*.[60] Divorce in Islamic law is the exclusive privilege of the husband, and his right to initiate *khul'* is an extension of that privilege.[61] A wife who wants to separate from an unwanted husband has to prove to a *qāḍī* that her husband is causing her harm (*ḍarar*). If the husband is not at fault – or if she fails to prove *ḍarar* – the adult wife can initiate *khul'*. The legal guardian (*walī*), such as the father of a minor wife can also secure her *khul'*, although he cannot demand compensation on her behalf.[62] The Ḥanafī school is the most restrictive when it comes to granting a woman divorce;[63] thus, a wife who wants to part from her husband may

---

[58] Al-Zayla'ī, *Tabyīn*, 3:182; al-Kāsānī, *Badā'i'*, 3:145; Ibn Māza, *al-Muḥīṭ*, 3:501-02; al-Samarqandī, *al-Nawāzil*, 131; al-Sarakhsī, *al-Mabsūṭ*, 5:173; al-Ūzjandī al-Farghānī, *Khazee-Khan*, 2:149; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 164.

[59] Ibid.

[60] Al-Kāsānī, *Badā'i'*, 3:144-45; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:199; al-Zayla'ī, *Tabyīn*, 3:182-83; al-'Aynī, *al-Bināya*, 5:291; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; Ibn Māza, *al-Muḥīṭ*, 3:501; al-Sarakhsī, *al-Mabsūṭ*, 5:171-72; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:439-41; Ibn Nujaym, *al-Baḥr*, 4:77-78; al-Shaybānī, *al-Jāmi'*, 215-16; al-Mūṣilī, *al-Mukhtār*, 192-93; al-Jaṣṣāṣ, *Aḥkām*, 1:391-92.

[61] Al-Kāsānī, *Badā'i'*, 3:145; Ibn Nujaym, *al-Baḥr*, 4:78.

[62] Al-Sarakhsī, *al-Mabsūṭ*, 5:179; al-Shaybānī, *al-Jāmi'*, 215; al-Mūṣilī, *al-Mukhtār*, 193.

[63] Arabi, "Dawning," 2; Recep Çiğdem, "*Khul'* or Dissolution of Marriage by a Woman: A Historical Background and Two Cases from the Bakhchisaray/ Crimea Court," *D.E.Ü Ilahiyat Fakültesi Dergisi Sayi* 21, (2005): 96-97; Galal H. el-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Chicago & Minneapolis: Bibliotheca Islamica , 1979), 46.

well have to revert to *khul'*. Separation, however, does not take effect without her husband's consent and action. This idea departs from the example of the Prophet described earlier, since Thābit was ordered to accept the garden and leave Ḥabība: he was given no option of consent or dissent.[64] Indeed, in the opinion of the Ḥanafī jurists, not only does *khul'* depend on the husband's approval, it is the husband alone who can take the step of granting *khul'* (*yakhla'*) to his wife. The reverse is not true: a wife who wants *khul'* to take effect has to ask her husband to grant her *khul'* (*yakhla'uhā*). Thus, the verb *yakhla'* is used by jurists only in the masculine form, and only in connection with the husband. Interestingly though, al-'Aynī (d.855/1451) is the only jurist among those surveyed who uses the term *khala'at zawjahā* (she 'removed' her husband), promptly following his statement with *wa ikhtala'at minhu* (and she was 'removed' from him).[65] The *mufā'ala* form, which implies a reciprocal action (*mukhāla'a*), is used by the jurists in connection with both, the husband and the wife. Ibn 'Ābidīn makes a very clear distinction as to these verb forms, stating that a husband who says *khala'tuki* (I had you submit to *khul'*) to his wife without mentioning *māl* (property-compensation in this case) is faced with a regular *ṭalāq* where the rights of the wife are safeguarded.[66] Indeed, in his choice of words, the husband excludes the consent of his wife, thus transforming his action into a *ṭalāq* where the wife's consent is immaterial though her rights are preserved intact.[67] On the other hand, should he use "*khāla'tuki*"

---

[64] A special version reported by Mālikī jurists seems to require the approval of the husband. Such a version, however, is nowhere to be found in the Ḥanafī literature, see Arabi, "Dawning," 12.
[65] The statement appears as follows *khala'at al-mar'a zawjahā wa-ikhtala'at 'anhu bimālihā*, see al-'Aynī, *al-Bināya*, 5:291.
[66] Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:440.
[67] Ibid.

or the imperative *ikhtali'ī, khul'* is pronounced.[68] Consequently, her marital rights expire in favor of whatever compensation they have agreed upon.

This in turn leads to another crucial point: the consent of the wife. Unlike *ṭalāq*, where her approval is immaterial, a wife's consent in *khul'* is mandatory.[69] As the financial compensator, she has to agree to renounce at least some (if not all) of the rights she would otherwise have safeguarded in the case of *ṭalāq*. The wife, being governed by the rules of *mu'āwaḍa* (compensation), becomes the compensating party or buyer, so that just as in any other contract her consent is required. Financial disbursement must have been a major consideration for the *fuqahā';* this – among other reasons – may have prompted them to view *ṭalāq* as a privilege granted exclusively to men. The major justification, though, stems from a traditional understanding of those Qur'ānic verses that refer to men as superior (*qawwāmūn*) and as having a degree of preference (*daraja*) over women.[70] This attitude is usually justified by a variety of claims, including the fact that women were never prophets, are not active in *jihād* and only inherit half of what men do.[71] Despite this, however, the *fuqahā'* must have taken into consideration the fact that a husband who chooses to divorce his wife is

---

[68] Ibid.

[69] Al-'Aynī, *al-Bināya*, 5:300; al-Sarakhsī, *al-Mabsūṭ*, 5:171; Ibn Nujaym, *al-Baḥr*, 4:77; al-Kāsānī, *Badā'i'*, 3:145.

[70] Q.4:34 reads: "Men are in charge of women by [the right] of what *Allāh* has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what *Allāh* would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek not means against them. Indeed, *Allāh* is ever exalted and grand." As for the degree of preference that men are granted, Q.2:228 reads as follows: "Divorced women remain in waiting [i.e., do not marry] for three periods, and it is not lawful for them to conceal what *Allāh* has created in their wombs, if they believe in *Allāh* and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to them [i.e., the wives] is similar to what is expected of them, according to what is reasonable. But the men [i.e., the husbands] have a degree over them [in responsibility and authority]. And *Allāh* is exalted in Might and Wise."

[71] Al-Jaṣṣāṣ, *Aḥkām*, 1:374-75.

automatically liable to compensate her. That point of financial disbursement is precisely why the wife's approval becomes mandatory in the case of *khul'*.

As for the favored position of the husband, this is apparent in his privileged right to initiate divorce and central to the legal understanding of *khul'*. Despite the fact that in the *ḥadīth* literature it is the wife who asks for a separation resulting in *khul'*, Ḥanafī jurisprudence allows the husband to present his wife with a *khul'* offer.[72] Not only can he propose such an arrangement to her, but she must also secure his consent in the event that she is the instigator of the *khul'* procedure. His agreement is also mandatory as far as her compensatory amount is concerned. Having established that both parties can initiate *khul'*, and that agreement is necessary on both sides, we now turn to the circumstances which justify the initiation of *khul'* in the first place.

### 1.4 Circumstances Leading to *Khul'*

Q.2:229, in introducing the concept of ransoming, sanctifies this procedure when both the husband and wife are afraid of failing to meet the standards ordained by God (*ḥudūd Allāh*). Indeed, failure – or fear of failure – to fulfill the *ḥudūd Allāh* is valid grounds for the dissolution of the marriage.[73] Thus, in order for *khul'* to take place, the parties concerned should, at the very least, be guilty of a failure to reconcile and remain bound by their *nikāḥ* contract. *Khul'*, in the view of the Ḥanafī jurists is consequently closely linked to the concept of *nushūz*. *Nushūz*, in its linguistic sense, was linked by

[72] The opinion of Ibn Ḥanbal differs, as he only attributes – based on the case of Ḥabība – the initiation of *khul'* to the wife. See Susan A. Spectorsky, *Chapters on Marriage and Divorce: Responses of Ibn Ḥanbal and Ibn Rāhwayh* (Austin: University of Texas Press, 1993), 109.
[73] Al-'Aynī, *al-Bināya*, 5:291-92.

early scholars, jurists and interpreters of the Qur'ān to the idea of rising (*irtifā'*), i.e., something that rises from the earth reaching a position higher than the ground level it was assigned.[74] In the realm of marriage, a *nāshiz* wife is one who refuses her husband sexual enjoyment. A *nāshiz* husband, in turn, is one who mistreats his wife and is cruel to her.[75] Examples of bad treatment vary from the failure to grant his wife her rights by not providing her with an adequate *nafaqa* to expressing an aversion to her while still simultaneously retaining her as wife. The most common reference to *nushūz* in cases of *khul'* is when a husband requests compensation from his wife even though he wishes to leave her for another.[76] Similarly, a wife's failure to remain under *nikāḥ* and fulfill the duties required by that contract makes her guilty of *nushūz* and obliges her to offer compensation if she wishes to terminate the *nikāḥ*.[77] However, already enjoying the right to terminate a marriage contract at will, a husband who simply no longer wishing to stay married, divorces his wife, is not guilty of *nushūz*, provided he grants her due rights.

*Khul'* can arise as a result of *nushūz*, such as in the case of disagreement (*shiqāq*) between husband and wife (i.e., *nushūz* by failing to reconcile), or as a result of a wife's *nushūz*. Interestingly, a third scenario where the husband is alone guilty of *nushūz* is identified by Ḥanafī jurists as acceptable grounds for *khul'*.[78] A couple that

---

[74] Muḥammad b. 'Abd Allāh Ibn al-'Arabī, *Aḥkām al-Qur'ān*, ed. 'Alī Muḥammad al-Bajāwī, 4 vols. (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya 'Īsā al-Bābī al-Ḥalabī wa Shurakā'uh, 1957), 1:417; Manṣūr b. Yūnus b. Idrīs al-Buhūtī, *Kashshāf al-Qinā' 'an Matn al-Iqnā'*, 6 vols. (Beirut: 'Ālam al-Kutub, 1983), 5:209; 'Imād al-Dīn Abū al-Fidā' Ismā'īl Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, ed. Muḥammad 'Alī al-Ṣābūnī, 4 vols. (Cairo: Maṭba'at al-Istiqāma, 1956), 1:492.

[75] Al-Jaṣṣāṣ, *Aḥkām*, 1:374.

[76] Al-Marghīnānī, *al-Hidāya*, 2:597; al-Jaṣṣāṣ, *Aḥkām*, 1:392; al-Zayla'ī, *Tabyīn*, 3:184.

[77] Al-'Aynī, *al-Bināya*, 5:293.

[78] Ibn Nujaym, *al-Baḥr*, 4:78; al-'Aynī, *al-Bināya*, 5:296-97; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:445; al-Shaybānī, *al-Jāmi'*, 216.

fails to reconcile, and in which both parties share responsibility for that failure, is one that will more likely be open to negotiation through *khul'*. Unlike the husband, however, a wife incurs blame if she decides to leave her husband for such reasons as aversion.[79] Such an attitude would automatically render her *nāshiz* for having decided to deny sexual access to a husband entitled to that favor by virtue of *nikāḥ*. That is precisely why Ḥabība was considered *nāshiz* and granted separation only after she agreed to return the garden to her husband. Indeed, a wife who is not at fault and whose husband is being abusive should either be granted a divorce by that same husband and have her rights safeguarded, or present her case to a judge who will separate the couple if convinced that she is suffering harm. An irreproachable wife should never lose her post-marital rights nor have to ransom her way out of *nikāḥ*.

The Qur'ān is clear on the fact that a *nāshiz* husband should not benefit from his wife's assets or belongings regardless of who wishes to terminate the marriage. As for the husband who wants to exchange his wife for another *and* be compensated, Q.4:20 states that he should compensate the harmed wife rather than be compensated by her. Also forbidden for the husband is to hold on to a wife in order to cause her *ḍarar*.[80] Nevertheless the *fuqahā'* surveyed are unanimous: a husband who is at fault, while discouraged from demanding or accepting anything at all from his wife, is legally entitled to whatever compensation she may willingly offer him.[81] Although the jurists

---

[79] Al-'Aynī, *al-Bināya*, 5:296.

[80] Q.4:19 reads: "O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality [i.e., adultery]. And live with them in kindness. For if you dislike them – perhaps you dislike a thing and *Allāh* makes therein much good."

[81] Ibn Nujaym, *al-Baḥr*, 4:82-3; al-Sarakhsī, *al-Mabsūṭ*, 5:173; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200-03; al-Shaybānī, *al-Jāmi'*, 215-16; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-'Aynī, *al-Bināya*, 5:297; al-Jaṣṣāṣ,

morally condemn such an action, basing themselves on the diverse Qur'ānic verses mentioned and legally qualifying such as abhorred (*makrūh*), they nevertheless all opt for its validity and binding nature. Thus, a husband who fails to fulfill his marital duties is allowed to propose *khul'* to his wife or accept her proposal of the same should she instigate it, *and* enjoy compensation. Should she agree to *khul'* and consent to compensating him, she is not allowed to reclaim later what she has given or promised to hand over, provided she acted of her own free will and was not coerced by her husband.[82] This complex idea of legally validating an abhorrent act motivated al-'Aynī to clarify the position of his predecessors using a carefully crafted linguistic exercise. His argument is as follows: the antonym of *makrūh* in Arabic is *mubāḥ* (lawful); as to the contrary of *jawāz* (permitted-ness), it is *ḥarām* (prohibition). Thus, an act can be abhorred and permitted or legally valid at one and the same time.[83] Another important point to keep in mind is the distinction the jurists established between legality and morality. Although legally valid, such an act would be discouraged and deemed abhorrent and immoral, meaning that a good Muslim husband should voluntarily avoid such a situation. This same process of reasoning, clearly distinguishing between legality and morality, is also found in the realm of compensation.

---

*Aḥkām,* 1:391; al-Kāsānī, *Badā'i'*, 3:145; al-Mūṣilī, *al-Mukhtār*, 193; al-Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, 191.

[82] Al-'Aynī, *al-Bināya*, 5:297. In the view of Mālik, a wife who was coerced can claim her money and divorce occurs without losing its irrevocability, see al-Jaṣṣāṣ, *Aḥkām*, 1:394.

[83] Al-'Aynī, *al-Bināya*, 5:299.

## 1.5 Compensation and its Limits

As previously mentioned, Q.2:229 provides a husband with the possibility of accepting compensation from his wife in the case of serious disagreement leading to the violation of the limits ordained by God. As far as the amount to be offered, it is limited to the value of the *mahr*. This is evidenced by the statement *mimmā ātaytumūhunna* (from what you gave them) that precedes the ransoming procedure. Thus, the Qur'ān is clear on two major conditions: the wife's *nushūz* as well as the maximum amount that the husband can reclaim (to the value of the *mahr*) – a clarity that the jurists fully acknowledge in their works.[84] The applicable *ḥadīth* is similarly clear on the question of the amount, as the jurists systematically refer to the fact that when Ḥabība was willing to offer Thābit her garden and more, the Prophet refused, stating that Thābit should accept the garden and nothing more (*lā yazdād*).[85] Even other versions of the *ḥadīth* where there is no reference to the issue of *ziyāda* corroborate the point that the garden returned to Thābit is undoubtedly Ḥabība's *mahr,* or at least that part of it which Thābit had paid.[86]

Even though the Ḥanafī jurists agree that the irreproachable wife should not compensate a *nāshiz* husband, she is legally bound to compensate him – *nāshiz* or not – in the event of *khul'*, regardless of the amount involved.[87] In case of *shiqāq* or *nushūz*

---

[84] Al-Jaṣṣāṣ, *Aḥkām*, 1:391.
[85] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:204; al-Kāsānī, *Badā'i'*, 3:150; al-Sarakhsī, *al-Mabsūṭ*, 5:183; al-'Aynī, *al-Bināya*, 5:298.
[86] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:325-30; al-Albānī, *Ṣaḥīḥ*, 1:349-50; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:168-70; al-Sijistānī, *Sunan Abī Dāwūd*, 2:268-69.
[87] Ibn Nujaym, *al-Baḥr*, 4:82-83; al-'Aynī, *al-Bināya*, 5:296-98; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:445; al-Shaybānī, *al-Jāmi'*, 216; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-Jaṣṣāṣ, *Aḥkām*, 1:392-93; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200; al-Kāsānī, *Badā'i'*, 3:150-51; al-Sarakhsī, *al-Mabsūṭ*, 5:183; al-Zayla'ī, *Tabyīn*, 3:184-85.

on her part, compensation is regarded as valid in both the moral and legal spheres. The only juristic disagreement (*khilāf*) over this matter pertains to whether the husband can demand or accept a compensation whose value is greater than that of the *mahr*. Indeed, while Shaybānī allows the husband to take more than the *mahr* from his *nāshiz* wife, (he states: "the excess may be enjoyed by him" (*ṭāba al-faḍl lahu*)), al-Qudūrī (d.428/1037) legally qualifies this act as *makrūh* (abhorred).[88] All jurists, however, even those who categorize such an action as *makrūh*, validate the husband's action in a court of law by asserting: it is permitted for him (*jāza lahu*).[89] Later jurists, when referring to this point of *khilāf*, tend to present both opinions without necessarily favoring one position over the other.[90] This is not the case, however, with al-Kāsānī, who gives precedence to the opinion of al-Qudūrī. In his view the idea of ransoming – although absolute in its pure sense – has been limited to the *mahr* by the very verse (Q.2:229) that deals with ransoming. Al-Kāsānī does acknowledge the validity of accepting what a wife has willingly offered in the legal sphere; however, such an act, having the potential of causing the wife *ḍarar*, is morally despicable.[91] Later jurists, especially Ibn al-Humām (d.861/1456) and Ibn 'Ābidīn, clearly favor the position of Shaybānī on the matter,[92] qualifying it as the stronger of the two opinions (*awjah*).[93] Despite the fact that al-Qudūrī's position matches the *ḥadīth* on Ḥabība, which is referred to in the

---

[88] Al-Shaybānī, *al-Jāmi'*, 216; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163.
[89] Ibn Nujaym, *al-Baḥr*, 4:78; al-'Aynī, *al-Bināya*, 5:291-92, 296-97; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:445; al-Shaybānī, *al-Jāmi'*, 216; al-Jaṣṣās, *Aḥkām*, 1:393; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200; al-Kāsānī, *Badā'i'*, 3:150; al-Sarakhsī, *al-Mabsūṭ*, 5:183; al-Zayla'ī, *Tabyīn*, 3:182-83.
[90] Ibn Nujaym, *al-Baḥr*, 4:73; al-Sarakhsī, *al-Mabsūṭ*, 5:183; al-Zayla'ī, *Tabyīn*, 3:184-85; al-Marghīnānī, *al-Hidāya*, 2:597-98.
[91] Al-Kāsānī, *Badā'i'*, 3:151.
[92] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:203; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:445.
[93] For more on this issue, see Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 154-55.

works of these jurists as the original narrative (*riwāyat al-aṣl*), Ibn al-Humām and Ibn ʿĀbidīn discredit the major *ḥadīth* authors and support the statement of Shaybānī.[94] Their argument is based on the position of al-Shumunnī (d.872/1428) – an Egyptian Ḥanafī *ʿālim* whose reasoning counters the findings available in the concerned prophetic *ḥadīth*.[95]

In light of the above, one wonders why the Ḥanafī jurists, while warning the husband not to take anything from his wife if he is at fault, chose to validate such an action? And why was no limit imposed on compensation, allowing a husband to oppose *khulʿ* until he obtains what he deems appropriate? Why is it that, despite the clear position of the texts on the matter, the jurists still chose to validate a husband's unfair actions? Concluding that the jurists granted the husband an absolute right at the expense of the wife because of the notion of *qawāma*, however tempting, would be the result of too narrow reasoning. Although the notion of *qawāma* may have been ever-present in the minds of the jurists, it was the contractual nature of the *nikāḥ* agreement that compelled the *fuqahāʾ* to regard any amount of compensation freely given as valid at any time. The modern understanding of a marital relationship based on love and mutual agreement – which renders the "trade" of sexuality and subsequent analogy to business transactions so troubling today – was not a pre-modern concern. Thus, the wife (in this case the buyer, who wishes to regain full control over her own self), if willing to offer a certain amount as compensation without coercion, is free to do so. There is therefore no harm in the acceptance of the seller. In addition, the jurists argue that, since a *nikāḥ* is

[94] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:203; Ibn ʿĀbidīn, *Radd al-Muḥtār*, 3:445.
[95] Ibid.

valid even if the *mahr* offered is greater than the appropriate dower (*mahr al-mithl*),[96] accepting exchange or compensation (*badal*) that exceeds the *mahr* is also valid.[97] In their legal definition of compensation, the jurists chose to adopt the notion of ransom (which is not bound by any upper or lower limit), thus allowing *khul'* to take place regardless of the value of the *badal* involved. The fact that Q.2:229 allows the husband to enjoy what the wife has proposed as a ransom endorses the concept of *fidā'* and validates its absoluteness, though it is only the consent of the wife that renders such compensation valid. Another element that must have influenced or at least strengthened the position of the *fuqahā'* is found in the accounts of the second and third caliphs 'Umar (d.23/644) and 'Uthmān (d.35/656), who seem to have validated *khul'* cases after wives had offered everything they owned including their hair-band (*'iqāṣ*) and earrings (*qirṭ*), thus sanctifying an extreme limit to compensation.[98]

A crucial point systematically referred to by the jurists is that of incitement (*ighrā'*). A wife who in effect bribes her husband to accept *khul'* is required to compensate him, as he may not have agreed to release her had he not been promised monetary compensation.[99] What can be understood from this is that a wife may obtain *khul'* without having to forego any financial advantage, provided that she doesn't make any allusion to financial compensation. How she phrases the request is vital: should she ask her husband to grant her *khul'* in exchange for what is in her hand – while holding nothing – she is granted a *khul'* without compensation.[100] Her statement "grant me

---

[96] *Mahr al-mithl* is determined according to what is appropriate for a woman of a similar social status.
[97] Al-Kāsānī, *Bada'i'*, 3:151; al-Jaṣṣāṣ, *Aḥkām*, 1:395.
[98] Ibn al-Humām, *Sharḥ al-Qadīr*, 3:200-04; al-Sarakhsī, *al-Mabsūṭ*, 5:173; al-'Aynī, *al-Bināya*, 5:296-97.
[99] Al-'Aynī, *al-Bināya*, 5:302-03; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:448.
[100] Al-'Aynī, *al-Bināya*, 5:302; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:446-47; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163.

*khul'* for what is in my hand" (*khāli'nī 'alā mā fī yadī*) makes no allusion to *māl*, thus clearly referring to what she may (or may not) be actually holding in her hand.[101] A husband who accepts this proposition of his wife cannot later contest having granted *khul'* without indemnification. It is assumed that he should have been more careful and rejected her (presumably unsuitable) offer. Another case where *khul'* is pronounced without any compensation is when the *badal* offered is void (*bāṭil*).[102] Indeed, in contrast with the rules for *nikāḥ*, a *khul'* is not itself void if any of its conditions are found to be so. The reasoning behind this is that the vulva (*buḍ'*) of the wife is considered possessing value (*mutaqawwam*)[103] in the case of entering the *nikāḥ* (*dukhūl*) and that to which no value can be attached (*ghayr mutaqawwam*) in the case of leaving the *nikāḥ* (*khurūj*).[104] Thus, if the *badal* is *māl ghayr mutaqawwam*, such as alcohol or pork, the wife is not required to compensate the husband when terminating the contract. Furthermore, if the wife specifies that she will give him the *dirhams* in her hand, the wife need only compensate him with three *dirhams*, since the plural form (*darāhim* in Arabic) starts with three.[105] As far as what constitutes an acceptable *badal*, it is agreed that what is valid in drafting the *nikāḥ* contract is valid when terminating

---

[101] Al-Marghīnānī, *al-Hidāya*, 2:599.

[102] Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:440; Ibn Nujaym, *al-Baḥr*, 4:82-3; al-Sarakhsī, *al-Mabsūṭ*, 5:173; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:206; al-Shaybānī, *al-Jāmi'*, 214; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-'Aynī, *al-Bināya*, 5:301; al-Zayla'ī, *Tabyīn*, 3:186.

[103] Wizārat al-Awqāf, *al-Mawsū'a*, 31:33-34. The Ḥanafī jurists classify property (*māl*) as *mutaqawwam* and *ghayr mutaqawwam*. The first case applies to lawful transactions, where usufruct is lawful. In the case of *māl ghayr mutaqawwam* – such as transactions involving alcohol or pork – usufruct is not allowed, for Muslims, when choice is available.

[104] Ibn Nujaym, *al-Baḥr*, 4:83; Ibn al-Humām, *Sharḥ al-Qadīr*, 3:206; al-Shaybānī, *al-Jāmi'*, 214; al-'Aynī, *al-Bināya*, 5:302-04; al-Zayla'ī, *Tabyīn*, 3:186.

[105] Al-Shaybānī, *al-Jāmi'*, 216; al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-'Aynī, *al-Bināya*, 5:305; al-Zayla'ī, *Tabyīn*, 3:186-87. This is because Arabic possesses a dual form, thus the plural is used beginning with three.

it.[106] A wife who uses the terminology "*māl* in my hand" while holding nothing, is one who is clearly giving her husband cause to expect compensation since she has made a specific reference to *māl*. Consequently, she becomes liable to paying him her *mahr*.[107] The *mahr*'s frequent presentation as a reasonable form of *badal* and its use as such when there is doubt about what was intended as compensation, compels us to wonder about its very function in a *nikāḥ*.

### 1.6 The Function of *Mahr*

We earlier noted that *nikāḥ* is a classic contractual agreement where husband and wife trade for the sexual availability of the latter. The husband is required to present the wife with a suitable *mahr* as previously agreed upon. Typically, the *mahr* is divided into two portions: (1) an advance payment to be delivered to the bride before consummation of the marriage and payable upon the conclusion of the contract, and (2) a deferred part, generally settled (as a matter of practice) when and if the contract is terminated. A wife who has not been paid her full advance portion of the *mahr* can and should refuse her husband's sexual advances.[108] Indeed, jurists insist on her right to deny him sexual access as well as her right to freedom of movement as long as the portion of the *mahr* due to her has not been received.[109] In addition to this, a woman contracting a *nikāḥ* is offered an adequate *nafaqa* (maintenance) that should cover her general

---

[106] Al-Kāsānī, *Badā'i'*, 3:148; al-Ūzjandī al-Farghānī, *Khazee-Khan*, 2:350.
[107] Al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-'Aynī, *al-Bināya*, 5:306; al-Zayla'ī, *Tabyīn*, 3:186-87.
[108] Al-'Aynī, *al-Bināya*, 4:719-20; Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:134.
[109] In his work on nineteenth-century Palestine, Mahmoud Yazbak reports that when the husband consummated the marriage before providing his wife with the advance *mahr*, the *qāḍī* forbade him from having sexual relations with his wife unless the advance *mahr* is paid, see Yazbak, "Minor Marriages," 396-409.

expenses such as clothing, food, and housing.[110] The Ḥanafī jurists determine *nafaqa* according to what is sufficient for a wife to live decently.[111] The *nafaqa*, other than being due as a result of his obligation to care for his wife and children, is an obligation that arises from his right to confine her to the home.[112] The sexual availability of the wife being the *raison d'être* of the *nikāḥ*, her movements and autonomy are seriously constricted. This grants the husband the right of confinement for his benefit (*ḥaqq al-iḥtibās li-manfa'atihi*), that is, the right to control her movements and to confine her to his home in case he should wish to implement his due rights.[113] Linguistically, *iḥtibās* is defined as the imprisonment of a person with an implied idea of personal benefit accruing to the imprisoner from that confinement.[114] Thus, the husband is given the right to detain his wife in their home on the grounds that he may need to exercise his conjugal right to sexual enjoyment. Thus, while the *mahr* is given in exchange for sexual relations, the *nafaqa* is given in compensation for the wife's restricted lifestyle.

Consequently, the fact that her right to the *nafaqa* expires following *khul'* should come as no surprise, since a wife who is bargaining her way out of the *nikāḥ* is a wife whose husband will no longer have the right to confine her. The loss of her deferred *mahr* is also justified by her wish to terminate the contract of sexual availability. What is contentious about this issue is the concept of the entire *mahr* as an appropriate *badal*. Indeed, taking back from a wife the advance *mahr* she was given to allow a husband sexual enjoyment while at the same time relinquishing her right to obtain the deferred portion of that *mahr* seems unjust when that same wife has already granted her husband

[110] Wizārat al-Awqāf, *al-Mawsū'a*, 41:34-37.
[111] Ibid., 41:39.
[112] Ibid., 2:68.
[113] Ibid., 1:375.
[114] Ibid., 2:66-68.

sexual access. Another case in which Abū Ḥanīfa requires that the wife lose the totality of the *mahr* – even after the consummation of the marriage – is when *khul'* occurs before she has taken possession of her *mahr*.[115] A closer look at the cases involving the return of the *mahr* as *badal* reveals that this procedure is not a standard one, but rather a solution to cases where there is doubt over the intended compensation. A wife who asks for *khul'* in return for the *māl* in her hand while holding nothing is guilty of misleading her husband. Her clear reference to monetary compensation compels her to offer him something of value, hence the *mahr*. Knowing that a wife who has not been paid her full advance portion of the *mahr* can and should refuse her husband's sexual advances, her losing the totality of the *mahr* if not received before consummation could well be a means to discourage a wife from allowing her husband sexual access without taking prior possession of her *mahr*. Thus, returning the totality of the *mahr* functions as a deterrent, since the wife should have known better and – depending on the case – refrained from alluring her husband, or should have secured her *mahr* before allowing him sexual access. The same penalty applies when a *ṭalāq* takes place as a result of the husband's uttering of *khala'tuki*. His failure to mention *māl* and take her consent into consideration will result not only in separation from his wife but also the obligation of paying her the post-marital rights she would deserve in case of *ṭalāq*.[116]

---

[115] Al-Shaykh Niẓām et al., *al-Fatāwā al-Hindiyya*, 1:489-90.
[116] Ibn 'Ābidīn, *Radd al-Muḥtār*, 3:440.

## 1.7 Conclusions

The Ḥanafī literature on *khul'* is uniform and systematic; the jurists' legal opinions are generally in harmony. One difference of opinion has been noted: whether taking more than the *mahr* from one's wife is acceptable (*mubāḥ*) or detestable (*makrūh*) on the moral level. In their understanding of *khul'* as a pure trade-related contract like any other, and thus applying to it the classic rules of *bay'*, *yamīn*, or *mu'āwaḍa*, the Ḥanafī jurists voluntarily deviated from the texts, justifying their position by a distinction between the legal and the moral spheres. In contrast to the first case of *khul'* in Islam – which was adjudicated by none other than the Prophet himself – initiation and consent are privileges given to both parties and *khul'* does not take place if the husband does not approve it. With regards to the circumstances that justify recourse to *khul'*, the jurists – in contrast to the many Qur'ānic verses they themselves cite – allow a *nāshiz* husband to accept compensation from a blameless wife as long as she is not coerced. As for the limit of compensation, the position of the Prophet and Q.2:229 are once again disregarded, since the jurists choose to apply the absolute extent of the ransoming notion.

As a result, the position of the husband has been strengthened while the wife finds herself completely at his mercy. Consequently, a wife whose husband is understanding and moderate is one who will be able to leave him with a measure of ease and dignity. As for the wife who has the misfortune to find herself with a ruthless and greedy husband who attaches less importance to being a good Muslim than to acquiring greater material wealth (as will be discussed in the following chapters) she must remain trapped

until she finds means to buy her way out. Alternatively, the unhappy wife can address the court seeking *tafrīq*. This procedure dissolves the marriage following some financial loss on the part of the wife. However, it seems that *tafrīq* has become – with time – a long process, thus leading many wives to favor reverting to *khul'* instead.[117] In such a case, one can easily assume that the desperate wife – who can no longer tolerate her marital situation – will willingly give up everything she owns, down to her very *'iqāṣ* ! But what was the real-life practice of *khul'* in the Islamic world? Did husbands show themselves more understanding and willing to compromise, or were they, rather, abusive – taking advantage of the preference they were given by the law? Can husbands of one century be shown to be more or less understanding than those of another? In order to address the practice of *khul'* – its historical application – Ottoman court records of the sixteenth-and seventeenth-century will next be analyzed for such light they can shed on the practical application of *khul'* in pre-modern times.

[117] This point will be further elaborated in chapter 3.

# Chapter Two: The Ottoman Application of *Khul'*

## 2.1 The Relevance of Ottoman Court Records

In order to draw a better picture of what jurists intended to accomplish through *khul'* within the social order, an analysis of sixteenth- and seventeenth-century Ottoman court records will be conducted in this chapter. This will permit us to approach the *fiqh* works from a new interpretive angle. Matters pertaining to the legal understanding of *khul'* (e.g. who was entitled to initiate it, under what circumstances, and what limits set on compensation) will be addressed in the Ottoman context. The work of Abdal Rehim Abdal Rahman Abdal Rehim on court records pertaining to the Moroccan community of sixteenth-century Ottoman Egypt will be essential to this task. The relevance of his work lies in that it presents a complete collection of cases pertaining to eight different courts adjudicating matters of personal status between 1525 and 1602.[118] Thus, the records presented by Abdal Rehim offer a unique series of cases dealing with commercial, social and personal legal matters which have not been pre-selected. Other scholarship assessing Ottoman court records on the basis of selected cases, such as may be found in the works of Ronald Jennings, Madeline Zilfi and Nelly

[118] Abdal Rehim's second volume of the *Documents of the Egyptian Courts Related to the Maghariba*, will be analyzed. The 361 court records available in this volume deal with every-day life situations of the Moroccan community (e.g. business transactions such as rent and sales registrations, suits involving assaults, inheritance cases, marriage agreements and divorce settlements). This thesis will limit itself to the analysis of the second volume, as it contains a considerable number of marriage and divorce cases, while the frequency of such cases in the other two volumes is insignificant. Indeed, out of the 361 total cases available in vol. 2, 78 deal with marriages and *khul'* requests. The cases pertain to the following courts: al-Zāhid, al-Ḥākim, Miṣr al-Qadīma, al-Qāhira, Bāb al-Sha'riyya, Qūṣūn, al-Barmashiyya, and Dasht.

Hanna, will also be referred to when comparisons are pertinent.[119] Less focus will be placed on these works, however, as the court records they present are the result of a personal selection aimed at a particular research interest. They are consequently insufficient, and at worst misleading for the purposes of this thesis, unless used only for comparison.

## 2.2 The Marriage Contract

It is unclear whether all marriages and divorces were registered in the court,[120] but the abundance of *nikāḥ* and *khul'* contracts recorded in the Ottoman *qāḍī*'s records (*sijillāt*) for Egypt either points to mandatory registration, or to a deliberate policy of documenting marriage agreements or their termination.[121] The Moroccan-Egyptian community's records examined by Abdal Rehim include the names (sometimes physical descriptions)[122] of the husband and wife, as well as the name of the wife's father and details of her status, if relevant. Remarkably, the wife's status is often indicated by the

[119] The works of Ronald Jennings on sixteenth-century Cyprus and seventeenth-century Kayseri present a number of selected court records pertaining to *khul'*. However, it is not clear how representative they are of other unpublished records. Madeline Zilfi's work on eighteenth-century Istanbul, in which she assesses *khul'* and cites several cases, is certainly a relevant comparative tool. Nelly Hanna's analysis of merchant family marriages in seventeenth-century Cairo is also a valuable comparative source, as her results and those pertaining to the Moroccan community in sixteenth-century Egypt are similar.

[120] Ronald C. Jennings, "Divorce in the Ottoman *Sharia* Court of Cyprus, 1580-1640," *Studia Islamica* 78 (1993): 157; Sveltana Ivanova, "The Divorce between Zubaida Hatun and Esseid Osman Aga," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira el-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 115; Nelly Hanna, "Marriage among Merchant Families in Seventeenth- Century Cairo," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira el-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 149-50; Madeline Zilfi, "We Don't Get Along: Women and *Hul* Divorce in the Eighteenth Century," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era,* ed. Madeline Zilfi (Leiden: Brill, 1997), 271-72.

[121] Abdal Rehim Abdal Rahman Abdal Rehim, "The Family and Gender Laws in Egypt during the Ottoman Period," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira el-Azhary Sonbol (Syracuse: Syracuse University Press, 1996), 104.

[122] Abdal Rehim Abdal Rahman Abdal Rehim, *Documents of the Egyptian Courts Related to the Maghariba*, 2 vols. (Zaghouan: Centre d'Études et de Recherches Ottomanes, Morisques, de Documentation et d'Information), 2:39, 163, 276.

terms woman (*mar'a*), virgin (*bikr*), reached puberty (*bāligh*) or minor (*qāṣira*), although the records sometimes refer to the female as woman (*ḥurma*) only.[123] The names of the *walī* (if his presence was required, or if one of the parties wished him to attend), the legal representative (*wakīl* (if solicited)),[124] and any of the witnesses present were also recorded. In 27% of the Moroccan-Egyptian marriage cases surveyed, it is clearly stated that the woman gave herself in marriage (*zawwajat nafsahā*), i.e., contracted her own marriage without the presence of a *walī* or *wakīl*.[125]

The value of the *mahr* and its clear breakdown into advance and deferred portions are also clearly stated in the records, as well as the method by which these were to be paid. The *mahr* was generally collected by the wife herself. In 58% of the marriage cases surveyed, the wife attested to having personally received the advance portion (*al-maqbūḍ bi-yadihā*, i.e., "received in her own hands"), usually placed at her disposal before the *nikāḥ* was registered in court.[126] In 18% of the records, there is no such specific reference, but we are made to understand that the advance *mahr* was indeed received through the formula "the parties agree as to its payment" (*muttafaq 'alā qabḍihi*).[127] Out of the 34 cases surveyed, the amount was not directly collected by the

---

[123] Ibid., 2:26, 27, 33, 50, 53, 54, 69, 72, 84-85, 86, 95, 125, 129, 152-53, 183, 185, 195, 226-27, 228, 231, 232, 233-34, 237, 258, 263, 268-69, 276-77, 277-78, 284, 286, 294-95, 303, 323, 326-27. For similar findings, see Hanna, "Marriage among Merchant Families," 143-54.

[124] Men and women often used the services of a legal representative (*wakīl*) to better ensure their legal rights. A discussion of the matter will follow in due course. For more on the role of the *wakīl*, see Ronald C. Jennings, "The Office of Vekil (Wakil) in Seventeenth Century Ottoman Sharia Courts," *Studia Islamica* 42 (1975): 147-69.

[125] The marriage records surveyed are not always specific on the matter, since statements such as "she married her fiancé" (*tazawajjat bikhāṭibihā*) could also mean that she gave herself in marriage; however, that the wife contracted her own marriage is undoubtedly stated in 27% of the cases, by the formula "she gave herself in marriage" (*zawwajat nafsahā*); see Abdal Rehim, *Documents*, 2:53, 54, 84-85, 129, 185, 258, 263, 268-69, 303.

[126] Ibid., 2: 33, 53, 54, 69, 84-85, 86, 95, 125, 129, 183, 185, 195, 233-34, 263, 268-69, 276-77, 277-78, 286, 323, 326-27.

[127] Ibid., 2: 26, 27, 228, 231, 258, 303.

wife in only 8 instances. The father received the advance of his daughter in three cases involving a minor,[128] a virgin contracting her first marriage,[129] and a woman who had not reached maturity (*rushd*).[130] In another instance, the woman provided her father with a legal proxy (*wikāla shar'iyya*), thus authorizing him as her *wakīl*.[131] In a fifth case, a mother collected the *mahr* of her minor daughter,[132] while in two other instances the woman chose to revert to a *wakīl* who received the advance on behalf of his client.[133] Finally, in a rather unusual case, the minor orphan girl Salīma received no advance *mahr*.[134]

[128] Ibid., 2:237.
[129] Ibid., 2:50.
[130] Ibid., 2:226-27. Note that in this case according to Ḥanafī *fiqh*, the father has the right to guardianship with power of coercion (*wilāyat al-ijbār*).
[131] Ibid., 2:284.
[132] Ibid., 2:294-95.
[133] Ibid., 2:72, 152-53.
[134] Ibid., 2:232.

The following chart shows a breakdown of the recipients of advance *mahr* according to the marriage records:

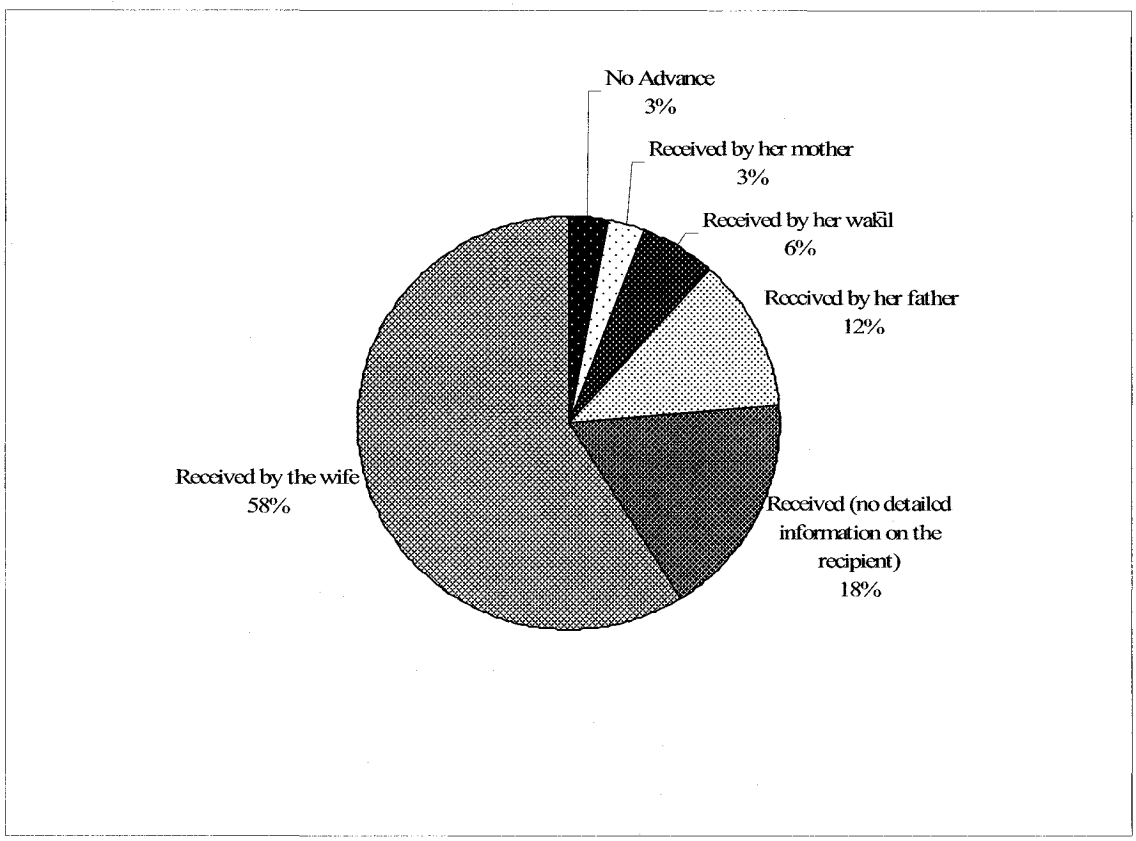



Figure 1: Collection of Advance *Mahr*

As for the deferred portion, there was little said beyond the standard formula "it is lawful to her upon his death or separation" (*taḥill lahā 'alayhi bimawt aw firāq*).[135] In terms of amount, the *mahr* constituted, in most cases, from 2 to 90 freshly minted gold *dīnār*s.[136] Some women were offered silver "halves" (*anṣāf*, sing. *niṣf*) instead, to the

[135] Ibid., 2:26, 33, 53, 54, 69, 72, 84-85, 86, 95, 125 ,129, 152-53, 183, 185, 195, 226-27, 228, 231, 232, 233-34, 237, 258, 263, 268-69, 276-77, 277-78, 284, 286, 294-95, 323, 326-27, in marriage cases, and 2:54, 115-16, 121-22, 124, 124-25, 185-86, 189-90, 193, 194-95, 220, 227-28, 317, in remarriages.

[136] These figures are intended to give a general idea about the *mahr* offered to the wife. The records are not always very specific as to what type of gold or silver the wife is offered, and the value of the gold or silver most certainly differs – although not significantly – according to its type. This data is especially relevant when determining how much was received by the wife in advance; ibid., 2:26, 27, 33, 50, 53, 69, 84-85, 86, 95, 125 ,129, 152-53, 183, 185, 226-27, 228, 232, 233-34, 237, 263, 268-69, 276-77, 277-78,

extent of anywhere from 80 and 600 *nisfs*,[137] with each *dīnār* equaling forty *nisfs*.[138] Women frequently requested that a greater portion of the *mahr* be paid in advance, but this was not always the case that they requested it.[139] The absence of advance *mahr* was not uncommon in remarriages – where the same couple was contracting a new *nikāḥ* – since the woman had already obtained compensation in advance when negotiating the conditions of the previous marriage.[140] Yet in 30% of the cases where the same couple decided to remarry, the woman managed to secure the entire *mahr* in advance.[141] In another 18% of the cases, the woman received an advance portion and was guaranteed a deferred one.[142] Thus, experience from previously contracted marriages as well as social status and strong family ties seem to have played a crucial role not only in determining the amount of the *mahr*, but payment modalities and any additional rights to be granted to the woman via stipulations inserted in the *nikāḥ*.[143] It is therefore not surprising that the only case where a wife received no advance payment was that of Salīma, who, though contracting a new marriage, was in fact a minor and an orphan.[144] The woman Zaynab – presumably of a poor background – received, for her remarriage following two

---

284, 286, 294-95, 323, 326-27, and 2:16, 38-39, 54, 59-60, 76-77, 115-16, 121-22, 124, 124-25, 138, 193, 220, 227-28, 317. In one case (2:124) – though not representative – the woman received ¼ of a *dīnār* only. As for the maximum amount, a certain 'Ā'isha (2:226-27) received a *mahr* of 70 *dīnārs*, in addition to a set of household items estimated at 20 *dīnārs*.

[137] Ibid., 2:54, 72, 195, 231, 258, 303, and 2:185-86, 189-90, 194-95.

[138] Ibid., 2:59, 69, 286.

[139] Ibid., 2:26, 27, 33, 50, 72, 86, 95, 152-53, 183, 226-27, 228, 237, 263, 323. While the advance portion is higher in 43% of the marriage cases, women receive higher deferred portions in only 24% of the records (2:53, 54, 195, 231, 232, 233-34, 276-77, 326-27), and the *mahr* is divided into 2 equal portions in the remaining cases (2:69, 84-85, 125, 129, 185, 258, 268-69, 277-78, 284, 286, 294-95).

[140] Ibid., 2:54, 115-16, 124, 124-25, 185-86, 189-90, 193, 194-95, 317.

[141] Ibid., 2:16, 38-39, 59-60, 76-77, 138.

[142] Ibid., 2:121-2, 220, 227-28.

[143] This point will be further elaborated in due course.

[144] Abdal Rehim, *Documents*, 2:232.

previous *khul'*s, one fourth of a *dinār* only, with no conditions attached to her third marriage.[145]

As far as the *nafaqa* was concerned, a number of the marriage contracts clearly stipulate the amount to be spent on the wife's maintenance,[146] rather than affirming that she was entitled to the customary allowance (*kiswatuhā al-shar'iyya*).[147] The amount specified as *nafaqa* ranges from a monthly payment of 3 *nisf*s of silver to 20, in the case of a woman of high society referred to in the records as "the lady of all" (*sayyidat al-kull*).[148] While Ḥanafī law does not consider the husband's failure to maintain a wife as reasonable grounds for divorce, it does require that the husband be imprisoned in such an eventuality;[149] and indeed, court records attest to husbands being held in custody for failing to support their wives.[150] Thus, seemingly to avoid such chastisement, husbands are recorded as having pledged to pay their wives within a certain timeframe or else immediately grant them a divorce. As a case in point, had Khadīja's husband failed to uphold his promise of paying her the clothing allowance (*kiswa*) and *nafaqa* he owed her within the space of a month, she was to be granted a single, irrevocable divorce.[151]

---

[145] Ibid., 2:124.
[146] Ibid., 2:26, 27, 33, 53, 54, 69, 72, 84-85, 86, 125, 129, 185, 195, 226-27, 228, 231, 232, 233-34, 237, 258, 263, 268-69, 276-77, 284, 294-95, 323, 326-27, and 2:16, 54, 59-60, 76-77, 115-16, 121-22, 124, 124-25, 138, 185-86, 189-90, 194-95, 220, 227-28, 317. For similar findings, see Hanna, "Marriage among Merchant Families," 148-49.
[147] Abdal Rehim, *Documents*, 2:50, 95, 152-53, 183, 277-78, 286, 303, and 2:38-39, 193.
[148] Ibid., 2:53.
[149] El-Nahal, *Judicial Administration*, 46-47; Abdal Rehim, "Family and Gender," 105.
[150] Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005), 53; el-Nahal, *Judicial Administration*, 44.
[151] Abdal Rehim, *Documents*, 2:184. The formula used in the record reads as follows:
"وعلق لها على نفسه برضاه، انه متى مضى شهر تاريخه، ولم يصرف لها ذلك، تكن طالقا طلقة واحدة، تملك بها نفسها."

## 2.3 The Additional Stipulations

A majority of the Moroccan-Egyptian community's marriage records include various stipulations – several of them contrary to Islamic law – with the standard statement: *'allaqa lahā 'alā nafsihi biriḍāh* (he, the husband, willingly imposed upon himself).[152] By this formula, the husband willingly bound himself – presumably at the request of his wife, or at least in order to please her – to one or more conditions that became fixed in their marriage contract. The most common stipulation encountered in the records surveyed is that of forbidding a husband from taking another wife, pointing to the unacceptability of polygamy – a major cause of divorce.[153] Despite the permissibility of polygamy in the opinion of all schools of law, a wife who stipulated in her *nikāḥ* that she be granted a divorce if her husband took another wife, always saw her condition upheld in the event that he did so.[154] Even though the Ḥanafī school did not support clauses that contradicted what was legally allowed, once agreed upon, these conditions became binding.[155] Polygamy-related stipulations are found in 34% of the

---

[152] Abdal Rehim, *Documents*, 2:50, 53, 69, 84-85, 86, 125, 129, 206-07, 226-27, 228, 233-34, 263, 276-77, 277-78, 286, 294-95, and 2:16, 38-39, 54, 76-77, 115-16, 121-22, 138, 185-86, 193, 227-28.

[153] The social unacceptability of polygamy was not peculiar to the Moroccan community in Egypt. For more on this issue, see Abdal Rehim, "Family and Gender," 107; Ivanova, "The Divorce," 116-17; Yossef Rapoport, *Marriage, Money and Divorce*, 86; Zilfi, "We Don't Get Along," 294; Ronald C. Jennings, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640* (New York & London: New York University Press, 1993), 29,36.

[154] Hanna, "Marriage among Merchant Families," 148.

[155] Ibid., 147. The cases of the Moroccan community were for the most part addressed to a Ḥanafī judge, perhaps being that the official school adopted by the Ottomans was the Ḥanafī one. However, the records demonstrate that a shift in the choice of *qāḍī* generally depended on the geographical location of the couple. Indeed, while the Ḥanafī school dominated the Cairo area, the Mālikī was more popular in Upper Egypt, and the Shāfi'ī in the Nile Delta, see Abdal Rehim, "Family and Gender," 97. In his work on seventeenth-century Ottoman Egypt, Galal el-Nahal reveals that cases of divorce initiated by women were handled by a Ḥanbalī *qāḍī* (as the Ḥanbalī school enforced any agreed upon stipulation); see el-Nahal, *Judicial Administration*, 46-47. This does not seem to have been the case for the Moroccan community, however, as most divorce cases were addressed to a Mālikī or Ḥanafī judge. For a discussion on the Ḥanafī school's position with regards to marriage stipulations, see Ron Shaham, "State, Feminism and Islamists -

marriage cases.[156] In fact, in one case the bride even imposed on her husband a deadline to divorce a previous wife,[157] while in other instances the wife specifically stated that her husband not return to his divorced wife.[158] Another popular stipulation emphasizing the importance of family ties prevented the husband from moving his wife to another location without her approval.[159] In another instance, it was stipulated that the husband not refuse housing his mother-in-law.[160] Forbidding the husband to take a concubine,[161] or to leave his wife without *nafaqa* for a period between 10 days and 6 months,[162] as well as denying him the right to inflict harsh beatings, [163] were also common stipulations. Should the husband fail to uphold such conditions, the wife was entitled to leave the marital relationship by means of a single irrevocable divorce by which she regains control of herself (*ṭalqa wāḥida, tamluk bihā nafsahā*).[164] Should the husband have not pronounced the *ṭalqa*, one can easily imagine that the wife would have approached the *qāḍī* for a judicial separation (*tafrīq*) on the basis that the husband had failed to uphold his promise.[165]

Another recurrent stipulation was that of women bringing children from a previous marriage to a new union, according to which the new husband was required to

---

the Debate over Stipulations in Marriage Contracts in Egypt," *School of Oriental and African Studies* 62,3 (1999): 463.

[156] Abdal Rehim, *Documents*, 2:69, 84-85, 86, 125, 206-07, 226-27, 228, 233-34, 263, 276-77, 286, 294-95.

[157] Ibid., 2:125.

[158] Ibid., 2:53, 226-27.

[159] Ibid., 2:69, 84-85, 226-27, 228, 277-78, 294-95. In record 2:228 the husband is required not to distance his wife from the protection of her two parents. Some records clearly specify that the husband not change the current domicile of his wife without securing her approval: 2:50, 276-77, 286.

[160] Ibid., 2:53.

[161] Ibid., 2: 84-85, 86, 206-07, 226-27, 228.

[162] Ibid., 2: 129, 206-07, 228, 233-34.

[163] Ibid., 2:233-34, 294-95.

[164] Ibid., 2:50, 53, 69, 84-85, 86, 125, 129, 206-07, 226-27, 228, 233-34, 263, 276-77, 277-78, 286, 294-95.

[165] Abdal Rehim, "Family and Gender," 105.

provide support for these children.[166] Thus, it would seem that having children by another man did not prevent women from remarrying, nor did it compel them to lose custody of their offspring.[167] Indeed, Ottoman women frequently kept their children beyond the age at which they might otherwise have had to be surrendered to their father.[168] These women required that their new husbands acknowledge that they had children by another man, and pledge to support them financially.[169] It is impossible, however, to attribute a proportion to such stipulations since the records do not mention in each case whether the woman contracting a new marriage, or remarrying a previously divorced husband, had children from another marriage. This information is only available to us insofar as child-related stipulations were included in the *nikāḥ*. It should also be pointed out that none of the records contain assertions by the husband that he would not shoulder financial responsibility for his wife's children by a previous husband.

Not only was remarriage common, but it seems to have been the logical step after divorce. Women seem to have rapidly remarried, negotiating higher dowers with a much larger advance payment and adding other stipulations to their marriage contracts.[170] Interestingly, the Moroccan-Egyptian records contain many cases of women remarrying the same husband they themselves requested to be divorced from

---

[166] Abdal Rehim, *Documents*, 2:69, 72, 263, and 2:54, 76-77.

[167] Abdal Rehim, "Family and Gender," 110-11. In a single record of the Moroccan community, the husband filed a suit against his wife requesting custody of his daughter. This resulted from the mother's remarriage to another man who had no right to custody (*lā haqqa lahu fil-ḥaḍāna*); see Abdal Rehim, *Documents*, 2:215. Ḥanafī doctrine dictates that a woman loose custody of her children upon remarriage, unless the new husband is consanguinous (*maḥram*) to the child.

[168] Abdal Rehim, "Family and Gender," 108-09. Ḥanafī law grants custody to the mother up to the age of 7 in the case of a boy, and 9 for a girl.

[169] Abdal Rehim, "Family and Gender," 108-09; idem, *Documents*, 2:54, 69, 72, 76-77, 263.

[170] Abdal Rehim, "Family and Gender," 109. While the remarriage records pertaining to the Moroccan-Egyptian community indicate that 30% of women returning to their husbands requested a full *mahr* in advance (2:16, 38-39, 59-60, 76-77, 138), this is only true in one of the marriage records; idem, *Documents*, 2:27.

earlier on.[171] In 3 out of 4 such cases, the woman is returning to her husband following a *khul'*.[172] Thus, it may be that *khul'* was sometimes used by women to punish their husbands by leaving them. These men then inclined to re-propose to their previous wives, binding themselves to her conditions and often providing her with her full *mahr* in advance.[173] Some 59% of women returning to their previously divorced husbands made stipulations similar to those of women contracting new marriages, the difference being that such stipulations were often more specific.[174] Indeed, already familiar with her husband's character, and wanting to protect herself, the wife seems to have forbidden him from engaging in certain actions – even if lawful ones – or at least to have compelled him to grant her yet another divorce should he fail to uphold her conditions. The Moroccan Laṭīfa returned to her husband after a previous *khul'* and *faskh* on the condition that, should he be absent for one night without a legally justified reason or for five consecutive days without providing her due *nafaqa*, she was to be given a divorce (after returning one of the 140 *nisfs* due her as deferred *mahr*).[175] In another case, the woman Sutayta agreed to return to the man she had divorced earlier, requiring (along with the right to divorce him should he take another wife or return to a previous one) that he accept her children by another man.[176] In another instance, the wife returned to her husband requesting a full advance *mahr*, and stipulated that she be given a divorce

---

[171] Abdal Rehim, *Documents*, 2:16, 38-39, 54, 59-60, 76-77, 115-16, 121-22, 124, 124-25, 138, 185-86, 189-90, 193, 194-95, 220, 227-28, 317. The records indicate that 33% of the women appearing in marriage or remarriage cases are returning to their husbands. Interestingly, in two instances the wife returns to her previously divorced husband after a divorce from yet another man (2:54, 115-16).

[172] Ibid., 2:38-39, 54, 76-77, 115-16, 121-22, 124, 124-25, 138, 185-86, 193, 220, 227-28, 317; are all cases involving a remarriage following a *khul'*.

[173] This is clearly indicated in 30% of remarriages; ibid., 2:16, 38-39, 59-60, 76-77, 138.

[174] Ibid., 2:16, 38-39, 54, 76-77, 115-16, 121-22, 138, 185-86, 193, 227-28.

[175] Ibid., 2:185-86.

[176] Ibid., 2:54.

should her husband take an additional wife or concubine, beat her, move her from her current domicile, leave her for a month without *nafaqa*, request that she leave Cairo (against her will), forbid her from pursuing her profession as a silk worker, or leave her without legally valid reasons for two nights.[177] The wife then allowed her husband to reside in her home as long as they remained married.[178] Women who returned to their husbands often stipulated – almost at the same frequency as those contracting first time marriages, or marriages with a new mate – that they not be forced to move from their place of residence, thus emphasizing the importance of family ties.[179] In one case the woman even requested that she not be separated from the protection of her mother.[180]

In 29% of the remarriage cases surveyed – versus 6% of the new marriages – the wife stipulated limits on her husband's right to beat her.[181] Corrective chastisement is allowed by the Qur'ān, but the clear ban on harsh beating leaving marks on her body (*ḍarb mubarriḥ yu'aththir 'alayhā atharahu 'alā jasadihā*)[182] in the Moroccan-Egyptian records gave real validity to the protection of women – who no longer at their first marriage seem to be more aware of their rights – from husbands who may have reverted to corrective chastisement.[183] Fearing that her husband might leave her without means of support also encouraged more remarrying women to bind him to the condition that

---

[177] Ibid., 2:16.
[178] Ibid.
[179] Ibid., 2:16, 115-16, 121-22, 227-28.
[180] Ibid., 2:227-28.
[181] Ibid., 2:16, 38-39, 115-16, 121-22, 227-28.
[182] Ibid. The statement slightly differs depending on the case. In record 2:227-28 the husband uses the statement " if I beat her with anger" (*ḍarabtuhā fī ghayẓ*).
[183] Q.4:34 has generally been understood to allow a husband to discipline his wife by hitting her lightly: "...But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek not means against them..." For a complete translation of Q.4:34, see *supra* note 70. Furthermore, on jurists' position – requiring that the beating be light – see al-Nawawī, *Rawḍat al-Ṭālibīn*, 7:367-71; Sayf al-Dīn Abī Bakr Muḥammad b. Aḥmad al-Shāshī al-Qaffāl, *Ḥilyat al-'Ulamā' fī Ma'rifat Madhāhib al-Fuqahā'*, ed. Yāsīn Aḥmad Ibrāhīm Darādka, 8 vols. (Mecca: Maktabat al-Risāla al-Ḥadītha, 1988), 6: 534-7.

she be divorced should he be absent from her.[184] Taking an additional concubine was also a concern for women remarrying,[185] although the most popular stipulation – the one against polygamy – increased to 41%.[186]

The following chart provides a comparison between the most frequent marriage and remarriage stipulations:[187]

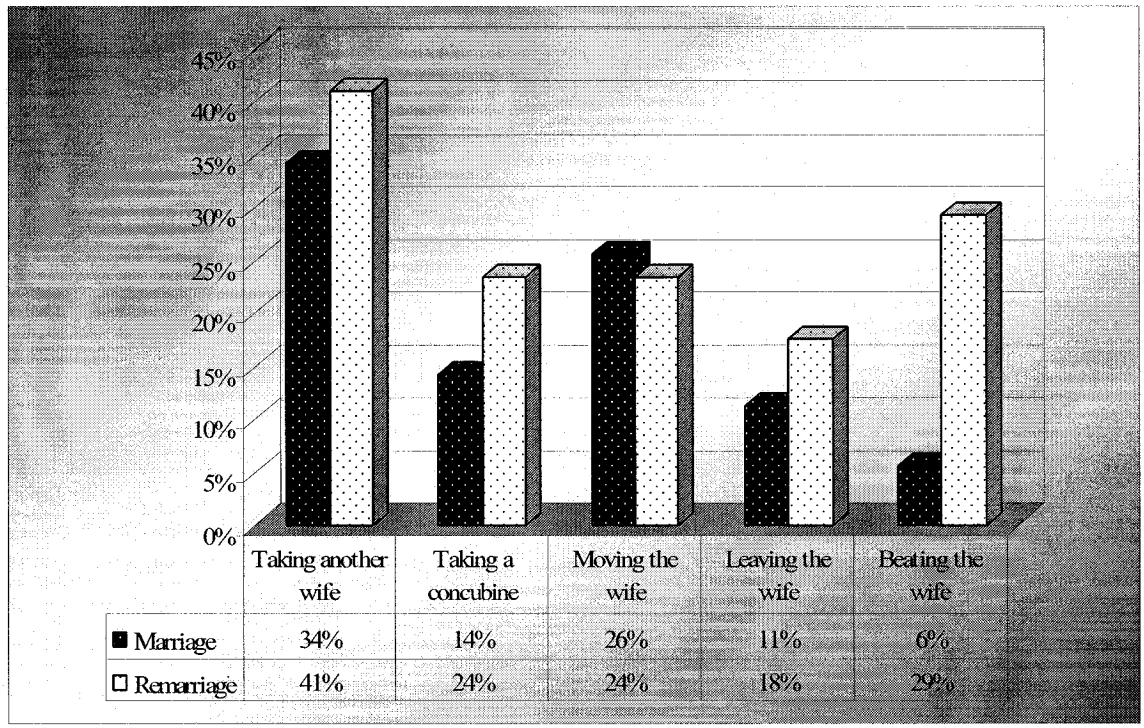



Figure 2: Comparative Analysis between the Marriage and Remarriage Stipulations

Interestingly, in one case the husband appears in court only to certify to the Ḥanafī *qāḍī* – in the presence, and most certainly at the request of, his wife – his pledge that, should he take an additional wife, a concubine, or leave his wife for a period of 10 days without maintenance, the latter will be granted a divorce in return for 1/8$^{th}$ of a

[184] Abdal Rehim, *Documents*, 2:16, 115-16, 185-86.
[185] Ibid., 2:16, 38-39, 76-77, 115-16.
[186] Ibid., 2:16, 38-39, 54, 76-77, 115-16, 138, 193.
[187] It is important to keep in mind that the records including stipulations generally contain more than one condition at a time.

*dīnār*.[188] The husband also certifies that her deferred *mahr* remains unaffected, and that he owes her unpaid *kiswa*.[189] Thus, it seems that women who had not inserted stipulations while contracting their *nikāḥ*s were provided with retroactive options.

Any breach of these stipulations entitled the wife to request a termination of the marriage, as her husband had previously agreed to bind himself to her conditions or allow her to leave in return (in a majority of cases) for a *badal*.[190] These Moroccan wives, for the most part, agreed to forfeit some amount – rather symbolic when compared to the *mahr* they were offered – should the husband fail to meet the conditions he had willingly accepted. Women generally surrendered only 1/8$^{th}$ or 1/4$^{th}$ of a *dīnār* depending on the agreement, while preserving their right to the deferred dowry.[191] In one document only, the woman returning to her husband stated that she would forgo her deferred *mahr* in addition to 1/8$^{th}$ of a *dīnār* should he fail to fulfill the conditions to which he had bound himself.[192] Compared to the *mahr* that these women received (ranging between 2 and 90 *dīnār*s), forgoing such a small fraction seems to have been of symbolic value. This procedure was presumably motivated by the fact that the

---

[188] Abdal Rehim, *Documents*, 2:206-07.

[189] Ibid.

[190] Ibid., 2:50, 53, 69, 84-85, 86, 125, 129, 206-07, 226-27, 228, 233-34, 263, 276-77, 277-78, 286, 294-95, and 2:16, 38-39, 54, 76-77, 115-16, 185-86, 193, 227-28. In two of the remarriage cases, no *badal* is mentioned (2:121-22, 138).

[191] 1/8$^{th}$ of a *dīnār* is forgone in 80% of the marriage cases, ibid., 2:50, 53, 69, 84-85, 86, 125, 129, 206-07, 226-27, 228, 276-77, 277-78; and 1/4$^{th}$ of a *dīnar* is relinquished in the remaining cases (2:233-34, 286, 294-95). As for remarriages, 1/8$^{th}$ of a *dīnar* is relinquished in 50% of the cases (2:16, 54, 115-16, 185-86, 227-28), 1/4$^{th}$ in 20% (2:76-77, 193), and no amount if forgone in another 20% of the cases (2:121-22, 138). The remaining 10% pertains to case 2:38-39, treated in the following note.

[192] Ibid., 2:38-39. What the wife relinquishes appears as follows: "من ثمن دينار و عن باقي صداقها ". One wonders if this is not a typographical error where "and from" (*wa 'an*) should not be "out of " (*min*), thus turning the *badal* into the (customary) 1/8$^{th}$ of a *dīnār* from her deferred *mahr*. Typographical errors are not uncommon in the records, and examples are to be found in record 2:16, where "she asked" is spelled "*sa'alaf*" instead of *sa'alat*. More importantly, an extra "*wa 'alā*" seems to have been inserted in the record 2:147-48, as the wife – requesting *khul'* – proposes to her husband 6 *dīnār*s in addition to her deferred dower amounting 6 *dīnār*s (*'alā sitat danānīr ... wa 'alā mu'akhkhar ṣaḍāqihā 'alayhi*), however, it is later stated in the same record that the husband received the 6 *dīnar*s agreed upon and has nothing more to request from his wife.

Ḥanafī school of law refuses to enforce stipulations contrary to what is legally accepted by the school itself (such as allowing a wife to separate from a husband who takes an additional wife, or from one who leaves his wife without *nafaqa*). Thus, it seems that the amount forfeited by the wives in order to obtain separation symbolically represented the sacrifice of something of financial value (typical of the compensation clause in any contract), even when their reasons for terminating the marriage would not have been deemed valid by Ḥanafī law. As for a woman who wanted to separate from a husband who had not breached any condition, she could always revert to *khul'*.

## 2.4 The *Khul'* Records

In Ottoman court records, generally speaking, there appear more cases of *khul'* than any other type of divorce.[193] There is no clear explanation as to why *khul'* outnumbered other divorces, leaving one – as is often the case when analyzing court records – to speculate on the matter. A possible reason for this abundance of *khul'* cases might be that a husband wishing to separate from his wife would presumably have resorted to *khul'* rather than *ṭalāq* in order to be exempted from the financial liabilities made incumbent upon him by the latter procedure. The peculiarity of *khul'* lies in the fact that it can also be initiated at the request of the wife, who may resort to *khul'* without having to prove to a *qāḍī* that she has suffered from *ḍarar*, thus making it more accessible than other types of divorce. Another explanation stems from the fact that the presence of a *qāḍī* is not deemed necessary in the case of *ṭalāq*. Indeed, Islamic law

[193] Jennings, "*Sharia* Court of Cyprus," 157; Judith E. Tucker, "Ties that Bound: Women and Family in Eighteenth- and Nineteenth-Century *Nablus*," in *Women in Middle Eastern History, Shifting Boundaries in Sex and Gender*, ed. Nikki R. Keddie and Beth Baron (New Haven: Yale University Press, 1991), 241.

grants the husband the right to repudiate his wife without any court involvement, the only condition being that he assure her the post-marital rights due in case of divorce. The presence of a *qāḍī* is not required in *khul'* cases either, as it is validated by the notion of mutual agreement, and can even be pronounced by the husband himself. Even in such circumstances, husband and wife may still feel the need to register this (or any other) type of divorce in court, and thus be provided with proof that separation did occur (such being mandatory in the case for a former wife wishing to remarry another) and that the conditions related to the separation are as agreed upon.[194] For all these reasons, *khul'* was a popular option, and accordingly makes a regular appearance in the records. Interestingly, the husband, wife or *wakīl* of either party appeared in court only to register the couple's settlement – not to dispute the issue.[195]

The Cypriot records assessed by Jennings indicate that it was either the husband who initiated *khul'* (proposing to his wife that she renounce a certain sum in exchange for separation), or the wife (attesting that she renounced whatever she was willing to forego in return for her release from the *nikāḥ*).[196] In the Moroccan-Egyptian community cases surveyed by Abdal Rehim, however, *khul'* was always initiated by the wife who, in 85% of the cases, appeared in court in person and asked that her husband grant her *khul'* (*yakhla'uhā*).[197] A *wakīl*'s services were contracted in one instance where the woman was registering her second *khul'*,[198] while it was the father who carried the

---

[194] Ivanova, "The Divorce," 116-18.
[195] Jennings, "*Sharia* Court of Cyprus," 157-58; Abdal Rehim, *Documents*, 2:16-17, 24, 47-48, 49, 66, 89-90, 94, 103, 103-04, 120, 122, 126, 147-48, 198, 201, 222, 224-25, 237-38, 249-50, 256-57, 285-86, 304, 314, 320-21, 321, 327-28.
[196] Jennings, "*Sharia* Court of Cyprus," 158-67.
[197] Abdal Rehim, *Documents*, 2:16-17, 47-48, 49, 66, 89-90, 103-04, 120, 122, 126, 147-48, 198, 201, 222, 224-25, 237-38, 256-57, 285-86, 304, 314, 320-21, 321, 327-28.
[198] Ibid., 2:249-50.

function of a lawful legal representative (*wakīl shar'ī* ) in another.[199] The father proceeded on behalf of his daughter in two other cases, one concerning an unconsummated marriage,[200] and the other as he himself was directly involved in the dispute.[201] Indeed, 'Ā'isha's father started by offering her husband the totality of his daughter's *mahr* as *badal*, only to argue later for the restitution of the deferred portion of her *mahr* because in lodging 'Ā'isha himself, he was discharging the husband from his housing duty. Both parties then agreed that the father would take back the amount of the deferred *mahr* from the husband, in exchange for housing 'Ā'isha.[202] Thus, it was the significant involvement of 'Ā'isha's father in the case that prompted him to represent her. Otherwise, Moroccan-Egyptian community women, for the most part, appeared alone when asking their husbands to grant them *khul'*. This was less often the case in the records pertaining to Cyprus and Kayseri, where recourse to a *wakīl* was customary.[203] Indeed, Jennings asserts that occurrences of women representing themselves at court versus instances where they hired a *wakīl* were somewhat equal, and that many husbands were represented by agents as well.[204] That women had recourse to the service of a *wakīl* was, however, in no way a confirmation of their seclusion or removal from the public sphere. The fact that many did appear in person demonstrates that they were not denied the opportunity of personally presenting their cases. Furthermore, the *wakīl* was often another woman.[205] This recourse to a representative was more likely a privilege, as the *wakīl* was presumably better suited to

[199] Ibid., 2: 24.
[200] Ibid., 2: 94.
[201] Ibid., 2:103.
[202] Ibid.
[203] Jennings, "*Sharia* Court of Cyprus," 158.
[204] Ibid., 158-67; idem, *Christians and Muslims,* 32.
[205] Jennings, *Christians and Muslims,* 32.

handling the clients' cases, sparing them the burden of attending trials and possibly of traveling long distances.[206] Women were sometimes represented by their own sons,[207] or appeared together (with their sons) standing against the husband.[208] Consequently, women seeking *khul'* do not seem to have been singled out by their families or looked down upon.

Having demonstrated that the Ḥanafī interpretation of compensation is not bound by any upper limit, (thus allowing the husband to accept any compensation the wife willingly agrees to offer), one would be tempted to conclude that some husbands might have tried to take everything they could from their wives before granting them *khul'*. This, however, seems hardly to have been the case. The standard *khul'* procedure in Cyprus, Kayseri and Istanbul is as follows. First, a woman renounces her delayed dowry, *nafaqa* and *'idda*.[209] She also states that she agrees to give up any additional claim and that she accepts *khul'*.[210] The usual statement of the wives: "I renounce claim to *mahr* " pointed to a relinquishing of the deferred portion (the wife could not use words pointing to a return or reimbursement).[211] That being said, in a great majority of the cases surveyed, there were very specific references to the deferred dowry in which

---

[206] The recourse to a legal representative seems to have been customary in Cyprus and Kayseri, as men and women were represented by a *wakīl* even when they were only registering a separation. It is in cases where women were demanding their financial rights from their husbands – or litigating against others that they were in conflict with – that the presence of a *wakīl* was presumably the most helpful. For more on the recourse to a *wakīl*, see Dror Ze'evi, "Women in Seventeenth-Century Jerusalem: Western and Indigenous Perspectives," *International Journal of Middle East Studies* 27 (1995): 166.

[207] Jennings, "*Sharia* Court of Cyprus," 159.

[208] Abdal Rehim, *Documents*, 2:47, 198.

[209] Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records: The *Sharia* Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 18 (1975): 72-86; idem, "*Sharia* Court of Cyprus," 158-67; idem, *Christians and Muslims,* 28. This is also true in the records cited by Zilfi, "We Don't Get Along," 276, 281-82, 284, 286.

[210] Jennings, "*Sharia* Court of Cyprus," 157-58; idem, "Anatolian Kayseri," 53-114; Zilfi, "We Don't Get Along," 273.

[211] Jennings, "*Sharia* Court of Cyprus," 158-63; idem, "Anatolian Kayseri," 83-85.

the woman clearly stated that she renounced all claim to her deferred dowry (*mu'akhkhar*).[212] Although this seems to have been the general norm, it was not the rule. Women frequently offered more or less than the deferred portion of their *mahr*, depending on the case, and were sometimes even offered a *badal* themselves. In a case from the Kayseri records, a certain Ayna renounced her claim to her *mahr*, *nafaqa* and other rights and received a variety of goods as *badal*.[213] In another Kayseri case, the husband offered his wife a vineyard in exchange for *khul'*,[214] while the Cypriot woman Loize accepted some sheep and wheat.[215] Yet while some Ottoman husbands are reported to have requested from their wives an amount over and above the *mahr*, this was not a regular occurrence.[216]

The matter was undeniably different in the eight courts surveyed pertaining to the Moroccan-Egyptian community, as the wife did not systematically renounce her deferred *mahr*, *nafaqa* and *'idda*. The deferred portion of the *mahr* was relinquished in 34% of the cases,[217] while other post-marital rights were foregone in addition to the deferred *mahr* in 12% of the cases.[218] Yet, even in such examples as these, the husband generally made concessions in return. In one of the cases where the deferred (amounting to 2 *dīnārs*) was relinquished, the husband accepted to forgo his right to the 28 *dīnārs*

---

[212] Jennings, "*Sharia* Court of Cyprus," 158-63; idem, "Anatolian Kayseri," 83.
[213] Jennings, "Anatolian Kayseri," 83.
[214] Ibid., 85.
[215] Jennings, "*Sharia* Court of Cyprus," 159-60.
[216] Abdal Rehim, "Family and Gender," 105-06.
[217] Abdal Rehim, *Documents,* 2:47-48, 66, 89-90, 147-48, 201, 224-25, 314, 320-21, 304. In one case (2:204), the husband was entitled to the deferred *mahr* and a velvet cushion. Also, see *supra* note 192, the woman Ma'ashūq (2:147-48) proposed to return her deferred portion of the *mahr* amounting to 6 *dirhams*, along with another 6 *dirhams*. It is later specified in the record that the husband received the 6 *dirhams* due, and that the parties have nothing more to request of one another. Thus, it seems that her *badal* amounted to 6 *dirhams* (the deferred). In light of this, the record has been classified – for the purposes of our statistics – as a case where the *badal* offered is the deferred *mahr*.
[218] Ibid., 2:49, 120-21, 222.

that his wife owed him.[219] In two other cases, the husband agreed to handle his wife's pregnancy expenses.[220] Where the wife renounces her right to the deferred *mahr* and *nafaqa* while pregnant, she normally does so because the husband pledges to later handle the *nafaqa* of their child, who generally remains in the custody of his mother.[221] Indeed, in a number of *khul'* cases surveyed, the natural fathers bound themselves – as one of the stated conditions – to support their children for a determined period of time, while they remained in the custody of their mothers.[222] The husband specifically agreed to grant custody to the mother who would keep the child for a period ranging between one and three years, during which time he would be responsible for the *nafaqa* of the child. The wife was then expected – upon expiration of her custody of the child – to appeal to the *qāḍī* in order to have it extended.[223] The typical statement concerning the husband was as follows: "he renounced custody of his child by her, whether she remarries or remains single" (*asqaṭa ḥaqqahu fīl-walad minhā, 'azbā' kānat aw mutazawwija*).[224] In 3 out of 4 cases, the wife retains sole custody whether she moves to live in a different location or stays where she is (*musāfira kānat aw muqīma*),[225] while the remaining records specify that the mother keeps her children regardless of her marital status and, of the father's domicile (rather than hers (*musāfir kāna aw muqīm*)).[226]

---

[219] Ibid., 2:66.
[220] Ibid., 2:314, 320-21.
[221] Ibid., 2:49, 120.
[222] Ibid., 2:16-17, 49, 120-21, 237-38, 249-50, 256-57, 285-86, 304.
[223] Abdal Rehim, "Family and Gender," 108-09.
[224] Abdal Rehim, *Documents*, 2:16-17, 120, 237-38, 249-50, 256-57, 285-86, 304. A similar formula is used in 2:49, as the child was left in the custody of his mother (*fī ḥaḍānat ummihi*).
[225] Ibid., 2:16-17, 237-38, 249-50, 256-57, 285-86, 304.
[226] Ibid.,2:49, 120-21.

It is noteworthy that 42% of the Moroccan-Egyptian wives paid a symbolic amount as *badal* – generally amounting to one *dirham* – and managed to secure their deferred rights.[227] In one case, a certain Qamar renounced a single silver *dirham* while taking in return some of the couple's shared household equipment, in exchange for her deferred rights.[228] In some of these cases, the *dirham* relinquished was accompanied by the *nafaqa*, yet, even then the husband was still liable to pay his wife her deferred *mahr*,[229] and it was not unusual for the *qāḍī* on such occasions to grant the husband the possibility of payment by instalments.[230] In one such case, this came about after the woman offered to compensate her husband with a portion of her deferred *mahr*, amounting to one *dīnār* out of four.[231] Thus it seems the financial burden did not systematically fall on the wife if the husband and wife were generally willing to compromise. Women in the Moroccan-Egyptian records surveyed were rarely compelled to return the advance portion of their *mahr*, neither were they asked to compensate their husbands from their own separate property. In the case of 'Ā'isha, the totality of the *mahr* was initially to be relinquished only as both parties had agreed that her father would reclaim the deferred portion of the *mahr*, in exchange for housing his daughter. The totality of the *mahr* was relinquished in only one case – that of a certain Sa'd, whose request for *khul'* preceded the consummation of her marriage.[232]

---

[227] Ibid., 2:16-17, 24, 103-04, 126, 198, 237-38, 249-50, 256-57, 285-86, 321, 327-28. Two silver *dirhams* were relinquished in record 2: 321.
[228] Ibid., 2:103-04.
[229] Ibid., 2:198, 327-28.
[230] Ibid., 2:16-17, 122, 198, 249-50, 321.
[231] Ibid., 2:122.
[232] Ibid., 2:94.

A proportional breakdown of *khul'*- related compensation from the Moroccan-Egyptian community record is as follows:

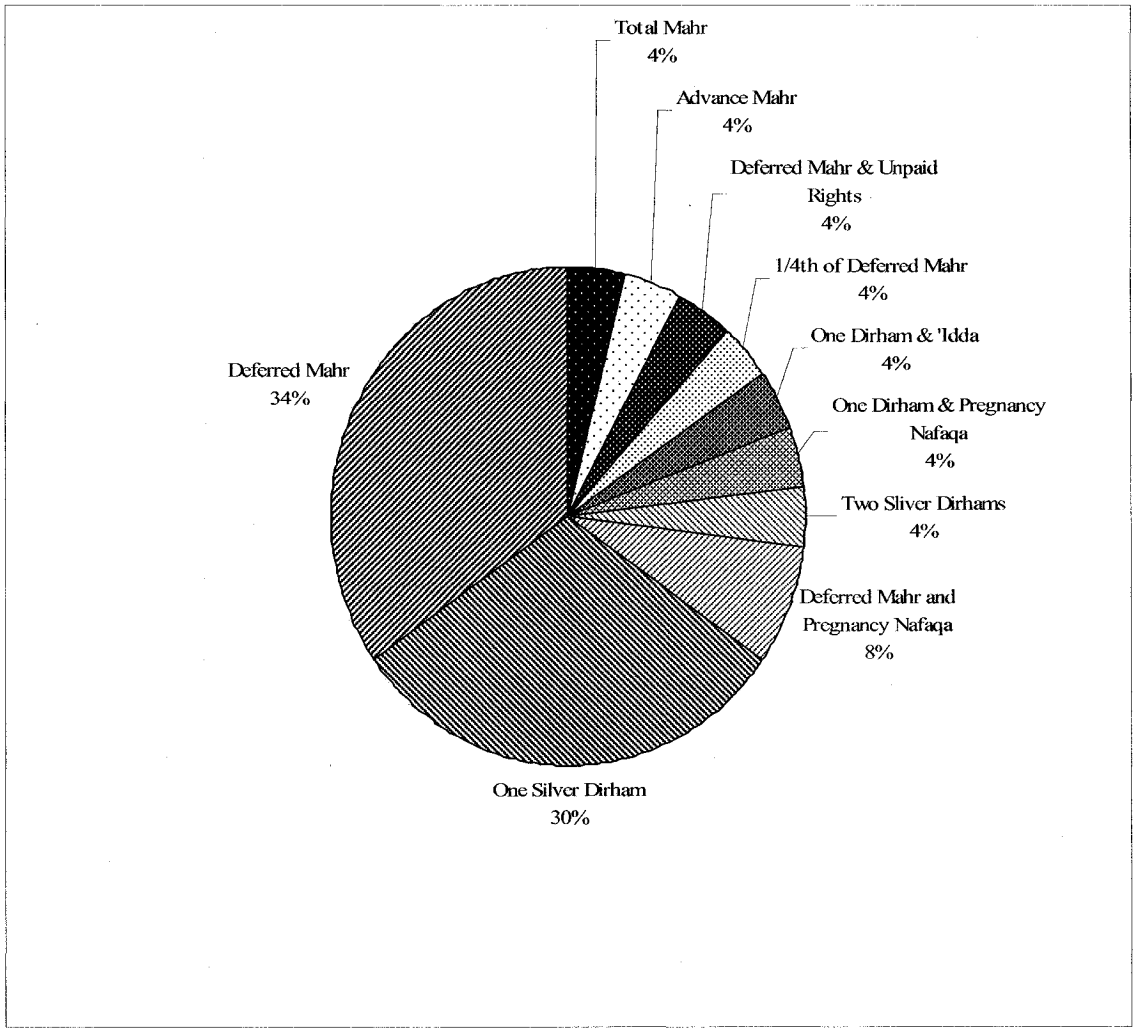



Figure 3: *Khul'*-Related Compensation [233]

After each party listed the rights incumbent upon the other, it was customary to include a detailed concluding statement in which both husband and wife attested, in very detailed and complete language – to the fact that they had nothing more to request

[233] The above chart is based on the 26 *khul'* cases surveyed (Abdal Rehim, *Documents*,), providing a general indication of the amount relinquished by women requesting *khul'*. All of the material reviewed in this thesis is not represented by the graph.

from one another.[234] The standard formulation included an assertion that neither party would later claim to any right, request, silver, gold, money, copper, fabric, *nafaqa*, *kiswa*, etc. Both parties also attested that they would forego any previous loan, claim, sum, etc. and confirmed that no demand would be made even in case of error in calculation or omission.

While the Moroccan-Egyptian cases do not mention the reasons why couples decided to part – this being immaterial in the event of *khul'* – the records pertaining to other Ottoman communities most often cite irreconcilable differences, a simple failure to get along, constant quarrelling, or even a need to separate due to sexual incompatibility.[235] Physical maltreatment was a less frequent reason.[236] The Moroccan-Egyptian records surveyed present no cases where the woman petitioned the court for *khul'* without having secured the acceptance of her husband, thus confirming that the couple used the court to register agreements previously obtained, rather than to settle a dispute. In addition, the frequency of *khul'* seems to indicate that husbands were generally willing to grant women *khul'* without – as has been demonstrated – taking all their rights away from them. On the contrary, seeing that Ottoman men were not limited to a particular amount, and could theoretically request any *badal* they so desired, they seem to have contributed to the compensation process themselves.

---

[234] The statements available in the records are more or less detailed according to the case. Below is a sample of the most specific formula encountered, ibid., 2:48:
"لا يستحق على الفريق الآخر حقا مطلقا، واستحقاقا ولا دعوى ولا طلبا بوجه ولا بسبب ولا فضة ولا ذهبا، ولا فلوسا ولا نحاسا ولا قماشا ولا اثاثا ولا مخبا ولا مدخورا، ولا صداقا ولا نصيبا من صداق، ولا كسوة ماضية ولا نفقة متجمدة، ولا علقة ولا تقريرا عنها، ولا دينا ولا عينا ولا بمسطور ولا بغيره ولا حسابا ولا غلطا في حساب، ولا جهالة ولا صيرورة ولا ضمانة ولا كفالة ولا سهوا ولا نسيانا ولا ذهولا، ولا جهالة ولا مالا من الاموال ولا حقا من ساير الحقوق على العموم والشمول والاستطراف، ولا شيئا من الاسباب كلها قليلها وكثيرها جليلها وحقيرها على اختلاف انواعها، وساير اجناسها، ولا قرضا ولا اقتراضا ولا قبضا ولا اقباضا، ولا ما تصح به الدعوى وتقام عليه البينة، وتتوجه بسببه الايمان والمطالبة، ولا شيئا قل ولا جل لما سلف من الزمان والى تاريخه."

[235] Ivanova, "The Divorce," 113; Jennings, "*Sharia* Court of Cyprus," 161-62; idem, *Christians and Muslims*, 28; Zilfi, "We Don't Get Along," 282.

[236] Ivanova, "The Divorce," 118.

## 2.5 Concluding Remarks

The application of *khul'* in the Moroccan-Egyptian cases surveyed seems to have been uniform, regardless of what school of law the consulted *qāḍī* belonged to. While both husband and wife could initiate a *khul'* procedure under Ḥanafī law, the Moroccan-Egyptian community's records indicate that it was customarily (or perhaps as the result of another school's influence) – the woman herself that did so.[237] In line with the Ḥanafī understanding of *khul'*, the woman did not petition the *qāḍī* to grant her *khul'*, but rather directed her request to her husband. Thus, although it was the wife who initiated the procedure, the consent of her husband remained mandatory. The circumstances leading to *khul'* seem to have been of minor importance as the records of the Moroccan-Egyptian community are silent on such matters. In other regions, the claim of incompatibility – echoing that of Ḥabība in the *ḥadīth* tradition – was deemed sufficient.[238] Indeed, the most important factor was a mutual agreement, and it seems that many couples did manage to reach an understanding outside the court, later appearing only to register their settlements. Thus, as long as she had a cooperative husband, a dissatisfied wife could hope for a resolution. Whatever the husband and wife agreed upon as *badal* stood as such, and the acceptance and payment of such compensation confirmed the *khul'*. Although the nature of the *badal* differed from one case to the next, it seems that it was not excessive or abusive, as husbands often found themselves compensating their wives themselves. One wonders if basic morality was not

[237] This could have resulted from the influence of the Malikī school, as *khul'* in Mālikī law is initiated by the woman, see Arabi, "Dawning," 8.
[238] Ivanova, "The Divorce," 113; Jennings, "*Sharia* Court of Cyprus," 161-62; Zilfi, "We Don't Get Along," 282.

what triggered such behavior: a husband's taking an excessive *badal* from the wife requesting *khul'* may have met with social condemnation.[239] Most *khul'* cases were adjudicated by a Mālikī judge, while in one third of the cases, a Ḥanafī *qāḍī* presided. Nothing in the *khul'* records reflects that the procedure differed from one school of law's application to the other.[240] Husband and wife were therefore presumably separated by either a single irrevocable divorce (if the *qāḍī* was Ḥanafī or Mālikī) or by an annulment (if the presiding *qāḍī* belonged to the Ḥanbalī school).[241] Should the same couple desire to re-marry, a new contract had to be drafted and a new *mahr* negotiated. The matter was clearly more complicated, however, in the case of a wife who had to deal with an uncooperative husband, i.e., one who refused to agree to *khul'*, as all schools of law make it impossible for her to be granted a *khul'* without his consent. Interestingly, while this did not seem to be an issue in the case of the Moroccan-Egyptian records surveyed, it has later become – as will be discussed in the following chapter – a matter of urgent concern.[242]

The variety of stipulations that women were able to insert in their *nikāḥ* contracts, thus allowing them to be granted a divorce while securing their rights should the husband fail to uphold his promise constitutes another important finding. Again, these stipulations seem to have been enforced in order to accommodate women, even

---

[239] In such case, excessive compensation would no doubt have also been discouraged by the *qāḍī*s themselves.

[240] The initiation and consent procedures are similar in all *khul'* cases. The *badal* offered differs from one case to the other, but nothing in the records indicates that a school of law favored some type of compensation over the other.

[241] *Khul'* records do not indicate how the couple was separated: the only information available is that the *khul'* occurred as per lawful ruling (*al-ḥukm al-shar'ī*). In all cases, it resulted in a single irrevocable divorce.

[242] Abdal Rehim relates cases where husbands refused to grant their wives *khul'*. In such instances, the jurists are reported to have granted the wife a judicial separation, after she relinquished some amount that was debated in court, see Abdal Rehim, "Family and Gender," 105-06.

when contrary to what is accepted by Ḥanafī law. Women time and again requested that their husbands not take an additional wife, move them to a different lodging, or leave them without means of support. Women also managed to obtain custody of their children rather than be separated from them upon remarriage or when they attained the legal age. In addition, fathers themselves systematically renounced custody and pledged to support their children even after the wife was married to another. New husbands, moreover, regularly agreed to support their wives' children by another father. Significantly, despite the fact that Ḥanafī jurisprudence refuses to enforce stipulations that counter what is allowed by Ḥanafī law, Ottoman *qaḍīs* – perhaps recognizing social reality – seem to have implemented such conditions. Stipulations were registered in the presence of the Ḥanafī judges themselves, and one assumes that these same judges would then see such conditions implemented. Ḥanafī law was thus shaped to fit societal needs. Notably, the amount required to be disbursed by the wife in case of breach of the marriage contract was also fair or even symbolic. This allowed a wife whose conditions were violated to leave the marriage contract without undo trouble. These findings will now be compared and contrasted with more "modern" applications in contemporary Egypt, with a view to shedding light on the effect that the rise of the nation-state and its legislative machinery has had on gender inequality. It would seem that the same flexibility has not always been shown in the modern period, despite the constant claims of reformers in promoting social harmony and yet greater levels of fairness between men and women.

# Chapter Three: The Modern Understanding & Application of *Khul'*: The Case of Egypt

## 3.1 Introduction

In this chapter, I will analyze some of the current options available to a contemporary Egyptian woman seeking termination of her *nikāḥ*. Specific attention will be directed to how modern reformers have constructed (or reconstructed) *khul'*, and how modern nation-states – in keeping with their claims at attempts to accommodate women's needs – have applied a reconstituted law of *khul'* to modern situations. The contemporary situation in Egypt is relevant to the theme of this thesis, as it will be contrasted with what we have learned of the Moroccan community living in Egypt under Ottoman rule. In addition, Egypt has witnessed substantial reform in the field of family law since the beginning of this century. Indeed, Egyptian reforms culminated in the introduction of "Law 1 of the year 2000" – which we will examine closely below – that modified the existing *khul'* procedure by allowing wives to obtain *khul'* without the approval of their husbands.[243] Obviously, such an exercise will require constant reference to pre-modern applications; parallels will thus be drawn between the classical positions of the Ḥanafī *fuqahā'*, Ottoman judges' application of the law, and contemporary positions expressed in personal status laws.[244] References to prophetic

[243] The case of contemporary Egypt will be analyzed based on its family law reform and on the works of Dawoud Sudqi el-Alami, Oussama Arabi, Aziza Hussein, Fauzi M. Najjar, Immanuel Naveh and Ron Shaham.

[244] The concept of personal status – according to which each individual follows the laws of its sect – originated in Middle-Age Europe, where some provinces favored the application of their customs and traditions as opposed to Roman Law. Consequently, and in order to accommodate those who were to travel to other provinces, rules pertaining to material matters were classified under "Real Status" (*Statuts*

*ḥadīth* will also be made, when pertinent. This continued reference to the past will permit us to compare and contrast the positions of classical Ottoman and present-day jurists when dealing with the needs and demands of dissatisfied wives wishing to terminate their *nikāḥ*s. In the process, the efficacy of Egypt's attempt at reform will be shown to be inadequate, and the question will be raised: Why are contemporary Egyptian women forced to struggle for rights that their Ottoman predecessors so freely possessed three centuries ago?[245]

### 3.2 Family Law Reform

Egypt in the first half of the twentieth-century witnessed extensive reform in the area of statutory laws.[246] By adopting the principles of selective choice and mixing (*takhayyur* and *talfīq*), legislators managed to adapt elements of Islamic family law to "modern" times.[247] Thus, various opinions could be selected from the diverse legal doctrines of different Islamic schools, or the positions of these schools might be knitted

---

*Reéls*), and those dealing with personal concerns under "Personal Status" (*Statuts Personnels*). Frequent travelers were required to apply the personal status laws of their place of origin; see Bachīr al-Bīlāni, *Qawānīn al-Aḥwāl al-Shakhṣiyya fī-Lubnān* (Cairo: Ma'had al-Buḥūth wal-Dirāsāt al-'Arabiyya, Qism al-Buḥūth wal-Dirāsāt al-Qānūniyya wal-Shar'iyya, 1971), 9-13.

[245] Egyptian women have recently taken up the struggle to obtain the right to divorce a husband who takes an additional wife. While Ottoman women were allowed to insert polygamy-related stipulations in their marriage contracts, this is no longer the case in Egypt today, as we shall see.

[246] For a discussion on Egyptian reform and its effects, see Dawoud Sudqi el-Alami, "Law No.100 of 1985, Amending Certain Provisions of Egypt's Personal Status Laws," *Islamic Law and Society* 1,1 (1994): 116-36; Arabi, "Dawning," 2-21; Dawoud Sudqi el-Alami and Doreen Hinchcliffe, *Islamic Marriage and Divorce Laws in the Arab World* (London: Kluwer Law International, 1996), 51-62; Immanuel Naveh, "The Tort of Injury and Dissolution of Marriage at the Wife's Initiative in Egyptian *Maḥkamat al-Naqḍ* Rulings," *Islamic Law and Society* 9,1 (2001): 16-41; Aznan Hasan, "Granting *Khul'* for a non-Muslim Couple in Egyptian Personal Status Law: Generosity or Laxity?" *Arab Law Quarterly* 18 (2003): 81-9; Ron Shaham, "Judicial Divorce at the Wife's Initiative: The *Sharī'a* Courts of Egypt, 1920-1955," *Islamic Law and Society* 1,2 (1994): 217-53; Fauzi M. Najjar, "Egypt's Law of Personal Status," *Arab Studies Quarterly* 10,3 (1988): 319-44.

[247] El-Alami, "Law No.100," 116; Arabi, "Dawning," 19-20.

together so as to produce a sort of amalgam ultimately belonging to no single school. These methods were put into effect in the elaboration of Laws 25 of 1920 and 1929, respectively, which contained provisions on family law matters.[248]

Prior to the elaboration of these laws, an Egyptian woman could obtain separation from her husband only as a result of his incapacity to consummate the marriage, or of his apostasy from Islam.[249] Egyptian legislators – adopting the Mālikī understanding of *ḍarar* (harm) – then broadened the acceptable grounds for a woman to request divorce so as to also include: (1) a husband's failure to provide his wife with *nafaqa;* (2) his contracting a serious incurable or contagious disease; (3) desertion in the form of extended absence or imprisonment; and (4) systematic maltreatment of his wife.[250] Nonetheless, those women who experienced other types of harm not recognized by the Mālikī school, or who were unable to convince the judge that they were truly experiencing *ḍarar*, remained hindered in their attempts to secure *khul'*. The recourse to *talfīq* was merely a partial solution in this case, as the reform did not tackle the major issues deemed problematic by many Egyptians, such as polygamous marriages, or the view that a wife taking a job is injurious.[251]

While Ottoman judges did not revert to the methods of *takhayyur* and *talfīq* as such, they nevertheless provided a remedy to women who needed additional guarantees from their husbands, or who requested separation for reasons deemed invalid by Ḥanafī

---

[248] El-Alami, "Law No.100," 116-36; Arabi, "Dawning," 2-21; el-Alami and Hinchcliffe, *Marriage and Divorce Laws*, 51-62.
[249] Arabi, "Dawning," 2.
[250] Naveh, "Tort of Injury," 16-41; Hasan, "*Khul'* for a non-Muslim Couple," 81-89; Arabi, "Dawning," 2. For a discussion on the reasons that judges – and their efforts to adapt to a changing social culture, see Ron Shaham's work based on Egyptian court records dating 1920 to 1955, see Shaham, "Judicial Divorce," 217-53.
[251] Naveh, "Tort of Injury," 29.

doctrine. In point of fact, Ḥanafī Ottoman judges accepted decisions issued by jurists from other schools of law as legally binding, precisely to accommodate women's needs.[252] In the same spirit, those records pertaining to the Moroccan community in Egypt clearly demonstrate that Ottoman *qāḍīs* systematically registered marriages where women had inserted a variety of stipulations, thus shaping the *nikāḥ* to fit their particular needs. Extracting the wife from her surroundings, beating her, failing to provide for her, taking an additional wife or concubine – all constituted unacceptable treatment in the opinion of many Ottoman women, who protected their future by inserting the relevant conditions.[253] Granting custody of her children to the mother – whether she remained single or not, and regardless of the identity of the new husband – as well as allowing her to retain it after her children had reached the legal age, were also common practices in Ottoman Egypt, as we have seen.[254]

While Law 25 of 1929 extended custody age in favor of the mother,[255] she lost her right of custody upon her remarriage to a non-relative.[256] Moreover, whereas in Ottoman times husbands generally granted custody to mothers regardless of their future

---

[252] Judith E. Tucker, in her work on seventeenth- and eighteenth-century Palestine and Syria, reports that Ḥanafī *muftīs* accepted annulment decisions emanating from Shāfi'ī and Ḥanbalī jurists, in cases of non-support of the wife; see Tucker, "Revisiting Reform: Women and the Ottoman Family Law of Rights, 1917," *Arab Studies Journal* 4,2 (1996): 12-13. Similarly, in his work on seventeenth-century Ottoman Egypt, Galal el-Nahal reveals that cases of divorce initiated by women were handled by a Ḥanbalī *qāḍī*, see el-Nahal, *Judicial Administration*, 46-47.

[253] Abdal Rehim, *Documents*, 2:50, 53, 69, 84-85, 86, 125, 129, 195, 206-07, 226-27, 228, 233-34, 263, 276-77, 277-78, 286, 294-95, and 2:38-39, 54, 76-77, 115-16, 121-22, 185-86, 193, 227-28.

[254] Ibid., 2:16-17, 49, 120, 237-38, 249-50, 256-57, 285-86, 304.

[255] Muṣṭafā al-Rāfi'ī, *Al-Aḥwāl al-Shakhṣiyya fil-Sharī'a al-Islāmiyya wal-Qawānīn al-Lubnāniyya* (Beirut: Dār al-Kitāb al-Lubnānī, 1985), 157. Article 20's relevant section of Law 100 of 1985 later replacing Laws 25 of 1920 and 1929 (in the translation of el-Alami, "Law No.100," 127), reads: "A woman's right of custody terminates when a minor boy reaches the age of ten and when a minor girl reaches the age of twelve. After these [respective] ages have been reached, the judge may allow a boy, until the age of fifteen, and a girl, until she marries, to remain in the custody of the woman without payment for custody, if it is apparent that their interests require this."

[256] Ḥanafī law dictates that a woman lose custody of her children upon remarriage, unless the new husband is a *maḥram* (related to the child by consanguinity).

marital status, in contemporary Egypt men generally request custody upon the mother's remarriage.[257] Furthermore, while Ottoman women often included stipulations allowing them to request a divorce should their husband marry another,[258] the practice of inserting conditions to a marriage contract – especially when contrary to what is accepted by Islamic law – seems to be the subject of a heated debate in contemporary Egypt.[259] Thus, in an attempt to provide remedy to women who do not tolerate polygamous unions, it took nothing less than an emergency presidential decree for Law 44 (allowing a wife to divorce a husband who marries another) to come into being in 1979.[260] Article 6b (relevant section) of Law 44 of 1979 reads as follows:

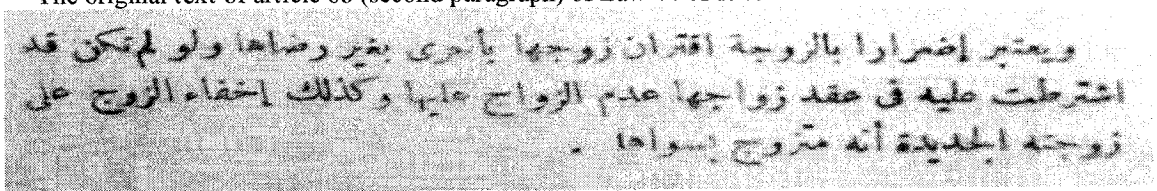
> A husband's simultaneous marriage with another is considered harmful to the existing wife if she has not approved of that union, even if she had not stipulated in the marriage contract that he may not take an additional wife. [261]

This new law, however, was deemed controversial to such an extent that it was invalidated in late 1982 by the Higher Constitutional Court (al-Maḥkama al-Dustūriyya al-'Ulyā), and later replaced by Law 100 of 1985. [262]

As a result, a wife whose husband married another no longer enjoyed the automatic right to leave him, but, rather, had to direct her case to court for approval.[263]

---

[257] Abdal Rehim, "Family and Gender," 108-09.
[258] Abdal Rehim, *Documents*, 2:69, 84-85, 86, 206-07, 226-27, 228, 233-34, 263, 276-77, 286, 294-95.
[259] Shaham, "State, Feminism and Islamists,"462-83.
[260] For a discussion on the reaction to Law 44, see Najjar, "Egypt's Law," 319-41.
[261] The original text of article 6b (second paragraph) of Law 44 of 1979 is as follows:



[262] Law 44 of 1979 was contested on the basis that no circumstance had occurred as to allow – following Article 147 of the constitution – the introduction of an exceptional legislation; see el-Alami and Hinchcliffe, *Marriage and Divorce Laws*, 51; Najjar, "Egypt's Law," 326-36; el-Alami, "Law No.100," 117; Naveh, "Tort of Injury," 30.

Clearly, this was a major drawback for Egyptian women since the "modern" wife was now required to engage in a lengthy process of convincing the *qāḍī* that she had sustained material or moral damage as a direct consequence of her husband's act. Consequently, the woman had to rely on the judge's compassion and understanding rather than on her own judgment of the situation or her own objections to polygamy.[264] Law 100 of 1985 provided Law 25 of 1929 with supplementary articles. Article 11b makes this clear:

> A wife whose husband takes a second wife may request a divorce from him if she is affected by some physical or mental injury (*ḍarar*) of a type that would make continued conjugal relations (*'ishra*) impossible between a couple of their status, even if she had not stipulated in the marriage contract that he may not take additional wives.[265]

Even though the above article – at first sight – seems to extend the right of petition for divorce on the basis of *ḍarar*, following a husband's remarriage to those women who have not inserted polygamy-related stipulations into their marriage contracts, what it in fact does is invalidate any previously inserted stipulation. Thus, a contemporary Egyptian woman who has stipulated in her *nikāḥ* that she be granted a divorce should her husband remarry, now has to present her case to a judge and prove that her husband's action is causing her *ḍarar*. Unlike an Ottoman woman, who could simply bind her husband to such a condition[266] (whether upon contracting her *nikāḥ*, or

---

[263] El-Alami, "Law No.100," 118-19.

[264] Despite such limitations, Law 100 of 1985 is qualified as having resulted in a "significant improvement" in the condition of Egyptian wives and as constituting a "touchstone for future legal reform", see el-Alami, "Law No.100," 117. Fauzi Najjar, on the other hand, qualifies Law 100 as restrictive, see Najjar, "Egypt's Law," 342.

[265] El-Alami, "Law No.100," 118-19. Law 100 of 1985 (as supplementing Law 25 of 1929).

[266] Hanna, "Marriage among Merchant Families," 146-49; Abdal Rehim, "Family and Gender," 105; Abdal Rehim, *Documents*, 2:50, 53, 69, 84-85, 86, 125, 129, 206-07, 226-27, 228, 233-34, 263, 276-77, 277-78, 286, 294-95, and 2:16, 38-39, 54, 76-77, 115-16, 121-22, 138, 185-86, 193, 227-28.

appearing before a *qāḍī* later on to add such a stipulation)[267] the contemporary Egyptian wife finds her options seriously restricted and her stipulations invalidated as such. An Ottoman woman who deemed polygamy objectionable would presumably have inserted a stipulation to that effect in her contract, and even if she did not, she could still revert to the *qāḍī* for *tafrīq,* or agree with her husband on *khul'* without having to prove *ḍarar.* In a society where polygamy seems to have been rejected by many,[268] and where divorce and remarriage were common,[269] one can presume that husbands would have granted such a request. In addition, one might assume that jurists who were willing to accommodate women to the extent that they agreed to enforce marriage stipulations sometimes counter to juridical rulings and enforce the decisions of *qāḍī*s belonging to different schools, would also have been sympathetic to a woman appealing to them for separation due to a husband's marrying another. As for the dissatisfied contemporary Egyptian wife seeking a release from her *nikāḥ*, she can either refer to a modern *qāḍī* – who, constrained by *codified* law, seems to have become less accommodating – or to her own husband, whom she would have to convince to grant her *khul'*.[270]

---

[267] Abdal Rehim, *Documents*, 2:206-07.

[268] Abdal Rehim, "Family and Gender," 107; Ivanova, "The Divorce," 116-17; Rapoport, *Marriage, Money and Divorce*, 86; Zilfi, "We Don't Get Along," 294; Jennings, *Christians and Muslims,* 29,36. Polygamy-related stipulations were inserted in 34% of the Moroccan community's marriage records and 41% of remarriages as we have seen (Abdal Rehim, *Documents,* 2:69, 84-85, 86, 125, 206-07, 226-27, 228, 233-34, 263, 276-77, 286, 294-95, and 2:16, 38-39, 54, 76-77, 115-16, 138, 193).

[269] The works of Abdal Rehim and Rapoport attest to that matter, as seen in preceding note. Also see Abdal Rehim, "Family and Gender," 109; Rapoport, *Marriage, Money and Divorce.*

[270] The "modern" Egyptian husband now being much more tolerant of polygamy and much less of divorce, it is fair to assume that he would be less inclined – than his Ottoman counterpart – to grant his consent to *khul'*. For more on the current situation in Egypt, see the many articles of Mariz Tadros in the Egyptian *al-Ahrām Weekly Online;* Tadros, "A Battle Half Won," *al-Ahrām Weekly Online*, no. 662, 30 October – 5 November 2003; available from http://weekly.ahram.org.eg/2002/617/eg11.htm; Internet; accessed 21 April 2006; "By the Skin of her Teeth," *al-Ahrām Weekly Online*, no. 469, 17-23 February 2000; available from http://weekly.ahram.org.eg/2000/469/feature.htm; Internet; accessed 21 April 2006; "No Time to Talk," *al-Ahrām Weekly Online*, no. 485, 8-14 June 2000; available from http://weekly.ahram.org.eg/2000/485/li5.htm; Internet; accessed 21 April 2006; "What Price Freedom?" *al-Ahrām Weekly Online*, no. 576, 7-13 March 2002; available from

### 3.3 Law 1 of 2000: The Ultimate Challenge?

The introduction of Law 1 of 2000 has fueled much controversy and debate, as it modified an existing *khul'* procedure based on mutual agreement. Basically, it allows the wife to separate from her husband, regardless of his consent, as long as she restores her dower and relinquishes her right to alimony.[271] The modus operandi in cases where the husband does not consent to *khul'* is as follows: the wife's request is directed to a court and followed by a mandatory intervention of two mediators who will try to reconcile the couple for a period that does not exceed three months. Should they fail, the wife is required to state explicitly that she abhors living with her husband and consequently feels herself "unable to maintain the limits ordained by God" (*an lā tuqīm ḥudūd Allāh*). Separation is then, finally, effected – in accordance with the Ḥanafī understanding of an irrevocable divorce, not subject to appeal. In order better to understand the elaborations, implications and (if indeed there are any) innovations of Article 20,[272] comparisons to prophetic *ḥadīth* and Ḥanafī legal understanding pertaining to *khul'*, as well as the application of such under the Ottomans, will now be made.

---

http://weekly.ahram.org.eg/2002/576/fe1.htm; Internet; accessed 21 April 2006; "Who Won the Tug-of-War?" *al-Ahrām Weekly Online*, no. 467, 3-9 February 2000; available from http://weekly.ahram.org.eg/2000/467/li1.htm; Internet; accessed 21 April 2006. For similar findings, see Human Rights Watch, "Divorced from Justice: Women's Unequal Access to Divorce," *Human Rights Watch Publications,* no. 16,8 (E), December 2004; available from http://hrw.org/reports/2004/egypt1204/; Internet; accessed 21 April 2006.

[271] For a detailed discussion on Law 1 of 2000, see Arabi, "Dawning," 2-21; Dawoud Sudqi el-Alami, "Remedy or Device? The System of *Khul'* and the Effects of its Incorporation into Egyptian Personal Status Law," *Yearbook of Islamic and Middle Eastern Law* 6 (1999-2000): 134-39.

[272] Article 20 reads, (in the translation of Arabi, "Dawning," 3-4): "A married couple may mutually agree to separation (*al-khul'*): however if they do not agree, and the wife sues demanding it (the separation), and separates herself from her husband (*khala'at zawjahā* ) by forfeiting all her financial legal rights, and restores to him the dower he gave her, then the court is to divorce her from him (*taṭlīqihā 'alayh*).
The court does not decree divorce (*taṭlīq*) via *khul'* except after attempting reconciliation between the married couple, and after asking two mediators (arbitrators; *ḥukkām*) to pursue conciliation efforts between them for a period that may not exceed three months,.. and after a wife decides explicitly (*tuqarrir*

The case of Ḥabība sheds some light on the origin of the statement required of the contemporary Egyptian wife, i.e., that she can no longer tolerate married life, and consequently fears she cannot maintain the limits ordained by God.[273] Thus, just like Ḥabība, whose aversion towards Thābit prevented her from having sexual relations with him, a contemporary Egyptian wife's abhorrence of her husband may also compel her to fail in her "wifely duties". While no such statement can be found in the Moroccan-Egyptian records (the reasons why couples decided to part, as we have seen, seem to have been immaterial in the event of *khul'*),[274] incompatibility is presumably what led wives to ask their husbands for *khul'* in return for some concession or compensation. As for records pertaining to other Ottoman communities, the most often cited reasons include: irreconcilable differences, a simple failure to get along, constant quarrelling, or sexual incompatibility.[275] Thus, it seems that a failure to get along – corresponding to the Ḥanafī category of *nushūz* from both sides – was the major reason justifying a recourse to *khul'* throughout history. While the records do not reveal any customary formula that the wife was required to utter in confirmation that she no longer tolerates conjugal life, the contemporary Egyptian wife's mandatory and detailed statement can be taken as a response to an absence of the husband's consent.[276] Thus, accountability is

---

*sarāḥatan*) that she abhors living with her husband and there is no way to continue married life between them, and that she is afraid to transgress God's limits because of this abhorrence.
The separation effected by *khul'* is, under all circumstances, an irrevocable divorce (*ṭalāq bā'in*); and the court's decision is, under all circumstances, not subject to appeal (legal contestation; *ṭa'n*) in any of the forms of appeal."

[273] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:329-30; al-Albānī, *Ṣaḥīḥ*, 1:350; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269.

[274] Abdal Rehim, *Documents*, 2:47, 66, 89-90, 103-04, 120, 122, 126, 147-48, 198, 201, 222, 224-25, 237-38, 256-57, 285-86, 304, 314, 320-21, 321, 327-28.

[275] Ivanova, "The Divorce," 113; Jennings, "*Sharia* Court of Cyprus," 161-62; Jennings, *Christians and Muslims*, 28; Zilfi, "We Don't Get Along," 282.

[276] *Khul'* records pertaining to the Moroccan community indicate that the woman directed her request (for *khul'*) to her husband, in the presence of the *qāḍī*, see Abdal Rehim, *Documents*, 2:16-17, 24, 47-48,

shifted onto the wife exclusively, and the possibility of a husband's ability to refuse his consent to *khul'* as a result of *nushūz* (such as holding on to his wife only to cause her *ḍarar*) is dismissed. Therefore, the wife, acting counter to the wishes of her husband by demanding *khul'*, is required to certify and confirm that she does so as a result of an aversion from *her* side, and that there is no possibility of reconsideration on *her* part. As a consequence of this shifting of accountability, the contemporary Egyptian wife is required to make substantial material concessions.

Modern Egyptian legislators require that any woman unable to secure the consent of her husband for *khul'* must return her advance dowry while forfeiting any deferred portion and any other post-marital rights.[277] In this sense, contemporary Egyptian legal reasoning somehow distances itself from the Ḥanafī understanding which – although validating maximum compensation from the wife – does not require the relinquishment of post-marital rights, and furthermore limits the forfeiting of the whole *mahr* to cases of unconsummated marriages or where confusion had occurred, rather than applying it systematically.[278] The Moroccan-Egyptian cases surveyed by Abdal Rehim reveal, as we have seen, that women demanding *khul'* generally relinquished their divorce-related rights, along with the deferred *mahr* or some *badal*, offering a

---

49, 66, 89-90, 94, 103, 103-04, 120, 122, 126, 147-48, 198, 201, 222, 224-25, 237-38, 249-50, 256-57, 285-86, 304, 314, 320-21, 321, 327-28. The work of Recep Çiğdem on sixteenth-century Crimean court records reveals that *khul'* was initiated by the woman, see Çiğdem, "*Khul'* or Dissolution of Marriage," 108. In the records surveyed by Jennings, the party requesting *khul'* generally states – sometimes after mentioning some form of incompatibility – that he or she is willing to offer or accept a specified *badal* in return for *khul'*, see Jennings, "*Sharia* Court of Cyprus," 158-67.

[277] Arabi, "Dawning," 3-4. The wife is, however, entitled to custody-related rights, as they relate to the benefit of the children.

[278] For the opinion of Abū Ḥanīfa, see al-Shaykh Niẓām et al., *al-Fatāwā al-Hindiyya*, 1:488. Confusion may occur when a wife asks her husband to grant her *khul'* against the *māl* she holds in her hand, while in fact holding nothing. In such a case, she becomes liable to paying him the totality of her *mahr*, see al-Qudūrī, *Mukhtaṣar al-Qudūrī*, 163; al-'Aynī, *al-Bināya*, 5:306; al-Zayla'ī, *Tabyīn*, 3:186-87.

compensation that does not appear to have been excessive or abusive.[279] Of further note is the fact that a woman was often offered a *badal* in return for *khul'*, or freed from a loan that she owed her husband, along with the possibility granted to the husband of paying his wife the balance of the *mahr* by instalments. This proves that the financial burden did not systematically fall on the wife.[280] While the deferred *mahr* was sometimes foregone, women in the Moroccan-Egyptian records surveyed often compensated their husbands with sums that were negligible when compared to the deferred *mahr* that they remained entitled to, and were rarely compelled to return the advance portion they had received upon contracting the *nikāḥ*.[281] Thus it seems that, by removing the element of mutual consent and consequently diminishing the husband's role, Egyptian legislators, created a situation where the wife has to make substantial concessions in return for her freedom.[282]

This new "right" introduced by Law 1 of 2000,[283] involves another condition to the effect that, prior to any pronouncement of *khul'*, an attempt at reconciliation is mandatory. Thus, the request of the wife is not granted immediately, but must wait until additional confirmation is produced or at least a reasonable attempt is made to reverse the situation of marital discord.[284] This new provision does not seem to originate in Ḥanafī *fiqh* works either, as no mention of reconciliation being a condition for *khul'*

---

[279] Abdal Rehim, *Documents*, 2:16-17, 24, 47-48, 49, 66, 89-90, 94, 103, 103-04, 120, 122, 126, 147-48, 198, 201, 222, 224-25, 237-38, 249-50, 256-57, 285-86, 304, 314, 320-21, 321, 327-28.
[280] Ibid., 2:16-17, 122, 198, 249-50, 321.
[281] When women did return the advance portion of the *mahr*, it was in order to end the *nikāḥ* before its consummation, or as a bargain to secure the deferred portion (Abdal Rehim, *Documents*, 2:94, 103).
[282] This was presumably in an effort to appease the conservatives. For more on the position of the conservatives, see Najjar, "Egypt's Law," 319-44.
[283] Such a right is hardly a novelty when compared to the prophetic *ḥadīth* relating the case of Ḥabība, as Thābit was ordered to accept his wife's compensation and separate from her, as we have seen (al-'Asqalānī, *Fatḥ al-Bārī*, 9:329-30; al-Albānī, *Ṣaḥīḥ*, 1:350; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269).
[284] Arabi, "Dawning," 3-4.

has been found in the Ḥanafī sources surveyed, nor is Ḥabība reported to have been questioned about her motives or even urged to reconsider.[285] Indeed, a wife's willingness to ransom herself by compensating her husband has always been reckoned sufficient. This is shown clearly in Ottoman practice, where the courts showed no interest in reconciliation and even tried to make divorce as unproblematic as possible.[286] This directly contrasts with the more "modern" attitude towards divorce in Egypt, which makes social outcasts of divorced women. Countless publications warning against the passing of this new law claimed that giving a woman the right to obtain *khul'* without the benediction of her husband menaced the very viability of the Egyptian family – and, by extension, society as a whole.[287] In addition, the qualities of swift justice and easy accessibility reflected in the Ottoman records [288] seem to have been replaced by a long, complicated and at times even costly procedure.[289] In defense of the law it may be said that a wife who succeeds in fulfilling the requirements dictated by article 20 will ultimately be granted *khul'* by means of an irrevocable divorce, not subject to appeal. It may even be said that, because wives are often required to wait years before they are granted a judicial separation following a claim of *ḍarar*, the new measures are in fact an

---

[285] Al-'Asqalānī, *Fatḥ al-Bārī*, 9:329-30; al-Albānī, *Ṣaḥīḥ*, 1:350; al-Nasā'ī, *Sunan al-Nasā'ī*, 5:169; al-Sijistānī, *Sunan Abī Dāwūd*, 2:269.

[286] Indeed, divorces and remarriages were frequent under the Ottomans and do not seem to have been considered a threat to family life, let alone society as a whole. The work of Abdal Rehim on the Moroccan community in Egypt attests to that. For similar findings pertaining to other areas and periods, see Rapoport, *Marriage, Money and Divorce.*

[287] Massive campaigns were launched by opposition papers such as the liberal *al-Wafd*, the Nasserite *al-'Arabī* and the Islamist *al-Sha'b;* see Tadros, "What Price Freedom?"

[288] Ottoman court records reflect that the *qāḍī* was accessible to everyone regardless of gender or social class, and his decisions seem to have been prompt. For more on this see Jennings, "Anatolian Kayseri," 53-114; idem, "*Sharia* Court of Cyprus," 155-67; idem, *Christians and Muslims;* and Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (California: University of California Press, 2003).

[289] For more on the tedious and convoluted contemporary Egyptian legal system, where litigants as well as their lawyers are often ill-informed and unprepared, see Enid Hill, *Mahkama! Studies in the Egyptian Legal System, Courts and Crimes, Law and Society* (London: Ithaca Press, 1979).

improvement. This, however, points to clear shortcomings in the Egyptian juridical system.[290]

Though often qualified as revolutionary, the right granted to women to override a husband's decision in Law 1 of 2000 is merely a result of revisiting the *ḥadīth* about Ḥabība.[291] Indeed, while the new law distances itself from the Ḥanafī understanding of *khul'* requiring the consent of the husband, it does not seem to contradict the *ḥadīth*, as Thābit was ordered to accept the garden and leave his wife. As a result, when dispensing the wife from her husband's mandatory approval, Egyptian legislators chose to surpass traditional legal doctrine in drawing on the prophetic *ḥadīth*.[292] Thus the Egyptian wife is no pioneer, nor is the right she has been granted (to leave her husband regardless of his consent) an unprecedented one. Yet, while the new law offers a dissatisfied wife the chance to force her husband to accept *khul'* (*takhla' zawjahā*) regardless of his consent, additional conditions and delays have been simultaneously imposed on her.

[290] El-Alami, "Remedy," 135.
[291] For a more detailed discussion on this see Arabi, "Dawning," 2-21.
[292] For more on the method applied, see ibid., 7-8.

The following chart attempts to provide a comprehensive summary of the above-mentioned laws:

| Legislation | Laws 25 of 1920 and 1929 | Law 44 of 1979 | Law 100 of 1985 | Law 1 of 2000 |
|---|---|---|---|---|
| **Additional reasons allowing a woman to petition for divorce** | Husband's failure to provide maintenance<br><br>His contracting a serious or contagious disease<br><br>Extended absence or imprisonment<br><br>Systematic maltreatment | Simultaneous remarriage of the husband | Simultaneous remarriage of the husband | Inability of the wife to maintain the limits ordained by God |
| **Proof required** | That the husband committed any of the above | That the husband took an additional wife | That the remarriage caused the previous wife harm | Statement of the wife |
| **Concessions on the part of the wife** | | | | Wife must return her advance dowry and forgo all her financial rights |
| **Shortcomings of the law** | Did not tackle other issues deemed problematic | Invalidated in 1982<br><br>Replaced by Law 100 of 1985 | Wife must convince the judge that she has been harmed<br><br>Lengthy procedure | Important financial concessions imposed on the wife |

Figure 4: Contemporary Egyptian Legislation

### 3.4 Concluding Remarks: Efficacy of the Egyptian Reform

As mentioned earlier, Law 100 of 1985 deprived women of the right they had earlier been granted to immediately request a termination of their marriage following a polygamous union, regardless of the consent of the husband. Far from being groundbreaking, Law 44 (the presidential decree allowing a wife to seek automatic divorce if her husband married another) was so controversial as to be extremely ephemeral, and was later "rectified". What we have seen of Ottoman records renders this "modern" rejection alarming, and one is compelled to wonder why it is that the Ottomans accepted that a woman could be displeased by the polygamous union of her husband, whereas our "modern" society fails to understand this much.[293] As for Law 1 of 2000, despite granting a woman the right to *khul'* without the consent of her husband, it is accompanied by a paralyzing condition: that of requiring her to forfeit all her financial rights and return the advance dower. In a country where about 44% of the population lives below the poverty line,[294] one can imagine that appealing for *khul'* without the husband's consent would be a difficult task for those women who cannot

---

[293] One wonders why a contemporary woman's view of polygamy as harmful should be so troubling; especially considering Ottoman women were frequently inserting stipulations allowing them to obtain a divorce, should their husband take an additional wife. Contemporary Egypt is, unfortunately not an exception. Ironically, in "modern" Lebanon, a wife can obtain a divorce if she stipulates that that she be divorced upon her husband's remarrying another, not so much as a result of a woman's right to oppose such a union, or as polygamy is not always socially tolerated, but, rather, because the Ottoman legislators allowed such an exception through the elaboration of article 38 of The Ottoman Family Law of 1917 (*Qānūn Ḥuqūq al-'Ā'ila al-'Uthmānī*), that later became codified. Article 38 reads (in the translation of el-Alami and Hinchcliffe, *Marriage and Divorce Laws*, 153): "If a man marries a woman and she stipulates that he should not take further wives and that if he does so either she or the second wife shall be divorced, the contract shall be valid and the condition recognized."

[294] Héba Nasreddine, "Parlement : Après des Débats Houleux, l'Assemblée du Peuple a Renouvelé sa Confiance au Gouvernement du Premier Ministre, Atef Ebeid," *Hebdo al-Ahrām*, no. 497, 17 March 2004; available from http://hebdo.ahram.org.eg/arab/ahram/2004/3/17/egyp3.htm; Internet; accessed 21 April 2006.

afford to return their advance *mahr* and renounce all post-marital rights at once.[295] In addition, harsh economic conditions often compel such women to spend their advance *mahr* to buy household items or provide for their children. Thus, it is only a woman with the means to reimburse her unwanted husband who is presented with a real remedy – provided she is somewhat patient and willing to lose all her financial rights. By contrast, her numerous less fortunate peers, if unable to secure the amount they are required to disburse, will not be granted *khul'* without the consent of the husband, and will possibly need to reconsider their decision to end the marriage altogether. Even in cases where women of poor means manage to secure the financial amount they are due and agree to relinquish any deferred post-marital compensation, they still face challenging living conditions; these new requirements to *khul'* are thus, yet again, transformed into deterrents.

Despite such limitations, Law 1 of 2000 has relieved some Egyptian women from unhappy marriages, and its application has been extended to non-Muslim women.[296] Shortly after the passage of the law, a Christian Apostolic woman, having converted from Coptic Orthodoxy in an effort (presumably) to resort to Islamic law, petitioned the *qāḍī* requesting *khul'* on the basis of sectarian difference with her husband.[297]

---

[295] El-Alami, "Remedy," 134-39. For more, see *supra* note 270 on the publications of Tadros and the Human Watch Report.

[296] Interestingly, non-Muslim Ottoman women are sometimes recorded as having converted to Islam to be divorced from their husbands (in the event that he did not convert to Islam as well), as Muslim women cannot legally marry a non-Muslim man. See Jennings, *Christians and Muslims*, 166.

[297] Record 2627 of 2000 (Dawoud Sudqi el-Alami, "Can the Islamic Device of *Khul'* Provide a Remedy for non-Muslims in Egypt?" *Yearbook of Islamic and Middle Eastern Law* 8 (2001-2002): 123-24). The law of the nation (Muslim family law) applies to all Egyptians, unless both husband and wife are non-Muslims and from the same sect. In the above case, as both husband and wife were of Coptic Orthodox faith before she became an Apostolic (presumably in order to be allowed to revert to Islamic law) the wife was able to petition the *qāḍī* for divorce.

Egyptian law apparently stipulates that two non-Muslims of different sects can resort to Islamic law in case of conflict:

> With regards to disputes related to the personal status of non-Muslim Egyptian couples who share the same sect and rite, and who at the time of the promulgation of the Law have their own organized sectarian juridical institutions, judgments will be passed in accordance with their new law, all within the limits of public policy.[298]

Thus, even though able to prove that her husband had mistreated and failed to maintain her, she still chose to revert to *khul'* and compensate him, rather than wait for years before the court ruled on her case.[299] Compensating her husband by returning her advance *mahr* and relinquishing her post-marital rights appear to have been a desperate option of last resort.[300]

Yet, while this Apostolic Christian woman was granted *khul'*, another less fortunate Catholic Maronite convert was denied *khul'* on the grounds that Catholic churches do not grant divorce regardless of the circumstances.[301] While the above-quoted article from Law 462 extends its reach to all non-Muslim couples where husband and wife do not belong to the same sect, Egyptian judges still found it necessary to accommodate the Catholic Church's position on divorce, rather than the woman appealing to the Muslim court in hope of separation. Thus, it seems that modern Egyptian law's efforts to accommodate the needs of non-Muslim women is not so much a recognition of their hardship, but rather the result of a strict application of codified law.

---

[298] Article 6 of Law 462 dated 1955 (in the translation of Hasan, "*Khul'* for a non-Muslim Couple," 81).
[299] El-Alami, "Islamic Device," 123; Hasan, "*Khul'* for a non-Muslim Couple," 85-86.
[300] Hasan, "*Khul'* for a non-Muslim Couple," 84-86; el-Alami, "Remedy," 136.
[301] Despite the fact that a Muslim *qāḍī* is given the authority to rule in such cases, such judges are careful not to override Church Laws; see el-Alami, "Islamic Device," 124.

# Conclusion

While Ottoman judges – free of the strictures of codification – were allowed leeway in the formulation and application of law, their more "modern" counterparts find themselves far more limited.[302] Ottoman judges, aware of the changing needs of their society and the growing objection of women to the often quite lawful actions of their husbands, allowed them to insert stipulations in their marriage contracts that adapted the *nikāḥ* to their specific situations. Consequently, the Ottomans distanced themselves from the Ḥanafī doctrine precisely in order to accommodate the needs of the wife. Unaffected by anything like the "modern" reification of Islamic law, they seem to have relied on their personal assessment of individual situations and worked to harmonize their laws with society. Recognizing the need to adapt to a culture that did not accept imposing polygamy on a wife, Ottoman judges granted women the right to object and seek legal recourse should they find themselves in unwanted polygamous unions.[303] One wonders once again why a contemporary woman's view of polygamy as harmful should be so troubling when Ottoman women were allowed to insert stipulations against the practice in a culture that saw polygamy as natural. The most popular stipulation in fact was that of forbidding a husband to take an additional wife. The consequence, as we have seen, was an obligation to divorce his wife against a symbolic reimbursement on her part, without the wife in turn losing most of her deferred rights.

---

[302] For a discussion on the effects of codified law, see Hanna, "Marriage among Merchant Families," 154; Naveh, "Tort of Injury," 16-41.

[303] This condition was later transformed into article 38 (see *supra* note 293) of the Ottoman Family Law of 1917, elaborated by the Sulṭān Muḥammad Rachād, shortly before the collapse of the Ottoman regime; see al-Bīlāni, *Qawānīn al-Aḥwāl al-Shakhṣiyya,* 18.

The frequency of *khul'* in the Ottoman records, as well as the agreement of the husband and wife in all cases surveyed, indicates that men were, on the whole, willing to grant women *khul'*. In addition, the amount of *badal* required in the Moroccan-Egyptian community's records seems to indicate that women were neither abused, stripped of their belongings, nor trapped in their marriages. In many instances, it was the husband himself who ended up being the major financial contributor following a *khul'*.

The case is undoubtedly different in Egypt today, where women seem to have less solutions at their disposal when choosing to leave a marriage, and much more to lose should they choose to do so. That, and the reluctance that husbands have shown to consent to *khul'*, is precisely why the need for new legislation is pressing. Although reformers did grant women a right they did not earlier enjoy, a contemporary Egyptian woman is heavily penalized should she desire to be freed from the requirement of her husband's consent to *khul'*. Interestingly, though such a right counters the understanding of *khul'* in all schools of law, it is more in line with the *ḥadīth* of Ḥabība. Indeed, Ḥanafī jurists, in their understanding of *khul'*, intentionally deviated from the Qur'ān and *ḥadīth* in order to elaborate a law fitting the needs of their society – a society in which men were granted a favored position.

This favored position, however, was accompanied by a duty to act morally and impartially. Yet in our own time, when morality as such is seemingly in jeopardy and where women no longer tolerate being at the mercy of their husbands, a new flexibility in the application of the law is required. While the Ottomans may not have bent the understanding of *khul'* so as to extend it to cases where the husband refused consent, this may simply reflect that there was no pressing need to do so. Such moral

implications as might possibly have restrained husbands from being abusive to wives demanding *khul'*, or, rather, such social norms as might not have tolerated this behavior, seem to have become less relevant in our "modern" times. As a result, the contemporary husband's mandatory consent to *khul'* has become a paralyzing factor today, since many men refuse to grant their wives *khul'* for the sake of financial gain, or for fear of social scandal. By contrast, divorce was not a problematic matter for the Ottomans, and couples often parted and reunited with the same (or another) mate shortly after.

Indeed, the "modern" condemnation of divorce has pushed husbands to be less tolerant of the idea of their wives wanting to leave them and possibly remarry. Indeed, a woman is often punished as a result of her remarriage to another man, usually by being deprived of her children. Consequently, wives are unable to rely on the judge's flexibility. The modern judge may himself deem divorce problematic, and will resort to all possible reconciliatory options available, thus making the procedure an extremely long one. Also, if unsuccessful in obtaining her husband's consent, the "modern" wife has no choice but to resort to *khul'* (albeit at a very high cost) or suffer in silence. One cannot but wonder what has happened to a society once tolerant of divorces and remarriages, and where women did not seem to face much trouble in securing the consent of their husbands for *khul'*. The nation-state – whose long arm has extended into the spheres of personal status – has failed to accommodate married women by granting the rights they often enjoyed in previous times, and this failure is accompanied by a clear alteration of both social structure and culture. The transformation that contemporary Egyptian society has undergone requires a close examination. Before addressing possible reforms and future options, one must enquire into the nature of

these transformations that rendered divorce – once easily acceptable to women – a "sinful" act that should be avoided at all cost.

One possible solution to the hardship of women seeking a divorce would be recourse to a delegated right to divorce (*tafwīḍ*).[304] Such a procedure would allow a woman to insert a stipulation into her marriage contract by which she is granted the right to initiate divorce when she deems it fit, and without the assistance of the *qāḍī*. Although lawful as per Ḥanafī doctrine, women are rarely granted *tafwīḍ* since it is often associated with some sort of social scandal, despite the fact that the husband is only granting the wife an equal right of choice. This would amount to taking a page from past legal practice in Ottoman Egypt. One wonders why Ottoman judges accommodated the law to fit their own societal needs,[305] whereas contemporary legislators and leaders of the nation-state fail to advocate such a possibility.

---

[304] Al-Marghīnānī, *al-Hidāya*, 2:558; Lucy Carroll, "*Talaq-i-Tafwid* and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife," *Modern Asian Studies* 16 (1982): 278; Hill, *Mahkama,* 82; el-Alami, "Remedy," 134.

[305] The Ottoman Family Law of 1917 allows women to insert two stipulations into their *nikāḥ*. While article 38 allows a wife who has inserted the condition that she be granted a divorce following her husband's taking of an additional wife to request a separation should her husband fail to uphold her condition (see *supra* note 293), article 48 (in the translation of el-Alami and Hinchcliffe, *Marriage and Divorce Laws*, 154), allows the woman to require that her husband be of the same social condition: "If the guardian gives a mature woman in marriage, with her consent, to a man whom they are unaware is not of equal status and it later becomes apparent to them that he is not of equal status then neither of them shall have the right to object. If, however, equality of status is stipulated at the time of the contract that he is of equal status and it is later proved that he is not, either the woman or her guardian may apply to the judge requesting the annulment of the marriage."

Selected Bibliography

No account of the letter ' or articles al- & el- is taken in classifying the entries.

## PRIMARY SOURCES


Al-Albānī, Muḥammad b. Nāṣir al-Dīn. *Ṣaḥīḥ Sunan Ibn Māja.* Edited by Zuhayr al-Shāwīsh. 5 vols. Beirut: al-Maktab al-Islāmī, 1988.

'Allīsh, Muḥammad. *Sharḥ Minaḥ al-Jalīl 'alā Mukhtaṣar Sayid Khalīl, 'alā Mukhtaṣar al-'Allāma Khalīl.* 9 vols. Beirut: Dār al-Fikr, 1989.

Al-'Asqalānī, Muḥammad b. Ja'far. *Fatḥ al-Bārī bi-Sharḥ al-Imām Abī 'Abd Allāh Muḥammad b. Ismā'īl al-Bukhārī.* Edited by 'Abd al-Raḥmān Muḥammad. 17 vols. Cairo: Maktabat wa Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1959.

Al-'Aynī, Badr al-Dīn Maḥmūd b. Aḥmad. *Al-Bināya fī Sharḥ al-Hidāya.* Edited by Muḥammad 'Umar. 12 vols. Beirut: Dār al-Fikr, 1990.

Bāz, Salīm Rustum. *Sharḥ al-Majalla.* 2 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 1923.

Al-Buhūtī, Manṣūr b. Yūnus b. Idrīs. *Kashshāf al-Qinā' 'an Matn al-Iqnā'.* 6 vols. Beirut: 'Ālam al-Kutub, 1983.

Al-Ghaznawī, Aḥmad b. Muḥammad. *Muqaddimat al-Ghaznawī 'alā Madhhab al-Imām Abī Ḥanīfa.* Edited by Khalīl Muḥyī al-Dīn al-Mays. Beirut: Dār al-Fikr, 1984.

Ḥaṭṭāb, Muḥammad b. Muḥammad. *Mawāhib al-Jalīl li-Sharḥ Mukhtaṣar Khalīl.* 6 vols. Beirut: Dār al-Fikr, 1992.

Ibn 'Ābidīn, Muḥammad Amīn b. 'Umar. *Radd al-Muḥtār.* 8 vols. Beirut: Dār al-Fikr, 1979.

Ibn al-'Arabī, Muḥammad b. 'Abd Allāh. *Aḥkām al-Qur'ān.* Edited by 'Alī Muḥammad al-Bajāwī. 4 vols. Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya 'Īsā al-Bābī al-Ḥalabī wa-Shurakā'uh, 1957.

Ibn Ḥazm, Abū Muḥammad 'Alī b. Aḥmad b. Sa'īd. *Al-Muḥallā bil-Āthār.* Edited by 'Abd al-Ghaffār Sulaymān al-Bindārī. 12 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 1988.

Ibn al-Humām, Muḥammad b. 'Abd al-Wāḥid. *Sharḥ Fatḥ al-Qadīr.* 10 vols. Beirut: Dār al-Fikr, 1990.

Ibn Kathīr, 'Imād al-Dīn Abū al-Fidā' Ismā'īl. *Tafsīr al-Qur'ān al-'Aẓīm.* 4 vols. Edited by Muḥammad 'Alī al-Ṣābūnī. Cairo: Maṭba'at al-Istiqāma, 1956.

Ibn Māza, Maḥmūd b. Aḥmad b. 'Abd al-'Azīz b. 'Umar. *Al-Muḥīṭ al-Burhānī fil-Fiqh al-Nu'mānī.* Edited by Aḥmad 'Azzū 'Ināya. 11 vols. Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 2003.

Ibn Nujaym, Zayn al-'Ābidīn. *Al-Ashbāh wal-Naẓā'ir.* Beirut: Dār al-Kutub al-'Ilmiyya, 1993.

_____. *Al-Baḥr al-Rā'iq.* 8 vols. Cairo: al-Maṭba'a al-'Ilmiyya, 1894.

Ibn Qudāma, Muwaffaq al-Dīn. *Al-Kāfī fī Fiqh al-Imām Aḥmad Ibn Ḥanbal.* Edited by Sa'īd Muḥammad al-Laḥḥām et al. 4 vols. Beirut: Dār al-Fikr, 1992.

Ibn Qudāma, Muwaffaq al-Dīn, and al-Maqdisī Shams al-Dīn, Ibn Qudāma. *Al-Mughnī wa Yalīh al-Sharḥ al-Kabīr.* 12 vols. Beirut: Dār al-Kitāb al-'Arabī, 1983.

Ibn Taymiyya, Aḥmad b. 'Abd al-Ḥalīm. *Fatāwā al-Zawāj wa 'Ishrat al-Nisā'.* Edited by Farīd b. Amīn al-Hindāwī. Cairo: Maṭba'at al-Turāth al-Islāmī, 1988.

Al-Jaṣṣāṣ, Aḥmad b. 'Alī. *Aḥkām al-Qur'ān.* 3 vols. Beirut : Dār al-Kitāb al-'Arabī, 1978.

Al-Kāsānī, 'Alā' al-Dīn Abī Bakr b. Mas'ūd. *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'.* 7 vols. Beirut: Dār al-Kitāb al-'Arabī, 1982.

Al-Khaṣṣāf, Abī Bakr Aḥmad b. 'Umar b. Māhir. *Adab al-Qāḍī.* Edited by Farḥāt Ziyāda. Cairo: American University, 1979.

Al- Marghīnānī, 'Alī b. Abī Bakr. *Al-Hidāya : Sharḥ Bidāyat al-Mubtadī.* Edited by Muḥammad Muḥammad Tāmir and Ḥāfiẓ 'Āshūr Ḥāfiẓ. 4 vols. Beirut: Dār al-Fikr, 1990.

Al-Muntadā al-Islāmī. *The Qur'ān: Arabic Text with Corresponding English Meanings.* Riyadh: Al-Qāsim Publishing House, 1997.

Al-Mūṣilī, 'Abd Allāh b. Maḥmūd. *Al-Ikhtiyār li-Ta'līl al-Mukhtār.* 5 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 1980.

_____. *Al-Mukhtār al-Fatwī.* Edited by Markaz al-Buḥūth wal-Dirāsāt bi-Maktabat Nizār Muṣṭafā al-Bāz. Riyadh: Maktabat Nizār Muṣṭafā al-Bāz, 1997.

Al-Nasafī, 'Abd Allāh b. Aḥmad. *Tafsīr al-Nasafī.* Edited by Zakariyya 'Umayrāt. 2 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 1995.

Al-Nasā'ī, Aḥmad b. Shu'ayb. *Sunan al-Nasā'ī bi-Sharḥ al-Ḥāfiẓ Jalāl al-Dīn al-Suyūṭī.* Edited by Ḥasan Muḥammad al-Mas'ūdī. 8 vols. Cairo: al-Maktaba al-Tijāriyya al-Kubrā, 1930.

Al-Nawawī al-Dimashqī, Abī Zakariyya Yaḥyā b. Sharaf. *Rawḍat al-Ṭālibīn.* 8 vols. Damascus: al-Maktab al-Islāmī, 196?.

Al-Nīshāpūrī, Al-Wāḥidī. Abū al-Ḥasan 'Alī. *Asbāb al-Nuzūl.* Beirut: Dār al-Kutub al-'Ilmiyya, 1982.

Niẓām, al-Shaykh. *Al-Fatāwā al-Hindiyya.* 6 vols. Diyār Bakr: al-Maktaba al-Islāmiyya, 1973.

Al-Qayrawānī, 'Abd Allāh b. 'Abd al-Raḥmān b. Abī Zayd. *Al-Nawādir wal-Ziyādāt.* Edited by 'Abd al-Fattāḥ Muḥammad al-Ḥilū. 15 vols. Beirut: Dār al-Gharb al-Islāmī, 1999.

Al-Qudūrī, Aḥmad b. Muḥammad. *Mukhtaṣar al-Qudūrī.* Edited by Kāmil Muḥammad Muḥammad 'Uwayḍa. Beirut: Dār al-Kutub al-'Ilmiyya, 1997.

Al-Qurṭubī, Muḥammad b. Aḥmad. *Al-Jāmi' li-Aḥkām al-Qur'ān.* 5 vols. Cairo: Dār al-Kātib al-'Arabī lil-Ṭibā'a wal-Nashr, 1935.

Quṭb, Sayid. *Fī Ẓilāl al-Qur'ān.* 30 vols. Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, 1953.

Ramaḍān, 'Ārif Afandī. *Majmū'at al-Qawānīn: Taḥtawī 'alā Jamī' al-Qawānīn al-Ma'mūl bi-Mūjabihā fī Jamī' al-Bilād al-'Arabiyya al-Munsalikha 'an al-Ḥukūma al-'Uthmāniyya.* Beirut: al-Maṭba'a al-'Ilmiyya, 1927.

Al-Raṣṣā', Muḥammad b. Qāsim. *Sharḥ Ḥudūd al-Imām al-Akbar Abī 'Abd Allāh b. 'Arafa.* Rabat: Wizārat al-Awqāf wal Shu'ūn al-Islāmiyya, 1992.

Riḍā, Muḥammad Rashīd. *Tafsīr al-Qur'ān al-Ḥakīm, al-Shahīr bī-Ism Tafsīr al-Manār.* 12 vols. Cairo: al-Hai'a al-Miṣriyya al-'Āmma lil-Kitāb, 1975.

Saḥnūn, 'Abd al-Salām b. Sa'īd. *Al-Mudawwana al-Kubrā wa Yalīha Muqaddamat Ibn Rushd.* 5 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 1994.

Al-Samarqandī, Abū al-Layth. *Fatāwā al-Nawāzil fil-Fiqh al-Ḥanafī.* Edited by Ghulām al-Murtaḍā. Hyderabad: Maṭba'at Shams al-Islām, 1937.

Al-Sarakhsī, Muḥammad b. Aḥmad. *Al-Mabsūṭ.* 24 vols. Cairo: Maṭba'at al-Sa'āda, 1913.

Al-Shahrastānī, Muḥammad b. 'Abd al-Karīm. *Al-Milal wal-Niḥal.* Edited by Muḥammad b. Fatḥ Allāh Badrān. 2 vols. Cairo: Maṭba'at al-Azhar, 1951.

Al-Shāshī al-Qaffāl, Sayf al-Dīn Abī Bakr Muḥammad b. Aḥmad. *Ḥilyat al-'Ulamā' fī Ma'rifat Madhāhib al-Fuqahā'.* Edited by Yāsīn Aḥmad Ibrāhīm Darādka. 8 vols. Mecca: Maktabat al-Risāla al-Ḥadītha, 1988.

Al-Shaybānī, Muḥammad b. al-Ḥasan. *Al-Aṣl al-Ma'rūf bil-Mabsūṭ.* 4 vols. Beirut: 'Ālam al-Kutub, 1990.

_____. *Al-Jāmi' al-Ṣaghīr.* Beirut: 'Ālam al-Kutub, 1986.

Al-Sijistānī, Abū Dāwūd Sulaymān b. al-Ash'ath. *Sunan Abī Dāwūd.* Edited by Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd. 4 vols. Beirut: al-Maktaba al-'Aṣriyya, 1980.

Al-Suyūṭī, Jalāl al-Dīn 'Abd al-Raḥmān b. Abī Bakr. *Lubāb al-Nuqūl fī Asbāb al-Nuzūl.* Damascus: Maṭba'at al-Mallāḥ, 1959.

Al-Ṭaḥāwī, Abū Ja'far Aḥmad b. Muḥammad b. Salāma. *Mukhtaṣar al-Ṭaḥāwī.* Edited by Abū al-Wafā al-Afghānī. Cairo: Maṭba'at al-Kitāb al-'Arabī, 1950.

Al-Usyūṭī, Shams al-Dīn Muḥammad b. Aḥmad al-Minhājī. *Jawāhir al-'Uqūd wa Mu'īn al-Quḍāt wal-Muwaqqi'īn wal-Shuhūd.* 2 vols. Cairo: Maṭba'at al-Sunna al-Muḥamadiyya, 1955.

Al-Ūzjandī al-Farghānī, Fakhruddīn Ḥasan b. Manṣūr. *Fatawa-i-Khazee-Khan: Relating to Mahomedan Law of Marriage, Dower, Divorce, Legitimacy, and Guardianship of Minors, According to the Soonnees.* Translated and edited by Mahomed Yusoof Khan Bahadur and Wilayat Hussain. 2 vols. New Delhi: Kitab Bhavan, 1986.

Al-Zamakhsharī, Maḥmūd b. 'Umar. *Al Khashshāf 'an Ḥaqā'iq Ghawāmiḍ al-Tanzīl wa 'Uyūn al Aqāwīl fī Wujūh al-Ta'wīl.* 4 vols. Beirut: Dār al-Kitāb al-'Arabī, 1947.

Al-Zayla'ī, Fakhr al-Dīn 'Uthmān b. 'Alī. *Tabyīn al-Ḥaqā'iq, Sharḥ Kanz al-Daqā'iq.* Edited by Aḥmad 'Azzū 'Ināya. 7 vols. Beirut: Dār al-Kutub al-'Ilmiyya, 2000.

SECONDARY SOURCES


Abdal Rehim, Abdal Rehim Abdal Rahman. *Documents of the Egyptian Courts Related to the Maghariba.* 2 vols. Zaghouan: Centre d'Études et de Recherches Ottomanes, Morisques, de Documentation et d'Information, 1994.

_____. "The Family and Gender Laws in Egypt during the Ottoman Period." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 96-111. Syracuse: Syracuse University Press, 1996.

Abu-Odeh, Lama. "Modernizing Muslim Family Law: The Case of Egypt." *Vanderbilt Journal of Transnational Law* 37,4 (2004): 1043-142.

Al-Abyānī, Muḥammad Zayd. *Sharḥ al-Aḥkām al-Shar'iyya fil-aḥwāl al-Shakhṣiyya.* Beirut: Maktabat al-Nahḍa, 1976.

Aghnides, Nicolas P. *Mohammedan Theories of Finance with an Introduction to Mohammedan Law and Bibliography.* Lahore: The Premier Book House, 1961.

Agmon, Iris. "Muslim Women in Court According to the *Sijill* of Late Ottoman Jaffa and Haifa: Some Methodological Notes." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 126-40. Syracuse: Syracuse University Press, 1996.

_____. "Women's History and Ottoman *Sharia* Court Records: Shifting Perspectives in Social History." *Hawwa* 2,2 (2004): 172-209.

El-Alami, Dawoud Sudqi. "Can the Islamic Device of *Khul'* Provide a Remedy for non-Muslims in Egypt?" *Yearbook of Islamic and Middle Eastern Law* 8 (2001-2002): 122-25.

_____. "Law No.100 of 1985, Amending Certain Provisions of Egypt's Personal Status Laws." *Islamic Law and Society* 1,1 (1994): 116-36.

_____. "Legal Capacity with Specific Reference to the Marriage Contract." *Arab Law Quarterly* 6,2 (1991): 190-203.

_____. *The Marriage Contract in Islamic Law in the Sharī'a and Personal Status Laws of Egypt and Morocco.* London: Graham & Trotman, 1992.

_____. "Remedy or Device? The System of *Khul'* and the Effects of its Incorporation into Egyptian Personal Status Law." *Yearbook of Islamic and Middle Eastern Law* 6 (1999-2000): 134-39.

El-Alami, Dawoud Sudqi and Doreen Hinchcliffe. *Islamic Marriage and Divorce Laws in the Arab World.* London: Kluwer Law International, 1996.

Ali, Kecia. "Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Laws." In *Progressive Muslims: On Justice, Gender, and Pluralism*, edited by Omid Safi,163-183. Oxford: Oneworld, 2003.

Arabi, Oussama. "The Dawning of the Third Millennium on *Shari'a*: Egypt's Law No.1 of 2000, or Women May Divorce at Will." *Arab Law Quarterly* 16, 1 (2001): 2-21.

'Askarī, Abū Hilāl al-Ḥasan b. 'Abd Allāh. *Al-Awā'il.* Beirut: Dār al-Kutub al-'Ilmiyya, 1987.

Al-Bīlānī, Bachīr. "Personal Status." In *The Lebanese Legal System*, edited by Antoine E. el-Gemayel, 1:267-390. 2 vols. Washington, DC: International Law Institute, 1985.

_____. *Qawānīn al-Aḥwāl al-Shakhṣiyya fī-Lubnān.* Cairo: Ma'had al-Buḥūth wal-Dirāsāt al-'Arabiyya, Qism al-Buḥūth wal-Dirāsāt al-Qānūniyya wal-Shar'iyya, 1971.

Carroll, Lucy. "*Talaq-i-Tafwid* and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife." *Modern Asian Studies* 16 (1982): 277-309.

Çiğdem, Recep. "*Khul'* or Dissolution of Marriage by a Woman: A Historical Background and Two Cases from the Bakhchisaray/ Crimea Court." *D.E.Ü Ilahiyat Fakültesi Dergisi Sayi* 21 (2005): 95-115.

De Bellefonds, Linant Y. "Le 'Hul'' sans Compensation en Droit Hanafite." *Studia Islamica* 31 (1970): 185-90.

Doumani, Beshara B. "Palestinian Islamic Court Records: A Source for Socioeconomic History." *Middle East Studies Association Bulletin* 19 (1985): 155-72.

Fay, Mary Ann. "The Ties that Bound: Women and Household in Eighteenth-Century Egypt." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 155-72. Syracuse: Syracuse University Press, 1996.

Friedman, Mordechai A. "Termination of the Marriage upon the Wife's Request: A Palestinian Ketubba Stipulation." *American Academy for Jewish Research* 37 (1969): 29-55.

Gerber, Haim. "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700." *International Journal of Middle East Studies* 12 (1980): 231-44.

Guechi, Fatima Zohra. "*Mahkama* Records as a Source for Women's History: *The Case of Constantine*." In *Beyond the Exotic: Women's Histories in Islamic Societies*, edited by Amira el-Azhary Sonbol, 152-61. Syracuse: Syracuse University Press, 2005.

Hallaq, Wael B. *Authority, Continuity, and Change in Islamic Law.* Cambridge: Cambridge University Press, 2001.

_____. "The *Qāḍī*s *Dīwān* (Sijill) before the Ottomans." *Bulletin of the School of Oriental and African Studies* 61,3 (1998): 415-36.

Hanna, Nelly. "The Administration of Courts in Ottoman Cairo." In *The State and its Servants: Administration of Egypt from Ottoman Times to the Present*, edited by Nelly Hanna, 44-59. Cairo: The American University in Cairo Press, 1995.

_____. "Marriage among Merchant Families in Seventeenth-Century Cairo." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 143-54. Syracuse: Syracuse University Press, 1996.

Hasan, Aznan. "Granting *Khul'* for a non-Muslim Couple in Egyptian Personal Status Law: Generosity or Laxity?" *Arab Law Quarterly* 18 (2003): 81-89.

Hill, Enid. *Mahkama! Studies in the Egyptian Legal System, Courts and Crimes, Law and Society.* London: Ithaca Press, 1979.

Human Rights Watch. "Divorced from Justice: Women's Unequal Access to Divorce." *Human Rights Watch Publications,* no. 16,8 (E), December 2004; available from http://hrw.org/reports/2004/egypt1204/; Internet; accessed 21 April 2006.

Hussein, Aziza. "Recent Amendments to Egypt's Personal Status Law." *Women and Family in the Middle East: New Voices of Change*, edited by Elizabeth Warnock Fernea, 229-232. Texas: University of Texas Press, 1985.

Imber, Colin. "Why You Should Poison Your Husband: A Note on Liability in Ḥanafi Law in the Ottoman Period." *Islamic Law and Society* 1,2 (1994): 206-16.

_____. "Women, Marriage, and Property: *Mahr* in the Behcetu'l- Fatawa of Yenisehirli Abdallah." In *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, edited by Madeline Zilfi, 81-104. Leiden: Brill, 1997.

Ivanova, Sveltana. "The Divorce between Zubaida Hatun and Esseid Osman Aga." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 96-111. Syracuse: Syracuse University Press, 1996.

Al-Jazīrī, 'Abd al-Raḥmān. *Al-Fiqh 'Alā al-Madhāhib al-Arba'a.* 5 vols. Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1986.

Jennings, Ronald C. *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640.* New York & London: New York University Press, 1993.

_____. "Divorce in the Ottoman *Sharia* Court of Cyprus, 1580-1640." *Studia Islamica* 78 (1993): 155-67.

_____. "Kadi, Court and Legal Procedure in 17th C. Ottoman Kayseri: The Kadi and the Legal System." *Studia Islamica* 48 (1978): 133-72.

_____. "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri." *Studia Islamica* 50 (1979): 151-84.

_____. "The Office of Vekil (Wakil) in Seventeenth Century Ottoman Sharia Courts." *Studia Islamica* 42 (1975): 147-69.

_____. "Women in Early 17th Century Ottoman Judicial Records: The *Sharia* Court of Anatolian Kayseri." *Journal of the Economic and Social History of the Orient* 18 (1975): 53-114.

Khoury Rizk, Dina. "Drawing Boundaries and Defining Spaces: Women and Space in Ottoman Iraq." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 173-87. Syracuse: Syracuse University Press, 1996.

Al-Khowli, Ramadan. "Observations on the Use of *Shari'a* Court Records as a Source of Social History." In *Beyond the Exotic: Women's Histories in Islamic Societies*, edited by Amira el-Azhary Sonbol, 139-51. Syracuse: Syracuse University Press, 2005.

Lutfi, Huda. "Manners and Customs of Fourteenth Century Cairene Women: Female Anarchy versus Male *Shar'i* Order in Muslim Perspective Treatises." In *Women in Middle Eastern History*, edited by Nikkie Keddie and Beth Baron, 99-119. New Haven & London: Yale University Press, 1991.

Mahmood, Tahir. *Statutes of Personal Law in Islamic Countries.* New Delhi : India and Islam Research Council, 1995.

Mandaville, Jon E. "The Ottoman Court Records of Syria and Jordan." *Journal of the American Oriental Society* 86,3 (1966): 311-19.

Marcus, Abraham. "Men, Women and Property: Dealers in Real Estate in Eighteenth-Century Aleppo." *Journal of the Economic and Social History of the Orient* 26 (1983): 137-63.

Meriwether, Margaret L. "The Rights of Children and Responsibilities of Women: Women as *Wasis* in Ottoman Aleppo, 1770-1840." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 219-35. Syracuse: Syracuse University Press, 1996.

Moors, Annelies. "Debating Islamic Family Law: Legal Texts and Social Practices." In *Social History of Women and Gender in the Modern Middle East*, edited by Margaret L. Meriwether and Judith E. Tucker, 141-75. Colorado: Westview Press, 1999.

El-Nahal, Galal H. *The Judicial Administration of Ottoman Egypt in the Seventeenth Century.* Chicago & Minneapolis: Bibliotheca Islamica , 1979.

Najjar, Fauzi M. "Egypt's Law of Personal Status." *Arab Studies Quarterly* 10,3 (1988): 319-44.

Nasreddine, Héba. "Parlement : Après des Débats Houleux, l'Assemblée du Peuple a Renouvelé sa Confiance au Gouvernement du Premier Ministre, Atef Ebeid." *Hebdo al-Ahrām*, no. 497, 17 March 2004; available from http://hebdo.ahram.org.eg/arab/ahram/2004/3/17/egyp3.htm; Internet; accessed 21 April 2006.

Naveh, Immanuel. "The Tort of Injury and Dissolution of Marriage at the Wife's Initiative in Egyptian *Maḥkamat al-Naqḍ* Rulings." *Islamic Law and Society* 9,1 (2001): 16-41.

Peirce, Leslie. *Morality Tales: Law and Gender in the Ottoman Court of Aintab.* California: University of California Press, 2003.

Petry, Carl E. "Conjugal Rights versus Class Prerogatives: A Divorce Case in Mamluk Cairo." In *Women in the Medieval Islamic World: Power, Patronage, and Piety*, edited by Gavin Hambly, 227-40. New York: St Martin's Press, 1998.

Al-Qattan, Najwa. "Dhimmis in the Muslim Court: Documenting Justice in Ottoman Damascus, 1775-1860." Ph.D. diss., Harvard University, 1996.

_____. "Textual Differentiation in the Damascus *Sijill:* Religious Discrimination or Politics of Gender?" In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 191-201. Syracuse: Syracuse University Press, 1996.

Rafeq, Abdul-Karim. "Les Registres des Tribunaux de Damas comme Source pour l'Histoire de la Syrie." *Bulletin d'Études Orientales* 26 (1973): 219-25.

Al-Rāfi'ī, Muṣṭafā. *Al-Aḥwāl al-Shakhṣiyya fil-Sharī'a al-Islāmiyya wal-Qawānīn al-Lubnāniyya.* Beirut: Dār al-Kitāb al-Lubnānī, 1985.

Rapoport, Yossef. *Marriage, Money and Divorce in Medieval Islamic Society.* Cambridge: Cambridge University Press, 2005.

Reilly, James A. "Women in the Economic Life of Late-Ottoman Damascus." *Arabica* 42 (1995): 79-106.

Semerdjian, Elyse. "Sinful Professions: Illegal Occupations of Women in Ottoman Aleppo, Syria." *Hawwa* 1,1 (2003): 60-85.

Seng, Yvonne J. "Invisible Women: Residents of Early Sixteenth-Century Islanbul." In *Women in the Medieval Islamic World: Power, Patronage, and Piety*, edited by Gavin Hambly, 241-68. New York: St Martin's Press, 1998.

Shaham, Ron. *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts, 1900-1955.* Leiden: Brill, 1997.

_____. "Judicial Divorce at the Wife's Initiative: The *Sharī'a* Courts of Egypt, 1920-1955." *Islamic Law and Society* 1,2 (1994): 217-53.

_____. "State, Feminism and Islamists - the Debate over Stipulations in Marriage Contracts in Egypt." *Bulletin of the School of Oriental and African Studies* 62,3 (1999): 462-83.

Shaḥrūr, Muḥammad. *Al-Kitāb wal-Qur'ān: Qirā'a Mu'āṣira.* Beirut: Sharikāt al-Matbū'āt lil-Tawzī' wal-Nashr, 2000.

_____. *Naḥwa Uṣūl Jadīda lil-Fiqh al-Islāmī.* Damascus: Al-Ahālī lil-Ṭibā'a wal-Nashr wal-Tawzī', 2000.

Smith, Robertson W. *Kinship and Marriage in Early Arabia.* Oosterhout: Anthropological Publications, 1966.

Sonbol el-Azhary, Amira. "Adults and Minors in Ottoman *Shari'a* Courts and Modern Law." In *Women, the Family, and Divorce Laws in Islamic History*, edited by Amira el-Azhary Sonbol, 236-56. Syracuse: Syracuse University Press, 1996.

Spectorsky, Susan A. *Chapters on Marriage and Divorce: Responses of Ibn Ḥanbal and Ibn Rāhwayh.* Austin: University of Texas Press, 1993.

Tadros, Mariz. "A Battle Half Won." *Al-Ahrām Weekly Online*, no. 662, 30 October–5 November 2003; available from http://weekly.ahram.org.eg/2002/617/eg11.htm; Internet; accessed 21 April 2006.

_____. "By the Skin of her Teeth." *Al-Ahrām Weekly Online*, no. 469, 17-23 February 2000; available from http://weekly.ahram.org.eg/2000/469/feature.htm; Internet; accessed 21 April 2006.

_____. "No Time to Talk." *Al-Ahrām Weekly Online*, no. 485, 8-14 June 2000; available from http://weekly.ahram.org.eg/2000/485/li5.htm; Internet; accessed 21 April 2006.

_____. "What Price Freedom?" *Al-Ahrām Weekly Online*, no. 576, 7-13 March 2002; available from http://weekly.ahram.org.eg/2002/576/fe1.htm; Internet; accessed 21 April 2006.

_____. "Who Won the Tug-of-War?" *Al-Ahrām Weekly Online*, no. 467, 3-9 February 2000; available from http://weekly.ahram.org.eg/2000/467/li1.htm; Internet; accessed 21 April 2006.

Tucker, Judith E. "'And God Knows Best': The *Fatwa* as a Source for the History of Gender in the Arab World." In *Beyond the Exotic: Women's Histories in Islamic Societies*, edited by Amira el-Azhary Sonbol, 165-79. Syracuse: Syracuse University Press, 2005.

_____. *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine.* California: University of California Press, 1998.

_____. "*Mufties* and Matrimony: Islamic Law and Gender in Ottoman Syria and Palestine." *Islamic Law and Society* 1,3 (1994): 265-300.

_____. "Revisiting Reform: Women and the Ottoman Family Law of Rights, 1917." *Arab Studies Journal* 4,2 (1996): 4-17.

_____. "Ties that Bound: Women and Family in Eighteenth- and Nineteenth-Century *Nablus*." In *Women in Middle Eastern History, Shifting Boundaries in Sex and Gender*, edited by Nikki R. Keddie and Beth Baron, 223-53. New Haven: Yale University Press, 1991.

_____. *Women in Nineteenth Century Egypt.* Great Britain: Cambridge University Press, 1985.

Wizārat al-Awqāf wal-Shu'ūn al-Islāmiyya. *Al-Mawsū'a al-Fiqhiyya.* 41 (to date) vols. Kuwait: Dār al-Ṣafwa lil-Ṭibā'a wal-Nashr, 1990-.

Yazbak, Mahmoud. "Minor Marriages and Khiyār al-Bulūgh in Ottoman Palestine: A Note on Women's Strategies in a Patriarchal Society." *Islamic Law and Society* 9,3 (2002): 396-409.

Zahraa, Mahdi. "The Legal Capacity of Women in Islamic Law." *Arab Law Quarterly* 11,3 (1996): 245-63.

Zarinefab-Shahr, Fariba. "Ottoman Women in the Tradition of Seeking Justice in the Eighteenth Century." In *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era,* edited by Madeline Zilfi, 253-63. Leiden: Brill, 1997.

Ze'evi, Dror. "The Use of Ottoman *Shari'a* Court Records as a Source for Middle Eastern Social History: A Reappraisal." *Islamic Law and Society* 5,1 (1998): 35-57.

_____. "Women in Seventeenth-Century Jerusalem: Western and Indigenous Perspectives." *International Journal of Middle East Studies* 27 (1995): 157-73.

Zilfi, Madeline. "We Don't Get Along: Women and *Hul* Divorce in the Eighteenth Century." In *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era,* edited by Madeline Zilfi, 264-96. Leiden: Brill, 1997.