

## **Research Project for Degree of LL.B.**

**“Analysis of Right of Khula in the light of current practices of Pakistani Courts”**



Research Project Supervisor: Sabeen Arif

This research project is submitted in partial fulfillment of the requirements for the degree of LL.B.

Submitted by: Hussain Riaz Chaudhary

Zain Ali Butt

Ahmed Amin Satti

26 May 2016

**Department of Law**

**Bahria University, Islamabad**

**Research Project for Degree of LL.B.**

**Supervisor Approval**

I hereby forward this work done by  
Hussain Riaz Chaudhary, Zain Ali Butt and Ahmed Amin Satti,  
to the Research Committee for the final Evaluation.

Supervisor Name: Sabeen Arif

Supervisor Signature:

26 May 2016

**Department of Law**  
**Bahria University, Islamabad**  
**Research Project for Degree of LL.B.**

## **Declaration of Ethical Conduct in Research**

We, as a student of Bahria University, hereby declare that firstly, we have abided by the research ethics while writing this research project.

Secondly, we have not committed any acts that may discredit or damage the credibility of my research. These include, falsification distortion of research findings or plagiarism.

Thirdly, we need to go through a plagiarism check before submitting this research project.

Date: 26 May 2016

Degree: LL.B.

Department: Law

Supervisor Name: Sabeen Arif

Name and Signature of Student:

Hussain Riaz Chaudhary

Zain Ali Butt

Ahmed Amin Satti

## **Acknowledgment and dedication**

We are very thankful to our supervisor Ma'am Sabeen Arif who guided us greatly in our research work. She pointed and corrected our errors. Due to her efforts, we improved our research a lot also improved our writing and research skills. She used to check our work every weekend. She helped us a lot. She has developed confidence in us.

She guided us in every aspect of the research. She recommended journal articles, books and case laws relevant to our project. She was always collaborated. She told us different tools of research which proves very helpful to our research. She identified possible sources of information in many types and formats.

We are also very grateful to Mr. Ch. Ashraf Gujjar Advocate Supreme Court and Mr. Naseer Haider Tiwana Advocate for their intense efforts. They guided us in the practical functioning of the Family Courts. They were humble and always motivated us. Their attitude was always very friendly. They recommended us in the case laws and articles relevant to our project.

# Table of Contents

## CHAPTER 01

1.1.INTRODUCTION .....	01
1.1.1. Hate Attitude of Wife leads to non-fulfillment of Marital Obligations.....	03
1.1.2. Claim of <i>Khula</i> can be raised in both Questions of Law and Facts.....	03
1.1.3. Limits imposed by Allah Almighty.....	04
1.1.4. Independent Right of Women.....	05
1.1.5. Past and Future Maintenance.....	05
1.2 . Historical Background.....	06
1.2.1. Non-existence of <i>Khula</i> in Arabian Society.....	06
1.2.2. Status of <i>Khula</i> in Prophet's Age.....	07

## CHAPTER 02

2.1. Legality of <i>Khula</i> .....	08
2.2. Is it necessary for Wife to give objective reasons.....	09
2.3 Grant of Maintenance.....	11
2.4 Haq Mehr not a consideration for <i>Badl-e-Khula</i> .....	14
2.5 Determination of <i>Zare Khula</i> .....	14
2.6 Distinction between <i>Khula</i> and <i>Mubaraat</i> .....	16
2.7 Amendments in <i>Khula</i> laws of Pakistan.....,	17
2.8 Different School of Thoughts.....	18
2.9 Difference between Islamic teachings and law of the land.....	19
2.10 The Causes of delay of justice .....	19

## CHAPTER 03

3.1 Development of the Principle of <i>Khula</i> in Pakistan.....	20
3.2 Current Practices.....	21
3.3 Conditions of <i>Khula</i> .....	22
3.4The Procedure of <i>Khula</i> .....	23

3.5 Appeal to the Decision of Family Court .....	26
3.6 Writ Jurisdiction.....	28
3.7 Statistics .....	27
3.7.1 Pending .....	28
3.7.2 Disposal .....	28
<b>CHAPTER 04</b>	
4.1. Legal Effects of <i>Khula</i> .....	29
4.2 The Effects of <i>Khula</i> on Dower.....	30
4.3 <i>Khula</i> is an Islamic Right of Muslim Wife .....	32
4.4 Gift or Benefit.....	32
<b>4.5 Comparison with other Muslim Countries.....</b>	<b>34</b>
4.5.1. Pakistan.....	34
4.5.2. Egypt.....	34
4.5.3. Yemen.....	35
4.5.4. Nigeria.....	35
4.5.5. Morocco, Syria and Jordan.....	35
4.5.6. Iraq.....	35
4.5.7. Saudi Arabia.....	35
<b>CHAPTER 05</b>	
5 .1. Conclusion .....	36
5.2 Recommendations.....	37

## **List of Case Laws**

- Sayeeda Khanum v. Muhammad Sami PLD 1952 Lahore 113
- M.st Balquis Fatima v. v. Najmul Ikram PLD 1959 Lah.566.
- Khurshid Bibi v. Muhammad Amin PLD 1967 SC 97
- Amanullah v. Husna PLD 1997 Kar 306
- Amna Bibi v. Mahmood Hussain 1998 CLC 171
- Bahauddin Sirhandi v. M.st Tnvir Amna, 1997 MLD 1826
- Bilquis Fatima v. Noor Muhammad PLD 1978 Lah.1109
- Dilshad Ahmed v Sarwat Bi PLD 1990 Kar 239
- Dr. Fakhar-ud-Din v. Mst. KausarTakreem PLD 2009 Peshawar 92
- Habib-ur-Rehman v. Additional District Judge, Lahore 1984 SCMR 1430
- Haroon Sultan Bokhari v. Syeda Mubarak Fatima 2014 CLC 1270
- Khurshid Bibi v. Mumtaz 1980 CLC 1212
- M.st RabiaRasheed v. Faisal Mir 2013 CLC 1203
- Malik Tanveer Khan v. M.st Amber Liaqat 2009 CLC 1210
- Manzoora Bibi v. Khan Muhammad 1998 CLC 1929
- Muhammad Akram v. Majeed Begum PLD 1984 Azad J and K 36.
- Muhammad Khan v. Zarina Begum PLD 1975 Azad J and K 27
- Muhammad Nawaz v. Faiz Ellahi PLD 1978 Lah.328
- Muhammad Nawaz v. Ghulam Rasool, Judge Family Court, Kabirwala and another 1979 CLC 1722
- Muhammad Rafiq v. Chairman , Arbitration Counsel 1986 CLC 1722
- Resham Bibi v Muhammad Shafi PLD 1967 Azad J & K 32
- Robina Kausar v Abdur Rehman 1988 CLC 399
- Sadia Sultan v. Additional Sessions Judge Hafizabad
- Saiqa v. Additional District Judge, Rawalpindi, 2003 YLR 70  
PLD 2012 Lahore 98
- Shagufta Jabeen v Javed Iqbal 1988 MLD 1207

## **Abstract**

Marriage among Muslims is not a sacrament, but in the nature of Civil contract. Such a contract undoubtedly has spiritual and moral overtones and undertones. Legally speaking, it remains a contract between the parties which can be the subject of dissolution for good cause. Under the Muhammadan Law, a sui juris woman cannot be forced to live with her husband against her wishes. If there is this agreement between the spouses the wife is entitled to live separately from her husband.

Khula is a release from matrimonial bond which, according to the dictate of Holy Quran, can be exercised if circumstances indicate that it has been impossible for the parties to live within the prescribed limits given by Allah Almighty. Their forceful union will give birth to hateful relationship, so the usual Court practice of Pakistani courts is that they grants Khula to a woman whether she expressly claims or omits to claim dissolution on ground of Khula in the pleadings and even when other grounds for seeking dissolution of marriage are not proved.