

RESEARCH PROJECT FOR DEGREE OF LLB

THE CONCEPT OF KHULA; A COMPARATIVE STUDY OF ISLAMIC LAW AND FAMILY LAW



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

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ORIGINALITY REPORT

SUPERVISOR'S APPROVAL

We hereby, forward this work done by Azhar Nawaz, M. Zohaib Tahir and Najeeb Ullah to the research committee for the final evaluation.

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DECLARATION OF ETHICAL CONDUCT IN RESEARCH

We, as students of Bahria university, hereby, declare that:

First, 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 our research. These include, but are not limited to; falsification distortion of research findings or plagiarism.

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

Date **December 8th, 2017**

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ACKNOWLEDGEMENT AND DEDICATION

In the name of Allah Almighty; the most merciful and beneficent;

We dedicate this research to our parents, family and friends.

We specially dedicate our work to all those , who are the victims from honour killing.

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LIST OF ABBREVIATIONS

APWA	All Pakistan Women's Association
CLC	Civil Law Cases
DMMA	Dissolution of Muslim Marriages Act
FSC	Federal Shariat Court
HC	High Court
MFLO	Muslim Family Laws Ordinance
MLD	Monthly Law Digest
PLD	Pakistan Legal Decision
SC	Supreme Court
YLR	Yearly Law Review
AIR	All Indian Reporter

LIST OF THE CASES

- 1) Aflab Ahmad V. Tahira Yasmeen, (1992) CLC 2345 2347, (PAK.).
- 2) Allah Ditta V. Judge Family Court, (1995) MLD 1952, (PAK.).
- 3) Batool Bibi V. Muhammad Hayat, (1995) CLC 724, (PAK.).
- 4) Buffatan Bibi V. Sheikh Abdul Salim, A.I.R. 1950 CAL. 304 (INDIA).
- 5) Dr. Akhlaq Ahmad V. Mst. Kishwar Sultana, (1988) CLC 1135. (PAK.).
- 6) Fazalhussain V. Husnabano, (1995) MLD 170, (PAK.).
- 7) Hidayatullah V. Amna Bibi, (2005) CLC 54, (PAK.).
- 8) Mehnaazmehboob V. Ishtiaq-Ur-Rasheed, (2006) YLR 335, (PAK.).
- 9) Mir Qalam Khan V. Shamim Bibi, (1995) CLC 731, (PAK.).
- 10) Mst Amira Bukhari V. Faqir Syed Jamil Ud Din Bukhari, (1994) PLD (SC) 136 (PAK.).
- 11) Mst. Ghulam Zohra V. Faizrasool, (1988) MLD 13531355, (PAK.).
- 12) Mst. Nazir V. Additional District Judge Rahim Yar Khan, (1995) CLC 296 298, (PAK.).
- 13) Mst. Shazianasim V. Additional District Judge, (1995) MLD 981. (PAK.).
- 14) Muhammad Aslam V. Razia Sultana, (1995) PLD (LAHORE) 287, (PAK.).
- 15) Muhammad Irfan V. Mst. Mohando, (1952) PLD (PESHAWAR), (PAK.).
- 16) Muhammadabbasi V. Samiaabbasi, (1992) CLC 937, (PAK.).

- 17) Muhammadyounus V. Kanizfatima, (2000) PLD (KARACHI) 348, (PAK.).
- 18) Mumtaz Bibi V. Muhammad Ilyas, (1987) CLC 2323, (PAK.).
- 19) Muslim Family Laws Ordinance, 1961, No.8, Acts Of Parliament, Section 7, 1961 (Pakistan).
- 20) Qamar Raza V. Tahir Begum, (1988) PLD (KARACHI) 169, (PAK.).
- 21) Qambarmurtaza Bukhari V. Zainab Bashir, (1955) Pld (Lahore) 187, (Pak.).
- 22) Qammar Alam Sheikh V. Robina, (1997) CLC 985, (PAK.).
- 23) Sayeeda Khanum V. Muhammad Sami, (1952) PLD (LAHORE) 113, (PAK.).
- 24) Shahista V. Liaqat Ali Sathi, (2006) PLD (LAHORE) 158, (PAK.)

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ABSTRACT

Family laws of Pakistan are discussed in detail. The researchers have done an analysis of legal and religious aspects of Khula. The concept of Khula and its practice in Pakistan with the help of case studies has been analyzed. Historical background of family laws of Pakistan along with relevant case laws is discussed in detail. The Family Courts Act, 1964 and all aspects of Khula in Pakistan are covered by the researchers. Conclusion is given at the end.