

## Regulation of Divorce in Muslim-Majority Countries: A Comparative Study of Arbitration and Judicial Intervention

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### ABSTRACT

The concept of dissolution of marriage in Muslim law holds a unique position within the broader framework of personal laws worldwide, balancing between religious principles and evolving human rights norms. This research examines the position of dissolution of Muslim marriage from an international perspective, highlighting the diverse interpretations and applications of Islamic principles. While Islamic law grants both men and women the right to seek dissolution through various forms such as talaq and khula, its implementation varies significantly from one country to another due to differing legal frameworks, cultural contexts, and levels of judicial reform. This paper analyzes the position of dissolution of Muslim marriage from an international perspective with particular reference to arbitration, emphasizing the Quranic injunction that encourages mediation and arbitration through appointed representatives from both families before divorce is finalized. The research concludes that arbitration in Muslim matrimonial disputes serves as a vital mechanism to ensure justice, protect women's rights, and prevent arbitrary dissolution of marriage. Thus, the integration of arbitration principles into the dissolution of Muslim marriages reflects a harmonious blend of religious ethics, legal pluralism, and contemporary notions of dispute resolution in an increasingly globalized world.

**Keywords:** Muslim Law, International Human Rights, Divorce, Reconciliation, Women's Rights.

### Introduction

Previously frowned upon in many cultures, divorce is now a common occurrence worldwide. As cultural norms evolve and legal systems modernize, the dissolution of marriage is increasingly viewed through the lens of personal autonomy, gender equality, and social justice. Nonetheless, the global divorce scene is still complicated, influenced by a variety of legal customs, religious beliefs, and socioeconomic variables.

Divorce laws vary significantly across countries. Many Asian and Middle Eastern countries still demand proof of fault or religious justification for divorces, even though Western countries frequently implement "no-fault" divorce laws. Divorce and *khula* are central mechanisms for the dissolution of marriage within family law in Muslim-majority countries. In Pakistan and Malaysia-both societies deeply shaped by Islamic legal traditions-the regulation of these processes reflects distinct historical, cultural, and social influences. A careful examination of how divorce and *khula* are structured and applied in each context is therefore critical to understanding their broader implications for gender equality and the protection of women's rights.<sup>1</sup>

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<sup>1</sup> Hafiz Falak Shair Faizi et al., "Divorce and Khula: A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia," *22 Pakistan Journal of Life and Social Sciences (PJLSS)* 1109 (2024).

The interaction between these systems is most evident in family law, where Muslims marry under Sharia Law but may engage with civil law for property rights and contractual obligations outside the marriage scope. Cases involving conversion from Islam to another religion bring significant challenges due to conflicts between the rights granted under the Federal Constitution and restrictions imposed by Sharia Law. Such conversions may affect marital status, child custody, and inheritance rights, requiring careful navigation through both legal systems.<sup>1</sup>

Islam denotes submission to the will of God and, in a broader sense, the establishment of peace. It is often regarded as one of the earliest religious traditions to formally recognize women as human beings with a legitimate and protected place in society. In contemporary Muslim-majority countries, efforts to balance legal modernization with respect for the *Shariat* have led to significant legal reforms. During the period of personal status legislation, numerous reforms—both across Muslim countries generally and in India in particular—have been enacted with the aim of improving women's status and strengthening their empowerment, especially in relation to matrimonial rights.<sup>2</sup>

The laws of Egypt and Syria adopt the four conditions of separation, the majority of which are adopted from the Malik and Hambali Madhhabs. Separation by judicial decree can take the form of talaq, which is separation due to lack of maintenance or *ila*, *lian*, disagreement between husband and wife, due to the husband's departure, due to the husband's captivity, or due to arbitrariness; it can also take the form of cancellation of the original contract. This is the same as separation that results from a broken contract, such as separation due to apostasy on the part of one of the spouses.<sup>3</sup>

In recent years, several Muslim-majority countries have undertaken substantial legislative reforms, particularly in the areas of marriage and divorce. In Mauritania, for example, the government enacted its first Personal Status Code in 2001. This code formally recognizes women's right to *khula*, or divorce initiated by the wife (Article 92). However, the enactment of the code did not constitute a socio-judicial revolution, as this right had long been acknowledged and practiced within Mauritanian Moorish society.<sup>4</sup>

### Core Principles

- **Talaq (Repudiation by Husband):** Traditionally, a Muslim man can unilaterally divorce his wife by pronouncing talaq. This is recognized in many Muslim-majority countries, though reforms have been introduced to regulate it.
- **Khula (Divorce by Wife):** A woman may initiate divorce by returning her mahr (dower), but this often requires judicial approval.
- **Mubarat (Mutual Consent):** Both spouses agree to end the marriage, which is generally accepted across jurisdictions.

### Global Variations

- **Saudi Arabia & Iran:** Follow classical interpretations of Sharia. Men have broad rights to initiate divorce, while women often need court intervention.
- **Egypt:** Recognizes *Khula* through judicial process; reforms have expanded women's rights in divorce.
- **India:** Muslim personal law is recognized, but *Triple Talaq* (instant divorce) was declared unconstitutional in 2017 and criminalized in 2019 under the Muslim Women (Protection of Rights on Marriage) Act.
- **Pakistan:** Requires registration of divorce and a reconciliation period; *Khula* is available through family courts.
- **Malaysia & Indonesia:** Blend Islamic principles with civil law. Divorce typically requires court approval, and both spouses have procedural rights.

<sup>1</sup> Mohd Amir bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," 3 *Law and Economy* 29–38 (2024).

<sup>2</sup> Md. Mofidul Islam, "The Reformatory Role of Personal Law and Judicial Proceedings for Upgrading the Marital Status of Women Under Islamic Law in India and Abroad," 11 *International Journal of Management (IJM)* 667 (2020).

<sup>3</sup> Mohammad Ainul Hakim Hakim, "Marriage Dispute Resolution in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore," 6 *Legitima Jurnal Hukum Keluarga Islam* 63–80 (2024).

<sup>4</sup> Corinne Fortier, "The Right to Divorce for Women (khul') in Islam: Comparative Practices in Mauritania and Egypt", *Interpreting Divorce Laws in Islam* 161 (2012).

- Muslim communities often face dual legal systems: religious divorce under Islamic law and civil divorce under national law. This can lead to complications, especially for women seeking recognition of religious divorce in secular courts.

Modern legal reforms aim to balance religious doctrine with human rights, especially regarding gender equality and procedural fairness. Landmark cases, such as *Shayara Bano v. Union of India*<sup>1</sup> in India, have led to the growing scrutiny of unilateral divorce practices.

### Various Laws Regarding Divorce in Different Countries and their Procedure

#### Divorce Under Muslim Law in Indonesia

- **Divorce Law**

Due to its predominantly Muslim populace, Indonesia has a positive law that governs divorce. Generally speaking, laws pertaining to divorce are governed by Law No. 1 of 1974 concerning Marriage. In addition, divorce for Muslims is regulated by separately written rules in the form of the Compilation of Islamic Law (KHI). KHI stands for *Kompilasi Hukum Islam*, which translates to the Compilation of Islamic Law. The KHI itself was prepared using the guiding principles of justice, benefit, and benefit, as well as resolving a number of *khilafiyah* concerns to guarantee legal certainty. In the judicial world, KHI is used as a guide for religious judges in handling cases submitted to them, including divorce. Divorce is strictly governed by Indonesian marriage law.<sup>2</sup>

*Talak* and *khula* appear to be divorce concepts that are similar to the no-fault principle in classical *fiqh*. This is because in divorce and *khula* there is no need to prove the fault of one of the parties as a basis for divorce by the husband. Regarding divorce, it can be argued that the husband has the authority to have the divorce enforced by anybody, anywhere, at any time, and under any circumstances. A divorce imposed without a reason is only penalized as a *makruh* action. Meanwhile, customary law in Indonesia recognizes divorce based on the agreement of both parties. But often, divorce does occur due to a demand from the wife. If the husband violates one of the customary prohibitions, this claim may be made. After attempts have been made to preserve the integrity of the marriage, it is the responsibility of the judges and traditional leaders to decide who is at fault.<sup>3</sup>

Marriage law in Indonesia is regulated in Law No. 1 of 1974 on the state gazette of the Republic of Indonesia. The general explanation section of Republic of Indonesia Number 3019's additional gazette contains the provisions of the law's explanation, which covers a number of essential topics. The Compilation of Islamic Law in Indonesia has the goal of uniting laws, namely unification. Furthermore, the KHI is employed in an attempt to give a judge's ruling the same legal weight as one rendered by a regular court.<sup>4</sup>

- **Procedure on Divorce**

Divorce in Indonesia largely follows the principles of Islamic law, as reflected in the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), which serves as the primary legal standard. Under the KHI, when a marriage is dissolved through divorce, the *iddah* period for the wife—whether she menstruates or not—is set at a minimum of 90 days or three menstrual cycles. Although divorce is legally permissible in Islam, it is regarded as a disliked act and is considered a last resort, to be undertaken only when reconciliation between the parties is no longer possible.<sup>5</sup>

According to Article 115 of the Compilation of Islamic Law (KHI), which is consistent with the Marriage Law, divorce can only be finalized in front of a Religious Court session following the Religious Court's unsuccessful attempt to mediate a settlement between the parties.<sup>6</sup>

However, in order to deal with the realities of a failed marriage, one or both parties may request a divorce. Despite the fact that divorce is clearly permissible and can only be carried out when both

<sup>1</sup> (2017) 9 SCC 1.

<sup>2</sup> Mohammad Ainul Hakim Hakim, "Marriage Dispute Resolution in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore," 6 *Legitima Jurnal Hukum Keluarga Islam* 63–80 (2024).

<sup>3</sup> *Ibid.*

<sup>4</sup> Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," 5 *Matan Journal of Islam and Muslim Society* 15 (2023).

<sup>5</sup> Prof. K.H. Saifuddin Zuhri, "The Dynamics of Polygamy and Divorce in Muslim Countries," 2 *El-Akwal Journal of Sharia and Comparative Law* 146 (2023).

<sup>6</sup> Mohammad Ainul Hakim Hakim, "Marriage Dispute Resolution in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore," 6 *Legitima Jurnal Hukum Keluarga Islam* 63–80 (2024).

parties have exhausted all other options, it is nevertheless a taboo subject in Islam. However, the KHI is somewhat different from the marriage law. In the KHI, a distinction is made between divorces caused by divorce and divorces due to divorce claims. Whereas the wife files a divorce suit, the husband files a divorce application for talak, which is then submitted to the Religious Court.<sup>1</sup>

In 2008, however, the Supreme Court introduced Supreme Court Regulation Number 1 of 2008, requiring mediation to be part of the judicial process in any dispute, including divorce as a dispute, along with other matters before all courts. One of the main aims has been to reduce the burden of cases in the judicial system, which may be problematic for divorce, as I will discuss. In a procedure mandated by the Supreme Court and uniform for all disputes, Islamic courts must now, for the first time, use mediation as a mandatory component of divorce proceedings. Through a negotiation process designed to secure both parties' agreement with the mediator's help, mediation is viewed as a means of resolving conflicts. All mediators must be trained with professional certificates.<sup>2</sup>

Yet since a major purpose of the new mediation regulation is to discourage legal disputes, this happens to coincide with the Islamic value of discouraging divorce. The mediation process has also been influenced by Islamic law, Quranic principles, and Islamic values. Social shifts have also had an impact on Muslim divorce mediation values and family life.

Another example of state attempts to regulate Islam during a period of growing Islamization is the Indonesian government's interference in the Religious Courts' operations. One implication of the Indonesian state's changes to Muslim divorce mediation is that the Religious Court practices, including mediation, are less overtly Islamic. Since 2008, mediation in Muslim divorce has been in a transitional phase, which helps to explain some of the diversity of practices I observed in Yogyakarta. Mediation has been professionalized by requiring certification. Training has developed the mediators' capacity to assist divorce clients. As yet, however, few judges, who do all of the official mediation, have mediator certificates. Furthermore, the rule requiring a judge to immediately transition from their position as a judge to that of a mediator is applied inconsistently.<sup>3</sup>

#### **Divorce under Muslim Law in Malaysia**

In Malaysia, Sharia Law, also known as Islamic law, plays a critical role in governing the personal and family affairs of the Muslim population, which constitutes about 60% of the country's total population. Sharia Law in Malaysia is derived from the Quran and the Hadiths, which are the records of the sayings and actions of Prophet Muhammad. In the context of family law, Sharia courts have exclusive jurisdiction over marriage, divorce, and related matters among Muslims. This includes the procedures for marriage registration, annulment, divorce (both Talaq and judicial divorce), and post-divorce matters such as alimony and child custody. Divorce under Sharia can be initiated by either the husband or the wife, though the processes and conditions vary significantly. For men, the pronouncement of 'Talaq' is sufficient under certain conditions, while women may seek a 'Fasakh' (judicial divorce) on several grounds, such as abuse, neglect, or impotence, which needs to be proven in the Sharia court. This overview provides the foundational understanding needed to explore the specific dynamics of Sharia Law in governing divorce proceedings among Muslims in Malaysia, as discussed in the subsequent sections of the paper.<sup>4</sup>

- **Divorce Law**

In Malaysia, talaq refers to the Islamic mechanism by which a husband pronounces divorce and is formally recognized under Malaysian Sharia law, particularly the Islamic Family Law (Federal Territory) Act 1984. Under this framework, a talaq must be pronounced and validated through the Sharia courts to ensure procedural and substantive compliance with Islamic legal principles. Khula, by contrast, denotes the wife's right to seek divorce in exchange for compensation paid to the husband. This form of divorce is also recognized under Malaysian Sharia law and enables women to petition the Sharia courts for

<sup>1</sup> Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," 5 *Matan Journal of Islam and Muslim Society* 15 (2023).

<sup>2</sup> Rita Pranawati, "Changes in Muslim Divorce Mediation in Indonesia: A Case Study of the Yogyakarta Religious Court" *International Journal of Indonesian Studies* 32 (2017).

<sup>3</sup> Ibid.

<sup>4</sup> Mohd Amir bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," 3 *Law and Economy* 29–38 (2024).

dissolution of marriage, provided they can demonstrate justifiable grounds. Together, talaq and khula illustrate the dual pathways for marital dissolution in Malaysia's Islamic family law system.<sup>1</sup>

The principle of reconciliation in Malaysian law is in line with the principle of Islamic law, which can be seen through Section 51 of the Islamic Family Law (Federal Territory) Act 1984 (IFLA). By virtue of Section 51(1), "revocable divorce" "means a divorce by one or two talaq not followed by completion of 'iddah, and "recohabit" means resume conjugal relations within the period before the divorce has become irrevocable." "If cohabitation occurs by mutual consent following a revocable divorce, the parties must report the cohabitation within seven days. "If after a revocable divorce the husband pronounces a ruju (reconcile) and the wife has consented to the ruju, she may, on the application of the husband, be ordered by the Court to resume conjugal relations, unless she shows good cause to the contrary, according to Hukum Syara, in which case the Court shall appoint a conciliatory committee as provided under Section 47 and that section shall apply accordingly." (Section 51(8), IFLA 1984). It is also permissible for a wife to refuse the reconciliation during the waiting period for the reason that harm is expected in the reconciliation, as Section 51(9) of IFLA 1984 provides that "if after a revocable divorce the husband pronounces a ruju but the wife has not consented to the ruju for reasons allowed by Hukum Syara, she shall not be ordered by the Court to resume conjugal relations, but the Court shall appoint a conciliatory committee as provided under Section 47, and that section shall apply accordingly."<sup>2</sup>

- **Procedure on Divorce**

Under talaq, the husband expresses his intention to divorce—traditionally by pronouncing talaq—and must submit a formal petition to the Sharia court, with due notice given to the wife. The court then undertakes reconciliation efforts to preserve the marriage. If reconciliation is unsuccessful, the divorce is confirmed. Following this, the wife is required to observe the iddah (waiting) period, typically three months, to establish that she is not pregnant. The divorce must be formally registered with the Sharia court, and failure to do so may result in legal penalties for the husband. In the case of khula, the wife initiates the divorce by filing a petition with the Sharia court. She must set out her reasons for seeking dissolution and indicate her willingness to return the dower (mahr) or provide other agreed compensation as a condition for the divorce.<sup>3</sup>

In Malaysia, the divorce procedures differ significantly under the Sharia Law system, applicable only to Muslims, and the Civil Law system, which governs non-Muslims and also applies to all citizens in non-religious matters. These varying procedures reflect the unique legal frameworks designed to accommodate the diverse religious and cultural demographics of the country.

- **Divorce under Sharia Law**

Divorce for Muslims can be initiated in various ways. Men may pronounce a 'Talaq,' a declaration of divorce made during a period of purity. Women can seek a 'Fasakh' divorce on grounds such as abuse, neglect, or the husband's inability to provide maintenance. Sharia courts often require efforts towards reconciliation, involving appointed arbitrators who attempt to reconcile the spouses. The legal process demands comprehensive documentation like marriage certificates and identification papers. Issues such as child custody, property division, and alimony are also resolved based on Islamic principles, which delineate specific rights and responsibilities for each gender.<sup>4</sup>

- **Divorce under Civil Law**

Non-Muslims undergo divorce proceedings in civil courts, starting with a divorce petition citing reasons like irretrievable marital breakdown, prolonged separation, adultery, or unreasonable behavior. The process may include mediation and counseling, particularly when minor children are involved, to prioritize their best interests. If reconciliation fails, the case advances to a hearing where evidence is presented, and a judgment is issued based on this evidence. Matters like child custody, asset division, and maintenance are either settled by mutual agreement sanctioned by the court or decided by the court if agreement proves elusive. Interactions Between the Systems: The defined jurisdictions of Sharia and

<sup>1</sup> Hafiz Falak Shair Faizi et al., "Divorce and Khula: A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia," 22 *Pakistan Journal of Life and Social Sciences (PJLSS)* 1109(2024).

<sup>2</sup> Nadzrah Ahmad et al., "The Application of Reconciliation in Muslim Divorce Cases Caused by the Domestic Violence: An Analysis Between Islamic and Malaysian Law," 11 *International Journal of Academic Research in Business and Social Sciences* 263–73 (2021).

<sup>3</sup> Hafiz Falak Shair Faizi et al., "Divorce and Khula: A Comparative Study of Prevailing Family Laws in Pakistan and Malaysia," 22 *Pakistan Journal of Life and Social Sciences (PJLSS)* (2024).

<sup>4</sup> Ibid.

civil law generally prevent overlap, but complications can arise in cases involving spouses from different religions or when a Muslim converts to another religion. These scenarios can lead to jurisdictional conflicts and legal complexities, challenging the consistency and predictability of divorce outcomes. This dual system approach to divorce law in Malaysia caters to the specific needs of its multicultural and multi-religious population but also introduces challenges due to the differences in legal practices and outcomes between the systems.<sup>1</sup>

In Malaysia, the procedures for obtaining a divorce under Sharia and civil law are structured to accommodate the diverse cultural and religious norms of Muslims and non-Muslims, respectively. This section provides a detailed comparison of these processes, emphasizing both the procedural nuances and broader legal implications. Divorce can be initiated by either spouse. Men have the ability to pronounce 'Talaq,' a unilateral declaration of divorce, which is relatively straightforward. Women, on the other hand, may petition for a 'Faskh' divorce, which requires proving specific grounds such as abuse, neglect, or the husband's failure to perform marital obligations. • Civil Law: Divorce proceedings begin with the filing of a petition in a civil court. The grounds for divorce under civil law include irretrievable breakdown of the marriage, demonstrated through adultery, unreasonable behavior, or prolonged separation.<sup>2</sup>

Sharia Law includes a mandatory reconciliation period where appointed arbitrators attempt to mediate between the spouses. The documentation required typically includes marriage certificates, proof of the grounds for divorce, and personal identification. • Civil Law: May involve mediation, especially when minor children are involved, aimed at reconciling the parties. If reconciliation fails, the process moves to a hearing phase where evidence is presented and both parties can make their case to the judge.<sup>3</sup>

### **Divorce Under Muslim Law in Pakistan**

- **Divorce Law**

Divorce in Pakistan is regulated through a combination of legal instruments that reflect the country's historical, religious, and social development. The two principal laws governing divorce are the Dissolution of Muslim Marriages Act, 1939, and the Muslim Family Laws Ordinance (MFLO), 1961. Although both statutes operate concurrently, the MFLO largely supplements and clarifies procedural aspects of divorce that were not adequately addressed in the 1939 Act.<sup>4</sup> Together, these laws illustrate the evolution of divorce regulation in Pakistan and the shifting balance between classical Islamic jurisprudence and legal reform.

- **Procedure on Divorce**

According to the Muslim Family Law Ordinance 1961. As previously mentioned, the MFLO was formed based on a survey conducted by Pakistan's lawmaking committee; therefore, the draft that is now the MFLO is an applicable law that suits Pakistani society. Regulations regarding divorce are regulated in articles 7 and 8 of MFLO 1961. Based on this regulation, the dissolution of marriages in Pakistan can occur in four ways, namely:

- **Divorce on Husband's Initiative:** Under Pakistani law, once a marriage is concluded, the husband possesses an inherent unilateral right to divorce. This right, however, may be contractually restricted through stipulations incorporated into the *Nikahnama* (marriage contract). Pakistani law does not confine divorce to judicial proceedings; a husband may pronounce divorce either orally or in writing outside the court. Nevertheless, once a divorce is pronounced, the husband is legally required to report it to the local Union Council so that a formal notice of divorce may be issued to the wife. Failure to register the divorce with the Union Council constitutes an offense and may result in penalties, including imprisonment for up to one year or a fine of up to 5,000 rupees. The husband is also obliged to provide the address of the former wife to enable the authorities to notify her of the divorce. Where

<sup>1</sup> Mohd Amir bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," 3 *Law and Economy* 29–38 (2024).

<sup>2</sup> Ibid.

<sup>3</sup> Supra note 20.

<sup>4</sup> Prof. K.H. Saifuddin Zuhri, "The Dynamics of Polygamy and Divorce in Muslim Countries," 2 *El-Aqwal Journal of Sharia and Comparative Law* 140 (2023).

the wife's whereabouts are unknown, notice is given through official correspondence or publication in newspapers to ensure that the information reaches her or her close family members. Following the issuance of the divorce notice, the Union Council forwards the matter to an Arbitration Council. This body is tasked with attempting reconciliation between the spouses and, where possible, facilitating a resolution before the divorce becomes final.<sup>1</sup>

- **Divorce on Wife's Initiative:** In Pakistan, a divorce initiated by the wife is subject to specific legal conditions. A wife may file for divorce independently only if she has been expressly granted the right to divorce (talaq-e-tafwid) by the husband. This delegated right is typically recorded in the Nikahnama at the time of marriage. Where such a right exists and the husband is shown to have violated the terms of the marriage contract, the wife may institute divorce proceedings before the court. In cases where the wife has not been granted the right to divorce under the Nikahnama, she may seek dissolution of marriage through khula. To invoke khula, the wife must establish grounds recognized under the applicable legislation and make a formal declaration in accordance with the requirements of the West Pakistan Family Laws Ordinance. The procedural framework for khula was initially set out in Article 2 of the Dissolution of Muslim Marriages Act, 1939, and these provisions were later incorporated, applied, and reinforced under the Muslim Family Laws Ordinance, 1961.<sup>2</sup>

A marriage may be ended in Pakistani law through Khula or Divorce (or Talaq), and the primary way Khula and Divorce differ is in who begins the process and how it is carried out. Divorce (Talaq) is the right of the husband. According to Islamic and Pakistani legal principles, a man can unilaterally divorce his wife by pronouncing Talaq, following the proper procedure. After the pronouncement, he is required to send written notice to the concerned Union Council, which then initiates a 90-day reconciliation period. If reconciliation fails and the husband does not withdraw the divorce during this time, the divorce becomes effective. Importantly, the wife doesn't need to agree for Talaq to be valid, although she must be informed. On the other hand, Khula is the right of the wife but involves a legal process. In short, while Talaq is a husband's unilateral right under Islamic and Pakistani law, Khula is a woman's legal recourse to seek separation through the court. Both end a marriage, but the procedure and authority behind each differ significantly.<sup>3</sup>

In both Pakistan and Bangladesh, a husband seeking to divorce his wife is required to submit a written notice of the divorce to the Arbitration Council and provide a copy to his wife. In Pakistan, the practice of *triple talaq* was abolished with the enactment of the Muslim Family Laws Ordinance in 1961, as reported by Geo News. This reform aimed to regulate divorce procedures and prevent the arbitrary and instantaneous dissolution of marriage, ensuring greater legal protection for women.<sup>4</sup>

#### **Divorce under Muslim Law in Saudi Arabia and Iran**

- **Divorce Law**

Saudi personal and family law is not codified or compiled in a law code. All cases concerning marriage, divorce, inheritance, and the status of children fall under the general jurisdiction of the sharia courts. Marriage in Islamic law is a contract of exchange between a man and a woman, concluded in the presence of two witnesses. A bride and groom have the right to include stipulations in their marriage contract. If a stipulation is broken, it can be used as justification to dissolve the marriage in court. For example, a clause can be included in the contract that provides that when the man marries a second wife, the first wife has the right to initiate divorce proceedings. In such a case, it is possible that the husband has granted the wife his right of repudiation (talaq); she can then repudiate herself because the husband broke the marriage contract. When a marriage is concluded without such stipulations, the woman's possibilities to obtain a divorce are limited. A woman can ask her husband to divorce her in exchange for a waiver of her financial rights (divorce by mutual consent, or khula), namely the return of

<sup>1</sup> Prof. K.H. Saifuddin Zuhri, "The Dynamics of Polygamy and Divorce in Muslim Countries," 2 *El-Aqwal Journal of Sharia and Comparative Law* 142 (2023).

<sup>2</sup> Prof. K.H. Saifuddin Zuhri, "The Dynamics of Polygamy and Divorce in Muslim Countries," 2 *El-Aqwal Journal of Sharia and Comparative Law* 143 (2023).

<sup>3</sup> Aisha Waraich et al., "Distinction between Khula and Divorce Under Pakistani Law: A Doctrinal Analysis," 3 *The Critical Review of Social Sciences Studies* 2370-86 (2025).

<sup>4</sup> Md. Mofidul Islam, "The Reformatory Role of Personal Law and Judicial Proceedings for Upgrading the Marital Status of Women Under Islamic Law in India and Abroad," 11 *International Journal of Management (IJM)* 667 (2020).

any dower and other remaining financial rights. A woman can seek judicial divorce when harm is inflicted upon her by her husband, which is interpreted as any harmful conduct of the husband (physical or mental) that makes conjugal life between the couple impossible. In practice, however, it is very difficult for a woman to obtain a judicial divorce in Saudi Arabia. She has to prove that harm was inflicted upon her by her husband, quite a challenge in the closed patriarchal Saudi society.<sup>1</sup>

In the civil law, in terms of the separation possibility, there is a full difference between woman and man. In the family support laws, it was tried that both of them be placed in an equal situation. Despite this, since the natural difference between woman and man isn't an affair that can be removed by law, inevitably in that same affair, the difference in the commands was manifested somehow unavoidably. But the legal bill of the special civil court re-established the civil legal system with a little difference: a husband can divorce his wife whenever he wants, but he is coerced to take the permission from the court, and this permission is given in the event that the selected arbitrators cannot succeed in amendment between both of them; but, vice versa, a wife can take the command on the husband's compulsion from the court only if it has legitimate cause. Consequently, divorce reasons pertaining to the wife or husband can be separated into two categories based on this issue, and divorce based on mutual consent can be added to them as a third category.<sup>2</sup>

Firstly, when ever a husband wants, he can divorce his wife (article 1133 of civil law). Second, under civil law articles 1029, 1129, and 1130, a wife may ask the court or a legislator for a divorce in certain circumstances. Thirdly, the spouses with special conditions can agree about the divorce mutually. This kind of divorce is called "divorce due to the wife's generosity in waiving her marriage portion" or divorce due to the aversion of parties from each other.<sup>3</sup>

After an initial attempt to reconcile the couple, the court refers them to arbitration. Each spouse nominates an arbiter, and these must submit a report of their attempt to reconcile the couple within two months. They seem to have no power of enforcement, and their intervention may in many cases be no more than a pro forma action required before the real divorce procedures will be accepted by a court. The court cannot deny a petition for divorce brought by a man but may delay giving a decision, either on its own initiative or on the recommendation of the arbiters stating that reconciliation is possible.<sup>4</sup>

## Conclusion

The study reveals significant differences in the legislative frameworks governing divorce and khula, with the former primarily relying on Islamic law and the latter incorporating elements of both Islamic and civil law. Judicial interpretations of divorce and khula laws vary, with courts considering factors such as welfare, financial support, and cultural norms, influencing the outcomes of divorce cases. The findings highlight the differential impact on women's rights, financial entitlements, and social stigma associated with divorce and khula in both countries. But the common factor that is followed by almost all the countries is the process of arbitration before the finalization of the divorce. Reconciliation of marriage is ultimately a time- and cost-saving process when it is conducted privately outside of the court proceeding. Even media and public attendance is not allowed in such dispute settlement. In addition, this process is more comfortable for the vulnerable parties who are in marital conflicts. Therefore, disputing parties are welcomed into the reconciliation process rather than traditional trial proceedings. Similarly, a well-trained mediator or conciliator is more capable of dealing with the parties in order to settle their dispute through a formal resolution process. In the Muslim-majority countries, due to the multi-religious social system, family issues are dealt with by either the Family Court or the Civil Court jurisdiction. On the other side, in some of the countries, family matters are dealt with by the Shariah law principles. In both jurisdictions, the trial proceeding is a lengthy process to get the final decision from the court, but the reconciliation process is a time- and money-saving process.



<sup>1</sup> Shabina Khalifa, "Divorce Practices in Islam & Other Religions" 163-164(Unpublished, 2023).

<sup>2</sup> Mohammad Reza Marandi and Zeynab Farzizadeh, "A comparative study of divorce laws in Islamic jurisprudence and Iranian law," 5 (2017).

<sup>3</sup> Ibid.

<sup>4</sup> Ehsan Zar Rokh, "Marriage and Divorce Under Iranian Family Law" *SSRN Electronic Journal* 41 (2011).