

Al-Khula in Algerian Family Law between Islamic Jurisprudence and International Agreements

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Received: 11-06-2023

Accepted: 02-09-2023

Published: 11-10-2023

Abstract:

If a woman finds herself oppressed financially, morally, or both as a result of continuing the marital relationship, she may dissolve the marriage contract through khul', where she redeems herself with financial compensation, this has been permitted by Islamic law, and the Algerian legislator has codified this according to legal articles, However, the latter changed the ruling on khul' from an exception in Law 84/11 to an inherent right in the latest amendment of 2005, and the reason is Algeria's signing of international agreements. Among the results obtained in this study are: Amending Article 54 of the Code of Criminal Procedure is a dark spot in this amendment, because it is contrary to Islamic law.

The legislator showed his adherence to Maliki jurisprudence at the beginning of the article, but then he violated it by the judge directly divorcing the woman without uttering the words used to dissolve the marital bond specific to khul', the judge has become responding to the woman's request for khul' from the moment she requests it and without verifying the reasons motivating it, The legislator wanted to grant the wife the right to dissolve the marital bond by her sole will under the cover of khul', and this is in response to the ratified international agreements.

Keywords: Al-Khula, Islamic jurisprudence, Algerian family law, international agreements

***Tob Regul Sci.*TM 2023 ;9(2): 3514 - 3534**

DOI: doi.org/10.18001/TRS.9.2.226

1- Introduction:

Marriage is considered the most important and sacred contract between a man and a woman on earth; it is a legitimate and legal bond; through it, both are permissible for each other, and through it, the human race continues to increase and grow, but sometimes this relationship is affected by a kind of shaking and disturbance, which requires its owners to take the initiative to reconcile in order to continue the marriage and its permanence. If it fails, one or both spouses may follow one of the legitimate and legal methods stipulated in Islamic law and in Algerian family law; this is either through divorce by the husband and his sole will, or divorce by mutual consent between the spouses or divorce at the request of the wife through a court ruling in the event that one of the cases 10 stipulated in Article 53 of the Algerian Family Law is available, or

through divorce by the wife in the event that she is harmed by the husband and is unable to prove that to the judge, especially the latter, with the new amendment to the Family Law of 2005, has moved away from its true purpose as outlined by Islamic law, due to its violation of the provisions of Islamic law and following the provisions of international agreements.

Algeria's ratification of international agreements, including the CEDAW Convention, changed the ruling on divorce and its conditions; after it was in Law 84/11 in accordance with the provisions of Islamic law.

This change had negative social effects, as it became a means of increasing family disintegration after it was an exceptional solution to lift injustice against women, as the rate of divorce at the national level in 2023 reached 10 thousand cases out of a total of 44 thousand divorce and divorce cases, to occupy a rate of 24% according to the Ministry of Justice, i.e. 240 cases per day, and 5 cases per hour, most of which are in the age group between 28 and 35 years, i.e. among newly married couples.

Women's resort to divorce has greatly contributed to the increase in cases of dissolution of the marital bond in Algeria, since the issuance of the new amendment to the Family Law in 2005, which was amended and abolished the man's clause and the suspension of his right to appeal or challenge the divorce rulings, which were present in Law 84/11, indicating that some women take advantage of this space to free themselves from married life.

Therefore, I pose the following question:

To what extent was the Algerian legislator influenced by international agreements in amending the provisions of Khul' in 2005?

To answer this problem, we decided to shed light on this topic based on several approaches, most notably the descriptive and analytical approaches, through presenting and analyzing legal texts and analyzing the provisions of international agreements related to the subject of the study, in addition to the comparative approach, through comparing the provisions of Islamic jurisprudence and international agreements included in this regard.

First: Definition of Khul'

A- Definition of Khul' linguistically

It is taken from the word khul'a, meaning to remove and reveal something, and it is called that because a woman is a man's clothing, and from that is the saying of God Almighty: •They are clothing for you and you are clothing for them•, [Al-Baqarah: 187], so if he divorces her, it is as if he removed the clothing and revealed the wife.

B- Technically:

Khulu has been defined in several ways, and I will limit myself to the definition of the jurists of the four schools of thought:

Hanafis defined it as:

Removing the marriage property that is dependent on the woman's acceptance by using the word "Khulu" or something similar.

Malikis' definition:

Divorce for compensation that she or someone else gives with her consent.

Shafi'is defined it as:

Separation for compensation on the part of the husband.

Hanbalis:

The husband's separation from his wife for compensation, which he takes from his wife or someone else using specific words.

Second: Its ruling and restrictions on the right to Khul'

Its ruling:

The basic rule regarding Khul' is that it is subject to the rulings of the obligatory ruling and differs according to the situation in which it occurs between the spouses.

1-1 Permissible Khul':

A woman's request for Khul' is permissible in legal cases that are disputed among jurists; Some permitted it absolutely without restriction or condition, while others permitted it conditionally. These also differed in the forms of restriction. Some of them compared it to the wife's hatred and fear, and some of them restricted it to the occurrence of discord between the spouses, and some of them made the form of restriction the wife's committing an immoral act, according to the following statements:

1-1-1 The first statement:

The imams of the four Sunni schools of thought held that khul' is permissible in the case of discord between the spouses or in the case of the woman's hatred of her husband due to apparent or hidden defects, such as a deficiency in his religion or character, or due to illness or old age, or something similar that distresses the woman and she does not accept him, so she fears disobeying God Almighty by not obeying her husband, thereby transgressing the limits of God. Likewise, khul' is permissible by mutual consent between the spouses, even if neither of them hides disobedience or aversion, nor fears that they will not uphold the limits of God. And the evidence for its permissibility is several:

From the Qur'an:

-The Almighty's saying: "And it is not lawful for you to take back anything of what you have given them unless both fear that they will not be able to keep within the limits of Allah. But if you fear that they will not be able to keep within the limits of Allah, there is no blame upon them for what she gives in ransom." [Al-Baqarah: 229], and the evidence is that the noble verse

clarifies that in the case of a disagreement between the spouses and the woman does not fulfill the rights of the man and hates him and is unable to live with him, then she may ransom herself from him with what he has given her, and there is no blame upon her for giving him what she has given him, nor is there blame upon her for accepting that from him.

Ibn Abbas, Ata' and the majority of jurists said that Khul' is not permissible if the discord and rebellion are on the part of the woman, so it is permissible for the man to take the ransom, but if it is on his part, it is not permissible.

Imam Malik said: "If something is taken from her and it is harmful to her, it must be returned to her and the divorce is revocable." - And the Almighty also said: •But if they give up willingly to you anything of it, then take it in enjoyment and good taste• [An-Nisa: 4], and the evidence is that if the wife asks for herself by presenting her dowry to her husband after naming him or for something of it, then he eats it lawful and good, and there is no doubt that this verse is mentioned regarding the dowry, except that the word "something" is general and includes the dowry and other things, so the ransom in Khul' is permissible according to the evidence.

From the Sunnah of the Prophet:

On the authority of Ikrimah, on the authority of Ibn Abbas, that the wife of Thabit ibn Qays came to the Prophet, may God bless him and grant him peace, and said: O Messenger of God, I do not blame Thabit ibn Qays for his character or religion, but I hate disbelief in Islam. So the Messenger of God, may God bless him and grant him peace, said: "Will you return his garden to him?" She said: Yes. The Messenger of God, may God bless him and grant him peace, said: "Accept the garden and divorce her once." - And from the consensus: Imam Malik - may God have mercy on him - said: I have not ceased to hear this from the people of knowledge, and it is the matter that is agreed upon among us, which is that if a man does not harm the woman or mistreat her, and she has not been harmed by him, and she loves to separate from him, then it is permissible for him to take from her everything with which she ransomed herself, as the Prophet, may God bless him and grant him peace, did with the wife of Thabit ibn Qays, even if it was If he is disobedient to her and harms her, he must return to her what he took from her".

2-1-1The second statement:

The Zahiris held that it is permissible for a woman to request a divorce if she hates her husband and there is discord and harm between them, based on fear of not implementing the limits of God in what He has imposed on each of them from the other in terms of good companionship and good company, whether from her or from us or from both of them together. They provided evidence for this with: - The Almighty's saying: • And it is not lawful for you to take back anything of what you have given them unless both fear that they will not be able to keep the limits of God •, [Al-Baqarah: 229]. The verse indicates in its explicit text that the permissibility of a divorce is conditional on fear, whether from the wife due to her dislike or from both spouses together in terms of what they are required to do in terms of good companionship and good company between them. If the condition is met, the divorce is valid, otherwise the divorce is not valid. Therefore, the divorce is restricted to the case of discord and harm. **The third opinion:**

Muhammad Ibn Sirin believed that the permissibility of Khul' is conditional upon witnessing the immorality and the husband is not entitled to take ransom from his wife unless she commits the crime of adultery.

They provided evidence for this with:

The Almighty's saying: •And do not prevent them from marrying in order to take away part of what you have given them unless they commit a clear immorality•, [An-Nisa': 19], and the evidence from the verse is that Khul' is permissible if the wife commits the crime of adultery.

fourth opinion:

Khulu' is permissible in all cases, whether in the case of agreement or the occurrence of discord between the spouses, and even if it is due to injustice and rebellion on the part of the husband by harming his wife.

The fifth opinion:

Khulu' is not permissible until discord occurs between the spouses; This is a statement of a group of the followers, and they based their evidence on the meaning of the verse: "There is no blame upon them for that by which she ransoms herself." [Al-Baqarah: 229], so this is an indication that the general negation of blame in the procedure of Khul' is restricted to the occurrence of discord between the spouses. If it occurs, and the fear of one of them without the other, the sin is not removed.

Disliked Khul':

Khulu' is disliked if the marital life is straight and free of discord and conflict

and the woman requests Khul' without an excuse, such as hatred or fear that she will not uphold the limits of Allah in obeying her husband. Ibn Qudamah says: "If you made it for something other than what we mentioned, i.e., without the need for Khul', it would have occurred disliked".

They provided evidence for this by his saying, peace and blessings be upon him: "Any woman who asks her husband for divorce without a valid reason, the fragrance of Paradise will be forbidden to her".

3- Forbidden Khul':

If the husband prevents his wife from seeking Khul' by denying her some or all of her rights, such as maintenance and clothing, along with mistreating her and other repulsive reasons.

Al-Buhuti says: "Khulu' is forbidden if he prevents her from inheriting from him so that she can seek a divorce. Khul' is not valid if he prevents her, i.e., he beats her, makes things difficult for her, or prevents her from her right to maintenance, clothing, or a share of her wealth, etc., so that she can seek a divorce from him, because Allah the Most High says: "It is not lawful for you to inherit women against their will, nor prevent them in order to take away part of what you have given them." [An-Nisa': 4] 19] The matter mentioned in the verse indicates that it is not

permissible for a man to subjugate his wife and harm her in their relationship so that she leaves him her dowry or some of it or any of her rights over him by redeeming her.

Second: The restrictions on the right to Khul'

The purpose of Khul' must be to achieve the wisdom that called for its legislation; which is to enable the husband to be freed from the marital bond that resulted in harm to her. Khul' also does not achieve its wisdom in the case of the husband's rebellion; because the husband has the right to divorce without the need for the wife's consent or payment of compensation. The jurists have agreed that Khul' is not permissible if the rebellion is from the husband so that it does not push her to redeem herself with money.

Second Section: Its wording and the type of separation that occurs by Khul' and the conditions required for the woman who is divorced by Khul' and the conditions of the formula

First: Its Wording

-Its Wording According to the Hanafis:

It occurs explicitly with the words Khul' and explicit divorce with compensation and implicitly with the words Mubara'ah and Bay.'

-Its Wording According to the Malikis:

It occurs with multiple words such as Khul', Fidyah, Sulh and Mubara'ah. Ibn Rushd says about this: "The names Khul', Fidyah, Sulh and Mubara'ah all lead to one meaning, which is: the woman giving him compensation for her divorce, except that the name Khul' is specific to her giving him all that he gave her, and the Sulh with some of it, and the Fidyah with most of it, and Mubara'ah with her dropping a right she has over him according to what the jurists claimed".

-Its Wording According to the Shafi'is:

It is valid with the words Khul' and Divorce. If it is with the words Divorce, then it is a divorce, and if it is with the words Khul' and Faskh, then if he intended divorce by it, then it is a divorce, and if he did not intend divorce by it, then there are three opinions:

A- The first opinion: It is divorce.

B- The second opinion: It is annulment.

C- The third opinion: It is nothing and the divorce is not valid unless the compensation is mentioned.

-Its expressions according to the Hanbalis:

The Hanbalis divided the expressions of divorce into explicit and implicit.

-The explicit section: Three expressions "I have divorced you" because it is established by custom and "I have redeemed you" because it was mentioned in the Quran

In His saying: There is no blame upon them for that by which she ransomed herself [Al-Baqarah: 229], she annulled her marriage; because it is a reality in it, so if he utters one of these expressions, it occurred without intention.

-The second section: Such as: I have acquitted you, I have acquitted you, and I have made you daughter, it is implicit; Because Khul' is one of the two types of separation, so it has an explicit and implicit meaning, like divorce.

Second: The type of separation that occurs by Khul'

The jurists differed on this issue into two opinions:

A - The first opinion:

The proponents of this opinion went to the view that Khul' is an irrevocable divorce, and this is what Saeed bin Al-Musayyab, Al-Hasan, Ata', Shuraih, Mujahid, Al-Awza'i, Al-Thawr, the Hanafis, the Malikis, and the Hanbalis said in a narration from them.

They provided evidence for their opinion with the following:

-That when the Prophet (peace and blessings of Allaah be upon him) performed Khul' between Habeeba and Thabit bin Qais, he said to her, "Observe your waiting period," then he turned to him and said to him, "She is one".

-That he used the implicit meaning of divorce, intending to separate from her, so her divorce was like other than Khul.'

-If the separation was related to the will of the spouses and not by force, then it is not annulment, but rather it is a divorce in principle, if he marries another woman and she demands separation from him.

-The husband took compensation for what he owns, and what he owns is divorce without annulment, because if he said I have annulled the marriage, it would not be annulled, and if he did not intend divorce.

-If he used a metaphor for divorce, intending to separate from her, then it is a divorce like other than khul.'

B- The second opinion:

The proponents of this opinion went to the view that khul` is annulment, and Ibn Abbas, Tawus, Ikrimah, Abu Thawr said the same, and a second narration by Imam Ahmad and Al-Shafi'i in one of his two opinions.

They provided evidence for this with:

-The Almighty's saying: Divorce is twice, [Al-Baqarah: 229], then He said: There is no blame upon them for what she ransoms herself with, [Al-Baqarah: 229], then He said: If he divorces her, she is not lawful to him afterward until she marries another husband, [Al-Baqarah: 230], so

He mentioned two divorces and a khul' and a divorce after that, so if the khul' was a divorce, it would be four.

-It is a separation that is devoid of an explicit divorce and its intention, so it is an annulment like all annulments.

As for the result of the disagreement, if we say it is a divorce, then he divorced her once according to the divorce, so the number of her divorces is reduced, and if he divorced her three times, she is divorced three times, so she is not permissible for him after that until she marries another husband. If we say it is annulment, she is not forbidden to him even if he divorced her a hundred times. Third: The conditions required for the divorced woman: - That the marriage be valid and that the wife be qualified for financial transactions. Ibn Rushd says: "There is no disagreement among the majority that the sane woman divorces herself".

Fourth: Conditions of the Khul' Formula

Khulu' must have a formula, so Khul' is not valid by giving her money and leaving his house without him saying to her: Divorce her for such and such, so she says to him: I have divorced her, or she says to him: Divorce me for such and such, so he says to her: I have divorced you for that, so the offer and acceptance by word are necessary, but as for the aforementioned action, Khul' does not occur even if he intended divorce by it, or divorce by it was common, and in the formula of Khul' and its conditions there is a detail of the schools of thought.

Third Section: Important Issues in the Rulings of Khul'

First: The Question: Is the husband's consent required for Khul'?

Khul' is not valid except with the consent of the husband and without causing harm to the wife. This is according to the majority of jurists from the Hanafi, Shafi'i and Hanbali schools of thought, due to the Almighty's saying: {But if they give you up willingly anything of it, then take it in enjoyment and good health.} [An-Nisa': 4]. As for the Malikis, they have made an exception in the case of material or moral harm or both to the wife, which makes married life unbearable; such as mistreatment, abandonment or any other form of harm. All the wife has to do is prove this before the judge, who can rule for khul' without the husband's consent.

Second: The issue of harming the wife and forcing her to seek khul':

If the harm is caused by the husband with the intention of forcing her to seek khul', the divorce is valid without compensation.

Third: The issue of return in Khul' There is no return in Khul', contrary to Abu Thawr, because the woman only gave compensation to remove the harm from her, and in proving the return against her, the harm remains, in addition to the fact that in proving it in Khul' all for the husband between the compensation and the compensated, which is not possible.

Fourth: The issue of whether the woman who has been divorced deserves maintenance?

There is no maintenance for the woman who has been divorced because her divorce is irrevocable, and she is not obligated to do so unless she is pregnant.

Fifth: The issue of whether what follows from divorce does not affect her during the waiting period of Khul'?

What follows from divorce does not affect her during the waiting period of Khul', contrary to Abu Hanifa.

Sixth: The issue of whether the divorcer may marry the woman from whom he divorced during the waiting period with her consent?

Seventh: The issue of whether Khul' is permissible in proportion to the dowry?

Khul' is permissible for the amount of the dowry, less or more, contrary to Ahmad and Ishaq Firan who say that it is not permissible except for the amount of the dowry. The reason for its permissibility is the generality of the Almighty's saying: {There is no blame upon them for what she ransoms herself with} [Al-Baqarah: 229]. The verse is general and includes everything that a woman ransoms herself with, whether it is less, equal or more than her dowry.

Eighth: Does the husband respond to the request for Khul'?

The jurists differed regarding the ruling on the husband responding to his wife's request for Khul', with two opinions:

The first opinion:

The majority of jurists from the Hanafi, Shafi'i, Hanbali and Zahiri schools of thought are of the view that it is desirable for the husband to respond to his wife's request for khul', and he is not forced to do so unless it becomes obligatory, which results in the wife's lack of will to initiate separation by khul' without the husband's consent. Al-Buhuti said: "It is recommended to respond to her, i.e. the wife, if she asks him for khul' in return for compensation, where khul' is permissible." Ibn Hazm says in Al-Muhalla: "That she redeems herself from him and he divorces her, if he is satisfied? Otherwise, he is not forced, nor is she forced? It is only permissible with their mutual consent.

These people used as evidence the hadith, "The garden came and he divorced her with her divorce." It provides guidance and reform for the response and the necessity of performing the khul'.

The second opinion:

The Malikis went to the opinion that it is obligatory for the husband to respond to his wife's desire to request khul', and thus the woman has the sole will to obtain the divorce by khul' by forcing the husband to do so because it is obligatory.

Ibn Rushd said: "The jurisprudence is that the ransom was made for the woman in exchange for what is in the man's hand of divorce, because when divorce was made in the man's hand if he rubbed the woman, khul' was made in the woman's hand if she rubbed the man".

He used as evidence for that the command in the hadith, "The garden came And he divorced her with one divorce, which indicates that the man must fulfill his wife's desire to request a divorce in order to maintain the matter and not treat him fairly in its original sense in indicating the obligation. They also compared the woman's will to obtain a divorce by divorce in exchange for compensation and the man's will to pronounce the divorce upon her whenever he wants without considering her consent, based on a common denominator, which is hatred that leads to separation and the lack of desire for the continuation of married life.

Also, reason dictates that keeping a wife who hates and loathes her husband and her home may lead to many deviations and sins, and preventing evil is obligatory, so divorce is the path to prevention and obligatory. Preference:

Saying that it is desirable for the husband to fulfill his wife's request for divorce, if the husband does not agree, it may lead to moral harm to the woman and the continuation of her marital life with her husband, hating him. However, there is more severe harm that may occur when saying that the husband is obligated to force him to accept his wife's request for divorce. If it is compared to the psychological harm that the woman is exposed to, this will be a reason for young men to refrain from marriage and forming families, and thus there is no development of the earth and no protection from falling into sin due to the ease with which the wife obtains

separation whenever she wants, which results in the frequent occurrence of divorce and the destruction of families, which leads to the loss of the objectives of Sharia in legislation.

Ninth: Does the judge have the authority to force divorce?

The basic principle of divorce is that it occurs by mutual consent between the spouses and their agreement on the basis that it is a contract according to many jurists, and the contract is based on consent. Do jurists stipulate a role for the judge in the matter of divorce, whether this role is for the purpose of supervision? Or is it greater than that, such as requiring that the validity of the Khul' must be performed before a judge? And if the wife requests Khul' from her husband for a legitimate reason, does the judge have the right to force the husband to perform Khul' or perform it instead of the husband?

The opinions of the jurists differed on this issue and can be summarized briefly in the following two directions:

The first direction:

The majority of the jurists from the Hanafi, Maliki, Hanbali and Zahiri schools of thought held that Khul' is valid without a judge and is also valid if performed before a judge, and thus it is valid and its issuance does not depend on the authority of the judge or imam. They provided evidence for this with:

-The Almighty's saying: There is no blame upon them for that by which she ransoms herself, [Al-Baqarah: 229], which indicates the permissibility of taking from the wife by mutual consent without the authority, and Abu Bakr Al-Siddiq and Omar Ibn Al-Khattab held that Khul' is permissible without an authority.

-Khulu is an exchange and does not require a judge, but rather is based on the agreement of the two parties. Many texts and statements of jurists have come indicating this, as they said that khul' is a contract of exchange, so it is like a sale, and if it is done as a mutual annulment, it is like annulment, and neither the sale nor the annulment requires a judge's ruling.

-Analogizing khul' to marriage and divorce, since marriage and divorce do not require a judge's ruling, then khul' is a type of divorce. Al-Suyuti says, in his explanation of the types of separation in terms of whether or not they require the presence of a judge: "As for what does not require it at all, then divorce, khul', emancipation, and what does not require establishment." The second trend: A group of the followers, such as Saeed Ibn Jubayr, Al-Hasan Al-Basri, and Ibn Sirin, held that it is not sufficient for the divorce to take place that the husband and wife agree independently, but rather it must be brought to the ruler, who is the one who takes place when the divorce takes place. Al-Jassas mentioned the statement of Saeed Ibn Jubayr: "The divorce does not take place until he admonishes her. If she is admonished, then fine, otherwise he beats her. If she is admonished, then he confines her. If she is admonished, then they should go to the ruler, who will send an arbitrator from his family and an arbitrator from her family, and they will return what they hear to the ruler." If he sees after that that he should separate, he should separate, and if he sees that he should gather, he should gather." And it is also the saying of Al-Hasan Al-Basri and Ibn Sirin. They provided evidence for that: - With the words of Allah the Almighty: There is no blame upon them concerning that by which she ransoms herself, [Al-Baqarah: 229], and His words also: And if you fear a breach between them, send an arbitrator from his people and an arbitrator from her people, [An-Nisa': 35]. Allah the Almighty made the fear in the first verse for other than the spouses in His words: And if you fear, attributing the divorce to the ruler and the governors and not to the spouses, and it indicates that the address is intended for the governors and that divorce can only be done by them and through them, just as the other verse: And if you fear a breach between them, send an arbitrator from his people and an arbitrator from her people, [An-Nisa': 35]. A rift between them (may Allah have mercy on them) indicates the same meaning.

The majority disagree with this and have responded to the verse by saying that it is usually done.

-And from the Sunnah is the command of the Prophet (peace and blessings of Allah be upon him) to Thabit ibn Qays to accept the garden and divorce her, so the ruling is binding and the khul' takes place except in the presence of a judge. Al-Shawkani mentioned that the command of the Prophet (peace and blessings of Allah be upon him) in this incident is obligatory and nothing has been reported to indicate that it was diverted from its true meaning, and this indicates his preference that the command is obligatory and that nothing diverted it from that.

The most correct view, and Allah knows best, is what the majority of jurists, i.e. the proponents of the first trend, have gone to in that khul' does not require the authority of a judge, and that it is consistent with the consent of the spouses due to the strength of their evidence and based on the actions of the senior companions who approved khul' with the consent of the spouses without the judge's ruling.

The second requirement: Khul' in Algerian Family Law and the impact of international agreements on it

In this section, we will discuss two requirements. The first requirement was about the provisions of Khul' before and after the new amendment of 2005. The second requirement presented Khul' in international agreements and its impact on the Algerian legislator in the new amendment of 2005 to the provisions of Khul', and the details of that are as follows:

The first section: Khul' provisions in Algerian Family Law

In this requirement, we will discuss the legal definition of Khul' and the provisions of Khul' in Algerian Family Law before and after the amendment, and the details of that are as follows:

First: The legal definition of Khul'

The Civil Code did not include a definition of Khul', but it referred to it in Article 54 of Law 84/11, which stated that: "The wife may divorce her husband's wife for money that has not been agreed upon. If they do not agree on anything, the judge shall rule that it does not exceed the value of the dowry of the like at the time of the ruling".

Accordingly, legal commentators have derived a definition of Khul', including Al-Arabi Balhaj, who defined it as: "A lawsuit filed by the wife against her husband, if she hates living with him, and there is no way to continue the marital life, and she fears that she will not uphold the limits of God because of this hatred, and Khul' requires the wife to redeem herself by returning her dowry and waiving all her legal rights".

A- Khul' provisions before and after the amendment

Khul' provisions in Law 84/11

By analyzing Article 54 - mentioned above - of Law 84/11 before the amendment, it becomes clear that the legislator intended by this article that Khul' is a mutual, consensual, and mutually beneficial contract that is permissible for the benefit of the wife, and its purpose is to end the marital life by a court ruling, based on the offer of one of the spouses and the acceptance of the other in response to the wife's desire in exchange for what is known and legally valued and paid by the wife; they agree on its type and amount in the ruling session, or the judge determines it to not exceed the amount of the dowry of the equivalent at the time of the ruling.

Accordingly, the legislator considered the husband's consent a condition for the occurrence of Khul', and if they disagreed on the compensation, the matter is referred to the authority of the judge. Here we find that the legislator took this ruling from the opinion of the public, and this is what the Supreme Court ruled in its ruling dated: 07/21/1991. The legislator considered Khul' a license for the wife, meaning: Khul' cannot occur except with the husband's consent to it, and the judge's intervention is when the husband is satisfied with the Khul', and in the event that the wife does not agree with her husband on the compensation for the Khul', and this is what appeared clearly in the decision issued by the Supreme Court dated: 11/21/1988, as well as another decision dated: 04/23/1991. The legislator in Law 84/11 considered Khul' a divorce and not annulment.

-2The provisions of Khula in the Algerian Family Law after the new amendment of 2005.

The Algerian legislator, after the last amendment of 2005, abolished the husband's consent, making Khula contingent on the woman's request in the text of Article 54 of the Code of Criminal Procedure, which is an inherent right for her, after adding the phrase "without the husband's consent" to Article 54 in the new amendment in the first paragraph. He also did not specify the conditions for the validity of Khula and was satisfied with emphasizing that it is an inherent right for the woman, which is what made the judiciary not settled on a fixed interpretation that clarifies the provisions of Khula.

The legislator considered Khul' a divorce and not annulment, and he was clear about that. The legislator specifically devoted the third chapter to annulment under the title of invalid and null marriage, from Articles 32 to 35 of the Penal Code. He also stipulated divorce in the second chapter under the title: Dissolution of the marital bond. It was mentioned that marriage is dissolved by the sole will of the husband or by the consent of the spouses, or at the request of the wife within the limits of what is stated in Articles 53 and 54 of the Penal Code. When we refer to Article 54 of the same law - mentioned above - we find that Khul' is included in the chapter on divorce. When the legislator used the term annulment, he addressed it in the event of a defect affecting the contract, and used nullity when the contract affects one of its essential qualities. The matter here is related to the emergence of elements outside the contract that target the marital relationship, and this relationship cannot be dissolved except by divorce. What is noteworthy in the last amendment of 2005 is that the judge divorces the woman without the man's consent, without his presence in the judiciary, without the divorce formula, and without the divorce oath; considering that divorce is a divorce, and this is a dangerous matter that contradicts Islamic law, so how about a woman being divorced by divorce and without an oath.

Second Section: Divorce in international agreements and its impact on the legislator.

There is no international agreement specific to family affairs, but we find in the folds of some agreements that some articles contain a reference to some provisions related to the family such as the "CEDAW" agreement, without forgetting the reference of this agreement; Which goes back to the "Universal Declaration of Human Rights", and "Additional Protocols I and II", and we will refer in this requirement to some of the articles that dealt with the subject of Khula explicitly or implicitly, and the details of that are as follows:

First: CEDAW Convention and its reference

A- CEDAW Convention

Article 16 of this Convention stipulates that: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

-The same rights and responsibilities during marriage and at its dissolution...

Here is a reference to marriage and its dissolution, and Khula is a form of it, and women have the same right as men

and rights and responsibilities; if men have the right to divorce, then even women must enjoy this right.

Article 2 of the same Convention also stipulates that states are obligated to do so, and obligated them to change their legislative system in a way that achieves equality from its practical side, as it stipulates the following: "States Parties condemn discrimination against women in all forms, and agree to pursue, by all appropriate means and without slow down, a policy aimed at eliminating discrimination against women, and to this end undertake to:

-To incorporate the principle of equality of men and women into their national constitutions or other appropriate legislation if not yet incorporated therein, and to ensure, through legislation and other appropriate means, the practical realization of this principle.

-To take appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.

-To establish legal protection of the rights of women on an equal basis with men and to ensure, through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination.

-To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation.

-To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

-To take all appropriate measures, including legislative, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

-To repeal all national penal provisions which constitute discrimination against women.

This article discussed equality between men and women, and obligated countries to change their legislative systems, including personal status, including the dissolution of the marital bond. The law in all countries - including Algeria - granted men the right to divorce by their sole will, and this article of this agreement called for equality between men and women in marriage and its dissolution. Accordingly, countries must give women the right to dissolve the marriage contract by their sole will as well, and this can only be achieved by khul'. The reference to this agreement goes back to the provisions of the Universal Declaration of Human Rights of 1949.

B- Reference to the CEDAW Convention

-1The Universal Declaration of Human Rights

This declaration that drew the first lines of this agreement, and among what it stated, that both men and women of marriageable age have the right to form a family without any restriction, whether this restriction is due to race, religion, sex or religion, and they are equal in rights at marriage, during marriage and at its dissolution, as stipulated in Article 16.

Article 2 of it also stipulated the following: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, in particular distinction as to race, colour, sex, language, religion"...

2- The United Nations

Its preamble stipulated the principle of respect for human rights and fundamental freedoms for all people

Without distinction as to race, sex, language or religion, and this was approved by its General Assembly in Resolution 843 (IX) dated 17 December 1954, that some customs, laws and ancient practices relating to marriage and the family are incompatible with the principles set forth in the Charter of the United Nations and the Universal Declaration of Human Rights.

One of the most important purposes of the United Nations, according to Article 1, paragraph 3, is to achieve international cooperation in solving international problems of an economic, social, cultural and humanitarian nature and to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, and without distinction between men and women.

Article 13 of the Charter, paragraph 1/b, states: "The General Assembly shall initiate studies and make recommendations for the purpose of... promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion"...

Article 55 of the Charter also urges states to respect universally and effectively the rights of peoples without any discrimination or distinction between men and women, and to observe these rights effectively. As for the text of Article 56, it came to urge member states to cooperate individually and jointly with the United Nations in implementing the purposes set forth in Article 55. Article 76 of the Charter also states that the main objective of the United Nations, which it seeks to achieve, is to promote respect for the principle of equality among all peoples, without distinction as to race, sex, religion, language or any other form of discrimination.

Accordingly, all of these principles show us that protecting human rights and establishing equality between men and women in rights and freedoms; It is one of the most important purposes for which the United Nations was established. Its charter is the global constitution for countries and is considered the first international instrument that establishes equality between women and men in rights in specific terms. 3- The two international covenants:

A covenant means a law, a formal agreement between states that defines and modifies the duties and obligations of the participating state parties and is used synonymously with the agreement and the treaty. When an agreement is adopted by the General Assembly of the United Nations, there becomes a legal obligation on the state parties that signed it. When a state government ratifies an agreement, the articles contained therein become part of their internal law. The covenant is thus a legal term that expresses a binding agreement between states and is used

synonymously with the agreement and the charter. Examples of these are the two covenants concluded in 1966, which are:

3 -The International Covenant on Civil and Political Rights:

It refers to an international agreement adopted by the General Assembly of the United Nations for Resolution No. 2200-A- dated December 16, 1966, which came into force on March 23, 1976, in accordance with Article 49; It is a covenant that stipulates that all people have a wide range of political rights, and it added a specific mechanism that ensures the guarantee of these rights, respects them, and achieves international protection for them, as a committee called the Human Rights Committee was formed under Article 28 of it, consisting of 18 members, to monitor the implementation of the treaty by member states. The wording of this covenant and the International Covenant on Economic, Social and Cultural Rights reflects the universality of their content, as their preambles, which are almost identical, reveal their universality. 3-2-The International Covenant on Economic, Social and Cultural Rights

It is an international agreement that falls within the framework of international human rights law. It was adopted by the United Nations General Assembly by Resolution 2200 A dated December 16, 1966, and came into force on January 3, 1976 in accordance with Article 27. It is one of the most widely ratified human rights agreements by states and the most important and confusing at the same time, as its provisions were formulated in a general manner, which resulted in the obligations also remaining in general forms, which made them lose much of their importance. It stipulates a set of economic, social and cultural rights for all people, and under its provisions, an 18-member committee was formed, which is the Committee for Monitoring Economic, Social and Cultural Rights, consisting of experts in the fields covered by the provisions of the Covenant. Second: The impact of international agreements on Khul' in the Civil Code after the 2005 amendment

In the new amendment of 2005, the legislator abolished the husband's consent to Khul', making it dependent on the woman's request only, in the text of Article 54 of the Civil Code, and that it is an inherent right for her, after it was a license in Law 84/11.

Law 84/11 made the judge's role in Khul' limited to the case of failure to agree on the Khul' compensation on the one hand, and in the case of the wife proving the great harm that she suffered as a result of continuing the marital life on the other hand.

The legislator in Law 84/11 took the opinion of the Maliki school, specifically in the statement of Ibn Rushd al-Hafid, in which he disagreed with the opinion of the majority of jurists, which some scholars considered to be anomalous rulings.

As for the new amendment, the legislator added the phrase "without the husband's consent", and did not specify the conditions for the validity of Khula, and was satisfied with changing its ruling from a license to an inherent right for the wife, and this is due to the fact that the legislator drew the principle of equality between the sexes according to Clause "c" of Article 16 of the "CEDAW" Convention, and Article 2 of it also stated the following: "Everyone is entitled to enjoy all the rights and freedoms set forth in this Declaration, without distinction of any kind, in particular distinction based on race, colour, sex, language, or religion...", and Article 13 of the

United Nations Charter, and Articles 55-56-75 of the same Charter, and Articles 18-49 of the International Covenant on Civil and Political Rights. The legislator in this amendment did not take the Maliki view here, but only pretended to do so;

-What is the ruling on a wife when a judge divorces her from her husband without the husband uttering a word indicating the dissolution of the marital bond by khul'?

-Does she observe the waiting period?

-And if she observes the waiting period, does this waiting period have any meaning?

-Can a woman who has been divorced in this manner marry another man?

-If she marries and the first husband has not yet uttered the word of divorce in return for compensation, is it considered a marriage? Or adultery?

The legislator fell into this trap as a result of following a policy of gender equality, following his signing of the CEDAW Convention and the Universal Declaration of Human Rights..., because he wanted to highlight equality from its practical side, and the evidence for this is that the legislator has codified divorce as a form of dissolution of the marital bond, enabling the wife to lift the harm caused to her, and there is no need to amend the provisions of khul' on the one hand, and on the other hand there is no jurisprudential opinion that applies to what the legislator followed when amending the provisions of khul' in Article 54 of the Penal Code.

The legislator was caught between two pressing forces: international agreements. Every country must ratify this agreement because it cannot live in isolation from the world. If it ratifies, it is obligated to prepare reports and send them to the heads of these committees through the Secretary-General of the United Nations, showing its serious intention and the extent of its response to what it ratified, even if the country has reservations about some articles. There is an article in this agreement, especially Article 28/2, which states: "No reservation may be made that is inconsistent with the subject and purpose of this agreement." The feminist groups opposed to global development and gender equality described Law 84/11 as religious and inconsistent with the developments of the era.

The legislator granted the husband the right to divorce by unilateral will, so the wife must be granted equal rights with the man to end the marital relationship by unilateral will by changing the provisions of khul' whenever she wants, so he found no solution other than this. No reservation may be made that is inconsistent with the subject and purpose of this agreement." This paragraph has implications for changing views on legislation, and little by little until these countries lift reservations finally.

The Algerian legislator has put in place contradictory laws, sometimes following Islamic legislation and other times international legislation; Law 84-11 was not unanimously accepted and was described as religious, because it contradicts the texts calling for false equality advocated by some international conventions, and the exclusion of everything that could be a condition or restriction on the basis of religion, gender or race, especially if the alleged equality was issued by a

primary basic international document that is the backbone of these agreements such as the Universal Declaration of Human Rights.

Especially the negative third and fourth reports of Algeria from the Secretary-General of the United Nations and the Chairman of the CEDAW Committee regarding Algeria's failure to implement what it has ratified, in addition to the report of the committee concerned with these agreements in its sessions, especially the thirty-second; which is the second report on Algeria, the representative indicated that the family law constitutes the basic tool for regulating family relations.

The President of the Republic at the time, Abdelaziz Bouteflika, may God have mercy on him, stressed the need to strengthen a set of laws in force to enable women to confront social burdens and enjoy the rights guaranteed by the Constitution. It is expected that the Family Law will be reviewed in accordance with international agreements, and a significant number of reservations expressed by Algeria at the time of ratification of the agreements can be lifted, which prompted the legislator to amend the Family Law by Order 05-02, which cancelled articles and amended others.

Conclusion:

The most important results and recommendations reached are the following:

1-Activating Khul' in Islamic jurisprudence is in the event that the couple cannot live together, and the wife is harmed, and the husband refuses to divorce her, so that it becomes a solution to break this bond and lift the injustice against the woman.

2-Khulu' has conditions, including the absolute consent of the husband; this is the opinion of the majority of jurists, and the Malikis also stipulated consent, but they made an exception in the case of harm to the wife, so they granted the judge the right to divorce her, forcing the husband to pronounce the divorce based on compensation.

3-The Algerian legislator has codified Khul' and made it an exception, and it is done with the husband's consent in Law 84/11, and it was amended again in the last amendment of 2005, to transform it into a fundamental right for the woman, and the judge approves it without the husband's consent and without him uttering the words used to dissolve the marital bond specific to Khul', and this opens the door to interpretations regarding its non-compliance with Islamic jurisprudence.

4- The reason for this amendment is the signing of international agreements such as "CEDAW" and other international covenants that called for gender equality.

5- The amendment of Article 54 of the Criminal Procedure Code is considered a dark spot in this amendment, because it is contrary to Islamic law. The legislator showed his adherence to Maliki jurisprudence at the beginning of the article, but then he violated it by the judge directly divorcing the woman without uttering the words used to dissolve the marital bond specific to khul'. The judge has become responsive to the woman's request for khul' from the moment she requests it and without verifying the reasons motivating it. The legislator wanted to grant the

wife the right to dissolve the marital bond by her sole will under the cover of khul', and this is in response to the ratified international agreements.

Second: Recommendations

6-The legislator should reconsider amending this article and codify its provisions according to Islamic jurisprudence and choose any jurisprudential statement, because personal status is very sensitive, especially since Algerian society is a Muslim society.

The reviewer

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