

# Khula & Talaq-e-Tafweez: The Infrequent Exercised Extra-Judicial Divorce Rights of Muslim Women with Contemporary Challenges and Judicial Responses on it

Salma Ara<sup>1</sup>, Dr. Arjun Kumar Mandal<sup>2</sup>

<sup>1</sup>PhD Research Scholar, Department of Legal Science, Techno India University, Kolkata, W.B., India

<sup>2</sup>Dean, Department of Legal Science, Techno India University, Kolkata, W.B., India

**Abstract:** *This article examines the underutilized extra-judicial divorce rights of Khula and Talaq-e-Tafweez available to Muslim women under Shariah law, alongside contemporary challenges and key judicial affirmations in India. Drawing from Quranic verses, Hadith, legal texts, and case law, it highlights how ignorance, social stigma, and patriarchal norms limit these rights despite their empowering potential. The doctrinal analysis reveals growing judicial support, promoting women's autonomy in marital dissolution.*

**Keywords:** Khula, Talaq-e-tafweez, Sharia rights, Muslim Personal Law

## 1. Introduction

Muslim women are entitled to divorce, despite what many people think. According to the Shariah, Muslim women have got extra judicial right to get divorce from their husband. The first of these two divorce rights is termed as 'Khula' and as stated in the Shariah Law, it can be obtained either by court decree or by mutual consent when the wife approaches her husband to get divorced. This paper explores the infrequent divorce rights exercised by the Muslim women in a detailed way. Besides, providing the proper way of initiating the two aforesaid divorce rights granted to Muslim women, the researcher tried to provide the Quranic as well as Hadith reference mentioning the issuance of the abovementioned rights of divorce. Talaq-e-tafweez or delegated divorce may be the most powerful tool for the Muslims women but due to illiteracy and ignorance of the law, it is exercised infrequently. The narratives highlight that the latter is a kind of pre-nuptial agreement that makes the wives so independent that no court order is required if a wife uses her delegate right of divorce. And the divorce is valid in the eye of law of the land as well as Shariah Law. This paper also reflects that gradually, the Muslim women are becoming more aware of their rights. Furthermore, the researcher has also referred some judicial responses to these divorce rights which will make it crystal clear that the Muslim women are now exercising their divorce rights when required thus making themselves self-sufficient and confident to lead their life with respect and dignity.

Is it true that women in Islam are oppressed, dehumanized, and subjugated? Are these false impressions created by a biased media, or are millions of Muslims really that oppressive? Can the divorce proceed even if the husband has no intention of divorcing the wife? What about in cultures like America, when wives dislike their husbands (often due to their religious beliefs)? The ladies believe that they are free to divorce the guys if they don't like them. Thus, they

are entitled, but are Muslim women denied this privilege as well?

Prior to Islam, prostitution was common, divorce was reserved for the husband, inheritance was reserved for the powerful, women were viewed as disgraceful, female children were buried alive, and oppression was pervasive. When Islam arrived, these customs were outlawed. More than fourteen hundred years ago, Islam gave women liberties that women in the West have only recently begun to enjoy. In the 1930s, Annie Besant noted that while Islam has always permitted women to own property, Christianity in England has only acknowledged this privilege in the previous 20 years. The claim that Islam teaches that women are soulless is defamatory.<sup>1</sup>The precise rights and obligations accorded to men and women differ, despite the fact that they are equal in principle. The only distinction is that in Islam, the rights and obligations of men and women are complementary. Women in America and Europe are still paid 80% of what males are paid for doing the same work in the twenty-first century. However, our media portrays Islam as being archaic.

In their continuous fight for their rights, Muslim women usually encounter two main obstacles: (i) ignorance of the rights granted by Muslim law, and/or (ii) distortion of the original message, both through additions from less revered sources and through interpretations of the Quran and the law that prioritize male privileges over female rights.

Contrary to popular belief, Muslim women have the right to divorce. A woman does not forfeit her right to terminate an unpleasant marriage by returning the dowry, despite the fact that it is often known that men in Islam are more likely to issue a Talaq (divorce by males), mainly because they pay a

<sup>1</sup>Besant, A.(1932). *The life and teachings of Mohammed*

woman a dowry (Mahr) in exchange for her hand in marriage.<sup>2</sup>

## 2. Methodology

The study employs doctrinal legal research, analyzing primary Shariah sources like Surah Al-Baqarah (2:229) and relevant Hadith on the Prophet's handling of Thabit ibn Qays' wife's case. Secondary sources include commentaries such as Fyzee's Outlines of Muhammadan Law and Engineer's Rights of Women in Islam, alongside Indian judicial precedents from courts like Calcutta High Court. Contemporary challenges and recent instances, such as 2018 Uttar Pradesh cases, are reviewed through descriptive and analytical methods to assess enforceability.

### 1) Khula

According to Shariah law, a Khula is a wife's legal right to break up from her husband or get a divorce. The Holy Quran and reliable Hadith state that a Khula may be obtained through a court order or with the consent of both the spouses.<sup>3</sup>

The Quran establishes the right to Khula in Surah Al-Baqarah (2:229), permitting a wife to seek divorce by returning her dower if both spouses fear they cannot uphold Allah's limits; otherwise, reclaiming gifts is forbidden, and transgression makes one a wrongdoer.<sup>4</sup> In Khula, a husband accepts money in exchange for releasing his wife, regardless of whether it matches the amount of mahr he paid her.

A fundamental Quranic rule permits a wife to pursue divorce (Khula) by returning her mahr (dower) if both spouses anticipate failing to adhere to Allah's prescribed boundaries; otherwise, husbands cannot reclaim any portion of the mahr given at marriage, with no fault attached to such an exchange.<sup>5</sup>

### 2) Sunnah Reference

Additionally, the Hadith that recounts the account of Thaabit ibn Qays's wife visiting the Prophet (PBUH) with the following petition mentions the issuance of a Khula:

The Sunnah reinforces this principle through the incident involving the wife of Thabit ibn Qays ibn Shammas, who approached the Prophet (peace be upon him) stating she found no shortcomings in his morals or faith, yet feared committing disbelief after embracing Islam. The Prophet (peace be upon him) inquired if she would return the garden given as her mahr, and upon her agreement, instructed Thabit (peace be upon him) to accept it and pronounce her divorce.<sup>6</sup>

<sup>2</sup>Wikipedia. (2024, January 13). *Khula*. <http://en.wikipedia.org/wiki/Khula>, accessed 13 January, 2024

<sup>3</sup>Ibn Humam. (1999). *Fath al-Qadir* (Vol. 3)

<sup>4</sup> Dawat ul Quran(n.d.). *Surah 2. Al Baqarah(2:229-231)* <https://islamicstudies.info/quran/dawat.php?sura=2&verse=229&to=231>

<sup>5</sup> *Quran with Tafsir: Surah Al-Baqarah, Ayat 229 (2:229)*

<sup>6</sup> Ibid

### 3) Grounds for asking Khula

Under Islamic law, a woman following Islam has the right to request Khula for the reasons outlined below.

- She detests her husband too much to live with him;
- He has a physical flaw.
- Poor care
- Impotence in men
- The husband is incarcerated
- The husband is not providing her with the maintenance, housing, and other Islamic duties that he is supposed to.<sup>7</sup>

### 4) Procedure for initiating Khula

To begin a Khula, a woman must first request a divorce from her husband (a Talaq). If he didn't, the wife would have to file a case in a Shariah court. Here, the court (under the guidance of a Qazi, or Islamic judge) evaluates all the information before determining whether or not to give a Khula. According to the Hadith mentioned above, some scholars are adamant that if a man's wife is unable to live with him and worries that she would not be able to fulfill her Islamic duties to him because she dislikes him, the court should issue the man a divorce.

A woman would be required to refund the entire mahr (dowry) if she started the Khula and her husband's conduct of her was acceptable. But if he is at fault, it would be evil of him to demand that she return any part of it in return for her freedom.

#### a) Talaq-E-Tafweez

Muslim husbands are free to end their marriages whenever they choose. He can use this right himself or assign it to someone else because it is so absolute. In other words, he may grant his right to divorce to anyone, including his own wife, rather than reciting the Talaq himself. A divorce that is carried out by a person serving as the husband's agent under his supervision is known as talaq-e-tafweez, or delegated divorce. When the other person's Talaq is as valid as if it were issued by the husband, the marriage is dissolved in the delegated divorce.

Talaq-i-tafwiz, or delegated divorce, is a kind of divorce where a husband might hire a lawyer to divorce her on his behalf, just as he might hire a lawyer to handle his property. The lawyers took advantage of this feature to safeguard the wife at an early enough point in time for the practice to be universal across all schools. In order to invoke the marital right of repudiation in specific situations, such when he remarried or kept a concubine, the husband was persuaded to name an irrevocable attorney (such as her parent or brother) for the wife or someone who would defend her interests. According to Maliki scholar Khalil, a woman is even allowed the option to refuse her husband's second marriage at her own or the second wife's discretion.<sup>8</sup>

Thus, the act of a man giving his authority to issue a talaq to another person (who is acting as the husband's agent) or his

<sup>7</sup> Engineer, A. (2008) *Rights of Women in Islam*.

<sup>8</sup> Vesey-Fitzgerald, S. (1931). *Muhammadan Law: An Abridgement According to its Various Schools* (p.77). Oxford: Oxford University Press

spouse while keeping it for himself is known as talaq-e-tafweez. This can be included in the Nikahnama as any other clause, like "no triple divorce," or it can be agreed upon even after the marriage ceremony (perhaps as a post-nuptial agreement).

The husband may empower his own wife to institute Talaq and confer divorce rights. Fyzee claims that this type of delegated divorce, which is starting to become fairly prevalent in India, is maybe the most powerful tool a Muslim wife can use to secure her freedom without the involvement of a court. Under a contract, the wife is granted authority at the moment of marriage or at any point thereafter.<sup>9</sup>

The woman may be granted the right to file for divorce for a set period of time, either long-term or short-term. A permanent delegation of power can be withdrawn by the husband, whereas a temporary delegation is irrevocable.

Tafweez's delegation may be unconditional or contingent on a number of factors. In situations where the delegation is conditional, the power to grant Talaq cannot be used until the condition is met. It is customary to give the woman the authority to file for divorce when the husband fails to meet specific requirements or when an incident occurs. However, the requirements must be acceptable and must not conflict with Islamic values.

If the husband does not satisfy the criteria or if the occurrence occurs, the wife may repudiate the marriage in which she has been granted the right to divorce. In these situations, the divorce is finalized in the same way as if the husband had delivered the Talaq himself. For instance, in accordance with a Tafweez agreement, a husband may give his wife permission to file for divorce on her own if he treats her cruelly or fails to pay the dower on time.

The Quran recounts an occasion in which the Prophet (peace be upon him) told his wives that they were free to live with him or to leave him as they pleased. This episode serves as the foundation for the theory of the delegation of divorce power.

Muslim jurists interpret this as the Prophet (peace be upon him) following the Quranic directive by granting his wives the option of either staying married to him or seeking separation—meaning they could dissolve the union or opt to maintain it. Aishah clarified that the wives selected the Prophet (peace be upon him), prioritizing marriage continuity, which prevented divorce. This narration implies a husband may validly delegate divorce authority to his wife if she chooses to exercise it.<sup>10</sup>

#### **b) Contemporary Challenges faced by the women who opt for divorce**

Even though we are in the 21<sup>st</sup> century, social stigma still prevails in the society for the divorced women. Women are

still considered shameful and bad in character when it comes to divorce. Muslim women are not an exception to this social stigma. Women also face financial crisis due to their dependency on their spouses. Prior to their marriages women are mostly dependent on their father and after marriage they are totally dependent on their husbands. Thus, financial dependency is one of the main reasons behind stepping backwards while opting for khula or talaq e tafweez. Being financially dependent on their husbands makes them to continue their marriages even going through a difficult marriage life. It takes lot of courage and a scope to earn livelihood for those who approaches for the extra judicial divorce from their husbands. Another common challenge faced by the Muslim women opting for extra judicial divorce is the resistance from their husband who may refuse to accept the divorce proposal. Some of the husbands take it into their ego when it comes to divorce proposal by their wives. They resist giving their consent to teach their wives a lesson. As it takes a long procedure to obtain a decree of divorce from the court the husbands make suffer their wives in court. The patriarchal structure of the society also creates pressure on women and creates hindrance on exercising her rights to divorce. The different interpretation of law across the country in regard to Muslim law also acts as a great barrier to Muslim women in obtaining divorce through court. The interpretation across different jurisdiction of the country makes the procedure complex thus creating a big challenge to Muslim women. Lack of awareness about the right and procedure of divorce may also lead to difficulties to Muslim women. In addition to this, the legal procedure is also not known to many of the Muslim men and women thus preventing them to exercise the right to divorce available to them by the Shariah Law.

#### **5) Judicial responses**

- a) **Hamidoolla v. Faizunnissa**,<sup>11</sup>: Prenuptial agreements typically specify this type of delegated divorce. In *Hamidoolla v. Faizunnissa*, decided in 1882, the Calcutta High Court affirmed a marriage contract, emphasizing that it had been signed prior to the marriage.
- b) **Md. Khan v. Shahmai**<sup>12</sup>: In this case, an agreement (pre nuptial) was made that gave a husband, a Khana Damad, the authority to grant his wife a divorce and committed him to paying a specific sum of the father-in-law's marriage-related costs in the event that he left the house. Without making the payment, the husband departed from his father-in-law's home. The wife filed for divorce on her own initiative. In the exercise of the authority granted to her, it was decided that the divorce was lawful. Even in agreements established after marriage, authority may be delegated. Because the conditions are reasonable and do not violate public interest, an agreement that stipulates that she will have the ability to file for dissolution on her own if her spouse defaults on support or takes a second wife is therefore valid. It should be noted that the lady has the last decision on whether or not to use the power, even in an emergency. The occurrence of a contingency event does not automatically result in divorce. The wife's statement made under the authority given to her by the husband (talaqi-tafwid) terminates the

<sup>9</sup> Fyzee, A.A.A. *Outlines of Muhammadan Law* (pp. 158-159) Oxford University Press.

<sup>10</sup> Ahmed, K.N. (1972). *The Muslim Law of Divorce* (pp. 184-185). Islamic Research Institute.

<sup>11</sup>*Hamidoolla v. Faizunnissa*, I.L.R. 8 Cal 327 ((1882).

<sup>12</sup>*Mohammad Khan v. Shahmai*, AIR 1972 JK 8.

marriage without a court order, much as the husband's declaration of talaq.<sup>13</sup>

c) **Sainuddin v. Latifunnessa**<sup>14</sup>: In the case of Sainuddin v. Latifunnessa, as part of their agreement, the husband allowed the wife to supply three Talaq in the instance that he took another wife despite the first's approval. The husband took a second wife without the first wife's permission. Under the Tafweez's guidance, the first wife so obtained herself three Talaq. The Court asserts that the wife's divorce is final and the marriage must cease because the incident that gave her the ability to seek for divorce was lawful under Muslim law.

It is important to remember that only the spouse has the capacity to assign the authority of Talaq to another individual. The delegation of authority does not become a bilateral delegation or a divorce by mutual consent if the husband gives his authority to the wife in writing and the woman signs the document.

d) A lady who married a guy who had two prior wives—neither of whom was residing with the husband at the time—was at issue in **Saifuddin Sekh v. Soneka Bibi**<sup>15</sup>. The husband was not allowed to bring either of these ladies to the house where he was supposed to live with the third wife unless she granted permission, according to a stipulation in the marriage contract. It was further stipulated that the third wife would have the authority to end her marriage to the husband if he broke this clause. One of the husband's previous wives did move in with him and the third wife. After objecting, the third wife departed the house and used the talaq authority that the marriage contract had granted her.

By stating the premise that *"a contract which serves to ensure peace and domestic happiness,"* the wife's decision to end her marriage and the arrangement were both upheld by the Assam High Court.

e) **Magila Bibi v. Noor Hassain**<sup>16</sup>: In this case, the husband had officially given his wife the right to file for divorce if she so desired. The documents were signed by the wife and the husband. After feeling that her husband had treated her harshly and discovering that he was not a medical graduate, as she had been told prior to their marriage, she proclaimed Talaq under the previously indicated written delegated authority. She discussed her decision with her husband. According to the Calcutta High Court, the husband's written delegation is not considered "bilateral delegation" just because the wife acknowledged it. It is still "unilateral delegation," and even without her husband's consent, a wife's talaq is binding. The court additionally stated that as the Talaq under delegated power is valid, the wife, as a divorced woman, is entitled to support and other rights under the Muslim Women Act of 1986.

When a Tafweez gives a wife the choice to file for divorce on her own, she cannot be forced to do so. She might or might not use the privilege. The wife must explicitly exercise her right to divorce in order to end the marriage; the

occurrence of the event that grants her the authority to do so is insufficient.

In June 2018, two women in Uttar Pradesh used talaq-e-tafweez to file for divorce from their husbands.

Thirteen years after their 'nikaah' was solemnized, Nisha Hamid divorced Jawed Ansari on Saturday in front of two witnesses at a Barreilly court. Neither her husband was developing their relationship into a favourable onenor was he divorcing her, and also her in-laws were mistreating her. Thus, she obtained her divorce by the use of talaq-e-tafweez.<sup>17</sup>

### 3. Results

Khula allows wives to seek divorce by returning mahr, valid via mutual consent or court decree under Qazi oversight, grounded in Quran and Sunnah. Talaq-e-Tafweez delegates talaq power to wives via nikahnama clauses, exercisable unconditionally or conditionally (e.g., cruelty, second marriage), without court intervention. Key cases affirm validity: Hamidoolla v. Faizunnissa (1882) upheld prenuptial delegations; Magila Bibi v. Noor Hassain (1992) confirmed unilateral exercise post-delegation.

Case	Key Holding	Relevance
Hamidoolla v. Faizunnissa (1882)	Prenuptial Tafweez valid if pre-marriage.	Supports contractual delegation.
Md. Khan v. Shahmai (1972)	Post-nuptial delegation lawful if reasonable.	Extends to conditional triggers.
Sainuddin v. Latifunnessa (1918)	Wife's exercise final upon condition met.	No automatic divorce; explicit needed.
Saifuddin Sekh v. Soneka Bibi (1954)	Upholds for domestic harmony clauses.	Assam HC reinforces peace clauses.
Magila Bibi v. Noor Hassain (1992)	Unilateral talaq binding; maintenance rights apply.	Entitles divorced women to support.

### 4. Discussion

Despite Quranic and judicial backing, Khula and Talaq-e-Tafweez remain infrequently exercised due to social stigma, financial dependency, spousal resistance, and legal unawareness. Patriarchal interpretations and jurisdictional variances further hinder access, trapping women in untenable marriages. Increasing awareness and precedents like 2018 U.P. cases signal empowerment, urging education and uniform application to align practice with Shariah intent for dignity and equity.

### 5. Conclusion

In this paper, the researcher has outlined the extrajudicial right to divorce available to Muslim women by the Shariah

<sup>13</sup>Suroj Mia v. Abdul Majid, AIR 1953 Trip. 6.

<sup>14</sup>Sainuddin v. Latifunnessa, 46 Cal 141 (1918).

<sup>15</sup>Saifuddin Sekh v. Soneka Bibi 59 Cal. W. N. 139 (1954-55).

<sup>16</sup>Magila Bibi v. Noor Hassain, AIR 1992 Cal. 92

<sup>17</sup>Times of India. (2018, June 24). *Talaq-e-Tafweez: Two women divorce their husbands in U.P.* [http://timesofindia.indiatimes.com/articleshow/64721880.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpst](http://timesofindia.indiatimes.com/articleshow/64721880.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst), last accessed 31 January 2026

Law, i.e. Khula and Talaq e tafweez. All the procedures with Quranic and hadith references have also been mentioned. Many misconceptions and distortions regarding a woman's rights in marriage and divorce have been spread. Men and women may only acquire the truth that Allah has decreed and comprehend the academic interpretations in order to fulfill the spirit of justice if they are self-educated and cognizant of the Quranic text.

The researcher has argued that women are still denied honor, dignity, and respect in "developed" nations, not to mention equal compensation for equal labor. But Islam views women as valuable and priceless, and they should not be treated with contempt or shame. Islam is not to blame for the abuse of women in some Muslim households or Middle Eastern nations; rather, it is a result of cultural norms that some Muslims incorrectly adhere to. Although having the extra judicial right to divorce available to Muslim women, still they are not exercised by the Muslim women. The researcher has analysed the contemporary challenges behind not exercising the extra judicial right to divorce available to Muslim women granted by the Shariah Law. This research has focused on the judicial responses to the court proceedings which are filed by the Muslim women against their husband before the proper jurisdiction who after exercising their extra judicial right cannot have the privilege to enjoy it. However, one limitation to this paper is that the evaluation in this paper is focused on Khula and Talaq e tafweez, therefore, in order to track down all the extra judicial divorces available to Muslim women a research on the other two extra judicial divorces, i.e. 'Fask' and 'Mubarat' is required to be conducted.

available

at <https://timesofindia.indiatimes.com/articleshow/64721880.cms> (last accessed 31 January 2026).

[14] *The Life and Teachings of Mohammed* (1932).

[15] Wikipedia, "Khula" (<https://en.wikipedia.org/wiki/Khula>, accessed 13 January 2024).

## References

- [1] Ahmed, K.N., *The Muslim Law of Divorce* (Islamabad: Islamic Research Institute, 1972), pp. 184-185.
- [2] Engineer, Asgharali, *Rights of Women in Islam* (2008).
- [3] Fyzee, A.A.A., *Outlines of Muhammadan Law* (Delhi: Oxford University Press, 1974), pp. 158-159.
- [4] Hamidoolla v. Faizunnissa, (1882) I.L.R. 8 Calcutta 327.
- [5] Ibn Humam, *Fath al-Qadir* (1999).
- [6] Magila Bibi v. Noor Hassain, AIR 1992 Cal 92.
- [7] Md. Khan v. Shahmai [Mohammad Khan v. Shahmai], AIR 1972 JK 8.
- [8] *Saifuddin Sekh v. Soneka Bibi*, (1954-55) 59 Calcutta Weekly Notes 139.
- [9] Sainuddin v. Latifunnessa, (1918) 46 Cal 141.
- [10] Seymour Vesey-Fitzgerald, *Muhammadan Law: An Abridgement According to its Various Schools* (Oxford: Oxford University Press, 1931), p. 77.
- [11] Suroj Mia v. Abdul Majid, AIR 1953 Tripura 6.
- [12] Surah Al-Baqarah, Ayat 229 (2:229), Quran with Tafsir; Dawat ul Quran, Surah 2: Al-Baqarah (<https://islamicstudies.info/quran/dawat.php?sura=2&verse=229to231>).[1]
- [13] "Talaq-e-Tafweez: Two women divorce their husbands in U.P.," Times of India (June 24, 2018),