

*Khul'* or Dissolution of Marriage by a Woman: A Historical Background and Two Cases From the Bakhchisaray/Crimea Court

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**Abstract**

This study aims to find out how women freed themselves from the bondage of marriage employing the *khul'* as a way of escape. Although a woman's powers to obtain a divorce are extremely limited, my examination of the court records indicates that most divorce cases were initiated by women. This could indicate that women did not want to go on with unhappy marriages. They preferred losing legal entitlements to living under unwanted circumstances.

**Kadın Tarafından Evlilik Akdinin Sonlandırılması (*Hul'*): Tarihsel Arkaplan ve Bahçesaray/Kırım Mahkemesinden İki Tutanak**

**Özet**

Bu çalışma, kadınların *hul'* yolunu kullanarak, evlilik bağından kendilerini nasıl kurtardıklarını ortaya koymayı hedeflemektedir. Kadınların boşanma elde etmeleri çok kısıtlı olmasına rağmen, mahkeme kayıtları üzerine yapmış olduğum çalışma, boşanma davalarının bir çoğunun kadınlar tarafından açıldığını göstermektedir. Bu, kadınların memnun olmadıkları aile hayatına devam etmeyi tercih etmediklerinin bir işaretidir. Onlar, hukukun tanıdığı hakları keybetmeyi, istenmeyen durum içinde yaşamaya tercih etmişlerdir.

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### Introduction

Islamic law gives husband unfettered and unrestricted powers to repudiate his wife. Islam sees divorce as morally wrong and recommend a man not to repudiate his wife unless he has to. For instance, Ibn Humam says; 'it is a reason for a man to repudiate his wife, when his wife goes astray and does not follow the commands of God'. He quotes the statement of the Prophet: 'the most hatred thing among licits (*halals*) to God is *talaq* (divorce)'.<sup>1</sup> Although it is not recommended, if he chooses not to go on with her, there is no legal obstacle for him to do so.

By contrast, a woman's powers to obtain a separation from her husband are extremely limited. Legal texts mention only a handful reasons which entitle a wife to demand divorce.<sup>2</sup> According to Muhammad (d. 189/805), Malik (d. 179/795),<sup>3</sup> Shafi'i (d. 204/820), Ahmad (d. 241/855),

<sup>1</sup> Kamal al-Din Ibn Humam, *Fath al-Qadir* (Beirut: Dar al-Fikr, 2<sup>nd</sup> edit., no date), vol. 3, pp. 463-4; Abdullah b. Sheikh Muhammad known as Damad efendi, *Macma' al-Anhur fi Sharh al-Multaqa al-Abhur*, (Istanbul: Matbaa al-'Amira 1316), vol.1, p. 380. For the different versions of this hadith, see Abu Dawud, *Sunan al-Abu Dawud*, (Beirut: Dar al-Janan 1988), chapter *Karahiyyat al-talaq*, 3 (vol. 1, pp. 661-2).

<sup>2</sup> For modern academic and otherwise studies on the different aspects of divorce in Islamic law, see Muhammad Zahid Kawsari, *Al-Ishfaq 'ala Ahkam al-Talaq*, (Egypt, 1355); Dhaki al-Din Shaban, *Al-Dhawaj wa al-Talaq fi al-Islam*, (Cairo, 1964); Badran Abu Al-'Aynayan Badran, *Al-Fiqh al-Muqaran li Ahwal al-Shakhsiyya bayn al-Madhahib al-Arba'a al-Sunniyya wa al-Madhahib al-Jafariyya wa al-Qanun*, (Beirut: Dar al-Nahdat al-Arabiyya, 1967); Abdurrahman Al-Bassam, *Ahkam al-Dhawaj* (Baghdad, 1968); H. Döndüren, *Delilleriyle İslam Hukuku: Şahıs, Aile ve Çözümlü Miras*, (Istanbul: 1983); M. A. Aydın, *İslam-Osmanlı Aile Hukuku*, (Istanbul: Marmara Üniversitesi, İlahiyat Fakültesi, 1985); H. Cin, *Eski Hukukumuzda Boşanma*, (Konya: Selçuk Üniversitesi, Hukuk Fakültesi, 1988); İ. Karlı, *İslam Hukukunda Kazai Boşanma (Tefrik)*, (Unpublished M.A. thesis, The University of Marmara 1988); A. Güneş, *İslam Hukukunda Boşanma Yetkisi, Bu Yetkinin Sınırlandırılması ve Devri*, (Unpublished M.A. thesis, The University of Erciyes 1994); M. Ayan, *İslam Hukukunda Boşanma Yetkisi*, (Unpublished M.A. thesis, The University of Selçuk 1995); H. Karapınar, *Medeni Hukuk ve İslam Hukuku'nda Kadının Boşanma Hakkı (Mukayeseli)*, (Unpublished M.A. thesis, The University of Atatürk 1995); A. Ünsal, *Arap Geleneğinde ve İslam Hukukunda Boşanma*, (Unpublished M.A. thesis, The University of Ankara 1996); İ. Acar, *İslam Hukukunda Evliliğin Sonu Ermesi*, (Erzurum, 2000).

<sup>3</sup> It is worth mentioning here that Malik entitles a woman to demand *tafriq* (separation) should she encounter serious problems arising from her husband. Muhammad al-Khurashi, *[Sharh] al-Khurashi 'ala Mukhtasar Saydi al-Khalil*, (Beirut: Dar al-Sadr, 1900), vol. 4, p. 9-11; Badran, *al-Fiqh al-Muqaran*, pp. 444-5.

these reasons are impotence, leprosy (judhham, baras), and insanity. The other two Hanafī jurists, namely Abu Hanifa (d. 150/767) and Abu Yusuf (d. 182/798) reduce the reason for separation to one which is impotence or sexual incapacity. She may exercise this right only if his impotence is evident on the first night of the marriage, and not if it appears subsequently. The judge, however, must grant the husband a year's delay, and can separate the couple only if the husband fails to consummate within this period. The same applies to a eunuch. However, this procedure is not required if his sexual organ and testicles are removed. Here, the judge grants separation upon application.<sup>4</sup>

Muhammad goes further and entitles a woman to demand separation if it is difficult (*dharar*) for her to live with him. For instance, if a woman marries to a man supposing that he is rich enough to provide her maintenance, she is entitled to ask for *talaq* when it turns out to be the opposite. To put it another way, an unexpected serious financial problem is a reason for a woman to obtain divorce through a court of law. Her expectation did not come true as he gave her a wrong impression. In his view, it is also a reason for a woman to demand divorce, if her man turns out to be a heretic (*ahl al-bid'a*) while she is expecting him a sinner (*Jasiq*). In other words, cultural or ideological differences can be a ground for divorce.<sup>5</sup>

Malik and Shafi'i entitle a woman to demand separation if her husband is so poor that he is not able to pay her dower or provide her maintenance. For the latter, Ahmed joins these two scholars. He lets her go free if he is so much poor. Hanafis do not see financial difficulties as a ground for divorce.

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<sup>4</sup> Burhan al-Din al-Marghinani, *al-Hidaya*, (Egypt: Matba'a Mustafa al-Halabi, 1971), vol. 2, pp. 26-7; Abu Hasan al-Quduri al-Baghdadi, *Quduri* (Istanbul: Sahaf Hacı Şakir, 1313), pp. 112-3; Ibn Humam, *Fath al-Qadir*, vol. 4, p. 304; Ibrahim al-Halabi, *Multaqa al-Abhur* (Istanbul: Güryay Matbaasi, 1981), pp. 150-151; Damad, *Macma' al-Anhur*, vol. 1, pp. 463-4; Alaaddin al-Haskafi, *Al-Durr al-Muntaqa* in the margins of *Macma' al-Anhur fi Sharh al-Multaqa al-Abhur*, (Istanbul: Matbaa al-Amira 1316), vol. 1, pp. 463-4; Zayn al-Din b. Ibrahim, Ibn Nujaym, *Al-Ashbah wa al-Nazair*, (Beirut: Dar al-Maktaba al-'Ilmiyya, 1985), vol. 2, pp. 120; Alaaddin Abidin, *Al-Hadiyya al-'Alaiyya* (Istanbul: Kahraman Yayınları, 1984), pp. 323; Muhammad b. Ahmad Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, (Beirut: Dar al-Fikr, no date), vol. 2, pp. 38-9; Abdullah b. Ahmad Ibn Qudama, *al-Mughni*, (Beirut: Dar al-Fikr, 1992), vol. 7, pp. 604-6; Muhammad al-Sharhibi al-Khatibi, *al-Mughni al-Muhtaj ila Ma'rifat Ma'ani al-Alfadl al-Minhaj* (Egypt: Matba'a Mustafa al-Halabi, 1958), vol. 3, pp. 202-8; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 2, pp. 235-50; Shams al-Din Muhammad al-Dussuqi, *Hashiya al-Dussuqi 'ala Sharh al-Kabir*, (Egypt: Dar al-Arabiyya, no date), vol. 2, pp. 277-93; Abu al-Faraj Abdurrahman ibn Rajab, *Al-Qawaid fi al-Fiqh al-Islami*, (Beirut, Dar al-Bayan, 1988), p. 34; Badran, *al-Fiqh al-Mukaran*, pp. 436-41.

<sup>5</sup> Haskafi, *Muntaqa*, vol. 1, pp. 463-4.

Rather, in their view, a woman can borrow on behalf of her husband but she has no right to demand divorce on this ground.<sup>6</sup>

Unlike Hanafis and Shafi'is, Malik and Hanbal allow a woman to obtain her separation and to marry someone else, should her husband disappear for at least 4 years.<sup>7</sup> Malik and Hanbal go further and let a woman rid of her husband if he leaves her without any reason for a year. Hanafis see it as morally wrong but do not consider it as a ground for divorce.<sup>8</sup>

When a child has been given in marriage, the wife has a restricted right to pronounce divorce on the attainment of *bulugh* (puberty). She can do this only if it was someone other than her father or parental grandfather who gave her in marriage, and only on the very first appearance of her menstrual blood. If she delays she loses this entitlement.<sup>9</sup>

In these, it is the authority of the *qadi* that effects the separation. Only on one occasion can a wife pronounce a divorce on her own authority. This is when the husband delegates his own power of divorce to his wife. The wife's option lapses if she does not exercise it immediately.<sup>10</sup>

In addition, a wife can get rid of her husband by renouncing her religion. According to Abu Hanifa, Malik and Hanbal, apostasy of a woman or a man abrogates marriage at once. Shafi'i joins these jurists in the apostasy of a woman who has not had sexual contact with her husband. In others, she holds the view that marriage continues until the end of her waiting period, if she reverts to Islam before it is over, she is on her marriage, and nothing is required. If she does not reconvert, her marriage ends from the time of her

<sup>6</sup> Marghinani, *Hidaya*, vol. 2, p. 41; Ibn Rushd, *Bidaya*, vol. 2, p. 39; Khatibi, *al-Mughni al-Muhtaj*, vol. 3, pp. 442-6; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 3, pp. 196-7; Dus-suqi, *Sharh al-Kabir*, vol. 2, pp. 518-9; Ibn. Rajab, *Qawaid*, p. 33.

<sup>7</sup> Marghinani, *Hidaya*, vol. 2, pp. 181-2; Ibn Rushd, *Bidaya*, vol. 2, pp. 39-40; Ibn Qudama, *Mughni*, vol. 9, p. 133; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 149-150; Dus-suqi, *Sharh al-Kabir*, vol. 2, p. 479.

<sup>8</sup> Alaiddin, *Hadiyya*, p. 323; Ibn Qudama, *Mughni*, vol. 9, pp. 131-2; Badran, *al-Fiqh al-Mukaran*, pp. 444-5; H. Karaman, *Mukayeseli Islam Hukuku*, (Istanbul: Nesil Yayinlari, 1996), vol. 1, p. 316.

<sup>9</sup> Marghinani, *Hidaya*, vol. 2, pp. 198-9; Halabi, *Multaqa*, p. 109; Damad, *Macma' al-Anhur*, vol. 1, pp. 336-7; Baghdadi, *Quduri*, p. 109; Ibn Rushd, *Bidaya*, vol. 2, p. 5; Khatibi, *Mughni al-Muhtaj*, vol. 3, p. 165, 169; Ö. N. Bilmen, *Hukuku İslamiyye ve Istila-hatı Fikhıyye Kamusu*, (Istanbul: Bilmen Basimevi, 1969), vol., 2, pp. 50-1.

<sup>10</sup> Marghinani, *Hidaya*, vol. 1, p. 243; Halabi, *Multaqa*, p. 130; Khatibi, *Mughni al-Muhtaj*, vol. p. 3, pp. 285-6.

apostasy.<sup>11</sup> Although, as has been stated, apostasy dissolves the contract of marriage, Hanafi *muftis* closed this door to women. According to the Hanafi jurists of Balkh, apostasy of a woman does not result in annulment of the marriage (*faskh*). On the other hand, the Hanafi jurists of Bukhara following the legal theory say that apostasy of a woman brings about a separation. However she has to be brought back to religion and has to be remarried to her ex-husband. Furthermore, she is to be punished with 75 lashes.<sup>12</sup> The jurists did not leave the apostasy of a woman for the purpose of dissolving the marriage as a matter of civil dispute. Rather, it was criminalised. Were they to allow apostasy, they would in effect give a woman the ability to repudiate her husband. This may indicate that the jurists saw it as a dangerous way.

The seriousness of the matter can be seen in the *fatwas* of *muftis*. In order to give an idea about how serious it was viewed, I would like to quote the *fatwas* of Abu'l-Su'ud (1545-74) who was an Ottoman jurist, and the head of legal and religious establishments:

Question [1]: Zayd's wife, Hind, blasphemes on purpose. Zayd thinks that a divorce (*talaq*) has occurred, and takes some of his things and leaves. Has an irreversible divorce occurred?

Answer: Repudiation does not occur through blasphemy. The couple become separated through annulment (*faskh*) of the marriage. However, after bringing the wife back to Islam by an eloquent chastisement, Zayd should forcibly renew the marriage and take [her back].

In which case, what degree of force towards Hind is licit?

Answer: (Bringing her back to Islam) is by great force (*jabr-i shadid*) and long imprisonment. After she has come to Islam, she becomes Zayd's wife through the judge's marrying

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<sup>11</sup> Marghinani, *Hidaya*, vol. 2, p. 221; Halabi, *Multaqa*, p. 121; Baghdadi, *Quduri*, pp. 113-4; Ibn Humam, *Fath al-Qadir*, vol. 3, pp. 428-9; Ibn Qudama, *Mughni*, vol. 7, pp. 564-5; Khatibi, *Mughni al-Muhtaj*, vol. p. 3, pp. 190; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 228-9; Dussuqi, *Sharh al-Kabir*, vol. 2, pp. 270.

<sup>12</sup> Ibn Humam, *Fath al-Qadir*, vol. 3, p. 429; Damad, *Macma' al-Anhur*, vol. 1, p. 372; Haskafi, *Muntaqa*, vol. 1, p. 372; Fakhr al-Din Hasan b. Mansur known as *Qadikhan*, *Al-Fatawa al-Qaqlikhan* in the margins of *al-Fatawa al-Hindiyya* (Egypt: Kubara Amiriyya, 1310), vol. 1, p. 546.

her to Zayd in the presence of two witnesses. Then he takes her home by force.<sup>13</sup>

Question [2]: Hind asks scholar Zayd; 'what is the way of obtaining divorce from my husband 'Amr?' He says; 'say, in front of the people, 'I renounced Islam''. She then renounces Islam. What should be done [to them]?

Answer: He, the cursed man, becomes an infidel before Hind. His execution becomes licit. Hind is brought back to Islam and is forcibly married off to 'Amr.<sup>14</sup>

One century later, we still see the question of the apostasy of women in the *fatwas* of *muftis*, which means that it was still a fact of social life and some women still employed it as a gateway to freedom. The seriousness of the matter was not lessened. To quote Ali *efendi*, who was *sheikh al-Islam* between 1673-1685:

Question: A woman becomes infidel by pronouncing profane words, and reconverts to Islam, but she does not want to renew her marriage for a little dower, can she be forced to do so?

Answer: She is forced to do so.<sup>15</sup>

Here, the two *sheikh al-Islam* insist on giving an apostate woman back to her former husband after bringing her back to Islam. While Ali *efendi* gives her a symbolic *mahr*, Abu'l-Su'ud gives her nothing. Furthermore, in his view, she is to be punished for deliberately blaspheming in order to dissolve the marriage. In short, *muftis* tried to block an escape route which beckoned to woman in unhappy marriages. However, in this, they were unsuccessful as it continued to cause legal problems.

By contrast, the apostasy of men created an opportunity for women. According to law, apostasy of a man dissolves his marriage, and he cannot get his former wife back without her consent.<sup>16</sup> Furthermore, he needs to pay

<sup>13</sup> E. M. Düzdağ, *Şeyhülislam Ebusuud Efendi Fetvaleri Işığında 16. Asır Türk Hayati* (Istanbul: Enderun Kitabevi, 1972), p. 46-7; C. Imber, *Ebu's-suud: The Islamic Legal Tradition* (Edinburgh University Press, 1997), p. 197.

<sup>14</sup> Düzdağ, *Ebusuud*, p. 46.

<sup>15</sup> Salih b. Ahmad al-Kafawi, *Fatava Ali Efendi ma'a nuqul lil Kafawi*, (Istanbul: Matba'a 'Amira, no date), vol. 1, p. 84; N. Dinç, (ed.) *Şeyhülislam Ali efendi Fetvaleri*, (Istanbul: Kit-San Matbaacılık, 1985), vol. 1, p. 142.

<sup>16</sup> Marghinani, *Hidaya*, vol. 2, p. 221; Halabi, *Multaqa*, p. 121; Baghdadi, *Quduri*, pp. 113-4; Ibn Humam, *Fath al-Qadir*, vol. 3, pp. 428-9; Ibn Qudama, *Mughni*, vol. 7, pp. 564-5;

a new *mahr* to her. The *muftis* followed this legal principle in their *fatwas*, providing women a way out of unwanted marriages. However, they ignored the possibility of apostasy being caused by women. The question part of the *fatwas* which almost always includes 'she does not want to remarry' suggests that it was women who caused their husbands to pronounce profane words since it was the easiest way of getting out of the marriage without losing any legal entitlement such as *mahr*. It is very likely that men uttered profane words upon anger without considering their serious consequences. For instance, if a man uses a slang word and says 'fuck your mouth' he is out of religion, and his wife is divorced. It must have been easy for a wife to make him utter such a word. Furthermore, in law, the intention of the speaker is not important. Uttering such a word is enough to put him out of religion. In addition, uttering a profane word by mistake or as a joke takes him out of religion.<sup>17</sup>

To quote Abu'l-Su'ud:<sup>18</sup>

Question: Zayd pronounces profane words. The renewal of his marriage is required, but his wife, Hind does not accept the renewal of the marriage contract. Can she be forced to do so?

Answer: She cannot be forced, because it was not her who blasphemed.<sup>19</sup>

We see Ali *efendi* following the legal principles in the apostasy of men, providing women a way to freedom if she is unhappy with her marriage. He says:

Question [1]: What is required for a woman whose husband renounces Islam?

Answer: She is irrevocably divorced.<sup>20</sup>

Question [2]: A man pronounces profane words and becomes an infidel and her wife becomes irrevocably

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Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 228-9; Dussuqi, *Sharh al-Kabir*, vol. 2, pp. 270.

<sup>17</sup> Damad, *Macma' al-Anhur*, vol. 1, pp. 688-98; Düzdağ, *Ebusuud*, pp. 45-6; Dinç, *Ali efendi*, vol. 1, pp. 229-40.

<sup>18</sup> For an examination of the *fatwas*, see Colin, I. 'Involuntary annulment of marriage and its solutions in Ottoman law', *Turcica*, 27 (1993), pp. 39-73.

<sup>19</sup> Düzdağ, *Ebusuud*, p. 46.

<sup>20</sup> Dinç, *Ali efendi*, vol. 1, p. 238.

divorced. Afterwards, he reconverts to Islam and wants to renew his marriage contract, but his wife does not want to remarry him. [Is it allowed for him] to force her to the marriage?

Answer: No.<sup>21</sup>

Abu'l-Su'ud goes further and issues a *fatwa* about the execution of a man who uses apostasy as a way of returning his wife after triple divorce and of a judge who shows apostasy as a way of getting back a triply divorced woman. He sees it as a serious crime. His intention perhaps was to prevent judges from getting involved in such a way and to warn the people not to use apostasy for this purpose. To quote:

Question [1]: When Zayd repudiates his wife Hind with a triple divorce, he does not elect for an intermediate marriage. The deputy judge, 'Amr says to Zayd; 'Become an infidel. Then become a Muslim again.' When Zayd- we take refuge in God- has become an infidel and then a Muslim again, 'Amr marries Hind to Zayd. Is the marriage which he has contracted valid?

Answer: The deputy judge is infidel before Zayd is. It is possible licitly to execute both of them.<sup>22</sup>

Question [2]: Zayd beats his wife, Hind, who is guilty of no offence. When 'Amr says; 'It is against the *shari'a*. Why are you beating her?'. Zayd replies; 'I do not recognise the *shari'a*'. What should be done?

Answer: He becomes an infidel. Hind is irrevocably divorced. She receives her dower and marries whichever Muslim she wishes.<sup>23</sup>

The husband's offence here is not his beating his wife, but blasphemy against the *shari'a*. This is what makes him an apostate and dissolves the marriage. Following the law, Abu'l-Su'ud declares the dissolution final, and he does not insist on a renewal, thus allowing a maltreated wife to escape a violent husband.

<sup>21</sup> Kafawi, *Fatawa*, vol. 1, p. 84; Dinç, *Ali efendi*, vol. 1, p. 141.

<sup>22</sup> Düzdağ, *Ebusuud*, p. 52; Imber, *Ebu's-suud*, p. 200.

<sup>23</sup> Düzdağ, *Ebusuud*, p. 45; Imber, *Ebu's-suud*, p. 196.



I have not come across a case of apostasy in my examination of the court records. However, Svetlana Ivaova examines such a case from 18<sup>th</sup> century Rumelia court records. She reports that a woman called Zübeyde came to the court and established with the evidence of two witnesses that her husband had renounced Islam and that since she became irrevocably divorced she did not want to renew the contract of marriage.<sup>24</sup> Her report does not make it clear how he uttered profane words. Was it her way of obtaining divorce by false witnesses or did her husband deliberately pronounce profane words for unknown reasons, or was it her who caused him to utter blasphemous words?

### Khul'

A significant method of divorce open to a woman, which is the subject of this study, involves a financial burden or penalty.<sup>25</sup> This is *khul'* whereby a wife asks her husband for a divorce, and her husband repudiates her for a consideration.<sup>26</sup> This is the only legal method for a woman to obtain her freedom without resorting to subterfuges such as blasphemy.

*Khul'* literally means taking off, and slipping off. As a legal term, it refers to the annulment of marriage for a consideration.<sup>27</sup> In return for the husband's consent to the request of his wife for this kind of divorce, the woman agrees to give up all or some of her dower and the maintenance of her waiting period.

Marghinani justifies the *khul'* by the following Qur'anic verse:

"...If you fear that they would not be able to keep the limits ordained by God, then there is no sin on either of them respecting the matter in lieu of which she has released herself..." (2:229)

Ibn Humam justifies the legality of *khul'* by a *hadith*:

"The wife of Sabit b. Qays came to the Prophet and said; 'O, the Prophet of God, I have nothing to say about his [Sabit b. Qays's] religion and nature. But I do

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<sup>24</sup> For more, See Ivaova, S. 'The divorce between Zubaida Hatun and Essid Osman Aga: Women in the 18<sup>th</sup> century Sharia court of Rumelia' in *Women, The family, and Divorce Laws in Islamic History*, Amira al-Azhary Sonbol, (edt.) (Syracuse: Syracuse University Press, 1996), pp. 112-115.

<sup>25</sup> For a study on *khul'*, see F. Gündüz, *İslam Hukuku'nda Muhalaa*, (Unpublished M.A. thesis, The University of Marmara, 1991).

<sup>26</sup> Marghinani, *Hidaya*, vol. 2, pp. 13-4; Halabi, *Multaqa*, pp. 142-3, 428-9; Badran, *al-Fiqh al-Mukaran*, pp. 391-2.

<sup>27</sup> Ibn Humam, *Fath al-Qadir*, vol. 4, p. 210; H. Wehr, *A Dictionary of Modern Written Arabic: Arabic-English*, M. J. Cowan (edt.) (Wiesbaden: Librairie du Liban 1980).

not like *kufir* (disbelief?) in Islam. [In another version: 'I cannot put up with him']. The prophet asked: 'Will you give the garden back to him?', she said; 'Yes'. The Prophet said to Sabit b. Qays: 'Take the garden and divorce her.' Another version of this report goes as follows: "Sabit b. Qays b. Shamma beat his wife, Jamila, the daughter of Abdullah b. Ubayy, and broke her hand. Her brother came to the Prophet and made a complaint about him. The Prophet sent a person to Sabit b. Qays and called him. He [the Prophet] said to him: 'Take whatever you gave her and let her go'. He [Sabit b. Qays] accepted it. The prophet said to her: 'Wait for a menstruation and go back to your home.'"<sup>28</sup>

While the second version of the *hadith* underlines that the *khul'* was the result of a special reason which is the maltreatment of a wife, the first tells us that a reason is not required for a *khul'*, a wife can demand it without a reason. Taking into account the first version of the *hadith*, Sunni schools of law let a wife go free via *khul'* once she obtains her husband's consent. However, Hasan al-Basri has an extreme view. He holds that *khul'* can only be concluded if he sees his wife committing a *zina* (adultery) crime. On the other hand, *zahiris* hold the view that a woman is entitled to demand *khul'* only if she does not like him, and fears that she may not be able to fulfil her duties towards her husband.<sup>29</sup>

*Khul'* becomes invalid if it is obtained by physical violence. According to Malik and Shafi'i, if a husband applies physical or emotional violence against his wife in order to make her conclude a *khul'* agreement with him, the *khul'* becomes invalid unless she was a recalcitrant woman. On the other hand, Hanafi scholars let the husband get away with his crime by validating a *khul'* obtained by violence. They see the violence against a woman as a sin, morally wrong, and nothing to do with law.<sup>30</sup>

As for the consideration paid as a result of a *khul'* agreement, Hanafis hold the view that if it is because of his *nushuz* (maltreatment of his wife), it is abhorred (*makruh*) for the husband to take anything from his wife. It is

<sup>28</sup> Muhammad b. Ismail al-Bukhari, *Sahih al-Bukhari*. (Beirut: Dar al-Qalam, 1987), chapter *talaq, bab*, 137 (vol. 7, pp. 92-4); Abu Dawud, *Sunan*, chapter *khul'* (vol. 1, pp. 676-8). For a legal and otherwise examination of this *hadith*, see Ahmad b. Ali b. Hajar al-Asqalani, *Fath al-Bari*, (Cairo: Al-Maktab al-Salafiyya, 1407), vol. 9, pp. 306-7, 310; Ibn Humam, *Fath al-Qadir*, vol. 4, p. 214; Ibn Qudama, *Mughni*, vol. 8, p. 174.

<sup>29</sup> Ibn Humam, *Fath al-Qadir*, vol. 4, pp. 211-2; Ibn Rushd, *Bidaya*, vol. 2, p. 51; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 13-5; Dussuqi, *Sharh al-Kabir*, vol. 2, pp. 351.

<sup>30</sup> Shams al-Din al-Sarakhsi, *Al-Mabsut*, (Beirut: Dar al-Fikr, 1989), vol. 6, pp. 182-3; Khatibi, *Mughni al-Muhtaj*, vol. 3, pp. 263, 273-4; Ibn Qudama, *Mughni*, vol. 8, p. 179; Badran, *al-Fiqh al-Mukaran*, pp. 401.

morally wrong, but it is legally valid. If it is because of her recalcitrance (*nushuz*) towards her husband, it is abhorred for the husband to take more than he gave to her. However, if he does, it is legally valid. In the view of Malik and Shafi'i, the latter is legally and morally justifiable.<sup>31</sup>

A mature woman can conclude a *khul'* agreement with her husband. According to Malik, the father of a boy or a girl can do this on his/her behalf. Hanafi allows only the father of a girl to reach a *khul'* agreement with her husband. According to Shafi'i, the father of a girl can do a *khul'* on her behalf providing that he pays the money out of his own property. Hanbal, however, does not let the father of a minor do it on his/her behalf if he does it from his/her property. If he does it from his own property, it is then valid.<sup>32</sup>

With regard to the result of a *khul'* agreement, according to Abu Hanifa, Malik and Shafi'i in one report, it brings about a single irreversible divorce, and obliges the woman who offered *khul'* to deliver her promise. Shafi'i and Hanbal hold the view that *khul'* results in the annulment of a marriage contract (*faskh*) and so it is not a *talaq*.<sup>33</sup> Once they have concluded *khul'*, it takes effect, and a judgement of a *qadi* is not required.<sup>34</sup> This is the case in theory. In practice, however, it was very frequently registered in the court. The main reason for this presumably was that the parties wanted to have firm evidence in their hands in case of dispute. In addition, such a document might provide sufficient evidence to establish the fact that the man was freed from all financial obligations arising from marriage contract. It also provided an absolute authority that the marriage has ended.

Having seen the legal principles, it is worth looking at living tradition, the *fatwas* of *muftis* as they give us an idea about the implementation of these rules and the woman's view of *khul'* since presumably it was them who asked the *khul'* questions. To quote Abu'l-Su'ud:

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<sup>31</sup> Sarakhsi, *Mabsut*, vol. 6, pp. 182-3; Marghinani, *Hidaya*, vol. 2, p. 14; Halabi, *Multaqa*, p. 142; Baghdadi, *Quduri*, p. 125; Ibn Humam, *Fath al-Qadir*, vol. 4, pp. 215-6; Ala'uddin, *Hadiyya*, p. 323; Ibn Rushd, *Bidaya*, vol. 2, p. 51; Khatibi, *Mughni al-Muhtaj*, vol. 3, p. 265.

<sup>32</sup> Marghinani, *Hidaya*, vol. 2, p. 17; Ibn Rushd, *Bidaya*, vol. 2, p. 51; Ibn Qudama, *Mughni*, vol. 8, pp. 216, 222; Khatibi, *Mughni al-Muhtaj*, vol. 3, p. 277; Badran, *al-Fiqh al-Mukaran*, p. 403.

<sup>33</sup> Marghinani, *Hidaya*, vol. 2, p. 13; Ibn Humam, *Fath al-Qadir*, vol. 4, pp. 211-2; Khatibi, *Mughni al-Muhtaj*, vol. 3, p. 268; Ibn Rushd, *Bidaya*, vol. 2, p. 52; Ibn Qudama, *Mughni*, vol. 8, p. 181; Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 15; Badran, *al-Fiqh al-Mukaran*, pp. 407-9.

<sup>34</sup> Khurashi, *Mukhtasar Saydi al-Khalil*, vol. 4, pp. 12; Dussuqi, *Sharh al-Kabir*, vol. 2, p. 347; Ibn Qudama, *Mughni*, vol. 8, p. 175; Badran, *al-Fiqh al-Mukaran*, pp. 391.

Question [1]: Is it permissible for Zayd to take more as an exchange for the *khul'* than what he has given to Hind?

Answer: It is not proper. One should not do this.<sup>35</sup>

As we have seen above, the amount which the wife must pay is what she has been given. To demand more than that is permissible in law, but immoral by the standards of piety. Here, Abu'l-Su'ud apparently repeats this rule.

Question [2]: Zayd divorces his wife twice and marries her again. Hind concludes a *khul'* with her husband Zayd, on condition that she give up her dower and the maintenance of her waiting period. Afterwards, Hind demands her dower and the maintenance of her *'idda*. Zayd says: 'I divorced you on condition that you give up your dower and the maintenance of your *'idda*'. Can Hind get them back?

Answer: No, she cannot demand it.<sup>36</sup>

Here, Abu'l-Su'ud follows the law and does not let her reclaim what she has already relinquished. As it is stated in the question, the usual understanding of the amount which the wife must pay is that she should renounce all, or some, of her dower and the maintenance, in other words, the financial obligations on the husband which arise out of the married state.

Question [3]: Hind concludes a *khul'* with her husband Zayd, on condition that she pay the seven years' maintenance of their infant son from her own resources. The judge confirms the *khul'* and issues a certificate. If the infant then dies, can the said Zayd reclaim the infant's seven year maintenance from Hind?

Answer: Yes.<sup>37</sup>

A boy remains in the custody of the ex-wife until the age of 7. The maintenance during this period is, however, an obligation on the former husband,<sup>38</sup> which here the ex-wife undertook to pay as the price of divorce. The death of the child does not release her from the obligation.

<sup>35</sup> Düzdağ, *Ebusuud*, p. 48; Imber, *Ebu's-suud*, p. 203.

<sup>36</sup> Düzdağ, *Ebusuud*, p. 47.

<sup>37</sup> *Ibid.*, pp. 47-8.

<sup>38</sup> *Mawāzīn al-Mabḥūṭ*, vol. 2, pp. 37-8.

Abu'l-Su'ud has a very extreme *fatwa* about a man who has sexual intercourse with his wife whom he has triply divorced. In his words:

Question: Zayd says; 'If I do this, may my wife be divorced three times'. Then he does it. His wife knows it but is not able to prove it. Is there any sin for her if he has intercourse with her?

Answer: This is adultery. This must not be elected. Whatever she owns should give to him in order to obtain a *khul'*. If he demands intercourse, and she is not able to avert it in any other way, it is allowed for her to put poison into his meal. This is not a sin and there is no *diya* (financial remedy).<sup>39</sup>

In this question, a woman claims to have been divorced by her husband but she is not able prove it. Since she is not able to establish as a fact that she was repudiated by her husband, Abu'l-Su'ud suggests that she conclude a *khul'* agreement with her husband in order not to commit a *zina* crime. If she is not able to get it, Abu'l-Su'ud allows her to poison her husband and assures her that it is not morally wrong and there is no penalty for it. In a normal procedure of law, when a woman and her husband differ on whether there was a divorce or not; or whether the condition of a conditional repudiation has taken place or not, his statement but not that of the wife is to be accepted.<sup>40</sup> Abu'l-Su'ud deviates from this normal procedure and takes the statement of the woman as a fact, and issues his *fatwa* accordingly. He ignores the possibility of the question being asked by a woman who was accused of poisoning or murdering her husband. She might have invented such a case in order to avert the punishment.

It is however very likely that Abu'l-Su'ud issued his *fatwa* on a religious or purely legal consideration. In law, when a woman is triply divorced, she cannot have sexual relation with her ex-husband. If he tries to do so, she has to defend her honour. If she cannot prevent her husband from having intercourse with her by any other means she is entitled to end his life.<sup>41</sup>

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<sup>39</sup> Düzdağ, *Ebusuud*, p. 159; Ahmad b. Muhammad al-Hamawi, *Ghamdhu 'uyun al-Basair sharh al-Ashbah wa al-Nadair*, (Beirut: Dar al-Maktaba al-'Ilmiyya, 1985), vol. 2, p. 124.

<sup>40</sup> Marghinani, *Hidaya*, vol. 2, p. 252; vol. 3, p. 158; Shams al-Din Ahmad b. Qadir known as *Qadizada*, *Nataij al-Afkar, Takmila al-Fath al-Qadir*, (Beirut: Dar al-Fikr, 2<sup>nd</sup> edit., no date), vol. 8, pp. 187-8.

<sup>41</sup> Ibn Humam, *Fath al-Qadir*, vol. 5, p. 346; Ibn Bazzaz, *Al-Fatawa al-Bazzaziyya* in the margins of *al-Fatawa al-Hindiyya* (Beirut: Dar al-Ma'rifa, 1892), vol. 5, p. 430; Sheikh

Whatever the reason behind this *fatwa* may be, it indicates that *khul'* was a significant way of obtaining divorce and in this particular situation it was to avert a crime or a sin.

### The court cases

My examination of the court records of Istanbul and Crimea indicates that mostly it was women who initiated divorce and got their freedom through *khul'*. The same fact has been observed by several other scholars.<sup>42</sup> For instance, in her study of 17<sup>th</sup> century Bursa *sijills*, Nurcan writes that most divorce cases were initiated by women.<sup>43</sup> Not only Muslim women but also dhimmi women employed *khul'* as a way to freedom. Çiçek who examined the status of dhimmis of Cyprus in a Muslim court says 'women initiated most of divorce cases'.<sup>44</sup> This in turn tells us that men did not use their power of divorce as they did not want to undertake financial obligations. It is almost certain that women turned to *khul'* as a last resort since they did not want to lose their legal entitlements. When a man rejects his wife's demand of *talaq*, there remains no alternative, she either has to go on living with him or give up her legal rights. As reflected in the *sijills*, they always chose the latter.

The original registers of the Bakhchisaray court are housed in the Saint Petersburg library in Russia. The Tatarian Library in Crimea/Ukraine holds photocopies of these registers, from which I received my photocopies. I was assured by the library staff that the photocopies were made from micro-films of the original registers.

Our document contains two *khul'* cases. One of which is as follows:

Case 1:

From the residents of Soritaş. Recep b. Tekirvirdi brought to the noble court Mustafa b. Davut *halife*, from

Niziam al-Din et al. *Al-Fatawa al-Hindiyya* (Beirut: Dar al-Ma'rifa, 1892), vol. 5, p. 313; Khatibi, *Mughni al-Muhtaj*, vol. 4, p. 191; Ibn Qudama, *Mughni*, vol. 9, p. 337.

<sup>42</sup> See R. C. Jennings, "Women in Early 17<sup>th</sup> Century Ottoman Judicial Records: The Sharia Court of Ottoman Kayseri", *JESHO*, XVIII/1 (1975), pp. 53-114; C. M. Zilli, "We do not get along: Women and Hul Divorce in the 18<sup>th</sup> century" in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, C. M. Zilli, (edt.), Netherlands, (1997).

<sup>43</sup> Abacı, N. *Bursa şehri'nde Osmanlı Hukukunun Uygulanması: 17. Yüzyıl*, (Ankara: Kültür Bakanlığı, 2001), p. 154.

<sup>44</sup> K. Çiçek, *Zimmis (Non-Muslims) of Cyprus in the Sharia Court: 1110/39 A.H. /1698-1726 A.D.* (Unpublished Ph.D Thesis, The University of Birmingham, 1992), p. 114.

the residents of the village of Kadıköy. In his presence, he stated:

'Previously, I married off my little daughter Alime Soray [to the aforesaid man] for an 80 florin (European golden coin)<sup>45</sup> deferred *mahr*. Afterwards, when we demanded *khul'*, the said Mustafa divorced my daughter Alime Soray on condition that we free him from her maintenance of her '*idda* and dower?. I demand that he should be interrogated about it.'

Mustafa admitted that he had married to Alime for 80 florin deferred *mahr* and that he had concluded a *khul'* with her father Recep on condition that he free him from *nafaqa* (maintenance). He [further] stated that Recep had undertaken himself the payment of the 80 florin deferred *mahr* of Alime Soray.

A judgement is issued that Alime Soray has been divorced from Mustafa and that her *mahr* is to be paid by Mustafa as there was *khalwa sahiha* (complete retirement) between the said Mustafa and Alime Soray.

Written on 8 *Dhilqada* 1018/2.2.1610.

*Shuhud al-hal* (witnesses to the proceedings of the court):<sup>46</sup> Illegible b. Mustafa *agha*,<sup>47</sup> Kaytaş *usta* (craftsman) b. Abdullah, Perviz *Muhzir* (the one who brings criminals to the court),<sup>48</sup> Muharrem *al-Malum* (known), further illegible names, and others.

The collection of *mahr* was registered in another document:

From the residents of Soritaş, the aforementioned Recep b. Tekirvirdi, in the presence of Hacı Mehmet b. Hacı Yahya who is an agent of Mustafa b. Davut *Halife*, his agency being established with the evidence of Mehmet

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<sup>45</sup> G. Bayerle, *Pashas, Begs, and Efendis: A Historical Dictionary of Titles and Terms in the Ottoman Empire*, (Istanbul: The Isis Press, 1997), p. 66.

<sup>46</sup> For an examination of the functions of the *shuhud al-hal*, see R. Çiğdem, *The Register of the Law Court of Istanbul 1612-1613: A legal Analysis* (Unpublished Ph.D thesis, The University of Manchester, 2001).

<sup>47</sup> The title of *agha* was borne by numerous officers or officials of rank. Bayerle, *Pashas*, p. 2.

<sup>48</sup> For the functions of the *Muhzirs* in a court of law, see Çiğdem, Unpublished Ph.D thesis.

*çelebi*<sup>49</sup> b. Mustafa *çelebi* and Mehmet b. Hamza, [Recep] stated:

"The aforementioned Mustafa accepted that he had divorced his wife, Alime Soray, who is my daughter. Since he was ordered by the court to pay 80 florin *mahr*, I received the 80 florin deferred *mahr* of my daughter Alime Soray. He now owes nothing to us.

The aforesaid agent Hacı Mehmet confirmed the statement of Recep.

What happened has been recorded upon demand.

Written on 17 *Dhilqada* 1018/11.2.1610.

*Shuhud al-hal*: Yahya *efendi* b. Sarı Hacı Hasan, from the judicial district of Yoralca, Abdurrahman *efendi* b. Allah kulu, the judge of Yoralca, Abdulgani *efendi* b. Hacı Gözü, from the judicial district of illegible, Mustafa *efendi* b. Hacı Bayram, *Usta* Kaytaş b. Abdullah, Sefer Ali b. *Usta* Kaytaş, and others from those who are present.

Here, the document records the *khul'* of a minor girl concluded by her father. As recorded in the entry, a minor girl called Alime was given into marriage by her father Recep. He also was the man who dissolved the marriage contract. On her behalf, he concluded a *khul'* agreement with her husband Mustafa giving up her dower and the maintenance of her waiting period (*nafaqa*). We understand from the statement of her husband that her father undertook the payment of her deferred *mahr* and that he was freed from all financial obligations. However, the court issued a judgment ordering her former husband to pay her *mahr*. The court reasoned for its judgment that they had complete retirement. The judgment of the court was the requirement of the law. In law, the father of a minor girl is entitled to conclude a *khul'* with her husband. However, he is not entitled to give it up. Even if

<sup>49</sup> *Çelebi* was designated from 15<sup>th</sup> century onwards to the literate people as a title of respect. However, according to Zilfi, it "probably denotes association with a trade". M. Seretoğlu, *Resimli Osmanlı Tarihi Ansiklopedisi*, (Istanbul: İstanbul Matbaası, 1958), p. 65; Bayerle, *Pashas*, p. 30; Zilfi, "We do not get along", pp. 280, 294.



her father relinquishes her *mahr* as part of a *khul'* deal, she is still entitled to it.<sup>50</sup>

The order of the court was implemented by her former husband. The second document which was registered nine days later confirms that her *mahr* was paid by her ex-husband and that her father, on her behalf, collected it.

The term *khalwa sahiha*, which means privacy between husband and wife where there is no legal or natural impediment to intercourse,<sup>51</sup> suggests that there was no sexual contact. They stayed together but had no sexual experience. This term also implies that she had physical maturity to have sexual intercourse, because otherwise sexual contact is forbidden. In other words, there is no legal impediment to the marriage of a minor, however, sexual contact is forbidden until her physical maturity.<sup>52</sup>

Here, the question arises why she was married off and why this marriage was dissolved. It is highly likely that she was married off to him since he was a well-to-do man as his title *halife* suggests. He perhaps was a civil servant with a regular salary as the title *halife* refers to a junior scribe of the Imperial chancery. It is also possible that he was a sufi as the other meaning of *halife* indicates diverse functions in a sufi tradition.<sup>53</sup> The several number of *efendis* among *shuhud al-hal* may also indicate that he was a respected man. Her father might have expected to derive some financial and otherwise advantages but it did not turn out as hoped. His daughter was not able to live with him. It is very likely that she faced serious domestic problems while her stay with her husband. The origin of the problem might have been her husband or his household. When she reported the domestic problems to her father, they decided to end this marriage.

They might have tried to put an end to it in a normal way i.e. *talaq*, but her husband did not give into their demand. So, they turned to *khul'* in order to free her from the bondage of marriage. On the question of why he did not divorce her rather than conclude a *khul'*, it is because he did not want to

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<sup>50</sup> Marghinani, *Hidaya*, vol. 2, p. 17; Halabi, *Multaqa*, 144; Muhammad b. Mahmud al-Babarti, *Sharh al-'Inaya 'ala-Hidaya* in the margins of *Fath al-Qadir* (Beirut: Dar al-Fikr, 2<sup>nd</sup> edit., no date), vol. 4, pp. 238-40.

<sup>51</sup> Ibn Humam, *Fath al-Qadir*, vol. 3, pp. 332-3.

<sup>52</sup> Sheikh Nizam al-Din et al. *Al-Fatawa al-Hindiyya* (Egypt: Kubara Emiriyya 1310), vol. 1, p. 287; Alauddin, *Hadiyya*, p. 322.

<sup>53</sup> Bayerle, *Pashas*, p. 74.

undertake the financial obligations as he did not get any advantage out of this marriage.

The wording of the second document 'since he was ordered by the court to pay 80 florin *mahr*' implies that this order was to their surprise. This order of the court probably shocked her former husband, as they came to the court only to have the *khul'* agreement recorded. Neither her father nor her ex-husband expected such an outcome. They were probably not aware of the law. On the other hand, it is possible that her father was aware of the law that her *mahr* is to be paid even if it is relinquished. For this reason, he brought the case as a disputed matter since the term 'I demand that he should be interrogated about it', is used in disputed matters but not in notary cases. Furthermore, the presence of a *Muhzir* among *shuhud al-hal* suggests that this was a disputed matter and the plaintiff Mustafa was brought to the court by the executive authorities. As recorded in the second document, he did not come to the court himself to deliver the *mahr*. Rather, he sent his proxy. This suggests that he did not want to see them again. He perhaps was still under the shock of the court order.

The second case goes as follows:

Case 2:

Ilyas b. Mustafa, an agent of Melek hinti (daughter of) Esed, his agency being established with the evidence of Rdzvan *agha* b. Illegible and Mehmet, brought to the court Abdulcebbar *çelebi* b. Sinan, an agent of the husband of the aforesaid [Melek], Hasan b. Mehmet, his agency being established with the evidence of Ramazan b. Şahin and Hasan b. Abdullah, [Ilyas] stated:

'The aforesaid Melek demanded divorce from her husband and she gave up her maintenance and 60 *hasan* (gold coins)<sup>54</sup> deferred *mahr* and all other rights.'

[Abdulcebbar] said: 'My principal, Hasan, accepted the divorce according to the aforementioned conditions and appointed me as his agent. On behalf of my principal, I divorced with an irreversible divorce the aforesaid Melek.

<sup>54</sup> Pamuk, Ş. "Money in the Ottoman Empire, 1326-1914" in *Economy and Social History*, H. Inalcik, and D. Quataert, (eds.), (Cambridge University Press, 1994), p. 954.

Ilyas confirmed the statement of Abdulcebbar from the beginning to the end.

It is recorded that Melek has been divorced with an irreversible divorce.

This took place at the beginning of Muharram al-Haram 1021/1-10.4.1612.

*Shuhud al-hal*: Abdurrahman *efendi al-Kirimi*, the judge of Yoralca, Kasım *dede* b. Illegible.

This entry records the *khul'* of a woman called Melek. In return for her freedom, she relinquished her deferred dower and the maintenance of her *'idda*. She did not come to the court. Rather she sent an agent named Ilyas. Her husband Hasan did not attend the court either. He was represented by a man named Abdulcebbar. Although *khul'* itself dissolves the marriage irrevocably, Abdulcebbar stated that he had divorced the said woman irreversibly. It is highly likely that he was repeating the result of the *khul'* which is an irrevocable divorce. To put it differently, he did nothing more than put it into the words. It is also possible that he was not aware of the result of a *khul'* agreement. He might have thought that unless he divorces her as an agent, she would not be divorced, so he did it. The document does not mention anything about the children. They may not have had any children. They perhaps were newly wedded wife and husband.

On the question of why they did not attend the court, it is perhaps because they did not want to see each other again or there are some other serious reasons. It is also possible that the agents were the ones who helped them to dissolve the marriage mutually and so they reported it to the court on their behalf.

When the problem came out, the husband and the wife might have tried to solve it within the family. However, they were not able to do so. When the problem got bigger and bigger, they asked the intervention of the elders or relatives. When they were not able to prevent the break-up of the family, they turned to *khul'* to resolve it. It is very likely that they asked her husband to divorce her using his power of *talaq*. When he did not give into their demand, they employed the *khul'* as a way of separating them. As mentioned above, a man holds an unconditional power of dissolving the marriage at any time he chooses. He is entitled to put an end to his marriage whenever he wishes to do so. In practice, however, they did not use this power as it brings about some financial disadvantages such as the payment of *mahr* and *nafaqa*. In order to avoid financial losses, they turned to *khul'* or waited until

such a time that she relinquish her economic and legal rights. It seems that men applied emotional or physical violence on women in order to make her give up her rights. They did it even if the origin of the problem was themselves.

### Conclusion

A wife has no matrimonial authority, and cannot therefore repudiate her husband. There are only few reasons which entitle a wife to ask for separation through a court of law. As we have seen, these are extremely limited. For a woman, there are two ways to get out of a marriage bond. One of which is apostasy. This however, was something which late Hanafi jurists did not permit, since to allow would, in effect, give women the ability to repudiate their husbands using a sinful way. The *fatwas* of *muftis* however indicate that apostasy did not escape the attention of some women who hoped to put an end to their marriages. It seems that a woman resorted to apostasy when she was not able get her husband to divorce her and when she did not want to loose her financial advantages. The cases of apostasy were not reported to the court or else they did not put them into writing. However, the *fatwas* of *muftis* indicate that apostasy of women was a fact of social life. They wanted to prevent it. However, in this they were unsuccessful as it continued to cause legal problems.

On the other hand, apostasy of men created an opportunity for women out of unwanted marriages. It seems that it was women who caused men to go out of religion since it was the words uttered but not the intention of the speaker which put them out of religion. They became the victim of their words. A profane word uttered after a sudden anger may dissolve a marriage. They suddenly find themselves out of religion and see their marital life ended. Unlike the apostasy of women, here the *muftis* followed the legal principles ending the marital status of an apostate man. They warned men about the consequences of their misplaced words.

*Muftis* followed different strategies in the apostasy of men and women. They blocked the way for women as their sole intention was to end the marital life. They did not condone it. As for the apostasy of men, they did not follow the same strategy. Since it cannot be a man's intention to put an end to his marriage by apostasy as he holds the absolute power of divorce. When he blasphemed, they did not hesitate to end his marriage as it was his own fault. By this, they penalised him.

*Khul'* was the only legal way out of an unwanted marriage. It was the only legal method for a woman to obtain a divorce from her husband without

resorting to subterfuges. The main advantage to husbands from this sort of divorce was to free themselves from all financial obligations. It was this reason which led them to apply pressure on their wives to extract a *khul'* agreement when they wanted divorce. It seems that *khul'* was not the first resort, rather it was the last. If a woman could get a normal divorce (*talaq*), why should she loose her legal entitlements. When she could not get her freedom in any other way, there remains for her only one option which is to give up what she has been given. In some cases, *khul'* perhaps was the result of the intervention of relatives. When the relatives were not able to resolve the issue and the break-up of the family was inevitable, they employed the *khul'* to end the marriage contract. The fact of *khul'* also shows that it was not only men who divorced their wives as is often imagined to be the case, but that very often women themselves obtained divorces in return for a consideration (*khul'*).

Lastly, the marriage of minors was a social fact. It seems that economic considerations played a significant role in their marriages. They were given into marriage by their male relatives. Their wishes were never sought. When they were not able to live in harmony and experienced serious problems, they were taken out of the marriage by the ones who gave them in. However, not every minor was that lucky. On the contrary, they had to get used to living under unbearable circumstances.

