

# KHUL' BETWEEN SHARIA, LAW, AND REALITY - CAUSES AND EFFECTS

BOUKHALFI AMEL<sup>1</sup>

<sup>1</sup>Faculty of Islamic Sciences, Department of Sharia, University of Batna 1 (Algeria),  
amel.boukhalfi@univ-batna.dz

**Abstract:**

*This research seeks to reveal the reasons for khul' in Islamic jurisprudence and Algerian law, its implications, and to clarify its truth in the reality of our Algerian society today, this has been explained by exposing the most important and prominent permissible reasons for requesting khul' in Sharia and comparing them with Algerian law, moreover revealing the reasons that push women in Algeria to request khul' in reality, then presenting the effects that Arranged by Sharia as a result of the occurrence of khul' between spouses and compared to the effects of khul' in the law, Moving to the effects of khul' in reality, which are primarily reflected on of spouses and childrens' lives , as a result it has been reached through this paper that it is necessary to take into account and adjust the law of khul' set of legitimate reasons permissible to request khul' in Sharia, and this to mitigate its spread in society as well as its consequent effects in reality by making it A solution for good as a payment for the harm caused to women and the family as a whole, not the opposite.*

**Keywords:** khul', sharia, law, reality, causes, effects.

**INTRODUCTION:**

The family in Islam has received a great deal of care and attention, commensurate with its importance in the entity of society and its impact on the life and future of the nation, Islam has included it with its educational directives, and specified for it from its legislative rules what ensures its establishment on sound foundations and supports its entity, and strengthens the bonds of relations between its members, and provides it with protection from the factors of decay and corruption, Islam seeks to combat discrimination between spouses, by offering various therapeutic solutions for each The negative phenomena that may afflict it, such as the phenomenon of violence between spouses, for example, in an effort to preserve the family, which is the first unit of formation of society, but in the event that it is impossible to ten between spouses and all therapeutic solutions for the survival of the family entity fail, Islamic law as well as man-made laws have taken into account this case by ending the marital relationship by divorce, by mutual consent of the parties, or by the will of the husband alone, or by khul' at the request of the wife, and this is if the damage is caused to me Behold, there are many reasons for the occurrence of khul', and with the high incidence rate of it and the consequent effects reflected on the family in particular, and on society in general, we had to take note of its causes and effects to be able to control it and mitigate its spread in society, and make it a solution and a path to good and pay for the harm caused to women and the family as a whole and not the other way around, the amazing rise of it in the Algerian reality invites us to research the subject of khul', a jurisprudential study of legitimacy compared to man-made laws and the reality of their occurrence in our contemporary society. The topic of this intervention is entitled: "**Khul' between Sharia, Law, and Reality - Causes and Effects** -", by answering the following questions:

What are the reasons for khul' in Islamic jurisprudence and Algerian law?, and what are its implications? How is it in the reality of our Algerian society today?

These and other questions will be answered by the researcher in this paper, through the following plan:

**Introduction.**

**Preliminary requirement: Definition of khul' between Sharia and Algerian law.**

**The first requirement: the reasons for khul' between Sharia and Algerian law and reality.**

**The second requirement: the effects of khul' between Sharia, Algerian law, and reality.**

**Conclusion**



### Preliminary requirement: Definition of khul' between Sharia and Algerian law

**Subchapter I: lexically:** Khul' (by conquest) is the removal and abstraction: It says in Lisan al-Arab: "Take off the dislocation of the thing take it off and take it off: as a removal except that the khul' has a time limit, and some of them settled between khul' And the removal, and take off the sole, the garment and the robe take it off by taking it off: stripped"<sup>(1)</sup>, and khul' (by annexation) is the name of khul', Ibn Manzur said: "He took off his wife by khul', by annexation, and khula and she took off and his aunt: He removed it from himself and divorced it on the effort of it to him, it is Khala, and the name of the khula, and it was dislocated, and it was taken from him by making it up, it is made up."<sup>(2)</sup>

Khul' in the language, then, is when the husband divorces his wife for compensation that she gives him.

#### **Subchapter II: contextually:**

**First: In jurisprudence:** The jurists defined khul' with many definitions and different terms according to their different doctrines, as follows:

Al-Ahnaf defined it as: "the removal of marriage that depends on the wife's acceptance of the word khul' or its meaning"<sup>(3)</sup>

The Malikis considered khul' as: indemnity divorce<sup>(4)</sup>, while the Shafi'is said in the meaning of khul' that: "It is a separation between the spouses with intentional indemnity due to the husband's side with the word divorce or khul'"<sup>(5)</sup>, and the Hanbalis said in its meaning that: "the husband's separation from his wife on compensation from her or from others in special terms"<sup>(6)</sup>.

The audience of jurists agree that khul' is a band that is by the wife by mutual consent with her husband, and in return for compensation paid to the husband, and in a form that is the word divorce or khul', then khul' is a band of mosquitoes intended for the husband with the word divorce or khul'.

Khul' is considered compensation in the sense that a woman cannot divorce her husband without his consent, because it is a netting contract that requires consent, and because of the words of Allah Almighty: "If you fear that they will not assess the limits of Allah, **﴿If you fear that they cannot**

**maintain God's limits, then there is no blame on them if﴾** Al-Baqarah: 229: The verse indicates that it is permissible for a woman to take khul' for a woman, and it is permissible for a man to take his suit, and there is no compulsion for the husband, al-Tabari says: However, I choose for the man a desirably that is not inevitable, if it becomes clear from his wife that her redemption is not disobedience to Allah, but out of fear of her for her religion to leave her"<sup>(7)</sup>. In the sense of the general jurists did not oblige the husband to accept khul' from his wife, but it is desirable to accept it if he wants before khul' and take the allowance and if he wants to refuse, then khul' does not occur.

**Second: In the law:** The Algerian legislator did not define khul' but referred to it in article 54 of Law N° 84/11 containing the Family Code promulgated in 1984, which stipulates that: "The wife may divorce herself from her husband on money to be agreed upon, and if they do not agree on something, the judge shall rule that it does not exceed the value of the friendship of the proverb at the time of the ruling."

Therefore, the spouses can agree to divorce by khul' and this is through the agreement of the man and the woman to divorce in exchange for money paid by the wife to her husband and this type of divorce does not require a certain formality. <sup>(8)</sup>

After the amendment of article 54 of the Algerian Family Code by Order N° 05/02 of 2005, this article added the phrase "without the consent of the husband" to stipulate that: "A wife may, without the consent of the husband, divorce herself for a financial consideration, and if the spouses do not agree on the financial compensation for khul' and disagree, the judge shall rule not to exceed the value of the dowry of the same at the time of the ruling."

Hence, khul' has become in Algerian law a pure right of the wife legislated intending to end married life by a judicial ruling and without the consent of the husband, in exchange for compensation paid



by the wife to her husband, and in the event of disagreement on the allowance of khul' the judge rules the friendship of the example at the time of issuance of the judgment.

### **The first requirement: the reasons for khul' between Sharia - Algerian law and reality**

#### **Subchapter I: Reasons for Khul' in Sharia and Law:**

**First: In Sharia:** The wife may request khul' in some cases, mentioned by the jurists in their books, which are as follows:

1- If the wife knows of a legal impediment that prevents the continuation of marital cohabitation and the husband refuses to divorce and she cannot prove the impediment to quarreling with the husband before the judiciary, such as if the husband meets the number of divorces and insists on living with his wife and she cannot prove these divorces and the husband denies it, then the jurists said that the woman must get rid of this man by khul'<sup>(9)</sup>

2- The wife's hatred of her husband or her hatred of him for his creation or his religion or his old age or illness or weakness or so on or that she will not be faithful to his house and is afraid that she will not perform the right of God to obey him and is afraid that she will not do her duty towards him despite not falling short of his rights, so she redeems herself with money she gives him to end the marital relationship between them so as not to fall into the forbidden<sup>(10)</sup>, meaning khul' is lawful if there is damage to the woman by continuing this marital relationship, which makes her live in distress and distress.

Apart from this, it is hated for a woman to khul' if the married life is straight and free from conflict and discord and the woman asks for khul' for no reason or excuse<sup>(11)</sup>, such as if a woman tends to someone other than her husband, so she divorces her husband, to go to the one who tends to him<sup>(12)</sup>, this is abhorrent to the hadith of the Messenger of Allah (peace and blessings of Allaah be upon him): **"The extracted women are the hypocrites"**<sup>(13)</sup>. As for the one who asks for khul' from her husband without any need, severity and need that pushes her to do so, this is forbidden because the Prophet (peace and blessings of Allaah be upon him) said: **"Any woman who asks her husband for a divorce in something other than what is wrong is forbidden to her the smell of Paradise"**<sup>(14)</sup>, and this is evidence of: "The prohibition of khul' without need and because it harms her and her husband and removes the interests of marriage without need"<sup>(15)</sup>, Islamic law has made khul' a solution in the hands of a woman who has been harmed by living with a husband who has harmed her, and not a means of dissolution from her marriage whenever she wants and without a legitimate and convincing reason, and khul' is also forbidden if the husband deliberately harasses his wife unjustly to get her to ask for khul' and pay compensation to him<sup>(16)</sup>, Islam is keen to preserve the family entity, and to adapt married life to avoid separation between spouses, without one of them being a sinner. Giving therapeutic solutions to various cases that may cause alienation between spouses, such as cases of disobedience and discord, is what says in the saying: **﴿As for those from whom you fear disloyalty, admonish them, and abandon them in their beds, then strike them. But if they obey you, seek no way against them. God is Sublime, Great﴾** An-Nisa:

#### **34.**

If the stay of the spouses together results in evils that can only be avoided by separation and the dissolution of the marital bond that unites them, this is clear from what has been written in the reasons that allow khul' in the books of jurists as a permissible exception to the need only.

**Second: In the law:** The Algerian legislator stipulated khul' in Article 54 of Order N° 05/02 of 2005, Article 54, saying: "The wife may, without the consent of the husband, divorce herself for a financial fee. If the spouses do not agree on the financial compensation for khul', the judge shall rule not to exceed the value of the dowry of the example at the time of the issuance of the ruling), the Algerian legislator, after amending the Family Law 84/11, which considered khul' as a license for the wife, i.e. khul' can only take place with the consent of her husband, has come to consider khul' an inherent right of the wife to resort to it whenever she deems it necessary, under Ordinance 05/02 after adding the phrase (without the consent of the husband) in the first paragraph of Article 54 of the Algerian Family Code, Therefore, there is no provision in the law to list or mention the reasons that enable a woman to request khul', and leave the matter open, as whenever a woman



wants khul', she has a legal right, and there is nothing in the law that prevents her, which formed the so-called legal vacuum.

**Section II: Causes of Khul' in Reality:** By observing and comparing the results of the statistics of the rate of khul' in Algeria, it is noted that it has increased frighteningly<sup>(17)</sup>, and there are many reasons that contributed to the spread of this phenomenon and its exacerbation in society, we will try to list the most influential on the aggravation and growth of this phenomenon, through the following<sup>(18)</sup>:

**1- Indulgence of the Khul' Law:** The Khul' Law is among the most common reasons that led to the spread of the phenomenon of Khul' in Algerian society, after amending the Khul' Law and adding the phrase (without the consent of the husband) where the text of the article became (the wife without the consent of the husband may divorce herself without financial consideration), Khul' became a right for the wife to use to break the marital bond whenever she wanted to do so and without the consent of the husband, activist Jamila Boutraa says that: What is happening is a disaster contributed by the family law, which made khul' occur without the consent of the husband<sup>(19)</sup>, and among the reasons leading to the growing phenomenon of khul' in Algeria is the neglect of the law exposure to the causes and conditions of khul', as is the case with divorce, and it is considered a legal vacuum that opens the way for family disintegration for the most trivial reasons<sup>(20)</sup>. The judge does not discuss the reasons for khul', even if the reasons are not convincing, it is enough for a woman to include separation in the category of khul', and this is what caused the disaster, especially since the reasons by which women request khul' in the courts remain mostly trivial and illogical.

**2- Lack of moral values:** The lack of moral values from society, as a result of the weakness of religious scruples among individuals, as well as the flow of Western culture through various social media, which made the girl live in a virtual world that has nothing to do with reality, and think in a way that does not match her reality and what she lives, the large number of comparisons, and her openness to the lives of others - originally fabricated - in addition to the impact of Turkish series that turn dreams of marriage into unhappiness, which makes her hate the life she lives with her husband, this on the part of the wife, On the part of the husband, the spread of lying between husbands, for example, the husband promised his wife a single residence to be surprised after living with the family and the resulting problems, in addition to the spread of the phenomenon of marital infidelity, and the husband's addiction, and the many problems this causes of physical, psychological and financial harm to the wife and children, all of this makes the husband narrow her husband and her life with him and try to get rid of him.

**3- Women going out to work:** The woman's financial liberation and her going out to work made her more powerful, as their lack of submission to the physical stature of men makes her not think about who supports her in terms of food, clothing, and housing, so her salary is enough for her, compared to those who do not have a salary; The worker no longer endures the difficulties of life as women were yesterday or even as some women stay at home who are freer from staying at home, as the worker has the money with which to take herself off, and the working woman no longer endures the difficulties of life as it was yesterday or even as some of those who stay at home. <sup>(21)</sup>

On the other hand, a woman's work and having a salary makes her husband covet it, which many Algerian women do not accept, and consider greed, while the husband considers it his right in exchange for allowing her to leave the house for hours, and the resulting neglect of many of her family duties, and the husband's compulsion to do some of them in her place, all of this makes the woman in conflict with her husband, forcing her to divorce in some cases.

**4- Deteriorating social and economic conditions:** Lawyer and human rights activist Fatima Zahra Ben Brahem revealed to Al-Masaa that the spread of the phenomenon of khul' in Algeria is a reflection of the deteriorating social conditions, as the housing crisis, for example, has led to severe suffering for women due to instability, and forcing them to live in deplorable conditions, which pushes them to file for divorce or Many cases of khul' recorded in courtrooms concern similar cases, where a woman shelters her husband to turn her home into a marital home, but most cases end in khul' because men do not assume their responsibilities, where the wife is responsible for



everything, and her husband forces her to do khul' so as not to pay her compensation<sup>(22)</sup>, and economic factors, difficult financial pressures and the accumulation of stifling social conditions play a role in the increase in divorce and khul' cases<sup>(23)</sup>

**5- The husband's coercion of his wife:** Some cases of khul' occur because the husband coerced his wife to do so, as the human rights defender Jamila Boutraa revealed in an interview with "Independent Arabia" that many cases of khul' are carried out under threat or coercion, so that the woman does not get the slightest rights, while the husband refuses to release her by divorce and continues to pressure or abuse her to the point that makes her look for any way to get rid of him and break up the marital relationship, even by abandoning her rights and paying him dues from her work savings<sup>(24)</sup>, which was stated by many women who asked for khul'.

**6- Children:** The lack of children pushes many couples to break the family bond for the most trivial reasons, the presence of children makes each of the spouses bury their differences and problems for the benefit of the children, and some women cannot bear to live without children and with sterile men, especially if she gives birth, and the presence of children may be a reason for the separation of parents, such as the difference of husbands about their upbringing, or neglect and abuse of children, which pushes them in such cases to resort to their right to request Dislocation.

These are the most important reasons that push women in Algeria to request khul', in addition to many other reasons such as the interference of parents in the life of the couple, my father also has a hand in the spread of this phenomenon, in addition to social differences, different tendencies, and ideas, immaturity of husbands, polygamy, injustice and jealousy between wives... etc., in addition to those trivial reasons that exist in reality, such as the refusal of a husband to cut his mustache, baldness, bad smell, and because of snoring. etc., for trivial reasons, and this is because the law, as we have already indicated, does not discuss the reasons for khul'.

**The second requirement: the effects of khul' between Sharia, Algerian law, and reality.**

**Subchapter I: Effects of Khul' in Sharia and Law:**

**First: In Sharia:** Sharia arranged a set of effects as a result of the occurrence of khul' between spouses, represented in the following:

**1- Differentiation between the couple immediately :** The distinction between the couple immediately, so that we find that there are those who considered khul' an annulment of the marriage contract and not a divorce, and there is no disagreement between jurists that khul' if it occurred with the word divorce or intended to divorce is a divorce, but the dispute between them was when it occurred without the word divorce and did not intend it explicitly divorce or its nickname, and the reason for the dispute is the coupling of compensation in which does it take it out of the type of divorce band to the type of band Annulment, or not taking it out, and in this case went Ahnaf in the Mufti and the Malikis and Shafi'i in the new and the Hanbalis in a narration from Ahmad to the fact that khul' is divorce<sup>(25)</sup>, and the owners of this opinion cited several evidence, including: The hadith of Ibn Majah from Ibn Abbas: "The woman of Thabit bin Qays came to the Prophet (peace and blessings of Allaah be upon him) and said: **O Messenger of Allah, Thabit bin Qays is not considered to be in religion or creation, but I hate disbelief in Islam, and the Prophet (peace and blessings of Allaah be upon him) said: Do you want his garden on him? She said: Yes, and the Messenger of Allah (peace and blessings of Allaah be upon him) said: Accept the garden and divorce it**"<sup>(26)</sup>.

Al-Shafi'i went in the old<sup>(27)</sup> and the Hanbalis in the most famous narration from Ahmad<sup>(28)</sup> that khul' is annulled, and the authors of this saying protested what was narrated by Ibn Abbas: that the woman of Thabit was taken away from him, so the Prophet (peace and blessings of Allaah be upon him) ordered her: "To be considered a menstrual woman"<sup>(29)</sup> The significance is that the Prophet (peace and blessings of Allaah be upon him) commanded the divorced woman to have one period, even though the number of divorced women has three menstrual periods for the Almighty to say:

﴿Divorced women shall wait by themselves for three periods﴾ **Al-Baqarah: 228.**

Those who say that khul' is a divorce agreement that the one who commits an irrevocable divorce, because the husband owns the allowance over her, so she becomes the property of herself by



meeting him, and because her purpose of the obligation of the allowance is to get rid of the husband, and this only happens with the occurrence of irrevocability<sup>(30)</sup>.

Therefore, the public is saying that khul' is a miserable divorce<sup>(31)</sup> with evidence that its occurrence aims to prevent harm to the wife.

**2- The effects of khul' on marital rights:** The jurists differed in this matter on two sayings<sup>(32)</sup>, where the Ahnaf argued that this issue differs according to its wording, where if khul' occurs with the word divorce on money, the husband is not discharged from all other marital rights that are obligatory for his wife in the marriage contract, such as the dowry, for example, but if the divorce occurs with the word khul' or match, here the wife's right to the dowry and the past alimony for her is forfeited if it is imposed other than the alimony of the waiting period and housing, the acquittal of them does not fall, The woman who is divorced has the alimony of the waiting period and housing unless she is divorced at the expense of the waiting period without housing because it is a right of Sharia.<sup>(33)</sup>

The majority of jurists argued that the rights of the spouses should not be forfeited because its effect is limited only to the so-called khul', which was agreed upon between the spouses.<sup>(34)</sup>

**3- Payment of Khul' allowance:** When khul' occurred legally affirmative and acceptable between the spouses and the judge ruled by it, the wife was obliged to pay the khul' allowance to the husband, and it is required that it be: "money that is righteous, existing at the time of khul', known, or unknown, little or many ignorances if it is not obscene"<sup>(35)</sup>, and accordingly the khul' allowance is all that may be a friendship of money or other, which has been agreed upon between the couple or what the judge ruled, and the audience of jurists went to say that It is permissible for a woman to have khul' with her husband for whatever she wants, say that about her friendship or more<sup>(36)</sup>, for the Almighty says: ﴿then there is no blame on them if﴾ **Al-Baqarah: 229**

**4 - iddah:** The audience of jurists went: to say: that the woman who asked for khul' counts three readings as several divorced and said by the Hanafi, Maliki, Shafi'i, and Ahmad in the narration and narrated that from Ibn Omar in one of his sayings and virtual<sup>(37)</sup>, and inferred by the saying:

﴿Divorced women shall wait by themselves for three periods﴾ **Al-Baqarah: 228**

Ibn 'Abbas and Ibn 'Umar went on to say that Ibn Taymiyyah and Ibn al-Qayyim, which is a narration approved by Ahmad, say that the woman counts as one menstruation<sup>(38)</sup>, and they quoted from Ibn 'Abbas that he said: "The woman of Thabit ibn Qays was divorced from her husband during the reign of the Prophet (peace and blessings of Allaah be upon him) and he commanded her to count with a menstrual period".<sup>(39)</sup>

**5- Custody:** The majority of jurists went that if the wife disobeyed her husband to commit to custody and hold the young for a known period, the khul' is correct, but dropping the custody of the mother in exchange for her dislocation, in this difference, as the Malikis said that it is permissible to be the compensation in khul' is to drop the custody, so the young moves to her husband who is deposed, and all this provided that it is not harmful to the child under custody.<sup>(40)</sup>

**Second: In Law:**

1. As for the type of distinction made by the Algerian legislator in khul', he relied on the position that khul' is divorce and not annulment, and this is understood through the order in which the legislator came in the Algerian family law<sup>(41)</sup>;

As for the type of divorce in khul', i.e. is it a retroactive divorce or irrevocable?, the legislator did not address this in Article 54 of the Family Law, and the text of Article 54 mentioned above relating to Khul' does not accommodate all the provisions related to Khul', and under Article 222 of the Family Law, which stipulates that: (All that is not stipulated in this law - meaning the Family Law - refers to the provisions of Islamic Sharia), the law explicitly stipulates that all detailed provisions that are not Including any legal text can be adopted from the provisions of Islamic law, and the prevailing doctrine in Algeria is the Maliki school of thought, which considers that khul' is a definite divorce, the separation through khul' is a definite divorce, especially after the legislator turned it into a pure right for the wife can use it whenever she wants without the consent of the husband, so we cannot consider it a pure right of the wife and then be retroactive.<sup>(42) (43)</sup>



The position of the Algerian judiciary and law on the type of division that occurs through khul' is due to Islamic law, and the text of the khul' article does not refer to this.

**2. Marital rights and allowance:** Algerian law does not provide for the effect of khul' on other marital rights, except for the provision for the financial allowance for khul' upon agreement and placing it in the hands of the judge, not exceeding the friendship of the example at the time of the issuance of the judgment at the time of disagreement.

**3- Waiting period and custody:** Algerian law makes a divorced woman a divorced woman, which he explained through articles 58 and 60 of the Family Code N° 05/02.

The Algerian legislator also dealt with custody as one of the effects of the dissolution of marriage in articles 62 to 72 of Law N° 05/02, in which the parties may not agree that custody is in return for khul', and if this happens, khul' will be valid and binding, while the assignment of custody is null and void because the latter is the right of the child and cannot be waived. <sup>(44)</sup>

These were the most important legal and legal effects that result from khul'.

**Subchapter II:** The effects of khul' in reality: The effects of khul' in fact are primarily reflected on the lives of spouses and children, we will address some of these effects through the following:

**First: Positive effects:** The most important of which are the following:<sup>(45)</sup>

1- In the event of prejudice to the dignity of the woman and her oppression, the husband harms and humiliates her in front of her children in many cases, and the wife does not reveal this in front of others for fear of breaking her dignity, especially since the culture of society requires the woman to endure cruelty and humiliation to preserve her home, as well as when the husband does not satisfy the wife's emotional desires and quarrels that last for many years, all these problems that hit her;

2- Khul' is the only solution for a man who does not want to spread his secrets, as there may be a defect and the wife does not want to announce it in front of the court and people, and some of the separated may feel comfortable and détente, especially if they live problems during married life. so separation is a savior that changes the course of their lives.

3- If the family atmosphere is dominated by frequent disputes between the spouses, such as insults, insults, and beatings, all of this in front of the eyes and eyes of the children, then khul' in such a case is in the interest of the children, especially if the cause of the problems is the husband's corruption and injustice.

**Second: Negative effects: represented in the following<sup>(46)</sup>:**

1- The woman suffers from several problems; emotional, psychological, and even economic, so she becomes a burden on the state, the most prominent thing that the separation of spouses does is financial destitution, if the woman does not work and there is no one to support her, as well as the effects of the worries that afflict women and their sense of fear and anxiety about the future and society's bad view of them as deranged, a look of doubt and suspicion in their actions and behaviors, which makes them accused of moral deviation and this increases their tragedy and their sense of frustration and disappointment, so they often feel guilty and fail in Social life and what increases its tragedy and its sense of frustration and disappointment.

2- Khul' is one of the most difficult situations that a man goes through so he feels inferior and degrading dignity among family, friends, and acquaintances, especially since he bears the title (deposed), our society accepts the husband's divorce of his wife and his rejection of her and never accepts the woman's rejection of her husband and her divorce of him, which makes him feel insecure and psychological disorder, so some of them indulge in staying up late and madness and drinking intoxicants and taking drugs to keep away their pain and psychological disorders and forgetting it in revenge for themselves and themselves, and if he wants to marry again in this case, he may be treated With caution, snoozing, and severity, his request from the girl's family is not accepted, because they fear him and argue that he failed in his marriage before.

3 - Perhaps the most affected by the separation of husbands are the children, affects them negatively in many aspects, the divorce on the psyche of the child to a large extent becomes a lot of sensitivity, and a sense of ostracism and neglect he sees in his view that if it was desirable by his parents to endure all the marital problems and difficulties and did not part for him, loses security



and manifestations of family solidarity and a sense of belonging to a stable group, all these feelings It increases the symptoms of anxiety, pain and other mental disorders, which extend to the disorder of his educational life, that is, in school and the amount of his educational achievement, where he becomes less interested in school subjects and thus becomes unable to understand and absorb his study materials, and this leads them to fail, and one of the serious effects is the child's exposure to delinquency and delinquency due to the lack of control within the family so that we find most of them leaving school and resorting to loitering and vagrancy, the demand for theft and damage to the property of others until reaching the use of drugs, rape Prostitution until they enter the fold of deviants is therefore not only a danger to them, but also a crime against society where it becomes vulnerable to decay and deterioration.

These were some of the effects that result from the occurrence of khul' in the reality of our contemporary society, with its pros and cons, and the positive ones were to achieve the purposes for which khul' was legislated, while the negative is the result of complacency and exploitation of what was prescribed for khul' for other than what was prescribed by some of those who do not have religious scruples, or rushing to decide khul' by others, whether it is on the spouses or their children If I go back to most of the women who asked for khul', you will find them regretful and limited to what happened to them and their children after they rushed to decide to khul'.

#### **CONCLUSION:**

With the help of God and His success, we reached many results, the most important of which are the following:

- 1- Sharia permits khul' for the wife as an exception to pay the harm caused to the woman, otherwise khul' is abhorrent or haraam, and it is not a solution for a woman to get rid of her husband whenever she wants, and there is no provision in the law to list or mention the reasons that enable a woman to request khul' and leave the matter open, which formed a so-called legal vacuum.
- 2- The law of khul' is among the most common reasons that led to the spread of the phenomenon of khul' in Algerian society, after amending the law of khul' and adding the phrase (without the consent of the husband), in addition to other reasons such as the work of the mirror, and the weakness of religious scruples, ... etc., from reasons that may be good, in addition to those trivial reasons that existed in reality, such as cutting the mustache.
- 3- One of the effects of khul' is the immediate separation between the spouses, and the public says that khul' is an irrevocable divorce and that the rights of the spouses are not forfeited because its effect is limited only to the so-called khul' allowance in mukhala, which was agreed upon between the spouses, which is what Algerian law has adopted.
4. When khul' is legally affirmative and accepted between the spouses, and the judge rules thereon, the wife is obliged to pay the khul' allowance to the husband, as stipulated in Article 54 of the Family Code.
- 5- The majority of jurists went on to say: that the divorced woman counts three readings as several divorcees, and the Algerian law also made the divorced woman in the rule of the absolute, which she explained through articles 58 and 60 of the Family Code N° 05/02.
- 6 - The majority of jurists argued that if the wife disobeys her husband to commit to custody and hold the minor for a known period, khul' is valid, but the revocation of the mother's custody in exchange for her disagreement, and in the law it is not permissible for the parties to agree that custody is in return for khul' and in articles 62 to 72 of the law N° 05/02,
- 7- The effects of khul' on the reality of our contemporary society are many and varied, including negative and positive, including the reality on the wife and the husband, and the reality on the children.

In conclusion, I ask God Almighty to benefit from this research and to accept it, and may God's prayers and peace be upon our Prophet Muhammad and his family and companions.



### Sources and references:

#### First: The Holy Quran.

#### Second: Publications:

- [1] Abu Dawood, Suleiman bin Al-Ash'ath, *Sunan Abi Dawood*, T.: Muhammad Muhyi Al-Din Abdul Hamid, Beirut: Al-Asriya Library Saida, (d.t.t.).
- [2] Al-Albani, Abu Abdul Rahman, *The series of authentic hadiths and some of their jurisprudence and benefits*, Riyadh: Al-Maaref Library, 1st Edition, 1995 AD.
- [3] Ibn Manzur, Abu al-Fadl Jamal al-Din, *Lisan al-Arab*, Beirut: Dar Sader, 3rd Edition, 1414 AH.
- [4] Ibn Rushd, Abu al-Walid, *The Beginning of the Mujtahid and the End of the Fugal*, Cairo: Dar Al-Hadith, 2004 .
- [5] Ibn Abdeen, Muhammad Al-Amin, *Al-Muhtar's response to Dar Al-Mukhtar*, Lebanon: Dar Al-Fikr, 2nd Edition, 1992 AD.
- [6] Ibn Qudamah, Muwaffaq al-Din, al-Mughni, Cairo Library, (d.m.i.), 1968.
- [7] Ibn Majeh, Sunan Ibn Majeh, Lebanon: Al-Asriya Library, 1st Edition, 2006 AD, *Kitab al-Talaq*, Chapter on the Mutkhal'a Taking What He Gave It, Hadith N° 2057.
- [8] Ibn Najim, Zain al-Din, *The Clear Sea, Sharh Kanz al-Daqa'in*, Dar al-Kitab al-Islami, 2nd Edition, (d.t.), 4/77.
- [9] Belhaj, Al-Arabi, *Al-Wajeez fi Sharh Al-Jazairi Family Law: Marriage and Divorce*, Algeria: Diwan of University Publications for Publishing and Distribution, 6th Edition, 2010.
- [10] Ibn Taymiyyah, Taqi al-Din, *Fatwas of Ibn Taymiyyah*, Riyadh: Riyadh Press, 1st Edition, 32/291.
- [11] Ben Saad, Thuraya, *The effects of divorce between legislation, law, and societal reality*, Tunisia: Maghreb Printing and Publicity, 2009.
- [12] Al-Bahooti, Mansour bin Yunus, *Sharh Muntaha Al-Iradaat, Alam Al-Kutub*, (D.M.), 1st Edition, 1993.
- [13] Al-Bahouti, Mansour bin Younis, *Scouts of the Mask on the Board of the Mask*, Beirut: World of Books.
- [14] Al-Tirmidhi, Abu Issa, *Sunan Al-Tirmidhi*, edited and produced hadiths and commented on: Bashar Awad Maarouf, Beirut: Dar Al-Gharb Al-Islami, 1st Edition, 1996 AD.
- [15] Al-Tunisiya, Nazir Hanan, *Khul' between legislation, jurisprudence, and reality, a supplementary note for obtaining a master's degree in law, specialization: personal status*, Mohamed Boudiaf University, Faculty of Law and Political Science, 2015-2016.
- [16] Al-Hattab, Al-Ra'ini Shams Al-Din, *Talents of Galilee for a brief explanation of Khalil*, Dar Al-Fikr Al-Arabi, 2nd Edition, 1978 AD.
- [17] Al-Daraqutni, Sunan Al-Daraqutni, edited by Shuaib Al-Arnaout and others, *Book of Divorce, Khul' and others*, Hadith N° 4026, 1st Edition, Part 5, Al-Resala Foundation, Lebanon, 2004.
- [18] Al-Zebari, Amer Saeed, *The provisions of khul' in Islamic law*, Lebanon: Dar Ibn Hazm, 1st edition, 1997.
- [19] Zaidan, Abdul Karim, *detailed in the provisions of women and the Muslim home in Islamic law*, Beirut: Al-Resala Foundation, 1st Edition, 1993.
- [20] Al-Sarkhsi, Abu Sahel, *Al-Mabsout*, Lebanon: Dar Al-Maarifa, 1993.
- [21] Saadi, Salim, *Khul' between the provisions of family legislation and jurisprudence*, Master's thesis, University of Algiers, Ben Youssef Ben Khadda, Faculty of Law.
- [22] El-Sherbiny, Shams al-Din, *singer in need of knowledge of the words of the curriculum*, Mustafa Al-Halabi Press.
- [23] Shirazi, Abu Ishaq, *The polite in the jurisprudence of Imam Shafi'i*, Dar al-Kutub al-Ilmiyya, (d.m.t . ).
- [24] Al-Sawi, Abu al-Abbas Ahmad, *al-Sawi's footnote on the small explanation of al-Dardeer*, Dar al-Maarif, (d.m.t.t. ).
- [25] al-Tabari, Abu Jaafar, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Beirut: Dar al-Kutub al-Ilmiyya, (d.i ).
- [26] Al-Tabarani, Suleiman bin Ahmed, *The Great Dictionary*, T.: Hamdi bin Abdul Majeed Al-Salafi, Cairo: Ibn Taymiyyah Library,
- [27] Allali, Nassima, *Post-divorce Conditions and their Impact on the Social Interaction of Algerian Women*, (Master's Thesis), Faculty of Humanities and Social Sciences, Kasdi Merbah University, Ouargla, 2013/2014,
- [28] Farrag, Ahmed Hussein, *Family Rulings in Islam: Khul' and Children's Rights, Alimony for Relatives According to the Latest Legislation*, Egypt: New University House for Publishing and Distribution, 2004.
- [29] Al-Kasani, Aladdin, *Badaa'i al-Sana'i' fi Arranging the Laws*, Egypt: Al-Jamaliyya Press, 1st Edition, 1327-1327 AH.
- [30] Al-Marghanini, Abu al-Hasan Burhan al-Din, *Al-Hidaya fi Sharh Bedayat al-Mubtadi*, T.: Talal Youssef, Beirut: House of Revival of Arab Heritage, (d.t.t. ),

- [31] Al-Mawardi, Abu al-Hasan Ali, *al-Hawi al-Kabir fi Fiqh of the Doctrine of Imam al-Shafi'i*, T.: Ali Muhammad Moawad, Lebanon: Dar al-Kutub al-Ilmiyya, 1st Edition, 1999 AD
- [32] Al-Mashni, Manal Mahmoud, *Khul' in Personal Status*, Jordan: Dar Al-Thaqafa, Jordan, 1st Edition, 2009.
- [33] Al-Nawawi, *Al-Majmoo' Sharh Al-Muhdhab*, Dar Al-Fikr, (d.t.t.).

### Third: Websites:

1. Zawawiya, Statistics from the Ministry of Justice, Jazayeris website, 28/02/2011, on the following page: <https://www.djazairress.com/djazairnews/26704>, accessed 04/04/2023.
  2. Sherif, Nadia, a shocking number of 10,000 Algerian women divorced their husbands in 6 months, 26/12/2021, on the following page: <https://cutt.us/lmu7C>, accessed 04/04/2023.
  3. Jawaher Al-Shorouk website on: 06/03/2015, on the following page: <https://cutt.us/Dneqq>, accessed: 04/04/2023.
- Yahi, Ali, 10 cases every hour... Khul' is closer than understanding in Algeria, on the "Independent Arabia" website on 26/11/2022 AD, on the following page: <https://cutt.us/cDk50>, accessed: 04/04/2023 AD

### Marginalization list:

- (1) Ibn Manzur, Abu al-Fadl Jamal al-Din, *Lisan al-Arab*, Beirut: Dar Sader, 3rd Edition, 1414 AH, article: Khula, 8/760
- (2) Ibn Manzur, previous source, 8/760
- (3) Ibn Abdeen, Muhammad Al-Amin, Al-Muhtar's response to Dar Al-Mukhtar, Lebanon: Dar Al-Fikr, 2nd Edition, 1992 AD, 3/439, 421.
- (4) Al-Hattab, Al-Ra'ini Shams Al-Din, *Talents of Galilee for a brief explanation of Khalil*, Dar Al-Fikr Al-Arabi, 2nd Edition, 1978 AD, 4/18.
- (5) El-Sherbiny, Shams al-Din, *Mughni who needs to know the words of the curriculum*, Mussafa al-Halabi Press, 3/262.
- (6) Al-Bahooti, Mansour bin Yunus, *Kashshaaf al-Qinaa on the board of the mask*, Beirut: Alam al-Kutub, 3/126.
- (7) Al-Tabari, Abu Jaafar, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Beirut: Dar al-Kutub al-Ilmiyya, (d.t.t.), p. 288.
- (8) Belhaj, Al-Arabi, *Al-Wajeez fi Sharh Al-Jazairi Family Code: Marriage and Divorce*, Algeria: Diwan of University Publications for Publishing and Distribution, 6th Edition, 2010, 1/263
- (9) Farrag, Ahmed Hussein, *Rulings on Families in Islam: Khul' and Children's Rights, Alimony for Relatives According to the Latest Legislation*, Egypt: New University House for Publishing and Distribution, 2004, p. 115
- (10) See: Ibn 'Abidin, Rad' al-Muhtar 3/441. Al-Nawawi, Abu Zakaria, *Al-Majmoo' Sharh Al-Muhdhab*, Dar Al-Fikr, (d.t.t.), 16/3. Al-Bahooti, *Kashshaaf al-Qinaa*, 3/126, and Zaidan, Abdul Karim, *The detailed provisions of women and the Muslim home in Islamic law*, Beirut: Al-Resala Foundation, 1st Edition, 1993, 8/119.
- (11) See: Ibn Qadamah, *Muwaffaq al-Din*, al-Mughni, Cairo Library, (d.m.i.), 1968, 7/51
- (12) Al-Mawardi, Abu Al-Hassan Ali, *Al-Hawi Al-Kabir fi Fiqh of the Doctrine of Imam Al-Shafi'i*, T.: Ali Muhammad Moawad, Lebanon: Dar Al-Kutub Al-Ilmiyya, 1st Edition, 1999 AD, 10/6.
- (13) Al-Tirmidhi, Abu Issa, *Sunan Al-Tirmidhi*, edited and produced hadiths and commented on: Bashar Awad Maarouf, Beirut: Dar Al-Gharb Al-Islami, 1st Edition, 1996 AD, chapters on divorce and cursing from the Messenger of Allah (peace and blessings of Allaah be upon him), chapter on what was mentioned in the mukhtalaat, 2/477, Hadith No. 1186. and al-Tabarani, Suleiman bin Ahmed, *The Great Dictionary*, T: Hamdi bin Abdul Majeed Al-Salafi, Cairo: Ibn Taymiyyah Library, 17/393, Hadith: 936. And the pronunciation of him. Al-Albani said: His isnaad is weak. Al-Albani, Abu Abd al-Rahman, *The series of authentic hadiths and some of their jurisprudence and benefits*, Riyadh: Al-Maaref Library, 1st Edition, 1995 AD, 2/213.
- (14) Abu Dawood, Suleiman bin Al-Ash'ath, *Sunan Abi Dawood*, T.: Muhammad Muhyi Al-Din Abdul Hamid, Beirut: Al-Asriya Library Saida, (d.t.t.), *Kitab al-Talaq*, chapter on khul', 2/168, Hadith: 2226. It was narrated by al-Tirmidhi, in his *Sunnah*, the chapters on divorce and cursing from the Messenger of Allah (peace and blessings of Allaah be upon him), the chapter on what was mentioned in al-Mukhta'at, 2/478, hadith no. 1187. Al-Albani said: Correct.
- (15) Ibn Qadamah, previous source, 7/54.
- (16) See: Ibn Qadamah, al-Mughni, 7/54-55
- (17) Khul' cases recorded a frightening escalation, estimated at more than 13,000 cases in 2019, exceeding 15,000 cases in 2020, and reaching more than 10,000 cases during the first semester of 2021 alone. Cherif, Nadia, shocking number 10 thousand Algerian divorced her husband in 6 months, on 26/12/2021, on the following page: <https://cutt.us/lmu7C>, accessed: 04/04/2023.



(18) See: Al-Tunisiya, Nazir Hanan, *Khul' between legislation, jurisprudence and reality*, a supplementary note for obtaining a master's degree in law, specialization: personal status, Mohamed Boudiaf University, Faculty of Law and Political Science, 2015-2016, p. 90 and beyond.

(19) Yahi, Ali, 10 cases per hour... *Khul' is closer than understanding in Algeria*, on the "Independent Arabia" website on 26/11/2022 AD, on the following page: <https://cutt.us/cDk5O>, accessed: 04/04/2023 AD.

(20) See: Jawaher Al-Shorouk website, date: 06/03/2015, on the following page: <https://cutt.us/Dneqg>, accessed: 04/04/2023. Zawawiya, Statistics from the Ministry of Justice, Jazayeris website, date: 28/02/2011, on the following page: <https://www.djazairnews.com/djazairnews/26704>, accessed: 04/04/2023.

(21) Jawaher Al-Shorouk website, date: 06/03/2015, on the following page: <https://cutt.us/Dneqg>, accessed: 04/04/2023.

(22) Cherif, shocking number 10,000 Algerian women divorced their husbands in 6 months, <https://cutt.us/lmu7C>, and Yahi, 10 cases every hour... *Khul' is closer to understanding in Algeria*, <https://cutt.us/cDk5O>.

(23) Yahi, 10 cases per hour... *Khul' is closer than understanding in Algeria*, <https://cutt.us/cDk5O>

(24) Ali Yahi, 10 cases per hour... *Khul' is closer than understanding in Algeria*, <https://cutt.us/cDk5O>,

(25) See: Ibn Rushd, Abu al-Walid, *The Beginning of the Mujtahid and the End of the Economic*, Cairo: Dar al-Hadith, 2004, 3/91. and Al-Sarkhsi, Abi Sahel, Al-Mabsout, Lebanon: Dar Al-Maarifa, 1993, 6/171. Ibn Qadamah, al-Mughni, 7/56-57

(26) Ibn Majeh, Sunan Ibn Majeh, Lebanon: Al-Asriya Library, 1st Edition, 2006 AD, Kitab al-Talaq, Bab al-Mukhtal'a takes what he gave her, 1/356, hadith no. 2057.

(27) Al-Mawardi, Al-Hawi Al-Kabir, 10/9.

(28) Ibn Qadamah, al-Mughni, 7/56-57

(29) Al-Daraqutni, Sunan Al-Daraqutni, investigated by Shuaib Al-Arnaout and others, Book of Divorce and *Khul'* and others, Hadith No. 4026, 1st Edition, Part 5, Al-Resala Foundation, Lebanon, 2004, p. 83

(30) See: Al-Sarkhsi, Al-Mabsout, 6/171. Ibn Rushd, *Bedayat al-Mujtahid*, 3/91. and al-Mawardi, al-Hawi al-Kabir, 10/10. Ibn Qadamah, op. cit., 7/56, 57. Al-Bahooti, Mansour bin Yunus, *Sharh Muntaha Al-Iradaat*, Alam Al-Kutub, (Blood N), 1st Edition, 1993, 3/60.

(31) It is branched on the fact that *khul'* is a divorce that if the intention of *khul'* is more than one divorce according to the Maliki, Shafi'i, Hanbali and exhalation, what he intended is to do is.

According to the Hanafi, if the nuclei of three divorces are three, because it is like the words of metonymy, and if the nuclei of two, they are one that is visible when not exhaling from the tap, because *khul'* means sanctity, and it does not tolerate multiplicity, but the intention of the three indicates the intensification of the sanctity, so it is considered a major statement and it is branched off on being an annulment that if he took it twice and then took it off again, or he took it off after two shots, he may marry her even if he took it a hundred times, because *khul'* according to this saying is not counted from the shots, see: Al-Sarkhsi, op. cit., 6/171. ; El-Sherbini, *Mughni al-Muhtaj*, 3/268. and Zaidan, *ADetailed in Family Rulings*, 8/219.

(32) See: Zaidan, previous reference, 8/224 onwards.

(33) See: Al-Marghanini, Abu Al-Hasan Burhan Al-Din, *Al-Hidaya fi Sharh Bedayat Al-Muhtadi*, T.: Talal Youssef, Beirut: Dar Revival of Arab Heritage, (d.t.t.), 2/213. and Zaidan, detailed in the provisions of the mirror, 8/224.

(34) See: Ibn Qadamah, previous source, 7/56.

(35) Al-Kasani, Alaa Al-Din, *Bada'i Al-Sana'i' fi Arranging the Laws*, Egypt: Al-Jamaliyya Press, 1st Edition, 1327-1327 AH, 3/147.

(36) See: Ibn Najim, Zain al-Din, *The Clear Sea*, Sharh Kanz al-Daqain, Dar al-Kitab al-Islami, 2nd Edition, 4/83. and nuclear, total, 16/8. and al-Sherbini, *Mughni al-Muhtaj*, 3/265.

(37) See: Al-Zebari, Amer Saeed, *The provisions of khul' in Islamic law*, Lebanon: Dar Ibn Hazm, 1st Edition, 1997 AD, pp. 251-255.

(38) Ibn Taymiyyah, Taqi al-Din, *Fatwas of Ibn Taymiyyah*, Riyadh: Riyadh Press, 1st Edition, 32/291.

(39) Narrated by Abu Dawood, in his Sunan, Kitab al-Talaq, chapter on *khul'*, 2/269, hadith no. 2229. Al-Tirmidhi, in his Sunnah, the chapters on divorce and cursing on the authority of the Messenger of Allah (peace and blessings of Allaah be upon him), chapter on what was mentioned in *khul'*, 2/477, Hadith number: 1185. And the pronunciation of him. Al-Tirmidhi said: This is a hadith of Hassan Gharib.

(40) See: Al-Sarkhsi, Al-Mabsout, 6/196. and Shirazi, Abu Ishaq, *The polite in the jurisprudence of Imam Shafi'i*, Dar al-Kutub al-Ilmiyya, (D.M.N-D.T.N.), 2/492. Al-Sawi, Abu al-Abbas Ahmad, al-Sawi's footnote on the small explanation of al-Dardeer, Dar al-Maarif, (D.M.T.T.), 2/522 and Zaidan, *The Detailed in Family Rulings*, 8/204

(41) Article 54, which was subjected to *khul'* as a form of dissolution of the marital bond, is found in the chapter on divorce, which is mentioned in Chapter Two under the title "Dissolution of Marriage" in Article 47 thereof,



which states: (The marital bond shall be dissolved by divorce or death), and then dealt with the ways of dissolution of the marital bond through Article 48 of Chapter I of the Family Law entitled Divorce, which states: (Subject to the provisions of article 49 below, a marriage contract shall be dissolved by divorce concluded by the will of the husband or by the consent of the spouses or at the request of the wife within the limits of articles 53 and 54 of this Code), article 54 provides for khul', and the Algerian legislator allocates in chapter III the annulment under the title "Corrupt and invalid marriage" in article 32 to article 35 thereof.

<sup>(42)</sup> Saadi, Salim, Khul' between the provisions of family legislation and jurisprudence, Master's thesis, University of Algiers, Ben Youssef Ben Khadda, Faculty of Law, p. 6061.

<sup>(43)</sup> It is a decision issued by the Supreme Court that states: "It is agreed in jurisprudence and jurisprudence in the provisions of Islamic law that the divorce that occurs from the husband is a retroactive divorce and that the judge's ruling on it does not change its retroactivity because it was based on the request for divorce. The dispute between them and her husband, and that the judiciary in contravention = = this principle is a violation of the provisions and principles of Islamic law and therefore requires the reversal of the decision that considered divorce by the will of the husband a miserable divorce." Supreme Court, (Personal Status Chamber), Decision No. 39463, dated 10/02/1986, case (A.H.) v. (N.A.), Judicial Journal, No. 1, 1989, p. 115.

<sup>(44)</sup> While judicial decisions agreed that custody may be waived as a consideration for khul', whether before or after independence, through the legislator's reliance on the Maliki school of thought, the couple's agreement on the fee for waiving custody is permissible in the Maliki school of thought, making the reality of the application of the law here in accordance with what is stated in Sharia. See: Saadi, Khul' between the provisions of family legislation and jurisprudence, p. 80.

<sup>(45)</sup> See: Al-Mashni, Manal Mahmoud, Khul' in Personal Status, Jordan: Dar Al-Thaqafa, Jordan, 1st Edition, 2009, p. 234 and beyond. and Ben Saad, Thuraya, The effects of divorce between legislation, law and societal reality, Tunisia: Maghreb Printing and Publicity, 2009. PHAR124

<sup>(46)</sup> See: Allali, Nassima, Post-divorce Conditions and their Impact on the Social Interaction of Algerian Women, (Master's Thesis), Faculty of Humanities and Social Sciences, Kasdi Merbah University, Ouargla, 2013/2014, p. 88. and Ben Saad, op. cit., pp. 126 ff. and Al-Mashni, op. cit., pp. 125-126, 237.