

Women's right to terminate marriage by individual will according to Saudi Family law

Ahmed S. A. Alborai^{*1}, Khaled M. Hamdi², Nasser A. M. Hashem², Mohammed B. Malik³, Mohamed B. Abdul-Rahim⁴, Musaad A. Abdel-Khaleq⁵

1. Department of Jurisprudence, College of Sharia and Law, University of Hail, Saudi Arabia, E. Mail: a.alborai@UOH.EDU.SA
2. Department of Islamic studies, College of Sharia and Law, University of Hail, Saudi Arabia
3. Department of Law, College of Sharia and Law, University of Hail, Saudi Arabia
4. Department of Islamic Studies, College of Education, Prince Sattam bin Abdulaziz University, Saudi Arabia
5. Department of Islamic Studies, Haql University College, University of Tabuk, Saudi Arabia.

***Corresponding Author: Ahmed S. A. Alborai**

1. Department of Jurisprudence, College of Sharia and Law, University of Hail, Saudi Arabia, E. Mail: a.alborai@UOH.EDU.SA

How to cite this article: Ahmed S. A. Alborai, Khaled M. Hamdi, Nasser A. M. Hashem, Mohammed B. Malik, Mohamed B. Abdul-Rahim, Musaad A. Abdel-Khaleq (2024). Women's right to terminate marriage by individual will according to Saudi Family law. *Library Progress International*, 44(3), 23049-23058

Abstract:

The issue of protecting women's rights has garnered extensive attention from international organizations, particularly the United Nations, through a range of international covenants and agreements, most notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Since the provisions of these declarations and agreements mandate equality between men and women upon the dissolution of marriage and prohibit discrimination against women in ending a marriage, and given that the marriage and divorce system in Islamic societies is religious, based on the sacred texts of Islamic Sharia, Islamic countries have attempted in their national laws to grant women the right to end the marital bond in a manner consistent with international agreements on one hand, and not in conflict with Islamic Sharia on the other.

This study highlights the efforts of the Kingdom of Saudi Arabia in supporting women's right to unilaterally terminate a marriage, in line with the provisions of the international agreements to which the Kingdom is a party, while also adhering to the sacred Islamic texts relevant to this context. The Saudi legislator has selected jurisprudential interpretations and explanations of Islamic texts that support this direction, avoiding strict interpretations and opinions on this issue, to balance as much as possible between the provisions of Islamic Sharia and the demands of modernity and development. This has resulted in a means that aims to establish balance upon the dissolution of a marriage.

The study concluded that Saudi Arabia has made significant progress in this area, and it can ensure more rights for women by exploring non-strict religious opinions and jurisprudential interpretations.

Keywords: CEDAW – Women's Rights – Family Law – Islamic Jurisprudence – Kingdom of Saudi Arabia.

1. Introduction:

The Kingdom of Saudi Arabia is rapidly progressing towards comprehensive development in all fields, aiming to achieve Vision 2030. The realm of legislation and judiciary has been one of the most significant areas witnessing notable advancements recently, particularly through the amendment and issuance of several national laws related to human rights, with a specific emphasis on women's rights.

One of the most prominent laws recently issued is the Family Law, promulgated by Royal Decree No. (M/73) dated 18/03/2022. This law represents a significant milestone in the field of human rights in general, and women's rights in particular.

The law has focused on enhancing women's rights and addressing numerous familial and societal issues that Saudi women have faced in recent years. This has been achieved through a series of legal provisions aimed at supporting women's rights in initiating, continuing, and terminating a marriage, in line with the provisions of international human rights treaties to which Saudi Arabia is a party, while also adhering to the application of Islamic Sharia law and sacred Islamic texts.

Saudi Arabia, one of the largest Islamic countries, bases its governance system on Islamic Sharia, the Quran, and the Sunnah of the Prophet, which govern all state laws as outlined in the Basic Law of Governance (Saudi Arabia, 1992, Basic Law of Governance, Articles No. 1, 7). Saudi Arabia also considers the international agreements and treaties it has signed as part of its national laws (Saudi Arabia, 1992, Basic Law of Governance, Article No. 70), and continually strives to reconcile these international agreements with its commitment to implementing the provisions of Islamic Sharia.

The issue of a man unilaterally terminating a marriage in Islam is a contentious topic that has sparked much debate and discussion. Some view it as discriminatory against women, arguing that women do not possess a similar right in Islam.

Family laws in Islamic countries, including Saudi Arabia's Family Law, have attempted to address this issue by granting women an equal right to unilaterally terminate a marriage, seeking a balance between the definitive provisions of Islamic Sharia and international treaty provisions.

In this study, we aim to shed light on this issue from the perspective of Islamic Sharia, presenting the views of Islamic jurists, outlining the stance of Saudi law on the matter, and explaining how the law addresses this issue by preserving the explicit texts of the Quran and Sunnah on one hand, and discarding rigid interpretations in favor of those that support eliminating discrimination against women.

2. Importance of the Study:

The importance of this study stems from the significance of the topic it addresses. At times, Islam and Islamic societies are accused of being biased towards men, practicing discrimination and oppression against women, and not supporting women's rights. Some cite the Islamic divorce system, which allows a husband to divorce his wife at any time without her consent, as evidence of discrimination against women. This study aims to clarify that Islamic Sharia grants women a similar right to unilaterally terminate a marriage without the husband's consent and that Saudi law, along with other Islamic countries' laws, provides women with this right under certain conditions and specified procedures, to promote equality and eliminating discrimination.

3. Study Objectives:

- Empowering Saudi women in society and raising awareness of their legitimate rights.
- Highlighting the Islamic and legal rights of Saudi women in the personal status system.
- Outlining the legal procedures Saudi women can follow to unilaterally terminate a marriage if harmed by their husband.

4. Study Questions:

The study attempts to answer a set of key questions, including:

- Has Saudi Family Law taken serious steps to protect women's rights in Saudi society?
- What are the main procedures the law has established to protect a woman's right to unilaterally terminate a marriage?
- Does Islamic Sharia make the right to terminate a marriage exclusive to men, or do women have this right in Islam as well?

5. Study Scope:

The study focuses on examining this issue through the texts of Saudi Family Law and other related

Saudi laws, comparing them with the provisions of Islamic Sharia, various jurisprudential schools, and relevant international treaties. We occasionally refers to family laws provisions in other Islamic countries when necessary.

6. The Right of Women to Dissolve Marriage in International Charters and Agreements:

6.1 The Principle of Gender Equality in International Charters:

Gender equality means that both women and men are equal in rights and responsibilities, enjoying equal opportunities, conditions, and treatment, and that these rights and opportunities do not depend on whether they were born male or female (UNICEF, 2017). Gender equality is one of the most important values of human rights and a fundamental principle of the United Nations. According to Article 1 of the UN Charter, one of the purposes of the United Nations is to achieve international cooperation in promoting respect for human rights "without distinction as to sex, language, or religion, and without discrimination between men and women" (United Nations, 1945, United Nations Charter, Article 1). The Preamble of the Charter also reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women" (United Nations Charter, 1945).

One of the earliest achievements of the United Nations in this field was the Universal Declaration of Human Rights, adopted by the General Assembly in 1948. It stipulated that everyone is entitled to their rights "without distinction of any kind, especially based on race, color, sex, language, or religion..." (United Nations, The Universal Declaration of Human Rights, 1948, Article 2). Following this declaration, two international legal instruments were adopted, forming, along with the declaration, the international legal framework for human rights. These two instruments are the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966, ICESCR) and the International Covenant on Civil and Political Rights (United Nations, 1966, ICCPR). Both covenants clearly state in Article 3 that all the rights mentioned in them apply to all individuals without any kind of discrimination and that states must undertake to ensure the equal rights of men and women in all respects.

Despite the existence of these three binding international instruments and the comprehensive inclusion of rights for all individuals, including women, the United Nations observed that women still did not enjoy equality with men in many areas such as marriage, family, work, and others. Discrimination against women persisted in societies, necessitating a reaffirmation of women's rights through a specific international convention. Thus, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979. The Convention calls on all member states to take measures to ensure women's equality with men in all rights and to prohibit sex-based discrimination (United Nations, 1979, CEDAW Convention). Under this Convention, the Committee on the Elimination of Discrimination against Women was established to monitor the compliance of member states with the provisions of the Convention (CEDAW, Article 17). This Convention is considered the international charter for women's human rights because it is the only legally binding instrument that enjoys near-universal ratification and guarantees the full protection of women's civil, cultural, economic, political, and social rights (Inter-Parliamentary Union and the United Nations, 2023, p. 18).

6.2 Gender Equality in Marriage Termination in International Charters:

Among the important rights stipulated in these international instruments is gender equality in marriage termination. The texts mandate granting women the same rights as men in divorce and marriage termination. This is articulated in the first paragraph of Article 16 of the Universal Declaration of Human Rights, which states: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution" (The Universal Declaration of Human Rights, 1948, Article 16). The phrase "at its dissolution" in the article grants women equal rights with men in ending the marital bond and does not allow discrimination against them in this matter by granting men exclusive rights to divorce and marriage termination.

Furthermore, Article 23/4 of the International Covenant on Civil and Political Rights states: "The States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution" (ICCPR, 1966, Article 23).

The CEDAW Convention strongly supports this right for women. Article 16 of the Convention addresses discrimination against women in the realm of family law and personal life. It obliges member states to take appropriate measures to ensure equality between men and women in marriage and divorce. The text explicitly states that: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular shall ensure, on a basis of equality between men and women: (a) The same right to enter into marriage. (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent. (c) The same rights and responsibilities during marriage and at its dissolution" (CEDAW, 1979, Article 16). Under this article, it is incumbent upon the countries to amend or repeal family laws containing discrimination against women in divorce and marriage termination, which do not

give women the same rights as men in divorce (Centre for Human Rights, Fact Sheet No. 22, P. 15).

6.3 Reservations of Islamic Countries on CEDAW:

Interpreting Article 16 of CEDAW, unilateral divorce by the husband is considered discrimination against women and must be abolished from current family laws. However, Islamic countries view this right as fixed for men by clear texts in Islamic law that cannot be repealed or amended. This has led most Islamic countries to reserve on the Convention, either with a general reservation or with reservations on specific articles including Article 16.

In 2000, the Kingdom of Saudi Arabia signed the Convention with a general reservation stating: "In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention." (United Nations, OHCHR, status of ratification interactive dashboard).

At the same time, Saudi Arabia and other Islamic countries have attempted to formulate family laws in a way that allows women the right to unilaterally terminate the marital bond, equating it with the right granted to men in Islam, without conflicting with definitive Islamic texts. This point is what the study aims to highlight and focus on within Saudi law.

7. The Right of a Woman to End a Marital Bond in Islamic Law

Divorce and annulment of marriage in Islam are considered exceptional measures permitted only in cases of necessity and need. Islam regards divorce as one of the most detestable permissible actions according to the saying of the Prophet Mohammad, "*The most detestable of permissible things to Allah is divorce*" (Abi Dawud, Hadith No. 2178). Despite this, Islamic law has outlined several methods for ending a marital bond:

- The first method: Divorce at the husband's will.
- The second method: Termination of marriage at the woman's request (Tafriq for harm).
- The third: Khul' (redemption).

7.1 Divorce at the Husband's will:

Islamic law grants the right of divorce to the husband, allowing him to initiate it whenever he wishes at his sole discretion. This is explicitly stated in the verses of the Quran. Allah says: "*And when you divorce women and they have almost reached the end of their waiting period, then either retain them honourably or let them go honourably*" (Quran, 2:231). Addressing men without mentioning women regarding the pronouncement of divorce confirms this.

Another verse states: "*Divorce is twice. Then, either the husband keep his wife in an acceptable manner or release her with good treatment. And if a man has divorced his wife a third time, then she is not lawful to him afterward until she marries a husband other than him*" (Quran, 2:229-230). This text clearly confirms that someone who divorces his wife once or twice can take her back. After the third divorce, it is not lawful for him to remarry her until after she has married another man. Scholars agree that this is a firm ruling of the Quran, which cannot be interpreted otherwise. (Al-Qurtubī, 1975, Vol. 2, P. 457:460).

Muslim scholars explain that the reason for granting the right of divorce to men is due to the financial obligations imposed on them towards women, such as the dowry (mahr), which must be paid by the man to the woman as agreed upon, this dowry is a condition for the validity of the marriage contract of all Muslim scholars. (Al-Marghinani, 2006, Vol. 1, P. 507, Ibn Naqib, P. 533).

During the marriage also, the husband must provide for his wife in all matters, and the husband's financial support for his wife is obligatory by consensus of Muslim jurists (Ibn Rushd, Vol. 2, P. 63). If divorce occurs by the unilateral will of the husband, he must pay the woman the remaining portion of the dowry, and it is forbidden for him to reclaim anything he has given her, because God said: "And if you wish to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything" (Quran, 4:20).

Due to this connection between the financial obligations imposed on the man and divorce, Islam granted the right of divorce to the man; because he will lose the money he has given to the wife if he divorces her. Undoubtedly, this will encourage him to be more deliberate and not to hasten in pronouncing divorce.

However, according to Muslim jurists, a man can relinquish this right to the woman and make it her own by saying, "I have made the matter of divorce yours." In this case, the right transfers to the woman, and she becomes capable of initiating divorce by her unilateral will. This is called Tafwid (delegation) or Takhyir (granting a choice) and Tamlik (granting possession of the right). (Al-Marghinani, 2006, Vol. 1, P. 593; Ibn Rushd, Vol. 2, P. 84).

7.2 Ending the Marriage at the Request of the Woman (Divorce for Harm):

Although Sharia has made divorce a right for the man, this does not mean that a woman can never end the marriage except with the husband's consent. It is possible that a woman may be harmed by her husband and not wish to continue the marriage due to the harm she suffers from him, and the husband may refuse to divorce her. Has Islam provided her a way in this case to end the marriage by her unilateral will without the husband's consent?

A group of Muslim jurists, such as the Malikis, say: If a woman is harmed by her husband and cannot continue with him due to the abuse and harm, and the husband refuses to divorce her, she can resort to the court to ask the judge to separate them due to unbearable harm. If the judge verifies the occurrence of harm, he annuls the marriage at the woman's request without the husband's consent. Examples of unbearable harm include the husband's failure to provide for her, his refusal to have marital relations with her for more than four months, his disappearance without his whereabouts being known, his affliction with a contagious disease, or his abuse through domestic violence or similar issues. (Ibn Rushd, Vol. 2, P. 58; Sabiq, 1977, Vol. 2, P. 289, 290).

However, another group of jurists, namely the Hanafis and Shafi'is, hold that it is not permissible for the judge to pronounce divorce in this situation without the husband's consent; because the husband is the one who holds the right to divorce, it cannot occur without his will. What the judge can do in this case is to warn the husband and punish him for causing harm and abuse to the woman. (Ibn Rushd, Vol. 2, P. 58; Al-Nawawi, 1914, P. 318, 319)

The opinion of the Maliki jurists is what this study supports and prefers. This opinion applies if the court confirms the occurrence of harm. If the court does not find evidence of harm to the wife, and the wife is unable to prove it, then the court will reject the woman's divorce request. (Sabiq, 1977, Vol. 2, P. 290).

But, If the woman repeats her divorce request due to repeated complaints and her inability to continue the marriage, the court will then appoint two arbitrators to try to reconcile the couple: one from the husband's relatives and the other from the wife's relatives, in accordance with the words of Allah: "And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people" (Quran, 4:35).

If the arbitrators are able to reconcile the couple and achieve harmony between them, they will rule for the continuation of the marriage. (Ibn Rushd, Vol. 2, P. 119; Sabiq, 1977, Vol. 2, P. 290).

If the arbitrators are unable to reconcile the couple due to the refusal of either or both spouses, can the arbitrators pronounce the divorce directly without the husband's consent? Muslim jurists have differed on this issue:

One group prohibits the pronouncement of divorce by the arbitrators without the husband's consent. Their argument is that divorce is the husband's right, and this right cannot be exercised without his permission. The arbitrators are merely representatives of the spouses, and the actions of a representative are conditional upon the authorization of the one they represent (Al-Nawawi, 1914, P. 318, 319).

However, another group, the Maliki jurists, say that the divorce can be pronounced directly by the decision of the arbitrators without the husband's consent. Their argument is that the Qur'an designates them as arbitrators in the previous verse, an arbitrator is a judge whose decision is binding. (Ibn Rushd, Vol. 2, P. 119; Sabiq, 1977, Vol. 2, P. 290). This opinion is supported and preferred by this study also.

7.3 Khul':

Islamic scholars define khul' as "the woman giving financial compensation in order to obtain her divorce" (Ibn Rushd, Vol. 2, P. 79). Another definition is "the wife's separation from her husband in return for remuneration paid to the husband" (Al-Fawzan, 2016, Vol. 2, P. 421).

In Islamic Sharia, khul' is a method that a woman can pursue to end the marital bond if she dislikes her husband and does not wish to continue with him, even if he has not harmed her or caused damage. Just as Sharia has given men the right to divorce if they do not wish to continue with their wives, it has given women the right of khul' if they do not wish to continue with their husbands, by giving back the dowry and possibly additional financial compensation to dissolve the marital relationship. (Ibn Rushd, Vol. 2, P. 81; Sabiq, 1977, Vol. 2, P. 294).

And the evidence for khul' in the Quran is the saying of Allah Almighty: "There is no blame upon them if the wife gives back [the dowry] to obtain divorce" (Quran, 2:229). In the Sunnah, there is the hadith of Ibn Abbas: "A woman from Banu Thabit came to the Prophet and said, 'O Messenger of Allah, Thabit ibn Qais is a righteous man and I have no fault in his character or religion. However, I dislike to continue a marriage.' The Prophet said, 'Would you return his garden [the dowry] to him?' She said, 'Yes.' The Prophet said to her husband: 'Accept the garden and divorce her once.'" (Bukhari, Hadith No. 5273). Muslim jurists have affirmed that it is not

preferable for the husband to take more from the woman than what he gave her if she desires to free herself from him through khul' (Al-Quduri, 2010, P. 372; Al-Marghinani, 2008, Vol. 2, P. 29; Al-Khiraqi, 1992, P. 189).

The essence of khul' is that it occurs by mutual consent between the spouses. If the husband and wife agree that the woman will give some money or her dowry (mahr) to her husband, and the husband accepts and says to her, "I have let you go," then the marriage ends at that moment. Afterward, the husband cannot revoke the divorce or prevent her from leaving (Barakaatee, 2012, P. 516; Thanvi, 2009, P. 405). However, jurists have differed regarding the scenario where a wife requests khul' in exchange for money, but her husband refuses and she files a legal claim for khul' in court. Is the judge allowed to compel the husband to accept khul' in exchange for returning the dowry he paid to her, or is he not allowed to do so?

Most Islamic jurists prohibit forcing khul' without the husband's consent and argue that khul' is a contract between the spouses that requires mutual agreement. Since divorce is the right of the husband, this right cannot be taken away from him except with his consent. However, some Muslim jurists like Imam Ibn Taymiyyah (1263-1328) have stated that the court may compel the husband to accept khul' if the woman requests it in exchange for returning the mahr he paid to her. They argue that there is no other way to resolve the dispute between them, and they support this view with the precedent of Thabit ibn Qais's case, where his wife requested the return of her dowry for khul', and the Prophet ordered him to accept it, saying, "Accept the dowry and divorce her." This directive implies obligation and compulsion (Sabiq, 1977, Vol. 2, P. 299). Imam al-Shawkani (1759-1839) states: "Khul' either occurs by mutual consent between the spouses or by the judge's compulsion in case of discord between them" (Al-Shawkani, 1987, Vol. 2, P. 227).

This opinion is supported by the study because it provides a way for a woman to terminate the marriage through her own choice, just as divorce provides a way for the husband to end the marriage through his own choice.

Recently, some family laws in Islamic countries have adopted this opinion despite its disagreement with the majority of jurists, as a reconciliation between the provisions of international agreements and the rules of Islamic law, reflecting equality between men and women in terminating marriages through individual choice.

In Egypt, for example, Article 20 of the Personal Status Law states: "The spouses may agree between themselves on khul'. If they do not agree and the wife initiates a lawsuit seeking khul' to free herself, relinquishing all her financial rights and returning the dowry given to her, the court shall grant her khul'." (Egypt, 2000, Personal Status Law). It allows the court to grant khul' without the husband's consent if the wife requests it due to her inability to continue marital life, provided she returns the dowry to the husband. It's worth noting that this article has been amended in Egyptian law. Previously, before this amendment, khul' was only permissible with the husband's consent.

In Algeria as well, the Family Law was amended regarding this matter. Article 54, amended by Law 02-05 in 2005, now states: "The wife may seek khul' without the husband's consent in exchange for financial compensation. If the spouses do not agree on the financial compensation for khul', the judge shall rule not to exceed the value of the equivalent bride-price at the time of the ruling." (Algeria, Family Law, Article 54). Thus, Algerian legislation completely disregards the husband's will and consent if the wife requests khul' in exchange for returning the dowry and waiving her financial rights that Islamic law obligates the husband to provide due to divorce.

Unfortunately, most family laws in Islamic countries still require the husband's consent for khul', without providing a solution for women who dislike continuing the marital relationship and decide to relinquish all their financial rights due to marriage. Despite this, husbands can sometimes act arbitrarily, forcing women to remain with them against their will. This deficiency in these laws, as identified by the study, contrasts with Islamic jurisprudence which allows khul' based on the sole intention of the wife without dependence on the husband's consent.

In Islam, marital life cannot be built on compulsion, as Allah says: "Either hold [her] in kindness or release [her] in kindness" (Quran, Al-Baqarah: 229). Islam does not envision either spouse being coerced into marital life. Therefore, Islam grants pure divorce rights to men and pure khul' rights to women.

8. The Right of Women to End Marriage in Saudi Law:

8.1 The Efforts of the Kingdom of Saudi Arabia in Supporting Women's Rights:

The Kingdom's Vision 2030, approved by the Council of Ministers in Decision No. 308 dated 25/04/2016, outlines the state's general policies and future programs. This vision includes a set of goals related to human rights, including women's rights. The Kingdom has made significant progress in this area, which is reflected in supporting Saudi women in employment, participation in political and public life, and combating

discrimination against women. This has been achieved through a series of legislative reforms that included the amendment and issuance of several laws in this field.

For example, in 2019, a set of laws was amended to ensure gender equality in civil and social rights, including:

- The Travel Documents Law was amended by Royal Decree No. (M/134) dated July 30, 2019, to ensure full gender equality in the requirements for obtaining travel documents and passports, and to combat discrimination against women in traveling abroad. Before this royal decree was issued, the system allowed a man's passport to include his wife's passport, his unmarried daughters, and his minor sons, but this provision was abolished by this amendment (Saudi Arabia, 2000, Travel Document Law, Article No. 3).
- The Civil Status Law was also amended by the aforementioned royal decree to ensure gender equality in obtaining civil documents and reporting civil incidents, and to enhance women's independence. Previously, the law granted this right to men but not to women (Saudi Arabia, 1987, Civil Status Law).
- The Labor Law was amended by Royal Decree No. (M/134) dated July 30, 2019, and Royal Decree No. (M/5) dated August 26, 2020, to include the provision that all citizens are equal in the right to work without discrimination based on gender or other factors, to ensure full equality between men and women in rights and duties, and to enhance the rights of women and groups with fewer opportunities to obtain employment (Saudi Arabia, 2005, Labor Law, Article No. 3). and other legislative reforms.

8.2 Women's Rights in the Family Law:

One of the most prominent laws recently enacted in the Kingdom to regulate social rights among family members is the Personal Status Law (Family Law), issued by Royal Decree No. (M/73) dated 18/03/2022.

The law aims to enhance equality between men and women within the family in light of the provisions of Islamic Sharia. Among the significant issues addressed by the law are the prohibition of child marriage, setting the marriage age at 18 years, preventing the forced marriage of women, ensuring equality between men and women in the right to choose a spouse and consent to marriage, and the right to litigation before the court in all matters related to marriage and its consequences... among other important achievements in the field of women's rights (Saudi Arabia, 2022, Family Law, Articles No. 9, 10, 13).

The law addressed the issue of ending marriage, attempting to reconcile the provisions of Islamic Sharia with international conventions regarding gender equality in the right to end the marital bond. It granted women the right to unilaterally terminate the marriage in certain cases, as follows.

8.3 Methods of Ending Marriage in Saudi Law:

The law stipulates that the termination of marriage can be done in one of the three ways previously stated in Islamic Sharia, which are:

8.3.1 The Husband's Unilateral Divorce:

Article (77) of the Family Law states: "Divorce is the dissolution of the marriage contract by the husband's will through a verbal declaration" (Family Law, Article No. 77). This provision is entirely consistent with the definitive texts in Islamic Sharia previously mentioned, which grant the right of divorce exclusively to the man, allowing him to initiate it at his discretion. A man can effectuate divorce verbally by saying to his wife, "You are divorced," or in writing, using this phrase (Family Law, Article No. 79).

It is worth noting here that the law permits a man to authorize a woman to carry out the divorce on his behalf, known in Islamic jurisprudence as "delegation of divorce to the woman." Article 84/1 states: "The husband may authorize another person—whether male or female—to pronounce the divorce" (Family Law, Article No. 84). This general phrasing includes the wife in this provision.

8.3.2 Divorce for Harm at the Woman's Request:

The law permits a woman to file a lawsuit in court to dissolve the marriage at her request under unilateral will in certain cases. This is a commendable aspect of the law as it selects from the opinions of Islamic jurists those that grant women the right to unilaterally end the marriage if she is unable to continue with her husband due to harm inflicted upon her. Some Islamic jurists, as previously mentioned, prevent the termination of the marriage without the husband's consent in such cases, but the law did not adhere to their opinion due to its discriminatory nature against women. The law states that "the court shall dissolve the marriage contract at the wife's request if her husband refrains from providing for her or if it is impossible to obtain maintenance from him" (Family Law, Article No. 107).

The law also states that "the court must dissolve the marriage contract at the wife's request in the following two cases: 1- If her husband swears not to have sexual intercourse with her for a period exceeding four

months, unless he retracts his oath before the four months expire. 2- If he abstains from sexual intercourse with her for a period exceeding four months without a legitimate excuse" (Family Law, Article No. 113).

The law here indicates that a husband's refusal to have intercourse with his wife for four consecutive months without a legitimate excuse is considered harm to the woman, granting her the right to request a divorce. This ruling is established in Islamic Sharia by the text of the Quran (Quran, 2:226).

The law also states that "the wife may request the dissolution of the marriage contract due to her husband's disappearance or absence if his whereabouts are unknown, provided that the court does not rule to dissolve the contract until a period determined by the court has passed, which must not be less than one year and not more than two years from the date of his disappearance or absence" (Family Law, Article No. 115). In this matter as well, the law selects from among the juristic opinions that which grants the woman the right to alleviate the harm caused by her husband's absence and disappearance (Sidi Khalil, 1916, P. 142).

The law also states that "the court shall dissolve the marriage contract at the wife's request if the husband harms her in a manner that makes it impossible to continue marital life in a harmonious manner, provided that the harm is proven" (Family Law, Article No. 108).

This is a general provision that allows a woman to request the termination of the marriage at her unilateral will when the husband causes her harm that makes it impossible to continue living together in a harmonious manner. The article does not specify particular types of harm but leaves the discretion to the court according to custom and tradition. Harm undoubtedly includes all forms of violence against women, whether physical, verbal, or psychological, that prevents the woman from continuing the marriage. In such cases, the court must dissolve the marriage at the wife's request without the husband's consent, but the article requires proof of the harm.

If the woman cannot prove the harm and the court refuses to terminate the marriage, and the conflict between the spouses continues, the court must appoint arbitrators to try to reconcile the spouses as previously outlined in Islamic Sharia. If the arbitrators cannot reconcile the spouses, they must agree on a decision regarding the termination of the marriage. This can either be a divorce in exchange for money paid by the woman if she is responsible for the harm, provided that the amount does not exceed the dowry she received from the husband, or a divorce without financial compensation, without waiving any financial rights of the woman, if the husband is responsible for the harm. The arbitrators' decision to dissolve the marriage is binding on the husband and does not require his consent. (Family Law, Articles No. 109, 110, 111).

8.3.3 Khul':

In Saudi law, Khul' is considered a consensual contract between the spouses and can only occur with the husband's consent. This is stipulated in Article 95 of the law: "Khul' is a separation between the spouses at the wife's request and with the husband's consent, in exchange for compensation provided by the wife or another party" (Family Law, Article No. 95).

It is noted here that Saudi law adheres to the majority opinion of Islamic jurists, which requires the husband's consent for Khul' and does not allow the court to impose it without the husband's agreement. The Saudi legislator could have adopted the alternative opinion in Islamic jurisprudence, which does not require the husband's consent for Khul' and permits the court to compel the husband to agree if the wife requests it because she cannot continue the marriage and is willing to return the dowry received. The study believes that this alternative approach is more appropriate, as it grants the woman the right to unilaterally end the marriage, similar to the man's unilateral right to divorce.

9. Results:

This study has reached several conclusions, which are:

1. Islamic Sharia grants a man the right to initiate divorce unilaterally without the wife's consent. This right is established in Islam by definitive texts that Islamic countries cannot contradict.
2. Islamic Sharia grants the wife equal opportunities as the man in unilaterally ending the marriage, which she can follow if she cannot continue in the marital relationship.
3. Islamic scholars have varied in their opinions on granting women these equal opportunities to unilaterally end the marriage. These opinions range from strict views that absolutely prohibit ending the marriage without the husband's consent to other views that grant women this right.
4. The Saudi Family Law has chosen, among the opinions of Islamic scholars, those that support the woman's right to unilaterally end the marriage and has avoided the strict views in this context.
5. The Saudi law has attempted to balance between the definitive texts of Islamic Sharia and the provisions of international agreements to which the Kingdom of Saudi Arabia is a party.

6. System of marriage and divorce in Islam remains a religious system governed by the Islamic texts found in the Quran and the Sunnah. It is unacceptable in Islamic societies to contravene the definitive texts. However, for texts that are not explicit and are subject to various interpretations, we can adopt one of the suitable interpretations and avoid others that do not align with the interests of society.
7. Khul' is an Islamic system that ensures a woman can unilaterally end the marriage without the husband's consent, as determined by some Muslim scholars. Requiring the husband's consent for khul' essentially nullifies its purpose.

10. Recommendations:

The study suggests that requiring the husband's consent for khula (a type of divorce initiated by the wife) essentially empties the concept of khula in Islam of its meaning. This is because Islam grants a man the right to unilaterally initiate divorce without requiring the wife's consent, and similarly, it grants a woman the right to unilaterally initiate khula without requiring the husband's consent. Some Muslim scholars support this view, even though they are a minority compared to the majority who consider the husband's consent necessary for khula, viewing it as a consensual contract between the spouses. However, the Saudi law could have adopted the opinion of these scholars to provide women with greater equality with men in the right to unilaterally end the marriage. The study urges the Saudi legislator to consider this and to follow the example of some Islamic countries that have adopted this view and included it in their national laws, such as Egypt and Algeria.

11. Acknowledgments:

This research has been funded by Scientific Research Deanship at University of Ha'il- Saudi Arabia through a project number (RG-23202).

12. References:

- Abi Dawud, S. (online). *Sunan Abi Dawud*. Available at: Sunan Abi Dawud - Sunnah.com - Sayings and Teachings of Prophet Muhammad. (Accessed on 12/6/2024)
- Al-Fawzan, S. (2016). *A Summary of Islamic Jurisprudence*. Riyadh, Saudi Arabia: Dar Al-Mayman for publishing and distributing, Fourth English edition.
- Algeria. (1984). *Family Code*, Law No. 11-48 of June 9, 1984, amended and supplemented by Order No. 02-05 of February 27, 2005.
- Al-Khiraqi, O. (1992). *The Mukhtasar of Al-Khiraqi*. Translated by: Anas Khalid: Ann Arbor, USA: University Microfilm International, A Bell and Howell information company.
- Al-Marghinani, B. (2006). *Al-Hedayah (The guidance)*. Translated by Imran Ahsan Nyazee. Bristol, London: AMAL press.
- Al-Marghinani, B. (2008). *Al-Hedayah (The guidance)*. Translated by Imran Ahsan Nyazee. Bristol, London: AMAL press.
- Al-Nawawi, M. (1914). *Minhag ET Talibin: A manual of Muhammadan Law according to the school of Shafii*. Translated by: E. C. Howard. London, UK: W. Thacker and Co.
- Al-Quduri, A. (2010). *The Mukhtasar Al-Quduri: A manual of Islamic law according the Hanafi School*. Translated by: Tahir Mahmood Kiani: London, UK: Ta-Ha publishers Ltd.
- Al-Qurtubī, M. (1975). *Tafsir Al-Qurtubi (The General Judgments of the Qur'an and Clarification of what it contains of the Sunnah and Ayahs of Discrimination)*, translated by: Aisha Bewley, Published by: Diwan Press Ltd.
- Al-Shawkani, M. (1987). *Al-Darari Al-Madiya Sharh Al-Durar Al-Bahiyya*, Dar Al-Kutub Al-Ilmiyyah, Beirut, Lebanon first edition. [In Arabic].
- Barakaatee, M. K. (2012). *Heavenly Gems*. Translated into English: Muhammad Waseem, Zia-ul-Quran publications, Lahore, Karachi, Pakistan.
- Bukhari, M. (online). *Sahih al-Bukhari*. Available at: Sahih al-Bukhari - Sunnah.com - Sayings and Teachings of Prophet Muhammad. (Accessed on 20/6/2024)
- Centre for Human Rights, United Nations Office at Geneva, *Fact Sheet*, No. 22, Discrimination against Women: The Convention and the Committee. Available at: [FactSheet22en.pdf \(ohchr.org\)](https://www.ohchr.org/en/factsheet/22).
- Egypt. (2000). *Personal Status Law*, Law No. 1 of 2000.
- Ibn Kathir. (2003). *Tafsir Ibn Kathir*. Abridged by a group of scholars under supervision Shaykg Safiur-Rahman Al-Mubarakpuri, London, UK: Darussalam international publication, second edition.
- Ibn Naqib, A. (N/A). *Umdat Al-Salik (Reliance of the traveller)*. Translated by: Nuh Ha Mim Keller. Beltsville, Maryland, USA: Amana publications.
- Ibn Rushd, M. (N/A). *Bidayat Al-Mujtahid wa Nihayat Al-Muqtasid (distinguished jurist's primer)*. Translated by: Imran Ahsan Nyazee. The center for Muslim contribution to civilization, Garnet publishing.
- Inter-Parliamentary Union and the United Nations. (2023). *the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians* No. 36.

- Available at: [The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians | Inter-Parliamentary Union \(ipu.org\)](#).
- Sabiq, S. (1977). *Fiqh Us-Sunnah*. Dar Al-Kitab Al-Arabi, Beirut, Lebanon. [In Arabic].
- Saudi Arabia, 1992. *Basic Law of Governance*, Royal Decree No. A/90 March 01, 1992.
- Saudi Arabia. (1987). *Civil Status Law*, Royal Decree No. M/7 December 21, 1986.
- Saudi Arabia. (2000). *Travel Document Law*. Royal Decree No. M/24 August 28, 2000.
- Saudi Arabia. (2005). *Labor Law*, Royal Decree No. M/51 September 27, 2005.
- Saudi Arabia. (2022). *Family Law*, Royal Decree No. M/73 March 9, 2022.
- Sidi Khalil, E. (1916). *Maliki Law: Mukhtasar of Sidi Khalil*. London, UK: LUZAC and Company.
- Thanvi, M. A. (2009). *Heavenly Ornaments*. Karachi, Pakistan: Darul-Ishaat.
- The Noble Quran. (Online). Available at: [The Noble Quran - Quran.com](#).
- UNICEF. (2017). *Gender equality: Glossary of terms and concepts*, Available at: [Gender equality: GLOSSARY OF TERMS AND CONCEPTS \(unicef.org\)](#).
- United Nations, OHCHR, *status of ratification interactive dashboard*. Available at: - OHCHR Dashboard.
- United Nations. (1945). *United Nations charter*, Available at: [UN Charter | United Nations](#).
- United Nations. (1948). *the Universal Declaration of Human Rights*. Available at: [Universal Declaration of Human Rights | United Nations](#).
- United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR)*. Available at: [International Covenant on Civil and Political Rights | OHCHR](#).
- United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Available at: [International Covenant on Economic, Social and Cultural Rights | OHCHR](#).
- United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Available at: [Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR](#).