The objective of the marriage is the achievement of the ideals of divorce. Confusion is caused by two parallel and conflicting forms of separation known as khul and another form of separation known as mubara'a. It also recognizes extra judicial divorces as well as interests of the next world, including the protection of women from abuse and the promotion of mutual respect as well as interests of the next world. The contract of marriage is intended to secure the husband and wife in their respective roles. If the husband and wife are not happy, then it is required that the marriage is dissolved. If the husband, besides fulfilling the obligations of the marriage, refuses to utter a divorce, the wife is allowed to obtain a divorce from the husband. If the husband, determines that the marriage is unsuccessful and there is no hope for reconciliation, then he should pronounce one divorce according to the Sharia law. If the husband refuses to utter a divorce, the wife may persuade her husband to enter into an agreement of khul. "Khul" is the proposal given to the husband by the wife for dissolution of marriage. "Khul" is also the interpretation of Jurists of Islamic Law. On one hand, there is the statutory law and interpretation by the Superior Courts of Pakistan and on the other hand, is the interpretation of the Islamic Law. In situations where there are no longer remain in the bond of marriage with her husband, the ideal solution would be for the wife to obtain a divorce from the husband. If the husband determine that the marriage is unsuccessful and there is no hope for reconciliation, he should pronounce one divorce according to the prescribed method in Shari'ah. However, in the case where the husband refuses to utter a divorce, wife may persuade her husband to enter into an agreement of khul. "Khul" will also come into effect by offer and acceptance (Kasani, 1328 h). Allah almighty ordains: “but if you intend to take one wife in place of another, even if you had given the latter a whole treasure for dower, take not the least bit of it back. Would you take it by slander and a manifest wrong? And how could you take it when you have gone into each other, and they have taken from you a solemn covenant?” (Al-Qur’an). In our research khul is discussed according to Qur’an and Sunnah. A detailed overview is given to elaborate the Judicial Khul administered in Pakistani court. The issue which is controversial among the jurists is whether the court has the right of Talaq (Divorce) on the face of husband opposition. Jurists which are of the opinion that court has no power to...
pronounce divorce, then how a women will un tie the knot of marriage for her comfortable life.

1. Right Of Khul’ In Qur’an And Sunnah:

Khul’ is legalized by verses of the Holy Qur’an and events of the Sunnah of the Prophet Muhammad (peace be on him). The Holy Qur’an expressly sanctioned khul’ as a form of repudiating marriage in the following words:

“and it is lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the women ransom herself.” (Al-Qur’an, 2:229.)

This verse is explained differently. If the agreement for severing the ties of marriage between the spouses is done by mutual consent then the compensation decided will be considered. However, if the case is taken to a court, the court will investigate the reasons behind the matter. If the court arrives at the conclusion that there is no way out of the problem the spouses live in other than dissolution of the marriage, the court will decide the compensation and the husband will pronounce divorce. (Abul Aala Maududi 1981:175)

Khul’ is completed by “offer” and “acceptance” like nikah and others matters of shari’ah. If fault is on the behalf of man, all jurist say that man is not eligible to receive compensation and he would pronounce talaq without compensation. If he receives compensation will not be legal for him. Under the Hanafi law, a khul’ under compulsion or by a person in a state of voluntary intoxication is valid. (Muhammad Ahmad Qureshi 1992: 229). The husband and wife can conclude it in their home. All jurists are of the opinion that it should be concluded by husband and wife by mutual understanding and there is no need to go to court for the dissolution of marriage. But there are some jurists who argue that the matter should be presented to court and the court should decide the matter. (Al-Sarakhsi 1324:173).

Another verse of the Holy Qur’an provides the procedure for the court in case of dissolution of marriage. It states that

“If you fear a breach between them (the husband and his wife), appoint (two) arbitrators, one from his family and other from hers; if they wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.” (Qur’an, 4:35)

Pakistani law is dealing with the interpretation of Qur’an and on question of interpretation; we are not bound to the opinion of jurists. If we be clear as to what the meaning of a verse in the Quran is, it will be our duty give effect to the interpretation irrespective of what has been stated by jurists. “obey Allah Almighty and his Prophet (peace be on him)” is the duty cast on the Muslim and it will not be obedience to God or to the Prophet if in a case where or mind is clear as to the order of the Almighty or the Prophet we fail to decide in accordance with it. We are concerned here with the interpretation of the verse relating to khul’ and it is stated in its interpretation that the court or the state has authority to direct a khul’. Similar consideration applies to the interpretation of the traditions of the Prophet. (Alamgir Muhammad Serajuddin 2011: 122).

As far as the events from the Islamic legal history are concerned, two events happening in the time of the prophet (peace be on him) are important to quote and elaborate. One such leading case is that of Thabit Ibn Qais. The facts which lead to the case are discussed in different Ahadith. Jamila bint Uba ibin salool hated the physical ugliness of her husband. She presented her case to the Messenger of Allah (peace and blessing be upon him) in the following words:

“O Messenger of Allah! Nothing can ever unite his head with mine. When I raised my veil I saw him coming in the company of a few men and he was the darkest, shortest and ugliest of them. by God! I do not dislike him because of any defect in his faith or morality. I just hate his ugly looks. By God! If I did not furt Allah, I would have spat on his face when he came near me.”

Bukhari and Nasai’ state that “I do not find any fault in his faith or morality. It denotes that she lived with that man she feared she might not remain faithful to Allah’s orders to obey her purity and honor. The messenger of Allah (peace be on him) heard that complaint and observed; “will you return to him the garden which he had given to you”. She answered; “O’ yes, Messenger of Allah! I shall give even more if he wants”. No, not more. Just return him his garden, observed the messenger of Allah (peace be on him).he (the holy Prophet)then ordered; Thabit, accept the garden and give her a divorce.” (Maududi 1981: 58)

The case cited above establishes the following grounds of khul’: The messenger of Allah (peacebe upon him) held that the complaint of the women that her husband was ugly and loathsome was adequate ground for granting khul’. When it is manifest that a man hates his wife or the wife hate her husband, divorce and khul’ are perfectly justified and valid measures, for the consequences of religion, morality and civilization of keeping a man and women forcibly yoked together are for worse than the consequences of Divorce and Khul’. (Maududi 1981:175)

The women right of khul’ is parallel to man’s right of divorce. When man’s right of divorce is not subject to the use should not be motivated by lust. In purely legal sense, the woman’s right to is khul’ cannot be subjected to any moral restrained. If the women is genuine need of khul’it would be cruel to deny to her. If she is lecherous denial of khul’ will defeat most important object of shari’ah for it is
better for a woman to take a score of men as husbands than an illicit lovers. (Maudodi 1981:69)

Ummi Habiba was another wife of Thabit. Malik and Abu Dawud reported her case as ‘One morning as the messenger of Allah (peace and blessing of Allah be upon him) came out of his house, he found Ummi Habiba waiting. The messenger of Allah (peace and blessing of Allah be upon him) enquired; “what is the matter?” she submitted “I cannot pull on with Thabit”. When Thabit arrived, the messenger of Allah (peace be upon him) said to him, “This is Ummi Habiba”. She has stated what Allah wishes her to state”. Ummi Habiba submitted; “O messenger of Allah (peace be on him)! All that Thabit gave me I have with me”. The Messenger of Allah (peace be on him) ordered Thabit to take all that and release Ummi Habiba from the marriage tie.” (Maudodi 1981: 69)

2. Views of the companion about khul':

A case of women was brought before Umar (Allah be pleased with him). Woman wanted to take khul’ from her husband as she was not pleased with him. Umar (Allah be pleased with him) advised the women to be patient and suggested that she should continue to live with her husband. The women refused, whereupon he shut her up in a room full of garbage. He (Allah be pleased with him) released her from this prison after three days and asked; How was these days? She replied, “By God, these were the only nights that I passed in peace. “On hearing this Umar (Allah be pleased with him) ordered her husband: “Give her khul’, even of you obtain only her ear-rings.” (Maudodi 1981: 66)

The action of Umar (Allah be pleased with him) shows that the judge can adopt a suitable method to ascertain the feeling of hate and aversion in the heart of women so that the matter is put beyond a shadow of doubt. Umar (Allah be pleased with him) also confirms that it is not necessary to go into the cause of hate and aversion. This is adequate reasonable. There may be some causes which when described will not strike the listener as sufficient to warrant hatred, but which are adequate sufficient for one who has to suffer them day and night. The only duty of the judge is therefore to ascertain the existence of antipathy in the heart of the women. (Maudodi 1981: 61).

3. Khul' and Jurists' Point Of View:

On the basis of the above mentioned verses of the holy Qur’an and Sunnah of the prophet (peace be on him), all jurists are of the opinion that khul’ is permissible in Islam. Although they defer about the conditions of khul’. Abu Hanifa declares khul’ on the condition when there is variance between the spouses at the extent that the limits prescribed by Allah are not followed. He says that Khul’ can be conducted in the court and outside the court (Al Sarakhsi 1324 h: 173).

On the other hand Shafi writes in his book Kitab ul um ‘if husband say that I will not detach my wife and will not provide her their rights’. She will be insured from her husband about her rights and the man will be bound to give her rights. But there will be no any compulsion on the male for the separation of his wife (Tanzt Urahman 1984: 586). Khul’ is concluded same as talaqu and no any other person can pronounce talaq other than husband. (Al Imam Shafi 1381 h: 200).

According to Malik when there is dispute between the parties to a marriage, the judge should appoint two arbitrator from the family of each, as laid down by the holy Qur’an and if these arbitrator fail to bring about a compromise the judge has the power to dissolve the marriage on such terms as he considers just and fair. He quotes in another place that the female should be compelled to go with her husband (Abul Waleed 1324: 61). Ahmad bin Hambal consider khul’ like other contracts and it is settled on mutual understanding (Ibn Qudama 1367 h: 52).

4. Dissolution Of Muslim Marriage Act, 1939:

The Dissolution of Muslim Marriage has a very interesting background. In 1939 Thanvi had issued a fatwa stating that Marriage of Muslim (Hanafi) woman is automatically dissolved if she converts to Christianity. Courts in case where a wife had announced her conversion to Christianity to have their Marriage dissolved. When the Thanvi gave the fatwa according to the Hanafi doctrine, confirming the automatic dissolution of marriage, a wave of such conversion from Islam to Christianity began throughout India.

The Thanvi, however, reconsidered his earlier opinion with the help of four groups of Muftis, three groups from India and one group from Medina and subsequently he amended his earlier view and issue another fitwa. He stated in his second fitwa in 1933 that stated the conversion of a Muslim Woman to Christianity would not automatically dissolve her Marriage. In 1936, Thanvi asked Muhammad Ahmad Kazmi, a lawyer and a member of the Indian parliament from Meerut, up, to present a bill in the central legislature for this reform. (Muhammad Munir 2009: 273)

The statement of objects and reasons appended to the bill stated: There is no provision in the Hanafi code of Islamic Law enabling a married Muslim (women) to obtain a degree from the courts dissolving her marriage in case the Husband neglects her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her provided for and under certain other circumstances. (Ashraf Ali Tanvi 1996: 185) The absence of such provision has entailed unspeakable misery to innumerable Muslim women in British India.

The Hanafi jurists however have clearly laid down that in cases in which the application of Hanafi
Law causes hardships, it is permissible to apply the provisions of the Maliki, Shafi’i or Hanbali Law. Acting on this principle the Ulama (educated class of muslims) have issued fatwas (legal opinion) to the effect that in cases enumerated in this bill, married Muslim women may obtain a degree dissolving her marriage. As the Courts are sure to hesitate to apply the Maliki Law to the case of Muslim women, legislation recognizing and enforcing the above mentioned principle is called for to relieve the suffering of countless Muslim women (Asif A.A.Fyzee 1999: 132). The bill was passed, with some amendments, as dissolution of Muslim Marriage Act (DMMA), 1939 after immense debate and discussions. The 1939 Act was the first major law initiated by ulama headed by Thanvi and it incorporated various protective devices for Muslim women adopted from the Maliki school of thought.

5. Judicial ijtehad in pakistani courts on law of khul’:

The first landmark decision based on judicial reinterpretation of Qur’anic verses was that of Balqis Fatima (1959) a case dealing with the law of khul’. The question was whether this termination can be effected only by agreement between the husband and the wife as ordained by the Hanafi School, or whether the wife can claim it even if the husband does not agree. Muslim wife has the right to demand and the dissolution of her marriage if she dislikes her husband. This was relied on Maudodi (1981), he interpret his view from Hadith (saying of Prophet) concerning Jamila and her husband Thabit. The words “if you fear” in the verse of Qur’an, the court held, are addressed to the judge. The reference to the judge can only mean that he is to determine if the circumstances are such as to make harmonious married life impossible and that if he so determines, he can pass an order dissolving the marriage even if the husband does not agree. (Alamgir Muhammad Serajuddin 2011: 121).

The court interpret the verse relating to khul’ is that khul’ depends on the order of the judge and not on the will of the husband. That is the implication of the words “if you fear “being addressed to a judge or the head of the state. Islam does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation. If the dissolution is due to some faults on the part the husbands, there is no need of any restitution. If the husband is not in any way at fault, there has to be a restoration of property received by the wife and ordinarily it will be the whole of the property but the judge may take into consideration reciprocal benefits received by the husband and continuous living together also may be a benefit received (Alamgir Muhammd Sirajuddin 2011: 121).

There is an important limitation imposed that if the judge apprehends that the limits of God will not be observed, that is, in their relation towards one another, the spouses will not obey God, that a harmonious married state, as envisaged by Islam, will not be possible that he will grant dissolution. The wife cannot have a divorce for every passing impulse. The judge will consider whether the rift between the parties is a serious one though he may not consider the reasons for the rift. Is it open to a present-day court to adopt a course different from that laid down by the classical jurists, in this case the Hanafi, and grant, in the words of the court, “to the wife for the first time a right of release from the marital tie”; which she did not have under the traditional Hanafi law? The opinion of the full bench, written by Kaikaus, J. is cleared categorical. On the facts of the case, the Courts came to the conclusion that the parties could not live together as husband and wife should, and accordingly, dissolved the marriage on restoration of the benefit received by the wife (Alamgir Serajuddin 2011: 122).

Balqis Fatima (1959) does not establish quality of divorce rights of husband and wife but it goes a long way towards it. Its significance lies in the facts that (i) it establishes the right of the courts to independently interpret the original sources of Muslim law including the Qur’anic texts, and (ii) it grants to the wife for the first time right of release from the marital tie which she did not have under Hanafi law until this case. Fyze points out that the full bench decision in the Sayeeda Khanam (1952) case represents the classical view of the Hanafi jurist as understood in South Asia. In the Balqis Fatima (1959) case the full bench adopted the Maliki view --that in fit case arbitrators have the powers to dissolve the marriage as being closer to the qur’anic teachings and more conductive to ameliorating the lot of women at the present time. But he doubts if the decision can be considered satisfactory unless legislative authority exists for the application of Maliki law to the Hanafi, even though the end to be achieved is a worthy one (A. A. Fayzee 1999: 170).

However, the decision of the Court did not go unchallenged and one of the new-fangled ideas of the equality of spouses. In the leading case of Khushid bibi (1967) the Supreme Court of Pakistan affirmed the Balqis Fatima (1959) judgment.

In case of Khurshid Bibi (1967) the facts are as follows, After the husband had contracted a second marriage, relations between the childless first wife and the husband became very much strained and she applied for dissolution of her marriage by khul’. The issue that the full bench of the Supreme Court of Pakistan was called upon to decide was whether a wife is entitled, as of right, to claim khul’, despite unwillingness of the husband to release her from the matrimonial tie, if she satisfies the court that there is no possibility of their living together consistently with their conjugal duties and obligation.

The five learned judges unanimously endorsed the decision in Balqis Fatima that the wife is entitled
to *khul*", as of right, if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union. S.A, Rahman, J. delivered the leading judgment and S.A.Mahmood, J. added reason of his own for reaching the same conclusion. S.A Mahmood, J. first discusses the sources of Muslim law and refutes the view of the classical jurists that a Muslim must follow one school of law exclusively. He asserts that the imams never claimed finality for their opinion. Due to various historical causes, in later times their followers invented the doctrine of *taqlid*, under which a *Sunni* Muslim must follow the opinions of only one of their imams exclusively, irrespective of the reasonableness of his views. There is no warrant for this doctrinaire fossilization in the *Qur'an* or authentic *Ahadith* (Saying of prophet) he adds. He then proceeds to discuss the meaning of the *Qur'anic Verse* (2:229) and agrees with the view taken by Kaikaus.

The legal consequences of the decisions in Baqlis Fatima (1959) and Khurshid Bibi (1967) are that the courts of Pakistan and Bangladesh can now allow a wife judicial *khul* on the ground that the marriage has irretrievably broken down. The decision has been both praised and criticized (Alamgir Muhammad Serajuddin 2011: 129). *Khul* may be a key to freedom for many women. As they have to buy their freedom from an undesirable marriage in exchange for their due rights (Taslima Mansoor 1999: 190). Thus, *Radul-Muhtar* states: If *khul* is due to ill-treatment by the husband he cannot lawfully take any consideration from the wife because Allah has enjoined on the husbands not to take back anything from the wives (Alamgir Muhammad Serajuddin 2011: 129). Muhammad writes when cruelty be from the side of the husband his accepting compensation for *khul* is not lawful. Baqlis Fatima (1959) has given judicial recognition to this principle in the following words: if the divorce was due to cruelty there is no reason why the dower should have been returned.

In fact, as early as 1956, the Commission on Marriage and Family laws had recommended that no person should be able to pronounce a divorce without obtaining a court order. Judicial *khul* is perhaps the best and most salutary example of judicial *ijtihad* (legal consensus) and activism in the of Muslim personal law in Pakistan. By an effective exercise of independent legal reasoning within the Islamic framework, the Pakistan courts have significantly advanced the divorce rights of Muslim women.

Most of the Jurists (*jaqafa*) allow the permissibility of *khul* on the basis of *Qur'anic verse* (2:229). In the verse Arabic word ‘*tum*’ is addressed to the *Hakam* (the government) and not to the husband and wife. Some Islamic Scholor as Taqi Usmani interpret in a different way that, the Prophet in Hadith of Thabit merely gives him opinion as a social leader to Thabit and Jamila which was not binding and was not acting in his judicial capacity (Taqi Usmani 2001: 175).

It is to be remembered that the majority of the Muslim Jurists do not agree that a judge can grant *khul*. The majority maintains that *khul* transacted by a women possessing discretion upon himself is valid. However Al-Hasan and Ibn Siren argue that *khul* is no not permitted except with the permission of the Sultan. The legislation and case law in Pakistan, as discussed above, seems to follow the view of Al-Hasan and Ibn Sirin regarding *khul* as they call it judicial *khul*. It may be argued that although *khul* is valid without judicial pronouncement however the procedural requirement of judicial pronouncement is required to make it effective and this is only to sanction the separation. In the absence of such pronouncement uncertainty will exist as to the matrimonial relationship and this would be the women who given her vulnerable social position be in an adverse state. This view is supported both by the above stated *Hadith* and Javid Iqbal’s decision in *Naseem Akhtar* case (2005).

6. Conclusion:

There is confusion that Muslim women had no rights to obtain a divorce through the courts. As a remedy to this situation, the Dissolution of Muslim Marriages Act of 1939 brought sweeping changes in the law. Section 2 of the Act specified a number of grounds on which a woman married under Muslim Law could sue for divorce, including cruelty, non-maintenance and Impotence as well as any other ground that could be recognized as valid for the dissolution of marriage under Islamic Law.

State legislation in the area of family law in British controlled sub-continent was pro-women from the beginning. This is evident from the passing of Dissolution of Muslim Marriages Act (DMMMA) 1939. The real architect of this act is *Ashraf Ali Thanvi*. The Dissolution of Muslim Marriages Act was the first legislation that introduced *Maliki* doctrines to provide much needed relief to the otherwise helpless women. The Act was a great departure from the traditional *Hanafi* doctrine of dissolution of marriage, in women separation from her husband in cases where they feel harm from them (Muhammad Munir 2009: 271). A case of two women whose separate appeals were disposed by a Divisional Bench of the Lahore High Court in a single Judgment in Umer Bibi case had each sought *talaq* on grounds of legal cruelty but had failed to prove her allegations. In another case of Syeeda Khanam a full Bench of the same court considered the matter again. The court decides that “the temperaments of the spouses were incompatible and this constituted sufficient ground for dissolution of marriage in Islamic Law”.

The law has undergone considerable change thereafter. One of the recognized forms under Islamic Law for Dissolution of Marriage through
which a woman can obtain divorce is that of khul'. In pre-partition India, khul' was only accepted as a ground for divorce by the British Indian Courts subject to the husband’s agreement to the dissolution of marriage via khul'. The first case bringing in changes in the concept of khul' was that of Bilqis Fatima, in which it was argued before the high court that khul' is a right of the wife. The judge ought to grant khul' if he finds that the husband and wife will not observe the limits of God otherwise. In a leading case decided by the Supreme Court of Pakistan, Khurshid Bibi, it was held that: “The Husband is e other i, it was held that: "The Husband is held that: "The Husband is e other .

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