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## Dissolution of Marriage: Exploring Various Modalities of Ending Marriage in Islamic Law

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### ABSTRACT

The purpose of this paper is to familiarize readers with the various methods of divorce in Islamic law. Divorce, according to the Holy Prophet (SAW), is the worst of the things permitted by law. Divorce is an evil that should be avoided as much as possible. However, in some cases, this evil becomes a necessity, because when the parties to the marriage are unable to carry on their union with mutual affection and love, it is preferable to allow them to separate rather than compel them to remain together in a state of animosity and apathy. The author also aims to provide a thorough explanation of the broad notion of divorce in Islam by methodically classifying it according to its effectiveness and structure. Furthermore, it seeks to clarify the rights granted to the husband and wife in the event of a divorce. All of the different aspects of divorce will be carefully covered in separate sections so that readers can grasp the subject completely.



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## 1. Introduction

When two people are united in the ties of marriage, a harmonious complementarity is created by taking into account each partner's strengths and shortcomings. A happy family life requires an enduring bond between the husband and wife, and Islam stresses the value of preserving marriages while opposing the breaking of marital vows (Hasbi & Hasbi, 2016). A husband and wife's relationship is equal in their rights and obligations. This implies that they both have the same social status, the same needs and desires, and share equal responsibility for raising their children and keeping their marriage together (Razi et al., 2021) This arrangement creates a harmonious balance in the marriage by using a husband's surplus strengths to compensate for a wife's shortcomings and vice versa. In the dynamics of a household, arguments often accompany high emotional states experienced by either the husband or the wife. The possibility that these problems will worsen to the point where a divorce ends the partnership becomes real in such difficult circumstances. It is important to understand that although unfavorable events can cause a marriage to end, matrimonial contracts are not usually established to be broken.

Islamic law bases divorce on the inability of the spouses to live together, not on any particular cause or guilt attributed to one of the parties. In other words, the inability to coexist is what ultimately leads to the dissolution of the marriage (Bani & Pate, 2015)

A divorce may result from the wife's actions or the husband's. The Islamic law provides for multiple ways to get a divorce. Divorce is one method of achieving this kind of dissolution. According to Islamic law, a divorce can be finalized by a court order or by the parties' actions. Whatever the impact of the divorce, it hasn't been accepted as the standard of living. Divorce is viewed as a deviation from the marital relationship in Islam (Sham, 2011). There are two primary categories of divorce under Islamic law: extrajudicial and judicial. Three different types of extrajudicial divorce exist, each with its own set of rules regarding particular circumstances and processes.

The husband is in charge of these three divorce procedures, which are Talaq, Illa, and Zihar. Talaq is the name for the customary divorce in which the husband initiates the dissolution. An Arabic term for "pledge" is I'la. It entails a husband making a legal vow to refrain from having sex with his spouse for longer than four months. If a man vows to his woman that he will not engage in sexual activity, then I'la is established.

Zihar is derived from zahar, which means from behind. It is essential for a man to not tie his wife to any of his prohibited female partnerships, whether through blood, foster care, or marriage, as this will unavoidably make their wedding unlawful.

Talaq al-Tafwid and Li'an are two modes of marriage separation initiated by the wife. The definition of Talaq al-Tafwid as defined by Ahmad & Tabassum, S. (2021) is "Although the authority to grant divorce belongs primarily to the spouse, he can delegate the authority to the spouse or a third party, either entirely or conditionally, and either for a specific time or permanently." The person to whom the authority is thus delegated will then issue the divorce decree."

Li'an alludes to injustice and a curse. It generally refers to a particular kind of husband-wife separation where the husband accuses the wife of adultery but provides scant evidence to support the claim, which

the wife denies. When a wife accuses her husband of being dishonest, the couple enters the Li'an process and swears before a judge (Bani & Pate, 2015).

A divorce that is approved by both the husband and the wife is the third method of separation, also called Khula. When a wife chooses to grant her husband money in exchange for being freed from the marriage bond, it is known as a “Khula” divorce (Niazi, 2012).

The following sections of the paper will go into great detail about the various ways in which marriages dissolve. It will look at them from a comparative perspective, exploring their unique traits and effects.

## **2. Divorce: A General Discussion**

Divorce in Arabic is known as "Talaq," which originates from the original Arabic word 'Talaq,' which means to untie or free. As noted by Rehman (2007), “Talaq technically refers to the unilateral authority granted to Muslim husbands to divorce their wives at their discretion. The word itself is frequently translated as repudiation, and it derives from the root 'Talaq,' which means to free an animal from its tether”. In the legal meaning of marriage, Talaq denotes the husband's absolute right to divorce his wife, effectively releasing her from the marriage bond.

Divorce is legal in Islam, and the husband has the power to start the divorce process. A husband is entitled to file for divorce, and he can do so whenever and wherever he pleases. A husband's choice to file for divorce from his wife is based on his subjective evaluation of the circumstances. Notably, no formal board is in charge of assessing a husband's objectivity in this situation. Divorce decisions are left to the husband's discretion because he is responsible for maintaining the family unit, which includes providing for the needs of his wife and children and paying the dowry (Ahmad, 2003).

On the other hand, Islamic law also gives the wife the ability to file for divorce. This can be done by bringing the case before the Qazi or by using the Khula opportunity. A wife may start the divorce process if she senses that her marriage is failing or that there is no longer any love in it. A claim based on the husband's verbally or in writing expressed desire for a divorce is referred to as a “sue for divorce, or contested divorce” (Platt, 2017). This system acknowledges the wife's autonomy in requesting the marriage's dissolution when it's thought appropriate.

In Islam, the core principle of equal rights serves as the basis for a wife's request for a divorce from her husband. The husband and wife have equal standing in the context of a divorce. Terminating the marriage settlement is regarded as the last resort in cases where the differences between the parties—whether related to communication, interaction, social standing, or financial matters—prove to be too great. This realization leads to the filing for divorce, recognizing that a marriage must end when its fundamental harmony is upset and reconciliation appears unfeasible.

However, according to Muhammad's (PBUH) teachings, it is improper for a woman to divorce her husband unless there is a legitimate reason based on Shari'a law, basically because the husband mistreated the wife. It is a grave sin for Muslim wives to request a divorce without providing a valid reason according to Shari'a, and they should repent of it and leave their husbands. As noted by Hasbi (2016), Rasulullah PBUH said: “Anyone wife requested (demanded) to her husband for divorce without justifiable reason then the forbidden smell of heaven on the woman”.

The context presented in the aforementioned Hadith Nabawi emphasizes that, in accordance with Islamic teachings, a wife ought not to ask for or file for divorce, nor should she ask her husband for khula unless there is a legitimate reason that is approved by Shari'a. However according to Shari'a law, divorce is legal in certain situations and for reasons that are justified; additionally, divorce is only legal if certain requirements are met (Hamza et al., 2022). Divorce is accepted as legal, but it must only be sought as a last resort when necessary because it is considered to be among the acts that Allah detests the most.

### **3. Words of Talaq (Divorce)**

In the context of Talaq (divorce) in Islamic law, the husband is not bound to use specific phrases such as "I divorce thee" or "I divorce you." Shariah allows for flexibility in expressions, leading to two types of Talaq declarations:

#### **3.1. Talaq-Sareeh**

This involves a clear and explicit declaration of divorce, for instance, saying "I divorce thee."

#### **3.2. Talaq-Kinaya**

This refers to an unclear or indirect declaration of divorce, using words that are not exclusively designated for divorce but imply it. Examples of Talaq kinaya declarations, as given by Islamic scholar Ibn Abdul-wahhab, include phrases like "you are divorced," "you are clear," "you are irrevocable," "you are cut off," "you are concluded," "you are a free woman," and "you are forbidden."

As discussed by Bani & Pate (2015), "If the husband wants to give Talaq, according to certain Islamic schools, Talaq-Kinaya may result in an irreversible divorce (TalaqBayyin). If there was no intention to indicate divorce, it might not be regarded as legitimate". Understanding the ramifications of indirect expressions in the divorce process within the context of Islamic law requires an understanding of this distinction.

### **4. Categories of Divorce under the Islamic law**

There are two broad divisions of types of Talaq (Divorce). (i) Extra judicial divorce. (ii) Judicial divorce. The category of extra-judicial divorce can be further subdivided into three types, namely: (a) Talaq, Illa, and Zihar (by Husband). (b) Talaq-i-tafweed and Li'an (by wife). (c) Khul'i (by mutual agreement).

Before delving into a discussion of each type of divorce mentioned above, the author has explored the conditions for a valid Talaq (Divorce).

### **5. Prerequisites for a Valid Talaq**

There are four prerequisites of valid talaq. Following are;

#### **5.1. Mental and Physical Capacity**

From a legal standpoint, a mentally sound Muslim husband who has reached puberty is qualified to pronounce Talaq without having to give a reason. A husband who is underage or mentally ill is not allowed to make the Talaq; such declarations are regarded as null and void. Nonetheless, any Talaq made by a husband during a "lucid interval" is accepted as legitimate if he is found to be insane. It is not

permissible for a guardian to give a minor husband Talaq (Hussain et al., 2022). When a mentally ill husband does not have a guardian, the Qadi or a judge has the authority to end the marriage in the best interests of the insane husband.

## **5.2. Voluntary Intent**

Apart from Hanafi law, the husband's consent for the Talaq must be given voluntarily. A Talaq given under duress, coercion, fraud, undue influence, or “voluntary intoxication” is still regarded as legitimate and dissolves the marriage, according to Hanafi law. It is important to remember that a talaq given while under duress or involuntarily is null and void under Hanafi law (Omar, 2007).

On the other hand, as noted by Omar (2007), “A Talaq issued under duress, fraud, compulsion, or “voluntary intoxication” is considered null and void in Shia law, as well as in other Sunni schools.” This distinction draws attention to the divergent views held by various Islamic legal traditions regarding the applicability of talaq in various situations.

## **5.3. Procedural Matters**

A Talaq may be communicated verbally or in writing under Sunni law. The husband is free to write down the Talaq or to simply say it. To be deemed legitimate, the Talaq does not need to follow any particular formula or contain any specific words. It is not required to do this in front of witnesses; any clear statement of the husband's intention to end the marriage is considered sufficient (Ullah, Uzair & Talaq, 2011). Shia law, on the other hand, mandates that Talaq be said aloud unless the husband is incapable of speaking. According to Shia law, if the husband can speak but decides to give the Talaq in writing, it is null and void. Furthermore, according to Shia law, a talaq cannot be deemed legitimate unless it is uttered in front of two witnesses. The disparities in practice between the Sunni and Shia traditions are emphasized by this difference in the prerequisites for the validity of Talaq.

## **5.4. Clear Pronouncement**

The husband must state the terms of the divorce straightforwardly and clearly. While some scholars stress that talaq should only be said once, others permit up to three pronouncements in a single period of purity (tuhr).

## **6. Right of Husband Regarding Ending The Marriage**

In Islam, the husband has the authority to terminate the marriage through any one of the three modes: talaq, I'la, and Zihar.

### **6.1. Talaq**

In Islam, the term "talaq" implies the husband's authority to formally and unilaterally declare the end of the marriage. By verbally declaring his intention of talaq to his wife, a husband can start the divorce process using a mechanism allowed by Islamic law (Rehman, 2007). Islamic jurisprudence describes the talaq procedure and requirements, and the husband usually needs to follow certain rules to guarantee the

divorce's legality. There are various forms of talaq, each with specific procedural requirements, such as Talaq-e-Ahsan (the most accepted form) and Talaq-e-Hasan (the permissible form).

### **6.2.I'la**

A Muslim husband has two additional options for ending his marriage besides talaq. These are called *ila* and *zihar*, and they are both regarded as constructive divorces. When a couple is in *ila*, the husband swears not to have sex with their spouse. After taking this oath, the marriage is irreversibly dissolved if consummation does not occur within four months. But if the husband moves back in during those four months, the *ila* is revoked and the marriage is still valid (Ahmad, 2003).

It is important to remember that, as highlighted by Hinchcliffe (1971), “*ila* does not function as an instantaneous divorce under the Ithna Ashara (Shi'a) School; rather, it requires an order from a court of law.” Following the expiration of the four months, the wife may file for a formal divorce. The wife may sue the husband for compensation of conjugal rights if there is still no cohabitation even after four months have passed. The nuances and variances in the application of these forms of constructive divorce are reflected in Islamic jurisprudence's nuanced approach.

### **6.3.Zihar**

A husband compares his wife to a woman in one of his forbidden relationships—his mother or sister, for example—in the *zihar* mode. The husband makes it clear that his wife is to be viewed as his mother or sister going forward. After making this analogy, the husband abstains from having sex with his spouse for four months (Akhter & Munir, 2013). The *zihar* is deemed accomplished after these four months have passed. After the fourth month has passed, the wife is entitled to the following: (i) She could ask the judge for a judicial divorce decree. (ii) She has the option to ask the judge to issue an order restoring the couple's marital rights. The wife cannot file for judicial divorce if the husband wants to revoke *zihar* by returning to cohabitation within the allotted time. Revocation is possible in the following situations: (i) the husband observes a two-month fast; (ii) he feeds at least sixty people; or (iii) he frees a slave.

*Zihar* must be performed in front of two witnesses by Shi'a law. The aforementioned divorce mode and its corresponding procedures underscore the intricacies and subtleties of Islamic matrimonial law.

## **7. Right of Wife Regarding Ending The Marriage**

In Islam, divorce initiated by the wife can be categorized into two main types: (i) *Talaaq al-tafwid* and (ii) *Li'an*.

### **7.1.Talaaq-al-Tafwid**

Delegated divorce, or *Talaaq al-Tafwid*, is accepted in both Sunni and Shia traditions. A Muslim husband may assign his authority to file for divorce to his wife or any other individual in this type of divorce (Ahmad & Tabassum, 2021). This delegation may be final or provisional, short-term or long-term. A temporary delegation of power cannot be revoked; a permanent delegation of power can. The transfer of authority must have a clear purpose and be expressly made in favor of the person who has been chosen.

Giving his wife the authority to issue a *talaaq* gives her a strong way to get freedom without the involvement of the courts. This practice is becoming more widespread, particularly in India, and

prenuptial agreements frequently include provisions for it. Such delegation may also be included in agreements made after marriage. For example, an agreement might state that the wife has the right to file for divorce on her own if the husband doesn't follow through on obligations, like paying maintenance or getting a second wife (Sham, 2011). These agreements are regarded as legitimate, reasonable, and compliant with public policy.

Importantly, the wife has the final say over whether to use the power that has been delegated, even if all requirements specified in the agreement are satisfied.

## **7.2.Li'an**

In Islam, a husband accusing his wife of adultery on pretenses is considered character assassination and can result in a divorce based on li'an. If the husband has falsely accused the wife of adultery, on voluntary and unfounded grounds, the wife may file for divorce on the grounds of li'an. This kind of divorce is motivated by verses in the Qur'an that instruct the husband to "swear four times." Three requirements must be satisfied for li'an to be applicable: the marriage must be continuing, the marriage contract must be enforceable, and the husband must be a qualified witness who has never made false accusations in the past (Bani & Pate, 2015). It's crucial to remember that a wife's actions do not qualify as a false accusation of adultery under li'an, and divorce is not granted on these grounds if they cause a husband to make retaliatory accusations.

## **8. Divorce by Mutual Agreement**

### **8.1.Khula**

A woman has the legal right to file for divorce or separate from her husband in Islam. If her husband refuses, she can ask a Qadi (judge) or an Islamic community panel in non-Islamic areas to grant her divorce. A woman seeking a divorce must wait three menstrual cycles (iddah) or three months if she is post-menopausal to make sure she is not pregnant. The waiting period continues until she gives birth if she is pregnant (Ahmad, 2003).

But compared to men, women's ability to file for divorce is more restricted. As highlighted by Niazi (2012), "Sharia law states that a wife can get a divorce if she can show that she and her husband did not have sexual relations for longer than three months or if he does not give her the necessities of life, like food and shelter". During the divorce process, women often encounter financial and legal challenges, such as the requirement to reimburse marriage and dowry costs. Furthermore, women frequently lose custody of their children, particularly if the child is older than seven, and even in cases where custody is awarded, it typically goes to the father when the child turns seven. This illustrates the difficulties associated with gender in Islamic divorce law.

## **9. Comparative analysis of different methods of Divorce**

Jurists have devised various approaches and strategies for terminating the marriage contract, guided by the principles of the Holy Qur'an and Sunnah. Each approach incorporates distinct mechanisms and implications. The author will undertake a comparative study of each method, using Talaq al-Tafwid as a focal point for clarity, in the following lines.

### **9.1.Variation between Talaq al-Tafwid and Khula**

There are many delicate and different aspects between Khul' and Talaq al-Tafwid. In Khul', the sum in question is decided by a court of law or by mutual agreement, whereas in Talaq al-Tafwid, the wife does not consider her husband. Second, although Judicial Khul' may be started without the husband's consent, Talaq al-Tafwid requires his consent. Thirdly, while a formal proposal and acceptance by the spouses are required for Khul' to be valid, Talaq al-Tafwid can occur without either. Fourthly, Talaq al-Tafwid is either revocable or irrevocable based on the number of divorces, whereas Judicial Khul' always leads to an irreversible divorce. Fifth, Talaq al-Tafwid usually leads to an irreversible or reversible divorce, while "Judicial Khul'" serves as the annulment of marriage. Regarding the termination of the marriage contract, Khula offers two options: one through a court order (known as Judicial Khul') and the other without the intervention of court (known as Khul'). Talaq al-Tafwid, on the other hand, permits the dissolution of the marriage agreement without the need for legal intervention. These contrasts highlight the important variations between Talaq al-Tafwid and Khul's recommended practices and outcomes.

### **9.2. Distinction Between Talaq al-Tafwid and Talaq (Divorce)**

The right of Talaq granted to the husband is not the same as Talaq al-Tafwid, and they differ in a few key ways. First of all, in Talaq, the divorce decree can only be issued by the husband; in Talaq al-Tafwid, the divorce can be started by either the husband or the wife. Second, in Talaq, the wife can file for divorce at any time, while in Talaq al-Tafwid, the husband can file for divorce whenever he wants or within a given window of time if he so chooses. Thirdly, in Talaq, the wife may only declare an irreversible divorce if the right to divorce is implicitly granted, whereas, in Talaq al-Tafwid, the husband may declare both revocable and irreversible divorce. Fourth, in Talaq, the husband can file for divorce without providing a reason; however, in Talaq al-Tafwid, if the wife wants to file for a divorce and the husband agrees, the wife must provide a reason. Fifth, in Talaq, the husband is immediately liable for paying his wife's dower (Mahr); in Talaq al-Tafwid, however, if the wife gives up her dower, she does not receive it back (Ahmad & Tabassum, 2021). Sixth, in Talaq al-Tafwid, the wife is not able to exercise revocation if the right to divorce is implicitly granted, but in Talaq, the husband may revoke the agreement if it is expressed once or twice. Seventhly, both implied and express words may be used to pronounce Talaq; however, in the case of Talaq al-Tafwid, express words are not permitted if the right to divorce is granted through implied words. Given the aforementioned distinctions, it follows that Talaq al-Tafwid cannot be conflated with the husband's authority to dissolve the union by declaring Talaq.

### **9.3. Difference between Talaq al-Tafwid and Faskh (Judicial Separation/ Dissolution)**

In Islam, the word "Faskh" denotes annulment. It differs from Talaq al-Tafwid and other types of Talaq in a few important ways: First of all, in Talaq al-Tafwid, the wife surrenders the normally unpaid dower; however, in cases of separation, the husband is required to pay the outstanding dower to his wife right away. Second, mutual consent between spouses can grant Talaq al-Tafwid, but legal proceedings are required to seek separation in situations where the husband's "failure to provide maintenance, harm to the wife, desertion by the husband, his imprisonment, impotency of the husband, option of puberty, or apostasy of the wife or husband" are involved divorce (Ahmad & Tabassum, 2021). Thirdly, in a divorce based on Talaq al-Tafwid, if there are exceptional circumstances, the wife may give the husband compensation and consideration. Faskh and other methods of dissolving a marriage, however, do not



take this into account. Fourthly, separation usually takes place, as noted by Bani and Pati (2015), “When there is Lia'n, I'la, failure of the husband to provide maintenance, harm to the wife, desertion by the husband or his imprisonment, impotency of the husband, option of puberty, apostasy of the wife or husband, or irregular contract of marriage.” On the other hand, when the wife wants to use her right to a divorce, Talaq al-Tafwid is granted. Thus, it is clear from these different perspectives what makes Faskh unique compared to other types of marital dissolution recognized by Islamic law (Mehrajuddin, 1985).

## **10. Conclusion**

In short, the complex dynamics of marriage as they are understood in Islam highlight the vital complementarity and unity of spouses. A happy family life is thought to depend on the husband and wife's strong union, and Islam encourages the upholding of marriage vows and the avoidance of their breaches. A strong marital bond is built on the reciprocity of strengths and support between partners, as each pair's benefits and drawbacks demonstrate.

However, the actuality of marital disagreements and different states of mind can result in unfavorable situations, which may ultimately lead to the divorce and breakup of the matrimonial contract. Islamic law views divorce as an exception to the rule, meaning that a couple's incapacity to cohabit must be the foundation for this decision. In Islam, there are two primary categories of divorce: judicial and extra-judicial, each with its unique forms, procedures, and circumstances. The thorough examination of different methods of dissolution of marriage clarifies their distinct traits and ramifications, offering insightful information about the various methods used by Islamic law to dissolve marriages.

This research attempts to provide a more nuanced understanding of the various approaches and strategies used in Islamic jurisprudence to navigate the complexities of marital dissolution. The purpose of the comparative analysis is to clarify the unique characteristics of each mode and provide a thorough understanding of the complex issues surrounding divorce in the context of Islamic law. In the end, this investigation aims to promote a deeper understanding and respect for the nuances related to marriage annulment within the Islamic faith.

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