Different Types of Divorces and their Conditions from the View Points of Islamic Doctrines

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ABSTRACT
Divorce is laid down as one of the perspicuous religion of Islam’s orders to remove family disputes, in other word Aghlal divorce is a matrimonial life by observing stipulated conditions with special formula on which it is devoted.
This article is going to explain the five religions jurists’ approaches on judicial basis of revocable and Khula divorce. Then jurist’s different ideas regarding the conditions and rules of correct divorce in terms of every Islamic religion point of view will be discussed. Moreover, different types of divorce, revocable and Khula divorce on the basis of lawful proofs and their proving reasons and their occurrence conditions will be analyzed.
Keywords : Divorce, Islamic doctrines, Khula

1. Introduction
Divorce and its different types – that revocable and Khula divorce are the most important subjects in this article - has different and various juridical, social, and legal dimensions. The researcher's approach involves juridical basis of revocable and Khula divorce in different aspects. For example expressing the divorce concept and its organs, and analyzing divorce concept regarding Islamic religions juridical proofs in Emamieh, Hambali, Shafeei, Hanafi, and Maleki. In this paper also designated rules will be discussed to clarify Islam's idea about divorce. Since family is the most important organ of the society in which there should be tranquility for the family members and there shouldn't be insolvable spiritual and mental pressures for them, So Islam has considered the divorce as a controllable device. Islamic religions different judicial books are written about divorce for example: Tahriratoroze that is written by Shahid Sani devoted one chapter to divorce and types of it, and Sheikhe koleini Osuli kafi in which sayings are considered as proofs without any analysis and interpretation. Finally we're going to discuss about divorce, different types of it and revocable and Khula divorce in regard to the five Islamic religions points of views.

Concepts
Divorce means to set free from clause. The people say "(Atlaght al abire men eghaleh) i.e. the camel released from its string" and this statement "(Talaght al mera'h) i.e. the woman is divorced" is a metaphor means release from marriage clause.

The term "divorce" defined in this way: to release marriage clause between spouses via special words. Shahid Sani from Emamieh said that divorce is releasing marriage clause by the divorce formula and like this. Divorce formula means releasing marriage clause related to Baa'in or related to revocable by the special word. By additional restriction on others definition, divorce is disruption of correct married life with conditions that are laid down in Islamic jurisprudence through the special formula on which devoted.

Divorce organs
Divorce includes some organs that jurists divided them to four categories:
1. Divorcer (a person who divorces)
Divorcer should be possessed below conditions:
a) Puberty
Majority of jurists believe that the minor's divorce is not correct although he is a discerning minor. Exceptionally the Hambalies believe that the minor's divorce is correct although he is under the age of ten.
b) Wisdom
All of the Islamic religions believe that divorce of a mad person is not correct whether his divorce is permanent or periodical. Shiite jurists say that the divorce of a drunk is not correct at all. Though the four religion's theologians have different idea and believe that if a drunk has drunk intoxicating liquid voluntarily, his divorce will be correct, but if he has drunk impunible liquid it will not be correct.
c) Option
All of the Islamic religions jurists come to an agreement on this case that a person's divorce
against his will is not correct, other than the Hanafies. 
Shiite jurists say that if an individual divorces his spouse by mistake or joke, his divorce will not be correct. The Hanafies believe that all types of divorces are correct and valid except the divorce of mad, minor, foolish, and unconscious individuals. Shafees, Malekies, and Hanafies believe that the divorce of a man who divorces his spouse jokingly is correct.

2. Producing a witness in divorce
Shiite jurists believe that divorce will not be possible without calling two righteous men. Their reasoning of this case is this verse:

(Va ashهدو zavay adle va menkom va aghimo al shahadateh allah and call tow righteous men to witness for the sake of Allah"

However Sunnites don't attribute the verse's intention of witness to divorce. They think that it is related to revoking, however the word "(Ashhedu)" is closer to divorce. Shiite jurists consider producing a witness as one of the divorce valid organs but the four religions don't have stipulated it as divorce correctness.

3. Divorcee (a person who is divorced)
All of the jurists believe that these conditions are necessary for a person who is going to be divorced:
1. to be one's wife 2. Permanent marriage 3. Purity of menstruation and Nifas (after birth bleeding) when her husband has had intercourse with her and she is not patient and her husband is with her 4. To assign the divorcee woman

4. Divorce formula
Shiite jurists believe that divorce is occurred just through this definite formula: "(Ante taalegho) you are divorced" (felaanato taalegho) a person who is divorced" or "(hia' taalegho) she is divorced" but "(Ante taalegho) you are divorced" is more popular for them.

Also it's not occurred through writing or pointing otherwise about a dumb person who cannot speak. In Emamieh religion divorce will not be occurred via order, oath, vow, covenant or anything else but it will be valid just by the word "(Taalaghando)" when there would be necessary clauses and conditions.

Although other religions allow the divorce permission to everything on which it's denoted, such as a word, a piece of writing, explicitness or allusion. For instance he says: you're unlawful for me, or you are separated from me, or you hate me etc as they have allowed the divorce to be unconditional or stipulated for example he can say:"if you go out of the house" (Ante taalegho) you are divorced".

Types of divorce
First of all jurists categorize divorces in two groups: Bida (innovative) and Soni. Soni divorce involves two other types: revocable and Baa'ın (irrevocable). And then Baa’in divorce is divided in two types too: Khula and Mubarat. Baa’in divorce is an irrevocable divorce where the husband doesn't have the right to take his wife back (article 1142).

1. Bida (innovative) divorce: It's occurred against Islamic arranged conditions for example when the woman is in her menses or Nifas period. Even though the Sunnites believe that it's occurred and valid.
2. Soni divorce: this type of divorce occurred conform to Islamic arranged conditions and Allah and his prophet's order.
3. Revocable divorce: means that it is permissible for man to return to his wife during the seclusion (Iddah) and all of the religions agree that the man can return to his wife as long as the divorce is in Iddah period whether she is satisfied or not .
4. Khula divorce: it's based on dislike of husband in exchange for compensation to him. This compensation called ransom.
5. Mubarat divorce: it's based on mutual dislike of the spouses.

1147 article: Mubarat divorce is based on mutual dislike of the spouses in which case the wife seeks the divorce in exchange for compensation to the husband which doesn't exceed the value of her marriage portion.

Revocable divorce (Raj’ee): the word "revoking” means to return or coming back and the term "revoking” means to return the divorcee woman who is in her ex-marriage Iddah. Because all of the Muslims come to an agreement on this case and in the light of all jurists consensus, revoking is permissible and it doesn't require woman's guardian consent, assigning marriage portion, and woman's action (knowledge).

1148 article: "in revocable divorce, husband has the right to take his wife back during her Iddah”. Revoking citations consist of: the holly Quran, Sunna(h), and consensus. The holly Quran: Allah divines this case in verses of Baghare chapter:

(Va bo'ulatohonna ahagho beradehenna) and their husband has the right to take them back… Sunna(h): O Muhammad (may God bless him) divorced his wife om al-momenin Hafaze then said that Jibraeel descended and told me: return your wife Hafaze.

1. legal period of abstention of a widow or divorcee before her re-marriage
Consensus: all of the jurists' consensus is on this case that husband has the right to return his wife before the expiry of the Iddah period.

Types of revoking:

a) Verbal revoking: The husband revokes his wife by verbally expressing, he says "I break with you" by adding extra word "(El nikah)" to marriage ". And in terms of all jurists consensus the revoking word should be unconditional.

b) Revoking by physical action: revoking by action is correct too for example by having physical contact with her by way of kissing, fondling, touching her with passion or having intercourse with her. Clear-sighted person's consensus is on this case and some of the public jurists agree with us.

To call someone for revoking: It is not obligatory that the man have anyone to witness his return to his wife and all religions jurists have consensus on this case.

Appointing as one's attorney for revoking: all of the jurists believe that appointing as one's attorney for revoking is correct.

Khula divorce

The word "Khula" means take the clothes off, also "Khala" means to separate.

The term "Khula" means repudiation of marriage by wife based on dislike of husband in exchange for a compensation to him that may be equal to, more, or less than her marriage portion (Mahr).

Khula citations consist of: holy Quran, Sunna(h), and consensus.

Khula basis conditions

1. Dislike (Ikrah): one necessary element in Khula divorce is that the woman doesn't desire to her husband otherwise the divorce will not be correct and only the woman should be undesirable to her husband necessarily, so it's not about both parties or just about husband.

2. Compensation: the term ransom (Fedie) means amount of money paid by wife to husband and it's called compensation because the woman pays it for herself. There is no ceiling to the amount of compensation ('awad) that she pays, but it should be so much to consent her husband to divorce.

Khula formula

Emamie jurists believe that Khula is correct just through these words ", (Taalegho)" and ", (Khula)" not anything else and both of these words or one of them is sufficient to divorce. The Sunnite jurists consider Khula divorce permissible just by explicit words like (Khula) and dissolution by words like "I separated from you" or "I broke with u".

Revoking and Iddah in Khula divorce

Iddah of the divorcée by Khula is as like as divorcée Iddah i.e. 45 days. In Khula divorce husband cannot take his wife back otherwise the woman return to the ransom she has paid to the man in Iddah period, which in this case husband has the right to return to his wife.

Inheritance in Khula divorce

There is not inheritance between the parties of Khula divorce because they are not wife and husband anymore by Khula, but if he revokes after returning to ransom in Iddah period, they will be couple and inheritance between them will be established.

Conclusion

Sharia considers divorce as the best policy to prevent permanent damage and it's dissolution of correct married life with conditions that are laid down in Islamic jurisprudence (Sharia) through the special formula on which devoted. In analyzing the jural basis of divorce there are different opinions concerning divorce organs. In Emamie religion these conditions are necessary for divorcer: puberty, wisdom, option, and intention. Although other religions for example the Hambalies believe that the divorcer should be an auditor, and they have detailed opinion about the option of a drunk person. The Hanafies consider the divorce of a person who doesn't desire to do it, correct and the Hambalies believe that the divorce of a man who divorces his spouse jokingly is not correct but the Shafeis and Hanafies and Malekies consider it correct.

Emamie religion considers producing a witness as one of the divorce organs but the public religions consider it necessary in revoking not about divorce.

The public religions permitted divorce in conceivable way possible (writing, pointing, allusion) but in Shiite religion it will be possible just through explicit word and judgment writing.

Types of divorce and lawful reasons of revocable and Khula divorce were analyzed in this paper. Revocable divorce means taking a divorcée woman back in her Iddah period and it's declared in Holly Quran explicitly and prophet's Sunnah and jurists' consensus also show the right of husband to return to his wife before the expiry of the Iddah period whether by verbal revoking or by physical action.

Khula divorce means repudiation of marriage by wife based on dislike of husband in exchange for a compensation to him and Khula citations consist of the holy Quran, Sunnah(h), and jurists consensus. In Khula divorce husband cannot take his wife back otherwise the woman return to the ransom she has paid to the man in Iddah period, which in this case husband has the right to return to his wife.

And there is not inheritance between the parties of Khula divorce

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[17] Baghareh chapter, verse 228.