

LEGAL DISSOLUTION OF MARRIAGE IN ISLAM TERMS AND CONDITIONS*M.Toraev**head of the cycle of combat and physical training of the
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Abstract: This article scientifically and theoretically studies the concept of marriage in Islamic law, the legal grounds for the dissolution of marriage, various legal grounds for the dissolution of marriage, issues of iddah, situations in which divorce may occur between husband and wife, such as khulu', ila', zihar, and mula'ana. At the same time, issues related to the dissolution of marriage are analyzed based on the sources of Islamic law.

Keywords: marriage, idda, hulu', iyla, zihar, mulaana, fiqh, expiation, divorce.

In all legal systems, the issue of marriage annulment is considered one of the important aspects in the regulation of family relations. However, different legal systems approach this issue differently. However, the common goal of all legal systems is to ensure the stability of marriage and preserve family relationships.

Divorce is also prohibited in Islamic law and is permitted only in cases of necessity. Because in Islamic teachings, marriage is considered as a sacred covenant, family is the pillar of society, and its violation causes serious consequences.

According to Islamic jurisprudence, divorce is considered a last resort only when the relationship between husband and wife cannot be improved, that is, when it is impossible to achieve the goals of family life. This is stated in the hadiths narrated from the Prophet (peace be upon him): "Marry, and do not rush into divorce, for the Throne of the Most Gracious trembles at the word divorce," and "The most halal thing that Allah dislikes is divorce." [1. – B.445.].

In Islamic legal doctrine, marriage is valued as a sacred covenant and its maintenance is defined as one of the main goals. That is why annulment of marriage, i.e. divorce, is actually not approved in Islamic jurisprudence, but is allowed only in case of necessity. Burhanuddin Marginani in his famous work "Hidaya" states about this: "Divorce is actually forbidden, but it is allowed out of necessity" [2. -B.248.; 3. -B.272445.; 4. -B.73.].

According to Islamic jurists, the dissolution of marriage is considered an exceptional case. That is, divorce is permitted only when the relationship between husband and wife has deteriorated and the possibility of living together has disappeared. This approach, on the one hand, aims to preserve the sanctity of the family institution, and on the other, to protect the interests of both parties.

In Islamic law, a marriage can be annulled for various legal reasons. In particular, a marriage loses its validity in the following cases:

1. **Death** - the marriage relationship ends naturally with the death of one of the spouses.
2. **Divorce** – is a method of divorce carried out by the man and is carried out in accordance with the signs of Sharia.
3. **Khulu'** - occurs on the basis of a woman demanding a divorce from her husband in return for a certain compensation.
4. **Difference** – a divorce carried out by a judge or authorized judicial authority, usually due to various disputes, injustice, or failure to provide maintenance.
5. **Ila** – a situation that occurs when a husband swears to his wife not to have sexual intercourse for a certain period of time and then does not have intercourse even after this period has expired.
6. **Zihar** - is one of the vows of the Jahiliyyah period, which is avoided as much as possible in Islam , but if it is followed, it causes divorce.
7. **Thought** - termination of marriage by both parties swearing in the name of God without proof of adultery between the spouses.

Thus, the annulment of marriage in Islamic law is always based on legal basis and wisdom. This is another form of legal approach aimed at ensuring the stability of family and society in Sharia.

In Islamic jurisprudence, marriage is a sacred covenant between two sane, adult men and women, based on the requirements of Sharia law. This covenant is realized through a marriage contract (contract) and binds the two individuals with mutual rights and obligations for life.

One of the circumstances that terminates a marriage is **the death of one of the spouses** . In this case, the marriage ends spontaneously, that is, without any separate legal action. Islamic jurists consider this a natural event and explain it as the “dissolution of the marriage” – that is, its automatic termination in accordance with the requirements of the Sharia. A woman is obliged to wait for **the iddah** (waiting period) after the death of her husband. The word “iddah” means “counting” in Arabic. In the term, it refers to the interim period during which a woman who has been separated from her husband due to death or divorce waits without touching another husband. The iddah is actually a period established in the Sharia to honor the memory of the deceased husband and the life she spent with the divorced husband, and most importantly, to determine whether the woman is pregnant [3. –B.348.].

This period is clearly defined in the Quran and is **four months and ten days** (Surah Al-Baqarah, verse 234). This period is necessary to determine the woman's pregnancy status and possible nisab issues after the marriage is concluded. The spouse of a deceased person has the right to inherit a certain share. If the man has died, his wife receives 1/4 of his inheritance (if

he has children). If there are no children, 1/2 of the share is withheld (Surah An-Nisa, verse 12). In this case, there is no need for a ruling or decision such as "talaq" or "tafriq". The marriage is immediately considered null and void according to Sharia law. Termination of marriage upon death serves, first of all, to protect human rights. It opens up the possibility of a new marriage for the deceased spouse.

In the Islamic legal system (fiqh), the right to **divorce**, that is, to dissolve a marriage, is primarily vested in the husband. This right is established in the Quran and Sunnah and is considered one of the legal powers of the husband in connection with his position of leadership in marital relations. However, this right is not absolute and unconditional; its exercise requires certain legal and intellectual conditions.

The following are necessary for divorce to be valid: first, to say or write or indicate by gesture the word that is usually used in the dictionary and custom to mean divorce; second, to understand the meaning of the word; if someone is taught the word for divorce in another language and uses it without knowing its meaning, then divorce does not apply; third, to attribute the word to the wife. This includes saying the woman's name, addressing her, describing her, pointing to her, etc.; fourth, there must be no doubt about the word and number of the word for divorce. Even if the word is pronounced incorrectly, divorce does apply [5.].

This issue is also supported by Quranic verses and hadiths. The Quran directly addresses men in its rulings on divorce: "When you divorce women, then calculate their waiting periods..." (Surah At-Talaq, verse 1) [6.]. This verse indicates that the command and responsibility for divorce are directed at men, and that they are responsible for ending the marriage.

Islamic law, by giving the husband the right to divorce, also places a responsibility on him. The husband not only has the right to divorce, but he also has the obligation to exercise it with justice, reason, and respect. This right must be exercised with caution, in accordance with the Shariah, and with good manners.

Islamic scholars have different opinions about whether the divorce of a drunk person who has lost consciousness due to the consumption of alcoholic beverages or narcotics is valid. Some say that the divorce of such a drunk person is not considered legitimate and does not entail any legal consequences, while some scholars say that the divorce of a drunk person is valid [7. –P.399-400.]. In "Fatawa Qazikhan" it is said: "The divorce of a person who is drunk from wine and alcohol is invalid" [3. –P.286.]. The chapter on "Divorce by Writing" in "Fatawa Qazi Khan" states the following, which is of some importance for today's technologically advanced era: "There are two types of writing: Clear: writing on a page, wall, or ground in a way that can be read and understood. Unclear: writing on air, water, or anything else that cannot be read and understood. In the second "unclear" type of writing, if there is no firm intention in the heart, divorce does not occur. If the writing is written clearly enough to be read and divorce is intended, then divorce occurs, otherwise it does not. In the first type of writing, that is, in the "clear" case, divorce occurs regardless of whether there was intention or not. What is written is never nullified. If the person who wrote the divorce and sent it wrote, "You are divorced," then divorce occurs from the time he wrote it, and the iddah period is required.

“**khulu**” is used literally to mean “to remove clothes,” in Islamic law it refers to the dissolution of a marriage by mutual consent by a woman seeking a divorce from her husband in exchange for certain property. Thus, khulu’ is a form of divorce initiated by the woman, which is subject to certain legal and material conditions in Sharia[8.].

According to fiqh sources, in the works "Fatawa Qazikhan", "Hidoya" and "Khulosat al-Fatawa", khulu' is considered a binding divorce. That is, if khulu' is performed, a binding divorce occurs between the husband and wife and they cannot remarry until they remarry.

The main difference between khulu' and talaq is that this process is carried out by mutual agreement and is initiated by the woman. In this interpretation, the khulu' contract expresses the woman's desire to end the marriage, which she achieves by returning the dowry or giving her husband certain property. In this case, the material compensation given by the woman demonstrates her firm determination to end the marriage and her willingness to renounce the husband's property obligations.

Furthermore, in some situations, the woman's consent to additional material benefits indicates the end of harmony, solidarity, and love in the family. Therefore, Islamic jurisprudence considers it advisable not to preserve such a marriage, but to terminate it in a just manner.

In fact, annulment of marriage through the Khulu' contract expresses a number of meanings:

If a woman demands material benefits despite such difficult circumstances, this shows her selfish attitude towards wealth.

if the husband abandons the family under these conditions, this will reveal his attitude towards marriage and his wife.

Viewed from this point of view, termination of marriage through Khulu' appears as a legal form of Islamic law to accurately assess family relations and, if necessary, resolve them fairly.

Ila is defined in Islamic jurisprudence (fiqh) as a condition in which a husband swears in the name of Allah not to have sexual intercourse with his lawful wife for a certain period of time and remains steadfast in this oath. This legal condition is a matter that requires serious attention in family relations and is closely related to the rights of a woman within the framework of marriage, in particular, the right to conjugal intimacy[9.].

In the Holy Qur'an, the issue of ilah is directly mentioned:

“ For those who swear not to approach their wives, there is a waiting period of four months. If they refrain (from their oaths) - then Allah is Forgiving and Merciful. If they decide to divorce - then Allah is Hearing and Knowing. ” (Surah Al-Baqarah, verses 226-227) [6.]. Based on this verse, scholars argue that **a period of four months** is prescribed for the husband in the case of ilaa.

The trick occurs in the following order:

A man swears by Allah to his wife, "I will not have sexual intercourse with you for four months (or a certain period of time) ." If he does not have sexual intercourse despite this, that is, if he keeps his oath, the ruling of *ila'* occurs.

If a man violates his oath and has intercourse before the end of the four-month period, in this case it is required to make expiation for the oath.

If the four-month period has passed and he still does not approach his partner, the marriage can be dissolved through the intervention of a judge, that is, **tafirq (divorce)** occurs.

Ila actually represents a temporary gap in the family and coldness in the relationship between husband and wife. It is not only related to personal feelings, but also to the requirements of Sharia:

If the husband refrains from this and confirms it with an oath, the Sharia protects the interests of the woman by limiting it. Therefore, the period of *ilaa* cannot last more than four months. According to the Madhhab of Abu Hanifa, after four months, a *raj'i* divorce is valid. It is not necessary for the husband to divorce her. If the husband does not keep his oath, he is required to make an expiation for the oath.

The Hanafi madhhab and other major madhhabs also recognize the *ilayah* and are unanimous on the following points:

Four months is the maximum period. After that, the husband is required to either break his oath or dissolve the marriage.

If the oath is broken, **the expiation** is to feed or clothe ten poor people or fast for three days (based on Surah Al-Ma'idah, verse 89). From the above information, we can conclude that *Ila* is a complex legal situation that can arise in a husband-wife relationship, and Islamic law takes into account the interests of the woman in this case as well. Based on the teachings of the Holy Quran and Sunnah, specific procedures have been established to limit *Ila* and eliminate the harm that follows it.

zihar is related to the Arabic word "zohr", which means the back of a person. In Islamic law and Sharia, "zihar" is a form of separation between husband and wife. It means that the husband tells his wife, "You are like the back of my mother to me," that sexual intercourse with her is forbidden.[10.]

This practice actually originated in the socio-legal life of the Arabs. In the Arabs, this custom was mainly a form of warning the wife against her husband and stopping the formation of family relations. According to Islamic teachings, after such words, it is forbidden for the husband to have sexual intercourse with his wife, and marriage is actually a written contract or relationship.

In Sharia, *zihar* can only be performed by the husband, and this decision has certain legal consequences. The husband who utters the words of *zihar* has no right to use them again against his wife, in his own mind and in his complete judgment. There is no intimacy through *zihar*, and the marriage relationship can only be terminated in one case.

The husband who utters the words of zihar, if he has initiated it, will be held responsible in the Shariah for the oath. If the husband does not keep his word in the current situation, he will be required to make atonement for the oath. In order to make atonement for this oath, the husband must perform it in accordance with the other Shariah requirements.

The practice of zihar, for women in a state of separation who have taken an oath, is to help ensure a certain level of fairness in family rights and relationships. It is to show the appropriate and appropriate actions and actions to ensure a high level of unity of heart. If a person in such a situation enters into a state of oath-taking, they will affect their relationships and lifestyle. Performing zihar disrupts family ties and can lead to a reduction in the relationship between husband and wife.

The Hanafi Madhhab and the Shafi'i Madhhab have adopted the same decision regarding the practice of zihar and the measures prescribed for it. In both of their madhhabs, several ways after zihar, decisions about their shari'i use are also defined[11.].

Islamic law, with regard to the zihar, examines the benefits and effects of annulment of marriage according to need. These rulings require individuals to memorize and strictly apply their decisions. The procedure for this action, if it is suitable for it, is aimed at balancing people's lives and protecting their rights.

Mulaanah (Arabic: مَلَاعَنَة) is a form of marriage dissolution in Islamic law, which is carried out in cases of conflict between husband and wife. Mulaanah is a specific process in which husband and wife seek to dissolve the marriage by accusing each other of their marital relationship and convincingly proving the accusations.

Mulaanah is usually performed when there are serious problems in the relationship between a husband and wife. The essence of mulaanah is that if the husband can simply and convincingly convince his wife and her family of their actions, their marriage will be officially ended.

In this case, the husband and wife take an oath to accuse each other and prove their guilt. If the wife feels that she is being accused, she also takes an oath. In this process, the accusations made must be mutually substantiated, that is, there must be a reliable basis for any accusation.

The review must comply with the legal and Sharia requirements for the dissolution of family relations. In this case, the current decisions are made based on the guilt and convictions of the husband and wife. The necessary conditions for the review are:

Husband and wife swear an oath if they are convinced of their faults towards each other. These oaths must only be unchangeable and reliable.

Both parties must convince each other of their faults. In this case, the faults are justified and, at the same time, are the main reason that leads to conflicting situations in their marriage.

The husband and wife's faults must be proven to each other in a reliable manner. If the faults are reliable, the outcome of the discussion can be certain.

According to Islamic law, adultery is committed through mutual accusations between husband and wife and leads to the dissolution of the marriage. The Holy Quran pays special attention to the situation of adultery:

“The ruling for a woman who swears with any fault according to the Book of Allah is that she must prove that she is of sound mind and understanding. If she errs in her oaths, they must also perform their duty.” (Surah An-Nisa, verse 6) [6.]

This verse emphasizes that marriage can be dissolved by accusation and proof of one's own guilt. The accused parties take an oath. If their guilt is clear, the stage of mu'ala'nah is adopted in this order. If both parties can prove their guilt through their oaths, the marriage is dissolved. This process must be carried out in accordance with Sharia. The purpose of mu'ala'nah is to dissolve the marriage through the faults of both parties, the contradictions and difficulties in their relationship. This is not at all an attempt to maintain family peace and stability. Mu'ala'nah only helps to resolve misunderstandings in the family relationship of husband and wife and to identify faults.

In Islam, marriage is considered obligatory and the family is indissoluble, and the bond between a husband and a wife is recognized as sacred. Accordingly, Islam prohibits a husband and a wife from living together without marriage. This encourages Muslims to treat marriage and the family with honor and caution. In order to ensure the stability of family life, Islamic law allows for the dissolution of marriage if these goals cannot be achieved. The increase in minor family disputes, which is relevant today, has become a problem that can be solved by studying the instructions of the Sharia and using them effectively. Islamic family law helps to correctly understand the obligations of husband and wife related to the dissolution of marriage, and to deeply understand the sacred importance of the family and marriage.

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