307000 - Types of Divorce in Islam

the question

What are the types of divorce (Talaq)?

Summary of answer

Divorce in Islam is divided into different types based on different criteria:
1. in terms of the ruling (halal, haram, etc);
2. in terms of the words used;
3. in terms of its consequences;
4. in terms of whether it takes effect immediately or it is subject to conditions.

Detailed answer

Praise be to Allah.

Divorce may be divided into different categories, based on different criteria, as follows:

Types of divorce based on the ruling (permissible, prohibited, etc)

The jurists have divided divorce, in terms of the Islamic ruling thereon, into the following categories:

1. Permissible divorce which is in accordance with Islamic teachings. This is called Sunnah divorce (At-Talaq As-Sunni). This refers to divorcing a woman once (one Talaq), when she is pregnant or during a period of purity [i.e., when she is not menstruating] in which the husband has not had intercourse with her.
2. Prohibited divorce which is contrary to Islamic teachings. This is called innovated divorce (At-Talaq Al-Bida'i).

Types of prohibited divorce

Prohibited divorce is of two types:

- Divorce that is innovated in terms of its timing, such as divorcing one who is not known to be pregnant – and who is obliged to observe `Iddah on the basis of her menstrual cycle – when she is menstruating , or during a period of purity [i.e., when she is not menstruating] in which the husband has had intercourse with her. However, if it has become evident that she is pregnant, then it is permissible to divorce her, even if he has had intercourse with her during a period of purity. Similarly, if she is not obliged to observe `Iddah, such as one with whom the marriage has not been consummated, if he divorces her when she is menstruating, the divorce is valid according to the Sunnah . This also applies if she is one who does not menstruate, such as one who is very young or an old woman – there is no blame on him if he divorces her [at any time].
- Divorce that is innovated in terms of the number of times the word of divorce is uttered, such as if he divorces her more than once and says “You are twice divorced” or “You are thrice divorced,” because the Sunnah is to issue one divorce (Talaq).

The scholars differed as to whether the innovated divorce counts as such. The view that we favour is that it does not count as such, and that the threefold divorce counts as one.

Types of divorce in terms of the words used

In terms of the words used, the jurists have divided divorce into that which is explicit and that which is implicit.

1. An explicit divorce is that which cannot be understood as meaning anything except divorce, such as when a man says to his wife “You are divorced (Taliq or Mutallaqah)” or “I divorce you.” This divorce counts as such, whether the husband intended divorce or not.
2. An implicit divorce is that which may be understood as referring to divorce or to something else, such as when a man says to his wife: “You are free” or “You are in control of your own affairs” or “Do what you like” or “Go and join your family” or “I have no need of you” and so

on.

What matters in this type of divorce is the intention. If the husband intends divorce, then it counts as such, otherwise it does not.

Types of divorce in terms of its consequences

In terms of its consequences, divorce may be divided into two categories:

1. Revocable divorce , which is when the husband divorces his wife for the first or second time, without her offering him any compensation for that; it is permissible for him to take her back before her `Iddah ends.
2. Irrevocable divorce . An irrevocable divorce is of different types:

- Major irrevocable divorce, which is when a man issues a third divorce to his wife. In this case, it is not permissible for her to go back to him until after she has married someone else, in a valid and genuine marriage (i.e., after consummating the marriage), then that husband leaves her.
- Minor irrevocable divorce, which is when the man divorces his wife for the first or second time, then her `Iddah ends; or he divorces his wife in return for compensation, which is called Khul` ; or he divorces her before consummating the marriage with her. In this case, it is permissible for him to take her back, but it must be with a new marriage contract and a new Mahr (dowry).

Types of divorce in terms of whether it takes effect immediately or it is subject to conditions

1. Divorce with immediate effect, such as when the husband says to his wife, “You are divorced” or other implicit words with the intention of divorce, without making the divorce conditional upon anything.
2. Divorce which depends upon a condition .

Types of conditional divorce

- When it depends on a clear condition that cannot be interpreted in any other way. This counts as a divorce in all cases, such as if he says, “When the sun sets, you are divorced.” In this case, when the sun sets, she is divorced, because it is a clear condition.
- When it is connected to a clear oath. In this case, divorce does not take place, but he must offer expiation for breaking an oath, such as if he says: “If I speak to Zayd, then my wife is divorced.” In this case, his intention was to prevent himself from speaking to Zayd, so this is a clear oath, because there is no connection between his speaking to Zayd and his divorcing his wife.
- When it may be understood as a clear condition or a clear oath. In this case, we must refer to the intention of the one who said that, such as if he says to his wife: “If you leave the house, then you are divorced.” It may be that he intended this as a condition, meaning that if his wife goes out he will no longer be interested in her, and she will be divorced. In this case, he intended to divorce her.

Or it may be that he did not intend to issue a divorce; rather he is still interested in his wife even if she goes out, and he does not want to divorce her, but he intended thereby to prevent her from going out, and he connected it to divorcing her as a threat. If she goes out in this case, she is not divorced, because this was intended as an oath.

See: Ash-Sharh l̩-Mumti‘ (13/126)

We also advise you to read the book At-Talaq by Dr. ‘Awad Ash-Shahri, which is a Master’s dissertation.

And Allah knows best.