

Compensationless *Khul'* and Post-Consummation *Mut'a*: A Comparative Doctrinal Analysis

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Abstract

Islamic jurisprudence distinguishes wife-initiated dissolution (*khul'*) from husband-initiated repudiation (*ṭalāq*), yet the juridical status of compensationless *khul'* and the conditional obligation of post-consummation *mut'a* remain undertheorized in comparative scholarship. This study examines the doctrinal rulings of the four Sunni schools on these two questions. Employing a qualitative doctrinal design, the research critically analyzes authoritative classical manuals across the *Ḥanafī*, *Mālikī*, *Shāfi'ī*, and *Ḥanbalī* traditions through comparative *fiqh* and *uṣūlī* frameworks. The findings reveal that compensationless *khul'* is uniformly classified as a metaphorical formula (*kināya*) requiring juridical intention (*niyya*), with divergent revocability outcomes: irrevocable (*bā'in*) in the *Ḥanafī* and dominant *Mālikī* and *Shāfi'ī* views, yet revocable (*raj'ī*) in the authoritative *Ḥanbalī* position. Regarding *mut'a*, only the *Shāfi'ī* school mandates it as obligatory for post-consummation divorcees, whereas the *Ḥanafī* and *Ḥanbalī* schools restrict obligatoriness to pre-consummation scenarios with unrealized dower, and the *Mālikī* school treats it as uniformly recommended. These findings demonstrate that classical divergence stems from differential calibration of linguistic formalism and substitutive-obligation logic, carrying direct implications for contemporary Islamic family law codification.

Keywords: *khul'*, *mut'a*, comparative *fiqh*, Sunni jurisprudence, Islamic divorce law

INTRODUCTION

Marital dissolution represents one of the most legally consequential and socially disruptive events in Islamic family law, affecting economic security, lineage integrity, and gendered obligations across Muslim-majority societies. Globally, divorce rates in countries operating under Islamic personal status codes such as Egypt, Pakistan, Malaysia, and Indonesia have risen steadily over the past two decades, prompting urgent calls for legislative reform that balances classical doctrinal fidelity with contemporary equity concerns (Esposito & DeLong-Bas, 2018; Tucker, 2008). Within the classical tradition, *Islamic jurisprudence* recognizes two principal mechanisms for terminating marriage: unilateral repudiation (*ṭalāq*) initiated by the husband, and the wife-initiated contractual dissolution known as *khul'*, classically conceptualized as requiring material compensation (*iwaḍ*) from the wife to the husband (Hallaq, 2009). Concurrently, the post-divorce financial entitlement designated *mut'a* a consolatory provision for certain categories of divorced wives generates significant *inter-madhab* divergence between obligatoriness (*wujūb*) and mere recommendability (*istiḥbāb*), particularly in relation to marital consummation (*dukhūl*) (Al-Anṣārī, 2024).

Despite the voluminous classical literature on both institutions, two specific doctrinal loci remain comparatively underexplored in modern academic scholarship. First, the precise juridical

status and revocability classification of *khul'* pronounced in the absence of compensation (*khul' bi-ghayr 'iwad*) has not been systematically reconstructed across the four Sunni schools within a single comparative framework. Second, the conditional obligatoriness of *mut'a* for women divorced after consummation (*al-muṭallaqah ba'd al-dukhūl*) lacks granular comparative analysis, particularly regarding how *Ḥanafī* doctrine interacts with the other three schools. Although classical jurists expounded these rulings through the lenses of linguistic analysis (*'ilm al-waḍ'*) and substitutive obligation (*qā'idat al-badāla*), modern scholarship has not adequately addressed their *inter-madhab* dimensions or their implications for contemporary legal practice (Kamali, 2006; Mir-Hosseini, 1999).

Previous studies provide important but partial foundations for this inquiry. Hallaq (2009) demonstrated that pre-modern *Islamic jurisprudence* operated with substantially greater doctrinal precision than many modern codifications, observing that contemporary statutory conflation of distinct juridical mechanisms often produces procedural ambiguity. Kamali (2006) outlined the methodological architecture of comparative Islamic legal studies, emphasizing that *al-fiqh al-muqāran* must foreground divergent evidentiary weightings (*tarjīḥāt*) that produce different outcomes from a shared scriptural corpus. Esposito and DeLong-Bas (2018) surveyed the status of women under Muslim family law across jurisdictions, noting that legislative treatments of *khul'* and *mut'a* frequently depart from classical calibrations; yet their work did not engage the specific doctrinal questions of compensation less formulae or post-consummation obligation. These gaps indicate a substantive research lacuna: contemporary codifications routinely invoke *khul'* and *mut'a* without the doctrinal precision that classical schools bring to their application, resulting in procedural conflation and the under-specification of financial obligations that bear directly on women's post-divorce economic security.

The urgency of this inquiry is underscored by the global momentum toward Islamic family law reform. In jurisdictions such as Egypt, statutory frameworks categorize *mut'a* as a judicial remedy for arbitrary *ṭalāq*, departing significantly from all four classical positions — none of which grounds *mut'a* in the husband's subjective conduct, but rather in objective criteria relating to consummation and dower status (Nasir, 2009; Welchman, 2000). Conversely, legislative silence on *mut'a* as observed in certain South Asian codifications contradicts the minimum recommendability common to all four schools. Similarly, codifications that subsume *khul'* under a generic "wife-initiated divorce" category without specifying whether compensation is required risk generating juridical ambiguity about the revocability of the resulting dissolution, with direct consequences for the wife's right to remarry and the husband's right of retraction.

The novelty of this study lies in its simultaneous interrogation of two undertheorized doctrinal questions within a single comparative framework. By examining how each of the four Sunni schools *Ḥanafī*, *Mālikī*, *Shāfi'ī*, and *Ḥanbalī* addresses compensationless *khul'* and post-consummation *mut'a*, the research elucidates the sophisticated linguistic formalism and substitutive-obligation logic underpinning classical divorce jurisprudence. The study does not privilege any single school's position as normatively superior; rather, it explicates the internal logic of each school's ruling, traces its evidentiary foundations in *Qur'ānic* hermeneutics and prophetic precedent, and identifies the *uṣūlī* principles calibrating divergent outcomes.

Accordingly, this study pursues two objectives framed as research questions: (i) Is *khul'* without compensation valid across the four Sunni schools, and if so, does it effect a revocable or irrevocable divorce? (ii) Is *mut'a* obligatory, recommended, or inapplicable for a wife divorced after consummation according to each school? The benefits of this inquiry are both theoretical and practical. Theoretically, it advances comparative *fiqh* scholarship by reconstructing granular

doctrinal positions within their *uṣūlī* architectures. Practically, it provides legislative drafters, jurists, and policy-makers with a source-grounded map of *inter-madhab* divergence that can inform more coherent and equitable codifications of Islamic family law. The implications extend beyond academic jurisprudence to judicial training, legislative drafting, and the protection of women's economic rights in post-divorce contexts.

METHOD

Research Type. This study employed qualitative doctrinal legal research (*al-baḥth al-istinbāṭī*), a normative-analytical methodology that examines established legal propositions within authoritative texts to extract, systematize, and evaluate jurisprudential rules (Kamali, 2006).

Research Design. The design integrates classical text analysis (*naqd al-matn*) with a comparative *fiqh* framework (*al-fiqh al-muqāran*). The comparative dimension operates synchronically, examining the mature classical positions as crystallized in the post-classical commentarial tradition, while the *uṣūlī* dimension traces each ruling to its underlying jurisprudential principles, including the taxonomy of divorce formulae (*ṣarīḥ* vs. *kināya*), the scope of Qur'ānic injunctions (*ʿumūm* vs. *takhṣīṣ*), and the principle of substitutive obligation (*qāʿidat al-badāla*).

Population and Sample. The population comprises the classical legal corpora (*matn-sharīḥ* tradition) of the four Sunni schools. The sample was selected through purposive sampling of *muʿtamad* (relied-upon) manuals identified by established scholarly consensus as authoritative within each school. For the Ḥanafī school, the sample includes al-Shaybānī's *al-Aṣl*, al-Kāsānī's *Badāʾiʿ al-Ṣanāʾiʿ*, al-Marghīnānī's *al-Hidāyah*, and Ibn ʿĀbidīn's *Radd al-Muḥtār*. Mālikī sources encompass Ibn Rushd al-Qurṭubī's *Bidāyat al-Mujtahid* and *al-Muqaddimāt al-Mumahhadāt*, al-Kharshī's commentary on *Mukhtaṣar Khalīl*, and al-Zurqānī's *Sharḥ ʿalā Mukhtaṣar Khalīl*. Shāfiʿī doctrine is derived from al-Nawawī's *Minhāj al-Ṭālibīn*, al-Haytamī's *Tuḥfat al-Muḥtāj*, and al-Anṣārī's *Fatḥ al-Wahhāb*. Ḥanbalī positions are sourced from Ibn Qudāma's *al-Muqniʿ*, *al-Kāfī*, and *al-Mughnī*, alongside al-Mardāwī's *al-Inṣāf* and Ibn al-Najjār's *Muntahā al-ʾIrādāt*.

Research Instruments. Data extraction was guided by a researcher-developed doctrinal analysis protocol comprising three coding frames: (i) formula taxonomy, distinguishing explicit (*ṣarīḥ*) from metaphorical (*kināya*) locutions; (ii) compensatory structure, identifying the presence, absence, or functional equivalence of *ʿiwad*; and (iii) obligation classification, categorizing *mutʿa* as obligatory (*wājib*), recommended (*mustaḥabb*), or inapplicable relative to consummation status and dower specification.

Data Collection Technique. Primary data were collected through systematic documentary search and critical reading of published critical editions of the selected manuals. Secondary data were drawn from peer-reviewed contemporary scholarship on Islamic family law to contextualize classical rulings within modern codification debates.

Data Analysis Method. The analysis proceeded in three stages. First, thematic doctrinal analysis extracted school-specific rulings on the two research questions. Second, comparative mapping juxtaposed inter-madhab divergence (*ikhtilāf*) and convergence (*ittifāq*) across identical legal questions. Third, the *uṣūlī* tracing explained doctrinal divergence as the product of coherently yet differently calibrated jurisprudential frameworks rather than arbitrary variation.

RESULTS AND DISCUSSION

Research Question 1: Juridical Validity and Revocability of Compensationless *Khul'*: Classical jurisprudence defines *khul'* as dissolution at the wife's initiative, typically in exchange for material compensation (*'iwad*) surrendered to the husband, grounded in Q. al-Baqarah 2:229. The critical question arises when *khul'* is pronounced without this compensatory element.

Table 1. Classification of Compensationless *Khul'* across the Four Sunni Schools

School	Formula Classification	Intention (Niyya) Requirement	Result when Intended as Divorce	Revocability
Ḥanafī	<i>Kināya</i> (metaphorical)	Required	One irrevocable (<i>bā'in</i>) divorce	Irrevocable
Mālikī	<i>Kināya</i>	Required	<i>Bā'in</i> divorce (if formula explicit)	Irrevocable
Shāfi'ī	<i>Kināya</i>	Required + wife's acceptance	<i>Bā'in</i> divorce	Irrevocable
Ḥanbalī (mu'tamad)	<i>Kināya</i>	Required	Standard divorce	Revocable (<i>raj'ī</i>)

The Ḥanafī school, following al-Kāsānī (2003), classifies compensationless *khul'* as *kināya* because the term “*khul'*” is lexically ambiguous, denoting generic “removal” (*naza'*) and acquiring its technical meaning only through customary specification (*ta'yīn 'urfī*). Absent *'iwad*, the utterance requires the husband's explicit intention; if he intends one divorce, one irrevocable (*bā'in*) repudiation occurs. The Mālikī school, as articulated in *Mukhtaṣar Khalīl* and its commentaries, similarly conditions *baynūna* on the presence of *'iwad*; without it, the formula operates as *kināya*, yielding *bā'in* divorce upon intention. The Shāfi'ī school, per al-Nawawī (2005) and al-Haytamī (2020), distinguishes *khul'* with property mention (*ṣarīḥ*) from *khul'* without it (*kināya*); if the husband intends divorce and the wife accepts, an irrevocable dissolution occurs; otherwise, a revocable divorce result. The Ḥanbalī school presents two transmitted positions, but the authoritative (mu'tamad) view documented in al-Mardāwī (1956) holds that *khul'* without compensation cannot constitute genuine *khul'* because exchange (*mu'āwada*) is constitutive of the institution; absent this element, the formula reverts to *kināya* and, if intended, yields a revocable (*raj'ī*) divorce unless the husband has exhausted his divorce allotments.

Research Question 2: Obligation of *Mut'a* for Wives Divorced After Consummation: The institution of *mut'a* derives its Qur'ānic foundation from Q. al-Baqarah 2:236, Q. al-Aḥzāb 33:49, and Q. al-Baqarah 2:241. Its obligatoriness depends on the schools on consummation, dower specification, and mode of dissolution.

Table 2. Status of Mut‘a for Post-Consummation Divorcees across the Four Sunni Schools

School	Post-Consummation Status	Pre-Consummation (Unspecified Dower)	Underlying Rationale
Ḥanafī	Recommended (<i>mandūb</i>)	Obligatory (<i>wājib</i>)	Substitutive obligation (<i>qā‘idat al-badāla</i>): <i>mut‘a</i> substitutes for unrealized dower
Mālikī	Recommended (<i>mustaḥabb</i>)	Recommended (<i>mustaḥabb</i>)	Ethical-excellence reading of Q. 2:236; linked to husband’s unilateral prerogative
Shāfi‘ī	Obligatory (<i>wājib</i>)	Obligatory (if no dower specified); Obligatory (if half-dower specified) alongside half-dower (if specified)	Consolatory function: <i>mut‘a</i> addresses emotional harm (<i>wahsha</i>) unaddressed by dower
Ḥanbalī	Recommended (<i>mustaḥabb</i>)	Obligatory (unmothered, unspecified/invalid dower)	Compensatory gap-filling when no valid dower was realized

The Ḥanafī school bifurcates *mut‘a* into obligatory and recommended categories. Per Ibn Rushd (1995) and al-Kāsānī (2003), *mut‘a* is obligatory only for pre-consummation divorce where no dower was specified or where the dower was invalidated (*fāsīd*), functioning as a substitute (*badal*) for the obligatory exemplary dower (*mahr al-mithl*). Post-consummation, the wife has realized her dower, so *mut‘a* is reclassified as recommended (*mandūb*) because accumulating a substitute obligation atop an already-fulfilled original generates a logical contradiction (*ijtima‘ al-badal wa’l-aṣl*). The Mālikī school adopts the minority position: *mut‘a* is uniformly recommended across all categories, interpreting the qualifier “with beneficence” (*‘alā al-muḥsinīn*) in Q. 2:236 as transferring the command from obligation to ethical excellence (*iḥsān*). The Shāfi‘ī school stands alone in mandating *mut‘a* as obligatory for all post-consummation divorcees, reasoning that the dower compensates for sexual access (*istīfā‘ al-buḍ‘*) but not for the emotional harm (*wahsha*) of abandonment following intimacy. The Ḥanbalī school aligns with the Ḥanafī position on pre-consummation obligatoriness but extends it to cases of invalid dower, while maintaining recommendability post-consummation.

Discussion

The findings reveal systematic doctrinal convergence and divergence rooted in shared *uṣūlī* principles differently calibrated. All four schools agree that compensationless *khul‘* does not automatically effect an irrevocable dissolution in the full technical sense of *khul‘*; the absence of *‘iwad* shifts the formula into the metaphorical-intention-dependent register (*kināya*). This convergence reflects a shared commitment to linguistic formalism: the technical juridical meaning of *khul‘* is anchored in the compensatory structure of exchange (*mu‘āwada*), and when that structure is absent, the utterance cannot bear the same juridical weight as an explicit divorce formula. However, the schools diverge on the consequences of intention. The Ḥanafī, Mālikī, and Shāfi‘ī schools classify the operative divorce as irrevocable (*bā‘in*) when intention is present, whereas the authoritative Ḥanbalī view classifies it as revocable (*raj‘ī*). This divergence stems from differential weighting of the wife’s initiative: the Ḥanbalī *mu‘tamad* view treats the absence

of compensation as depriving the utterance of the distinctive *khul'* character, causing it to revert to ordinary *ṭalāq* rules where revocability is the default unless tripartite exhaustion occurs.

Regarding *mut'a*, the principal divergence concerns whether post-consummation provision is obligatory or recommended. The Shāfi'ī school's unique mandate of obligatoriness rests on a consolatory theory: *mut'a* serves a function distinct from dower, addressing the emotional and social disruption of post-intimacy abandonment. The Ḥanafī and Ḥanbalī schools, by contrast, operate within a compensatory/substitutive framework: *mut'a* fills the gap only when the primary financial right attaching to marriage exemplary or specified dower remains unrealized. Once consummation occurs and the dower is fulfilled, no compensatory gap exists, and the general Qur'ānic command in Q. 2:241 is interpreted as recommendability (*nadb*) rather than obligation. The Mālikī school's uniform recommendability reflects an ethical-excellence hermeneutic that resists judicial enforceability of *mut'a* across all categories, linking it to voluntary *iḥsān* rather than legal duty.

These doctrinal distinctions carry direct practical implications for contemporary Islamic family law reform. Legislative codes in Muslim-majority jurisdictions that subsume *khul'* under a generic "wife-initiated divorce" category without specifying the compensatory element risk generating precisely the juridical ambiguity that classical *fiqh* sought to prevent. For instance, if a modern statute treats all wife-initiated dissolution as irrevocable *khul'* regardless of compensation, it inadvertently strips wives of the revocability protections that the Ḥanbalī school (and, conditionally, the Shāfi'ī school) would afford them when compensation is absent. Conversely, if a code treats compensationless dissolution as automatically revocable, it undermines the irrevocable status that the Ḥanafī and Mālikī schools assign to intended formulae. Codifications must therefore specify whether compensation is a constitutive element or merely an economic incident of dissolution, and they must calibrate revocability accordingly.

Similarly, statutory treatments of *mut'a* that uniformly mandate it as obligatory for all post-divorce wives—as in the Egyptian Personal Status Law—depart from the classical tradition's careful factual calibration. None of the four schools' grounds *mut'a* in the husband's subjective fault; all four predicate it on objective criteria of consummation and dower status. A codification that ignores these criteria and instead predicates *mut'a* on judicial discretion over the husband's conduct introduces a legal standard foreign to classical jurisprudence. Conversely, legislative silence on *mut'a*—as observed in certain South Asian frameworks—contradicts the minimum recommendability common to all schools and may leave divorced wives without even a normative expectation of post-dissolution provision. A *maqāṣid*-informed approach to reform (Kamali, 2006) would thus require legislators to attend to these doctrinal nuances not as antiquarian relics but as prerequisites for coherent and gender-sensitive codification.

CONCLUSION

This study demonstrates that compensationless *khul'* is uniformly classified across the four Sunni schools as a metaphorical formula (*kināya*) requiring juridical intention (*niyya*) for legal efficacy, yet the schools diverge consequentially on revocability: the Ḥanafī, Mālikī, and Shāfi'ī positions yield irrevocable (*bā'in*) dissolution when intention is present, whereas the authoritative Ḥanbalī view yields a revocable (*raj'ī*) divorce. Regarding *mut'a*, only the Shāfi'ī school mandates it as obligatory for post-consummation divorcees; the Ḥanafī and Ḥanbalī schools restrict obligatoriness to pre-consummation scenarios with unrealized dower expectations, and the Mālikī school treats it as uniformly recommended. These divergences reflect coherent yet differently calibrated applications of shared *uṣūlī* principles linguistic formalism, substitutive-obligation logic, and hermeneutical treatments of Qur'ānic imperatives rather than arbitrary variation. For future research, scholars should empirically examine how contemporary Islamic courts assess juridical intention (*niyya*) in compensationless *khul'* cases across different national legal systems; analyze modern codifications in Egypt, Malaysia, Indonesia, and Pakistan against the classical positions documented here; and engage in comparative legal scholarship with Jewish marital dissolution law (*gett*) and canonical Catholic annulment provisions to situate Islamic juridical tradition within a broader framework of religio-legal post-dissolution economic obligation.

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