

222367 - What is tahleel marriage?

the question

What is tahleel marriage?

Detailed answer

Praise be to Allah

Firstly:

The husband is given the option of taking back his wife if he has divorced her (by talaaq) twice, and this is called revocable divorce. Allah, may He be exalted, says (interpretation of the meaning):

“The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness”

[al-Baqarah 2:229].

If he divorces her a third time, then she becomes haraam for him and it is not permissible for him to marry her with a new marriage contract and mahr unless she marries someone other than him, in a valid and genuine marriage, then he (second husband) consummates the marriage with her, then divorces her or dies and leaves her a widow. Allah, may He be exalted, says (interpretation of the meaning):

“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them

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that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the limits of Allah, which He makes plain for the people who have knowledge”

[al-Baqarah 2:230].

It was narrated from ‘Aa’ishah (may Allah be pleased with her) that Rifaa’ah al-Qurazi married a woman then he divorced her, issuing a third divorce. Then she married another man, then she came to the Prophet (blessings and peace of Allah be upon him) and told him that he did not have intercourse with her, and the Messenger (blessings and peace of Allah be upon him) understood that she wanted to go back to Rifaa’ah, so he (blessings and peace of Allah be upon him) said: “No, not until he (the second husband) tastes your sweetness and you taste his sweetness [a metaphor for consummation of the marriage].”

Narrated by al-Bukhaari (5011) and Muslim (1433).

Secondly:

It is not permissible for the man who issued the divorce, or for the woman, to use tricks to get around the laws of Allah and get back together by means of what is called a tahleel marriage. This kind of marriage takes several forms, including the following:

1. where the husband who had issued the divorce, or the woman, or her guardian, hire a human “billy-goat”, and stipulate that he must marry the divorced woman, consummate the marriage with her, then divorce her, and they give him a sum of money in return for that!
2. Where a man marries that divorced woman without making any agreement with anybody, but his aim is to make her permissible for the first husband, then he divorces her.

Tahleel marriages are haraam and invalid, and those who do that deserve to be cursed.

It was narrated that ‘Abdullah ibn Mas’ood said: The Messenger of Allah (blessings and peace of

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Allah be upon him) cursed the muhallil and the muhallal lahu. [The muhallil is the one who marries a woman and divorces her so that she can go back to her first husband, and the muhallal lahu is the first husband] Narrated and classed as saheeh by at-Tirmidhi (1120); also narrated by an-Nasaa'i (3416).

Al-Haafiz Ibn Hajar (may Allah have mercy on him) said:

It was classed as saheeh by Ibn Qattaan and Ibn Daqeeq al-'Eid according to the conditions of al-Bukhaari.

End quote from at-Talkhees al-Habeer (3/72)

Ibn al-Qayyim (may Allah have mercy on him) said:

With regard to the Prophet (blessings and peace of Allah be upon him) cursing them [the muhallil and the muhallal lahu], this is either telling that Allah, may He be exalted, has cursed them, or it is a supplication for them to be cursed. This indicates that it is haraam and is a major sin. End quote from Zaad al-Ma'aad fi Hadiy Khayr al-'Ibaad (5/672)

It was narrated that 'Uqbah ibn 'Aamir said: The Messenger of Allah (blessings and peace of Allah be upon him) said: "Shall I not tell you of a borrowed billy-goat?" They said, Yes, O Messenger of Allah. He said, "He is al-muhallil. May Allah curse al-muhallil and al-muhallal lahu."

Narrated by Ibn Maajah (1936); classed as hasan by al-Albaani in Saheeh Ibn Maajah.

These hadiths indicate that tahleel marriage is haraam, and that it is a major sin; they also indicate that it is not valid.

It says in al-Mawsoo'ah al-Fiqhiyyah (10/256, 257):

The majority of scholars - the Maalikis, Shaafa'is, Hanbalis and Abu Yoosuf among the Hanafis -

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are of the view that this kind of marriage is invalid, because of the two hadiths quoted above, and because marriage for the purpose of tahleel comes under the same heading as temporary marriage, and stipulating that a marriage is to be temporary renders it invalid. So long as the marriage is invalid, no tahleel occurs thereby [i.e., it does not make it permissible for the woman to go back to her first husband after the second marriage ends]. This is supported by the view of 'Umar (may Allah be pleased with him) who said: "By Allah, no muhallil or muhallal lahu will be brought to me but I will stone them." End quote.

Shaykh 'Abd al-'Azeez ibn Baaz (may Allah have mercy on him) said:

This is one of the most abhorrent kinds of falsehood, and one of the gravest kinds of corruption. He is in effect a zaani (fornicator or adulterer), because he did not marry her so that she could be a wife to him, and keep him chaste and stay with him, and so that he might hope to have children from her. No, rather he came as a borrowed billy-goat, to make her permissible for the one who came before him, by having intercourse with her once, then leaving her and finishing with her. This is the muhallil; his marriage is invalid and is not legitimate, and she does not become permissible for the first husband so long as (the second husband) married her with this intention and for this purpose. It is an invalid marriage and she is not permissible for him or for the first husband, because this is not a marriage, and Allah says (interpretation of the meaning): "until she has married another husband" [al-Baqarah 2:230]. This is a borrowed billy-goat, not a legitimate husband, and he does not make her permissible for the first husband .

End quote from Fataawa ash-Shaykh Ibn Baaz (20/277, 278)

With regard to the prohibition on tahleel marriage and its invalidity, it makes no difference whether the condition of tahleel is specifically mentioned in the marriage contract or if the agreement is made beforehand and not mentioned at the time of the marriage contract, or the second husband had that intention without anybody stipulating it or coming to some agreement to

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that effect with him. In all these cases it is a tahleel marriage and is haraam.

Ibn al-Qayyim (may Allah have mercy on him) said:

There is no difference of opinion, according to the people of Madinah, the scholars of hadith and the fuqaha', whether that is stipulated verbally or by implicit agreement and intention, because in their view the intention behind contracts carries weight, and actions are judged by intentions, and in their view a condition was agreed implicitly is like one that was spoken aloud, because words are not sought in and of themselves, but because of the meaning to which they point. So once the meaning and intention become clear, the actual words do not matter, because they are just the means (of expressing what is in the heart) and in this case that aim has been achieved, therefore the rulings are to be based on the aims.

End quote from Zaad al-Ma'aad fi Hadiy Khayr al-'Ibaad (5/110)

The scholars of the Standing Committee for Issuing Fatwas said:

If a man marries a woman on condition that it be for the purpose of tahleel, or he intends that, or they both agree to that, then the marriage contract is invalid and the marriage is not legitimate.

End quote from Fataawa al-Lajnah ad-Daa'imah (18/439)

Al-Bayhaqi narrated in as-Sunan al-Kubra (7/208) from Naafi' that he said: A man came to 'Umar (may Allah be pleased with him) and asked him about a man who divorced his wife three times, then a brother of his married her without any prior agreement with him, so as to make her permissible for his brother - does she become permissible for the first husband? He said: No, unless it is a genuine marriage. We used to regard this as fornication at the time of the Messenger of Allah (blessings and peace of Allah be upon him).

Shaykh Muhammad ibn Saalih al-'Uthaymeen (may Allah have mercy on him) said:

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If the second husband has the intention that when he has made her permissible for the first husband he will divorce her, then she does not become permissible for the first husband, and the marriage is invalid. The evidence for that is that this is the intention of tahleel, so it is included in the curse. The Prophet (blessings and peace of Allah be upon him) said: "Actions are but by intentions, and each person will have but that which he intended."

End quote from ash-Sharh al-Mumti' 'ala Zaad al-Mustaqni' (12/176, 177).

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) listed all the forms in one place, and regarded them all as forms of tahleel marriage which is prohibited and invalid.

He (may Allah have mercy on him) said:

Tahleel marriage is haraam and invalid, and it does not make it permissible (for the woman to go back to her first husband). What it means is that if a man divorces his wife three times, then she becomes haraam for him until she has married another husband, as Allah, may He be exalted, states in His Book, and as is stated in the Sunnah of His Prophet (blessings and peace of Allah be upon him), and the ummah is unanimously agreed on that. If another man marries her with the intention of divorcing her so that she will become permissible for her first husband, this marriage is haraam and invalid, whether he decides after that to keep her or to leave her, and whether that is stipulated in the marriage contract, or was stipulated before the marriage contract, or was not stipulated verbally... Or none of that happened; rather the man decided to marry her, then divorce her so that she would become permissible for the one who had divorced her three times, without the woman or her guardian being aware of any of that, whether the husband who had divorced her three times was aware of it or not, such as if the muhallil thought that this was a good deed and a favour to the man who had divorced her and his wife, by helping her to go back to him because he thought that the divorce had caused harm to them and their children and their families, and so on.

In fact it is not permissible for the one who divorced his wife three times to marry her again until

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she has been married by a man who wanted a genuine marriage, not a sham marriage, and he consummated the marriage with her in the sense that she tasted his sweetness and he tasted her sweetness, then after that if they happened to be separated by death or divorce or annulment of the marriage, then it is permissible for the first one to marry her.... This is what is indicated by the Qur'an and Sunnah, and it is what was narrated from the companions of the Messenger of Allah (blessings and peace of Allah be upon him) and from all of those who followed them in truth, and the majority of the Muslim fuqaha'. ... This is the view of Maalik ibn Anas and all his companions, and of al-Awzaa'i, al-Layth ibn Sa'd, and Sufyaan ath-Thawri; it is also the view of Imam Ahmad ibn Hanbal among the scholars of hadith, including Ishaq ibn Raahawayh, Abu 'Ubayd al-Qaasim ibn Salaam, Sulaymaan ibn Dawood al-Haashimi, Abu Khaythamah Zuhayr ibn Harb, Abu Bakr ibn Abi Shaybah, Abu Ishaq al-Jawzajaani and others. It is also the view of ash-Shaafa'i.

End quote from Iqaamat ad-Daleel 'ala Ibtal at-Tahleel (p. 6-8). The author quoted many views from leading religious scholars stating that it is haraam.

And Allah knows best.