

311459 - Can taking back one's wife after divorce be valid by saying "I marry you," or "Give yourself to me in marriage," or by doing a marriage contract with her?

the question

Is taking back the wife [after a revocable divorce (talaq)] valid if the man says to his wife: "Give yourself to me in marriage" with the intention of taking her back, instead of saying "I take you back" or "I am keeping you"?

Detailed answer

Taking back the wife [after a revocable divorce (talaq)] may be done by making an explicit statement, such as "I take you back."

Or it may be done by making an implicit (or ambiguous) statement, according to the majority of scholars, with the exception of the Hanafis.

Uttering the word "marry" is an implicit statement in this context, such as saying "I marry you" or "I marry her."

The same applies if the husband does another marriage contract, because the original marriage contract is still valid, so doing a new marriage contract carries no weight, but it signals that he is taking his wife back, if that is his intention, because the word marry implicitly suggests keeping.

Ibn al-Humam said in *Fat-h al-Qadir*, 4/159 [Hanafi]: The wording of taking the wife back may be explicit or implicit. Explicit wording includes saying "I take you back," if he is addressing her directly, or saying "I take my wife back," if she is not present or even if she is present.

Another example of explicit statements include: "I take you back" and "I am keeping you."

Implicit statements include: "You are with me as you were," or "You are my wife"; they do not count as taking her back unless they are accompanied by the intention to do so.

The scholars differed regarding the words keep and marry. So if he does a marriage contract with her during the 'iddah, it does not count as taking her back according to Abu Hanifah. According to Muhammad it does count as taking her back, and there are two views narrated from Abu Yusuf.

Abu Ja`far said: We prefer the view of Muhammad.

In *al-Yanabi* it says: This is the correct view. Something similar is said in *al-Qunyah*.

The basis for the view of Abu Hanifah is that if someone does another marriage contract with his wife, it is null and void, and what it may imply is not accepted.

We say: we do not accept this type of marriage on the grounds of what it may imply; rather we do not regard the word of marriage as a metaphor which means keeping [the wife]. End quote.

It says in *Sharh al-Kharashi `ala Khalil*, 4/80 [Maliki]:

As for the explicit statement, it does not require an intention, such as saying "I take you back" or "I take her back on the grounds that she is still married to me."

Ibn `Arafah said: The correct view is that the explicit statement does not require an intention.

Or the mere intention, according to the correct view, because Ibn Rushd said: The correct view is that taking her back is valid as soon as he intends and decides to take her back, because saying that in words is only an expression of what he has decided in his mind. So if he intends in his mind that he is taking her back, then decides that he has taken her back, his taking her back is valid between him and Allah, may He be Exalted.

He cannot take her back with an ambiguous statement and no intention to take her back, such as saying "I have decided that it is halal" or "that it is no longer haram."

We noted above that a clear statement without any intention or decision in his mind is sufficient for his taking her back to be valid.

Here the author pointed out that an ambiguous statement that is not based on an intention or decision, and does not have any clear indication, is not sufficient for his taking her back to be valid, as is the case with his saying “I have decided that it is halal” or “that it is no longer haram,” because that may mean taking her back or it may mean something else. End quote.

It says in *Asna al-Matalib*, 3/341 [Shafa`i]: Saying “I am keeping you,” or “I marry you,” or “I choose to take you back,” or “You are no longer haram for me,” or “You are permissible for me again,” and so on – all of these are implicit statements, because they may mean taking the wife back or may mean something else. Moreover, saying “I marry you” and the like is an explicit statement when doing the original marriage contract, but it does not have the explicit meaning of taking the wife back, because what is regarded as an explicit statement in one context is not necessarily regarded as an explicit statement in another context, as is also the case with the words of divorce (talaq) and zihar (a jahili form of divorce in which a man says to his wife, “You are to me like my mother’s back”).

Likewise if the husband does a new marriage contract with her, with the proposal and acceptance, instead of using explicit words referring to taking back, this is an implicit action, because of what we have noted above. End quote.

As for the Hanbalis, their view is that taking the wife back cannot be done by using implicit and ambiguous words.

But it was narrated from Ahmad that using implicit words (to take the wife back) is valid.

Ibn Qudamah said in *al-Mughni*, 7/524:

If he says “I marry you”, this is not an explicit statement concerning this issue, because taking back the [revocably-divorced] wife is not a marriage contract.

But does it count as taking her back? There are two views concerning that, the first of which is that it does not count as taking her back, because this is an implicit statement, and taking the wife back is for the purpose of permitting intimacy with this particular woman, and that cannot be achieved by using implicit or ambiguous words such as “marriage.”

The second view is that it does count as taking her back, and this view was indicated by Ahmad and favoured by Ibn Hamid, because the marriage contract makes intimacy permissible with a woman who is a stranger, so in the case of a revocably-divorced woman, it is more appropriate that intimacy become permissible with her again by means of a new marriage contract.

Based on that, when he says something implicit, he needs to have the intention of taking her back, because whatever is said in an implicit manner is to be based on the intention, as is the case with implicit statements of divorce. End quote.

See also: *Al-Insaf*, 9/151.

Conclusion:

The majority of scholars are of the view that saying “I marry you” is valid for the purpose of taking back the wife.

The same applies if he does a marriage contract with her, with the proposal and acceptance, or he marries her during the 'iddah, or he says: “Give yourself to me in marriage,” with the intention of taking her back.

If the question is about having taken back a wife on the basis of implicit statements in the past, then yes, taking her back is valid, as is the view of the majority of scholars.

However, if the taking back has not yet happened, what is better for him is to take her back by using an explicit statement, such as saying “I take you back” or “I have you back.”

And Allah knows best.