

320506 - If a husband divorces his wife during a period of purity in which he was intimate with her, is it a Sunnah divorce or a bid`ah divorce?

the question

Is intimacy with ejaculation but without penetration or genital contact something that causes a divorce to be not a Sunnah divorce? And is the main reason why divorce should be during a period of purity in which he did not have intercourse with her – according to what I have read – that it is to ascertain that there is no pregnancy? This could not happen at all in the case of intimacy that was far away from her vagina. What is your opinion about this scenario? Is what I have understood correct, or does that come under the heading of intercourse?

Summary of answer

1. A Sunnah divorce is one in which the man issues one talaq (divorce) to his wife during a period of purity (i.e., when she is not menstruating) in which he has not had intercourse with her, then he leaves her alone until her `iddah ends. A bid`ah (innovated) divorce is when the husband divorces his wife three times, or during menses, or during a period of purity in which he has had intercourse with her.

2. Intercourse means penetration of the head or tip of the penis into the vagina. Intimacy without intercourse does not come under that heading, regardless of whether ejaculation occurs or not. So if no vaginal intercourse took place, then the divorce was issued, it is a Sunnah divorce.

Detailed answer

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Sunnah divorce

A Sunnah divorce is one in which the man issues one talaq (divorce) to his wife during a period of purity (i.e., when she is not menstruating) in which he has not had intercourse with her, then he leaves her alone until her `iddah ends, because of the report narrated by Muslim (1471) from Anas ibn Sirin, who said: I asked Ibn `Umar about his wife whom he divorced, and he said: I divorced her when she was menstruating, and I told `Umar about that, and he told the Prophet (blessings and peace of Allah be upon him), who said: "Tell him to take her back, then when she becomes pure, he may divorce her when she is pure."

According to another report: "Tell him to take her back, then wait until she has become pure, then menstruated again, then become pure again. Then if he wishes he may keep her, or if he wishes he may divorce her before he has intercourse with her. That is the `iddah (prescribed periods) at which Allah, may He be Glorified and Exalted, has enjoined the divorce of women."

Bid'ah divorce

A bid'ah (innovated) divorce is when the husband divorces his wife three times, or during menses, or during a period of purity in which he has had intercourse with her. Ibn Qudamah (may Allah have mercy on him) said: The Sunnah divorce is when he divorces her when she is pure, without having had intercourse with her, issuing one divorce, then he leaves her alone until her `iddah ends. What is meant by the Sunnah divorce is divorce which is in accordance with the command of Allah, may He be Exalted, and the command of His Messenger (blessings and peace of Allah be upon him)... It is the divorce that is issued during a period of purity in which he has not had intercourse with her, then he leaves her alone until her `iddah ends. There is no difference of scholarly opinion regarding the fact that if he divorces her during a period of purity in which he has not had intercourse with her, then he leaves her alone until her `iddah ends, he has acted in accordance with the Sunnah and he has divorced her at the time when the prescribed waiting period can properly start, which Allah has enjoined. This was stated by Ibn `Abd al-Barr and Ibn al-Mundhir... Ahmad said: The Sunnah divorce is one talaq, then he should leave her alone until she has gone through three menstrual cycles. Something similar was stated by Malik, al-Awza'i, ash-Shafa'i and Abu `Ubayd.

End quote from *al-Mughni*, 7/278.

For more information, please see the answer to question no. [307000](#).

Zakariyya al-Ansari (may Allah have mercy on him) said: The Sunnah divorce is divorce of a woman with whom the marriage was consummated, during a period of purity in which the husband has not had intercourse with her, provided that she had menstruated before that, which excludes one who is pregnant, one who is a minor and one who is postmenopausal. Then she should observe `iddah, waiting for three menstrual cycles, because that divorce is to be followed immediately by starting to count the `iddah, unless he regrets it and changes his mind. Allah, may He be Exalted, says (interpretation of the meaning):

{when any of you want to divorce women, then divorce them at a time when their prescribed waiting period can properly start}

[at-Talaq 65:1].

That is, they should divorce them at the time from which they should start counting the `iddah.

In al-Bukhari and Muslim, it is narrated that Ibn `Umar divorced his wife when she was menstruating. `Umar mentioned that to the Prophet (blessings and peace of Allah be upon him), and he said: "Tell him to take her back, then wait until she has become pure, then menstruated again, then become pure again. Then if he wishes he may keep her, or if he wishes he may divorce her before he has intercourse with her. That is the `iddah (prescribed periods) at which Allah, may He be Glorified and Exalted, has enjoined the divorce of women."

The bid`ah divorce is divorce of a woman with whom the marriage has been consummated, without her offering anything in return for that, during menses or postpartum bleeding (nifas), even if that is during the `iddah of a revocable divorce, when she is counting her menstrual cycles, because that is contrary to the words of Allah, may He be Exalted: {then divorce them at a time when their prescribed waiting period can properly start} [at-Talaq 65:1].

The time of menses and postpartum bleeding is not counted as part of the `iddah.

The reason for that is that the woman would be harmed by having to wait for so long.

Or during a period of purity in which he has had intercourse with her, or inserted his semen in her during that time, whether that was by means of intercourse or insertion during menses, in her vagina or in her back passage, if there is no sign of pregnancy and she is a woman who could become pregnant, because that could lead to him changing his mind if there is any sign of pregnancy, because a man may divorce one who is not pregnant but not one who is pregnant, and when he feels remorse it may be too late for him to take her back, so that will be detrimental to him and to the child.

And because her `iddah if she is pregnant will last until she gives birth, and if she is not pregnant it will be determined by counting menstrual cycles, and it is possible that some confusion may arise and she would continue to be uncertain, so she would not be able to remarry.

End quote from *Asna al-Matalib*, 3/263.

Intercourse means penetration of the head or tip of the penis into the vagina.

Intimacy without intercourse does not come under that heading, regardless of whether ejaculation occurs or not.

It says in *al-Majmu`* (17/158): If he is intimate with her without intercourse in the vagina, and no semen reaches her womb, then it is not a bid`ah divorce. End quote.

Conclusion:

If no intercourse in the vagina took place, then a divorce (talaq) was issued, it is a Sunnah divorce.

And Allah knows best.