

## **348008 - She asked for khul' so he divorced her (talaaq) and refused to take the mahr. Is the talaaq valid, and what is the difference between talaaq and khul'?**

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### **the question**

A lady who got divorced using Khula, wants to give her Mahr and other valuables back to her husband in line with the conditions of that kind of divorce. The husband has accepted to grant her the divorce but however has refused to accept anything from her. What should she do? Will the divorce be valid if the husband refuses to accept the Mahr and the other valuables but grant her the divorce anyway? Can she then just give this away to charity?

### **Detailed answer**

Firstly:

If separation is done by uttering the word of talaaq and not khul', then if it is in return for compensation, such as the wife returning the mahr or giving some money, then it is an irrevocable divorce, and if it is not in return for compensation, then it is a revocable divorce if it is the first or second talaaq.

The 'iddah following talaaq is three menstrual cycles if the woman menstruates, then if the 'iddah ends without him taking her back, she becomes irrevocably divorced and cannot go back to him except with a new marriage contract.

Secondly:

If separation is done by uttering the word of khul', then if the husband does not accept any compensation, is the khul' valid?

There are two scholarly views regarding this matter:

The first view: khul' is not valid without compensation. This is the view of the majority. In that case, if he intended talaaq, then it is a revocable talaaq and the 'iddah following it is three

menstrual cycles, as noted above.

The second view: khul' is valid without compensation. This is the view of Maalik.

See: *Haashiyat ad-Dasooqi* (2/351) and *al-Mughni* (7/337).

Two things result from the khul' being valid: the separation is irrevocable, so the husband does not have the right to take his wife back except with a new marriage contract, and her 'iddah is one menstrual cycle according to the more correct view.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: If he separates from her by khul' without compensation or in return for something haram, it is not valid, because Allah, may He be exalted, says (interpretation of the meaning): *"then there is no blame upon either of them concerning that by which she ransoms herself"* [al-Baqarah 2:229]. If he separates from her by khula' without compensation, then how is she ransoming herself? There is no ransom. This is the correct view.

Shaykh al-Islam said: It is valid for him to divorce her by khul' without compensation, and he gave two reasons for that:

The first is that compensation is the husband's right, but if he waives it voluntarily, there is nothing wrong with that, like any other rights. If she offers him one thousand riyals to divorce her by khul' and the khul' is completed, then he waives that, there is nothing wrong with that. The same applies if they agree from the outset that there is to be no compensation.

The second reason is that if he divorces her by khul', then he is getting something in return for divorcing her by khul', because she is waiving her right to maintenance; if it were a revocable talaq, then maintenance during the 'iddah is the husband's duty, but if she chooses divorce by khul', no maintenance is required of him, so it is as if she gave him some compensation, and she has given up the right that she had to maintenance from the husband, and he has waived the right that he had to take her back during the 'iddah. Taking the wife back is right of the husband, and maintenance during the 'iddah is the right of the wife. So if they agree to waive both in the case of khul', there is nothing wrong with that.

With regard to quoting the verse as evidence, it is most likely that the husband will not let his wife go through the process of khul' except in return for compensation. Hence Allah, may He be exalted, says (interpretation of the meaning): *"then there is no blame upon either of them concerning that by which she ransoms herself" [al-Baqarah 2:229].*

What the shaykh said is good, because in reality, in the case of khul' there is compensation, which is waiving maintenance.

End quote from *ash-Sharh al-Mumti'* (12/476).

Thus the difference between talaq and khul' becomes clear:

Talaq is without compensation: a revocable *talaq* occurs – if it is a first or second talaq – and the 'iddah is three menstrual cycles.

The woman may ask her husband for khul' and he may not agree, but he divorces her through talaq without any compensation in return. In that case his talaq is valid, and it is revocable, as noted above.

In the case of khul', it is an annulment, and is not regarded as one of the three talaqs. It is a complete divorce, and the 'iddah in that case is one menstrual cycle.

Thirdly:

If the husband did not take back the mahr and gifts, then they remain the property of the wife, and she may keep them, give them away or give them in charity. They are like any other property that she owns.

And Allah knows best.