

98775 - Ruling on divorce (talaaq) by one who is drunk

the question

There is a man who used to get drunk and beat his wife, and he divorced her several times verbally; for example, he used to say to her “You are thrice divorced (talaaq)” when he was not sober, then after that he used to make up with her. But now he has repented to his Lord; he has started to pray and he regrets what he used to do. What is the Islamic ruling in this case?

Detailed answer

The scholars differed concerning the divorce issued by one who is drunk, if he became drunk by consuming that which Allah has forbidden of all types of intoxicants (khamr): does it count as a divorce or not? There are two views:

The first view

The first view is that the divorce does count as such. This is the view of Abu Haneefah and Maalik, and it is one of the two views narrated from ash-Shaafa'i and Ahmad (may Allah have mercy on them).

They said: That is because his reason has diminished because of sin, so the divorce counts as such, as a punishment to him and as a deterrent to committing the sin.

See: al-Mughni by Ibn Qudaamah, 7/289. They quoted evidence to support their view.

The second view

The second view is that his divorce does not count as such. This is the view of the literalists and is the second view narrated from ash-Shafaa'i and Ahmad. This is the view that Imam Ahmad finally settled on. They quoted several things as evidence, including the following:

- 1.

The words of Allah (interpretation of the meaning): “O you who believe! Approach not As-Salat (the prayer) when you are in a drunken state until you know (the meaning) of what you utter” [an-Nisa’ 4:43]. Here Allah, may He be glorified, states that the word of one who is drunk does not count for anything, because he does not know what he is saying.

2.

It is narrated in a saheeh report from the Prophet (blessings and peace of Allah be upon him) that a man came to him and confessed to zina (fornication or adultery) and he said: “Has he been drinking wine?” A man got up and smelt his mouth, and did not detect any smell of wine. Narrated by Muslim (1695). This indicates that if he had drunk wine, then his confession would not be acceptable. By the same token, divorce issued by someone in this state does not count as such.

3.

Because this is the view of ‘Uthmaan ibn ‘Affaan and Ibn ‘Abbaas (may Allah be pleased with them), and no one among the Sahaabah differed with them.

Imam al-Bukhaari (may Allah have mercy on him) said:

‘Uthmaan said: The one who is insane or drunk cannot issue a divorce. Ibn ‘Abbaas said: Divorce issued by one who is drunk or one who is compelled does not count as such.

Ibn al-Mundhir (may Allah have mercy on him) said: This is proven from ‘Uthmaan, and we do not know of anyone among the Sahaabah who disagreed with him.

4.

Because he has lost control of his will, he is like one who is compelled.

5.

Because he has lost his mind or his reason, he is like one who is insane or asleep.

6.

Because being of sound mind is a condition of accountability, and there is no accountability for one who does not understand the religious teachings.

See: Majallat al-Buhooth al-Islamiyyah, 32/252; al-Mawsoo'ah al-Fiqhiyyah, 29/18; al-Insaaf, 8/433

The second view was regarded as more correct by a number of scholars, such as Shaykh al-Islam Ibn Taymiyah and his student Ibn al-Qayyim; fatwas were issued on this basis by Shaykh Ibn Baaz and Ibn 'Uthaymeen (may Allah have mercy on them).

Shaykh Ibn Baaz (may Allah have mercy on him) was asked: Does divorce issued by one who is drunk count as such? If it does count as such, then will he be brought to account for other transgressions he may commit, such as zina, murder and stealing? If that is the case, then what is the difference between the two?

He replied: The scholars differed as to whether divorce issued by one who is drunk counts as such. The majority of scholars are of the view that his divorce does count as such, and he is also accountable for his actions; his sins are not an excuse for waiving his divorce, just as they are not an excuse for waiving accountability for his actions such as murder, stealing or zina, and so on.

Some of the scholars are of the view that divorce issued by one who is drunk does not count as such; this is what is narrated from the Rightly-Guided Caliph 'Uthmaan (may Allah be pleased with him), because he is not in his right mind at that time, so he is not accountable for things he says that harm others, and divorce harms him and others. So he is not accountable for it, because the punishment for drunkenness is flogging; making his divorce count as such is not part of his punishment. The same applies if he manumits a slave or engages in other transactions, such as selling, buying, giving gifts and so on – they are all invalid.

With regard to his deeds and actions, he is accountable for them, and his being drunk is not an excuse for him in the case of zina, stealing, murder or anything else, because a person is accountable for his actions whether he was sober or not. He may have taken drunkenness as a means of doing things that Allah has forbidden or reprehensible actions, and he may be using it

as an excuse so as to evade the rulings on these sins. Hence the scholars are unanimously agreed that he is accountable for his actions.

However the correct view is that he is not accountable for it. If it is known that he issued the divorce in a state of drunkenness when he was not of sound mind, then the divorce does not count as such. By the same token, if he manumitted his slave or disposed of his wealth when he was in a drunken state, then he is not accountable for that (and it is not valid). The same applies if he sold or bought anything, and the same applies to all other conduct in which being of sound mind is necessary; they are not valid or binding, because this comes under the heading of verbal conduct, as explained above. This is the correct view, on the basis of which we issue our fatwa, which is that his divorce does not count as such when it is proven that he was drunk at the time of issuing the divorce and was not sober at that time.

But if he was not sinning, in the sense that he was given a drink and did not know that it was an intoxicant, or he was forced to drink it, and he consumed the drink because he was compelled to do so, then he is not sinning, and the divorce issued in this case does not count as such, according to all scholars, because his state of drunkenness did not result from deliberate actions, so he is not accountable for it; rather he was wronged or deceived.

End quote from Fataawa at-Talaaq, p. 29

See: ash-Sharh al-Mumti', 10/433, al-Maktabah at-Tawfeeqiyyah edn.

Based on that, the divorce mentioned does not count as such. We praise Allah, may He be exalted, for having enabled him to repent and having guided him to the right way, and we ask Allah to make us and him steadfast.

And Allah knows best.