

KHULA' AND ITS ISLAMIC RULINGS

Definition of Khula'

الخلع : هو فراق الزوجة بعوض ، فيأخذ الزوج عوضاً ويفارق زوجته ، سواء كان هذا العوض هو المهر الذي كان دفعه لها أو أكثر أو أقل .

Khula' means the separation of the wife in return for a payment; the husband takes the payment and lets his wife go, whether this payment is the mahr which he gave to her, or more or less than that.

Tafseer Ibn Katheer:

When the spouses have irreconcilable differences wherein the wife ignores the rights of the husband, dislikes him and becomes unable to live with him any longer, she is allowed to free herself (from married life) by giving him back what he had given her (in gifts and Mahr). There is no sin on her in this case nor on him if he accepts such offer.

The basic principle concerning Khula':

The evidence of Khula' is found in the Glorious Qur'an and the Authentic Sunnah of the Prophet (صلى الله عليه وسلم).

The evidence from the Glorious Qur'an:

(وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ)
البقرة / 229 .

“And it is not lawful for you (men) to take back (from your wives) any of your Mahr (bridal-money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allaah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allaah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul‘ (divorce)”
[al-Baqarah 2:229]

The evidence from the Authentic Sunnah:

عَنْ ابْنِ عَبَّاسٍ : أَنَّ امْرَأَةً تَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ تَابِتُ بْنُ قَيْسٍ مَا أَعْتَبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي

الْإِسْلَامَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُنْتَرِدِينَ عَلَيْهِ حَدِيثَهُ قَالَتْ نَعَمْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَقْبِلِ الْحَدِيثَ وَطَلِّقْهَا تَطْلِيقَةً " أخرجه البخاري: الطلاق وكيف الطلاق فيه: (4867)

‘Abdul Ibn ‘Abbas said: The wife of Thaabit ibn Qays ibn Shammaas (may Allaah be pleased with him) came to the Prophet (peace and blessings of Allaah be upon him) and said, “O Messenger of Allaah, I do not find any fault with Thaabit ibn Qays in his character or his religious commitment, but I do not want to commit any act of kufr after becoming a Muslim.” The Prophet (peace and blessings of Allaah be upon him) said to her, “Will you give back his garden?” Because he had given her a garden as her mahr. She said, “Yes.” The Prophet (peace and blessings of Allaah be upon him) said to Thaabit: “Take back your garden, and divorce her.” (Narrated by al-Bukhaari, At-Talaaq: Al-Khula’ wa Kayfa At-Talaaq Feeh: 4867).

How the Khula’ is done?

With regard to the way in which it is done, the husband should take his payment or they should agree upon it, then he should say to her “*faaraqtuki*” (I separate from you) or “*khaala’tuki* (I let you go), or other such words.

How much should a man take from his wife who is divorced by khula’?

Ibn Qudaamah said: It is recommended that he should not take from her more than he gave to her. If he does that, it is makrooh (disliked) but it is still valid. This was narrated from ‘Uthmaan, Ibn ‘Umar and Ibn ‘Abbaas, because Allaah says (interpretation of the meaning):

“then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul’ (divorce)”

[*al-Baqarah 2:229*]

Al-Rabee’ bint Mu’awwidh said: I asked my husband for a divorce (khula’) for everything except my head cover, and ‘Uthman ibn ‘Affaan permitted me to do that. Such incidents become well known, (and as no one spoke against it), thus there is consensus on this matter. Since this is proven to be the case, then it is a permissible action, even though it is disliked (makrooh), because it was narrated in the hadeeth of Jameelah: “So he commanded him to take his garden back from her and no more than that.” And it was narrated from ‘Ataa’ (from Ibn ‘Abbaas) that the Prophet (peace and blessings of Allaah be upon him) regarded it as makrooh to take more from a wife divorced by khula’ than had been given to her. So we may reconcile the aayah and the hadeeth by saying that the aayah indicates that it is

permissible to take more than was originally given, and the prohibition on taking more in the report indicates that doing this is makrooh. [Al-'Iddah Sharh Al-'Umdah of Imam Ibn Qudamah Al-Maqdasee , p. 482. Also see Fathul Baaree under the explanation of the above mentioned hadeeth. Also can be referred to Tafseer Ibn Katheer and Tafseer Al-Qurtubee under the interpretation of the verse: 229 of Al-Baqarah (2).]

When can a woman ask for Khula'?

Shaykh 'Abd-Allaah ibn 'Abd al-Rahmaan ibn Jibreen answered as follows:

1. If a woman dislikes her husband's treatment of her – for example, he is over-strict, hot-tempered or easily-provoked, or gets angry a lot, or criticizes her and rebukes her for the slightest mistake or shortcoming, then she has the right of khula' [female-instigated divorce].
2. If she dislikes his physical appearance because of some deformity or ugliness, or because one of his faculties is missing, she has the right of khula'.
3. If he is lacking in religious commitment – for example, he doesn't pray, or neglects to pray in jamaa'ah, or does not fast in Ramadaan without a proper excuse, or he goes to parties where haraam things are done, such as fornication, drinking alcohol and listening to singing and musical instruments, etc. – she has the right of khula'.
4. If he deprives her of her rights of spending on her maintenance, clothing and other essential needs, when he is able to provide these things, then she has the right to ask for khula'.
5. If he does not give her her conjugal rights and thus keep her chaste because he is impotent (i.e. unable to have intercourse), or because he does not like her, or he prefers someone else, or he is unfair in the division of his time [i.e., among co-wives], then she has the right to ask for khula'.

And Allaah knows best.

Shaykh 'Abd-Allaah ibn 'Abd al-Rahmaan ibn Jibreen

What is the 'iddah period for the woman after the Khula

1 – Khula' – in principle – can only occur at the request of the wife, and with the husband's subsequent agreement to end the marriage.

2 – 'Iddah is obligatory upon every woman who leaves her husband, or whose husband leaves her, whether the cause is talaah (divorce), annulment of the marriage or the death of the husband, except when the divorce occurs before the marriage has been consummated, in which case the woman does not have to observe 'iddah, because Allaah says (interpretation of the meaning):

“O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no ‘Iddah [divorce prescribed period] have you to count in respect of them”
[*al-Ahzaab 33:49*]

3 – With regard to the ‘iddah following khula’, the correct scholarly view is that it is one menstrual cycle, as is indicated by the Sunnah.

It was narrated from Ibn ‘Abbaas that the wife of Thaabit ibn Qays ended her marriage to her husband by means of khula’ at the time of the Prophet (peace and blessings of Allaah be upon him). The Prophet (peace and blessings of Allaah be upon him) commanded her to observe an ‘iddah of one menstrual cycle. (Narrated by al-Tirmidhi, 1185; Abu Dawood, 2229. Also narrated by al-Nasaa’i (3497) from the hadeeth of al-Rabee’ bint ‘Afra’. The two hadeeth were both classed as saheeh by Ibn al-Qayyim, as we shall see below).

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

In the fact that the Prophet (peace and blessings of Allaah be upon him) commanded the woman who ended her marriage to her husband by khula’ to observe an ‘iddah of one menstrual cycle, there is evidence for two rulings:

The first is that she does not have to wait for three menstrual cycles, rather one menstrual cycle is sufficient. Just as this is clearly the Sunnah, it was also the view of Ameer al-Mu’mineen ‘Uthmaan ibn ‘Affaan, ‘Abd-Allaah ibn ‘Umar ibn al-Khattaab, al-Rabee’ bint Mu’awwadh and her paternal uncle, who was one of the greatest Sahaabah. We do not know of anyone who held a different opinion, as al-Layth ibn Sa’d narrated that Naafi’ the freed slave of Ibn ‘Umar heard al-Rabee’ bint Mu’awwadh ibn ‘Afra’ telling ‘Abd-Allaah ibn ‘Umar (may Allaah be pleased with him) that she had ended her marriage to her husband by khula’ at the time of ‘Uthmaan ibn ‘Affaan, and her paternal uncle had come to ‘Uthmaan ibn ‘Affaan and said, The daughter of Mu’awwadh ended her marriage to her husband by khula’ today, so should she move (from the marital home)? ‘Uthmaan said, She should move, and there is no inheritance between them, and she does not have to observe any ‘iddah, but she should not remarry until one menstrual cycle has passed, lest she be pregnant. ‘Abd-Allaah ibn ‘Umar said: and ‘Uthmaan was the best of us and the most knowledgeable.

This view was also shared by Ishaq ibn Raahawayh and Imaam Ahmad, according to one report narrated from him. It was also the view favoured by Shaykh al-Islam Ibn Taymiyah.

Those who supported this view said: this is in accordance with the principles of sharee’ah. The ‘iddah (in the case of talaaq) was made three menstrual cycles in order to lengthen the time during which the husband may take back his wife, so that the husband will have enough time to rethink the matter and to be able to take his wife back during this time. But in the case of khula’ the wife is not going to go back and the purpose is simply to establish whether she is pregnant or not, so one menstrual cycle is sufficient. They

said: this does not contradict the ruling that the ‘iddah for a woman divorced by talaaq is three months. In the case of divorce the ‘iddah is the same whether it is a final talaaq or a revocable talaaq.

Zaad al-Ma’aad, 5/196, 197.

Some scholars said that the ‘iddah for a woman who ends her marriage to her husband by khula’ is three menstrual cycles, as in the case of one who is divorced by talaaq, but this was expertly refuted by Imam Ibn al-Qayyim, who said:

What indicates that khula’ is not the same as talaaq is the fact that in the case of a revocable talaaq after consummation of the marriage, there are specific rulings which are not applicable in the case of khula’.

1. That the husband has more right to take her back.
2. When the husband issues a talaaq, is it counted as one of three, and after the third it is not permissible for the wife to go back to him until she has been married to another man and that marriage has been consummated.
3. ‘Iddah in the case of talaaq is three menstrual cycles.

So the ‘iddah in the case of khula’ is what is indicated by the Sunnah, namely one menstrual cycle.

And Allaah knows best.

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