

## **146967 - He divorced his wife when she was in nifaas (post-partum bleeding) when she insisted on divorce**

---

### **the question**

A few years ago there was an argument between me and my wife, and I uttered the word of divorce (talaaq). I was very angry and was not aware of what I was saying in the heat of argument. One of the shaykhs told me that this did not count as a divorce because of my state at that time. Last month my wife gave birth and she was in nifaas, and we had an argument. She locked the door and hid the key so that I could not go out and solve the problem, which made me angrier. During the argument I said to her, "you want to live on your own," meaning that I was divorcing her. The argument got worse and I said to her, "actually you want to get divorced and live on your own." She said: "Divorce me so that I could be free from the hell I am in." So I divorced her. Please note that I tried to take the key so that I could get out of the house, and I also said to her, "I will divorce you after the nifaas," trying to calm things down so that I could go out and let things settle down. But she insisted on divorce at that moment and I said to her: "You are divorced." After that, we talked about what had happened and she said: "I swear by Almighty Allah that I did not ask for divorce and I never meant that."

My question is: Did this count as divorce? If it did, is it regarded as the first or second talaaq? What is her 'iddah? When can I take her back? Because she is still in 'iddah and is not pure at present.

Can I stipulate my conditions verbally, so that I could take her back and so that she will not go back to some of the problems that she did? Please note that one of the shaykhs gave a fatwa stating that this does count as a divorce and that it is haraam during nifaas.

### **Detailed answer**

The divorce (talaaq) that is prescribed in sharee'ah is when the husband divorces his wife during the period of purity in which he has not had intercourse with her. If he divorces her during her menses or when she was bleeding following childbirth (nifaas), this is an innovated divorce (talaaq bid'i).

The fuqaha' differed concerning the innovated divorce. The majority of them are of the view that it does count as such, but some are of the view that it does not count, because it is an innovated and haraam divorce, because Allah, may He be glorified and exalted, says (interpretation of the meaning): "O Prophet (صلى الله عليه وسلم)! When you divorce women, divorce them at their 'Iddah (prescribed periods)" [al-Talaaq 65:1]. What is meant is when they are in a state of purity and the husband has not had intercourse with them (during that period of purity). Among those who were of this opinion was Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him), and he was followed by a number of scholars.

It says in Fataawa al-Lajnah al-Daa'imah (20/58):

There are different types of innovated divorce, such as: when a man divorces his wife when she is menstruating or bleeding following childbirth, or during the period of purity in which he has been intimate with her. The correct view is that this does not count as divorce.

Shaykh Ibn Baaz (may Allah have mercy on him) said: Because Allah has prescribed that a woman should be divorced during a state of purity following nifaas or menses, at a time when her husband has not had intercourse with her. This is the divorce (talaaq) that is acceptable in sharee'ah. So if he divorces her during her menses or nifaas, or during a period of purity in which he has had intercourse with her, this is an innovated divorce and does not count as such according to the correct

scholarly opinion, because Allah, may He be glorified and exalted, says (interpretation of the meaning): “O Prophet (صلى الله عليه وسلم)! When you divorce women, divorce them at their ‘Iddah (prescribed periods)” [al-Talaaq 65:1].

What is meant is when they are in a state of purity and the husband has not had intercourse with them. This is what the scholars said about divorcing them at the prescribed period: they should be in a state of purity following menses or nifaas when the husband has not had intercourse with them, or else they should be pregnant. This is what is meant by divorcing women in their prescribed periods.

End quote from Fataawa al-Talaaq, p. 44

See also: Fataawa al-Shaykh Ibn Baaz (21/286)

Based on that, the divorce that you issued when your wife was in nifaas did not count as such.

See also the answer to question no.

[110488](#).

And Allah knows best.