175765 - The Difference between Khul` and Talaq

the question

I had given back my husband a few months ago his dowry for my freedom. He said Shukron Jazakalah, you are free to go, so go. I left the next day to go to my sister's house where I had spent 2months and then came down with illness during that time, so the community decided to help, so they housed me and placed my children under the care of other Muslims until I got better. At that time i was pregnant and almost due to have the baby, he said that he wanted to take the responsibility of the baby and myself to ensure that i was safely delivered. Later he said to me that we are still married because a Khul` is not an automatic divorce. Now today the Imam said that we are divorce.So do we have to remarry to have an `Aqiqah or will it be prohibited for us coming together to have the `Aqiqah for our newborn baby as divorce parents?

Summary of answer

Khul` is an annulment of the marriage and not a divorce. The wife cannot go back to the husband after Khul` except with a new marriage contract.

Detailed answer

Praise be to Allah.

Khul`: A Form of Annulment, Not Divorce

Khul` is not regarded as a divorce (Talaq) , but it is an annulment of the marriage. The wife cannot go back to the husband after Khul` except with a new marriage contract.

One of the differences between annulment and divorce is that annulment is not counted as a divorce , so if you go back to your husband now, he still has the option of three pronouncements of divorce.

But if he has given you one pronouncement of divorce and your `Iddah has ended , if he does a new marriage contract with you, he only has two pronouncements of divorce left.

Any word that is indicative of separation, accompanied by payment of compensation on the part of the wife, is Khul`.

If the husband utters words of divorce along with the Khul`, such as if he says, “I divorce you on condition that you return the Mahr to me,” this is an annulment of the marriage according to the correct opinion. In other words, the Khul` is an annulment even if the husband utters the word of divorce at the same time.

Celebrating Birth and `Aqiqah after Separation

You can celebrate the child’s birth and do the `Aqiqah even if you are separated, and there is no need to repeat the marriage contract for that purpose. But it should be noted that he is now a “stranger” (non-Mahram) to you, with all the rulings that implies.

Advice for Reconciling after Separation

We advise you to think, pray Istikharah and examine your former husband’s situation; if you think that he is good and that there is some benefit in going back to him, that will be a good time to repeat the marriage contract.

And Allah knows best.