42532 - It is not permissible to force one’s wife to give up her rights before divorcing her

the question

What is the ruling on forcing a wife to give up her rights before divorcing her?.

Detailed answer

Praise be to Allah.

It is not permissible for a husband to take anything of his wife’s wealth unless she gives it willingly; that includes her mahr, except in a case where the wife has committed a blatant immoral action. Allah says (interpretation of the meaning):

“but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm” [al-Nisa’ 4:4]

“and you should not treat them with harshness, that you may take away part of the Mahr you have given them, unless they commit open illegal sexual intercourse” [al-Nisa’ 4:19]

Ibn Qudaamah said:

The scholars are agreed that the husband may not take her wealth, except in the case of willful defiance and bad conduct on her part. Ibn al-Mundhir narrated that al-Nu’maan said: If the wrongdoing and mistreatment is on his the husband’s part and she seeks divorce by means of khula’, then it is permissible for him (to take the mahr), but he is sinning because of his bad conduct, and he should not be forced to return what he took.

Ibn al-Mundhir said: What he said goes against the apparent meaning of the Book of Allah, and the proven reports from the Prophet (peace and blessings of Allah be upon him), and the consensus of

the scholars.

Al-Mughni, 3/137

Shaykh al-Islam Ibn Taymiyah said in Majmoo’ al-Fatawa (32/283):

It is not permissible for a man to treat his wife harshly in order to make her give up part of the dowry, or to beat her for that purpose. But if she commits an blatant act of immorality then he has the right to treat her harshly in order to make her give up her mahr or some of it (so he can divorce her), and he may hit her. This is between the man and Allah. The woman’s family should investigate the matter and fid out who is in the right. If it is proven to them that she is the one who transgressed the sacred limits of Allah and betrayed the husband, then she is a wrongdoer and transgressor, so she should give back the mahr (or part of it). End quote.

What is meant by the act of blatant immorality (or “open illegal sexual intercourse”) mentioned in the verse (interpretation of the meaning):

“and you should not treat them with harshness, that you may take away part of the Mahr you have given them, unless they commit open illegal sexual intercourse” [al-Nisa’ 4:19]

is adultery and lack of chastity, and bad behaviour such as using foul language and offending her husband.

See Tafseer al-Sa’di, p. 242

And Allah knows best.