134281 - Is an oath of conditional divorce swearing by something other than Allah?

the question

Is it haraam to swear an oath of conditional divorce, because it is swearing by something other than Allah?

Detailed answer

Praise be to Allah.

Swearing by anything other than Allah is an evil act, and the Prophet (blessings and peace of Allah be upon him) said: “Whoever swears an oath, let him swear by Allah or remain silent.” And he (blessings and peace of Allah be upon him) said: “Whoever swears by anything other than Allah has disbelieved or has associated something else with Him.” This is a saheeh hadith. And he (blessings and peace of Allah be upon him) said: “Whoever swears by his acts of worship is not one of us.” And he said: “Do not swear by your fathers or by your mothers or by the idols, and do not swear by Allah unless you are telling the truth.”

This is the ruling of the Prophet (blessings and peace of Allah be upon him), which is that it is not allowed to swear by anything or anyone other than Allah, no matter what it is. So it is not permissible to swear by the Prophet (blessings and peace of Allah be upon him), or by the Ka‘bah, or by one’s acts of worship, or by the life of So-and-so, or by the honour of So-and-so. All of that is not permissible, because the saheeh hadiths indicate that it is not allowed.

Abu ‘Umar ibn ‘Abd al-Barr, the famous imam (may Allah have mercy on him), narrated that the scholars were unanimously agreed that it is not permissible to swear by anything or anyone other than Allah, and what is required of the Muslims is to beware of doing so.

As for the oath of conditional divorce, it is not really an oath; even though the fuqaha’ call it an

oath, it does not come under this heading. What is meant by the oath of conditional divorce is making divorce conditional for the purpose of of urging someone to do something, preventing him from doing it, or confirming something to be true or confirming something to be false, such as when a person says: “By Allah I shall not get up,” or “by Allah I shall not speak to So-and-so.” This is called an oath (yameen). But if a person says: “My wife is divorced if I get up,” or “my wife is divorced if I speak to So-and-so,” this may be called an oath in this regard, meaning that it is for the purpose of urging someone to do something, preventing him from doing it, or confirming something to be true or confirming something to be false. So it is called an oath in that sense, but it is not swearing by something other than Allah. But saying, “I swear by divorce (bi’t-talaaq) I shall not do such and such,” or “I swear by divorce (bi’t-talaaq) I shall not speak to So-and-so” is not permissible.

But if he says, “My wife is divorced if I speak to So-and-so,” or [he says to his wife] “You are divorced if you go to such and such a place,” or “You are divorced if you travel to such and such a place,” then this is a conditional divorce; it is called an oath because it comes under the heading of an oath in the sense that it is for the purpose of urging someone to do something, preventing him from doing it, or confirming something to be true or confirming something to be false. The correct view regarding it is that if his intention was to prevent her, or to prevent himself, or to prevent someone else from doing this thing concerning which he swore the oath, then it comes under the ruling on oaths and he must offer expiation for breaking an oath (kaffaarat yameen).

This does not contradict our saying that swearing by anything other than Allah is not permissible, because they are two different things. Swearing by something other than Allah includes saying, “By al-Laat and al-‘Uzzah, by So-and-so, by the life of So-and-so.” this is swearing by something other than Allah. As for the matter under discussion here, it is a conditional divorce (talaaq), not an oath in the real sense of swearing by something other than Allah. Rather it is an oath in the sense of preventing something, or confirming something to be true or confirming something to be false.

So if a person says that his wife is divorced if he speaks to So-and-so, it is as if he is saying: “By Allah, I shall not speak to So-and-so.” And if he says: “You are divorced if you speak to So-and-so”

– addressing his wife – it is as if he is saying: “By Allah, you must not speak to So-and-so.” Then if that happens and this oath of divorce is broken, then the correct view is that he must offer expiation for breaking an oath (kaffaarat yameen). In other words, the ruling on oaths applies if his aim was to prevent his wife or himself from doing something, and he did not intend a divorce to take place; rather he only intended to prevent this thing from happening, and to stop himself or his wife from doing this thing, or from speaking to that person. So this conditional divorce comes under the ruling on oaths according to some of the scholars, and this view is more likely to be correct. According to the majority of scholars, the divorce does take place and counts as such.

But according to a number of scholars, the divorce does not count as such, and this is the more correct view. It is the view that was favoured by Shaykh al-Islam Ibn Taymiyah and Ibn al-Qayyim, and by a number of the early generations (may Allah have mercy on them), because it is like an oath in the sense that it is for the purpose of urging someone to do something, preventing him from doing it, or confirming something to be true or confirming something to be false, but not in the sense of swearing an oath by something other than Allah, which is haraam, because it is not in fact an oath sworn by something other than Allah; rather it is a conditional divorce. So it is essential to understand the difference between the two. And Allah knows best. End quote.

Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allah have mercy on him).

Fataawa Noor ‘ala ad-Darb (1/181-183).