146794 - If he said to his wife, “Israhi (you may leave),” does that count as divorce (talaaq)?

the question

I read on an Islamic website that if the husband says to his wife, “You may leave,” that is a divorce (talaaq). I wanted to tell my husband about this so that he would not say that, especially as this word is common among us in Egypt. For example we say, “Leave so I can sleep.” I said to my husband: “Can you believe it? I read that if the husband says ‘You may leave’ to his wife, it counts as a divorce.” And I said: “Listen to me and do not repeat what you said.” But he said it again; he said “You may leave” in an angry tone and he swore that he did not mean to say it; it came out without him meaning it to. Does this count as divorce?.

Detailed answer

Praise be to Allah.

Firstly:

The words “You may leave” are regarded by the majority of fuqaha’ as a form of implicit divorce, and it does not count as divorce unless there is the intention of divorce.

The Shaafa‘is and some of the Hanbalis are of the view that saying “You may leave [a translation of the Arabic word israhi]” is an explicit form of divorce. So if the husband says “Israhi (you may leave)” to his wife, it counts as a divorce and if he says, “I did not intend divorce,” that is not acceptable unless there is circumstantial evidence to show that he did not intend to divorce, such as if he said to her, “Israhi (you may leave)” immediately after telling her to go out early to work in the fields. Ibn Hajar al-Makki, one of the Shaafa‘is, said that “Israhi (you may leave)” is used in a metaphoric way.

Al-Ramli said in Nihaayat al-Muhtaaj (6/429): If the husband has clearly uttered the word of divorce, it is not acceptable for him to say that he did not intend to divorce unless there is

circumstantial evidence to that effect. For example he mentioned: if he said to her “Israhi (you may leave)” immediately after telling her to go out early to work in the fields, then this is to be accepted as it appears to be. End quote.

Some of the Maalikis were of the view that divorce takes place if the word “Israhi” is spoken even if that is without the intention of divorce, because it is explicit according to some of them, or it is a word that is used in a metaphoric way with a clear meaning that does not need intention.

The correct view is that of the majority, which is that no divorce takes place if the husband says “Israhi” or similar phrases, unless he intended divorce.

Ibn Qudaamah (may Allah have mercy on him) said in al-Mughni (7/294): If he says, “I have divorced you” or “I am leaving you” or “You may leave (israhi)”, that means that divorce has taken place. This implies that explicit divorce is represented in three words: “divorce” (talaaq), “separation” (firaaq) and “leaving” (saraah) and other words or phrases derived from them. This is the view of al-Shaafa‘i. Abu ‘Abd-Allah ibn Haamid was of the view that explicit divorce is represented only in the word “talaaq” and words/phrases derived from it. This is also the view of Abu Haneefah and Maalik, except that Maalik said that it counts as divorce even if that was not the intention, because metaphoric words of which the meaning is clear do not need an intention. The evidence for this opinion is that words derived from firaaq (separation) and saraah (leaving) are often used in cases other than divorce, so they cannot be regarded as explicit expressions of divorce.

With regard to the word firaaq (separation), this word is mentioned in the Qur’aan in the context of separation between the spouses, so it may be explicit to that effect, like the word talaaq. Allah, may He be exalted, says:

“either you retain her on reasonable terms or release her (tasreeh) with kindness”

[al-Baqarah 2:229]

“But if they separate [wa in yatafarraqaa] (by divorce), Allah will provide abundance for everyone

of them from His Bounty”

[al-Nisa’ 4:130]

“then come! I will make a provision for you and set you free (usarrihkunna) in a handsome manner (divorce)”

[al-Ahzaab 33:28].

And the view of Ibn Haamid is more correct, that explicit statement of something is that which states it and cannot be interpreted in any other manner unless it is a far-fetched interpretation. The words firaaq (separation) and saraah (leaving), although they appear in the Qur’aan in the sense of separation between spouses, they are also used with other meanings, as Allah says (interpretation of the meaning):

“And hold fast, all of you together, to the Rope of Allâh (i.e. this Qur'ân), and be not divided [wa la tafarraqu] among yourselves”

[Aal ‘Imraan 3:103].

People do not use this word in the sense of divorce, so it is not one of the explicit words of talaaq for them.

To sum up: no divorce occurred when this word was used, so long as your husband did not intend divorce thereby.