170606 - Is Divorce in Anger Valid?

the question

My question is about divorce
I am a British revert Muslim and I am married to my wife also revert we been married 3 months now and we was together before we were practising, we sometimes have trivial arguments which lead us to anger and say things we both don’t mean out of anger I said on many occasions that I divorce you which I did not mean, once I was calm and was aware of what I was actually saying and meaning. Recently it was brought to my attention that after it being said three times this is an actual divorce by saying Talaq which I assumed to my local knowledge that saying three times this is one divorce and so on not Talaq being one whole counted, now people are telling me that I must leave my wife who I love and she has to be married to another and have sexual intercourse with another man and divorce or he dies before we can remarry, which she find disgusting and I believe seems very unislamic, so please could you share some knowledge with me as to help me decide what would best please Allah and which is correct according to quran and sunnah, also can you explain in surah Talaq I have read two witnesses are needed for divorce and taking wife back and have read Hadith by Abu Dawud confirming this, but I am told they are not needed only if wife can't be told in person can you present proof for this? Also each time I said it I didn't mean it and was angry as I calmed down and was aware I didn't mean what I said and just want to live Halal please Allah and raise a Muslim family as all our family are disbelievers and are of no help.

Summary of answer

Divorce issued in the state of extreme anger is not valid. The threefold divorce counts as one divorce and it is not essential to have divorce witnessed and the same applies to taking the wife back.

Detailed answer

Praise be to Allah.

Is divorce in anger valid?

If the anger reached a level where the individual did not know what he was saying, or it was extreme anger that made him issue the divorce , and were it not for the anger he would not have issued the divorce, then it does not count as a divorce .

Does triple divorce count as one divorce?

The jurists differed concerning the threefold divorce , and the most correct opinion is that it counts as one divorce , whether it was uttered in a single phrase, such as saying “you are thrice divorced”, or it was uttered in separate phrases such as saying, “you are divorced, you are divorced, you are divorced.”

By the same token, if he issued a divorce then he repeated it during the `Iddah, the divorce before taking her back is part of the first divorce, because it only happens once, and divorce can only happen again after a marriage contract or after taking the wife back.

Do you need witnesses for divorce?

It is not essential or obligatory to have witnesses to the divorce. If a man utters the word of divorce, then divorce has taken place, even if it is in the absence of the wife or no one else was present. The same applies if he writes the word of divorce in a message or on a piece of paper with the intention of divorce; divorce has taken place in this case.

It was narrated that there was scholarly consensus that it is not essential to have witnesses to divorce.

Ash-Shawkani (may Allah have mercy on him) said concerning the issue of having witnesses to

taking the wife back:

“Among the evidence that it is not essential is the fact that there was scholarly consensus that it is not essential to have witnesses to divorce, as was narrated by Al-Muwazi‘i in Taysir Al-Bayan. And taking back the wife is of a similar nature, so it (having witnesses) is not essential in that case as it is not essential in the case of divorce.” (Nayl Al-Awtar, 6/300)

Allah has enjoined having witnesses to divorce and taking back the wife in the verse in which He says (interpretation of the meaning):

“Then when they are about to attain their term appointed, either take them back in a good manner or part with them in a good manner. And take as witness two just persons from among you (Muslims),” [At-Talaq 65:2]

This command is by way of recommendation and preference according to the majority of jurists.

Abu Dawud (2188) narrated that `Imran ibn Husayn (may Allah be pleased with him) was asked about a man who divorced his wife, then had intercourse with her but he had not called witnesses to the divorce or to his taking her back, and he said: Your divorce was not in accordance with the Sunnah and your taking her back was not in accordance with the Sunnah; bring witnesses to the divorce and to taking her back, and do not do (this mistake) again. It was classed as authentic by Al-Albani in Sahih Abu Dawud.

It may also be understood as meaning that it is recommended to have witnesses.

The words “bring witnesses to the divorce and to taking her back, and do not do (this mistake) again” indicate that witnessing divorce or taking back the wife may come after the fact, hence he told him to bring witnesses to both even though they had happened previously.

Shaykh `Abd Al-Muhsin Al-`Abbad (may Allah preserve him) said:

“This indicates that witnessing may come later and that it does not have to be at the time of the divorce or at the time of taking the wife back; rather a man may issue a divorce and then have it

witnessed or he may take back his wife and then have it witnessed. And the taking back may be in the form of intercourse, because if a man has intercourse with his divorced wife during her ‘Iddah, that constitutes taking her back. Or it may be done verbally, but having it witnessed is required so that it will be known that the divorce has ended with the taking back. And the same applies to divorce.” (Sharh Sunan Abu Dawud)

To sum up, your divorce issued in the state of extreme anger does not count as such, and the threefold divorce counts as one divorce; it is not essential to have divorce witnessed and the same applies to taking the wife back.

We advise you to be careful and avoid using the word divorce (Talaq) altogether.

And Allah knows best.