43481 - He said to his wife: You are divorced when we go back to our country

the question

I was travelling with my husband and we had an argument. He said: You are divorced when we go back to our country. We have come back now. Does this divorce count as such?.

Detailed answer

Praise be to Allah.

If the husband said to the wife: You are divorced when we go back to our country, then the divorce takes effect when you return to your country, because this is what he meant, i.e., it was not intended to encourage or discourage, or to confirm or deny, rather it is like when a person says: “When the first day of the month comes”, or “when Ramadan comes”, or “when the ruler comes, then my wife is divorced.” By saying these words, your husband did not intend to prevent you or prevent himself from returning to his country, nor did he intend to encourage you to stay outside your country; what he meant was divorce.

If we assume that he said: “I meant that I would divorce you after we came back”, this is not acceptable either, because by saying “You are divorced”, clearly using the word divorce (talaaq), it cannot be accepted that what he meant and intended was a threat of divorce.

As for the statement of divorce which is intended to stop someone doing something, such as saying, “You are divorced if you go out of the house”, intending to prevent her going out, or that which is intended to encourage her to do something, such as saying, “You are divorced if you do not come back to the house,” this is a statement of divorce concerning which the scholars differed. The majority of them are of the view that divorce does take place when the thing stipulated happens, but a number of them are of the view that divorce does not take place, because he did not intend to divorce her, rather he intended to encourage her to do something or prevent her

from doing something.

Ibn Qudaamah (may Allaah have mercy on him) narrated that al-Qaadi Abu Ya'la said, speaking of an oath to divorce and differentiating between that and a statement of divorce that is intended as such: This is his stipulating a condition by means of which he intends to encourage her to do something, or prevent her from doing something, such as saying, "If you enter the house then you are divorced", or "if you do not enter the house then you are divorced."

With regard to a statement of divorce other than that, such as saying, "You are divorced when the sun rises", or "when the pilgrim comes back", or "if the ruler does not come," this is a statement of divorce which is intended as such and is not an oath.

End quote from al-Mughni, 7/333

Shaykh Ibn Baaz (may Allaah have mercy on him) said: An oath to divorce is a statement of divorce by means of which the person intends to encourage (his wife) to do something, or to prevent her from doing something, or to urge his listeners to believe him or disbelieve him. This is the oath to divorce which is intended to encourage or discourage something, or to confirm or deny something, unlike a statement of divorce which is intended as such, which cannot be regarded as an oath, such as saying, "When the sun rises, my wife is divorced," or "When Ramadaan comes, my wife is divorced." This is not described as an oath (yameen), rather it is simply a statement of divorce in which a condition is stipulated, and when the stipulated event takes place, the divorce comes into effect. If he says for example, "When Ramadaan comes my wife is divorced," then the divorce takes effect when Ramadaan begins. If he says, "When the sun rises, my wife is divorced," then the divorce takes effect when the sun rises.

And he said: But if there is no encouragement or discouragement, rather it is simply stipulating a condition, then this is a statement of divorce in which the divorce counts as such, as stated above, such as if he says: "When the month of Ramadaan begins then my wife is divorced." This is stipulating a condition, and when that happens the divorce takes effect, because the thing that is attached to a condition takes effect when the condition comes to pass. This is the basic principle."

End quote from Fataawa al-Talaaq, p. 129-131

The Standing Committee was asked about a man who said to his wife: When your period comes then you are purified, then you are divorced, but after that he decided to keep his wife and not divorce her.

They replied: This is a divorce that is connected to a stipulated condition, and he did not intend thereby to encourage her to do something or prevent her from doing something, so the divorce takes effect when that condition comes to pass, which is her purification after her menses. Recanting this condition after it has come to pass is not valid. End quote.

Fataawa la-Lajnah al-Daa'imah, 20/174

And Allaah knows best.