636859 - Does a divorce (talaq) take place if the husband says: “I will divorce you,” and his intention is for the divorce to take place with immediate effect?

the question

If a husband says, ‘I will divorce you,’ using future tense but meaning it to happen immediately or in present tense, does the divorce take place, or not just because he specifically used or uttered in future tense?

Summary of answer

If a man says to his wife “I will divorce you” it is a promise (or a threat) of divorce, and divorce does not take place if he only says this phrase.
What is most likely is that divorce does not take place immediately, even if the husband claims that he intended by using this phrase to initiate divorce with immediate effect, because the future participle sa- (equivalent to “will” in English) refers to the future, and the intention has an impact on identifying one of the meanings that the ambiguous word or phrase could refer to, but the intention cannot change the meaning of a phrase to a meaning that cannot be indicated by it, unless it is proven that the phrase could mean immediate divorce according to the custom and usage of language among a given community. In that case, the matter should be referred to a mufti issue a fatwa on a particular incident.

Detailed answer

Praise be to Allah.

I.

If a man says to his wife “I will divorce you” it is a promise (or a threat) of divorce, and divorce

does not take place if he only says this phrase.

It says in *Al-Mutli` `ala Abwab al-Muqni`*, p. 314: A ruling does not become binding by use of the imperfect tense [in Arabic, which may refer to what is happening now or what will happen in the near future] or the imperative tense [commands], because the imperfect tense is just a promise, like saying “I manumit,” “I manage,” or “I divorce.” And the imperative tense is not valid to make an action binding, nor is it valid to inform of what the speaker did (such that he could be held accountable for it). End quote.

That includes the phrase “I will divorce you (*sa’utalliquki*); it is also a promise.

Muhammad ibn al-Hasan ash-Shaybani said in *Al-Asl* (4/559): If a woman says to her husband: “If you divorce me three times, then I owe you one thousand dirhams,” and he says: “Yes, I will divorce you,” he is not entitled to anything unless he actually does it. End quote.

As-Sarkhasi said in *Al-Mubsut* (6/184): That is because she committed herself to give this money in return for his issuing the divorce, not for the promise to issue the divorce. So if he initiates the divorce immediately, then he is entitled to the thousand dirhams, but if he does not do it immediately, then he is not entitled to anything, but the divorce will count as such if he does it [later on].... So if he divorces her later on, then the divorce counts as such, because the husband can initiate divorce by himself. End quote.

What as-Sarkhasi meant by divorce counting as such is that the divorce will count if the husband initiates divorce later on, and he did not mean that the divorce will count as such straight after he said “I will divorce you,” – because he [as-Sarkhasi] clearly differentiated between the promise of divorce and divorce actually taking place, and he stipulated that for the husband to be entitled to that money and for the divorce to count as such, he should divorce her immediately after saying “I will divorce you.”

These two texts indicate that there is a difference between saying “I will divorce you” and issuing the divorce after that. The former is a promise, whereas the latter is the action that initiates divorce.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: If a man says to his wife: “I will send the divorce papers” or “I will divorce you,” or he mentions papers and that could be understood as referring to divorce papers, then this is a promise of divorce; it is not an actual divorce and does not count as a divorce, and if he wants to change his mind, there is nothing wrong with that.

End quote from *Fatawa Nur `ala ad-Darb*, 19/2.

This statement clearly explains the ruling on this phrase when one says it, because the shaykh regarded “I will divorce you” as a promise of divorce, which does not count as a divorce, therefore he regarded it as permissible for the husband to change his mind.

II.

It should be noted that there is a difference between the simple imperfect tense, such as “*utalliquki* (I divorce you)” and the imperfect tense preceded by the future particle *sa-* , such as “*sa’utalliquki* (I will divorce you).”

The simple imperfect may be understood in linguistic terms as referring to the present or the future, thus it is regarded as an ambiguous phrase – as the Hanbalis and those who agreed with them suggested. So if the speaker intends thereby to issue an immediate divorce, then it counts as such, but if his intention was to make a promise of divorce, then it does not count as such.

Al-Bahuti (may Allah have mercy on him) said: The explicit word in this case is talaq (divorce) and words derived from it, because this word exclusively refers to divorce and has no other meaning, as is proven in the religious texts and in linguistic usage. So if the husband says “You are divorced” or “Divorce (talaq)” or “I have divorced you” or “You are divorced,” this is an explicit statement… and it is not an imperative, such as saying “Go!”, or a imperfect tense such as “I divorce you,” or an active or passive participle. In the latter examples, divorce does not take place, because these phrases do not indicate that he intended for divorce to take place with immediate effect.

Shaykh Taqiy ad-Din said in *Al-Musawwadah fil-Buyu`*, after mentioning words that make the

transaction binding, whether in the past tense or present tense or active participle or passive participle, that the transaction does not become binding by using the imperfect tense, and whatever wording of this nature that could be interpreted in different ways is ambiguous, because using ambiguous words – in the case of divorce and the like – is valid, and the context and circumstances should be taken into consideration. This approach is of great benefit, especially in the case of khul`.

End quote from *Kashshaf al-Qina`*, 12/212.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said regarding the simple imperfect: if the speaker's intention is that divorce should take place immediately, then she is divorced, because the imperfect tense may refer to the present or the future.

End quote from *Ash-Sharh al-Mumti`*, 13/61.

The reason why the simple imperfect is regarded as ambiguous is that it may refer to the present or to the future. So if his intention is that the divorce should take place with immediate effect, then it counts as a divorce.

As for saying ""sa'utalliquki (I will divorce you)," the particle sa- (equivalent to English "will") refers to the future, as indicated by the grammatical structure of the phrase in Arabic. So in this case the phrase cannot possibly refer to the present; it is no longer ambiguous, so it is not valid to count this as a divorce that took place as soon as the words were uttered; rather it is a promise or threat to issue a divorce in the future.

Ibn Ya`ish said in *Sharh al-Mufassal* (5/95), in the chapter on the future particles [in Arabic]: These particles always refer to the future, meaning that they indicate something that is to happen in the future, and the verb that follows them can only refer to something that will happen in the future.

What these particles refer to is a deferral in terms of time. So if they precede an imperfect verb, they turn its meaning into something that is to be done in the future, and they remove any ambiguity about the verb, just as the definite article *al-* removes any ambiguity about the noun.

End quote.

His saying that these two particles remove any ambiguity indicates that the possibility that the imperfect verb may be understood as referring to the present – because of which the simple imperfect verb is regarded as ambiguous – is eliminated by adding the particle *sa-* (equivalent to "will" in English).

The intention has an impact only when an ambiguous word or phrase is used, in which case the intention will identify one of the possible meanings of a word or phrase, but the intention cannot cause a word or phrase to be interpreted in a way that is not possible. Moreover, the mere intention of divorce without uttering a word that counts to make divorce take place does not lead to divorce taking place.

From the above discussion, we may conclude what the jurists established, which is that the intention has no impact except in the case of ambiguous words or phrases that could be interpreted as being in harmony with that intention.

Ash-Shafa`i (may Allah have mercy on him) said in *Al-Umm* (5/278): If a man speaks to his wife saying words that cannot imply divorce, and says: I meant it as a divorce, it is not a divorce. Rather the intention can only have an impact with words or phrases that could carry the meaning of what was intended. End quote.

Ibn Qudamah (may Allah have mercy on him) said in *Al-Mughni* (10/370): As for words that cannot be taken as referring to divorce and do not convey any meaning of separation – such as saying "Sit down" or "Stand up" or "Eat" or "Drink" or "Come here" or "Feed me" or "Give me water" or "May Allah bless you" or "May Allah forgive you" or "How beautiful you are" and so on, these are not ambiguous and cannot be taken as meaning divorce, even if he intended it, because such words cannot carry the meaning of divorce. If divorce using such words was valid, it would take place by virtue of the intention only, but we have stated above that divorce cannot take place through such words. End quote.

There is a similar statement in *Kashshaf al-Qina`* (12/227).

These texts did not use the specific phrase "*Sa'utalliquki* (I will divorce you)" but they set out a general guideline, which is that the intention on its own does not cause divorce to take place; rather it identifies the specific meaning of an ambiguous word or phrase.

The intention has an impact only when an ambiguous word or phrase is used and the speaker's intention is in harmony with one of its meanings. So if the husband says "*Sa'utalliquki* (I will divorce you)" , it refers to something that he will do in the future, as is the usual usage of this grammatical structure, and it does not indicate that divorce takes place immediately. In that case, the intention at that moment on its own is not sufficient to make divorce take place immediately, because the intention at that moment is something that the wording used cannot mean.

It cannot be said that the phrase "*Sa'utalliquki* (I will divorce you)" is one in which the word talaq (divorce) is mentioned and that is enough to say that it may mean divorce with immediate effect, because what matters is not the mere usage of the word talaq (divorce); rather what matters is whether the phrase used could mean what the one who uttered these words intended. This phrase indicates that the divorce will be issued in the future, and does not refer to a separation that is to take place as soon as these words are uttered. Thus the meaning intended by the speaker – which is divorce with immediate effect – cannot be understood from the wording used, which refers to the future, because what matters is that the words used should match the meaning that the speaker intends, and not merely using the word divorce in the phrase uttered. So the intention when uttering the words one its own is not sufficient to change the meaning of the phrase to a divorce that is to take place with immediate effect.

III.

Well-established customs and traditions may have an impact on the way a phrase is understood, if it is proven that the people who have such a custom traditionally use this phrase to initiate a divorce with immediate effect, and do not use it to merely make a promise of divorce. In that case, customs and traditions have an impact on understanding the phrase and determining whether it could mean divorce with immediate effect. In that case, a particular incident should be referred to the mufti to examine the words that the speaker used and the custom associated with that phrase,

and other circumstantial evidence.

Conclusion:

If the husband says to his wife: "*Sa'utalliquki* (I will divorce you)" , this phrase is usually used as a promise or threat to initiate a divorce in the future, therefore divorce does not take place by merely uttering this phrase.

What is most likely is that divorce does not take place immediately, even if he claims that he intended by using this phrase to initiate divorce with immediate effect, because the future participle *sa-* (equivalent to "will") in English refers to the future, andthe intention has an impact on identifying one of the meanings that a particular word or phrase could refer to, but the intention cannot change the meaning of a phrase to a meaning that cannot be indicated by it. What supports this view is the fact that the marriage remains intact until it is proven that it has ended by virtue of clear wording.

With regard to the simple imperfect tense, such as "I divorce you (*utalliquki*)" or "*tatluqina* (you are divorced – passive imperfect tense)", this may refer to the present or the future, therefore it is ambiguous according to the Hanbalis and those who agreed with them. So if he intended thereby a divorce with immediate effect, then it counts as such; and if he intended it as a promise of divorce, it does not count as such. Based on that, there are three scenarios:

If he intended in his heart a divorce with immediate effect, but he did not use wording that could be used to issue a divorce, then it does not count as such, because that is a mere intention.

If he said: "*Sa'utalliquki (*I will divorce you)", promising that the divorce would happen later on, it does not take place until he initiates the divorce after that by speaking valid words of divorce.

If he claims that by saying "*Sa'utalliquki* (I will divorce you)" he intended that the divorce should happen immediately, what appears to be the case is that it does not count as such, because of what we have noted above, because the wording that can only refer to the future cannot mean now.

When it comes to a specific incident in which it is claimed that there is a specific custom or unusual usage of a phrase, then the matter should be referred to a mufti to examine the phrase that was used for divorce, and the local customs and circumstantial evidence.

And Allah knows best.