126292 - He agreed with her husband that if he travelled without her knowledge, it would be the last day between them, and he travelled

the question

A woman stipulated that her husband should not travel abroad without her knowledge, and that if he did travel without her knowledge, it would be the last day between them. Then he travelled without telling her, and she does not know whether he forgot the condition or was heedless of it. Is the relationship ended by this action and is the woman irrevocably divorced? i.e., is she finally divorced from her husband and cannot go back to him? Or is it one talaaq? Or does it depend on the woman herself, if she insists on her condition then she is divorced and if she recants it then there is nothing? Is there any expiation to be offered?.

Detailed answer

Praise be to Allah.

Divorce (talaaq) can only come from the husband. If a woman divorces her husband by talaaq or makes him haraam for herself, that does not count as a talaaq.

But if the husband accepted what his wife stipulated, and said that if he travelled without her knowledge then it would be the last day between them, then this wording is a metaphor for divorce, and it is dependent upon a condition, so it depends on the husband’s intention; if he intended divorce thereby then it counts as a talaaq, and if he did not intend divorce then it does not count as such. If he intended to prevent himself from travelling without her knowledge but did not intend divorce, and then he travelled, then he must offer kafaarat yameen (expiation for breaking an oath).

If he said: I intended divorce by this stipulation, but he travelled forgetting the condition, then it does not count as divorce according to the more correct scholarly view.

See the answer to question no. 105998.

In the event that it is deemed to count as a divorce, it counts as one talaaq only. If this is the first or second talaaq then the husband may take his wife back so long as the ‘iddah has not yet ended.