263228 - If he says to his wife, “Divorce [talaaq]” or “You are divorce”

the question

I have been married for approximately two years, and I have a daughter from my wife. I wanted some clarification about the conditions that must be fulfilled in order to complete divorce. For example, if the woman does not menstruate, and no intercourse has taken place since her last period, if the conditions are not met, can divorce be valid or not? Also, when a man divorces his wife, is it sufficient for him to say the word “talaaq (divorce)”, or is it essential for him to say: “I am giving you your divorce?” I have some problems with anger, which everyone who knows me is aware of. I am seeing my doctor about the anger. I said divorce [i.e., he said, “divorce” and did not say, for example, “you are divorced”] to my wife when we were arguing, and she was saying disrespectful things to me and asked me to divorce her. I said the word “divorce” when I was very angry, but after I came back to my senses, I regretted it. I did not really intend to divorce my wife. Now my wife thinks that we are divorced. Is it possible to explain the correct Islamic ruling on divorce and when it counts as such? May Allah reward you with good.

Detailed answer

Praise be to Allah.

Divorce as prescribed in Islam means that the man issues one divorce (talaaq) to his wife during a period of purity in which he has not had intercourse with her, or when she is pregnant. Such a divorce counts as such, according to scholarly consensus.

As for issuing a divorce when the woman is menstruating or during a period of purity in which he has had intercourse with her, it counts as such according to the majority of scholars, but does not count as such according to some scholars. Please see the answers to questions no. 72417 and 106328.

Secondly:

A divorce issued in a moment of anger is subject to further discussion and is a matter concerning which the scholars differed. The more correct view is that in the event of anger, if the speaker does not know what he is saying, or extreme anger led the husband to issue the divorce, and were it not for the anger he would not have done so, then it does not count as such. This is in contrast to ordinary anger that is not severe; in such cases the divorce does count as such. See the answer to question no. 45174.

Thirdly:

If a man says to his wife: “You are divorced”; or he says, “She is divorced”; or he says, “I have divorced you”, or “You are divorced” – all of these are clear statements of divorce and the divorce counts as such, with no need to examine his intention.

It is not stipulated that he should say: “I give you divorce”.

If he says: “Utalliquki (I divorce you)” (in the present tense), this is open to interpretation, because the present tense in Arabic may refer to the present or the future. If he was referring to the present – i.e., I am divorcing you now – then the divorce counts as such. If he was referring to the future, then this is a threat and a warning, and the divorce does not count as such until he fulfils his threat and divorces her. Attention should be paid to such matters in the language of any speaker.

Fourthly:

If the husband says: “You are divorce”, then there is a difference of scholarly opinion concerning that: is this an explicit statement, in which case the divorce counts as such regardless of his intention, or is it a metaphor, in which case the divorce does not count as such unless he actually intended it?

The majority of Hanafi, Maaliki and Hanbali scholars are of the view that it is an explicit statement [and therefore the divorce counts as such].

Ibn Qudaamah (may Allah have mercy on him) said: If he said, “You are divorce”, then al-Qaadi said: All the reports from Ahmad indicate that divorce counts as such in this case, regardless of whether he intended it or not. This is also the view of Abu Haneefah and Maalik. There are two views among the companions of ash-Shaafa‘i, one of which is that it is not an explicit statement, because the word talaaq (divorce) is a masdar (verbal noun), which cannot refer to something specific except by way of metaphor. The second view is that divorce is an explicit term, so there is no need for it to be accompanied by the intention, as it is customarily used among them. End quote from al-Mughni (7/387).

It says in al-Furoo‘ (5/395): In [the book] al-Waadih it says: If someone says, “You are divorce”, then it counts as a divorce. Something similar is mentioned in [the book] al-Intisaar. End quote.

Ad-Dardeer said in ash-Sharh as-Sagheer (5/395): This is the explicit wording of divorce, by means of which divorce takes place, even if his intention was not such, if what he meant to say was divorce, such as if he said, I am committed to divorce, or ‘Alayya talaaq (Divorce is binding upon me), or You are divorce, and the like. End quote.

See also: al-Bahr ar-Raa’iq, 3/279

The Shaafa‘is think that the more correct view is that it is a metaphor.

An-Nawawi (may Allah have mercy on him) said in al-Minhaaj: The explicit terms are talaaq (divorce), firaaq (separation) and saraah (letting go), according to the well-known view, such as saying, Tallaqtuki (I have divorced you), Anti taaliq/mutallaqah (you are divorced) and so on; not “Anti talaaq/at-talaaq (you are divorce).”

Ar-Ramli said in ash-Sharh: … not “you are divorce.” This is a metaphor, like saying: If you do such and such, then it is your divorce, as is quite clear, because the masdar (verbal noun) is not used to refer to something specific except on rare occasions.

End quote from Nihaayat al-Muhtaaj (6/428)

Undoubtedly his saying “divorce”, without saying “you are” is less indicative of divorce than

saying “you are divorce”, which appears to be a metaphor.

Based on that, if you said “divorce (talaaq)”, as may be understood from your question, if you intended divorce thereby, then it counts as such, but if you did not intend that, then it does not count as a divorce.

Fifthly:

It should be noted that most instances of divorce stem from anger, frustration and agitation; no one speaks of divorce when he is relaxed and happy. Therefore the fact that the husband divorced his wife in a moment of anger does not necessarily mean that it does not count as such, as many people think, unless the anger is so extreme that he no longer knew what he was saying, or he lost control of himself in such a manner that he spoke without meaning it. In that case, his divorce does not count as such, according to scholarly consensus.

However, if he was very angry but did not reach the stage where he was no longer aware of what he was saying, although his anger was so intense that he was no longer in control of himself and felt that he had been pushed to divorce, in this case the majority of scholars are of the view that this anger does not preclude divorce.

Some of the scholars are of the view that that level of anger does in fact preclude divorce. Fatwas based on this view were issued by Shaykh al-Islam Ibn Taymiyyah (may Allah have mercy on him) and his student Ibn al-Qayyim, and this is the more correct view, in sha Allah.

We only referred to the majority view so that people will realise the seriousness of talking about divorce, at moments of anger and otherwise, and will understand that it may destroy families and cause harm to a man and to his wife because of his haste and his failure to control his tongue. We ask Allah to keep us safe and sound.

For more discussion on this issue, please see the answers to questions no. 45174, 82400, and 160830.

Whatever the case, one should beware of being hasty and taking lightly the matter of using words

of divorce, so as to protect one’s home and family.

And Allah knows best.