272841 - He said to her “I divorce you” or “You are divorced” with the intention of threatening and scaring her

the question

I am in a desperate situation, and I hope you can help me. During my marriage, due to some bad behaviour on the part of my wife we argued and due to intense anger I used to threaten her with divorce. My intention was only ever to shock her and make her understand the seriousness of the situation, but I never intended divorce in a true sense. In some of our arguments, I used to threaten her with divorce and say to her, You are divorced. I also wrote to her, when she was in India, saying: If you do not listen to me, I shall divorce you. After that, I wrote to her saying: You are divorced. I swear by Allah that in all of these arguments (verbal or written), I never intended to divorce her at all; I only wanted to scare her. Do these threats or my saying, You are divorced, in anger, without intending divorce, count as divorce?

Detailed answer

Praise be to Allah.

Firstly:

If a husband says to his wife: “Anti taaliq (you are divorced),” then this clearly counts as divorce and does not depend on what your intention was; your saying that you only wanted to scare her or threaten her is not acceptable. So divorce occurs when you say “You are divorced”, regardless of your intention, so long as you meant to say that and understood the meaning of the word.

If one who is asleep or is not aware of what he is saying (for any reason) utters the word of divorce without meaning to utter it, then his divorce does not count as such. The same applies if one who does not know Arabic utters the word talaaq (divorce) without knowing what it means; his divorce does not count as such.

But if a person says it deliberately and knows what it means, then divorce counts as such, even if he did not intend it to happen.

Al-Qarraafi said in al-Furooq (3/163):

When the fuqaha' said that the intention (niyyah) is a condition in the case of uttering a clear or explicit word of divorce, what they meant was that the person uttered that phrase deliberately, which excludes slips of the tongue when the person had no intention of uttering the word of divorce, such as if his wife's name is Taariq and he is calling her but by mistake he calls her Taaliq (meaning divorced). In that case, nothing results from his saying that, because he did not intend to utter the word of divorce.

And when the fuqaha' said that the intention (niyyah) is not a condition in the case of uttering a clear or explicit word of divorce, what they meant was that the person intended divorce by using a certain phrase (in other words, he used it with the intention of divorce). In that case the intention is not a condition when using an explicit word of divorce, according to scholarly consensus; rather the intention of divorce is a condition only when he uses words that are not explicit.

If you took your wife back after having divorced her, then you divorced her a second time by saying, You are divorced, then this counts as two divorces on your part.

This applies if you uttered the word of divorce. But if you wrote it, then the divorce does not count as such unless you had the intention of divorcing her, because what is written is not regarded as being an explicit form of divorce; rather it is implicit. Please see question no. 72291.

With regard to your saying: If you do not listen to me I am going to divorce you, this is the threat of divorce in the future. If you carry out your threat and divorce her, then it counts as such, but if you do not carry out your threat and do not actually divorce her, nothing results from a mere threat.

Secondly:

With regard to divorce issued at a time of anger, some cases do not count as such, according to

scholarly consensus; some do count as such, according to scholarly consensus; and in some cases there is a difference of scholarly opinion, according to the type and level of anger involved. We have discussed this previously in the answers to questions no. 22034 and 45174.

The conclusion reached there is that in cases of anger that makes a person no longer aware of what he is saying, divorce does not count as such. The same applies to extreme anger that compels a person to utter the word of divorce, when in a normal situation of calmness he would not issue a divorce.

This is the view favoured by a number of scholars.

Based on that, if you uttered the word of divorce in a state of extreme anger, and were it not for that anger you would not have issued a divorce, then the divorce does not count as such.

But if it was an instance of ordinary anger that did not lead to you not knowing what you were saying, then the divorce does count as such.

Our advice to you is to go yourself to the shar'i court in the place where you live.

If there is no such court, then go to the mufti among the scholars of the country where you live, and explain to him what happened and what you said about divorce, so that he can give you a fatwa and advise you on the basis of clear understanding, after you have explained the situation in detail.

If you can take your wife with you, that will be better.

And Allah knows best.