

363652 - Is it valid for the husband to retract a conditional divorce or limit it after uttering it by stating his intention?

the question

Her husband said to her that if she talks about her past, she is automatically divorced when she talks about it. He also said that whenever she would talk about her past, she is divorced one time, if she talks about it the second time, she would be the second divorced, and if she talks about it the third time, she is divorced the third time. They both didn't know about conditional divorce. She took permission from her husband and talk about her past many times with him. After she learned about conditional divorce, he asked her husband about that. Her husband said to her that he put the condition on specific past things, not all things. He told her that by saying "you are divorced when you talk about your past" he meant specific past things not all. Her husband said to her that she didn't break the condition because she didn't talk about what past things he meant. Can she trust her husband?. Did conditional divorce occurred?. (note they didn't consummate the marriage). Plz, brother gives her a fatwa. (her country's people follow the school of Hanafi). If it possible please brother give a reference so she would have no doubt

Detailed answer

Firstly:

If the husband made the divorce dependent upon a condition and that condition was not met, then the divorce does not count as such.

Ibn Qudamah (may Allah have mercy on him) said:

If the husband connected the divorce to a particular time or to a specific condition, and made it dependent on that, it does not come into effect unless that condition is met or that time comes. This is the view of Ibn 'Abbas, 'Ata', Jabir ibn Zayd, an-Nakha'i, Abu Hashim (i.e., Yahya ibn Dinar), ath-Thawri, ash-Shafa'i, Abu 'Ubayd and ashab ar-ra'y."(Al-Mughni 10/410).

If the divorcing husband uttered general words and said: I meant it to be specific, that is to be accepted from him, because general words may often be used to refer to specific meanings, and his intention makes specific what is general in wording and restricts that which is open-ended, as was stated by Ibn al-Qayyim (may Allah have mercy on him) and others.

See: *at-Turuq al-Hukmiyyah fi's-Siyasah ash-Shar 'iyyah* by Ibn al-Qayyim (2/803).

Al-Bahuti (may Allah have mercy on him) said:

If in his heart he intended to exempt one of his wives from the general statements of divorce, such as if he said that his wives were divorced, but he intended to exclude So-and-so from that, then this exemption is valid and she is not divorced, because his saying "My wives are divorced" is a general statement, and it could be used to refer to some of what he mentioned, because using a general phrase to refer to something specific is something that is commonly accepted in ordinary speech."(*Ar-Rawd al-Murbi'* 6/531).

He also said (6/574, 575).

If someone says to his wife: "If I start talking to you, then you are divorced," then she starts to speak, his oath becomes no longer applicable, because she spoke to him first and he did not speak to her first... unless what he meant was if he was the first to speak to her in some other situation. If that was what he meant, then it is to be understood according to what he meant and intended. End quote.

Based on that, so long as the husband connected his words to specific things in the past, then he is to be believed with regard to what he said about his intention, and that is to be accepted from him. Thus the condition should be based on his intention, and you said that the wife did not speak about the things that the husband meant that she should not talk about, so no divorce takes place.

Thirdly:

If the man connected the divorce of his wife to a specific matter, as mentioned in the question and the like, then he has no right to retract the conditions he specified or to give her permission

to do that thing. Rather if she does it, then he has broken his oath.

Al-Bahuti (may Allah have mercy on him) said: The man who stipulated the condition for divorce of his wife has no right to cancel that condition, because cancelling it means that it is no longer applicable, but what happened cannot be deemed to no longer be applicable. So if the thing that was stipulated in order for divorce to occur happens, which is described as the condition, then she is divorced because that condition was met, and if it does not happen, then she is not divorced."(*Kashshaf al-Qina'* 12/297).

See also the answer to question no. [105438](#) .

Fourthly:

If it so happened that the wife spoke about what her husband meant with regard to her past, then most of the scholars say that the divorce counts as such, and the divorce is repeated every time she speaks of that, because the husband uttered the words "every time", which is indicative of repetition.

But if that happened before the marriage was consummated, she is completely divorced by one talaq (divorce), and no other talaq counts after that.

Shaykh al-Islam Ibn Taymiyah favoured the view that a conditional divorce counts as such if the husband intended that it should count, when that condition is met.

But if the husband's intention was to prevent his wife from talking about a specific matter, then this comes under the ruling on oaths, and it does not count as a divorce, but the husband must offer expiation for breaking an oath (kaffarat yameen) if his wife goes against him.

This has been explained previously in the answer to question no. [229507](#) .

Shaykh Ibn 'Uthaymin (may Allah have mercy on him) was asked about a woman who visits her family a great deal, and her husband said to her: "If you go to your family again, then you are divorced." He said: She started to cry and urged me to change that, and I felt sorry for her, so I

tried to find a way to re-interpret what I had said, and I told her: If you go to your family without my permission, then you are divorced, and now I give you permission to go.

He said: But I am not comfortable about that, because I did not ask any scholar about it; rather we carried on with our marital life as it had been.

He (may Allah have mercy on him) replied:

Before answering this question, I would like to offer some advice. How often some Muslims do things which require us to give them some advice about those matters. I would like to say:

Any action that a person does when he does not know the Islamic ruling concerning it, he is taking a risk by doing it. What the believer should do, when he wants to do some deed – whether it is an act of worship or some interaction with other people – is not to do anything until he finds out the Islamic rulings regarding it, so that he will be acting on the basis of knowledge, especially with regard to such serious matters as marriage and divorce.

The fact that a man does not realise what he has done until after he has been stricken with something which he may think is because of his infraction means that it is not appropriate for a believer or one who is prudent to do that thing. When that happened, this brother should have asked us, before trying to interpret things for himself on the basis of ignorance. I ask Allah to turn in mercy to us and to him.

With regard to the answer to his specific question, I say:

If, when this man said to his wife, “If you go to your family, then you are divorced,” he intended to threaten her and prevent her from going to her family, then this is regarded as coming under the ruling on oaths, and he may change his mind and offer expiation for breaking an oath (kaffarat yamin), which is freeing a slave, or feeding or clothing ten poor persons. If he cannot afford that, then he must fast for three days.

But if what he meant by saying “If you go to your family, then you are divorced” was divorce, and the idea that he had in mind was that she would be divorced if she disobeyed him and went

against his wishes, and he does not want her to remain his wife, then in that case the divorce counts as such if she went to her family.

He cannot change this condition, meaning that he cannot add another condition to it or cancel it completely. So he cannot say the last thing he said: which was “If you go to your family without my permission, then you are divorced.” This does not count for anything, because by stipulating a condition the first time, the ruling became binding, which is that the divorce that was dependent upon this action of the wife would come into effect if she did that action. So he cannot add anything to it or subtract anything from it, or cancel it altogether.

Based on that, if she went to her family, then she is divorced as a result of going to her family. If the divorce was revocable (first or second talaq), then he can take her back so long as her ‘iddah has not yet ended.

Yes, if he intended from the outset, that “if you go to your family, then you are divorced,” and he meant “without permission from me,” this intention makes the general statement specific, so if she went out with his permission, there is no blame on either of them.”(*Fatawa Nur ‘ala ad-Darb 21/2*).

And Allah knows best.