276888 - Ruling on deliberately uttering the word of divorce in a program for treating OCD

the question

I have previously written to you asking for fatwas regarding divorce. and you replied that it did not count due to my condition i.e. sihr/ extreme waswasa. after explaining my situation to a psychiatrist i have been diagnosed by a psychiatrist to have obsessive compulsive disorder. i am due to undergo treatment for this issue. i have been told by the psychiatrist that i will eventually have to as part of the treatment programme utter the words 'divorce' as part of getting cured inshallah from this ocd. what is the islamic ruling on this matter? (where i have to say the word divorce as part of my treatment plan to get better). will it have any impact on my marriage

Detailed answer

Praise be to Allah.

Firstly:

A divorce issued under the influence of waswasah (whispers from the Shaytaan) or sihr (magic, witchcraft) does not count as such, so long as the one who uttered it did not intend it as such and was, rather, compelled to do so, because there is no divorce at the time of coercion. Ibn Maajah (2046) narrated from ‘Aa’ishah that the Messenger of Allah (blessings and peace of Allah be upon him) said: “There is no divorce and no manumission at the time of coercion.” The hadith was classed as hasan by al-Albaani.

Al-Bukhaari included a chapter heading in his Saheeh: Divorce in the case of coercion and compulsion, or uttered by one who is drunk or insane, or who uttered the word of divorce or words of shirk and the like by mistake or out of forgetfulness, because the Prophet (blessings and peace of Allah be upon him) said: “ Actions are but by intentions, and each person will have but that which he intended.” Ash-Sha‘bi recited the verse (interpretation of the meaning): “Punish us not if

we forget or fall into error” [al-Baqarah 2:286]. And what is not valid of admission (of sin or crime) on the part of one who is affected by waswasah. The Prophet (blessings and peace of Allah be upon him) said to one who admitted an offence: “Are you insane?” ‘Uqbah ibn ‘Aamir said: The divorce of one who is affected by waswasah does not count as such. End quote.

Coercion includes being forced or compelled, being unaware of what one is saying, and when one does not mean what one says. This could happen with those who are affected by waswasah and sihr, and to some of those who are suffering from depression, as one of them could issue the word of divorce without intending to or wanting to, and could even find himself compelled to utter the word of divorce and unable to calm down until he utters that word. In such cases, the divorce does not count as such.

Al-Bahooti (may Allah have mercy on him) said: Shaykh [Ibn Taymiyah] said: If the sihr has had such a great impact that he does not know what he is saying, then his divorce does not count as such.

End quote from Kashshaaf al-Qinaa‘ (5/236).

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: Question: Is the one who is affected by sihr like the one who is insane?

The answer is yes; we ask Allah to keep us safe and sound. Being affected by sihr is a type of insanity, so if a person who is so affected utters the word of divorce, his divorce does not count as such; if he swears an oath not to have sexual relations with his wife [eelaa’], his oath is not valid; if he divorces his wife by zihaar [a jaahili form of divorce in which the man says to his wife, you are to me as my mother’s back], his zihaar is not valid. That is because the one who is affected by shihr has no control over his thoughts at all.

End quote from ash-Sharh al-Mumti‘ (13/221).

Shaykh Ibn Jibreen (may Allah have mercy on him) was asked: Does a divorce issued by one who is affected by sihr count as such or not?

He replied: If the sihr overwhelmed his reason to the point that he would be classed as insane, then his divorce does not count as such, because divorce is dependent upon his being able to decide upon it, because Allah, may He be exalted, says (interpretation of the meaning): “And if they decide upon divorce…” [al-Baqarah 2:227]. The one who has lost his mind is unable to decide or intend anything.

But if the word of divorce was uttered with understanding and awareness of the ramifications of divorce, and what it would lead to of separation, then it does count as such.

But if the effect of sihr keeps him away from his wife and creates resentment between them, and he cannot find any way to calm down except by uttering the word of divorce – as referred to in the verse in which Allah, may He be exalted, says (interpretation of the meaning): “And from these (angels) people learn that by which they cause separation between man and his wife” [al-Baqarah 2:102] – then what appears to be the case is that it does not count as such, because he is not in control of his words and deeds. And Allah knows best. End quote.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: The divorce of one who is affected by waswasah does not count as such, even if he utters it himself, if he did not mean it, because this word is coming from one who is affected by waswasah, and he does not intend or want that. Rather he is coerced and compelled to say that, because of the strength of the factor that is pushing him to say it, and the lack of restraint. The Prophet (blessings and peace of Allah be upon him) said: “There is no divorce at the time of coercion.”

His divorce does not count as such if he did not really intend it with a sense of certainty. In this scenario, in which he is coerced or compelled to say it without intending it or choosing to do so, it does not count as such.

End quote from Fataawa Islamiyyah (3/277).

Secondly:

If you feel overwhelmed because of the sihr and waswasah, and you can find no peace except by

uttering the word of divorce, there is no blame on you for that. As for deliberately uttering the word of divorce as a means of therapy for waswasah, in principle it is not allowed, and you should look for other means of therapy.

If this is the only option, and there is no other, then there is nothing wrong with saying: “Anti taaliq min withaaq” meaning “you are released from bonds” or saying “Anti taaliq” which usually means “you are divorced”, but may be intended to mean “you are free of fetters or chains,” i.e., her hands and feet are not tied up.

Adding the phrase “min withaaq (from above)” prevents any divorce from taking place. The same applies if you intend that in your mind, without adding these words verbally.

If you are overwhelmed by waswaas to the point that you utter the word without restricting the meaning of the word talaaq (divorce, release) in any way, then the divorce does not count as such.

It says in Kashshaaf al-Qinaa‘ (5/247): If he says to his wife, “Anti taaliq (you are divorced)”, and he says that what he meant was “released from fetters”, then she is not to be regarded as divorced before Allah, because Allah knows best what his intention was. If he clearly mentions the idea of (release from) bonds, and he said: I have released you from bonds, then his divorce does not count as such, because what was added to the word of divorce diverted it from its original meaning, which is similar to making exceptions or conditions.

And Allah knows best.