106328 - He divorced her three times during a period of purity (tuhr) in which he had had intercourse with her

the question

I have been married for four months, and there was an argument between me and my wife. Her mother got involved in the matter and she said something inappropriate to me which made me lose control of myself and I said to her: Your daughter is divorced, divorced, divorced (taaliq, taaliq, taaliq). I also got in touch with her father and said to him: Your daughter is divorced (taaliq). Then I went to my wife in her room and I said to her: You are divorced (taaliq). All of this was because of something inappropriate that her mother said, which made me do this thing without intending to divorce her. My wife and I regretted it the following day. My wife asked one of the shaykhs and he said to her: When is the last time he had intercourse with you? She said: One day before the divorce. He said: Then the divorce does not count as such. What is your opinion?.

Detailed answer

One should beware of using the word of divorce (talaaq), because divorce is not prescribed for the sake of expressing anger or revenge; rather it is prescribed in the case of need, to dissolve the firm covenant, which is marriage. If every time the husband gets angry he speaks of divorce, then divorce may take place and his wife will become irrevocably divorced from him, and that will be the cause of his family being split up without him intending that.

Secondly:

Divorce as prescribed in sharee'ah is when the man divorces his wife when she is pregnant or during a period of purity during which he has not had intercourse with her. As for divorce during a period of purity in which he has had intercourse with her, this is an innovated divorce (talaaq bid'i), but does it count as such or not? The majority of scholars are of the view that it does count as such, just as the majority of them are of the view that divorce during the 'iddah also counts as such. If a man gives his wife one divorce and she begins the 'iddah, then he comes

back and divorces her a second time, then divorce has taken place a second time. If he comes back and divorces her a third time, then she is irrevocably divorced from him and she is not permissible for him to marry until she has been married to another husband.

Thus it should be clear to you that the matter is serious and that this word that came out of your mouth has consequences.

Some of the scholars are of the view that divorce during a period of purity in which the husband had intercourse with the wife does not count as such. This is the view favoured by Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) and his student Ibn al-Qayyim. It is also mentioned in the fatwas of a number of contemporary scholars.

In Fataawa al-Lajnah al-Daa'imah (20/58) it says: There are different kinds of innovated divorce, such as the husband divorcing his wife during her menses or nifaas, or during a period of purity in which he has had intercourse with her. The correct view concerning this is that it does not count as such. End quote.

Shaykh Ibn Baaz (may Allah have mercy on him) said: Allah has prescribed that women should (only) be divorced at times of purity when they are free of nifaas and menses, when the husband has not had intercourse with her during that period of purity. This is the proper, shar'i divorce. If he divorces her during her menses or nifaas, or during a period of purity in which he had intercourse with her, then this divorce is bid'ah, and does not count as such according to the correct scholarly opinion, because Allah says (interpretation of the meaning):

"O Prophet (صلى الله عليه وسلم)! When you divorce women, divorce them at their 'Iddah (prescribed periods)"

[al-Talaaq 65:1].

What is meant is when they are pure and the husband has not had intercourse with them during that period of purity. This is the view of the scholars concerning the meaning of the phrase 'divorce them at their 'Iddah (prescribed periods)'. They should be pure, with no

intercourse having taken place during the period of purity, or pregnant. This is divorce at the prescribed periods.

End quote from Fataawa al-Talaaq, p. 44

Based on this view, none of the divorces you issued is valid or counted as such.

And Allah knows best.