

191258 - Issues having to do with conditional divorce, and different fatwas about whether it counts as such

the question

Firstly: I have been married for eight years, and I have a husband who frequently swore to divorce me – a conditional divorce – during the first years of our marriage.

At the beginning, I consulted a number of shaykhs and scholars because I was worried about my living with him: was it halaal or haraam? So as to put my mind at rest with a fatwa.

There were some who gave me a fatwa saying that the divorce counted as such, and there were others who gave me a fatwa saying that it did not count as such, because I used to ask my husband about his intentions, and he would tell me that his intention was to discipline me and threaten me.

I even asked your website twice about some of the words that he had said to me.

After reading and finding out that a conditional divorce does not count as such, and that this is the view of Imam Ibn Taymiyah and Ibn al-Qayyim, as I read in his book *Zaad al-Ma'aad*, and after the two shaykhs, Ibn 'Uthaymeen and Ibn Baaz said that in their fatwas, my mind was put at rest and I followed the view that the conditional divorce does not count as such.

Is there any sin on me? Have I followed my own whims and desires? What is your view of my question to the shaykhs? I have read on your website that I should adhere to the view of the first one I asked: but I do not remember who I asked first and what he said in his fatwa.

Secondly:

My husband clearly uttered the word of divorce on three occasions:

1. During my menses

2. He uttered this word by a slip of the tongue, as he did not realise that he had said it and I am the one who pointed it out. He was joking with me and said this word without meaning it, and a shaykh told my husband that it did not count as such.

3. He kept repeating to himself “Taaliq, taaliq, taaliq (divorced, divorced, divorced)” during a period of purity (i.e., I was not menstruating) when he had had intercourse with me. That was during an argument we had.

I know that I was wrong to go from one shaykh to another, but I did not know that doing so was haraam. I did not follow my personal view that the conditional divorce does not count as such if his intention was only to threaten, until after I had read a great deal on your website and in books of fiqh. I do not deny that this is in accordance with my own wishes in my heart, so please pray for me.

Secondly: is it permissible for me to give a fatwa to myself with regard to conditional divorce, because my husband swore so many conditional oaths that I cannot remember them? In a moment of calm, I asked him about his intention in all of them, and not one by one, because I cannot remember them and I said: Why did you swear to divorce me? He said: I wanted to discipline you.

Detailed answer

I.

The Muslim has to control his tongue and refrain from frequently speaking the word of divorce, because this ruling was not prescribed for the purpose of toying with this concept and its phrases. How often has uttering this word led to conflict, disputes and breakup of families,

when the husband was had the option not to take this path, but he insisted on putting himself through hardship.

Moreover, divorce results in many other rulings and puts the spouses in a confusing and difficult situation, to the extent that they do not know what counts as divorce and what does not. Is their living together halaal or haraam? Are their children legitimate or not?

II.

The Muslim has to adhere to the fatwa of a scholar whose religious commitment and knowledge he trusts. He should not seek out fatwas from different shaykhs with the aim of looking for concessions until he finds a fatwa that is in accordance with his whims and desires, and then follows it. This is not permissible.

It is not prohibited for him to ask someone other than the one whom he asked first, if he is not entirely certain that this is indeed the most correct opinion and is the shar'ī ruling that must be followed concerning this matter, especially if he has some understanding about issues of Islamic knowledge or he is able to weigh up scholarly opinions according to sound academic principles.

It is not haraam for the questioner to adopt the opinion that is in accordance with his desires and suits him, if those who issue this fatwa are scholars whose knowledge and religious commitment are trustworthy in his opinion.

Shaykh Muhammad as-Saalih al-'Uthaymeen (may Allah have mercy on him) said to someone who had asked someone else before asking him:

He should not ask again, because if a man asks a question of a scholar whose knowledge and religious commitment he trusts, and believes that what he says is true, then it is not permissible for him to turn to another scholar to ask him for a different opinion, because this comes under the heading of toying with the religion and law of Allah, may He be glorified and exalted.

What I advise this man – and others – to do is, if he has asked a scholar whose knowledge and religious commitment he trusts, and he believes that what he tells him about this matter is true, is not to then ask someone else after that and act upon what the latter advises him, because he

thinks that what he said is correct and true. That is unless he has heard from someone – without asking for a fatwa – a view that is contrary to that fatwa, and the one from whom he heard it has evidence for it. In that case, there is nothing wrong with asking him in order to discuss it with him. So he can say: You said such and such, and you quoted such and such as evidence for it, but I was given a fatwa saying such and such, so what is your response? Because these are very important issues and we see some people asking for fatwas from a number of scholars, either to find out the easiest option and the one that is closest to his own whims and desires, or to play off the opinions of the scholars against one another. All of that comes under the heading of toying with the religion.

End quote from Fataawa Noor ‘ala ad-Darb (tape no. 25)

III.

With regard to conditional divorce, if the intention behind it is divorce itself, then it counts as such. If the intention was to encourage the wife to do something or to prevent her from doing something, then it does not count as such, as is the view followed on this website and in the fatwas of some of the scholars.

In the case of this conditional divorce that was intended for such a purpose, expiation for breaking an oath (kafaarat yameen) is required, as we explained in the answer to question no. [82400](#).

IV.

With regard to divorce during a period of purity in which the husband had intercourse with her, or during her menses, what we on this website think most likely to be correct is that this does not count as such. Please see the answers to questions no. [72417](#) and [106328](#).

V.

If the husband utters the word of divorce without intending to, let alone having decided on divorce, then it does not count as such.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said, commenting on the meaning of the verse in which Allah, may He be exalted, says (interpretation of the meaning), “Allah will not call you to account for that which is unintentional in your oaths, but He will call you to account for that which your hearts have earned. And Allah is Oft-Forgiving, Most-Forbearing” [al-Baqarah 2:225]:

Among the things we learned from this verse is that a person will not be brought to account for what he did not intend in the words he uttered. This is an important principle that has to do with many matters, including cases where the word of divorce come from his lips without him intending it to; in that case his wife is not divorced. And if he issues a divorce in a state of extreme anger, his wife is not divorced.

Tafseer Soorat al-Baqarah (3/93)

VI.

Finally, what we think is:

1. If the husband has been given a fatwa by a shaykh or Islamic organisation stating that the divorce does not count as such, then that is the case.
2. What the wife thinks does not matter according to the rulings having to do with divorce. Rather what matters is what the husband thinks if he is a seeker of knowledge. Otherwise you should follow the fatwa of a scholar whose knowledge and religious commitment you trust.

And Allah knows best.