

291666 - He swore on pain of divorce that he would never touch her again

the question

My wife has been refusing to have relations with me, and after an argument I swore on pain of divorce that I would never touch her again. What is the solution?

Detailed answer

Your swearing on pain of divorce that you would never touch your wife again is a matter concerning which there is a famous difference of opinion among the fuqaha'.

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The majority are of the view that if you touch her again, divorce will take place, regardless.

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Some of the scholars are of the view that this matter depends on the husband's intention. If his intention was to prevent something happening, or to issue a threat, and he did not really intend to divorce her, then it is an oath (yameen), and if he breaks it, then he must offer the expiation for breaking an oath (kafaarat yameen), but no divorce takes place.

However, if he did intend divorce, then divorce takes place if he touches her.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: The correct view is that if divorce is used by way of an oath, in that the intention behind it was to urge someone to do something, or to prevent someone from doing something, or to confirm that something was true or false, or to emphasise a point, then it comes under the rulings on oaths (yameen), because Allah, may He be exalted, says (interpretation of the meaning):

“O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful.

Allah has already ordained for you [Muslims] the dissolution of your oaths”

[at-Tahreem 66:1-2].

Thus Allah, may He be exalted, described the prohibition of something to oneself as an oath (yameen).

And 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.” (al-Bukhaari). In this case, there was no intention of divorce; rather the intention was an oath or what comes under the same heading as an oath. Hence if the oath is broken, it can be compensated for by offering the expiation for breaking an oath (kafaarat yameen). This is the correct view.

End quote from Fataawa al-Mar’ah al-Muslimah (2/754).

The expiation for breaking an oath is to feed or clothe ten poor persons. Whoever cannot afford to do that should fast for three days.

If we assume that you did indeed intend to divorce her, then if you touch her that counts as a revocable divorce, and you can still take her back so long as her ‘iddah has not ended.

And Allah knows best.