

302320 - Implicit Divorce

the question

I love my husband very much. But when I think of all the times we have argued, I feel sad because I wonder if we are still husband and wife. He has said things like "You can go back to your dad's house and be miserable again." He said it was not a Divorce. But how can we be so sure if he used the word 'again'?

He also said "If there's violence, we'd be over." I asked if he meant Divorce. He said No but when I asked again, he said Yes. Is that now a Conditional Divorce? Meaning if there is violence between the two of us or in the house, will we be divorced automatically?

One day in the past, we were divorced. He said "I'm done." I asked what he meant and he said "Divorce. I'm Done." What if those words were considered 2 or 3 divorces to Allah? He said it was 1 divorce but he is a revert and he probably don't know how serious the law of Islam is. I don't know for sure. What if he forgot or didn't know?

Based on Shafii madhab, are they all divorces and how many? Do I have to leave him if I'm not sure if we are husband and wife or if a sentence or word was a divorce?

Detailed answer

Firstly:

The husband's statement, "You can return to your father's house and be miserable again," his statement, "If there is violence, it will be the end," and his statement, "I'm done"... all of these are implicit expressions, and they are not explicit in divorce.

Divorce does not occur with implicit expressions without intention.

So, if your husband says that he did not intend divorce, then divorce does not take place.

In the Encyclopedia of Jurisprudence (35/138): "These implicit expressions and the like may be understood as referring to divorce or may be understood otherwise. The intended meaning is concealed from the listener, and thus they require intention to specify the intended meaning. So his saying: 'You are ba'in (separate, revocable),' can mean separation from evil or good or marriage, and 'free': can mean free from the husband, and marriage, and can mean free from diseases or defects, and 'I have parted from you': can mean separation from marriage, and can mean separation from the bed or place, and his saying: 'You are innocent (free),' can mean innocence from marriage, and can mean innocence from evil or good, and his saying: 'Battah (Absolutely),' from the word meaning 'cutting off,' can mean cutting off from marriage and can mean cutting off from evil, and his saying: 'Your matter is in your hands,' can mean divorce, and can mean something else, and so on.

There is no disagreement among the majority of Jurists that divorce occurs with implied statements if there is intention.

They differed in some issues of implicit divorce...

The Shafi'i school of thought holds that divorce occurs with implicit statements if there is intention and does not occur without intention.

There are many such expressions, indeed they are innumerable: like 'You are free,' 'innocent,' 'absolutely,' 'separate,' 'observe your waiting period,' 'purify your womb,' 'join your family,' 'your rope on your own neck,' 'remain single,' 'go away,' 'leave me,' 'farewell.'

They said: Implicit refers to what can mean divorce and other things, but with the intention to enact it, and with the intention of its words.

As for expressions that do not imply divorce except on an unreasonable basis, they have no effect, so no divorce occurs with them even if intended, such as saying: 'May Allah bless you,' and 'May Allah reward you well.' End quote.

Secondly:

Your husband's statement, "If there is violence, it will be the end":

If he meant divorce when he said it, then this is a divorce contingent on a condition, so if the intended violence occurs, a divorce takes place.

And if he did not mean divorce when he said it—as understood from your question that he first answered you that he did not mean divorce—then divorce does not take place. Even if he intended afterwards that you would be divorced if violence occurred, divorce would not occur, unless he uttered the sentence again intending divorce.

You should seek mediation from knowledgeable people who can sit with your husband and make him understand the seriousness of divorce and its rulings; so that he is cautious about being negligent in this matter.

And Allah knows best.