

Darul Ifta Caribbean

دار الإفتاء كاريبيان

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Question

Salaams,

I would like some advice, my husband has had mental health issues for the past 25 years, there are times where he sleeps very little has depression and just has periods where he has fits of rage and becomes very aggressive both verbally and physically which he can't control at times. We went on hajj in 2019 on the last day we were doing tawafee alvida we were extremely tired hardly slept for 3 days. During tawafee alvida we got separated about 10 pm . My mobile battery had died and could contact my husband. After about 3 hours I bought a charger and charged my phone abit in clock towers and spoke to him. We met outside the clock towers he was very angry and was constantly blaming and swearing at me. We were arguing and he was losing his temper. The security guard asked him to calm down and move away. He was so angry he was about to hit the security guard. I pulled him away and my husband continued shouting. I told him to stop swearing in Allahs house. Then in anger he said the words, 'talaq, talaq, talaq', he didn't say 'I give you talaq' but just said the word 'talaq' three times. We were both extremely tired he has anger issues and sometimes loses it and didn't mean it at all. The following day I told him what he had said and he said I didn't know what I was saying at all and had no intention to divorce me.

Can you please clarify if we are divorced or not because of his mental health issues he has?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Most Gracious, the Most Merciful

Answer:

May Allah reward you for your concern and may he give your husband tranquility.

Firstly, concerning the talaq, the following is the main issue that we have to consider, "...We were both extremely tired he has anger issues and sometimes loses it and didn't mean it at all. The following day I told him what he had said and he said I didn't know what I was saying at all and had no intention to divorce me."

Talaq given by a husband who is Baalig (mature) and Aa'qil (aware and conscious) occurs without doubt.¹

If a person is heavily intoxicated and his senses and awareness are so distantly absent that he cannot even distinguish between the sky and the earth and even his speech is greatly distorted² or if he suffers from very harsh headaches and his awareness is compromised at the time, then if he issues talaq it would not occur.³

If for some valid reason the consciousness of the husband was temporarily compromised by his excessive anger and he was not aware of what he was saying and cannot recollect issuing Talaq after regaining his senses, then the Talaq would not occur, and the marriage is intact but the anger must be of such a scale that it is close to extreme intoxication as previously explained. There are many people who blame their actions on anger, but their expression of anger is usually due to pride or their anger does not reach the stage where they have lost their senses. Anger is of three types;

1. Mild anger that does not alter the intellect and a person is aware of his words and intentions.

¹ Haashiya Ibnu Aabideen, pg 427 vol 4

² Haashiya Ibnu Aabideen, pg 432 vol 4

³ Haashiya Ibnu Aabideen, pg 433,434 vol 4

2. Extreme anger that alters a person's consciousness in that he is unaware of what he is saying and intending.
3. In between the above two, and this type has to be carefully observed because sometimes a person's intellect may be intact or not.

If the anger of your husband is of the second category, then we would not consider the Talaq as valid and the marriage is intact.

If his anger was of the third category, then we would consider the previous episodes of his anger to judge if the Talaq occurred or not.⁴ If it is his habit of losing control and awareness not only when you are present but also with others and there are at least two other persons who can bear witness that he does experience loss of awareness and intellect when he gets angry⁵ and he does not know what he utters or intends during these outbursts then this will be enough to conclude that the Talaq has not occurred.

In conclusion, the main element of consideration will be his awareness at the time of expressing the words "Talaq" and if he actually knew what he was saying to you, if he admits that he did not know what he was saying then it is safe to say that the Talaq had not occurred.

We must fear Allah and be honest in all circumstances and even when we are judging against ourselves, may Allah guide us to understand the truth and to practice upon it.

Only Allah knows best

Written by Mufti Naieem Mohammed

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⁴ Qawaaid Fiqhiyya, pg 17 {استصحاب} بقاء ما كان على ما كان

⁵ Haashiya Ibnu Aabideen, pg 439, vol 4