101912 - Her husband reviles her and accuses her and threatens to kill her; is it permissible for her to ask for a divorce from him?

the question

I am seeking divorce for many reasons:

1- My daughter who was 6 years old has passed away six months ago in an accident, she was with me, and my husband accuses me of killing her.

2- He slanders me in a way that no wife would ever accept from her husband.

3- He accuses me of having an affair with my sister's husband! Although he is in London and I am in Egypt.

4- He insults me everywhere in a very bad language.

5- I have tolerated like nobody ever tolerated before. He is 20 years older than me. I was looking for a man who is much older than me; thinking he would have a mature mind. After marriage I knew that he is suffering from a psychiatric illness. I stayed with him until he was treated from it, but now that illness came back. He wants to kill me; as he accuses me of killing his daughter. I have another daughter and son; he wishes they died instead of her; because he loved her only.

My question:

Is it permissible for me to ask for divorce, knowing that he does not want to divorce me, but wants to kill me?.

Detailed answer

We ask Allah to increase your reward for the death of your daughter, and to make her an intercession for her family on the Day of Resurrection. And may Allah increase your reward because of your husband who says and does things that cause you distress and grief.

You should note that this world is the realm of trials and tests, and that the Muslim will be faced with worry, distress, grief, and sickness, but he should not let that cause him to miss out on the rewards that are available, so seek reward with your Lord for that which has befallen you and ask Him to make you patient and to make you steadfast in adhering to His religion.

As for seeking a divorce, some of what your husband has done makes it permissible for you to ask for a divorce, so how about when all of the things are taken together?

Slandering or falsely accusing a person is a major sin and it is not permissible for him to do that. Reviling, insulting and threatening to kill are things that no one could bear from a stranger, so how about when it is done by one's life partner, one’s husband who lives in the same house?

If a woman asks for a divorce from her husband for no reason, this is what is warned against. But if there is a reason for it, then undoubtedly the warning is not addressed to the woman who seeks a divorce in that case.

The Prophet (peace and blessings of Allah be upon him) said: “Any woman who asks her husband for a divorce when there is nothing wrong, the fragrance of Paradise will be forbidden to her.”

Narrated by al-Tirmidhi (1187) and Abu Dawood (2226); classed as saheeh by al-Albani in Saheeh al-Tirmidhi.

Al-Hafiz Ibn Hajar (may Allah have mercy on him) said:

The reports which warn women against asking for a divorce from their husbands are to be understood as referring to cases where there is no reason for doing so.

Fath al-Bari (9/402).

Al-Mubarakfoori (may Allah have mercy on him) said:

i.e., without there being any hardship that would cause her to resort to asking for a divorce.

Tuhfat al-Ahwadhi (4/410).

In al-Mawsoo'ah al-Fiqhiyyah (29/11) it says:

The wife may ask for the marriage to be ended if there is a reason that justifies that, such as if the husband is miserly or absent, and other reasons concerning which the fuqaha differed; some are more lenient than others. But that does not depend on her opinion, rather it is to be determined by the judge, unless the husband gives her the authority to issue a divorce, in which case she may also divorce herself by her own words.

If the couple agree to separate, that is permissible, and it may be done without needing to refer to the court. The judge may also separate a couple if there is a reason for doing so, so as to protect the rights of Allah, such as if one of a Muslim couple has apostatized – Allah forbid – or one of a Magian couple has become Muslim and the other refuses to do so, and so on.

But none of that is called talaq, apart from the first case if it is instigated by the husband. The evidence that talaq is the right of the husband only is the hadeeth in which the Prophet (peace and blessings of Allah be upon him) said: "(The right of divorce) belongs to the one who takes hold of the calf [i.e., her husband]", narrated by Ibn Majah (2072) and classed as hasan by al-Albani in Saheeh Ibn Majah. End quote.

To sum up:

The husband has to fear Allah and hold his tongue, and not utter haram words. Anyone among his family or the authorities who can stop him must hasten to do so. If the wife wishes, she may be patient and put up with the hurt and harm from her husband, or if she wishes she may ask for a divorce and come to some agreement with her husband concerning divorce. Otherwise their case may be referred to the shar'i judge to make him divorce her, if it is proven that he is causing harm.

And Allah knows best.