

267869 - Her husband mistreats her and forces her to work, and he refuses to divorce her, and she is in a country where there are no sharee'ah courts

the question

My problem is that my husband changed five years ago; he became violent and he sends me to pay the bills and deal with men, whilst he sits on the Internet. He even forced me to work in a company with men so that I can spend on my children, because he is busy on the Internet. This has led to men harassing me and stalking him and trying to harm me, which has forced me to change my place several times. He has subjected me to physical harm. I know that divorce is something blameworthy, and I know about the hadiths which say that a woman should not ask for divorce except when there is good cause. I have suffered extreme mistreatment from him. Please note that he has forced me into anal intercourse, and I tried to stop him several times. I have given him many chances, but the matter got so bad that when he realised that I have decided to leave him, he contacted my family and his family, and accused me of having unlawful relationships with other men, and he threatened to make horrendous fake pictures of me with young men and spread them far and wide, which made me hate him very much, for Allah is my witness that I have never committed haraam with anyone, despite all the harassment that I have suffered, and his shortcomings in terms of romance, and the lack of compassion and kindness on his part. Now we are living in a non-Muslim country, and I want a divorce, but he adamantly refuses. I have asked shaykhs about my situation, and they told me that I have the right to seek divorce, but now I am facing a problem, because my husband does not want to divorce me, and in the country where we live, if he does not divorce me, the matter will take a long time, one year or more. The situation in my own country is very bad and I cannot go there to seek divorce there. I am very confused about my situation; what should I do? My question is: can I appoint a shaykh here to arrange my divorce from him, and is it Islamically acceptable for the shaykh to act in the place of a qaadi (judge) and arrange my divorce from him? If it is permissible, then when my 'iddah ends, will I be free of him, even if officially I am still his wife?

Detailed answer

It is not permissible for a woman to ask for divorce except with good reason, because of the report narrated by Abu Daawood (2226), at-Tirmidhi (1187) and Ibn Maajah (2055) from Thawbaan, who said: The Messenger of Allah (blessings and peace of Allah be upon him) said: “Any woman who asks her husband for a divorce except with good reason, the fragrance of Paradise will be forbidden to her.” Classed as saheeh by al-Albaani in Saheeh Abi Daawood.

With regard to what you mentioned about your husband falling short in spending on you, and forcing you to work in a mixed environment, and exposing you to harassment and harm from men, and his mistreatment of you, and forcing you into haraam intercourse – each one of these on its own may be regarded as an excuse which makes divorce permissible, so how about when they are combined?

If the husband refuses to issue a divorce, and there is no qaadi (shar‘i judge) to whom the matter may be referred, then you should refer your case to the Islamic centre or to those who are responsible for the Muslim community in the place where you are living, so that they can call upon your husband to divorce you, then if he refuses to do that, they may issue a divorce in his stead, and act in place of the shar‘i qaadi in that regard.

The final statement of the second conference of the Fiqh Council of North America, which was held in Copenhagen, Denmark, with the Muslim World League, 4-7 Jumaada al-Oola 1425 AH/22-25 June 2004 CE, stated that: a concession is granted allowing one to refer to the court that is based on the man-made law of the land, when doing so becomes a means of getting one’s rights or warding off wrongdoing in a land that is not ruled by sharee‘ah, on condition that those who have knowledge of sharee‘ah be consulted to determine the shar‘i ruling that is applicable to a given case, and that the demand be limited only to seeking what sharee‘ah allows and trying to implement it.

It also says:

Seventh clause: the extent to which civil divorce done in lands outside the Muslim world is valid:

The statement explains that if a man divorces his wife in a shar‘i manner (talaaq), there is nothing wrong with documenting it in the court that is based on the man-made law of the land. But if there is a dispute between the spouses about the divorce and connected issues, the Islamic centres may play the role of the Muslim judge (qaadi) where there is none, after doing all legally required procedures.

Referring to the man-made judicial system to end the marriage does not on its own dictate the end of the marriage from the shar‘i point of view.

If the woman gets a civil divorce, then she may go to the Islamic centre and refer the matter to people who are qualified to deal with these matters and have sufficient knowledge, to complete the matter from the shar‘i point of view.

One cannot make the excuse that this is a matter of necessity because Islamic centres are available and easy to refer to in various regions. End quote.

From this you may understand that the actions of the civil court are not sufficient to complete your divorce from your husband, because the ruling of a non-Muslim judge does not carry any weight according to scholarly consensus. It is also not sufficient for you to refer to a shaykh to arrange your divorce. Rather the matter requires an organisation that has qualified seekers of knowledge who can verify what you have mentioned and take charge of arranging your divorce. This is what is known as Islamic centres in Western countries.

And Allah knows best.