126281 - Is the woman who is divorced after consummation of the marriage entitled to maintenance?

the question

Last year I got married and was living with my husband in Kuwait due to health problem that arose after I came to Kuwait, my husband sent me to India for treatment and promised that his parents will take care of my medical expenses. After coming to India we found out I had a chronic illness and had to take medicine life long. This agitated my in-laws and they started abusing me and my parents verbally. Financially they refused to take care of me, so came back to my parent's place for shelter. To My Husband they gave wrong information about me and my parents as if we ill treated them and created misunderstanding between me and my husband. Listening to his parents, he gave me three thalaq at the same time through a letter stating that due to my health reason he feels that I can't conceive a normal child and not fit for proceeding married life. He was not willing to solve this issue by coming to India so I went to Kuwait to prove him my innocence. There with help of Islamic scholars and relatives we made him understand what he did was out of islam and unkind. Also with help of a doctor i made him understand that there is nothing serious about my illness and that I can conceive. But he was not willing to accept and denied me shelter to spend my hidda period with him. He gave me two options either to stay in In-law's house or in my parent's house and gave me just 80 dinar for maintenance during hidda period. He refused to pay for what my parents spent during my stay with them. Having faith that his mind will change, I came back and staying with my parents now. My Hidda period is going to get over. I don't know what to do next? He has not changed and not even communication with me. My husband and his family has done injustice, acted unfairly and have spoiled my future by spreading all wrong things about me. As they are not willing to settle this issue in person, my relatives insist me to file a case through shariyath court (which is conducted in Chennai with help of town ghazi and with Muslim judges) or civil court as there is provision for claming maintenance amount. A girl's life becomes uncertain due to this kind of thalak, so what islam say about this? Does islam ask husband to provide any compensation or maintenance after hidda period for a girl's future? Can I seek the help of shariyath court or civil court? What is the meaning for kuraan aayath chapter: 2 versus:

241.

Detailed answer

Praise be to Allah.

Firstly:

If a man divorces his wife thrice in one go, such as if he says “You are divorced three times” or “you are thrice divorced” or he says it in separate words such as saying “You are divorced, divorced, divorced”, then it counts as one divorce according to the more correct opinion, and he may take her back so long as she is still within the ‘iddah period. Once the ‘iddah period has ended he cannot go back to her without a new marriage contract.

Secondly:

The revocably divorced woman (i.e., first or second talaaq) is entitled to maintenance during her ‘iddah, and it is not permissible to make her leave the house, because of the words of Allaah (interpretation of the meaning):

“And turn them not out of their (husband’s) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allaah. And whosoever transgresses the set limits of Allaah, then indeed he has wronged himself. You (the one who divorces his wife) know not it may be that Allaah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce)”

[al-Talaaq 65:1].

Based on this, you are entitled to request the maintenance that your father spent on you during your ‘iddah, if what your husband gave you was not enough, and you can refer the matter to the sharee’ah court and make a claim there. If there is no sharee’ah court, and it is not possible to take your rights by advising your husband or through the intervention of good people, it is permissible to refer the matter to the civil courts, even though it is not proper to refer for

judgement to man-made laws, but do not take more than you are entitled to, even if that is awarded to you by the courts.

Secondly:

Allaah says (interpretation of the meaning):

“And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al-Muttaqoon (the pious)”

[al-Baqarah 2:241]

This maintenance is obligatory in the case of a woman who is divorced before consummation, if she did not have a specified mahr at the time of the marriage contract, because Allaah says (interpretation of the meaning):

“There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal-money given by the husband to his wife at the time of marriage). But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good”

[al-Baqarah 2:236].

But if the divorce came after consummation, then maintenance is not obligatory according to the majority of fuqaha’, rather it is mustahabb.

Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) was of the view that it is obligatory for all divorced women.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said: Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) said: Maintenance must be given to every divorced women, even after consummation. And he quoted as evidence for that the verse in which Allaah says (interpretation of the meaning):

“And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al-Muttaqoon (the pious)”

[al-Baqarah 2:241]

“Divorced women” is general in meaning, and the entitlement is confirmed by the word “duty” [haqqan]. This is further confirmed by the words “on the pious”. This indicates that doing this is part of piety or fearing Allaah (taqwa), and fearing Allaah is obligatory. What the Shaykh [Ibn Taymiyah] said is a very strong argument if the marriage has lasted a long time, but if the man divorces her within a short period, then in that case we say:

Firstly: the woman’s relationship with the man has lasted only a short time

Secondly: The mahr she was given is still with her, because it was only given to her recently.

But if the marriage lasted for a year, or two years, or a few months, then in that case what Shaykh al-Islam (may Allaah have mercy on him) said is sound. This is a moderate view that falls in between two others which say that it is either mustahabb in all cases or obligatory in all cases. This is the correct view. End quote from al-Sharh al-Mumti’ (12/308).

Maintenance depends on the husband’s situation, whether he is rich and well off or poor and hard up. Allaah says (interpretation of the meaning):

“But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means”

[al-Baqarah 2:236].

There is no specific, set amount in this case.

If a man divorces his wife, he should offer some consolation by giving her some money.

As for referring the claim to the husband’s relatives, we do not think that this will achieve anything for you. Refer their matter to Allaah, for He will requite each person for what he did.

You do not know what is best for you. Perhaps Allaah will bring you something good, as Allaah says (interpretation of the meaning):

“it may be that you dislike a thing which is good for you and that you like a thing which is bad for you. Allaah knows but you do not know”

[al-Baqarah 2:216]

Turn to Allaah and cling to Him, and delegate your affairs to Him, and do a lot of acts of worship. Allaah will not let His righteous slaves down.

We ask Allaah to heal you, grant you well being and decree good for you.

And Allaah knows best.