146851 - What Must a Husband Spend on His Pregnant Divorced Wife?

the question

I am going to divorce my wife and she is pregnant. I want to figure out how much I will pay for her maintenance as prescribed in Islam during the `iddah and on the maintenance for the baby when he is born, because I am going to marry someone else, and there will be the expenses of the wedding and what I will spend on maintenance for the new household. How can I work out the amount of this maintenance?

Detailed answer

Praise be to Allah.

Firstly:

The divorced woman who is pregnant is entitled to maintenance and accommodation, whether her divorce is revocable or irrevocable.

In the case of a revocable divorce, that is because she still comes under the same rulings as a wife until her `iddah ends, which in this case is when she gives birth.

In the case of an irrevocable divorce, she is still entitled to maintenance, based on evidence from the Sunnah and scholarly consensus.

Ibn Qudamah (may Allah have mercy on him) said: In brief, if a man divorces his wife irrevocably, either by means of three statements of divorce (talaq) or khul` or because of nullification of the marriage, and she is pregnant, she is entitled to maintenance and accommodation, according to scholarly consensus. That is because Allah, may He be Exalted, says: { Lodge them1 [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth } [at-Talaq 65:6]. In one of the

reports about Fatimah bint Qays, it is narrated that the Prophet (blessings and peace of Allah be upon him) said: “You have no right to maintenance unless you are pregnant.” Moreover, the foetus is his child, so he is obliged to spend on him, and he cannot spend on him except by spending on her (the mother). Therefore it is obligatory, as it is also obligatory to pay a fee for breastfeeding his child.(*Al-Mughni*, 8/185).

The evidence that the woman who has been divorced irrevocably is not entitled to maintenance or accommodation unless she is pregnant is the report narrated by Muslim (1480) from ash-Sha`bi, who said: I went to visit Fatimah bint Qays and asked her about the ruling of the Messenger of Allah (blessings and peace of Allah be upon him) concerning her. She said: My husband divorced me irrevocably, and I referred my dispute with him about maintenance and accommodation to the Messenger of Allah (blessings and peace of Allah be upon him). He did not grant me any accommodation or maintenance, and he told me to observe my ‘iddah in the house of Ibn Umm Maktum.

According to another report also narrated by Muslim, she said: I mentioned that to the Messenger of Allah (blessings and peace of Allah be upon him) and he said: “You have no right to maintenance or accommodation.”

According to a report narrated by Abu Dawud: “You have no right to maintenance unless you are pregnant.”

Secondly:

The man is obliged to pay for the maintenance of his child during pregnancy, during breastfeeding and afterwards, and the mother is not obliged to do that even if she is rich.

Maintenance includes the costs of giving birth, accommodation, food and drink, clothing, the fee for breastfeeding and whatever the child may need of medicine and other things.

Once the divorced woman gives birth, she is not entitled to maintenance or accommodation; rather maintenance and accommodation are for the baby, and she may ask the father for a fee for

breastfeeding.

If the divorced woman is the one who has custody of the child, then the jurists differed regarding her accommodation: is it the responsibility of the father of the child who is in the mother's custody, or her responsibility and that of whoever is spending on her maintenance, or is it to be shared, meaning that rent is paid by the husband and the woman he divorced, according to whatever the judge decides, or if she has her own accommodation, that should be sufficient for her; if she does not have accommodation, must the father provide accommodation for her? There are several well-known scholarly views.

See: *Hashiyat Ibn `Abidin*, 3/562; *Sharh al-Khurashi*, 4/218; *al-Mawsu`ah al-Fiqhiyyah*, 17/313.

If the father is required to provide accommodation for his infant son – as mentioned above – the divorced woman may stipulate that she should live with the child so long as she has custody of him or is breastfeeding him, and she does not have to live with her family or rent her own accommodation. But they may reach an agreement that she will stay with her family or in her own accommodation.

Thirdly:

The fee for breastfeeding is to be paid by the father of the infant according to scholarly consensus, and the father does not have the right to force the woman he divorced to breastfeed him.

Ibn Qudamah (may Allah have mercy on him) said: Arranging for breastfeeding of the infant is the responsibility of the father only, and he does not have the right to force the infant's mother to breastfeed him, whether she is of lowly status or noble status, and whether she is still married to him or is divorced. We do not know of any difference of opinion regarding the fact that he cannot force her to breastfeed if she is divorced from him. However, if she is still married to him, in our view he still cannot force her to breastfeed. This is the view of ath-Thawri, ash-Shafa`i, and as-hab ar-ra'y.(*Al-Mughni*, 11/430).

And he said: If the mother asks to breastfeed the child in return for the usual fee, she has more

right to do that, whether she is still married or after she has been divorced, whether the father finds someone who will volunteer to breastfeed the child or not.(*Al-Mughni*, 11/431).

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: With regard to the fee for breastfeeding, she is entitled to that according to scholarly consensus, as Allah, may He be Exalted, says: {And if they breastfeed for you, then give them their payment} [at-Talaq 65:6]. But it is not obligatory to spend on her maintenance except for a husband who is well off; as for one cannot afford it, he is not required to spend on her maintenance.(*Al-Fatawa al-Kubra*, 3/347).

Fourthly:

Regarding the fee for custody of the child – which means raising him and taking care of him – the jurists differed regarding that. The view of the Hanbalis is that the mother has the right to demand a fee for raising the child, even if there is someone else who would do it for free. It says in *Muntaha al-Iradat*: The mother has more right to do that, even if it is in return for the usual fee, as also applies with regard to breastfeeding. See: *Sharh Muntaha al-Iradat*, 3/249.

The view of the Malikis is that there should be no fee for raising the child.

There was some discussion about the details of this issue among the Hanafis and Shafa`is. See: *Al-Mawsu`ah al-Fiqhiyyah*, 17/311.

Fifthly:

In all of the scenarios mentioned above, maintenance is to be worked out fairly, paying attention to the husband's situation and what he can afford, because of the verse in which Allah, may He be Exalted, says: {Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not place on any soul a burden beyond what He has given it. Allah will bring about, after hardship, ease [i.e., relief]} [at-Talaq 65:7]. This varies from one country to another and from one person to another. So if the husband is rich, maintenance should be commensurate with his wealth, and if he is poor or of moderate means, maintenance should be according to what he can afford. If the parents agree on a specific amount

of money, small or great, that is up to them. But in the case of dispute, the one who is to decide concerning that is the judge.

Conclusion:

You are obliged to spend on the wife you divorce and her foetus until she gives birth, then you must spend on the infant, which includes providing accommodation. You are also obliged to pay fees for breastfeeding and raising the child, if the wife you divorce demands that. You should both come to an agreement regarding maintenance and the amount of money concerned, working it out in such a way that will provide a life of dignity for the child and the mother who is raising him.

However, we advise you to think long and hard before taking this step, because what we understand from your question is that you are not someone who makes hasty decisions. So examine your situation, and if there is any opportunity for reconciliation, that is better for you and is in the best interests of your child who will be born to you. However, that should not prevent you from marrying another wife as you have decided, and being married to both of them.

And Allah knows best.