175624 - Divorce before Consummation of Marriage in Islam

the question

I hope that you can help me with the following, because I am confused about my situation. I was divorced before the consummation of the marriage. After getting some opinions, according to the majority of opinions that I found, I have to observe `Iddah and receive my Mahr in full, because we were alone together and some intimacy happened between us, but my husband refused to believe that. Then we got married a second time with a new marriage contract and Mahr a few months ago, ma sha Allah. But my husband went to study fiqh and one of the shaykhs told him: if you divorce the sister before consummation of the marriage, then she will be prohibited for you like one who is divorced three times. So my husband refused to consummate the marriage with me, saying that he wants to think about it and be sure that the marriage will be successful, and that before that I have to lose some weight, and that he will not have intercourse with me unless that happens. We have been married for approximately four months, ma sha Allah, but if consummation has not happened up till now, do we have to separate? He also asked me to give up some of my rights at present, and he also agreed to some conditions, but now he is saying that he intends to go back on the agreement, saying that it was only verbal, and that it should have been written in the marriage contract in order to be valid. Is it permissible for him to do that? What is the state of my marriage?

Summary of answer

If a divorce is issued to the wife before the consummation of the marriage and without having been completely alone together in such a manner that consummating the marriage would have been possible, then she does not have to observe `Iddah, and she is entitled to half of the Mahr that was agreed upon. If a divorce is issued to the wife before consummating the marriage but they have been completely alone together in such a manner that consummating the marriage was possible, then the majority of Hanafi, Maliki, Shafi`i and Hanbali scholars are of the view that she must observe `Iddah and she is entitled to the Mahr in full.

Detailed answer

Praise be to Allah.

The Importance of Consulting Islamic Scholars in Marital Matters

It would have been better for you and your husband to refer what happened between you of matters having to do with marriage, divorce, the Mahr and `Iddah before deciding whether to end the marriage or carry on with it, to a shaykh near you, or to an Islamic centre run by people who you trust, or to wait until you asked someone whom you trusted, even if that was someone far away.

You should not have taken the rulings on these issues from people or from a lesson given by a Shaykh in a mosque. This is the advice that we always give to spouses who have problems, and we advise them to refer matters of marriage and divorce only to an Islamic judge or to one who plays the same role in countries where there is no Islamic legal system.

Scenarios of Divorce before Consummation of Marriage in Islam

With regard to divorce before consummation of the marriage, the following details apply:

- If a divorce is issued to the wife before consummation of the marriage and without having been completely alone together in such a manner that consummation of the marriage would have been possible, then she does not have to observe `Iddah, and she is entitled to half of the Mahr that was agreed upon. If no Mahr was agreed upon, then she is entitled to some payment, according to how well off he is. And he cannot take her back except with a new marriage contract and Mahr.

Please see the answers to questions no. 75026 and 99597.

- If a divorce is issued to the wife before consummation of the marriage but they have been completely alone together in such a manner that consummation of the marriage was

possible, then the majority of Hanafi, Maliki, Shafi`i (according to the earlier view of their Madhhab) and Hanbali scholars  are of the view that she must observe `Iddah and she is entitled to the Mahr in full.

As far as taking her back is concerned, the majority of Hanafi, Maliki and Shafi`i scholars are of the view that he cannot take her back except with a new marriage contract and Mahr.

Please see the answers to questions no. 49821 and 118557.

- As you (re)married in that manner – i.e., with a new marriage contract and Mahr – then at present you are a wife to him according to Shari`ah, and he is your husband; the marriage contract between you is valid, with all its Shar`i implications, and it is not permissible for either of you to undermine any of its conditions, if the conditions are Islamically acceptable. Moreover, it is not permissible for him to ask you to give up some of your rights, unless you do that willingly, not as a result of compulsion or embarrassment.

It was narrated from `Uqbah ibn `Amir (may Allah be pleased with him) that he said: The Messenger of Allah (blessings and peace of Allah be upon him) said: “The conditions that most deserve to be fulfilled are those by means of which intimacy becomes permissible for you.” (Narrated by Al-Bukhari, 2572 and Muslim, 1418)

Al-Hafidh Ibn Hajar (may Allah have mercy on him) said: The words “those by means of which intimacy becomes permissible for you” mean: The conditions that most deserve to be fulfilled are the conditions of marriage. (End quote from *Fat-h Al-Bari*, 9/217)

For more details on conditions in the marriage contract, please see the answers to questions no. 10343, 49666 and 20757

Nullifying marriage conditions

It is not permissible for the husband to go back on the conditions that he agreed upon with his wife or her guardian, whether the conditions were stated verbally or in writing. If the conditions were

not recorded in the marriage contract, then they are still binding on him before his Lord, may He be Exalted, even if they are not legally binding.

To sum up:

- Your first marriage ended with a valid, Islamically acceptable divorce. As it happened before consummation of the marriage and after being alone with him in such a manner that he could have consummated the marriage, then you are entitled to the Mahr in full, and you have to observe `Iddah, and you cannot go back to him except with a new marriage contract and Mahr.
- Your going back to your husband with a new marriage contract and Mahr is valid, whether you were completely alone with him or not. Hence your second marriage contract is valid with all its Shar`i implications, and you both have to fulfil the Islamically acceptable and permissible conditions stipulated by both of you, whether they were stated verbally or in writing.

We ask Allah to guide your husband to that which He loves and is pleased with, and to guide him to adhere to what we have mentioned of rulings. If he does not agree with what we have mentioned here, then we advise you to take your case to the director of the nearest Islamic centre, or to someone near you whose knowledge and religious commitment you trust. There is nothing wrong with asking some sincere people to intervene, especially if they are from your family or his, to bring about reconciliation between you.

And Allah knows best.