98829 - Her husband is mentally ill and hurts her. How should she deal with him? Does he have any rights?

the question

A woman is asking if her husband has rights over her. He is mentally ill. He does not interfere in the matters of their home. He also accuses her of being disloyal. She is far from him though. He is a father for 10 individuals. They got married without any help from his side. This made her very upset and she does not want to even talk with him. Please clarify the Islamic ruling on this matter.

Detailed answer

Praise be to Allah.

Firstly:

We ask Allah to heal your husband sooner rather than later, and we ask Allah to increase your reward for your patience and forbearance. This calamity with which Allah has tested you will bring reward if you are patient and seek reward for it.

It was narrated that Suhayb said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “How wonderful is the situation of the believer, for all his affairs are good. If something good happens to him, he gives thanks for it and that is good for him; if something bad happens to him, he bears it with patience, and that is good for him. This does not apply to anyone but the believer.”

Narrated by Muslim (2999).

And it was narrated from Abu Sa’eed al-Khudri and Abu Hurayrah that the Prophet (peace and blessings of Allah be upon him) said: “No exhaustion, pain, anxiety, grief, harm or distress befalls a Muslim, not even a thorn that pricks him, but Allah will expiate some of his sins thereby.” Narrated by al-Bukhari (5318) and Muslim (2573).

Secondly:

In the case of your husband's sickness, either he is aware of what he is doing and saying, or he is not aware. If he is aware, then he is accountable for what he says and does, and it is not permissible for him to accuse you or to fail to raise his children; he must do what Allah has enjoined upon him of acts of worship and obedience, and not do that which Allah has forbidden.

In this case you must carry out all marital duties and it is not permissible for you to neglect them.

If he is not aware of what he is saying and doing as a result of this sickness, then he is no longer accountable for what he says and does. But if his actions affect the rights of others, then the one whose right it is may take his right from your husband's wealth or from his guardians, such as if he transgresses against someone by killing him or he damages his car and so on.

It was narrated from 'Aishah that the Prophet (peace and blessings of Allah be upon him) said: "The Pen has been lifted from three: from the sleeping person until he wakes up, from the minor until he grows up, and from the insane person until he comes to his senses." Narrated by Abu Dawood (4398), al-Nasai (3432) and Ibn Majah (2041); classed as saheeh by al-Albani in Saheeh Abi Dawood.

Ibn Hazm (may Allah have mercy on him) said:

As for the one who has not yet reached puberty, or who has reached puberty but has no discernment or reason, or has lost his power of discernment after reaching puberty and being able to discern, such people are not accountable and they are not allowed to dispose of any of their wealth, because of the report that we have narrated from the Messenger of Allaah (peace and blessings of Allah be upon him): "The Pen has been lifted from three", in which he mentioned "from the minor until he grows up, and from the insane person until he comes to his senses."

Al-Muhalla (7/200).

Ash-Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said:

As for the rational man, his opposite is the insane man who has no reason, or the elderly man or elderly woman if they have reached the age where they have lost the power of discernment, which is known as senility. Such a person does not have to pray because he does not have the mental capacity.

Majmoo' al-Fatawa (12/first question).

Please see scholarly comments on his behaviour and its effects in the answer to question no. 73412.

With regard to his accusation that you have sinned, if what you mean is an accusation of zina, then in the second case he is not committing slander, because an important condition, namely reason, is missing. Similarly, he cannot engage in li'an either.

In al-Mawsoo'ah al-Fiqhiyyah (33/11) it says:

The fuqaha are unanimously agreed that in order for a person to be regarded as committing slander, he (or she) must be an adult of sound mind and acting on the basis of free will, whether male or female, free or slave, Muslim or non-Muslim.

End quote.

To sum up:

You may either put up with what he is doing, if he does not understand what he is doing because of his sickness and loss of reason, or you may refer your case to the qadi to determine whether he is fit to remain as your husband or the marriage may be annulled.

If he does understand what he is doing, then you may either put up with what is happening or you may ask him for a divorce, and if he refuses you may refer your case to the sharee'ah court to arrange a separation.

And Allah knows best.