101771 - If she accuses her husband of zina, does she have the right to separate from him by means of li’aan?

the question

I would like to know: what is the procedure in the case of a woman who accuses her husband of adultery. Does she take the oath of li-an (curse) upon herself as in surat an-Nur or is this only in the case of a husband who accuses his wife? I searched for the answer here but did not find it anywhere.

Detailed answer

Praise be to Allah.

Li’aan is prescribed for two reasons:

1 – If the husband accuses his wife of zina and cannot produce four witnesses, then he may get the hadd punishment for slander waived by engaging in li’aan.

2 – If he wants to deny that a child is his.

The basic principle concerning that is the passage in which Allah says (interpretation of the meaning):

“And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth.

7. And the fifth (testimony should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her).

8. But it shall avert the punishment (of stoning to death) from her, if she bears witness four times

by Allah, that he (her husband) is telling a lie.

9. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth”

[al-Noor 24:6-9]

Ibn Katheer (may Allah have mercy on him) said in his Tafseer:

This verse offers a way out to husbands if a husband accuses his wife of zina but it is too difficult for him to establish proof; he may engage in li’aan against her as enjoined by Allah, may He be glorified and exalted. This means bringing her before the judge and making his accusation against her, and the judge should make him swear four times by Allah, instead of bringing four witnesses, that he is telling the truth i.e., about what he is accusing her of, namely zina. And the fifth time he should invoke the Curse of Allah upon himself if he is lying. If he says this, she becomes irrevocably divorced by virtue of this li’aan, according to al-Shafa’i and many of the scholars, and she becomes permanently forbidden to him, and he should give her the mahr (dowry), and the hadd punishment for zina should be carried out on her. The punishment is not averted from her unless she also engages in li’aan and swears by Allah four times that he is lying, i.e., with regard to what he has accused her of; and the fifth time she should invoke the wrath of Allah upon herself if he is telling the truth. Hence Allah says “But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie.

9. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth.” End quote.

As for the wife, if she accuses her husband of zina, but she cannot produce four witnesses, then she should be given the hadd punishment for slander, because Allah says (interpretation of the meaning):

“And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the Fasiqoon (liars, rebellious,

disobedient to Allah)”

[al-Noor 24:4]

These verses apply equally to slander against both women and men.

Al-Qurtubi (may Allah have mercy on him) said in his Tafseer: Allah mentioned women in the verse because they are of greater concern and accusing them of immorality is more abhorrent and more hurtful, but slandering men is also included in the meaning of the verse, and the ummah is unanimously agreed on that. End quote.

Al-Mawardi said in Ahkam al-Sultaniyyah (p. 287): If a woman slanders her husband, she should be given the hadd punishment, but she should not engage in li’aan. End quote.

If a woman knows that her husband has committed zina but she has no proof, namely four witnesses, then she should advise him and remind him, and tell him to fear Allah. If he persists in his sin she may ask for a divorce from him or separate from him by means of khula’, because there is nothing good for her in staying with him, and because his having intercourse with her may be harmful for her.

And Allah knows best.