122703 - The revocably-divorced woman should not observe ‘iddah in her family’s house except in cases of necessity

the question

I asked for a divorce (talaaq) through the court because of harm – by way of beating, humiliation and shorcomings (on my husband’s part). I stayed in my family’s home for several months, and my ex-husband did not come to try to discuss the issue with my family, and he did not send anyone to try and bring about reconciliation. I refused to go back to him without him discussing the issue with my family and giving me a promise that he would not beat me. But he refused to discuss the issue with my family, and the court ruled that I should be granted a divorce because of harm. They asked me if I wanted to give up my financial rights, but I refused to give them up. The divorce given was one talaaq (revocable divorce), and he gave me the delayed portion of the mahr and maintenance during the ‘iddah period.
My question is: is this regarded as a talaaq or khula‘, because I am the one who asked for the divorce? And how long is the ‘iddah period? During the ‘iddah period, am I obliged to stay in the marital home? I cannot stay with him, because I do not want him and he does not want me. And my family will never agree to that, because he humiliated me and them. If I go back to him I am afraid that he may beat me severely. Is what I am doing haraam, by spending the ‘iddah period in my family’s home? I hope you can advise me.

Detailed answer

Praise be to Allah.

Firstly:

If the court has issued a verdict of divorce because of the harm done to you, and one revocable talaaq has been issued to you, as you say, then this is talaaq and not khula‘, and the ruling is not affected by the fact that you are the one who asked for divorce.

Secondly:

The basic principle is that the divorced woman should observe ‘iddah in her husband’s house, as Allah, may He be exalted, says (interpretation of the meaning):

“O Prophet (blessings and peace of Allah be upon him)! When you divorce women, divorce them at their ‘Iddah (prescribed periods), and count (accurately) their ‘Iddah (periods). And fear Allah your Lord (O Muslims), and turn them not out of their (husbands’) 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 Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You (the one who divorces his wife) know not, it may be that Allah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce)”

[at-Talaaq 65:1].

But if she is afraid that by observing ‘iddah in her husband’s house she will definitely be subjected to harm, it is permissible for her to observe ‘iddah in her family’s home.

Al-Qurtubi (may Allah have mercy on him) said:

“and turn them not out of their (husbands’) homes” means: the husband does not have the right to turn her out of the marital home so long as she is still observing ‘iddah, and it is not permissible for her either to leave, because of the husband’s rights, except in the case of clear necessity. If she leaves, she is sinning, but the ‘iddah is not interrupted. This applies equally to both revocably and irrevocably divorced women, and is ordained in order to protect the man’s sperm [from being confused with that of a subsequent husband, if the woman were to remarry soon and pregnant]. End quote.

It says in Fataawa al-Lajnah ad-Daa’imah (20/224): With regard to the verse in which Allah, may He be exalted, says (interpretation of the meaning): “and turn them not out of their (husbands’) homes, nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse” [at-Talaaq 65:1], if the woman leaves without her husband asking her to leave,

whether by hinting or a clear request, and without the husband's permission, what is the ruling on that? The talaaq is complete and all that remains is the 'iddah.

Answer:

The woman in 'iddah following a revocable talaaq is sinning if she leaves the husband's house without him asking her to leave, unless she left because of necessity or need which made it permissible for her to do that. End quote.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: The woman who has been revocably divorced must remain in her husband's house, and it is haraam for her husband to turn her out of the house because Allah, may He be exalted, says (interpretation of the meaning): "and turn them not out of their (husbands') 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 Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself" [at-Talaaq 65:1]. What the people do nowadays, whereby if a woman is revocably divorced she goes immediately to her family's home, is wrong and is haraam, because Allah says "and turn them not out… nor shall they (themselves) leave", and He made no exceptions from that, unless she has committed open illegal sexual intercourse, then He says after that: "And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself" [at-Talaaq 65:1]. Then He explains the wisdom behind obliging her to remain in her husband's house, as He says: You (the one who divorces his wife) know not, it may be that Allah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce)" [at-Talaaq 65:1].

The Muslims must pay attention to the limits set by Allah and adhere to what Allah has enjoined upon them, and they should not take traditions and customs as a means of going against the injunctions of sharee'ah.

The point is that we must pay attention to this matter and remember that the woman who is revocably divorced is obliged to remain in her husband's house until the end of her 'iddah. In this

case, whilst she is staying in her husband's house, she may uncover herself in front of him, adorn herself, beautify herself, put on perfume, speak to him, and he may speak to her, and she may sit with him and do everything except intimacy or intercourse, which may only take place in the case of him taking her back. He may take her back verbally, so he may say, "I am taking back my wife", or he may take her back by his actions, by having intercourse with her, with the intention of taking her back. End quote from Fataawa Islamiyyah.

We have stated that this moving of the woman from her husband's home, during her 'iddah, even though it is prohibited in principle, it may be permitted in the case of necessity or if there is a reason which dictates that she should leave the marital home.

Abu'l-Waleed al-Baaji (may Allah have mercy on him) said:

Al-Qaadi Abu Muhammad said: If there is a great deal of such misconduct and trouble between them, and there is no hope of them reconciling, then the woman may move to some other abode.

Then he said, after referring to some of what had been said about the reasons why a woman may move from her husband's home:

All of these opinions indicate that it is not permissible for her to move without good reason, although they differed as to the definition of such reasons. And Allah knows best and is most wise.

End quote from al-Muntaqa Sharh al-Muwatta'.

Based on that, if you are afraid that your husband will beat you and harm you if you observe your 'iddah in his house, then it is permissible for you to observe 'iddah in your family's home.

And Allah knows best.