245819 - If he refuses to have intercourse with his wife of four months, is this ila’ (oath of abstinence from marital relations)?

the question

What if the husband refuses to sleep with his wife for two whole years; is the marriage still valid? What if he does not like to learn and study the Quran?

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for the man to forsake his wife in bed for this length of time, because what is required of the husband is to keep his wife chaste, by having intercourse with her as much as meets her need and he is able to do.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) was asked about a man who is able to keep away from his wife for one month or two months, and he does not have intercourse with her; is there any sin on him or not? Should the husband be told to do that?

He replied: It is obligatory for the man to have intercourse with his wife on a reasonable basis, and that is one of the most important rights that she has over him; it is more important than feeding her. With regard to what is obligatory in terms of intercourse, it was said that it is obligatory once every four months, or that it should be according to her need and his ability, just as he must feed her according to what she needs and he can afford. This is the more correct of the two scholarly views."(*Majmu‘ al-Fatawa* 32/271).

If he has forsaken her for this length of time with the aim of harming her, then he is sinning, but the scholars differ as to what is required of him. Some of them are of the view that he comes

under the ruling of one who swore an oath of ila’ (oath of abstinence from marital relations), so he should be given four months’ respite, then if he persists in that, the judge must compel him to divorce her. Other scholars are of the view that he should not be given this much respite, because the harm must be dealt with immediately. So he must be instructed, with immediate effect, either to be intimate with his wife on a reasonable basis or to divorce her.

Ibn Rushd said: As for applying the ruling on ila’ to the husband if he refrains from having intercourse without having sworn an oath, the majority of scholars are of the view that the ruling on ila’ does not apply if he has not sworn an oath, although Malik said that it does apply to him; that is, if his aim in not having intercourse with her is to harm her and even if he did not swear an oath to that effect. Thus the majority of scholars based their view on the apparent meaning of the text, whereas Malik based his view on the concept, because the ruling only comes into effect when the husband decides that he does not want to have intercourse, regardless of whether he reinforced his decision with an oath or not, because harm is taking place in both scenarios."(*Bidayat al-Mujtahid* 2/101).

See also: *al-Mughni*, by Ibn Qudamah (8/551).

But if he is not forsaking her with the aim of harming her – rather it is done for the purpose of disciplining her and making her mend her ways – then he may forsake her for the period that he believes is needed in order to achieve his objective that is in accordance with Islamic teachings, and so as to ward off the bad consequences of her defiance and disobedience.

On this basis the scholars of the Permanent Committee for Ifta’ issued fatwas. It says in *Fatawa al-Lajnah* (20/261): What are the consequences for someone who forsakes his wife for more than three months? Does that come under the ruling on ila’? Please note that this forsaking is for the purpose of disciplining his wife for persisting in some behaviour that usually happens between spouses, but there is nothing in it that is contrary to Islamic teachings. What is ila’ and how is it done?

Answer: If someone forsakes his wife for more than three months, if that is because of her

defiance, meaning that it is because she disobeys her husband regarding the marital rights that he has over her, and she persists in that after he exhorts her, reminds her to fear Allah, may He be exalted, and reminds her of her obligatory duties towards her husband, then he may forsake her in bed for as long as he wishes, for the purpose of disciplining her, until she gives him his rights willingly. The Prophet (blessings and peace of Allah be upon him) forsook his wives and did not go to them for a month. However, in terms of speaking, it is not permissible for the husband to shun his wife for more than three days, because of the report which was soundly narrated from the Prophet (blessings and peace of Allah be upon him) in the hadith of An as ibn Malik (may Allah be pleased with him), according to which he said: “It is not permissible for a Muslim to shun his brother for more than three days.” Narrated by Imam al-Bukhari and Muslim in their *Sahihayn*, and by Ahmad in his *Musnad*.

As for the husband shunning his wife in bed for more than four months with the aim of harming her and without any shortcomings on her part in her duties towards her husband, he is like one who has sworn the ila’ oath, even if he did not actually swear an oath to that effect. He should be given the time of ila’, then if four months pass without him having gone back to his wife and had intercourse with her in the vagina when he is able to have intercourse, if she is not menstruating or bleeding following childbirth, then he should be ordered to divorce her. If he refuses to go back to his wife and he refuses to divorce her, then the judge should issue a divorce or annul her marriage to him, if the wife requests that. And Allah is the source of strength. May Allah send blessings and peace upon our Prophet Muhammad and his family and companions. End quote.

Shaykh Ibn ‘Uthaymin (may Allah have mercy on him) favoured the view that he is not to be given respite; rather he is to be asked to remove the harm from his wife immediately, either by being intimate with her on a reasonable basis, or by divorcing her.

He said in *ash-Sharh al-Mumti‘* (13/233):

If he refrains from having intercourse with her with the aim of causing her harm, without having sworn an oath and without any excuse, like one who swore the ila’ oath, or like one who refrains from having intercourse with his wife without having sworn an oath, but he stopped doing that

with the aim of harming her, then in this case he is sinning, and we apply the ruling on ila' to him. So according to the author, he should be given four months from the time he stopped having intercourse with his wife, but that is subject to the condition that his aim is to harm her. In that case we say: Either have intercourse with her and treat her reasonably, otherwise, if she asks for an annulment, the marriage should be annulled.

And it was said that he is not like one who swore the oath of ila', so we cannot apply the ruling thereon to him, because the situation is different. This view is more sound, that the one who refrains from having intercourse with his wife in order to harm her, without having sworn an oath and without any excuse, is not like one who has sworn the oath of ila'; rather he should be intimate with her on a reasonable basis, otherwise she has the right to ask for annulment or divorce.

The difference between him and one who has sworn the oath of ila' is that the latter has sworn an oath, and as a result of his oath he must wait for the period that Allah, may He be glorified and exalted, mentioned, because of his oath. As for this man, he only wants to harm his wife, and the Messenger (blessings and peace of Allah be upon him) said: "There should be neither harm nor reciprocating harm." And Allah, may He be exalted, says (interpretation of the meaning): "and do not keep them, intending harm, to transgress [against them]" [al-Baqarah 2:231]. So how can we say that the harm should continue for four months?

The correct view regarding this matter is that the one who stopped having intercourse with his wife with the aim of harming her, with no excuse, should be told to take her back immediately and be intimate with her on a reasonable basis, otherwise he should be made to divorce her. End quote.

Whatever the case, the period mentioned in the question (two years) is very long, and it is not possible to hope that any shar'i objective could be met by persisting in forsaking her after that. Rather there is the fear that this may open the door to mischief in the home and infidelity on the wife's part, if she starts looking for what is not permissible for her, if the husband does not keep her chaste by the means that Allah has permitted.

In that case, he should either be intimate with her on a reasonable basis, if they are able to live together peacefully, or divorce her, if she cannot live with him, so as to ward off that extreme harm from her.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

The harm that is caused to the wife as a result of the husband not having intercourse with her dictates that the marriage should be annulled in all cases, whether that was the husband's deliberate intention or it was not deliberate, and whether he is able to have intercourse with her or not, like maintenance and more so."(A*l-Fatawa al-Kubra* 5/480).

As to whether the marriage is still valid, the marriage is still valid and they cannot be separated until after the wife asks for her rights and the husband insists on withholding them.

Secondly:

Memorisation of the Quran is the best thing that a man can spend his life doing, and is the most appropriate thing to which he could dedicate his life, because it is the word of Allah, may He be exalted, the Lord of earth and heaven, the Creator of all things, may He be glorified.

Al-Bukhari narrated in his *Sahih* (5027) from Abu 'Abd ar-Rahman as-Sulami, from 'Uthman (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) said: "The best of you are those who learn the Quran and teach it."

If what the questioner meant by saying that her husband does not like to learn the Quran is that he will not accept an Islamic fatwa, then the best option she has is to look for organisations that look after Muslims' affairs, such as Islamic centres, because they can play the role of the shar'i court. So they can advise the husband, and he can be instructed to treat his wife reasonably, which includes having intercourse with her and other things, then if he refuses, he can be ordered to divorce her. If he does not do that, then the Islamic centre can divorce her from him.

See the answer to question no. 175230 .

And Allah knows best.