513613 - They forced her to get married and she wants a divorce; What should she do?

the question

There is a girl whose parents forced her to get married, and she did not agree to this marriage. Now, after consummation of the marriage, she wants to get divorced from her husband, because she cannot bear to live with him, and the situation is so bad that she does not want to be anywhere near her husband, and she does not love him.

My question is:

in this situation, when he divorces her with one revocable divorce (talaq), should she stay in his house and wait until her `iddah ends, or should she go back to her family? If her husband intends to take her back during the `iddah period, does she have the right not to go back to him, even though she did not accept him from the outset?

Detailed answer

Praise be to Allah.

I.

If the woman got married out of fear of her father, then her marriage is valid according to the majority of jurists, including the Malikis, Shafa`is and Hanbalis.

Ibn `Abd al-Barr (may Allah have mercy on him) said: The scholars differed regarding the father: can he force his adult, virgin daughter to get married, or not? Malik, ash-Shafa`i and Ibn Abi Layla said: If the woman is a virgin, her father has the right to force her to get married, unless there will be clear harm to her in the marriage, whether she is young or an adult. This is the view of Ahmad, Is-haq and a number of other scholars.

End quote from *At-Tahmid*, 12/40.

Ibn Qudamah (may Allah have mercy on him) said: As for an adult virgin of sound mind, two views were narrated from Ahmad, one of which is that he may force her into a marriage and give her in marriage without her consent, as is the case with one who is young. This is also the view of Malik, Ibn Abi Layla, ash-Shafa`i and Is-haq. End quote from *Al-Mughni*, 9/399.

Based on that, the marriage contract that was done between them is valid, and the shar'i rulings connected to marriage are applicable to it.

II.

Some of the scholars are of the view that a forced marriage is not permissible, and the wife has the right to choose whether she wants to affirm it and accept it, or annul it in the court.

They quote as evidence the words of the Prophet (blessings and peace of Allah be upon him): "A virgin should not be married until her permission has been sought, and a previously-married woman should not be married until she has been consulted." Narrated by al-Bukhari, 6567; and Muslim, 1419.

This is the view of the Hanafis and is the view favoured by Shaykh al-Islam Ibn Taymiyah and his student Ibn al-Qayyim. Among our contemporary scholars, it is the view favoured by Shaykh Ibn Baz and Shaykh Ibn `Uthaymin (may Allah have mercy on them), and is the basis on which fatwas are issued by the scholars of the Permanent Committee for Issuing Fatwas.

Ibn al-Humam al-Hanafi said: It is not permissible for the guardian to force an adult virgin woman into a marriage. End quote from *Fat-h al-Qadir*, 3/260.

Ibn al-Qayyim said, commenting on the hadith "the virgin should be asked for permission [regarding her marriage] … ": What this ruling means says that an adult woman cannot be forced into marriage, and she cannot be given in marriage except with her consent.

End quote from *Zad al-Ma`ad*, 5/88.

If she gives her approval after the marriage contract is done, in word or in deed, such as willingly allowing him to be intimate with her, and they live together a normal life as husband and wife for a while, during which she could have refused to live such a life, but she did not do that, then by her actions she has approved of the marriage.

It was narrated from `A'ishah that a girl came to her and said: My father gave me in marriage to his brother's son so that he might raise his own status thereby, and I was unwilling. [`A'ishah] said: Sit here until the Prophet (blessings and peace of Allah be upon him) comes. Then the Messenger of Allah (blessings and peace of Allah be upon him) came, and I [`A'ishah] told him (what she had said). He sent word to her father, summoning him, and he left the matter up to her. She said: O Messenger of Allah, I accept what my father did, but I wanted to know whether women have any say in the matter.

Narrated by an-Nasa'i, 3269; and Ibn Majah, 1874. Al-Albani classed it as weak, but al-Busayri classed it as authentic in *Misbah az-Zujajah*, 2/102. Similarly, Shaykh Muqbil al-Wadi`i said: It is authentic according to the conditions of Muslim. End quote from *As-Sahih al-Musnad*, p. 160.

Al-Kasani (may Allah have mercy on him) said: If the consent of an adult woman to the marriage is a condition of the marriage being valid, then if her marriage is arranged without her consent, the validity of the marriage is dependent on her approval: if she gives her approval, the marriage is valid, but if she refuses, it is invalid.

And he said: As for approval by actions, that includes allowing him to be intimate with her, demanding the dowry and maintenance, and so on, because such actions are indicative of approving of the marriage.

End quote from *Bada'i` as-Sana'i` fi Tartib ash-Shara'i`*, 2/242.

The Permanent Committee for Issuing Fatwas was asked: What is the Islamic ruling regarding a woman who is given in marriage when she does not agree to it?

They replied: if she does not approve of this marriage, the matter should be referred to the court,

to either affirm or annul the marriage contract.

End quote from *Fatawa al-Lajnat id-Da'imah*, 18/126.

What appears to be the case in the question is that she showed her *approval* in her actions, and intimacy occurred between them with her consent. The fact that she does not love him does not mean that she did not give her approval to the marriage. How many women there are who do not love their husbands, but never think of leaving them, and the thought never crosses their minds!

III.

If she wants to end the marital relationship now, she has two options:

The first option:

She can ask him to divorce her (talaq), and if he agrees and divorces her, she must observe the `iddah in his house for three menstrual cycles. If she is pregnant, her `iddah lasts until she gives birth.

When the `iddah ends, she is revocably divorced, because Allah, may He be Exalted, says: {Divorced women should wait concerning themselves for three menstrual cycles} [al-Baqarah 2:228]. The jurists are agreed that the `iddah of a woman who menstruates is three menstrual cycles, because of the verse quoted.

As for a divorced woman who is pregnant, her `iddah lasts until she gives birth, because Allah, may He be Exalted, says: {And for those who are pregnant, their term is until they give birth} [At-Talaq 65:4].

During the `iddah, she must stay in the husband's house and not leave except with his permission, and he has the right to take her back. Taking her back may be done either in word, or in deed, by having intercourse with her during the `iddah.

That is because Allah, may He be Exalted, says: {And their husbands have more right to take them back in this [period] if they want reconciliation} [al-Baqarah 2:228]. Thus Allah has given the

husbands of divorced women the right to take them back during the `iddah period, if by doing so they want reconciliation.

And Allah, may He be Exalted, says: {O Prophet [and believers], when any of you want to divorce women, then divorce them at a time when their prescribed waiting period can properly start, and keep an accurate count of the waiting period; and fear Allah your Lord. Do not turn them [divorced women] out of their houses [during the waiting period], nor should they themselves leave, unless they are guilty of manifestly immoral conduct} [At-Talaq 65:1].

It was narrated from Ibn `Umar that he used to say: If a man divorces his wife once or twice, she should not leave her house except with his permission. Narrated by Ibn Abi Shaybah in his *Musannaf*, 20054.

An-Nawawi (may Allah have mercy on him) said: If she is revocably divorced, she is still his wife, so he must spend on her maintenance, and she should not go out except with his permission.

End quote from *Rawdat at-Talibin*, 8/416.

It says in *Al-Mawsu`at al-Fiqhiyyah*, 25/113: The woman who is observing `iddah following a revocable divorce (talaq) is still regarded as a wife, because the marriage between them is still valid, so the situation after the divorce (talaq) is the same as it was before. End quote.

If the `iddah ends without the husband having taken her back, then the marriage has ended and she is not permissible for him except with a new marriage contract.

The second option:

She can separate from him by means of khul`, either by mutual consent, meaning that he agrees to accept compensation (which is the dowry that he gave her, or whatever amount of wealth they agree to) and leaves her, whether by uttering the word of divorce (talaq) or khul`, or whatever words take their place, with the intention of separation.

If he refuses, then she may take the matter to the judge, to separate from him by means of khul`,

by asking the judge to annul the marriage in return for her giving back to him the dowry that he gave her at the time of marriage.

In the event of khul`, the husband has no right to take her back during the `iddah, and she should not stay in his house; rather she becomes a stranger (non-mahram) to him. And when her `iddah ends, she may marry someone else after that.

The evidence for that from the Sunnah is that the wife of Thabit ibn Qays ibn Shammas (may Allah be pleased with him) came to the Prophet (blessings and peace of Allah be upon him) and said: O Messenger of Allah, I do not find any fault with Thabit ibn Qays in his character or his religious commitment, but I do not want to commit any act of disbelief after becoming a Muslim. The Messenger of Allah (peace and blessings of Allah be upon him) said to her, “Will you give back his garden?” Because he had given her a garden as her dowry. She said, “Yes.” The Prophet (peace and blessings of Allah be upon him) said to Thabit: “Take back your garden, and divorce her.” Narrated by al-Bukhari, 5273.

As for the `iddah of one who has separated from her husband by khul`, the scholars differed regarding its length. The majority are of the view that it is three menstrual cycles, but some other scholars are of the view that it is one menstrual cycle.

This has been discussed previously in the answer to question no. 5163.

If there is a shar`i judge in your country who has knowledge of Sharia and judges according to it, then he may decide what is appropriate in this situation, whether that be nullifying the marriage, divorce (talaq), or whatever he thinks is appropriate after examining the situation and understanding the circumstances.

And Allah knows best.