72417 - Is Divorce Valid during Menstruation?

the question

On the first day of her menses she forgot to tell her husband, and asked him for a divorce, and the third talaq was issued. Then she remembered that and told him. What is the shar'i response to that?

Summary of answer

The jurists differed as to whether the divorce of a menstruating woman counts as such or not. The majority are of the view that it does count as such, but there is a group of scholars who say that it does not, and this is the view reflected in the Fatwas of many contemporary jurists such as Shaykh Ibn Baz.

Detailed answer

Praise be to Allah.

The jurists differed as to whether the divorce of a menstruating woman counts as such or not . The majority are of the view that it does count as such, but there is a group of scholars who say that it does not, and this is the view reflected in the fatwas of many contemporary jurists such as Shaykh Ibn Baz (may Allah have mercy on him) and Shaykh Ibn `Uthaymin (may Allah have mercy on him).

Shaykh Ibn Baz (may Allah have mercy on him) said:

"Divorce of a menstruating woman does not count as such according to the more sound of the two scholarly opinions, which is contrary to the view of the majority. The majority of scholars think that it does count as such, but the correct scholarly view is that reflected in the Fatwas of some of the Successors and in the fatwa of Ibn `Umar (may Allah be pleased with him). This is also the view

favoured by Shaykh Al-Islam Ibn Taymiyah and his student Ibn Al-Qayyim and a number of scholars who said that this divorce does not count as such, because it is contrary to the laws of Allah.

Allah decreed that a woman should be divorced when she is in a state of purity, free from Nifas (postpartum bleeding) and menses, and during a time of purity when her husband has not yet had intercourse with her. This is the divorce that is prescribed according to Shari`ah.

If the husband divorces his wife during her menses or Nifas, or during a time of purity when he has had intercourse with her, then his divorce is Bid`ah (an innovation) and does not count as such according to the more sound of the two scholarly views, because Allah says (interpretation of the meaning):

“O Prophet! When you divorce women, divorce them at their `Iddah (prescribed periods) and count (accurately) their `Iddah.” [At-Talaq 65:1]

What this means is when they are pure (not menstruating) and you have not had intercourse with them. This is what the scholars have said about divorcing them at their prescribed periods, they should be pure (not menstruating) and you should not have had intercourse with them, or they should be pregnant. This is what is meant by divorce at their prescribed periods.” (Fatawa At-Talaq, p. 44)

It says in Fatawa Al-Lajnah Ad-Da’imah (20/58):

“There are several kinds of innovated divorce: where a man divorces his wife during her menses or Nifas, or during a time of purity when he has had intercourse with her. The correct view is that this does not count as a divorce.”

Based on this, if the divorce was issued at the time of her menses, it does not count and the woman is still married to her husband.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) was asked about a man who divorced his wife when she was menstruating but he did not know that she was menstruating – does this

divorce count as such?

He replied:

“The scholars differed concerning a divorce that takes place when a woman has her monthly period, and there was a lengthy discussion as to whether the divorce counts or not. The majority of scholars are of the view that divorce does count as such and is regarded as a divorce, but the man should be told to take her back and keep her until she has become pure from her menses, then menstruated a second time and become pure. Then if he wishes he may keep her and if he wishes he may divorce her.

This is the view of the majority of scholars, including the four Imams: Ahmad, Ash-Shafi`i, Malik and Abu Hanifah (may Allah have mercy on them). But the more correct view in our opinion is that favoured by Shaykh Al-Islam Ibn Taymiyah (may Allah have mercy on him), that divorce at the time of menses does not count as such , because it goes against the command of Allah and His Messenger.

The Prophet (peace and blessings of Allah be upon him) said: “Whoever does any action that is not in accordance with this matter of ours will have it rejected.”

The evidence concerning this very issue is the Hadith of `Abdullah ibn `Umar, when he divorced his wife at the time of her menses. He told the Prophet (peace and blessings of Allah be upon him) about that and the Messenger of Allah (peace and blessings of Allah be upon him) got very angry and said: “Tell him to take her back , then keep her until she has become pure, then menstruated, then become pure, then if he wishes he may keep her after that and if he wishes he may divorce her.” Then the Prophet (peace and blessings of Allah be upon him) said: “That is the prescribed period at which Allah has commanded men to divorce women.”

The prescribed period at which Allah has commanded men to divorce women means that a man may only divorce his wife when she is pure (not menstruating) and he has not had intercourse with her. Based on this, if he divorces her when she is menstruating, he has not divorced her in accordance with the command of Allah, so it is to be rejected.

We believe that the divorce that has been issued to this woman does not count as such, and that the woman is still married to her husband. It does not matter whether the husband knew that she was menstruating or not menstruating when he issued the divorce . Yes, his knowledge of her condition does not matter, but if he knew about that then he has committed a sin, and the divorce does not count. If he did not know, then the divorce still does not count, but there is no sin on the husband." (Fatawa Islamiyyah, 3/268)

And Allah knows best.