

273858 - He divorced her before consummating the marriage and after being alone with her, and he did not specify any dowry for her

the question

A man did the Islamic marriage contract, without doing the official civil contract. Shortly after doing the marriage contract, some troubles occurred, so the man decided to divorce her for some reason. What are the Islamic rulings that result from this divorce? Please note that he did not specify the dowry, and they were alone together, but the marriage was not consummated (intercourse).

Detailed answer

Firstly:

If the marriage contract was done by the woman's guardian or his proxy, in the presence of two witnesses, then it is a valid marriage, regardless of whether it was officially documented or not. Specifying the dowry is not a condition of the marriage contract, so if he married her without mentioning or specifying the dowry, the marriage is valid and the woman is entitled to a dowry like that of her peers.

Ibn Qudamah said in *al-Mughni* (7/182): The marriage is valid without specifying the dowry, according to the view of most scholars. That is indicated by the words of Allah, may He be exalted (interpretation of the meaning):

{There is no blame upon you if you divorce women you have not touched nor specified for them an obligation [i.e., the dowry] } [al-Baqarah 2:236].

It was narrated from Ibn Mas'ud that he was asked about a man who married a woman, and did not specify a dowry for her or consummate the marriage with her before he died. He said: She is entitled to a dowry like that of her peers, no more and no less; she must observe 'iddah; and she is entitled to inheritance. Ma'qil ibn Sinaan al-Ashja'i stood up and said: The Messenger of Allah (blessings and peace of Allah be upon him) issued a ruling

concerning Barwa' bint Waashiq, one of our womenfolk, similar to the ruling that you have issued. Narrated by Abu Dawud and at-Tirmidhi, who said: it is a sahih hasan hadith. End quote.

Secondly:

If the woman was divorced before consummation of the marriage and before being alone with her, if he had specified a dowry for her, then she is entitled to half of it, and if he did not specify any dowry for her, she is entitled to compensation, because Allah, may He be exalted, says (interpretation of the meaning):

{There is no blame upon you if you divorce women you have not touched nor specified for them an obligation [i.e., the dowry]. But give them [a gift of] compensation – the wealthy according to his capability and the poor according to his capability – a provision according to what is acceptable, a duty upon the doers of good.

And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified – unless they forego the right or the one in whose hand is the marriage contract foregoes it. And to forego it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing} [al-Baqarah 2:236, 237].

There is no stipulated amount for this compensation according to Islamic teachings; rather it depends on how well off or otherwise the man is. If they agree on a certain amount, then the purpose has been served. If they disagree, then it is the judge who should determine the amount.

Shaykh Muhammad al-Amin ash-Shinqiti (may Allah have mercy on him) said:

In fact, there is no amount for that compensation that is stipulated according to Islamic law, because Allah, may He be exalted, says (interpretation of the meaning) {the wealthy according to his capability and the poor according to his capability} [al-Baqarah 2:236].

So if they agree on a certain amount, the matter is clear. If they differ, then the judge should work out what is most appropriate, and he should determine the amount in the light of the verse in which Allah, may He be exalted, says (interpretation of the meaning) {the wealthy according to his capability ...} [al-Baqarah 2:236]. This is what appears to be the case.

The apparent meaning of the words {[a gift of] compensation} [al-Baqarah 2:236] and {And for divorced women is a provision} [al-Baqarah 2:241] indicates that it is obligatory to give this compensation or provision in general terms. This is in contrast to the view of Malik and those who agreed with him; he said that it is not obligatory to give this compensation or provision at all."(*Adwa' al-Bayan* 1/192).

Thirdly:

If the divorce takes place before consummation of the marriage, but when the couple have been completely alone together in such a way that it was possible to consummate the marriage with her, then the majority of Hanafi and Maliki scholars – and ash-Shafa'i in his old view – and the Hanbalis are of the view that she must observe 'iddah, then she is entitled to the dowry in full.

This was narrated from a number of the senior Sahabah, such as 'Umar ibn al-Khattab, 'Ali, Zayd ibn Thabit, Mu'adh ibn Jabal and 'Abdullah ibn 'Umar (may Allah be pleased with them).

'Umar (may Allah be pleased with him) consulted a number of the Companions of the Prophet (blessings and peace of Allah be upon him), and none of them differed concerning the fact that the dowry is obligatory in that case.

There are conditions attached to this being alone together, which have been explained previously in the answer to question no. 268304 . One of these conditions is that she should have been willing and that she would not have prevented him from having intercourse if he had wanted to.

If this being alone together did indeed occur, then this woman must be given a dowry like that of her peers, in full. If it did not occur, then she is not entitled to anything except compensation.

And Allah knows best.