

Question and Answer

The 'Idda (waiting period) of an Engaged Woman whose Husband Passed Away

To Malek Salem and Abu Bakr Al-Fuqahaa'

(Translated)

Question of Malek Salem:

My Sheikh, please allow me, a question please: the engaged woman, if her husband died, does she have a 'Idda? Does she inherit her fiancé? May Allah reward you the best of reward.

Question of Abu Bakr Al-Fuqahaa':

May Allah reward our sheikh, is the 'Idda observed after the consummation of the marriage or only by concluding the contract? Because there are cases of divorce in which there is no penetration for various reasons, so is the 'iddah the same in both cases?

Answer:

Assalamu Alaykom Wa Rahmatullah Wa Barakatuhu,

The two questions are similar, so we will answer them together, Allah willing.

1. If what is meant by "engaged" in the question was the woman whom the man proposed to marry, and there was a preliminary approval of the marriage, but the marriage did not take place, i.e. what some call "contract" did not take place, nor was there offer and consent according to the relevant legal provisions... if the intended fiancé in this question is this case of engagement that is spread in some Muslim countries, that is, the initial approval for marriage, but without the marriage contract... then this case is not considered a marriage, and the fiancée is not considered a wife and is a foreigner to the fiancé, so it is not correct for him to be alone with her and it is not correct for her to reveal something of her awrah in front of him... and the engagement in this sense does not have any effects on the marriage contract of 'iddah, dowry, inheritance, etc.

2. If what is meant by the engaged woman in the question is the woman whom the suitor married with a legal marriage contract then she would be his wife legally and the legal marriage contract has effects according to the details shown in the books of jurisprudence (fiqh), and we will explain some of them in the following points, Allah willing.

3. The woman whose husband died before consummation, that is, after the marriage contract was concluded and before the marriage took place, this woman is considered the wife of the deceased and the legal 'iddah of the woman whose husband is deceased is four months and ten days, Allah (swt) says: ﴿وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذُرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا﴾ "If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days" [Al-Baqarah:234], and for what was narrated by Tirmidhi and others on the authority of Abdullah ibn Mas'ud that he (Abdullah ibn Mas'ud) was asked about a man who had married a woman without cohabiting with her or fixing any dower for her till he died. Ibn Mas'ud said: She should receive the full dower (as given to women of her class), **observe the waiting period ('Iddah)**, and have her share of inheritance. Thereupon Ma'qil ibn Sinan said: I heard the Messenger of Allah (ﷺ) giving the same decision regarding Birwa' daughter of Washiq (as the decision you have given), upon which ibn Mas'ud was happy... Abu 'Issa said: the Hadith of ibn Mas'ud is Hasan Saheeh.

Also, she inherits her deceased husband even if the marriage was not consummated, as Allah (swt) says: ﴿وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوَصِّينَ﴾

“بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ النُّصَبُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّتِهِ تَوْصُونَ بِهَا أَوْ دَيْنٍ ﴿۱۲﴾” **what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts.**” [An-Nisa’:12], and for the aforementioned hadith of ibn Mas’ud.

4. The woman whose husband divorces after the marriage contract, but before consummation, the rulings regarding her ‘iddah differ than the woman whose husband dies, the divorced woman before consummation has no ‘iddah at all, for what Allah (swt) says: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَنْعُوهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا﴾ **O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddah have ye to count in respect of them: so give them a present. And set them free in a handsome manner.**” [Al-Ahzab: 49]

There is a different situation in which if her husband spends time alone with her (khalwah) before the divorce and before consummating, then this khalwah according to some jurists necessitates ‘iddah as well, and I will convey to you some juristic opinions regarding the subject of Khalwah:

- It was mentioned in *Al-Mughni* for *Ibn Qudamah*: “he – may Allah have mercy on him – said: (If a man divorces his wife after they were in khulwa, then her ‘iddah is three monthly menses other than the menstruation upon her divorce) this matter has three matters: the first: ‘Iddah is a must (wajib) on every woman who was in khulwah with her husband, even if he did not touch her (consummate). There is no disagreement among the people of knowledge regarding its (‘iddah) obligation on the divorced woman after consummation, as for if he was in khulwah with her but did not touch her, then divorced her, then the madhhab of Ahmad obliges her for ‘iddah.

(Imam Ahmad and Al-Athram narrated, through their chain, that Zarara ibn Awfa said: The rightly guided caliphs have ordered that whoever removed their clothing, or closed their doors, then dowry and ‘iddah become obliged. Al-Athram also narrated it from Al-Ahnaf, from Omar and Ali, and from Sa’id ibn al-Musayeb, from Omar and Zayd ibn Thabet.).

This was also narrated from the rightly guided caliphs, Zayd and ibn Omar. The same was mentioned by Urwah, Ali ibn Hussein, ‘Ataa, Az-Zahri, Al-Thawri, Al-Awza’i, Ishaq, the people of opinion, and Ash-Sahfi’i in his older opinions.

- Al-Shafi’i said in his *al-Jadeed*: she has no ‘iddah, and Allah’s saying: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا﴾ **O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddah have ye to count in respect of them**” [Al-Ahzab: 49], this is a principle, and because she is divorced who was not touched, then she resembles the one who was not in khulwah with her husband.

In conclusion, the divorced woman before consummation does not have an ‘iddah, except if her husband has been in khulwah with her, that is, it is proven that he met her in a room with a closed door being alone, in this case she has a ‘iddah according to Imam Ahmad.

I hope this this answer is sufficient and Allah (swt) Knows Best and He is the All-Wise.

Your brother,
Ata Bin Khalil Abu Al-Rashtah
16 Dhul Qi’dah 1441 AH
Corresponding to 07/7/2020 CE

Link to the answer on the Ameer’s (may Allah preserve him) Facebook page:
https://web.facebook.com/HT.AtaabuAlrashtah/posts/2685016195077721?_tn=%K-R