

Dar-ul-Ifta

Jummah Masjid

39, Royal Street, Port Louis, Mauritius - Tel: 242-1129 / Fax: 242-7260

www.jummahmasjid.org / ✉ info@jummahmasjid.org

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

نحمده و نصلى على رسوله الكريم

Praise is due to Allah Almighty who guided us to the righteous path, And Durood o Salaam upon the Holy Prophet Muhammad "peace and blessings be upon him" and his Family and Companions.

IMPOTENT HUSBAND

According to Shariah, A person who is incapable to have sexual intercourse is known as *Inneen* (Impotent). After getting married, his wife may request an annulment of the Nikah to the Judge.

The Judge will give the husband a delay of one year for treatment. After one year if he is now capable of having sexual intercourse, the bond of Nikah will be maintained; otherwise if he is still incapable of having sexual intercourse, the Judge will invalidate the Nikah by separating them.

Same version is narrated by Sayyiduna Omar, Sayyiduna Ali and Sayyiduna Abdullah Ibne Mas'ood '*May Allah be pleased with them*'

Marriage is a union between two souls male and female; sexual intercourse is the right of a wife. Now if the husband is incapable of sexual intercourse, the delay of one year is to seek medical advice and assistance so as to find the real problem and to know whether he was like that before. Is it physical? How did it happen? These questions can only be answered by doctors; hence the urgency of the need to find a cure.

Now, after one year, if the husband is still incapable of sexual intercourse, it means he was like that before, that is he is powerless and unable to accomplish the wife's right, so now it is necessary (Wajib) for him to depart from *Imsaak Bil Ma'rouf* (امساك بالمعروف) to *Tasreeh Bil Ihsaan* (تسريح بالاحسان)

Imsaak Bil Ma'rouf means to accomplish the rights of wife and *Tasreeh Bil Ihsaan* means to leave the wife in a fitting way.

If the husband still refuses to leave the wife, then the Judge will have the right to separate them, and this separation is equal to a *Talaaq e Baayin*.

Other important Issues

1. If the wife did experience *Khalwat e Saheeha** with the ex-husband, then she will get the full right of the entire dowry.
2. And if they have divergent views on this matter, then if the wife is not a virgin, in this situation, the husband will have to take an oath. If he takes an oath, then there is no right for the wife.
3. If the husband refuses to take oath, the judge will give him a delay of one year.
4. If the wife is still virgin, she will be examined by women. If they testify that she is virgin, so here also the judge will give the husband a delay of one year.
5. If the women say that she is not virgin, and the husband takes oath that “*By God, I have lived with her*”, so there is no right of dowry for the wife.
6. If the husband refuses to take oath, so the judge will give him a delay of one year.

Al Hidaaya V 2 Pg 426-427

* *Khalwat e Saheeha* means the husband and the wife were in privacy and there was no blockage preventing them from relations.

The blockage shall be Shar’ee, i.e. (1) the wife is experiencing her monthly menses (2) One of them is offering obligatory fasting (3) One of them is in the state of Ihram etc...

Jazaakallah

Mufti Muhammad Ishaq Qadri Rizvi

Director of Dar ul ifta

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