

14021 - She is asking her husband to divorce her co-wife

the question

I left my country to live in an environment more conducive to learning about Islam, and Alhamdulillah, Allah provided me with a wonderful family who looked after me, JazahumAllahu kheyran. The father of this family took the responsibility of walayah (my family is not Muslim) - in looking for an appropriate husband for me, making arrangements for my accommodations, provision, and Islamic education. As we began to go through potential husbands, he became aware that he had most of the qualities I was looking for. He first discussed it with his wife, and then several months later opened the subject with me.

However, his first wife made it clear to me that she didn't want the marriage to take place. I requested another brother to take the role of wali for me, and on his advice, and the advice of other learned people who know him and his family, and after much istikhara, the marriage took place. My question is two parts - Now, the first wife is claiming that my marriage to her husband is ungratefulness for all of the kindness she had previously shown me, and that I oppressed her by responding to her husband's proposal without consulting her, and by accepting the marriage with the knowledge that she wasn't happy with it.

1. Is her claim valid? Have I oppressed her, and did our former friendship create a relationship between us that should have prevented me from marrying her husband?

Since then, she has insisted on divorce if he continues with me. As they have seven children, and I have none, the mafsadah in divorcing her was greater than the mafsadah in divorcing me. And as such, she forced him to divorce me even though I was giving up much of my rights to his time and agreed to her stipulations that their children should not know of the matter.

2. Is it within the rights of the first wife to force her husband to divorce the second wife .

Detailed answer

Firstly:

It is not permissible for a woman to ask her husband to divorce his second wife:

It was narrated that Abu Hurayrah (may Allaah be please with him) said: The Prophet (peace and blessings of Allaah be upon him) said: “It is not permissible for a woman to demand her sister’s divorce so that she may take her place and get married; she cannot have more than what is decreed for her.”

(Narrated by al-Bukhaari, 5144; Muslim, 1413).

According to another version, the Prophet (peace and blessings of Allaah be upon him) forbade women to stipulate (in the marriage contract) that their sister be divorced. (Narrated by al-Bukhaari, 2577). Al-Bukhaari included this hadeeth in a chapter entitled “Marriage conditions which are not permissible.”

(a) Ibn al-Qayyim (may Allaah have mercy on him) said: the ruling of the Prophet (peace and blessings of Allaah be upon him) indicates that it is haraam for a woman to stipulate that her sister be divorced, and that the husband is not obliged to fulfil this condition.

(Zaad al-Ma’aad, 5/107).

(b) Al-Haafiz Ibn Hajar said: The apparent meaning of the phrase “it is not permitted” is that this is forbidden. This is to be understood as being the rule so long as there is no reason to allow that, such as there being some suspicion concerning the woman which implies that she should not remain married to the husband. The woman (the new wife) may suggest that to the husband by way of advice only or so as to avoid harm that either party may cause to the other.

Ibn Battaal said: Saying that it is not permitted clearly means that it is forbidden, but that does not necessarily mean that the marriage is annulled, rather it is to emphasize that the woman (the new wife) should not demand that he divorce the other wife. She should be content with that which Allaah has decreed for her.

(al-Fath, 9/274)

(c)Al-Nawawi said: the meaning of this hadeeth is that it is not permitted for a non-mahram woman to ask the man to divorce his wife and to marry her so that she becomes the only one on whom he spends, whom treats kindly, has intercourse with, etc, as the divorced woman used to be.

Sharh Muslim, 9/193

Based on the above, it is not permissible for the first wife to ask her husband to divorce you, so you should not pay any attention to what she says. Note that this is a case of the jealousy that exists in all women; indeed, jealousy existed even in the best of women, namely the wives of the Prophet (peace and blessings of Allaah be upon him), the Mothers of the Believers. Jealousy is something natural.

Secondly:

The fact that she had treated you kindly is something for which she will be rewarded, but that does not allow her to ask her husband to divorce you. So be patient and ignore her demand, and treat her kindly as much as you can. The first wife should realize that she will not have anything other than that which is decreed for her, as it says at the end of the hadeeth quoted above from al-Bukhaari.

Al-Haafiz Ibn Hajar said:

Hence he ended by saying, “she cannot have more than what is decreed for her,” to show that even if she asks for that or insists on it and stipulates it as a condition, nothing will happen except that which is decreed by Allaah.

Al-Fath, 9/275

And Allaah knows best.