12509 - She has gone off him and doesn’t want to have any intimacy with him in bed

the question

I love my wife, but she has said that she doesn't love me. She does not want to have intercource with me. Earlier in our marraige we performed oral sex. Her position now that it is najas (impure), therefore she is turned off completely sexually. We have agreed that to fulfill my needs, I should marry another wife. But my job cut my salary considerably. I am afraid of angering Allah by divorcing her. Could I marry a woman who would waive some of my financial responsibilities until I am able to equally provide for both?

Detailed answer

Praise be to Allah.

You should know that it is not permissible for you to force your wife to do anything repulsive or that may cause impurity (najaasah) to enter the stomach, and you should have intercourse with her in a natural manner. Your wife should know that it is not permissible for her to forsake her husband’s bed when he calls her to do something that is permitted in Islam and to fulfil one of his rights, which is to enjoy her in the manner that Allaah has permitted. It is not permissible for a wife to refuse to share her husband’s bed without a legitimate shar’i excuse, such as when she is menstruating or bleeding following childbirth. A stern warning is issued to the wife who refuses to share her husband’s bed, and there are many ahaadeeth concerning that. It was narrated that Abu Hurayrah (may Allaah be pleased with him) said: “The Messenger of Allaah (peace and blessings of Allaah be upon him) said: ‘When a man calls his wife to his bed and she refuses, and he spends the night angry with her, the angels will curse her until morning comes.’” (Narrated by al-Bukhaari, Bid’ al-Khalq, 2998)

It was narrated that Abu Hurayrah said: “The Prophet (peace and blessings of Allaah be upon him)

said: ‘If a woman spends the night having forsaken her husband’s bed, the angels will curse her until she goes back.’” (narrated by al-Bukhaari, al-Nikaah, 4795)

And it was narrated that Abu Hurayrah said: “The Messenger of Allaah (peace and blessings of Allaah be upon him) said: ‘By the One in Whose hand is my soul, there is no one who would be pleased with her.’” (Narrated by Muslim, al-Nikaah, 2595).

It was narrated that Talq ibn ‘Ali said: “The Messenger of Allaah (peace and blessings of Allaah be upon him) said: ‘When a man calls his wife to him, then let her respond, even if she is at the oven (baking bread).’” (Narrated by al-Tirmidhi, 1080, classed as saheeh by al-Albaani, no. 927, in Saheeh Sunan al-Tirmidhi).

If a woman consistently refuses to spend the night with her husband in his bed, then she forfeits her rights to maintenance and also her share of her husband’s time [in the case of a plural marriage], because maintenance is a right given in return for intimacy. Such a woman is considered to be naashiz (defiant, rebellious, disobedient). Al-Bahooti said: Nushooz (defiance, rebellion) means when a wife does not let her husband be intimate with her or she responds to him unwillingly as if she finds it too much when he calls her, and she only responds reluctantly.

(Sharh Muntaha al-Iraadaat by al-Bahooti, vol. 3, p. 55)

If a woman is defiant, then she no longer has the right to maintenance, because maintenance is in return for allowing her husband to have intercourse with her.

Nushooz means a wife disobeying her husband with regard to her obligations towards him. Allaah has stated what the husband is permitted to do in the case of his wife’s being disobedient. Allaah says (interpretation of the meaning):

“As to those women on whose part you see ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they return to obedience, seek not against them means (of annoyance). Surely, Allaah is Ever Most High, Most Great”[al-Nisa’ 4:34]

The fuqaha' said: If she persists in her disobedience after he has admonished her and refused to share her bed, i.e., not slept with her as long as she persists in that, and not spoken to her for three days, because Allaah says, 'refuse to share their beds' – if she persists even though he has refused to share her bed and not spoken to her for three days, then he may hit her, but not hard.

In this case, it is permissible for him to divorce her. Al-Mardaawi said: divorce is permissible when necessary because of the woman's bad attitude and bad behaviour, or because of harm caused to him by her actions. So divorce is permissible in this case, and there is no scholarly dispute on this point.

(al-Insaaf, vol. 8, p. 430)

But if she has gone off you in a way that cannot be remedied, and she dislikes you so much, then in this case divorce is recommended, because staying married in this case is harmful to the wife. The Prophet (peace and blessings of Allaah be upon him) said: "There should be no harming or reciprocating harm."

See al-Mulakhkhas al-Fiqhi, vol. 2, p. 305.

You will not be considered a sinner if you divorce her in this case. With regard to the solution of your financial problems, it is permissible for you to marry a woman who agrees to support herself, or who agrees to let you off some of your financial responsibilities towards her, just as it is permissible for you to agree with your first wife to stay married whilst forgoing some of her rights. It is permissible for a wife to forego some of her rights to a share of her husband's time and maintenance so that he will keep her and so that she may stay married to him, because Allaah says (interpretation of the meaning):

"And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better" [al-Nisa' 4:128]

'Aa'ishah (may Allaah be pleased with her) said: "This refers to a woman who is married to a man and he wants to divorce her, so she says, 'Keep me and do not divorce me, and you are freed any

obligation to spend on me or give me a share of your time…’”

al-Mulakhkhas al-Fiqhi, vol. 2, p. 296

Because maintenance is one of the wife’s rights, so when they reach an agreement that she will forgo her rights or some of her rights, then that is up to her. On this basis then if the woman whom you want to marry agrees to forgo maintenance, that is permissible. And Allaah knows best.