184519 - He disappeared from his wife, so the qaadi granted her a divorce, and now he wants to go back to her

the question

I made accusations against my wife and her family after a lot of arguments and troubles, then I had to go abroad and stay away from her for six years, but I did not divorce her. Her family went to the court and they arranged her divorce in absentia, although she did not want a divorce. She knew that I had been under the influence of witchcraft (sihr). After that time, I returned to the house, and she and my fourteen children welcomed me, then we brought two witnesses of good character, and we recited al-Faatihah. We are looking for the correct solution.

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for the husband to travel and leave his wife for more than six months except with her permission. If she did not give consent for his absence for more than six months, and she referred the matter to the qaadi to correspond with her husband and oblige him to return, and he did not return, then the qaadi may rule as he sees fit, either granting a divorce (talaaq) or annulling the marriage.

In *al-Mawsoo'ah al-Fiqhiyyah* (29/63), it says: If the husband is absent from the wife for some time without any excuse, then she has the right to seek separation from him, but if he left her with an excuse, then she does not have the right [this is the Hanbali view].

According to the Maalikis, they are of the view that intimacy with the husband on a regular basis is the right of the wife in all situations. Based on that, if the husband is away from his wife for some time, then she has the right to seek separation [and divorce] from him, regardless of whether this

travel of his was for a valid reason or not, because her right to intercourse is a must according to their view. End quote.

See also the answer to question no. 102311 .

Secondly:

If the qaadi granted a divorce to your wife because of your absence, and your wife suffered harm because of lack of maintenance, or because of not getting her right to intimacy, and that was the first or second talaaq, then you have the right to do a new marriage contract with your wife, fulfilling all the conditions, with her wali (guardian) giving her to you in marriage, in the presence of two witnesses of good character, with the obligatory proposal and acceptance; the proposal should come from her guardian, such as his saying, “I give my daughter [or sister] to you in marriage,” and you should say: “I accept.”

The correct view is that the marriage contract may be done by using any words that are indicative of that, as has been explained previously in the answer to question no. 131337 . But reciting al-Faatihah without the proposal and acceptance is not regarded as doing the marriage contract.

So if there was no proposal or acceptance in any form, the marriage contract must be repeated.

For more information on the words of the fuqaha’ regarding separation of spouses because of absence, please see *al-Mawsoo‘ah al-Fiqhiyyah* (29/62-64).

And Allah knows best.