482093 - Wife waiving conditions stipulated by her guardian

the question

Allah, may He be exalted, enabled me to marry a Muslim girl from a different country, and her father stipulated, before the marriage, that I should not move to another country with her. I agreed and the girl did not agree, but she kept quiet for fear that her father would refuse to let her get married. After a few years, I had some serious problems and restrictions in this country, and I had no choice but to leave the country out of fear for my life and my wife’s life.

My first question is:

Am I obliged to fulfil this condition? Please note that it was not the girl who wanted it or stipulated it in the first place.

My second question: does the fact that I am not able to fulfil the condition due to circumstances make this condition no longer applicable?

My third question is: am I sinning or is my wife sinning by not fulfilling the condition?

Summary of answer

The wife has the right to waive the conditions that she or her guardian stipulated in the marriage contract.

Detailed answer

Praise be to Allah.

I.

If the woman herself stipulated a condition, or her guardian stipulated a condition for her and she approved of it, then this is a matter concerning which the scholars differed as to whether it is

obligatory to fulfil it or only recommended to do so.

Al-Khattabi said: Conditions are of different types. Some of them must be fulfilled according to scholarly consensus; this refers to what Allah enjoined of either keeping the wife on reasonable terms or releasing her with kindness. Some of them quoted in support of this idea the hadith “The condition which most deserves to be fulfilled is that by means of which intimacy becomes permissible for you.” Other conditions should not be fulfilled according to scholarly consensus, such as asking the man to divorce his first wife. And some conditions are subject to a difference of scholarly opinion, such as stipulating that he should not marry another wife, or that he should not move her from her accommodation to his accommodation.

End quote from *Fat-h al-Bari* by Ibn Hajar, 9/217.

Al-Mazhiri (may Allah have mercy on him) said: For the wife's family to stipulate that the husband should not take her out of her city to another city, or from her neighbourhood where her relatives are to a neighbourhood with which she is not familiar, or from her neighbourhood to his neighbourhood, or that he should not marry another wife and so on, fulfilling these and similar conditions is not obligatory according to ash-Shafa`i, Abu Hanifah and Malik; however, it is obligatory according to Ibn Mas’ud, and this was also the view of Ahmad.

End quote from *Al-Mafatih fi Sharh al-Masabih*, 4/36.

The evidence supports the view which says that it is obligatory to fulfil the conditions that were agreed upon in the marriage contract that are not contrary to Islamic teachings and are not contrary to the purpose of the contract, because Allah, may He be exalted, says: {O you who have believed, fulfill [all] contracts} [al-Ma’idah 5:1]. This includes the marriage contract and the conditions that are stipulated in it.

And because the Prophet (blessings and peace of Allah be upon him) said: “The condition which most deserves to be fulfilled is that by means of which intimacy becomes permissible for you.” Narrated by al-Bukhari, 2721.

Ibn Hajar al-`Asqalani (may Allah have mercy on him) said: It was narrated that `Abd ar-Rahman ibn Ghanam said: I was SC sitting with `Umar, with my knees touching his knees, when a man came to him and said: O Amir al-Mu'minin, I married this woman, and I accepted her stipulation that she could stay where she is living, but it is better for me and my affairs to move to such-and-such a land. He said: You have to fulfil the condition she stipulated. The man said: This is too much trouble for men, because any woman who wants to divorce her husband will be able to do so! `Umar said: The believers are bound by their conditions, when their rights conflict."

End quote from *Fat-h al-Bari* by Ibn Hajar, 9/217.

Ibn al-Qayyim (may Allah have mercy on him) said: The condition which most deserves to be fulfilled is a condition stipulated in the marriage contract. This is what is dictated by Islamic law, reason and sound analogy, for by stipulating that condition, the woman is stating that she does not accept for her husband to be intimate with her except on the basis of that condition. If we suggest that this condition does not have to be fulfilled, then this contract is not based on mutual consent, and that contract will be imposed on her when she did not commit to it and neither Allah nor His Messenger committed her to it.

End quote from *I`lam al-Muwaqqi`in*, 3/266.

II.

The basic principle is that conditions in the marriage contract should be in the interests of the wife, because she is the subject of the contract, and her father's stipulating anything that serves his own interests is a matter concerning which the scholars differed. The majority of scholars are of the view that such a condition is not binding.

It was narrated from `Amr ibn Shu`ayb, from his father, from `Abdullah ibn `Amr that the Prophet (blessings and peace of Allah be upon him) said: "If a woman gets married in return for a dowry or gift or promise of a gift that is given before the marriage, it is hers, and whatever is given after the marriage belongs to the one to whom it was given. And the most appropriate time for a man to be honoured is when he gives his daughter or sister in marriage." Narrated by Ahmad in *Al-Musnad*,

6709; classed as sound (hasan) by Shu`ayb al-Arna'ut.

Ibn Abi Shaybah narrated in his *Musannaf* from al-Awza`i that a man gave his daughter in marriage for a thousand dinars, and stipulated that he should also receive a thousand dinars, then `Umar ibn `Abd al-`Aziz ruled that the woman should be given two thousand dinars and her father should receive nothing. End quote from *Al-Musannaf*, 17263.

It was narrated that `Ikrimah said, in his response to a guardian stipulating that he should receive something: If the guardian is the one with whom the marriage contract is to be consummated, then he may have that – expressing his disapproval of the guardian asking for that.

End quote from *Al-Musannaf*, 17264.

Ash-Shafa`i (may Allah have mercy on him) said: If a man does a marriage contract with a virgin or a previously-married woman, whether she is in charge of her own wealth or not, then her consent to the marriage is a different issue to her consent regarding the dowry, and if he marries her for one thousand on condition that he also gives her father one thousand, then the marriage is valid, and she should be given a dowry like that of her peers, whether it is less than one thousand or more than two thousand, on the grounds that it is a valid marriage contract, but the stipulation regarding the dowry is invalid. In principle, the dowry should be stipulated in the contract, but it is not part of the contract, and it does not become binding when the contract is agreed upon, unless the husband stipulates that the dowry is for the woman, in which case it is regarded as becoming her due. But if he gives it to her father, then he is giving him something to which he has no right, because he has no right to take what is due to someone else.

End quote from *Al-Umm*, 5/78.

Al-Baji (may Allah have mercy on him) said, explaining what `Umar ibn `Abd al-`Aziz wrote to the governors during his caliphate: This means that whatever the guardian – no matter who he is, whether he is the father or someone else – stipulates of gifts and so on, it is the woman's right to keep it if she wants. This means that whatever the guardian stipulates in the marriage contract is to be given to him or to someone else, all of that belongs to the wife.

The reason being that it is a contract of exchange, so all recompense should go to the one who is giving something in return for that recompense, as in the case of buying and selling, or renting and hiring.

End quote from *Al-Muntaqa Sharh al-Muwatta'*, 2/283.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: There is an issue to which guardians should pay attention, and they should realise that it is not permissible for them to stipulate that they should receive anything of the dowry. This applies to the father, the brother, the paternal uncle or any other guardian. If they do stipulate anything, then it belongs to the woman who has got married, because it is in return for allowing the husband to be intimate with her, so no one else has any authority over it.

End quote from *Fatawa Nur `ala ad-Darb*, 2/19).

III.

According to the view that it is obligatory to fulfil conditions that the woman stipulates for herself, or that the guardian stipulates for her or for himself, the wife has the right to waive all of that, if she agrees to waive it.

Al-Hattab said: This is the view of Malik regarding a virgin bride whose husband promises that he will not force her to leave her neighbourhood except with her consent, then she waives that stipulation. That is permissible, even if her father disagrees.

End quote from *Mawahib al-Jalil fi Sharh Mukhtasar Khalil*, 3/455.

Ibn `Arafah said: Malik said: She has the right to waive her stipulation that he should not ask her to leave her neighbourhood except with her consent, even if her father disagrees. End quote from *Al-Mukhtasar al-Fiqhi*, 3/248.

Al-Bahuti said: Her right to ask for annulment of the marriage on the grounds that he has not fulfilled what she stipulated cannot be waived, unless there is proof that she consented to that,

either verbally or by allowing him to be intimate with her, such as if she allows him to be intimate with her even though she knew that he had done what she stipulated he should not do.

End quote from *Sharh Muntaha al-Iradat*, 2/665.

Shaykh Muhammad ibn Ibrahim (may Allah have mercy on him) was asked about a husband, the guardian of whose wife stipulated that she should remain in her city and not move with her husband to any other city, and so on.

He replied: The condition stipulated by the wife or her guardian, that the husband should not make her leave her accommodation or her city, is a valid and binding condition that must be acted upon, because of the marfu` report which was narrated by `Uqbah ibn `Amir [and attributed to the Prophet (blessings and peace of Allah be upon him)]: "The condition which most deserves to be fulfilled is that by means of which intimacy becomes permissible for you." Narrated by al-Bukhari and Muslim.

Al-Athram narrated with his isnad that a man married a woman and agreed to her stipulation that she could stay in her accommodation, then he wanted to move her (to some other accommodation). They referred their dispute to `Umar (may Allah be pleased with him) and he said: You have to fulfil her condition.

But if the wife agrees to move with him, she has the right to do that, and if she waives [her stipulation], then it no longer applies.

End quote from *Fatawa ash-Shaykh Muhammad ibn Ibrahim Al ash-Shaykh*, 10/146.

Based on the above:

Your wife's consent and her agreeing to travel with you makes non-applicable the condition that her guardian stipulated, that you should not take her with you when you travel.

But there remains the issue of having a gentle approach with him, on your part and that of his daughter, by explaining that this is what is in your best interests, and that you will remain in touch

with him.

And Allah knows best.