12298 - Ruling on marrying a fifth wife during the ‘iddah following divorce of the fourth wife

the question

If a man has 4 wives and he divorces one of them,is it permissible for him to marry someone else during this iddah period? What is the daleel,if the answer is no it's not permissible for him to marry someone during the iddah period will that last marriage be valid and what should be done to rectify the situation according to the quraan and sunnah.

Detailed answer

Praise be to Allah.

If the divorce that has been issued to the fourth wife is a revocable divorce – i.e., it is the first or second talaaq – then the scholars are unanimously agreed that a woman who has been given a revocable divorce is still to be considered a wife until her ‘iddah is over. (al-Mughni, 7/104). If it is proven that she is still your wife, then you should note that the scholars are agreed that it is not permissible for a free man to have more than four wives at one time, because of the hadeeth narrated by al-Tirmidhi (1128) from Ibn ‘Umar (may Allaah be pleased with him) that Ghaylaan ibn Salamah al-Thaqafi became Muslim and he had ten wives during the Jaahiliyyah; they became Muslim along with him, and the Prophet (peace and blessings of Allaah be upon him) commanded him to choose four of them. This was classed as saheeh by al-Albaani, as stated in Saheeh Sunan al-Tirmidhi, 1/329.

It is clear from the above that it is not permissible for a man to marry a fifth wife during the ‘iddah of a wife who has been given a revocable divorce, because by doing so he will have five wives at the same time, and the Sahaabah, the four imams and all of Ahl al-Sunnah wa’l-Jamaa’ah are agreed, in word and deed, that it is not permissible for a man to have more than four wives at one time, except for the Prophet (peace and blessings of Allaah be upon him). Shaykh al-Islam Ibn Taymiyah said in al-Fataawa al-Kubra (4/154), that the great Taabi’i ‘Ubaydah al-Salmaani said:

“The companions of Muhammad (peace and blessings of Allaah be upon him) did not agree on anything as much as they agreed that a fifth wife cannot be married during the ‘iddah of the fourth, and a woman cannot be taken as a co-wife with her sister.” Whoever wants to have more than four wives is going against the Book of Allaah and the Sunnah of His Messenger Muhammad (peace and blessings of Allaah be upon him), and is going against Ahl al-Sunnah wa’l-Jamaa’ah.

See Fataawa al-Lajnah al-Daa’imah, al-Fataawa al-Jaami’ah li’l-Mar’ah al-Muslimah, 2/641.

If this has taken place, then the marriage contract is invalid, and you have to leave her until the ‘iddah of your divorced wife is over. If you have consummated the marriage with her – i.e., with the fifth wife – then you have to give her the mahr that is given to women of her social standing, and she has to wait out the ‘iddah of one who is divorced. Then if you want to marry her after that, you must make another marriage contract with her, meeting all the conditions prescribed in sharee’ah for a marriage contract.

But if your divorce of the fourth wife is an irrevocable divorce – i.e., a third talaaq – then there is a difference of scholarly opinion as to whether it is permissible to marry a fifth wife during the ‘iddah of the fourth wife following a third talaaq. The Hanbalis and Hanafis say that this is not allowed, and this is the view regarded as most correct by Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allaah have mercy on him). See Kitaab Fataawa al-Talaaq by Shaykh Ibn Baaz, 1/278. On this basis, the ruling is the same as that described above in the case of a revocable divorce. When the ‘iddah of the woman who has been divorced for a third time comes to an end, it is then permissible for him to make a marriage contract with her (the fifth woman). And Allaah knows best.

But in the case of the fourth wife dying, it is permissible for him to get married after she dies, because the marriage is not considered to be still in effect in this case.

And Allaah knows best