186325 - Can a Woman Divorce Her Husband If He Takes a Second Wife?

the question

Can I divorce my husband, because he is trying to take a second wife, but he cannot even take care of me and our children?

Summary of answer

• A woman does not have the power to divorce her husband; rather divorce is in the hand of the man. The husband is not obliged to seek the permission or approval of his wife if he wants to take a second wife.
• If it so happens that a woman cannot put up with her husband's taking a second wife and she fears that she will not be able to fulfil her husband's rights over her, then she may request Khul ` and return the dowry to the husband.

Detailed answer

Praise be to Allah.

Can I divorce my husband if he takes a second wife?

A woman does not have the power to divorce her husband; rather divorce is in the hand of the man , because the Prophet (blessings and peace of Allah be upon him) said: "(The right of divorce) belongs to the one who takes hold of the calf [i.e., her husband]." (Classed as sound by Al-Albani in Sahih Ibn Majah)

The calf referred to here is the calf of the wife; this is a metaphor for intercourse. Hence the one who has the right of divorce is the one who has the right of intercourse.

The Standing Committee was asked: If a woman divorces her husband, does she have to offer

expiation, and what is that expiation?

They replied:

“If a woman divorces her husband, it does not count as such and she does not have to offer any expiation, but she should ask Allah for forgiveness and repent to Him, because her issuing a divorce to her husband is contrary to the Shar`i evidence, which indicates that divorce is in the hand of the husband or whoever is acting on his behalf according to Shari`ah.” (Fatawa Al-Lajnah Ad-Da’imah (vol. 1 – 20/11)

Do you need your first wife’s permission to take a second wife?

The husband is not obliged to seek the permission or approval of his wife if he wants to take a second wife , but part of good treatment is to console her by taking measures to reduce the distress that women naturally feel in such situations.

Our advice to the woman whose husband takes a second wife is to be patient , seek reward with Allah and accept what Allah has decreed for her. No one knows where goodness lies. Allah, may He be Exalted, says (interpretation of the meaning):

“…it may be that you dislike a thing which is good for you and that you like a thing which is bad for you. Allah knows but you do not know.” [Al-Baqarah 2:216]

But if it so happens that a woman cannot put up with that and she fears that she will not be able to fulfil her husband’s rights over her if he takes a second wife, then she may request Khul ` and return the dowry to the husband.

Al-Bukhari (48677) narrated from Ibn `Abbas (may Allah be pleased with him) that the wife of Thabit ibn Qays came to the Prophet (blessings and peace of Allah be upon him) “O Messenger of Allah, I do not find any fault with Thabit ibn Qays in his character or his religious commitment, but I do not want to commit any act of disbelief after becoming a Muslim.” The Messenger of Allah (peace and blessings of Allah be upon him) said to her, “Will you give back his garden?” Because

he had given her a garden as her dowry. She said, “Yes.” The Prophet (peace and blessings of Allah be upon him) said to Thabit: “Take back your garden, and divorce her.”

Ibn Hajar (may Allah have mercy on him) said: “The words “but I do not want to commit any act of disbelief after becoming a Muslim” mean: If I stay with him, I would hate to fall into anything that constitutes disbelief. It is as if she was indicating that her intense dislike of him might prompt her to make an outward display of disbelief so that her marriage to him would be annulled. She knew that that was prohibited, but she feared that intense hatred might push her to do that. Or it may be that what she meant by disbelief was ingratitude to her husband, which refers to the wife falling short in fulfilling the rights of the husband.” (Fat-h Al-Bari (9/399)

But if the husband is not well off and cannot afford to spend on his wife’s maintenance and do what he is obliged to do of taking care of her, then she may refer the matter to the Islamic judge and request an annulment of the marriage .

And Allah knows best.