20757 - She stipulated that her husband should quit smoking but he went against that. What should she do?

the question

To begin, I state that I embraced Islam about 15 years ago, part of what is so impressive to me is the true revolution to women and their rghts which Islam has made, alhumdo lillah. But regretfully, so many Muslims do not acknowledge nor apply these standards and I have seen many women taken advantage of due to it. So my question is rgarding "Womens Rights"...
my husband & I spoke in detail before deciding to marry, and I made myself clear that I was not interested in a husband who smoked, for a variety of reasons. He was a smoker and stated he had wanted a reason to quit for a long time, and would quit. After about a month of not smoking, I agreed to marry him, the night of our marriage following the ceremony I found out that he was still smoking and had not completely quit. He asked that I be patient because he was still trying... Its 5 years and two kids later. Does a woman have any rights, or means by which she can be recompensed for unfulfilled agreements?
Given the choice I would not be in this situtation which I was deceived to be in.

Detailed answer

Praise be to Allah.

What the sister did by stipulating the condition that her husband give up smoking is something good, for which she is to be commended.

Smoking is an evil action and is haraam according to sharee’ah. It goes against the sound nature of man (fitrah) and harms a person’s health and the health of those around him. He is like the one who works the bellows: either he will burn your clothes or you will notice a foul smell coming from him.

But it is very strange that the sister has put up with her husband for so long after finding out that

he had not stopped smoking. She has stayed with him for five years, during which she had produced two children. This is a long time, and it indicates that she accepts or does not care what he does. It is well known that no one would put up with such a thing for so long.

The conditions which a wife stipulates for her husband prior to marriage give her the choice, if her husband goes against them. If she wants, she may annul the marriage, and if she wants she may forego those conditions and stay in the marriage.

If a woman foregoes her conditions or she knows that her husband has gone against the conditions of marriage but accepts that, which indicates that she has foregone these conditions, then she has no right to annul the marriage after that.

This is what seems to be the case here: if the sister had put up with it for a reasonable amount of time, or she had refused to stay in the marriage as soon as she found out that her husband was still smoking, then she could have annulled the marriage and taken her rights in full, until her husband really gave up smoking.

But she stayed for so long and had two children in the meantime, so I do not think it is permissible for her to ask for annulment of the marriage, let alone ask for compensation for her husband not fulfilling the conditions of the marriage contract.

The husband has to fear Allaah and he should realize that what he is doing is a major sin, to which may be added a further sin, namely not fulfilling the conditions stipulated in the marriage contract. The conditions of marriage are the most binding of conditions and are the most important before Allaah, because through them intimacy becomes permissible.

It was narrated that ‘Uqbah ibn ‘Aamir said: The Messenger of Allaah (S) said: “The conditions which most deserve to be fulfilled are those by means of which intimacy becomes permissible to you.”

Narrated by al-Bukhaari, 2572; Muslim, 1418.