259111 - She has gone to her family’s home and is claiming that she is not married because the marriage was not documented

the question

I'm in a tricky situation and need some guidances, me and my wife are on bad terms and not living in the same house anymore. She wanted a divorce from me and when I asked why it was because her mother doesn't like me and sees me unfit for her daughter it has nothing to do with the accepted Sharia law options for divorce just because I had an arguments with my mother in law its stupid but my wife and her family are very ignorant when it comes to islam and don't know much many times they make up stuff in order to benefit their situation and when I question them she tells my wife I have no respect for her. Also my inlaws always intervenes and tells my wife why i do this and that why does he not love you essentially causing a lot of issues of trust and peace for us. She has moved back to her mother's house and they have cut all communication with me I cant get hold of her blocked from social media and I fear my wife is involved with someone else because according to her mother we never got married only brought an imaan so nikkah never happened no legal papers signed and also my wife never bleed during our wedding night so there's no consumation of marrige according to them so shes free to marry someone else and has no responsibilities to me. My question is what can I do, if I pray and wait for her to come back will I sin for not being there for her? I tried telling them shes married and commiting serious evil but they do not listen. I dont want to divorce am I wrong for trying?

Detailed answer

Praise be to Allah.

Firstly:

If the marriage fulfilled the necessary conditions, namely the proposal and acceptance, the consent of the wife, and the presence of the wife’s guardian and two witnesses, then it is a valid marriage, even if it was done verbally. Documentation of the marriage contract is only required in

order to preserve people's rights; it is not a condition of the marriage being valid.

If we assume that one of the conditions – such as the presence of the woman's guardian or his deputy – was not fulfilled, then it was an invalid marriage, yet despite that the wife cannot exit the marriage except through divorce.

Ibn Qudaamah (may Allah have mercy on him) said: If a woman gets married in an invalid marriage, it is not permissible for anyone else to marry her until (the first husband) divorces her or her marriage is annulled.

End quote from al-Mughni (7/9)

See also the answer to question no. 256417.

It makes no difference if the wife did not lose her virginity, because as soon as the marriage contract is done, she becomes a wife, and if she has moved to her husband's house, it is haraam for her to leave the house except with his permission, even if she is going to visit her family.

Among the evidence that the husband's permission is necessary even to visit her family is the report narrated in as-Saheehayn from 'Aa'ishah (may Allah be pleased with her), according to which she said to the Prophet (blessings and peace of Allah be upon him): Do you give me permission to go to my parents? Narrated by al-Bukhaari (4141) and Muslim (2770).

If the woman goes out without her husband's permission, then she is disobeying her Lord and her husband, so how about if she goes further in disobedience and refuses to go back to him?

Secondly:

it is not permissible for a woman to seek divorce except for a valid reason that makes it permissible to do so. If she does not have any valid reason, then she is exposing herself to a stern warning from Allah.

It was narrated by Abu Dawood (2226), at-Tirmidhi (1187) and Ibn Maajah (2055) that Thawbaan (may Allah be pleased with him) said: The Messenger of Allah (blessings and peace of Allah be

upon him) said: “Any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of Paradise will be forbidden to her.” Classed as saheeh by al-Albaani in Saheeh Abi Dawood.

What is meant by it being absolutely necessary is that there should be some hardship and a compelling reason for divorce.

From what you have mentioned, there does not seem to be any reason that makes it permissible to ask for divorce.

The woman and her family should fear Allah, may He be exalted, and adhere to the limits that He has set. They should beware of His anger and wrath.

If this wife marries another man, then her action constitutes zina (adultery), which is haraam and is a grievous crime.

It is not permissible for her to form a relationship with any man who is not her mahram, even if she is not married, so how about if she is already married? This is even worse and more reprehensible.

What we advise is to bring in a mediator from among her family, neighbours or friends, or the imam of the mosque, who can warn them about the consequences of this evil action, and remind them of the rights of the husband, and dispel any doubts they may have, because this is a valid marriage which the woman cannot exit except by means of divorce.

Allah instructs us to look for two arbitrators in the event of wilful defiance (on the part of the wife), as He says (interpretation of the meaning):

“If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things”

[an-Nisa’ 4:35].

Perhaps you can find someone among your family and her family who can do that.

Moreover, there is no sin on you if you do not give her her rights of maintenance and the like, because the one who is wilfully defiant does not deserve maintenance, and because she is the one who has forfeited her rights by her own actions, and has been disobedient and committed sin.

If your wife and her family insist on their attitude, then we advise you to leave her, because there is nothing good for you in such a woman.

We ask Allah to set straight our affairs and the affairs of all the Muslims.

And Allah knows best.