91878 - She dislikes her husband but he refuses to divorce her and he does not give her her rights

the question

I am a religiously committed wife but I dislike my husband for many reasons and he knows that, but he refuses to divorce me and I often refuse to have marital relations with him. What is the ruling on that?.

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for a woman to ask her husband for a divorce with no reason. If there is a reason such as his falling short with regard to her rights, or his mistreatment of her, then there is nothing wrong with her asking for a divorce.

Abu Dawood (2226), al-Tirmidhi (1187) and Ibn Maajah (2055) narrated that Thawbaan (may Allaah be pleased with him) said: The Messenger of Allaah (peace and blessings of Allaah 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.

But if the man is not falling short with regard to his wife’s rights and he is not mistreating her, but she dislikes him so much that she cannot live with him and she is not giving him his rights, then they must both try to set things straight. If these attempts prove to be fruitless and their life reaches an impasse, then Allaah has given them a way out, which is khula’ – so she should return all the mahr that he gave her, and the man should be enjoined in that case to accept it and separate from her.

Al-Bukhaari (5273) narrated from Ibn ‘Abbaas (may Allaah be pleased with him) that the wife of Thaabit ibn Qays came to the Prophet (peace and blessings of Allaah be upon him) and said: “O Messenger of Allaah, I do not find any fault with Thaabit ibn Qays in his character or his religious commitment, but I do not want to commit any act of kufr after becoming a Muslim.” The Prophet (peace and blessings of Allaah be upon him) said to her, “Will you give back his garden?” Because he had given her a garden as her mahr. She said, “Yes.” The Prophet (peace and blessings of Allaah be upon him) said to Thaabit: “Take back your garden, and divorce her.”

According to Ibn Maajah (2056) she said: “I cannot stand him.” Classed as saheeh by al-Albaani in Saheeh Ibn Maajah.

What made her ask for a divorce was her dislike of him.

The words “I do not want to commit any act of kufr after becoming a Muslim” refer to ingratitude towards her partner, as she was falling short with regard to his rights and was not doing what Allaah has enjoined of obeying her husband and treating him kindly.

Secondly:

We would remind you that if there is no obvious justification for seeking a divorce, refusing to share his bed is a serious evil, concerning which the Prophet (peace and blessings of Allaah be upon him) said: “If a man calls his wife to his bed and she refuses, and he remains angry with her overnight, the angels will curse her until morning.” Narrated by al-Bukhaari (3237) and Muslim (1736).

We suggest that you should choose righteous people among your family or his who can advise your husband to separate from you in a proper manner.

Thirdly:

Our advice to the husband is not to keep a wife when she is being harmed by staying with him. If he wants to keep her and refuses to divorce her, then he must treat her kindly and do something about the reasons that are putting his wife off. If he cannot do that, then he must divorce her or

agree to khula', and not force the wife to resort to committing sin by being wilfully defiant (nushooz) and disobeying him.

The Standing Committee for Issuing Fatwas was asked: A woman dislikes her husband, although she does not find any fault in his character or religious commitment. She gave him everything that she had taken from him as the mahr. Should this husband be forced to divorce his wife if he is keeping her even though she dislikes him so much?

They replied: If the wife dislikes her husband and fears that she may not be able to adhere to the limits set by Allaah, in that case khula' is prescribed, whereby she should return to him the dowry that he gave her, then he should separate from her, because of the hadeeth about the wife of Thaabit ibn Qays. … If there is a dispute between them, the matter should be referred to the shar'i judge to separate them. End quote.

Fataawa al-Lajnah al-Daa'imah (19/411).
We ask Allaah to set the affairs of all the Muslims straight.

And Allaah knows best.