94454 - Can a Wife Set Conditions to Refuse Intimacy after Marriage in Islam?

the question

If a woman or her guardian stipulates that (the husband) should not have intercourse with her at all, or that he may have intercourse with her only once, this condition is invalid, because it goes against the aims of marriage.

Detailed answer

Praise be to Allah.

The Islamic Perspective on Marital Intimacy

It is not permissible for a Muslim to forbid himself anything that Allah has permitted to him. Allah says (interpretation of the meaning):

{O you who believe! Make not unlawful the Tayyibat (all that is good as regards foods, things, deeds, beliefs, persons) which Allah has made lawful to you, and transgress not. Verily, Allah does not like the transgressors.} [Al-Ma'idah 5:87]

And the Prophet (peace and blessings of Allah be upon him) said: "There is no monasticism in Islam." This was quoted by Al-Albani in Silsilat Al-Ahadith As-Sahihah, 4/387)

Regarding intimacy between spouses as something that is not right and that is negative is a weird view. How can it be so when Allah has permitted it to His slaves and the best of mankind enjoyed it, namely the Prophets and Messengers? Allah says (interpretation of the meaning):

{And indeed We sent Messengers before you (O Muhammad), and made for them wives and offspring.} [Al-Ra`d 13:38]

Moreover, if people were to adopt this strange opinion, how would mankind continue to exist on earth? How could the Prophet (peace and blessings of Allah be upon him) feel proud before the other Prophets on the Day of Resurrection because of his nation being the greatest in number? It is for this reason that the Prophet (peace and blessings of Allah be upon him) encouraged us to marry women who bear many children.

The Prophet (peace and blessings of Allah be upon him) said: “Marry the one who is loving and fertile, for I will be proud of your great numbers.” (Narrated by Abu Dawud, 2050)

Invalid Conditions in Marriage

If a woman or her guardian stipulates that (the husband) should not have intercourse with her at all, or that he may have intercourse with her only once, this condition is invalid, because it goes against the aims of marriage. The aims of marriage are intimacy, maintaining chastity and producing children.

Should the marriage be regarded as valid but this invalid condition be cancelled? Or is the marriage invalid from the outset? There is a difference of opinion among the jurists.

The Malikis and Shafi`is think that the marriage contract is invalid in that case, whereas the Hanafis and Hanbalis think that the marriage contract should be regarded as valid but this condition should be cancelled.

It says in Mughni Al-Muhtaj (4/377), which is a Shafi``i book: If a condition goes against the aim of marriage, such as a stipulation that the husband should not have intercourse with her at all, or that he should have intercourse with her only once a year or only at night or only during the day, or that he should divorce her even if that is after having intercourse, then the marriage is invalid because that goes against the purpose of the marriage contract, so it renders it invalid. (End quote)

Ibn Qudamah (may Allah have mercy on him) said in Al-Mughni (7/72), which is a Hanbali book: What invalidates the condition although the marriage contract is still valid, such as if he stipulates

that she should have no Mahr (dowry), or she stipulates that he should not have intercourse with her, or that he should withdraw from her (`Azl). These are conditions which are invalid in and of themselves, because they go against the purpose of marriage. But the marriage contract itself is still valid.

If she stipulates that he should not have intercourse, it may be that the contract is invalid, because this is a condition that goes against the purpose of marriage. This is the view of Ash-Shafi`i. (End quote) (See also: Hashiyat Ibn `Abidin, 3/131; Fatawa `Alish Al-Maliki, 1/333; Hashiyat Al-Dusuqi, 2/237)

Based on that, it is not permissible for you to agree to this condition, and it is not permissible for the woman to stipulate it, because it is an invalid condition that goes against the purpose of marriage. What she must do is repent to Allah and beware of speaking about Allah with no knowledge.

Rulings on Fiancées and Communication

It should also be noted that the fiancé is a stranger (non-Mahram) to his fiancée so it is not permissible for him to speak to her unless there is a need. She is like any other non-Mahram woman.

And Allah knows best.