

94454 - If a woman stipulates that her husband should not have intercourse with her

the question

My fiancée has some negative ideas about intimacy between a man and his wife, and she thinks that it is not right. She has stipulated that I should not touch her after the marriage contract is done. She is insisting on that to such an extent that if I refuse her request she will not agree to marry me. She is a very religious girl.

Detailed answer

Firstly:

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

“O you who believe! Make not unlawful the Tayyibaat (all that is good as regards foods, things, deeds, beliefs, persons) which Allaah has made lawful to you, and transgress not. Verily, Allaah does not like the transgressors”

[al-Maa'idah 5:87]

And the Prophet (peace and blessings of Allaah be upon him) said: “There is no monasticism in Islam.” This was quoted by al-Albaani in Silsilat al-Ahaadeeth al-Saheehah, 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 Allaah has permitted it to His slaves and the best of mankind enjoyed it, namely the Prophets and Messengers? Allaah says (interpretation of the meaning):

“And indeed We sent Messengers before you (O Muhammad صلى الله عليه وسلم), 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 Allaah 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 Allaah be upon him) encouraged us to marry women who bear many children.

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

Secondly:

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 valid but this invalid condition be cancelled? Or is the marriage invalid from the outset? There is a difference of opinion among the fuqaha’.

The Maalikis and Shaafa’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-Muhtaaj (4/377), which is a Shaafa'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 Qudaamah 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 al-Shaafa'i. End quote.

See also: Haashiyat Ibn 'Aabideen (3/131); Fataawa 'Aleesh al-Maaliki (1/333); Haashiyat al-Dasooqi (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 Allaah and beware of speaking about Allaah with no knowledge.

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 Allaah knows best.