



Fiqh of Marriage: Class Twenty-Seven

الحمد لله و الصلاة و السلام على رسول الله و بعد:

The Hadith:

: وَمِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيَّبِ أَيْضًا قَالَ
{ قَضَى عُمَرُ فِي الْعَيْنِ , أَنْ يُؤَجَّلَ سَنَةً , } وَرَجَالُهُ ثِقَاتٌ

Narrated Sa'id bin al-Musaiyab: Umar gave a decree regarding a husband who is impotent that he be given delay for one year. [Its narrators are reliable]

The Explanation:

Ibn ul-Qayyim states that every matter which the other party finds appalling or disgusting grants them the right annul the marriage contract.

In other words, some ulema state: if a deficiency is found in one's spouse, the like of which would give the slave owner the right to return the female servant to the one he purchased her from, it is grounds for an annulment.

This brings us to the hadith:

Umar gave a decree regarding a husband who is impotent that he be given delay for one year.

Impotency is defined as the inability of a man to perform the sexual relations with women.

There is the famous hadith of Rafeah, who divorced her husband, and it became a permanent divorce. So she married someone else. However, she later came to the Prophet alayhi as salam and complained that her husband was like 'hudbat at thawb' i.e. the sleeve of a dress. 'Hudbat' is a colored cloth placed on a camel, or the sleeve.

What she meant was an allegorical reference to her husband being impotent.

When does impotence take place?

It could be inherent, or it could come about afterwards.

If a woman finds her husband impotent, she can be patient with it at that is permissible for her.

If she shows signs of acceptance, this is allowable.

But if she complains, the judge should give the husband one year's respite, if he admits to it.

If he denies it, they should be referred to a specialist.

If the specialist determines that the husband is healthy, then the wife's lawsuit should be cancelled.

If there are no specialists, the husband should be made to swear an oath that he is not affected by impotence. If he refuses, it is proven that he is impotent and he should be given one year's respite.

Proof of impotence can be established one of three means:

--by the husband's own admission

--by a specialist

--by the husband's refusal to testify

In each of these cases, the husband should be given one year's respite.

This is the position taken by the majority of scholars, since perhaps the impotence is caused by some external factor that may go away in one year's time.

This will allow the husband to experience all four seasons, the cause of impotence may be the heat of the summer, or the cold of the winter, or the variation in temperature in the fall, or spring.

Different weather could cause this illness and it could pass with time.

If one year passes by and she still requests separation, they are separated.

If they have relations during the one year her suit is cancelled and they return to the contract that they were upon.

If when they married the husband was healthy, but later on he became impotent, can the wife seek an annulment of the contract?

No, because he is not impotent (by nature) but this is just like any illness that comes and goes.

She can separate based on the husband's agreement, but he cannot be forced to divorce her or separate in this case.

There is another issue that was mentioned by some Ulema such as Shaikh Amin ash-Shinqeeti:

If a woman found her husband to be sterile, or vice versa, is this sufficient reason for annulment of the marriage?

The majority of scholars say: No. Because he still has relations with her and gives her her rights, but as far as having a child, that is not something he possesses, it is from Allah.

Allah says, "He grants whom he pleases daughters, and sons, ..."

However, a minority of Ulema say that motherhood is from the rights of marriage, and if a husband cannot have children, she can request a divorce and marry someone else who will bring her a child, by permission of Allah.

And Allah knows best.

End of Class 27