

Stipulation of Conditions by the Wife

The Hanbali school is of the opinion that if the husband stipulates at the time of marriage that he will not make her leave her home or city, or will not take her along on journey or that he will not take yet another wife, the condition and the contract are both valid and it is compulsory that they be fulfilled, and in the event of their being violated, she can dissolve the marriage. The Hanafi, the Shafi'i and the Maliki schools regard the conditions as void and the contract as valid, and the Hanafi and the Shafi'i schools consider it compulsory in such a situation that the wife be given a suitable *mahr*, not the *mahr* mentioned (Ibn Qudamah. *al-Mughni*. vol. 6. chapter on marriage).

According to the Hanafi school, when the man puts the condition that the woman would have the right to divorce, such as when he says. "I marry you on the condition that you can divorce yourself," the condition is invalid. But if the woman makes such a condition and says to the man, "I marry myself to you on the condition that I shall have the right to divorce," and the man says in reply. "I accept." the contract and the condition are both valid and the woman can divorce herself whenever she desires.

According to the Imamiyyah school, if at the time of contract, the woman stipulates such conditions as that the man shall not take another wife, or shall not divorce her. or shall not prohibit her from leaving home whenever she wants and wherever she wants to go, or that the right to divorce will be hers, or that he shall not inherit her, or any other such condition which is against the spirit of the contract, the condition will be considered void and the contract will be valid.¹ But if she lays down such conditions as that the man will not make her leave her city, or will keep her in a specific home, or will not take her along on journeys, the contract and the condition are both valid. But if any of these conditions are not met, she does not have the right to dissolve the marriage.

However, if in such a situation the woman refuses to accompany him, she still enjoys all the rights of a wife, such as being provided with maintenance and the like of it.² When the wife pleads of having included a valid condition in the contract and the husband repudiates the inclusion of such a condition, the wife will have to furnish evidence, because she has pleaded this extra condition. On the wife being unable to furnish the evidence, the husband will take an oath regarding the non-inclusion of the condition because he is the one who negates it.

[1.](#) According to the Imamiyyah, an invalid condition in a non-marriage contract results in the contract becoming void. But in a contract of marriage such a condition does not cause the contract nor the mahr to be void unless a choice is given regarding the voiding of the contract or a condition is laid that none of the consequences of the contract will follow, which is against the spirit of the contract. They have argued on the basis of reliable traditions that there is a difference between a marriage contract and other forms of contract.

Some of the legists have said: "The secret of this difference is that marriage is not an exchange in the true sense of the word as in the case of other forms of contract." The Imamiyyah scholars have extensive discussions on these conditions the like of which are not found in books of other schools. Those who want further information regarding these conditions may refer to al-Makasib of Shaykh Murtada al-'Ansari and Taqirrat al-Na'ini of al-Khwansar i, vol. 2, and the third part of Fiqh al- Imam al-Sadiq by this author.

[2.](#) In Farq al-zawaj of Ustadh 'Ali al-Khafif. it is stated that the Imamiyyah consider these kind of conditions as void. This is a mistake which has been caused as a result of confusing these kind of conditions with those which negate the spirit of the contract.

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