118752 - If the spouses were not praying at the time of the marriage contract, do they have to renew the marriage contract?

the question

If a man did the marriage contract at a time when he was not praying, and the husband and wife, the wife's father, and the two witnesses also were not praying, and the one who did the marriage contract did not do it in the correct manner, rather he did it in a language other than Arabic and he did not recite the Shahaadatayn (twin declaration of faith) or say the words of the marriage contract, what is the ruling on this marriage? Is this marriage regarded as legitimate or not? If they have repented from not praying and have begun to pray, should they do a new marriage contract, or is the old marriage contract regarded as Islamically acceptable?

Detailed answer

Praise be to Allah.

If the one who does not pray does not do so because he is denying that it is obligatory, then he is a kaafir according to scholarly consensus. But if he does not pray because he is heedless and lazy, then he is a kaafir according to the more correct of the two scholarly opinions. Please see the answer to questions no. 5208 and 2182.

If the husband and wife were not praying at the time of the marriage contract, then they repented and began to pray, then they remain married on the basis of the original marriage contract, because the Prophet (blessings and peace of Allah be upon him) ruled that people remained married on the basis of non-Muslim marriage contracts, and he did not instruct them to repeat the marriage contract after they became Muslim,. Also, the Sahaabah did not instruct those who came back to Islam after apostatising to renew their marriage contracts.

Ibn Qudaamah (may Allah have mercy on him) said: The marriage contracts of the kuffaar are valid and approved if they become Muslim … there is no need to examine the form of their

marriage contracts or how they were done, and they are not subject to the same conditions as Muslim marriages, namely the presence of the wali (wife's guardian) and witnesses, and the proposal and acceptance, and so on. There is no difference of opinion among the Muslims concerning this matter. Ibn 'Abd al-Barr said: The scholars are unanimously agreed that if the two spouses become Muslim together at the same time, they remain married on the basis of their original marriage contract, so long as they are not mahrams through blood ties or breastfeeding. Many people became Muslim at the time of the Messenger of Allah (blessings and peace of Allah be upon him), as did their wives; their marriages were approved and the Messenger of Allah (blessings and peace of Allah be upon him) did not ask them about the conditions of marriage or the nature of their marriage contract. This is something that is well-known from mutawaatir reports, so it is certain.

End quote from al-Mughni, 10/5

It says in Mataalib Ooli an-Nuha (5/13):

Note: if an apostate marries a kaafir apostate woman or the like, or an apostate woman marries a kaafir man, then both spouses become Muslim, what should be said in this case is that we accept their marriage, just as in the case of the harbi (non-Muslim whose people are in a state of war with the Muslims), if his marriage was not done properly, then they (he and his wife) become Muslim. The matter is the same. Apostates came back to Islam at the time of the Messenger of Allah (blessings and peace of Allah be upon him) and his successors (i.e., the Rightly Guided Caliphs) and they were not instructed to renew their marriage contracts. This is a good analogy, and was stated by Shaykh Taqiy ad-Deen (i.e., Shaykh al-Islam Ibn Taymiyah). End quote.

The scholars of the Standing Committee for Issuing Fatwas were asked: I used to pray only rarely, and during that period of my life I got married. Now, praise be to Allah, I pray regularly and I have done Hajj and have repented to Allah, but I do not know what is the ruling on my marriage, is it valid or not? What should I do if it is not valid? Please note that I have five children from my wife.

They replied: If your wife was like you at the time of the marriage contract and did not pray, or she

only prayed sometimes, then the marriage is valid and it does not have to be renewed, because you were equal in terms of the ruling having to do with not praying, which is (that the one who does not pray) is a kaafir. However, if the your at the time of the marriage contract prayed regularly, then what you must do is renew the marriage contract according to the more correct of the two scholarly opinions, if both of you still want to be married to the other. It is also essential to repent from not praying and to pray regularly in future.

With regard to the children who were born before the renewal of the marriage contract, they are legitimate and are to be attributed to their father because the marriage appeared to be valid.

We ask Allah to set your affairs straight and to guide you to all that is good. And Allah is the source of strength. May Allah send blessings and peace upon our Prophet Muhammad and his family and companions. End quote.

Fataawa al-Lajnah ad-Daa'imah, 18/290

Shaykh Ibn Baaz (may Allah have mercy on him) said: But if both of them did not pray at the time of the marriage contract, then Allah guided them and they began to pray regularly, then the marriage contract is valid. This is similar to the case of disbelievers who become Muslim; their marriage contract does not need to be renewed if there is no shar'i impediment to the continuation of the marriage, because the Prophet (blessings and peace of Allah be upon him) did not instruct the disbelievers who became Muslim at the time of the conquest of Makkah and so on to renew their marriage contracts.

End quote from Fataawa Ibn Baaz, 10/291

Based on that, if the spouses have repented from not praying and they have started to pray, they do not need to repeat the marriage contract; rather their original marriage contract remains valid.

And Allah knows best.