186092 - Can zihaar occur before consummation of the marriage? What is the ruling on one who divorced his wife by zihaar if he has intercourse with his wife before offering expiation?

the question

I am a man who has been married for about two months. One week before my wedding, one of my female relatives tried to hurt me by saying something about me to my wife to cause trouble for me. I heard about this from one of my sisters and I said: “My wife is as haraam to me as my mother; I shall not consummate the marriage with her until after I harm her as she tried to harm me.” My sister tried to calm me down and my brother came to me and spoke to me. Then I calmed down and forgot about the matter until a while ago, when my wife and I were speaking about zihaar. Please note that I swore the oath when I was married, but I had not yet consummated the marriage. Now I am uncertain about my situation. I asked a shaykh from Yemen and he gave me an answer based on the Ithna ‘Ashari madhhab! He told me that it is regarded as an oath and expiation must be offered for it, but I am not sure about the fatwa of the Ithna ‘Ashari madhhab.

Detailed answer

Praise be to Allah.

Firstly:

If a man states that his wife is as haraam to him as his mother is or another mahram woman who is permanently forbidden to him, then he has uttered a great evil and spoken falsehood, and he comes under the rulings that result from zihaar. His wife remains haraam to him until he has fasted for two consecutive months; if he is not able to do that because of a legitimate shar‘i reason, then he must feed sixty poor persons.

For zihaar to take place, it is not stipulated that he should have consummated the marriage with his wife; it is sufficient for him merely to have done the marriage contract with her for these

rulings to come into effect.

Secondly:

What appears to us to be the case is that what you said comes under the heading of conditional zihaar. Because you decided not to cause harm to that woman, then you come under the rulings on zihaar. So you have to repent from saying that and your wife remains haraam to you until you have offered the expiation for zihaar.

The scholars of the Standing Committee were asked:

There was an argument between my father and my oldest brother, and my oldest brother said something, which was: “My wife is as haraam to me as my mother.” That was in a moment of anger. My brother has done the marriage contract with this wife of his but he has not consummated the marriage with her and there has not been any wedding party until now. I hope that you can advise me.

They replied:

If what is mentioned about your brother declaring his wife to be haraam to himself is correct, and that happened after he did the marriage contract with his wife, then he has committed a major sin and he has to offer expiation for zihaar before he can touch his wife, whether he said that before consummating the marriage with her or after. Expiation for zihaar is freeing a believing slave. If that is not possible, then he must fast for two consecutive months. If he is not able to do that, then he should feed sixty poor persons, giving thirty saa‘s of wheat, half a saa‘ for each poor person.

Shaykh Ibraaheem ibn Muhammad Aal ash-Shaykh; Shaykh ‘Abd ar-Razzaaq ‘Afeefi; Shaykh ‘Abdullah ibn Ghadyaan; Shaykh ‘Abdullah ibn Munayyi‘

End quote from Fataawa al-Lajnah ad-Da’imah, 20/277

If you had consummated the marriage with your wife – as appears to be the case – then you have to stop being intimate with her immediately; it is not permissible for you to continue being

intimate with her before you have offered expiation for zihaar.

The scholars of the Standing Committee said:

With regard to what you have done of intercourse before offering expiation as a result of ignorance before starting to fast, you do not owe any penalty for that because you had the excuse of ignorance. But now you must avoid having intercourse until you have completed the fasting.

Shaykh ‘Abd al-‘Azeez Aal ash-Shaykh, Shaykh ‘Abdullah ibn Ghadyaan. Shaykh Saalih al-Fawzaan, Shaykh Bakr Abu Zayd

End quote from Fataawa al-Lajnah ad-Daa’imah, 20/322

Thirdly:

It is not permissible for a Muslim to follow the Shi‘i (Ithna ‘Ashari) madhhab with regard to basic issues or minor matters, or to be happy if they are in agreement with Ahl as-Sunnah (concerning some issue), just as it does not matter if they differ from us. It is not permissible for you to consult one who will advise you in accordance with their madhhab or give you a fatwa based on their opinions.

And Allah knows best.