8981 - She committed adultery when she was a minor – should the hadd punishment be carried out on her?

the question

What is the punishment for a girl found guilty of adultery if she has not even reached her puberty that is she is still a minor ?.

Detailed answer

Praise be to Allah.

The sin of adultery (zina: unlawful sexual relationship) is a major sin which Allaah has mentioned in conjunction with kufr, shirk and murder, as He says (interpretation of the meaning):

“And those who invoke not any other ilaah (god) along with Allaah, nor kill such person as Allaah has forbidden, except for just cause, nor commit illegal sexual intercourse and whoever does this shall receive the punishment.

The torment will be doubled to him on the Day of Resurrection, and he will abide therein in disgrace”

[al-Furqaan 25:69]

Al-Qurtubi said:

The followers of all religions are agreed that adultery is forbidden; no religion regards it as permissible. Hence the punishment for it is one of the most severe punishments, because it is a crime against honour and lineage, which is one of the five basic principles that Islam seeks to protect, namely life, religion, lineage, reason and wealth.

Tafseer al-Qurtubi, 24/20, 21

1 – If a woman has been previously married – i.e., a legitimate marriage with her has been consummated – then her punishment is to be stoned to death.

‘Umar ibn al-Khattaab (may Allaah be pleased with him) said, when he was sitting on the minbar of the Messenger of Allaah (peace and blessings of Allaah be upon him): “Allaah sent Muhammad (peace and blessings of Allaah be upon him) with the truth, and revealed to him the Book. One of the things that He revealed was the verse of stoning, which we have read and understood. The Messenger of Allaah (peace and blessings of Allaah be upon him) carried out the punishment of stoning and we did so after him. I fear that as time goes by, people will say, ‘We do not find any mention of stoning in the Book of Allaah,’ so they will go astray by forsaking an obligation that was revealed by Allaah. In the Book of Allaah, stoning is the punishment deserved by any previously-married person, man or woman, who commits adultery, if proof is established, or pregnancy results, or he or she confesses.”

(Narrated by al-Bukhaari, 2462; Muslim, 1691)

2 – If the woman is a virgin – i.e., she is not married yet or the marriage contract has been done but her husband has not yet consummated the marriage with her – then the punishment is one hundred lashes and exile from her country for a year, as stated in the hadeeth of ‘Ubaadah ibn al-Saamit, who narrated that the Prophet (peace and blessings of Allaah be upon him) said: “Receive (teaching) from me. Allah has ordained a way for those (women). When an unmarried male commits adultery with an unmarried female (they should receive) one hundred lashes and banishment for one year. And in the case of a married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death.”

(Narrated by Muslim, 1690).

If the adulterer or adulteress is a minor below the age of puberty, then there is no punishment to be carried out, according to all scholars.

Ibn Qudaamah (may Allaah have mercy on him) said:

With regard to puberty and sound mind, the scholars are agreed that both are conditions of punishment being obligatory.

Al-Mughni, 8/134.

The evidence for that is the words of the Messenger of Allaah (peace and blessings of Allaah be upon him): “The Pen has been lifted from three, from the sleeper until he awakes, from the minor until he grows up, and from the insane until he regains his reason.” (Narrated by al-Nasaa’i, 3432; classed as saheeh by al-Albaani in Saheeh al-Nasaa’i, 3210).

But the minor boy or girl should be punished, with something less than the hadd punishment, in a manner that will deter them from doing this action. And their guardian must also be punished if there was any shortcoming on his part, such as allowing his daughter to mix with boys or being careless concerning such matters.

The girl has to conceal what she has done, and her guardian must also conceal it, because the Prophet (peace and blessings of Allaah be upon him) said: “Avoid these filthy things that Allaah has forbidden. Whoever has done any of them, let him conceal himself with the concealment of Allaah, and let him repent to Allaah…”

(Narrated by al-Haakim; classed as saheeh by al-Albaani in Saheeh al-Jaami’, 149).

If the signs of puberty are present in the boy or the girl, then he or she becomes accountable (mukallif) thereby. Information on these signs may be found in Questions Nos. 21246 and 13262.

And Allaah knows best.