106288 - Effects of marriage resulting from an illicit relationship

the question

There is a woman who is 27 years old and has received a proposal of marriage from a man, but her family objected because of the difference in education between them only, but the woman agreed to the marriage. The man and woman tried to convince the family to agree, and the man strove hard to improve his level of education. For four years the man and the woman tried hard to in approval because of the love between them and because they had promised before Allah that they will never part. Praise be to Allah, the family finally agreed and the marriage contract was done in the presence of the father and mother and his family and witnesses, with the blessings of all concerned. But during the previous four years there were haraam meetings between the couple. Allah is witness that they do not want to remember it, and praise be to Allah that after marriage they lived a decent life and had children, and now they have a lovely family and the couple have kept away from everything that angers Allah. Allah enabled them to go for Hajj and perform ‘umrah a number of times. They were deeply in love, by Allah's grace, until one day, after ten years, they heard one of the shaykhs on the radio saying that whoever has a haraam relationship has to announce his repentance before getting married, otherwise the marriage is invalid. From that point doubts set in: does this apply to them? In other words, should the contract be annulled or not? After all this time, from the time of the marriage contract, they did not commit any sin against Allah and they have tried to make their life good. There was no one else for either of them. Because it has been such a long time they are confused about their situation. Was there any intimacy which deserved to be punished, either by a disciplinary punishment (ta’zeer) or a hadd punishment? But what is certain is that the full consummation came after marriage, i.e., they are not certain that any immoral action took place because there is no evidence to indicate that. Are they regarded as having committed zina and does what is mentioned in Soorat al-Noor apply to them? Because from various tafseers they understood the meaning of this verse as applying to people who behave in such a manner all the time.

This is the problem in brief. Should this marriage contract be annulled or not? If that was done before marriage because of lack of knowledge, are they to be blamed for not their lack of knowledge? What the woman remembers is that she menstruated after marriage and also before the marriage contract was done, but she is not certain of the timing, i.e., was it shortly beforehand or a long time before. One thing remains to be asked: if one of the two parties did any of these abhorrent things when he was 16 years old with someone who was younger for a while at the time of adolescence and then stopped doing that for several years, and does not think that he did it until he met the person he married, does that affect the current problem, or should he conceal it and not mention it?
I hope that you can advise us of the solution that will protect us from meeting Allah with our faces darkened by sin before Him, and so that we may rather meet Allah with hearts that know what Allah has forbidden and have found the right way to the Hereafter. We only want to know whether their lives now are halaal or haraam, because since they found out about this matter their lives have been affected by waswaas after they were happy.

Detailed answer

Praise be to Allah.

We have discussed in abundant detail that which supports what you heard about it not being permissible for a Muslim man to marry a woman who is a zaaniyah and that a Muslim woman cannot marry a man who is a zaani unless they both repent and it is established that the woman is not pregnant by waiting for one menstrual cycle before getting married.

For more details, please see the answers to questions no. 87894, 50508 and 85335.

What we want to find out from both parties is two important matters, on which the answer will be based.

The first is: did zina take place between them, meaning penetration, not just touching and fulfilling desire, even if ejaculation took place?

The second is: did they repent before the marriage contract was done?

In the light of these two matters we can answer your questions.

If zina took place but they did not repent, then what they heard applies to their situation.

If zina took place between them but they regretted it and repented, then their marriage is valid and there is no need to worry about it.

If zina did not take place, rather the relationship was just touching and no penetration took place, then they cannot be called zaanis, even if ejaculation occurred and those actions constituted major sins, but it cannot be called zina unless there was penetration.

Based on that:

1.If no zina took place, or it took place but they repented, then there is no need to do anything; rather they remain married but they should strive to do a lot of righteous deeds.

2.If zina took place between them and she did not have a period before getting married, then she got married before it was proven that she was not pregnant, this means that the marriage should be annulled.

Shaykh Muhammad ibn Ibraaheem (may Allah have mercy on him) said: It is not permissible to marry a zaaniyah until she repents. If a man wants to marry her, he must wait for one menstrual cycle to establish that she is not pregnant before doing the marriage contract with her. If it turns out that she is pregnant, it is not permissible for him to do the marriage contract with her until after she gives birth.

Al-Fataawa al-Jaami'ah li'l-Mar'ah al-Muslimah, 2/584

Something similar was stated by the scholars of the Standing Committee, al-Fataawa, 18/383, 384

3.If zina took place between them and they did not repent, then they have to annul the marriage and wait one menstrual period to establish that she is not pregnant. He may marry her again, with

a new proposal and a new contract and mahr.

In the questions referred to above we said:

The one who committed this sin and did the marriage contract before repenting has to repent to Allah and regret what he did, and resolve not to commit the sin again. Then he may do a new marriage contract. End quote.

4.If you have children from this marriage, then the children should be attributed to their father, because what happened was a dubious marriage contract and he was not aware that the contract was haraam – if he committed zina and did not repent from it. This is different from the case of illegitimate children, in which case the children are not to be attributed to the zaani, rather they should be attributed to their mother.

The scholars of the Standing Committee said:

The correct scholarly view is that the child cannot be attributed to the man unless the intercourse was based on a valid or invalid marriage contract or a dubious marriage contract, or ownership of the slave woman, or dubious ownership of the slave woman, in which case the child is to be attributed to the man, and they may inherit from one another. But in the case of zina, the child is not to be attributed to the zaani; the blood relationship to him is not proven and therefore he cannot inherit from him.

Shaykh ‘Abd al-‘Azeez ibn Baaz, Shaykh ‘Abd al-Razzaaq ‘Afeefi, Shaykh ‘Abd-Allaah ibn Ghadyaan, Shaykh ‘Abd-Allaah ibn Qa’ood

Fataawa al-Lajnah al-Daa’imah, 20/387

The one who studies the question will see that the case mentioned in the question is not quite clear. We do not know whether zina took place or not and we do not know whether repentance took place or not. We do not know whether the woman menstruated before marriage or not. All these factors affect the answer. Hence we have mentioned the answer in all cases. It may be a good idea to discuss this issue with a scholar so that the man can explain exactly what happened

and the scholar may give him a detailed answer. We hope that the answer will be helpful to him and there will be no need for further questions or clarification.

With regard to the questioner saying in his question, “But what is certain is that the full consummation came after marriage, i.e., they are not certain that any immoral action took place because there is no evidence to indicate that”, if that is true as he says, that there is no certainty that zina occurred in this case and what it is certain is that full consummation occurred after marriage, then the answer is clear from what we have said, which is that what happened does not affect the validity of the marriage at all and there is no need to annul it or do a new marriage contract, and there is no need to open the door to waswasah concerning their marriage. Rather all they have to do is fear Allah with regard to what remains and strive to do good deeds, in the hope that Allah will accept their repentance and replace their bad deeds with good for He is Oft Forgiving, Most Merciful.

And Allah knows best.