133140 - He did the marriage contract with her when she was pregnant as a result of zina, and now he is refusing to do a new marriage contract

the question

I am in need of your help, in sha Allah. I committed zina with a Muslim man before I embraced Islam, and became pregnant as a result. I uttered the Shahaadatayn (twin declaration of faith) and the next day, when I was six months pregnant, we got married. Then I saw on your website, in question no. 9848, that this marriage is invalid. My problem is that my husband refuses to accept that the marriage is invalid and he will never do the marriage contract again, because he says that there is no evidence for that in the Qur'an or Sunnah (and I do not have enough knowledge to debate with him). Will I be sinning if I leave the house and refuse to go back if he does not acknowledge that the marriage is invalid? Or will I be sinning if I stay with him? I hope that you can advise me because this matter is making me very anxious and I do not want to make the same mistake again, because I have repented from my previous actions and I regret them greatly.

Detailed answer

Praise be to Allah.

Firstly:

What we mentioned in our website was that the marriage of a man who committed zina with a woman then got married before repenting, and before waiting for the prescribed period to establish that there is no pregnancy, is invalid. However, this is a matter concerning which the fuqaha' (jurists) differ. What we followed is the view of Imam Ahmad (may Allah have mercy on him), and the evidence supports his view. For more information on that see the answer to question no. 85335

Some of the fuqaha' regard as valid a marriage contract done before repenting; some regard it as valid even if the woman is pregnant, if the pregnancy is from the man who is marrying her.

Allah has blessed you with Islam, and Islam erases what came before it of zina and other sins, and you have fulfilled the conditions of repentance. Allah, may He be exalted, says (interpretation of the meaning):

“Say to those who have disbelieved, if they cease (from disbelief) their past will be forgiven”

[an-Anfaal 8:38].

The Hanafis and Shaafa‘is are of the view that it is permissible to do the marriage contract with a woman who is pregnant as a result of zina and to have intercourse with her after getting married, if he (the husband) is the one with whom she committed zina.

See: al-Mawsoo‘ah al-Fiqhiyyah al-Kuwaitiyyah, 29/338; Haashiyat Ibn ‘Aabideen, 3/49

Undoubtedly to be on the safe side you should redo the marriage contract, so as to avoid a matter concerning which there is a difference of scholarly opinion. If your husband consulted a scholar who says that the marriage is valid, or he is following the Hanafi or Shaafa‘i madhhabs (schools of thought), then he does not have to redo the marriage contract and in that case you will not be sinning by staying with him, seeing that the issue is one of those issues that are subject to ijtihaad, concerning which the scholars differed.

Renewing the contract does not have to be registered; rather it could be done between the husband and the Muslim guardian, if there is one, in the presence of two witnesses. If there is no Muslim guardian, the imam of the Islamic Centre can do the marriage contract for you and act as your guardian.

And Allah knows best.