199332 - He committed an immoral act with his wife’s daughter

the question

I am writing regarding a very delicate question, can you please answer me as soon as possible. What is the ruling regarding a person who has made the big mistake of having illicit relations with his step daughter, he has kissed, and had oral sex with her although no vaginal penetration has taken place. Is his Nikah with his wife still valid or not .

Detailed answer

Praise be to Allah.

First of all, and before answering your question about the shar‘i ruling, the Muslim must always find out about repentance and its means. So he should strive hard to find out about things that will expiate sins and ask Allah for pardon, mercy and forgiveness. The consequences of sin are terrible in this world and the Hereafter, but if Allah, may He be glorified and exalted, sees that the Muslim sincerely regrets what he has done, is determined to refrain from that sin in the future, and is sincere in seeking forgiveness and turning to Him, then He, may He be glorified and exalted, forgives sin, as He says (interpretation of the meaning): “And verily, I am indeed Forgiving to him who repents, believes (in My Oneness, and associates none in worship with Me) and does righteous good deeds, and then remains constant in doing them, (till his death)” [Ta-Ha 20:82].

But if he persists and is arrogant, and continues in his sin as if nothing happened, then he will carry a burden on the Day of Resurrection. Allah, may He be glorified and exalted, says (interpretation of the meaning):

“And whosoever disobeys Allah and His Messenger (Muhammad SAW), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment”

[an-Nisa’ 4:14].

What this man and this girl must do is hasten to make up for their recklessness in committing these grave sins and immoral actions, and seek forgiveness from Allah, may He be glorified and exalted. That cannot be achieved except by taking all possible measures to ensure that immoral actions do not occur again, by changing one's place of residence, and avoiding mixing with his wife's daughter, and keeping away from her altogether, so that seeing her will not prompt him to commit that sin again. This is the responsibility of both parties, and her mother – who is his wife – is also responsible. If they do not give due attention to the matter, and they do not keep far away from one another, the Shaytaan will tempt him again to fall into an even greater sin.

With regard to the shar'i ruling, it is also serious. The Hanafi fuqaha' stated that if a man touches a girl with desire, then the mahram rulings regarding marriage immediately come into effect, even if no intercourse takes place. Whoever kisses a girl with desire, her mother and daughter become haraam to him and she becomes haraam to his sons.

Ibn Abi Shaybah narrated in al-Musannaf (3/479-480) with his isnaads that 'Umar (may Allah be pleased with him) undressed his slave woman, then one of his sons asked to marry her, and he said: She is not permissible for you.

It was narrated from 'Amr ibn Shu'ayb, from his father, from his grandfather, that he undressed one of his slave women, then one of his sons asked to marry her and he said: She is not permissible for you.

It was narrated that Ibn 'Umar (may Allah be pleased with him) said: If a man undresses his slave woman, and looks at her with desire, she is not permissible for his son.

As-Sarkhasi (may Allah have mercy on him) said:

We quote as evidence the reports of the Sahaabah (may Allah be pleased with them) – and he mentioned some of the reports quoted above – and because touching and kissing are a means that lead to intercourse, they are regarded as foreplay leading to it, so they have the same effect as intercourse itself in establishing the mahram relationship, just as the marriage contract, which is a means for legitimate intercourse, has the same effect in establishing the mahram relationship,

except in the case where the text states otherwise, namely that of a stepdaughter. That is because the mahram relationship is based on precautions; therefore anything that could lead to intercourse may have the same effect with regard to the mahram relationship as intercourse itself, and that is as a precautionary measure, even though it has no effect on other rulings.

End quote from al-Mabsoot (4/206)

Ibn al-Humaam (may Allah have mercy on him) said:

If a man touches a woman with desire, her mother and daughter become haram for him, because touching and looking are means that lead to intercourse, so they are regarded as having the same effect, as a precaution.

End quote from Fath al-Qadeer (3/2210)

Moreover, the Hanafi fuqaha' have ruled that the marriage is annulled because of touching with desire in such cases, as Ibn Nujaym (may Allah have mercy on him) said: In the case of a woman who is observing 'iddah following a revocable divorce (first or second talaaq), if she allows her husband's son to be intimate with her, or he kisses her with desire, then she is not entitled to any maintenance, because the separation did not occur as a result of talaaq, rather it occurred as a result of an action on her part, which is the sin she committed.

End quote from al-Bahr ar-Raa'iq (4/218)

Az-Zayla'i (may Allah have mercy on him) said:

Zina, touching and looking with desire result in in-laws becoming prohibited for marriage … The Prophet (blessings and peace of Allah be upon him) said: "Whoever touches a woman with desire", her mother and daughter become haraam for him. This is the view of 'Umar, 'Imraan ibn al-Husayn, Jaabir ibn 'Abdullah, Ubayy ibn Ka'b, 'Aa'ishah, Ibn Mas'ood, Ibn 'Abbaas and the majority of the Taabi'een.

End quote from Tabyeen al-Haqaa'iq (2/106)

We do not deny that a number of scholars stated that the mahram relationship only comes into effect as a consequence of intercourse within the framework of a valid, legitimate shar‘i marriage. Some of them said that intimacy and the like does not have any effect of creating a mahram relationship. Others said that the mahram relationship cannot be created, even as a result of intercourse, except within the framework of a valid marriage.

Shaykh ad-Dardeer al-Maaliki (may Allah have mercy on him) said:

It is permissible for a man who has committed zina with a woman to marry her ascendants and descendants, and for his father or son to marry her.

End quote from ash-Sharh al-Kabeer ma‘a Haashiyat ad-Dasooqi (2/251)

Ibn Hajar al-Haytami ash-Shaafa‘i (may Allah have mercy on him) said:

Intimate actions are not like intercourse, according to the more correct view, because they do not require ‘iddah, so by the same token they do not result in creation of the mahram relationship.

Tuhfat al-Muhtaaj (7/303)

Al-Bahooti al-Hanbali (may Allah have mercy on him) said:

There is no proof that the mahram relationship is created as a result of intimacy or looking at the private part or elsewhere, or by being alone with the person, even with desire, because Allah, may He be exalted, says (interpretation of the meaning): “but there is no sin on you if you have not gone in them” [an-Nisa’ 4:23]. What is meant by “going in” is intercourse. The same applies if she is the one who did that, i.e., what is mentioned above of intimacy, looking at the private part or elsewhere, and being alone with a man, with desire. Her daughter does not become haram for him, because he did not have intercourse with her mother.

End quote from Kashshaaf al-Qinaa‘ (5/71)

This has been discussed previously, and we stated which view is more likely to be correct. See 131569

But no one would say, and no wise person would accept it, that the husband should remain in that situation, exposing himself to the risk of falling into sin and immoral deeds, without closing the door to it.

Would this husband be happy to be gathered (on the Day of Resurrection) with the adulterers and adultresses, and to receive the same punishment as them, of which the Prophet (blessings and peace of Allah be upon him) spoke when he said: "…we came to something like a tannoor (clay oven), in which there was shouting and voices. We looked inside and saw naked men and women, towards whom flames came from beneath them. When the flames reached them, they cried out" then he stated that they were "the adulterers and adulteresses", as is narrated in Saheeh al-Bukhaari (7047).

Undoubtedly, if your marriage to your wife is not annulled, then leaving things as they are and continuing to live with her daughter in the same house, with the possibility of being alone with her, is one of the gravest of evils and opens wide the door to falling into immoral deeds and incurring the wrath of the Lord, may He be glorified and exalted.

Your transgression of the sacred limits set by Allah is worse than mere annulment of the marriage.

If someone were to ask, does a wife become haraam for her husband if he kills her daughter, the answer would be: No.

But annulment of the marriage, or its being haraam from the outset is one thing, and the abhorrent nature of the crime is something else.

So think: where are you, O slave of Allah, and where is your religious commitment? How could you allow yourself to drift away from religion and be overtaken by your desires??

If you stay in your marriage to this woman, it is not permissible for you to continue in that immoral action. This is quite clear. But, moreover, it is not permissible for you to stay with the door to fitnah wide open in front of you. Rather you must keep away from fitnah and its causes, with all means at your disposal, and you must block every route that calls you to be tempted by this girl

and to go back to what you both did.

What you must do is take precautions and protect your religious commitment, not only by repenting from those reprehensible actions, but also by closing the door to anything that could make you go back to it. ‘Umar (may Allah be pleased with him) said: “Give up riba and doubtful things.” Narrated by Ibn Maajah (2276); classed as saheeh by al-Albaani.

We ask Allah, may He be exalted, to protect Muslim families from immoral actions, both obvious and hidden.

And Allah knows best.