

111983 - Can the marriage contract of a zaaniyah be annulled?

the question

If a married woman commits zina, is she still a wife, or is her marriage contract annulled and does she become divorced because of this action?.

Detailed answer

Praise be to Allah.

If a married woman commits zina, her marriage contract is not annulled and she does not become divorced because of her committing this sin, but if she does not repent and she persists in this evil action, her husband is enjoined to divorce her, so as to protect his honour and his children.

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

If a woman commits zina with a man, or her husband commits zina, the marriage contract is not annulled, whether that occurs before or after consummation, according to the majority of scholars. This was the view of Mujaahid, 'Ata', al-Nakha'i, al-Thawri, al-Shaafa'i, Ishaq and ashaab al-ra'y. But Ahmad regarded it as mustahabb for the man to leave his wife if she commits zina, and he said: I do not think that he should keep such a woman, because there is no guarantee that she will not be unfaithful to him and attribute to him a child who is not his. Ibn al-Mundhir said: Perhaps those who said that keeping this woman is makrooh did not mean that doing so is haraam, so it is similar to this view of Ahmad's.

Ahmad said: And he should not have intercourse with her until it has been established that she is not pregnant by waiting for three menstrual cycles.

But it is more likely that this may be established by waiting for one menstrual cycle. End quote.

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Al-Mughni (9/565).

It says in Kashshaaf al-Qinaa' (5/2):

If a woman commits zina before or after consummation, the marriage contract is not invalidated, or if a man commits zina before or after consummating the marriage with his wife, the marriage is not invalidated by zina, because it is a sin that does not put one beyond the pale of Islam, like stealing, but he should not have intercourse with her until she has observed an 'iddah, if she is the one who committed zina. End quote.

Shaykh al-Shanqeeti (may Allaah have mercy on him) said:

It should be noted that if a man marries a woman thinking that she is chaste, then she commits zina when she is married to him, the more correct of the two (scholarly) opinions is that the marriage is not annulled, and it is not haraam for him to continue with the marriage. This was the view of some of those who did not allow marriage to a zaaniyah, as they differentiated between continuing such a marriage and initiating it.

Those who held this view quoted as evidence the hadeeth of 'Amr ibn al-Ahwas al-Jashami (may Allaah be pleased with him) who was present during the Farewell Pilgrimage with the Messenger of Allaah (peace and blessings of Allaah be upon him). He praised and glorified Allaah, and reminded and exhorted (the people), then he said: "I enjoin good treatment of women, for they are prisoners with you, and you have no right to treat them otherwise, unless they commit blatant sin. If they do that, then forsake them in their beds and hit them, but without causing injury or leaving a mark. If they obey you, then do not seek means of annoyance against them...."

Al-Shawkaani said concerning this hadeeth of 'Amr ibn al-Ahwas: It was narrated by Ibn Majaah and al-Tirmidhi, who classed it as saheeh. Ibn 'Abd al-Barr said in al-Istee'aab in his biography of 'Amr ibn al-Ahwas: His hadeeth about the Farewell Sermon is saheeh. End quote.

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His hadeeth about the Farewell Sermon is this hadeeth, based on the words, He praised and glorified Allaah, and reminded and exhorted (the people). This reminding and exhortation refers to the sermon as is well known.

Thus you may understand that the opinion of one who says that if a man's wife commits zina, the marriage is annulled and she becomes haraam for him, is contrary to the correct view, and Allaah knows best. End quote.

Adwa' al-Bayaan (6/82, 83)

And Allaah knows best.