75026 - Ruling on what comes before consummating the marriage with one’s wife; is it haraam to have intercourse after doing the marriage contract?

the question

I heard someone say, when a young man asked him what the rights of the one who has had made a marriage contract are, he replied: Allaah says (interpretation of the meaning):
“Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, your foster mothers who gave you suck, your foster milk suckling sisters, your wives’ mothers, your stepdaughters under your guardianship, born of your wives to whom you have gone in — but there is no sin on you if you have not gone in them (to marry their daughters)” [al-Nisa’ 4:23]
Here Allaah differentiates between those to whom you have gone in (consummated the marriage) and those to whom you have not gone in. Is it permissible for the the one who has had made a marriage contract to have intercourse or touch (his wife)?
I read previously that it is permissible for the one who has had made a marriage contract to do everything because she is his wife, and if the wife gets pregnant before the wedding party, the child is legitimate and has the right to inherit. Is the evidence for this answer correct?.

Detailed answer

Praise be to Allah.

Firstly:

The speaker whom you mention is not correct with regard to the ruling or to the evidence quoted. The verse which he quoted as evidence is describing the women whom a man is forbidden to marry. Allaah states that it is haraam to marry mothers, daughters and paternal aunts. Among others whom Allaah says men are forbidden to marry are the daughters of a wife with whom one has consummated the marriage. If a man makes a marriage contract with a woman and she has a

daughter, then he leaves her before consummating the marriage with her, then it is permissible for him to marry her daughter, but if he leaves the mother after consummating the marriage with her, then it is not permissible for him to marry her daughter, rather she is permanently forbidden to him.

This is what the verse means. The verse has nothing to do with what is permitted for the husband to do with his wife with whom he has made a marriage contract. Rather the verse speaks of those women whom a man is forbidden to marry, and states that in order for a stepdaughter – the daughter of a wife – to become his mahram (one whom he is forbidden to marry), it is stipulated that he have consummated the marriage with her mother, and if he has not consummated the marriage with her mother, then it is permissible for him to marry her (the daughter).

Any person who is asked about something that he does not know must say “I do not know.” It is not permissible for anyone to say about Islam something that is not true, or to say that something is haraam when Allaah has permitted it, or to say that something is halaal when Allaah has forbidden it.

Allaah says (interpretation of the meaning):

“And follow not (O man, i.e., say not, or do not, or witness not) that of which you have no knowledge. Verily, the hearing, and the sight, and the heart of each of those ones will be questioned (by Allaah)”

[al-Isra’ 17:36]

“Say (O Muhammad): (But) the things that my Lord has indeed forbidden are Al-Fawaahish (great evil sins and every kind of unlawful sexual intercourse) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allaah for which He has given no authority, and saying things about Allaah of which you have no knowledge”

[al-A’raaf 7:33]

Secondly:

With regard to the one who has made a marriage contract with his wife, it is permissible for him to do everything, as she is his wife and he is her husband. If she dies he will inherit from her and if he dies, she will inherit from him, and she is entitled to the mahr in full. But it is better for the one who has made a marriage contract not to consummate the marriage until the marriage has been announced, because consummating the marriage before it has been announced may lead to many evils. The wife may be a virgin and lose her virginity, or she may become pregnant from this intercourse, then she may get divorced or her husband may die, and this will cause anxiety to her family and will cause great embarrassment. Hence the one who has made a marriage contract may touch and kiss his wife, but he should refrain from intercourse, not because it is haraam, but because of the bad things that may result from it.

For more information please see the answer to question no. 3215.

Thirdly:

A number of practical rulings have to do with not consummating the marriage.

‘Iddah: if a man divorces his wife before consummating the marriage with her, she does not have to observe any ‘iddah, because Allaah says (interpretation of the meaning):

“O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no ‘Iddah [divorce prescribed period] have you to count in respect of them. So give them a present, and set them free (i.e. divorce) in a handsome manner”

[al-Ahzaab 33:49]

Mahr (dowry): if a man divorces his wife before consummating the marriage with her, then she is entitled to half of the agreed upon dowry, because Allaah says (interpretation of the meaning):

“And if you divorce them before you have touched (had a sexual relation with) them, and you have appointed unto them the Mahr (bridal-money given by the husband to his wife at the time of marriage), then pay half of that (Mahr), unless they (the women) agree to forego it, or he (the husband), in whose hands is the marriage tie, agrees to forego and give her full appointed Mahr.

And to forego and give (her the full Mahr) is nearer to At-Taqwa (piety, righteousness)”

[al-Baqarah 2:237]

If no mahr has been stipulated, then she is entitled to a gift according to what he can afford, because Allaah says (interpretation of the meaning):

“There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal-money given by the husband to his wife at the time of marriage). But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good”

[al-Baqarah 2:236]

But if the husband dies, then she is entitled to the mahr in full, if it was agreed upon, and if they had not agreed on the mahr, then she is entitled to a mahr like that of her peers.

It was narrated from ‘Alqamah from Ibn Mas’ood (may Allaah be pleased with him) that he was asked about a man who married a woman but did not stipulate a dowry, and he did not consummate the marriage with her before he died. Ibn Mas’ood said: She should have a dowry like that of her peers, without exaggeration or falling short, and she has to observe the ‘iddah, and the inheritance is hers. Ma’qil ibn Sinaan al-Ashja’i stood up and said: The Messenger of Allaah (peace and blessings of Allaah be upon him) passed a ruling concerning Birwa’ bint Waashiq – one of our womenfolk – similar to what you have said. Ibn Mas’ood rejoiced at that.

Narrated by Abu Dawood (2114), al-Tirmidhi (1145), al-Nasaa’i (3355), Ibn Maajah (1891). Classed as saheeh by al-Albaani in Irwa’ al-Ghaleel (1939).

And Allaah knows best.