

Shaykh Mashhūr Hasan Āl Salmān
(*hafidhahullāh*)

**MARRYING THE ONE WITH WHOM
ONE HAS COMMITTED ZINA¹**

Question:

“A man committed zina with a virgin, she then became pregnant and he married her. She gave birth to a child, so is the child treated as a Divinely Legal child from the aspect of inheritance?”

Answer from Shaykh Mashhūr (hafidhahullāh):

Allāhu Mustaʿān. Semen which enters a place which it is not Divinely supposed to and involves making istihlāl of private parts, aswell as transgression against Allāh’s Limits, then the basis is that any child which is born as a result of that is regarded as ‘a child of zina’. The Prophet (*sallallāhu ʿalayhi wassallam*) stated in Saheeh Muslim: “*You have made legal private parts with the word of Allāh.*” What do the words of Allāh’s Messenger “*istablaltum*” [you have made legal] mean? They mean that the basis of [entering a female’s] private parts is that there is a prohibition, “*istablaltum*” [you have made legal] means that before this therefore it was prohibited. Thus, the basis with *Furūj* [private parts], *Ammāl* [wealth and properties] and *Nufūs* [souls] is that they are prohibited [to transgress against].

As has arrived in the question, the man’s semen came into contact with her private parts without this being halāl. This birth is ascribed to the father because the Divinely Legislated child is ascribed to the father based on when Allāh says:

“Upon the father is the mothers’ provision...”

{*al-Baqarah* (2): 233}

¹ Translation: ʿAbdulHaq ibn Kofi ibn Kwesi al-Ashantī. From our Shaykh’s Q&A session dated 5th April 2013 CE, after 29 minutes. It can be referred to here:

<http://www.youtube.com/watch?v=PofyyJb9BR4>

The jurists have deduced from this that a child is ascribed to whom? To its father. Woe to you that you say that on the Day of Judgement people will be ascribed to their mothers. The Prophet (*sallallahu 'alayhi wassallam*) stated, as is in Saheeh Muslim, that the betrayer will have a flag on his backside on the Day of Judgement and it will be said that this is the betrayal of so and so. Thus, a person will be ascribed to his father in this life and the next, and the statement that some people say that on the Day of Judgement people will be called by the names of their mothers is incorrect and they base this on when Allāh says:

“[Mention, O Muhammad], the Day We will call forth every people with their record [of deeds].”

{*al-Israa (17): 71*}

This has been interpreted as “by their mothers” – and this is a tafseer of innovation which is incorrect. The intent of “their leader” is not “their mothers”, the basis is for a person to be ascribed to his father and not his mother. However, a youth committed zina, and this is something which happens often with those who live in the West: a youth gets to know a girl, he has his way with her and then immediately she becomes pregnant. He repents, but has a child, and so he marries her after she becomes pregnant. Today in the West a man and women can live together for years unmarried with children and after this lengthy time then they decide to get married?! Unfortunately, this is life in the west. This child is to be ascribed to whom? Its father or mother? The child of zina is the one whom is ascribed to its mother.

The four Imāms and the majority of the people of knowledge ascribe the child, in the example of the case alluded to in the question, to its mother and regard the child as being one of zina who does not inherit from its father unless his father mentions the child in a will as he may mention other strangers. Except for Shaykh ul-Islām Ibn Taymiyyah who, from his fiqh choices, is that the child is ascribed to his father with the condition that the mother is not a prostitute that has had relations with other than the father of the child. If the mother is a prostitute, and Allāh’s refuge is sought, then the child is decisively ascribed to the mother and regarded as a child of zina. Shaykh ul-Islām among all of the people of knowledge says that the woman who has only been in [sexual] contact with the man from whom she became pregnant, and it is certain that the pregnancy is only from him and she is not known to have had relations with anyone else, then in this instance the child is ascribed to its father and not to its mother. He used as a proof for this what was verified from ‘Umar ibn al-Khattāb (*radi Allahu ‘anhu*) in the Musannaf of ‘AbdurRazzāq and others that ‘Umar ascribed men, born in the pre-Islamic times out of wedlock when their mothers had not been married, to their fathers. They stated that this was what ‘Umar

would do when he became aware that their mothers had not been in any [sexual] contact with men other than the fathers of their children.

So all praise is due to Allāh who has given a broad outlook to the Ummah on this issue with this opinion of Shaykh ul-Islām which as you can see has proof in the actions of 'Umar. What has to be mentioned is that every marriage in which there is a prohibition in which the people involved are in doubt then the children are ascribed to their fathers. For example, today people marry according to Shighār, do you know what Shighār is? Shighār marriages are known in our culture today as Zawāj ul-Baladī [Civil Marriage] when a man marries a woman and then her brother marries her husband's sister. In these cases the children are ascribed to their fathers. The prohibition is one thing, and the ascription of the children to either their mothers or fathers is another thing, and Allāh knows best.