

164794 - Can a Woman Marry in Court Without a Guardian in Islam?

the question

My older sister recently signed a marriage contract in the Country of Tunisia with a Muslim Man. She completed the marriage contract without her parents' knowledge or family's knowledge. Although the marriage has not been consummated and there must still be an Islamic marriage contract that must be completed, Tunisian law allows for a woman to make a marriage contract without family presence. My question is whether the marriage contract is halal or haram because of the fact that her family, specifically her parents did not know about the marriage.

Her stance is that she has had very little support from her family to get married as they made little effort in the past to help her find a mate. I personally feel that her marriage is invalid but I don't know as I am not an expert with the laws of Islam. If the marriage is haram what would be the next step, should they file for divorce or something else.

I greatly appreciate it if you can answer this question as this issue is difficult for our family and we need some guidance.

Summary of answer

If an Islamic court approves a marriage without a guardian, the ruling is generally respected. However, for those who wish to be on the safe side, repeating the marriage with the guardian's approval can remove any doubt regarding its validity.

Detailed answer

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What Makes a Marriage Contract Valid in Islam?

In order for a marriage contract to be valid it should be done by [the woman's guardian](#) or representative. The woman does not have the right to give herself in marriage, because the Prophet (blessings and peace of Allah be upon him) said: "There is no marriage except with a guardian." (Narrated by Abu Dawud, 2085; At-Tirmidhi, 1101 and Ibn Majah, 1881, from Abu Musa Al-Ash`ari (may Allah be pleased with him). Classed as authentic by Al-Albani in *Sahih At-Tirmidhi*)

And he (blessings and peace of Allah be upon him) said: "Any woman who gets married without the permission of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid." (Narrated by Ahmad, 24417; Abu Dawud, 2083 and At-Tirmidhi, 1102. Classed as authentic by Al-Albani in *Sahih Al-Jami`, 2709*)

Who Is a Woman's Guardian?

The woman's guardian is her father, then his father (i.e., paternal grandfather), then her son, then his son (i.e., grandson, if she has a son), then her (full) brother through her father and mother, then her brother through her father only, then their sons, then her paternal uncles, then their sons, then the ruler. (*Al-Mughni*, 9/355)

This is the view of the majority of Maliki, Ash-Shafi'i and Hanbali jurists, and it is the correct view that is in accordance with the texts.

Is Marriage Concluded without the Woman's Guardian Valid?

The Hanafis are of the view that [a marriage concluded without the woman's guardian is valid](#), and [some Islamic courts follow this opinion](#).

Because of the difference of opinion among the scholars as to whether this marriage contract is valid, if the judge issued a verdict of validity concerning this marriage, then his ruling is not to be overturned and in that case it is said to be valid, so that there will not be any confusion among people.

What Happens if an Islamic Court Validates a Marriage without a Guardian?

Ibn Qudamah (may Allah have mercy on him) said in *Al-Mughni* (9/346), concerning a marriage contract that is done without a guardian:

“If a judge has ruled that this marriage contract is valid, or if the one who did the marriage contract was a judge, it is not permissible to overturn that. This applies to all other marriages that may be regarded as invalid. And some of the scholars are of the view that it should be overturned because it is contrary to the text. But the former view is more appropriate, because this is a matter concerning which there is a difference of scholarly opinion and differences of opinion are acceptable in this case.” (End quote)

If your sister wants to be on the safe side, and [the parents approve of the marriage](#), then she has to ask her husband to repeat the marriage contract with her father as guardian, so that the marriage contract will be valid beyond any shadow of doubt.

For more details, please see the following answers: [22728](#), [113867](#).

And Allah knows best.