

164794 - She got married without a guardian through the courts

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 families knowledge. Although the marriage has not been consummated and their 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 dont 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 if you can answer this question as this issue is difficult for our family and we need some guidance.

Detailed answer

Praise be to Allah.

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 Dawood, 2085; al-Tirmidhi, 1101; Ibn Majah, 1881, from Abu Moosa al-Ash 'ari. Classed as saheeh by al-Albani in Saheeh 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

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invalid.”

Narrated by Ahmad, 24417; Abu Dawood, 2083; at-Tirmidhi, 1102. Classed as saheeh by al-Albani in Saheeh al-Jami', 2709.

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. See: al-Mughni, 9/355

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

The Hanafis are of the view that a marriage concluded without the woman's guardian is valid, and some 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.

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.

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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.

And Allah knows best.