

173946 - A Christian woman married a Muslim without a wali (guardian); is her marriage valid?

the question

I will apologize in advance for my lengthy questioning. I am a Christian woman who just recently married a Muslim man. Firstly after reading some of the info on your website I am questioning if we are actually married under Islamic law, as since I had no wali, the Imam who performed the nikah became my wali for the ceremony. We are speaking of divorce. He has moved out of my house, and I do not know where he is living. We only communicate via text messaging because he says he cannot control his emotions when talking over the phone. He never actually said I divorce you, but we told others that we were getting a divorce. I told him I don't know how an Islamic divorce actually works, so I will handle the legal documents from the state, and he can handle the Islamic part, but I don't think he even knows how to go about that. I should probably state that we have only been married for four months. I married him two weeks after he was released from prison, because he said that he could not live with me if we were not married. We had a previous relationship with several children involved before he went to prison and became a "practicing Muslim" I agreed to a lot of things in regards to Islam in our household, letting him teach the children about Islam, giving up a male friend that I had for numerous years before I knew him, no pork, no music, no alcohol, dressing conservatively, etc. I even agreed that once we could afford to, I would get my tubal ligation reversed, because he says it is against Islam for my tubes to be tied, (even though the surgery and a future pregnancy has the potential to cause me great harm). I never said that I would stop celebrating some holidays and he agreed. I never promised that I would convert either, but now this is a problem. He feels as though he cannot deal with me because I haven't converted yet. I told him that I used to have a genuine interest in Islam, until he continuously "harassed me about it" I try to hold conversations with him, and he says unless it is about Islam, there is nothing to talk about. We are both not happy, but I don't think that divorce is

Islam Question & Answer

General Supervisor:

Shaykh Muhammad Saalih al-Munajjid

a good idea either. One major issue is that he feels as though I hate Islam, which I don't, but I have said some not so nice things to him about Islam, because he constantly belittles me and is very condescending about my religion. Are we allowed to agree to disagree about our religious views? I also am very concerned that he is talking to women on Facebook, one who he has had a prior sexual relationship with, but he states that it is all innocent, he is only talking with them about Islam, but I was able to see messages where he asked several women if they were married or not, which I don't feel is appropriate. He also made conversation with a woman from another country about flying her here to the US. How can he do this? He is not even taking care of me and our family. He has no money, or work, and I take care of us all, all 13 of us. A lot of things that he does and says seem to push me further away from Islam, because he seems so selfish and I feel like he uses Islam to excuse behaviors that I feel are inappropriate. We were once having relations in the bedroom, and we had not had intercourse yet, but he had already climaxed, so when we tried to have intercourse, because I hadn't yet climaxed of course, he withdrew in the midst of it, got up, and said we'll try later it's time for prayer. I felt very hurt and ashamed, but he said he doesn't have to justify anything to me. I thought Muslims were to treat their wives with kindness. He says that he can't love me because I am not Muslim. Is this true? He also says that I am not allowed to talk to anyone about our marital problems, but what am I to do if I can't even get him to talk to me about our problems? When I bring to his attention about facts in Islam, that he is not adhering to, he states that I am not a believer, and can't tell him anything about Islam. I even told him some information that I learned from this website, that he also frequents, but he still says I have no right to question him, and that I am just fuel for the Hell-fire because obviously Allah has placed a veil over my heart. Please help.

Detailed answer

Praise be to Allaah.

Firstly:

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

In order for the marriage to be valid, it is stipulated that the contract be done by the woman's guardian.

The guardian of a Christian or Jewish woman is a male relative who is a follower of the same religion: her father, grandfather or brother... If there is no such relative or he refuses, then her marriage contract is to be done by the Muslim judge if there is one; if not, her marriage should be done by the director of the Islamic Centre in her locality, because the basic principle with regard to guardianship in the case of marriage is that it belongs to the father, then to male relatives, the closest then the next closest. If there are no male relatives or they are not qualified to be guardians for any reason, or if they refuse for no good reason, then guardianship passes to the ruler or one who takes his place.

Fataawa al-Lajnah ad-Daa'imah, 18/162

If a woman gets married without a guardian or the imam of the mosque does the marriage even though she has a guardian who is of the same religion as her, then there is a difference of opinion among the fuqaha' concerning this marriage, but if it has taken place then it is not to be invalidated, because of this difference of scholarly opinion.

In many Muslim countries the shar'i judicial system is based on the madhhab of Imam Abu Haneefah (may Allah have mercy on him) who said that a woman's marriage without her guardian's consent is valid.

Based on that, if you do not have a guardian who is of the same religion as you, or you have a guardian but he refused to give you in marriage to this man for no good reason, so the imam of the mosque did the marriage for you, then the marriage contract is valid.

If you had a guardian and he did not refuse to give you in marriage, but you gave yourself in marriage or the imam of the mosque did the marriage for you, this is a marriage without a

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

guardian and in principle it is not allowed, but so long as it has taken place, it is not to be invalidated and you are indeed a wife on that basis.

So now you are a wife to this Muslim man, whatever the case.

Secondly:

There is no doubt that Islam has enjoined kind treatment of the wife, as you mentioned. In fact this is something that is well known and is confirmed by a great deal of evidence from the Qur'aan and Sunnah. For example Allah, may He be exalted, says (interpretation of the meaning):

“And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good”

[an-Nisa' 4:19].

And the Prophet (blessings and peace of Allah be upon him) said: “I advise you to treat women kindly.” Narrated by al-Bukhaari, 3331; Muslim, 1468

And he (blessings and peace of Allah be upon him) said: “The best of you is the best of you to his family and I am the best of you to my family.” Narrated by at-Tirmidhi, 3895; Ibn Maajah, 1977. Classed as saheeh by al-Albaani in Saheeh at-Tirmidhi.

Kind treatment includes the following:

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Communicating with the wife, consulting her, discussing matters with her and listening to her advice, even if she is not Muslim.

-2-

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

Giving her her rights to intimacy, and not leaving her until her desire has been satisfied.

Imam Ibn Qudaamah (may Allah have mercy on him) said: It is mustahabb to engage in foreplay with one's wife before having intercourse and to arouse her desire, so that she will get the same enjoyment from intercourse as he does. It was narrated from 'Umar ibn 'Abd al-'Azeez from the Prophet (blessings and peace of Allah be upon him) that he said: "Do not have intercourse until she is as aroused as you are, so that you will not reach climax before she does." I [the narrator] said: Are you telling me that? He said: Yes, you kiss her, touch her and embrace her, and when you see that she is as aroused as you are, then have intercourse with her.

If he reaches climax before her, it is makrooh (disliked) for him to stop until she has also reached climax, because of the report narrated by Anas ibn Maalik who said: The Messenger of Allah (blessings and peace of Allah be upon him) said: "When a man has intercourse with his wife, let him do it wholeheartedly, then when he has fulfilled his desire, he should not rush her until she has fulfilled her desire." And because that is harmful to her and prevents him from fulfilling her desire.

Al-Mughni, 8/136

Both hadeeths are da'eef (weak), but they are sound in terms of meaning and proper understanding.

Al-Manaawi (may Allah have mercy on him) said: When one of you has intercourse with his wife, let him do it wholeheartedly, meaning that he should do it in a loving and way, and do it properly.

If he reaches climax first, when she is aroused, he should not make her rush to reach climax; rather he should give her time until she reaches climax as he did. So he should not leave her until he is certain that she reached her climax. That is part of kind treatment, keeping her chaste and good manners.

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

From this hadeeth and the following one it may be understood that if the man is quick to reach climax and cannot wait until his wife reaches climax, then it is recommended for him to seek treatment that will help him to delay reaching climax.

End quote from Fayd al-Qadeer, 1/325

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Another aspect of kind treatment is not belittling the wife for her religion and addressing her as a “kaafir” (disbeliever), because that is contrary to the command of Allah, may He be exalted, Who says (interpretation of the meaning):

“Invite (mankind, O Muhammad SAW) to the Way of your Lord (i.e. Islam) with wisdom (i.e. with the Divine Inspiration and the Quran) and fair preaching, and argue with them in a way that is better. Truly, your Lord knows best who has gone astray from His Path, and He is the Best Aware of those who are guided”

[an-Nahl 16:125].

And it is going against the command of the Prophet (blessings and peace of Allah be upon him) and his instructions to treat women kindly, as quoted above.

The man who has married a woman of the People of the Book (i.e., a Jewish or Christian woman) married her knowing what her religion was, so what is the point of his criticising her for that or telling her that he will never love her unless she changes her religion?!

Thirdly:

It is not permissible to force a Jewish or Christian wife to become Muslim; rather it is not permissible to force any other people to become Muslim either, because Allah, may He be exalted, says (interpretation of the meaning):

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

“There is no compulsion in religion”

[al-Baqarah 2:256].

Fourthly:

The basic principle is that it is not permissible for a woman to ask for divorce unless there is a reason that makes doing so permissible, such as her husband refusing to spend on her or repeated bad treatment and harshness towards her. Allah has prescribed for us an important way of resolving marital disputes, which is for the woman to choose a man from among her family and the husband to choose a man from among his family, who then examine the causes of the dispute and try to remedy the matter, and decide whether it is better for the marriage to continue or for it to end in divorce.

Allah, may He be exalted, says (interpretation of the meaning):

“If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things”

[an-Nisa’ 4:35].

It is not true that no one should know about marital problems. If there is any dispute and the spouses are not able to resolve it, then there is no option but to seek the intervention of people who could bring about reconciliation between them, examine the causes of the problem and try to resolve it.

We get the sense from your question that you love your husband and want to stay with him, hence we say: do not hasten to seek a divorce; try to remedy these problems. Your husband should understand that he is enjoined to refer to sharee’ah with regard to this dispute.

Islam Question & Answer

General Supervisor:

Shaykh Muhammad Saalih al-Munajjid

This principle, if it is repeatedly applied in your lives, will guarantee both of you happiness by Allah's leave. All disputes should be referred to the laws of Allah in which your husband believes and which you respect: the Book of Allah and the Sunnah of His Messenger (blessings and peace of Allah be upon him), to know what is true and what is false. There are people who are specialised in sharee'ah, so your husband should not refrain from consulting the imam of the Islamic Centre or anyone else who has knowledge of sharee'ah, and discuss the problem with him and seek the Islamic ruling concerning it. Sharee'ah will only guide to that which is good and give you dignity that you seek.

Fifthly:

We also get the sense from your question that you are a reasonable person with sound thinking, and that you were right about all the things you have mentioned in your question, hence we say:

A person like you should not hesitate to join this great religion, for it is the religion that is in accordance with reason and sound human nature, that encourages morality and values, that encourages its followers to treat others kindly, respect their feelings, be considerate towards others, be fair to the weak and respect people. It is a realistic and practical religion, in which there are dozens of texts which address marital problems and social issues; it guarantees happiness for the family, the ummah and mankind.

So our sincere advice to you is to do your utmost in finding out about Islam from valid sources, and do not let the bad conduct of its followers put you off it, for among its followers are righteous and evildoers, those who do good and those who behave badly. This is the case of the followers of all the Prophets.

We are happy to hear that our website is one of the sources that you are referring to.

We ask Allah to open your heart to Islam and guide you to faith, and to decree for you guidance

Islam Question & Answer

General Supervisor:
Shaykh Muhammad Saalih al-Munajjid

and happiness in this world and in the Hereafter.

And Allah knows best.