

183046 - The father said: I give my daughter in marriage to So and so, in front of Muslim witnesses, then he changed his mind and recanted his words

the question

A father says that he gives his daughter in marriage to X in front of Muslim witnesses, including two males, and gives them permission to inform friends and family relatives about it. After everybody has been informed and the boy has given the mehr to the girl, the father changes his mind.

Is it permissible for the father to stop them from starting to live together? Are they considered to be married or not?

Detailed answer

The marriage contract is completed with the proposal and acceptance. The proposal is when the wife's guardian says, "I give So and so to you in marriage." The acceptance is when the groom says, "I accept" or "I accept marriage to So and so." It is not essential for it to be in these exact words; rather the marriage contract is completed by whatever phrases indicate marriage.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: The basic principle is that all contracts are completed by means of whatever signifies them according to custom, whether it is in the words mentioned or otherwise, in the case of the marriage contract and other contracts. This is the correct opinion and it is the view favoured by Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him).

End quote from ash-Sharh al-Mumti', 12/40

And he (may Allah have mercy on him) said: Some of the scholars stipulated specific phrases in some contracts and said that they must be used, as in the marriage contract for example, where they said that it is essential (for the guardian) to say: "I give to you in marriage...", and for (the groom) to say, "I accept."

Other scholars say that all contracts are completed by means of whatever phrases signify them according to custom. This view is the one that is correct, and this is the view favoured by Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him), because transactions are not acts of worship in which one should adhere strictly to what has been narrated; rather they are transactions between people. So whatever people regard as a sale is a sale, whatever they regard as a pledge (or mortgage) is a pledge (or mortgage), whatever they regard as a waqf (endowment) is a waqf, and whatever they regard as marriage is marriage.

The correct opinion is that there is no specific format for any contract; rather the contract is completed by means of that which signifies it, and no one can prove that there is any difference between sale transactions and other types of transactions. If they say, for example, that Allah mentioned marriage by using the word nikaah, we say: likewise, He mentioned sales by using the word bay; are you saying that it is essential to say, “Bi’tu (I have sold)”? They will say that this is not essential, as buying and selling are done by whatever wording signifies that according to custom, with a proposal and acceptance (after the proposal).

End quote from ash-Sharh al-Mumti‘, 8/101

If the father of the girl said: “I have given my daughter in marriage to So and so,” and the husband responded in a way that signified acceptance, then the proposal and acceptance have taken place.

Moreover, there are essential conditions for marriage which must be met: there should be consent from both spouses, and the marriage contract should be done by the woman’s guardian issuing his proposal in the presence of two witnesses. If these conditions were met, then the marriage has been done and the guardian does not have the right to retract it or annul it unless there is a reason that makes annulment permissible, such as annulment due to a physical defect (in one of the spouses) or annulment for going against the conditions.

Our advice is to refer the matter to a scholar whom you trust, so that he can listen to the guardian, and the husband and wife.

We ask Allah to help and guide us and you.

And Allah knows best.