

311438 - Is it permissible for a man to propose marriage to a woman whose previous husband has not divorced her from an improper marriage?

the question

What is the ruling on proposing marriage to a woman whose previous husband has not yet divorced her from an improper marriage?

Detailed answer

Marriages may be divided into three categories:

1. Valid marriage, which is a marriage that meets all necessary conditions.
2. Invalid marriage, which is a marriage on which there is scholarly consensus that it is invalid, such as marrying a woman during her 'iddah [waiting people following divorce or death of the husband], or marriage to a sister through breast-feeding, or if the marriage contract is done without the presence of both the woman's guardian and witnesses.
3. Improper marriage, which is a marriage concerning which there is a difference of opinion as to whether it is valid, such as marriage without the woman's guardian, or marriage without witnesses.

In the case of an invalid marriage, it is as if it never happened in the first place, and there is no need for divorce; rather the couple should be ordered to separate, and a man may propose marriage to a woman whose marriage has been proven to be invalid.

But if her invalid marriage was documented officially, then it must also be nullified officially, lest the woman or her new husband run afoul of the law because of his marrying the woman when she is the wife of another man according to the law.

It says in al-Mughni (7/13): With regard to invalid marriages, such as marriage to a woman who is already married or who is observing 'iddah, and the like, if both parties were aware of what is halaal and what is haraam, then they have committed zina and are subject to the hadd punishment, and any child born as a result is not to be attributed to the man. End quote.

With regard to the improper marriage, it is essential that there be a divorce, or that the judge decreed that they separate. The woman has no right to get married before that.

Ibn Qudaamah (may Allah have mercy on him) said: If the woman entered into an improper marriage, it is not permissible for anyone else to marry her until the first husband divorces her or her marriage is annulled. If he refuses to divorce her, then the judge should declare the marriage null and void. This was stated by Ahmad.

Ash-Shaafa'i said: There is no need for annulment or divorce, because it is like a marriage that has not taken place and is similar to a marriage done during the woman's 'iddah.

In our view: This type of marriage [improper marriage] is based on the view of some scholars, so there is a need to end this marriage through [the decree of judge] so as to separate them, [or through the first husband divorcing her] like a valid marriage concerning which there is a difference of opinion. If he marries her without prior separation [from the first husband], that will lead to two husbands having authority over her, each of them believing that his marriage is valid and that the marriage of the other is improper.

This is in contrast to the invalid marriage with regard to these two points.

If the woman gets married to another man before separation, then the second marriage is not valid either.

End quote from al-Mughni (7/11).

With regard to improper marriages: if the qaadi (judge) does the marriage contract or gives permission for it because he thinks that it is valid – such as marriage without her guardian in countries that follow the Hanafi madhhab – then the marriage is to be approved and not nullified, so how can someone propose marriage to her when this is the situation?

Rather no one has the right to propose marriage to a woman who is married on the basis of an improper marriage in any case, until she is divorced or until the qaadi separates the couple, because she is a wife to whom the rulings on wives having to do with inheritance and other

matters apply. It is not permissible to propose marriage to another man's wife, either explicitly or implicitly.

And Allah knows best.