

7193 - The girl's father disagrees with a marriage –what is the solution?

the question

I have a question regarding marriage. If a father disagrees with a marriage along racial lines or because that person is upon the manhaj of the salaf and there is no Islamic judge in your locality e.g. Caribbean, What should that person do according to the Qur'an and Sunnah?

Detailed answer

Praise be to Allah.

Firstly: it is not permissible for a man to marry a woman without the permission of her walee (guardian), regardless of whether she is a virgin or previously-married. This is the view of the majority of scholars, including al-Shaafai, Maalik and Ahmad. They take as evidence (daleel) the words of the Prophet (peace and blessings of Allaah be upon him):

There should be no nikaah (marriage contract) except with a wali (guardian).

(Narrated by al-Tirmidhi, 1101; Abu Dawood, 2085; Ibn Maajah, 1881. It is saheeh, as stated in Irwaa al-Ghaleel, 6/235, by al-Albaani, may Allaah have mercy on him).

And the hadeeth:

Any woman who gets married without the permission of her wali, her marriage is invalid, her marriage is invalid, her marriage is invalid. If her husband has consummated the marriage, then the mahr belongs to her in return for that. If she does not have a wali then the (Muslim) ruler is the wali of anyone who does not have a wali.

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(Narrated and classed as hasan by al-Tirmidhi, 1102; Abu Dawood, 2083; Ibn Maajah, 1879).

Secondly: if her wali prevents her from marrying the person she wants with no shari reason for doing so, the guardianship passes to someone who is fit to be a wali, so it may pass from her father to her grandfather, for example.

Thirdly: if all her guardians prevent her for no shari reason, then the (Muslim) ruler will be her wali, because of the hadeeth, If she does not have a wali, then the (Muslim) ruler is the wali of anyone who does not have a wali. The ruler here means the judge who rules according to shareeah.

The wali does not have the right to prevent a woman from marrying on the basis of his own whims and with no shari reason.

It was reported that al-Hasan said: Maqil ibn Yassar told me that [this aayah] was revealed concerning him. He said: I married a sister of mine to a man, and he divorced her. When her iddah was over, he came and asked to marry her. I said to him, I married her to you and I treated you well and honoured you, then you divorced her. And now you come asking to marry her! No, by Allaah, she will never go back to you! He was a man who had nothing wrong with him, and the woman wanted to go back to him. Then Allaah revealed this aayah (interpretation of the meaning): do not prevent them [al-Baqarah 2:232]. So I said, Now I will do it, O Messenger of Allaah. So he married her to him.

(Narrated by al-Bukhaari, 4837).

According to another report, he said:

It was concerning me that this aayah was revealed (interpretation of the meaning): And when you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them from marrying their (former) husbands [al-Baqarah 2:232].

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Fourthly: If there is no wali and no shari judge, then her case should be referred to the ruler or whoever is acting in his stead. If there is no such person, then her case should be referred to the shareeah courts. If there is no shareeah court, then her case should be referred to a man who holds a position of leadership among his people and is committed to Islam. If there is no such man, then her case should be referred to any trustworthy and religiously-committed man who is fit to be a wali.

Ibn Qudaamah said: if a woman does not have a wali and there is no ruler, then according to Ahmad, any religiously-committed man may arrange her marriage with her permission.

(al-Mughni, 7/352).

Shaykh Umar Al-Ashqar says:

If there is no Muslim ruler and the woman is in a place where the Muslims do not have a ruler and she has no wali at all, such as the Muslims in America etc., then if there are Islamic organizations in that country which take care of the Muslims affairs, they should step in and take care of arranging her marriage. The same applies if the Muslims have a leader whom they obey or someone who takes care of their affairs.

(Al-Waadih fi Sharh Qaanoon al-Ahwaal al-Shakhsiyyah al-Urduni, p. 70).

All of this [transferring guardianship to someone other than the girls father] must be with the consent of the girl and should not result in greater corruption than preventing you from marrying her. It should also be on the condition that the reason for [the fathers] refusal is invalid according to the shareeah, as you have explained.

Fifthly: it is not permissible for the walee to refuse marriage because the prospective husband does not follow his manhaj of dawah, or because he is not of his tribe or from his country. The Prophet (peace and blessings of Allaah be upon him) commanded us to marry religious people and

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not to refuse them, otherwise corruption and tribulation would be the result.

Abu Hurayrah said: the Messenger of Allaah (peace and blessings of Allaah be upon him) said: If someone whose religious commitment and attitude pleases you proposes marriage, then marry [your female relative under your charge] to him. If you do not do that, there will be tribulation in the land and much corruption.

(Narrated by al-Tirmidhi, 1084; Ibn Maajah, 1967. Classed as saheeh by al-Albaani, may Allaah have mercy on him, in al-Silsilah al-Saheehah. 1022).

Sixthly: by the same token, it is not permissible for a woman to justify a marriage to whomever she wishes on the grounds that this person is following the same manhaj of dawah. It is sufficient for her that the person who is proposing marriage is religiously committed and has a good attitude.

And all parties concerned should remember that their Lord, may He be blessed and exalted, is always watching them.