

91533 - Her guardians are preventing her from getting married and she knows that the qaadi does not deal with such cases

the question

I am a young woman who is nearly 25 years old, and I am not that pretty. No one has proposed marriage to me who has the character, religious commitment and compatibility that I had hoped for. A 28 year old man who is of good character and religiously committed proposed marriage to me, and he is compatible with me in terms of education and social standing, but my family rejected him, not because of any fault in him but because he is not of the same nationality as me.

My family are preventing me from getting married and I want to marry this man, I have become attached to him. I see in him someone who will look after me and protect my religious commitment in this time that is filled with temptations.

In my country, cases of preventing marriage are not dealt with; if the judge does deal with them, he will not rule in favour of the girl, so as to avoid problems. This is based on knowledge from someone who works in the courts.

No one knows about this suitor except my mother and my sister, and two of my four grown up brothers, one of whom hit me and humiliated me because I asked about this, and they forced me to appear normally in front of people, otherwise I would be hit and humiliated again. They are asking me for something I cannot do. I am very upset and depressed. My father is dead and I have a paternal uncle and two cousins, and they are like my family in not wanting me to get married, and even worse. They do not know about this suitor and I am certain that they would prevent me from getting married if they knew about him. It is extremely difficult for me to get in touch with them and tell them, especially my cousins. I do not have any relationship with them and I do not know how to get in touch with them at the time when my brothers are being very stubborn about this issue and mistreating me very badly. Since my brothers do not want me to get married and I already know that my uncle and cousins would not let me get married, in

addition to the harm that may befall me if they knew about it, can I dismiss them as my walis and choose a righteous wali who can arrange my marriage for me without me having to go to the qaadi, because he does not carry out the laws of Allaah? If I do that, will I be disobeying my family and my mother who is objecting to the marriage for the same reason? Please note that she is of the same nationality as this suitor!.

Detailed answer

Firstly:

It is not valid to get married without a wali (guardian), because the Prophet (peace and blessings of Allaah be upon him) said: “there is no (valid) marriage except with a wali (guardian).

Narrated by Abu Dawood (2085), al-Tirmidhi (1101) and Ibn Maajah (1881) from Abu Moosa al-Ash’ari; classed as saheeh by al-Albaani in Saheeh al-Tirmidhi.

And the Prophet (peace and blessings of Allaah be upon him) said: “Any woman who gets married without the permission of her wali, her marriage is invalid, her marriage is invalid, her marriage is invalid... and if there is a dispute, the ruler is the wali of the one who has no wali.”

Narrated by Ahmad (24417), Abu Dawood (2083) and al-Tirmidhi (1102); classed as saheeh by al-Albaani in Saheeh al-Jaami’ (2709).

Secondly:

If the wali refuses to marry the woman under his care to a man who is compatible and of whom she approves, then he is preventing her marriage (‘adl). Some of the scholars stipulated that in order for it to be proven that the wali is preventing marriage, such refusals should have taken place several times. If the wali refuses several times to give her in marriage to a compatible man, then he is preventing her from marrying and guardianship passes to the next closest relative on the male side, then to the qaadi (judge).

Ibn Qudaamah (may Allaah have mercy on him) said: What is meant by preventing marriage is not allowing a woman to marry one who is compatible with her, if she agrees to that and if each one wants to marry the other. Al-Ma’qil ibn Yasaar said: A sister of mine married a man, then he

divorced her. When her 'iddah was over he came and proposed marriage to her (again), and I said to him: "She married you, was intimate with you and honoured you, then you divorced her, and now you come to propose marriage again! No, by Allaah, she will never go back to you." He was a man with whom there was nothing wrong, and she wanted to go back to him. Then Allaah revealed these words (interpretation of the meaning):

"do not prevent them from marrying"

[al-Baqarah 2:232]

I said: Now I will do it, O Messenger of Allaah. He said: So he married her to him. Narrated by al-Bukhaari.

This applies whether she asks to get married with a mahr like that of her peers or for less. This is the view of al-Shaafa'i, Abu Yoosuf and Muhammad.

So if she wants to marry a specific person who is compatible, and he wants to marry her to someone else who is also compatible, and refuses to marry her to the one she wants, then he is preventing her marriage.

But if she asks to marry someone who is not compatible, then he has the right to prevent her from doing that, and he is not (willfully) preventing her in that case.

End quote

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) said: If the guardian refuses to arrange the marriage of a woman to a suitor who is compatible in terms of his religious commitment and good character, then guardianship passes to the next closest male relative on the father's side, then the next closest. If they refuse to arrange her marriage, as usually happens, then guardianship passes to the shar'i judge, and the shar'i judge should arrange the woman's marriage. If such a case comes to him and he knows that the woman's guardians refused to arrange her marriage, then he is obliged to arrange her marriage, because he has general guardianship so long as family guardianship was not achieved.

The fuqaha' (may Allaah have mercy on them) mentioned that if the guardian repeatedly refuses compatible suitors, then he becomes a faasiq (evildoer) as a result; he is no longer regarded as being of good character and his guardianship is waived. According to the well known view of Imam Ahmad, he is no longer qualified to lead prayers, and it is not valid for him to lead a group of Muslims in prayer. This is a serious matter.

As we have referred to above, some people reject the suitors who come to propose marriage to the women over whom Allaah has given them guardianship, even though they are compatible, but the girl may be too shy to go to the qaadi (judge) to ask him to arrange her marriage. This is something that really happens. But the woman should weigh up the pros and cons, and see which is worse: staying without a husband and letting this guardian who fools about and is careless control her life, then when she grows old and has no desire for marriage, he marries her off, or approaching the qaadi with a request to arrange her marriage, which is her shar'i right.

Undoubtedly the second alternative is preferable, which is going to the qaadi and asking him to arrange her marriage, because she is entitled to that, and because going to the qaadi and having the qaadi arrange her marriage is in the interests of other women as well, because other women will come as she has come, and because her coming to the qaadi is a rebuke to those wrongdoers who do wrong to the women whom Allaah has placed under their guardianship by refusing to marry them to compatible suitors. So this serves three interests:

- The woman's own interests, so that she will not be left without a husband
- The interests of others, as it will open the door for other women who are waiting for someone to set a precedent for them to follow
- Preventing these unjust guardians who are controlling the lives of their daughters and other women whom Allaah has placed under their guardianship, on the basis of their whims and wishes.

It also serves the purpose of establishing the command of the Messenger (peace and blessings of Allaah be upon him) who said: "If there comes to you one with whose religious commitment and

character you are pleased, then marry (your female relative under your care) to him, for if you do not do that there will be tribulation in the land and a great deal of corruption.”

And it also serves a specific interest, which is making it easy for those men who propose marriage to women, whose are compatible in terms of religious commitment and character.

End quote from Fataawa Islamiyyah (3/148).

Thirdly:

It seems from your question that your brothers are not preventing you from marrying another man who is compatible, so based on that you should not be hasty. Allaah may send you someone with whose religious commitment and character you are pleased, and your brothers may also approve of him.

And your brothers may have a reason for rejecting this suitor, because he is not of the same nationality as you. It is well known that many problems may arise in such marriages.

If they repeatedly refuse to give you in marriage to one who is compatible with you, then you will have the right to go to the qaadi. If the qaadi is a coward and will not arrange your marriage because he is afraid of your walis, then the only choice you have left is to follow the view of Imam Abu Haneefah (may Allaah have mercy on him) and arrange your own marriage, and this will be a case of necessity.

But it is better for you to refer to a righteous Muslim man to arrange your marriage for you.

This is the ruling in such cases.

But we do not suggest that you should get married without the approval of your family, because those who choose this option usually lose their families for good. Based on that, and before you make a decision, you should weigh up two options:

Either get married in this manner and lose your family, or be patient and wait in the hope that there will come one of whom your family will approve and who will be pleasing to you too.

The choice between these two options will vary according to circumstances. The first choice may be better for one who is older and who is running out of opportunities for marriage. And the second option may be better for one who is younger and hopes that if she waits a year or two, Allaah will send her a righteous husband and will relieve her of her problems.

Finally, the entire matter is in the hand of Allaah, may He be exalted, so you must turn to Him and pray to Him to guide your family and bless you with a righteous husband and righteous children who will bring you joy.

We ask Allaah to make things easy for you and to relieve your distress.

And Allaah knows best.