83782 - Is it permissible for a woman to write marriage contracts?

the question

In our country there are ladies who write marriage contracts. They work as registrars, and as such they write down marriage contracts. I know that one of the conditions for the witnesses and the wali (guardian of the bride) is that they must be male.
Is it permissible for a woman to write the marriage contract?
I hope that you can answer my question. Many thanks.

Detailed answer

Praise be to Allah.

The one who writes down the marriage contract is known as the registrar or by other titles

This is the one who conducts the marriage procedure in accordance with the essential shar'i requirements, and records it in a document called 'aqd al-nikaah (the marriage contract).

One of his duties is to confirm that the bride gives her consent and agrees to this marriage, by consulting a previously-married woman and by asking the permission of a virgin, finding out the conditions stipulated by both parties and ensuring that there are no impediments to the marriage.

His duties also include confirming whether the wali is acceptable as a wali according to sharee'ah or not, and confirming the identity of the witnesses and recording their testimony.

His duties also include documenting the nature and amount of the mahr, whether it has been received by the bride or the wali, or not, and whether there remains any of it to be paid at a later date, or it has been paid in full.

Acting as a registrar is regarded as a branch of the judiciary, in fact the registrar is acting as a deputy of the shar'i judge (qaadi), so the registrar must himself meet some of the conditions that are stipulated for the qaadi, the most important of which are that he should be Muslim, male, an

adult, of sound mind and mature.

It is permissible for a woman to help prepare the marriage contract with regard to the dowry and consent of both parties. But with regard to directly doing the marriage procedure, it is not permissible for her to do that. Concerning this there is a report from ‘Aa’ishah (may Allaah be pleased with her).

It was narrated that Ibn Jurayj said: When ‘Aa’ishah wanted to arrange the marriage of one of her womenfolk, she called some of her family and would recite the shahaadah, and when there was nothing left but the nikaah, then she would say: “O So and so, perform the marriage, for women cannot perform marriages.”

Musannaf ‘Abd al-Razzaaq (6/201); classed as saheeh by al-Haafiz Ibn Hajar in Fath al-Baari (9/186).

It was narrated that ‘Aa’ishah said: If a young man from among her sister’s children liked a young women from among her brother’s children, a curtain would be set up between them and she would speak, and if there was nothing left but marriage she would say: “O so and so, perform the marriage, for women cannot perform marriages.”

Musannaf Ibn Abi Shaybah (3/276)

There was also narrated from ‘Aa’ishah a report which may be misinterpreted as meaning that a women is allowed to conduct marriages, and the Hanafis quoted it as evidence that it is not essential to have a wali for marriage.

It was narrated from al-Qaasim ibn Muhammad that ‘Aa’ishah the wife of the Prophet (peace and blessings of Allaah be upon him) married Hafsah bint ‘Abd al-Rahmaan to al-Mundhir ibn al-Zubayr when ‘Abd al-Rahmaan was away in Syria. When ‘Abd al-Rahmaan came he said: How could such a thing be done to me? How could I be mistreated in such a manner? ‘Aa’ishah spoke to al-Mundhir ibn al-Zubayr and al-Mundhir said: That is up to ‘Abd al-Rahmaan. ‘Abd al-Rahmaan said: I would not undo something that you have decided. Therefore Hafsah remained married to al-Mundhir and

there was no divorce.

Narrated by Maalik (1182). Its isnaad is saheeh.

What they understood from this report is wrong. What the report means is in accordance with what we have narrated from ‘Aa’ishah (may Allaah be pleased with her) above.

Imam Abu Waleed al-Baaji (may Allaah have mercy on him) said:

The words “ ‘Aa’ishah married Hafsah to…” may be understood in two ways:

1 – That she herself did the marriage contract. This was narrated by Ibn Muzayn from ‘Eesa ibn Dinar who said: This is not the usual practice – i.e., the practice of the people of Madeenah at the time when ‘Eesa was there – because Maalik and the fuqaha’ of Madeenah did not regard as permissible a marriage contract done by a woman, and it to be regarded it as invalid whether the marriage is consummated or not.

2 –That she only discussed the mahr and other matters having to do with the marriage, and appointed one of her male relatives to conduct the marriage, but the contract was attributed to ‘Aa’ishah because she is the one who arranged it. It was narrated that ‘Aa’ishah would arrange marriages then say: “Perform the marriage contract, for women cannot perform the marriage contract.” This is what is well known among the Sahaabah, that it is not valid for a woman to perform a marriage contract for herself or for another woman.

Al-Muntaqa Sharh al-Muwatta’ (3/251).

Ibn ‘Abd al-Barr (may Allaah have mercy on him) said:

The words in this hadeeth – ‘Aa’ishah married Hafsah, the daughter of her brother ‘Abd al-Rahmaan, to al-Mundhir ibn al-Zubayr – are not to be taken at face value. What is meant by the words “she married Hafsah to” is – and Allaah knows best –the proposal of marriage and other arrangements concerning the dowry, consent to marriage and so on, not the marriage contract itself. This is based on the hadeeth that is narrated from her, which says that when she had

finished discussing the proposal, dowry and consent to marriage, she would say: “Perform the marriage contract, for women cannot perform the marriage contract.”

He said: The Kufis quoted as evidence the hadeeth of Maalik from ‘Abd al-Rahmaan ibn al-Qaasim from ‘Aa’ishah that is mentioned in this chapter about it being permissible for a woman to perform a marriage contract.

But it cannot be evidence because of the hadeeth of Ibn Jurayj that we have quoted, and because ‘Aa’ishah is the last of those who quoted the Prophet (peace and blessings of Allaah be upon him) as saying: “There can be no marriage without a guardian.” The word wali (guardian) can only be applied to male relatives, not women.

Al-Istidhkaar (6/32).

Conclusion:

It is permissible for a woman to arrange and prepare for a marriage but it is not permissible for her to conduct the marriage herself, because that is the job of the qaadi or his deputy, and one of the conditions of the qaadi is that he should be male.

If the marriage contract has been performed with the consent of both parties and the agreement of the wali, and the woman is appointed to document the marriage contract, such as if she is an employee working in the court or sharee’ah department, and the like, then it seems that there is nothing wrong with that, because the marriage contract has been done, and all she is doing is recording it in a document.

But if she is a witness to the marriage contract or is the one who decides the validity of the witnesses or she is the one who conducts the marriage, instead of the wali, then that is not permissible.

And Allaah knows best.