

## **150788 - Is it permissible for the marriage contract to be done by a more distantly related guardian due to social reasons?**

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### **the question**

Is it permissible for the marriage contract to be done by a guardian who is more distantly related than the original guardian when the latter is available, due to social reasons?

### **Detailed answer**

Firstly:

Guardianship with regard to marriage is a very serious matter, which Allah, may He be glorified and exalted, has prescribed for His slaves to protect women and their rights, and to look after their interests. Therefore Islam does not allow the woman to be in charge of the marriage contract, whether for herself or for anyone else, and it does not allow her to choose her guardian for marriage or to appoint her own proxy. Rather there is a prescribed order of precedence, and it is not up to people to choose.

Al-Bahuti (may Allah have mercy on him) said:

The father of a free woman is to be given precedence in arranging her marriage, because he has more insight into what is best for her and is more compassionate towards her. Next in order of precedence comes his proxy, meaning the proxy of the father who acts on his behalf in doing the marriage contract. Next in order of precedence comes the paternal grandfather or great-grandfather..., no matter how far the line of ascent reaches, the closest then the next closest, because he is an ancestor and is a male relative on the father's side, so he is like the father. Then comes her son, then his son or grandson..., no matter how far the line of descent reaches, the closest then the next closest, because of the report narrated by Umm Salamah, which says that when her 'iddah ended, the Messenger of Allah (blessings and peace of Allah be upon him) sent word to her, proposing marriage, but she said: O Messenger of Allah, none of my guardians are present. He said:

"None of your guardians, present or absent, would disapprove of that." So she said [to her son]: O 'Umar, get up and give your mother in marriage to the Messenger of Allah (blessings and peace of Allah be upon him), and he did so. Narrated by an-Nasa'i. Next in order of precedence comes the woman's brother through both parents (full brother), then her brother through the father (half-brother), as in the case of inheritance, then their sons or grandsons..., no matter how far the line of descent reaches. Precedence is given to sons and grandsons of her brothers who are connected to her through both parents over those who are connected to her only through the father, if they are equal in degree, the closest then the next closest. Then comes her paternal uncle who is a full brother to her father, then the paternal uncle who is a brother to her father through their father only, because of what is noted above. Then come the sons of the paternal uncles, according to what was mentioned above regarding inheritance. Then come the closest of male kin on the father's side, as in the case of inheritance. The most entitled of the male kin after the brothers with regard to inheritance are the most entitled with regard to guardianship, because guardianship is based on compassion and seeking what is in the best interests of the woman under their guardianship, and that is achieved when there are ties of kinship. Then comes the master who has manumitted his slave, because he may inherit from her and is required to pay blood money on her behalf [if that is needed]. Then come the closest of the former master's kin on his father's side, in the same order of precedence as for inheritance. If there are no such relatives, next in order of precedence comes ties of wala' as mentioned above, then the ruler - which refers to the leader or his deputy. Ahmad said: I prefer the judge to the governor in this matter. If none of them is available, then anyone with authority in the place where the woman lives may give her in marriage." (*Ar-Rawd al-Murbi'* 335-336).

Shaykh Ibn 'Uthaymin (may Allah have mercy on him) said:

There are five categories of guardianship with regard to marriage: fathers, then sons, then brothers, then paternal uncles, then wala'. If they are all of the same degree of kinship, then precedence is given to the one who is most closely related, and the one who is most closely related is the one whose lineage meets with the lineage of the woman whose

marriage is to be arranged before that of the other one. So the one who has a common ancestor within three generations is closer than the one who has a common ancestor within four, and so on. If they are of the same degree, then the one who has stronger ties takes precedence. So if there is a full brother and a brother through the father only, the full brother is the guardian."(*Ash-Sharh al-Mumti'* 12/84).

Secondly:

It is essential to pay attention to the order of precedence between guardians, based on what has been noted above. Therefore it is not permissible to give precedence to the more distantly related guardian over the more closely related guardian with regard to doing the marriage contract.

Ibn Qudamah (may Allah have mercy on him) said:

If the more distantly related guardian gives her in marriage in the presence of the more closely related guardian, and if she agrees to him giving her in marriage without the permission of the more closely related guardian, then the marriage contract is not valid. This is the view of ash-Shafa'i.

Malik said: The marriage contract is valid, because he is a guardian and has the right to give her in marriage, with her permission, like the one who is more closely related.

In our view, this guardianship is based on being a male relative on the father's side, and this cannot be allowed for one who is more distantly related when one who is more closely related is there, as in the case of inheritance."(*Al-Mughni* (7/364); see also: *al-Mawsu'ah al-Fiqhiyyah* 33/90).

Al-Bahuti (may Allah have mercy on him) said:

If a guardian who is more distantly related gives her in marriage, or a non-relative gives her in marriage, even the ruler, without there being any reason for the guardian who is more closely related not being able to be present, then the marriage is not valid, because the one

who did the marriage contract on her behalf has no right to guardianship over her when the one who has the right to guardianship is present."(*Ar-Rawd al-Murbi'* 336).

One of the valid excuses which make it permissible to overlook the more closely related guardian for one who is more distantly related than him with regard to doing the marriage contract is if he is not qualified to do the marriage contract.

Al-Hajawi (may Allah have mercy on him) said in *Zad al-Mustaqni'*:

If the close relative refuses to give her in marriage (to a compatible suitor) or is not qualified to do that, or he is away travelling and cannot come except with difficulty and hardship, then a more distant relative may give her in marriage.

Shaykh Ibn 'Uthaymin (may Allah have mercy on him) said in *ash-Sharh*:

Saying that he is not qualified to be a guardian means that he is not qualified for that because he is a minor or an evildoer or is of a different religion and the like, because if the guardian is available but is not qualified, it is as if he is not there, because there is no benefit in his being available."(*Ash-Sharh al-Mumti'* 12/89).

Conclusion: it is not permissible for the more distantly related guardian to do the marriage contract when a more closely related guardian is present, unless there is a legitimate excuse which makes doing that permissible.

If the social reasons mentioned in the question prevent the more closely related guardian from doing the marriage contract – such as if he is incompetent or unable to do the right thing, or he is an evildoer, or other legitimate reasons – then it is permissible for the more distantly related guardian to do the marriage contract.

But if the social reasons have nothing to do with the impediments mentioned in Islamic teachings, then they carry no weight and it is not permissible to use that as an excuse to overlook the more closely related guardian and transgress his right to guardianship that Islam has granted to him.

If people need, for some reason, for the marriage contract to be done by a more distant relative, and the closer relative agrees to that, then the closer relative may appoint the more distant relative, or someone else who is qualified to do the marriage contract, as a proxy, even if he is not a guardian at all.

The scholars of the Permanent Committee were asked:

Sometimes a woman's brother does the marriage contract for her, even if her father or grandfather is present, because he has delegated him to do that and has agreed to it. Is the marriage contract valid if it is done in this way? In other words, if a more distantly related guardian does the marriage contract even though a more closely related guardian is present, with his consent?

They replied:

If the more distantly related guardian of the woman does the marriage contract in the presence of the more closely related guardian, without a legitimate reason for the original guardian not to do it, and without him being appointed as a proxy by the more closely related guardian, then the marriage contract is invalid, and the marriage is not valid in this case, because he has no guardianship over the woman when the one who is entitled to guardianship, namely the more closely related guardian, is present.

But if the one who is entitled to do the marriage contract for the woman gives up the right to guardianship to one who is more distantly related than him, or he appoints as a proxy someone who is qualified to be a guardian to do the marriage contract for the woman under his care, it is permissible for him to do the marriage contract and the marriage is valid, because it is a right of his that he has given up to the one whom he has appointed as his proxy, so the latter takes his place.

Based on that, it is permissible for the brother to do the marriage contract for his sister, if the guardian who is more entitled to do the marriage contract for her appointed him as his proxy and delegated him to do that.

And Allah is the source of strength. May Allah send blessings and peace upon our Prophet Muhammad and his family and companions.

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End quote from *Fatawa al-Lajnah* (18/174).