

7989 - He married a woman without a guardian

the question

I am in a foreign land and married a Christian girl who is also a foreigner in that country. Both of us do not have any relatives or friends or contacts in that country. I proposed to her and she accepted so I read the marriage statements and she accepted and then I read the marriage statement for my acceptance. I forgot the Mehr in statement but later paid some amount to her. There was no guardian for her as she is adult and independent and we could not arrange any witness. Question is:

1. Whether this is a valid religious marriage and is it not sin in Islam as we do not care for the social or legal aspect because we are foreigners. In other word we married keeping in view our God and do not want to be punished by God on day of judgment. (We lived like man & wife for some days).
2. As I was not sure about religious aspect of this marriage, we mutually decided that I should divorce her, and I did. Is it OK?
3. Do I need to marry her again if our marriage was not OK, in front of witnesses and any Guardian / Wali to relieve myself of any sin.

Detailed answer

Firstly:

It is not permissible for a man to marry a woman without the permission of her guardian, whether she is a virgin or previously-married. This is the view of the majority of scholars, including al-Shaafa'i, Maalik and Ahmad. This is based on evidence which includes the following:

The verses in which Allaah says (interpretation of the meaning):

“do not prevent them from marrying their (former) husbands”

[al-Baqarah 2:232]

“And do not marry Al-Mushrikaat (idolatresses) till they believe (worship Allaah Alone)”

[al-Baqarah 2:221]

“and marry those among you who are single”

[al-Noor 24:32]

The point here is that these verses clearly stipulate that there be a guardian in marriage, because Allaah is addressing the guardian with regard to the marriage of the woman under his care. If the matter were up to her and not him, there would be no need to address him.

It is indicative of Imam al-Bukhaari’s deep understanding of issues of sharee’ah that he quoted these verses in a chapter which he entitled “Baab man qaala la nikaaha illa bi wali (Chapter on those who say that there is no marriage without a guardian).”

It was narrated that Abu Moosa said: The Prophet (peace and blessings of Allaah be upon him) said: “There is no marriage without a guardian.”

(Narrated by al-Tirmidhi, 1101; Abu Dawood, 2085; Ibn Maajah, 1881. Classed as saheeh by Shaykh al-Albaani (may Allaah have mercy on him) in Saheeh al-Tirmidhi, 1/318)

It was narrated that ‘Aa’ishah (may Allaah be pleased with her) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: Any woman who gets married without the permission of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. But if the marriage is consummated then the mahr is hers because she has allowed him to be intimate with her. If they dispute, then the ruler is the guardian of the one who has no guardian.”

(Narrated by al-Tirmidhi, 1102; Abu Dawood, 2083; Ibn Maajah, 1879. Classed as saheeh by al-Albaani in Irwa’ al-Ghaleel, 1840)

Secondly: If her guardian prevents her from marrying the person she wants for no valid reason according to sharee’ah, then the role of guardian passes to the next closest relative, so it passes from the father to the grandfather, for example.

Thirdly: if all of her guardians prevent her from getting married for no valid reason according to sharee'ah, then the ruler is her guardian, because of the hadeeth quoted above ("...If they dispute, then the ruler is the guardian of the one who has no guardian")

Fourthly: if there is no guardian and no ruler, then her marriage is to be arranged by a man who has authority in the place where she is, such as the head of a village, or the governor of a province, and so on. If there is no such person, then she should appoint a trustworthy Muslim man to arrange her marriage.

Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) said:

If there is no relative who can act as her guardian, then the position of guardian passes to the one who is most fit among those who have any kind of authority in matters other than marriage, such as the head of a village, the leader of a caravan, and so on.

Al-Ikhtiyaaraat, p. 350.

Ibn Qudaamah said: If a woman does not have a guardian and there is no ruler, then there was narrated from Ahmad that which indicates that her marriage should be arranged by a man of sound character, with her permission.

Al-Mughni, 9/362.

Shaykh 'Umar al-Ashqar said:

If there is no ruler of the Muslims, or if the woman is in a place where the Muslims have no ruler, and she has no guardian at all, like the Muslims in America and elsewhere, if there are Islamic institutions in that country that take care of the Muslims' affairs, then they should arrange her marriage. The same applies if the Muslims have a leader who is in charge or someone who is responsible for their affairs.

Al-Waadih fi Sharh Qanoon al-Ahwaal al-Shakhsiyyah al-Urduni, p. 70

The marriage contract must be witnessed by two adult male Muslims of sound mind. See question no. [2127](#).

Hence you have to repeat your marriage contract, and it is essential that the woman's guardian be present, as stated above, as well as two witnesses.

And Allaah knows best.