

Guardian preventing guarded woman from marrying

Shaykh Aboo `Abd-al-Mu`iz `Alee Farkous al-Qoobee

Article taken and slightly adapted from: ferkous.com

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

Question: A man whose wife has died, has a daughter of marriageable age. Many suitors came to ask for her hand, but her father did not accept any of them, in order to let her at his service. His daughter fears that if she remains till a late age, she will not get married. So, does the guardianship move from the father to another, in order to remove the harm from her?

Answer: All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers till the Day of Resurrection.

We distinguish in the fact of a guardian refusing the marriage of his ward between two cases:

- If the guardian refuses to marry his ward for legal and acceptable reasons (in relation to Sharee'ah) as if the suitor is not compatible with her, or because there is another suitor who is more suitable in view of his religious commitment and good character; his guardianship remains then valid and it is not transferred to another person.
- However, if the refusal is based upon reasons which contain injustice and infringement on her rights for marriage, like if a suitor whose religious commitment and character are good asks for her hand, but the guardian refuses to marry her, this is then preventing his ward from marriage. The guardian has not the right to do such thing and it is unanimously considered forbidden by the scholars, as it is reported by Al-Bukhaaree and others: "That the sister of Ma`qil Ibn Yassaar was given in marriage to a man who later divorced her and kept away from her till her period of `Idda¹ expired. When he demanded her hand in marriage, Ma`qil got angry out of pride and haughtiness and said, "He kept away from her when he could still retain her, and now he demands her hand again?" So, Ma`qil disagreed to remarry her to him. Then Allaah revealed:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ ...

[And when you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them...]²,

until the end of the verse.³

¹ Allaah's prescribed waiting period for a woman after divorce or death of her husband, after the expiry of which she can remarry another person. (See the Qur'aan, Soorah at-Talaaq 65).

² Soorah al-Baqaraah [2:232]

Guardian preventing guarded woman from marrying

So, the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ sent for Ma`qil and recited to him (Allaah's order) and consequently Ma`qil gave up his pride and haughtiness and yielded to Allaah's order."⁴

As for the case of preventing the woman from marriage, the guardianship is transferred directly to the general authority, namely that of the Muslim judge if the matter is carried before him, and it will not be transferred to the one who comes after the main guardian among the legal guardians, since preventing from marriage is an injustice, and the authority of removing injustice is attributed to the Muslim judge.

However, if there is no Muslim judge, or it is difficult for the woman to reach him, then one of his guardians who come after the guardian who prevented her from marriage will marry her, and his guardianship will be considered in this case by way of arbitration, and "**The one we appoint as a judge is a substitute for the ruler**" as it is established by Ash-Shaafi'ee.

As for the father, he can get married with a woman who will be at his service. If the woman does not find an official Imaam, then any believer can be her guardian and marry her, in accordance with Allaah's عَزَّ وَجَلَّ saying:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ

[The believers, men and women, are Auleeyaa' (helpers, supporters, friends, protectors) of one another]⁵

The perfect knowledge belongs to Allaah عَزَّ وَجَلَّ. Our last prayer is all praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon our Prophet, his Family, his Companions and Brothers till the Day of Resurrection.

Algiers, Dhu Al-Qa`da 2nd, 1417H. Corresponding to: March 11th, 1997.

³ The rest of the verse: "...from marrying their (former) husbands, if they mutually agree on reasonable basis. This (instruction) is an admonition for him among you who believes in Allaah and the Last Day. That is more virtuous and purer for you. Allaah knows and you know not."

⁴ Reported by Al-Bukhaaree, chapter of "Divorce", concerning the fact that "...their husbands have the better right to take them back" in that period, and how could one take his wife back within the prescribed period (of `Idda) if he divorced her once or twice (hadeeth 5331), on the authority of Ma`qil Ibn Yassaar رَضِيَ اللهُ عَنْهُ.

⁵ Soorah at-Tawbah [9:71]