159297 - Marrying a Christian woman without a wali (guardian) or witnesses

the question

I wanted to take a second wife, and because it is difficult to convince my first wife and my community about this wish, and to avoid breaking up my marriage and causing trouble to my family from my first wife, I could find no solution more suitable then marrying a Christian woman who I had got to know in a foreign country. My marriage to her was done as follows: I informed her of my wish to marry her, and she agreed to be my wife. But she did not have any guardian, because her father is Christian and would never accept her marrying a Muslim, and he does not care about her anyway. So she gave herself to me in marriage without a wali (guardian), and I followed the view that it is permissible for a previously married woman to give herself in marriage. Because we met in a foreign country, where I do not know anyone who could witness the marriage, I followed the view that the testimony of two witnesses to the marriage can be replaced by an announcement, because the purpose served is the same. So I contacted two sincere friends by phone and informed them of this marriage, so that announcement of the marriage could be done, and I informed others after that. I also gave her a mahr (dowry) and informed her that this mahr is her right as a wife. The mahr was in the form of a gold ring. I told her that this marriage was witnessed by Allah and that she was like a wife to me, and she had to be sincere to me as a wife and not commit any sin. She agreed to marriage on the basis of these conditions, and we got married and lived as husband and wife. Nevertheless I fear Allah, may He be glorified and exalted, and I am afraid that everything I have done may be invalid and subject to the ruling on zina (adultery or fornication). Recently I have been faced with some problems in my work and with my first wife, and I am afraid that Allah is punishing me. Yet I do not think there is anything wrong with my second marriage; she is Christian and has sacrificed a great deal. She has given up many of the rights that she has over me, and she understands my situation. She agreed to be my wife and she obeys me in what I have asked of her. I hope that there is nothing wrong with this second marriage of mine, even though I know that it goes against the conditions of marriage on which there is scholarly consensus, but I followed the opinions of respectable scholars. What is your

opinion?

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible for a Muslim to follow whatever he wants of opinions, even if they were stated by some of the scholars, because by doing that he is following his whims and desires and is not following the laws of Allah.

Rather what he must do – if he is able to – is to follow the most correct opinion which is supported by shar'i evidence. If he is not able to weigh up which of the opinions is most correct, then he should ask someone whose knowledge and religious commitment he trusts, and follow the advice he gives him.

Secondly:

For marriage to be valid, it is stipulated that the wali (guardian) of the woman be present, and it is not permissible for the woman to do the marriage contract for herself, because the Prophet (blessings and peace of Allah be upon him) said: "There is no (valid) marriage except with a wali." Narrated by Abu Dawood, 2085; classed as saheeh by al-Albaani in Irwa' al-Ghaleel, 1839. And he (blessings and peace of Allah be upon him) also said: "Any woman who gets married without the permission of her wali, her marriage is invalid, her marriage is invalid, her marriage is invalid." Narrated by Ahmad, 24417; Abu Dawood, 2083; at-Tirmidhi, 1102; classed as saheeh by al-Albaani in Saheeh Abi Dawood.

In that regard it makes no difference whether the woman is a virgin or previously married.

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

One of the conditions of the marriage contract being valid is that it should be done by the wali

(guardian), whether the woman is a virgin or previously married, because the Prophet (blessings and peace of Allah be upon him) said: “There is no (valid) marriage except with a wali.” End quote.

Majmoo‘ Fataawa Ibn Baaz, 21/39

If her father did not agree to this marriage because he did not want her to marry a Muslim, then guardianship passes to the next closest of her guardians, such as her brother, then her paternal uncle. If all of them refuse, the head of the Islamic Centre in her city can give her in marriage; if that is not applicable, then the imam of the Jaami‘ mosque may do that.

The majority of scholars are of the view that the marriage contract is not valid except in the presence of two witnesses to the marriage contract, because the Prophet (blessings and peace of Allah be upon him) said: “There is no (valid) marriage except in the presence of the wali and two witnesses of good character.” Narrated by al-Bayhaqi, 14086; classed as saheeh by al-Albaani in Saheeh al-Jaami‘, 13515.

Some of the scholars stipulated that the marriage must be announced publicly in order for it to be valid. According to these scholars, the announcement must come before consummation of the marriage. Telling two men about it does not constitute a public announcement.

Based on that, the marriage contract that you did is not valid, and you should not be intimate with her until after a new marriage contract which is done correctly, in accordance with the conditions stipulated in sharee‘ah.

The scholars of the Standing Committee for Issuing Fatwas was asked about a Muslim who marries a Christian woman without the permission of her guardian. They replied:

The marriage contract is not valid unless it is done in the presence of the wali and two witnesses of good character. It is not permissible for the woman to do the marriage contract for herself, because the Prophet (blessings and peace of Allah be upon him) said: “There is no (valid) marriage except in the presence of the wali and two witnesses of good character.” And he (blessings and

peace of Allah be upon him) said: “A woman cannot give another woman in marriage, and a woman cannot give herself in marriage.” Based on that, the marriage contract mentioned in the question is not valid, and it must be done again with the wali of the woman.

A kitaabi (i.e., Jewish or Christian) woman may be given in marriage by her father. If he is not present or he is present but refuses, the closest of her male relatives on her father’s side may give her in marriage. If they are not present, or they are present but refuse, the Muslim qaadi (judge) may give her in marriage; if there is no Muslim qaadi, then the head of the local Islamic centre may give her in marriage, because the shar‘i evidence from the Qur’an and Sunnah indicates that. End quote.

Fataawa al-Lajnah ad-Daa’imah, 18/180-181

Shaykh Muhammad ibn Ibraaheem (may Allah have mercy on him) was asked about a man who married an Australian Christian girl in London, and the wife gave herself in marriage without the presence of a wali. There was no mention of the value of the mahr (dowry) in the marriage contract, and it was not attended by any witnesses apart from a Muslim man and a Christian woman who was the mother of the bride. In the wedding party there were some Christian girls and friends of the bride, along with the Christian registrar. Four years later, the wife became Muslim and she has two children from him. She is asking about the validity of her marriage contract; if it is not valid, then how can it be made valid?

He replied: With regard to the marriage contract that you describe, it is not valid, because the wali and two witnesses were not present. The Prophet (blessings and peace of Allah be upon him) said: “There is no marriage except in the presence of the wali and two witnesses of good character.” With regard to not stating the mahr in the marriage contract, that does not affect anything.

The way to correct it is to bring her wali to the registrar to do the marriage contract for her to the husband mentioned, after obtaining her approval and consent. This should also be attended by two witnesses of good character. If she does not have a wali, then her wali is the shar‘i judge; she should give him permission to do her marriage contract. There is no sin on them for what has

passed, and their children are legitimate and it is correct to call them after their father, if they believed that the marriage contract was valid, because this comes under the heading of a marriage that was thought to be legitimate. End quote

Fataawa wa Rasaa'il Muhammad ibn Ibraaheem, 10/68

And Allah knows best.