278709 - Marrying with the Intention to Cover Up a previous marriage and Miscarriage

the question

I am a young man, twenty-three years old. I fell in love with a girl in university, and we agreed to get married. After we graduated, I went to her father to speak to him, and he agreed initially. I sent my mother to their house, but her mother refused to meet my mother, and there was some trouble between my mother and hers. Then my mother and my father completely refused to let me marry this girl, and I told her that we would never get married. We stayed away from one another for two months, then we started to talk to one another again. I went to her father without my family's knowledge, but he refused and stipulated that my family should agree to the marriage. Then she and I agreed to get married without anyone's knowledge, and we got married unofficially, and our marriage lasted for a year and a half, until there happened what was not expected. When her pregnancy was in the early stages, we agreed to work to convince our families and get married as quickly as possible, and we tried hard, but without any success. But Allah's help came and the pregnancy did not go to full term (there was a miscarriage). We decided to keep away from one another until we could get married officially, and until our families were convinced and agreed to that marriage. We set a date to do the marriage contract, then two days before that date, one of my relatives died, so we delayed the marriage. After that there were some more troubles between my mother and the girl, and that affected my mother's health. Because I am the only son, I contacted that girl and told her that we can never get married. We stayed away from one another for six months, then I realized that what I had done was wrong and it incurs Allah's anger. Then I repented to Allah, may He be Glorified and Exalted, and I went to do Hajj and `umrah, and ask Allah to forgive me. Then she contacted me again, and she wants me to marry her officially then divorce her, so that she will not be exposed to shame before her family. If her family do not agree, and I marry her without her father's knowledge, then divorce her, or I do not marry her officially, is there any sin on me? What should I do?

Detailed answer

Praise be to Allah.

Firstly:

An unofficial marriage done without a guardian is an unlawful and invalid marriage, and if the one who does that is aware of the prohibition on it, he is a zani (fornicator).

That is because marriage to a woman is not valid except with a guardian, because the Prophet (blessings and peace of Allah be upon him) said: “There is no marriage except with a guardian.” Narrated by Abu Dawud (2085), at-Tirmidhi (1101) and Ibn Majah (1881) from the hadith of Abu Musa al-Ash`ari; classed as authentic by al-Albani in *Sahih at-Tirmidhi*. And he (blessings and peace of Allah be upon him) said: “There is no marriage except with a guardian and two witnesses of good character.” Narrated by al-Bayhaqi from the hadith of `Imran and `A’ishah; classed as authentic by al-Albani in *Sahih al-Jami`*, no. 7557.

This is the view of the majority of jurists, the Malikis, Shafa`is and Hanbalis, and it is the correct view, which is in accordance with the religious texts.

The Hanafis are of the view that marriage is valid without a guardian, and some courts follow their view.

As there is a difference of scholarly opinion regarding the validity of this marriage, if the judge rules that it is valid, his verdict is not to be overturned.

Ibn Qudamah (may Allah have mercy on him) said: If a judge rules this marriage contract to be valid, or if the one who did the marriage contract was a judge, it is not permissible to overturn it. The same applies to other invalid marriages.(*Al-Mughni*, 7/6).

But if the marriage was unofficial and was not done by the woman’s guardian or his proxy, and a Muslim judge did not deem it to be valid, and it was not announced and publicized among people, then it is to be overturned and the man and woman are to be separated.

Secondly:

You do not have to marry this woman, but if you want to try again to persuade your mother to agree, and then marry this woman in a valid marriage with the aim of remaining married and not with the aim of divorce, then there is nothing wrong with you doing that.

But if the woman regrets what she did and has repented to Allah, may He be Exalted, we encourage and urge you to do that, because you both made this mistake together, so you should both cooperate in bearing the consequences, for this, if it does not come under the heading of justice, it could come under the heading of decency and showing kindness.

It will also protect her from scandal and avoid exposing her errors to people, as is quite obvious. It was narrated from `Abdullah ibn `Umar (may Allah be pleased with him) that the Messenger of Allah (blessings and peace of Allah be upon him) said:

“The Muslim is the brother of his fellow Muslim; he does not wrong him or let him down. Whoever meets the needs of his brother, Allah will meet his needs. Whoever relieves a Muslim of distress, Allah will relieve him of distress on the Day of Resurrection. Whoever conceals a Muslim, Allah will conceal him on the Day of Resurrection.”

This will be an act of kindness towards her on your part, but… before that she must repent to Allah, may He be Exalted, from what she did.

See also the answer to question no. 117567.

Thirdly:

Temporary marriage is not permissible, whether that is clearly stated in the marriage contract, or it states that he will divorce her after a specific period, or both parties implicitly agreed to that.

It says in *Kashshaf al-Qina`* (5/97): It [mut`ah or temporary marriage] is when a man marries a woman for a certain period, whether it is known or not, such as if the guardian says: I give my daughter to you in marriage for a month or a year, or I give her to you in marriage until the end of

the season, or until the pilgrims return, and so on, whether the length of that period is known or not.

If the husband stipulates in the marriage contract that he will divorce her at some time, even if it is unknown, then this is like mut`ah, so it is not valid. End quote.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said, when speaking of the invalidity of tahlil marriage [in which a man marries a woman whose former husband has divorced her irrevocably, consummates the marriage with her, then divorces her so that she can go back to the previous husband]:

Whether that is stipulated in the marriage contract, or stipulated before the marriage contract, or it was not stipulated verbally, but there was implicit agreement between them at the time of the proposal and that was reflected in the circumstances of the man and the woman and in the mahr, which was like a stipulated condition.(*Bayan ad-Dalil `ala Batlan at-Tahlil*, in *Al-Fatawa al-Kubra*, 6/8).

Fourthly:

If it is not possible to marry this woman, and there is no way to do that for some reason or another, then what you must do is stay away from her and beware of the tricks of the Shaytan, as Allah, may He be Exalted, says:

{O you who believe, do not follow the footsteps of the Shaytan; whoever follows the footsteps of the Shaytan, he only enjoins indecency and wickedness. Were it not for the grace and mercy of Allah towards you, not one of you would ever have been purified. But Allah purifies whomever He wills, and Allah is All-Hearing, All-Knowing} [An-Nur 24:21].

You should pray a great deal for forgiveness and do a lot of righteous deeds, in the hope that Allah will accept your repentance, as He says:

{Verily, I am Oft-Forgiving to those who repent and believe, and do righteous deeds, then remain steadfast} [Ta-Ha 20:82].

And Allah knows best.