32580 - Should she complain to the qaadi because her father is not letting her get married?

the question

I have a friend who is 28 years old, and a young man has proposed marriage to her. He is religiously-committed and of good character, and he comes from a rsespectable family, as her own family have attested, because they know him from before. My friend was astonished when her father and mother refused this man, even though they praised his religious-commitment and good character. The reason they gave for their refusal was that he is not from their tribe, and it is a shame for them to let their daughter marry someone who is not from their tribe. My friend tried every way to convince them, but without success. She asked some people to speak to her father and two of her male cousins went and asked about the man and found out that he is good, and they went to her father (to convince him to let her marry him), but without success. She tried to remind her father that she is getting too old and has few chances of marriage, and she told him that Allaah would punish him, but without success, because he is under the thumb of the mother who does not want her to get married, not because of tradition or custom, but because she wants her to find a job as a teacher so she can take her salary. This is the problem. My question is, should this girl go to the court so that the qaadi will marry her to this young man? Will that take a long time before the marriage is done, i.e., will the qaadi summon her father and will there be lengthy procedures? This makes her afraid because if she goes to the court the first time and the judge makes an appointment for the hearing on another day, her family may prevent her from attending and the matter may be decided without her being present. Please advise us on this matter, may Allaah reward you with good.

Detailed answer

Praise be to Allah.

Parents’ insisting on marrying their daughters to men from the same tribe, even if that means

delaying their marriage, is a serious wrongdoing and a betrayal of the trust which Allaah has given to them.

The evil consequences which come from denying women the opportunity to get married, or delaying it, are known only to Allaah. Anyone who looks at the state of society will see that clearly.

The Prophet (peace and blessings of Allaah be upon him) referred to these evil consequences when he said: “If there comes to you (to propose marriage to your daughter) one with whose religious commitment and character you are pleased, then marry (your daughter) to him, for if you do not do that, there will be fitnah (tribulation) on earth and widespread corruption.” Narrated by al-Tirmidhi, 1084, from Abu Haatim al-Muzani. This hadeeth was classed as hasan by al-Albaani in Saheeh al-Tirmidhi.

If a man prevents a female relative under his guardianship from marrying a man who is compatible and who is religiously-committed and of good character, then guardianship passes from him to the next (relative) in line.

Ibn Qudaamah (may Allaah have mercy on him) said: “Preventing a woman from marrying means preventing a woman from marrying a compatible man if she wants to get married and if each of them wants to marry the other. Ma’qil ibn Yassaar said: I married a sister of mine to a man, then he divorced her. When her ‘iddah ended, he came to propose marriage to her again. I said to him, ‘I married her to you, I was kind and I honoured you, then you divorced her, and now you come proposing marriage again! No, by Allaah, she will never go back to you.’ There was nothing wrong with the man, and she wanted to go back to him. Then Allaah revealed the words (interpretation of the meaning):

‘do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis’

[al-Baqarah 2:232]

I said, ‘Now I will do that O Messenger of Allaah.’ So he married her to him. Narrated by al-Bukhaari.

It is the same whether she asks for marriage with a mahr like that of a woman of equal standing to her, or with less. This is the view of al-Shaafa’i.

If she wants to marry someone of equal standing, and the wali wants to marry her to a different person of equal standing, and he refuses to marry her to the person whom she wants to marry, then he is preventing her from marrying.

But if she wants to marry someone of different standing, then he has the right to stop her, and in this case he is not preventing her from marrying in the wrongful sense.

Al-Mughni, 9/383

Shaykh Muhammad ibn Ibraaheem (may Allaah have mercy on him) said: “When a woman reaches the age of puberty, if there comes to you one with whose religious commitment and character she is pleased and who is compatible, and the wali does not have any proof that he is not compatible, then the wali has to respond to his request and marry her to him. If he refuses to do so, then his responsibilities towards his charge should be pointed out to him. If he still insists on refusing after that, then he forfeits the right of guardianship and it passes to the next closest relative on the father’s side.”

From the Shaykh’s Fataawa, 10/97.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said:

If the wali refused to let a woman marry a man whose religious commitment and character are good, then guardianship passes to the next closest male relative on the father’s side, then the next closest and so on. If they refuse to arrange her marriage, as usually happens, then guardianship passes to the qaadi, and the qaadi should arrange the woman’s marriage. If the matter is referred to him and he knows that her guardians have refused to arrange her marriage, then he should do that, because he is the wali in cases where there is no specific wali.

The fuqaha’ (may Allaah have mercy on them) stated that if the wali repeatedly refuses marriage proposals from suitable men, then he is a faasiq (evildoer) and is no longer regarded as being of good character or as being a wali, rather according to the best known view of the madhhab of Imam Ahmad, he also forfeits the right to lead prayers and it is not valid to offer any congregational prayer behind him. This is a serious matter.

Some people, as we have referred to above, refuse offers of marriage from compatible men, but the girl may feel too shy to come to the qaadi to ask for her marriage to be arranged. This is something that does happen. But she should weigh the pros and cons, and decide which has the more damaging consequences, staying without a husband and letting her wali control her life according to his mood or his whims and desires, and when she grows old and no longer wants to get married, then he will arrange her marriage, or going to the qaadi and asking him to arrange her marriage because that is her right according to sharee’ah.

Undoubtedly the second alternative is preferable, which is that she should go to the qaadi and ask him to arrange her marriage, because she has the right to that, and because her going to the qaadi and his arranging her marriage serves the interests of others too, because others will come just as she has, and her coming to the qaadi will serve as a deterrent to those who wrong those whom Allaah has put under their care and prevent them from marrying compatible men. In other words, this serves three purposes:

1.The woman’s own interests, so that she will not stay without a husband.

2.The interests of others, because it will open the door for women who are waiting for someone to set a precedent they can follow.

3.Preventing those oppressive walis who make decisions for their daughters or other women under their guardianship according to their own moods or what they themselves want.

This also serves the purpose of establishing the command of the Messenger (peace and blessings of Allaah be upon him), who said: “If there comes to you (to propose marriage to your daughter) one with whose religious commitment and character you are pleased, then marry (your daughter)

to him, for if you do not do that, there will be fitnah (tribulation) on earth and widespread corruption."

It also serves a specific interest, which is arranging marriages for those who are suitable in terms of religious commitment and character, thus protecting them from going astray and falling into haraam.

Quoted from Fataawa Islamiyyah, 3/148.

Shaykh Ibn 'Uthaymeen also said:

Would that we could reach a level where a woman can dare, if her father refuses to let her marry one who is suitable in terms of religious commitment and character, to go to the qaadi and he could say, "Arrange her marriage or I will do it, or a guardian other than you will do it." Because this is the girl's right, if her father refuses to arrange her marriage (it is her right to complain to the qaadi). This is her right according to sharee'ah. Would that we could reach this level, but shyness keeps most girls from doing that.

See also question no, 10196

The one who has most right to arrange a woman's marriage is her father, then his father, (and grandfathers) no matter how far the line of ascent extends; then her son and grandson, no matter how far the line of descent extends; then her brothers through her father and her mother; then her brother through her father only; then their sons, no matter how far the line of descent extends; then her paternal uncles; then their sons, no matter how far the line of descent extends; then the father's paternal uncles; then the ruler.

Al-Mughni, 9/355

We do not know whether the court procedures will take a long time or not. You could always alert the qaadi to the fact that the father may prevent his daughter from attending the court in the future. We ask Allaah to make things easy for you and to give you a way out from your difficulty.

And Allaah knows best.