98110 - Her family do not want to arrange a marriage for her and she is thinking of an ‘urfi marriage with no wali (guardian)

the question

I am a 31 years old girl. I do not work and I am of a weak financial status. About one month ago, I knew a man “innocently” through the internet. He offered to marry me as he does not see the point of a man knowing a woman without marriage. I talked to my mother and she refused saying that he is of a higher social status than ours, which may make him and his family look down at us.
I have discussed the matter of marriage with her many times but she says: “why do you want to marry? You are staying honorably in your family’s home!” so I told that man that we cannot marry, and the matter was finished.
I knew some man through a matrimonial website few months ago. He is married, my mother refused him because he is married, but I do not mind. She said also that he is from a different tribe to ours.
We have difficult financial status, and many family problems. I am tired of all this. I fear Allah, but I did things, more than one time, that I wouldn’t like to mention.
Sheikh: I do not want to commit a sin, but the only solution is to marry this last man who I knew through the matrimonial website. He is ready for marriage and we agreed to this, Alhamdulillah.
My question is: I want to marry him without telling my family. Secret marriage but with all conditions fulfilled; witnesses, contract, dowry and everything except the wali. As my father is of a weak personality, and the last word is always for my mother.
Also the witnesses will be two women friends of mine. Is it permissible to marry this way? Knowing that our marriage will not remain secret, just for little while so that I protect myself from the haram. Until the suitable time for telling my family comes.

Detailed answer

Praise be to Allah.

Firstly:

Marriage without a wali is not valid, because the Prophet (peace and blessings of Allaah be upon him) said: “There is no marriage except with a wali (guardian).” Narrated by Abu Dawood (2085), al-Tirmidhi (1101) and Ibn Majaah (1881) from Abu Moosa al-Ash’ari; classed as saheeh by al-Albaani in Saheeh al-Tirmidhi.

And he (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.” Narrated by Ahmad (24417), Abu Dawood 92083) and al-Tirmidhi (1102); classed as saheeh by al-Albaani in Saheeh al-Jaami’ (2709).

Secondly:

If the guardian refuses to marry his daughter (or female relative under his care) to a compatible man with whom she is pleased, then he is regarded as preventing her from marriage, and guardianship passes to the next closest male relative, then to the qaadi (judge).

Ibn Qudaamah (may Allaah have mercy on him) said:

What is meant by preventing marriage is not allowing a woman to marry one who is compatible with her, if she agrees to that and if each one wants to marry the other. Al-Ma’qil ibn Yasaar said: A sister of mine married a man, then he divorced her. When her ‘iddah was over he came and proposed marriage to her (again), and I said to him: “She married you, was intimate with you and honoured you, then you divorced her, and now you come to propose marriage again! No, by Allaah, she will never go back to you.” He was a man with whom there was nothing wrong, and she wanted to go back to him. Then Allaah revealed these words (interpretation of the meaning):

“do not prevent them from marrying”

[al-Baqarah 2:232]

I said: Now I will do it, O Messenger of Allaah. He said: So he married her to him. Narrated by al-

Bukhaari.

This applies whether she asks to be married with a mahr (dowry) like that of her peers or less. This was stated by al-Shaafa'i, Abu Yoosuf and Muhammad.

So if she wants to marry a specific person who is compatible, and he wants to marry her to someone else who is also compatible, and refuses to marry her to the one she wants, then he is preventing her marriage.

But if she asks to marry someone who is not compatible, then he has the right to prevent her from doing that, and he is not (willfully) preventing her in that case.

Al-Mugni (9/383).

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

If the guardian refuses to arrange the marriage of a woman to a suitor who is compatible in terms of his religious commitment and good character, then guardianship passes to the next closest male relative on the father's side, then the next closest. If they refuse to arrange her marriage, as usually happens, then guardianship passes to the shar'i judge, and the shar'i judge should arrange the woman's marriage. If such a case comes to him and he knows that the woman's guardians refused to arrange her marriage, then he is obliged to arrange her marriage, because he has general guardianship so long as family guardianship was not achieved.

The fuqaha' (may Allaah have mercy on them) mentioned that if the guardian repeatedly refuses compatible suitors, then he becomes a faasiq (evildoer) as a result; he is no longer regarded as being of good character and his guardianship is waived. According to the well known view of Imam Ahmad, he is no longer qualified to lead prayers, and it is not valid for him to lead a group of Muslims in prayer. This is a serious matter.

As we have referred to above, some people reject the suitors who come to propose marriage to the women over whom Allaah has given them guardianship, even though they are compatible, but the girl may be too shy to go to the qaadi (judge) to ask him to arrange her marriage. This is

something that really happens. But the woman should weigh up the pros and cons, and see which is worse: staying without a husband and letting this guardian who fools about and is careless control her life, then when she grows old and has no desire for marriage, he marries her off, or approaching the qaadi with a request to arrange her marriage, which is her shar'i right.

Undoubtedly the second alternative is preferable, which is going to the qaadi and asking him to arrange her marriage, because she is entitled to that, and because going to the qaadi and having the qaadi arrange her marriage is in the interests of other women as well, because other women will come as she has come, and because her coming to the qaadi is a rebuke to those wrongdoers who do wrong to the women whom Allaah has placed under their guardianship by refusing to marry them to compatible suitors. So this serves three interests:

- The woman's own interests, so that she will not be left without a husband

- The interests of others, as it will open the door for other women who are waiting for someone to set a precedent for them to follow

- Preventing these unjust guardians who are controlling the lives of their daughters and other women whom Allaah has placed under their guardianship, on the basis of their whims and wishes.

It 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 one with whose religious commitment and character you are pleased, then marry (your female relative under your care) to him, for if you do not do that there will be tribulation in the land and a great deal of corruption."

And it also serves a specific interest, which is making it easy for those men who propose marriage to women, whose are compatible in terms of religious commitment and character.

End quote from Fataawa Islamiyyah (3/148).

Secondly:

You should seek the help of people who can advise your father and mother, and urge them to arrange your marriage, and warn them against the sin of preventing you from marrying and of mistreating you.

The one who wants to propose marriage to you should approach your wali, and if he refuses for no apparent reason, then refer your case to the qaadi so that he may take charge of arranging your marriage. You do not have the right to arrange your own marriage, especially the ‘urfi marriage in which there is no protection for your rights; how easy it is for the husband to forsake his wife in such cases and to deny her and not acknowledge any rights for her. There are many well known stories of such cases, which should be taken as a lesson.

Thirdly:

You should beware of forming any relationship with men via the internet or otherwise. You should note that that which is with Allaah cannot be attained except by obeying Him, and that disobedience or sin is the cause of being deprived of provision and goodness.

See the answers to questions no. 34841, 26890 and 23349.

We ask Allaah to guide your parents and to make things easy for you, and to bless you with a righteous husband and righteous offspring.

And Allaah knows best.