118856 - Ascendants and descendants of the couple acting as witnesses to their marriage

the question

Is it permissible for the woman’s maternal or paternal grandfather to act as a witness to the marriage contract?.

Detailed answer

Praise be to Allah.

In order for the marriage contract to be valid, according to the majority of scholars it is essential that it be witnessed by two Muslim witnesses of good character. It is acceptable for the witness to be the woman’s grandfather on her mother’s or father’s side, according to the more correct opinion.

Some of the fuqaha’ did not allow the ascendants or descendants of the couple or wali (guardian) to act as witnesses.

It says in Kashshaaf al-Qinaa’ (5/66): The marriage contract cannot be valid if the witness is biased, such as the sons of the couple or the sons of one of them and the like, such as their fathers, or the son of one of them and the father of the other, because of the risk of bias. End quote.

i.e., he may be suspected of being biased, because he is likely to testify in favour of his father or son.

It says in Sharh al-Muntaha (2/648): The testimony of the wife’s father or grandfather concerning [the marriage contract] is not valid, nor that of her son or grandson. The same applies to the father, grandfather, son and grandson of the husband, because of the risk of bias. The same applies to the father and son of the wali. End quote.

It says in al-Mawsoo'ah al-Fiqhiyyah al-Kuwaitiyyah (41/300), discussing the conditions of the two witnesses to marriage: The witnesses should not be sons of the couple.

The Hanbalis stated – as al-Mardaawi said: That it is stipulated that neither of the two witnesses to marriage should be a son of one of the partners. So the marriage contract cannot be witnessed by sons of the couple or by the son of one of them.

The same conclusion may be understood from the general views of the Hanafis and Maalikis, that the testimony of a father for his son cannot be accepted, or of a son for his father.

The Shaafa'is have several views, the soundest of which is that the marriage contract is valid (when witnessed by the relatives discussed above). End quote.

One report is narrated from Imam Ahmad (may Allaah have mercy on him) which says that the witness of ascendants and descendants is valid. This view was favoured by a number of his companions. Al-Insaaf (8/105).

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) said: The second view concerning this issue is that it is valid for the witnesses or one of them to be one of the ascendants or descendants. This is undoubtedly the correct view, because the testimony of ascendants and descendants is not allowed when it is testimony in favour of a person, because of the risk of bias. But when it is testimony for or against him, as is the case with a marriage contract, it is not disallowed.

The marriage contract in fact is not exclusively about rights for the husband or wife, nor is it exclusively about duties, rather it includes both rights and duties for the one who enters into it. So the correct view is that the contract is valid. This was also narrated from Ahmad (may Allaah have mercy on him) and was favoured by many of our companions. End quote from al-Sharh al-Mumti' (12/99),

And Allaah knows best.