# 13929 - Her brother was her guardian for marriage because her father did not approve of the marriage, then he agreed one year later

**the question**

I have a question regarding the validity of my Nikah. I got married one year ago with my brother as my guardian, because my father refused to marry me. After one year, my father had happily accepted my marriage. I am sometimes worried about the validity of my nikah, was it islamically correct?

**Detailed answer**

Praise be to Allah.

(1)This advice is addressed to parents:

The duty of parents is to hasten to arrange the marriages of the women who are under their guardianship, if someone who is compatible proposes marriage and the woman agrees to that. Whoever does not do that is going against the command of the Prophet (peace and blessings of Allaah be upon him). It was narrated from Abu Hurayrah that the Messenger of Allaah (peace and blessings of Allaah be upon him) said: “If there comes a proposal of marriage from one with whose religious commitment and character you are pleased, then marry [your female relative under your guardianship] to him, for if you do not do that, there will be fitnah (temptation, tribulation) on earth and much corruption.” (Narrated by al-Tirmidhi, al-Nikaah, 1004; classed as hasan by al-Albaani in Saheeh Sunan al-Tirmidhi, no. 865).

It is not permissible to treat them with harshness [cf. al-Nisaa’ 4:19 – interpretation of the meaning] for any reason that has not been prescribed by Allaah and His Messenger. “Harsh treatment”, as defined by Ibn Qudaamah, means, “preventing a woman from getting married to someone who is compatible, if she asks for that and if each of them wants to marry the other.” (See al-Mughni, part 7, p. 24). Parents and guardians should hasten to marry the women under

their care because that will protect them from falling into that which Allaah has forbidden, and so that the guardian himself will not fall into that which Allaah has forbidden of the sin of treating them harshly. The basic principle is that harsh treatment on the part of the guardian by not letting her marry someone compatible is haraam, because it is oppression and harming the woman by depriving her of her right to marry someone she wants. That is because Allaah forbade that when He said, addressing guardians:

"… do not prevent them from marrying their (former) husbands…" [al-Baqarah 2:232 – interpretation of the meaning].

(2)The ruling on this matter may be one of two:

The first is that if the closest relative or guardian of the woman was treating her harshly by preventing her from getting married, then it is OK for a more distant relative to act as her guardian in marriage, even if the closer relative is present, because in this case he has no right to be her guardian.

Al-Mirdaawi said: "The phrase 'if the closer relative is preventing her from getting married then the more distant relative should act as her guardian in marriage' is the correct view in the madhhab; most of our companions share this view… Shaykh Taqiy al-Deen (may Allaah have mercy on him) said: one of the forms of 'harsh treatment' is when no one is proposing marriage to her, because of the harshness of her guardian."

(al-Insaaf, part 5, p. 74)

Shaykh al-Islam Ibn Taymiyah said: If she likes a man and he is compatible with her, then it is obligatory for her brother or her (paternal) uncle to act as her guardian in her marriage to him. If they treat her harshly and prevents her from marrying, then a more-distantly related guardian may marry her to him."

(al-Fataawa al-Kubra, part 3, p. 83)

Ibn Qudaamah said: "If her more-closely related guardian treats her harshly (by not letting her get

married), then the guardianship passes to one who is more distantly related. This was stated by Ahmad…"

(al-Mughni by Ibn Qudaamah, part 7, p. 24)

Shaykh Ibn 'Uthaymeen said: If a father prevents his daughter from marrying someone who is compatible, then guardianship passes to a more distant relative, the closest then the closest."

(Fataawa Islamiyyah, part 3, p. 149)

The second is when a more distant relative has arranged the marriage when the closer relative is present and was not treating her harshly (by preventing her from getting married).

Al-Mardaawi said: "If a more distant relative arranged the marriage for no reason, or a non-relative arranged the marriage, then this is not valid." (al-Insaaf, part 8, p. 82).

Al-Bahooti said: "If a more distant relative arranged the marriage with no reason why a closer relative could not have arranged it, then the marriage is not valid… because the more distant relative has no right of guardianship if a closer relative is present."

(Kashshaaf al-Qinaa', part 5, p. 56)

This issue may be examined further. If the closer relative approves of this marriage, what is the ruling? And if the closer relative approves of this marriage, does his approval make the marriage valid or not?

The scholars said: If someone arranges the marriage when there is someone else who is more entitled to guardianship and he is present, and is not treating her harshly (by preventing her from getting married), then the marriage is invalid. This issue includes three rulings, the first of which is that if the more distantly related guardian arranges the marriage, when the more closely related guardian is present, and she accepts the proposal of marriage without the permission of the closer relative, then it is not valid.

This was the view of al-Shaafa'i.

Maalik said: It is valid, because this is a guardian, so it is permissible for him to arrange the marriage with her permission, as is the case with a closer relative.

The second ruling is that this marriage is null and void; it was not done with permission or with proper permission, and it cannot be made valid with the approval of the closer relative. Marriage in all such cases is invalid, according to the more sound of the two reports. This was stated by Ahmad in several places, and this is the view of al-Shaafa'i, Abu 'Ubayd and Abu Thawr.

Another report was narrated from Ahmad, in which he said that it depended on approval, if approval was given it was permissible, and if approval were not given, it was invalid.

Inkaah al-Fudooli.

According to the terminology of the fuqaha', the fudooli means one who interferes in the rights of another without any permission from sharee'ah, because his interfering is not based on any rights of ownership, trusteeship or guardianship.

(al-Mawsoo'ah al-Fiqhiyyah, part 32, p. 171)

The fuqaha' differed concerning the ruling on a marriage arranged by a fudooli without any rights of guardianship or proxy:

The Hanbalis and al-Shaafa'i in al-Jadeed said that the marriage arranged by a fudooli is invalid and the approval of the guardian has no effect (i.e., the marriage contract must be repeated).

The second view is that of Ahmad, according to one report narrated from him, and of Abu Yoosuf, which is that the marriage arranged by a fudooli is valid, but it depends on the approval of the guardian. If he gives approval then it is OK, but if he disapproves, it is not valid.

(al-Mawsoo'ah al-Fiqhiyyah, part 32, p. 175)

In conclusion: some of the scholars have said that the marriage contract is valid if the guardian approves – as you have seen – and if you want to have more peace of mind and avoid an area concerning which there are differences of opinion among the scholars, then do the marriage

contract again. All that is needed is the proposal from your guardian – your father – and acceptance from the husband, and the witness of two Muslim men, and repentance for what has happened.

We ask Allaah to give you strength.