174496 - If her guardian refuses to give her in marriage to a man who is already married and has children, is he unjustly preventing her from getting married?

the question

have been approached by a brother for marriage, the brother is already married and has two children. He wants me to become his second wife.
The brother was going to approach my wali, but I wanted to speak to my family first, I spoke to my mother, who I know isnt my wali. My mother said she will never allow my marriage to him as he is married with children. I haven't spoken to my wali as in father because of my mothers reaction.
I would like to marry this brother as I feel I will benefit from him in deen, duniya and hereafter...Allah knows best.
Can you please tell me what my options are to progress with this marriage..
Do I need to speak to my father? N if my father says no to marriage to this brother, can I still marry him if an imam was a guardian

Detailed answer

Praise be to Allah.

If this man is good in terms of religious commitment and character, and you want to marry him, then tell him to approach your guardian (wali), and tell your guardian about his good qualities and that you accept him. If your father agrees to accept him as a husband for you, then praise be to Allah. If he refuses and gives an acceptable reason for that, then it is not permissible for you to try to marry him through the imam of the mosque or anyone else, because there is saheeh evidence that the approval of the guardian is a condition of marriage being valid and that it is not permissible to overlook him so long as he is not unjustly preventing marriage. Unjust prevention of marriage means preventing a woman from marrying a compatible man of whom she approves.

For example, the Prophet (blessings and peace of Allah be upon him) said: “There is no marriage

except with a guardian.” Narrated by Abu Dawood, 2085; at-Tirmidhi, 1101; Ibn Maajah, 1881, from Abu Moosa al-Ash‘ari; classed as saheeh by al-Albaani in Saheeh at-Tirmidhi

And he (blessings and peace of Allah 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, 2083; at-Tirmidhi. 1102. Classed as saheeh by al-Albaani in Saheeh al-Jaami‘, 2709

If it is proven that marriage has been unjustly prevented, guardianship passes to the next closest male relative (on the father’s side), such as the (paternal) grandfather, then the brother, brother’s son, paternal uncle and so on. If none of these relatives are present or they refuse to give the woman in marriage, then she may be given in marriage by the Muslim judge if there is one, otherwise the imam of the mosque or a Muslim of similar standing may give her in marriage.

But if the guardian refuses to give a girl in marriage to a married man who has children, this is not regarded as unjustly preventing marriage, because he thinks that it is not appropriate for her or he fears that she may suffer in this marriage, or he fears that there may be problems between her and the first wife, as happens in many cases of plural marriage, many of which end in failure and termination of married life.

The guardian has to look at what is in the best interests of the female relative under his guardianship. In most cases he is better able than she is to let reason and wisdom prevail over emotion, hence Islam has given him this duty.

An-Nasaa’i (3221) narrated that Buraydah said: Abu Bakr and ‘Umar both proposed marriage to Faatimah, but the Messenger of Allah (blessings and peace of Allah be upon him) said: “She is too young.” Then ‘Ali proposed to her and he gave her in marriage to him. This hadeeth was classed as saheeh by al-Albaani in Saheeh an-Nasaa’i.

As-Sindi said in his commentary on an-Nasaa’i: The words “Then ‘Ali proposed to her” indicate that

happened straight afterwards without any delay, as is indicated by the word fa (translated here as “then”). Thus it is known that the Prophet (blessings and peaces of Allah be upon him) thought that she was too young for them (i.e., Abu Bakr and ‘Umar) but that did not apply in ‘Ali’s case. This indicates that being of the same age or close in age is something to be paid attention to because it is more likely to lead to harmony. End quote.

Thus it is known that it is possible to reject a man who is of good character and religiously committed, if the guardian thinks that his daughter is not suitable for him in terms of age or if he fears that she may suffer in the marriage, or that she may have troubles with the co-wife, or he hopes that she may receive a proposal from someone who is more suitable for her.

It says in Asna’l-Mataalib (3/108): It says in al-Ihya’: just as it is mustahabb to marry a virgin, it is mustahabb not to give one’s daughter in marriage except to a virgin who has never been married, because people usually feel more at ease with the first spouse. End quote.

So do not object to your parents if they reject this suitor, because they have more insight into married life than you and they are the keenest of people to get what is good for you. Their opinion is based on experience and reasoning, not emotion, and perhaps Allah will bless you with something good by virtue of your obeying your parents.

And Allah knows best.