273353 - She got married without a guardian and the registrar said that he would be a guardian for her, and issued an official paper for her marriage

the question

I fell in love with a woman and we agreed to get married. She has a brother who is older than her, but she said that he would never agree, because I am married and have four children. So we went to a registrar and he said that he would be a guardian for my wife, even though that was the first time we had met him, and he did the marriage and issued official marriage documents. I have not yet consummated the marriage with her, and people often tell me that this marriage is invalid. Please advise me as to whether this marriage is invalid or what?

Detailed answer

Praise be to Allah.

In order for a marriage to be valid, it must be done by the woman’s guardian or his proxy in the presence of two Muslim witnesses, because the Prophet (blessings and peace of Allah be upon him) said: “There can be no marriage except with a guardian.” Narrated by Abu Dawood (2085), at-Tirmidhi (1101) and 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: “There can be no marriage except with a guardian and two witnesses of good character.” Narrated by al-Bayhaqi from ‘Imraan and ‘Aa’ishah. Classed as saheeh by al-Albaani in Saheeh al-Jaami‘, no. 7557.

The woman’s guardian is her father, then his father (her paternal grandfather), then her son, then his son (her grandson) – if she has a son – then her full brother, then her brother through her father only, then their sons (her nephews), then her paternal uncles, then their sons, then the paternal uncles of her father, then the ruler. See: al-Mughni (7/14).

The registrar cannot be a guardian, unless the woman’s guardian appointed him as his proxy, or the woman has no guardians, in which case the registrar or a person of good character may give her in marriage.

If she has guardians, but they refuse to give her in marriage to a compatible man with whom she is pleased, then the shar‘i judge (qaadi) should arrange her marriage, because the Prophet (blessings and peace of Allah be upon him) said: “Any woman who gets married without the consent of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. If the marriage has been consummated, then she is entitled to the mahr in return for his being intimate with her. And if there is any dispute, then the ruler is the guardian of the one who does not have a guardian.”

Narrated by Ahmad (24417), Abu Dawood (2083), at-Tirmidhi (1102) and Ibn Maajah (1879). Classed as saheeh by al-Albaani in Saheeh Ibn Maajah.

The requirement of the guardian’s consent for the marriage to be valid is the view of the majority of Maaliki, Shaafa‘i and Hanbali fuqaha’. Abu Haneefah (may Allah have mercy on him) regarded it as permissible for a woman to get married without a guardian.

Taking this difference of scholarly opinion into consideration, if the procedure was done in a country that follows the madhhab of Abu Haneefah, and the shar‘i courts regard as valid a marriage that is done without a guardian, and the judge did the marriage procedure himself, or regarded the marriage contract as valid, then this marriage cannot be annulled and it does not have to be repeated.

Ibn Qudaamah (may Allah have mercy on him) said: If a judge deems this marriage contract to be valid, or the one who did the marriage contract was a judge, it is not permissible to annul it. The same applies to all invalid marriages.

End quote from al-Mughni (7/6).

Based on that:

If the registrar issued an official marriage contract, then this marriage is not to be regarded as invalid and it is not to be annulled.

However, in your case what you should do is repeat the marriage contract, especially if you have not yet consummated the marriage with her, so as to avoid going against those scholars who regard this marriage as invalid, and as a precaution to guard your religious commitment and honour.

And Allah knows best.