36209 - Her father is refusing to arrange her marriage on the grounds that she has to finish her studies. Is his guardianship waived thereby?

the question

I am a seventeen year old girl, and I became Muslim a year ago. My father is Muslim and my mother is Christian. My father does not let me wear niqaab and he won’t let me get married until I finish my higher studies. On one occasion I ran away from home and did not return until my father promised in front of the imam of the mosque and in the presence of two witnesses, that I could wear niqaab and get married to someone who is compatible with me. But my father did not fulfil his promise and he is refusing until now to arrange my marriage. Please note also that he prays sometimes and not at other times, and sometimes he drinks alcohol.
Now my question is: is his guardianship of me waived, because I want to get married and there is someone who wants to propose marriage?.

Detailed answer

Praise be to Allah.

Firstly:

We congratulate you on your becoming Muslim, and we ask Allaah to increase you in faith, knowledge and piety.

Secondly:

It is obligatory for a woman to cover her face before non-mahram men, according to the more correct of the two scholarly opinions. We have explained the evidence for that in the answer to question no. 11774.

It is not permissible for a father to prevent his daughter from wearing niqaab.

Thirdly:

If the father is negligent with regard to prayer and drinks alcohol sometimes, then he is a faasiq (evildoer), and whether he may act as a guardian with regard to marriage is a matter concerning which the fuqaha' differed. The view of the Shaafa'is and Hanbalis is that it is not valid. The Hanafi fuqaha' are of the view that the guardianship of a faasiq is valid, and this is the well known view among the Maalikis, but they regard the guardianship of a faasiq as makrooh (disliked). See: Nihaayat al-Muhtaaj (6/738), al-Insaaf (8/73), Haashiyat Ibn 'Aabideen (3/55), Haashiyat al-Dasooqi (2/230) and Manh al-Jaleel (3/289).

Based on the view that his guardianship is not valid, then guardianship passes to the next closest male relative on the father's side. The most qualified people to arrange a woman's marriage after her father are: her grandfather, then her son, then her full brother, then a brother through the father, then his sons, then paternal uncles, then their sons, then the father's paternal uncles, then the ruler (or qaadi – judge).

See: al-Mughni (7/346).

Fourthly:

If a guardian refuses to marry a woman to one who is compatible with her and whose religious commitment and character are good, then he is preventing her marriage, and guardianship passes from him to whoever is closest.

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.

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.

End quote from al-Mughni (9/373)

Shaykh Muhammad ibn Ibraaheem (may Allaah have mercy on him) said: When a woman reaches the age of puberty and if a man proposes marriage whose religious commitment, attitude and compatibility she approves of, and her guardian cannot find any fault in him that make him incompatible with her or prove this fault, then the woman's guardian must accept his request to marry her, and if he refuses to do that, then he should be reminded of the obligation of taking care of the woman under his care. If he insists on refusing after that, then his guardianship is waived and it passes to the next closest male relative on the father's side.

End quote from Fataawa al-Shaykh Muhamamd ibn Ibraaheem (may Allaah have mercy on him), (10/97).

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).

Shaykh Ibn ‘Uthaymeen also said: Would that we could reach a level where a woman whose father refuses to marry her to one who is compatible in terms of character and religious commitment would dare to go to the qaadi so that he might say to her father: Arrange her marriage or I will arrange it myself, or a guardian other than you will arrange it, because this (complaining to the qaadi) is the girl’s right if her father prevents her from marrying and this is a shar’i right. Would that we could reach this level, but most girls are prevented by shyness from doing that. End quote from al-Liqa’ al-Shahri. See also the answer to question no. 10196.

If you father refuses to arrange your marriage to one whom you like, then he is preventing your marriage, and guardianship passes to the next closest male relative on the father’s side, in the order that we have mentioned above. If they refuse to arrange your marriage, or if there are no relatives, then guardianship passes to the Islamic qaadi (judge), and his place is taken by the Islamic Centre in countries where there are no Islamic qaadis.

It is not permissible under any circumstances for you to get married without a guardian, because the Prophet (peace and blessings of Allaah be upon him) said: “There is no marriage except with a guardian.” Narrated by Abu Dawood (2085), al-Tirmidhi (1011) and Ibn Maajah (1881), from the hadeeth of al-Ash’ari; classed as saheeh by al-Albaani in Saheeh al-Tirmidhi.

And the Prophet (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 (2083) and al-Tirmidhi (1102); classed as saheeh by al-Albaani in Saheeh al-Jaami’ (2709).

We ask Allaah to make you steadfast and to guide and forgive your father.

And Allaah knows best.