91688 - She got married in an urfi marriage without her family's knowledge and now they want to arrange a marriage for her

the question

What should a girl do who was a virgin and married herself off in an 'urfi marriage to a man who is already married, at the hands of a sheikh and with two witnesses and the family of the sheikh in his house, with a simple mahr that she accepted but without any papers (it was only verbal)? Her father is dead and she is grown up and does not have any adult brothers. The man consummated the marriage with her and had intercourse with her, and they lived together for a while in secret like a married couple, without the knowledge of either family. After that she found out that this marriage could not continue for fear that her family would always object to the idea. Her family are determined to marry her off to another man of whom they approve and they are determined to ahead with this marriage without knowing of her secret. What should the girl do with regard to the first marriage? Is the marriage valid and does she have to get divorced from him? How should the divorce be done? Is it by speaking in front of the same witnesses or what? When she gets married to another man, does she have to tell him that she was married before, even though she is going to have an operation to repair the hymen so as to avoid any shame, whether she marries him or not?.

Detailed answer

Praise be to Allah.

Firstly:

According to the majority of fuqaha', in order for a marriage to be valid it is essential for the woman's wali (guardian) to be present. The wali is her father, then her son – if she has a son, then her brothers, then her brother's son, then her paternal uncles, then the sons of her paternal uncles, and so on in order of closeness among the male relatives on her father's side. If there is no one, then the ruler or the qaadi (judge) is her guardian, because the Prophet (peace and blessings

of Allaah be upon him) said: “There is no marriage without a guardian.” Narrated by Abu Dawood (2085), al-Tirmidhi(1101) and Ibn Maajah (1881) from the hadeeth of Abu Moosa 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, and if there is a dipute, then the ruler is the guardian of the one who has no guardian.” Narrated by Ahmad (24417), Abu Dawood (2083) and al-Tirmidhi (1102); classed as saheeh by al-Albaani in Saheeh al-Jaami’ (2709).

Based on this, this girl’s marriage that was done in this manner is not valid, because it was done without the presence or consent of her guardian. The basic principle is that they should be separated, and there is no need for a divorce because the marriage was not valid in the first place. But as some scholars regard marriage without a wali as valid (even though this is a weak view), then divorce should be done. It is sufficient for the husband to speak the words of divorce, and it is not necessary to bring the witnesses who witnessed the marriage.

Ibn Qudaamah (may Allaah have mercy on him) said: If a woman gets married in an invalid manner, it is not permissible for someone else to marry her until she is divorced or the marriage is annulled. End quote from al-Mughni (7/9).

If he divorces her and her ‘iddah has ended, then it is permissible for her to marry someone else.

Secondly:

This girl has to tell the future husband of her first marriage. It is not permissible for her to have an operation to repair her hymen because that is deceiving the husband. The Prophet (peace and blessings of Allaah be upon him) said: “Whoever deceives is not one of us.” Narrated by Muslim (101).

This is even more important if it says in the marriage contract that the bride is a virgin, as is the case in the country of the woman who is asking this question.

It does not matter how much embarrassment this will cause for her. She is the one who has brought it on herself and entered into this haraam marriage which is shameful in the view of others, so she has to bear the consequences.

But if she repents to Allaah and turns to Him, Allaah will grant her a way out.

We ask Allaah to help us all to obey Him and please Him.

And Allaah knows best.