97117 - Is the marriage valid if the woman says to her fiancée “I give myself to you in marriage” in the presence of her wali?

the question

Will the contract of marriage be valid if the woman says by herself to her fiancée “I give you myself in marriage” in presence of her walee (guardian) who is her father, two fair witnesses, and many of her and her fiancée’s relatives, with eejaab (Proposal of walee) and qabool (acceptance of the fiancée) of this by her walee’s permission and approval?.

Detailed answer

Praise be to Allah.

A woman does not have the right to do the marriage contract for herself, according to the majority of scholars, whether her wali (guardian) gives her permission or not. The wali should do the marriage contract himself or delegate another man to do the marriage contract on his behalf, because the Prophet (peace and blessings of Allaah be upon him) said: “There is no marriage except with a wali (guardian).” Narrated by Abu Dawood (2085) and classed as saheeh by al-Albaani in Irwa’ al-Ghaleel (1839).

Ibn Majaah narrated from Abu Hurayrah (may Allaah be pleased with him) that the Prophet (peace and blessings of Allaah be upon him) said: “No woman can give a woman in marriage and no woman can give herself in marriage.” Al-Haafiz ibn Hajar said in Buloogh al-Maraam: the men (of its isnaad) are thiqaat (trustworthy).

It was classed as saheeh by Ahmad Shaakir in ‘Umdat al-Tafseer (1/285) and it was classed as saheeh by al-Albaani in Irwa’ al-Ghaleel (1848).

Al-San’aani said in Subul al-Salaam:

This indicates that a woman cannot act as a wali in the case of marriage, whether for herself or for

someone else. So she cannot give herself in marriage with the permission of her guardian or anyone else, and she cannot give someone else in marriage as a guardian or deputy. This is the view of the majority. End quote.

It says in Mughni al-Muhtaaj, which is a Shaafa'i book (4/239): A woman cannot give herself in marriage, i.e., she cannot do that in any circumstances, whether it is with permission or otherwise, whether she issues the proposal or accepts the proposal, because it is not appropriate for her to get involved with that, due to what is expected of her of shyness and modesty and because there is no reference to it in the sources.

And Ibn Majaah narrated: "No woman can give another woman in marriage or give herself in marriage." It was also narrated by al-Daaraqutni with an isnaad that meets the conditions of the two Shaykhs (al-Bukhaari and Muslim). End quote.

Based on this, if the marriage contract was done in the manner asked about, then it is not valid and it must be repeated with the guardian himself or his deputy.

And Allaah knows nest.