

Questions and Answers regarding the Wali Amr for a woman in Marriage.

1. Question: It is said that the agreement of the guardian (wali amr) is required for marriage. Concerning this Wali Amr, can he forbid the woman from marrying any man? Whether this was for an Islamic reason or a non-Islamic reason. If it is allowed for a woman to choose a wali amr after the father disagrees for a non-islamic reason then is there a logical chain the shara has obliged her to follow? Or can she choose anyone?

Answer: The agreement of the guardian is a condition for the validity of the marriage. As for your statement that this rejection for a non-Islamic reason, then you have to explain this to us to know the effect of this on the suitability of the father for the guardianship of the marriage or not. This is because when it comes to the faasiq, the guardianship is transferred from him to the next person who follows him. Similarly if the guardian prevents the marriage of his daughter to a suitable person whom she wants with a shariah Justification, then the guardianship is transferred from him to the one who follows him. As to the order in succession of the guardianship in marriage it is: her father, then her paternal grandfather (her father's father) and going up to the next similar great grandfather (i.e. father's grandfather and so on). Then it is transferred to her son, then her grandson (son's son) and going down to the next similar great grandson (i.e. son's grandson and so on). Then to her brother from her father and mother. Then the brother from her father, then the sons of such brother (i.e. nephews) and so on down. Then the uncles of the woman (the father's brothers), then their sons and so on down. Then the uncles of the father then the Sultan (i.e. judges), in case there is no guardian. (this is the shariah chain and she cannot jump this chain.)

2. Question: You asked us to clarify the point about 'non-Islamic' reason. By this we can state some realities that presently exist:

- A father does not accept a proposal because the man is not from his tribe/nation.
- A father wants his daughter to marry a relative who may be a fasiq or may not, but lives in another country, and his daughter wants to marry someone here.

Answer: The father has no right to force his daughter to marry his relatives living in another country. Nor is he allowed to prevent her from marrying a man who is not from his tribe and not equivalent to her. He has no right to do that, and if he insisted he would be considered "a'adhel" (someone who prevents marriage illegally (see 2:232). In that case the guardianship will be transferred to the next person.

3. Question: Who is the faasiq? And what is his description?

Answer: The Faasiq is the one whose guardianship (wilayah) for marrying his daughter off, is withdrawn and it is transferred to the next person for the one who commits the sin openly, paying no heed to Islam. Anyone who realises such description, his wilayah (guardianship) is withdrawn from him and transferred to the next person.

4. Question: If the daughter disagrees with the fathers definition of "who is a good Muslim" is she allowed to reject his guardianship? Say if she feels in her understanding of Islam a 'good Muslim' is of one type and this contradicts the view of her father.

Answer: The guardianship of the father for marrying his daughter off is not removed from him just because he disagrees with her regarding the definition of a good Muslim.

Rather his approval is sought as long as he cares about Islam according to his understanding.

5. Question: You said that after the list of relatives the last person is the Sultan. What if she exhausted this list sincerely and found the same problems with all her relatives or she had no relatives. And there is no Sultan like we have today and there is not any legitimate baya, what should a Muslim do in such a circumstance with regards to appointing a Wali Amr?

Answer: If she has no relatives and there is no Muslim ruler who is based upon the Shar'ai baiyah. Or if there is no shar'ai judge or those who may represent him like the embassies of the state of the Islamic countries which carryout the marriage according to the shar'ai contracts, then she can appoint as a guardian for marriage any Muslim man whom she trusts, whether he was from the hizb or any other Islamic society in the place where she is.

6. Question: Does a convert to Islam seek guardianship from her father, if he is a non-Muslim?

Answer: The woman who converts to Islam and her father remains kaffir, his guardianship in that case is abolished, because guardianship of a kaffir upon a Muslim does not stand. This is the opinion of most of the scholars. Imam Ahmad said: we have been told that Ali allowed the Muslim brother (blood brother) to give in marriage and reject the marriage made by the father, for he was Christian. Allah (swt) says:

الذَّكَرُ بِنِجْمٍ وَالنِّجْمُ بِزَوْجٍ

الذَّكَرُ وَالنِّجْمُ وَالزَّوْجُ وَالنِّجْمُ وَالزَّوْجُ وَالنِّجْمُ

The male believers and female believers are awliya'a (friends) for each other.

7. Question: Does the divorced or widowed woman require a wali amr?

Answer: The divorced and widowed woman and every woman require Wali Amr (guardian) for her marriage.

8. Question: If a woman gets married without a guardian or marries with a guardian that is not the sequence you mentioned in an earlier question, what is the position of her marriage?

Answer: The woman who gets married without a guardian or a guardian other than those mentioned in the sequence agreed by the shar'a, then her marriage is faasid (incomplete) but not baatil (null and void), this is because the existence of the guardian is a condition of validity (correctness) but not a condition of contracting.

Thus they (the husband and the wife) have to amend the mentioned contract immediately by taking the approval of the guardian.

It is worth mentioning that the preponderant (opinion) in our view is this opinion, that the guardian is a condition for the validity (correctness) of the marriage, and this is what we adopt and follow (and find the strongest and correct), though there are some jurists (fuqahaa) who do not consider the guardian as a condition for the validity of the woman's marriage from the person who is her match.

9. Question: Is it allowed for a male and female who are seeking to get married to first speak on the phone? Does the Wali Amr's (guardians) permission need to be sought?

Answer: The woman/girl is allowed to speak, by telephone, after the consent of her guardian, with a person who seeks his permission for marriage with her, on condition that the phone contact be limited in taking her opinion regarding the marriage and the agreement of her guardian of this phone call.

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