

211954 - Marriage contract done by phone with no witnesses; husband said that he could get it witnessed after consummation

the question

There is a man who wanted to marry a woman who is living on her own in Egypt. He asked her about her guardian, and she replied that she had a brother living in Tunis, so he contacted him by phone and they both said the words of proposal and acceptance, and the brother blessed this marriage. But the husband asked him about whether there were any witnesses with him who were present at the time of this proposal and acceptance, and he said no. Then the issue of witnesses was forgotten, and the bride told her sister, and the bride, her sister and her neighbour came to the husband, and he gave her her dowry. Then the sister and neighbour departed, and left the bride there. The husband said: There remains the issue of two witnesses, but we can bring the two witnesses later, even if it is after consummation of the marriage, and he consummated the marriage with her. Is this marriage contract valid? Would the testimony of two witnesses make this marriage contract valid? Is there any expiation to be offered for this?

Detailed answer

Praise be to Allah.

The majority of scholars stipulate that in order for the marriage contract to be valid, it must be witnessed by two Muslim men of good character, because the Prophet (blessings and peace of Allah be upon him) said: "There is no marriage except with a guardian and two witnesses of good character." Narrated by al-Bayhaqi from the hadith of 'Imraan and 'Aa'ishah; classed as saheeh by al-Albaani in Saheeh al-Jaami' no. 7557

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Ibn Qudaamah said: The marriage contract can only be done in the presence of two Muslim witnesses, regardless of whether the couple are both Muslims, or only the husband is Muslim. This was stated by Ahmad and is the view of ash-Shaafa'i. ... because the Prophet (peace be upon him) said: "There is no marriage except with a guardian and two witnesses of good character."

End quote from al-Mughni (7/7)

Al-Sarkhasi said: Marriage is a contract of great importance and significance, and its objectives are noble. Therefore Islamic teaching highlights its gravity by stipulating that there must be two witnesses to it, unlike other contracts.

End quote from al-Mabsoot by as-Sarkhasi (5/11)

The majority of fuqaha' are of the view that it is stipulated that the witnesses must be males, so in their view the testimony of women in this matter is not valid. The Hanafis differed from that and allowed the testimony of a man and two women. This has been explained previously in fatwa no. [97239](#).

The majority of fuqaha' also stipulated that the witnessing must occur at the time of the marriage contract. However the Maaliki differed from that and regarded it as permissible for there to be no witnesses at the time of the marriage contract, on condition that there be witnesses just before the time of consummation. It says in Haashiyat as-Saawi 'ala ash-Sharh as-Sagheer (2/339): The basic principle concerning witnessing of the marriage is that it is obligatory, and that it is recommended for it to be done at the time of the marriage contract. If that happens at the time of the marriage contract, then both matters are fulfilled, what is obligatory and what is recommended. If it does not happen at the time of the marriage contract, but it happens just before the time of consummation, then what is obligatory has been fulfilled, but what is recommended has been omitted. If witnessing does not happen just before the time of consummation or at the time of the marriage contract, but witnesses are present at one of them,

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then the marriage is definitely valid, but those who are in charge of the marriage are sinning by failing to call witnesses. If no witnesses were present at all, then the marriage contract is definitely invalid. End quote.

This is the view of the majority of scholars.

Some of the scholars are of the view that it is not essential to have witnesses to the marriage if the matter is publicly announced. Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: Undoubtedly if a marriage is publicly announced it is valid, even if it was not witnessed by two witnesses. If it is concealed but witnessed, then there are some reservations about the matter. If it is both witnessed and publicly announced, then there is no dispute that it is valid. If there are no witnesses and it is not publicly announced, then it is invalid according to most of the scholars, and if there is any difference of opinion, then it is rare.

End quote from al-Ikhtiyaaraat al-Fiqhiyyah (p. 177)

Once this is established, if this marriage was done without any public announcement, then it is invalid and must be annulled, and cannot be validated by the testimony of two witnesses after consummation. Rather if the couple want to continue with it, then they must do a new marriage contract, with the proposal and acceptance, witnessed by two Muslim men of good character. It is only invalid because it was done without being witnessed and without being publicly announced, therefore it is a secret marriage, which is invalid. We noted above that Shaykh al-Islam Ibn Taymiyah said: If there are no witnesses and it is not publicly announced, then it is invalid according to most of the scholars, and if there is any difference of opinion, then it is rare. End quote from al-Ikhtiyaaraat al-Fiqhiyyah (p. 177)

The testimony of these two women – the wife’s sister and her neighbour – to the marriage does not have any impact on that, because women have nothing to do with witnessing marriage, according to the view of the majority of scholars.

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But if the marriage was announced and it became well-known among people that this man had married this woman, then it is a valid marriage, because in that case it fulfilled the conditions of marriage by means of this proposal and acceptance that were done over the phone, which is valid, so long as it was free from any tampering and you were actually certain that the one who spoke to you on the phone and did the marriage contract for the woman was really her brother.

But if you were not certain, at the time of doing the marriage contract, that the one who did the marriage contract with you was the woman's brother, then this marriage contract is not valid, because it is not certain that her guardian was present at the time of the marriage contract.

Please see the answers to questions no. [2201](#) and [105531](#) .

It is clear from the details of the case asked about here that this husband was unaware of the seriousness of marriage in the religion of Allah, and he did not know that marriage as prescribed in Islam is ordained by Allah, and that the rulings thereon limits set by Allah, to which Allah has given great significance and importance, and which He has commanded His slaves to adhere to and has forbidden them to transgress beyond that. How can that be compared with the behaviour of some people who seek to validate their marriage by seeking concessions from here and there. There is no power and no strength except with Allah, the Almighty, the Most Wise.

As for the husband saying that it is permissible to have the marriage witnessed after consummating the marriage with his wife, this is invalid and wrong. The husband must ask Allah to forgive him for that, and he must beware of speaking about the religion and laws of Allah without knowledge. Allah, may He be exalted, says (interpretation of the meaning):

“Say (O Muhammad (blessings and peace of Allah be upon him)): ‘(But) the things that my Lord has indeed forbidden are Al-Fawahish (great evil sins, every kind of unlawful sexual intercourse, etc.) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allah for which He has given no authority, and saying things about Allah

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of which you have no knowledge’”

[al-A’raaf 7:33].

And Allah knows best.