

## The condition of guardianship upon the Muslim woman

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

**Question:** I would like to get married with a Muslim Hungarian woman whose parents are Christians. So, who will be her guardian? And is the legal contract (which is according to the Sharee'ah) enough, because making it official (in the concerned services) requires complicated procedures?

**Shaykh Aboo `Abd-al-Mu`iz `Alee Ferkous al-Qoobee** (May Allaah the Most High preserve him): All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers till the Day of Resurrection.

The Muslim woman gets married in any case (whether her parents are Muslims or not...), and among the conditions of the guardian is to be Muslim and that the person who takes him as a guardian should be Muslim too. Hereupon, it is not permissible that a non-Muslim be the guardian of a Muslim even if it is her father, in accordance with Allaah's saying:

[وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا]

The meaning of the verse:

**[And never will Allaah grant to the disbelievers a way (to triumph) over the believers.]<sup>1</sup>**

And the verse:

[وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ]

The meaning of the verse:

**[The believers, men and women, are Auleeyaa' (helpers, supporters, friends, protectors) of one another ]<sup>2</sup>**

<sup>1</sup> [Soorah An-Nisaa' (The Women): 141]

<sup>2</sup> [Soorah At-Tauba (The Repentance): 71]

## The condition of guardianship upon the Muslim woman

If she does not find a guardian, then she should resort to a Muslim judge if possible, in accordance with the Prophet's ﷺ saying: **"If there is a dispute, the sultan (man in authority) is the guardian of the one who has none."**<sup>3</sup> If it is not possible to resort to the sultan, then if an official Imaam in any mosque can marry her, he could be her guardian in such case. Otherwise, any Muslim can marry her, as people need marriage. However, they (people) should seek the best possible guardian, and the Muslim who is her guardian and marries her – as there is no guardian -, his guardianship is considered by way of arbitration, and "The one we appoint as a judge is a substitute for the ruler" as it is reported about Ash-Shaafi'ee.

Furthermore, the contract which is set according to the Sharee'ah is not sufficient alone to assure the continuation of the conjugal life. It should be legalised and officialised in the concerned services so that all the rights of the husband and wife, currently and in the future, like inheritance, children and others will be preserved.

The perfect knowledge belongs to Allaah عزَّ وجلَّ. Our last prayer is all praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon our Prophet, his Family, his Companions and Brothers till the Day of Resurrection.

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<sup>3</sup> Reported by Aboo Daawood, chapter of "Marriage", concerning the guardian (hadeeth 2083), by At-Tirmidhee, chapter of "Marriage" (hadeeth 1102), by Ibn Maajah, chapter of "Marriage", concerning the fact that there is no marriage without the permission of a guardian (hadeeth 1879), by Ad-Daarimee (hadeeth 2106), by Ibn Hibbaan (hadeeth 4075), by Al-Haakim (hadeeth 2708), by Ahmad (24205), by Sa`eed Ibn Mansoor in As-Sunan (hadeeth 528), by Aboo Ya`la in Al-Musnad (hadeeth 4837), by `Abd Ar-Razzaaq in Al-Mussannaf (hadeeth 10472) and by Al-Baihaqee (hadeeth 13952), on the authority of `A'ishah رضي الله عنها. This hadeeth is judged authentic by Ibn Al-Mulaqqin in Al-Badr Al-Muneer (7/533). It is judged good (Hassan) by Ibn Hajar in Muwaafaqat Al-Khubr Al-Khabar (2/205). It is judged authentic by Al-Albaanee in Irwaa' Al-Ghaleel (hadeeth 1840) and in Mishkaat Al-Massaabeeh (hadeeth 3067) and by Muqbil Al-Waadi'i in As-Saheeh Al-Musnad (hadeeth 1628).