

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to the Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question

**It is not Permissible for a Woman to become a Marriage Official
(Ma'zoun) Conducting Marriage Contracts**

To: Umm Mu'min Maryam Bader

Question:

Assalam Alaikum Wa Rahmatullah Wa Barakatuh

My honourable brother please accept my kind greetings:

Two female Shar'i Marriage officials (Ma'zoun) were appointed in Al-Khalil city and were given the authority to conduct marriage contracts.

My question to you, my honourable brother: is it permissible for a woman to give another woman in marriage , and to conduct the marriage of another woman? To my knowledge it is mentioned in the Hadith: **لَا تُزَوِّجُ الْمَرْأَةُ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةُ نَفْسَهَا فَإِنَّ الزَّانِيَةَ هِيَ الَّتِي تُزَوِّجُ نَفْسَهَا** "

"A woman shall not give another woman in marriage, nor should a woman give herself in marriage. Indeed only the fornicatress shall give herself in marriage." [Narrated by Ibn Majah and Ibn Khuzaymah in his Saheeh], if it is not permissible, is the contract conducting by the woman permissible or invalid?

May Allah reward you with the Good.

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

The answer to this question, it is necessary to clarify the reality of the Shariah ruling that a woman may not give herself in marriage by herself or give another woman in marriage, as well as knowing the reality of the work of the marriage official (Ma'zoun) and the documentation he undertakes, and then to study whether the ruling that a woman may not give another woman in marriage applies to the Ma'zoun be it a woman or not.

First: The Shariah ruling on a woman giving herself in marriage or giving another woman in marriage:

The Shariah ruling indicated from the Shariah evidences states that it is not permissible for a woman to conduct her marriage contract by herself, i.e. she cannot carry out the contract, rather she must appoint a *wali* (legal representative) that represents her or a person who will take the status of a wali when the wali is absent to conduct the marriage contract on her behalf. It is also not permissible for the woman to conduct the marriage contract of another woman on her behalf. That is, the woman cannot be a wali, or a representative for another woman in the marriage contract; rather, the wali and wakeel (representative) must be a male according to the Fiqh details of the subject of the Wilayah of Nikah in the Fiqh books. We have stated the issue of the woman not having the authority to give herself in marriage or give another woman in marriage with evidences in the Social System Book where it states:

(...If the marriage contract is conducted, the marriage is correct if it meets all its conditions correctly, and they are three:

...The second condition is that the marriage will not be correct without a guardian since the woman does not possess the right to give herself or give others in marriage. Similarly, she does not have the right to delegate anyone other than her guardian to give her in marriage. If she does this, the marriage will not be correct. As for the marriage not being correct without a guardian

(wali), this is due to what has been narrated by Abu Musa from the Prophet's (saw) saying: « لا نِكَاحَ إِلَّا بِوَالِيٍّ » **“There is no marriage without the permission of a guardian (wali).”** [Reported by Ibn Hibbaan and alHaakim]. As for the woman not possessing the right to give herself or give others away in marriage, nor possessing the right to delegate anyone other than her guardian to give her in marriage, this is due to what 'Aisha reported from the Prophet (saw): « أَيَّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ: » **“Any woman who gets married without the permission of her guardian (wali), her marriage will be void, her marriage will be void, her marriage will be void.”** [Reported by al-Haakim], and also due to what Abu Hurayrah has reported that the Prophet (saw) said: « لَا تُزَوِّجُ الْمَرْأَةَ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةَ نَفْسَهَا فَإِنَّ الزَّانِيَةَ هِيَ الَّتِي تُزَوِّجُ نَفْسَهَا » **“A woman shall not give another woman in marriage, nor should a woman give herself in marriage. Indeed only the fornicatress shall give herself in marriage.”**) End of quote from the *Social System in Islam*

Ad-Darqutni narrated this Hadith as follows: (Abd al-Rahman ibn Muhammad al-Muharabi told us from 'Abd al-Salam ibn ibn Harb from Hisham from Ibn Sirin from Abi Hurayrah, that the Prophet (saw) said: « لَا تُزَوِّجُ الْمَرْأَةَ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةَ نَفْسَهَا » **“A woman shall not give another woman in marriage, nor should a woman give herself in marriage”**. And we used to say that the one who gave herself in marriage is the Fajira (sexually immoral) **End.**

In the narration of Al-Baihaqi: (Abu Hurayrah said (ra) we viewed the one who gave herself in marriage as a fornicator). In *Irwa' Al-Ghalil fi Takhreej Ahadith Manar As-Sabeel* (248/6) by Al-Albani (died: 1420 AH) regarding this Hadith, his saying: (I said: its Isnad is Sahih on the condition of the two Sheikhs). Thus it is not permissible for a woman to conduct the proposal and acceptance in the contract, or to accept to contract her own marriage, or to carry out the proposal and acceptance in the contract as a wali for another woman or a wakeel for another woman. All this is included in the Hadith: « لَا تُزَوِّجُ الْمَرْأَةَ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةَ نَفْسَهَا » **“A woman shall not give another woman in marriage, nor should a woman give herself in marriage”**.

Second: The work of the marriage official (Ma'zoun) and the documentation of marriage contracts:

1- The Ma'zoun is a state employee who conducts marriage contracts in terms of offer and acceptance between the spouses. He also investigates the qualification of the spouses prior to the marriage and meeting of Shariah conditions and the absence of Shariah objections. He also investigates the personality of the two spouses, the wali and the witnesses at the time of the contract. And he recites the statements (of the contract) for the spouses, i.e. what the wali of the wife says: (I married my daughter to you), and he gives the statement of response to the husband: (I accepted her marriage) according to the related Shariah rules. And he also ensures the acceptance of the woman to the marriage. He also documents the contract by writing, so that it would be an official recognized document; he includes in it the conditions agreed upon by the two parties and the amount of the dowry, its immediate and later payment...etc.

2- Documenting the marriage contract in the government departments is not a pillar or a valid condition in the marriage contract. That is, the marriage takes place and is valid if it fulfills its pillars and conditions even if it is not documented in the state departments. However, documentation is a duty to preserve the rights and remove the damage if the lack of documentation causes loss of rights and harm to spouses and children when in conflict. However, if documentation in writing does not cause loss of rights and harm to spouses and children when in conflict, it is not obligatory. This needs understanding of the reality (Tahqeeq Al-Manat) to achieve the separation of cases of disputes between spouses and children, and nowadays most countries do not approve the marriage and child's kin affiliation unless it is documented in the state departments.

Third: the ruling of women working as a marriage official (Ma'zoun):

1- It is clear from the above mentioned on the work of the Ma'zoun is that he is not part of the marriage contract, i.e. as a Ma'zoun, he is not a wakeel (representative) of the wife or husband in the contract, i.e. in the offer and acceptance. The Ma'zoun's job is not to establish a marriage contract, but rather the establishment of the marriage contract is by the contracting parties: wife/fiancé through her wali and wakeel, and the husband/ fiancé by himself of his wakeel.

2- However, the appointment of a woman as a marriage official (ma'zoun) makes her in charge of conducting the marriage contract, so she orders the wali of the wife to say to the husband (I married you my daughter so and so ...) and she says to the husband or his wakeel, "say (I accepted her marriage)" and so on including that which is necessary to conclude the marriage, the witnesses, and other matters. In other words, she manages the process of marriage contract and her job is not limited on documenting the contract only, since this is done in the state departments such as documenting the contract in the records and completing the ratification procedures and the signing by the endowment officials, the concerned parties, etc.

3- The Hadiths that prohibits a woman from giving herself in marriage or to represent other women in marriage, i.e. the prohibition of taking the offer and acceptance from her; these Hadiths indicate by reference that women are prohibited to conduct the process of offer and acceptance in marriage, and to clarify that we say:

a- The indication by reference (dalalat al-Ishara) is understood from the meaning and is not intended in the text but is understood by reference based on what is stated in the text:

- In the book, *The Islamic Personality*, Volume 3 under the chapter of Mafhoom, it states the following: [... the meaning of the text is confined to the spoken words (mantouq) and the meaning (mafhoum). If the meaning is not taken from the spoken words, it is taken from the mantouq, and there is nothing else. Accordingly, the indication of Iqtida (from the text), and the indication of alert (tanbih) and gesture (ima'), and the indication by reference (Ishara) are taken from the meaning, as well as the understanding of agreement (Muwafaqa) and contradiction (Mukhalafa) are also taken from the meaning...

The indication by reference is: when the text has been given to clarify the ruling, or to indicate a ruling, but what is understood from it also is another ruling different than the ruling that was stated and explained, or the text came to indicate the ruling. And this second ruling was not intended from the text. Therefore the indication from the text the regarding the ruling that was not specified or or indicated to, but is understood from it, is the indication by reference (Dalalat Al-Ishara). For example:

- Total meaning of the verse: ﴿حَمَلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا﴾ **“and his gestation and weaning [period] is thirty months”** [Al-Ahqaf: 15] And His (swt) saying: ﴿فِصَالُهُ فِي عَامَيْنِ﴾ **“And his weaning is in two years”** [Luqman: 14] is that the minimum duration of pregnancy is six months, although it is not intended from the text. It is called indication of reference (Ishara)] End

- In the book *Tayseer Al-Wusul Ila Al-Usul* it states examples of the indication of reference:

﴿وَأُولَدْتُ يُرَضَعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ﴾ (-

“Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable.” [Al-Baqara: 233]. It is understood in terms of indication by reference that lineage is to the father.

- ﴿لَا يَسْتَحَرُّ قَوْمٌ مِّنْ قَوْمٍ عَسَىٰ أَن يَكُونُوا خَيْرًا مِّنْهُمْ وَلَا نِسَاءٌ مِّنْ نِّسَاءٍ عَسَىٰ أَن يَكُنَّ خَيْرًا مِّنْهُنَّ﴾ **“let not a people ridicule [another] people; perhaps they may be better than them; nor let women ridicule [other] women; perhaps they may be better than them.”** [Al-Hujurat: 11]. It is understood in terms of the indication by reference that the male community is separate from the women's, so women make fun of women and men of men ...) End

There are other examples:

- Al-Hakim extracted in *Al-Mustadrik* and said, "This is a saheeh Hadith according to the condition of the two sheikhs": From Abu Musa, from the Prophet (saw) he said: ﴿الْجُمُعَةُ حَقٌّ وَاجِبٌ عَلَىٰ كُلِّ مُسْلِمٍ فِي جَمَاعَةٍ إِلَّا أَرْبَعَةً: عَبْدٌ مَّمْلُوكٌ، أَوْ امْرَأَةٌ، أَوْ صَبِيٌّ، أَوْ مَرِيضٌ﴾ **“The Friday prayer in congregation is a necessary duty for every Muslim, with four exceptions; a slave, a woman, a boy, and a sick person.”** The text came to explain that the Friday prayer is not an obligation on women. But by the indication of reference it is understood that it is not permissible for a woman to lead men in Friday prayers, because Friday is obligatory for men and it is not obligatory for women. The one who is obliged to pray Friday cannot be lead in prayer by those who are not obliged to pray Friday prayers.

b- Thus it is understood in terms of the reference from the Hadiths that indicate that the woman does not give herself in marriage or give other women in marriage; it is understood in terms of reference that the woman are not permitted to conduct the process of offer and acceptance in marriage, such as saying to the woman's wali: ("Say: I married you my daughter or the one I represent...") and she says to the husband or his wakeel: ("Say I accepted her marriage..."). It is not permissible for a woman to do so. This is contrary to documenting the contract in the state departments after its completion, such as registering it in the records and taking the signatures of specialists and so on, this is permissible and nothing is wrong with it, whether the registration is by a man or a woman.

4- In addition, another warning is added, that the work of the Ma'zoun is mostly linked to the men. The conduction of the marriage contract is by two men, and witnesses are men, and the wali is a man and so on. Also in many Islamic countries there are celebrations of the marriage contract in which the Ma'zoun is called to the house of the wife or husband and the contract is concluded among men, which is not confined to the parties to the contract and witnesses, but exceeds them to others and the contract is publicized like that. The Ma'zoun's work in some countries is not only conducted in his office in the presence of the parties to the contract and the witnesses, but also in the presence of many men. In such a situation, it is mixed with unauthorized mixing with men because it is not limited to the parties to the contract and witnesses.

In Conclusion:

- It is not permissible for a woman to give herself in marriage or give another woman in marriage, i.e. she is not permitted to carry out the offer and acceptance of marriage, because the Shariah texts forbid this.
- It is understood by the reference (dalalat Al-Ishara) of these texts that women may not conduct the process of offer and acceptance between spouses.
- The woman may register the contract after its completion in the State records, as required by the procedures of documenting the contracts.
- A woman conducting the offer and acceptance process between spouses is neither a requirement nor a condition of validity, so the marriage contract is valid as long as the spouses meet the contract conditions and validity conditions.

Final Conclusion:

- It is not permissible for a woman to be a marriage official (Ma'zoun) to handle the process of offer and acceptance between spouses and to recite to the spouses the content of the offer and acceptance.
- The marriage contract is valid as long as the terms of the contract and the conditions of validity are met, because the personality of the Ma'zoun is not one of these conditions.

This is what I view as the stronger (opinion) in this matter, and Allah knows Best He is Most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192/1175037956026607/?type=3&theater>