

# Role of Guardian in Muslim Woman's Marriage: A Study In The Light Of Religious Texts

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## ABSTRACT

*Islam attaches great importance to 'Guardianship of Marriage' when a woman's hand is given in the hand of her future husband. This is to provide security and safeguard the rights and interests of the girl. Islam lays stress on the fact that the will of the guardian should not be in conflict with the girl's consent. The guardian must take express consent and permission of the girl and guide her in making a sound decision. In Muslim societies this concept is mostly misunderstood and girls are given in marriage by the guardians without their wishes. This article highlights instructions given in revealed texts and their explanations with regard to role of guardians in marriage. Primary sources of literature in this article are the texts of Qur'an and Prophetic traditions on this issue.*

**Key words:** Guardianship, Marriage, Wali, Kiyar al Bulugh, Consent in Marriage, Muslim Women.

## INTRODUCTION

Marriage is a relationship which occupies very important place in Islamic legal and ethical system. Family unit is a building block of society, relationships within a family and observance of the rights and duties of spouses and children contribute towards a peaceful flourishing society. Islam speaks of marriage as *muaddat* (love), *rehmat* (sympathy) and *sukun* (peace of mind). The institution of marriage in Islam comprises of both *Ibadat* as well as *mu'amlat*. From legal perspective marriage in Islam is a civil contract in which free consent of both contracting parties is essential for its accomplishment. Islamic marriage system has encountered numerous issues in the twenty first century, among which role of guardian in marriage contract deserves special attention. Guardian or *Wali* literally means a person who protects someone. It also means a friend, a guardian or a companion.

To understand the concept of guardianship in Islam reference is made to following verses taken from Quran;

1. *“Allah is the guardian of those who believe.”<sup>1</sup>*
2. *“If the party liable is mentally deficient or unable himself to dictate let his guardian dictate faithfully.”<sup>2</sup>*
3. *“O you who believe! Take not for guardian (Auliya) disbelievers instead of believers. Do you wish to offer Allah a manifest proof against yourself?”<sup>3</sup>*
4. *“The believing men and women are guardians (Auliya) of one another.”<sup>4</sup>*

Thus guardians are those men who have been granted a position of authority over others so as to safeguard their interests and a guardian must be faithful, honest and sincere in taking decisions. Belief in Allah has also been made a condition of guardianship as fear of Allah helps him take decisions in the best interest of his ward.

### **MARRIAGE GUARDIANSHIP IN ISLAM**

Concept of guardianship or *Wilaya* in Muslim marriage is well known to Muslims. Marriage guardianship is a legal authority vested in a person who is fully competent to safeguard the interests and rights of another person who is incapable of doing so independently. In case of marriage, *Wali* is someone who has been granted an authority to consent to marriage on behalf of someone.

Following verses of Quran throw light on the role of guardian in marriage of a Muslim woman.

1. *“And perform marriage of those among you who have not been married and of your suitable servants and hand maids. If they are poor Allah will enrich them out of his bounty. And Allah is ample knowing.”<sup>5</sup>*
2. *“ Therefore you may marry them with the permission of their guardians and give them their dower so that they may live a decent life in wedlock”<sup>6</sup>*

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<sup>1</sup> Al- Quran, 2: 25

<sup>2</sup> Al-Quran , 2: 282

<sup>3</sup> Al-Quran, 4:144

<sup>4</sup> Al-Quran, 9:71

<sup>5</sup> Al-Quran, 24:32

<sup>6</sup> Al- Quran, 4:25

3. *“And when you divorce women and their period is completed, then O guardians of women! Prevent them not from marrying their husbands, when they agree themselves according to law. This counsel is given to him who among you have faith in Allah and the Last day.....”*<sup>7</sup>
4. *“And those who are taken in death among you and leave wives behind- they (the wives) shall wait four months and ten days. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner.....”*<sup>8</sup>

Above stated verses throw light on the role of guardians of marriage in Islamic law. First verse stated above encourages guardians to arrange marriages of unmarried (men and women) among them and also arrange marriages of their captive men and women over whom they have an authority. Thus Allah makes no distinction between marriage guardianship of unmarried men or women.

The second verse is addresses exclusively to men who wish to propose a woman for marriage. Rightful conduct according to Islamic values is that they should seek permission of the guardians of women whose hands they are asking and also give them their dowers.

Third verse is addressed to guardians of women undergoing revocable divorced. Allah instructs these guardians that they should not prevent such women if they wish to reunite in marriage with their former husbands.

The last verse is addressed to guardians of women who have been divorced. For such women guardians are exempted from their responsibility to decide in matter of their second marriage, if such women decide themselves in an acceptable manner.

Following persons have the authority to act as guardians for marriage in order of preference:

- a) Father
- b) Paternal Grandfather
- c) Brother and other paternal relatives
- d) Paternal grandfather executor or nominee

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<sup>7</sup> Al-Quran, 2:232

<sup>8</sup> Al-Quran, 2:234

e) The *qazi*/ the court

Most often quoted verse of Quran as an evidence of importance and necessity of *wilaya* in marriage of a Muslim woman is ‘*Therefore you may marry them with the permission of their guardians and give them their dower so that they may live a decent life in wedlock.*’<sup>9</sup> In another verse of Quran Allah Almighty says, ‘*... Nor marry your girls to unbelievers until they believe....*’<sup>10</sup> Imam Qurtabi in his commentary of this verse of surah al Baqara says that this verse is a proof that without wali marriage is not valid.<sup>11</sup> According to Ibn e Kathir verse 232 of surah al Baqarah also indicates that a woman is not permitted to give herself in marriage. Rather she requires a guardian such as her father, brother, adult son and so forth to give her away in marriage.

Verse 32 of surah al Noor is evidence that *wilaya* in marriage is not only confined for women but it also includes unmarried men. The verses states, ‘*And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.*’<sup>12</sup>

This verse is supported by a tradition of Prophet Mohammad (pbuh). In this tradition Prophet Mohammad commanded Walis not to prevent marriages of women whom Allah has placed under their care. The tradition is, ‘*If there comes to you one with whose religious commitment and character you are pleased, then marry (your daughter of female relative under your care) to him, for if you do not do that there will be fitnah and widespread mischief in the land.*’<sup>13</sup> This hadith is classified as sahih by Tirmadhi and Albani.

It is not permissible for Wali to mistreat his ward and deny her the right to marry, otherwise it will lead to great mischief on earth. On the other hand it implies that minor and virgin girls should not marry without the consent of their guardians. A virgin is generally inexperienced and vulnerable, so it is advisable that her guardian should decide on her behalf but with her consent. It is not permissible for a guardian or father to compel

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<sup>9</sup> Al-Quran, 4: 25

<sup>10</sup> Al-Quran, 2:221

<sup>11</sup> Tafseer Qurtabi

<sup>12</sup> Al-Quran, 24:32

<sup>13</sup> Tirmadhi, 1084

the woman under his guardianship to marry someone she does not desire to marry. Rather it is necessary to seek her consent and permission according to another tradition of Prophet Mohammad (pbuh). It says. ‘*A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission*’<sup>14</sup>

However for divorced and widowed women Allah gives separate instructions in Qur’an,

‘... . *and when they have fulfilled their term, there is no blame on you for what they do for themselves in a lawful manner (with regards to marriage); and Allah is aware of what you do.*’<sup>15</sup>

Thus upon completion of *iddah* (waiting period after divorce or death of husband) a woman is given the authority and liberty to do as she pleases in matter of her own marriage.

## **KINDS OF MARRIAGE GUARDIANSHIP**

Jurists have divided marriage guardianship under different categories in Islamic fiqh. This division is based on Quranic verses and Prophetic traditions which explain marriage guardianship. These are;

1. Recommended Guardianship (*Wilayat ul Istahbab*)
2. Complementary Guardianship (*Wilayat ul Sharikah*)
3. Compulsory Guardianship (*Wilayat ul Ijbar*)

### **a) Recommended Guardianship**

Recommended guardianship is accepted only by Hanafi and Shi’s school of thought. Under this guardianship *Wali* has the right to contract marriage but only with the consent and permission of the ward. Wards under recommended guardianship can contract their own marriages but it is considered good (*Ahsan*) if they seek consent of their guardian. However marriage contracted by the ward himself/herself under this guardianship, without the consent of *wali*, is a valid marriage. Widowed and divorced women contracting second marriage are prime examples of such guardianship.

### **b) Complementary Guardianship**

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<sup>14</sup> Sahih Bukhari 7:67

<sup>15</sup> Al- Quran, 2: 232 & 234

Complementary guardianship is accepted by Maliki, Shafi'i and Hanbali schools whereas Hanafis don't uphold this kind of guardianship. Under complementary guardianship consent of both guardian and ward is compulsory and woman cannot contract her marriage by herself, nor can a guardian impose his decision on the ward.

### c) **Compulsory Guardianship**

Compulsory guardianship is supported only by Shafi'i school of thought. In wilayat tul Ijbar wali can contract Nikah of a woman without her consent. This type of Wilayah is supported by Shafi school of thought and it includes women who are mature and Biker<sup>16</sup> as well as Qaisarah<sup>17</sup>.

## **WOMAN'S CONSENT IN MARRIAGE**

Consent of the woman whether previously married or not is of great importance in Islam and is essential for a valid marriage contract. In case of a virgin girl it is the duty of the father or her guardian to consult her. She may feel shy or hesitant to express her opinion in open words, therefore her silence is taken as her consent.<sup>18</sup> Expression of consent by words is not essential by a virgin girl. If a mature girl is given in marriage by her guardian without seeking her consent, she is at liberty to accept or reject the proposal.

## **ROLE OF WALI IN CASE OF DIVORCED OR WIDOWED WOMAN**

For a woman who is divorced or widowed her guardian may not force her into marriage unless by a clear and undisputed permission. This is explained in following hadith by Prophet Mohammad.

*“A widowed woman has more rights unto herself than her guardian and a virgin woman is married off by her guardian.”*

Widowed and divorced women when entering into second marriage must pronounce her consent clearly and verbally. Silence alone is not sufficient for her. There is a hadith supporting this viewpoint in Sahih Muslim.

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<sup>16</sup>

<sup>17</sup> Incompetent and immature person

<sup>18</sup> Mansoori, Mohammad Tahir. (2009), 'Family Law in Islam' (Islamabad: Sharia Academy)

“A previously married woman (*thayyab*) has more right to her person than her guardian.”

### **OPTION OF PUBERTY (*KIYAR UL BULUGH*)**

Another important issue which we come across in Islamic law of marriage is ‘*kiyar al bulugh*’. It means authority or liberty to annul marriage on reaching age of majority. This right is granted to girls whose marriage is contracted by her wali on her behalf when she was still a minor. On attaining the age of majority/ puberty she is given the authority to exercise her right of annulment if she is not willing.

### **MARRIAGE OF FATIMA (R.A)**

We know from the Prophet Mohammad’s seerah that he sought the consent of his daughter Fatima in case of her marriage. When proposal of Ali was put before Fatima she gave a symbol of acceptance whereas for proposals previous than Ali she turned her face away as a sign of disapproval. Prophet Mohammad gave due weightage to his daughter’s wishes and willingness and married her where she gave her consent.

### **CONCLUSION**

From the above discussion following inferences can be drawn;

Firstly that consent and presence of *Wali* at the time of marriage of a Muslim woman is of grave importance in Islam.

Secondly *Wali* must not impose his will upon the woman under his guardianship. Rather he should take the consent of the woman; if she disagrees he should not force her to agree.

Thirdly Islam makes a distinction between marriage of an adult, virgin woman and that of a woman who is widowed or divorced and is contracting marriage for the second time.

Fourthly Islam also allows guardians to contract marriages of women who are still minor (not adult) but gives the right of *kiyar al bulugh* to the girl upon reaching the age of majority.

Lastly rightful conduct under Islamic teachings is that a woman living under the guardianship of her father or any male relative should seek their permission and should not go against their wishes. In case of a conflict *Qazi* can be a *Wali*.

The problem arises when *Wali's* wish is imposed upon the girl or when a girl living under guardianship does not take her *Wali's* permission and opinion in her marriage. In both these cases the authority granted is being misused which results in a conflict.

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