

## The Wali's Role in Islamic Marriage: Legal, Social, and Religious Dimensions

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### Abstract

This study critically examines the matrimonial rights of women under Islamic law and the prevailing practices of Pakistani society about the concept of wali in marriage. Historically, women have often been subjected to patriarchal norms, where they are expected to embody subservience and devotion, this frequently denied their rights that are equal to those of their male equals. The principal intention of this study is to explore the concept of wali's consent in marital rights of women as prescribed by Islamic law as well as in our legal dimensions. This study has analysed the role of wali in protection of marital rights of women and the importance of a guardian's consent. This study has used various qualitative research methodologies including the doctrinal approach. This study concludes that this right to marry is the utmost important right, and the society plays an imperative role in preservation of this right while considering the woman's free will in marriage. This work contributes to the ongoing discourse on women's rights.

**Keywords:** Right to Marry, Women's Rights, Islamic Law, Wali in Marriage, Wali's Consent

### 1. Introduction

Women's rights (WR) have emerged as a vital topic and a prominent theme in contemporary discourse. The issue has developed a distinct group of analysis within the broader human rights discussions. Over the past few decades, WR have sparked considerable debates. It has gained significant attention at international gatherings e.g. the 1995 Beijing Platform for Action and its succeeding reviews. Within the context of Islam, WR have been particularly controversial, with some scholars advocating that Islam upholds and protects these rights, while others argue that certain practices in Muslim

societies contribute to the oppression of WR and view their practices as being contrary to feminist principles (Fazaeli, 2006). This research paper, however, concentrates on the WR perspective about right to marry (RTM) as it has been granted and safeguarded by Islam, as well as by prevailing statutory law in Pakistan. It also examines how the superior judiciary endeavours to protect this RTM within the framework of Muslim Family Law.

Islam is a comprehensive way of life for all persons. This religion that upholds equality. It makes no distinctions on the basis of wealth, nation, or origin. It also does not endorse gender discrimination. It recognizes WR as equals to men. The Holy Qur'an rejects any form of gender-based bias, as God declares "O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you" (*The Holy Qur'an 49:13*). In the eyes of Almighty Allah, a creature's dignity and honor are not determined by physical appearance, race, or social status. Rather, persons are valued on the basis of on their righteousness, chastity, and righteous actions. The Holy Prophet (PBUH) stated, "O people, your Lord is one, and your father is one. An Arab has no superiority over a non-Arab, nor does a non-Arab over an Arab, nor does a red person have superiority over a black person, or a black person over a red, except through piety" (*Musnad Ahmad Ibn Hanbal, Hadith No. 23536*).

Islam guarantees the preservation of life, honour, and dignity. It also endorses gender parity to ensure a composed life. Its objective is to foster a just social order. It undoubtedly define the rights and responsibilities of persons within both household and community situations (Nyazee, 2004, p. 204). An examination of WR in a Muslim civilization reveals that Islam does not differentiate between males and females on gender basis. It advocates for comprehensive social conduct without discrimination. It is important not to judge Islam on the basis on the actions of some negligent citizens of Muslim countries. About the WR in Islam, Abdul Rauf remarked that a female is separate person who deserve self-respect and reverence, as an autonomous human being, and as an autonomous social individual, a lawful entity, a accountable agent, a free national, a servant of God, and as a capable individual who is endowed with emotion, empathy, and intelligence, who has an identical right to develop her skills in all ranges of human endeavour (Abdul-Rauf, 1977, p. 29).

Marriage is a central relationship amongst husband and wife. It holds a vital role in the Islamic legal system. The family unit serves as the foundation of society. It maintains healthy relationships. It fulfills the rights and responsibilities of spouses, and it fosters a harmonious community. The importance of marriage is strongly highlighted in Hadith, wherein Holy Prophet (PBUH) said that wedding is His Sunnah (tradition); thus, anybody who does not abide by the Sunnah will not be considered part of His Ummah

(*Sunan Ibn Majah 1846*). In Islam, wedding is initiated on principles of love, compassion, and tranquility of both heart and mind. Legally, it is both a sacred and civil union that requires the shared consent of the partners. This marriage system has faced various challenges in this time period, with particular focus looked-for on the role of the guardian in the this contract (Siddique, 2017). This study explores WR to marry and the role of the wali's consent. It also evaluates the views of scholars concerning the guardian's consent in these marriage contracts.

## **2. Research Methodology**

This research paper aims to recognize and deliberate the principles and guidelines established within Shari'ah for the safety and protection of the status of women. This study has analytically examined the views of the jurists which are existing for the protection of WR on the topic of marriage and how they are understood. Furthermore, this study also employs various qualitative research methods, including historic, descriptive, investigative, comparative, and illustrative approaches. The study is not confined to any single research method but integrates all relevant qualitative methods as needed. Public library and net sources are extensively utilized to gather pertinent material and information. While primary sources are the cornerstone of this research paper, secondary sources are also referenced besides cited where needed.

## **3. Significance of the Study**

The implication of this study lies in its examination of the complex relationship amongst Islamic teachings and the practical application of the concept of wali in marriage, particularly in the context of Pakistani society. This research provides valuable insights into how traditional Islamic principles are integrated with contemporary practices through probe into the role of the guardian in marital decisions. Comprehensions of these dynamics are vital to cope with potential gaps and inconsistencies in the views of our citizens in our cultural system that may affect WR and her autonomy in marriage. This study not only contributes to the academic discourse on the family law but it also offers practical recommendations for reforms that can enhance the protection of WR and ensure that Islamic teachings are applied effectively in our societal-modern contexts. Additionally, this study is also relevant for policymakers, legal practitioners, and scholars who are interested in the intersection of law, religion, and gender equality in the context of WR.

## **4. Understanding the Concept of Wali**

Generally, a wali is considered to be one who is a guardian or caretaker and who is responsible for the protection and oversight of a woman or child, whether a boy or girl, in various aspects of life. The wali has the authority to make significant decisions regarding their welfare. In Pakistan, the role of the wali involves at various stage for overseeing their well-being

and in making crucial decisions which are related to property, education, and marriage. According to Islamic principles, the wali has the authority to make these decisions (Ahmad et al., 2022). In spite of this, literally, this term is the Arabic equivalent of guardianship, it is denoting a family relationship and it is derived from the Arabic root 'Wali'. In the context of Shari'ah, this term signifies the authority to establish and execute a contract. Hence, the guardian is the one who has the legal capacity to formalize and enforce a marriage contract on behalf of another, whether that person is a young woman or man is another question (Siddiqi, 1984, p. 71).

Abdul 'Ati provides a detailed explanation of the concept of a guardian. He describes it as the legal authority which is granted to a qualified and competent individual to make him responsible for protection of the benefits and rights of someone who is unable to do so autonomously. This power typically lies with a father or to a closest male relative. They are duty bound to oversee minors, especially those who are mentally incapacitated, or those individuals who lack the experience to manage their own affairs; therefore, they require protection and guardianship (al-' Āfī, 1977, p. 70). Apropos to the concept of guardianship in marriage, it can be categorized into two types: Compulsory and Complementary. Jamal Nasir explains that the first one applies to individuals who are with limited or with no legal capacity. In such cases, the guardian can complete the marriage agreement without the consensus of ward. This contract will be a valid one and it is enforceable. Whereas, in the case of complementary guardianship, it is applied when a woman, whether a virgin or formerly wedded, do has full legal ability, but the authority to conclude the wedding is entrusted to a guardian due to prevailing social customs, ethics, mores, and traditions, etc (Nasir, 1990, p. 9).

### **5. Muslim Jurists' Perspectives on Wali's Consent in Marriage**

Muslim legal expert from various schools of thought differ on whether an adult, sane, and unmarried female has the right to enter into a marriage agreement without the involvement of a guardian. However, they unanimously agree that an adult woman who has been previously divorced cannot be compelled to marry someone against her wishes (Siddique, 2017, p. 124). They hold this view based on a hadith. Abu Hurairah narrated that the Messenger of Allah SWT said that a formerly married woman should not be given in marriage without her consultation, and a virgin should not be married without seeking her consent, with her silence indicating approval (*Sunan Ibn Majah 1871, Sunan an-Nasa'i 3267, Sunan an-Nasa'i 3265*).

The Hanafi School holds that the consensus of a wali is not mandatory for a marriage contract, they allow a woman to marry any man of her choice without the wali's approval. In contrast, the Shafi'i School disagrees with this stance; they assert that a woman cannot enter into marriage without the permission of her wali (Ahmad et al., 2022). Furthermore, some jurists from the Hanafi and Hanbali schools support the opinion that a woman has

the right to select her husband and marry without the consent of a guardian. They argue that a father cannot influence his mature, rational, virgin daughter into a marriage she does not desire. A guardian, whether a father or another individual, is not permitted to compel her to marry against her will. The reasoning for forcing a girl into marriage is typically her young age, but if the female is mature and rationally capable of exercising her legal rights, compelling her to marry is deemed unfair (Siddique, 2017, p. 127).

There are precedents in support of this version. Abdur Rahman bin Yazid Al-Ansari and Mujamma bin Yazid Al-Ansari reported that a man named Khidam arranged a marriage for his daughter, but she was unhappy with her father's choice. She approached the Messenger of Allah to express her concerns, and He (PBUH) annulled the marriage arranged by her father. Subsequently, she married Abu Lubabah bin Abdul-Mundhir (*Sunan Ibn Majah* 1873). After extensive discussion among various schools of thought on the issue of guardian consent in marriage contracts, scholars tend to favour the Hanafi viewpoints. They find its perspective most compelling due to the evidence provided in support of this view. According to this opinion, a guardian—whether a father or another individual—cannot, under any circumstances, force an adult, sane, virgin woman into a marriage without her consent. The guardian must seek the woman's opinion, either directly by asking her or indirectly through her mother (Siddique, 2017, p. 130).

Furthermore, about the consent of a formerly married woman, the common of Muslim jurists agree that an mature, sane, and formerly married woman has the sole authority to make her own decision about marriage, irrespective of whether the caretaker is her father or someone else. They concur that a father cannot compel his mature, previously married daughter into a marriage without her consent. This consensus is supported by a hadith narrated by Ibn 'Abbas, where the Prophet (PBUH) stated that a guardian has no right to force a previously married woman into marriage, and that an orphan girl should be consulted, with her silence indicating her consent (*Sunan An-Nasa'i* 3263). Moreover, Islamic teachings have explicitly forbid forced marriages and they emphasize on the importance of a woman's consent. These teachings asserted that a marriage contract is invalid if the woman is coerced. The Qur'an and Hadiths underscore the necessity of mutual agreement. A guardian has no right to impose a marriage on a woman without her consent, and her silence is taken as approval in the case of consultation. These principles ensure that WR and her autonomy in the institution of marriage (Hafidzi & Septiani, 2020; Halim, 2010).

## **6. Wali's Consent for the Conclusion of Marriage Contracts**

Muslim legal experts hold two contradictory views on the requirement of a wali's consent for concluding a marriage contract. The primary discussion centers on whether a woman has the right to finalize her own marriage contract or if she requires the consent of a wali. Here on this

point, most jurists do not allow a woman to marry herself or act as a guardian for another woman in a marriage. They believe that a male guardian is essential in the marriage contract, and without his involvement, the contract is considered incomplete (Mehmood & Hashim, 2021). The supporting source is a hadith, wherein, it was reported by Aishah (R.A) that the Holy Prophet (PBUH) stated that any woman whose marriage is not arranged by her guardian has an invalid marriage (*Sunan Ibn Majah 1879, Jami' at-Tirmidhi 1102, Mishkat al-Masabih 3131*). The majority of jurists have determined that this hadith is authentic and have used it to support their argument on the necessity of male guardianship in a marriage contract. They argue that the presence and approval of a guardian are essential components of a valid marriage contract. The reasoning behind this requirement is that a guardian, often a father or grandfather, plays a key role in guiding the woman towards making a sound decision. The guardian's life experience and knowledge of men can help to protect the woman from potential deception or poor choices. The guardian's involvement is seen as a means of protection and that the woman's best interests are served, as he can provide valuable insights and guidance in long lasting decision-makings. Additionally, to have a guardian as a participant in the marriage contract also serves to publicly announce the marriage, which was and still considered traditionally important for social recognition of the union (Siddique, 2017, p. 144).

## **7. Hanafi Views on the Requirement of Wali**

Islamic scholars from various schools of thought hold contradictory views on the need of a wali's consent in wedding. According to the Shafi'i, Maliki, and Hanbali jurists, the wali's approval is obligatory for the marriage to be effective. In distinction, the Hanafi jurists view the wali's consent as an important but not indispensable condition for a legitimate marriage. Hanafi jurists maintain that a virgin woman has the right to enter into a marriage without her wali's consent. They argue that once she reaches puberty, then she is capable of taking her own decisions. They assert that it would be impermissible for a wali to force his virgin daughter into a marriage against her will (Mehmood & Hashim, 2021). This view is supported by a Qur'anic verse which states: "And when you divorce women and they complete their waiting period ('iddah), do not prevent them from remarrying their husbands when they agree among themselves in a lawful manner." (*The Holy Qur'an 2:230*) On the basis of this verse, they argue that a woman is free to marry without the need for her wali's approval (Ali, 1996).

## **8. Benefits of Wali's Consent**

The consent of a wali in marriage is considered very important by both classical and modern scholars for several important reasons, each of which contributes to the protection and well-being of the woman involved. Scholars found many benefits of wali's consent (Mohd et al., 2015)



### **8.1. Advisory Role of the Wali**

The wali plays a serious advisory role in the marriage process. As someone with more life experience and knowledge, the wali can offer valuable guidance to the woman on various aspects of the marriage, such as the character and suitability of the prospective husband. This advice is particularly important for young women who may lack the experience or vision to fully evaluate the potential challenges and benefits of a marriage. Through leading the woman, the wali helps to guarantee that her decision is well-informed and is in her best interest.

### **8.2. Assistance in Negotiation**

In many social contexts, women may feel uncomfortable or hesitant about negotiating the terms of their own dower or other marital conditions in order to protect themselves, which is an essential part of their marriage contract. The cautious nature of a woman, when combined with other societal expectations, may make it more difficult for her to assertively discuss the amount of mahr or other conditions regarding dowry articles etc. The wali steps in here as a representative who can negotiate on her behalf. He ensures that the dower is fair and reflective of her worth. This role is crucial. The wali's experience and authority can help to secure a considerable mahr that appropriately honours the woman in order to avoid any situation where she might be undervalued or taken advantage of.

### **8.3. Protection from Deception**

One of the primary reasons for involving a wali in the marriage process is to protect the woman from potential deceit. The wali, usually being the father or a close male relative, is presumed to have a deep love and concern for her well-being. His involvement helps to scrutinize the intentions and character of the prospective husband. Moreover, a woman might be more emotional in matters of love and marriage, whereas, the wali's objective and seasoned perspective is important to prevent hasty or unwise decisions. His role is to ensure that the man who marries his ward is of good moral character and has personal standing, which in turn contributes to the long-term success and stability of the marriage.

### **8.4. Strengthening Family Ties**

The inclusion of a wali in the marriage process also has significant social benefits. It strengthens family bonds. The approval of the wali is often seen as a means to secure the support and involvement of the wider family in the marriage. This familial involvement is important to create a network of support for the couple. If any issues or disputes arise in the marriage, the presence of a strong family connection, which is facilitated by the wali's consent, makes it ensure that there is a structure in place to help to resolve conflicts. This can lead to greater mutual understanding and happiness, not just between the couple, but also between their families. It contributes towards a more harmonious social environment.

### 8.5.Social Approval and Legitimacy

Another key benefit of involvement of a wali in the marriage process is the social approval and legitimacy it confers on the marriage. In many cultures, especially within Pakistani communities, the presence and consent of a wali has lent credibility to the marriage. It ensures that it is recognized and it is respected by the wider community. The wali's involvement acts as a public endorsement in the marriage so that community recognizes that it has been conducted according to their religious and cultural norms. This helps to prevent any future disputes or doubts about its validity. This social approval is also important for integration of couple into their community as a recognized family unit. It fosters a sense of belonging and it reduces the likelihood of social stigma or isolation.

All these factors when work together they ensure that the marriage is entered into with careful consideration, fairness, and with backing of familial support. They promote the woman's overall well-being and also aids in the stability of the marriage.

## 9. Legal Dimensions on the Requirement of Wali

The Constitution of Pakistan ensures legal protections for women. It affirms certain rights without any form of discrimination. The Muslim Family Law Ordinance (MFLO) is the main legal framework that deals with our subject; however, it is pertinent to note that it does not include any provisions that deals with a WR regarding requirement of consent. This implies that under Pakistani law, a marriage can take place without the consent of a wali. In fact, there have been instances where Pakistani courts have upheld the validity of marriages conducted without the wali's consent (Khan, 2017). Scholars have noted that Pakistani law does not explicitly deals with this issue in marriage. Additionally, there is no specific legislation in Pakistan that is addressing forced marriages. In some cases, parents in Pakistan may arrange marriages for their daughters, even before they are born or while they are still in the womb, through selection of a prospective spouse by themselves (Patel, 2003, p. 55).

In a specific case, the appellant approached the court while seeking to have criminal charges against her dismissed. She claimed that she had married without her parents' consent, who had arranged her marriage when she was still a child, and upon realization of her marriage, her parents filed a police report. She had been coerced into wedding with her cousin while her first marriage was still valid. She petitioned in the High Court and argued that her second marriage was conducted under duress and it should be annulled. The court ruled in her favour. The court assert that under Islamic law, the Constitution of Pakistan, and international human rights standards, a woman has the right to enter into marriage without restrictions, even without the need for her wali's consent (*Humaira Mehmood v. The State, 1999*). In a distinct case, the court took the matter of a guardian's consent



and concluded that a woman has the right to enter into marriage independently, without the needful of the approval of her guardian (*Muhammad Tariq Mahmood v. SHO, 1997*).

In the jurisprudence of our country, it is now established that an adult Muslim woman of legal capacity can choose to marry someone of her preference without necessitating any guardian's consent. In the case of Hafiz Abdul Waheed, the Supreme Court of Pakistan, after reviewing numerous judgments on this issue, has clarified in paragraph No. 10 that several rulings from the Federal Shariat Court have affirmed this principle. Specifically, they state that an adult Muslim woman has the authority to enter into a valid marriage (Nikah) independently. The law does not demand any requirement of the approval of her guardian or family members (*Hafiz Abdul Waheed v. Mrs. Asma Jehangir 2004*). The Federal Shariat Court, in a case, recorded that Article 35 of the Constitution supports, promises, and defends the right to marry. It is a well-established legal principle that an adult Muslim woman, being of full legal capacity, can exercise her right to marry without the need of the consent of her guardian. Marriage, a sacred and religious contract between two individuals is aimed to establish a home. It is a beginning of a family. It is fundamental to society that it should not be interfered with (*Riaz Begum Alias Razia v. Mst. Farzana etc 2018*).

If a woman marries without her wali's consent, then she and her husband may face several challenges in our society. Usually in such cases involve accusations of abduction or kidnapping, or charges of Zina. These charges then are often dismissed under the Constitutional petitions. False accusations may include accusations of abduction or illicit sexual relationships. The law provides judicial remedies for such cases to protect couples who marry against their family's wishes. When they marry without parental or guardian consent, then they often have to seek relief through the courts. Habeas corpus petitions are the ones which are commonly filed after marriages because families refuse to accept them. This process has become a common practice in Pakistani courts (Siddique, 2017, p. 157-158). The courts have also noted that, according to Islamic law, both men and women have the right to marry in accordance to their own free will, and their marital relationships are also safeguarded keeping in view the Article 35 of the Constitution. Yet, in practice, when marriages occur without family approval, it is common norm of our society that close relatives try to dissolve such union. It is important to highlight that such actions do violate Articles 9 and 35 of the Constitution (*Mst. Saima Mai v. DPO, etc, 2021*). However, these decisions have faced objections from scholars (Mehmood & Hashim, 2021).

## 10. Conclusion & Recommendations

This study has attempted to look into the legal, social, and religious aspects of the wali's role in Islamic marriage. It has attempted to focus on

the matrimonial rights of women as they have been prescribed by Islamic law as well as highlight the practical realities within Pakistani society. Historically, patriarchal norms have often overshadowed WR. Such norms relegate them from their roles of subservience and they also restrict their autonomy. This research highlights the contours of the wali's role in protection of these rights and also highlight the significance of obtaining the guardian's consent in a marriage. Furthermore, the analysis also reveals that while the concept of wali is deeply rooted in Islamic tradition, yet there is a pressing need to ensure that WR are upheld and respected in our contemporary contexts. This study underscores that the right to marry is a fundamental aspect of a woman's autonomy, and this is high time that our societal norms now must evolve in order to protect this right.

In view of the above, it is recommended as follows:

1. **Education and Training:** There should be a comprehensive training programmes for judges, police officials, religious leaders, and ulemas independently and together. These programmes should focus on the importance of safeguarding WR. They should be designed to develop a balanced approach with an aim to teach them interpretation of the principles on the concept of wali in a way that respects WR and their autonomy and also that such interpretation prevents misuse.
2. **Policy Development:** We also need to develop and implement such policies that ensure the right to marry while making it due consideration to the woman's free will. This includes to revise prevailing legal frameworks in order to better align it with Islamic principles and contemporary needs.
3. **Public Awareness:** This is top most requirement in our society. We should increase awareness and education within our society about WR in marriage and the role of the wali. With this we can help to shift our societal attitudes and we may also reduce the influence of outdated patriarchal norms.

Through implementation of these very basic recommendations and through addressing these specific areas, we may contribute in the ongoing discourse on WR specifically about their marriage and we may also be able to promote a more just and equitable society for them.

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