

## The Guardian's Arbitrariness In The Right Of Marriage

Kefah Abdel Alqader Alsouri\*<sup>1</sup>, Ahmad Nemer Au Jweied<sup>2</sup>,  
Murad Shakeeb Yousef<sup>3</sup>, Abdulla Taha Abu Shower<sup>4</sup>,  
Belal Abu Qadoom<sup>5</sup>

\*<sup>1</sup> Amman Arab University, Faculty of Sharia, Amman, Jordan.  
kefahalsouri@aau.edu.jo

<sup>2</sup> UNRWA School, Amman, Jordan.  
Jweid840@gmail.com

<sup>3</sup> Amman Arab University, Faculty of Sharia, Amman, Jordan.  
m.yousef@aau.edu.jo

<sup>4</sup> Amman Arab University, Faculty of Sharia, Amman, Jordan.  
a.abushawer@aau.edu.jo

<sup>5</sup> Amman Arab University, Faculty of Sharia, Amman, Jordan.  
Belal-abuqadoom@aau.edu.jo

### *Abstract*

Research on abuse of rights examines the application of a contemporary theory rooted in Islamic jurisprudence. This theory aims to prevent negative use of rights causing harm to others. Specifically, this study focuses on the right of a guardian in Islamic law to approve the marriage of assigned women, ensuring their rights and interests. However, guardians can abuse this right by unjustly preventing women from marrying or proposing a different competent man against their choice. In such cases, women may seek the intervention of a judge to allow a suitable marriage. The researchers analyze and compare jurisprudential opinions, presenting evidence and stating the correct perspective. The study concludes that the guardian's marriage right is limited to safeguarding the women's best interests and considering the suitability of the husband. Keywords: Arbitrariness, right, guardian, abuse.

### **Preface**

Praise be to God, Lord of the Worlds, and peace be upon the Master of the Messengers, our Master Muhammad, and his family and companions, after them:

God Almighty is the owner of all existence, land, and sky. He bestows sovereignty on whom He wills and withholds it from others, testing or punishing as He sees fit. Allah says, "Say, 'O Allah, Owner of Sovereignty, You give sovereignty to whom You will and You take sovereignty away from whom You will. You honor whom You will and You humble whom You will. In Your hand is [all] good. Indeed, You are over all things competent'" (Quran, 3:26).(1)

Mismanagement of guardianship harms those under their care. Islamic rights have two restrictions: fulfilling God's purpose and considering societal interests. Guardians have the right to arrange marriages for females under their care, but some misuse this right by preventing suitable unions. Sharia limits this right and allows for replacement if misused. The study highlights the societal impact of spinsterhood and negative consequences of forced marriages. Excessive conditions and unjust rejections hinder resolution. The study aims to clarify competency criteria and enable judgment of rejecting suitable suitors.(2)

#### **Significance of the Study:**

This study addresses spinsterhood's impact in Arab and Islamic societies, disrupting social structure and promoting immorality. Undesired marriages forced by guardians result in negative consequences for the entire family. The problem is worsened by excessive criteria and unjustified rejections claimed as guardians' God-given rights. This study aims to enhance understanding of competency criteria, enabling evaluation of guardians rejecting suitable suitors.

#### **Study Problem:**

This study addresses the following questions:

Competency traits recognized by Islamic Law and when denying marriage based on these traits becomes arbitrary for guardians.

Criteria applied to the theory of arbitrariness in cases of guardian abuse.

Whose preference takes priority when a woman desires to marry a competent individual but her guardian prefers another?

#### **Study Aims:**

This study aims to:

- 1 - Clarify jurists' understanding of right, arbitrariness, and guardianship.
- 2- Identify relevant competency traits.
- 3- Determine circumstances in which a guardian is considered arbitrary in exercising their guardianship right over females.

### **Methodology:**

- 1- Descriptive approach: Extracting jurists' opinions on guardian arbitrariness and competency conditions.
- 2- Analytical approach: Analyzing and comparing jurists' opinions, discussing disputes, and presenting the researcher's perspective.

#### Study Plan:

This study comprises five papers, each with specific requirements:

First Paper: Defining study concepts and terms (e.g., right, arbitrariness, guardian).

Second Paper: Exploring arbitrariness in Islamic Law and its origins.

Third Paper: Examines competency in Islamic Jurisprudence, including definitions and disputed aspects.

Forth Paper: Investigating proven abuse cases, such as a guardian preventing marriage to a qualified individual or imposing a different choice.

Fifth Paper: Analyzing criteria for arbitrariness in applying rights, considering subjective and objective standards.

### **First paper: A Preface in Study Terminology.**

First requirement: Defining right in language and terminology

Language: Right is the opposite of wrong, encompassing justice, truthfulness, and established existence. It can also refer to one of God's names and the opposite of falsehood. (2)

Terminology: Right is defined as a specific jurisdiction established in Sharia, authorized by God or a person over others. Dr. Fathi AlDerini defines it as a jurisdiction recognized by Sharia that aims to achieve a specific interest. (3, 4, 5) The common element in these definitions is the concept of jurisdiction, signifying ownership or authority over something, with Dr. AlDerini's definition being considered the most accurate due to its emphasis on the legitimate purpose of right's legislation.

Second requirement: Defining abuse

Abuse is defined as acting in contradiction to the legislator's intention, accepted legally and in accordance with customs. If a right

owner contradicts the legislator's intention, they are considered abusive and may be deprived of that right. (6)

Third requirement: Defining abuse in language and terminology

Language: Examples of abuse include a husband imprisoning his wife or a man unjustly preventing a woman from getting married. Allah's command prohibits preventing women from remarrying their former husbands. (7)

#### **Terminology:**

Jurists define abuse as a man's disapproval of a woman's marriage to a suitable partner when both desire to marry each other. According to Ibn Qudama, abuse involves preventing a woman from marrying a competent individual upon mutual desire (8).

Fourth requirement: Defining the guardian of marriage (Nikah):

Language: The guardian is someone who takes charge, supports, loves, and has authority over the woman (9).

Terminology: Jurists consider the guardian as someone who has legitimate authority over the woman. The Hanafi school distinguishes between desired guardianship for mature females and obligatory guardianship for young females or those with mental disorders. Ibn Arafa Al.Malky defines a guardian based on possession, paternity, wills, sponsorship, sultanate, or adherence to Islam. Similar definitions are found in the Shafi'i and Hanbali schools (10, 11, 12).

#### **Second paper: Abuse in Sharia**

First requirement: Abuse is prohibited in Sharia as it unjustly harms women and deprives them of their inherent rights. Quranic verses forbid preventing women from remarrying their former husbands, which was revealed in response to a specific situation (13, 14).

Second requirement: Origins of abuse

Abuse is discussed in two contexts: husband's abuse of his wife and guardian's abuse. The first involves restricting a wife's rights and demanding divorce. Prohibition of this type of abuse is emphasized in the Quran. The second context includes preventing a woman's desired marriage or forcing her into a different one. Such abuse is also prohibited in the Quran, allowing women to remarry their former husbands if all parties agree (15, 16, 17).

This position is the focus of our research study:

Dispute resolution:

Jurists agree that a guardian's unjustified prevention of a woman's marriage to a competent individual is considered abuse, causing

harm. They also agree on the guardian's disapproval if the proposed man is proven to be incompetent. However, there is a dispute among religious schools regarding the specific qualities that define legitimate competency and when a guardian is considered virtuous. Therefore, our study aims to examine the reality of competency, its various aspects, and its boundaries.

### **Third paper: The reality of competency according to jurists and its interpretations**

First requirement:

Competency, in language, implies equality and equivalence between two entities (18).

In terminology, competency refers to the equality between men and women in certain traits. Different religious schools define it as special equality, similarity, or approximate resemblance (19).

Second requirement: The rule of requiring competency in the marriage contract and the jurists' disagreement:

Regarding the requirement of competency in the marriage contract, jurists hold two doctrines:

The first doctrine states that competency is not a requirement for marriage. Jurists who support this view include AlHasan AlBasry, AlThoury, and AlKarkhy from the Hanafi school (20).

Supporting evidence:

Quranic verse emphasizes that the criterion for nobility is righteousness, regardless of origin or other factors (21).

A Prophetic Hadith highlights the equality and lack of superiority based on race or nationality, with devotion to God being the distinguishing factor (22).

Narrated Abu Hurayrah:

Abu Hind cupped the Prophet (saws) on his head. The Prophet (saws) said: Banu Bayadah, marry Abu Hind to your daughter, and ask him to marry his daughter to you. (23) Similarly, Bilal proposed to a group of Ansar, but they refused to marry him. Then the Messenger of Allah told him: "Tell them that God's messenger demands you to marry me." (24)

Connotation of the two Hadiths:

The Prophet's command to marry Bilal and Abu Hind, despite their lack of competence, suggests that marrying a qualified person is not obligatory. AlKarkhy argues that competency is less important in Sharia compared to other factors to avoid bloodshed. (25) However, jurists from the four Islamic schools of jurisprudence believe that competency is a requirement in the marriage contract, but an incompetent marriage can be dissolved upon the woman's or her guardians' request. (26)

**Evidence:**

1- Wathila b. al-asqa' reported the Prophet saying: "Allah granted eminence to Kinana from among Isma'il's descendants, and to the Quraish among Kinana, and to Banu Hashim among the Quraish, and He granted me eminence from the tribe of Banu Hashim." (27) This indicates varying status and lineage, where non-Hashemi and Al-Muttalib individuals are not considered competent for Hashemite and Al-Muttalib individuals, according to AlNawawi. (28)

2- Ali narrated the Prophet's words: "There are three things, 'Ali, which you must not postpone: Prayer when its time comes, a funeral, and the marriage of an unmarried woman when she finds one of suitable class for her." (29) This emphasizes the importance of timely marriage for unmarried women to qualified partners.

3- Jaber Bin Abdillah narrated the Prophet's statement: "Do not marry women except to a competence, and no one should commence their marriage except their guardians, and the dowry which is less than 10 dirham is not considered a dowry." (30)

Connotation: The command "do not marry women except to competence" is a clear evidence that marrying women to those who are not competent for them is not allowed, highlighting the mandatory nature of competency in Sharia.

1 - Aishah narrated: The Prophet said, "Choose the best spouse, marry compatible partners." (31) Ibn Omar's Hadith adds that Arabs are suitable for each other, except for certain professions(32) .

2- Connotation: This Hadith emphasizes lineage as a consideration for marriage competency.

**Reasoning:**

Spousal compatibility is crucial for harmonious relationships. A virtuous woman wouldn't accept an unworthy man, so men should consider competency. The husband's incompetency

has less impact, as customs affect the wife more. If the husband is unsuitable, the marriage weakens, affection fades, and respect diminishes. Parents prioritize religion and lineage, affecting marriages and hindering social goals(33) .

### **Discussion and argument:**

Discussion of the first opinion:

- 1- Considering the noble verse on competency is necessary, highlighting equality in rights and duties based on devotion (Al.Taqwa). Personal considerations like customs and wealth differ among individuals. Allah has blessed some with provision. (34) Superior knowledge brings honor. (35) People differ in social status and literary positions, aligning with human instinct. Sharia doesn't contradict instincts or customs not conflicting with religious principles(36) .
- 2- The command to marry may recommend prioritizing religion, with other competencies as secondary. Denying marriage to the deemed incompetent remains valid. The command to marry specific individuals may be a privilege, as seen in Khuzaymah's testimony being accepted alone(37) .

Discussion of the second opinion:

- A. The first Hadith: God's choice doesn't imply incompetency in marriage. The Prophet married Zainab Bint Jahsh from the Quraish Tribe to Zaid Bin Haretha, a former slave. He advised Fatima Bint Hubaysh from the Quraish Tribe to marry Osama Bin Zaid Bin Haretha, whose father was a guardian.
- B. The Hadiths cited are weak and not considered strong evidence.
  - 1- Ali's Hadith is weakened due to the inclusion of Sa'ed Bin Abdullah AlJuhany, considered anonymous by Abu HAtim AlRazy(37) .
  - 2- Jaber Bin Abdullah's Hadith is weak and weakened by AlArna'ot due to including Mubashar Bin Ateak, whose Hadiths aren't considered in Sharia(38) .
  - 3- Aisha's Hadith is weak and weakened by Althahaby and Ibn Hajar. (39)

### **Subjective opinion:**

After examining jurists' opinions, I believe that competency as a requirement in the marriage contract holds weight based on social customs rather than weak evidence. Competency manifests mercy and affection, essential for marriage, as diverse languages and colors are signs of knowledge. (40)

Ignoring competency in marriage leads to instability and animosity between spouses and families. The marriage contract binds families, emphasizing the importance of considering competency.

Third requirement: Competency traits.

Though majority require competency, traits vary. Let's examine each trait separately based on jurists' views.

First: Descent and lineage

Most jurists, excluding Malikyeh, consider descent as a competency trait despite minor differences.

Hanafis and Hanbalis view descent among Arabs only. Banu Hashim holds highest status, followed by Quraish. Non-Arabs are competent for each other, and within Quraish, non-Hashemi individuals are equal to Hashemi, as Prophet (pbuh) said, "Quraish is competent for each other." (41)

Shafi'is differ, as non-Arabs are unequal to Arabs, and non-Qurayshi are unfit for Quraysh. Ali bin Abi Talib's hadith supports this, as Prophet (pbuh) said, "Advance Quraysh and do not get ahead of it..." (42) Shafi'is believe either everyone is competent or differences exist, making non-Hashemi and al-Muttalib unfit for Hashemi and al-Muttalib.

Wathila b.al-asqa' narrated, "Verily, Allah granted eminence to Kinana... Quraish amongst Kinana... Banu Hashim amongst Quraish..." (43)

Competency matters among non-Arabs, favoring Persians over Nabateans and Banu Israel over Copts. (44)

Certainly! Here's the revised paragraph with further reductions in word count:



Considering the father –excluding Prophet Muhammad's offspring-only, the mother holds no significance, even if she was a slave. A man with a non-Arab father and an Arab mother is not equivalent to a woman with an Arab father and a non-Arab mother. A person born to a slave mother is equivalent to one born to a free mother, as they follow their father's descent. Embracing Islam at different times also creates inequivalence, with a self-converted man not on par with a woman who has a father or more in Islam. A man with two Islamic fathers is not equal to a woman with three fathers(45) .

#### Secondly: Freedom

The majority of jurists, including Hanafi, Shafi'i, Hanbali, and a narrative of Maliki school, consider freedom as a competency trait. A male servant is unequal to a free woman, as stated in the Quran: "Allāh presents an example: a slave [who is] owned and unable to do a thing and he to whom We have provided from Us good provision, so he spends from it secretly and publicly. Can they be equal? Praise to Allāh! But most of them do not know(47) ".

A free woman should not marry a slave, even if she was previously enslaved, as it brings disgrace, as slaves are not allowed to act in their earnings(48) .

In the Maliki school, there is a disagreement on considering freedom:

The first opinion suggests competency for the woman and the guardian, allowing them to waive it. AlMoghera proposes breaking the contract to avoid disgrace or harm. Another source states that a servant cannot be sought if the woman is of higher destiny, giving the guardian the right to reject him(49) .

#### Thirdly; Religion:

Religion is a significant trait according to the majority of jurists. Hanafi defines it as devotion, asceticism, and righteousness. Even if a virtuous man's daughter marries an immoral man, jurists have the authority to respond due to its disgraceful nature. Maliki views it as religiosity in general, while Shafi'i and Hanbali define it as chastity, righteousness, and abstaining from prohibited acts. Thus, an immoral man is not equivalent to a chaste woman. The Quran

supports the consideration of religion: "then is one who was a believer like one who was defiantly disobedient? They are not equal(50)".

Muhammad bin AlHasan, of the Hanafi school, does not consider competency in religion, as it pertains to the hereafter, while competency concerns worldly matters. Abi Yousef suggests that if an immoral person shows chivalry, he is competent, but must keep it concealed to prevent disgrace(51).

Fourthly; Craft:

Jurists have differing views on considering craft as a competency trait. Imam Abu Hanifa excludes craft, deeming it replaceable and non-essential. Abi Yousef, however, argues that craft is considered only if the owner acts immorally, such as in the case of weavers, cuppers, and sweepers.(52) Therefore, a person in such a craft is not equal to someone from a different profession, like an exchanger's daughter. Maliki does not mention craft in their books, indicating that they do not consider it as a competency trait.(53)

Fifthly; Money:

Jurists disagreed on considering money as a competency trait. Hanafi and Hanbali schools considered it, but disagreed on the amount. Hanafi defined the amount as owning advanced dowry and alimony, while Abi Yousef stated that alimony alone makes a man competent. Hanbali determined the amount based on the woman's right, stating that a wealthy woman should not marry a poor man due to potential harm. Maliki and Shafi'i schools agreed on not considering money as a trait, as it fluctuates and does not define one's worth. (54-56)

The most accurate opinion is that religion and freedom should be considered in competence, while money and craft should not.

Justification:

Firstly: Religion: Prophetic Hadith supports considering religion and character when choosing a spouse. (57)

Secondly: Freedom: A slave is not equal to a free person in terms of guardianship, as per Islamic Sharia provisions. The example of Zaid

bin Haritha's marriage to Zainab bint Jahsh illustrates this distinction. (57)

Thirdly: Lineage, craft, and money are not considered as competency traits. The noblest in the sight of Allah is the most righteous, regardless of lineage. (58)

Connotation: The verse indicates that superiority criteria between people is devotion and sincere fear of God, and the evidence of that is what God's messenger said: (O people, your God is one, and your father is one, an Arabic has no superiority over a foreigner, nor a foreigner over an Arabic, and a red has no superiority over black, nor black over red, except in the fear of God).<sup>(59)</sup>

Additionally, God Almighty explained why he made people as tribes throughout interaction and familiarizing, which can be achieved by the mean of marriage.

1. It was narrated that Allah's messenger –may peace be upon him– said: (marry Zaid bin Haretha –who was a released slave- to Zaynab bint Jahsh).<sup>(60)</sup>

2. Fatima bint Qais approached the Prophet Muhammad, seeking his guidance regarding potential marriage proposals. She informed him that both Mu'awiyah bin Abi Sufyan and Abu Jahm had expressed interest in marrying her. The Prophet (peace be upon him) advised her by saying, "Regarding Abu Jahm, he is always carrying a stick on his shoulder, and as for Mu'awiyah, he is a man of limited means without much wealth. Instead, marry Usamah bin Zaid." Although Fatima initially had reservations about Usamah, the Prophet insisted that she marry him. Consequently, she followed his advice and married Usamah. As a result, their marriage was blessed by Allah and they enjoyed prosperity, which led to others feeling envious.<sup>(61)</sup>

3. Act of companions:

Abu Huthayfa –witnessed Bader battle with the prophet- adopted Salem and married him to his niece (Hind Bint Otbah).<sup>(62)</sup>

Fourthly: as for craft: it is not considered a competence trait, and the evidence for that is what Allah's messenger said to banu Bayadah when they rejected to marry Abu Taybah because of his cupping

craft, Allah's Messenger said : (Marry Abu Taybah, unless you do it, there will be sedition on earth and great corruption. They said: Yes, and honor.), Allah's messenger considered their rejection here because of his career a huge corruption in earth. <sup>(63)</sup>

Fifthly: Money: Allah's Messenger married his daughter, Fatima, to Ali Bin Abi Talib who was destitute, and he only had an iron shield that he offered as a dowry to Fatima.

Allah's messenger married a poor man to a woman who offered herself to him. A lady approached the Prophet (ﷺ) expressing her desire, but he remained silent. One of his companions offered to marry her instead. The Prophet (ﷺ) asked if he had anything to offer her, but the man had nothing. The Prophet (ﷺ) advised him to search for something, even if it was just an iron ring. The man returned empty-handed and offered half of his waist sheet. However, the Prophet (ﷺ) explained that it wouldn't suffice for either of them. The man left, but the Prophet (ﷺ) called him back. Upon learning of his knowledge of the Qur'an, the Prophet (ﷺ) married the woman to him in exchange for the portion he knew by heart (64). The Jordanian Personal Status Law considers religiousness, wife's alimony, and ability to pay the dowry as criteria for competency, as stated in Article (21) paragraph (a).

#### **Fourth paper: proven abuse cases**

First requirement (1): Guardian prevents woman from marrying qualified.

Jurist majority agreed:(2)

The guardian preventing the woman from marrying a qualified person, who fulfills the considered competency traits, is annulled, and she can transfer her issue to the judge.

Badaa' Al-Sana'i by Al-Kasani: If she married a competent person, marriage is not annulled; guardian's role is protection from disgrace, negated by marrying a competence, so if he refuses a competent match, he will be abusive(65) .

Al-Hawi for Al-Mawardi: If the man is competent and guardian rejects due to hatred, the guardian is abusive(66) .

Ibn Qudama: If husband is competent, the governor can command the marriage; if not approved, the governor intervenes(67) .

Hashiyat of Ibn Abidin: Guardian is abusive if he disapproves marriage to a competent with dowry similar to woman's peers; not abusive if man is incompetent and dowry is less(68) .

Shafi'is disagree, guardian should not disapprove competent match solely based on lower dowry, as dowry is woman's right(69) .

Second saying (3): Malikis accept guardian's disapproval if harm does not occur.

Enormous explanation: Father not abusive until harm occurs at least once(71) .

Ibn AlQasem: Father not abusive in rejecting first or couple of proposers until harm is apparent(72) .

Probable saying (4): Preventing woman from marrying a considered competent leads to harm without legitimate justification.

Jordanian Personal Status Law (Article 18): Competency should not be disapproved, dowry should not be lower than usual (Article 20).

Second requirement (5): Guardian desires woman to marry one person while she desires another.

Preface:

Woman desires to marry a qualified person, but guardian rejects for his chosen match. Is the guardian abusive?

Jurists' doctrines:

Hanafis (1):

1- If father rejects a competent suitor for another, he's abusive.

2- Detail: If another competent suitor is present and father rejects the first, he's not abusive. But if father rejects the competent suitor and waits for another, he's abusive. (73)

Malikis and Hanbalis:

They say if a woman desires a competent suitor but father wants another, her choice prevails. Judge can compel father to marry her choice unless a valid reason for refusal exists. Father's rejection without reason is abusive.

Al-Desouki's footnote: If woman desires a more qualified suitor than guardian's choice, judge can demand their marriage. If guardian refuses without clear reason, judge or assigned person can marry her, and guardian is abusive. (74)

Ibn Qudamah: If she wants a competent suitor but he refuses for another, he's abusive. If she wants an incompetent suitor and he disapproves, he's not abusive. (75) In another position, he added: This is Ahmad's apparent doctrine. If she desires a competent suitor and he rejects, he's abusive. (76)

Shafi'is:

Ruling differs for compelled and unforced guardians:

- 1- Forced guardians (father, grandfather, etc.) can marry under their guardianship without approval.
- 2- Unforced guardians cannot marry those under their guardianship without approval.

Two cases:

1- Type 1 father:

A. If he disapproves her choice, he's not abusive; he acts in her best interest.

B. He can't forbid her as it's not virtuous.

2- Type 2 guardian:

He can't strictly forbid her, or he'd be abusive. (78)

Probable saying:

Preventing a daughter's marriage to a chosen competent suitor for another is prohibited abuse. Forcing a woman into a marriage she doesn't desire, even if the suitor is qualified, is unjust and infringes upon her rights. Legal texts affirm a wife's right to choose her husband if he's suitable. Coercion and compulsion undermine stability and hinder progress.

Hadith from Abu Hurairah: Permission of a previously married woman must be sought, and a virgin's consent is required. Silent consent is considered permission(79) .

Narrated Ibn 'Abbas: A virgin girl's father married her against her will, but the Prophet (ﷺ) allowed her to exercise her choice. This shows her guardian violated her right to marry without consent. This aligns with Jordanian Personal Status Law, where Article (18) allows the judge to authorize the marriage of a virgin, aged fifteen or above, to a qualified suitor in case of guardian's abuse without legitimate reason, provided the dowry meets the common known standards stated in Article.(20)

Arbitrariness is linked to guardian's abuse, as it involves prohibiting a female from marrying a suitably competent individual.

**Fifth paper: Arbitrariness criteria in applying right and its applicability on guardian abuse cases**

This practical paper discusses the application of arbitrary theory to guardians' misuse of rights and its potential for abuse.

First Requirement: Subjective Criterion (Personal):

A. Intent to Harm: The law prohibits acts intended to harm others, even if concealed. Unjustified actions solely aimed at causing harm contradict legislative intentions. Shatby emphasized the prohibition of such acts, including mistreatment of the wife, harming inheritors, separating the wife from her family, and false accusations.

B. Misuse of Rights: Arbitrariness occurs when guardians deviate from their legislative aim of safeguarding the interests of those under their care. This includes ensuring individuals marry competent partners for happiness and stability.

Second Requirement: Objective Standard Criterion

This criterion relates to the evident imbalance of interests observed in cases of guardian abuse.

A. Imbalance of Individual Interests: When the interest sought by the right holder greatly outweighs the resulting harm, the action becomes prohibited. In cases of guardian abuse, the female's interest in marrying a competent partner takes precedence over the guardian's individual interest.

B. Severe Harm: Guardian abuse not only harms the female but also jeopardizes her chances of marrying a competent partner, potentially leading to lifelong spinsterhood. Sharia aims to achieve interests and alleviate harm.

C. Societal Damage: Guardian abuse has broader consequences, affecting society as a whole. Disrupting the institution of marriage can lead to corruption and vice, damaging families and societies. Prophet Muhammad stressed the importance of accepting suitable suitors to prevent temptation and widespread corruption.

**The study outcomes:**

1- Right: Recognized by Sharia, it denotes authority or fulfillment of a requirement.

2- Competency is crucial for marriage and dissolution of contracts, as it fosters affection and mercy.

3- Competency traits include religion, freedom, and absence of repulsive defects. Lineage, money, and craft are not considered by researchers.

4- The guardian has the right to arrange marriages for females under their care, but this right is restricted for their benefit.

5- Preventing a female's marriage to a competent suitor for personal preference is an abusive and prohibited act by the guardian.

And our last prayer is that praise be to God, Lord of the worlds

**List of sources and references:**

1. Abu Daoud: Al-Sunan, I: Modern Library, Sidon, Lebanon.
2. Ahmed bin Hanbal: Al-Masnad, I: Al-Raha Foundation, Damascus 2001M
3. Albanian, Mohammed Nasiruddin: series of weak Hadiths. I: Dar al-Ma'raf, Riyadh, Saudi Arabia, 1992.
4. Albanian, Mohammed Nasser al-Din, Al-Ghalil in the graduation of Manar Al-Sabil, I: Islamic Office, Beirut.
5. Albanian, Muhammad Nasser al-Din: Saleh al-Jama'a. Islamic Office, Damascus, Syria.
- Al-Bahouti, Mansour bin Younis: Al-Rawd Al-Murabba' Explanation of Zad Al-Mustaqni'. I: Dar Al-Moayad, Al-Resala Foundation.
- 7- Al-Bahouti, Mansour bin Younis: Explanation of Muntaha Al-Rawad. The World of Books, I: The First, 1414 A.H. - 1993 A.D.



- 8- Al-Bayhaqi, Abu Bakr: Al-Sunan Al-Kubra i: Dar Al-Baz Library - Riyadh - Saudi Arabia.
- 9- Al-Tirmidhi, Abu Issa: Sunan Al-Tirmidhi. i: Beirut - Lebanon.
- 10- Al-Hakim Al-Nisaburi, Abu Abdullah Muhammad bin Abdullah: Al-Mustadrak on the Two Sahihs, i: Dar Al-Kutub Al-Ilmiyya, Beirut, Edition: First, 1411 AH - 1990AD.
- 11- Ibn Hajar Al-Asqalani: Summarizing Al-Habeer in the graduation of the hadiths of Al-Rafa'i Al-Kabeer, i: Dar Al-Kutub Al-Ilmiyya. Beirut, Lebanon
- 12- Al-Kharshi: Explanation of the text of Hebron. I: Dar Al-Fikr, Beirut.
- 13- Al-Khatib Al-Sherbiny: Persuasion in solving the words of Abu Shuja. I: Dar Al-Fikr, Beirut, Lebanon.
- 14- Al-Khatib Al-Sherbiny: the singer of the needy, explaining the words of the curriculum. I: Dar Al Marefa, Beirut, Lebanon 2010
- 15- Al-Dar qutni: Sunan Al-Daraqutni. I: Al-Resala Foundation, Damascus, 2004.
- 16- Al-Desouki: The footnote to the great explanation. C: Dar Beirut, Lebanon.
- 17- Al-Damiati: A footnote to the two students' aid. T: Dar Al-Fikr. Beirut, Lebanon 1997
- 18- Zakaria Al-Ansari: Asna Al-Matalib in Explanation of Rawdet Al-Talib, i: Dar Al-Kitab Al-Islami, Beirut, Lebanon.
- 19- Saeed bin Mansour: Sunan Saeed bin Mansour, chapter on what came about intercourse, Hadith No. 585, vol. 1, p. 188. I: Salafi House, India.
- 20- Al-Tabarani: Intermediate Thesaurus. T: Dar Al-Haramain. Cairo Egypt .
- 21- Ibn Qudamah al-Maqdisi al-Hanbali, Muwaffaq al-Din bin Abdullah: al-Kafi fi fiqh al-Imam Ahmad, ed: Dar al-Kutub al-Ilmiyya, Beirut, 1414, 1994.
- 22- Ibn Qudamah Al-Maqdisi, Muwaffaq Al-Din Bin Abdullah: Al-Mughni with Al-Sharh Al-Kabeer i: Cairo Library, Cairo, Egypt.
- 23- Abd al-Rahman al-Baghdadi al-Maliki: guiding the traveler to the nearest path. Mustafa Al-Babi Al-Halabi & Sons Library and Press, Egypt, third edition.
- 24- Al-Rahman Al-Jazari: Jurisprudence on the Four Schools. I: Dar Al-Fajr for Heritage, Cairo, Egypt, 2000 AD.
- 25- Abdul Qadir Al-Ghalaby: Neil the Desires, Explanation of Student's Guide, i: Dar Al-Nafais: 1999
- 26- Ibn al-Arabi: Provisions of Qur'an. I - Scientific Books House. Beirut, Lebanon 2003
- 27- Fathi Al-Darini: Jurisprudence Theories. i: Damascus University, i: the second. 1996
- 28- Al-Qarafi, Shihab Al-Din Ahmed: Al-Adhkhir. I: Dar Al Gharb, Beirut, Lebanon 1994
- 29- Qaliwi and Amira, footnote to the curriculum of Alnawawi. T: Dar Al.Fikr. Beirut, Lebanon 1995.
- 30- Al-Kasani: Badaa' Al-Sana'i in Order of the Laws. I: Dar Al-Kutub Al-Ilmiyya. Second edition 1986

- 31- Muhammad bin Ismail al-Bukhari: Sahih al-Bukhari. I: Dar Touq Al-Najat 1422 AH
- 32- Muhammad Al-Zuhaili: The Reliant on Shafi'i Jurisprudence. I: Dar Al-Qalam, Damascus 2000.
- 33- Muhammad Alaa Al-Hasfaki: Al-Durr Al-Mukhtar Sharh Tanweer Al-Absar in the Jurisprudence of Imam Abi Hanifa, second edition, Dar Al-Fikr, Beirut, Lebanon 1992.
- 34- Al-Musali, Abdullah bin Mahmoud: The Choice, Explanation of the Justification of Al-Mukhtar. T: House of Scientific Books. Beirut, Lebanon.
- 35- Al-Mawardi, Abu Al-Hasan Ali Bin Muhammad: The Great Hawi in Shafi'i Jurisprudence. T: Dar Al.Fikr. Beirut - Lebanon 1999
- 36- Muslim: Sahih al-Imam Muslim, i, Dar al-Jeel wa al-Afaaq, Beirut, Lebanon.
- 37- Malik bin Anas Al-Asbahi: The Great Blog. T: Scientific Books House. Beirut, Lebanon, first edition 1994
- 38-Al-Mawwaq, Muhammad bin Yusuf bin Abi Al-Qasim: The Crown and the Coronet for the Brief of Al-Khalil. I- Scientific Books House. Beirut, Lebanon, 1994
- 39- Mustafa Ahmed Al-Zarqa: Introduction to Islamic Jurisprudence. I: Dar Al-Qalam, Damascus, Syria, 2004 AD
- 40- Ibn Muflih: The Branches, Al-Resala Foundation, Damascus, Syria 1424-2003
- 41- Ibn Muflih: The branches in the jurisprudence of Imam Ahmad. Message Foundation. Damascus, Syria, Edition: First - 2003 CE
- 42- Ibn Majah, Abu Abdullah Muhammad bin Yazid Al-Qazwini: Al-Sunan. I: The Scientific Library. Beirut, Lebanon.
- 43- Ibn Najim al-Hanafi: The Clear Sea, Explanation of the Treasure of Minutes. T: Scientific Books House. Beirut, Lebanon.
- 44- Al-Nawawi, Yahya bin Sharaf Al-Din: Al-Majmoo' Sharh Al-Muhadhab by Al-Shirazi, i: Beirut, Lebanon.
- 45- Ibn al-Hammam: Fath al-Qadeer, Explanation of the Beginning of al-Mubtadi, i: Dar al-Kutub al-Ilmiyya. Beirut, Lebanon.
- 46-Al-Haytami: The compound of the benefits and the source of the benefits. I: Dar Al-Fikr, Beirut - Lebanon.
- 47- Al-Nafrawi, Ahmed bin Ghanem, Al-Fawakh Al-Dawani on the letter of Abi Zaid Al-Qayrawani. I: Dar Al-Fikr, Damascus, Syria 1995.
- 48- Jordanian Personal Status Law

### **Margins:**

- 1- Surah Al Imran Verse No. 26
- 2- Ibn Manzur: Lisan al-Arab, part 3 - p. 255
- 3- Dr. Abd al-Salam al-Abadi, Property in Islamic Law, Volume 1: Pg. 98-103.
- 4- Mustafa Al-Zarqa: Introduction to Islamic Jurisprudence - Part 1/5/28
- 5- Dr. Fathi Al-Derini: Fiqh Theories - p.123.

- 6- Previous reference p. 131
- 7- Ibn Manzur: Lisan al-Arab vol.9-pg. 259.
- 8- Ibn Qudamah al-Hanbali: Al-Mughni in the jurisprudence of Imam Ahmad bin Hanbal al-Shaibani - Chapter on the provisions of the muscle of the nearest guardian vol.7-pg. 368
- 9- Ibrahim Mustafa and others: Al-Mu'jam Al-Wasit vol. 2 / p. 1058 - Al-Waw chapter.
- 10- Ibn Najim al-Hanafi: The Clear Sea, Explanation of the Treasure of Minutes - Book of Marriage - Volume 3 - Pg. 157
- 11- Al-Nafrawi: Al-Fawakhi Al-Dawani on the letter of Ibn Abi Zaid Al-Qayrawani - Chapter on the provisions of marriage, part 2 / 4946. Ibn Al-Arabi: Ahkam Al-Qur'an, part 1, p. 272
- 12- See: Al-Zuhaili: Al-Mutamad in Shafi'i Fiqh - Part 4 - pg. 60. Marriage book, pillars and conditions of marriage. Neil the goals - explaining the student's guide part 2, p. 148.
- 13- Surah Al-Baqarah Verse No. 232
- 14- Al -Bukhari: Sahih Al -Bukhari, with Fath Al -Bari by Ibn Hajar - The Book of Interpretation of the Noble Qur'an - Chapter (And when you release the women, then they will be their sake, so do not prefer them to marry them.
- 15- Ibn Qudamah: Al-Mughni in the jurisprudence of Imam Ahmad - The Book of Khul', chapter - Musing his wife and harming her by beating, vol. 16, p. 109.
- 16- Surah An-Nisa Verse 19
- 17- Surah Al-Baqarah Verse No. 232
- 18- See Ibn Manzur: Lisan al-Arab - Part 1 / pg. 139.
- 19- See the doctrines of the jurists at: Muhammad Alaa Al-Din Al-Hasfaki - Al-Durr Al-Mukhtar Sharh Tanweer Al-Absar in the jurisprudence of the doctrine of Imam Abu Hanifa - Book of Marriage - Chapter of Competence, Part 3 - Pg. 84. And see al-bahr al-ra'ej, part 3-183 - Al-Kharshi: Khalil's explanation - Chapter on Marriage - Chapter on its pillars, conditions, contraindications, etc., Part 3 - Pg 205. See Al-Qarafi: Al-Thakhira: Part 4 - Pg. 211. Al-Bahooti: Explanation of Muntaha Al-Iradaat - Book of Marriage - Chapter on Testimony on Marriage - Part 8, pg. 382.
- 20- See al-Kamal Ibn al-Hamam: Fath al-Qadeer on Sharh al-Hidaya, Sharh al-Bidaa: Book of Marriage - Chapter on Competence - Part 3, pg. 281-282
- 21- Surah Al-Hujurat Verse No. 13
- 22- Imam Ahmad: Al-Musnad vol. 5 / p. 411, Hadith No. 23536 - Commentary by Shuaib Al-Arna'ut: its chain of transmission is authentic.
- 23- Abu Dawud - Sunan - Book of Marriage - Chapter of the Competent - Hadith No. 2102. Al-Albani said about him: It is good. And al-Hakim: In al-Mustadrak, vol. 2 - p. 162, Kitab al-Nikah, he said it is authentic according to the conditions of Muslim, and they did not come out,

- and al-Dhahabi agreed with him in the summary. And it was classed as hasan by al-Hafiz Ibn Hajar in Takhlees al-Habeer, vol. 3-356
- 24- Narrated by Al-Hakim C3-Pg. 330 Book of Knowledge of the Companions (Al-Manaqib), Hadith No. 5237, and he said the chain of transmission is authentic, but they did not produce it, and Al-Dhahabi agreed with him.
- 25- Al-Kasani: Badaa' Al-Sana'i fi Arran Al-Shari'a – Book of Marriage – Chapter on the Condition of the Husband's Competence in Marrying a Free Woman – Part 3 / pg. 573.
- 26- See the doctrines of the jurists: Ibn Najim Al-Hanafi - Al-Bahr Al-Ra'iq, Explanation of the Treasure of Minutes - The Book of Marriage - Chapter of the Guardians and the Competents, 3 p. Al-Minhaj - Book of Marriage - Chapter on Reputable Efficiency - Part 3, p. 222 - Al-Bahooti: Explanation of Muntaha Al-Adwat - Book of Marriage - Partition of the Testimony of Marriage - Part 8, Pg. 382.
- 27- Imam Muslim: Sahih Muslim - Book of Virtues - Chapter on the merit of generating the Prophet, may God bless him and grant him peace, and handing over the stone to him, vol. 7 - p. 58, Hadith No. 6077
- 28- Al-Nawawi: Al-Majmoo' Sharh Al-Muhadhdhab - Book of Marriage - Chapter What Is Marriage Valid - Part 16, p. 182
- 29- Al-Tirmidhi: Jami' al-Tirmidhi with Tuhfat al-Ahwadhi - The Book of Prayer - Chapter What came in the first time of the credit, Hadith No. 171 - Part 1, pg. 320, Abu Issa said this is a strange and good hadith. Sheikh Al-Albani said: Weak.
- 30- Al-Daraqutni: Al-Sunan - Volume 4 / pg. 358 - Book of Marriage - Chapter on Dowry - Hadith No. 3601.
- 31- Ibn Majah: Sunan Ibn Majah - Book of Marriage - Chapter of the Competents, Hadith No. 1968, vol. 1, p. 633, which was authenticated by Al-Albani in Al-Silsilah Al-Sahihah, Hadith No. 1067.
- 32- Al-Bayhaqi: Al-Sunan Al-Soghra - Volume 6 / p.130, Hadith No. 2407. It was classed as weak by Al-Albani in Al-Silsilah Al-Da'eefah No. 5963
- 33- Dr. Wahba Al-Zuhaili: Islamic jurisprudence and its evidence, vol. 9- pg. 6740
- 34- Surah An-Nahl Verse 16
- 35- Surat Al-Mujadila Verse No. 11
- 36- The previous reference, part 9-pg. 6736. Al-Kasani: Badaa' Al-Sana'i, Book of Marriage - Chapter on the Requirement of Competence in Marriage to a Free Woman, vol. 3-573-574.
- 37- Nasir al-Din al-Albani: Series of Weak Hadiths 5157-Volume 12, first part.
- 38- Al-Haythami - the compound of the appendages and the source of the benefits. Book of Marriage - Chapter of Competence, Part 4 / p. 317, Hadith No. 7446, Sheikh Shuaib Al-Arnaout said in his investigation of Sunan Al-Daraqutni: Mubashir bin Obaid left the hadith, his hadiths are not followed by them, but the rule of Al-Albani. On the hadith of fabrication, see: Irwa al-Ghalil in the

graduation of the hadiths of Manar al-Sabil, vol. 6, p. 264, hadith number 1866.

- 39- Abu Abdullah al-Hakim al-Naysaburi - al-Mustadrak on the two Sahihs.
- 40- Surah Al-Rum verse number 21
- 41- Al-Kasani: Badaa' Al-Sana'i in the Order of Laws – Book of Marriage – Chapter on the requirement of competence in the marriage of a free woman, vol. 3/p. 587. Ibn Qudamah Al-Maqdisi Al-Hanbali: Al-Kafi fi Fiqh of Imam Ahmad, Chapter: The Conditions of Marriage, Part 3, pg. 21. Ibn Muflih: Al-Furoo', chapter of the fourth condition: Evidence-Passion, c, p. 234.
- 42- Al-Bazzar: Al-Musnad, Hadith No. 7834 C-1 / 784-7834. Sheikh Al-Albani said: (Sahih) See Hadith No.: 4384 in Sahih Al-Jami'.
- 43- Previously documented.
- 44- See the schools of jurists: The Hanafis at: Al-Mawsili: Choice in the Reasoning of Al-Mukhtar - Book of Marriage - Part 3, pp. 112-113 - Al-Kasani: Badaa'i Al-Sana'i in the arrangement of laws - Book of Marriage - Chapter on what is considered competence - Part 3, pp. 576-582 - Ibn Al-Hamam Fath al-Qadeer, vol. 7, p. 50-66 - Ibn Njeim: Al-Bahr al-Ra'iq, Explanation of the Treasure of Minutes, Book of Marriage - Chapter of the Guardians and the Competents, vol. 8, p. 169-178, The Shafi'i school of thought in: Al-Nawawi: Al-Nawawi: Al-Muhadhab in the Fiqh of Imam Al-Shafi'i - The Book of Marriage-Chapter What Is Marriage Verified Part 16 / p. 187 . Sheikh Al-Islam Zakaria Al-Ansari: Asna Al-Matalib in the Explanation of Rawda Al-Talib - Branch If Tawzadeq Part 3 / Pg. 137-138 Al-Sherbini: Persuasion in Solving the Words of Abu Shuja' Book of Marriage - The Seventh Party in Qualities of Competence Volume 2 / Pg 474. Al-Sherbiny: The singer who needs to know the words of the Minhaj - Chapter on the Considered Competence in Marriage - Part 3/pg. 223-224. The Hanbali school of thought in: Al-Bahooti: Explanation of Muntaha Al-Adwat - Book of Marriage - Chapter on the Testimony of Marriage Part 8 - Pg. Al-Mardawi Al-Dimashqi: Fairness in matters of dispute, Book of Marriage - Chapter on the pillars and conditions of marriage, Part 8-81 - Ibn Qudamah: Al-Mughni Al-Sharh Al-Kabeer by Ibn Qudamah - Volume 7/p. The issue of efficiency in marriage. C 9 p. 136.
- 45- Sheikh Al-Islam Zakaria Al-Ansari: Asna Al-Matalib in Sharh Rawd Al-Talib, the seventh party: On the Qualities of Reputable Competence, Vol. 6, p. 256, Vol. 3, p. 137.
- 46- Imam Malik bin Anas: The Blog, Chapter: Marriage of the Guardians, Volume 2, p. 107.
- 47- Surah An-Nahl, Verse 75.
- 48- See the schools of jurists: The Hanafis at: Al-Mawsili: Choice in the Reasoning of Al-Mukhtar - Book of Marriage - Part 3, pp. 112-113 - Al-Kasani: Badaa'i Al-Sana'i in the arrangement of the laws -

Book of Marriage - Chapter on what is considered competence - Part 3, pp. 576-582 - Ibn Al-Hamam Fath al-Qadir, vol. 7, p. 50-66 - Ibn Najim: Al-Bahr al-Ra'iq, Explanation of the Treasure of Minutes, Book of Marriage - Chapter of the Guardians and the Competents, Part 8, p. 169-178, The Shafi'i school of thought in: Al-Muhadhab fi Fiqh al-Imam al-Shafi'i - The Book of Marriage - Chapter What Is Marriage Verified, Part 16 / p. 187. Sheikh Al-Islam Zakaria Al-Ansari: Asna Al-Matalib in Explaining Kindergarten Al-Talib - Branch If Tawaskan Part 3 / 137-138 Al-Sherbini: Persuasion in Solving the Words of Abu Shuja' Book of Marriage - The Seventh Party in the Qualities of Competence Volume 2 / Pg. 474 On marriage - vol. 3, p. 223-224. The Hanbali school of thought in: Al-Bahooti: Explanation of Muntaha Al-Adwad - Book of Marriage - Chapter on the Testimony of Marriage Part 8 - Pg. Alaa al-Din al-Mardawi al-Dimashqi: Fairness in matters of disagreement.

- 49- See the Maliki school of thought in: Al-Qarafi: Al-Dhakhira - Book of Marriage - Part 4 / pg. 213. Abdul Rahman Al-Baghdadi Al-Maliki: Guidance of the Salek to Ashraf Al-Masalih - Book of Marriage, Part 1 / 131 - Al-Mawwaq: Al-Taj wa Al-Ikleel - Book of Marriage - Chapter of Competence in Marriage, Religion and Condition, Part 5 / 365 - Al-Kharshi: Sharh Khalil - Chapter on Marriage - Chapter on its pillars, conditions, prohibitions, and other things, vol. 3 / p. 205.
- 50- Surah Al-Sajdah Verse 14.