

The Son's Guardianship Over His Mother In Marriage In The Presence Of Other Relatives: A Maqasidic Study In Light Of Arab Laws Foundations Of Means To Achieve The Interests Of Women In Marriage For Ensuring The Sustainability Of Marital Life In A Holistic Societal Environment

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Abstract

This research deals with the issue of the guardianship of a son over his mother in the marriage contract in the presence of other family members, which is a controversial issue among the four madhhabs and has been presented in the Arabic laws.

Research Problem: The controversy over the son's right to assume the marriage contract with his mother in the presence of the father, grandfather, and other ascendants and descendants, and the validity of this contract if it is concluded.

Objectives: This study aimed to clarify the legal ruling of this guardianship in marriage, analyze the opinions of jurists, present legal articles, and indicate the necessary conditions for the validity of the guardianship, and whether it applies to the son towards his mother.

Methodology: This study relied on the inductive approach based on collecting material from its primary sources, then the analytical approach to analyze it in order to reach the required analyses and the comparative approach in order to compare it with the four madhhabs and Arab laws.

Findings: The study came up with the following findings The majority of jurists do not authorize the guardianship of a son over his mother in marriage, because the guardianship is from origins to branches, not vice versa, and because this is a violation of the jurisprudential order adopted in the family, as it may result in embarrassment and social harm, however, the Shari'ah has taken into account the interest of the woman in taking over her marriage contract who is more compassionate and careful for her.

Conclusion: Islam paid attention to the guardianship in marriage and ranked the guardians, and intended to preserve the woman's right to marry on correct bases that preserve her right, as well as preserve the Muslim family through this, and the jurisprudential schools did not neglect to clarify the ranks of the guardians in marriage, and that the Sharia was keen to preserve the woman's right to choose her guardian and did not limit the guardianship to a specific person, which is what Arab laws have adopted.

Keywords: Guardianship in marriage, son, mother, relatives ('asabah), Islamic jurisprudential schools, Arab laws.

INTRODUCTION

Praise be to Allah, the Lord of the Worlds, and prayers and peace be upon the most honourable prophets and messengers, our Prophet Muhammad and his family and companions: Guardianship in

marriage is one of the important jurisprudential issues that jurists, both ancient and modern, have been concerned with, due to the legal implications related to the validity and legitimacy of the marriage contract. The majority of scholars have stipulated that marriage is not valid without a guardian, citing the saying of the Prophet (peace and blessings of Allah be upon him): '(Ibn Habban, 1993, 9/386), and they ranked the guardians according to the degree of proximity and kinship. The issue arises when considering some contemporary real-life cases, including: The issue of the guardianship of a son over his mother in marriage, especially in the presence of other guardians such as the father, grandfather or siblings; in some cases, the son may take precedence over them, which calls for a jurisprudential study of the issue, comparing the opinions of the madhhabs, showing what is stipulated in Arab laws, and explaining the consequences of the validity or invalidity of the marriage contract if someone who is not the first in line of guardianship is presented. Hence the importance of this research in explaining the judgement of the son's assumption of his mother's marriage in the presence of a guardian who is legally closer to him, and the position of Islamic jurisprudence and Arab laws on this important issue. **The importance of the study** :The importance of this study is to clarify the ruling on the guardianship of a son over his mother in marriage, and to clarify the position of jurists and Arab laws on this issue, which contributes to addressing contemporary family issues. It also helps judges and legislators in making regulated legal decisions, and achieves a balance between jurisprudential rulings and the legitimate objectives of preserving dignity and removing embarrassment. The importance of the study is based on two bases :**Scientific importance**:The scientific importance of this study lies in the fact that it is a delicate and rare jurisprudential issue that lies at the crossroads between the rules of guardianship, the legal arrangement of guardians, and the status of women in contracts. It is an issue that has realistic applications in contemporary social situations, especially when close guardians are lost or in the case of complex family situations and issues between family members that require consideration of who has the right of guardianship in marriage.**Practicality**:The practical importance appears through the direct impact of the issue of guardianship on the family reality, judicial procedures, and the organisation of social relations, especially in Islamic societies where the presence of a guardian is a condition for the validity of marriage.**Problem of the study** :The issue of the study is based on the lack of clarity on the jurisprudential judgement of the son's guardianship over his mother in marriage in the presence of others such as the father, grandfather or siblings, and the validity of the contract if the son assumes the guardianship without the permission of his guardian.**Methodology** :In order to study the legal rulings related to the son's guardianship over his mother in marriage in the presence of others who are closer and more senior than him, it is necessary to explore the texts and legal evidence, which requires the adoption of the inductive method to review the statements of scholars, and the comparative analytical method to discuss their evidence and weigh the most likely, with documentation from approved jurisprudence books in the four schools and Arabic laws.

Objectives of the study :This study aims to study the order of guardians in marriage in Islamic jurisprudence. It also aims to clarify the position of the son within this order, and it also aims to study the position of the jurisprudential schools and Arab laws on the son's assumption of his mother's marriage in the event that there is a higher family member than him. It also aims to clarify the legal judgement of the contract if it violates the order of the guardians. It also aims to study the position of jurisprudence and Arab laws on the validity of the marriage contract.

Study questions :In order for this study to fulfil its objectives and test its hypotheses, a number of questions must be answered:

- 1- What is the order of guardians in marriage in Islamic jurisprudence?
- 2- What is the position of the son within this order?
- 3- What is the position of jurisprudence and Arab laws regarding the son's assumption of his mother's marriage if there are closer guardians?
- 4- What is the legal judgement of the contract if it violates the order of the guardians?
- 5- What is the effect on the validity of the marriage contract?

Previous studies : The books of jurisprudence in the four schools of thought dealt with the order of the guardians and their right to take over the marriage contract with the existence of disagreement between them, as will be shown through this research. With regard to contemporary studies, I did not come across any research on the subject of the guardianship of the son over his mother in the presence of other family members, and I came across some studies that dealt with the guardianship of marriage from a legal perspective in general, including these studies:

- 1- Al-Subaie, Saad bin Hamid. (1981). Guardianship in marriage: A comparative study. Doctoral dissertation. Umm Al-Qura University. Mecca.
- 2- Al-Hamzani, Dukhi bin Fahid. (1976). Guardianship in marriage. Master's Thesis. Imam Mohammed bin Saud Islamic University. Riyadh.

The two papers dealt with the subject of guardianship in marriage. The study included an examination of the ranks of guardians in marriage and who is the first to contract marriage from a jurisprudential point of view.

Firstly: The order of guardians : This is because the guardianship of marriage, according to those who require it, is not a loose guardianship, as is common in some Muslim cities and villages, where they contract the wife without a guardian or in the presence of any guardian, regardless of his rank, proximity or distance, or even regardless of his eligibility or incompetence .

The truth is that they are between two things :Either they take the doctrine of those who do not require a guardian in the marriage contract, and they have the right to do so .Either they take the doctrine of those who require the presence of the wali and his permission in the marriage contract, and therefore each person should be placed in his rank according to what has been decided by the proponents of this view.

Secondly: Who performs the marriage contract?

People differ on who can be a woman's guardian in marriage, according to two opinions:

That the guardian is a member of the family in the order of descent, then the cause, then the family, not including relatives, which is the opinion of the public.

The League: Linguistically: A man's kinship to his father. (Ibn Faris, 1986, 1/672; Al Matarzi, Dt, 317). Etymologically: Those who do not have a prescribed share of the heirs and inherit the estate if they are alone or what is left over after the duties. (Al-Sherbini, 2000, 2/386; Al-Bahuti, 2000, 8/205; Ibn Abedin, 1992, 6/773). Abu Hanifa included the relatives of relatives and the Sultan.

Al-Shawkani said: 'The guardian is the closest relative of the family from the lineage, then from the cause, and then from his family .This is the doctrine of the public, and it is narrated from Abu Hanifa that relatives of relatives are among the guardians. If there is no guardian or if there is one and he is obstructed, the matter is transferred to the Sultan because he is the guardian of those who do not have a guardian' (Al-Shawkani, 1993, 6/143). Thirdly: The reason for the disagreement:

The reason for the jurists' disagreement is due to the lack of a valid or explicit text on the requirement of a specific guardian, even though there is a need for this because this matter is commonplace, as Ibn Rushd states: 'There is no verse or sunnah that is clear about the requirement of guardianship in marriage, let alone a text, but the verses and sunnahs that are usually invoked by those who require it are all possible, as are the verses and sunnahs invoked by those who require its omission.' (2004, 3/36).

IV: Asabat: The following is the order of the guardians according to the madhhabs and a statement of the prevailing view, and the ranks of the guardians can be categorised according to their entitlement to guardianship as follows:

- 1- Relatives from the ascendants: The order of relatives in marriage guardianship is the same as the order of inheritance, and the farthest one is blocked by the nearest one, including the woman's male relatives on her father's side. (Al-Aini, 2000, 5/93; Ibn al-Hammam, Dt, 3/277).

The jurists have differed on some of these in-laws, as well as those who are related to her on her mother's side, such as her maternal grandfather, uncle, etc:

A- Father and son :The jurists agreed that the father and son are considered close relatives, but they disagreed as to which of them is more likely to have guardianship over the woman in marriage, according to two opinions:The first opinion :The first argument is that the father and the son are the most important people in guardianship over a woman in marriage, not the husband and the wife, and not the father and the son. (Al-Mawardi, 1999, 9/92; Al-Juwayni, 2007, 3/46; Al-Shirazi, 1995, 2/427; Al-Nawawi, Dt. 16/147), and Ahmad. (Ibn Qadama, 1968, 7/16; Ibn Qadama, Dt, 7/417; al-Maqdisi, 2003, 1/391; Ibn Mufleh, 1997, 6/107; al-Bahuti, Dt, 5/50).

This is the famous version of Abu Hanifa and Muhammad. (Shaybani, 1983, 3/123; al-Sughdi, 1984, 1/127; al-Sarkhsi, 1993, 4/220; al-Kasani, 1986, 2/250; Ibn Mazza, 2004, 3/42).

They reasoned as follows :

1/ From the book :

¶ He said: 'Lord, grant me a good offspring from Yourself, for You are the one who hears prayers' [Al-Imran: 38.]

And We gave him Isaac and Jacob [Al-An'am: 84].

¶ and what He said :And We gave him Haiyya[Al-Anbiya: 90].

¶ and what Almighty says :And We gave David Solomon [S: 30].

¶ and the saying: ¶ Lord, grant me one of the righteous [Al-Safat: 100].

This is because the child is gifted to his father, and proving the guardianship of the gifted over the gift is more important than vice versa.

2/ From the Sunnah :

¶ On the authority of Jabir bin Abdullah, a man said: 'O Messenger of Allah, I have money and children, and my father wants to raid my money.' He said: 'You and your money belong to your father. (Ahmad ibn Hanbal, 2001, 11/503; Ibn Majah, 2009, 2/769; Ibn Habbab, 1993, 2/142). The hadith is true. Meaning: He will sweep away my money: That is, he takes it away and comes to take and spend it. (Ibn al-Athir, 1979, 1/311).

Those who hold this view have learnt from this hadith: That the child is gifted to his father, and therefore the most rightful person to guard the marriage of a free woman is her father, because the child is gifted to his father. (Al-Kasani, 1986, 2/250).

3/ It is reasonable :

-The father's guardianship is based on consideration and compassion, so he should be given precedence in guardianship.

-The father has guardianship over his child in his youth, infancy and insanity, so he has guardianship over him in all other matters, unlike the son's guardianship.

-This is because guardianship is an arbitration, and the parent's authority over the child is more important than the other way round .

-When meeting, the father shall be presented out of respect and honour.

-This guardianship is established in consideration of the ward, and the father's action is more favourable to his daughter because he is more compassionate towards her than the son, and therefore he is more likely to dispose of her property.

-The father's guardianship encompasses money and soul, so the son does not have guardianship over money, and because the father usually looks after her, and the son looks after himself and not her, so the father has precedence in guardianship.

(Shaybani, 1983, 3/123; al-Sughdi, 1984, 1/127; al-Sarkhsi, 1993, 4/220; al-Kasani, 1986, 2/250).

Ibn Qadama said: 'Then her son and his son, even if he is lower in rank. In short, if the father and his parents are absent, the first person to marry a woman is her son, then his son after him, even if he is lower in rank, the closest of them. The Companions of Opinion said. Shafi'i said: There is no guardianship for a son unless he is a cousin, a sire, or a ruler, so he has guardianship by that, but not by filiation; because he is not suitable for her, so he cannot marry her, like her uncle, and because his temperament is averse to marrying her, so he does not look at her.' (1968, 7/15).Al-Maqdisi said: 'The

first person to marry a free woman is her father because he is the most compassionate of her kinsmen, and he is in charge of her property when she comes of age, then his father, even if he is higher, because he is a father, then her son, then his son, even if he is lower, because he is one of her kinsmen, so he is in charge of her marriage like her father. He takes precedence over the other in-laws because he is the closest relative and the strongest in-law, so he takes precedence like the father.' (2003, 1/391).

DISCUSSION

According to the proponents of the first argument that guardianship is arbitration, there is no arbitration in guardianship. In addition, the difference in inheritance is not considered, and there is no significance in the inference of the right of guardianship by inheritance, because inheritance, on the one hand, is mandatory, and on the other hand, the place of presentation in inheritance is need and responsibility, not proximity, which is why a child and an insane person inherit, and there is no arbitration or guardianship over the inheritor.

There is also no evidence that the guardianship in marriage is for the closest relative, so the matter is based on that; because the role of the guardian is to take special care, and this is evidenced by the fact that the governor assumes her marriage if her guardian is absent. As for the father's compassion and consideration, compassion and consideration may be in the son and not in his father, and it may be in another relative, so why not consider compassion and consideration as the reason for submission rather than being a father or a son?

Al-Qarafi said: 'It may be that the former in one section is later in another section, as men in wars and imamate and delayed in custody, and women in custody because of their greater pity and patience for children; they are therefore more complete in custody than men; their greater expenditure prevents them from realising the interests of the children; for this rule the son is given precedence over others, for we know necessarily that a man's son is more pitying for him than his cousin, especially if he is far away, and every guardian is given precedence over other guardians if his character is closer and his condition of good consideration is more than others, so he is given precedence for this reason.' (DHT, 3/103).

Arab personal status laws that provide for this option:

People's Democratic Republic of Algeria :

-The marriage of a woman shall be performed by her guardian, namely her father, one of her first relatives, and the judge shall be the guardian of the person who has no guardian. (Article 11 of Law No. 11 of 1984, published on 09/06/1984).

Kuwait - :The guardian of a child is the father, then the grandfather, then the incapacitated grandfather, then the brother, then the father, then the uncle, then the father (Article 37 of Law No. 51 of 1984, published on 29/09/1996).

Hashemite Kingdom of Jordan - :The guardian in marriage is the asaba himself in the order stipulated in the most favourable opinion of Abu Hanifa. (Article 9 of Law No. 2 of 1976, published on 01/12/1976). The laws of these countries have agreed that the guardian must be an incapacitated person, and the order of guardianship is in the order of inheritance: the father, then the son, then the incapacitated grandfather, then the brother, then the father, then the brother's brother, then the father's uncle, then the father's uncle. Algerian law, although it is based on Maliki jurisprudence, has opted for the father to take precedence in the guardianship in marriage, and explicitly stipulates this, which is in accordance with the choice of the majority of scholars from the Ahnaf, Sha fi'ya and Hanbaliya. Jordanian law, on the other hand, stipulates that the order of guardianship is based on the most likely opinion of the Ahnaf, who chose to place the father ahead of the son and all other in-laws. **The second argument :** The son is more favoured than the daughter, which is the opinion of the Prophet (peace be upon him). (Ibn Nasr al-Tha'albi, 2004, 1/113; Ibn Abd al-Bar, 1980, 2/525; Ibn al-Hajjab, 2000, 255; al-Qarafi, 1994, 4/246). Abu Yusuf is a version of Abu Hanifa (al-Sarkhsi, 1993, 4/220; al-Kasani, 1986, 2/250; Ibn Mazza, 2004, 3/42). This view is attributed by Ibn Qadama in al-Mughni: Al-Anbari, Ishaq, and Ibn al-Mundhir. (1968, 7/14). They cited the following as evidence :1/ **From the Sunnah:** -On the authority of Umar Ibn Abi Salma, from Umm Salama (may Allah be pleased with both of them) who said: The Messenger of Allah (God's blessings and peace be upon him) said: 'When a calamity befalls one of you, let him say: 'O Allah, to

whom we return, O Allah, it is to You that I reckon my calamity, so help me in it.' When I wanted to say, "Who is better than Abu Salama?" I would say, "Who is better than Abu Salama?" When her period was over, Abu Bakr proposed to her and she rejected him, and Umar proposed to her and she rejected him; then the Prophet (may Allah be pleased with both of them) sent to her to propose to her and she said: 'Welcome to the Messenger of Allah (may Allah be pleased with both of them) and his messenger, I give the Messenger of Allah (may Allah be pleased with both of them) peace and tell him that I am a woman with a jealous affliction and that none of my guardians are witnesses,' so the Messenger of Allah (may Allah be pleased with both of them) sent her: 'As for your statement: Allah will take care of your children, and as for your statement that I am a jealous woman: I will pray to Allah to remove your jealousy, and as for the guardians, none of them is present or absent but will satisfy me.' And she said to her son: Get up, O Umar, and marry the Messenger of Allah (may Allah be pleased with both of them). So he married her. (Al-Hakim, 1990, 4/18). The hadith is true. Meaning: Musabiya: That is, having two boys (Zamakhshari, Dt, 2/286). Commenting on this hadith, Ibn Qadama said: 'Al-Athram said: I said to Abu Abdullah, 'The hadith of 'Umar ibn Abi Salamah when the Prophet (may Allah be pleased with both of them) married his mother, Umm Salamah, was he not a child? (1968, 7/15).2/ **Reasonable** : - The father and the son, if they are together, the son is the one who is a member of the family, and the father is the one who has an obligation; he is like a mother's brother with a father's brother and a mother -. Lineage is prior to others, and the first line of descent is the son, then the son's son, then the father (al-Sarkhsi, 1993, 4/220; Ibn Nasr al-Tha'albi, 2004, 1/113). **The chosen one** : There is no explicit evidence that the order of guardianship in marriage is the same as the order of inheritance, nor is there any evidence to favour the father over the son or vice versa in this matter, as Ibn Rushd said: Ibn Rushd said: 'As you can see, the issue is possible, but what is most likely is that if the law intended to require guardianship, it would have indicated the gender, types and ranks of the guardians; for it is not permissible to delay a statement from the time of need. If it is not permissible for the Prophet (peace be upon him) to delay a statement from the time of need, and the general public opinion on this matter requires that the requirement of guardianship be transmitted from him, either tawatirly or near tawatirly, and then it is not transmitted, then one of two things must be believed: Either the guardianship is not a condition for the validity of the marriage, but the guardians are responsible for it. Or, if it is a condition, it is not a condition of validity to distinguish the qualities, types and ranks of the guardians, and therefore the opinion of those who invalidate the contract of the most distant guardian in the presence of the closest one is weak.' (2004, 3/36). Al-Kasani said: 'It is better in both cases for the son to delegate the marriage to the father out of respect for the father and to avoid a dispute' (1986, 2/250). Therefore, it is more likely - God knows best - that when there is a conflict of guardianship and different guardians, the most compassionate and caring relatives, regardless of their degree of kinship, will be entrusted with the guardianship, and the woman may entrust her marriage to whomever she chooses. In normal cases where there is no dispute and where all guardians are keen to marry the fittest and most competent, the father will take precedence over the son because of his status and age, in recognition and honour of him, unless the father waives his right to guardianship for his daughter's son. And God knows best. A- In the presence of the grandfather and other guardians, which one should take precedence? The grandfather: The jurists differed on whether the grandfather, even if he has a higher rank, should be given precedence over the son and brother in marriage, according to the following opinions: **First argument** : The paternal grandfather is the most rightful guardian after the father, which is the opinion of al-Shafi'i (al-Omrani, 2000, 3/46; al-Sunaiki, Dt, 4/114). And its evidence: It makes sense - : The grandfather has the right of birth and inheritance, and because he is ahead of the uncle and other in-laws, he is ahead of other in-laws such as the father -. The grandfather has guardianship over money and marriage, so he is more important than the brother whose guardianship is limited to marriage -. The grandfather had guardianship over the father, so he is more important than the brother who was under the father's guardianship -. The grandfather is more compassionate towards her than the brother -. The son and brother are killed by her, and are amputated for stealing her property, but the grandfather is not -. The grandfather only falls in inheritance with the father, and the brother falls with him, the son and his

son, and if the money is tight and there is a grandfather and a brother, the brother falls alone, so he must be given precedence over them like the father. **Personal status laws that stipulate this choice:** All the laws that I have come across stipulate the order of guardians in the order of inheritance, and the son is prior to the grandfather in inheritance, and I have not come across a law that chooses the Shafi'i opinion that the grandfather is prior to the son. Although the law of the State of Kuwait stipulates that the grandfather is prior to all other relatives except the father and then the son, who are prior to him, but it stipulates that the grandfather is prior to the brother, which is as follows: - The guardian in the competence of the family is the father, then the son, then the incapacitated grandfather, then the brother, then the father, then the uncle, then the father (Article 37 of Law No. 51 of 1984, published on 29/09/1996). **The chosen one:** In my opinion, the chosen opinion in the matter is to submit the one who is closest to the woman and the most compassionate and keen on her, as compassion and keenness for the woman may be in the son, brother or grandfather; but the best in any case is to submit the one who is older and wiser, as Al-Qarafi said: Al-Qarafi said: 'Every guardian should be given precedence over the other guardians if his character is closer and his state of mind is more favourable than the others.' (DHT, 3/103). God knows best. **2/ Branch relatives:** Branches: They are sons and their descendants, and their consideration in guardianship varies according to two opinions: The first saying: There is no guardianship for a son - nor his son - unless he is a cousin, mawla, or ruler, so he is guardian by that, not by filiation, which is the opinion of the Shafi'ya (Al-Mawardi, 1999, 9/91-97; Al-Ghazali, 1997, 4/451; Al-Hosni, 1994, 359; Al-Sunniki, Dt, 4/114). They cited the following as evidence:

A- From the Sunnah :

-The Prophet (may Allah be pleased with both of them) said: 'Any woman who marries without the permission of her guardian, her marriage is null and void', three times. (Abu Dawud, Dt, 2/229; al-Tirmidhi, 1975, 3/399) and was authenticated by Ibn al-Malqan (2004, 7/533).

The son is not called a mawla and is not related to her .

B. It is reasonable :

-The branch is not stronger than the parent, and since the parent is the guardian, he cannot marry her as she marries herself -. He is a person whose father is not a valid guardian, so it is not valid from him, such as the son of the uncle with the uncle -. He does not share the lineage with the mother because he is related to his father and not to his mother, so he does not care about the shame of marrying her to an incompetent man -. Because he sees her marriage as a disgrace, in the sense that he prevents her marriage and sees it as a disgrace, he does not seek luck for her in the marriage of her equal -. Because his nature is averse to marrying her, he does not look at her.

For this reason, the son is excluded from the meaning of guardians according to the Shafi'i (Al-Mawardi, 1999, 9/91-97; Al-Ghazali, 1997, 4/451; Al-Hosni, 1994, 359; Al-Saniki, Dt, 4/114).

The discussion can be summarised as follows:

¶ The son is called an asba by agreement .

¶ The son is included in the general statement: [Al-Nur: 32]; because it is a speech to relatives, the closest of whom are children (Ibn Qadama, 1968, 7/16; Al-Qarafi, 1994, 4/226-227; Al-Shawkani, 1993, 6/148).

- Personal status laws that stipulate this choice:
- All the laws that I have come across stipulate the order of guardians in the order of inheritance, and the guardianship of the son because he is a member of the family, and I have not come across a law that stipulates that he has no guardianship as a son, and that he is not a guardian unless he is a ruler.

Second argument :

The validity of the guardianship of the son and his son, even if lower, over the mother, which is the opinion of the public (Ibn Qadama, 1968, 7/15; Al-Qarafi, 1994, 4/226-227; Al-Babarti, DT, 3/291).

They cited the following as evidence :

A- From the Sunnah :

-The above hadith narrated by Umm Salamah (may Allah be pleased with her) who said: The Messenger of Allah (may Allah be pleased with both of them) said: 'When a calamity befalls one of you, let him say: 'Inna Allah, to Him we return, O Allah, it is to You that I reckon my calamity, so help me in it.' When I wanted to say this, I used to say, 'Who is better than Ubayy Salama? I said, 'Who is better than Abu Salamah?' I didn't stop until I said it, and when her period was over, Abu Bakr proposed to her and she rejected him, and Umar proposed to her and she rejected him, so the Prophet (may Allah be pleased with both of them) sent to her to propose to her: I greet the Messenger of Allah (may Allah be pleased with both of them) and his messenger, I give the Messenger of Allah (may Allah be pleased with both of them) peace and tell him that I am a woman with a jealous affliction, and that none of my guardians is a witness, so the Messenger of Allah (may Allah be pleased with both of them) sent her: 'As for your statement: Allah will take care of your children, and as for your statement that I am a jealous woman: I will pray to Allah to remove your jealousy, and as for the guardians, none of them is present or absent but will satisfy me.' And she said to her son: Get up, O Umar, and marry the Messenger of Allah (may Allah be pleased with both of them), so he married her -.What was narrated by Aisha (may Allah be pleased with her) who said: The Messenger of Allah (may Allah be pleased with both of them) said: 'Any woman who marries without the permission of her guardian, her marriage is null and void.' - (Ibn Habbab, 1993, 9/384).

Her son is her guardian because guardianship is from proximity, as the Arabs say, 'This is next to this,' meaning close to it, and her son is closer to her than others because he is part of her and the part of something is closer to it than things outside of it (DAT, 3/102).

B- Reasonable :

- Because he is ahead of the in-laws in inheritance, so he is ahead in marriage .
- Mawla has many meanings in the Arabic language, including :
- Nasser :
- for the Almighty saying ﷻ :Indeed, Allah is his guardian, Gabriel, and the righteous of the believers [Al-Tahrim: 4]; i.e., his supporter .
- This includes the saying: and that the unbelievers do not have a guardian [Muhammad: 11]; i.e. there is no guardian for them, which is many, and the son is his mother's guardian, so he is her guardian. (Ibn Manzoor, 1994, 15/406).
- -Her son's guardianship of her is more than the guardianship of others because he is part of her, so he is her guardian. (Ibn Qadama, 1968, 7/15; Al-Qarafi, 1994, 4/226-227; Al-Babarti, Dt, 3/291).

The chosen one:

We believe that the chosen opinion on the issue is that the son's guardianship over his mother is established because there is no explicit evidence that prevents his guardianship over his mother, and what the Shafi'i mentioned does not serve as evidence to reject his guardianship, as Al-Qarafi said: Al-Qarafi said: 'Rather, the son should be ahead of all the guardians because he is part of her and her part is more closely related to her than external matters, and the rule is that in every guardianship the one who is most capable of looking after the interests of the guardian should be in charge.' (DHT, 3/103). This meaning is not restricted to the in-laws, but may be found in those who are related to the woman, such as her mother's brother, and those who are related to her, such as the daughter's son, and the anger may be more severe with them than with the sons of uncles and the like. There is no reason to limit the guardianship of marriage to the in-laws, just as there is no reason to limit it to those who inherit, and whoever claims this must provide evidence or a report that the meaning of the guardian in marriage is this in law or language, and as for the sultan's guardianship, it is proven by the hadith 'If the guardians quarrel, the sultan is the guardian of those who have no guardian' (Ahmad bin Hanbal, 2001, 3/1188; Al-Tirmidhi, 1975, 3/399).' (al-Qunuji, dt, 2/12). Therefore, the son's guardianship over his mother is valid on the basis of filiation and not on the basis of rulership.

CONCLUSION

At the conclusion of this study, it is clear that the guardianship of a son over his mother in the marriage contract is a complex jurisprudential and social issue, in which sharia rulings overlap with legal and social realities. The study has shown that the Shari'ah has established a balanced system of guardianship in marriage that takes into account the interests of women, preserves their dignity and rights, and emphasises the order of families in accordance with the objectives of the Shari'ah in preserving offspring, family, and community cohesion in order to sustain marital life in a healthy and integrated community environment. It was also found that the majority of Arab jurisprudence and laws reject the guardianship of a son over his mother if there are other in-laws, in order to preserve the social order and avoid potential embarrassment and issues. However, Maqasidic principles focus on achieving the interest of women and the sustainability of marital life in an integrated societal environment, which opens the way for a renewed reading that takes into account contemporary circumstances without departing from the constants of the Sharia.

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