

## Women's Right to Choose a Spouse in Saudi Family Law Compared to Shari'a and International Conventions

Ahmed S. A. Alboraie<sup>1</sup>, Khaled M. Hamdi<sup>2</sup>, Nasser A. M. Hashem<sup>3</sup>, Mohammed B. Malik<sup>4</sup>, Mohamed B. Abdul-Rahim<sup>5</sup> and Musaad A. Abdel-Khaleq<sup>6</sup>

### Abstract

*Among the recent laws issued in the Kingdom of Saudi Arabia is the Personal Status Law issued in 2022, this law is considered a qualitative leap in the field of human rights. One of the main principles targeted by this law is empowering women and supporting their rights. It aims to address many societal problems that families and women have sometimes faced by regulating family relationships, rights, and duties for all family members. One of the significant rights guaranteed by the law for women is the right to choose a spouse without coercion. The law has established a set of procedures to ensure the consideration of this right in Saudi society. In this study, we aim to focus on the mechanisms of protecting this right in Saudi law and examine some important issues related to this right, such as male guardianship over women in marriage, determining the marriage age, compatibility between spouses, and the restrictions imposed on this right in Saudi law, comparing this issues with Islamic Sharia texts and international agreements.*

**Keywords:** Male guardianship over women, compatibility between spouses, marriage of minors, Forced marriage, Islamic jurisprudence, CEDAW.

### INTRODUCTION

The Kingdom of Saudi Arabia, is rapidly advancing towards comprehensive development in all fields, aiming to achieve Vision 2030. One of the most crucial areas that has witnessed significant development recently is the field of legislation and judiciary in the Kingdom. Among the prominent matters introduced in this field is the declaration of the development of the legislative environment. This involves the introduction of a set of judicial laws aimed at preserving human rights, upholding the principles of justice and integrity, Codifying rules for judicial decisions to be issued in all courts within a unified legal framework and specified time frames. The objective of this action is to deal with the past problems of inconsistent judicial decisions in comparable cases and extended litigation periods.

The Personal Status code is one of the recently enacted laws in Saudi Arabia, designed to enhance women's rights and treat numerous family and societal issues that have emerged in recent years, in addition to restricting the role of judges in applying legal texts without personal opinions or interpretations, and eliminating disparities in judgments.

The study believes that the promulgation of the law mentioned as a qualitative leap in the field of human rights in general and women's rights specifically. The law endeavors to empower Saudi women and support their legitimate rights through a set of procedures in line with the principles of Islamic Sharia law and its general rules. The law ensures that it is in line with Islamic jurisprudence doctrines in every situation, maybe it goes against the opinions of a majority of jurists in some situations, however, the law did not issue a judgment in any matter without a basis in Islamic Sharia law and a text by some jurists.

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<sup>1</sup>Department of Jurisprudence, College of Sharia and Law, University of Hail, Saudi Arabia E-mail: [a.alboraie@UOH.EDU.SA](mailto:a.alboraie@UOH.EDU.SA) ,(Corresponding Author)

<sup>2</sup>Department of Islamic studies, College of Sharia and Law, University of Hail, Saudi Arabia

<sup>3</sup> Department of Islamic studies, College of Sharia and Law, University of Hail, Saudi Arabia

<sup>4</sup>Department of Law, College of Sharia and Law, University of Hail, Saudi Arabia

<sup>5</sup> Department of Islamic Studies, College of Education, Prince Sattam bin Abdulaziz University, Saudi Arabia

<sup>6</sup>Department of Islamic Studies, Haql University College, University of Tabuk, Saudi Arabia

At the same time, the law ensures that international human rights conventions, which the Kingdom of Saudi Arabia is a member of, are applied, but with the commitment to complying with Shari'a law and avoiding any interpretations that are not in accordance with the holy provisions of Islam.

One of the important rights for women affirmed by Saudi law is the woman's right to consent to a marriage contract and her right to choose a husband, as guaranteed by Islamic law and international instruments. This right relates to the most critical personal decision a woman can make in her life – the decision to marry. It is inconceivable that a woman should make this decision without having a voice and a choice.

In this study, we aim to highlight the mechanisms outlined by the law to protect this right and clarify the limitations in accordance with Shari'a and jurisprudential texts. Additionally, we will specify the points of agreement between the law and international agreements, as well as points of disagreement with some interpretations of these agreements, stating the reasons for the divergence from the Islamic perspective.

### **Importance of the Study:**

Islamic societies have often been accused by some Westerners of being biased towards men, practicing discrimination and persecution against women, and not supporting women's rights. This study aims to illustrate a model of women's empowerment and support for their rights in one of their legitimate rights in an Islamic society, which is considered one of the most important and largest Islamic societies.

### **Study Objectives:**

Empowering Saudi women in society and acknowledging of their legitimate rights.

Highlighting the Islamic and legal rights of Saudi women in the personal status code.

Demonstrating the compatibility of the Saudi Family Law with the principles of Sharia and the schools of jurists.

Indicating that the Saudi Family Law is in line with international human rights treaties, as long as it doesn't conflict with Islamic Shari'a provisions.

### **Study Questions:**

Has the Saudi Family Law taken significant steps to protect women's rights in Saudi society?

What measures have been taken by the law to safeguard women's right to consent to marriage and their freedom to choose a spouse without coercion?

What is the alignment between the Saudi Family Law and international agreements?

To what extent does the Saudi Family Law align with the Islamic schools of jurisprudence?

### **Human Rights in Sharia and International Conventions:**

Human rights are a set of values and rights aimed at protecting the human personality in its various dimensions. Whether these rights relate to the material aspects of human beings, such as the right to life and the right to bodily safety, or to the moral entity of humans, such as the right to a distinctive name, the right to honor and dignity, the right to privacy, and the right to one's thoughts and creative productions. These rights also include personal freedoms essential for human life, such as freedom of thought, opinion, expression, movement, choice of work, contracting, marriage, and other freedoms inherent to human personality in securing its function and activity (Keira, 1969, p. 448).

According to the United Nations High Commissioner, human rights are defined as rights that we possess as humans and are not granted by any state. All of us are entitled to these universal rights, regardless of our nationality, gender, national or ethnic origin, color, religion, language, or other status (OHCHR. What are human rights?).

The concept of human rights has gained international consensus through treaties and declarations issued by the United Nations, starting with the Universal Declaration of Human Rights (UDHR) in 1948, the International

Covenant on Civil and Political Rights (ICCPR) in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, and other international treaties and agreements in this regard.

The idea of human rights has also gained general acceptance in Islamic societies, except for some texts that can be interpreted in ways that contradict clear texts in Islamic law. The general principle in Islam is based on respecting human dignity and caring for their rights. Muslim jurists believe that Islamic law came to support these rights and protect them. According to them, Shari'a came to safeguard all individuals in five important areas: religion, soul, mind, progeny, and property. Islamic scholars refer to these five matters as the five higher purposes that underlie Islamic ruling (Auda, 2008, Rizal and Bahri, 2022). Undoubtedly, preserving souls and offspring necessitate protecting all the rights that constitute human personality, such as the right to life, health, medical care, physical safety, human dignity, as well as the right to name, lineage, marriage, and the formation of the family, and so on.

This is evident in multiple Islamic texts which emphasizing the dignity of all human beings and their equality, regardless of nationality, or race. For instance, the Quran states: "We have dignified the children of Adam" (Quran, 17: 70) and "Whoever saves a life, it will be as if they saved all of humanity" (Quran, 5: 32). Additionally, it emphasizes: "Surely the most noble of you in the sight of Allah is the most righteous among you" (Quran, 49: 13). In a Hajj sermon, the Prophet Muhammad declared the equality of all people and emphasized that piety is the criterion for preference (Ibn Hanbal, 2001, Hadith No. 23489). Furthermore, the Prophet stated that: "Allah (God) would torment those who torment people in the world" (Ibn Al-Hajjaj, Hadith No. 2613). In addition to that, there are more Islamic texts affirming human rights in Islam (Andrabi, 2016).

### **The Right to Marriage and Family Formation in Islamic Law and International Agreements:**

One of the important human rights that Islam affirms and is reiterated in international agreements is the right to marriage and family formation. It is a natural right dictated by the human nature of both men and women. Article 16 of the (UDHR) states that The right to marry and establish a family is granted to men and women who are full age, regardless of their race, nationality, or religion, and they are entitled to the same rights in relation to marriage, both during and after its end. As stated also in Article 23 of the (ICCPR).

Also, the right to marry and establish a family are among the most important rights that Islam preserves. Islam sees a marriage as a religious purpose commanded and encouraged, and as a right belonging to the community. This is due to its important implications in procreation and the formation of a family, which constitutes a vital unit in building society (Barakaatee, 2012, p. 461).

However, since marriage in Islam is a religious objective aimed at preserving lineage and forming interconnected families capable of contributing to the development of society, Islam only allows marriage between a man and a woman. This is because human nature and the upright human disposition dictate so. The Quran states: "And of all things, we created pairs" (Quran, 51: 49). Additionally, it is mentioned: "O mankind, indeed we have created you from male and female" (Quran, 49: 13). The Holy Quran also highlights (Quran, 23: 7) that pursuing the satisfaction of sexual desires through illegitimate means, such as, sex beyond the natural bounds of the two genders and adultery within the two genders, is considered a departure from the inherent human nature and disobedience of divine orders. (Draman, and Hashi, 2019).

For this reason, Islam and the laws of Islamic countries do not allow same-sex marriage, because it goes beyond the limits of nature, violates human nature and dignity, and undermines the structure of the family, and conflicts with the purpose of God's creation (Ukoma, Uka, and Nnachi, 2016, Karimullah, 2023).

Consequently, a number of Muslim countries, including Saudi Arabia, have reservations about certain provisions of international human rights conventions that have been interpreted as supporting homosexuality and LGPT persons as a human right (Factsheet, 2021).

The study confirms that if we interpret the right to marriage and family formation in the international treaties as the solemnization of marriage between a man and a woman in accordance with the cultural and religious beliefs of each society, this would be a respectful interpretation that takes into account the religious background of each community.

## **Woman's Right to Choose a Spouse:**

### **Woman's Right to Choose a Spouse in Islamic Law:**

If a woman has a confirmed right to forming a family, it is a complement to this right that she also has the right to choose her husband; That is because marriage is a personal matter that should not be under coercion, and this is explicitly affirmed in Islamic Sharia texts. In Islam, the purpose of marriage is the harmonization of interests between spouses as Quran stated (Quran, 30:21), and this objective cannot be achieved in a marriage built on compulsion. In light of this, the Prophet Muhammad instructed seeking the permission of the woman before marriage, stating: "A woman who has been married before (Thayyib) has more rights to her own body than her guardian, and a virgin's father is required to seek her consent" (Ibn Al-Hajjaj, Hadith No. 1421). The matter in this hadith is considered obligatory with any an adult woman, as stated by the Hanafi jurists, because it's not possible to ask for her permission without following her opinion. (Al-Quduri, 2010, p.327).

Therefore, the Prophet ruled in multiple cases for the invalidity of marriage contracts when women were forced into these contracts without their consent, and he granted women the right to choose to execute or annul the marriage contract. Ibn Abbas narrated: "A virgin came to the Prophet (PBUH) and stated that her father had given her in marriage without her consent, so the Prophet allowed her to make her own decision" (Abu Dawud, Hadith no. 2096).

Because of these texts, the Hanafi jurists stated that: It is prohibited for a father to force his adult and sane daughter into marriage, whether she is a women who has been previously married (Thayyib) or a virgin. According to them, if her father takes this action without her consent, the contract is considered void, because, as mentioned by the Hanafi jurist Al-Marghinani (d. 1135 CE), "she is a free and adult woman, therefore, no one has authority over her to force her" (Al-Marghinani, 2006, Vol. 1: 492).

While another group of jurists holds the opinion that the father may impose a marriage on his adult daughter without her consent if she is still a virgin. This opinion belongs to the school of jurisprudence of the Maliki jurists (Sidi Khalil, 1916, p.92), the Shafi'i jurists (Al-Nawawi, 1914, p. 284), and the Hanbali jurists (Ibn Qudama, p. 201). They argue that the father's compassion and concern for his daughter's interests might lead him to do this in certain situations, and the obligation of seeking permission in the Hadith: "A virgin's father is required to seek her consent" is interpreted by this group as a matter of preference rather than necessity.

The study confirms that those who support this opinion, lack an explicit religious text on this matter, and the first interpretation is strengthened by other texts, such as the hadiths in which the Prophet invalidated marriages when a woman complained that she had been married without her permission.

Hence, the study believes that the idea of a father being allowed to arrange his adult daughter's marriage without her agreement is not correct. This goes against clear teachings from the Prophet, who canceled marriages when the woman didn't give her consent. It also goes against the main purpose of Sharia regarding marriage, which is to promote love, peace, and mutual understanding between spouses.

### **Women's Right to Choose a Spouse in International Conventions:**

International covenants also affirm this right for women. According to Article 16 of the (UDHR), marriage should only be entered into with the consent of the intending spouses. This principle also is reiterated in the ICESCR (Article 10), and the ICCPR (Article 23).

In 1969, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has entered into force. It emphasizes in Article 5 the right of every person to marry and choose a spouse without discrimination between men and women. Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) explicitly prohibits gender-based discrimination, advocating equality between women and men in all rights, including the right to choose a spouse (Article 16). Additionally, Article 1 of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1964) declares that Marriage is not legal unless the intending parties express their free and full consent in person.

## **Women's Right to Choose a Spouse in Saudi Law:**

The KSA is an Islamic state, governed by the Quran and the Sunnah of Prophet Muhammad, as outlined in (Article 1 and 7 of the Basic Law of Governance (1992). In line with Article 26 of the same law, the state is obligated to "protect human rights in accordance with Islamic Sharia". Simultaneously, The KSA considers international agreements, enacted by royal decree, as integral to its national laws, provided they align with the principles of Islamic Sharia, as stipulated in Article 70 of this Law.

The Kingdom's stance on this matter has been declared explicitly through its reservations expressed in the CEDAW and ICERD. The KSA made a general reservation, specifying that "Islamic law takes precedence in case of any conflict with the provisions of the conventions" (UNDP, 2019). The reason behind this reservation was to avoid interpretations that some try to impose on Islamic societies, claiming to uphold human rights such as the right to same-sex marriage or the right to engage in relationships outside the framework of Sharia-sanctioned marriage. Otherwise, the fundamental principle is that Islam strongly supports women's civil, social, and political rights, as long as they do not contradict with divine religions and the texts of Islamic law.

Building upon the aforementioned, the KSA has been committed to addressing certain customs that may be practiced against women, which are neither endorsed by Islam nor aligned with international conventions. In this regard, the KSA took a significant step by issuing the Personal Status Law (2022). This legislative move aims not only to overcome practices contrary to the rights of women but also to navigate through judicial interpretations and varied perspectives offered by family court judges in family-related cases (Antaki, 2022).

The "woman's right to consent to marriage and choose a spouse" was a subject where jurists historically held diverse opinions, as discussed earlier. This variation was reflected in family court cases in the Kingdom, prompting the law to address it explicitly. (Article 13) of the Personal Status Law states, "The consent of both spouses is necessary for a marriage contract to be valid". Additionally, (Article 17) specifies that "a guardian, even if he is the father, may not conclude the marriage contract of a woman under his guardianship without her consent, and her consent must be included in the marriage contract". These provisions underscore equality between men and women in the right to consent to marriage and freedom of choice. Moreover, they unambiguously invalidate marriages conducted without the woman's consent.

## **Safeguards for Upholding a Woman's Right to Select a Spouse in Saudi Legislation:**

Saudi law has implemented various measures to reinforce the Saudi woman's ability to exercise this right, ensuring her freedom to make choices without undue influence from male relatives. These protective measures encompass:

### **Setting the Age of Maturity for Marriage and Prohibiting minor Marriages:**

Given that the consent of both spouses is a condition for the validity of a marriage contract, it becomes essential to establish a minimum age for marriage, as consent in legal contracts is only recognized if it comes from an adult of mature age, possessing full legal capacity to engage in significant actions.

So, the law has set the minimum age for marriage for both men and women at 18 years, as this is generally considered the age of maturity. At this age, the husband and wife can usually express their full consent without coercion from any person. According to (Article 9), the law prohibits documenting a marriage contract for those below this age unless the court authorizes the marriage of a person under such age if the person has reached the age of puberty and the marriage serves his or her interests.

In this regard, the Law aligns with international agreements, as seen in (Article 2) of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, and (Article 6) of CEDAW.

However, the law may face objection from some Muslim scholars who differentiate between entering into a marriage contract on one hand and implementing the contract on the other. They argue that it is permissible for a father to conclude the marriage contract of his young daughter or son if he sees benefit in it. The execution of the contract, however, is delayed until the age of puberty, ensuring that there is no conjugal relationship until after maturity. This matter has been a subject of historical disagreement among scholars.

A group of Islamic jurists asserts that marrying off minors is never permissible, whether the father conducts the marriage or someone else. They argue that a marriage is only valid after reaching the age of maturity. This position is held by the jurist Uthman al-Batti (d. 760 CE), Ibn Shubruma (d. 761 CE), and Abu Bakr Al-Asamm (d. 892 CE) (Al-Sarakhsi, 1993, Vol. 4:212).

Their evidence is based on the verse from the Quran: "And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them..." (Quran 4:6). The phrase "reach marriageable age" indicates that marriage is linked to reaching the age of maturity.

However, the majority of Islamic jurists stated the father may conclude the marriage contract of his minors if he sees it in their interest. The implementation of the contractual terms, in this case, is delayed until after reaching puberty. This perspective is shared by jurists of the Hanafi (Al-Marghinani, 2006, Vol. 1: 495), Maliki (Ibn Rushd, Vol. 2: 6.), Shafi'i (Al-Nawawi, 1914, p. 284), and Hanbali schools (Al-Khiraqi, 1992, p.168).

The reason behind their assertion of the permissibility of the marriage contract in this case is the prevalence of such marriages in all ancient societies. This also happened during the time of the Prophet Muhammad and his companions, following local customs and traditions, but the contract's consequences did not take effect until puberty. This type of marriage was not criticized during that era because it was a widespread cultural norm.

The study emphasizes that Islam does not provide a directive or preference for marrying young girls over adult women. The texts only indicate that it is permissible for a father to undertake such an action if he perceives it to be in the best interest of the young individual. In Islamic jurisprudence, what is permissible is that in which actions and omissions are equivalent, without praising the doer or criticizing the one who refrains. One of the principles of Islamic jurisprudence is that "the ruler has the authority to restrict what is permissible according to the public interest". This principle is reflected in the Personal Status Law of the KSA, Due to in the context of our time, the public interest dictates that marriage should only take place after reaching the age of puberty and maturity.

This step in Saudi law is a serious move towards enhancing the rights of Saudi women and supporting them in one of their fundamental rights. It represents a significant effort to combat traditions and customs that encourage the marriage of minors, with potential penalties for those who engage in such practices, as stipulated by the Saudi Child Protection Law (2014).

### **Establishing Women's Consent within the Marriage Contract:**

As part of the measures implemented by the law to ensure the application of a woman's right to choose her spouse, the law stipulates in (Article 17) the marriage contract must include evidence of a woman's consent.

The law aims to ensure the woman's consent to marriage, and this is achieved through the woman's electronic signature on the marriage contract. Every adult woman in the KSA possesses a digital account on the Saudi digital platform. Through this platform, a woman can log in to her account to participate as one of the parties in the marriage contract. She can review all the data and conditions in the contract, input the necessary information, and then give her approval.

It is noteworthy to mention that the government of the KSA aimed, through this platform, to combat manipulation that could occur with traditional handwritten signatures. In the past, marriage contracts were often written and sent to women for their signatures, as they typically did not attend the contract-signing ceremony due to customs and traditions. In such cases, someone else might sign on their behalf. However, with the current digital signature, forgery has become more challenging.

### **Marriage Contract Registration:**

To ensure conclusively that marriage has taken place with the consent of the woman, Saudi law mandates the parties involved to authenticate and register the marriage contract on the dedicated digital platform for recording marriage contracts. According to (Article 8) both the woman and the man are granted the right to access the platform for the authentication of the contract.

Anyone in Saudi Arabia can access to marriage registration platform to create a marriage contract request on the platform, entering all the required information such as the details of the husband, wife, guardian, and witnesses, as well as pre-marital medical examination details and the conditions stipulated by the husband or wife in the contract. Subsequently, an appointment is scheduled with the authorized person, the "Ma'zoon" who officiates the marriage contract, to conduct the entire marriage electronically. For the electronic marriage contract to be authenticated, it is essential to review the contract details from all parties involved (husband, wife, guardian, witnesses), and all parties must sign the contract. These procedures ensure the complete protection of the Saudi woman's right to consent to marriage and her freedom of choice in this matter.

It is noteworthy that Saudi law, in this matter, aligns with the international treaties that mandate the registration of all marriage contracts in the official records of the competent authority in each country. (CEDAW, Article: 16:2, and the Convention on the Consent to Marriage, the Minimum Age for Marriage, and the Registration of Marriages, Article: 3).

### **Guardianship over women in marriage and its non-contradiction with women's right to consent and choice:**

#### **The Concept of Guardianship in Islamic Jurisprudence:**

Guardianship in marriage signifies, according to Islamic jurists, the male relatives' authority over the woman's marriage contract. The contract is formed through their expressions, with one side presenting the proposal (ijab) and the other side expressing acceptance (qobul). This guardianship is established for the male relatives of the woman in order of kinship, starting with the father, followed by the grandfather, then the son, and subsequently the full brother. The sequence continues with other male relatives based on their degree of relationship to the woman, and there are variations among jurists regarding the specifics of this order (Al-Khiraqi, 1992, p.167, Ibn Rushd, Vol. 2:14, Al-Fawzan, 2016, Vol. 2:365).

This guardianship has been a subject of debate among jurists in two aspects:

The first point was whether this guardianship gives the guardian the right to compel an adult, sane woman into marriage without her consent. We previously discussed this issue and highlighted the invalidity of this opinion and leaned towards the view that forcing a mature and major woman into marriage is prohibited. The Saudi Arabian law aligns with this perspective, as we mentioned before.

The second point was whether an adult, sane woman, has the right to enter into a marriage contract by herself without seeking permission from her guardian. This debate revolves around whether, in Islam, it is necessary for the guardian to approve the marriage, considering that marriage establishes a social bond between the two families. Does the guardian have the right to consent to this social relationship? This point also sparked disagreement among scholars due to their interpreting the religious texts related to this matter.

The majority of Islamic jurists, contend that it is not permissible for a woman to marry without the knowledge and consent of her guardian. They stipulate that for the marriage to be valid, the woman must delegate her guardian to represent her in the marriage contract, ensuring the guardian's approval. According to this view, a woman is not allowed to independently contract her marriage, and if she does, the marriage contract is considered void. This perspective is shared by scholars of the Maliki (Ibn Rushd, Vol. 2:9), Shafi'i (Ibn Naqib, p. 520), and Hanbali schools (Ibn Qudama, p. 201).

Supporters of this opinion relied on the hadith narrated by Aisha, where the Prophet Muhammad said: "Any woman who marries without the permission of her guardian, her marriage is void" (Abu Dawud, Hadith No. 2083).

On the other hand, the Hanafi School stated that it is permissible for an adult and sane woman to contract her own marriage without the permission of her guardian. In this case, the marriage contract is considered valid, and the guardian has no right to object to the marriage as long as the woman chooses an equivalent husband and he is a same social standing as her (Al-Marghinani, 2006, Vol. 1: 491, Maulana Thanvi, 2009, p. 378). They argued that the woman is exercising her legitimate right, and her action is permissible. If she chooses a suitable

husband and requests the guardian to solemnize the marriage, the guardian has no right to refuse. If he does, the judge can compel him to officiate the marriage. In this scenario, the marriage contract, when initiated by the woman herself, is considered equivalent to a marriage contract conducted through the guardian.

In this matter, Saudi law has adopted the opinion of the majority of jurists, requiring the validity of marriage that the woman's guardian personally conducts the marriage contract. (Article 17) of the law specifies the order of guardianships.

The reason for the law is that marriage in Arab and Islamic societies is not limited to the bilateral relationship between the man and the woman alone. Instead, it is a contract that gives rise to social ties between the man's family and the woman's family, forming the bonds of affinity between the husband and the in-laws and between the wife and the in-laws. As Allah Almighty states: "And He is the One Who creates human beings from a "humble" liquid, then establishes for them bonds of kinship and marriage" (Quran, 25:54). This verse combines both blood relations and relations by marriage, indicating that marital affinity in Islam is equally significant as blood relations. Hence, the guardians have the right to consent to marriage and the resulting kinship, but without coercion on the woman.

Based on this reason, the woman's consent and the male guardian's approval became two essential conditions for the validity of the marriage contract in Saudi law, as clarified by (Article 13). In this context, if a woman chooses a compatible man for her, she is required to inform her guardian of her choice. The guardian, in turn, must proceed with the marriage contract for her with the qualified man she has chosen. The guardian does not have the right to refuse the marriage as long as the chosen husband is suitable for her. Thus, by proceeding in this manner, we have taken into account the woman's right to choose her spouse and consent to the marriage on one hand, and the guardians' right to approve the kinship ties resulting from this contract on the other. (Badawi, 2007, p. 373).

However, the question arises here about the mechanism for dealing with the conflict that may arise between the woman's choice and the guardian's opinion. In a situation where the woman chooses a suitable spouse and her guardian does not approve, refusing to proceed with the marriage, how should this situation be handled? This issue is known in Islam as "Aadl al-Wali" or the guardian's refusal. Islam has addressed it through unequivocal texts, and the Saudi law adheres to these principles in dealing with this matter, as we will explain in the next point.

### **The Guardian's Refusal and How to Confront It:**

In Islam, the guardian's refusal (Al-Aadl) is prohibited. Allah says in the Quran: "But do not prevent them from marrying their husbands when they agree between themselves in a lawful manner" (Quran, 2:232). Therefore, Islamic jurists unanimously agree that the guardian does not have a right to decline his ward's marriage, if a woman desires marriage to a man of equal status. Moreover, Islamic jurists also agree that if the guardian refuses to marry the woman to the suitable man of her choice, she has the right to appeal to the judge to facilitate the marriage (Ibn Rushd, Vol. 2:17). They argue that since the guardian has then failed to fulfill his duty, the judge steps in to perform this duty on his behalf. The Prophet Muhammad also alluded to this in his saying: "Any woman who marries without the permission of her guardian, her marriage is void. If they dispute, the ruler is the guardian of one who has no guardian" (Ibn Majah, Hadith No. 1897).

The Saudi law has adopted this measure to address the obstruction of guardians. (Article 20) stipulates that: "If the guardian, even if he is the father, prevents his female relative from marrying a suitable match whom she has approved, the court shall undertake the marriage of the restrained woman upon her request".

### **Constraints on Women's Right to Choose a Spouse in Saudi Law:**

There are limitations imposed on a woman's right to choose their spouses in accordance with the Saudi legal framework, which is founded on Islamic Sharia. The Kingdom cannot contravene the unequivocal religious texts regulating marriage in Islam. For this reason, the Law specifies a set of constraints on a woman's right to choose her spouse, which are outlined below:



### **Prohibited Kinship for Marriage:**

Sharia has prohibited marriage between certain relatives, as outlined in various Quranic verses and the sayings of the Prophet. For example, (Quran 4:23), (Quran 4: 24), and the saying of the Prophet Muhammad: "One should not combine a woman and her father's sister, nor a woman and her mother's sister in marriage" (Ibn Al-Hajjaj, Hadith No. 1408). And other texts which provided us a complete list about this (Barakaatee, 2012, p. 471, Ibn Rushd, Vol. 2:37). The Law explicitly outlines these restrictions. It prohibits, as stated in (Articles 22-26), the marriage between any two individuals who share a relationship that Islam prohibits for marriage. This includes some relationships based on kinship, affinity, breastfeeding, or any temporary impediment that restricts their marriage.

### **Difference in Religion:**

Islamic Sharia allows a Muslim man to marry a woman from the People of the Book, whether she is Christian or Jewish, as stated in the (Quran, 5:5). On the other hand, unequivocal Islamic texts prohibit the marriage of a Muslim woman to a non-Muslim man, regardless of his religion. Allah says: "If you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them" (Quran, 60:10). Due to this verse, the prohibition of a Muslim woman marrying a non-Muslim became an acknowledged matter in Islam (Ibn Kathir, 2003, Vol. 9:600). The law adheres to religious texts on this matter, explicitly prohibiting a Muslim woman marrying a non-Muslim, deeming such a contract invalid (Article 26).

As marriage in Islam is a sacred religious bond, and a covenant that includes a worshipful aspect to God, rather than merely a civil contract between the spouses, it was necessary for the women to respect Islamic text in this issue which considered to be a part of Islamic identity and a manifestation of Islamic rituals. It is akin to other Islamic worship practices that a Muslim is not allowed to deny or contravene. Despite attempts by some to reinterpret the religious texts on this matter, promoting the marriage of a Muslim woman to a non-Muslim through inaccurate interpretations of Quranic verses (Karakaya, 2022; Haqqani, 2023), others advocate for it under the pretext of preserving women's rights, citing human rights conventions and non-discrimination against women. According to them, women should be allowed to marry non-Muslims to uphold principles of equality and human dignity (Abdellatif, 2017). However, this study argues that these calls directly contradict the unequivocal Quranic texts on this issue.

### **Compatibility between spouses:**

Marriage in Islam is envisioned as a lifelong commitment, and ensuring its success requires confirming the compatibility between spouses in social, cultural, and moral aspects before entering into the marital contract. If the couple is equivalent in these matters, the marriage is considered successful, reducing the likelihood of divorce and separation. Hence, many Islamic scholars emphasize the principle of "compatibility" between spouses in the marriage contract (Khan, and Naqib ullah, 2018).

The issue of compatibility between spouses as a condition for marriage has been a matter of disagreement among Islamic scholars:

Some scholars, including Ibn Hazm (d. 1064 CE) and others, argue that compatibility is not a necessary condition for marriage. They believe that neither the wife nor her guardian should focus on compatibility, as Islamic texts emphasize the absence of favoritism based on lineage, wealth, or profession (Ibn Hazm, Vol. 9: 151). They point to verses like, (Quran 49:13) which confirms that all people are equal and the most noble of people in the sight of Allah is the most righteous among them. The Prophet Muhammad also stated, "An Arab has no superiority over a non-Arab except by piety" illustrating the lack of preference based on social status. They further cite the example of Bilal Ibn Rabah, a former slave, who faced objections to marriage based on his social status, but the Prophet endorsed his marriage.

The majority of Islamic jurists, representing Four schools of Islamic Fiqh, Hanafi (Maulana Thanvi, 2009, p. 382), Maliki (Ibn Rushd, Vol. 2:18), Shafi'I (Al-Nawawi, 1914, p. 288), and Hanbali (Al-Fawzan, 2016, Vol. 2:367), argue that compatibility is a condition for the effectiveness of the marriage contract but not a condition

for its validity. They assert that both the wife and her guardians have the right to consider compatibility in the marriage contract, and they can choose to include or waive this condition. If the parties consider compatibility, and the woman marries a suitable man with the approval of the guardians, the marriage contract is valid and binding. However, if there is a disagreement about the evaluation of the husband's suitability, and one of the guardians objects, they can appeal to the court. In such cases, the validity of the marriage depends on the judge's ruling and assessment of the legitimacy of the objection raised by the objecting guardian.

The reason for considering the suitability of the husband, as mentioned by them, is that marriage is a social contract that establishes relationships between the families of the husband and wife. It was necessary to take into account the right of the guardians in assessing the husband's suitability. We can liken the right of the guardians in suitability to the right of a partner in pre-emption, where just as a partner is adversely affected by introducing a third party into the partnership without their knowledge and consent, guardians may be adversely affected by bringing a man into the family whom they perceive as unsuitable.

Historically, Islamic scholars have differed on the criteria required for the husband's suitability. Some debated whether it suffices for the husband to be a Muslim, while others argued for the inclusion of piety, good character, lineage, wealth, and occupation as additional criteria. (Ibn Rushd, Vol. 2:18). The disagreement among scholars reflects diverse perspectives on the essential qualities deemed necessary for a husband's suitability in marriage.

The study emphasizes that there is no explicit text that mandates the requirement of suitability in marriage. Rather, these are juristic opinions based on customs. According to our perspective, the closest of these matters is the requirement of religious, and the other criteria mentioned by scholars are subject to the customs and traditions, varying with time and place. In Islam, these customs are considered valid as long as they do not contradict a legal text. This is in line with the approach taken by Saudi Arabian law in this matter. The law specifies that: 1- The suitability of a man for a woman is a condition for the enforceability of the marriage contract but not its validity. 2- The criterion for the man's suitability during the contract is his religious righteousness and what is considered customary. 3- Any relative up to the third degree who has an interest can object to the marriage contract if the man is deemed unsuitable, and the court shall review the objection (Article 14).

## **RESULTS:**

The Saudi Personal Status Law marks a qualitative leap in empowering Saudi women and supporting their rights.

The law was chosen among the opinions of Islamic scholars to support a woman's right to express herself, even if it conflicts from the majority of scholars sometimes.

The law aligns with international human rights conventions, of which the Kingdom is a party, without conflicting with Islamic Sharia.

A woman's consent to marriage is a crucial condition in the contract, as stated by Saudi law, and no guardian can force a woman into marriage, even if her guardian is her father.

The Saudi government has implemented strict measures to ensure the enforcement of this right by mandating the registration of marriage contracts on the official platform and requiring a woman's approval for the electronic contract from her personal account.

The Kingdom has taken a significant step towards prohibiting the marriage of minors, reflecting a commitment to public societal interests and international norms.

The concept of male guardianship over women in marriage does not imply compelling women to marry without their consent. Instead, it signifies that the guardian has the right to consent to the marriage, considering that marriage is a social contract that establishes a relationship between the families of the husband and wife.

The law stipulates the guardian's approval for marriage while addressing the issue of whether the guardian abuses this right and refuses to proceed with the marriage, if she chooses a suitable husband. The law allows the woman in this case to seek legal recourse to complete the marriage proceedings.

The prohibition of Muslim women marrying non-Muslim men is not discrimination or oppression against women. Instead, it is part of Islamic identity and a religious matter in Islam, given that marriage in Islam is considered a sacred contract.

## **RECOMMENDATIONS:**

The Saudi law imposes a financial penalty for delaying the registration of marriage contracts. However, the study recommends increasing the punishment to make it more deterrent, due to Individuals often resort to delaying the registration of marriage contracts to circumvent the imposed prohibition on marrying minors

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