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Family Provisions Regarding Guardianship – A Study of Purpose-

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Abstract:

This study aims to clarify the provisions of *Qawwamah*, and to correct its concept, which has been distorted, whether the West who wanted to harm women and ruin the family, or by people affiliated with Islam, but they understood *Qawwamah* incorrectly, and practiced it in the wrong way and gave a bad example. The study also aims to demonstrate the advantages of guardianship for women themselves, if it is in the right concept and application, and respects the privacy and decent jobs of each gender. The study has shown that guardianship for the benefit of women is necessary to preserve the family institution and protect it from cracks and internal conflicts. and that the Guardianship of a man is his preference over a woman in this section to ensure the good functioning of the institution, not an absolute preference for him, no is it to reduce its value; And the right is justice, not absolute equality.

Keywords: Family provisions; guardianship; equality; interest; justice; preference; Man; woman**.**

Introduction:

Praise be to Allah, He who gave to each thing its form and nature, then guided it aright, He Who created mankind, and then sent His messengers to guide mankind to what is the most upright law. It is Allah who created this human being and made his “marital nature” the same as everything he created in this existence: (And of all things We created two mates [i.e., counterparts]; perhaps you will remember)(1).

Then He wanted to make the two spouses two parts of one soul: (O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer.) (2). In the *hadith*: "They are created from a rib"(3) ;Not to belittle their

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status, but to arouse pity and compassion for them, as evidenced by the recommendation for them in the same *hadith*: " Treat women of good."
He made one of the purposes of this meeting for the two parts of the same soul - after that - as he intended; That this meeting should be a tranquility for the soul, a calm for the nerves, reassurance for the soul, and comfort for the body...then protection and maintenance...then a farm for the offspring and an extension of life: (And among His signs is that He created for you spouses from among yourselves, so that you may find tranquility in them; and He planted between you love and compassion. In this are signs for people who think.)(4). With serenity, affection and compassion.. clothing: (They are a clothing for you and you are a clothing)(5), A great garment that protects against the heat of temptation and the harshness of nature, and provides cover, beauty, companionship, and peace of mind, for each of them is the same for the other. Then He made it a well-grown farm... whose fruits are human beings: (Your women are cultivation for you; so approach your cultivation whenever you like, and send ahead for yourselves. And fear Allah, and know that you will meet Him. And give good news to believers.)(6). The most dangerous institution on the face of the earth arises, which is the family institution. Then he orders its protection: (O you who believe! Protect yourselves and your families from a Fire, whose fuel is people and stones. Overseeing it are angels, fierce and severe. They never disobey Allah in anything He has commanded them, and they carry out whatever they are commanded.)(7). The journey continues on the straight, connecting path until ascension occurs, then they encounter survival, and they will meet here in the garden of faith, and then there in the garden of eternity: (Those who believed and whose descendants followed them in faith: We will unite them with their descendants, and We will not deprive them of any of their works. Every person is a hostage to what he has earned)(8).
All that long, arduous, and at the same time enjoyable, journey would not have ended with this happy ending had it not been for taking that connecting path, which Allah Almighty revealed to guide us to the path that is most worthy. (This Qur'an guides to what is most upright)(9). Most upright in everything He guides to, indicates, commands, or forbids, and sets the right balance.
One of the most important things that Allah Almighty has guided us to is the jurisprudence (*fiqh*) of the family and its rulings. Indeed, it has taken up a wide space in the verses of the Holy *Qur'an* and the *Sunnah*, similar to *Surah Al-*

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Baqarah, which spoke about the rulings on maintenance, breastfeeding, divorce, bereavement, and other matters. In addition to *Surah An-Nisa*, which spoke about what is permissible and what is not permissible for women in the context of building a family, as it spoke about the provisions of polygamy and inheritance, which is classified in the laws among family provisions. In addition to *Surat Al-Nour* and what was stated in the prophetic *hadiths*, explaining what is in the *Qur'an* or establishing new provisions.

Research Problem

From what Allah Almighty has guided us to is the law of guardianship (*qiwamah*), the guardianship of men over women. Therefore, the problem of the research is represented in the following questions: What is the reality of guardianship, and what is its source? What are the extent and limits of men's guardianship over women? What does this guardianship achieve for the family institution in particular, and for humanity in general? What effect does this have on achieving worshipfulness, for which God Almighty created us for?: (I did not create jinn and humans except to worship Me)[10].

The Objective of the Study

This study aims to clarify the rulings on guardianship and its reality, and to correct its concept, which has suffered from distortions and alterations, whether at the hands of the West who wanted to do harm to women and to destroy the family, or by people who belong to Islam but understood and practiced guardianship in a wrong way, thus providing bad role models and wrong messages. The study also aims to explain the advantages and benefits of guardianship for the woman herself, if the correct concept and application, and the privacy and functions appropriate to each gender are respected.

Literature Review

When I did this research, I did not have any access to previous academic studies. After that, I looked at a group of them, but I did not use them, and I noticed a difference in presentation and purpose, including:

"The Concept of Marital Guardianship in Islamic Jurisprudence and the Refutation of Suspicions Regarding It," by Shahr al-Din Kala, University of Batna, Ninth International Conference, Contemporary Family Issues in the Light and Purposes of Islamic *Sharia*, pp. 191-214. The researcher attempts to explain the truth of guardianship, trying to find a difference between the traditional

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approach and the innovative approach in understanding the text. His discussion includes some suspicions about guardianship, such as it being the superiority of the man over the woman, depriving woman of her freedom and contradicting the principle of equality and other things, and also limiting the concept of guardianship to the framework of marital status only.

"Marital Guardianship in Light of the Qur'an and Sunnah" by Dr. Manouba Burhani and researcher Dhikra Mansouri, University of Batna, Ninth International Conference, pp. 141-160. In this study, the two researchers discuss the evidence for marital guardianship in the *Qur'an* and *Sunnah*, addressing the causes of guardianship, and addressing the mutual impact between the spouses in light of this guardianship. Likewise, they also limited the guardianship between the spouses only.

"Guardianship in the Family between Reason and Intention" by Mayada Muhammad Al-Hassan, Department of Jurisprudence and Principles, College of Arts, King Faisal University, Kingdom of Saudi Arabia, 1442 AH - 2020 AD. In this study, the researcher discusses the purpose of guardianship and its cause, and investigates whether it is a multiple cause between earning and giving. Or whether it is complex, as mentioned in the rulings of jurists in the case of imbalance in the reasons for guardianship and its purposes.

"The Guardianship of the Man between the Objectives of Islamic Law and the Reality of the Condition in the Islamic Society Today" by Shayeb Al-Omaria, 6, No. 11 (June 30, 2017), p. 324-349, 26 pp., Prince Abdul Qadir University of Islamic Sciences, Faculty of Sharia and Economics. But I was unable to have access to it.

Research Method

In this study, I use the inductive analytical method, using which I trace the texts and remnants related to *qiwamah*, and their explanations from the books of interpretation and explanation of the *hadith*, then I analyze them to reveal the truth about *qiwamah*, its etiquette, and its rulings.

Research Plan

I made the research after the introduction in three sections:

The first section: The Meaning of Guardianship Linguistically and Terminologically.

The second section: The Truth about Men's Guardianship over Women.

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The third section: Elements of Guardianship.

Then a conclusion in which I discuss the most important results and recommendations.

Keywords: rulings-provisions, family, purposes, guardianship, interest.

THE FIRST TOPIC : Meaning of Guardianship Linguistically and Terminologically:

First requirement: *Qiwamah* Linguistically:

The origin of the word *Qawamah*: From (qa wa m) (Al-Fayoumi, nd): to carry out the matter, upright, and the matter is upright. The *Qiwam* (by *kasra al-qāf*) is what provides a person with sustenance. And in the Almighty Allah's words: (And do not give the immature your money which Allah has assigned to you for support. But provide for them from it, and clothe them, and speak to them with kind words.) (11) That is, the money that provides you with sustenance(12). And in the *hadith*: "He has a question that is even wounded by resurrections from a living"(13). And they say: "This is the qiwam of the matter which means its essence and meaning. The qiwam of the army is its number.

And (*Qawam*), -with an 'a' instead of an 'i' is justice, moderation, and mediation in matters. The Almighty said:9 (And those who, when they spend, are neither wasteful nor stingy, but choose a course in between.)(14). That is, justice without extravagance or coercion. The foundation of the matter: its pillar, which is carried out and organized.

Qiyamah the People: The One who straightens them and manages their affairs(15) And it is used with (on). Allah says:(What of He who is Vigilant over the deeds of every soul?)(16) That is: A Guardian, All-Knowing, Watcher over every soul. He knows what good and evil people do, and nothing is hidden from Him(17).

The highest degree of *Qawamah* and *Qayyymiyah* is what characterizes Allah Almighty and is one of His names, Glory be to Him, (*Al-Qayyum*) (18); Managing all the creation of revival, construction and livelihood(19) "The ruler of everything."

When the Prophet - may God bless him and grant him peace - stood up for prayer in the middle of the night, he would say: "O God, praise be to You, You are the light of the heavens and the earth, and praise be to You, You are the sustainer (*Qayyam*) of the heavens and the earth..." (20). And in the narration of *Sunan*:

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"The sustainer (Qayyum) of Heaven and Earth." He, Glory be to Him, is the One who is responsible for His creation with knowledge, encompassment, management, sustenance, preservation, reward and punishment, as required by His wisdom. Nothing is impossible for Him in their affairs. He responds to the call of those who supplicate, accepts the work of those who work, supports those who seek help, and takes revenge on criminals. He gives life and kills whomever He wills whenever He wills and however He wills.. If the worlds were to come together including *jinn* and *ins* (people), and asked him, he gave them without diminishing his possessions in any way, in a similar manner as when a needle diminishes when it is inserted into the sea. And if they all disobeyed him, they would not harm him in the slightest, and if they all obeyed him, they would not increase his possessions in any way. Glory be to Him, He is the All-Sufficient.

***Al-Hay Al-Qayyum* (the Living, the Self-Sustaining Sustainer)**: the perfect of life and the one who brings together the attributes of the Self, and **Qayyum**: (the Ever-Living): the One who exists by Himself and the one who brings together the attributes of actions, and they were combined in the most appropriate way, as God combined them in three places in the Holy *Qur'an*. Allah says: (Allah, there is no god except He, the Living, the Everlasting)[21]. The reference for all the attributes of perfection is to these two noble names {*Al-Hay Al-Qayyum*}, and for this reason it is stated in the *hadith*: "It is the greatest name of God by which He answers, and when asked, He gives" [22], because they include all Perfections[23].

The greatest verse in the Holy Qur'an is *Ayat al-Kursi*, and it was venerated because it contained among the greatest and most comprehensive attributes of God Almighty: (*Al-Hay Al-Qayyum*).

This *Qiwamah* and *Qayyumiyah* of God Almighty, in accordance with divinity and godhead: (The Originator of the heavens and the earth. He made for you mates from among yourselves, and pairs of animals, through which He multiplies you. There is nothing like Him. He is the Hearing, the Seeing.)[24].

Some people are characterized by what suits them in terms of (*Qiwamah*) guardianship, within the limits of what God has naturally destined for them and permitted by law. This includes the guardianship of the shepherd over his flock, and the guardianship of men over women.

Al-Qawm: is addressed for men without women[25], and the plural of *qawm* is *aqwam*, and the plural of the plural is *aqawim*, Zuhair said:

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I do not know, and I will think I know * * * Whether I live in the people (*qawm*) of *Hisn* or women.

Allah said: (O you who believe! No people shall ridicule other people, for they may be better than them. Nor shall any women ridicule other women, for they may be better than they. Nor shall you slander one another, nor shall you insult one another with nicknames. Evil is the return to wickedness after having attained faith. Whoever does not repent—these are the wrongdoers)[26], He mentioned the people (*qawm*) and then said: "Nor shall any women ridicule other women." Perhaps women were included in it as a matter of consequence, because the people of every prophet were men and women[27].

Women are not among the people (qawm), because they do not possess the elements of guardianship. Ibn al-Atheer said: The people (qawm) were originally a source that originated and then refered to men rather than women, and they were called that because they were guardians over women in matters that women could not do.

First requirement: ***Qiwamah* Terminologically:**

The guardianship (*Al-Qiwamah*) was defined as: being in charge of affairs, money, or guardianship[28] .

(Guardianship): The husband takes charge of managing his wife's affairs, spending on her, protecting her, maintaining her, taking care of her interests, keeping her in her home, and disciplining her with what has been entrusted to him." [29] .

This definition is taken to be limited to guardianship between spouses, and it is broader, as will be explained.

From the totality of interpretations and explanations, the following definition can be extracted:

***Qiwamah* (guardianship) :** it is the responsibility of men and their care for women, as the situation requires, including upbringing, education, guidance, spending, protection, and maintenance in what is due for them, and taking into their hands with what is due from them by God, for themselves.

And our saying: "Men and their care for women" so that all those who care for them include men. Whether it is a husband, a father, an adult son, or a brother. As well as the "women" whom the man takes care of, including husbands, daughters, sisters, and even the mother, need the care of her son, who is her guardian and protector, and who is her *mahram* during her travels, and even in

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the guardianship of the marriage contract over her if she becomes estranged and wants to get married. He is responsible for contracting it if someone who is more worthy of him, such as the father and paternal grandfather, is missing. It is narrated that our mother, Umm Salamah's son Omar ibn Abi Salamah, may God be pleased with them, was responsible for her marriage to the Prophet, they disagreed about it due to their difference in the age of Omar ibn Abi Salamah at the time[30].

THE SECOND TOPIC: The Truth about Men's Guardianship over Women:

From all of the above related to guardianship and its derivations, it is clear that guardianship is based on the strength and ability to do something, and that it requires a position that qualifies it to assume the position of guardianship, and each guardianship is according to its type.

In order to accommodate the issue of men's guardianship over women, we stand at stations included in God's words: (Men are the caretakers of women, as Allah has given some of them an advantage over others, and because they spend from their wealth. The good women are loyal; guarding what Allah would have them guard. As for those from whom you fear treason: advise them, then abandon them in their beds, then discipline them. But if they obey you, seek no way against them. Allah is Sublime, Great.)[31]. In order to clarify this fact, we should better address it through the following points:

First requirement: The Reason for the Revelation of the Verse:

The reason for the revelation of the verse was stated: It was the statement of women, including Umm Salamah, the Mother of the Believers: "Do you invade men and we do not invade, but we get half the inheritance", then this verse was revealed: (And do not desire what Allah has favored some of you above others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of His favor. Allah has knowledge of all things.)[32]. His wife, Habiba bint Zaid bin Abi Zuhair, disobeyed him, so he slapped her. Her father complained about him to the Prophet - may God bless him and grant him peace - so he ordered her to slap him as he had slapped her. The verse was revealed immediately after that, and the Prophet - may God bless him and grant him peace - said: I wanted one thing and God wanted something else[33], which means that he prevented her from returning the slap because she

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did not have the right to hit him the way he hit her because of the meaning of guardianship he had over her.

It is not impossible for the set of verses to respond to a number of reasons. Looking at these two reasons that were transmitted by commentators, it appears that the story of Umm Salamah fits into its first half. This is a preference from God Almighty for men for reasons mentioned.

As for the last part of it, it fits with the story of the man who slapped his wife and she wanted to take retaliation. So, the verse was revealed {and strike them} – which permits for men to strike women as a means of discipline and correction, not as a way of torture, and that this is not a strike of aggression. Therefore, there is no retaliation in it, so he has the right to strike her, and She cannot hit him as retaliation, as well as hit him as a means of discipline.

There is no retribution (*Qisas*) between a man and his wife in anything other than the self. If a man stabs his wife or wounds her, he is not obligated to retribute. Its origin is taking the offender by order of the ruler to retribute against him - and he is obligated to reason except for the one who kills her, in which case he should be killed[(34)]. This is because one of the conditions for retribution is intentional aggression. If these two conditions are not fulfilled, retribution is not required. Here, intentionality is present, which is slapping, and aggression is not present, because it is the use of a legitimate right. Therefore, the one who carries out punishments by order of the guardian is not subject to retribution, because he is not an aggressor. Likewise, here he is not an aggressor, so there is no retribution for her.

second requirement: **Guardianship is Care, not mere Authority:**

Ibn Abbas - may God be pleased with them both - said: As guardians over them, women must obey men in whatever Allah has commanded them to do, and their obedience to them is to be good to their family and protect their money. Al-Tabari said: Men are competent to stand up to their wives, in disciplining them and taking over what is obligatory upon them for God and for themselves; they are guardians over them regarding what God has assigned to them regarding their affairs[(35)], just as governors are guardians over subjects[(36)] (Al-Zamakhshari , 1407 AH, page 1/505).

In fact, guardianship is not domination and captivity that a woman falls into, but rather it is care, protection, preservation, sacrifice, and enduring hardships so that she may be comfortable, and enduring dangers so that she may be safe, even

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dying for the sake of her well-being and preserving her honor. According to what the Prophet, peace and blessings of God be upon him, said: "And whoever is killed while protecting his family is a martyr»[37]. Therefore, some commentators confirmed this meaning by saying: "That is, it is their well-known and customary duty to provide protection, care, guardianship, and sufficiency over women, and one of the necessities of this is that *jihad* is imposed on them and not on women, as it includes protection for them" [38].

In some interpretations, the expression for guardianship is: "They have authority over them." This may be understood as domineering, condescending over them, and subjugating them.. Some people said to me one day: If your wife asks you to buy something for the house, do not buy it immediately, until she has passed her request, then bring it on your own, so that she is not to command you or be a guardian over you!!

This guardianship is no different from the guardianship of a man over his children, whom he was tasked with protecting from Hellfire with good upbringing and care, and to spend on them. Furthermore, he was threatened if he neglected them, as in the *hadith*: "It is enough sin for a man to waste the one he supports"[39] "He provides for," which includes women, offspring, parents, and others in need. So, guardianship is an obligation and not just an honour. Rather, the honor that comes with it is as if it were a reward for that task and a return of the favor. It is itself one of the components of guardianship, so that he receives appreciation, respect, and reverence, which helps and encourages him, and encourages the subjects to adhere to the matter of his guardianship. The exchange of need requires the exchange of compliance.

One of the requirements for a man to be a "guardian" is that he resists the family's problems and bears what others cannot bear, in good times and bad. He must be patient with her morals that he does not like, and constantly tries to be patient and wise when they are crooked until he straightens them, and whoever is patient, God will give him patience, as in the *hadith*. This is especially that the woman who was created from a crooked rib, and the most crooked part of the rib is the top, and her top part is her head and the thoughts and mentality it carries. A man may find himself needing to exert effort, patience and wisdom about what might come from her, so that he can coexist with her in peace. This is the reason that divorce is in the hands of the man, not the hands of the woman, because he can be patient and resist problems until the storm calms down and the waters return to their courses and become clear. This is to prevent him from

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demolishing the nest on its inhabitants, thereby not fulfilling the greatest wish that Satan wants and is working on, which is to bring about divorce and separation between spouses and the separation of families. The first crime that Satan committed among humanity in Paradise was to separate our parents Adam and Eve, peace be upon them, and that remains his wish and mission until the Day of Judgment.

The third requirement: Guardianship is an Innate Need, a Human Necessity, and a Legal Obligation:

The family is a dangerous institution in the caliphate of the earth, upon which stands the orbit of the goodness and corruption of the earth. What makes this clear is that it was the first target of Satan in his battle against the family, so he displaced it, dispersed it, and expelled it from its first homeland - Paradise -.

The accursed Satan, the one who is humiliated and arrogant towards God Almighty and his creation, and despite the fact that he asked for attention from Allah Almighty until the Day of Resurrection, and vowed to make the descendants of Adam, peace be upon him, afflicted: (He said, "Do You see this one that You honored over me? If You delay me until the Day of Resurrection, I will bring his descendants under my sway, except for a few.")[(40)]. One can imagine how spiteful and aggressive he is in his tough expression "under my sway". Then, in Adam's enmity, he trespassed to his descendants, who were not there at the time!

However, he did not call our father Adam and our mother Eve to outright polytheism or disbelief in Allah. Rather, he chose the first arrow he aimed to be at the family in order to corrupt it, disperse it, cause it to violate God's command, expose it and its faults, and reveal what should be hidden... And that is only because he knows that the corruption of the world begins with the corruption of families and the destruction of homes... and he is the one who installs his throne and sends his soldiers, and is not satisfied with them without separating families and bankrupting their institutions.

It is as if he knows that a family that has no home, no tranquility, no agreement, no harmony, and no order... will end in ruin and corruption, and that its members will be displaced, and that instead of becoming a factory of goodness, it will export evil people to society, and will perish and be destroyed.

In order to confront this enemy and his followers, both humans and jinn, there must be a system that preserves the front, protects the egg, and protects the

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family from behind it. Hence, it is necessary to put one of the spouses over the other and thus over the family institution, otherwise we would be faced with two of the corrupting matters:

Either the family institution is left without a head, and this leads to dispersion and separation, or the institution is two-headed, which constitutes an example of disagreement and fighting. Therefore, the latter's end is corruption which is more severe than the first case, because it results from conflict, until some of them rise above others, and for this reason Allah Almighty said: (If there were in them gods other than Allah, they would have gone to ruin. So glory be to Allah, Lord of the Throne, above what they describe.)(41). And He said: (Allah has never begotten a son, nor is there any god besides Him. Otherwise, each god would have taken away what it created, and some of them would have gained supremacy over others. Glorified is Allah, far beyond what they describe)(42), In the end, it must be one God, the God who predominates all others, thus He is God and others are His subjects!

This is conclusive rational evidence provided by Allah Almighty that God must be one, and the evidence for His being one is that the heavens, the earth, and the entire universe remain in order and are not corrupted. And on that path, all life matters take place.

Then He forbade the multiplicity of guardians, and ordered the fulfillment of the pledge of allegiance to the first and the killing of the second, whoever he was. Although it entails the loss of a life, in comparison with the corruption of the nation and its harm caused by the multiplicity of heads, it was committing the lesser of the two corruptions by avoiding the greater amongst them!

If this is established, then it is from the universal laws that the head is one in every society... and in every institution... even in the animal world as in the world of bees. Therefore, it had been decided that the family should have one head to support it, either the man or the woman. It was God's prior decree that He equipped the man with the basically congenital qualities (psychological, physical, and mental) in order to perform a task that requires this specification. The meaning of better here is more appropriate, but not necessarily nobler, more honorable, and more beloved to Allah Almighty, because that is for piety, not for sex: (O, people! We created you from a male and a female, and We made you races and tribes, so that you may come to know one another. The best among you before Allah is the most righteous. Allah is Knowing and Aware)(43).

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Just as He prepared a woman for other things that a man cannot do and for which he is not qualified. He created in her moral, psychological and mental characteristics... that are appropriate for her mission. Among the strongest of these characteristics is emotion, without which she would have eaten her young and killed her husband, just as scorpions and spiders do, as biologists say: (is that of the spider. It builds a home. But the most fragile of homes is the spider's home; if they only knew)(44).

As for the innate aspect, the truth is what the enemies testify to. So, we hurl the words of one of them in the face of the defeated who call for women to be equal to men in guardianship. Philosopher Dr. Alexis Carrel says that: "Educers must pay close attention to the organic and mental characteristics of males and females. Likewise for their natural functions. There are endless differences between the sexes, and therefore it is inevitable that we take these differences into account in creating a civilized world" (45). He also says: "Perhaps there are women who do not feel the strength of the man whom she loves to make him valuable and accept him as a husband, except when he subdues her muscularly!" It is as if it refers to the woman's natural reassurance of being in the corner of the man whom she seeks shelter and protection from. That constitutes one of the components of guardianship, which is the man's innate, earned preference... Glory be to God, the All-Knowing Creator and All-Wise Administrator.

The fourth requirement: A Congenital Dependency that requires Behavioral and Organizational Dependency:

The woman is originally subordinate to the man in terms of creation. She was created from the rib of Adam, peace and blessings be upon him. It was innate and natural for her to be the part and the follower, and for him to be the whole and the origin and the highest in rank. This resulted in the man's commandment of her and urging him to be kind to her and take care of her. The Prophet, may God's prayers and peace be upon him, said: "And treat women well, for they were created from A rib, and the most crooked part of the rib is the upper part, if you try to straighten it, you will break it, and if you leave it, it will remain crooked, so treat women well." (46). It should be noted that the crookedness that characterizes a woman is from within the man himself, because the crooked rib is part of his structure.

Any attempt to violate this nature is an destruction of the human being and a procedure for it other than the law appropriate for it.. And then there is bound to

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be a bad outcome, which we see with our own eyes as humanity reaps its bitter fruits, in every society that violates the divine nature and the divine law that agrees with it, because it is puy by its creator. Allah says (Would He not know, He Who created? He is the Subtle, the Expert)[47], and He says :(His is the creation, and His is the command. Blessed is Allah, Lord of all beings.) [48]. He who created humanity is the one who is fit to be the one who commands and prohibits. He is qualified to employ the spouses in the tasks of this life in a way that suits their character and nature. Any other (catalog) not made by the instrument maker himself will spoil it and not repair it.

The fifth requirement: Guardianship Concerns all Men and Women and is not Exclusive to Spouses:

The understanding of many men and women, and even in some interpretations, is that the verse only refers to husbands and wives. However, the point is its generality, as it includes all men and all women. It means all guardians, not just husbands: as well as women, which is what was stated in the interpretation of Ibn Abbas, may God be pleased with him.

The article (the : Arabic language) in the two words men and women includes all men and all women. It is a general form. All men who are in the position of guardianship are guardians of the women who are under their guardianship, including wives, daughters, sisters, and even mothers, while preserving their position... without those who are in this position.

It is not confined to the wife, but rather to every woman, her guardian, and her man. Starting with the guardianship of raising her, taking care of her, and marrying her off, until the daughter of the people comes to him, whose man was the other guardian, taking his place in the case of his daughter... So he completes the specific guardianship, which is the marital guardianship... because the wording is general, even if it has a reason for its revelation, the reason is definitely within. The form of the reason falls under generality, and what matters is the generality of the word, not the specificity of the reason as the fundamentalists say. Otherwise - based on this specificity - the woman would not have a guardian before marriage, and thus she would be the guardian herself, which is not correct.

Therefore, scholars such as Al-Shafi'i, may Allah Almighty have mercy on him, took from it the obligation of guardianship in marriage. He said: "This verse -

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and what came before it - is the clearest verse in the Book of Allah Almighty, indicating that a free woman has no right to marry herself." [49] .
Of course, the one who marries her and undertakes to marry her off is not her husband, but rather her guardian including her father and the like.
Just as Al-Shafi'i took the obligation of guardianship in marriage from the verse on guardianship, we can also reverse the matter. Every evidence of the obligation of guardianship in marriage is evidence of the legitimacy of a man's guardianship over a woman. Because if Allah Almighty appointed him to take charge of her and allocate what she possesses, and appointed him to marry her and put her affairs in his hand, then that is evidence of his guardianship over her affairs. Allah says:(If you divorce them before you have touched them, but after you had set the dowry for them, then give them half of what you specified—unless they forgo it or he whose hand holds the marriage tie forgoes. But to forego is nearer to piety. And do not forget the grace between yourselves. Allah sees whatever you do.) [50]. The words of the commentators have agreed that the one in whose hand is the marriage contract is the man, whether it is the husband, as in the doctrine of Ibn Abbas and Abu Hanifa, and the new opinion of Al-Shafi'i. The basis for this saying is that the one in whose hand is the marriage contract is, in reality, the husband, as it is in his hand its contract, conclusion and annulment. Just as it is not permissible for the guardian to give some of his subject's money to someone else, and the same applies to dowry. Or that is her father or her brother, or someone who does not marry except with his permission, as is the narration of Ibn Abbas and his students, the doctrine of Malik, and the old opinion of Al-Shafi'i[51].
It was taken from it that she should not lead him in prayer, nor be his guardian in ruling and emirate. This is not specific to marriage, but rather general for men and women - unlike in the emirate from which women are prohibited, the major imamate only or all the emirates. This is not the place to talk about this issue, as I have discussed it in detail in my Magistère's dissertation. As for a woman who is not under the guardianship of a man, he does not have guardianship over her. A man is not guardian over the women and daughters of his neighbors, unless he has legal guardianship over the people including their men, such as the prince and the governor, in which case he is guardian over the men primarily and over their women accordingly, within the limits of the function of guardianship in matters of the public.

THE THIRD TOPIC : **Elements of Guardianship and its Limlitations**

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First requirement: Elements of the Guardianship Acquired and Innate:

It was mentioned in the Almighty's saying as a justification and reason for assigning guardianship to men over women: (Men are the caretakers of women, as Allah has given some of them an advantage over others, and because they spend from their wealth)(52), The scholars deduced that the "*ba*" (in Arabic) is for causality, so they mentioned two things: innate and acquired(53) .

The first is innate: because Allah has favored some of them over others: and that is because Allah Almighty has given and created in man the elements of strength, fortitude, and endurance, compared to the weakness and delicacy of women. In addition to reason and awareness corresponding to the woman's emotion, and composure compared to her panic at perils.

We mention here the degree that Allah Almighty has added for men over women, saying: (But men have a degree over them. Allah is Powerful and Wise)(54). As much as it increases their right to obedience, good subservience and the like as manifestations of honor for him, it also requires an obligation, as Ibn Abbas - may God be pleased with them both - said: "This degree is an indication of urging men to treat women well and raise their wealth and morals." Ibn Attiya said: That is, the best should be biased against himself, and this is a good saying(55) With this, guardianship became in favour of women.

The second is acquired: by what they spend of their money. This is because Allah Almighty has increased the man's inheritance and given him more opportunities to earn than a woman. This is due to his ability to move outside the home, travel on trips without a *mahram*, and make earnings...all of this has caused him an increase in money. As a result, he becomes obligated to spend, starting with spending on her as a young girl or giving dowry when he marries a woman, and continuing with the obligation to spend on her clothing, housing, and other things... There is no doubt that the spender is more deserving of guardianship and leadership, while exempting her from obligatory spending, and makes what she takes from the dowry and inheritance as a gift to her. From this perspective, she was more fortunate than him in inheritance, even in the case when the male had the same share as the two females. Because she takes to hoard, and he takes to spend on her and himself.

Abu Bakr Ibn al-Arabi says: The saying of God Almighty: (by [right of] what Allah has given one over the other) (56). The meaning is that I (Allah) assigned

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guardianship over women to men because of my preference for him over her, and that is for three things:
The first: completeness of reason and discernment.
The second: completeness of religion, obedience in jihad, enjoining good and forbidding evil in general, and so on. This is what the Prophet - may God bless him and grant him peace - explained in the authentic hadith: "I have not seen anyone more deficient in intelligence and religion than you. A cautious sensible man could be led astray by some of you.' The women asked, 'O Allah's Messenger! What is deficient in our intelligence and religion?' He said, 'Is not the evidence of two women equal to the witness of one man?' They replied in the affirmative. He said, 'This is the deficiency in her intelligence. Isn't it true that a woman can neither pray nor fast during her menses?' The women replied in the affirmative. He said, 'This is the deficiency in her religion'" (57) Allah Almighty has stated that this is a deficiency, He said: (If one of them forgets, the other will remind her)(58).
The third: He gives money in the form of dowry and alimony, and Allah has stipulated that here(59).
Accordingly, it is necessary to clarify three issues related to the limits of men's superiority in this field, as well as the woman's superiority over men in what she was created for, and the fact that guardianship is in fact in the favour of women:
second requirement: Limits of Men's Preference:

A- Firstly, it is a preference that is not for a man to brag about over a woman. Nor is he the one who chose his gender. If Allah had willed, He would have created him a female. This is purely a favor and appreciation from Allah Almighty, so that the place of guardianship is determined, so that it does not swing between two situations.
B - This preference is not absolute, but rather in this regard, women may be better than men in faith, and women may be wiser than men.. And here we take half of our religion from women headed by our mother Aisha, may Allah be pleased with them all. Further, the 'preferred' man is the son of a woman, and his father owes a quarter of his treatment with reverence, not three-quarters! "A man came to the Messenger of Allah, may Allah bless him and grant him peace, and said: "Who is the most deserving of my good companionship?" He said: Your mother. He said: Then who? He said: Then your mother. He said: Then

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who? He said: Then your mother. He said: Then who? He said: Then your father."[60].

C- Many, if not most, of the great men of Islam were raised by their mothers rather than their fathers! They were better than many of those whose both parents raised them... Is not this an advantage for women when they are fit and qualified?

The third requirement: Women are also Preferred:

A woman is also favored according to what suits her nature, and even according to what suits and complements the deficiency of a man. What some may see as a weakness in her is her strength, and this includes the strength of her affection and the tenderness of her feelings, which are the basis of her patience with her child. If it were not for that, neither the man nor she would exist. If she were as tough as a man, she could not be compassionate towards a child and not allow a child to be raised... Reality bears witness. The evidence for this is that if a man were required to be patient with his son for a night and cradles him without sleep, his patience would run out, his muscles and nerves would fail, and he might resign from married life the next night or early in the morning...However, she is patient, and she may enjoy it. Thus, it became clear that this is a strength and a weakness in her... and this is a preference for her, and a provision for her with what she can complete her functional role in human production and human rehabilitation.

Islam is fundamentally equal between males and females, and does not deviate from the rule of equality except to the extent of justice. Rather, it is always fair between them, and it sometimes treats them equally in every way, when equality becomes justice, that is, in matters they do not differ in. However, when they differ in nature or function, there is a need for inequality, and this is the essence of wisdom. That is because they differ in nature and character, some rights and duties differ in proportion to this difference: (And when she delivered her, she said, "My Lord, I have delivered a female," and Allah knew what she delivered, "and the male is not like the female)[61]. This verse proves beyond any room for doubt or disagreement that there is an absolute difference and inequality between men and women, but it does not prove by its wording the preference of one over the other absolutely. Therefore, it is not taken as evidence for preferring a man over a woman in an absolute manner, just as it is not taken from as evidence that a woman is preferred over a man. The nation of the *Qur'an* and Islam has lived for many centuries without disputing this axiom that came in the Book of God -

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Glory be to Him - that the male is not the same as the female. The men of Islam did not see this as an advantage for them, nor did its women see it as a belittlement or devaluation of their status. It is a description of a reality and an innate nature that we see as evident not only among human beings, but also between every male and every female of God's creatures around us, from the small insect to the giant animals. Therefore, in Islam there is no absolute preference for one sex over the other with regard to gender. Rather, there is a preference according to eligibility and function, based on the difference in natural and congenital structure. The nature of women is that they are not like men in terms of strength, fortitude, determination of heart, endurance, suitability for tasks and functions that are appropriate for men, and constant readiness for missions and facing emergencies. That is because of what she endures from menstruation, pregnancy, postpartum, and other types of physical and psychological weaknesses of a woman. This is to the extent that Islamic law waived prayer, fasting, and some other acts of worship in such cases out of consideration for her weakness(62) Naturally, the difference in nature and ability is followed by a qualitative and quantitative difference in assignments and functions. This is what the verse makes clear.: (And do not desire what Allah has favored some of you above others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of His favor. Allah has knowledge of all things)(63).

The third requirement: Guardianship is in the Favor of both Men and Women

Based on the above, it becomes clear that guardianship is in favor of women, not against them, even if the matter appears otherwise; and this is for the following justifications:

Firstly: Because it is in accordance with the nature with which God created people, there is no change in God's creation, and it is creation in the best manner that is guided by the most sound legislation. It is not possible and not correct to leave the significance of the nature and the significance of the Islamic law to satanic whisperings that he cast into the souls of some of his followers and on their tongues.

Secondly: Because it is in accordance with the universal laws in the order of the world, by removing the causes of collision, friction, and struggle over positions,

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Allah decided on the matter for man to be in this position, and entrusted him with this guardianship, in order to defuse the conflict and cut off aspirations.

Third: Allah Almighty has created a distinction between the two sexes, so that each sex is appropriate for what it was created for. Therefore, neither party desires what Allah has bestowed on the other, "for everyone is facilitated for what he was created" (64) .

Fourth: It is a human necessity and a human dignity for a woman to find someone who will work hard to protect her, care for her, and take care of her offspring, and who will run an institution in which she is the second most important entity. If the system becomes corrupt, and everything will be useless. This is so that she will be free to devote herself to the greater task.

Fifth: He is primarily tasked to defend her, even if martyrdom is required in order to protect his honor, and he is closest to Hell when he neglects it.. She is in good health from all of that. Is not the man's guardianship over her in reality his responsibility and in her benefit?!

Based on all of the above, the family's goals are achieved as follows:

1- Attaining peace, tranquility, and enjoyment of all life's enjoyments and adornments.
2- The continuation of the normal human species.
3- Achieving succession in accordance with the will of Allah Almighty, and rebuilding the earth in accordance with the path set by Allah Almighty, in order for a family to be raised in accordance with common sense and *Shariah*.
4- Forming a good nation that will come out to the people, so that it will be Allah's proof against His servants.
5- Forming a fearsome nation with a solid structure that will be a tool in the battle of the struggle between truth and falsehood.
6- The fulfillment of the goal of the Prophet - may God bless him and grant him peace - and his wish of being proud of his nation on the Day of Resurrection and to multiply it with the abundance of righteous offspring resulting from righteous families.

Conclusion:

After this tour of the meanings, conditions, and etiquette of guardianship, we reach many conclusions, the most important of which are:

1- It has become clear that guardianship is for the benefit of women, and if the disobedient women among them were rational, they would not be repulsed by

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it. In addition, it is necessary to preserve the family institution and protect it from internal rifts and conflicts.

2- The man has been appointed to the position of guardianship because Allah Almighty has provided him with the qualities that would qualify him for this dangerous position. The failure of which - whether in an excessive or negligent manner - leads to the corruption of the institution, which is no less than the corruption of the lack of guardianship.

3- A man's guardianship is an advantage over a woman and an increase in his status, which is in this regard to ensure the good conduct of the institution, and not an absolute preference for him, nor is it a diminution of her value. As for honor in the sight of God, it revolves around piety.

4- A woman is also preferred in terms of the power that Allah Almighty has provided her with. She can perform her function in a way that a man cannot do, and in a way that a man's own life does not stand, because through her, marriage is completed and the man's innate deficiency is perfected.

5- A man's guardianship over women is not limited to the marital status, but rather extends to everyone under his guardianship, including a wife, a sister, and a daughter. Because what is essentially intended is good care, managing a living, bearing hardships on their behalf, and providing them with the basic task, which is the production of humanity itself.

6- Absolute equality between men and women is a trivial, naive or cunning call that contradicts universal nature in general, and human nature in particular especially with the differences between the sexes that are clear. Even Western wise men called against such equality, including the philosopher Alexis Carrel and others.

Recommendations

The most important recommendations to be taken into consideration are:

- Emphasizing the beautiful and correct meaning of guardianship through every scientific or media means, especially among women.

- A call to Muslim men to practice guardianship in its correct form, its sophisticated meaning, its human ethics and its legal controls. As a result, that constitutes compliance with the command of Allah Almighty in His law and appropriate for His creation in its nature. Then it is the correct and effective response by highlighting the role model in this field, and the appropriate response to the opponents of male guardianship, from the intellectual

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hermaphrodites, or impersonators, or those who fell victim to imitations and deceptions.

- Empowering the righteous women themselves, who have found the correct understanding and good practice, to defend this divine law and human nature, and explain its virtues and refute its doubts. This is because they have more influence on girls and their own gender.
- Holding disciplined public conferences, seminars and debates from people of competence and expertise in different languages that the world's population can watch through various screens and media. This is because the peoples of the West are victims of distortion and confusion, as confirmed by the conversion of a number of them to Islam with just a good statement and a wise call, and Allah will inevitably ask us about them.

This, and Allah knows best, and may God's blessings and peace be upon our Prophet Muhammad and his family and all his companions.

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