



REVIEW OF LITERATURE ON THE INFLUENCE OF *MALIKI* JURISPRUDENCE ON MARRIAGE GUARDIANSHIP UNDER ISLAMIC LAW IN CONTEMPORARY TIMES

By

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Abstract

This paper examines the influence of Maliki Jurisprudence on Marriage Guardianship under Islamic law. Juristic opinions have a lot of impact on Islamic law. There are four Juristic Schools of thought under Islamic law, namely Imam Hanbali, Imam Hanafi, Imam Shafii and Imam Maliki. Their opinions are useful in adjudication process particularly as it relates to Muslim personal matters, such as: Marriage; Divorce; Inheritance; Endowment; and other related matters. The Muslim Ummah is divided in accordance to the four Juristic Schools. The people of West Africa official jurisprudence is the Maliki jurisprudence. The institution of marriage is significant under Islamic law. There are laid down rules in order to contract a valid Marriage. The laid down rules are guides by the provisions of the Quran and the Sunnah of the Prophet. Marriage Guardianship is an essential ingredient of marriage and without it, such marriage contract is regarded as invalid under Islamic law. The tradition has been in use since the classic era in different Muslim regions of the world. This study focuses on the Juristic view from Maliki jurisprudence, highlighting on the qualifications, duties and classification of marriage guardianship under Islamic law. Similarly, the paper addresses the various responsibilities and legal expectation of being a guardian of marriage in modern times. The discourse evaluates the impact of international law and international human rights norms on marriage guardian under Islamic law. The study uses the doctrinal approach methodology and makes useful recommendations

Keywords: Marriage Guardianship, Influence, Islamic law, Contemporary era, and Maliki Jurisprudence.

1.0 INTRODUCTION

Marriage is a cardinal institution under Islamic and other legal systems. It is useful as a cornerstone in the societal fabric and across various cultural norms.¹

Different definitions have been given to the concept of marriage. Modern Western scholars argued that marriage is contract between a male and female to live as a couple.² According to African Customary law. Marriage is regarded as the joining together of two families instead of individuals. Most civilizations of the world regards the concept as a solemn institution because it ties the relationship that unifies communities and nations.³ Under Islamic family law, marriage is regarded as Sunnah of the Prophet and it is regarded as one of the attributes of those

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¹ A Handbook on Marriage with Marriage Contract and Marriage Certificate. Available at <https://Monzer.kahf.com> Accessed on 18 May 2026.

² P. Hank(ed) The Collins Paper Dictionary. (10 Ed). (Harper Collins 2014), 34.

³ S. Dorin and M. Marshall. Taking Government Out of the Marriage Business Proposal: Questioning a Legal Status. A Bernstein (ed).2006), 70-72.



that follows the teaching of prophet Muhammad and an avenue to perfect Islam. It is a civil contract that legalizes a sexual relationship and having legitimate offspring.⁴

One of the vital principles of Islamic marriage is the concept of marriage guardianship (*Walaya*) and it is a fundamental requirement for a valid marriage under Islamic jurisprudence. The concept is an integral aspect of Islamic family law and it safeguards the legality and validity of a contract of marriage under Islamic jurisprudence. The concept is of classic origin where the guardian has the responsibility of guiding the marriage process and ensuring the interest of the individuals involved.

Maliki jurisprudence is one of the four known Sunni Schools of Islamic jurisprudence. This jurisprudence has respect for local norms and tradition, the Maliki jurisprudence has unique principles guiding the duty and authority of marriage guardianship under Islamic jurisprudence. The Quran made it expressly clear that a female's choice must not be tampered with, instead her guardian Wali should have an input in the matter. The Quran recommends as a marriage guardian either her father, or son, paternal brother or the head of Muslim *Ummah*.⁵ According to the tradition of the Prophet a marriage contract is not valid without the provision of marriage guardian.⁶ The Maliki jurisprudence is the official jurisprudence of the people of Northern Nigeria and Muslim judges use it in the adjudication process.⁷

2.0 ORIGIN OF GUARDIANSHIP

The conceptualization of guardianship has emerged over time and it has the impact philosophical dynamics, cultural and religious shifts. In the ancient times in Europe, the concept of wardship formed part of feudal arrangement and its attendant obligations.⁸ The guardian is an individual vested with legal authority to make decisions on behalf of the ward. Such decisions may relate to various aspects of the ward's well-being. This may include living engagement, healthcare, finances, education and other related matters.⁹ The cardinal goal of guardianship is protect and support the individual incapable to take decisions freely.¹⁰

Guardianship, fundamentally, is an ethical framework and legal safeguard to protect persons that are unable to take valuable decisions freely.¹¹ With the emergence of the Enlightenment times, the notions of individual rights and freedom gained prominence, challenging ancient models and paving way for right-based system in human relationship.¹² In contemporary times guardianship has become the center stage of legal system in different corners of the world

⁴ J.E. Bond, Culture, Dissent and the State : The Example of the Commonwealth African Marriage Law. (Yale Human Rights and Development Journal. Vol. 14, Issue1, Article 1,(2011) 9-24.

⁵ J. Haniffa. 'The Rights of Women in Islam: An Authentic Approach,' London: (Macmillan Press Ltd, 1998). 12-15.

⁶ Sunnah Abu Dawud, 'The Book of Marriage' Number. 2080. M. Aljibaly. 'The Quest for Love and Mercy : Regulation for Marriage and Wedding in Islam'. Al-Katab and As-Sunnah Publishing, 6 (8), Maman Publishers. (2017), 66.

⁷ A. M. Gurin 'An Introduction to Islamic Family Law 7 (2) Journal of Arabic, (2001). 48.

⁸ N. NiK Badli Shah. Marriage and Divorce Under Islamic law. Malaysia. (1998). 1

⁹ I. A Parol, 'Guardianship Rights under the Sharia.' Dakwah Corner Book Store Darul Ihsan Kuala Lumpur. (2022), 55-87.

¹⁰ Ibid.

¹¹ M.Poya. 'Women, Work and Islamism'. London. Zed Books, (1999). 6.

¹² Ibid.



providing template to tackle the various needs of people needing protection.¹³ The category of persons that make this group include those with mental health issues, minors, incapacitated individuals or persons with poor cognitive domain. Islamic courts assist by the appointment of a guardian to perform such responsibility through a legal laid down rules.¹⁴

In contemporary times, guardianship is the hallmark of different legal systems all over the world, showcasing structural arrangements to explain the various needs of person that need protection. In light of this development, legal meaning and attributes for guardianship differ across jurisdictions, and varies in accordance to legal and cultural landscapes.¹⁵ Scholars argued that guardianship is deeply impacted by cultural norms and societal outlook. Various cultural groups hold different opinions on person freedom, family arrangements and the duty of community in the well-being of its people.¹⁶ Contemporary scholars explained that looking into the future guardianship may change with the dynamics of the society, especially now that we have emerging technologies, new decision-making methods to protect against individual abuse.¹⁷

Guardianship, some scholars posited, involves a dynamic of historical antecedent, legal arrangement, ethical norms and societal inputs.¹⁸ Guardianship conceptual framework is ever changing, therefore not static. It is a concept that continues to evolve as the society tries to look for balance between protection and freedom. The adventure through the difficult terrain of guardianship which needs special care for values, rights and needs of those that require protection, in order to achieve just society that safeguard individual well-being.¹⁹

3.0 MARRIAGE GUARDIANSHIP *WILAYAH* UNDER ISLAMIC LAW

The word *Al-Wilayah*, Guardianship, is of Arabic origin and it has a lot of influence on family relationship. Islamic law explains the term as the wisdom to perfect a marriage contract into effect. Scholars argued that it is seen as legal power given to an individual fully competent and qualified to safe the rights and interest of another individual, who is not with the capacity of doing so freely.²⁰ This power is given to the father or nearest male relation of the woman. Jurists and scholars posit that for validity under Islamic law, marriage guardianship is a vital requirement. They back their position with textual references from the Quran and Sunnah of the Prophet.²¹ Although the Quran is not expressly clear on guardianship and rather silent on the concept, it provides appropriate guidance on related issues such as inheritance and individual rights.

Essentially, the Quran makes provisions for fairness, justice and the safeguard of the vulnerable and weak members of the Muslim Ummah. Such principles is related to the notion

¹³ A.A An-Naim, *Islamic family law in the changing World : A Global Resource Book*.

¹⁴ A. A. Maududi, *The Law of Marriage and Divorce in Islam* Lahore : Islamic Book Publishers. (1993). 24.

¹⁵ A. A Naim. ‘ Islamic Family Law in the changing World: A Global Resource Book’, London: Zed Books Ltd, (2002), 45.

¹⁶ M.A Ambali. ‘The Practice of Muslim Family Law in Nigeria.’ 2nd Edition. New Times Publishers. (2017). 26-39.

¹⁷ C. Angela, and Others. *Rethinking Importance of Guardianship : Positive Effects of Guardianship on Marriage*, *The Journal of Psychology*, 145 (3) (2005), 245-264.

¹⁸ Ibid.

¹⁹ S. K.Das, U.K Holder and Mishra. *Impact of Guardianship in Islami Journal of Indian Academy of Appied Humanities*, 34, (2008), 73-77.

²⁰ A.I. B Ibrahim and S AbdulRasak, *Protecting Women’s Interest in Marriage Through Appointment of A Guardian Under Islamic Law*. *Pertanika Journal of Social Science & Humanities*. 23 (3) (2015) 75-84.

²¹ A.Hammudah. *The Family Structure in Islam*.



of guardianship under Islamic law.²² The Sunnah of the Prophet is a blueprint as a source of legal interpretation and vital guide of Islamic jurisprudence. Prophetic Sunnah shed light on dark areas such as well-being of vulnerable persons within the Muslim society, the minors, and above all, rights and duties of guardians.²³ Islamic jurisprudence provides a bird's eye in understanding Islamic law, jurists and scholars explained vividly the principles and laid down rules guiding guardianship under Islamic law. There are various scholarly works that provide insight into the understanding of guardianship, particularly on the roles, responsibilities and appointment of a marriage guardian under Islamic law.²⁴ Another source of legality of guardianship under Islamic law is the consensus and analogical reasoning *Qiyas*. Muslim legal scholars have agreed on many issues that deal with the interpretation of primary sources and logical reasoning as it relates to marriage guardianship. They agreed that it is an accepted norm, legitimate and significant institution under Islamic legal tradition.²⁵

Guardianship under Islamic law is not only regarded as legal but seen as a norm which safeguard the well-being of individuals within Muslim society and also assist to maintain the dignity and rights of persons under Muslim *Ummah* who may need such protection.²⁶

Patriarchal culture of the Arab was inherited by Islamic jurisprudence and it argued that a woman needs to understand the principles of reasoning and the logic of Islamic law of the classic era. However, for many centuries this mode of reasoning has put women on disadvantageous position. Notwithstanding, the negative effects of the norm, patriarchal scholars and jurists are of the opinion that the norm was relevant during the olden days.²⁷

Guardianship (Wilayah) under Islamic law is regarded as a fundamental norm of ensuring the protection and well-being of persons who may need representation or guidance in different aspects of human endeavour.²⁸ Both Quranic verses and Prophetic traditions assist in shedding light on *Al-Wiliyah* Guardianship as encompassing principles of duty, stewardship, and care thereby promoting harmonious family relationship and uplifting the societal well-being within the guidance of Islamic jurisprudence and ethics.²⁹

The concept of guardianship (Wilayah) is deeply connected to Islamic principles of the preservation of rights, equity and justice. Attached to the norm is the responsibility of persons or designated authority to perform or act on behalf of others that may not be able to fully perform their rights or their affairs.³⁰ Essentially, Guardianship is to safeguard the interest of individuals that are incapable or vulnerable as a result of age or mental capacity, or any related human problems.³¹

²² S. E. A. Dawood 'Legal Capacity with Specific Reference to the Marriage Contract.' Arab Law Quarterly 6 Number 2 (1991).190-204.

²³ A. Hammudah. 'The Family Structure in Islam'. 4th ed. (American Trust Publication. 1995).45-49.

²⁴ A. S Sardar. Is an Adult Muslim Woman Sui Juris?. Some Reflection on the Concept of Consent in Marriage without a Wali (with particular reference to the Salma v. Waheed Case). Yearbook of Islamic and Middle Eastern Law. Online 3, Number 1 (January 1, 1996). 156-74.

²⁵ Ibid.

²⁶ I. Breatrix. 'Marriage and Celibacy in Medieval Islam. : A Study of Ghazal's Kitab Arab Al-Nikah' King's College, Cambridge, (1994), 50

²⁷ A. Rafiq, Role of Guardian in Muslim Women's Marriage: A Study In the Light of Religious Text. International Journal of Innovation Science., Volume 2. Issue 4. April, (2015) 1254

²⁸ M.K Al-Azri, ' The Scholarly Debate on Kafa'a and Social-Economic Change'. In Social and Gender Inequality in Oman : The Power of Religious and Political Tradition, 1st ed; (Rout-ledge Press, 2012), 29-47.

²⁹ K. Ali, 'Marriage in Islamic Law : The Islamic Law of Personal Status'

³⁰ Ibid.

³¹ A. Al Hibri, 'The Nature of the Islamic Marriage : Sacramental, Covenantial or Contractual 'In Covenant Marriage in Comparative Perspective, edit by John Witte Jr & Elilison, Cambridge, U. K : William. B. Es Rd Maanap Grand Rapid S. Michigan, (2005), 182-216.



However, Muslims argue that the almighty Allah is the guardian of all the believers in Islam. Moreover, those mentally not capable to perform a task, the guardian may be a useful guide to her or his faith under Islamic law. Islamic jurisprudence suggests that Muslim faithfuls who are in better position to assist one another by performing the duty of guardianship to fellow Muslims.³² Marriage guardianship in Islamic is classified into two: the specific and the general guardianship. Under the specific guardianship a male, possibly the father or close male relation of the father's lineage or blood ties have specific power on the daughter. The father, or the grandfather, the paternal nephew or paternal uncles are under this classification.³³ On the other hand, general guardian are vested with a general authority of guardianship over women under Islamic law. In an Islamic State, Muslim ruler has the right of such authority over Muslim women under his jurisdiction. However, scholars explain that there are types of guardianship. In this religion: the compulsory guardianship, the complementary and recommended guardianship.³⁴ The norm has been in existence since the classic era and relevant till modern times.

4.0 GENESIS OF MALIKI JURISPRUDENCE UNDER ISLAMIC LAW

The founder of Maliki jurisprudence was *Imam Maliki bin Anas* the jurist, where date of birth was controversial. One scholar argued that he was born in the year 94 A. H, and support his authority with the famous works such as *Kitab Al Anasab* and *Tadkhkirah Al-Huffaz*.³⁵ Classic scholar Ibn Khallikan was of the opinion that the jurist was born in 95 A. H, but his former teacher agreed with the first suggested year of birth. Furthermore, historians of Muslim Caliphate submitted that Imam Maliki was born during the reign of the third Umayyad dynasty.³⁶

Imam Maliki bin Anas, according to scholars was of a royal blood of Arab dynasty of Humair. His people were of Yemen origin but later settled in Medina after the emergence of Islam.³⁷ The jurist shared the same name with his grandfather who had deep knowledge of Sunnah of the Prophet. This great scholar died when Imam Maliki bin Anas was ten years old.³⁸ Though Imam Maliki did benefit scholarship directly from his grandfather, the memory of him on words of encouragement and moral guidance left a legacy in the mind of Imam Maliki. The jurist learned under his father and his uncle, all known for solid scholarship in Hadith.³⁹ The Maliki jurisprudence is of great significance to Islamic law

³² Quran 2 : 25 ; Quran 2 : 285; Quran 4 : 144 and Quran 9 : 71.

³³ H. Aftab *The Status of Women in Islam*. Lahore, (Law Publishing Company 1987). 45-50. J. J Nasr, *The Status of Women under Islamic Law*. London, (Graham and Trotman, 1990), 9-11.

³⁴ A. A. Onalapo and Others. *Guardianship under the Maliki School of Thought*. Asian Journal of Humanities and Social Sciences. 1 (1), (2014), 12-19 Ibn Juzay, '*Alqawanin Al- Fiqhiyya fi Talkhis Al-Malikiyyah*', (1998) , 43

³⁵ S. A Kalid, '*Historical Development of Islamic Law under Guardianship on Marriage*', *Journal of Islamic Education*. (2013). 21-35.

³⁶ A. U. Faruk, *Maliki and Madina :Islamic Legal Reasoning in the Formative Period*, Leiden, Brill, (2013), 24.

³⁷ M. Al-Jibaly. '*The Quest for Love & Mercy. Regulation for Marriage & Wedding in Islam*' (Alkatab and As - Sunnah Publishing, 4th Edition (2017), 12-20.

³⁸ AS Abiola and JA Ogedengbe '*Understanding Plea bargain as an Alternative Dispute Resolution in the administration of criminal justice system in Nigeria*' *Law and Social Justice Review (LASJURE)* 4 (3) September 2023 Available online at <https://www.nigerianjournalsonline.com/index.php/LASJURE/index> (accessed 10 October 2026)

³⁹ M. N. Danjuma and Others, '*Development of Islamic Jurisdiction*'. *International Journal of Research*. (2014). 2 (3), 64-80.



4.1 INFLUENCE OF MALIKI JURISPRUDENCE ON MARRIAGE GUARDIANSHIP

Due to Imam Maliki bin Anas' vast knowledge of the Hadith and Islamic jurisprudence, his contemporaries referred to him as the Imam of Medina.⁴⁰ He later became the founder of the Maliki jurisprudence one of the four known Schools of Sunni law. Furthermore, the Maliki jurisprudence is a normative norm for the Sunni practice in different regions of the world, particularly in places such as Yemen, North Africa, Syria, Sudan, Iraq, Khorasan, vast area of Egypt and West Africa.⁴¹

Imam Maliki's accomplishment and contribution in the development of Islamic jurisprudence was his book the Mutwatta; On asset and compendium, a classic and one of the ancient known Muslim law book in human history.⁴² The work made a survey of law and justice in Medina. In addition, the jurist reviewed norm and practice of religion in accordance to the perspective of Islam in classic era of Medina particularly, taking into consideration the Sunnah common in Medina.

Imam Maliki established a theoretical framework for issues that were not resolved from the stand point of consensus and Sunnah.⁴³ The essence of the classic work was aimed to establish a straight path (the literary meaning of the word Al-Muwatta) It was regarded as a leading authority in Islam after the Quran. This remark was the opinion of Imam Shafii, one of the former teachers of Imam Maliki.⁴⁴

As a result of the impact of Muwatta on Muslim Ummah, Imam Maliki was referred to as the Shaykh of and one of the greatest scholar of Medina and an expert in Sunni tradition.⁴⁵ According to classic scholar, the Prophet predicted the emergence of a great scholar in Medina after his demise.⁴⁶

Maliki jurisprudence argued that on female right to choice a spouse, it is the father that has the power of Wilayat Al-Ijbar over his mentally balanced virgin daughter that is of age. However, for the mature virgin daughter Maliki jurisprudence is of the view that the father must take into consideration that such daughter must be legally competent to perform the task.⁴⁷ The contention of the Maliki jurisprudence on eligibility framework was based on tradition of the Prophet that only holy and those free from serious diseases and other related matters can embark on the task.⁴⁸ For the specified daughter exempted from a marriage guardianship, the father of such category of women has no right of Wilayat al-ijbar. To attempt to exercise such right by father will be regarded as void according to Islamic law. In recent times, Marriage Guardianship under Islamic law is often criticized by modern scholars and feminist movements around the world due to its shortcomings as a result of the dynamics of the present times.

⁴⁰ M. Y. Sani, 'Concept of Islam in Arabic Perspective'. United Nations Publication: New York. (202). 146-153.

⁴¹ M. Tomljanovich, 'The Role of Guardianship in Islam, Historical Perspective'. Journal of Contemporary Knowledge. India. (2014), 22 (3) 318-330.

⁴² M.N. Aminu and S. Salihu, 'Islamic Jurisdiction in the West'. New Haven : (Yale University Press. 1993). 23-31.

⁴³ Ibid.

⁴⁴ N.J A. Coulson, 'A History of Islamic Law.' Edinburgh, (Edinburgh University Press, 1964), 43.

⁴⁵ AS Abiola and AD Adisa, 'Legal and Institutional Framework for Effective Application of ADR in Marital Disputes' (2025) 2(4) *Fountain University Law Journal* 69-88 available online at <https://fountainjournals.com/index.php/FULAJ/article/view/868>

⁴⁶ D. Yasin. 'The Origin of Islamic Law'. Muwatta and Madinah Amal, London : (Curzon, 1999). 18.

⁴⁷ M. Fadel Reinterpreting the Guardian's Role in the Contract of Marriage: The Case of the Maliki School. The Journal of Islamic Law. Volume. 3, Number 1. (Spring /Summer 1998). 1-26,

⁴⁸ Ibid.



4.2 CRITIQUE ON MARRIAGE GUARDIANSHIP IN MODERN TIMES

In recent times, the classic opinions of the women and her responsibilities in Islamic *Ummah* are being subjected to criticisms particularly from contemporary feminist groups in different corners of the world. They contended that the role of women has changed from the pre- Arabia society, which had symptoms of dehumanization and discrimination. This group argued that their gender suffer socio-cultural negation in different culture of the modern world. They submitted that women are second class individuals to men.⁴⁹

Scholars posited that despite the fact that the Quranic provisions are adequate, yet the ideas of the Quran are at variance with the realities of Muslim in recent times. Women movement thereby demands for women's rights in the contemporary era.⁵⁰

The modern women's movement is of the view that the contemporary women should have freedom, recognition and respect in order to blend with the recent socio-cultural setting.

The classic scholars argued that women are not created the same as men and therefore guardianship is required to track their inadequacies.⁵¹ The position of the Quran focused on the protection of rights of women is in relation to Islamic marriage. This is to safeguard the interest of young women who do not comprehend that marriage is a contractual covenant that can be bargained.⁵² The ancient scholars are of the view that women should be protected and not free from the father's authority until she is married. Their position is based on the patriarchal norm embedded in Islamic jurisprudence.⁵³ Other group of scholars, speculated that the emergence of Islam corrected the shortcomings of the conservative patriarchal cultural set-up of the Arabian society. Marriage guardianship is, therefore, seen as useful reform to guide women matrimonial life.⁵⁴

The recent times contemporary jurists explained that the classic era point of view of protection of the woman folks is not useful in the modern Muslim *Ummah*. They argued that the notion of guardianship was relevant in the dark ages of Islam where there was insecurity and that such era is gone.⁵⁵ Maliki jurists do not differentiate between male and female on matter of legal capacity unlike other jurisprudence. Maliki jurists, however, argued that that any negative cutting-edge in the custom that hinder the women from exercising their legal rights is regarded as discrimination based on sex. In the contemporary era, the debate is ongoing especially in some Muslim nations on the necessity for a guardianship.⁵⁶ In modern era, especially in the Muslim majority nations, the State only deny the minors and those not mentally balance the right to take positive decisions on their own.⁵⁷

Contemporary scholars make use of International law and International Human Rights Norms to examine the legal capacity of competent mature women. This School of thought posited that the focus of the limitations on the rights to fully mature grownup women is against the women's

⁴⁹ F. Acar, Women in the Islamic Revivalism in Turkey. *Three Islamic Women's Journal on Islamic Literature in Contemporary Turkey* (1991), 280-303.

⁵⁰ Ibid.

⁵¹ AS Abiola, 'Online Arbitration as a Mechanism for Settlement of E-Commerce Disputes' (2021) 2(1) *KWASU Law Journal* 26-38.

⁵² M. Fadel, Reinterpreting the Guardian's Role in the Islamic Contract of Marriage: The Case of the Maliki School.

⁵³ Ibid.

⁵⁴ A. Hibir, An Introduction to Muslim Women's Rights. Window of Faith 51, Webb Gisela ed. Syracuse, (Syracuse University Press 2015), 60-62.

⁵⁵ A. A. Naim Islam and Women's Rights : A Case Study of Women Living under Muslim (Dossiers 14-15, 1996) 7-10.

⁵⁶ Ibid.

⁵⁷ M. Al-Musnad. Islamic Fatwa Regarding Women . Riyadh. (Darussalam Publications 1996), 310- 313.



rights in accordance to the UN Convention on the elimination of all types of segregation against female since they are equal to men in use of capacity.⁵⁸

Modern scholars highlighted that women have the right to enter marriage without any obstacle, thus the norm that a woman requires the permission of a man amounts to gender discrimination against the female.⁵⁹

5.0 REVIEW OF LITERATURE ON INFLUENCE OF *MALIKI* JURISPRUDENCE ON MARRIAGE GUARDIANSHIP UNDER ISLAMIC LAW

Although, several studies have been carried out on Marriage Guardianship in the Muslim world and beyond, literature survey indicated that very few scholars have written on juristic approach of Islamic jurisprudence on the study of Marriage Guardianship.

5.1 JURISTIC DISCOURSE ON MARRIAGE GUARDIANSHIP

Despite this reality, there are no studies done on juristic discourse on marriage guardianship under Islamic law. It is against this background this study makes a literature review on influence of Maliki jurisprudence on Marriage Guardianship under Islamic Law.

Doi⁶⁰ examines Shariah the Islamic law and argued on the position of guardianship in marriage in way to assist an inexperienced woman in marriage relationship. However, the author is silent on legal implication of marriage guardianship under Islamic jurisprudence. Such silence created a gap that needs to be filled by the present study.

Kamali,⁶¹ reviews principles of Islamic jurisprudence and identified them as assent in the growth and development of the Islamic law. The author argued it can assist as a means of compromise and accommodation between the normative gains of the Sharia and the useful avenue for change. Though the work assist in comprehending the subject matter, it left a gap which this study examines. The author overlooked Maliki jurisprudence position on marriage guardianship under Islamic law. This study inquired into the juristic view from the Maliki School of thought.

Muhammad and Muhammad⁶² discussed Concept of Guardianship in Islamic jurisprudence. The authors review the different Islamic law but they specifically remark that the minor, insane of either sex and inexperienced woman require marriage guardians. This work is useful in understanding the discourse at hand but the scholar fail to explain in details the Maliki jurisprudence to Marriage Guardianship. This study addresses specifically the influence of the jurisprudence on Marriage Guardianship.

Ismaila⁶³ outlines the work of *Muwatta* Maliki and Issues of Marriage Guardianship, he specifically examined *kKtabi Nikah* with detailed discussion on marriage guardian under Islamic jurisprudence. The scholar highlighted on the technicalities related to marriage guardianship under Islamic jurisprudence, and the variations with other Schools of

⁵⁸ ZO Shittu-Adenuga and AS Abiola and SS Mustapha 'The Critique of Alternative Dispute Resolution under Islamic Law and Its Relevance in the Contemporary Nigeria' Jurnal Syariah (University of Malaya), Jil. 31, Bil. 2 (2023) 119-22. Available online at <https://tamilperaivu.um.edu.my/index.php/JS/article/view/43960>

⁵⁹ AS Abiola and ZO Shittu-Adenuga, 'Biological Determinants of Crime: Rethinking the Requirements of Mens Rea for Establishing Criminal Culpability' (2023) 3 *Al-Hikmah University Journal of Private and Business Law* 24-38.

⁶⁰ I A, Doi Sharia the Islamic law, Journal of Education Studies, 4 (112), (1993), 17-20

⁶¹ Kamali, M.H. *Principles of Islamic Jurisprudence*. (3rd Ed) London, Islamic Text Society, (2006)

⁶² T. A Mohammad and M. K. Muhammad Concept of Guardianship in Islamic Jurisprudence 5 (3) A Review (1996), 94

⁶³ P. M, Ismaila, Mutawwa Malik and Issues of Marriage Guardianship 5th ed, International Journal of Novel Research in Humanity and Social Science, 4 (2), (2004), 43-51,



jurisprudence. Although the scholarly discourse assist the Maliki jurisprudence in one coherent effect, they do not outline the impact of influence of Maliki jurisprudence on marriage guardianship. This a gap the present study intends to address.

Orire,⁶⁴ gives vivid explanation on the Sharia as a legal system that was misunderstood. It is a detailed approach to the study of the Muslim family law, particularly in Nigeria. The work omitted to address marriage guardianship. The jurist, however, examined the Muslim family law from the Maliki jurisprudence perspective. The present study examines marriage guardianship in contemporary era. The study added value to the discourse on Muslim family law for it explains marriage guardianship under Islamic law. This study bridge the gap omitted by the previous work.

Kumo⁶⁵, focuses on the application of Islamic law in the northern Nigeria, the scholar endeavoured to pin-point the challenges and prospects. This is comprehensive work on Islamic law generally without any mention of marriage guardianship under Islamic law. This is a gap which the present discourse attempt to evaluate.

Bakhtiar,⁶⁶ outlines the black-letter principles on the differences in principles of four Schools of jurisprudence. The classic work is a useful reference material for the present study since it assist in the comprehension of the Sunni and other School of jurisprudence in a single coherent package, but the do not relate it to marriage guardianship under Islamic law. This is a lacuna the present study intends to address.

5.2 RESPONSIBILITIES AND LEGAL EXPECTATIONS OF BEING A GUARDIAN OF MARRIAGE IN MODERN TIMES

Several authors write on marriage guardianship under Islamic jurisprudence. Though these scholars appreciated the classic role and duties and legal effects of being a marriage guardian in marriage, yet most scholars were quiet on responsibilities and legal effects of being a guardian in marriage in modern Muslim times.

Akhar⁶⁷ consideres education on Islamic Guardianship. He relies on different provisions of the Quran to justify his position on the subject matter. The previous work though a useful blue print on the Islamic family law, yet it does not address the juristic view of Maliki jurisprudence on Marriage.

Nik, B ⁶⁸ evaluates Marriage and Divorce under Islamic law, the writer reviews marriage guardianship with particular interest in Malaysia Islamic family law and expresses the different views among Muslim scholars with reference to the rights of the guardian and the requirement of consent. The research fills the areas of lacuna of the previous work.

Gurin, ⁶⁹ explores Introduction to Islamic Family in which he examines the various types of School of jurisprudence as it relates to guardianship. He pin-points condition of marriage guardian and submits that the norm is accepted by all the main Schools of jurisprudence. The work overlooked to explain the impact of custom and tradition in marriage guardianship under Islamic law. The study addresses the gap in the scholarly book on Islamic jurisprudence.

⁶⁴A. Orire. A Misunderstood Legal System. Zaria, Sankore Educational Publishers Ltd.(2007)

⁶⁵ S. Kumo, . The Application of Islamic Law in Northern Nigeria: Problems and Prospects. Lagos, Islamic Publications Bureau. (1986).

⁶⁶ L. Bakhtiar, Encyclopedia of Islamic Law : A Compendium of Major Schools of. Chicago Liberia of Islam Kazi Publications. (1995)

⁶⁷ M. Akhar, Education on Islamic Guardianship International Journal of Advance Islamic Research Ideas in Education, 3(3), (2008). 30-33.

⁶⁸ N.B Nik, Marriage and Divorce under Islamic law International Journal of Islamic Studies,

⁶⁹ A. M,Gurin, . An Introduction to Islamic Family Law. Malthouse Press Limited, (2014),, 48-53.



Though the scholars⁷⁰ argued from the Maliki jurisprudence perspective, it is a useful reference work for the present study and assist understanding of the present discourse, yet the work paid little attention to a guardianship of a minor, a blind person and deaf individual. This study bridges the areas of gap.

Al-Ati⁷¹ in his work *The Family Structure in Islam* highlights on who under Islamic law must have guardian in marriage and various positions of jurists. The writer acknowledges the general perspective that the insane and inexperienced irresponsible individuals of both sex must have marriage guardian.

But the scholar skipped to mention the duties and rights of marriage guardian. Similarly, the work ignores to evaluate the vital part of guardianship. More importantly, the work fails to address the position of the Sunni School in relation to marriage guardianship under Islamic jurisprudence.

5.3 IMPACT OF INTERNATIONAL LAW AND INTERNATIONAL HUMAN RIGHTS NORMS ON MARRIAGE GUARDIANSHIP

In recent times, many scholars have written on Muslim Family law and have reviewed the theme from different perspectives so as to improve Islamic family law. Moreover, little is done to discuss the impact of international law and international human rights norms on marriage guardianship in modern times. This segment addresses the impact of international instruments on marriage guardianship in Islam.

Al- Hajj⁷² expatiates on *Encyclopedia of Islamic Jurisprudence Concerning Muslim Women* with particular attention on rulings dealing with guardian and much details on Muslim Women. He omits to highlight the concept and the practice of guardianship. In addition, the work fails to examine guardianship, and its practice under the Maliki jurisprudence. This study examines the gap.

Abu M. A⁷³ on the other hand, discusses *Risala a Maliki Shariah Text*. The classical text was translated by Mohammad Bello. Though the work examines much on Islamic marriage but little reference to the concept of marriage guardianship with emphasizes on testamentary guardian. This study fills the area of gaps not covered by the author.

Zahraa and Maliki⁷⁴ reviews the Concept of Child Custody under Islamic law, the scholar pin-point on marriage guardianship with focus on concept of a child. This is a useful reference material for this study. This study overviews the area of lacuna with reference to the *Maliki* jurisprudence.

⁷⁰ ZO Shittu-Adenuga and AS Abiola, 'Equalizing the Legal Status of Customary and Statutory Marriages in Nigeria: Lessons from Kenya and South Africa' (2024) 15(1) *Law and Policy Review* 13–34 available online at <https://cambridgeresearchpub.com/ijlphr/article/view/1221> (accessed 8 October 2026)

⁷¹ Al. A. Hammudah, *The Family Structure in Islam*, International Journal of Humanities and Islamic Studies, 4 (2), (2012), 23-27; ZO Shittu-Adenuga, AS Abiola and SS Mustapha, 'The Critique of Alternative Dispute Resolution under Islamic Law and Its Relevance in Contemporary Nigeria' (2023) 31(2) *Jurnal Syariah* 119–122 available online at <https://tamilperaivu.um.edu.my/index.php/JS/article/view/43960>

⁷² Y.A Al-Hajj *Encyclopedia of Islamic Jurisprudence Concerning Muslim Women*. Vol. 2, (Riyadh Darussalam Global Leader in Islamic Books. (2016), 309.

⁷³ M.A.Abu *Ibn Al-Qaira*. Translated by Bello, M Daura Risala Zaria, Northern Nigeria Publisher Company Ltd. (2016) 89.

⁷⁴ M.A Zaharaa, and Nurmi, N.A. *The Concept of Custody in Islam*. Darrul Islam, Madena. 6 (19), (2018), 20-35.



Sabiq ⁷⁵ focuses on *Fiqh* and Sunnah. The writer addresses marriage guardianship, he emphasized on legal and natural guardians. This work is laudable efforts in understanding the discourse under review and useful guide in assimilating the contemporary trend of Muslim marriage guardianship. This present work evaluates the gap not addresses by the previous study.

Nasir ⁷⁶ examines the Islamic Law of Personal Status. He argues the concept of marriage guardianship and makes useful contributions on *De-factor* guardianship. The present study is specific on its area of focus on influence of Maliki jurisprudence on marriage guardianship under Islamic law.

6.0 RECOMMENDATIONS

There is the need to establish Islamic mode of mediation and arbitration organised by experts in Islamic jurisprudence on issue of resolution of marriage guardianship conflicts guided by cultural norms of the Muslim *Ummah* to tackle different grievances and safeguard persons rights within the ambit of Islamic legal approach. Contemporary society is dynamic and always changing. Therefore, the youths of today need to be sensitized via Islamic education resources and programmes of Marriage guardianship. Here, the jurists and experts in Islamic law can assist in the propagation of this Islamic law doctrine. Jurists Islamic law experts and other stakeholders need to work hand in hand to address cultural norm sensitivities and ensure regular application of one of the golden principles of Islamic jurisprudence. The radio, television and the social media can be a useful avenue to champion the spread of Islamic education of our youths in the Muslim society.

Similarly, public lectures, workshops and symposium can be organised from time to time to create awareness of this vital Islamic norm. All these measures would assist in the comprehension of Islamic legal norm. It is also a recommendation of this paper that there is need for a detailed review of the institutional arrangement and the legal framework of Islamic family law in line with the changing positions of the contemporary society. This study recommends that there is need to move away the classic aspects of Islamic jurisprudence especially marriage guardianship due to the rights and privileges women enjoyed in recent time, totally different from the classic times.

This paper recommends that the classic explanation on this norm needs to be harmonized in the light of contemporary expectations. Organisation of international conferences, workshops and symposium for the Muslim jurists, scholars, and experts in International law, International Human Rights and other related areas to address topical matters on Islamic jurisprudence. This paper recommends further that in such gathering of experts, review of recently decided cases would assist to uplift the position of the subject matter in line with contemporary era.

The communicate of international conferences may be translated as the blue- prints on recent position of Islamic law on marriage guardianship and suggest areas of improvement on Islamic family law. The classic position of Islamic family law needs to be completely overhauled as result of the changes in the modern international law legal instruments. The conservative traditional role of women in the society has change totally. Women are now breadwinners of

⁷⁵ C Ekpenisi, CE Ekpe and AS Abiola, 'Digital Justice and the UNCITRAL ODR Framework: Normative Foundations, Institutional Limits, and Future Directions' (2026) 3(5) Fountain University Law Journal 303–326, available at: <https://www.fountainjournals.com/index.php/FULAJ/article/view/1517> (accessed 17 October 2026).

⁷⁶ AS Abiola, O Olaboopo and B Ade-Abatan, 'Social Media and Data Protection in Nigeria: Gender, Vulnerable Populations and the Role of Alternative Dispute Resolution in Nigeria' (2026) *International Journal of Law, Politics & Humanities*, available at <https://cambridgepublishing.com/ijlph/article/view/1221>; J.J Nasir, *The Islamic Law of Personal Status*. (Darul Ummah Publisher Company 2022). 186-196.



their families and they occupy international positions and contribute meaningfully to the growth of modern society.

7.0 CONCLUSION

The paper concludes that *Maliki* jurisprudence has a lot of influence on Islamic law particularly the people of West Africa. The article concludes that the norm does not conform to international law and international human rights. This article concludes on the issue of marriage guardianship strictly from the perspective of *Maliki* jurisprudence. Islamic law safeguard the rights, welfare and interest of persons across different angles. According to the *Maliki* jurisprudence, the focus lies on the legal requirements and duties of guardians.

The paper explains that this classic approach emphasizes male members of the family, particularly the father, as first and foremost, the guardian. This School of thought relies deeply on accepted legal and cultural norms. This article highlights that with the dynamics of contemporary era, there is growing trend to harmonize classic cultural practices with modern values, as it relates to gender equality and person freedom.

This paper believes that it is significant to note that marriage guardianship is regarded as a cardinal principle under Islamic legal requirements of marriage, yet one cannot overlook the protection of person rights and freedom. The article submits that the debate is ongoing, there is the need for dialogue, sensitization, education and advocacy to safeguard that marriage guardianship norms are in line the principles fairness, justice and involvement within the Muslim society. The paper explains on the need to bring *Maliki* jurisprudence as comfort to international law and international human rights norms for the betterment of Islamic family law in contemporary times.