

The Marriage of a Sui Juris Girl: Permission of Wali (Guardian) or Consent of Ward in the Context of Personal Law in Pakistan

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Abstract : The present article explores the woman's consent as a paramount element in contracting a Muslim marriage. Also, whether permission of the wali (guardian) is a condition per se for a valid nikah (marriage deed) in the eye of law and Sharia. The researcher attempts to treat it through the related issues, inter alia; the marriage guardian, the women's legal capacity to give consent whether she is a virgin or nonvirgin and how that consent is to be given or may be understood. Does her laugh, tears or salience needs a legal interpretation as well as other female manifestations of emotion explained by the Muslim jurists? The silence of Muslim Family Law Ordinance 1961 (hereafter; MFLO 1961) in this regard and the likely reasons behind such silence is also inquired in brief. Germane to the theme, the various cases in which the true notion of woman's consent is interpreted by courts in Pakistan are also examined. In order to address the issue in hand, it is proposed to provide a brief overview of a few contemporary writers' opinions in which the real place of woman's consent in Muslim marriage is highlighted. Key to the idea of young Muslim woman's marriage, the doctrine of kafa'a (equality or suitability) between the man and woman is argued here to be grounded in the patriarchal and social norms. It is, therefore, concluded that such concept was the result of analogical reasoning and has less importance in the present time. As such it is not a valid factor in current scenarios to validate or invalidate marital bonds. A standard qualitative convention is used for this research. Among primary and secondary sources; for examples, Qur'an, Sunnah, Books, Scholarly articles, texts of law and case law is used to point out the researcher's view. In summation, the article is concluded with a bold statement that a young woman being a party to the contract, is absolutely entitled to 'full and free' consent for the Muslim marriage contract. It is the woman, an indispensable partaker and her consent (not the guardian's permission) that does validate or invalidate the said agreement in the eye of contemporary personal law and in Sharia.

Keywords : consent of woman, ejab (declaration), Nikah (marriage agreement), qabool (acceptance), sui juris (of age; independent), wali (guardian), wilayah (guardianship)

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