

MARRIAGE WITHOUT WALI'S CONSENT AND PARADIGM SHIFT IN FAMILY STRUCTURE OF PAKISTAN.

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Abstract

In Islamic Law *an-nikah* is referred to as a civil contract. Thus, to fulfil a valid contract all the requisites (*arkan an-nikah*) should be fulfilled. According to majority of Islamic jurists, a guardian (*wali*) is one of the pillar determining the validity of marriage. Nevertheless, the Hanafis is of the view that it is a mere condition for a marriage. In Pakistan, a precedent has been set by the Supreme Court (case of Saima Waheed), where it was decided that an adult Muslim woman can conduct her marriage without her *wali's* consent. A debate is started after the precedent of Supreme Court that whether guardian is a pillar of contract or merely a condition. In order to understand the issue of *wali's* approval in a marriage contract, it is essential to discuss the purpose of a marriage itself. The paper discusses the importance of the *wali's* consent under Islamic law, followed by the elaboration of the legal status of a marriage without consent of the guardian under the Pakistani law. Besides desk research, interviews were conducted with female respondents who married without the *wali's* consent. The results from the interviews show that marriage without *wali's* consent is shattering the family structure and causing isolation of the partners both from the family and the society. Conclusively, it is found imperative that recommendation of the guardian is essential in sustaining family system.

Keywords: *Wali*, marriage, Pakistani Law, Islamic law and family

1. INTRODUCTION

The word guardian (*wali*) means a person who extends help. According to Islamic law; *wali* is a person “who has the authority to contract on behalf of a person”, it could be restricted or absolute.³ Islam emphasizes on protecting interests of woman in all situations. In the Muslim

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³ Abdurrahman al Baranji, *Fiqh al Usra al-Muslimah wa nawazijoha fil Maghrib*, (Cairo: Darul kĒtub al-misriya, 2007), p.100.

family structure, there is close relation of *wali* and his ward. The utmost relation between the *wali* and Muslim women constitute a bond of love and affection. Subsequently, the *wali* becomes a good advisor in all affairs of her life. In the same manner in choosing her life partner, she is not expert in the social system and her less exposure to men and general public restricts her ability to evaluate and judge men. However, the male guardian has more experience in choosing a better partner for his ward. It is found from the *Qur'an* and Sunnah of the Prophet (s.a.w) that consent of *wali* for the women is obligatory. In contrary, it is narrated that numerous marriages occurred without *wali's* consent during prophet (s.a.w)'s time. In the court decision of Saima Waheed case; the women are authorised by the court for solemnizing their marriage in Pakistan. Our work is divided into three portions. In the first portion the importance of *wali* in marriage for women is discussed. In second portion authorities from the primary and secondary sources are discussed to highlight the validity of consent of *wali* for a woman in her marriage. The last portion elaborates the law regarding to consent of *wali* in other Muslims countries and Pakistan.

2. CONSENT OF WALI

Under Islamic law, guardianship implies a position of a person who bears certain authority on her/ his ward. A person who fulfils the criteria to control the others right is named as his/her *wali*. In marriage, a person who has the right to allow her to marry is known as her *wali*.⁴

2.1.1 Importance

For the protection of women's interest, the consent of *wali* is vital which is observed from classical and modern scholars. There are numerous reasons,⁵ i.e. firstly, for the woman the *wali* plays the role of a consultant by recommending feasible advice. The view is endorsed from Prophet Shuaib (a.s) where he advised his daughter to marry Prophet Mosa (a.s).⁶ It is stated in Qur'an:

⁴ Noraini Binti Md Hashim, "Registration of Marriage in Malaysia: A Socio-legal study of Runaway Marriages Among Muslims," (Ph.D Thesis, IIUM, 2009), P.166.

⁵ Aziza Mohd, Badruddin Ibrahim & Syafiqah Abul Razak, "Protecting Women's Interest (*Maslahah*) in Marriage Through Appointment of a Guardian (*Wali*) Under Islamic Law", *Social Sciences & Humanities*, Vol.23 (2015), p.80.

⁶ Ibid.

“Said one of the (damsels): O my (dear) father! Engage Him on wages: truly the best of men for Thee to employ is the (man) who is strong and trusty”⁷

“He said: I intend to wed one of these My daughters to thee, on condition that Thou serve me for eight years; but if Thou complete ten years, it will be (grace) from thee. But I intend not to place Thee under a difficulty: Thou wilt find me, if Allah wills, one of the righteous”⁸

“He said: Be that (agreement) between me and thee: whichever of the two terms I fulfil, let there be no ill-will to me. Be Allah a witness to what we say”⁹

Sayyid Qutab interprets that the prophet Shuaib (a.s) found a healthy and pious person and her daughter was also inclined towards him. So he offered him his daughter in marriage.¹⁰ It is clear from the verse that the *wali* chooses a person who bears good character and his advice of marriage for his daughter was proved to be right.

Secondly, the dependence on *wali* is necessary because softness in the nature of a woman makes it difficult for her to ascertain the amount of dower. In the given social conditions, the bride feels shy to negotiate on dower. Instead a male guardian can determine the amount of the dower.¹¹ The emotional feeling of a woman sometime overshadows her decision.¹²

Thirdly, the *wali* plays the role of a protector for the woman safeguarding the ward from a deceiver because he is supposed to be much wiser in taking decision.¹³ Hammudah ‘Abd Al-‘Ati writes that it is the responsibility assigned to the *wali* to safeguard the ward’s welfare. He further states that the guardian usually looks at his experience as a male and in that regard, decide his

⁷ Qur’an 28: 26

⁸ Ibid, 28: 27.

⁹ Ibid, 28: 28.

¹⁰ Sayyid Qutb, *In the Shade of the Qur’an*, (UK: The Islamic Foundation, 2003) vol. XIII, p.221.

¹¹ Azizah Mohd, ... p.81

¹² Syeed Sabiq, *Fiqh al-Sunnah*, (Egypt: D’Er ul-Kutub al-Islami, n.d) vol.2, p.113.

¹³ Aziza Mohd, ... p.80

best opinion for marriage. The father has love and affections for his children and is expected more careful in choosing their partner. For the interest of the ward the guardian should meet certain moral and personal qualities.¹⁴

Lastly, the approval of *wali* has another social significance in strengthening the family ties. Hence the consent of *wali* is supposed to ensure mutual understanding and happiness of both the families.¹⁵ In case of any misconception amongst the partners; their families takes responsibility in sorting it out.

2.1.2 *Qur'an* and Sunnah

The requirement of Guardian in a marriage can be stated from *Qur'an* and sunnah. A verse from *Qur'an* on the issue of *wali* is; “therefore you may marry them with the permission of their guardians and give them their dower so that they may live a decent life in wedlock”.¹⁶ In another verse it is stated that“.... And Allah is most knowing about your faith. You [believers] are of one another. So, marry them with the permission of their people and give them their due compensation according to what is acceptable. [They should be] chaste, neither [of] those who commit unlawful intercourse randomly nor those who take [secret] lovers.....”.¹⁷ These verses clearly declare the permission of the guardian obligatory.

The essence of *wali* is also stated in the hadith, in which he termed a *wali* as an obligatory element for the solemnisation of marriage. It is narrated from Aisha (r.a) that the prophet (s.a.w) said “The marriage of a woman who marries without the consent of her guardians is void. (He said these words) three times. If there is cohabitation, she gets her dower for the intercourse with

¹⁴ Mammudah ‘Abd Al-‘Ati, *The Family Structure of Islam*, (Selangor Malaysia : The Other Press, 2008), p.84.

¹⁵ Azizah Mohd...p.81..

¹⁶ *Qur'an* 4: 25

¹⁷ *Qur'an* 4:25

her husband. If there is a dispute, the sultan (man in authority) is the guardian of one who has none.”¹⁸

Abu Musa (r.a) narrates a hadith that “There is no marriage without the permission of a guardian”.¹⁹ In another hadith Ayesha (r.a) states that “her father gave her in marriage with prophet (s.a.w) when she was six years old and he (s.a.w) established matrimonial relationship with her when she was nine years old”.²⁰ It could be argued from the verses of *Qur’an* and the sayings of the prophet (s.a.w) that a virgin girl must get the consent of her *walĒ* before solemnisation of the marriage.

2.1.3 Juristic Views

Muslim jurists from different schools of thought bears varying opinion on consent of *wali* in marriage. Shafi’is, Maliki’s and Hanbali’s says that the consent of *wali* is compulsory for the solemnisation of marriage. While Hanafi’s consider the *wali* merely a condition for marriage. Imam Shafi writes “if a woman got married without the consent of her guardian her marriage is void”.²¹ He legalised his stance from the verse 4.25 of *Qur’an*. In the famous book on *fiqh* Shafi’s, *Al-Fiqh Al-Manhaji* it is stated that the consent of the *wali* is the pillar of a marriage. It is indicated in his book that a female who is adult, a widow or virgin should be given in a marriage by her guardian.²² They took above interpretation from the hadith narrated by Abu Hurairah in which the prophet (s.a.w) said:

¹⁸ Al-Tirmidhi, Sunan al-Tirmidhi, Kitab al-Nikah, (Beirut: Dar al-Gharab al-Islami, 1981), Vol.2, p.398. see also Narrated by Sunan Abu DĒwud, kitab al nikah, Book 5, Number 2078, also stated in Ahmad 24417.

¹⁹ Ibn Majah, Abu Abdullah Muhammad Ibn Yazid al-Qazwini, Sunan Ibn Majah, Kitab al-Nikah, (Hadith No.1880) (Dar Ihya’alkitab al’Arabiyyah), Vol.2, p.605.

²⁰ Sahih Muslim, KitĒb al-Nikah, BĒb Tazwij al-Ab al-Bikar al-Saghirah.

²¹ Muhammad bin Idrees Al-Shafi, *KitĒb Al-Umm*, (BeirĒt: DĒr-ul-kutub Al gilmiya, 1993), p.12.

²² Mustafa Al-Khin, Mustafa Al-Bugha & Ali Al-Sharji, *Al Fiqh Al-Manhaji ala Mazhab Al-Imam Al Shafi*, (Beirut: Al DĒr Al-Shamiya, 2008), Vol.2, P. 57.

“No woman should arrange the marriage of another woman, and no woman should arrange her own marriage. The adulteress is the one who arrange her own marriage”.²³

The father has authorisation of marrying his virgin daughter without her consent. However, the Islamic law recommends a father to consult his daughter for her marriage. The necessity of the consent of a female is mentioned in hadith, “A woman without a husband has more right to her person than her guardian, and a virgin's consent must be asked from her, and her silence implies her consent”.²⁴ Though, the authority of the guardian ceased to exist if his daughter is not virgin.²⁵

The Maliki's emphasises on the importance of *wali* for a woman in her first marriage and is allowed to freely enter into her second marriage.²⁶ Hanbalis are also of the same opinion that a marriage could not be conducted without the consent of her *wali*.²⁷ However, Ahmad bin Hanbal do not consider it a pillar (*rukan*) rather a compulsory condition (*shart li sihat al-nikah*) for the completion of her marriage.²⁸ While Hanafis hold the stance that a virgin girl can enter into a marriage without consent of her *wali*. They argue that after puberty a lady can make decisions for herself. It would not be allowed for the *wali* to arrange marriage of his virgin daughter without her will.²⁹ They argued from the two verses of *Qur'an*:

²³ Ibn Majah, Sunan Ibn Majah, Vol.3, Book 9: 1882.

²⁴ Sahih Muslim, Book 8,: 3306

²⁵ Abu Zakaria Yahya Ibn Sharif En Nawawi,.... 284.

²⁶ Ibid.

²⁷ Ibn QudÉmah, *Al MughnÉ*, (BeirÉt: DÉR ul Aalam Al-Kutab, 2005), vol.9, p. 345.

²⁸ Mustafa Abdul Qadir Ata, *AhkÉm Al- ZiwÉj 'Ala Al-Mazahib Al- arbe*, (Beirut: Dar-Ul Kutub Al-Gilmiya, 1986), p.118.

²⁹ Burhanuddin Abi Al-Hasan Ali Marghinani, *The HidÉya*, trans Charles Hamilton, Vol.1, Part.1 (Karachi, DÉRul Ishat, 2005), 65.

“And when you divorce women and they end their term of probation (*‘iddah*) do not prevent them from marrying the husband when they agree among themselves in lawful manner”.³⁰

From the verse Hanafis contended that a woman is free to marry without the consent of *wali*. They argue from the precedent of Ayesha in which she arranged the marriage ceremony of her brother’s daughter while her father was not present.³¹ Moreover, in *al-Bahr al-Ra’iq* it is argued that “everyone whom the law permits to dispose of their property acting as their own guardian, it also permits them to marry acting as their own guardian”.³² They also quote another Hadith, “a virgin came to the Prophet (s.a.w) and mentioned that her father had married her against her will, so the Prophet (s.a.w) allowed her to exercise her choice”.³³ In light of this hadith, Hanafis interprets that “a father does not have right to force his virgin daughter into a marriage”.

From the above discussion it could be maintained that majority of the Muslim jurists prefer the consent of *wali* a pillar of marriage while others (Hanafis) are weak in their opinion. After examination of earlier referred hadith, Ayesha (r.anha) married her niece without her brother’s consent. Some of the Muslim jurists commented that Ayesha (r.anha) exercised the rights of her guardianship as she did not want to lose the better proposal. The Hadith where the Prophet (s.a.w) declared the marriage void to the bride’s desire, Shafis says that the hadith is regarding the authority of *wali* in the marriage of a widow and a virgin. On the basis of hadith, widows are privileged over their *wali*. From the arguments it is distinct that *wali* has more rights over the virgin while consummating her marriage.³⁴ Even Abu Yousaf the student of Abu Hanifa

³⁰ Qur’an 2:230.

³¹ Muhammad Simarah, *AhkÉm wa asÉr al-Zawjiya sharah maqarin li qanoon al ahwÉl al-Shakhsiya*, (Oman: Darul- Al saqÉfah, 2008), p.85.

³² Ibn Nujaym, *al-Bahr al-Ra’iq*, (Cairo: Maktabat al-Majidiyah, 1968), vol.3, p.117

³³ Ibn Majah, Hadith No.1875.

³⁴ Muhammad Shamsul Al Haq Azim Abadi, *An ’nul Ma ’bud*, (Darul Fikar, 1995), p.96.

states that a marriage could not be solemnized except through her guardian.³⁵ Another vicegerent of Abu Hanifa, Muhammad holds that if a marriage is not conducted in the presence of *wali*, the marriage can only be solemnized after attaining the consent of *wali*.³⁶

2.1.4 Marriage Legislation in Other Muslim Countries

Family laws vary in Muslim countries due to being follower of different school of thoughts. On the matter of female guardianship; some Muslim countries have recognised it compulsory in marriage. While in others the guardianship is required if the female is minor and insane.³⁷ In Malaysia, The Islamic Family Law (Federal Territories) Act 1984 states that, “a marriage shall not be recognised and shall not be registered unless both parties to the marriage have consented, and either the *wali* of the woman has consented or shariah judge has granted his consent as *wali* Raja whenever there is no *wali nasab* available to act or if the *wali* cannot be found or where the *wali* refuses his consent without sufficient reason”.³⁸ Though it is not clear that whether the law talks about the consent of a *thayyiba* or the virgin. Another confusion relates to the guardian whether the act mentioned *wali* as bride’s father or her grandfather or any other *wali nasab*.³⁹

The law in the state of Kelantan (Malaysia) clarify according to the Shafi school of thought, which is stated as, “a woman who is to be married should first give permission to her *wali*, her consent being *wajib* if she is not a virgin or if she is virgin whose *wali* is not *mujbir*”, but “her consent being only *sunat* if she is a virgin whose *wali* is *mujbir* i.e her father or paternal grandfather”.⁴⁰ The legislation in Malaysia bound the female to marry with approval of the *wali* only.

³⁵ Marghinani, *The HidÉya*.....,65

³⁶ Ibid.

³⁷ Muhammad Tahir Mansoori, *Family Law in Islam*, (Islamabad: Islamic Research Institute Press, 2009), p.66.

³⁸ Islamic Family Law (Federal Territories) 1984, Section 13.

³⁹ Nik Noriani Nik Badli Shah, *Marriage and Divorce under Islamic Law*, (Selangor: International Law Book Service, 1998), p.15.

⁴⁰ Kelantan Islamic Family Law Enactment 1983, section 2(e). see also Nik Noraini Nik Badli Shah,...p.15.

The Family Code of Algeria states that, “marriage of a woman shall be contracted by her marriage guardian, who may be her father or one of her near relatives”. “The *Qadi* is the marriage guardian of a person who has no father or near relative”.⁴¹ The Libyan Law states that “it is not be lawful for the guardian to compel the ward in respect of marriage. So, where a marriage has been contracted with the consent of the guardian it shall be valid, but where either the guardian or the ward contracts without the consent of the other, its validity will depend on the consent of the other of them”.⁴² The Libyan Law recognises the consent of the bride and the guardian essential. The family law of Sudan also endorses the consent of the woman and her guardian essential for the marriage. The Law provides that, “the marriage of a girl which is not contracted by the legal guardian either personally or through delegated authority shall be ineffective.”⁴³

According to Syrian Family law, the guardian cannot directly control her daughter. If a female who has reached majority wishes to marry, she may inform the judge of her choice and the judge will communicate to her *wali*. The court will give specific time to the *wali* to respond. The judge would have authority to conduct their marriage if her parents do not agree.⁴⁴ In Saudi Arabia, a Marriage requires the consent of the two parties, the consent of the girl’s father/guardian, two witnesses, the giving of a dowry from the husband to the wife, and a medical check.⁴⁵

Subsequently, the personal law of Somalia also gives importance to the consent of *wali*. Somalian Family Code mentions that “a girl of sixteen but below eighteen years of age can marry with her guardian’s consent”.⁴⁶

⁴¹ The Family Code 1984, Art. 11

⁴² Law on Women’s Rights in Marriage and Divorce 1972, Art.2

⁴³ Law on Marriage-Guardianship 1960, [*Manshur* 54 of 1960], art.1.

⁴⁴ The Islamic Law of Personal Status, p.47.

⁴⁵ Al-Hakami, Husain, and Kenneth McLaughlin. "Debatable marriages: Marriage and child marriage in Saudi Arabia." *Marriage & Family Review* 52, no. 7 (2016): 654-664.

⁴⁶ The Family Code 1975, art.16.

3. LOVE MARRIAGE

Love marriage is a term used (in India, Pakistan and Sri Lanka) to describe a marriage where the individuals decide to marry with or without consent of their parents by themselves.⁴⁷ Sometime, the consent of the daughter is not considered by the guardian and she runs away with her love interest. This irregular marriage conducted between the male and female without the approval of their guardian is called elopement.⁴⁸

3.1.1 Dower (*Mahr*)

Dower is the compulsory payment made by the husband to the wife prior to the marriage. It is a gift from the husband which may be in the form of money or property for the wife in consideration of a marriage.⁴⁹ All the Sunni schools of thought agree that dower is the basic condition for the marriage and it will not be valid without paying the dower.⁵⁰ They concluded their opinion from the following verse of Holy *Qur'an*:

“And give woman their dowries as a free gift”.⁵¹

“And lawful for you are all women besides these, provided that you take them in marriage not committing fornication. Then as to those whom you profit by (through marriage), give them their dowries as appointed”.⁵²

“And the chaste from among the believing women and the chaste from those who have been given the Book before you, when you have given them their dowries, taking them in marriage”.⁵³

⁴⁷ Love marriage, available on https://en.wikipedia.org/wiki/Love_marriage [last Accessed at 23th January 2018]

⁴⁸ Mohammad Samara, *Alk'Em wa Asar Al-Zawjyah sharf maqarin lil qinun al-Ahwal Al-Shakhsiyyah*, (Oman: Darul Saq'efah lil nashr wa al-tawzih, 2002), p.150.

⁴⁹ 'Abdur Rahm'En I. Doi, *Woman in Shari'ah*, (Kuala Lumpur: A.S Noordeen, 1992), p.155.

⁵⁰ Muhammad Tahir Mansoori,p.71.

⁵¹ Qur'an 4:4.

⁵² Qur'an 4:24

⁵³ Qur'an 5:6

It is apparent from the verses of the Holy *Qur'an* that dower is compulsory upon the male for validation of the marriage. The same conclusion is also interpreted from the hadith of the prophet (s.a.w). The dowry is compulsory, it could be paid at the time of marriage or after the marriage. The amount of the dowry will be specified according to the social status of the wife or as mutually agreed upon.⁵⁴ The wife has right to remit the whole or partial dower but Umar (r.a) have decided that after remission if the wife demands later, the husband would be bound to pay.⁵⁵ The dower is property of the wife which she can use at any time and it the safeguard for the wife if her husband divorce her. To favour the bride groom, Islam permits to pay in the marriage anything according to his financial situation and even the prophet organised a marriage ceremony of a couple even with the memorisation of *Qur'an*.⁵⁶

In Pakistan the dower is specified in the marriage but in the situation of love marriage, elopement and court marriage; the amount of dower is less or remitted by the wife. Initially the partners are not aware of the importance, but a woman feels its significance when she is left by her partner.⁵⁷ The bride should specify the amount of dower in their marriage.⁵⁸

3.1.2 Legislation in Pakistan

In Pakistan the solemnisation of marriage is regulated in Muslim Family Law Ordinance 1961(MFLO). MFLO is mainly concerned with the procedural part of the marriage. So, the authority of the substantive aspects is vested in courts.⁵⁹ It is found that Pakistani Law is silent on the matter of guardian's consent in the marriage. Moreover, the legislation regarding forced

⁵⁴ Abul A'la Mawdudi, *The Law of Marriage and Divorce in Islam*, (Kuwait: Islamic Books Publishers, 1983), 51.

⁵⁵ 'Abdur Rahman Doi,...156.

⁵⁶ Sunan Abi Dawud, Kitab Al-Nikah, Bab al-tazwîj 'ala al-mal, Hadith No. 20111.

⁵⁷ Shamim Akhtar, Interviewed by researcher, Sindh Pakistan, 28 December 2017.

⁵⁸ Sadiya Quraishi, Interviewed by researcher, Sindh Pakistan, 28 December 2017.

⁵⁹ Karin Carmit Yefet, What's the Constitution Got to Do with it? Regulating Marriages in Pakistan, *Duke Journal of Gender Law & Policy*, vol.16 (2009), 351.

marriage and exchange marriage is also not determined in Pakistan. The unborn girl is sometime given by her parents to a person of their choice.⁶⁰

However, the injustice in society could not be hidden from the Pakistani courts. Pakistan is a common law country and the precedent of the court is also considered as a source of law. It was found in the case of *Humaira Mehmood vs. The State*⁶¹ that the appellant came to the court to quash criminal charges against her. She narrated to the court that she married against the consent of her parents. She said that her parents already decided her marriage when she was still a child. When her parents came to know about her marriage, they approached the couple and her husband was jailed by adultery charges. She was forcefully bonded to her cousin in the second marriage while she was already in the first *nikah*. Humaiara filed a petition in Lahore High Court that her second marriage was under duress and should be pronounced void.⁶² The court decided that according to Islamic Law, Constitution of Pakistan and International Human Rights law it is the right of the female to freely enter into a marriage without the consent of *wali*.

In another case of *Muhammad Tariq Mahmood vs. SHO*⁶³, the court observed the issue of *walÊ's* consent. The Lahore High Court decided that a female could conduct her marriage without the consent of guardian. The court observed that “the judges of superior Courts by all measures, Jurists of today, it is their right as well as responsibility to give progressive interpretation to Muhammadan Law that are in consonance with the spirit of law and the need of the time”.⁶⁴ The land mark decision of Supreme Court of Pakistan was found in the case of “Saima Waheed’s case”. Saima Waheed was a twenty-two years old student when married without the consent of her guardian. She moved to a female shelter after realising threat from her

⁶⁰ Rashid Mohammad Husain Patel, *Woman Verses Man: Socio-Legal Gender Inequality in Pakistan*, (New York: Oxford University Press, 2003), 55.

⁶¹ PLD 1999 Lahore 494,514.

⁶² Ibid.

⁶³ 1997 PCrLJ 758 (Lahore)

⁶⁴ Ibid.

own family. Her husband was tortured and was imprisoned. Saima in response appealed that she had married according to her own wishes and shall freely live with her husband.⁶⁵ Questions were raised by the court and the opinion of the majority of the Islamic jurists was sanctioned as well. Justice Ihsan-ul-Haq said;

“marriage in Islam is a sacrament and not a civil contract; that rights of parents in this regard were legally enforceable and that an adult Muslim woman could not enter into a valid contract of marriage without the intervention of her guardian”⁶⁶

The court discussed the issue of guardian in a marriage according to Islamic law and reviewed the opinions of four Islamic Jurists.⁶⁷ The opinion of three jurists was accepted by the court, the ruling validated the fundamental rights given by the constitution of Pakistan. The Lahore High court decided a divergent decision and for that reason the case was brought to the supreme court of Pakistan.⁶⁸ The Supreme Court decided the case on the same line of argument as was adopted by the LHC in *Muhammad Tariq Mahmood vs. SHO, Millat Park*⁶⁹, Lahore, albeit in a refined manner. The court issued a detailed judgement and endorsed the view of Saima Waheed. The precedent of Supreme Court is now followed in every court and opened the door for the youngster to go against the will of their guardians.

3.1.3 Effects of Saima Waheed Case

Family is the first assembly for the human where he/she seek good manners, discipline, world view and belief system. It is found that all the religions have given special importance to the

⁶⁵ Saima Waheed case, PLD 1997 Lahore 301

⁶⁶ Ibid.

⁶⁷ Karin Carmit Yafet, What's the Constitution Got to Do with it? Regulating Marriages in Pakistan, 358.

⁶⁸ Hafiz Abdul Waheed v Asma Jehanghir PLD 2004 SC 219.

⁶⁹ 1997 PCrLJ 758 (Lah)

family structure.⁷⁰ For the reason, all the religions have recommended to strengthen the family structure. The marriage bond is not cohabited for the combination of two individuals but it unit the two families.⁷¹ If the marriage is conducted only between the parties, then the real purpose of the marriage is not obtained.

In aftermath of Seema Waheed case the decision; the youth is observed destroying their family bond. It is noticed that the partners who have conducted love marriage, eloped marriage and court marriage are isolated from the families. At the same time the bride's family usually lose their reputation and status in society and is tabooed. During interviews the respondents shared their opinion gained through their love marriage experiment. Firstly, the female should be given religious education. The love marriages are conducted because of the ignorance of religion. A female came to know for its consequences afterwards. A feeling is observed by the female when their children grow up and pursue the marriage decision by themselves as their parents did.⁷² Secondly, these couples are isolated from their families and society and usually live in seclusion.⁷³ Thirdly, the brides face mental torture by the society for a long time and are shamed.⁷⁴ Fourthly, the love marriage is risky for the woman as usually the male partner is accepted by his family and the bride remains in cul-de-sac. The woman feel suppressed to search for jobs to survive and lives a troublesome life.⁷⁵ Fifthly, the love marriage couples pass a disgraceful life and they are curbed by their families and society.⁷⁶

4. CONCLUSION

⁷⁰ John H. Chamberlayne, *The Family in Islam, International Revive for the history of religions*, vol.15 (1968), p. 119-141

⁷¹ Saima Waheed case,... 327.

⁷² Sadaf Naz,...Islamabad.

⁷³ Irum Shahzad, Interviewed by the Researcher, Islamabad, 2 January 2018

⁷⁴ Sadiya Quraishi, Sindh.

⁷⁵ Humaira Khalid, interviewed by the Researcher, Islamabad, 2 January 2018.

⁷⁶ Shamim Akhtar,..... Sindh.

The consent of *walÊ* is a pre-requisite for a bride. It is rectified from the verses of *Qur'an* and the Sunnah of the prophet (s.a.w). The majority of Islamic jurists also declared the consent of *walÊ* cardinal. In Pakistan there is no procedural law where the consent of *walÊ* for bride is determined. In “Saima Waheed case” the court set the precedent that consent of *walÊ* for a bride is not necessary. Although Justice Ihsan Ul Haq Chaudary commented that it is necessary for the woman to marry according to the wishes of her guardian and also lamented that the guardian should arrange the marriages of their children in early age. The decision of Supreme Court in Saima Waheed set precedent for the youth and the family structure is badly affected. Moreover, it is found from the interviews of the respondents that they live in social isolation and spend a miserable life. It is recommended that the legislations of other Islamic countries (i.e Malaysia, Algeria, Libya, Sudan, Somalia and Syria) shall be followed to safeguard the interest of partners and social norms of society. Furthermore the patriarchal and social structure of society is at risk due to love marriages. Following the findings it shall be declared mandatory that *nikah* registrar shall specify the amount of dower to safeguard the bride’s interest.⁷⁷

⁷⁷ Sadaf Naz, Interviewed by researcher, Islamabad Pakistan, 31 December 2017.