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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله حمد الشاكرين، والصلاة والسلام على المبعوث رحمة للعالمين، وهادياً للناس أجمعين. صلاةً وسلاماً دائمين إلى يوم الدين، وآله وصحبه ومن تبعهم بإحسان، وسلم تسليماً كثيراً، أما بعد:

باب الأولياء والأقفاء فى النكاح

The position of a guardian (Wali) in the Nikah of a mature female

Everything in this world which has value is safeguarded. In the same manner the status of women in Islam is extremely lofty and elevated and their honour and respect is safeguarded to the highest standard and ability. The responsibility of this guardianship is appointed to the woman's family. One such responsibility placed upon the menfolk of the household is that when a woman reaches maturity (puberty) they should seek for her an appropriate partner for the purpose of Marriage. In the light of the Qur'an and Sunnah, when a young immature woman **صغيره** (i.e. who has not passed the age of puberty) **or** one who is not of sound mind and intellect **or** a female slave, performs her Nikah without the permission of her guardian, her Nikah would not be fulfilled. This is due to limitation and weakness in her understanding which may not be sufficient for her to make a decisive decision.

The guardian (Wali) is understood to be the father of the woman, if the father is not alive, then the grandfather, then the mature son, then the blood brother, then the uncle (father's brother), then cousin (father's brother's son), then the mother. (Mazhirul Haq, vol 3, p275)

When a mature woman **بالغه باكره** (past the age of puberty) who is of sound understanding and intellect, and never having been married previously; performs her Nikah; then for her to do so with the permission of her guardian is the most preferred and (Mustahab) and ideal manner because of modesty (Haya). However, if a mature woman of sound understanding and intellect performs her Nikah without the permission of her guardian to a man of her own preference who is compatible with her (**كفوء**), then her Nikah will verily be fulfilled. (Badahi-ul Sanai' vol 2 p248, Fathur Qadeer vol 3, p157, Mabsoot Sarkhasi vol 5, p10)

A mature woman, **بالغه ثيبه** who is a divorcee or a widow of sound understanding and intellect, has full authority to perform her Nikah on her own accord and desire without the guardian being present or seeking their approval. This is due to the fact that she has experienced marriage and its associated occurrences therefore Shariah, allows this woman to have complete control of matters relating to her Nikah.

Supporting evidence and proofs from the Qur'an and Ahadith:

1. **Allah ﷻ says in the Holy Qur'an:** 'And when you have divorced women and they have fulfilled the term of their Iddah, do not prevent them from marrying their former husbands, if they mutually agree on a reasonable basis.' (s2,v232)

Mu'aqal bin Yasaar **رضي الله عنه** relates: I had a sister who was married to our cousin, he issued my sister with one Talaq Rajae. After her Iddah was complete, he wished to perform Nikah with her again. When he put the proposal forward, I prevented her from accepting his proposal. On that incident and in relation to my action this verse of the Qur'an: 'And when you have divorced women...' (s2,v232) was revealed, hence preventing me from prohibiting my sister to marry her former husband again.' (Abu Dawood #319/ Tafsir Qurtubi vol 3, p158)

2. **Allah ﷻ says in the Holy Qur'an:** '...then when they have fulfilled their term, there is no blame on you for what they do for themselves in a lawful manner (with regards to marriage); and Allah ﷻ is aware of what you do.' (s2,v234)

In this verse of the Qur'an, upon the completion of Iddah, a woman is given the authority to do as she pleases in the matter of her own Nikah.

3. **Allah ﷻ says in the Holy Qur'an:** 'So if he divorces her she shall not be lawful to him after that until she marries another husband...' (s2,v230)

In this verse of the Qur'an also, the action of Nikah is placed in the hands and authority of women.

The Prophet ﷺ approving Nikah of a woman without her guardian being present:

4. Sayyidah Umme Salama رضي الله عنها related that after the death of the husband of Subai'ah Aslami رضي الله عنها, two weeks after his passing away she gave birth to a baby (therefore her Iddah was complete). Following this, she was sent proposals for marriage from two men, a mature individual and an elderly man. The elderly man, seeing this situation advised her: 'it is not Halal for you to accept a proposal yet as your guardians/housefolk are not present (they were travelling).' To understand the truth of this man's advice, Sayyidah Subai'ah Aslami رضي الله عنها presented her case to the Prophet. The Prophet ﷺ stated to her: 'Verily, it is Halal for you! Which ever of them you wish to do Nikah with, you may.' (Muwatta Imam Malik#156 / Sunan Nasai vol 2, p114)
5. A woman presented herself to the Prophet ﷺ with the intention of being married to him ﷺ. On this the Prophet ﷺ remained silent. A companion of the Prophet ﷺ who was present stated: 'O Prophet of Allah ﷺ, if you do not desire to marry her, I would like to do so.' On the request of this companion and the acceptance of the woman, the Prophet performed their Nikah. The guardian of the woman was not present at this occasion. (Sahih Bukhari vol 2, p767, Muwatta Imam Malik #9 , Sunan Nasai# 3255)

The Nikah of the Prophet ﷺ to Umme Salama رضي الله عنها without a guardian being present:

6. Sayyidah Umme Salama رضي الله عنها related, when her Iddah was completed following the death of her husband, the Prophet ﷺ sent her a proposal for marriage. She responded to the Prophet ﷺ: 'my guardian is not present here.' The Prophet ﷺ responded: 'whether your guardians are present or not, they will not disapprove of this Nikah.' Then Umme Salama رضي الله عنها said to her young (immature) son: 'O Umar come accompany me at my Nikah.' (Sunan Tahawi vol 2, p8/ Sunan Nasai vol 2, p72)

In this Hadith, Umar bin Abi Salama رضي الله عنه was an immature boy. (Sunan Tahawi vol 2, p8)

It is proven that in Shariah it is not permissible to have an immature child acting as a guardian for a woman in the matter of Nikah. He was only included in the Nikah out of affection, if he was a capable guardian the Prophet ﷺ would have appointed him as such.

7. Sayyidina Ibn Abaas رضي الله عنه relates: the Prophet ﷺ stated: 'A mature woman has more right over her affair in regards to Nikah than her own guardian.' (Sahih Muslim vol 1, p455/ Sunan Nasai p276/ Sunan Abu Dawood p286/ Jami Tirmidhi vol 2, p164)
8. Sayyidah Ai'sha رضي الله عنها relates: 'A mature woman who had not been married previously complained with regards to her father to the Prophet ﷺ, who without her consent, got her married. She stated: 'O Prophet of Allah ﷺ, whatever my father has done (in relation to my Nikah), I am not happy with.' The Prophet ﷺ called her father into his company. The woman further stated: 'O Prophet of Allah ﷺ, whatever my father has done is in the past now, what I really wish to ask is that in this matter of Nikah, doesn't a woman have a right?!' (On the questioning of this woman the Prophet ﷺ stayed silent showing approval of her dispute). (Sunan Nasai vol 2, p77#3274/ Sunan Abu Dawood vol 1, p285/ Sunan Ibn Majah p135)

The scholars of Ahadith have stated that the chain of narration here is correct (Sahih). (Fathul Bari vol 9, p196/ Umdadul Qari, vol 20, p130)

Further this was the first engagement of this young woman. (Sunan Ibn Majah p135)

The above case clearly verifies that the approval of Nikah by the father without the consent of the daughter was not the correct manner in which to conduct this affair, as her approval should have been sought.

Furthermore, Sayyidina Abu Hurairah رضي الله عنه related that the Prophet ﷺ stated 'With regards to a mature woman, her permission has to be sought in matters that concern her. If she remains silent, it is deemed that she agrees and if she objects she should not be forced.' (Sunan Nasai #3275, Sahih Bukhari #122)

9. The narration by Sayyidah Ai'sha رضي الله عنها 'Women should not perform their Nikah without their guardian.' Is considered to be weak by Muhadis'een. (Al Mirkaad, vol 6, p209/ Mazhirul Haq, vol 3, p279)

The scholars that consider this narration to be authentic interpret this to be an exception for immature girls, without whose guardian (Wali) the Nikah cannot be fulfilled. This view is further corroborated in another narration where Sayyidah Ai'sha رضي الله عنها performed the Nikah of her niece Hafsa bint Abdur Rahman bin Sayyidina Abu Bakr رضي الله عنها to Munzil bin Zubair رضي الله عنه without her father (Wali/guardian) being present. (Kanzul Aamal, vol 16, p532/ Musanaf ibn Abi Shayba, vol 4, p134)

10. Sayyidina Ali رضي الله عنه used to advise the people to perform Nikah with the permission of their guardians. However, if a Nikah had been performed without the guardian's permission, Sayyidina Ali رضي الله عنه would not annul the marriage. This is further proof to the fact that Nikah without the guardian is permissible. (Kanzul Aamal, vol 16, p531)

11. Sa'eed ibn Musayib رضي الله عنه related that Sayyidina Umar bin Khattab رضي الله عنه stated: 'A woman should not perform Nikah without the permission of her Wali or with the advice of an understanding individual of her household or the Amir of that area (Islamic leader)'. (Kanzul Aamal, vol 16, p530).

Here the Wali is not the only individual that is being mentioned, it is also mentioned that through the supervision of another responsible adult the Nikah is fulfilled.

The matter of Nikah with the permission of a Wali is (Ikhtilaafe Masa'la) issue from the time of the pious predecessors. However, nowadays the Ghair Muqallid propagate that there is no Nikah without the Wali being present. Yet when it suits their purpose, some amongst their group take any individual to act as the Wali of the woman even though the individual may not have any connection or relation with the woman at all. There is no proof from the Qur'an and Sunnah that a non- relation to the 'to be' bride can be taken as Wali especially when the father of the woman is present. This is completely wrong in respect of the Shariah and Sunnah and is a self-concocted method for performing Nikah.

والله وحده هو المسؤول والمستعان وهو الهادي إلى سبل الخير والسلام .

محمد يوسف (عفى الله عنه)

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