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## Book Reviews

*Al-Wilayah fi- Az-zawaaj Bayna Al-Shariat wa Al-Taqlid fi Iqliim Shimaal shirq Kiinya (Guardianship in Marriage between Sharia and Custom in North-East Kenya*

*Region)*, Yunis Abdielle Mussa, 330 pp, Sumait University Press, 2015 (1436 AH), Zanzibar, ISBN: 978 - 9987- 499- 40 - 3

Reviewed by Prof. Mohamed Ali El Kamil \*

This study is a cross-sectional summary of the book: *Al-Wilayah fi- Az-zawaaj Bayna Al-Shariat wa Al-Taqlid fi Iqliim Shimaal shirq Kiinya (Guardianship in Marriage between Traditional and Islamic Law in North East Kenya Region)* in which I would like to provide a review about it.

My review will cover the following three main areas:. About the Book. 2. Presentation of the content of the book and 3. Evaluation of the book.

### The Book

The author arranged his book in chapters, sections, topics and subjects. The book contains many findings arrived at by the author, followed by glossary of verses from the holy Qur'an and traditions of the Prophet, authors, bibliography. A summary of the book is provided in English language.

The book consists of an introduction and two chapters. Chapter One presents the position of the Islamic law on the state in general and provisions related to a guardian, especially where the views of the jurists and sects were differed. The author collected the relevant doctrines of related jurisprudence and explained them extensively. Chapter Two discusses the situation in the study area recounting history, causes and the religious reference relied upon to address the phenomenon.

.In chapter one the author deals with the subject of guardianship in legal marriage which he divides into issues of guardians according to Muslim Jurists (Fuqaha) and

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the rule (hukm) which prevents marriage for a woman. The author also presents definitions, classifications and prevention of guardianship.

Literally the term *wilayah* [with kasrah of letter waaw], refers to a plan, an indication and power. The term *walayah* [with fathah of letter waaw], refers to manage and to be able to do something. In light of the author's own remarks *guardianship* bears the meaning of "the helper and supporter". This view is supported by verses from the Qur'an, Ahadith (traditions) of the Prophet, Companions of the Prophet and their followers. The author provides the meaning of *wilayah* in its technical meaning. After listing various meanings he finds that all of them refer to the same meaning: to have power or authority to undertake certain action at your own disposal without stopping.

In another section the author provides classification of guardianship based on different schools of thought of Hanafi, Maliki, Shaf'ii and Hanbali each of which with different peculiar classification as indicated in the following paragraphs.

According to the Madh-hab of Hanafi there are three types of guardianship: guardianship on one's self, guardianship one's self and property and guardianship on one's property. The Madh-hab of Maliki classifies guardianship as specific guardianship (*al-wilayah al-khasah*) and general guardianship (*al-wilayah al-'amah*). The Madh-hab of Shafi'i, classifies guardianship as compulsory guardianship which is the right of the father and grandfather and optional guardianship, which is the right of anybody else among relatives apart from the father and the grandfather.

In this study, the author exposes the causes which can prevent one to have the right of guardianship and concludes by what he prefers to be his own view based on authentic authority of hadiths.

The author also deals with the order of guardians and the juristic rule which prevents one from doing so. This is further elaborated into conditions of a guardian and the order of guardians according to the Muslim Jurists of the four Madh-habs of Hanbali, Maliki, Shafi'i and Hanafi.

Furthermore, the author deals with the subject of prevention of a woman from being married (*Adhlu*) by explaining the literal and technical meaning of *Adhlu* from the texts of the Holy Qur'an and Sunnah on the guardians who have the right to prevent one from being married. The author concludes the section by showing the preferred view that *Adhlu* does not extend to distant people with the exception of one with authority like a Judge (*Qadhi*).

In the third section of Chapter One the author attempts to present an important subject on conditions of marriage for a woman who has reached legal age. He divides the subject into eleven sub-sections with citation of evidences of the majority scholars followed by scholars from different Madh-hab including Abu Thawr and Abu Yusuf. In the same line the author gives a critical analysis of the causes behind the disagreement of scholars on the subject.

In section four, the author presents evidences from the Hanafi scholars on their view of not considering the necessity of stipulating conditions on guardianship. These evidences are based on the the Quran, Sunnah and rational ones.

In section five the author presents a detailed discussion of Majority of scholars on evidences held by Hanafi scholars from the Qur'an, the Sunnah and rational basis. He also cites evidences advanced by individual scholars such as Abu Thawr, Abu Yusuf, Muhammad bin al-Hasan and narration from Imam Malik which are all presented in sections six and seven.

After presenting all the evidences of the supporters the necessity of stipulating conditions of guardian and those who do not support its necessity, in sections eleven and twelve, the author concludes the Chapter One by discussing the causes which are behind the disagreement of scholars on the subject and come up with the preferred view. His conclusion is that although there is such disagreement concerning stipulation of conditions, all the scholars unanimously agree on its importance.

Chapter Two explains guardianship in traditional marriage and its nature in North East Kenya Region. The chapter consists of two sections: 1) Meaning and definition of traditional and customary marriage and its implication in the region.

2) The true nature of separating one [who is] under guardianship from the guardian.

There is no doubt that this topic is the major point of discussion in this particular book. It discusses the wide spread customary issue in the region. It discusses at a great extent the issue of guardianship in its important aspects as presented in Chapter One with evidences from scholars of different schools or Madhahib to support their views.

In section one the meaning of traditional and customary marriage is presented. The section is further divided under the following sub-sections.

Sub-section one presents the literal and technical meaning of *taqlid* (imitation) from various dictionaries. Then the author gives four meanings of the term *taqlid al-Shar'ia* (legal imitation) in the following examples:

- 1) Imitating the guardian or the judge or their alike: meaning to be in charge of action.
- 2) Imitating the guidance: meaning to be responsibly on guidance.
- 3) Imitating talisman practices: meaning to assign the responsibility to someone to take care and protect them.
- 4) Imitating in religion: meaning to take or to practice without evidence and proof. In fact this is the subject matter of the research of this book.

The same sub- section also includes definition of traditional marriage (*al-Ziwaj al-Taqlidi*). The author asserts that it means "that which people are acquainted with by imitating each other: however it may differ partially or completely from Islamic law. Moreover this type of marriage can be acceptable in a certain society as part of its heritage.

In the second sub-section the author puts together many evidences from the Qur'an, Sunnah, practices of the companions of the Prophet and a number of scholars, such as Ibn al-Qayyim, al-Suyuti, Abu Yusuf and al-Qarafi, all of which strongly oppose the practice of *taqlid*.

The third sub-section deals with causes for the spread of *taqlid* and its implication in the region in which the author mentions some of the causes for the practice.

- Distrust of judges who have been trusted by people for a long time because of their knowledge, uprightness and piety to the extent of taking bribes.
- Prevalent weakness in doing research unlike the way the previous scholars used to do: prevailing competitions and conspiracies among scholars, spread of disputes among them, and disassociation from prominent scholars particularly in towns.
- Disputes amongst scholars some of whom hold that only the Companions of the Prophet and their followers that need to be followed.

The author argues that as result of *taqlid*, disputes arose concerning the celebration of the *Mauled* of the Prophet (s.a.w.), the Prophet's Night journey to Bait al-Maqdis and his Ascension to the Heavens and organizing recitation gatherings at the homes of deceased persons after their burials.

The third section deals with the issue of separating one who is under guardianship from the guardian. The subject is treated under seven sub-sections.

In sub-section one the author gives the meaning of the marriage which is practiced by the people of the region in which asserts that this kind of marriage was inherited by the people and is conducted either as a proposal for a girl directly through her guardian ( father or uncles) or friends and neighbours taking a girl to a Sheikh of the area to conduct a *nikah*. In this case the Sheikh bears responsibility of a guardian or a judge after his confirmation of her consent. The scenario ends by sending the woman back to her parents escorted with a number of opinion people to ask the guardian to pardone the girls.

In sub-section two the author explains in detail the following reasons underlying the practice of such a kind of marriage including:

- Ignorance of some guardians especially those from the villages that it is acceptable for them to send off their girls without retuning to any Sheikh.
- Some Sheikhs are not knowledgeable enough in religious issues.
- Some youths find that the practice is a way to show manhood.
- Demand of huge dowry.

In sub-section three the author discusses the history of this kind of marriage and argues that there is no much information about the beginning of this practice. However, the author makes the following observations on the history of this kind of marriage:

- The beginning of this practice cannot be less than four centuries.
- Some people say that its beginning can be traced back earlier than four centuries. However, the author disproves this view based on the fact that the Somali people were among the first to believe in what was brought to them by people of knowledge and to follow their guidance.
- The author also disproves the view which says that the beginning of this practice was before the eleventh century because the renowned scholar of the 10<sup>th</sup> century (after Hijrah) al-Sheikh al-‘Alawi al-Yamani and his scholars discussed this practice extensively.
- Through the interviews he conducted the author learnt that the practice cannot extend beyond four centuries.

The sub-section four he deals with the issues of authority of custom ( *urf* ) based on the legal texts, literal and technical meaning of the word, its classification, stipulated conditions and disagreement of custom with legal text; whether specific one or general.

After highlighting the reasons behind the existence of such type of marriage the author provides the following summary of the legal ruling according to Islamic law as follows:

- There is a view which prohibits the practice.
- There is a view which allows a woman to get married on her own consent.
- Another view recommends that a woman guardian or the judge can bear responsibility of her marriage.

In the same line the author examines the position of some Madhahibs based on the above mentioned ways (See pages 230 – 236).

In the fifth sub-section the author indicates some places where this kind of marriage takes place in which he shows the major towns and tribes which practice such kind of marriages. He summarises the status these places from the economic, political social and educational perspectives.

- The sixth sub-section exposed the religious and social effects of marriage which include:
  - Seclusion of women and men,
  - Violation of the rights of girls that can lead to family disputes
  - Family quarrels which may cut off relations and cause psychological problems among girls leading them to commit suicides.

The author presents a summary of the the challeges he faced in his research which includes:

- Scarcity of references on the subject and those which could be found were scattered in various places, not easy to be obtained or sometimes not relevant.
- Some reliable sources could not provide information and would themselves for security reasons or could not be able to answer some questions.



In sub-section seven, the author presents his recommendations as follows:

- Reformation of families by bringins religious awareness among the aged people so that they can impart such awareness to the youth generation of yout in order change their behaviors and beliefs.
- Scholars and their students should not restrict themselves in areas where they live.They have to outreach the people in areas where this kind of marriage is practiced.
- Knowledge and culture should be used remove ignorance and to learn from Salaf al-Salih, scholars.
- Introduce reforms that will lead many people towards better life.
- Participating in conferences, seminars, workshops and other social gatherings intended to guide people.
- The above mentioned recommendations must be implemented in well planned programmes to achieve the intended objectives.

### **My Views**

In *Al-Wilayah fi- Az-zawaaj Bayna Al-Shariat wa Al-Taqlid fi Iqliim Shimaal shirq Kiinya (Guardianship in Marriage between Traditional and Islamic Law in North East Kenya Region)* the author has put a great scientific effort. He has relied on key references of the jurisprudential books. This is an academic research which was presented not just for mere publication but to benefit the readers.

The selection of a topic like this, suits the needs of the one who is the seeker of knowledge or those who work in the fields of judiciary. Moreover, the book is not limited to specific people but it can help other people in various situations including in marriage which is supposed to be the cause of society formations.

Although the study area of the research is limited to a specific region, the results can benefit other areas. The study deals with the region where the practice is prevalent but educational, economic and political lessons can be learned by other societies with similar practices.

There are so many benefits in the footnotes, such as documentation, since most of the topics therein come from the sources or dictionaries which give us more knowledge to a greater extent.

In this book, the author has relied on major sources in a subject with many views of scholars from various schools of thought. He has used more than 140 sources.

In his book the author included a list of references which I have organized in the following table:

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S/N	Reference	No of References	Serial No	Number of References	Number of References
1	Al-Tafsir wa Ulumuh	15	5	Madh-hab of Hanafi	9
2	Al-Hadith wa Ulumuh	20	6	Madh-hab of Maliki	8
3	Usul al-Fiqh	15	7	Madh-hab of al-Shafi 'i	23
4	Qawa'id al-Fiqhiyyah	15	8	Madh-hab of Hanbal	13
10	Secondary sources for Fiqh	15	9	Madh-hab of Dhahiri	1
11	History and	8	12	Biographies	6

	Bibliographies				
13	Dictionaries	8	14	Various Books	9
15	Journals	3	16	Interviewing	172

Having read the book thrice I find it to be a work of hope in which the author deserves to be commended for the noble work that he has done. May Allah pay him abundantly on the Day of Judgment.

However, there is no doubt shortcomings can be found in any academic work since it is human nature to forget or to commit mistakes. Pointing out the shortcomings may benefit the author to sharpen his thinking and make the necessary corrections. Having mentioned the positive aspects of the work, I want to point out the areas that need corrections:

- By analyzing the results and solutions the author seems to figure out the negative practices for this type of marriage. This is not an easy task to be done by anybody, but it can be done by associating the people who are connected with the region. My observation is that most of the chapters or sections of the research contain preferred views of the author.
- The author needs to make changes on some structures of sentences and summarize what needs to be summarized. This view is based on the fact that this is an academic research which is presented not just for mere publication but with a purpose to benefit the readers. The following needs to be observed by the author:
- Linguistic revision (or proof reading) in some of the sections of the book.
- To make follow up in the foot notes to complete what is missing or to mention what has been forgotten.

All that said, it is recommended that this book should be translated in whole or in parts into local languages particularly into Kiswahili, Somali and English to benefit communitie which practice such kind of marriage.