
The Role of The United Arab Emirates Personal Status Law in Strengthening the Guarantees of The Wife's Rights: A Comparative Study

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Abstract

They represent human rights guarantees and their good application in reality, by analogy with the development of society and its advancement, and evidence of the extent of awareness in it. Respecting the rights of others and putting guarantees to protect them leads to a person's feeling of his value, and thus this is a motive for work, creativity and development, and on the contrary, a person will be subject to frustrating psychological setbacks that affect not Only on him, but on the entire community, and the legislator in the United Arab Emirates has taken into account these rights in all laws issued and at all levels. Referring to Islamic jurisprudence, we find that man has rights and guarantees that guarantee the implementation of these rights, and among these guarantees, but the most important of them are human rights guarantees within the family, represented by guarantees of the rights of the husband, wife, children and relatives. The importance of human rights guarantees comes within the family, as the family represents the first pillar of stability In society, if it is reformed, society is reconciled with it, and if it is corrupted, society is corrupted, and personal status laws regulate everything related to these rights and guarantees. Through the following points:1. Shedding light on the guarantees of the rights of the wife at the stage of concluding the marriage contract, starting with competence, guardianship, and the conditions associated with the marriage contract and the registration of the marriage contract. 2. Determining the guarantees of the rights of the wife with regard to the financial implications of the marriage contract, including dowry and alimony. 3. Continuing guarantees for women during the period of dissolution of the marriage contract by divorce and the consequent compensation for arbitrary divorce, and the role of family guidance in protecting the rights of spouses, especially the wife. 4.All of the above mentioned in points (3,2,1) will be discussed by analyzing the texts of the UAE Personal Status Law No. 28 of 2005, and a statement of the development of these guarantees through what the law has settled, or what amendments have been added to it during the past years Especially Federal Decree-Law No. 8 of 2019 and Federal Decree-Law No. 5 of 2020 and Federal Decree-Law No. 29 of 2020.

Keywords: Personal Status, Marriage Contract, Divorce, Alimony, Dowry, Compensation.

Introduction

The human rights guarantees and their proper application in reality are considered an evidence of the development of society, its advancement and the extent of awareness of its members. Respecting the rights of others and putting guarantees to protect them lead to a person's feeling of his value, and thus this is a motive for work, creativity and development. On doing the opposite, a person will be subject to frustrating psychological setbacks that affect not only on him but on society as a whole. It may occur to our minds that this term was first started in Western countries, as if from there human rights were launched. However, the browser and the student of the Islamic jurisprudence find that the human being has rights and guarantees that secure the implementation of these rights at all levels. Among these guarantees, may be the most important, are the guarantees of human rights within the family, represented by the guarantees of the rights of the husband, wife, children and relatives. The importance of human rights guarantees springs from the fact that the family represents the first pillar of stability in society. If the family is reformed, society will be reformed, and if it is corrupted, society will be corrupted.

Personal Status Laws regulate everything related to these rights and guarantees. The principles brought by the Islamic Sharia and its legal sources and the opinions of Muslim jurists were the basis for the setting these laws. In our research, we focused on the guarantees of women's rights in the marriage contract in order to

show the greatness of the wife's right in Islamic law, as well as to highlight the unique characteristic that God Almighty gave to the marriage contract over all other contracts. Among these guarantees are competency, guardianship, dowry, registration and proof of the marriage contract, the conditions associated with the contract, and the guarantees in the field of contract effects, especially the financial effects of dowry and alimony. Furthermore, there are guarantees for the right of the divorced woman who divorced her husband without her request or desire, which are represented by the maintenance of the post-divorce waiting period support. Since Islamic Sharia is the basic premise on which the UAE legislator laid the provisions of the amended Personal Status Law Federal No. 28 of 2005, we will present the most important guarantees of the rights of women in this law. This law chose the best appropriate jurisprudential opinions and adopted them as a basis for formulating its texts, in a manner that achieves a balance between the interests of women and the interests of the family.

In this research, we will confine ourselves to shedding light on the guarantees of the rights of the wife, Federal Law No. (28) of 2005 regarding personal status issued in the United Arab Emirates and its amendments, with reference to the opinions of Muslim jurists.

Research method

In this research, we will rely on the comparative approach and the analytical approach to the opinions of jurists and the texts of the UAE Personal Status Law.

Research objectives

1. Shedding light on the legal regulation of the wife's rights in the UAE Personal Status Law.
2. Indicating the extent to which the legal texts in this aspect are consistent with the opinions of the jurists, and to adopt the most popular and most likely of these opinions.
3. Defining some issues that need to be modified or re-addressed.

Research organization

First topic: Guarantees of the wife's rights upon initiating marriage contract

First theme: Competency

Second theme: Guardianship

Third theme: Conditions associated with the contract

Fourth theme: Registration and proofing of marriage contract

Second topic: Guarantees of the wife' rights upon concluding marriage contract

First theme: Guarantees of the right of dowry

Second theme: Guarantees of the right of alimony

Third topic: Guarantees of the wife's rights upon dissolution of marriage contract (marriage enjoyment compensation)

First topic

Guarantees of the wife's rights upon initiating marriage contract

In this topic, we will discuss the guarantees of the wife's rights associated with initiating the marriage contract in the UAE Personal Status Law. First, competency will be addressed as a condition for the marriage contract. Second, guardianship will be discussed as a validity condition of the marriage contract. Third, the conditions associated with the marriage contract, in the event that the woman stipulates a condition she deems appropriate to complete her marital life will be explained. Finally, registration and proofing of the marriage contract in the official records will be considered.

First theme:

Competency

A successful marriage is based on firm foundations of compatibility in nature, similarity in social status, and convergence in the moral, cultural and financial levels. As a result, the spouses can have a stable and quiet

life filled with affection and sincerity and based on appreciation and respect ⁽¹⁾. Competency is defined as equality and similarity between men and women in several matters ⁽²⁾. Muslim jurists stipulate competency in the marriage contract, but they differed in the criteria and qualities considered in this competency. Some of them identified it with Islam, lineage and money, and some added knowledge, craft and being free from defects ⁽³⁾. The aspect in which competency is required is the side of the man, who must be competent to the woman he wants to marry. This is an evidence of preserving the dignity and position of the woman in Islamic Sharia. The time considered for competency is the time of initiating the contract, so the man must be competent to the woman when establishing the contract and there is no effect for its demise after consuming the marriage with her. Competency is a fixed right for the woman and her legal guardians, so if the woman forfeits her right to competency, the legal guardian's right to object remains. However, a section of the jurists said that it is the right of the woman only to drop it if she wants, and the legal guardian has no right to object and request the rescission of the contract. A third party of the jurists emphasized the greatness of this right for women, considering that competency is not a right of the woman and her legal guardians only, but it is a right of God Almighty. It is not waived by the woman or her legal guardian ⁽⁴⁾.

The amended UAE Federal Personal Status Law No. (28) of 2005 has organized the competency in Articles (21-25). By referring to these texts, it becomes clear to us that the UAE legislator has arranged the provisions related to competency in a way that guarantees the effectiveness of this important guarantee of women's rights. These guarantees are required as a first step to verify that the husband is qualified for the woman he wants to marry, to provide her with the necessities for the continuation of married life, as follows:

1- Paragraph (1) of Article (21) stipulates: (One of the marriage conditions is that the man must be competent to the woman at the time of initiating the contract only, and both the woman and her legal guardian have the right to request the rescission of the contract when this competency is over, and the demise of competency after the contract does not affect it). We note that the UAE legislator, according to the previous text, has taken the opinion that competency is the right of both the woman and the legal guardian. There is no consideration for the woman to forfeit her right to competency if her legal guardian adheres to it on the one hand, and she has the right to object and request rescission of the contract if her legal guardian agreed to marry her to an unqualified husband on the other hand. The legal guardian for whom competence is considered a right is required to be fully competent, and to be the next-of-kin, as the more distant legal guardian may not object to competency of the husband with the presence of the close relative. This is what Article 23 stipulates: (1) Competency is a right for both the woman and her fully competent legal guardian.

2- Legal guardians who are distant of kin have no right to object to the incompetency, except when the next-of-kin is incompetent or has a lack of capacity.) This article is considered an application of the general rules in the legal guardian's conditions and the arrangement of the legal guardians.

3- We note that the Muslim jurists differed over the qualities of the competency. There are those who defined them by knowledge, religion, money, lineage and craft as we explained earlier. The UAE legislator did well when he left determining the qualities considered in competency to custom with the exception of religion. He considered religion as evidence of righteousness of the husband, and its existence as more important than all other qualities considered in the competency. Thus he has given this guarantee more solidity, instead of turning it into a burden or restriction on the marriage contract. Accordingly Article (22) stipulates: (The essence of competency is the husband's righteousness, and the other qualities of competency are left for the custom to decide).

¹. Hassan Muhammad Al-Marzouki, *Al-Kafa'ah fi Aqd al-Zawaj* [Competency in Marriage Contract]. *Journal of Sharia and Law*, College of Sharia and Law, United Arab Emirates University, No. 4, 1990, p. 141.

². Ibn Njeim, *Al-Bahr al-Ra'iq: Sharh kinz al-Daqa'iq* [The clear sea: Explanation of the treasure of minutes], Volume 3, Lebanon, Beirut: Dar al-Marifa p. 137.

³. Alaa Al-Din Al-Kasani, *Badaa' al-Sana'i fi tartib al-Shara'* [Marvels of crafts in the order of laws], Volume 2, 2nd Edition. Lebanon, Beirut: Dar al-Kitab al-Arabi, 1982, pp. 318-205; Ibn Qudamah, *Al-Mughni* [The sufficient], vol.3, Cairo 1995, 387; Mohiedin Al-Nawawi, *Al-Sarraj Al-Wahaj Al-Sarraj Al-Wahhaj Ala matin al-minhaj* [The illuminating lamp on the right path], Volume 3, 5th Edition. Beirut: Dar al-Kutub al-Ilmiya, 2008, p. 64.

⁴. For more details see Manal Maysir Nayef. *Faskh Aqd al-Zawaj: Dirasah muqaranah* [Dissolution of the Marriage Contract: Comparative Study], A Master's Thesis, University of Mosul, College of Law, under the supervision of Nada Salem Hamdoun, 2012, p. 58 and beyond.

4- The legislator did not consider the wife's dowry that is less than the dowry that has been given to her peers as a violation of the competency. Accordingly, he did not give the legal guardian the right to rescind the contract, even if the dowry of the woman under his guardian is less than the dowry that was given to her peers. This is what Article (26) indicated: (The legal guardian does not have the right to request rescission because the dowry is less than the dowry of the peers.) The reason for this is that if the dowry is nominated in the contract and by mutual consent of the two parties, their consent is considered even if what they called the dowry is less than the dowry that has been given to her peers. Thus, it is not permissible for the two parties to cancel what they have agreed upon in application of the Sharia rule that (Whoever seeks to reverse what has been done on his part, his efforts will be rejected).

5- The Emirati legislator attached particular importance to the age of criterion as one of the competency criteria in view of the negative social effects that might result from such marriage. The legislator set criteria for the marriage contract of persons of varying age. Paragraph (2) of Article (21) stipulates: (If the suitors are not proportionate in age: If the age of the fiancé is twice the age of the fiancée or more, then the marriage is not contracted except with the consent and knowledge of the suitors and after the permission of the judge.

The judge may not authorize it unless there is an interest in this marriage.) Through the previous text it becomes clear to us the following:

A- The legislator considered that the fiancé is not suitable for the fiancée if his age is twice the age of the fiancée or more, but if he is less than that, we do not apply this text.

B- The consent and knowledge of the suitors about this matter, and this phrase could have been dispensed with because it is obvious that each of the suitors knows the age of the other, because there is an important guarantee, which is to officially register the marriage contract and verify the personal identity of the two parties.

C- Obtaining the judge's permission on this marriage, and the judge here has a discretionary authority to grant permission or not after studying the reasons that led to such a marriage. The judge does not give permission if there is no interest in this marriage.

6- There are cases where the wife or her legal guardian has the right to request rescission of the contract as stated in the text of Article (24): (If the man claims competency, fabricates what is illusion of it, or competency is a condition in the contract, and then it appears that he is incompetent, both the wife and her legal guardian have the right to request rescission. It is noted from the previous text that in case of the man's claim of competency, his fabrication of competency, or the competency was a condition in the marriage contract; the law has given the wife the right for rescission. If the wife does not request the rescission of the contract, the legal guardian has the right to object and request the rescission of the contract, because this claim is a deception that affects the will of the woman and the legal guardian.

7- The competency is conditional upon concluding the contract, and it is the right of the woman and the legal guardian. Thus, if it is present and then demises after that, the wife may not request the rescission of the contract. The law has given a deadline after the conclusion of the contract, which is the lapse of a year whose calculation begins from knowledge of marriage, or if the wife became pregnant until before the end of the year. In these two cases, she is not entitled to request the rescission of the contract. Moreover, if she and her legal guardian knew that he was incompetent for her and were both, or one of them, satisfied with the conclusion of the contract, then neither of them nor the one who were satisfied with the contract have the right to request rescission of the contract, because the stability of marriage life takes priority here. Furthermore, a year is sufficient for the woman to discover the imbalance of the condition of competency in the husband. This provision is clarified by Article (25): (The right to request rescission for incompetency lapses if the wife becomes pregnant, a year has elapsed after knowledge of the marriage, or with the prior consent of the one who requested the rescission).

Second theme

Guardianship

The legal guardian is the one who initiates the conclusion of the marriage contract on behalf of the woman, based on the hadith of the Messenger Muhammad, may God bless him and grant him peace, (there is no

marriage except with a legal guardian and two just witnesses) ⁽⁵⁾. This guardianship is established for the father, then the grandfather, then the next of kin, then the most distant from the relatives according to the order in force in the inheritance⁽⁶⁾. The presence of the legal guardian does not mean canceling the woman's will in establishing the marriage contract, as the woman's consent or her lack of consent in the contract affects the marriage contract. If the woman is a sane, adult, mature woman, the guardian must seek her permission in the marriage contract and she must agree so that he can conclude this contract. If she does not agree and the guardian concludes the contract, then this contract is considered suspended on her authorization, otherwise it is invalid. This is the opinion of the majority of jurists, except for the Shafi'is who said that it is permissible for a father (as her legal guardian) to marry his daughter without her consent, whether she is young or adult. Hanafis saw that she can conclude her own marriage contract, but that it is *makrooh* (undesirable), but if the woman is young, the father (as her legal guardian) can only marry her without her permission, as he has a compulsory guardianship over her⁽⁷⁾. Article (39) stipulates: (The woman's legal guardian undertakes her marriage contract, and the notary made her sign the contract, and the contract is invalidated without a legal guardian. If he consummated marriage with her, they shall be separated (divorced) and the lineage of the child is established), so the marriage contract is invalidated if it is not concluded by the woman's legal guardian.

The requirement of guardianship in the marriage contract is a guarantee and a safety valve to preserve the dignity of the woman; raise her status in front of the husband and his family; stress on the man the need to respect the woman who will become his wife later, and that he has given a covenant to her in front of her family and the legal guardians. However, the guardian may arbitrarily give a woman in marriage in several ways. He may force her to marry, marry her when she is young, and she has no interest in this marriage, but rather wants to achieve his personal interests, or prevents her from marrying. Each case has its own ruling, which constitutes guarantees of the women's rights as follows:

First: Coercion of marriage

We mentioned above the opinion of the majority of jurists and the position of the UAE legislator that the legal guardian concludes the marriage contract with the consent of the woman, but coercion may occur on the woman and she agrees to the marriage contract under threat from her legal guardian, relatives or even from others. Since coercion is a defect of will, the contract is suspended on the forced women's authorization. That is, after lifting of coercion, if she authorizes the contract, marriage shall be implemented; if not, marriage shall be invalidated⁽⁸⁾. The UAE Personal Status Law did not regulate the issue coercion in the marriage contract and its impact on the contract, so it is necessary to refer to the regulation of this issue with special texts.

Second: Preventing marriage by the legal guardian

The second guarantee that the wise legislator has provided for the protection of women's rights from the abuse of the legal guardian is the issue of preventing marriage by the legal guardian. If the legal guardian prevents the sane, mature, adult woman from marrying without a legitimate justification, the guardianship is transferred to the next of the guardians of kin. If marriage prevention continues, the woman can take her case to the judiciary and the authority to marry her passes to the judge because he is the legal guardian of those who do not have a legal guardian⁽⁹⁾.

⁵. Ahmad Abu Bakr al-Bayhaqi, Sunan al-Bayhaqi al-Kubra, *Sunan al-Bayhaqi al-Kubra*: Kitab al-Nikah [The great practices of al-Bayhaqi: The Bbook of Marriage], Chapter (No marriage without a guardian), Hadith No. (13645), vol. 7, p. 180.

⁶. For more details about the arrangement of kinsmen, see Qais Abdel-Wahab Al-Hayali, Abdullah Abdul Rahman Al-Saidi, *Ahkam al-Mawarith wa al-Wasiyah wa al-Waqf* [Provisions of Inheritance, will and endowment] al-Afaq al-Mushriqah, 2012, p. 112 and beyond.

⁷. For more details about the position of Muslim jurists on the marriage of an adult and a young girl, see Majid Muhammad Abu Rakhiya, Abdullah Muhammad Al-Jubouri, *Fiqh al-Zawaj wa al-Talaq wa ma Alayh al-Amal fi qanun al-Ahwal al-Shakhsiyah al-Imarati* [The jurisprudence of marriage and divorce and what should work in the UAE Personal Status Law]. Maktabat al-Jami'ah. 2019, p. 59 and beyond.

⁸. Mustafa Ibrahim Al-Zalmi, *Ahkam al-Zawaj wa al-Talaq* [Provisions of marriage and divorce]. Lebanon: al-Mu'asasah al-Haditha li al-Kitab, pp. 51, 52.

⁹. Ahmed Nasr El-Gendy, *Al-Ahwal al-Shakhsiyah fi qanun al-Imarat al-Arabiya* [Personal Status in the United Arab Emirates Law]. Egypt: Dar al-Kutub al-Qanuniyah, 2010, p. 137.

The UAE legislator took this ruling for both men and women, as paragraphs (1 and 3) of Article (30) stipulate: (1- The eligibility for marriage is complete by reason, puberty, and the age of puberty is to reach the age of eighteen for those who have not reached the legal puberty before that. 3- If a person who has completed eighteen years of age requests marriage and his legal guardian refuses to marry him, he may refer the matter to the judge). Article (34) stipulates: (If the next of kin legal guardian is absent, intermittent absent, his whereabouts are unknown, or the contact is lost with contact him, the guardianship shall pass to the one next him in kinship with the permission of the judge, and in the case of marriage prevention, it shall be transferred to the judge.

By examining the previous two texts, we can determine the following:

A- The marriage prevention by the legal guardian under paragraph (3) of Article (30) relates to the legal guardian preventing who has reached eighteen years of age from marrying if he wants to do so, while paragraph (1) of the same article sets the age of marriage at eighteen years. Therefore, if a man who has reached this age does not need the permission of a legal guardian to marry, there is no legal value to be prevented from marrying by his legal guardian. Accordingly, the text of paragraph 3 is supposed to be specific to women because even after puberty she needs a legal guardian in marriage according to the text of Article (39) of her sane, adult, legal guardianship marriage that is without excuse or justification. This does not include the man, because once he reaches the age of eighteen, he does not need the consent of the legal guardian to conclude the marriage contract.

B- The transfer of guardianship in the case of marriage prevention on the part of the legal guardian to the judge directly according to the text of Article (34), it does not transfer to the legal guardian who follows the first legal guardian in the order. Thus, the UAE legislator did well in dealing with the issue of preventing marriage by the legal guardian of under-his-guardianship female, and the transfer of guardianship to the judge directly. The rationale behind this is that the transfer of guardianship to the next guardian in order may not do any good, as there is a possibility that he will be affected by the opinion of the first legal guardian.

Third theme

Conditions associated with the contract

The condition associated with the marriage contract is what one of the spouses takes from the other in the marriage contract, so it does not affect the origin of the contract in terms of permanence and cessation. Moreover, it is not from its original effects that its purpose is to achieve an intended benefit for the stipulating person⁽¹⁰⁾. The evidence for the legality of conjugating the marriage contract with conditions that the man or woman requires is the Almighty's saying: "And those who fulfill their contracts they have made."⁽¹¹⁾ Furthermore, in the *Sunah*, the Messenger, peace and blessings be upon him, that he said: "The conditions that are most deserving of fulfillment, are those by means of which the private parts become allowed to you."⁽¹²⁾

The conditions associated with the marriage contract that must be fulfilled are the conditions that confirm the requirement of the contract, the conditions appropriate to the requirement of the contract, or the conditions under which custom and tradition have taken place⁽¹³⁾.

If a condition is inserted by the woman or by the man in the description that we mentioned, the condition becomes a part and parcel of the contract that must be fulfilled, and failure to fulfill the condition entails the rescission of the contract by the wife if the condition is in her interest and the husband has not fulfilled it.

The UAE legislator has regulated in the Personal Status Law the conditions associated with the marriage contract in Article (20): (1- The spouses meet their conditions except for a condition that makes the forbidden permissible or prohibits the permissible. 2- If the marriage contract stipulates a condition that

¹⁰. Mustafa Ibrahim Al-Zalmi. *Osul al-Fiqh al-Islami fi Manhajih al-Jadid* [Fundamentals of Islamic jurisprudence in its new approach]. 2nd Edition. Mosul: Dar Al-Kutub li al-Tiba'ah, 199, p. 308.

¹¹. Surah Al-Baqarah, Verse 177.

¹². Al-Bukhari, Sahih Al-Bukhari, *Kitab al-Nikah: Bab al-Walimah wa law bi-Shah* [Book of Marriage: Chapter (Banquet even with sheep), Hadith No. (4872), vol. 5, p. 983.

¹³. Khalil Ibrahim Muhammad, *Huquq al-Insan fi qanun al-Ahwal al-Shakhsyah li Dawlit al-Imarat* [Human rights in the Personal Status Law of the United Arab Emirates]. Cairo: Dar al-Nahdah al-Arabiyyah, 2012, p. 72.

contradicts the original conditions of the contract, the contract shall be invalid. 3- If there is a condition that does not contradict its original conditions, but is contrary to its requirements, or if it is legally forbidden, the condition is invalid and the contract is valid. 4- If a condition is stipulated in it that does not contradict its original conditions or its requirement, and it is not prohibited by Sharia, the condition is valid and must be fulfilled. If a condition is breached by the party who undergoes the condition, the other party who stipulated it may request the rescission of the marriage, whether it was on the part of the wife or on the part of the husband. The husband is exempted from the post-divorce waiting period support if the breach was on the part of the wife. 5- If one of the spouses stipulates in the other a specific description and it is found that otherwise, the stipulator may request the rescission of the marriage 6- in denial no condition is taken into consideration unless it is stipulated in writing in the documented marriage contract. 7- The right of rescission is forfeited by waiver of the owner or his consent to the violation, explicitly or implicitly. Moreover, it is considered in the rule of implicit consent that one year has passed since the occurrence of the violation with knowledge, as well as in the irrevocable divorce).

We note that the UAE legislator has carefully organized the issue of the conditions associated with the contract. He puts a check on the validity of these conditions that: do not make the forbidden permissible or permits the forbidden. The ruling for violating this rule is that the condition is considered null and has no effect on the marriage contract, so it remains valid. The condition must also be written explicitly in the marriage contract and documented. The ruling for breach of the condition by the husband or wife is a request for separation (divorce) by the aggrieved party. However, the correct opinion of the jurists is that the contract is rescinded for non-fulfillment of the conditions.

If we look at the conditions associated with the marriage contract on the part of the woman, we see a great guarantee of the woman's right. Her will has a role in the marriage contract and she may stipulate what she deems appropriate for her life, but within the limitations that we mentioned, and if the husband does not fulfill what she stipulated, the wife may rescind the marriage contract.

Fourth theme

Registration and proofing of marriage contract

The UAE Personal Status Law emphasizes the registration and proofing of the marriage contract. It is stated in Article (27) that: (1- The marriage is officially documented, and it is permissible, in view of a certain fact, to prove the marriage with legal evidence. 2- One of the conditions of the marriage contract is to submit a report from a specialized medical committee formed by the Minister of Health, stating that the spouses are free from the diseases that were stipulated by the law as a cause of the request for separation. 3- The marriage contract is documented by the authorized notaries and the Minister of Justice, Islamic Affairs and Endowments issues their regulation). The registration and proofing of the marriage contract is a guarantee of the right of the spouses, although the wife's side is the clearest in the matter. The failure to register the contract harms her rights and leads to the difficulty of proving these rights, especially financial rights such as dowry and alimony.

As for the proof of the marriage contract, we note that Muslim jurists have agreed on the condition of witnesses in the marriage contract, based on the hadith of the Messenger, may God's prayers and peace be upon him, (There is no marriage without a legal guardian and two just witnesses)⁽¹⁴⁾.

Article (48) stipulates: (1- For the validity of the marriage, the presence of two sane, adult, male witnesses who hear the words of the contracting parties and understand the significance of marriage. 2- The Islam of the two witnesses is required, and it is sufficient, when necessary, for the testimony of two witnesses (from people of Scripture: Christians and Jews) in the marriage of a Muslim to marry a Christian or Jewish woman).

So the testimony is a valid condition for the marriage contract, and it constitutes another guarantee of the women's rights within the scope of the marriage contract. That is, the registration of the contract with the competent official authorities does not replace the testimony.

¹⁴. Ahmad Abu Bakr al-Bayhaqi, *Sunan al-Bayhaqi al-Kubra*: Kitab al-Nikah [The great practices of al-Bayhaqi: The Bbook of Marriage], Chapter (No marriage without a guardian), Hadith No. (13645), vol. 7, p. 180.

Second topic

Guarantees of women's rights in the financial effects of the marriage contract

First theme

Guarantees of right of dowry

In a valid marriage contract, there must be an amount of money for the woman known as the dowry, which is the money that the husband owes to his wife, either by name or by contract. It is named dowry, gift, and obligation⁽¹⁵⁾. The evidence of this dowry is the saying of the Almighty: "And give the women their dowries as a gift spontaneous; but if they are pleased to offer you any of it, consume it with wholesome appetite"⁽¹⁶⁾ (Arberry, Quran, 4:4). As for the Sunnah, in an authentic hadith on the authority of the Messenger of God (may God's prayers and peace be upon him) in which it was stated that Abd al-Rahman ibn Awf said: O Messenger of God, I got married, so he, may God's prayers and peace be upon him, said: What did you give her as a dowry? He said: The weight of a fruit pit of gold. He, may God's prayers and peace be upon him, said: May God bless you, slaughter one sheep and give a banquet⁽¹⁷⁾. The dowry is legally obligatory in every marriage contract from the husband to his wife as soon as the valid marriage contract is concluded. However, mentioning the dowry in the contract is not a condition for the validity of the contract because God Almighty says:

"There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means; - A gift of a reasonable amount is due from those who wish to do the right thing" (Yusuf Ali, Quran, 2: 236)⁽¹⁸⁾.

Moreover, the UAE Personal Status Law defines the dowry in Article (49) as: (The dowry is the money that the husband provides for the purpose of marriage, and there is no limit to the minimum, and most of it is subject to the law determining dowries). As for the guarantees of the wife's right to the dowry, they are represented in the regulation of the UAE Personal Status Law for the dowry, as follows:

1- The evidence of the greatness of the wife's right to the dowry is that it is not only the right of the woman, but the right of God Almighty as well because the spouses do not have the right to drop or deny this dowry. The dowry is an effect that God Almighty arranged on the marriage contract, and the will of the husband or wife has no influence on excluding it from the contract. It is more than just a right because neither the wife nor her guardians waiver it due to the peculiarity of the marriage contract, which God Almighty called the strong covenant on the one hand, and to indicate the greatness of the wife's right to the dowry on the other hand.

2- After the wife is entitled to the dowry - whether it is a mutually-accepted dowry or a dowry similar to that of her peers - it becomes her exclusive property and she disposes of it as she wants. This was confirmed by the text of Article (50) of the UAE Personal Status Law (The dowry belongs to the woman, she disposes of it as she wants, and any contrary condition shall not be considered). Just as it is not permissible to stipulate excluding or denying the dowry in the marriage contract, it is not permissible to stipulate that the dowry should be owned by someone other than the wife, even if this person is her legal guardian. However, after the wife owns the dowry, she can dispose of it any act she wishes, such as a gift or a will, provided that she is being fully competent to act in accordance with the general rules governing legal actions.

3- The equal-to-peers dowry is one of the guarantees of the wife's right to the dowry, because not naming the dowry in the contract or agreeing that the marriage will be without a dowry does not lead to the loss of the wife's dowry, as we mentioned previously. In this case the wife is entitled to a dowry equal to that of her peers. This was confirmed by the UAE legislator in the Personal Status Law in Article (51): (1- If a dowry is nominated in the contract with a correct name, the woman must have that dowry. 2- If the dowry is not named in the contract, or an incorrect name was given, or it was originally denied, she shall be entitled to a dowry equal to that of her peers.

¹⁵. Ahmed Nasr Al-Jundi, *Op. cit*, p. 163.

¹⁶. Surah An-Nisa, Verse 4.

¹⁷. Muhammad bin Ismail Abu Abdullah Al-Bukhari, *Sahih Al-Bukhari* (Authoritative traditions of al-Bukhari]. Volume 5, 3rd Edition Damascus, Al-Yamamah: Dar Ibn Katheer, 1987, pg. 1983.

¹⁸. Surah Al-Baqarah / Verse 236

4- A woman is not entitled to the dowry by contracting a valid marriage only, but she is also entitled to it by an irregular marriage (*fasid*: no consensus among Muslim jurists on some of conditions of the marriage) if the consummation is made on the basis of this marriage. The UAE legislator defined the irregular marriage in Article (59) as: (The irregular marriage is the one that lost some of its conditions). Moreover, Article (57) stipulated that: (The marriage is either valid or invalid, and the invalid includes the both the irregular and the null marriage – *batil*: there is consensus among the Muslim jurists on the nullity of marriage). Also, it stipulates the effects of the irregular marriage in Article (60) that: (After consummation the irregular marriage has the following effects: A- Less than the named dowry and the dowry equal to that of the wife's peers.) We note that the Emirati legislator made a distinction in ruling between the effects of the null and irregular contract, and the woman deserves the dowry by entering in the irregular marriage only.

Second theme

Guarantees of the right of alimony

Wife's maintenance is what is imposed on the wife from her husband in terms of money for food, housing and the like. It is one of the effects of the marriage contract. The husband is legally obligated to spend on his wife, even if she is well off⁽¹⁹⁾. Its legal evidence is established in the Qur'an in the Almighty's saying: "The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child." (Pickthall, 2:233)⁽²⁰⁾. What was narrated on the authority of the Prophet, may God's prayers and peace be upon him, in the Farewell Pilgrimage, he said: (... and they have upon you their provision and clothing in a reasonable manner.)⁽²¹⁾

The guarantees of the wife's right to maintenance are as follows:

1- It is obligatory for the husband even if the wife is well off because the woman's maintenance is on her legal guardian before marriage and she is not obligated to spend on herself or on others. After marriage her maintenance is transferred to her husband even if she has money from which she can spend on herself. The UAE legislator has taken this Judgment in the Personal Status Law, as Article (66) stipulates: (The wife is obligated to pay maintenance for her husband according to the valid contract if he consummated marriage with her).

2- The alimony is considered one of the preferential debts according to the text of the law. By the preferential debt we mean that the creditor ranks before the ordinary creditors. The UAE legislator applied this on:

A- The Personal Status Law, as Article (65) stipulates: (Continuous maintenance has a priority over all other debts).

B- Civil Transactions Law No. (5) of 1985, as amended, as Article (1515) stipulates: (1- The following rights shall have a privilege over all the debtor's movable and immovable property to the extent of what is due from these rights in the last six months: A - The alimony owed by the debtor to whom the alimony is due) and the wife is among those whose alimony is owed by the debtor.

3- Interim maintenance, which is a provision wherein a husband is obligated to meet the maintenance costs of the wife in the course of the court proceedings and it is immediately enforceable. In the Personal Status Law the UAE legislator considered the Interim maintenance. Article (68) stipulates: (The judge may, at the request of the wife, decide an interim maintenance for her and his decision shall be subject to expedited expeditious execution by force of law).

4- Alimony is not definite, but rather it accepts the increase and decrease depending on the change in the economic status of the spouses and the change in the state of the country. This is what the UAE legislator considered in Personal Status Law, as the Article (64) stipulates: (1- It is may be increased and decreased according to changing circumstances 2- A claim for increase or decrease shall not be heard before the lapse of one year from the imposition of alimony, except in exceptional cases 3- The increase or decrease of the alimony shall be calculated from the date of the legal claim).

5- Housing is one of the most important inclusions of marital alimony. The husband is obligated to provide a suitable home for his wife. As for the guarantees of this right, the legislator took into account the balance between the interests of his wife, second wife, his parents who are responsible for their maintenance and his

¹⁹. Qais Abdel-Wahhab Al-Hayali, *Nafaqat al-Zawjah bayn al-Nas wa al-Tatbiq* [Wife's alimony between text and application]. 1st Edition. Iraq, Mosul: Dar al-Abid li al-Tiba'ah wa al-Nashr, 2008, p. 2.

²⁰. Surah Al-Baqarah / Verse 233.

²¹. Muslim bin Al-Hajjaj Abu Al-Hussein Al-Nisaburi, *Sahih Muslim* (Authoritative traditions of Muslim). Volume 2. Beirut: Dar Ihya' al-Turath al-Arabi, p. 889.

children from another wife. However, he gave precedence over the interest of the wife and her right to a quiet residence in which she can continue her marital life quietly. We note this through the text of Article (76): (A- The husband has the right to lodge with his wife in the marital home his parents and children from others, whenever he is charged with spending on them, provided that she is not harmed by that. B- The wife does not have the right to lodge with her in the marital home her children from someone else unless they do not have another custodian or they are harmed by their separation, or the husband consents to that explicitly or implicitly, and he has the right to withdraw when he is harmed by it). Moreover, the text of Article (77) stipulates: (The husband does not have the right to lodge with his co-wife in the same dwelling unless his first wife agrees to that, and she has the right to withdraw when she is harmed by that).

Third topic

Guarantees of the wife's rights upon dissolution of marriage contract (Marriage enjoyment compensation)

Divorce is a right of the husband who has the right to take it by his own will whenever the marriage contract is in place and when the husband is sane and his will is sound and not tainted by any defect. It results in the end of the marital bond in a way that varies in detail according to the type of divorce, revocable or irrevocable, and irrevocable (minor or major) and what is related to it as the wife's waiting period. Although the husband uses his right to dissolve the marital bond by his own will, a section of Muslim jurists have gone to say that the absolute entitlement to the marriage enjoyment compensation which is defined as: what the husband gives to his divorced wife in addition to the dowry in order to compensate her according to his condition.

The UAE Personal Status Law considered the marriage enjoyment compensation, as Article (140) stipulates: (If the husband divorces his wife who has consummated with her in valid marriage by his unilateral will and without asking her, she deserves marriage enjoyment compensation other than the post-divorce waiting period support according to the husband's condition and not exceeding the maintenance of a year equal to that of her peers. The judge may divide it in installments according to the husband's means whether affluent or needy, estimating the damages that befall the woman).

By extrapolating the previous text, it becomes clear to her the importance of this guarantee set by the law for the wife who divorces her husband without asking him to do so. Marriage enjoyment support is considered one of the guarantees of the rights of the divorced women for the following reasons:

The basic principle is that legal permissibility contradicts the guarantee, so whoever uses his right in a permissible way does not guarantee the harm⁽²²⁾ that may result from that, except that if he was abusive in using his right, he must guarantee the harm. The evidence for arbitrariness in divorce from the Holy Qur'an is the Almighty saying: "And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself. And do not take the verses of Allah in jest. And remember the favor of Allah upon you and what has been revealed to you of the Book and wisdom by which He instructs you. And fear Allah and know that Allah is Knowing of all things" (Sahih International: 2:231.)⁽²³⁾ This verse indicates the exercise of the legitimate rights in divorce and taking her back (the wife) if it is with the intention of building a dignified marital life. However, if the use of the right of returning her back with the intention of harming the wife or forcing her to ransom from the husband in order to get rid of his harm, then this is considered an abuse of the right in a way other than what was legally prescribed for him⁽²⁴⁾.

Likewise, what was reported on the authority of the Prophet Muhammad, may God bless him and grant him peace, as saying: (There should be neither harming nor reciprocating harm.)⁽²⁵⁾

²². Omar Abdullah Kamel, *Al-qawa'id al-Fiqhiyya al-Kubra* [The great Jurisprudence rules]. 1st Edition. Egypt: Maktabat al-Turath al-Islami, 2006, p. 192.

²³. Surah Al-Baqarah / Verse 231.

²⁴. Jamil Fakhri Muhammad Janem, *Al-tadabir al-Shariyah li al-Had min al-Talaq al-Ta'asufi fi al-Fiqh wa al-Qanun* [Legal Measures to limit arbitrary divorce in jurisprudence and law]. Jordan: Dar Al-Hamid, 2008, p. 50.

²⁵. It verified by Ibn Majah, *Sunan ibn Majah: Kitab al-Ahkam* [Pretices of ibn Majah: The book of rules], Chapter of Building in one's own possession right without harming his neighbour, Hadith No. (2341), vol. 2,

1- The harm that a woman may suffer from divorce according to the previous text is not a harm that must be proven, so the woman is not required to prove it, but rather it is a presumed harm that cannot be proven otherwise. Once the conditions for the application of the text are fulfilled, the divorced woman is entitled to the marriage enjoyment compensation. These conditions are:

- A- That the divorce takes place after entering into a valid marriage contract.
- B- That the divorce occurs by the husband unilaterally.
- C- That the divorce is not at the request of the wife.

2- The judge estimates the amount of the marriage enjoyment compensation in a harmonious way between the economic condition of the husband and the amount of the wife's damages. Thus, the judge does not ask to prove the occurrence of the harm or not, as we mentioned previously, but he has a discretion authority in determining the amount of the marriage enjoyment compensation, according to a general criteria: not exceeding the amount of the marriage enjoyment compensation for a year's alimony is calculated for the divorced woman on the basis of her peers who are in the same circumstance.

Conclusion

We reached a number of conclusions and recommendations, which we show as follows:

First: Results

1- The Islamic Sharia has emphasized the rights of women, including her right within the scope of issues related to the personal status. Based on the Islamic Sharia and the opinions of Muslim jurists, personal status laws were issued in Islamic and Arab countries. These laws contained a statement of these rights and their guarantees.

2- The UAE Personal Status Law regulates everything related to the family, including all the issues related to women. This law set out women's rights and guarantees, starting with the guarantees accompanying women's rights at the stage of concluding the marriage contract, which are competency, guardianship, conditions associated with the marriage contract, registration and proof of the marriage contract. There are two other guarantees related to the effects of the marriage contract, namely the dowry and alimony. Moreover, other grantees included the dissolution of the marriage contract, such as giving a role to the will of the wife to end the marriage contract, and her right to the marriage enjoyment compensation that she deserves by divorce.

3- Competency is a special right of the woman and her legal guardians. If the woman drops it, the legal guardian's right to object remains, and if the legal guardian drops it, the woman's right to object remains, and if they drop it together, it forfeits.

4- A sane, mature, adult woman is given in marriage by her legal guardian with her permission and consent, otherwise the contract is contingent on her permission, and the father may give in marriage his young daughter. Islamic Sharia and the UAE Personal Status Law have set guarantees to prevent the abuse of the guardian, which is the regulation of what is related to the prevention woman from marriage by the guardian, coercion to marry, and the option of puberty.

5- According to the UAE Personal Status Law, the marriage contract must be officially registered with the competent authorities. Moreover, the registration does not replace the testimony in the marriage contract, which is one of the validity conditions.

6- The dowry is one of the important financial rights that arise from the marriage contract and the woman deserves it even if it is not mentioned in the contract or denied, she shall deserve a dowry that is equal to that of her peers.

7- A woman has the right to stipulate conditions within the marriage contract, provided that these conditions do not prohibit what is lawful or permit what is unlawful.

8- The alimony is a woman's exclusive right that she deserves from her husband under the marriage contract, even if she is well off.

9- The wife is entitled to the alimony if the husband divorces her without reason or if she suffers any harm from this divorce.

Second: Recommendations

We call on the legislator in the United Arab Emirates to organize two issues in the Personal Status Law No. (28) of 2005 as follows:

1- Regulating coercion on the conclusion of the marriage contract, whether the coercion is on the woman or the man, and clarifying the result of the marriage contract based on coercion, whether the coercion is from the second party or from a third party, and considering the marriage contract concluded on the basis of this coercion as a contract dependent on the authorization of the person under coercion.

2- The marriage prevention from legal guardian under Paragraph (3) of Article (30) relates to preventing the legal guardian from giving in marriage a person who has reached eighteen years of age if that person wants to do so, while Paragraph (1) of the same article sets the age of marriage at eighteen. Therefore, if a man has reached this age, he does not need the permission of a legal guardian to marry. Thus, there is no legal value to prevent the man from marrying by legal guardian. Thus, the text of Paragraph 3 is supposed to be specific to women because even after puberty she needs a legal guardian in marriage according to the text of Article (39) of her sane, adult, legal guardianship marriage that is without excuse or justification. This does not include the man because once he reaches the age of eighteen, he does not need the consent of the legal guardian to conclude the marriage contract. Accordingly, we suggest amending the provisions of the articles with regard to the prevention of marriage by the legal guardian because marriage prevention in Islamic jurisprudence is in relation to preventing a sane, mature, adult woman from marrying by her legal guardian.

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