



# The privilege of guardianship rights in Islamic jurisprudence

**Dr. Chouder Yamina**

University elchahid hamma lakhder Eloued- Algeria.

Email: [chouder-yamina@univ-eloued.dz](mailto:chouder-yamina@univ-eloued.dz)

## Abstract:

This research addresses the "Privilege of Guardianship in Islamic Jurisprudence." Islamic law grants guardians the authority to manage the affairs of those under their guardianship, whether over their person or property, within legal and Sharia-compliant frameworks aimed at protecting the ward.

This right is characterized by its privileged nature, granting its holder priority over all other rights. The guardian does not possess a financial right to it, but rather a moral authority. The subject matter of this right is related to the individual's personal obligations (or morals), without being limited to them. Thus, the privileged right is established based on a protected interest.

This research seeks to establish this privileged right and its subject matter, clarifying the priority in the right of guardianship in its original form, and identifying those who share this privilege on behalf of others when there are multiple guardians.

The research concludes that the guardian's privilege is a legitimate right related to the individual's personal obligations (or morals), without being limited to them. This privileged right is established based on a protected interest for the well-being of the ward. Furthermore, regulating the guardian's privileges is a legitimate and legal necessity, representing a means to ensure the care of those under guardianship and the preservation of their interests, thus fulfilling the reason for establishing this right.

**Keywords:** guardian, privilege, ward, interest.

**Received: 19 Nov 2025**

**Accepted: 28 Dec 2025**

**Published: 20 Jan 2026**

## Introduction

Some non-financial rights possess a privileged status, granting their holder priority over other rights. The holder does not possess a financial right to these rights, but rather a moral authority. The subject matter of the right is related to the individual's conscience without being limited to it, and the privileged right is established based on an interest worthy of protection.

Among the privileged rights that I have researched and studied are the privileged rights of guardians in Islamic jurisprudence and Algerian family law. Islamic jurisprudence regulates the rights and duties of guardians, granting them specific privileges that enable them to fulfill their role to the fullest extent. These privileges are subject to legal controls, the basis of which is safeguarding the interests of the ward. Scholars differed in defining the scope of these privileges and the order of guardianship. The Algerian legislator also regulated the rights and privileges of the guardian, defining his powers in matters of marriage and the management of the minor's assets, while subjecting him to judicial oversight to protect the rights of the ward and prevent abuse of this right.

Our research, focusing on the privileged right of guardianship, is limited to establishing this privileged right, clarifying the priority in the original entitlement to guardianship, and identifying who shares this privilege on behalf of others when there are multiple guardians.

**Research Problem:** The topic of the privileged rights of guardianship over the person and property raises a highly significant jurisprudential and legal issue: the legitimacy of this right granted to the guardian, and the priority in the original entitlement to guardianship, as well as identifying who shares this privilege on behalf of others when there are multiple guardians. And to what extent do legal texts align with jurisprudential rulings in establishing this right to protect the ward?

#### Research Objectives

This research aims to achieve several objectives, most notably: - Clarifying the concept of the guardian's privileged right to guardianship over the person and property of the ward.

- Establishing the guardian's privileged right in Islamic jurisprudence and family law, and explaining its rationale.
- Determining the priority in the original entitlement to guardianship, and who shares this privilege on behalf of others when there are multiple guardians.
- Highlighting the nature of the privileged guardianship as a means to achieve the best interests of the ward, ultimately personal.

#### Research Methodology

In our research, we adopted an inductive and analytical approach based on clarifying this privileged right by presenting and analyzing the opinions of jurists and their evidence on the issues addressed, in comparison with the texts of the Algerian Family Law.

#### Research Plan

##### **First topic: Definition of the guardian's privilege**

The first requirement: Defining the term "wali" (guardian/protector).

Discussing the term "wali" necessitates defining it linguistically and then technically, as follows:

First subsection: Linguistic definition of "wali"

The word "wali" is derived from the root "wali," meaning "to have authority" or "to be in charge of." "Wala" means "to follow" or "to be in charge of." "Wilayah" (guardianship/authority) is the verbal noun of "mawla" (master/guardian).

Ibn Faris said: The letters waw, lam, and ya' form a sound root indicating closeness. From this comes "walya," meaning closeness. It is said, "He distanced himself after wali," meaning he was close. And, "He sat near me," meaning he was close to me.<sup>1</sup>

Al-Zubaidi stated that the word "wali" (guardian/protector) has many meanings, including: the one who manages your affairs, the one who loves you against your enemy, the friend, the supporter, the helper, the one who manages the affairs of the world with his planning and power, the benefactor, the benefactor, the one who receives the benefactor, the lover, the follower, and the in-law. He also stated that "wilayah" (guardianship/authority) has meanings including: leadership, emirate, and sultan. And that "mawla" (master/patron) has meanings including: the owner, the slave, the emancipator, the emancipated, the companion, the relative, the neighbor, the ally, the guest, and the partner.<sup>2</sup>

The second branch: The technical definition of a guardian

Early jurists did not define a guardian, but rather mentioned the meaning of guardianship in more than two chapters on marriage, wills, incapacity, and other areas of jurisprudence. Below are some of the jurists who explicitly defined a guardian or guardianship.

The author of Durr al-Mukhtar defined a guardian as: "An adult, sane, and heir, even if he is considered immoral according to the school of thought, unless he is dissolute." He defined guardianship as: "The

enforcement of one's word upon another, whether he consents or not."This definition has been <sup>3</sup> challenged on several grounds:<sup>4</sup>

1. It is not clear that implementation does not express the definition of guardianship, as guardianship is an attribute inherent in a person, and implementation is its effect, not its essence.
2. It is not comprehensive of the individuals of the definition, because speech does not include actual actions, while guardianship encompasses both speech and action.
3. It does not include a person's guardianship over himself and his property, even though a person is the guardian of himself and his property before he is the guardian of others.
4. His statement, "whether he wills it or not," indicates that the definition here refers to one type of guardianship, namely, the guardianship of compulsion, and does not include guardianship in its general sense.

Ibn Arafa said: The guardian is the one who has ownership over the woman, or fatherhood, or agnatic relationship, or a will, or guardianship, or authority, or is a Muslim.<sup>5</sup>

It is noted from the definition that the term "wali" (guardian/protector) is defined in its general sense as one who has the right to marry off his daughter, and as agnatic inheritance: such as paternal or full brothers, and paternal uncles, and as a testament: that is, one to whom a testament is entrusted, whether father or executor, and as guardianship: that is, one who is under the guardianship of someone with authority over her, and as authority: that is, one who is under the authority of a ruler, namely the judge, and as Islam, which is the act of guardianship<sup>6</sup>

Ibn al-Mubarrad al-Wali defined it as: he who has guardianship over women. He who has authority over women is the sane Muslim, the adult, the just, the rational male.<sup>7</sup>

Some contemporary scholars have defined guardianship in similar ways, including: - The act of a mature, adult person taking charge of a minor person's personal and financial affairs.<sup>8</sup>

- Authority that empowers the person who possesses it to create and execute transactions and contracts in such a way that they become binding<sup>9</sup>.

- The ability to act directly without depending on anyone's permission; the person in charge of the contract is called the guardian.<sup>10</sup>

The second requirement: The concept of the privilege of guardians

The first branch: The linguistic definition of privilege

The word privilege is derived linguistically from the root meaning "to distinguish" or "to differentiate." The letters mim, ya, and za form a sound root indicating the separation or differentiation of something from something else. The verb "to distinguish" (in the sense of "to differentiate") means to distinguish oneself from another. The phrase "he almost became distinguished by his anger" means he was about to be torn apart. The phrase "something became separated" means it became detached from something else. Ibn Manzur says: "Distinguishing is differentiating between things, and distinguishing something means <sup>11</sup> separating some of it, and the people became distinguished and became prominent."<sup>12</sup>

And distinction is elevation...and the people became distinguished and became prominent, and it was said: they became separate...and distinction is partisanship and competition...and he removed the harm from the path: he removed it and took it away, and he turned away from his prayer place: he turned away from it<sup>13</sup>

And he preferred it over others... and the thing became distinguished: its superiority over its like became apparent<sup>14</sup>

A review of the various linguistic meanings of the word "privilege" reveals that it encompasses numerous concepts, including elevation, separation, isolation, distancing, preference, superiority, power, and others.

Perhaps the closest meanings intended by the right of privilege are those of preference, superiority, and exclusivity. These meanings are considered in the jurisprudential and legal sense of privilege, because the holder of the privileged right is favored over others, and the law inherently grants them a power advantage, thus distinguishing them from others.<sup>15</sup>

Adding a right to a privilege is like adding a thing to its attribute.

#### Second Branch: The Concept of the Guardian's Privilege in Legal Terminology

The privilege is a legal term that early jurists referred to as priority, precedence, or priority, and some contemporary jurists refer to as the right of preference. Islamic<sup>17</sup> Or the right of legal documentation<sup>16</sup> jurisprudence has defined the concept of the right of preference by outlining its rulings and establishing its foundations and principles, but it does not use that specific term. There is no point in arguing over terminology, as the meaning is what matters, not the wording or the name.

Islamic jurisprudence contains terms with similar meanings related to preference, and there are many branches documented in books of jurisprudence that have priority over other rights in cases of conflict, which are analogous to this right.

Jurists did not dedicate a separate chapter to the topic of preference as they did to other legal issues. Rather, they addressed its rulings in numerous branches and details within various chapters of jurisprudence, often including the following: - The chapter on guardianship, concerning the division of the assets of a debtor who is under guardianship due to bankruptcy, or after his death when debts conflict with those of the bankrupt debtor. - The chapter on inheritance, when arranging the rights related to the estate, as there are rights attached to it, some of which take precedence over others.

Although jurists have explained the rulings on the right of preemption in detail in various chapters of jurisprudence, I have not found a comprehensive definition that accurately portrays its essence. We know the reasons for this lack of a definition: - Firstly, the rights of preemption are diverse and varied, depending on the subject matter to which they apply, making it difficult to formulate a comprehensive definition of their characteristics.

- Secondly, the concept of the right of preemption is not clear to them, as they did not provide a definition for it, but rather sufficed with explaining its rulings in various branches of jurisprudence.

I have decided to define the right of preemption as the guardian's right, considering both its general and specific meanings, in light of what I have deduced from the rulings on the right of preemption. This is because the term "preemption" has a broad meaning in Islamic jurisprudence, encompassing both financial and non-financial rights, some of which are more specific than others. The privileged right of<sup>18</sup> guardians refers to the priority in the original entitlement to guardianship, and who shares this privilege on behalf of others when there are multiple guardians.

#### Second Topic: The Ruling on Guardians' Privileges

Guardianship varies in several forms based on different considerations. It may be general guardianship, such as that of a judge, or specific guardianship, such as that of a father or grandfather. It may also be limited guardianship (a person's guardianship over themselves, which is inseparable from their legal capacity) or complete and transferable guardianship (which authorizes a person to manage the affairs of others, even by force). This guardianship is of three types:

- 1- Guardianship over the person.
- 2- Guardianship over property.
- 3- Guardianship over both the person and property.<sup>19</sup>

The division of guardianship into guardianship over the person and guardianship over property is a division of the Hanafi school of thought.<sup>20</sup> As for the general public, the guardian over himself is the guardian over the money.<sup>21</sup>

## The First Requirement: Guardianship over the Person

### First Branch: Definition of Guardianship over the Person

Guardianship over the person encompasses a set of actions related to the person under guardianship. In this sense, it grants the guardian the right to arrange their marriage, discipline them, educate them, and care for them. This includes special guardianship—marriage—and perhaps this is what Al-Zayla'i meant in his explanation of the facts. He said: "The word 'awliyy' is the plural of 'wali,' which comes from <sup>22</sup> 'wilayah,' meaning guardianship that extends to the person, and it is the execution of a ruling over another, whether he likes it or not."

From the definition of 'wilayah,' we derive the definition of 'wali' in the context of marriage. Ibn Arafa said: "The 'wali' is the one who has ownership over the woman, or fatherhood, or agnatic relationship, or guardianship, or authority, or Islam."<sup>23</sup>

### First Branch: The Right to Guardianship and the Ranks of Guardians.

The purpose of mentioning the different ranks of guardians and their precedence over one another in the right to guardianship when there are multiple guardians is to clarify who is most entitled to guardianship and takes precedence over others. The schools of thought of the imams differed on this issue, and this is a summary of what has been reported.

Guardianship is established as a general rule for the closest male relatives, according to their order of inheritance.

The jurists agreed that guardianship in marriage is established for male relatives on the father's side, except for the son. They agreed to give precedence to male relatives over other blood relatives, but then <sup>24</sup> they differed on the validity of blood relatives' right to arrange marriages.<sup>25</sup>

The order of guardianship among relatives in marriage is a matter of great disagreement among jurists, to the point that it has become difficult to detail their opinions on this issue. Therefore, I will mention the jurists' schools of thought in summary. The reason for the jurists' disagreement on this matter is the lack of a clear and definitive text that explicitly establishes the order of guardianship in marriage, as well as the analogy drawn between them and the agnatic relatives in inheritance, which is also a point of contention among the jurists.

First: The Hanafis: The order of agnatic relatives in marriage guardianship does not differ from their order in inheritance. The son takes precedence, then his son and so on down the line, then the father and so on up the line, then the full brother, then the paternal brother, then the son of the full brother, then the son of the paternal brother, then the full servant, then the paternal servant, then the son of the full servant, then the son of the paternal servant. Muhammad ibn al-Hasan disagreed with this order, arguing that the father takes precedence over the son.<sup>26</sup> After the rank of kinship comes the rank of loyalty. And <sup>27</sup> after that, the guardianship of the Imam. The Imam may arrange a marriage if there is no guardian at all, or if the guardian is unable to perform the marriage, in which case the guardianship is transferred to him to prevent harm. The guardian does not have the authority to arrange a marriage.

### Secondly: The Malikis:

The son and his descendants take precedence, then the father, then the full brother, then the paternal uncle, then the son of the full brother, then the son of the paternal uncle, then the grandfather and his ascendants, then the paternal uncle and his descendants, then the son of the paternal uncle.<sup>28</sup> Some Malikis believe that the grandfather and his father should take precedence over the brother and his son. <sup>29</sup> Tabu and others agreed that a son has precedence over his father if the woman is not under guardianship. <sup>30</sup> Or a will; if she is under guardianship or has a will, then the father or his executor takes precedence. <sup>31</sup>

### Thirdly: The Shafi'i School

An-Nawawi mentioned the order of heirs as follows: the father takes precedence, then his father and so on up the paternal line, then the full brother, or the paternal uncle, then the nephew and so on down the

line, then the paternal uncle, or the paternal uncle's son and so on down the line, then the rest of the agnatic relatives according to the order of inheritance. He then made three exceptions:

First: The grandfather takes precedence over the brother, unlike in matters of inheritance.

Second: The full brother takes precedence over the paternal uncle in inheritance, and there are two opinions on this: the more apparent and newer opinion is that he also takes precedence, while the older opinion is that they are equal.

Third: The son takes precedence in inheritance, and here he has guardianship by virtue of being a son. If he shares a woman's lineage, such as his son or the sons of her paternal uncle, then she has guardianship by virtue of that. The Shafi'i school of thought has a more detailed and expansive approach to these <sup>32</sup> issues. Talibin: "The most entitled of guardians is the father, then the -Nawawi said in *Manhaj at-An* <sup>33</sup> grandfather, then his father (meaning the paternal grandfather), then the maternal uncle of the parents or the paternal grandfather, then his son, and so on down the line, then the paternal uncle, then his son, and so on down the line, then the rest of the agnates, as in inheritance. The maternal uncle of the parents takes precedence over the paternal uncle, according to the more apparent opinion. A son cannot be married off by virtue of his father's lineage. If he is a son of a slave, or a freed slave, or a judge, then he must be married off. If no male relative is found, then the freed slave's agnates are married off, then his agnates, as in inheritance. He continued: If the freed slave and his agnates are unavailable, then the ruler marries off the agnates. Likewise, he marries off the agnates if the relative refuses to allow the agnates to marry." <sup>34</sup>

Fourth: The Hanbalis:

The father takes precedence, then the grandfather and his ascendants, then the son, then the son's son and his descendants, then the full brother, then the paternal brother, then the son of the full brother (whose father is mentioned), then the full uncle, then the paternal uncle, then the son of the full uncle (whose father is mentioned), then the rest of the agnates according to the order of inheritance. Ibn <sup>35</sup> Qudamah and al-Mardawi mentioned some other narrations, including: giving precedence to the son and his son over the father and grandfather, giving precedence to the son over the grandfather, giving precedence to the brother over the grandfather, the brother and grandfather being equal, and the son and father being equal. These are the different opinions among jurists regarding guardianship in marriage, <sup>36</sup> both in agreement and disagreement.

In the Hanafi school, guardianship in marriage is established for any relative, although jurists differ on the definition of "relative." The order of kinship follows the same principle as in inheritance: the more distant relative is excluded by the closer one. The male agnates have the first right to this guardianship. If the father or grandfather marries her off—whether a minor or a minor—they have no choice after reaching puberty. If both the father and son of an insane woman are present, the son takes precedence, according to Abu Hanifa and Abu Yusuf (may God have mercy on them). Muhammad (may God have mercy on him) said: her father, because he is more compassionate than the son. They do not permit a guardian to force a virgin who has reached puberty into marriage.

The Malikis held that the closest male relative in the line of inheritance is the son, then his son and so on down the line, then the father, then the brothers, with the full brother being the closest, then the father, then the grandfather and so on up the line, then the rest of the male relatives in the order of inheritance, with the grandfather's position being after that of the brothers and their sons.

As for the Shafi'is and Zahiris, the closest male relative in the line of inheritance is the father, then the paternal grandfather and so on up the line, then the full brother, then the rest of the male relatives in the order of inheritance. However, the father has no authority over his mother unless he is her cousin or holds a position of public authority. According to them, the grandfather has his position after the father, and the son has no authority. As for the Hanbalis: the person most entitled to guardianship in marriage is the father, then the grandfather (and his ascendants), then the son (and his descendants), then the full brother, then the rest of the male relatives in the order of inheritance. Thus, the son has guardianship, but

only after the grandfather, and after the father, the grandfather, and the daughter. Guardianship is determined according to the order of inheritance.

#### - Presentation of evidence

The Hanafis argued<sup>37</sup> That inheritance is a type of guardianship, because the heir succeeds the deceased in ownership and disposition, and inheritance is the succession in dispositions, and the strongest basis for inheritance is agnatic kinship.

The Shafi'i school's evidence for their view is that guardianship is based on consideration and compassion, and the father has the most complete consideration and the greatest compassion than all other agnatic relatives. Then, in this sense, the grandfather follows the father because he is like the<sup>38</sup> father in his complete concern and abundant compassion. Then, the brothers follow the grandfather.

As for the son, he cannot marry his mother because of the paternal relationship, since guardianship is established for the guardians to protect the lineage from shame, and there is no lineage between the son and his mother.

The Hanbalis' evidence is that the father is more complete in his concern and more abundant in his compassion, so he must be given precedence in guardianship over the son, just as he is given precedence over the grandfather. Furthermore, the father is the son's father in his infancy, foolishness, and insanity, so he has authority over him in all matters where guardianship is established, unlike the son's guardianship. Therefore, the father is exclusively entitled to guardianship over property. And because the grandfather is like the father of the father in his complete concern and abundant compassion, he is not subject to retaliation for stealing property, nor is his hand cut off for theft, unlike the son. As for the son himself, his rank follows that of the paternal grandfather because he has agnatic kinship, but his compassion is less than that of the father and grandfather. Based on the aforementioned evidence, the Hanbali school of thought favors the view that the closest male relatives have priority over all others in arranging the marriage of a daughter. This order is: her father, then her paternal grandfather, then her son, then her full brother, then her paternal uncle, then the son of the full brother, then the son of the paternal uncle, then the full uncle, then the son of the full uncle, then the father of the full uncle, and so on, according to the order of inheritance by agnatic kinship. This is because guardianship is based on compassion, and the order that is preferred is the one most likely to elicit this compassion, which is the reason for its distinction.

In some cases, these ranks are not observed, and guardianship is transferred from the closest to the most distant relative. This occurs either because the closest guardian no longer meets some of the guardianship requirements, or because the closest guardian is absent, such that he is in a place where it is impossible to contact him, consult him, or seek his opinion, either due to the impossibility of traveling to him, or the inability to travel to him for any reason whatsoever, or because he has disappeared and his whereabouts are unknown, and there is a fear that waiting for him will cause harm to the woman. In such cases, guardianship is transferred to the most distant relative. Or, it may occur because the closest guardian is preventing his ward from marrying.

It is worth noting that the Algerian legislator, in Article 11 of the old Law 84/11, stipulated the following: "The marriage of a woman is overseen by her guardian, who is her father or one of her first relatives, and the judge is the guardian of one who has no guardian." The law establishes the same guardianship system for both young and old women, and considers the marriage contract invalid if the guardian is not present. The legislator's inclusion of the guardian as a condition for the marriage contract reflects the Maliki school of thought, which considers the presence of a guardian mandatory in a marriage contract.

Article 11 arranges the guardians in a manner consistent with the Maliki school of thought. The guardian is the father, followed by the closest relatives. "Closest relatives" here means the son, the father's appointed guardian, then the next closest relative (nephew), then the grandfather, and so on. A full brother takes precedence over others, and a guardian takes precedence over a judge. Article 11 of Law<sup>39</sup> 11/84 was amended, and the new article stipulates the following: "A mature woman may conclude her

marriage contract in the presence of her guardian, who is her father or any person she chooses." This article grants a mature woman the right to conduct her own marriage contract, but in the presence of her father, one of her relatives, or the person she chooses. This is what the Supreme Court has done in a ruling, which stated: "Regarding the guardianship of a sister, a brother may act as her guardian in her marriage contract, as is the case in the present lawsuit, acting on behalf of her father if the latter is absent for any reason. The action taken by the plaintiff's brother in the appeal, acting as her guardian in the customary marriage contract in dispute, is a valid procedure according to the provisions of the Family Law, especially since it has been proven that the father was not present at the contract ceremony."It <sup>40</sup> should be noted that the phrase "any person you choose" may include both males and females, and its general application is not permissible. However, in matters of ambiguity, the provisions of Article 222 of the Penal Code should be restricted, which refers us to the provisions of Islamic Sharia in matters where there is a clear legal text, leaving no room for ambiguity. <sup>41</sup>

The second requirement: Guardianship over property.

First section: Definition of Guardianship over property

Guardianship over property: It is the supervision of the minor's financial affairs, including preserving property, concluding contracts, and all other transactions related to property. This refers to <sup>42</sup> guardianship over financial matters that benefit the minor through all transactions. This guardianship is established based on an agreement or a guardianship contract, unlike guardianship over the person. Establishing guardianship for the minor is both reasonable and legitimate. This is because the minor is incapable of managing their own affairs, while the father or the next in line for guardianship is capable of doing so due to their sound judgment and intellect. Therefore, it is obligatory for them to assist the weak and aid the needy, and all of this is good both rationally and religiously. <sup>43</sup>

The second branch: The right to guardianship over property.

According to the Hanafi school, financial guardianship over a minor is established for the father, then his appointed guardian, then his appointed guardian, then the grandfather, then his appointed guardian, then the judge. So, whoever appoints him as guardian... <sup>44</sup>

According to the Maliki school of thought: guardianship belongs to the father, then the grandfather, brother, and paternal uncle, unless the father has appointed a guardian, even if the father appointed a guardian himself. Thus, the Malikis do not grant the grandfather any share of guardianship over his grandson if the grandson dies after his father, unless the father appointed him as guardian before his death. <sup>45</sup>

According to the Shafi'i school, guardianship belongs to the father, then the grandfather (i.e., to his father and so on up the paternal line), as is the case with guardianship in marriage. Then comes the father's appointed guardian, then the grandfather's appointed guardian, then the judge himself or one of his trustees. No one else has guardianship over the minor's property, such as maternal uncles and paternal uncles, unless the deceased guardian appointed one of them. <sup>46</sup>

The Hanbalis gave guardianship to the father, or his appointed successor, or the ruler, and did not consider the property of a minor or an insane person as long as they were under guardianship. <sup>47</sup>

They argued for the father's superiority with the following:

1- That the child is gifted to his father; God Almighty said: "And We gave him Yahya" <sup>48</sup> And Zechariah said: "My Lord, grant me from Yourself a good offspring." There is no doubt that the recipient is the <sup>49</sup> guardian of the gift. <sup>50</sup>

2- The father has a more complete perspective and greater compassion than others, and this necessitates his guardianship over his child. <sup>51</sup>

From the aforementioned statements of the jurists, we conclude that the father has the privilege of financial guardianship over his minor child. This guardianship is inherent and established by Islamic law,



according to the consensus of the jurists, because he is the most compassionate person towards the minor and the most concerned for his well-being. His guardianship over his child is considered both his right and his duty. It is his right because he is the most suitable person to care for his child, the most knowledgeable about his interests, and the most eager to protect them. The judge cannot deprive him of this guardianship without a valid reason. It is his duty because fathers are the most suitable person to bear the burdens of their children. A father cannot relinquish guardianship over his child unless he is incapacitated and unable to fulfill its responsibilities. In that case, the judge's approval is necessary for any relinquishment. The foundation of this guardianship, which distinguishes the father, is his abundant compassion and strong love for the minor and those under his care, along with his ability to manage financial matters. This necessitates working to preserve and invest the minor's wealth, which is the intended purpose of guardianship and the goal it should achieve.

### Conclusion:

- The privileged right of guardians refers to clarifying the priority in the original entitlement to guardianship, and who shares this privilege on behalf of others when there are multiple guardians.
- Guardianship is established as a general rule for the closest male relatives according to their order of inheritance.
- Jurists agree that guardianship in marriage belongs to male relatives on the father's side, excluding the son. They also agree on giving precedence to male relatives on the father's side over other uterine relatives. However, they differ on whether other uterine relatives have guardianship in marriage.
- Jurists differ on the order of guardianship in marriage. The reason for the jurists' disagreement on this issue is the absence of a clear and definitive text that explicitly establishes the order of guardians in marriage, as well as their analogy to the agnatic relatives in inheritance.
- The privilege of guardianship grants its holder priority over all other rights. This privilege does not confer a financial right upon the holder, but rather a moral authority. The subject of this right is related to the person's financial obligations, as this privilege is established when the interest of the person under guardianship is worthy of protection.
- The guardian's privilege in Islamic jurisprudence and family law is based on achieving the best interests of the ward, whether this pertains to guardianship over the person or guardianship over property.
- The guardian's privilege is a means of achieving the objectives of Islamic law in preserving life and property.
- Mentioning the different types of guardians and their precedence over one another in the entitlement to guardianship when there are multiple guardians is intended to clarify who is most deserving of guardianship and takes precedence over others.
- The father's privilege of financial guardianship over his minor child is an inherent right, established by Islamic law and agreed upon by scholars.
- The basis of this guardianship, which distinguishes the father, is his abundant compassion, strong love for the minor and those under his care, and his ability to manage financial matters.

### References and citations

---

<sup>1</sup> ((*Mu'jam Maqayis al-Lughah*, vol. 6, p. 141, entry "wali").

<sup>2</sup> ((*Taj al-Arus*, Vol. 40, pp. 241-245), entry "Wali", *Lisan al-Arab*, Vol. 15, p. 406, entry "Wali."

<sup>3</sup> (*Ibn Abidin's commentary*, Vol. 3, p. 55. See: *Al-Bahr Al-Raiq*, Vol. 3, p. 117.

<sup>4</sup> (See: *General Jurisprudential Introduction*, Vol. 2, p. 845. *Hafiz Muhammad Anwar, Women's Guardianship in Islamic Jurisprudence*, p. 14.

<sup>5</sup> (*Explanation of Ibn Arafat's limits*, Part 1, p. 241.

<sup>6</sup> (*Explanation of Ibn Arafat's limits*, Part 1, p. 241.

<sup>7</sup> (See: *Al-Insaf*, vol. 8, pp. 72-73; *Kashf al-Qina'*, vol. 5, p. 53, 54-*Al-Mughni*, Vol. 7, pp. 16-17.

<sup>8</sup> (*General Jurisprudential Introduction – Vol. 2*, p. 817.

- <sup>9</sup>(Ahmed Faraj Hussein: *Guardianship over the Self*, p. 4.
- <sup>10</sup>(*Islamic Jurisprudence and its Evidence*, Vol. 7, p. 746
- <sup>11</sup>(Ibn Faris: *Dictionary of Language Standards*, entry "Miz" Vol. 5, p. 289.
- <sup>12</sup>(Ibn Manzur: *Lisan al-Arab*, Madam Mayz, vol. 7, p. 4307.
- <sup>13</sup>(Al-Zubaidi: *Tajal Al-Arous*, Material Mizj 8 p. 135.
- <sup>14</sup>(Ibrahim Anis Dawood and others: *Al-Mu'jam Al-Wasit*, entry for Maz, Vol. 2, p. 893.
- <sup>15</sup>(Abdullah Muhammad Abdullah: *Contractual privileges on debts in the case of bankruptcy and set-off*, p. 299.
- <sup>16</sup>(Al-Zarqa, Mustafa Ahmad: *The General Jurisprudential Introduction*, p. 24.
- <sup>17</sup>(See: Mr. Abdel Nayel, *Provisions of Real and Personal Guarantee*, p. 298.
- <sup>18</sup>(See: Our book, *The Rules of Privilege Rights in Islamic Jurisprudence and Algerian Civil Law*, published by Dar Ahlam Publishing, Algeria, 2026 AD, p. 35.
- <sup>19</sup>(Ahmed Fouad Hussein: *The rules of marriage in Islamic law*, p. 254.
- <sup>20</sup>(Al-Inayah, vol. 3, p. 185; Al-Durr al-Mukhtar, vol. 2, p. 295; Al-Ashbah wa al-Naza'ir, p. 156
- <sup>21</sup>(Al-Sharh al-Saghir, vol. 3, p. 389; Al-Muhadhdhab, vol. 1, p. 328; Mughni al-Muhtaj, vol. 2, p. 173; Al-Mughni, vol. 6, p. 612; Kashshaf al-Qina', vol. 3, p. 434
- <sup>22</sup>(The facts are revealed, Part 5, p. 220.
- <sup>23</sup>(Sharh Hudud Ibn Arafat, p. 218.
- <sup>24</sup>(Abu Hanifa affirmed its authenticity in one of the two narrations attributed to him, but the majority disagreed. See: Al-Mabsut (4/223), Al-Umm (5/14), and Al-Mughni (7/13).
- <sup>25</sup>(Al-Mabsut (4/219), and Ibn Abidin's commentary (2/311-312), Al-Bahr Al-Raiq, vol. 3, p. 128, Al-Hidayah, vol. 1, pp. 155-158
- <sup>26</sup>(Al-Mabsut (4/219), and Ibn Abidin's commentary (2/311-312), Al-Bahr Al-Raiq, vol. 3, p. 128, Al-Hidayah, vol. 1, pp. 155-158
- <sup>27</sup>(Bada'i'at al-Sani', Vol. 2, p. 209.
- <sup>28</sup>(Al-Ma'una (2/730), and the laws of Sharia rulings (322)
- <sup>29</sup>(Al-Dasouqi's commentary (2/225)
- <sup>30</sup>(That is, whether she is a minor, a virgin of legal age, or an insane adult, whether a virgin or previously married (the latter being the intended meaning here). *Guardianship in marriage* (2/75)
- <sup>31</sup>(Mawahib al-Jalil (3/429), and al-Sharh al-Kabir (2/225)
- <sup>32</sup>(Rawdat al-Talibin (5/405-406)
- <sup>33</sup>(See: Al-Amal by Al-Shafi'i (5/13-14), and Mughni Al-Muhtaj (3/151)
- <sup>34</sup>(Minhaj al-Talibin with the commentaries of Taqli and Abu 'Amirah, vol. 3, pp. 224-225
- <sup>35</sup>(Al-Mughni (7/10 – 12)
- <sup>36</sup>(Al-Mughni (7/11-12), and Al-Insaf (8/69-71), Kashshaf Al-Qina', Vol. 3, p. 28
- <sup>37</sup>(Al-Bahr Al-Raiq, Vol. 3, p. 128, Al-Mabsut, Vol. 4, p. 220.
- <sup>38</sup>(The End of the Needy, Vol. 5, p. 132.
- <sup>39</sup>(Al-Arabi Belhadj: *A Concise Explanation of the Algerian Family Law*, p. 125.
- <sup>40</sup>(See: Shahat Abdelkader and others: *Family Law supported by the principles of judicial interpretation of the Supreme Court*, p. 20.
- <sup>41</sup>(Bendaoud Abdelkader: *A Concise Explanation of the Algerian Family Law*, Dar Al-Hilal, Algeria.
- <sup>42</sup>(General Jurisprudential Introduction (2/818), *Islamic Jurisprudence and its Evidence* (7/746, 747)
- <sup>43</sup>(Abu al-Aynayn: *Children's Rights in Islamic Law and Positive Law*, p. 134
- <sup>44</sup>(Radd al-Muhtar, vol. 5, p. 625; Tabyen al-Haqiqat, vol. 5, p. 220; Hashiyat al-Tahawi, vol. 4, p. 343
- <sup>45</sup>(Al-Dardir's commentary, vol. 3, p. 300; Bidayat al-Mujtahid, vol. 2, p. 196
- <sup>46</sup>(Al-Bijrami's commentary, Vol. 2, p. 298.
- <sup>47</sup>(Al-Mughni, vol. 4, p. 552; Kashf al-Qina', vol. 2, p. 324
- <sup>48</sup>(The Prophets: 90.
- <sup>49</sup>(Al-Imran: 38.
- <sup>50</sup>(Al-Mughni (9/356)
- <sup>51</sup>(Al-Mughni (9/356)