

# The Theory of Compulsion (*Ijbar*) in Marriage Under Islamic Law: Incorporation of the Hanafis View on Compulsory Consent in Marriage Under the Islamic Family Law (Federal Territories) Act 1984

Azizah Mohd<sup>1</sup>, Nadhilah A. Kadir<sup>2</sup>

<sup>1</sup>*Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia*

<sup>2</sup>*Former student, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia*  
Email:<sup>1</sup>[azizahmohd@iium.edu.my](mailto:azizahmohd@iium.edu.my), <sup>2</sup>[nadhilah1108@yahoo.com](mailto:nadhilah1108@yahoo.com)

## ABSTRACT

Under Islamic law, a *wali mujbir* has an authority to contract the marriage of his virgin daughter even though she does not agree with the marriage. The authority is known as *wilayat al-ijbar* and quite often described as marriage by compulsion. This paper seeks to examine the theory and concept of compulsion in marriage or *ijbar* under Islamic law. The discussion will include an analysis of views of Muslim scholars on the issue. The paper will also investigate the practice of the Muslim communities in Malaysia nowadays as regards to marriage by compulsion based on the theory of *ijbar*. The examination will be extended to the provisions of Islamic Family Law (Federal Territories) Act 1984 on compulsory consent of a woman in her marriage that follows the view of the Hanafis. The research will adopt qualitative research where most of the materials will be based in the library. Finally, the research will provide the suggestion for improvement of the application of Islamic law in Malaysia especially on the incorporation of the views of Sunni school other than Shafi'is, where relevant and necessary

**Keywords:** *compulsion in marriage, marriage of a virgin, wali mujbir, Islamic law, Islamic Family Law (Federal Territories) Act 1984*

## 1. INTRODUCTION

Marriage is an institution that legitimizes the carnal relationship between a man and a woman, especially to safeguard human being against lewdness and indecency. *Wali* or guardian is one of the conditions of a valid marriage. Basically, the power of *ijbar* vested in a girl's *wali*, in particular, the father how high so ever. Based on his experience, a father is regarded as the most suitable person to choose a good man for his daughter.<sup>1</sup> This may prevent a daughter from marrying a man who is not in equal status with her.<sup>2</sup> It is also to ensure a good relationship between the two families after the marriage.<sup>3</sup> The role of a *wali* also signifies that *wali* is a protector that protects and safeguards his ward's welfare and best interests.<sup>4</sup>

## 2. THE THEORY OF COMPULSION (IJBAR) UNDER ISLAMIC LAW

The term *ijbar* is an Arabic word, which literally means compulsion.<sup>5</sup> Concerning guardianship (*wilayah*) in marriage, the word *ijbar* generally refers to the authority to contract the marriage of a virgin woman without her consent. The common term used for a guardian who is bestowed with this authority is *wali mujbir* (compulsory guardian). The word *mujbir* basically means a person asks someone to do something against his will.<sup>6</sup> Meanwhile, *al-wilayat al-ijbariyyah* refers to the authority of imposing one's will on the other whether his consent is obtained or not.<sup>7</sup> Thus, the theory of *ijbar* basically refers to the guardian's absolute legal power (*wali mujbir*) to dictate over his female ward in her marriage, to whom and when

\*This research is funded by the IIUM RIGS Research fund.

<sup>1</sup> Mahyudin Abu Bakar, "Bidanguasa Wali Mujbir dari Perspektif Hukum dan Undang-Undang Keluarga Islam di Malaysia" in *Tamadun Islam Suatu Sorotan*, pp. 47-60, edited by Wan Ab. Rahman Khudzri Wan Abdullah, Munif Zariruddin Fikri Nordin and Solahuddin Ismail, Pahang: PTS Publications & Distributors Sdn. Bhd, 2002, at 51.

<sup>2</sup> Taqi Al-Din Abu Bakr Ibn Muhammad Ibn 'Abd Hisni, *Kifayat Al-Akhyar Fi Hall Ghayat Al-Ikhtisar*, Beirut: Dar Al-Khayr, 1994, at 355.

<sup>3</sup> Mahyudin Abu Bakar, "Bidanguasa Wali Mujbir", n. 1, at 51.

<sup>4</sup> See Azizah Mohd, Badruddin Ibrahim and Syafiqah Abdul Razak, Protecting Women's Interest (*Maslahah*) in Marriage through Appointment of a Guardian (*Wali*) under Islamic Law, *Pertanika Journal Social, Science and Humanities*, Vol. 23 (S), (2015): 75.

<sup>5</sup> See Ruhi Ba'albaaki, Al Mawrid, *A Modern Arabic English Dictionary*, 6<sup>th</sup> Ed. Beirut: Dar Al-Ilm Lil Malayin, 1994.

; Muhammad Tukur Muhammad, *A Critical Analysis on the Impact of the Concept of Ijbar on the Practice of Child Marriage under Islamic Law* (Being A Project Submitted To The Postgraduate School, Ahmadu Bello University, Zaria. In Partial Fulfilment of the Requirements for the Award of the Degree of Master of Arts in Law-M.A. Law Department Of Islamic Law, Ahmadu Bello University, Zaria, November 2014)

<<http://kubanni.abu.edu.ng/jspui/bitstream/123456789/772/4/1/A%20CRITICAL%20ANALYSIS%20ON%20THE%20IMPACT%20OF%20THE%20CONCEPT%20OF%20IJBAR%20ON%20THE%20PRACTICE%20OF%20CHILD%20MARRIAGE%20UNDER%20ISLAMIC%20LAW.pdf>> viewed on 21 August 2018, at 76.

<sup>7</sup> Ibid., (citing Masud, M. K. (1985) *The Sources of the Maliki Doctrine of Ijbar*, *Islamic Studies* [A Journal of the Islamic Research Institute, Islamic University, Islamabad, Pakistan], Vol. 24. No. 2, pp. 215-253, at 217).

without her consent.<sup>8</sup> Additionally, the jurists have defined the power of *ijbar* as the right of the legal guardian, generally, the father, to dispose of his female ward's hand without his or her consent.<sup>9</sup>

Based on the concept of *ijbar*, the Shafi'i argued that a father or grandfather (in his absence), as a *wali mujbir* may marry off his daughter or granddaughter without her consent. Although, it is always commendable to ask for her permission regarding her future husband.<sup>10</sup> Nevertheless, several conditions are to be fulfilled if such marriage is to be contracted. Those conditions include that there is no apparent enmity between the father and the daughter. Secondly, marriage is contracted in favour of a man of equal condition. Thirdly, the daughter is given in marriage with *mahr al-mithl* based on local currency, and the husband should have the capacity to pay for the *mahr*.<sup>11</sup> It follows that the power of *ijbar* cannot be exercised by the father or grandfather on *thayyib* or non-virgin daughter, since virginity is the main ground for the power of *ijbar* in marriage according to the Shafi'is.<sup>12</sup> This is based on among others a hadith narrated from Ibn 'Abbas that the Prophet PBUH said: "The previously-married has more right concerning herself than her guardian does, and the virgin should be asked for permission, and her permission is her silence."<sup>13</sup> The Prophet PBUH is also reported to have said: "The guardian has no command over the previously married lady."<sup>14</sup> It follows that the *wali* is to give a widow or divorcee in marriage to a person of her choice provided that there is no legal reason making him unsuitable.<sup>15</sup> Unlike a virgin, a *thayyib's* silence is not sufficient to be considered as her permission. She must give

her express consent before her father gives her in marriage.<sup>16</sup> The obvious reason is that a non-virgin or married woman is seen as a matured woman who has an understanding of the advantages and disadvantages of her marriage. As for a virgin, she is seen as a shy woman and often hesitates to express her opinion. Subsequently, her silence is considered as her permission to marry.<sup>17</sup>

In the case where a daughter's marriage is contracted by the father or grandfather during minority, she cannot be brought to the husband before she reaches maturity. Significantly, the father's right of *ijbar* ceases when she has lost her virginity. In this respect, there is no difference between a loss of virginity due to licit or illicit intercourse such as marriage and fornication, respectively. The right remains if the loss of virginity is due to an accident like fall on the ground.<sup>18</sup>

On the other hand, the Hanafi school of thought regards minority as the ground for the power of *ijbar* whether she is a virgin or not.<sup>19</sup> The guardian cannot force the daughter or granddaughter, who is an adult into a marriage against her will. An adult and sound mind female may give herself into marriage without her guardian's consent, whether she is a virgin or not, provided that the husband is of equal condition.<sup>20</sup> In contrast to the Shafi'is, the Hanafis are also of the view that an infant or minor whether she is a virgin or not maybe contracted to marriage by paternal kindred other than father or grandfather. The Shafi'is only allow a father and grandfather to marry off an infant provided that she is a virgin. If the infant or minor is no longer a virgin, she is considered to have sufficient understanding and capacity to make a decision for her own self. Shafi'i further argues that the power to contract marriage vested on others than the father or grandfather would be oppressive upon the child. This is because it is to be expected that no one else other than the father or grandfather are equally concerned in the child's welfare and happiness.<sup>21</sup>

It is to be noted that an infant's marriage contracted by father or grandfather is binding even after she has reached puberty. This is because the parents' determination in contracting their children's marriage is basically based on their affection in which there is surely no evil intention. However, if such marriage was contracted by a person other than father or grandfather, then the child has the option whether to affirm or annul the marriage when she comes of age. This is the opinion of Abu Hanifa and Muhammad. Additionally, Abu Yusuf regards that all

<sup>8</sup> Ibid., (citing Masud, M. K. (1985) *The Sources of the Maliki Doctrine of Ijbar*, at 215).

<sup>9</sup> Ibid., (citing Masud, M. K. (1985) *The Sources of the Maliki Doctrine of Ijbar*, at 218).

<sup>10</sup> Abu Ishaq Ibrahim Ibn 'Ali Al-Syirazi, *Al-Muhazzab Fi Fiqh Al-Imam Al-Shafi'i*, Juz 2, Beirut: Dar Al-Kitab Al-'Ilmiyah, 1995, at 429-430 ; Abi Zakaria Yahya Bin Sharaf Al-Nawawi, *Minhaj Al-Talibin*, Juz 2, Beirut: Dar Al-Basya' Ir Al-Islamiyyah, 2000, at 426; Al-Hisni, *Kifayat Al-Akhyar*, n. 2, at 360; Shamsuddin, Muhammad Bin Ahmad Al-Khotib Al-Syirbini, *Mughni Al-Muhtaj Ila Ma'rifah Ma'ani Alfaz Al-Minhaj*, Juz 4, Beirut: Dar Al-Kutub Al-Ilmiyah, 2000, at 246.

<sup>11</sup> Al-Syirbini, *Mughni Al-Muhtaj*, n. 10, at 246. See also, Abd Al-Rahman Al-Jaziri *Kitab Al-Fiqh 'Ala Al-Madhahib Al-Arba'ah*, Juz 4, Beirut: Dar Al-Kutub Al-Ilmiyah, 2003, at 37 (describing seven conditions when *ijbar* can be exercised without a woman's consent, namely, no enmity between *wali mujbir* and his female ward; no enmity between the prospective husband and the woman and the marriage is not valid if it is still contracted when the woman dislikes the man or he causes harm to her; the man must be of equal status to her; he is able to pay the dowry or *mahr*; the *mahr* is *mahr mithli*; payment is made on currency that is accepted in that state, and the man is capable to pay the *mahr* without delay.

<sup>12</sup> Al-Syirazi, *Al-Muhazzab*, n. 10, at 430; Al-Nawawi, *Minhaj Al-Talibin*, n. 10, at 426; Al-Hisni, *Kifayat Al-Akhyar*, n. 2, at 360.

<sup>13</sup> Muslim ibn al-Hajjaj al-Qushayri, *English Translation of Sahih Muslim*, Vol. 4, translated by Nasiruddin Al-Khattab, Riyadh: Dar-us-Salam, 2007 [hereinafter *Sahih Muslim*], Hadith no. 66. See also *Sahih Muslim*, Hadith no. 67-68; Abu Dawud Sulayman Ibn Al-Ash'ath Al-Sijistani, *English Translation of Sunan Abu Dawud*, Vol. 2, translated by Yaser Qadhi, Riyadh: Dar-us-Salam, 2008 [hereinafter *Sunan Abu Dawud*], Hadith no. 2098-2099.

<sup>14</sup> *Sunan Abu Dawud*, n. 13, Hadith no. 2100.

<sup>15</sup> *Sunan Abu Dawud*, n. 13, at 528.

<sup>16</sup> Al-Syirbini, *Mughni Al-Muhtaj*, n. 10, at 248.

<sup>17</sup> Muslim ibn al-Hajjaj al-Qushayri, *Sahih Muslim with Explanatory Notes and Brief Biographical Sketches of Major Narrators*, translated by Abdul Hamid Siddiqi, Vol. II, Delhi: Adam Publishers & Distributors, 1999, at 353.

<sup>18</sup> Al-Nawawi, *Minhaj Al-Talibin*, n. 10, at 427; Al-Syirbini, *Mughni Al-Muhtaj*, n. 10, at 247.

<sup>19</sup> Al-Jaziri *Kitab Al-Fiqh 'Ala Al-Madhahib Al-Arba'ah*, n. 11, at 32.

<sup>20</sup> Ali ibn Abi Bakr Marghinani, *The Hedaya Commentary on the Islamic Laws*, translated by Charles Hamilton, New Delhi: Kitab Bhavan, 1994, at 34; Al-Jaziri, *Kitab Al-Fiqh 'Ala Al-Madhahib Al-Arba'ah*, n. 11, at 34; Shamsuddin Al-Sarakhsi, *Al-Mabsut*, Vol. 5, Beirut: Dar Al-Marifah, 1989, at 10.

<sup>21</sup> Al-Marghinani, *The Hedaya*, n. 20, at 36.

guardians to be the same as parents and maintain that the child has no option of acquiescence after maturity.<sup>22</sup>

The option to annul a marriage upon puberty is also known as *khiyar-ul-bulugh* (option of puberty). It is described as a safeguard to protect a minor from an unscrupulous exercise of the legal guardians in marrying off their female wards in an undesirable marriage. Subsequently, the minors are accorded with the right to annul such a marriage upon attaining puberty.<sup>23</sup> The legal basis of the doctrine of the option of puberty is also traceable in the hadith where, "Ibn 'Abbas narrated that a young, virgin girl came to the Prophet PBUH and mentioned that her father married her (to someone) while she disapproved. So the Prophet PBUH allowed her to choose."<sup>24</sup> In other narration, Khansa' bint (Khidham) Al- Ansariyyah narrated that her father married her to someone and she had been previously married, but she did not approve of the marriage. So she went to the Messenger of Allah PBUH and mentioned it to him, and he cancelled the marriage.<sup>25</sup>

In general, the female chooses herself to exercise the option of the annulment of marriage on reaching puberty, for instance, as soon as she saw menstrual blood.<sup>26</sup> However, she lost the right to exercise the option if after attaining puberty and of being informed of the marriage and her right to annul it, she acts after unreasonably delay.<sup>27</sup> Notably, the manner of option of puberty is exercised is distinguished between a virgin (*bikr*) and a *thayyib*. If a virgin is silent, which she does not annul the marriage upon attaining puberty, the marriage becomes binding. On the other hand, the *thayyib* does not lose the right through silence after reaching puberty as the silence does not imply consent. She must, however, deliver a more open expression of her approval or rejection.<sup>28</sup>

The concept of *ijbar* also includes the power of constraint (*'adhal*), which authorizes the legal guardian to

withhold his consent over his female ward's marriage.<sup>29</sup> It follows that if a woman has married a man who is her unequal, her guardians have a right to intervene and separate them.<sup>30</sup> However, if the man of her choice meets the requirement of compatibility (*kafa'ah*) and the dower is equivalent to that of her equal (*mahr al-mithl*), the legal guardian cannot constraint his female wards from getting married.<sup>31</sup> Notably, the legal guardian would not be disentitled from his power of *ijbar* if the constraint is exercised based on lawful justifications. For example, the suitor is incompatible, the dower (*mahr*) is lesser than that of her equal or there is a better man than the one she elects.<sup>32</sup> Therefore, a father in using his power of *ijbar* in marriage must ensure that the potential husband of his daughter is not of inferior condition.

### 3. IJBAR AND THE ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984

Islamic Family Law that is applied in Malaysia is totally based on the Shari'ah and the view of the four Sunni schools of law.<sup>33</sup> Notwithstanding the fact that Muslims in Malaysia are formally Shafi'i *madhhab*, the provisions in the Islamic Family Law (Federal Territories) Act 1984 (hereinafter IFLA)<sup>34</sup> including relating to marriage and *wali* and consent to marry are based on the four Sunni schools of law and applied under the Islamic Act and enactments in all fourteen states in Malaysia. This paper will particularly refer to the IFLA as it is considered pioneer Act and other states enactments seem to be almost similar to the provisions in the IFLA.

### 4. INCORPORATION OF HANAFI'S VIEW IN THE ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984

The IFLA requires that marriage in the Federal Territory must be solemnised by a *wali*.<sup>35</sup> In the absence of *wali nasab* (*wali* related by blood), a woman may apply to the court to have *wali Raja*<sup>36</sup> to consent to her marriage.<sup>37</sup> The IFLA defines *wali mujbir* as to include the father or father's father and above.<sup>38</sup> The IFLA, however, emphasizes that consent from both parties (male and female party) to the marriage and *wali*, either *wali nasab* or *wali*

<sup>22</sup> Ibid., at 37.

<sup>23</sup> Muhammad, n. 27, at 80 (citing Ahmed, K. N. The Muslim Law of Divorce, Kitab Bhavan, New Delhi, India (1978), pp. 137- 138). See also Siddiqui, n. 10, at 178 (describing that the jurists present the option of puberty as a protection of the minor's interests, the minor then exercises the option and lastly the *qadi* who represents the judicial process is the one to put the option into social effect).

<sup>24</sup> Ibid.; *Sunan Abu Dawud*, n. 35, Hadith no. 2096.

<sup>25</sup> *Sunan Abu Dawud*, n. 35, Hadith no. 2101.

<sup>26</sup> Al-Jaziri *Kitab al-Fiqh 'ala al-Madhahib al-Arba'ah*, n. 32, at 32-33.

<sup>27</sup> Shaheen Sardar Ali, Is an Adult Muslim Woman *Sui Juris*? Some Reflections on the Concept of "Consent in Marriage" without a *Wali* (with Particular Reference to the Saima Waheed Case), 3 Y.B. Islamic & Middle E. L. Vol. 3, (1996):156, at 170-172 (citing M. A. Mannan (ed.), *D. F. Mullals Mahomedan Law*, Lahore, PLD Publishers, 1995, at 409-410).

<sup>28</sup> Siddiqui, n. 10, at 181.

<sup>29</sup> Muhammad Tukur Muhammad, *A Critical Analysis*, n. 6, at 77 (citing Sabiq S. (nd) *Fiqh-ul-Sunnah*, Al-Fath, Cairo, Vol. 2, pp. 90; Masud, M. K. (1985) *The Sources of the Maliki Doctrine of Ijbar*, at 218).

<sup>30</sup> Al-Marghinani, *The Hedaya*, n. 20, at 40; Al-Jaziri *Kitab Al-Fiqh 'Ala Al-Madhahib Al-Arba'ah*, n. 11, at 34.

<sup>31</sup> Muhammad Tukur Muhammad, *A Critical Analysis*, n. 6, at 77 (citing Sabiq S. (nd) *Fiqh-ul-Sunnah*, Al-Fath, Cairo, Vol. 2, pp. 90; Masud, M. K. (1985) *The Sources of the Maliki Doctrine of Ijbar*, at 218).

<sup>32</sup> Ibid.

<sup>33</sup> See the definition of *Hukum syarak* (Islamic law) under section 2 of the Islamic Family Law (Federal Territories) Act 1984.

<sup>34</sup> Act 303.

<sup>35</sup> Islamic Family Law (Federal Territories) Act 1984, s. 7 (1), (2).

<sup>36</sup> Islamic Family Law (Federal Territories) Act 1984, s. 2 (1) (describing the definition of *wali Raja* as *wali* authorized by the Yang Dipertuan Agong).

<sup>37</sup> Islamic Family Law (Federal Territories) Act 1984, s 13 (b).

<sup>38</sup> Islamic Family Law (Federal Territories) Act 1984, s. 2 (1).

*Raja*, is necessary for a valid marriage.<sup>39</sup> The consent requirement from woman regardless of whether she is virgin or non-virgin seems to base on the view of the Hanafis as discussed above. This also indicates that the law in Malaysia recognizes the right of a woman in her marriage and determines a suitable man in her marriage. Therefore, any marriage that is solemnized by a father in contravening the provision of section 13(a) the IFLA may subject to penalty. Nevertheless, the IFLA also provides that another provision that such action is not considered an offence as it is in line with the Islamic law, i.e. the view of the Shafi'is.<sup>40</sup>

The Islamic law in Malaysia was codified in the 1980s based on the method of *takhayyur* which opinions from other schools of thoughts were selected. The opinion of Hanafi school of thought in regard to the authority of *ijbar* was preferred in promoting the women's rights pertaining to marriage. The Hanafi school of thought generally accords the right of marriage to women and does not recognize the power of *wali mujbir* in forcing the daughter or granddaughter into a marriage against her will. It follows that the IFLA and all state enactments in Malaysia have standardised the requirement for consent of a woman in marriage during the revision of Islamic Family law in 2000s.<sup>41</sup> Before the revision, several states, namely Kelantan, Kedah and Malacca which hold a strong Shafi'i school of thought were unwilling in forfeiting the right of *wali mujbir*. Their respective former laws provided that *wali mujbir* was allowed to give his virgin daughter or granddaughter in marriage without her consent, if the *wali* or prospective husband is not hostile to her; the prospective husband is of equal condition; and he is able to pay a reasonable *mahr* (*mahr mithli*).<sup>42</sup> Though it is rare in the modern day for parents to force their daughter into an unwanted marriage, such provision basically authorizes *wali mujbir* to do so. Notably, the revision upholds the right of a woman to consent to her own marriage.<sup>43</sup>

The IFLA further protects a woman whose guardian has contracted her into marriage during minority. It allows women to apply to the court to terminate the marriage on the ground that the marriage was contracted by her *wali* when she was a minor.<sup>44</sup> This provision seems to reflect the doctrine of the puberty option as mentioned before, a safeguard which is mainly to protect minors from being given away through marriage casually by her guardian.

In a nutshell, the IFLA incorporates the view of the Hanafis and recognizes woman's right in consenting to her marriage. It aims to strike a balance between the right of

*wali mujbir* in marrying off his female ward and the right of the woman to choose her husband to avoid injustice to all the parties involved in the marriage. It needs to be noted that *wali* is responsible for taking care of his female wards' welfare, especially in marrying her off. Since marriage generally makes two families closer and bigger, it should not cause disharmony among family members, especially between parents and their children. The power of *ijbar* in marriage accorded to the *wali* generally allows the father and grandfather to uphold the welfare of their female wards who have no legal competency due to certain circumstances such as minority, marital inexperience and insanity. Accordingly, the legal guardians must properly exercise the authority of *ijbar* solely for the interests of their female wards. The above discussion has further shown that the consent of a woman in marriage is also essential. Failure obtaining her consent in marriage has often caused conflicts between the *wali* and their female wards regarding the choice of the future husband, which will be discussed below.

The authority of *ijbar* in the local context can be seen in the judgment of the Singaporean case of *Syed Abdullah Al-Shatiri v. Shariffa Salmah*<sup>45</sup> where a woman was forced by her father to get married to someone of his choice, and her equal Syed Idros. The court held that the marriage was valid since the Shafi'i school of law allows a father to give her virgin daughter in marriage without her consent. Nevertheless, in this case, the husband who had lost interest in the marriage agreed to give his wife a *khulu'* divorce.

In accordance with the IFLA, it is imperative to seek both consent of a woman and her *wali* for a valid marriage. In *Re Wan Norsuriya*,<sup>46</sup> a marriage was forced on the applicant by the respondent who she knew only for several days. The respondent kidnapped and brought her to Thailand, where they got married. The *imam* who solemnized the marriage did not ask anything about her, including the *wali* though she still had a father. After the marriage, the respondent brought her to his mother's house. After several days of being detained in the house, the respondent brought the applicant to her mother's house and suggested a wedding ceremony. However, the mother and the applicant made a police report, and they went to Thailand to rescind the marriage because it was held against her will. The applicant and the respondent never met again after that. The applicant later got married to someone new, and her father became the *wali* in the marriage. However, the *qadi* in the district where she lived, *Kemaman*, had her new marriage annulled. She then applied to the court to annul her previous marriage with the respondent. The court stated that the marriage with the respondent in Thailand was not valid according to Islamic law. The marriage was invalid because it was held against the applicant wishes, and it was solemnized without her father as the *wali*, which is basically the essential elements of a valid marriage according to the IFLA.

Woman's right to choose her future husband is further upheld as the provision which allows her marriage to be solemnized by *wali hakim* if her guardian unreasonably

<sup>39</sup> See Islamic Family Law (Federal Territories) Act 1984, s. 13 (a), (b).

<sup>40</sup> See Islamic Family Law (Federal Territories) Act 1984, s. 37.

<sup>41</sup> See Islamic Family Law (Federal Territories) Act 1984, s. 13 (a), (b).

<sup>42</sup> See The Islamic Family Law Enactment of Kelantan 1983, s. 13; The Islamic Family Law Enactment of Kedah 1984, s. 10; and The Islamic Family Law Enactment of Melaka 1983, s. 13.

<sup>43</sup> Zanariah Noor, Gender Justice and Islamic Family Law Reform in Malaysia, *Kajian Malaysia*, Jld. XXV, No. 2, (Disember 2007): 121 <[http://web.usm.my/km/25\(2\)2007/01274082\\_25.2.2007\\_121-156.pdf](http://web.usm.my/km/25(2)2007/01274082_25.2.2007_121-156.pdf)> viewed on 3 March 2018, at 141-142.

<sup>44</sup> Islamic Family Law (Federal Territories) Act 1984, s. 52 (g).

<sup>45</sup> [1959] MLJ 137.

<sup>46</sup> (1998) 11 JH (2) 211.

refuses the marriage. In the case of *Ramli bin Abdul Rahman v. Marlia Akmar binti Ramli*,<sup>47</sup> The court allowed the marriage to be solemnized through *wali hakim* after the bride's father or the appellant refused to be *wali mujbir*. The father appealed to the court against the decision. The court stated that the act of the father refusing to be the *wali* was not reasonable, and he also failed to show that he had an eligible candidate for her daughter. Thus, the court allowed the daughter to get married to a man of her choice through *wali hakim*. It seems that if the authority of *ijbar* is not lawfully exercised by the legal guardian, a woman is free to marry a man of her choice by applying for *wali hakim* to solemnize her marriage.

## 5. CONCLUSION

It is to be noted that even though the authority of *ijbar* allows a legal guardian especially father or grandfather to give his daughter or granddaughter in marriage without her permission, Islamic law in a total recommends the *wali mujbir* to obtain consents from his virgin daughter before contracting their marriage. This stance has been applied in Malaysia that at the same time incorporates the view of the Hanafis in the IFLA to require the consent of a woman in her marriage. This is also followed by all state enactments. It follows that the idea of *ijbar* seems not famous in Malaysia and is not that practical nowadays even though based on the Shafi'i's view, a *wali mujbir* is allowed (to a certain extent) to force. This practice seems more acceptable, especially in this modern world where women become more educated and learned. Furthermore, the law also allows a woman's marriage to be solemnized by *wali Raja* if she has no *wali* from *nasab* or the *wali* has unreasonably refused to solemnize her marriage. The requirement further recommends that the legal guardian considers accepting his female ward's choice of the husband if it does not contradict with the Islamic principles. Notably, the requirements of *the wali* and the woman's consent are vital for a valid and recognized marriage in the IFLA.

## REFERENCES

- [1] Mahyudin Abu Bakar, "Bidangkuasa Wali Mujbir dari Perspektif Hukum dan Undang-Undang Keluarga Islam di Malaysia" in *Tamadun Islam Suatu Sorotan*, Wan Ab. Rahman Khudzri Wan Abdullah, Munif Zariruddin Fikri Nordin and Solahuddin Ismail, Eds. Pahang: PTS Publications & Distributors Sdn. Bhd, 2002, pp. 47-60.
- [2] Taqi Al-Din Abu Bakr Ibn Muhammad Ibn 'Abd Hisni, *Kifayat Al-Akhyar Fi Hall Ghayat Al-Ikhtisar*. Beirut: Dar al-Khayr, 1994.
- [3] Azizah Mohd, Badruddin Ibrahim and Syafiqah Abdul Razak, "Protecting women's interest (masalah) in marriage through appointment of a guardian (wali) under Islamic law," *Pertanika J. Soc. Sci. & Hum.*, vol. 23 (S), pp. 75 – 84, 2015.
- [4] Ruhi Ba'albaaki, al Mawrid, *A Modern Arabic English Dictionary*, 6th ed. Beirut: Dar Al-Ilm Lil Malayin, 1994.
- [5] Muhammad Tukur Muhammad, *A Critical Analysis on the Impact of the Concept of Ijbar on the Practice of Child Marriage under Islamic Law* (Being A Project Submitted To The Postgraduate School, Ahmadu Bello University, Zaria. In Partial Fulfilment of the Requirements for the Award of the Degree of Master of Arts in Law-M.A. Law Department Of Islamic Law, Ahmadu Bello University, Zaria, November 2014), <http://kubanni.abu.edu.ng/jspui/bitstream/123456789/7724/1/A%20CRITICAL%20ANALYSIS%20ON%20THE%20IMPACT%20OF%20THE%20CONCEPT%20OF%20IJBAR%20ON%20THE%20PRACTICE%20OF%20CHILD%20MARRIAGE%20UNDER%20ISLAMIC%20LAW.pdf>. Accessed 21 August 2018.
- [6] Al-Shirazi, Abu Ishaq Ibrahim Ibn 'Ali, *Al-Muhazzab Fi Fiqh Al-Imam Al-Shafi'i*, Juz 2. Beirut: Dar al-Kitab al-'Ilmiyah, 1995.
- [7] Al-Nawawi, Abi Zakaria Yahya Bin Sharaf, *Minhaj Al-Talibin*, Juz 2. Beirut: Dar al-Basya'ir al-Islamiyyah, 2000.
- [8] Al-Shirbini, Shamsuddin, Muhammad Bin Ahmad Al-Khotib, Mughni Al-Muhtaj Ila Ma'rifah Ma'ani Alfaz Al-Minhaj, Juz 4. Beirut: Dar Al-Kutub Al-Ilmiyah, 2000.
- [9] Abd Al-Rahman Al-Jaziri, *Kitab Al-Fiqh 'Ala Al-Madhahib Al-Arba'ah*, Juz 4. Beirut: Dar Al-Kutub Al-Ilmiyah, 2003.
- [10] Muslim Ibn Al-Hajjaj Al-Qushayri, *English Translation of Sahih Muslim*, vol. 4, Nasiruddin al-Khattab, Trans. Riyadh: Dar-us-Salam, 2007.
- [11] Abu Dawud Sulayman Ibn Al-Ash'ath Al-Sijistani, *English Translation of Sunan Abu Dawud*, vol. 2, Yaser Qadhi, Trans. Riyadh: Dar-us-Salam, 2008.
- [12] Muslim Ibn Al-Hajjaj Al-Qushayri, *Sahih Muslim with Explanatory Notes and Brief Biographical Sketches of Major Narrators*, vol. II, Abdul Hamid Siddiqi, Trans. Delhi: Adam Publishers & Distributors, 1999.
- [13] Ali Ibn Abi Bakr Marghinani, *The Hedaya Commentary on the Islamic Laws*, Charles Hamilton, Trans. New Delhi: Kitab Bhavan, 1994.
- [14] Al-Sarakhsi, Shamsuddin, *Al-Mabsut*, vol. 5. Beirut: Dar Al-Marifah, 1989.
- [15] Zanariah Noor, *Gender justice and Islamic family law reform in Malaysia*, *Kajian Malaysia*, jld. XXV, no. 2, pp. 121-156, Disember 2007, [http://web.usm.my/km/25\(2\)2007/01274082\\_25.2\\_2007\\_121-156.pdf](http://web.usm.my/km/25(2)2007/01274082_25.2_2007_121-156.pdf). Accessed 3 March 2018.

<sup>47</sup> (2010) 30 JH (2) 199.