

SHACKLED BY SHARI'A:
SAUDI WOMEN STILL CONTROLLED BY MALE
GUARDIANSHIP SYSTEM DESPITE PRESENT
(COSMETIC) REFORMS

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INTRODUCTION¹

Saudi Arabian women have long had their legal status entrapped in customs, laws, and regulations that have subjected them to male authority.² These rules are derived from the religious discourse of Islam: Shari'a Law.³ More specifically, the male guardianship system is guided by a fundamentalist interpretation of Shari'a Law.⁴ Under the male guardianship system, a guardian is granted full control over a woman's life from birth until death.⁵ Every woman must have a guardian. Therefore, a woman's husband or *mahram*, which is an unmarriageable male relative such as a father, brother, or son, has the power to make critical decisions on her behalf.⁶ Because every decision is made for them, Saudi women are left to play a game of chance to see how "open-minded" their guardian is.⁷ This has led to men abusing the male guardianship system by "twisting it in their favor and using its rules to subject women to gross injustices."⁸

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¹ There are many additional issues that have been reformed or still need to be reformed that are not covered in this Note but deserve further research and notice.

² Eman Alhussein, *Saudi Changes to Guardianship System Ease Restrictions on Women*, ARAB GULF STATES INST. WASH. (Aug. 7, 2019), <https://agsiw.org/saudi-changes-to-guardianship-system-ease-restrictions-on-women/>.

³ *Saudi Arabia: 10 Reasons Why Women Flee*, HUM. RTS. WATCH (Jan. 30, 2019, 12:00 AM), <https://www.hrw.org/news/2019/01/30/saudi-arabia-10-reasons-why-women-flee> [hereinafter *10 Reasons*].

⁴ Mariam Nabbout, *Saudi Arabia Takes Step Against Abusers of Male Guardianship System*, STEPFEED (June 21, 2019), <https://stepfeed.com/saudi-arabia-takes-step-against-abusers-of-male-guardianship-system-4539>.

⁵ *10 Reasons*, *supra* note 3.

⁶ *Who are the Mahrams of a Woman?*, ISLAMWAY (Mar. 18, 2014), <https://en.islamway.net/article/23767/who-are-the-mahrams-of-a-woman>; *10 Reasons*, *supra* note 3.

⁷ Nabbout, *supra* note 4.

⁸ *Id.*

Under the male guardianship system, women are not given basic human rights and are legally treated as permanent minors.⁹ Women are not granted full citizenship, which requires them to have their guardian's permission in a wide range of matters such as education, employment, travel, obtaining a passport, healthcare, family rights, legal rights, and many other things.¹⁰ Throughout their entire lives, women encounter systematic discrimination.¹¹ Within the male guardianship system, some women are even exposed to domestic violence and are left with few to no places to receive protection when they are abused.¹² This leads domestically abused women to dangerously attempt to escape and flee Saudi Arabia.¹³

For many years, Saudi women have been fighting for the shutdown of the male guardianship system.¹⁴ Crown Prince Muhammad bin Salman fronts that he is a women's rights reformer, but women's rights activists have proven that Crown Prince Salman's reformer persona is "laughably at odds . . . [with] reality when the authorities try to hunt down fleeing women and torture[] women's rights activists in prison."¹⁵ The male guardianship system remains the most significant restriction on women's rights in Saudi Arabia.¹⁶ Although the guidelines which control the lives of Saudi women are beginning to loosen, Saudi Arabia has done little to end the male guardianship system.¹⁷ There is still such a long way to go. So, the question to ask is whether Saudi Arabia can effect real change in the male guardianship system when the current reforms are only cosmetic, intending to mask ongoing women's rights abuses?

The purpose of this Note is to examine the current situation of women's lives in Saudi Arabia and explain why the Saudi Arabian government and community should take steps toward the abolition of the male guardianship system. Section I introduces the origins of the male guardianship system. It discusses where the system came from, how the system started, and the history behind the system. Section II analyzes a limited number of the present reforms for women's rights in Saudi Arabia that have been implemented before the creation of this Note. Section III discusses some of the restrictions on women that need reformation. Section IV explains how the Saudi Arabian government and community

⁹ *Id.*; *10 Reasons*, *supra* note 3.

¹⁰ Alhussein, *supra* note 2; *Ending Male Guardianship In Saudi Arabia*, EQUAL NOW, https://www.equalitynow.org/ending_male_guardianship_in_saudi_arabia (last visited Nov. 17, 2020) [hereinafter EQUAL NOW].

¹¹ *10 Reasons*, *supra* note 3.

¹² *Id.*

¹³ *Id.*

¹⁴ Nabbout, *supra* note 4.

¹⁵ *10 Reasons*, *supra* note 3.

¹⁶ *Id.*

¹⁷ EQUAL NOW, *supra* note 10; *10 Reasons*, *supra* note 3.

continue to obstruct reformations of the male guardianship system. Section V examines the present reforms of the male guardianship system to analyze whether these reforms have been anything but cosmetic. Section VII provides two steps for the Saudi Arabian government and community to take in order to progress toward the complete abolition of the male guardianship system.

I. ORIGINS OF THE MALE GUARDIANSHIP SYSTEM

Saudi Arabia adheres to Islamic principles and values.¹⁸ Islamic teachings are the way of life for the citizens of Saudi Arabia.¹⁹ Islam is the basis of all the kingdom's laws, decisions, actions, and goals.²⁰ Saudi Arabia's interpretation of Islam is strictly fundamental, which is the most traditional and conservative form of Islam.²¹ This fundamentalist interpretation is known as Wahhabism.²² Wahhabism is a textual interpretation of the Qur'an, which tolerates neither Islamic traditions nor modern changes.²³

The male guardianship system is a part of the kingdom's strict and rigid adherence to Islam and the Qur'an.²⁴ The male guardianship system is not a law or codified set of laws.²⁵ Instead, the male guardianship system is an institution built upon the idea that women are legally minors.²⁶ The male guardianship system denies women economic and academic opportunities.²⁷ Even though the male guardianship system is itself not a set of laws, it has crept into different laws and regulations that restrict women's freedom of choice and independence.²⁸ Some guardians restrict and punish the women under their control.²⁹ The issue with the male guardianship system is that it denies women their God-given rights because of archaic traditions.³⁰ However, opposers of

¹⁸ *History and Heritage*, VISION 2030, <https://www.vision2030.gov.sa/thekingdom/explore/history/> (last visited Sept. 12, 2021).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Dalia Fahmy, *5 Facts About Religion in Saudi Arabia*, PEW RSCH. CTR. (Apr. 12, 2018), <https://www.pewresearch.org/fact-tank/2018/04/12/5-facts-about-religion-in-saudi-arabia/>.

²² *Id.*

²³ *Id.*

²⁴ EQUAL. NOW, *supra* note 10.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Alhussein, *supra* note 2.

²⁹ *Id.*

³⁰ Kristine Beckerle et al., HUM. RTS. WATCH, BOXED IN: WOMEN AND SAUDI ARABIA'S MALE GUARDIANSHIP SYSTEM 57 (2016), https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0716web.pdf.

development and progress in getting rid of these traditions try to defend the male guardianship system's restrictions as rules of the Qur'an that are meant to protect women.³¹

II. PRESENT REFORMS

Saudi Arabian women's freedom has been seriously limited by legal and social restraints.³² Activists have worked to advocate for the reform of certain aspects of the male guardianship system.³³ The kingdom has made important changes throughout the years that have loosened the restrictions against women and improved their status and lives.³⁴ These reforms have empowered women in the kingdom to continue to address the decades-long discrimination against them.³⁵

A. Identification Cards

Saudi women are now able to have their own identification card.³⁶ In the past, women were not given their own identification cards, but were instead listed by name as a dependent on their *mahram's* or husband's identification card.³⁷ These identification cards included no photo of the woman listed; therefore, others could not know for certain if the woman before them was the same woman listed on the identification card.³⁸ This provided the possibility of guardians abusing women's rights.³⁹

Many religious authorities opposed the idea of providing women with their own identification card because their face would be shown on the card.⁴⁰ However, the Saudi government ultimately decided to allow women to obtain photo identification cards.⁴¹ In the first phase of this reform, women could only obtain their own identification card if their

³¹ *Id.*

³² Fawziah Al-bakr et al., *Empowered but not Equal: Challenging the Traditional Gender Roles as Seen by University Students in Saudi Arabia*, 4 F. FOR INT'L RSCH. EDUC., 52, 56 (2017).

³³ EQUAL. NOW, *supra* note 10.

³⁴ Alhussein, *supra* note 2.

³⁵ *As Society Opens, Saudi Women Surge into Job Market*, THE NEW ARAB (Apr. 28, 2020), <https://english.alaraby.co.uk/english/news/2020/4/28/as-society-opens-saudi-women-surge-into-job-market> [hereinafter *Job Market*].

³⁶ Purva Desphande, *The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia*, 22 WOMEN'S RTS. L. REP. 193, 203 (2001).

³⁷ *Id.*

³⁸ A.E.H. Mobaraki & B. Söderfeldt, *Gender Inequity in Saudi Arabia and Its Role in Public Health*, 16 E. MEDITERR. HEALTH J. 113, 116 (2010).

³⁹ *Id.*

⁴⁰ Desphande, *supra* note 36, at 203–04.

⁴¹ Mobaraki & Söderfeldt, *supra* note 38, at 116.

guardian consented to it.⁴² If a woman did not have her own identification card, she had to be accompanied by her *mahram* or husband so that he could identify her.⁴³ In 2013, the Council of Ministers passed a law that stated Saudi women must have their own national identification card within seven years of the passage of the law.⁴⁴ After seven years, a woman's identification card would be the only way to prove her identity.⁴⁵ Now, in the year 2020, every woman should have her own identification card.

B. Driving

Prior to lifting the ban in 2018, Saudi Arabia was the only country that continued to forbid women from driving.⁴⁶ The driving ban long interfered with women's lives in the public sphere.⁴⁷ Due to the ban, women were not able to participate in the labor market or public activities.⁴⁸

Talk of lifting the ban began in 1979 when the United States of America established its presence in Saudi Arabia with the production of oil and the creation of the Arabian American Oil Company.⁴⁹ American engineers and oil executives moved to Dhahran and American women were seen unveiled and driving cars, which Saudi women were forbidden to do.⁵⁰ Saudi women began asking for the rights of American women and there were formal discussions, but they soon stopped.⁵¹ Even though Saudi Arabia was advancing on all economic and social levels, the kingdom was still determined to uphold the religious and social traditions.⁵²

During the Gulf War of 1990 ("Desert Storm" as Americans refer to it), Saudi women again saw American women driving military vehicles around Riyadh, the kingdom's capital, and east coast cities.⁵³ During this war, Saudi women became frustrated with their restricted way of life and

⁴² *Id.*

⁴³ Jassim Abuzaid, *IDs a Must for Saudi Women*, ARAB NEWS, <https://www.arabnews.com/news/446108> (last updated Mar. 27, 2013).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Shannon Van Sant, *Saudi Arabia Lifts Ban On Female Drivers*, NAT'L PUB. RADIO (NPR) (June 24, 2018, 6:23 PM), <https://www.npr.org/2018/06/24/622990978/saudi-arabia-lifts-ban-on-women-drivers> [hereinafter NPR]; Al-bakr et al., *supra* note 32, at 56.

⁴⁷ Al-bakr et al., *supra* note 32, at 56.

⁴⁸ *Id.*

⁴⁹ Amani Hamdan, *Women and Education in Saudi Arabia: Challenges and Achievements*, 6 INT'L EDUC. J. 42, 43 (2005).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

staged a protest when they realized they would not be able to drive their children to safety during the war unless they were joined by a *mahram* or their husband.⁵⁴ During the protest, almost fifty women dismissed their drivers and drove (or rode with a woman driving) through the downtown area of Riyadh.⁵⁵ These women were immediately arrested, but they were not charged and were released soon after; however, some religious leaders called for these women to be beheaded.⁵⁶ The women's actions were investigated by a Royal Commission, which held that the women's actions did not break any Qur'anic laws.⁵⁷ Yet, after the protest, the Interior Ministry passed a law to ban women from driving, stating that "women should not be allowed to drive motor vehicles as the Shari'a instructs that things that degrade or harm the dignity of a women must be prevented."⁵⁸

Finally, after years of waiting, the ban on women driving was lifted in 2018.⁵⁹ The days of depending on drivers, *mahrms*, or husbands to travel anywhere by car is now over.⁶⁰ However, this freedom did not come without sacrifice.⁶¹ Prior to lifting the ban, many women's activists were arrested for driving and accused of undermining security.⁶² Some of these women are still detained today.⁶³ Women's lives have slightly improved since the ban was lifted.⁶⁴ However, lifting the ban did not interfere with established social norms, such as the structure of the male guardianship system, that still affect Saudi women each day.⁶⁵

C. Employment

The number of women working outside the home has nearly tripled since 1992.⁶⁶ In 2019, there were reports of women making up thirty-five percent of the labor force.⁶⁷ Women have quickly worked their

⁵⁴ Desphande, *supra* note 36, at 200.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* (In 1990, the ban on women driving was based off the Qur'an, not an actual law. The Qur'an was written when cars did not exist, and the major form of transportation was camel. The Qur'an allows women to lead camels, therefore, Saudi women should have been allowed to drive today's major form of transportation.)

⁵⁸ *Id.*

⁵⁹ NPR, *supra* note 46.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Fadi al-Qadi, *Do Not Forget the Jailed Saudi Women's Rights Activists*, ALJAZEERA (Mar. 8, 2020), <https://www.aljazeera.com/opinions/2020/3/8/do-not-forget-the-jailed-saudi-womens-rights-activists/>.

⁶⁴ Alhussein, *supra* note 2.

⁶⁵ *Id.*

⁶⁶ Al-bakr et al., *supra* note 32, at 54.

⁶⁷ *Job Market*, *supra* note 35.

way into senior positions.⁶⁸ However, these women still struggle with organizational and professional challenges due to their gender.⁶⁹ Most of these challenges deal with lack of participation in decision-making and planning.⁷⁰ Women in senior positions do not receive the same support for growth and opportunities for training, networking, and expanding their skills as their male counterparts do.⁷¹ This shows that these women are willing and capable of achieving and maintaining leadership positions, but that they are not receiving the support one needs to succeed.⁷²

Many women are teachers or work in administration, but they are striving to break into male-dominated fields.⁷³ Women are currently able to hold jobs in multiple fields such as banking, business, and financing, among other professions.⁷⁴ However, there are still fields women are struggling to break into.⁷⁵ King Abdullah bin Abdul Aziz al-Saud has advocated for women's employment in industrial fields by adopting policies that encourage women to keep persevering.⁷⁶ The King has shown that the kingdom needs women in these male-dominated fields so that the kingdom can continue to advance economically as well as socially.⁷⁷ For example, women are still not allowed to be judges.⁷⁸

Although women are allowed to work, there are still significant hoops for them to jump through in their everyday lives on the job. For example, even though the government does not impose guardianship restrictions on working women, the authorities do not punish employers who require a woman's guardian's consent for her to work or who restrict women from working their jobs.⁷⁹ Further, there are strict segregation policies that disincentivize employers from hiring women because they will have to implement different workplace policies.⁸⁰ However, some women do not mind the strict sex-segregation policies.⁸¹ These women

⁶⁸ Al-bakr, et al., *supra* note 32, at 55.

⁶⁹ *Id.*

⁷⁰ Nouf Alsuwaida, *Women's Education in Saudi Arabia*, 12 J. OF INT'L EDUC. RSCH. 111, 114 (2016).

⁷¹ *Id.*

⁷² *See id.*

⁷³ Ahmed Al-Asfour, Hayfaa A. Tlaiss, Sami A. Kahn, & James Rajasekar, *Saudi Women's Work Challenges and Barriers to Career Advancement*, 22 CAREER DEV. INT'L 184, 190 (2017).

⁷⁴ *Job Market*, *supra* note 35.

⁷⁵ *10 Reasons*, *supra* note 3; Al-Asfour et al., *supra* note 73.

⁷⁶ Alsuwaida, *supra* note 70, at 113.

⁷⁷ *Id.*

⁷⁸ *10 Reasons*, *supra* note 3.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Hamdan, *supra* note 49, at 58.

state that segregation gives them a professional advantage and more access to jobs where they do not have to compete with men.⁸²

III. NEEDED REFORMS

Even though progress has been made to restore some women's rights, there are still many reforms to be made in order for Saudi women to truly achieve equality.⁸³ A guardian's permission is still needed for women to marry, to divorce, and to leave prison.⁸⁴ Women can still have disobedience cases filed against them by their guardian.⁸⁵ Women continue to be subjected to domestic violence with no escape.⁸⁶

A. Marriage

1. Choosing a Spouse

Women cannot freely enter into marriage; guardian permission is required.⁸⁷ Although a woman must orally consent at the marriage ceremony, she has no choice in when or who she marries.⁸⁸ The presence of a woman's guardian is essential at the ceremony because a woman and her guardian are both required to sign the marriage contract.⁸⁹

In 2020, a female council member of the Shura Council, the formal advisory council of the kingdom, proposed an approach that allowed women to contract their marriage without their guardian.⁹⁰ The approach called for the Judicial Council of the Shura Council to work with the Ministry of Justice to amend the laws and implement the new approach to marriage.⁹¹ However, the Judicial Committee of the Shura Council rejected the proposal.⁹² The reason for the rejection was that "a male guardian's presence is a key condition to legislate a marriage."⁹³

⁸² *Id.*

⁸³ EQUAL. NOW, *supra* note 10.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *10 Reasons*, *supra* note 3.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Saudi Shura Council Rejects Proposal to Let Women Marry Without a Male Guardian's Permission*, THE NEW ARAB (May 30, 2020),

<https://english.alaraby.co.uk/english/news/2020/5/30/women-cant-marry-without-male-guardians-permission-saudi-council> [hereinafter *Saudi Shura Council*]; *10 Reasons*, *supra* note 3.

⁹⁰ *Saudi Shura Council*, *supra* note 89.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

2. Multiple Spouses

Polygamy is allowed in Saudi Arabia for males, though it is neither encouraged nor required.⁹⁴ Currently, men are allowed to marry up to four wives.⁹⁵ This trend is common in the kingdom, but it is becoming increasingly unpopular amongst Saudi women.⁹⁶ In fact, the percentage of divorces increased throughout the coronavirus pandemic because wives were discovering that their husbands had multiple wives.⁹⁷ The Shura Council rejected proposals that would have required husbands to reveal if they had multiple wives.⁹⁸ However, the Shura Council did recommend that the Ministry of Justice establish a court system that would reveal if a man is already married to a possible spouse.⁹⁹

However, some families willingly engage in polygamy.¹⁰⁰ In this situation, it is required that the husband treats each wife equally and justly and that all wives must have the same status and rights when it comes to their shared husband.¹⁰¹ Yet, women engaged in polygamy can suffer from negative impacts on their physical and mental health, struggle with higher levels of distress, face more problems in their marital relationships, and lack satisfaction in life more than those wives engaged in monogamous marriages.¹⁰²

3. Child Marriage

There are no minimum age requirements for marriage in the kingdom.¹⁰³ In fact, there have been reports of girls as young as eight years old being subjected to child marriages.¹⁰⁴ In 2019, the Shura Council passed a regulation that prohibited marriage for girls and boys under the age of fifteen years old.¹⁰⁵ However, there is an exception that girls between fifteen years old and eighteen years old can marry with approval from a specialized court.¹⁰⁶ Prior to this regulation, there were no other

⁹⁴ Mobaraki & Söderfeldt, *supra* note 38, at 116.

⁹⁵ *10 Reasons*, *supra* note 3.

⁹⁶ *Saudi Shura Council Postpones Reforms Forcing Husbands to Come Clean About Having Multiple Wives*, THE NEW ARAB (June 25, 2020), <https://english.alaraby.co.uk/english/news/2020/6/25/saudi-postpones-reforms-forcing-husbands-to-disclose-multiple-wives>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Mobaraki & Söderfeldt, *supra* note 38, at 116.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *10 Reasons*, *supra* note 3.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; EQUAL NOW, *supra* note 10.

¹⁰⁶ *10 Reasons*, *supra* note 3; EQUAL NOW, *supra* note 10.

statutes that govern the legal age of marriage in the kingdom.¹⁰⁷ Even though the regulation is a step in the right direction, the exception paired with women needing permission from their guardian to marry contributes to the vulnerability of women being forced into marriage.¹⁰⁸

4. Divorce

Husbands may divorce their wives without any limitations.¹⁰⁹ A wife does not need to be in court for her husband to acquire a divorce decree.¹¹⁰ In fact, a husband does not even need to notify his wife of his intent to divorce her.¹¹¹ In the past, this left many women without the knowledge that they were even divorced.¹¹² In 2019, Saudi authorities established a text notification system that notifies a woman when her husband files the divorce in court.¹¹³ Still, many men simply declare the divorce orally by stating “I divorce you” three times.¹¹⁴ This forces women to prove the divorce in courts themselves.¹¹⁵

A woman’s right to obtain a divorce is much more difficult and restricted than a man’s.¹¹⁶ The process that a wife must go through in order to obtain a divorce is lengthier and more costly.¹¹⁷ A woman can seek *khul’* divorce, a form of divorce when a woman’s husband agrees to allow a divorce if she returns the full amount of her dowry or something else she received from her husband.¹¹⁸ Another option for a woman seeking divorce is to apply for a fault-based divorce, where she must prove a fault of her husband in court.¹¹⁹ However, there is no family law in the kingdom, so the judge will determine whether he believes there was a fault.¹²⁰ A

¹⁰⁷ EQUAL. NOW, *supra* note 10.

¹⁰⁸ *Id.*

¹⁰⁹ *10 Reasons*, *supra* note 3.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Lin Taylor et al., *Saudi Women to Be Told of Divorce by Text Message Under New Law*, REUTERS (Jan. 6, 2019, 2:17 PM), <https://www.reuters.com/article/saudi-women-divorce/saudi-women-to-be-told-of-divorce-by-text-message-under-new-law-idUSL8N1Z60IB>.

¹¹³ *10 Reasons*, *supra* note 3.

¹¹⁴ Katherine Lemons, *At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi*, 118–19 (2010) (Ph.D. dissertation, University of California, Berkeley) (eScholarship).

¹¹⁵ *10 Reasons*, *supra* note 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ MUSAWAH FOR EQUAL. IN THE FAM., THEMATIC REPORT ON MUSLIM FAMILY LAW AND MUSLIM WOMEN’S RIGHTS IN SAUDI ARABIA 21 (2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SAU/INT_CEDAW_NGO_SAU_30191_E.pdf.

¹¹⁹ *See id.*

¹²⁰ *10 Reasons*, *supra* note 3.

woman's husband maintains the authority to control her as her guardian throughout all divorce proceedings.¹²¹

B. Domestic Violence

Many women are subjected to domestic violence and the male guardianship system causes these women to have an extremely difficult time seeking protection and legal action.¹²² The male guardianship system promotes domestic violence because it allows guardians control over a woman's every movement.¹²³ Research from Human Rights Watch showed that women have issues trying to report their abuse to police, social services, or courts without their guardian, who is usually their abuser; in fact, when women flee an abusive spouse or family, they can be arrested and returned to their abuser.¹²⁴ Sometimes after a woman flees to a shelter, she cannot return to her biological family unless there is reconciliation or an arranged marriage because shelters do not encourage women to live independently.¹²⁵

The National Family Protection Program in Saudi Arabia has determined that thirty-five percent of women have experienced some form of domestic violence.¹²⁶ In 2013, Saudi Arabia decided to criminalize domestic violence; yet, many activists have claimed that there has been no enforcement of the law.¹²⁷ The legislation created shelters for victims of abuse and obligates authorities to follow up on abuse reports.¹²⁸ However, this legislation can only be backed up by changed social perspectives because the male guardianship system is deeply rooted in Saudi culture and law.¹²⁹

Further, the ways to report abuse are still very limited.¹³⁰ When the legislation was passed, women were not able to drive, so the only way they could get to the police was if their guardian drove them there.¹³¹ Now, women face emotional challenges when deciding to report their abuse; women all over the world face the same issues of confusion, fear, and the

¹²¹ *Id.*

¹²² Beckerle, *supra* note 30, at 32.

¹²³ *See id.* at 30.

¹²⁴ *10 Reasons*, *supra* note 3.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Nesrine Malik, *Saudi Arabia's Domestic Violence Law is a First Step to Changing Attitudes*, MUSLIM INST. (2017), <https://musliminstitute.org/freethinking/world-affairs/saudi-arabias-domestic-violence-law-first-step-changing-attitudes>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

challenge of proving their abuse.¹³² Many women are still afraid to report their abuse because of the possibility that the police will try to convince them to drop the charges.¹³³ If a reporting woman is not removed from her situation, her act of defiance could lead to more abuse.¹³⁴

In fact, the Ministry of Labor and Social Development stated that it came across 8,016 cases of physical and psychological abuse between spouses over a one-year period from October 2014 to October 2015.¹³⁵ It seems that Saudi Arabia will continue to allow the male guardianship system to promote abuse and prevent victims from reporting their abuse.¹³⁶

C. Disobedience Laws

If a woman does not obey her guardian, he may file a complaint of “disobedience” against her and have her arrested.¹³⁷ A woman’s husband can go as far as interpreting her refusal to his sexual advances as disobedience.¹³⁸ In fact, a woman who is abused is more likely to be charged with disobedience than her guardian is to be charged for abuse.¹³⁹ One woman was beaten by her father and kicked out of the house.¹⁴⁰ He then reported her to the police for disobedience.¹⁴¹ It is clear that as long as guardians can still file complaints of disobedience against women and women are able to be charged and punished for their “disobedience,” Saudi Arabia will continue to be unwilling to take the necessary steps to abolish the male guardianship system and improve women’s lives.¹⁴²

¹³² *Id.*

¹³³ Ban Barkawi, “Why I Didn’t Report It”: Saudi Women Use Social Media to Recount Harassment, REUTERS (Apr. 6, 2020, 1:59 PM), <https://www.reuters.com/article/us-saudi-women-violence-trfn/why-i-didnt-report-it-saudi-women-use-social-media-to-recount-harassment-idUSKBN21O2J7>.

¹³⁴ *Id.*

¹³⁵ 10 Reasons, *supra* note 3.

¹³⁶ Tom Throneburg Butler, *The Times: Are They a-Changin’? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse*, 100 IOWA L. REV. 1233, 1255 (2015).

¹³⁷ Margaret Coker, *How Guardianship Laws Still Control Saudi Women*, N.Y. TIMES (June 22, 2018), <https://www.nytimes.com/2018/06/22/world/middleeast/saudi-women-guardianship.html>.

¹³⁸ LIV TØNNESEN, CHR. MICHELSEN INST., WOMEN’S ACTIVISM IN SAUDI ARABIA: MALE GUARDIANSHIP AND SEXUAL VIOLENCE 15 (2016), <https://www.cmi.no/publications/5696-womens-activism-in-saudi-arabia>.

¹³⁹ *See id.*

¹⁴⁰ Barkawi, *supra* note 133.

¹⁴¹ *Id.*

¹⁴² *Saudi Arabia’s Reforms: A Facade for Systematic Persecution of Women Rights Activists*, EUR. CTR. FOR DEMOCRACY AND HUM. RTS. (June 2020), <https://www.ecdhr.org/?p=933>.

D. Prison

Women are only allowed to leave Saudi prisons and juvenile detention centers with the consent of their guardian.¹⁴³ They must be released into their guardian's care as well.¹⁴⁴ When a woman's family refuses to consent to her release, the woman is forced to remain in prison until reconciliation with her family happens.¹⁴⁵ One way to get around this is if she obtains a new guardian, which usually only happens after an arranged marriage.¹⁴⁶

IV. SAUDI ARABIA'S OBSTRUCTION OF REFORMS

Saudi Arabia has established major social changes since Crown Prince Salman came into power.¹⁴⁷ However, along with these reforms, there have been efforts to suppress any further disagreement with Saudi Arabia's male guardianship system.¹⁴⁸ The leadership in Saudi Arabia is still so strongly opposed to change for their women that they have imprisoned women's rights activists and journalists who have fought and are fighting for the equal rights of humans.

A. Women's Rights Activists Imprisoned

In May of 2018, leading women's rights activists were arrested in Saudi Arabia.¹⁴⁹ These women's rights activists are still detained for demanding an end to the male guardianship system.¹⁵⁰ These women continue to face abuse while in prison and are even deprived of contact with their families.¹⁵¹ The treatment of these women is inhumane. They have been subjected to solitary confinement and various forms of torture, including but not limited to beatings, waterboarding, sexual harassment, and threats of rape and murder.¹⁵²

¹⁴³ *10 Reasons*, *supra* note 3.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Job Market*, *supra* note 35.

¹⁴⁸ *Id.*

¹⁴⁹ *Saudi Arabia's Leading Women Activists Mark Two-Year Prison Anniversary Despite Kingdom's "Reform Drive"*, THE NEW ARAB (May 16, 2020), <https://english.alaraby.co.uk/english/news/2020/5/16/two-years-on-saudi-womens-rights-activists-await-trials> [hereinafter *Two-Year Prison Anniversary*].

¹⁵⁰ EQUAL. NOW, *supra* note 10.

¹⁵¹ *Id.*

¹⁵² *Two-Year Prison Anniversary*, *supra* note 149.

Saudi Arabian authorities have charged these women with various crimes linked to their activism.¹⁵³ The authorities held what are criticized as “sham trials” beginning in March 2019.¹⁵⁴ These trials consisted of closed-door hearings in which the defendants were prohibited from speaking and lawyers and others were prohibited from attending.¹⁵⁵ In addition to these “sham trials,” these women’s trial dates have been and continue to be postponed due to the coronavirus pandemic.¹⁵⁶

May 15, 2020 marks the two-year anniversary of the arrest of these women’s rights activists.¹⁵⁷ Lynn Maalouf, Amnesty International’s Middle East Research Director, stated that “it is heartbreaking that two years have now passed with these brave women still behind bars, especially as during this time Saudi women have been enjoying some of the newfound rights they had fought so hard for.”¹⁵⁸ To commemorate the anniversary, seventeen non-governmental organizations wrote a letter calling for Saudi Arabian authorities to terminate their strategy to silence disagreement and stifle freedom of expression and release and drop the charges against the women’s rights activists.¹⁵⁹ These organizations urged the United States and other governments to press for the women’s release.¹⁶⁰ Thirty-six countries then pressured Saudi Arabia to release the women’s rights activist because they are being imprisoned for exercising their fundamental rights.¹⁶¹

B. G20 Riyadh Summit

The G20 Riyadh Summit was held on November 21, 2020.¹⁶² Using its presidency, Saudi Arabia ensured that meaningful discussions of women’s rights and human rights did not take place.¹⁶³ In fact, gender was

¹⁵³ *Saudi Arabia Has Dragged Its Imprisoned Female Activists Back into Court. How Will Biden Respond?*, WASH. POST (Nov. 30, 2020), https://www.washingtonpost.com/opinions/global-opinions/saudi-arabia-has-dragged-its-imprisoned-female-activists-back-into-court-how-will-biden-respond/2020/11/30/a1ee4c30-3337-11eb-b59c-adb7153d10c2_story.html [hereinafter *How Will Biden Respond?*].

¹⁵⁴ *Two-Year Prison Anniversary*, *supra* note 149.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Activists & Women Human Rights Defenders Continue to Face Reprisals*, CIVICUS (Aug. 14, 2020), <https://monitor.civicus.org/updates/2020/08/14/activists-women-human-rights-defenders-continue-face-reprisals/>.

¹⁵⁸ *Two-Year Prison Anniversary*, *supra* note 149.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *How Will Biden Respond?*, *supra* note 153.

¹⁶² *G20 in 2020*, G20, <https://www.g20.org/about-the-g20.html> (last visited Oct. 11, 2021).

¹⁶³ *Two-Year Prison Anniversary*, *supra* note 149.

not mentioned in any outputs from G20.¹⁶⁴ This omission angered many western delegates who planned to attend the summit.¹⁶⁵ Several members of the groups that create policy ideas about human rights, women's empowerment, and other issues for the summit leaders backed out of their planned discussions.¹⁶⁶ It was clear that Saudi Arabian organizers "gender-washed" the summit with the goal of suppressing discussions of women's rights, while also turning the summit into a public relations sham to achieve their true goal: a perception of reform and change in Saudi Arabia.¹⁶⁷ Director of Freedom Forward, Sunjeev Bery, stated that the summit was "all about the Saudi monarchy parading itself under the global spotlight and dodging questions over its abysmal record on basic freedoms."¹⁶⁸ Saudi Arabia has been described as the worst place in the world to be a woman.¹⁶⁹ Bethany Alhaidari, a women's rights campaigner at Freedom Forward, stated that going to the summit, engaging with the Saudi Arabian government, and pretending everything is normal while Saudi Arabian heroes, reformers, and women's rights activists are sitting and dying in prison is ridiculous.¹⁷⁰

V. THE REFORMS ARE COSMETIC

Many people believe that the present reforms of Saudi Arabia were merely passed with the intent to promote Crown Prince Salman as a reformer.¹⁷¹ These reforms have been further criticized by human rights organizations and Saudi regime critics as being the kingdom's "smokescreen" to continue to cover up reports of human rights abuses.¹⁷² Some critics believe these reforms are only being passed with the intent

¹⁶⁴ James Reinl, *How Saudi Arabia Is Using G20 Talks to Hide Its Terrible Record on Women's Rights*, THE NEW ARAB (May 7, 2020), <https://english.alaraby.co.uk/english/indepth/2020/5/7/saudi-accused-of-stifling-womens-rights-in-g20-talks>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Emma Beswick, *Virtual G20 Hosted in Saudi Arabia Amid Human Rights Criticisms and Coronavirus Pandemic*, EURONEWS (Nov. 20, 2020), <https://www.euronews.com/2020/11/20/virtual-g20-hosted-in-saudi-arabia-amid-human-rights-criticisms-and-coronavirus-pandemic>.

¹⁶⁸ Reinl, *supra* note 164.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Saudi Shura Council Postpones Reforms Forcing Husbands to Come Clean About Having Multiple Wives*, THE NEW ARAB (June 25, 2020), <https://english.alaraby.co.uk/english/news/2020/6/25/saudi-postpones-reforms-forcing-husbands-to-disclose-multiple-wives>.

¹⁷² *Id.*

to encourage more “foreign investment and tourism” in the kingdom while it tries to work its way out of oil dependency.¹⁷³

In 2001, Saudi Arabia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁷⁴ CEDAW put forth various general recommendations for countries to follow in order to decrease systemic discrimination against women.¹⁷⁵ Saudi Arabia, as a signatory of CEDAW, is bound to implement policies that will eliminate discrimination of women.¹⁷⁶ CEDAW describes discrimination of women as “any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁷⁷

However, when Saudi Arabia ratified CEDAW, it did so with reservations.¹⁷⁸ These reservations allow the kingdom to apply the treaty as it sees fit.¹⁷⁹ One of the reservations states that “in case of contradiction between any term of the Convention and the norms of Islamic law, the kingdom is not under obligation to observe the contradictory terms of the Convention.”¹⁸⁰ This reservation shows that the Saudi Arabian government believes “it is legitimate to deny women human rights on the basis of cultural particularism . . . since they purport to rest on divine authority.”¹⁸¹ Saudi Arabia thought that just signing CEDAW would be enough to show their interest in reforming women’s rights, but it is proven that just signing CEDAW does not change community perception.¹⁸²

Upon recommendation from CEDAW, Saudi Arabia publicly stated that the kingdom would officially abolish the male guardianship system and all discrimination against women by passing effective legislation.¹⁸³ Since then, the kingdom has implemented only small changes.¹⁸⁴ The kingdom has failed to implement CEDAW’s

¹⁷³ *Id.*

¹⁷⁴ EQUAL. NOW, *supra* note 10.

¹⁷⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979 1249 U.N.T.S. 13 [hereinafter CEDAW].

¹⁷⁶ EQUAL. NOW, *supra* note 10.

¹⁷⁷ CEDAW, *supra* note 175.

¹⁷⁸ EQUAL. NOW, *supra* note 10.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Ann Elizabeth Mayer, *Islamic Reservations to Human Rights Conventions: A Critical Assessment*, 15 RECHT VAN DE ISLAM 25, 28 (1998).

¹⁸² See *CEDAW Review Shows Limits of Saudi Arabia’s Gender Policies*, AMS. FOR DEMOCRACY & HUM. RTS. IN BAHR. (Mar. 19, 2018), <https://www.adhrb.org/2018/03/cedaw-review-shows-limits-of-saudi-arabias-gender-policies/>.

¹⁸³ See *id.*

¹⁸⁴ *Id.*

recommendation by continuing to restrict women's rights through the practice of the male guardianship system.¹⁸⁵

With the present reforms that women have achieved comes a "deepening repression and abusive practices meant to silence dissidents and critics."¹⁸⁶ Human Rights Watch reported that there are still many abusive practices happening in the kingdom, and the abusers are not being held accountable.¹⁸⁷ This shows that the rule of law is still weak and can be undermined by political leadership.¹⁸⁸ Crown Prince Salman has worked hard to get rid of anyone who stands in the way of this political uprising.¹⁸⁹

VI. STEPS TOWARD ABOLITION

"I'll give you the best solution: abolish the male guardianship system."¹⁹⁰ Saudi women do not want the male guardianship system to be merely amended; they want it to end. In fact, in order for Saudi women to grow in their potential, the male guardianship system must end.

It is not feasible to believe that the male guardianship system can be completely abolished within a short time. Saudi Arabia has much work to do to lead it down this path. To guide Saudi Arabia down the road to abolition of the male guardianship system, this Note proposes two starting points. First, the male guardianship system should be elective. Saudi women are treated as legal minors their whole life.¹⁹¹ However, the age of adulthood in Saudi Arabia is eighteen years old.¹⁹² Upon reaching the age of adulthood, women should be given the option of whether they want to have a guardian or not. If women decide to stray from the male guardianship system, they should not be shunned from their homes but taught how to navigate life with their new freedom. Women who choose to live freely may have the option to return to the male guardianship system at any time during their lives if they wish. If women decide to continue following the tradition of the male guardianship system and keep their guardian, they should be able to change their mind regarding their freedom of choice at any time throughout their lives. This freedom of

¹⁸⁵ *See id.*

¹⁸⁶ *Saudi Arabia: Change Comes with Punishing Cost*, HUM. RTS. WATCH (Nov. 4, 2019, 12:00 AM), <https://www.hrw.org/news/2019/11/04/saudi-arabia-change-comes-punishing-cost>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Nabbout, *supra* note 4.

¹⁹¹ *10 Reasons*, *supra* note 3.

¹⁹² Ayesha Saldanha, *Saudi Arabia: Age of Adulthood is Now 18*, GLOB. VOICES (Nov. 27, 2008), <https://globalvoices.org/2008/11/27/saudi-arabia-age-of-adulthood-is-now-18/>.

choice would allow women to become independent, free-thinking individuals who will grow and develop into citizens who further the kingdom's mission of economic prosperity. Also, giving women the choice to participate in the male guardianship system will enhance the support of the male guardianship system while simultaneously decreasing the negative connotation attached to the male guardianship system because only those who wish to follow the tradition will be led to do so. While others will elect to opt out of the male guardianship system, the two groups will support each other's freedom of choice, resulting in a more accepting culture and community in the kingdom.

Second, women who have reached the age of adulthood and have decided to keep their guardian should have the opportunity to challenge their guardian's decisions in court. This opportunity to challenge will not mean that they do not wish to have a guardian any longer but will give them the ability to voice their concerns with some of their guardian's decisions in their lives. It will allow women to seek additional unbiased guidance and opinions on matters that contribute to critical life decisions which will ultimately direct the path of their lives. Further, the option to challenge the guardianship will develop communication and collaboration skills between men and women throughout the kingdom by establishing a joint goal of satisfactory relationships and furtherance of traditions. Because families will not want to spend time in the court system, they will work to negotiate decisions that will be mutually beneficial and pleasing to all individuals. This option gives women a chance to have some control over their lives while choosing to keep a Saudi tradition alive.

There are two possible ways for the kingdom to implement this solution. First, the Court of the First Instance of the Shari'a Courts would have jurisdiction over a woman's challenge of her guardian's decision.¹⁹³ This would subject the challenge to a decision by one judge, with the possibility of appeal.¹⁹⁴ Second, the kingdom could create a new special committee for guardianship challenges.¹⁹⁵ The committee for guardianship dispute would be an independent judicial committee, meaning that it is initiated by an act and its decisions cannot be appealed.¹⁹⁶

¹⁹³ *Legal and Judicial Structure*, THE EMBASSY OF THE KINGDOM OF SAUDI ARABIA, <https://www.saudiembassy.net/legal-and-judicial-structure-0> (last visited Oct. 25, 2021); *Introduction to the Saudi Legal and Court Systems*, ABDULAZIZ I. AL-AJLAN & PARTNERS, https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1384896_1.pdf (last visited Nov. 8, 2021) [hereinafter *Saudi Legal*].

¹⁹⁴ *Saudi Legal*, *supra* note 193.

¹⁹⁵ *Id.*

¹⁹⁶ Ahmed A. Al-Ghadyan, *The Judiciary in Saudi Arabia*, 13 ARAB L.Q. 235, 248 (1998).

Implementing these solutions will give Saudi women the freedom they deserve. If women elect to opt out of the male guardianship system, they will have the opportunity to date and choose their own spouse instead of being restricted to arranged marriages. These solutions will also limit the number of men who have multiple spouses as women will have more choice in participating in monogamous or polygamous relationships. Further, if a woman receives knowledge that her husband is unfaithful and/or has another wife, she will be able to leave her home and file for a divorce without issue. If a woman finds herself in an abusive relationship, she will be able to escape to terminate the marriage and find safety. Shelter will be more accessible to these women under these solutions because disobedience laws will be abolished, and women will not be required to obtain consent from their abuser to leave these shelters. If a woman chooses to keep her guardian, she will still have the opportunity to opt out of the system if she encounters a situation in which her marriage becomes unsatisfactory or abusive. A woman who participates in the system can choose to divorce her husband and receive a new guardian upon the filing of divorce documents.

If these solutions are successful, women who are subjected to domestic violence will be able to flee their situations without repercussions. These women would be able to seek protection and legal assistance because they would no longer need a guardian's approval. These solutions would eliminate the detainment of women who escape their abusers and finally enforce the 2013 law which criminalized domestic violence. Even though women may still face emotional limitations while deciding to report their abuser, at least they will no longer be limited by physical restraints or fear of more abuse.

Under these solutions, disobedience laws would essentially be abolished because a woman will be allowed to live her life as she pleases. She would be an equal to her husband and other male family members. Therefore, they would not be able to file disobedience complaints against her. Even if a woman's guardian or other family member tried to sue her in the court system, she would finally be able to use her voice to defend and stand up for herself. Also, women would be able to leave prisons after their sentence was served and they were released; they would no longer need a guardian's consent.

The purpose of these two starting points is to give Saudi women the freedom over their lives that they deserve. With these two steps, women are afforded the opportunity to decide for themselves the amount of freedom they wish to possess. In order to implement these solutions, Crown Prince Salman needs to pass laws calling for the immediate integration of these solutions. The kingdom's leadership should encourage social acceptance of these changes through media outlets, workplace reforms, community reforms, trainings, classes, and familial discussions.

CONCLUSION

The male guardianship system has boxed in Saudi women for decades. Women's lives should not be on hold while they wait for their guardian to approve or deny their requests. Women should not have to wonder what version of their guardian they will interact with each day. The male guardianship system must be reformed in order for these women to truly live and reach their full potential. The abolition of the male guardianship system will not only improve the lives of women, but family dynamics and the kingdom's economy.

This Note discussed the fundamentalist Islamic view that the citizens of Saudi Arabia follow which led to the creation of the male guardianship system. Section II examined a limited number of present reforms implemented for Saudi women and how these reforms improved women's everyday lives. The restrictions on women that still need reformation were addressed, as well as how the Saudi Arabian government is continuing to actively obstruct further reformations by imprisoning activists and suppressing the discussion of women's rights at one of the world's biggest summits. These obstructions prove that the reformations that have been implemented are nothing but cosmetic reforms with the intent to create a façade that the kingdom fosters women's rights.

Although the present reforms may be cosmetic, Saudi Arabia can effect real change in the male guardianship system by switching their intention from covering up ongoing women's rights abuses to taking the necessary steps toward abolition. First, the kingdom must stray away from the fundamentalist view of Islam. If it returns to the moderate view of Islam, more reforms for women will be easily achieved. Shari'a can evolve with Saudi Arabia to address the needs of the society today. This is possible because Shari'a was not revealed by Allah but interpreted by the creators of the Qur'an and the words and actions of the Prophet Muhammad. When Shari'a was created, the people included common and cultural practices from their time and society.

Shari'a is not a legal system, but a moral religious system. This means that Shari'a must be followed voluntarily. If not, Muslims no longer have freedom to choose different views and make good choices to be rewarded by Allah. Because Shari'a gives individual believers free will, a law needs to be implemented in the kingdom that calls for the above proposed solutions. These solutions allow followers of Shari'a to have free will by giving them the freedom of choice for their own participation in the male guardianship system. The removal of forced male guardianship over all Saudi women allows for each individual to have different outlooks and to make their own decisions which will determine their path to meet their

god, Allah. Since Shari'a is a voluntarily religious discourse of Islam, any system created under Shari'a, such as the male guardianship system, should also be followed voluntarily by all participants.

Based on the pushback of the male guardianship system, it is clear that Saudi citizens are striving to live in a kingdom where everyone is treated justly and equally. This type of community in the kingdom can only be established by the kingdom's leadership. Therefore, the Crown Prince must lead his people by example, make real changes in the Kingdom of Saudi Arabia that go beyond cosmetic reforms, and establish precedents that future generations can build upon.

