

Sunni Jurisprudent's View on the Father's Walayat in Marriage of Virgin Girl

M. Sarfi*

Lecturer, Department of Theology, Islamic Azad University, Central Tehran Branch

Abstract

The article aims to investigate the issue of father's walayat (guardianship) on the marriage of the virgin mature daughter by quantitative research methods like reviewing the jurisprudential and historical views of Imamiya and Sunni jurists. As a result, despite the consensus on the walayat of the father or paternal grandfather on the minor virgin, there are contradictory views on the walayat of the father or paternal grandfather on mature virgin. As a conclusion, the civil law has deemed it necessary to obtain wali's permission due to social security issues and the protection of the rights of girls in the society.

Keywords: Father's Walayat, Puberty, Mature Virgin.

1. Introduction

1.1. Nikah of Mature Persons in Islamic Jurisprudence

Does a person quit her father's walayat after reaching puberty? There is no dispute in the fact that people in minor ages are incapable of managing their financial affairs, but in non-financial matters, of course the interference of others and making decisions for the future to the interest of the individual is reasonable and wise. However, it is better to even restrict the interference of other people and leave the decision on the person. Of course, we do not deny that individuals

should consult with other people who are more experienced in most of their affairs, but this advice should not become compulsory as an order. We believe that consultation should be advisory not compulsory. In this section, we are not talking about immature people who need walayat, but we are talking about people who have reached the age of puberty who have rational in addition to physical puberty. This is where talking about the custody and the walayat over people becomes meaningless and at this period the person wants to independently decide for life in various aspects, including financial and non-financial affairs and to advance it (Abiwalid, 2009).

The fact that a person can independently interfere in their own affairs is called Walayat Qasserah by jurists. At the beginning of the discussion, it is better to answer a question that some readers may have in mind, that is, whether after the adult son passes the age of minority is he still under walayat? Of course, by walayat, we mean walayat of marriage. After reaching puberty, which can be said to be the main condition for interference in the personal affairs of individuals—which is under controversy by the Islamic jurisprudence of different sects—are they still under walayat? Here we are not talking about non-competence or anything else that we would like to make new exclusions for the principle of non-walayat. In this case, each of our jurists proposed a theory with a view to the implications of the jurisprudence and reference books of their time, some of which are replicated by their successors. However, some others have expressed more recent ideas regarding this time and its needs (Abiwalid, 2003).

2. Concepts

2.1. Definition and concept of puberty

The majority of Islamic jurists of Sunni and Imamiya agree that the adult man can marry independently, a man can marry any woman he wants and give him whatever present he wants and determine any amount of the marriage portion (Mahria) for her. Therefore, he is free in all directions of the marriage contract, and what he concludes is influential and correct and does not stop without anyone's permission. This is an answer that can be achieved with respect to all the rational and narrative principles. There is no objection or suspicion in it, and this is a rational account, an approach consistent with the nature of human beings. Each person reaches puberty after the childhood stage and must be independent as an adult. However, the fact that when this independence—which can be

dangerous in essence—should start requires discussion. What age should be considered as the age of growth and puberty that individuals have reached physically and mentally to the so-called sexual maturity from one hand, and the intellectual powers that make them confident and potent for leading a life on the other hand? In this regard, the Islamic jurists have stated different ages for boys' puberty. Most Shiite jurists regard the completion of 15 Hijri years as the age of puberty for boys. Among the other Islamic sects, the Shafi'i and Hanbali consider completion of 15 years as the age of puberty, but Maliki sect believes 17 is the age of puberty despite that Imam Malik himself stated 15 as the age of leaving childhood (Soqr). Hanafis have two narratives for the age of puberty of boys, 18 and 19 years old. So, in the opinion of the jurists, a 14-year-x-months old boy can decide for his future and the choice of his wife, which seems to be a great responsibility for the boys (Alzahili, 2009).

Whether or not a girl can have the responsibility of her marriage right after reaching the age of puberty is an important question that has been long discussed, that whether they can decide independently on their marriage after puberty like boys? First, it is better to see when the girl reaches puberty. As other jurisprudential issues, this issue is under controversy between different Islamic sects. Most of the Imamiya jurists consider 9-years (Hijri) as the age of puberty in girls. Shafi'i and Hanbali jurists have stated the age of 15. Hanafis state 17 as the age of puberty, and somewhere else 9 years is mentioned for the girls' puberty. After reaching this age, they quit the childhood, which we explained in detail. Here some questions are raised. Is the girl still under the walayat after reaching this age? The differences between jurists' idea on this issue are rooted in jurisprudence. Some religious scholars believe that as we consider independence for boys after reaching the age of puberty and give them the complete authority of their own affairs, the girl should be granted this autonomy and authority like the boy; and the girl can independently get married without obtaining permission. However, some other scholars take moderate opinion and say that the girl and her father and paternal grandfather must decide this together. The details are discussed in the rest (Ameli, 2008).

2.2. Definition of the mature virgin (Bakera Rashida)

Virginity in the word means remained and untouched, and virgin literally refers to a girl whose virginity is not lost by intercourse and intimacy. Therefore, if a woman has had no intercourse, but her virginity is gone in another way, she is called a virgin. On this basis, a virgin may even have a husband. So with this definition, two types of women can be identified:

First: those who have never married and have not had intercourse

Second: those who have previous intercourse

Therefore, the criterion of distinguishing virgins from non- virgins is not marriage, but having intercourse and losing virginity. If a girl has already been married to a man, but has been separated from him before any intercourse, she is also a virgin. Some women have lost their virginity for other reasons, but they are titled virgin, the famous quotation of the jurists is that a woman whose virginity is lost by jumping, falling, or severe menstruation, etc. is a virgin since the state of virginity is removed only by mixture with men and intercourse. On the other hand, a person whose virginity has been lost via coitus is called a widow, whether this is through appropriate Nikah or doubt or adultery, and in the case of a woman who has been approached by anus there are two claims: some believe that she is a virgin because she did not lose her virginity, but some consider her widow due to the decay of her pudency. In Sunni jurisprudence, Hanafis say: virgin is a female that has never had intercourse and so if a woman loses her virginity by jumping, or menstruation, etc. she is virgin. The same applies when a girl is married appropriately or inappropriately to someone, but she is divorced or the man dies before penetration. However, someone who loses her virginity through adultery is deemed virgin, meaning that, even though her virginity is lost but if she does not repeat adultery, and Hadd is not applied on her, unless she is considered widow (Babazadeh, 2008).

3. Review Of Different Opinions About The Extent Of Fathers' Walayat On The Marriage Of Mature Virgin

3.1. Wali's Independence Theory

As a girl reaches the age of puberty, does she remain under custody of her wali; does she have any authority over her marriage? If we want to give a general opinion, then we consider the non-interference of individuals in their own affairs due to the non-rationality of their interference, and after it has been recognized in the custom that they can do their affairs correctly, they will be given the opportunity to carry out their own affairs independently, and will not need the custody of anyone and no one can forbid them from interfering in their personal affairs, except with legal authorization.

However, In the case of girls' Nikah there is great conflict, and they do not pass easily on this issue; since from the beginning, there was a dispute on this issue between Islamic jurists and scholars rooted in the custom, jurisprudence, and the narratives. Therefore, the ideas on this issue are very different (Babazadeh, 2007).

For the walayat of parents on female offspring, some jurisprudents state a twofold reason; one is minor age and the other is virginity. The opinion of this group of jurisprudents is that, although the girl reaches the age of adulthood, she is still under custody and does not quit this condition. According to these scholars, though the girl reaches the age of puberty, she cannot be a party to the contract of marriage independently, and even some of the great jurists have come to the point that the father and paternal grandfather could compel the marriage and it is recommended for them to get permission from their daughter in this case. What can be understood here is that the old jurists believed that the girl did not have the power to even comment on her marriage, and that all the work was left to the parents, which could be consistent with the reality of that time. Of course, these people state their reasons from the Qur'an and the tradition that will be examined in the following (Babazadeh, 2007).

3.1.1. The evidence in Shiite jurisprudence

Those who believe in independence of wali in the marriage of their mature daughter refer to Hadiths and traditions of the infallibles (as) to justify their views. Some of these hadiths will be mentioned.

Sahihah Abdullah Ben Salt narrates from Abaahsan (AS): I asked about a little girl whose father made her marry, has she the authority when she is mature? He said: No, she has no authority with her father being alive; I asked if a virgin becomes mature has she authority? He said: No, she has not authority unless she is widow. The points that can be derived from this narration are, first, a girl whose father makes her marry underage will not have the power to violate this marriage when she is mature, and second: the virgin mature daughter cannot independently marry similar to an underage girl. What can be understood from this narration for the marriage of adult daughters is that father and paternal grandfather have authority, and the girl has no option at all in this regard. Third, this tradition has a point concerning the marriage of widow female which is accepted by our civil code. According to the aforementioned hadith, female widow can independently manage her affairs and marry anyone who wants to. The same hadith is narrated in Sahiha Halabi from Imam Sadiq (AS): I asked about the mature girl who had reached the age of women, does he have an authority with the existence of her father? He said: "With the father, she does not have the authority unless she is widow. Now, we have to check whether the girl has any right to choose a spouse?" Bohrani (1998: 14) Sahiha Halabi quotes Imam Sadiq (AS): In the case of a girl whose father married her to someone without her consent, he said: "With her father, she has no authority" Bohrani (1998: 13); if she is married, the marriage is correct, even if she is not pleased. In this regard, some have commented that: First, according to these words the inquirer stated the girl is not pleased with this marriage and the command of Imam Sadiq (AS) saying that although she is not pleased,

indicates that she is mature at the time of marriage, because otherwise, satisfaction is not valid except in the case of a mature girl, and also in the case of dislike, the same argument applies, and we take lack of satisfaction and dislike to after maturity. And consider the occurrence of marriage before puberty, it is quoted: *بغير رضي* indicating that from the beginning the girl under question in this hadith is mature.

In this case, a narration is also quoted by Zarareh that says I heard from Imam Sadiq (AS) who said: "Except for the Father, no one can cancel the marriage" (Feizalkashani, 2008: 15). Here, it seems to talk only on violation of the marriage, and nothing is said about independence or lack of independence of wali on marriage. Another interpretation of this narrative is that, if we carefully scrutinize this narrative, we find out someone can call off the work or legal action that he has created himself, and if wali makes a marriage, he has the authority to call it off, so by scrutinizing this narrative we confirm this view. Another narrative in this regard is quoted by Ibn Ya'four from Abu Abdullah (Imam Sadiq) (a): التمسح ذات الباء مه البكار الباذن أبائه: This narrative implies that virgin daughters who have father cannot marry without his permission. As we can see, this narrative implies the prohibition of the independent marriage of a girl and the corruption of marriage without permission of wali; some have argued that the girl could not marry individually. It seems that this narrative cannot support this theory, and the maximum thing that comes from this narrative is that the girl cannot independently make a marriage contract. The narrative does not tell us anything about the total independence of wali, but on the other hand, does not deny girl authority and intervention in her own affairs.

There are other narratives in this regard that indicate the independence of wali in Nikah, and introduce father as the wali of mature girl in the marriage relationship, limit of walayat is until the girl is virgin. Some other people who tried to justify this idea believe that what makes a girl unable to act independently in her non-financial affairs, especially her marriage, is that, a girl is deceived quickly. Thus Islam religion has held that a girl's elders should give her consultation to prevent mistakes. Of course, this seems to be a customary justification, not what the jurists have cited as the reason, including the narratives mentioned earlier. It should be noted that jurists are also affected by customs in any society and it cannot be denied that the custom of society has its own effect on their decree. They have their own justifications and, for example, stated that: inexperienced and affectionate girls, all of which have pure hearts and sentimental feelings, do not know the tricks of covetous men. They have never been trapped by such people and they will be fooled by their fake love and affection, and they will destroy their happiness and interests. Although this theory is somewhat correct, this is not the reason why a girl cannot properly manage her affairs, and the people, especially those who want to decide on the most important things in their lives, are less emotional and try to take a more rational decision, although they do not forget the affection and love since they play a vital role in the formation of the family. Thus, it is not correct to accuse the girls of these issues (Bohrani, 2000).

3.1.2. The reasons in Sunni jurisprudence

To enter this discussion, it is better to know that the Sunni jurists divide walayat into several sections. As discussed in previous parts, walayat is divided into two parts: compulsion walayat and authority walayat (walayat ijbar and walayat Ikhtiar). Walayat ijbar means that: one person is given the power of forcing another person, in other words, by this walayat the person can independently make a contract. Walayat Ikhtiar means: the wali has the right to marry his Mawali to someone, which should be with her satisfaction and willingness, but the wali has no independence. The jurists believe that the condition of marriage is that one person will be in charge of making this contract, whether it is walayat on one's own or someone else, and if there is such a walayat, the marriage is correct otherwise it is void by the majority of the jurists, but Hanafis deny it. Walayat Nadab is constant for each wali there is no difference between the walis, according to the order, it is constant in the case of the mature woman as well, and the conflict among Sunni jurists is whether this walayat is constant for such a woman whether she is virgin or not? Or if the woman is bound by a limitation, the walayat becomes compulsory. Hanafis completely consider an adult independent in marriage; the Shafi'i is differentiate between being widow or not, and believe that if she is virgin walayat Ijbar is necessary. In this regard, the Hanbali also agree with the Shafi'i. The Maliki also believes that walayat ijbar applies on virgin girls even if they are sixty or more years old. First, we will talk about independence of wali in marriage. The narratives which these people have presented to justify their views are

provided in the following. Narratives from the Prophet (PBUH) include *أذوا صمًا وفيها َ ادوا صمًا* that is, the widow is entitled the right to her own than the wali, and the virgin is asked for permission and the permission is her silence. Another *ليس للتي مع الثيب امر البيت* says: who Abbas Ibn by quoted is narration *صمًا تستامر َ صمًا اقرارًا* Wali does not interfere with widow and consultation can be given to the orphan woman whose satisfaction is her silence.

This group believes that from these two narratives, one concludes wali have authority on widow, or, in other words, wali is more competent than his daughter. Moreover, about the marriage of Aisha, who was married to the prophet without the permission of Aisha, and other instances in the life of the Prophet and the 4 Caliphates, they have come to the conclusion that the main reason for forcing the mature daughter to a marriage is her virginity, since they are naïve about marriage! Another justification for this theory is that a girl is not trustable for her expediency because she is incomplete and is deceived quickly, so it is not permissible to grant her the authority of marriage, as someone who spends money in vain ways. Other reasons for this are the Qur'anic verses, believing that these verses attribute Nikah to the wali; such as these verses, *التكذبا المشركيه دتي ُمنًا* . In their belief Nikah is concluding a marriage that the God has placed wali as the audience and author of this issue. They interpret the word *ايم* as a woman who does not have a husband that would be a virgin or a widow.

Other reasons for this are the narratives that have been quoted from the elders of the Islam religion, such as those narrated from the

Prophet (PBUH). *ال تسج المرابي المرابي ال تسج المرابي وفيها فان الساوي ي التي* which means that no woman should take the authority of marriage of another woman, nor should she take the authority of her own marriage; truly an adulteress is the one who marries by herself. It can be said that this narrative explicitly denies the independence of girls in marriage, but the question remains whether the narrative totally condemns the will of the daughter. In our view, such an interpretation cannot be extracted from this narrative. This narrative only prohibits girls from marrying without the permission and interference of their father, but does not hold anything for the wali. Another tradition quoted from the Prophet (PBUH) is *الوكاح البلي*, which also does not allow marriage without wali. In other words, the marriage contract does not exist without wali; in our opinion, this does not deny girl's marriage shared authority, and at least it can be said that this narrative is not exclusively for independence of wali. Another narrative is quoted by Aisha of Prophet Muhammad (PBUH): *اذن َ ليا فكاذا باطل، فكاذا باطل، فكاذا باطل، فان دخل يا فلا المر بما استندل مه ايما امرا وكذت بغير* any woman who marries without permission of her wali, her Nikah is void (three times) if she is penetrated then marriage portion is applied for her, and if they disputed the ruler is the wali of someone who has not wali (Horalameli, 2008).

We did not find any narrative which directly recognizes wali as the uncontested ruler in the marriage issue, although we believe that this way of thinking may be understood in the light of the customs of the society of that time. Since absolute authority can be understood by reference to history and it is obvious that the intellectual conditions of the time affect the social thinkers as well. Finally, some would interpret the narratives with the common view. In our opinion, the only thing that can be clearly understood from this narrative is that the Prophet of Islam nullifies only the marriage that was carried out without permission of wali, and we know that we can include the permission as a part or condition of the marriage; therefore, this narrative, as in previous narratives, can be accepted for the sake of shared authority theory of marriage. Another reason these scholars give is rational reasoning and they believe that marriage is an important thing and a contract of life. It is assumed that people live with each other for good, and this brings many effects and outcomes for marriage, leading to being very careful about marriage while it is not easy to research about people. But the girl may decide about marriage with more freedom because the women are not fully aware of the men and are immediately affected and deceived and heavily influenced by them, besides women are not futuristic. It can be said that, when it comes to rational reasoning, there must be at least an acceptance so that others can accept this idea. If we say that they are irrational, or low-minded it is not acceptable unless with scientific evidence (Horalameli, 2001).

Some of the Sunni sects, like the Shafi'i, consider wali permission as the absolute condition of marriage, and consider the marriage to be void without the presence of wali; and some, like Hanafis, do not consider the interference of wali as a prerequisite for the authenticity of marriage contracts and believe that a woman can marry on her own will. However, Shiite has an explanation and does not accept any group in practice; the description of Imamiya views is provided in the following:

- A) Regarding a widow, jurists believe in her independence in Nikah, meaning that she can marry without permission and satisfaction of her wali, and she is in charge of herself.
- B) In the case of the mature virgin, the most famous jurists believe in collecting the permission between wali and the girl, in a way that the independence and sovereignty of will (of daughter) are preserved and the expediency and intention of wali are respected.
- C) In the case of a minor daughter and a minor son, wali is entitled to admission and interference, in such a way that the proof of walayat in the marriage of minor son and the minor daughter is one of the determinants and both Sunni and Shiite jurists agree with it, and even some claimed consensus.

3.2. Girl's Independence Theory

3.2.1. Girl's Independence Theory in Shiite Jurisprudence

Recent jurists believe that the father and the paternal grandfather do not have walayat over a mature virgin, and the daughter in such cases can independently establish her Nikah. As we have said and as accepted in the field of law, arriving the age of puberty, any person moves out of walayat and people do not have walayat on each other. That we believe in the walayat of the people in the minor ages is because people at a young age cannot properly think and consider their interests. This situation is until they reach the age of puberty when they can do their affairs properly, and their affairs will be left to them, and in these cases, they will no longer need custody and there is no difference between girl and boy in this regard.

The study of narratives and other references of jurists and Islamic scholars and lawyers indicate that there are some narratives concerning the independence of the daughter quoted from Imams (as) which were referred to in jurisprudential books. As stated, our recent jurists are of the opinion that the girl is independent like a boy in their own affairs, and we will examine the narratives that are brought in jurisprudence books in the following. Yazid bin Mu'awiyah quotes from Abi Ja'far (AS) girl is the owner of herself, except a fool girl. What can be said is that in this narrative, the girl has the right to keep her affairs and, like other individuals, only in some cases that have not reason (natural fool), she cannot intervene in her own affairs, and this is where she needs wali. Another narrative of Zarareh quoted from Abi Ja'far (a) is that: When a girl owns her own affairs and buys and sells and gains from her property what she wants, and she is allowed to do so, and marries, and if she does not do so, then her marriage is not correct except with the permission of her wali. There are a few points in this narrative. When it speaks of a girl buying and selling and rational spending in financial affairs, it indicates the intellectual maturity and the so-called social maturity of the girl, which is a very delicate and precise point, and it is also what we call growing up, a growth that allows interference in all matters of the individual, which implies that in marriage, in addition to natural and sexual maturity, rational maturity should be considered as well, then the marriage can be left to the people themselves. In other words, if a girl can and does organize her life in the community, she no longer needs the permission of her wali and she can freely marry (Horalameli, 2006). It seems that the concept of this statement, which is quoted from the infallible Imam (AS), is that girls who deal with multiple people in the community can better understand the good and the bad, which makes a distinction among the girls and those who were not in the community and have been less concerned with other people or have not shown their maturity in any way, such as buying and selling, and other cases in this narrative, they have not reached maturity and if they intend to marry, they must have the permission of their wali (Horalameli, 1997).

Some objections have argued that the meaning of the word buy and sell and the other items referred to in this narrative cannot be interpreted, but is a secondary issue. Or, quit from financial support

cannot lead to quit from wali's custody in Nikah, this narrative is about widow and those who do not have a father. As we have said in the previous narrative, the daughter has no authority with the presence of

her wali. So how the girl owns her own affairs? This is a good mix of traditions. As mentioned above, the narrative did not in any way seek to distinguish between the girls otherwise it would not use the word امرأى. For example, if the mentioned issues above were intended, the words such as ثيب (widow) or the like were used. Or at least the cases claimed by these jurists were mentioned. As noted above, widow can assume her marriage herself independently, so even if the widow did not do of the works mentioned in the above narrative, she is not denied of the right to independent marriage by anyone of the jurisprudents. Thus, she can independently take her marriage in the same way about an orphan girl who, according to explicit Quranic texts, can get married after their maturity, and no one in Imamiyah jurisprudence, of course as far as we know, has considered wali for them. So, it is not a matter of talking about the having walayat or not over these people, that we need to prove and such interpretations of the traditions cannot contain the truth. Given the meaning of the sentence and the fact that girls were accused of lack of futurism, it seems to us that this narrative indicates that girls in the society can properly recognize people, and they cannot be accused of being limited. There is another narrative in this regard that Abi Maryam quoted Imam Sadiq (as) as the virgin daughter, who has a father, does not marry without the permission of the father. If the daughter had the authority she has the right to marry whatever. By authority, authority over their affairs is intended. Those who advocate for the independence of mature daughter in marriage argue that the word virgin, which is at the beginning of the narrative, is meant for a minor or non-mature girl, and the part that considers a girl owner of her own affairs refers to mature virgin. The controversy that

has been made in this area is, firstly, we cannot specify the general without reason, but we have the opposite. Secondly, your argument is begging the question. Therefore, the appearance of this saying of the infallible Imam is that we must remain on the generals of saying at the top of the narrative, and interpret the word المالكُ امرأاً to the widow or virgin daughter who has not wali Qahri. With the evidence that we already have forbidding an adult girl from marriage, it can be said that the principle walayat is the lack of walayat, which is one of the basic principles. In this regard, those people can be considered under walayat who have not reached the age of growth or cannot realize their interest; which include only two groups of minor and insane persons. This can be accepted as a general principle, but there are controversies in the case of a mature virgin daughter. According to the narratives that contradict each other, we cannot enter the adult daughter in this exception—walayat—which is considered to be general. Therefore, for the inclusion of an exception on the original principle, which is lack of walayat, we cannot invoke that the principle of walayat is a general principle which, for an exception, requires specific reasons. And because we have no reason, the mature virgin girl remains under walayat (Jafarilangaroudi, 2004).

Another narrative has been quoted from Abu Abdallah (AS) as: There is no fear about the marriage of the virgin girl who is pleased to do so without the permission of her father. Here, it can be said that the principle of walayat over others can be accepted as far as their decisions cannot be rational, but after these people reach intellectual puberty, we must have a decisive and indisputable reason if we want to

subject their actions to others' influence, otherwise we return to the original principle after reaching maturity and we cannot, as in the case of a minor age, separate from our original principle and distinguish between men and women and between virgin and widow women. Another issue that is important here is the case where one can refer to the practical tradition of the Prophet (PBUH) about the marriage of his daughter Fatemeh Sediqa (AS). When the Amir Momenan (AS) proposes before the Prophet (PBUH), there were other suitors who had been rejected by Hazrat Zahra (S) before, but she was pleased with the suggestion of Imam Ali (AS), and she did not turn her face away. The quotes from the jurisprudential and historical books indicate that the Prophet (PBUH) referred the proposals to his great daughter and did not intervene at all in accepting or rejecting these cases. The decision was taken by the Prophet's daughter (s), and with this behavior the Prophet (PBUH) wanted

the Arabs, whose families were based on ethnicity and relative, to understand that the girl also has the right to choose and the criterion is not father's pleasure and consent. It is the girl who lives with a man, and that is why one cannot be persuaded that the father can give his daughter to anyone he wants, or to forbid marry someone who does not agree with though she is pleased with him. This issue was new and so-called an innovation in the historical events and customs at that time among the Arabs, who considered father as the absolute leader of the family. If we want to refer to the Prophet's tradition, this is a good example for this claimant. Therefore, the girl can marry independently and it is recommended to ask for her parents' permission. In some other cases, it has been claimed that most of the Imamiyah believe that the adult mature daughter owns all her affairs, such as contracts and the like, even as a marriage, like a widow, whether she has father and paternal grandfather or not, whether father is satisfied or displeased with this. Somewhere else, in jurisprudential books, it is stated that after the girl reaches the age of maturity, and that the father's and paternal grandfather's walayat is over, if madness or stupidity overcomes the girl, wali will be the Sharia ruler. Another reason that scholars have stated for this view is in the Qur'anic verses, as in verse 232 of Surah al-Mobarakeh Baqara: *تَعْضَلُهُ إِنْ يَكْذِبْهُ إِزْوَاجِهِ إِذَا تَرَاضَا بَيْنَهُمَا بِالْمَعْرِفَةِ* The full translation of this verse is that after divorcing women, do not forbid them from marrying their husbands, if they decently compromise among themselves. In this regard, there are interpretations in the texts of jurisprudence and commentary. Some believe that if this verse does not imply ineffectiveness of walayat, there is no sign of its effectiveness as well. What we have said so far is the reasons for this opinion, and it has been claimed that most of the recent jurists have accepted the theory of the independence of the girl. Opponents have provided another reason for the ineffectiveness of the narrative, they believe that all the traditions from the Imams (AS) in this issue have been due to the atmosphere that dominated that time and Imams dissimulated their real intention (Taqya) in this case; and for this reason, these narratives cannot be true, therefore, they are void. The answer to this can be that: apart from the Hanafi, who consider the mature girl independent in her marriage affairs, the rest of four sects, which are Hanbali, Shafi'i and Maliki, believe in walayat over daughter in the issue of marriage. Thus, it cannot be said that the narratives from several Imams are said by Taqya. On the other hand, we have the prophet's traditions. A group that believes in the shared walayat has used these narratives; according to both groups of narratives, nothing else can be understood except the recommendation of asking for permission (Kalini, 2015).

3.3. Examining the evidence in Sunni jurisprudence

Among the jurists of the four Sunni sects, the Hanafis believe that when the girl reaches the age of puberty and perfection, the father's walayat on her is over and she can marry herself and the parents have no right to object except in the case that she wants to marry someone not appropriate. Only in this case can they demand a ban.

We start with the question of whether there is a difference between virgin and widower. The views of other sects were reviewed in previous discussions now we are going to see what Hanafis believe. In this regard, they assume that there is no difference between the virgin and the widow, since the cause of the compulsion is the minor age and lack of awareness from the state of marriage in them can be impediment of marriage. But such limitations do not count for mature wise woman. The other reason for this is a narrative that says: the widow is being consulted and the virgin is asked for permission: they believe that the meaning of virgin in this narrative is the virgin girl and the minor girl here does not have a place for attention because she is neither consulted nor asked for permission, and this saying that widow is consulted and virgin is asked for permission refers to this point that both groups' opinion is obtained for the marriage and they both have the authority and no difference can be made between the two groups of women. Another reason they state for no difference between the widow and the virgin are the hadith narrated by Abu Hurairah from the Holy Prophet (PBUH): *إِنْ تَكَخَّضَ الْيَمِّ دَتِي تَسْتَأْمِرُ ۖ وَإِلَّا لِكُرِّ دَتِي تَسْتَأْذِنُ*. They believe that in this narrative, the marriage without their consent is banned, and walayat Ikhtiar is true here. But, as to why a virgin can govern her own marriage, some reasons are provided that will be discussed below (Maghnia, 2003).

The first evidence is mentioned is the verses of the Qur'an. To

says: Baqarah of 230 verse the end, this *فان طلقا فالت دل ل مه بعد دتي* means that whenever (he) divorces a woman, the woman is not halal for him unless she chooses another husband. From this verse, it can be understood that Nikah is related to the woman and she can do Nikah. In the rest of the same verse, it is stated that: *يتراجعا فال جباح عليا* it is not a sin for a husband or wife if they wish to refer to one another. Here, too, God has brought marriage without interference of wali. In verse 231 of Baqarah *اذا طلقتم النساء فبلغه اجله فالتعضل ه ان بيكده* says after you divorced your women and their time have passed, do not forbid them from marrying their husbands. Another reason provided for women's independence in marriage is a narrative quoted from Prophet Muhammad (PBUH). *تستاذن في وفيها ادوا صماتا الثيب ادق بفيها مه ليا البكر*. The widow is more qualified in her own affair than her wali, and the permission of virgin woman is obtained, and her silence is her permission. Ibn Abbas has narrated this hadith from the Holy Prophet (PBUH). The narratives mentioned so far do not seem to be sufficient for the independence of the daughter in marriage. Since none of the hadiths and verses directly address the independence of the girl in marriage. For example, in the case of a marriage after divorce, it is argued that our discussion is not about widow's independence in her marriage, and all the words and the disputes are related to the marriage of the virgin daughter. In the statements on return of husband and wife, none can definitely be attributed to the virgin girl. But it should be reminded that the marriage of the virgin daughter can also be implicitly understood from hadiths and verses. Another hadith that has been mentioned in this regard is: *الليم ادق بفيها مه ليا*, which means that the girl is more righteous to her own affairs than her wali (Musavialbaghdadi, 2010). The scholars said that this hadith is true for all girls, and we cannot attribute this hadith to any of the three groups we consider, including virgin, orphan, or the widow; because we do not have any reason for them. Another reason for this comment is the rational argument that when a girl intervenes in her own marriage, she intervenes in her specific right, and she has the authority to interfere, so this interference is correct. They claim that as a girl has the right to interfere in all her properties, she has the right to interfere in all matters (Musavikhomeini, 2011; Najafi, 2012).

3.4. The claim of collective/ shared authority of the daughter and daughter's wali in the marriage

After two opinions discussed above, a third opinion comes after the two which can only be found in the Imamiya jurisprudential books, that is the claim of shared walayat. This belief means that the girl must, in order to be married, obtain her wali's permission, i.e. wali's permission is required in Nikah. There are some narratives for confirming this idea, one of them is an authentic hadith narrated by Safwan: Abdul Rahman Musa Ibn Ja'far (AS) consulted about the marriage of his daughter to his brother's son, and it was said to him: Do it if she has satisfaction, there is a goodness for her in this... Another reason which seems relevant is that the theory of shared walayat is based on collecting traditions that was mentioned in previous discussions. According to evidence this theory is one of the weakest ideas in this issue. Some of the scholars have tried to collect among the narratives that consider the father independent in marriage, with narratives that regard the girl as independent in marriage, saying that in order not to reject traditions, we must combine these two kinds of narratives and know both involved in marriage, as they say, *thus, we can conclude that it is better to add and collect the narratives.* However, there are objections to this theory and stated that the traditions that consider the father independent in the matter of marriage object the participation and involvement of other people than wali—the girl, and also the narrations that regard the daughter independent in marriage prohibit the interference of the father in the marriage. The illusion that we collect the principles and traditions via narratives despite the difference in their content, has led some of the jurists to this theory (Tabatabaiee, 2010). However, it seems a mere mistake, but in any case, some of the jurists accepted this view and have argued that it is not permissible for a virgin mature girl, with the existence of his father and paternal grandfather, to marry without a permission from them --a permanent Nikah. Some other jurists, although they believe in the independence of the girl in the marriage, are cautious about taking permission from wali. It can be said that this is a sub-theory

based on the theory of shared *walayāt*; since in the above theory, both girls and women should be satisfied with this, in other words, they make the contract together. But in the theory last mentioned, which we said at the end, the daughter could independently marry, but for respect to parents and preventing girl's mistake and according to the Iranian society customs they have recommended to obtaining wali's permission. They have considered this recommended for virgin and even widow girl, but emphasized on mature virgin and that some of the jurists obliged the virgin daughter to obtain permission to avoid absolutism cannot be the reason for the recommendation (*Istehbab*) of obtaining wali's permission. Therefore, even the belief in obtaining permission is not correct due to the virtue of this issue. First of all, it should be proved that this issue is *mustahab* which is impossible due to the opinions of the jurists. On the other hand, when they are required to get wali's permission because it is *mustahab*; it should be noted that *mustahab* does not impose a necessary and obligatory duty on individuals. It can be said that this theory is the same as the theory of independence of wali in many respects, although it does seem to be different in practice (Tusi, 2000).

3.5. Independence of wali in permanent marriage and not in marriage

This theory means that the father and the paternal grandfather have complete *walayāt* on virgin daughters in the permanent marriage, but in the temporary marriage, this is the girl who can independently decide on her own affairs. The appearance of the matter is that the scholars wanted to collect between the traditions that consider absolute *walayāt* over virgin daughter, and the traditions on independence of the virgin girl and the other traditions and somehow take all the issues in their judgment. The narratives that led to the formation of this idea will be mentioned. It is quoted: I asked about the temporary marriage of a virgin who has father and paternal grandfather without their permission. He said: There is no fear. From this narrative, it is found that a girl can independently interfere in her temporary marriage. Another narrative by Abi Sa'id quotes Abuabdollah (AS) I asked about temporary marriage of a virgin who has a father and paternal grandfather. He said: not forbidden and we do not say it is a weakness of the soul, as they say. These traditions have been mentioned. Of course, in our opinion, in addition to the fact that these narratives confirm temporary marriage by girl, points another important issue that is probably associated with a negative view of the people, i.e. at the end of the narrative, it has been mentioned that a temporary marriage contract is not a weakness of the soul which unfortunately has not been adequately addressed in our society, and maybe it is not compatible with custom and tastes in our society, because we can only find these rules and hadiths in the book of jurisprudence. The question that rises here is whether the father has *walayāt* on daughter after the temporary marriage. Does this permission nullify the *walayāt* of the father or the grandfather in the permanent marriage? And does not this lead to escape from the law? And there are many other questions that come to mind in this regard. As we know, temporary marriage has been

accepted only in Imamiya jurisprudence, and so this theory and the next theory are found only among the Imamiya jurists and in their books. And Sunnis do not accept these ideas. So, what should we do if we want to accept these ideas in Imamiya jurisprudence? In Imamiyah jurisprudence, even if we believe that the father has *walayāt* on daughter, it is assumed that the daughter is a virgin.

The consensus among Imamiya jurists is that the father and the father of the paternal grandfather do not have any *walayāt* on the widow. It can be said that the reason of *walayāt* is the virginity. So if a girl could have a temporary marriage, there would not remain a place for the father and grandfather's *walayāt*, except to assume that there is no intercourse beforehand, which cannot be a correct viewpoint as well. On the other hand, when the girl confronts her father and grandfather and their disagreements, she puts them in a temporary marriage to save herself from the opposition, and, in this way, free herself from wali's independence in a permanent marriage, the so-called jurisprudential fraud. What comes to mind in this regard is that one cannot leave this view easily out of criticism. It quickly comes to mind that the jurists take into account the aspects of a matter in order to give an opinion, but this does not seem to have been critically taken into account, and it is possible to say that this viewpoint has been presented without any attention to marginal and even the main issues of marriage, which is worthy of further consideration and more precision. It is against the common sense

that in the temporary marriage which is less worthy than the permanent marriage, authority is given to the daughter and the permanent marriage to the father

because temporary marriage is a serious matter and, on the other hand, why do not give her the permission of permanent marriage when she is allowed for the temporary one. On the other hand, the point that can be mentioned is that in our society, the permanent marriage has been always accompanied by the supervision of the parents, and this is an accepted thing in the days of our ancestors. Therefore, for not disagreeing with this procedure from one hand, and the existence of hadiths which support this viewpoint, the jurists considered wali authorized in permanent marriage as in the customary practice of society; and have given the temporary marriage authority to the girl which is less accessible in the historical texts of Arabs and Iran in order to both get rid of objection to wali of the girl and also not to be accused of limiting girls, however the consequences of this should also be taken into account and do not cite the traditions without regard to the effects. Since the traditions in this context consider girl independent only in temporary marriage and never been in permanent marriage, and therefore it cannot be concluded that father and paternal grandfather have walayat in permanent marriage and girl in temporary marriage; because there are some hadiths that contradict the first part of this theory.

3.6. Girls' independence in permanent marriage and not in temporary marriage

The believers in this claim believe that the girl can take the responsibility of her permanent marriage, but in the temporary marriage

contract father and paternal grandfather take charge of it and the girl can make a permanent contract with her beloved person. Proponents refer to two hadiths. One is a hadith quoted by Abi Maryam from Abi Abdullah (AS): a virgin that has father does not have a temporary marriage except by the permission of her father. Another is a Hadith narrated by Baznati from Imam Reza (PBUH): a virgin does not marry temporarily except by the permission of her father. Of these narratives, it is concluded that the father permission is constant in temporary marriage and the daughter's in permanent marriage. In this regard, there are also some defects like before. First, when a narration gives the temporary marriage authority to the father, one cannot deduct a reverse result from it. Since the narrations mentioned were not about that. On the one hand, as mentioned in the previous section, there are narratives about the independence of the daughter in the books of hadiths. It can be said اذا تعارضاً تساقطاً . Also, if we carefully note the hadiths mentioned, these narratives put the marriage in the same way as the permanent contract, which we said in the shared walayat theory, and nothing more can be elicited from the aforementioned hadiths, whether it is permission for a person who has the power of creation but needs her wali's permission to conclude Nikah. Thus, it cannot be said that the father has the absolute authority in the marriage contract according to these traditions.

4. Conclusion

Imamiya jurists, as well as Sunni jurisprudents, agree on the walayat of paternal grandfather on minor girl and immature girl. But there is a controversy among the jurists on the mature virgin among the jurists. The claims and ideas of Imamiya can be summed up as five claims:

- A) The continuity of walayat of father and the paternal grandfather on the mature virgin girl.
- B) The mature virgin's independence in marriage.
- C) Collecting the walayat.
- D) The continuity of walayat for the father and paternal grandfather in the permanent marriage, not temporary.
- E) The continuity of walayat in temporary marriage, and its decay in permanent marriage.

Among these claims, the most well-known among former and later jurists of Imamiya is mature virgin independence in marriage. In the Sunni jurisprudence, there are two claims that Shafi'i, Maliki and Hanbali jurisprudents believe in the independence of wali in the marriage of mature virgin. But the Hanafi jurisprudents believe in the independence of virgin girls in marriage. The civil law of Iran has also chosen a secondary claim due to the social security issues and the rights of girls in the

community; and obtaining the permission of the father or grandfather is necessary for the marriage of a virgin.

References

- [1] Abiwalid, M. 2009. **Bedayat Al-Mujtahid And Nahaiat Al- Moqtased, Maktab Al-Azharaiat.** Vol. 2, N° 1: 17. Egypt.
- [2] Abiwalid, M. 2003. **Bedayat Al-Mujtahid And Nahaiat Al- Moqtased, Maktab Al-Azharaiat.** Vol. 2, N° 1: 17-92. Egypt.
- [3] Alzahili, W. 2009. **Al-Fiqh Al-Islamyah And Adelatah, Dar Al- Fekr Pub, Damascus.** Vol. 9, N° 4: 91. Beirut. Lebanon.
- [4] Ameli, Z. 2008. **Al-Ruza Al-Behia Fi Sharh Al-Loma Al-Damishqia, Maktab Ayatollah Al-Mar'ashi Al-Najafi.** Vol. 5, P. 116. Qom. Iran.
- [5] Babazadeh, A. 2008. **The Issues In Marriage And Family Law, The Office Of Research And Publications Of Badr,** P. 38. Beirut. Lebanon.
- [6] Babazadeh, A. 2007. **The Issues In Marriage And Family Law, The Office Of Research And Publications Of Badr.** P. 36. Beirut. Lebanon.
- [7] Bohrani, S. 1998. **Al-Hadaeq Al-Nazera Fi Al-Ahkam Al-Etrat Al- Tahera.** Vol. 23, P. 195. Egypt.
- [8] Bohrani, Y. 2000. **Al-Hadaeq Al-Nazera Fi Al-Ahkam Al-Etrat Al- Tahera.** Vol. 23, P. 201-203. Egypt.
- [9] Feizalkashani, M. 2008. **Mafatih Al-Sharaieh.** Majma Al- Zakhaier Islamiya Publication. Vol. 2, P. 265. Beirut. Lebanon.
- [10] Horalameli, M. 2008. **Vasael Al-Shia, Dar Al-Haia Al-Torath Al- Arabi.** Vol. 14, N° 3: 203. Beirut. Lebanon.
- [11] Horalameli, M. 2001. **Vasael Al-Shia, Dar Al-Haia Al-Torath Al- Arabi.** Vol. 14, N° 3: 203. Beirut. Lebanon.
- [12] Horalameli, M. 2006. **Vasael Al-Shia.** Vol. 14, N° 3: 201. Egypt.
- [13] Horalameli, M. 1997. **Vasael Al-Shia.** Vol. 14, N° 9: 214. Beirut.
- [14] Lebanon.
- [15] Jafarilangaroudi, M. 2004. **The Encyclopedia Of Civil Law And Commerce.** Mizan Publication, P. 112. Beirut. Lebanon.
- [16] Kalini, J. 2015. **Al-Foru Mina Al-Kafi, Dar Al-Kotob Islamiyah.**
- [17] Vol. 5, N° 6: 394. Beirut. Lebanon
- [18] Maghnia, M. 2003. **Al-Fiqh Ala Al-Mazahib Al-Khamsa.** 7th Ed. P.
- [19] 322. India.
- [20] Musavialbaghdadi, M. 2010. **Al-Intisar, Nashr Al-Islami Publication.** P. 283. Beirut. Lebanon.
- [21] Musavikhomeini, S. 2011. **Tahrir Al-Vasilah, Bita Publication.**
- [22] Vol. 2, P. 393. Beirut. Lebanon.
- [23] Najafi, M. 2012. **Javaher Al-Kalam, Maktab Al-Islamiya.** 2nd Ed.
- [24] Vol. 19, P. 229. Beirut. Lebanon.
- [25] Tabatabaiee, S. 2010. **Almizan Fi Tafisr Al-Quran, Dar Al- Kotob Al-Islamiya.** 2nd Ed. Vol. 2, P. 249. Beirut. Lebanon.
- [26] Tusi, A. 2000. **Dar Al-Kotob Al-Islamyah.** Vol. 3, N° 3: 234. Egypt.