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GUARDIANSHIP AUTHORITY IN MARRIAGE WITHIN SHIITE SCHOOLS: A COMPARATIVE ANALYSIS

A AUTORIDADE DE TUTELA NO CASAMENTO NAS ESCOLAS XÍITAS: UMA ANÁLISE COMPARATIVA

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Ahmet Ekinci*
*Faculty of Theology, Kafkas University, Kars, Türkiye
Orcid: https://orcid.org/0009-0008-5840-0441
ahmedekinci@hotmail.com

Mustafa Arasoğlu*
*Faculty of Theology, Kafkas University, Kars, Türkiye
Orcid: https://orcid.org/0000-0002-7745-8453
mustafaarasglu@gmail.com

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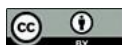
Abstract

Guardianship authority (*wilāyah*) in the marriage contract stands out as a significant and debated issue in Islamic family law, particularly in terms of establishing a balance between individual consent and the interests of the family and society. Although there are common principles regarding this issue among Shiite schools of thought, there are distinct differences in opinion concerning the scope of guardianship, the limits of compulsory guardianship (*wilāyat al-ijbār*), the role of the woman's consent in the validity of the marriage, and the legal status of marriage contracts concluded without a guardian. This study aims to examine the approaches of the Ja‘farī, Zaydī, and Ismā‘īlī schools -three prominent Shiite branches- regarding guardianship authority in marriage through a comparative methodology. The study adopts a qualitative research method, analyzing the primary sources of these schools based on classical jurisprudence (*fiqh*) literature. The views of the schools are handled comparatively within the framework of the identity of the guardian (*walī*), the acceptance of compulsory guardianship, the legal value of the woman's consent, the validity of marriage contracts concluded without a guardian or permission, and the jurisdictional areas of the judge (*qāḍī*), executor (*waṣī*), master, and agent (*wakīl*). As a result of the analysis, it has been determined that in the Ja‘farī school, guardianship is predominantly valid for minors and those lacking legal capacity; in the Zaydī school, guardianship is strictly limited by the consent of the sane and pubescent (*āqīl-bāligh*) woman; and in the Ismā‘īlī school, while the authority of

Resumo

A autoridade tutelar (wilāyah) no contrato matrimonial destaca-se como uma questão significativa e debatida no direito de família islâmico, particularmente no que diz respeito ao estabelecimento de um equilíbrio entre o consentimento individual e os interesses da família e da sociedade. Embora existam princípios comuns sobre essa questão entre as escolas de pensamento xiitas, há diferenças distintas de opinião quanto ao âmbito da tutela, aos limites da tutela compulsória (wilāyat al-ijbār), ao papel do consentimento da mulher na validade do casamento e ao status jurídico dos contratos de casamento celebrados sem um tutor. Este estudo tem como objetivo examinar as abordagens das escolas Ja‘farī, Zaydī e Ismā‘īlī — três ramos xiitas proeminentes — em relação à autoridade da tutela no casamento por meio de uma metodologia comparativa. O estudo adota um método de pesquisa qualitativa, analisando as fontes primárias dessas escolas com base na literatura clássica de jurisprudência (fiqh). As visões das escolas são tratadas comparativamente no âmbito da identidade do tutor (walī), da aceitação da tutela obrigatória, do valor jurídico do consentimento da mulher, da validade dos contratos matrimoniais celebrados sem tutor ou permissão e das áreas de jurisdição do juiz (qāḍī), do executor (waṣī), do senhor e do agente (wakīl). Como resultado da análise, determinou-se que, na escola Ja‘farī, a tutela é predominantemente válida para menores e pessoas sem capacidade jurídica; na escola zaydita, a tutela é estritamente limitada pelo consentimento da mulher sã e pubescente (āqīl-bāligh); e na



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guardianship is restricted to a narrow framework consisting of the father and the paternal grandfather, special importance is attributed to the institutions of consent and proxy (*wakālah*).

Keywords: Law, Ja'farī, Zaydī, Ismā'īlī, Marriage, Guardianship.

escola ismaelita, embora a autoridade da tutela se restrinja a um quadro restrito composto pelo pai e pelo avô paterno, é atribuída especial importância às instituições do consentimento e da procuração (wakālah).

Palavras-chave: *Direito. Ja'farī. Zaydī. Ismā'īlī. Casamento. Tutela.*

1 INTRODUCTION

The authority of guardianship (*wilāyah*) in the marriage contract is one of the fundamental issues in Islamic family law that directly brings to the fore the question of how the relationship between individual will and the interests of the family and society should be established. Although there are certain common principles regarding this issue among Shiite schools of thought, significant differences of opinion exist concerning the scope of guardianship, the limits of compulsory authority (*wilāyat al-ijbār*), the role of the woman's consent in the validity of the marriage, and the legal status of marriage contracts concluded without a guardian. Upon reviewing the literature, it is observed that while there are numerous general studies on the issue of guardianship in the marriage contract within the context of Sunni schools (For the primary studies on the subject, see: Köse, 2003; Bayındır, 2012; Güler, 2021; Aksoy, 2022; Genç, 2019; Aslan, 2016; Demir, 2025; Demir, 2024; Yıldız, 2012), studies within the context of Shiite schools are quite limited. The first of the studies in this field is the paper titled "Guardianship Authority in Marriage According to the Ja'farī School" (*Ca'ferî Mezhebine Göre Nikâhta Velâyet Yetkisi*) authored by Ahmet Ekinci (Ekinci, 2025). In the aforementioned paper, the institution of guardianship in marriage within the Ja'farī school was handled independently and examined within the framework of intra-sectarian debates. The second study is Fatih Çinar's article titled "The Issue of the Guardian in Marriage According to al-Shawkānī" (*Şevkânî'ye Göre Nikâhta Veli Meselesi*) (Çinar, Fatih, 2016). In this study, the views of al-Shawkānī, who belonged to the Zaydī school in his early period and later adopted the understanding of absolute *ijtihad*, were evaluated comparatively with the approaches of the Sunni schools. On the other hand, an independent study that addresses the views of the Ja'farī, Zaydī, and Ismā'īlī schools -which persist today- on guardianship

in marriage with an inter-sectarian comparative approach has not been identified in the existing literature. Aiming to fill this gap in the literature, this study intends to examine the approaches of the Ja‘farī, Zaydī, and Ismā‘īlī schools in a holistic and comparative manner.

The purpose of this study is to examine the approaches of the Ja‘farī, Zaydī, and Ismā‘īlī schools regarding guardianship authority in the marriage contract through a comparative methodology and to reveal the similarities and differences between these schools. In this context, by evaluating the identity of the guardian (*walī*), the acceptance of compulsory guardianship, the legal value of the woman's consent, and the jurisdictional areas of other authorities, it is aimed to provide a systematic framework for Shiite marriage law.

A qualitative research method has been adopted in the study, and document analysis based on classical jurisprudence (*fiqh*) literature has been taken as the basis. For the Ja‘farī school, the primary jurisprudential works of the school and the views of contemporary *mujtahids* were examined; for the Zaydī school, classical Zaydī sources were analyzed; and for the Ismā‘īlī school, the works of Qāḍī Nu‘mān were reviewed. The views of the schools were handled under the same headings to conduct a comparative analysis, and to ensure conceptual consistency, fundamental concepts such as *wilāyah* (guardianship), *ijbār* (compulsion), *ijāzah* (ratification), *mukhayyarah* (option), *mawqūf* (suspended), and *bāṭil* (void) were evaluated within the framework of the schools' own terminologies.

This study is limited to the views of the Ja‘farī, Zaydī, and Ismā‘īlī schools within the Shiite tradition regarding guardianship authority in marriage. Qāḍī Nu‘mān’s works, *Da‘ā’im al-Islām* and *al-Iqtiṣār*, which are the fundamental pillars of Ismā‘īlī jurisprudence, represent the classical and normative stance of the school on this issue. In this study, the texts of Qāḍī Nu‘mān, who is considered the highest authority in Ismā‘īlī law, were taken as the basis, thereby placing the school's original doctrine at the center. Although Ismā‘īlī legal literature has remained within a limited circle -particularly due to its esoteric (*bāṭinī*) character and the tradition of preserved manuscripts- the data in the aforementioned sources, which form the legal backbone of the school, were taken as the basis for this study. Since the explanations regarding the issue of guardianship in these sources are concise, the evaluations have been limited to the theoretical framework

provided by these core texts. Furthermore, the study focuses on the theoretical and normative dimensions of guardianship in the marriage contract; historical practices of the schools or their reflections in modern legal systems are excluded from the scope of the investigation.

2 INDIVIDUALS POSSESSING GUARDIANSHIP AUTHORITY IN THE MARRIAGE CONTRACT

According to the Ja‘farīs, the right of guardianship (*wilāyah*) in the marriage contract belongs exclusively to the father, the paternal grandfather, and their ancestors, as well as the executor (*waṣī*), the master (*mawlā*), and the judge (*qāḍī*) (al-Ṭūsī, 1388, 4/162, 164, 174; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/501-502; al-ʿĀmilī, 2008, 20/100-101, 267; al-Narāqī, 2008, 16/123-131; al-Ḥalḥālī, 2/449 vd. 481, 484, 487, 503, 587; Kāshif al-Ghiṭāʾ, 2015, 8/47-48; al-Khumaynī, 1998, 2/232; al-Sīstānī, 2023, 3/31-32). It is not a requirement for the father to be alive for the paternal grandfather to act as a guardian, and the guardianship rights possessed by these two guardians are independent and distinct in nature. Consequently, whichever of the father or the grandfather marries off the female child first, the other loses the authority to do so. In the event that both marry the female child to different men, the first marriage contract is valid, while the subsequent one is void. If the father and the grandfather simultaneously marry a female child under their guardianship to different men, the marriage contract concluded by the grandfather is considered valid, whereas the one performed by the father is deemed invalid (al-Ṭūsī, 1388, 4/162, 164, 174; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/501-502; al-ʿĀmilī, 2008, 20/100-101, 267 vd.; al-Narāqī, 2008, 16/123-131; al-Ḥalḥālī, 2/449 vd. 481, 484, 487, 503, 587; Kāshif al-Ghiṭāʾ, 2015, 8/47-48; al-Khumaynī, 1998, 2/232; al-Sīstānī, 2023, 3/31-32).

According to the Ja‘farīs, transgressors (*fāsiqs*) who do not comply with religious commands and prohibitions possess the right of guardianship over their children. In this regard, there is no difference whether the guardianship is compulsory (*ijbārī*) or optional (*ikhtiyārī*) (al-Ṭūsī, 1388, 4/163; Kāshif al-Ghiṭāʾ, 2015, 8/72). According to the Ja‘farīs, the mother does not possess guardianship authority over children regarding marriage. Nevertheless, if a mother attempts to marry off her male child, the provisions of

unauthorized agency (*fuzūlī*) are applied. In this context, if the child approves the marriage contract concluded by the mother, the contract becomes valid. If the child does not consent to the legal transaction, the contract becomes void (*bāṭil*) (al-Ḥillī, 1383, 200; Kāshif al-Ghiṭāʾ, 2015, 8/87).

According to the Zaydīs, guardianship authority in the marriage contract belongs to the male agnates (*asabah*) and the males within the scope of distant kindred (*dhawū al-arḥām*). The order of priority for their authority to marry off is as follows: the son, the son's son, and their descendants; the father; the paternal grandfather and their ancestors; the full brother; the consanguine brother; the son of the full brother; the son of the consanguine brother; the full paternal uncle; the consanguine paternal uncle; the son of the full paternal uncle; the son of the consanguine paternal uncle; followed by the father's paternal uncles and then their sons; and finally the master (*mawlā* - the master who manumitted the slave). It is considered commendable (*mustahabb*) for the father or the grandfather to perform the marriage contract instead of the woman's son or the son's son, as this situation is seen as closer to etiquette and benevolence. According to the specified sequence, males have the right of priority in marrying off the woman. While a guardian with priority is available, it is not permissible for a subsequent individual to perform the marriage contract (al-Hādī ilā al-Ḥaqq, 2014, 1/304; al-Ṣanʿānī, 1414, 2/17; Ibn al-Murtaḍā, n.d., 37).

According to the Zaydīs, in the absence of any of the aforementioned guardians, guardianship authority -only applicable to minor girls and on the condition that the guardian has made a will to this effect- is transferred to the designated executor (*waṣī*). However, the executor does not have the authority to marry off sane and pubescent (*āqīl-bāligh*) women. In the absence of these individuals as well, guardianship authority passes to the imam or the judge (*qāḍī*). The authority of the imam and the judge to marry off in the capacity of a guardian is valid for both minor and adult women. If these are also unavailable, the woman authorizes a person to marry her off, and the marriage contract is performed by this individual (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/17-19). If the woman has no guardian through lineage or cause, and the imam or judge is also not present or is too distant to be reached, in this case, the woman may appoint a sane, pubescent, and free male as a proxy (*wakīl*) to marry her off (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/19).

According to the Zaydīs, it is essential that the marriage contract be performed by the woman's guardian. In this context, it is deemed sufficient for the guardian to be sane and pubescent; as long as these conditions are met, being a transgressor (*fāsiq*) is not considered an obstacle to the validity of the guardianship authority (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/22-23). Although it is stated in some narrations within the Zaydi school that the mother's act of marrying off her daughter is accepted as valid, according to the preferred view in the school, the marriage contract performed by the mother is not valid (al-Hādī ilā al-Ḥaqq, 2014, 1/304; ʿAlawī, 2014, 4/58; al-Ṣanʿānī, 1414, 2/17).

The sources through which the views of the Ismāʿīlīs regarding guardianship authority in marriage can be identified are limited to the works of Qāḍī Nuʿmān. However, detailed explanations regarding the issue are not included in these works. Based on the available data, it is understood that the guardianship authority in the marriage contract belongs to the father and the grandfather in the position of the paternal grandfather (al-Qāḍī al-Nuʿmān, 1416, 80).

According to the Ismāʿīlīs, a marriage contract performed by appointing a proxy is considered sound (*ṣaḥīḥ*). Indeed, according to them, a Muslim woman may appoint a non-Muslim as her proxy to conclude the marriage contract. As a matter of fact, it is narrated that Ḥaḍrat ʿAlī (a.s.) said: "If a Muslim woman appoints her Christian father or brother as a proxy to marry her off and this person performs the marriage contract on her behalf, the marriage performed is valid." (al-Qāḍī al-Nuʿmān, 1383, 2/219).

According to the Ismāʿīlīs, guardianship authority is limited to the father and the paternal grandfather. Therefore, according to them, a marriage contract performed by the mother is invalid. In the absence of guardians, the woman appoints a man as a proxy to marry her off, and the marriage contract is concluded through this proxy (al-Qāḍī al-Nuʿmān, 1416, 80; al-Qāḍī al-Nuʿmān, 1383, 2/218-219).

2.1 Compulsory guardian (al-Walī al-Mujbir)

According to the Jaʿfarīs, the right of compulsory guardianship (*wilāyat al-ijbār*) belongs exclusively to the father and the paternal grandfather. In this context, the authority to marry off minor girls, including those whose virginity has been lost for any reason, belongs to their father and paternal grandfather (al-Ṭūsī, 1388, 4/162, 164, 174;

al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/501-502; al-ʿĀmilī, 2008, 20/100-101, 267 vd.; al-Narāqī, 2008, 16/123-131; al-Ḥalḥālī, 2/449 vd. 481, 484, 487, 503, 587; Kāshif al-Ghiṭāʾ, 2015, 8/47-48; al-Khumaynī, 1998, 2/232; al-Sīstānī, 2023, 3/31-32).

According to the Ja'farīs, a minor girl married off by her father or grandfather within the scope of compulsory guardianship does not have the right to approve or rescind the marriage contract upon reaching puberty (*bulūgh*). However, regarding whether a male child married off at a minor age has the right to approve or rescind the marriage upon reaching puberty, there are two different views within the school; nevertheless, according to the dominant (*ẓāhir*) view, the male child also does not possess the right of option (*mukhayyarah*) regarding the performed marriage. Similarly, the marriage contracts of adult males and females who lack mental capacity are performed by their fathers or grandfathers, and these individuals do not have the right of option even if they regain their mental faculties (al-Ṭūsī, 1388, 4/162, 164, 174; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/501-502; al-ʿĀmilī, 2008, 20/100-101, 267 vd.; al-Narāqī, 2008, 16/123-131; al-Ḥalḥālī, 2/449 vd. 481, 484, 487, 503, 587; Kāshif al-Ghiṭāʾ, 2015, 8/47-48; al-Sīstānī, 2023, 3/31-32).

According to the Ja'farīs, if a guardian marries off a son or daughter who has not yet reached puberty to a person with a mental disability or to a hermaphrodite (*khunthā*), the contract is sound (*ṣaḥīḥ*). However, the children possess the right of choice upon reaching puberty. They may approve the marriage contract if they wish, or they may rescind it (al-Ḥillī, 1409, 2/504).

According to the Ja'farī school of law, the guardianship of a minor girl belongs exclusively to her father or paternal grandfather. Even if these individuals are absent (*ghāʾib*) or missing (*mafqūd*), and even if it is known that they reside in the same city as the girl, the authority of guardianship is never transferred to another relative or guardian; therefore, the marriage contract cannot be performed by any authority other than them. However, when a girl whose father or grandfather is absent reaches the age of puberty (becomes *rashīdah*), she acquires the authority to perform the marriage contract herself or may delegate this authority to a proxy (*wakīl*) of her own will (al-Ṭūsī, 1388, 4/179).

According to the Ja'farīs, if a guardian marries off a minor girl for a dower (*mahr*) lower than the customary dower (*mahr al-mithl*), or a minor boy for a dower higher than the customary dower, the best interest (*maṣlaḥah*) of the children is taken into

consideration. If the marriage in question serves the interest of the minors in terms of both the contract and the specified dower, the performed contract and the specified dower are considered valid (*ṣaḥīḥ*), and the contract becomes binding (*lāzim*). In this case, the children do not have the right to object to the contract or the dower after reaching puberty. On the other hand, if the interest of the minors only necessitates the marriage contract but does not render the specified dower mandatory, according to the more potent (*aqwā*) view, while the marriage contract is sound and binding, the dower is not binding. Consequently, the children have the right to object to the specified dower upon reaching puberty (al-Ḥillī, 1409, 2/503; al-Khumaynī, 1998, 2/233-234).

According to the Zaydīs, the right of compulsory guardianship belongs only to the father and the proxy appointed by the father. A minor girl married off by them does not possess the right of option upon reaching puberty. However, certain conditions must be met for this result to occur. Accordingly, first and foremost, the man to whom the girl is married must be her equal (*kufu'*) in terms of lineage and religion. Otherwise, after reaching puberty, the girl may object to the marriage contract and refuse to accept it. Furthermore, the man to whom the girl is married must not possess qualities that would cause loathing or hatred in shared life. Indeed, if the father or his proxy marries the girl to a person with leprosy, leucoderma (*al-baraṣ*), or a mental illness, the girl possesses the right of option upon reaching puberty. According to the view accepted as the most sound (*aṣaḥḥ*) in the school, the aforementioned provisions regarding minor girls apply identically to minor boys (Ibn al-Murtaḍā, n.d., 38; al-Ṣanʿānī, 1414, 2/37).

According to the Ismā‘īlīs, the authority of compulsory guardianship belongs only to the father and the grandfather who is the father's father. The authority to marry off minors is also granted exclusively to these two guardians. Minors married off by the father or grandfather do not have the right to reject the contracted marriage upon reaching puberty. Indeed, minors do not possess the right of option regarding the marriage contract performed by these guardians. However, it should also be stated that it is not valid for a non-Muslim father or grandfather to marry off minors; for a non-Muslim does not possess guardianship authority over a Muslim (al-Qāḍī al-Nuʿmān, 1383, 2/218-219; al-Qāḍī al-Nuʿmān, 1416, 80).

According to the Ismā‘īlīs, the grandfather -that is, the father's father- takes the place of the father in marrying off a minor girl. While the marriage contracted by the

grandfather takes precedence, if a marriage contract has been performed earlier by the father, this contract is considered valid. If the father and the grandfather have married the girl to different men, the marriage performed first is valid, while the one performed later is deemed invalid (al-Qāḍī al-Nuʿmān, 1383, 2/219).

2.2 Non-compulsory guardian (al-Walī al-Ghayr al-Mujbir)

According to the Ja'farīs, if a minor girl or boy is married off by their near or distant guardians other than their father and paternal grandfather, according to the more evident (*azhar*) view in the school, these children possess the right of option (*mukhayyarah*) upon reaching puberty. The children may approve the marriage contract if they wish, or they may rescind it. Consequently, the legal effectiveness of the marriage contract depends on the approval of the children who have reached puberty (al-Ḥillī, 1383, 199; al-Ḥillī, 1409, 2/504; Kāshif al-Ghiṭāʾ, 2015, 8/78).

According to the Zaydīs, a marriage concluded without a guardian is not permissible and is invalid (*bāṭil*). It is stated that there is a consensus (*ijmā'*) of the *Ahl al-Bayt* on this matter. Accordingly, marriage contracts performed without a guardian by both previously married women (*thayyib*) and virgins are considered invalid (ʿAlawī, 2014, 4/54; al-Hārūnī, 2006, 4/57; Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/22). Therefore, in the event that a woman marries without the permission of her guardian, it is not permissible for the parties to maintain a family life if the guardian does not give ratification (*ijāzah*) to the concluded marriage (al-Hādī ilā al-Ḥaqq, 2014, 1/303; ʿAlawī, 2014, 4/56). However, the consent of the *mukallaf* -that is, the sane and pubescent (*āqīl-bāligh*)- woman is a requirement for the marriage concluded by the guardian. For even if the marriage contract is performed by the guardian, it is not permissible for the guardian to marry her off without her permission. The consent of a previously married woman is realized by her explicit declaration of consent using the past tense or an expression conveying this meaning. The consent of a virgin woman is understood by her not exhibiting any attitude, word, or deed indicating that she does not want the contract after becoming aware of the marriage contract (al-Hādī ilā al-Ḥaqq, 2014, 1/304; ʿAlawī, 2014, 4/58; Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/33).

According to the Zaydīs, if the woman exhibits a behavior indicating that she does not consent to the concluded marriage -such as slapping herself, imprecating, tearing her clothes, or similar ways of expressing her dissatisfaction- it is accepted that her consent is absent, and in this case, the legal transaction performed by the guardian is considered invalid. On the other hand, if a woman was married off by her guardian despite having explicitly opposed the marriage before the contract, but did not exhibit any attitude or declaration indicating her opposition upon learning of the contract, the marriage contract performed is considered valid (al-Ṣanʿānī, 1414, 2/34).

According to the Zaydīs, the authority of guardianship is immediately transferred to the next guardian in the event that the guardian falls into unbelief (*kufr*), loses mental capacity, disappears continuously, becomes impossible to reach, his location becomes unknown, or any instance of *ʻadl* (unjust prevention) regarding the marriage of a *mukallaf* and free woman emerges. In this matter, the woman's statement alone is not deemed sufficient; on the contrary, there must be evidence to confirm her claim. Furthermore, the testimony of only one person is not considered sufficient in this regard (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/20-22).

According to the Zaydīs, if a woman has more than one guardian of the same degree, any of them may perform the marriage contract. Indeed, in the event that a woman has more than one son, it is possible for her to be married off by one of them. Provided that the man who is a suitor is equal (*kufu'*) to the woman, it is not a requirement to obtain the consent of the other guardians for the validity of the marriage. However, in the absence of equality (*kafāʾah*), the other guardians may object to the marriage contract (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/19).

According to the Zaydīs, in the event that a woman is married off to different men by two of her guardians, the following points are taken into consideration: If one of the guardians performing the marriage has priority over the other, provided that the woman's consent is present, the marriage performed by the prior guardian is valid, while the marriage contracted by the other is invalid. For while a near (prior) guardian is available, it is not permissible or valid for a distant guardian to marry the woman off. Conversely, if the guardians are at the same level in terms of priority and it is not known which guardian married the woman off first, both marriage contracts are considered invalid; in this case, the woman is married off by making a new marriage contract with the man of

her choice. However, if the woman consents to one of the men and does not consent to the other or opposes him, in this case, the marriage performed with the man she consented to is accepted as valid, and the other is invalid. This provision is applicable even if the guardian who married the woman off has a prior right compared to the other (al-Hādī ilā al-Ḥaqq, 2014, 1/305).

According to the Ismāʻīlīs, women cannot marry without the permission of their guardians, and a marriage contract concluded without a guardian is void (*bāṭil*) and not accepted as valid. Nevertheless, this authority does not mean that guardians can marry off sane and pubescent women against their will. Within this framework, the woman's opinion is sought before the marriage contract; the consent of a virgin girl is understood by her silence, and in the event that she explicitly manifests that she does not wish to marry, it is not possible for the guardian to marry her off (al-Qāḍī al-Nuʿmān, 1383, 2/218; al-Qāḍī al-Nuʿmān, 1416, 80).

3 GUARDIANSHIP IN THE MARRIAGE OF ADULT AND MATURE (*RASHĪDAH*) WOMEN

According to the Jaʻfarīs, a virgin woman who is adult and mature (*rashīdah*) is free regarding her marriage and may marry of her own wish and will, even if her father and paternal grandfather are alive. If the father or grandfather marries off an adult and mature woman without her knowledge, the performed marriage contract depends on the woman’s permission. If the woman approves the marriage contract, the performed marriage becomes valid; however, if she does not show consent, the contract becomes invalid (al-Ṭūsī, 1388, 4/156, 162 vd; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/502; al-Narāqī, 2008, 16/106; al-Ḥalḥālī, 2/468-469; Kāshif al-Ghiṭāʾ, 2015, 8/50).

According to the Jaʻfarīs, the silence of a virgin woman, who is asked by her guardians whether she consents to be married, indicates that she consents to the marriage contract to be performed (al-Ḥillī, 1383, 199; al-Ḥillī, 1409, 2/504; al-ʿĀmilī, 2008, 20/274-275; al-Ḥalḥālī, 2/530).

According to the Jaʻfarīs, in addition to the view given above, there is also a view within the school that in both permanent marriage contracts and temporary marriage (*mutʻah* marriage), an adult and mature girl must make the marriage decision together

with her father, and the legal transaction performed without the consent of both will not be valid. According to this view, the contract does not take place without the consent of the father and the daughter. On the other hand, some jurists (*fuqahā’*) deem the permission and consent of the father necessary in permanent marriage, while they argue that the father's permission is not required in *mut‘ah* marriage. Some other jurists have claimed the opposite, stating that the father's permission is not necessary in permanent marriage, but his consent is required in *mut‘ah* marriage. However, there is a consensus (*ijmā‘*) among jurists that if an equal (*kufu’*) man proposes to the woman and the woman wishes to marry him, but her guardian prevents this marriage, the consent of the guardian is not required for this marriage (al-Ṭūsī, 1388, 4/156, 162 vd.; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/502; al-Narāqī, 2008, 16/106; al-Ḥalḥālī, 2/468-469; Kāshif al-Ghiṭāʾ, 2015, 8/50).

According to al-Sistānī, one of the contemporary Ja‘farī scholars, if a virgin woman is capable of managing her own affairs and is an independent individual in her life, her father or paternal grandfather does not have the authority to marry her off without her consent. Nevertheless, whether such a virgin woman can marry without obtaining permission from the father or grandfather is a matter of debate. Therefore, as a matter of precaution (*iḥtiyāṭ*), the requirement of obtaining said permission should not be abandoned. On the other hand, a woman who cannot manage her own affairs and is not independent of her family cannot marry without the permission of her father or paternal grandfather (al-Sīstānī, 2023, 3/34-35).

According to the Ja‘farīs, the father, grandfather, and other guardians do not possess guardianship authority regarding the marriage of a previously married woman (*thayyib*) who is adult and mature. A previously married woman has the right to marry of her own wish and will. If the father marries off his previously married daughter without her permission, the validity of the marriage contract depends on the woman's permission and consent to the performed contract. If the woman approves the marriage, the performed marriage contract enters into force. If the woman does not show consent, the contract becomes invalid (al-Ṭūsī, 1388, 4/162; al-Ḥillī, 1383, 198; al-Narāqī, 2008, 16/105; al-Ḥalḥālī, 2/458). According to the Ja‘farīs, a previously married woman, who is asked by her guardians whether she consents to be married, is required to express her consent verbally. Her silence in response to the question is not evaluated as consent (al-Ḥillī,

1383, 199; al-Ḥillī, 1409, 2/504; al-ʿĀmilī, 2008, 20/274-275; al-Ḥalḥālī, 2/530). In the event that a woman's virginity is lost as a result of sexual intercourse occurring through adultery or upon doubt (*shubhah*), the provisions regarding previously married women are applied to her (al-Narāqī, 2008, 16/128; al-Ḥalḥālī, 2/481-482).

According to the Zaydīs, even if the marriage contract is performed by the guardian, it is not valid for adult and mature women to be married off by their guardians without their consent (al-Hādī ilā al-Ḥaqq, 2014, 1/304; ʿAlawī, 2014, 4/58).

It is a requirement for the *mukallaf* -that is, the adult and mature- woman to have consent for the marriage contracted by her guardian. The consent of a virgin woman is understood by her not exhibiting any attitude, word, or deed indicating that she does not want the contract after becoming aware of the marriage contract (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/33).

According to the Zaydīs, it is not valid for an adult and mature previously married woman to be married off by her guardians without her consent. For even if the marriage contract is performed by the guardian, it is not permissible for the guardian to marry her off without her permission (al-Hādī ilā al-Ḥaqq, 2014, 1/304; ʿAlawī, 2014, 4/58). According to the Zaydīs, the consent of a previously married woman is understood by her verbal declaration of consent using the past tense or an expression conveying this meaning (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/33-34).

According to the Ismāʿīlīs, women cannot marry without the permission of their guardians, and a marriage contract concluded without a guardian is void (*bāṭil*). Nevertheless, for the marriage contract to be valid, adult and mature women must consent to this contract. Within this framework, the woman's opinion is sought before the marriage contract; the consent of a virgin girl is understood by her silence, and in the event that she explicitly manifests that she does not wish to marry, it is not possible for the guardian to marry her off (al-Qāḍī al-Nuʿmān, 1416, 80; al-Qāḍī al-Nuʿmān, 1383, 2/218).

According to the Ismāʿīlīs, previously married women also cannot marry without the permission of their guardians, and a marriage contract concluded without a guardian is void. For the marriage contract to be valid, previously married women must consent to this contract. Otherwise, the marriage contract to be performed will be invalid (al-Qāḍī al-Nuʿmān, 1416, 80; al-Qāḍī al-Nuʿmān, 1383, 2/218).

4 THE LEGAL STATUS OF MARRIAGE CONTRACTS CONCLUDED WITHOUT A GUARDIAN

According to the Ja'farī school, the state of legal capacity (*ahliyyah*) is an element that directly determines the legal status of the contract. Sane, pubescent (*āqīl-bāligh*), and mature (*rashīdah*) women possess the authority to personally conclude a marriage contract without the need for the permission or ratification (*ijāzah*) of a guardian. Therefore, a marriage concluded without a guardian by women in this group is directly valid and binding. Conversely, in marriage contracts performed by those who completely lack legal capacity (minors and the insane) and those with deficient legal capacity, the prior permission of the guardian or subsequent ratification is a requirement; otherwise, the performed contract is considered void (*bāṭil*) as it does not acquire legal legitimacy (al-Ṭūsī, 1388, 4/156, 162, 164, 174; al-Ḥillī, 1383, 198; al-Ḥillī, 1409, 2/501-502; al-Narāqī, 2008, 16/106, 123-131; al-Ḥalḥālī, 2/449 vd. 468-469, 481, 484, 487, 503, 587; Kāshif al-Ghiṭāʾ, 2015, 8/47-50; al-ʿĀmilī, 2008, 20/100-101, 267 vd.; al-Khumaynī, 1998, 2/234; al-Sīstānī, 2023, 3/31-32).

According to Zaydī and Ismāʿīlī legal doctrine, the validity (*siḥḥah*) of the marriage contract depends on the participation or prior approval of the guardian. According to these two schools, a marriage contract performed without obtaining the permission of the guardian is in the nature of an unauthorized transaction (*fuzūlī*), and its legal validity is suspended (*mawqūf*) upon the subsequent ratification of the guardian. In the event that the guardian approves the contract, the marriage produces its legal consequences; in case of a declaration of will to the contrary, the contract is accepted as void and considered invalid. In these schools, no distinction is made between sane and pubescent women and minors in terms of the legal status of the contract, and in both cases, the approval of the guardian is evaluated as a constituent element of the contract (ʿAlawī, 2014, 4/54; al-Hārūnī, 2006, 4/57; Ibn al-Murtaḍā, n.d., 37-38; al-Ṣanʿānī, 1414, 2/22, 37; al-Qāḍī al-Nuʿmān, 1383, 2/218; al-Qāḍī al-Nuʿmān, 1416, 80).

Regarding the marriage contracts of the spendthrifts (*safiḥs*), Ja'farī and Zaydī jurists deem the ratification of the guardian necessary due to the state of interdiction (*ḥajr*). Nevertheless, there are exceptional provisions in the jurisprudence (*fiqh*) literature where contracts performed without a guardian out of necessity (*ḍarūrah*) or public

interest (*maṣlaḥah*) are accepted as valid in some cases, either judicially (by court decision) or without the need for a court (*ex officio*) (al-Ḥillī, 1409, 2/503; al-Narāqī, 2008, 16/134-135; al-Ḥalḥālī, 2/499-501; Kāshif al-Ghiṭāʾ, 2015, 8/62-63; al-Khumaynī, 1998, 2/234; al-Sīstānī, 2023, 3/34; Ibn al-Murtaḍā, 2001, 4/96).

According to the Ismāʻīlīs, it can be said that the marriage of a spendthrift is evaluated within the framework of general rules of legal capacity, and therefore, the marriage contract of a spendthrift is subject to the permission of the guardian.

5 GUARDİANSHİP AUTHORİTY OF THE EXECUTOR, MASTER AND AGENT

According to the Jaʻfarīs, the master (*mawlā*) has the right to marry off his male and female slaves, regardless of whether they are adult, minor, sane, insane, previously married, or virgin. In this case, the slaves do not have the right to approve or rescind the marriage contract performed by their masters. If a slave marries without the knowledge of the master, the marriage contract depends on the master's ratification (*ijāzah*). On the other hand, there are different views within the school regarding whether the contract is valid after the master gives approval (al-Ṭūsī, 1388, 4/166; al-Ḥillī, 1409, 2/502; al-Ḥillī, 1383, 199; al-Narāqī, 2008, 16/181 vd.; Kāshif al-Ghiṭāʾ, 2015, 8/76-77). While some jurists (*fuqahāʾ*) argue that the contract becomes valid with the subsequent approval of the master, others contend that the performed contract is invalid even if the master subsequently gives ratification.

According to the Zaydīs, the authority to marry off slaves belongs to their masters (al-Hādī ilā al-Ḥaqq, 2014, 1/304; Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/17). Indeed, according to them, the person who marries off the woman must be a guardian. It is also a requirement for the guardian to be free; for this reason, the guardianship of a slave is not valid (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/23). Consequently, marriages performed by slaves without the permission or ratification of their masters are invalid.

According to the Ismāʻīlīs, male and female slaves cannot marry without the permission of their masters. The marriage of a slave who marries without the master's permission is not valid; however, in the event that the master subsequently gives ratification, the contract gains validity (al-Qāḍī al-Nuʿmān, 1416, 84).

6 GUARDİANSHİP AUTHORİTY OF THE JUDGE AND EXECUTORS İN THE MARRİAGE CONTRACT

According to the Ja'farīs, the guardianship authority of the judge (*qāḍī*) and executors (*waṣī*), who are guardians other than the father and paternal grandfather, over women is valid only for minor girls who have not yet reached puberty (*bulūgh*), provided that there is a necessity (*ḍarūrah*) or public interest (*maṣlaḥah*). Regarding women who have reached puberty and are mature (*rashīdah*), the judge or executor does not have the authority to marry them off. Therefore, such women cannot be married off by the aforementioned guardians. Nevertheless, if the judge or executor concludes that there is a public interest or necessity in their marriage, they may marry off the minors under their guardianship (al-Ḥillī, 1409, 2/502-503; al-Ḥillī, 1383, 199; al-Narāqī, 2008, 16/138, 142; al-Ḥalḥālī, 2/519, 528; Kāshif al-Ghiṭāʾ, 2015, 8/59-61; al-Khumaynī, 1998, 2/234; al-Sīstānī, 2023, 3/33).

According to the Zaydīs, in the absence of male agnates (*asabah*) and males within the scope of distant kindred (*dhawū al-arḥām*), guardianship authority passes to the imam or the judge. The authority of the imam and the judge to marry off in the capacity of a guardian is valid for both minor and adult women. In the absence of these as well, the woman authorizes a person to marry her off, and the marriage contract is performed by this individual (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/17-19).

According to the Zaydīs, if the guardian refrains from marrying off the woman or makes a choice that would be to the woman's detriment, the guardianship authority passes respectively to the other guardians; in their absence, a person from among the Muslims assumes this duty and marries the woman off (al-Hādī ilā al-Ḥaqq, 2014, 1/303-304; ʿAlawī, 2014, 4/55). In addition, there is a view in the school that if the guardian refrains from marrying off the woman, the guardianship authority is transferred to the head of state or the judge in the position of his deputy (*nāʾib*), and the marriage contract is performed by them (al-Hādī ilā al-Ḥaqq, 2014, 1/303-304; ʿAlawī, 2014, 4/56) On the other hand, a *mukallaf* woman whose lineage is unknown and who claims that she has no guardian is required to take an oath, as a matter of precaution (*iḥtiyāṭ*), stating that she has no guardian and that there is no obstacle to her marriage. If the woman takes this oath, the marriage contract is performed by the imam or the judge; in their absence, it is

performed through the proxy (*wakīl*) to be appointed by the woman. However, in the event that the woman refrains from taking the oath, the marriage contract cannot be performed (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/20).

7 GUARDİANSHİP AUTHORİTY İN THE MARRİAGE OF NON-MUSLİM GUARDİANS AND NON-MUSLİM MİNORS

According to the Jaʻfarīs, a non-Muslim father does not possess the authority to marry off his children. In this case, the guardianship authority belongs to the grandfather in the position of the paternal grandfather. Similarly, if the father falls into mental illness, suffers a fainting spell, or becomes unable to effectively exercise the right of guardianship for similar reasons, the authority to marry off belongs to the grandfather. The same provision applies to the grandfather. If the grandfather loses his mental health, faints, or leaves the religion of Islam (*riddah*), the authority to marry off children belongs exclusively to the father. Therefore, the father and grandfather who are non-Muslim or have lost their mental faculties do not possess guardianship for marriage over the children (al-Ḥillī, 1409, 2/504; al-Ḥalḥālī, 2/503-504, 536-537; Kāshif al-Ghiṭāʾ, 2015, 8/71, 74; al-Khumaynī, 1998, 2/235; al-Sīstānī, 2023, 3/35-36).

According to the Jaʻfarīs, a Muslim guardian has no guardianship right over a non-Muslim woman. The right of guardianship over non-Muslim children belongs to their non-Muslim guardians. In addition to the views given above on the subject, according to the more potent (*aqwā*) view in the school, it is stated that a Muslim father possesses the right of guardianship over his non-Muslim child (al-Ṭūsī, 1388, 4/180; al-Ḥalḥālī, 2/540).

According to the Zaydīs, the guardian who will marry off the woman and the woman herself must belong to the same religion. In the event that the guardian and the woman belong to different religions, the performed marriage is not accepted as valid. For there is a legal separation between a Muslim and an infidel (*kāfir*) in matters such as inheritance and guardianship. For this reason, a non-Muslim guardian has no right of guardianship over a Muslim woman. Indeed, since Abu Sufyan had not yet become a Muslim, when the Prophet married his daughter Umm Habiba, he did not deem the father's consent necessary; therefore, the marriage contract was performed by someone other than her father (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/23). According to them,

a Muslim guardian cannot marry off a *dhimmī* woman; only her other *dhimmī* guardians can marry this woman off. If such a guardian does not exist, the woman performs the marriage contract by appointing a male from her own religion as a proxy (*wakīl*). However, minor girls are excepted from this rule; for a minor girl whose father is Muslim is also considered Muslim (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/23).

According to the Ismāʻīlīs, it is not valid for a non-Muslim father and grandfather to marry off minors; for a non-Muslim does not possess guardianship authority over a Muslim. However, a Muslim woman can perform the marriage contract by appointing a non-Muslim as her proxy. As a matter of fact, it is narrated in a report that Ḥaḍrat ʻAlī (a.s.) said: "If a Muslim woman appoints her Christian father or brother as a proxy to marry her off and this person performs the marriage contract on her behalf, the marriage performed is valid." (al-Qāḍī al-Nuʿmān, 1383, 2/218-219; al-Qāḍī al-Nuʿmān, 1416, 80).

8 LEGAL STATUS OF THE SUSPENDED (*MAWQŪF*) MARRİAGE CONTRACT

According to the Jaʻfarīs, due to their deficient legal capacity, the marriage contracts concluded by discerning (*mumayyiz*) minors become sound (*ṣaḥīḥ*) with the permission or ratification (*ijāzah*) given by their fathers and paternal grandfathers. Similarly, the marriage contracts concluded by slaves become valid with the permission or ratification of their masters (al-Ṭūsī, 1388, 4/166; al-Ḥillī, 1409, 2/504).

According to the Jaʻfarīs, if news can be received from the father or paternal grandfather of discerning minors and their place of residence is known, even if the place where these individuals live is further than the travel distance (*masāfat al-safar*) of eight *farsakhs*—that is, 46,102.4 meters—from where the girl lives, the guardianship right of the father and grandfather does not lapse. under these conditions, guardians other than the father and paternal grandfather cannot perform the marriage contract of the minor girl. However, the head of state or the judge (*qāḍī*) may marry this girl off. In the event that the place where the guardians are located is within the travel distance from where the girl lives, there are two facets (*wajh*) within the school. According to the first facet, the head of state may marry the girl off. According to the second facet, the head of state possesses no such authority (al-Ṭūsī, 1388, 4/180; al-ʿĀmilī, 2008, 20/275-279).

According to the Zaydīs, a marriage contract can be suspended (*mawqūf*) either literally (*ḥaqīqī*) or figuratively (*majāzī*). The marriage of a sane and pubescent (*āqīl-bāligh*) woman who is married off without her consent being obtained can be given as an example of a literally suspended marriage. In this case, if the woman gives ratification to the contract, the marriage gains validity; in the event that she does not give ratification, the contract becomes invalid. In this respect, there is no difference whether the person performing the marriage contract is the woman's guardian or a stranger (*ajnabī*). However, if the person performing the marriage is a stranger, both the woman and the guardian must give ratification for the contract to be valid (Ibn al-Murtaḍā, n.d., 38; al-Ṣanʿānī, 1414, 2/36). The marriage of a minor girl by guardians other than the father and the proxy appointed by the father can be given as an example of a figuratively suspended marriage contract. In this case, when the girl becomes sane and pubescent, she may approve the contracted marriage if she wishes, or she may render the contract invalid. The option of puberty (*khiyār al-bulūgh*) for a minor girl is limited to a narrow period; therefore, the girl must exercise this right immediately upon reaching puberty without delay. The same provisions apply to an insane person (*majnūn*). Indeed, when a mentally ill woman regains her sanity, she must exercise her right to approve or reject the contract immediately upon becoming aware of the marriage contract performed. It is not a requirement for these individuals to have witnesses present during the approval or rejection of the contract, nor is there a need for a court decision for minors to be able to rescind the marriage contract. The maximum period of delay in exercising this right is three days. If the right is not exercised within this period or is postponed without a reason, the right lapses. However, if the postponement is due to fear or pressure arising from the guardian or another cause, the right does not lapse (Ibn al-Murtaḍā, n.d., 38; al-Ṣanʿānī, 1414, 2/36).

According to the Zaydīs, for a woman's postponement of the right to approve or reject the marriage contract without an excuse to produce the consequence of lapsing the right, certain conditions must be met together. Accordingly, the right is extinguished if the postponement occurs after puberty; if it happens after the woman realizes she has reached puberty; and if the woman delays her choice despite being aware of the performed legal transaction and knowing that she has an option regarding the marriage (Ibn al-Murtaḍā, n.d., 38; al-Ṣanʿānī, 1414, 2/36-37).

According to a weak view in the Zaydī school, if a woman performs the marriage contract personally and the guardian gives ratification to this contract, the marriage becomes valid. However, according to the preferred view in the school, a marriage contracted in this manner is not accepted as valid. Nevertheless, in the event that the person performing the marriage contract is a male child possessing the power of discernment (*tamyīz*), it is accepted that the contract will be valid with the subsequent approval of the guardian. Indeed, just as this approval to be given by the guardian is valid in contracts performed by an unauthorized agent (*fuzūlī*), the contract is also considered valid in the event that the person appointed as a proxy by the guardian gives ratification to the contract performed by the *fuzūlī* (Ibn al-Murtaḍā, n.d., 37; al-Ṣanʿānī, 1414, 2/24).

Although no explicit statement regarding the issue is found in Ismāʻīlī sources, based on the available data and the general principles of the school, the following conclusions can be reached: A marriage contracted without a guardian is void (*bāṭil*). A marriage contract performed without the woman's consent is suspended (*mawqūf*) upon the woman's ratification; in the event that the woman gives approval to the contract, the marriage gains validity, and in the event that she does not give approval, it becomes invalid. Similarly, the marriages contracted by slaves without the permission of their masters are also dependent on the ratification of the master; in the event that the master gives approval, the contract is accepted as valid, and in the case that he does not give approval, it is considered invalid (al-Qāḍī al-Nuʿmān, 1416, 80, 84; al-Qāḍī al-Nuʿmān, 1383, 2/218).

9 LEGAL STATUS OF THE MARRİAGE CONTRACT OF THE SPENDTHRİFT (*SAFĪH*)

According to the Jaʻfarīs, the marriage contract performed by a spendthrift (*safīh*) -that is, an adult and pubescent person who acts imprudently with their property and makes excessive expenditures to the extent of warranting interdiction (*ḥajr*)- gains legal validity with the permission of their father or paternal grandfather. In this case, the individual must clearly inform their guardian of the woman they wish to marry and the dower (*mahr*) they undertake to provide. However, the determination of the dower amount and the woman to be married is essentially carried out by the guardian. The

validity of a marriage contract performed without the permission of the guardian depends on the subsequent ratification (*ijāzah*) to be given by the guardian. If the guardian sees a best interest (*maṣlaḥah*) in the marriage in question and approves the contract, the performed marriage is accepted as valid; otherwise, the marriage contract is considered null and void (al-Narāqī, 2008, 16/134; al-Ḥalḥālī, 2/499-501; Kāshif al-Ghiṭāʾ, 2015, 8/62; al-Khumaynī, 1998, 2/234; al-Sīstānī, 2023, 3/34).

According to the Jaʿfarīs, in the absence of the father or paternal grandfather, the spendthrift may marry with the permission of the judge (*qāḍī*) (al-Narāqī, 2008, 16/134; al-Ḥalḥālī, 2/499-501; Kāshif al-Ghiṭāʾ, 2015, 8/62; al-Khumaynī, 1998, 2/234; al-Sīstānī, 2023, 3/34). However, it should also be noted that in this case, the marriage of the spendthrift is valid only in the state of necessity (*ḍarūrah*). If the spendthrift marries without any necessity, the marriage contract they perform is considered irregular (*fāsid*). The marriage of a spendthrift in the state of necessity depends on the permission to be granted by the court. Specifically, the spendthrift who wishes to marry shall first apply to the court and request permission. If the court evaluates the request positively, the spendthrift will be able to conclude a marriage with the permission document granted to them. On the other hand, if the spendthrift performs a marriage contract without obtaining permission from the court in the state of necessity, the marriage contract performed in this case will be valid and sound (*ṣaḥīḥ*). However, if the spendthrift provides a dower higher than the customary dower (*mahr al-mithl*) to the woman, the excess amount will be considered invalid, and the return of this amount to the spendthrift will be requested (al-Ḥillī, 1409, 2/503; al-Narāqī, 2008, 16/134-135; Kāshif al-Ghiṭāʾ, 2015, 8/62-63).

In Zaydī jurisprudence, the marriage of a spendthrift male who is under interdiction (*ḥajr*) is essentially suspended (*mawqūf*) upon the permission of his guardian. The spendthrift's request to marry gains legal validity either by being performed personally by his guardian or by being executed by the spendthrift with the explicit permission of the guardian. Regarding the marriage contract performed by the spendthrift without permission despite the opposition of his guardian, there are two facets (*wajh*) in the school: According to the first facet, the contract is considered invalid as the guardian's permission is accepted as a condition for validity (*siḥḥah*); while according to the second facet, it is accepted that the contract will produce legal consequences based on the personal declaration of will (Ibn al-Murtaḍā, 2001, 4/96).

The absence of a specific provision on this matter in the works of Qāḍī Nuʿmān indicates that the marriage of a spendthrift is evaluated within the framework of general rules of legal capacity. Therefore, it can be said that the marriage contract of a spendthrift is subject to the permission of the guardian.

10 COMPARATİVE ANALYSİS AND TABLE

Comparison of Guardianship and Jurisdictional Areas in the Marriage Contract within Shiite Schools

Table 1

Comparison Criteria	Jaʿfarī School	Zaydī School	Ismāʿīlī School
Primary Guardian (Walī al-Aṣlī)	Father and paternal grandfather.	Male agnates (ʿasabah) and distant kindred (dhawū al-arḥām).	Father and paternal grandfather.
Compulsory Guardianship (Wilāyat al-Ijbār)	Only the father and paternal grandfather.	Only the father and the proxy appointed by the father.	Only the father and paternal grandfather.
Hierarchy of Guardians	The grandfather takes precedence over the father.	Distant guardian is unauthorized while a near guardian is available.	The grandfather takes precedence over the father.
Marriage of Minors	Binding (lāzim).	Binding (lāzim).	Binding (lāzim).
Adult and Mature (Rashīdah) Woman	May marry by herself.	Cannot marry by herself; guardian's consent is mandatory.	Cannot marry by herself; guardian's consent is mandatory.
Marriage Without a Guardian	Valid (ṣaḥīḥ) for the mature woman.	Suspended (mawqūf) upon the guardian's permission.	Suspended (mawqūf) upon the guardian's permission.
Right of Option (Mukhayyarah)	Limited for minors, unlimited for sane and pubescent individuals.	Limited for minors, unlimited for sane and pubescent individuals.	Limited for minors, unlimited for sane and pubescent individuals.
Judge (Qāḍī) / Executor (Waṣī)	Intervenes in the absence of a guardian.	Intervenes in the absence of a guardian.	In case of necessity (ḍarūrah).
Marriage of the Spendthrift (Safīh)	Guardian's ratification (ijāzah) is required.	Guardian's ratification (ijāzah) is required.	General rules of legal capacity apply.
Marriage of Slaves	Master's permission is a requirement.	Master's permission is a requirement.	Master's permission is a requirement.
Non-Muslim Guardian	Has no authority.	Has no authority.	Has no authority.
Marriage via Proxy (Wakālah)	Valid (ṣaḥīḥ).	Valid (ṣaḥīḥ).	Valid (ṣaḥīḥ).

11 GENERAL ASSESSMENT

When the approaches of Shiite legal schools to the institution of guardianship in the marriage contract are analyzed from the perspective of modern legal norms and universal human rights, it is observed that a delicate balance is maintained between the preservation of the traditional family structure and the autonomy of the individual will. The full legal capacity granted by the Jaʻfarī legal system, particularly to mature and previously married (*thayyib*) women, exhibits a high level of alignment with the principle of modern individual will and contemporary legal principles, as it positions the woman as an independent subject of the contract. In contrast, the preservation of the guardian's permission as a condition for the validity of the contract in the Zaydī and Ismāʻīlī schools is a reflection of the social control and familial solidarity mechanisms in classical Islamic jurisprudence (*fiqh*) thought. At this point, it is evaluated that the differences in *ijtihad* (legal reasoning) between the schools do not merely consist of a literal disagreement but also present a wide diversity regarding the socio-legal status of women. Consequently, this dynamic structure in Shiite jurisprudence constitutes a rich ground for modern legal discussions, as it reflects the effort of each school to resolve the tension between the woman's freedom to marry and the guardian's duty to protect within the framework of its own methodological (*uṣūlī*) principles.

12 CONCLUSİON

The issue of guardianship (*wilāyah*) in the marriage contract is a deep-rooted subject of disagreement among Shiite schools, handled within the framework of both common principles and specific approaches unique to each school. When the doctrines of the Jaʻfarī, Zaydī, and Ismāʻīlī schools are evaluated from a comparative perspective, it is observed that significant similarities exist alongside distinct divergences regarding the scope, limits, and legal function of guardianship.

According to the Jaʻfarī school, guardianship is essentially a functional institution concerning minors and individuals with legal incapacity (*ahliyyah*). While the father and paternal grandfather possess the authority of compulsory guardianship (*wilāyat al-ijbār*), the exercise of this authority is bound by the condition of *maḥḍ al-maṣlaḥah* (the best

interest of the child). Although sane, pubescent (*āqīl-bāligh*), and mature (*rashīdah*) women, as a rule, have the right to marry of their own will, the necessity of the father's consent -particularly in the marriage of virgin girls- presents a debated ground in the doctrine. The different *ijtihāds* developed between permanent marriage and temporary (*mut'ah*) marriage reveal the dynamic and rich structure of Ja'farī legal thought on this matter.

In the Zaydī school, guardianship in marriage is built upon a broader and more hierarchical system. The authority of guardianship is determined based on the principle of male agnates (*'asabah*) and distant kindred (*dhawū al-arḥām*); the hierarchy based on the degree of kinship is preserved, and the authority of a distant guardian is excluded while a near guardian is available. In the Zaydī legal system, the consent of the sane and pubescent woman is accepted as an essential condition (*rukn*) for the validity of the marriage. In this respect, guardianship in Zaydī doctrine is not an absolute authority that nullifies the woman's will, but on the contrary, it is a legal mechanism limited by the element of consent. Furthermore, it is noteworthy that technical concepts such as suspended (*mawqūf*) marriage, ratification (*ijāzah*), the right of option (*mukhayyarah*), and the guardianship of the judge (*qāḍī*) are processed in detail within the school's jurisprudence.

In the Ismā'īlī school, the authority of guardianship in marriage is limited to a narrower framework, primarily the father and paternal grandfather. According to the data obtained from the works of Qāḍī Nu'mān, a marriage performed without a guardian is considered void (*bāṭil*), and the personal conduct of the marriage contract by women is not deemed valid. Nevertheless, the consent of sane and pubescent women is seen as mandatory for the validity (*siḥḥah*) of the marriage; this situation confirms the importance given to the principle of consent in Ismā'īlī law. Moreover, the legitimacy of marriage through proxy (*wakālah*) reflects the school's character that is open to practical legal solutions.

Consequently, in all three schools, the institution of guardianship is a functional legal tool designed for the protection of individual rights in the marriage contract and the establishment of familial and social order. However, the differences regarding the scope of guardianship, the limits of compulsory authority, and the legal value of the woman's consent symbolize the jurisprudential diversity in the approach of Shiite schools toward

family law. This situation proves that the issue of guardianship in marriage is not a one-dimensional restriction but, on the contrary, possesses a multi-layered and dynamic structure encompassing legal, social, and ethical elements.

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All authors contributed equally to the development of this article.

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All datasets relevant to this study's findings are fully available within the article.

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