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Women's Right to Choose a Spouse: In the  
Hanafi School of Islamic Jurisprudence

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## Women's Right to Choose a Spouse: In the Hanafi School of Islamic Jurisprudence

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### Abstract

**Introduction:** According to the sacred provisions of Islamic sharia and the Hanafi School of Islamic jurisprudence (Madhab), a woman has the right to choose herself a spouse. When a woman becomes a widow, this right is given to her even more often because they know more.

**Purpose:** The purpose of this research was to clarify the right of a woman to choose her spouse. It clarifies all the conditions and circumstances according to the Hanafi School, in which a woman can choose a spouse for herself.

**Methodology:** The doctrinal research methodology and a descriptive, explanatory, and analytical research approach were used in this work. In this study, the rules and regulations of the Hanafi School of Islamic jurisprudence were analyzed in detail to support the research study. It is worth mentioning that this part of the research was entirely based on library sources. References were mostly primary and secondary sources. The primary sources included the Afghan civil code and the secondary sources include jurisprudential textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area.

**Findings:** According to the Hanafi School of Islamic jurisprudence, a woman is not given the right to choose her husband in the pre-puberty stage. In the remaining two stages (the puberty stage and the stage of widowhood), a woman can choose her own spouse and no one can take that right away from her. Even if a guardian (*Wali*) marries a girl who is too young, the marriage can be ended when the girl reaches puberty. She can do this by taking the matter to the competent court.

**Unique contribution of theory and practice:** Theoretically, this work is very useful in contributing to the existing body of literature of knowledge. Practically, this work identifies the circumstances in which a woman is allowed to choose her own spouse. Each and every woman will know her bona fide right to choose a husband. On the other hand, society will never force a woman to marry without her own consent.

**Keywords:** *Marriage, Spouse, Hanafi School, Puberty, Widowhood.*

### 1.0 INTRODUCTION

In the sacred religion of Islam, a woman is an individual of dignity and respect. Having an independent personality and having rights and obligations that must be respected. One of these rights is the choice of the husband. Parents do not have the power to force their daughter to marry against her will, but the parents are allowed to guide and advise their daughter. The jurists of Islamic shariah have also studied this issue, which is reflected in many texts and events, which show the whole world how the great prophet Mohammad treated women and challenged the systems of ignorance that abused women. It was a test for the hearts of the believers, to be satisfied with the true Shariah that respects women, respects their will and choice, and rejects all systems that insult women. In this regard, the Prophetic Hadiths have confirmed all these rights. In authentic (Sahih) Bukhari and Muslim, the Holy Prophet (SAW) says: A widow will not be given in marriage unless she shows her consent. And a virgin will not be given in marriage unless permission has been obtained from her. The companion (*Sahabas*) of the holy prophet Mohammad interrogated, "O Allah's messenger, what is the permission of the maiden?" The holy prophet Mohammad replied, "The sign of the permission of the Virgin is her silence."

## **2.0 STATEMENT OF THE PROBLEM**

In a Muslim society, choosing a husband is a legitimate right of every female. This particular right is granted to every woman according to the Hanafi school of Islamic jurisprudence (*fiqh*) and Afghan civil law, but unfortunately, we witness that the majority of people in Afghan society do not give this right to a female, and many times a girl does not even know herself that she is engaged to someone, which then leads to more conflicts and domestic violence. By conducting this research, the level of awareness of society will definitely rise. The mentioned right is given to females, and they will not face problems in their marital life.

## **3.0 THE SIGNIFICANCE OF THE RESEARCH STUDY**

In order to raise the level of education of women, respect, and maintain human rights in society, it is necessary to know that women are allowed and have the right to choose their husbands under some specific conditions and circumstances. This research will pave the way for women to understand their right to choose a husband according to the Hanafi school of Islamic jurisprudence and to move towards a positive direction. On the other hand, the wali (Islamic legal guardian) will understand his range and scope of authority to make a positive decision regarding marriage. By fulfilling these conditions, women's lives will not be in trouble and they will live a happy and prosperous life.

## **4.0 LITERATURE REVIEW**

In his book (Islamic family system), Associate Professor Shirzad Azizi deeply discussed the subject matter under the title of compulsory Wilayah (Islamic legal authority or guardianship), which only discusses the powers of the Wali (Islamic legal guardian), that is, under what conditions and circumstances a guardian is allowed to marry off the girl to a husband. On the contrary, this research, broadly explores, explains, and analyzes the right of choosing a life partner for a girl based on the Hanafi School of Islamic jurisprudence (*fiqh*).

Another important and significant research done by Sheikh Asad Muhammad Al-Sagharji under the title (Hanafi jurisprudence (*fiqh*) in the light of the Qur'an and Sunnah), explores and discusses Wilayah (Islamic legal authority or guardianship) under the framework of family law. This research varies in many aspects from the above research. For instance, the research of Sheikh Asad

Muhammad Al-Sagharji is about the broad Hanafi Jurisprudence, which does not cover a specific family law related issue but many family law related issues. On the other hand, this research study will discuss a specific family law issue, which is choosing a husband for a woman according to the Hanafi School of Islamic jurisprudence, which makes up a small portion of Islamic family law. Furthermore, this study collects various perspectives on the subject from Hanafi school jurists and scholars, but also consults other jurisprudential books as needed.

In addition to the above literatures, other important jurisprudential books such as: Alahwal Alshakhsiat fi Altashrie Alaslami (الاحوال الشخصية فى التشريع الاسلامي), Alhadayih Sharh Albidayih (كنز الدقائق (الهداياه شرح البدايه), family law, and so on were used.

## 5.0 CONCEPT AND GOALS OF MARRIAGE (NIKAH) IN LIGHT OF ISLAMIC SHARIA

### 5.1 The Concept of Marriage

In Islamic jurisprudence, marriage — or more specifically, the contract of marriage- is called *nikah*. *Nikah* is an Arabic word whose original literal meaning is "sexual intercourse", "intimate or close union of a husband and wife" or "cohabitation." In other words, marriage (*nikah*) is a legal contract between a male and a female.<sup>1</sup> Furthermore, the marriage should be based on the groom and the bride's verbal or written mutual consent, which is considered a religiously valid Islamic marriage and outlines the rights and duties of the husband and wife. According to Islamic jurisprudence, there should be two Muslim witnesses while the marriage contract is signed.<sup>2</sup>

Islamic marriages require the consent (*qubl*) of the groom, the bride, and the guardian (*wali*) of the bride. Typically, the *wali* of the bride is a male relative, preferably the bride's father. Typically, the bride is present during the signing of the marriage contract.<sup>3</sup> The *Wali* is a technical term in Islamic law that refers to the guardian of a bride. In traditional Islam, the term "*wali*" has the literal meaning of "guardian" or "protector." In this context, the bride's silence is understood to constitute consent. In the majority of jurisprudential schools of Islamic law, only the bride's father or paternal grandfather may serve as a *wali*.<sup>4</sup> Moreover, an Islamic wedding can take place if the conditions are met and a *mahr* and contract are signed. Brides often sign marriage contracts. Brides must consent. A responsible person declares the couple's Islamic marriage after giving them a sermon. Though customary, the person marrying the couple need not be religiously knowledgeable. The bridegroom can deliver the sermon if he is religiously educated, as Imam Muhammad bin Ali did in 829 AD. It's usually followed by a reception that lasts a few hours or several days, depending on the couple's or local customs.<sup>5</sup>

### 5.2 Objectives of marriage (*nikah*) according to Islamic Sharia

<sup>1</sup> Ibnul Hamam, Kamal Mohammad Bin Abdul Wahid Alsawasi, Fathul Qadeer, Maktabah Altijaria. Fourth edition. 184. <https://www.merriam-webster.com/dictionary/marriage>. 15. 6. 2022. 11:43 AM.

<sup>2</sup> [https://advocatespedia.com/Definitions\\_Of\\_Marriage\\_In\\_Muslim\\_Law](https://advocatespedia.com/Definitions_Of_Marriage_In_Muslim_Law). 15.06.2022. 9:26 AM.

<sup>3</sup> Ibid.

<sup>4</sup> Ghandur, Personal Status in Islamic Legislation, Maktab al-Falah, Kuwait. 1392 Hijri. P 149.

<sup>5</sup> Abu Bakr al-Mazghinani, Al-Hidaya Sharh Al-Badaiya, Maktab Al-Bashari Karachi Pakistan, Volume 2, P 3. Also see Shirzad Azizi, Islamic Family System. 2018. P 92.

The marriage and family structure that are prevalent in western cultures have certain goals that, in many respects, are different to the aims of an Islamic marriage. In terms of marriage objectives in Islam, they are unique in that all of the couple's objectives, as well as all of their rights and responsibilities, have been prescribed by divine legislation, namely the Qur'an and Hadith, and thus neither spouse can deny his or her fundamental responsibilities nor expect extra demands from the other. Islam emphasizes love, affection, tolerance, and couples' cooperation in order to establish a stable and strong family in a society. Marriage's goals in Islamic law can be summed up as follows:

- **Protection from the Devil:** The first and most important function of marriage in Islam is to save a couple's character, moral fiber, purity, and chastity. It's a method of regulating sexual arousal. "If a man marries, half of his religion is saved," the prophet said. Moreover, Allah Almighty states in the Quran "These are the limits of Allah; do not transgress them".<sup>6</sup> This verse warns the couple not to cross Allah's limits. Furthermore, men and women's desire for each other must be satisfied. It will be a source of discord and disruption in society if it is not fulfilled. As a result, God's Messenger, upon whom be peace and blessings, commanded that all men capable of meeting the responsibilities of marriage marry. O! said the Prophet. If you can get marriage (*nikah*) to keep your eyes and heart pure. Whoever can't marry should fast because it protects from sin.<sup>7</sup>
- **Fertility:** The second most important goal is to continue and expand the population of the Muslim community. Obviously, this objective could be accomplished apart from marriage. However, actions that are carried out in disobedience to God do not receive His blessing and instead contaminate society. Not only is the production of children for the next generation but also the production of righteous children, who will obey God, serve the people, and be a source of reward for their parents who have passed away.<sup>8</sup>
- **Affection & Love:** The third goal of marriage is for the couple to derive pleasure and satisfaction from each other, as well as to strengthen their love and affection for one another. This relationship is declared a source of peace and love in the Quran. In the Quran, it is stated, "One of His (God's) signs is that He created mates for you from among yourselves so that you can live in peace with them, and He has placed love and mercy between you." There are signs for those who think about it."<sup>9</sup> As a result, marriage is required for mental stability." It leads to the conclusion that marriage is not solely for the purpose of reproduction; rather, love and affection provide the foundation for creating new generations and achieving the ultimate goal of establishing a just and peaceful human world order.
- **The Wife's contribution to the husband's responsibilities:** The fourth purpose is for the wife to perform divine service, which relieves the husband of some of his responsibilities. She gives her husband leisure by performing housekeeping duties and satisfies his sexual

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<sup>6</sup> The Quran, 2: 229.

<sup>7</sup> Razi Naseem, Importance and Objectives of Marriage in Islam: An Analysis of Pakistani Nikah Namah in the Light of the Provisions of the Quran and the Sunnah. J. Asian Dev. Stud. (September 2013). Vol. 2, Issue 3. P 115.

<sup>8</sup> <https://www.dislam.org/islam/a-muslim-s-daily-life/marriage-and-family-life/291-the-purpose-and-goals-of-marriage>. 15.6.2022. 12:59 PM.

<sup>9</sup> The Quran, 30:21.



desire. 'Let one of you have a grateful heart, a remembering tongue, and a chaste wife helping him for the next world,'" said the Prophet (P.b.u.h).<sup>10</sup>

## **6.0 WOMEN'S RIGHT TO CHOOSE A HUSBAND IN THE HANAFI SCHOOL OF ISLAMIC JURISPRUDENCE**

Based on the sacred rules and regulations of Islam, both men and women are given the same amount of freedom to choose their partners. It is forbidden for parents, along with any other party, to coerce their children into marriages that they do not want to enter into. This is due to the fact that an Islamic marriage is valid and legitimate only if there is genuine consent on the part of both the husband and the wife. Their function and responsibility entail nothing more than offering counsel and direction to others. A woman has complete discretion over whether or not to accept or reject any proposal made to her. She has the final say on whether or not to marry. The wisdom behind this is that a marriage conducted under duress has a low likelihood of resulting in a healthy family life, because this is an impediment to what Allah requires of both spouses in their lives together: that they foster mercy and compassion toward one another.<sup>11</sup>

In this section, the research study will focus on three cases and conditions in which a woman can choose a life partner and marry. Firstly, the right of a woman to choose her spouse (husband) before puberty. Secondly, the right of a woman to choose her spouse (husband) after puberty. Thirdly, the right of a widow in the state of widowhood.

### **6.1 Women's Right to Choose a Spouse before Puberty (Child Marriage)**

In Islam, husband and wife have an equal right to choose each other, which is explained in hadiths on this subject. The Prophet Mohammad (SAW) says: A widow will not be given in marriage unless she has made a request. And a Virgin will not be given in marriage unless permission has been obtained from her. The companions said: Oh, Messenger of Allah! what will be the permission of the maiden? The Prophet Mohammad (SAW) replied to the companions, her silence.

It is obviously inferred from the above hadith that a woman is allowed and has a bona fide right to choose a spouse for herself. But the question now is, does a child girl who has not yet reached puberty has the right to be married or not? Or is a guardian (*Wali*) allowed to marry a minor (child) girl to someone? These questions are going to be answered in detail.

#### **6.1.1 Age of Puberty and Marriage before Puberty in Islamic Jurisprudence**

A person is considered a "minor" until he or she reaches the age of puberty. In Islamic jurisprudence, puberty is defined by physical and biological signs of a minor's development, such as the onset of menstruation for females and semen emission for males. Age is considered a secondary source for determining puberty in Islamic jurisprudence.

According to Imam Abu Hanifa, According to Imam Abu Hanifa, a boy is considered an adolescent when he reaches the age of 18 without showing any signs of maturity, such as semen emission or

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<sup>10</sup> Razi Naseem, Importance and Objectives of Marriage in Islam: An Analysis of Pakistani Nikah Namah in the Light of the Provisions of the Quran and the Sunnah. J. Asian Dev. Stud. (September 2013). Vol. 2, Issue 3. P 116.

<sup>11</sup> <https://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=126&text=marriage>. 16.6.2022. 3:25 PM. See also Ghandur, Personal Status in Islamic Legislation, Maktab al-Falah, Kuwait. 1392 Hijri. P 149.

other signs of puberty. Similarly, a 16-year-old girl is considered an adolescent if she has no signs of maturity, such as menstruation or other indicators of puberty.<sup>12</sup>

Marriage before puberty (child marriage) is defined as "any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to bear the responsibilities of marriage." Child marriage, on the other hand, occurs when either one or both of the spouses are under the age of 18. This type of marriage can take place with or without formal registration, and it can be governed by civil, religious, or customary laws.<sup>13</sup>

As previously stated, a child marriage occurs when one or both of the parties are incompetent when it comes to the maturity of a marriage contract. Marriage is a huge responsibility for both spouses. As a result, both parties must be aware of their rights and responsibilities. It is obvious that children are incapable of understanding the responsibilities that they have been entrusted with as a result of a marriage contract (child marriage). A minor is prohibited by law from entering into any legal contract. As a result, his or her marriage contract will have no legal consequences for the parties. Some conditions must be met by both parties before entering into a marriage contract, according to Islamic law. The basic sources of Islamic law, the Quran and Sunnah, contain no clear ruling on child marriage. As a result, Islamic scholars have the responsibility of guiding the Ummah in such situations. Muslim jurists provide their logical viewpoints on the topic of child marriage according to Islamic jurisprudence.<sup>14</sup> Among these jurists, Imam Abu Hanifa agrees that the father, brother, uncle, or grandfather of the girl may perform the marriage contract. They provide several examples of child marriage precedents to support their argument, including:

- Aisha (RAA) was very young when the Prophet Muhammad (PBUH) married her. The exact age of Ayesha (RAA) when she married Prophet Muhammad (PBUH) is debated by Muslim scholars. Some say that she was six-years-old at the time of the engagement and at the age of nine she got married. On the other hand, some say that the age of Aisha (RAA) was 10 when she got engaged and she got married at the age of 15.
- Urwah b. Zubari married Ali (RAA)'s daughter at a very young age before she became adult.
- Ali (RAA) did not nullify a marriage contract in which a father gave his daughter to Abdullah bin. Hassan.<sup>15</sup>

## 6.2 Marriage before Puberty (Child Marriage) According to the Afghan Civil Code

In accordance with Afghan Civil Law, the minimum age for a girl to get married is sixteen, while the minimum age for a boy to get married is eighteen. However, if both the girl's father and the

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<sup>12</sup> Nazir Ullah, Saidatul Nadia Binti Abd Aziz, and Rao Qasim Idress, Child marriage: International Laws and Islamic Laws perspective. Journal of Educational and Social Research. Vol 11. No 3. 2021. P 66. DOI: <https://doi.org/10.36941/jesr-2021-0051>.

<sup>13</sup> Group development Pakistan, child marriage in Islam. 2019.

<sup>14</sup> Nazir Ullah, Saidatul Nadia Binti Abd Aziz, and Rao Qasim Idress, Child marriage: International Laws and Islamic Laws perspective. Journal of Educational and Social Research. Vol 11. No 3. 2021. P 67-68. DOI: <https://doi.org/10.36941/jesr-2021-0051>.

<sup>15</sup> Nazir Ullah, Saidatul Nadia Binti Abd Aziz, and Rao Qasim Idress, Child marriage: International Laws and Islamic Laws perspective. Journal of Educational and Social Research. Vol 11. No 3. 2021. P 68. DOI: <https://doi.org/10.36941/jesr-2021-0051>.

appropriate court give their consent, a girl who is fifteen years old is legally allowed to get married. Marriage of girls under fifteen is not allowed under any circumstances. The Afghan civil code states that “(1) the marriage contract of a girl who has not attained the age mentioned in Article (70) of this Law may only be concluded by her competent father or competent court.” (2) Marriage contract of a minor girls under the age of 15 is strictly prohibited.”<sup>16</sup>

The above article makes it abundantly clear that the guardian (*Wali*) has no right to marry off a girl before puberty. The ruling of the Afghan civil code is in contradiction to the Hanafi School of Islamic jurisprudence. Because the Afghan civil code allows a guardian (*Wali*) to marry off a girl after she turns fifteen, The Hanafi School of Islamic jurisprudence, on the other hand, grants a guardian (*Wali*) the right to give a girl in marriage even if she has not reached the age of fifteen.

A question that arises here is, if a girl does not reach the age of puberty and her guardian (*Wali*) gives her in marriage to someone, can she cancel or annul the marriage after she reaches the age of puberty? In Islamic jurisprudence, it is called the option of repudiation on puberty (*Khyar-ul-Bulugh*). Rejection of marriage is the act of one or both parties to annul or terminate the marriage that has been solemnized. Under Islamic Law, the 'Option of Puberty' is a right to repudiate a woman's marriage if it took place while she was a minor, including a marriage contracted by her father or grandfather. Both the father and the grandfather have done this, but they are notorious for misconduct. So, when the child reaches puberty, he can annul the marriage. Of course, he cannot do it on his own, but will go to the court and order annulment or cancelation of the marriage after investigation.<sup>17</sup>

### **6.3 Women’s Right to Choose a Spouse after Puberty in Islamic Law**

According to Imam Abu Hanifa (RA), Imam Zafar, and Imam Abu Yusuf, a sane and mature woman can enter into a marriage contract of her own free will, which is not subject to the permission of the *Wali*, whether she is a virgin or a widow. If we think deeply, it can be said that a woman who is sane and mature and marries someone who is her equivalent, she is actually occupying her right. When someone is occupying her right, then no one has the right to object.<sup>18</sup>

According to the Hanafi school of Islamic Jurisprudence, it is not permissible for anyone to force a mature woman to marry someone. Because, according to Islamic principles, every mature and sane woman is fully independent in choosing a spouse for herself. The Hanafi School of Islamic jurisprudence argues based on a hadith narrated by Hazrat Aisha that a young girl came to my house and said: "My father had given me in marriage to my cousin, but I do not like him." When the Prophet Mohammad (peace and blessings of Allah be upon him) came, she told the whole story to the prophet. The Prophet Mohammad (peace and blessings of Allah be upon him) summoned her father and gave her authority over him. It is up to you whether you want to marry the boy or reject him, and your father cannot force you to marry him. The young girl replied that I accepted

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<sup>16</sup> Civil code of the republic of Afghanistan, translation produced by Afghanistan legal education project. Official Gazette NO. 353 (4 VOLUMES) PUBLISHED: 15 JADI 1355 (JANUARY 5, 1977). P 23.

<sup>17</sup> [https://advocatespedia.com/Option\\_of\\_repudiation\\_on\\_puberty](https://advocatespedia.com/Option_of_repudiation_on_puberty). 22.06.2022. 9:44 PM.

<sup>18</sup> Shirzad Azizi, Islamic Family System. 2018. P 102.



what my father decided. Of course, I did this in order to make it clear to the women of the Ummah that fathers do not have full control over the marriage of daughters (but will consult with them).<sup>19</sup>

The Imam Ibn Qayyim (may Allah be pleased with him) said: The father of a wise, mature, and knowledgeable woman cannot take financial property from his daughter without her consent; nor can he force her to give him a small thing; so how can a father give her to anyone without her consent? Furthermore, Abu Thawr (may Allah be pleased with him) states that in the marriage contract, both parties (the woman and her guardians) should show their consent, whether the woman is a widow or a virgin. Because marriage is not only about the husband and wife, but also about the family.<sup>20</sup> Moreover, according to Imam Muhammad ibn al-Hasan al-Shaybani (may Allah be pleased with him), if a wise, sane, and mature woman enters into a marriage contract without the permission of her guardian (*Wali*), it is valid, provided that she is married to her equivalent. And if she has not gotten married to her equivalent, then it is suspended till she gets the permission of the guardian (*Wali*). If the guardian (*Wali*) gives permission, then the marriage contract is valid; if he does not give permission, then the marriage contract is void.<sup>21</sup>

Based on the above arguments, the researcher concludes that a wise, sane, and mature woman has the right to choose her spouse and get married. As well, according to the Hanafi School of Islamic jurisprudence, marriage without the permission of the guardian (*Wali*) is valid. Furthermore, the civil code of Afghanistan has accepted the same view and agrees that a sane, wise, and mature woman has the right to choose her spouse and get married.

#### **6.4 Right of Choosing a Spouse in Widowhood**

Marrying a widow is a Sunnah and a social need. It is a social need because a married woman finds it more difficult and dangerous to live without a man than an unmarried woman. If a widow is not remarried, she is more likely to be corrupted than a single woman. Because of this, Islam commands us to marry a widow. Even widows are permitted to remarry, giving them the opportunity to select a spouse of their own choice.<sup>22</sup> There are several hadiths that show a widow is allowed to choose a spouse by her own free will and authority:

1. Abdullah Ibn Abbas narrated that a widow has more right to herself in terms of marriage than her guardian, and the virgin is more entitled to her permission, and her permission is her silence.
2. Imam Bukhari (may Allah be pleased with him) narrated by Abu Hurayrah (may Allah be pleased with him) that the Prophet Mohammad (peace and blessings of Allah be upon him) said, "A previously married woman (widow) should not be married until her consent has been sought."<sup>23</sup>

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<sup>19</sup> Muhammad ibn Isma'il and Amir al-Sana'ani, *Sabal al-Salam*, Dar al-Kitab al-Ulamiya, Beirut. (1182 Lunar Hijri) Vol 4. P 155.

<sup>20</sup> Abu Bakr al-Mazghinani, *Al-Hidaya Sharh Al-Badaiya*, Maktab Al-Bashari Karachi Pakistan, Volume 2, P 3.

<sup>21</sup> Ibid. 91.

<sup>22</sup> Muhammad Shakil Auj, the problem of the marriage of widow. P 93.

[http://pu.edu.pk/images/journal/alqalam/PDF/9%20Shakil%20Auj%20The%20Problem%20of%20the%20 v28\\_issu e40-2013.pdf](http://pu.edu.pk/images/journal/alqalam/PDF/9%20Shakil%20Auj%20The%20Problem%20of%20the%20 v28_issu e40-2013.pdf). 23.6.2022. 11:01 AM.

<sup>23</sup> Sunan an-Nasa'i, *The Permission of a Virgin*. Chapter 34. Book 26. Hadith 72. Vol. 4. Hadith 3269. P 3267. <https://sunnah.com/nasai:3267>. 23.6.2022.11:35.

3. The Prophet Mohammad (peace be upon him) married widows to support them. If a man marries a widow, he is definitely following the Prophet's deed.<sup>24</sup>

From the above hadiths, it is clear that a widow is free to choose her spouse and no one can force her to remarry or not. Because, according to the meaning of the hadith, a widow is more powerful than her guardian (*Wali*). Reasonably, all the scholars agree that no one is allowed to possess a woman's property except with her permission, so how could someone give her in marriage.

## 7.0 CONCLUSION

In the sacred religion of Islam, marriage is a crucial social and religious institution because it creates a social contract that creates a person's legal, financial, and familial relationships. Since the arrival of Islam fourteen hundred years ago, the practical application of the concept of guardianship (*Wilayat*), which is a fundamental principle in the institution of marriage, has been varied. The right of a woman to choose a spouse is debatable in three cases, namely, at the pre-puberty stage, at the puberty stage, and at the stage of widowhood. According to the Hanafi school of Islamic jurisprudence, only in the first of the above three cases, which is the stage before puberty, a woman not given the right to choose her husband. In the remaining two cases (the puberty stage and the stage of widowhood), a woman can choose her own spouse and no one can take that right away from her. Even if a guardian (*Wali*) gives an underage girl in marriage, upon reaching the stage of puberty, the girl can apply for the termination of the marriage by referring the matter to the competent court. Moreover, according to Islamic Sharia and the Afghan civil code, after a girl reaches the age of puberty, her guardian (*Wali*) should counsel her regarding her marriage and the guardian (*Wali*) is not allowed to force her into marriage without her consent. Additionally, the widow's right to choose a spouse is even broader. Since the marriage contract cannot be solemnized unless the widow has made an order or accepted it by word of mouth.

## 8.0 RECOMMENDATIONS

The state and non-governmental organizations must plan and implement effective programs to improve public awareness and capacity. When these programs are carried out regularly in a consistent manner by the executive authorities, they will become more successful. So, here are some suggestions for the public, the government, and non-governmental organizations to follow:

1. Regular awareness campaigns are needed. These programs should target rural areas.
2. All people are to respect the rights of women and give them rights according to the rulings and principles of Islam and Afghan law. One of these rights is the right to choose one's spouse, which is one of the most violated rights in Afghan society.
3. The government should design and implement public awareness programs on women's rights, so that our society could be aware of women's rights and implement them in their lives.
4. Assistance should be provided to women who experienced domestic violence while they were given in marriage as children. They should also be informed and aware of those legal solutions that result in dissolving the marriage.

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<sup>24</sup> <https://azislam.com/benefits-or-marrying-a-widow-in-islam>. 23.6.2022. 11:44 AM.

5. It is important to raise women's public awareness regarding their rights, particularly their right to choose a spouse and marry.

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