INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN PROGRESSIVE EDUCATION & DEVELOPMENT

OPEN ACCESS JOURNAL

Vol 12, Issue 1, (2023) E-ISSN: 2226-6348

The Practice of Changing *Mazhab* (School of Thought) and its Implication to A Marriage

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To Link this Article: http://dx.doi.org/10.6007/IJARPED/v12-i1/16388 DOI:10.6007/IJARPED/v12-i1/16388

Published Online: 25 March 2023

Abstract

In Islam, marriage is the only true form of relationship between a man and a woman as it is the only established medium to create a family. Hence, Islam emphasizes on the importance of marriage and takes various legal measures to ensure its purity and propriety. When it comes to the issues pertaining to marriage, the most fundamental principle is that it is forbidden upon us to deal with the matters relating to marriage and divorce, until or unless there is an authority who permits us to do so. It is implicitly implied here that Islam takes very serious care of marital issues since they are very much concerned with many aspects of the Islamic teaching itself, as emphasized in many Quranic verses and hadiths. However, it cannot be denied that different interpretations and opinions among the religious scholars on these marital issues do exist and cannot be avoided. The purpose of this study is to highlight the extent to which we can contemplate and negotiate with different views of matters pertaining to marital issues such as marital guardianship, dowry and witnesses in a divorce. The practice of changing *mazhab* (school of thought) in these matters is permissible, yet subject to several rules and regulations.

Keywords: Change, *Mazhab,* Marriage, Implication.

Introduction

Islam lays great stress on the right and method of choosing a partner. Both men and women must select their partner based on the fact that he or she is a good Muslim. Piety becomes the basis of mate selection among the Muslims as a means to ensure a happy and fulfilling marriage for both the husband and the wife (Omar, 2019).

A Muslim man must choose a religious and pious woman as his life partner, as explained in a hadith of Prophet Muhammad p.b.u.h that "A woman must be married for four things: for her wealth, for her lineage, for her beauty, or for her piety. Blessed and fortunate is he who chooses a woman for her piety in preference to the other qualities" (Muslim, 1994; Al-Shawkaniy, 2021). The pious women are those who obey the Islamic teachings.

Problem Statement

Islam considers marriage as a very serious commitment. It has prescribed certain underlying principles to ensure the longevity of marital bond between the partners. One of them is the requirement for entering a marital contract at the earliest stage of a marriage. It is not a mere requirement but intended to ensure the fulfillment of several matters and rights before the couple is allowed to be in a marriage (Muhammad, 2007). For instance, the solemnization itself must be done in front of two just witnesses, and the guardian of the bride (either the bride's father or paternal grandfather (*wali mujbir*), or any other legal guardian) must consent to the marriage. The wisdom or justification behind this requirement is to represent a proper handover of responsibility from the guardian to a "new guardian" (the bridegroom), as well as to ensure the bride's right. Islam sees marriage as something that cannot be taken lightly as it involves human dignity (Uqlah, 2002). But if does not work well for any valid reason, it may be terminated in kindness and full honor with equity and respect (Meraj, 2018).

Islamic family law in Malaysia is bound by Shafie school of thought. Although it is true that there is a law in the Islamic Law Enactment in most of the states in Malaysia that allows muftis to extract a rule prescribed by the Shafie school of thought and replace it with another if the opinion of the former does not favour the public interest (Omar & Muda, 2017). It can still easily be questioned as to what extent can this act be enacted, and to what extent can the legislation influence the process of judgment performed by the judge? This question arises due to the distinguishable entities of the judgment institution and the legislation institution. There is also no provision of law that says that the legislation made by the legislators (including muftis) must be supported by the judge since the judges in the Sharia court are subjected only to two things in the process of judgment:

i) the provision of law as outlined in the Enactments;
ii) their opinions, including in the matters that are not mentioned in the provision of law either completely or vaguely.

To discover and understand further about matters relating to the application of Shafie and other schools of thought in the judgment process in Malaysia, we can look through several cases of marital matters previously handled.

Research Methodology

This study employs a qualitative method (philosophical approach), namely the methodology of library research of both exploratory and descriptive natures. Exploratory research basically uses investigative focus to seek clues for the necessary results (Marican, 2005). The purpose of this study is to identify the basic principles of the underlying different views and review the key sources that discuss the issue of following different schools of thought in solving marital issues in Islam. The author examines any form of ancient and current writings that relate to this study either directly or indirectly. Information is obtained from books, journals, law enactments, magazines, papers, printed media, electronic media, internet, and the like.

Finding and Research Discussion

Following is the detailed explanation of the Islamic family law and certain review cases on marriage in Malaysia that have or should have involved the practice of changing *mazhab* (school of thought).

1. Categories of Conflicting Views (*Khilaf*)

There are several categories of *khilaf* (conflicting views) in juridical matters where each of them is allowed different degrees of permissibility for the practice of changing *mazhab* (school of thought) in finding solution for the marital cases.

Table 1
Categories of Conflicting Views (Khilaf)

	Arise from different interpretations of Al Quran and Al Sunnah
	Based on personal reasonings (ijtihad)
	Based on wasilah (method)
	Regarding uncertain matters (shubhat)
	Strange views from the Islamic fundamental principles

Conflicting views that arise from different interpretations of the religious texts (Al Quran and Al Sunnah)

It is common for Muslim scholars to argue upon issues that have no valid basis or reference in any of the legal texts. However, it is also not uncommon for them to still argue on issues that have been stated or explained clearly in Al-Quran and Al-Sunnah since these religious texts can still be interpreted and understood differently due to different analysis of the semantic, literary and grammatical structures of the Arabic language.

A clear example of this is the notion of guardianship of a "major" woman (a woman who has reached puberty) who is of a sound mind. The Muslim scholars have expressed contrary opinions about this, and some of them argue that such woman must seek consent from her guardian to get married while some others opine that such consent is not relevant or necessary since she is capable to make her own judgment and decision for her own interest.

Majority of Muslim scholars agree that a marriage is not valid until or unless it is consented by the bride's guardian (Al-Shiraziy, n.d.; Ibn Rushd, n.d.; Ibn Hazm, n.d.), while Imam Abu Hanifah argues that a sane woman who has reached puberty can get married without her guardian's consent, provided that she is in agreement with her future husband on that marriage and the dowry that will be given is *mahr-al-misl* (al-Kasaniy, 1986).

According to Ibn Rushd (n.d.), one of the reasons for these conflicting views to have existed is because the religious texts that touch on the matter(s) concerned are construed differently resulting in the scholars generating various interpretations. One example of a Quranic text that is commonly interpreted differently is, "*Do not prevent them from marrying their (former) husbands*" (Al Baqarah, 2:232). To the majority of Muslim scholars, this verse is aimed at the guardians of the brides where Allah ordains them to not impede or interfere with the bride's marriage even when the bride is under their guardianship. The issue that arises in this particular verse is on the right of guardianship, that if a guardian has no right to his daughter or any woman under his guardianship, then there should be no issues raised about any impediment or interference by the guardian (Al-Zuhailiy, 1989).

On the other hand, this verse is believed to reveal that a guardian has the right to determine the marriage of his daughter or of any woman under his guardianship. This is

because the use of the word "prevent" in this verse actually connotes to the right of the guardian toward the woman itself. In addition to this, there is a fatwa that states that a guardian (e. g. a father) must not give his consent to his daughter's marriage until or unless he is certain that the marriage will benefit his daughter. Here, it is clear that the bride's guardian is given the right to give consent to her marriage (Uqlah, 2002).

The scholars from the Hanafiy school of thought, however, view this verse as a mere prohibition for the family members or relatives to interfere or impede with the bride's choice such as not agreeing to the marriage and calling off the wedding. In fact, it is believed that there is no issue of any right of guardianship here in this verse. This is strengthened with the word "*ankihu*" which shows a woman has more right to her marriage than her guardian does (Uqlah, 2002). This is more justified with the fact that a woman knows better to determine her own future, thus has the right to marry any man that she thinks is the most ideal for her without the consent from her guardian.

Here we can see how two conflicting views are made based on the same legal Quranic verse. Both views are deemed strong in terms of status as they rely on the same source which is Al-Quran, the primary source of Sharia. For this reason, we can opt for either of these views and this should not lead to any prejudice. Hence, when it comes to cases of this type (marriages without the bride's guardian's consent), judges must be open to all views when giving their judgment.

Conflicting views that are based on personal reasonings (ijtihad)

Ijtihad is the continuous process of development of Sharia law after the divine revelation and prophetic legislation got discontinued upon the demise of Muhammad p.b.u.h. In this case where there is no divine revelation or prophetic legislation to be referred to about a particular issue, the Muslim jurists try with their best effort to infer the Sharia laws regarding that issue based on the details found in the sources. *Ijtihad* is based on the method of jurisprudence and wisdom for the authorization of certain *hukm* or regulations. For instance, regarding the issue of sequence of a bride's guardian, the jurists argue if a son can be considered a guardian of his mother in the solemnization (Al Zuhailiy, 1989). If he is, who then should be given a priority to be her guardian; her son or her father? Another example of *ijtihad* in marital matters is when the jurists argue about the validity of the consent given by a *wali ab'ad* while the *wali agrab* is still alive, that then leads to another issue of the validity of such marriage.

The views that these jurists confer and resolve in are based on *ijtihad*. *Ijtihad* essentially results in inferences (*istinbat*) that amount to the probability (*zanni*). Therefore, we are allowed to choose any of the views to be followed. In this case, judges have to be flexible in handling the issues involving *ijtihad* and not be too rigid in following the Shafie school of thought. This is because the judges themselves are those who are granted the power of making *ijtihad* as stated by the majority of Islamic scholars (Zaydan, 1984). On the other hand, they made ijtihad for the sake of public interest (Omar & Muda, 2017).

Arguments based on wasilah (method)

The arguments about marital matters among the jurists normally revolve around the question of *wasilah* (method). One example of this is the requirements of the solemnization which then form a sort of marital contract between the husband and the wife that is not only meant to symbolize the wife's submission to the husband. The notion of marriage in Islam is unique and features both sacramental and contractual values. The *akad* ceremony is considered

important representing the handover of responsibility from the bride's guardian to the husband.

According to the scholars of *tafsir*, the meaning of the phrase "*mithaq thaqil*" as stated in Surah Al Nisa' is an agreement to protect and live peacefully and affectionately (Al Zuhailiy, 1991). As asserted in an authentic *hadith*, a marital bond between a couple must be seen and treated as a trust entrusted by Allah to His slave (the husband) to protect and take care of his wife. Thus, it is clear here that the marital bond is the most fundamental element in a marriage, and the act of witnessing the marriage is a custom that relates to the matter of *wasilah*. However, it cannot be denied that having witnesses during the solemnization is one of the conditions of the validity of a marriage (Al Shawkaniy, 2021), as supported by a hadith reported by Imran Ibn Hussain where the prophet states clearly, "*The marriage is not valid if it is not solemnized by the guardian and witnessed by two upright persons*" (Abadi, 1979).

Based on this hadith, it is very clear that any solemnization of a marriage must be witnessed by two just persons. There is also another hadith reported by Ibn Abbas that also mentions the act of witnessing in a solemnization but without a clear explanation about the nature of the act. Imam Tarmidhiy explains that most of the companions, successors and Muslims have been including the act of witnessing in solemnizations as proposed in the hadith and there is no dispute regarding this matter (Al-Mubarakfuri, 1979).

However, there are several arguments about the nature of the act. Majority of the Islamic scholars hold the view that this act of witnessing must be done by two just witnesses during the solemnization, referring to several hadiths that say that a marriage is not valid without the presence of two witnesses. Among the hadiths are the two mentioned above.

Yet, according to other scholars like Imam Malik ra.m and Ibn Hazm ra.m, the core purpose of the witnessing act is to publicize the marriage to the society. This is to avoid any negative assumption or misunderstanding toward the couple. As said by the prophet p.b.u.h. in a hadith, "*Declare the marriage to the public and let it be solemnized at a mosque*" (Al Haithamiy, 2001).

Since the ultimate purpose of witnessing is to publicize the marriage, the validity of a marriage is not dependent on the act of witnessing but the act of publicizing of the marriage itself. The requirement of two just witnesses is only as an emblem of the condition of publicizing the marriage.

Conflicting views regarding uncertain matters (shubhat)

There are views pertaining to marital matters that entail uncertainties. When a judge is handling a case that involves uncertainties, he has to be very careful in making judgment and take certain precautions (*ihtiyad* or precautionary measures). An example of this is the case of marriage between a man and his stepdaughter. According to some scholars, a man who has divorced his wife whom he once had coitus with is allowed to marry his step-daughter (the daughter of his former wife) (Al Qurtubiy, 1985). This is based on a Quranic verse, "*Forbidden to you for marriage are . . . your stepdaughters under your guardianship if you have consummated marriage with their mother—but if you have not, then you can marry them. . .*" (Al Nisa', 4:23).

Based on this verse, there are some scholars saying that the prohibition for a man to marry his step-daughter depends on two situations. The first situation is if the step-daughter is staying with him (meaning she is under his guardianship), and the second one is if he and the step-daughter's mother had consummated marriage. At first glance, it may be interpreted here that the prohibition is only valid if both conditions are met. Hence, the man is allowed

to marry his step-daughter who is not or no longer under his guardianship regardless his consummation status with the mother. This view obviously contradicts the view of the majority of the jurists who assert that a marriage between a man and his step-daughter is invalid and illegal although they have previously never lived under the same roof, unless his previous marriage to her mother had never been consummated (Al Qurtubiy, 1985).

The marriage between the man and the step-daughter is illegal and invalid (*ab initio*). However, in a case where the man and his step-daughter's mother never consummated their marriage, he is then allowed to marry her. The former view above where a man can be allowed to marry his step-daughter who is not under his guardianship seems to have the element of uncertainty, and according to the Islamic maxim, "*It is forbidden upon us to deal with the matters relating to marriage and divorce until and unless there is an authority that permits us to do so*" (Al Suyutiy, 1959).

When it comes to situations that involve ambiguous legal texts or Quranic verses either semantically or contextually, Islamic scholars must not confine themselves to the conditions stated in the texts. As for the above case, it is up to a judge to decide and regulate a legal rule or *hukm* based on the original *hukm* on what is *haram* or illegal in the matter of marriage between a man and his step-daughter. The judge must administer his judgment only after taking into consideration the maxim of *sadd al dhara'i* (blocking the means). *Sadd al dhara'i* implies blocking the means to an unexpected bad occurrence, or in jurisprudence, it can be defined as blocking the means to evil. Here, by regulating the prohibition of marriage between a man and his step-daughter, it would prevent unwanted actions such as flirting with step-daughters or among the family members.

Strange views from the Islamic fundamental principles

There are certain strange practices coming from the Islamic fundamental principles that involve unjust and wicked deeds. These practices then must be restricted as a response to the primary Islamic fundamental principle which is to oppose cruelty, injustice, selfishness, and the like. One example of these strange practices is the temporary marriage (*mut'ah*). Through this kind of marriage, a man is allowed to have a sexual intercourse with a woman within a specific period of time (Ibn Hajar, n.d.). This kind of marriage does not require any witness or permission from the guardian (*wali*), does not oblige the man to provide and maintain the marriage, and can even be had with more than four women (wives) (Al Amin, 1991). Since the contradiction to the Islamic principles is very clear here, a judge should not allow this practice to the society. Following this practice can be considered a crime toward the Islamic principles.

The justifications behind the practice of changing *mazhab* in marital matters

The justifications behind the practice of changing *mazhab* in marital matters are as below:

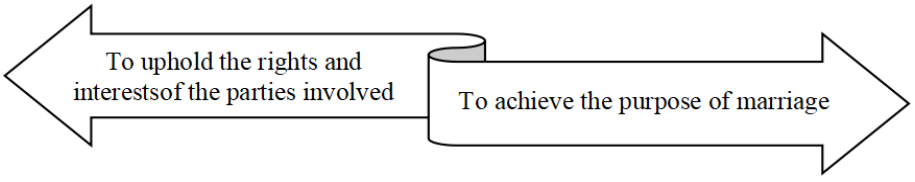

Figure 1: The justifications behind the practice of changing *mazhab*

To uphold the rights and interests of the parties involved

For most scholars including those of Maliki, Shafie and Hambali schools of thought, a marriage is deemed invalid and void if the bride represents herself in the marriage regardless of her marital status (a virgin, a divorcee or a widow), her sanity and whether or not she has hit the puberty (Ibn Rushd, n.d.; Al Ramliy, n.d.; Al Bahutiy, 1983).

Imam Abu Hanifah, on the other hand, is of the view that a woman can represent and marry herself off without relying on her guardian (*wali*). However, he proposes that her guardian can intervene by calling off the wedding if he thinks that the man who the bride is marrying is not in same level or status (*kufu'*) than she is or the dowry offered is not equivalent to her worth (Ibn Nujaym, 1983). According to Imam Muhammad, the validity of the marriage in this case then depends on the consent of the guardian.

Referring to the general concept of Islam, most Muslims ought to be responsible for themselves. They are given freedom and rights to determine what is best for them as long as it does not violate the teachings of Allah. They will also be rewarded or recompensed for their own deeds and actions in the hereafter. The opinion of Imam Abu Hanifah here is sensible if we apply this concept. Nonetheless, Islam is also a religion that defends the weak and the marginalized so that they do not fall victim to irresponsible people, and among these weak and marginalized people are women. This is actually the justification behind the concept of guardianship. Thus, the opinion of the majority of scholars is considered stronger and has since become the consensus.

On top of that, it is also necessary to consider the wants and interests of all parties involved, be it the woman, the man or the families from both sides. Therefore, women's right to choose their life partner should not be denied. They are given the right to determine the right man for them to spend their lives with, and their families are also given the right to intervene in their decision if it is meant to preserve their honour and dignity in the society.

The practice of changing *mazhab* is appropriate for the sake of all parties involved. If the process of achieving good for all is impeded by following a certain school of thought, it is a must to find other alternatives such as following the Hanafi school of thought that are less strict and rigid. The hadith from Ibn Abbas mentioned above proves that even though a woman has a right to determine on her marriage, the guardian's right to represent his daughter or the woman under his care also cannot be denied.

To Achieve the Purpose of Marriage

A marriage must serve its utmost purpose of expanding the population and guiding the generation to carry the big responsibilities, i. e. the responsibilities of handling life well and executing the obligations, which have been ordained by Allah. To successfully prepare them with these responsibilities, they need to be educated and paid full attention to especially during the growing-up time, and parents are the main people who are responsible for this role. A marital life is an arena for jihad, which means married couples must strive and make their utmost effort to strengthen their marriage. Virtues such as humility, patience and honesty are prime qualities in a marriage, whereas vices such as irresponsibility, arrogance and infidelity are detriments (Amni, 2019). Therefore, the family institution is important and extremely necessary in Islam. Harmony, compassion and concern are among the necessary traits to be existed in a family. Hence, the laws in marital matters must be empowered and maintained perpetually.

The permission to change *mazhab* must not be used as excuses to justify or legitimize our personal actions, as this no longer serves the purpose of benefiting Muslims as a whole

but would only become the means to satisfy one's desire and lust. For this reason, the concept of temporary marriage, for example, cannot be materialized as it distorts the original purpose of marriage and may lead to situations such as abandonment and irresponsible behaviour.

A Case Review

Ismail Abdul Majid v. Aris Fadila & Insun bt. Abd Majid ([1984]5 (2) JH 326)

One case that involves the practice of changing *mazhab* in marital issues is the case of Ismail Abdul Majid v. Aris Fadilah & Insun bt. Abd Majid. When Insun got married to Aris Fadilah, Insun's brother, Ismail b. Abd Majid, acted as her guardian (*wali*) while her paternal grandfather, Abd. Karim b. Samah, was still alive and of sound mind thus perfectly capable of acting as the *wali* in the solemnization. Six years later, after the couple already got three children, a paternal uncle of Ismail and Insun, Muhammad Rais b. Abd Karim, informed them that Insun's marriage was invalid because of the absence of the real *wali* in the solemnization.

After being informed of that, Ismail went to file the dissolution of the marriage. In the court hearing, he stated that he was unaware of the invalidity of the marriage until he was informed so. He also claimed that he had no knowledge about the order of *wali*. The judge of the Sharia court then, Anuar b. Saad, reached a verdict that the marriage was indeed invalid and it then got annulled.

In this case, it is indisputable that the Sharia court of Kuala Lumpur was too confined to the Shafie school of thought. They could have referred to Maliki or Hambali schools of thought and returned a verdict that was more practical and less damaging.

The main issue here is that the judge was too rigid and restricted his judgment only to the Shafie school of thought, while in this issue of guardianship, there is no definite unequivocal legal text or Quranic verse or hadith that establishes unequivocally the law of guardianship. Arguments pertaining to this issue have no definite and clear-cut evidence and are only based on *ijtihad* which is determined and agreed for the sake of public interest (*maslahah*) (Abu Zahrah, n.d.).

It can be safely asserted that all schools of thought unanimously agree that the father is the most suitable man to be a bride's guardian in her solemnization and giving consent to her to enter the new chapter of her life. There is an exception, according to scholars from Maliki and Hanafi schools of thought, for a woman who has a son where the son is said to be more entitled to be her guardian. Although it is so, for a woman who does not have a son, the right of guardianship is definitely granted to her father (Al-Zarqaniy, n.d.; al-Kasaniy, 1986).

In cases where the father has passed away or is no longer fit to be his daughter's guardian (e. g. he is insane or senile), there are often issues arising about who should replace him as the guardian of the bride. Muslim scholars are of different views about this. According to Shafie and Hambali schools of thought, the most suitable person to replace the father is the paternal grandfather. In fact, in Shafie school of thought, the paternal grandfather would even replace the father as the "*wali mujbir*" who owns the right to marry the woman even without her consent (Khalaf, n.d.). The same view is held by Hanafi school of thought but as an addition, the scholars also contend that even when the marriage is performed by the *wali ab'ad* while the *wali aqrab* is still alive, the marriage can still be considered valid, subject to the consent of the said *wali aqrab* (Uqlah, 2002).

The main opinion on this matter qualifies the paternal grandfather, brothers and paternal half-brothers as the *wali* to the bride (Uqlah, 2002) This opinion is derived from the analogy of the concept of inheritance, in which the paternal grandfather, brothers and

paternal half-brothers are entitled to inherit the assets upon the demise of the father. It can be inferred here that they are also entitled to act as the *wali* in the father's absence.

The above view is mainly based on personal reasoning (*ijtihad*). There is no definite statement from any legal text that explains the order of the eligibility of *wali*. According to Ibn Rushd, one of the Muslim scholars, the order of *wali* is not really set in Islamic law, hence it should be arranged according to the discretion of the guardian himself. This means a marriage is considered valid even when it is solemnized by a distant *wali* without the consent of the close *wali*. Several other scholars, on the other hand, opine that the order is actually set in the Islamic law and the right of guardianship must be given to the close *wali*, and the marriage solemnized by a distant *wali* cannot be considered valid unless or until it is permitted by the close *wali*.

With regards to the judgment made by the judge in the discussed review case, it is clear that the verdict returned was in the favour of the plaintiff. The judgment here is analyzed in terms of several factors:

i. The validity of a matter must be based on a definite Sharia law. Since the arguments made in this case was based on personal reasoning, the verdict that the marriage is invalid is disputable.
ii. Imam Nawawiy has explained further on this issue, that even though cases like this are considered invalid and void in Shafie school of thought, they should still be tolerated, meaning we are allowed to view them in the perspective of other schools of thought. Another issue that may be similarly confusing is the issue of divorce between a man and woman whose marriage is not consented from the latter's guardian. According to Shafie school of thought, the marriage itself is *void ab initio*, hence this issue of divorce is irrelevant. However, according to Abu Ishak al Maruzi, the divorce is valid, meaning the marriage itself is valid (Al Nawawiy, 1985)
iii. The purpose of having a *wali* in the solemnization is to ensure that the daughter or the woman under the guardian's care ends up marrying a responsible man who fulfills her needs and does not neglect her. According to Al-Zuhailiy (1989), the wisdom behind the concept of guardianship is to protect the welfare of the guarded (e. g. women, slaves, mentally disabled people), who may be weak or disabled, from being violated. In this case, there had been no report of transgression done by the husband, thus we can safely assume that the woman was living happily with her husband.
iv. Normally, when there is a dispute within a family, the surrounding people and the society as a whole would develop bad assumptions about the family, such as the family is a problematic family. It might even get to the point where people would assume that the woman is not a good woman hence not a good wife, or the man is an irresponsible husband, and this would certainly affect their lives afterward. The verdict would be damaging to every aspect of their lives.
v. This all happened due to the ignorance of knowledge as admitted by Ismail b. Abd Majid.

Therefore, the view from Shafie school of thought should have been deemed irrelevant here, and the marriage should have been considered valid as proposed by the other schools of thought. For example, if we rely on Maliki school of thought, the marriage can still be considered valid because it was consented by the woman herself, plus she was represented by a remote guardian (w*ali ab'ad*) which is a brother despite the fact that the close guardian (*wali aqrab*) such as the father or the paternal grandfather is still alive (Al Kashnawiy, n.d.). There is another narration where Imam Malik is said to have opined that a marriage in this

situation is valid but it is suspended until the consent is received by the close guardian (Ibn Rushd, n.d.). This opinion is similar to the Hanafi school of thought which proposes that the marriage is considered valid if it is permitted by the close guardian (Damadafandiy, n.d.). This is also agreed by (Sabiq, 1983).

Conclusion

The practice of considering the various views of all scholars in marital issues is allowed due to the reason that these different views are generally about the matters that are *furu'* mentioned in the Quranic verses and hadiths (of which the interpretation may even be allegorical). For example, we might find the Hanafi school of thought as relevant in certain cases but not in certain others, and this can be similarly said about the other schools of thought as well (e. g. Maliki, Shafie, Hanafi and Zahiri). It is important to emphasize that their views and opinions are basically under the scope of *ijtihad* (personal reasonings) where most of these reasonings came from a particular situation in a particular community, and they formed them for the sake of public interest then.

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References

Abadi, M. S. H. (1979). 'Awn al Ma'bud Syarh Sunan Abi Dawud. Beirut: Dār al Fikr.
Abu Zahrah, M. (n.d), Usul al-Fiqh. Cairo: Dār al Fikr al `Arabi
Al-Amin, A. A. (1991). Al Dirasat fi al-Firaq wa al-Mazahib al-Qadimat al-Mu'asirat. Beirut: Dar al-Haqiqah.
Al-Bahutiy, M. Y. (1983). Kashshaf al-Qina' 'an Matn al-Iqna'. Beirut: 'Alam al Kutub.
Al-Haithamiy, N. D. (2001). Ghayah al Maqsad fi Zawaid al Musnad. Beirut: Dar al-Kutub al-Ilmiyyah
Al-Kassniy, A. D. (1986). Kitab Bada'i wa al Sana'i fi Tartib al Syara'I. Beirut: Dar al Kutub al 'Ilmiyyah.
Al-Kashnawiy, A. B (n.d.). Ashal al-Madarik bi Syarh Irshad al Salik. Beirut: Dār al Fikr.
Al-Mubarakfurī, M. (1979). Tuhfat al-Ahwazi Syarh Jami' al Tarmidhi. Beirut: Dār al Fikr.
Al-Nawawiy, M. D. (1985). al Majmu' Syarh al-Muhadhdhab. Beirut: Dār al Fikr.
Al-Qurtubi, M. A. (1985). Al-Jami' li Ahkam al-Qurān. Beirut: Dār al Turath al- 'Arabi.
Al-Ramliy, S. D. (n.d.). Nihayat al-Muhtaj ila Syarh al-Minhaj. Cairo: Matba'ah Musafa al-Halabi.
Al-Shawkaniy, M. A. (2021). Nayl al-Awtar min Ahadith Sayyid al-Akhyar. Riyadh: Dar Ibn Jauzi
Al-Shiraziy, I. (n.d.). al Muhadhdhab fi Fiqh al_Imam al-Shafie, Beirut: Dar al Fikr
Al-Suyutiy, J. D. (1959). al Asybāh wa al Nazāir fi Qawā`id wa Furu' Fiqh al Syāfi'iyyah. Qāherah: Matba'ah Mustafa al-Halabi.
Al-Zarqaniy (n.d.). Syarh al-Zarqānī `ala al-Muwatta'. Cairo: Matba'ah `Abd al Hamid Ahmad.
Al-Zuhailiy, W. (1989). Al-Fiqh al-Islami wa Adillatuhu. Beirut: Dār al Fikr.
Al-Zuhailiy, W. (1991). al-Tafsir al Munir fi al-`Aqidah wa al-Syari`at wa a- Manhaj. Beirut: Dar al Fikr.

Damadafandiy, A. A. (n.d.). Majma' al-Anhur fi Syarh Multaqa al-Abhur. Beirut: Dar Ihya' al-Turath al 'Arabi.

Ibn Hajar, S. D. (n.d.). Tuhfat al muhtaj bi sharh al minhaj. Beirut: Dar al-Kutub al-Ilmiyyah

Ibn Hazm, A. M. (n.d.). al Muhalla. Cairo: Dar al-Turath

Ibn Nujaym, Z. D. (1983). al Asybah wa al Nazair. Beirut: Dār al Fikr.

Ibn Qudamah, A.A (1983). al Mughniy. Beirut: Dar al-Kitab al-Arabi

Ibn Rushd, M. A. (n.d.). Bidayat al Mujtahid wa Nihayat al-Muqtasid. Singapore: Maktabah al Haramayn

Khalaf, A. W. (n.d.). 'Ilm Usul al-Fiqh. Damsyiq: Dar al-Qalam.

Meraj, M. A. (2018). The importance of marriage in Islam. *International Journal of Research-Granthaalayah*, 6(11), 1-6.

Muhammad, A. S. (1992). *Al Madkhal Li Dirasat Al Quran Al Karim*. Cairo: Maktabah Al Sunnah.

Muhammad N. K. (2007). Zawaj Najih. Cairo: Dar al-Salam

Omar, N., & Muda, Z. (2017). Islamic preaching and its impact on utilization of Shafi'i Mazhab (sect) in Malay archipelago: Specific study on Malaysian experience past and present. *Man In India*, *97*(22), 367-375.

Omar, N., Muda, Z., & Salleh, S. M. (2019). A Review on Marriage Education in Malaysian Higher Education Curriculum. International Journal of Academic Research in Business and Social Sciences, 9(10), 218–228

Omar, N., & Muda, Z. (2017). Change of mazhab (school of thought): The Effects on inheritance in Islamic family law. *International Journal of Academic Research in Business and Social Sciences*, *7*(11), 633-642.

Sayyid, S. (1983). Fiqh al Sunnah. Beirut: Dar al Kitab al `Arabi

Uqlah, M. (1984). Al-Islām Maqasiduh wa Khasais. Ammān: Maktabah al Risalah al Hadithah.

Uqlah, M. (2002). Nizam al-Usrah fi al-Islam. Amman: Maktabah al-Risalah al-Hadithah

Zaydan, A. K. (1984). Nizam al-Qada fi al-Islam. Baghdad: Matba'ah al-Aniyy