

Nikah without the consent of a Wali for female

The ruling of marriage without the approval of a wali is considered invalid by not only Imam Shafi', Imam Malik and Imam Ahmed, but also by Imam Abu Yusuf and Imam Muhammad of the Hanafi School, however, look at some of the evidence that the Hanafi school agreed upon.

From the Link provided by brother Muadh;

<http://www.croydonmosque.com/pdf/The%20position%20of%20a%20guardian%20Wali%20in%20the%20Nikah%20of%20a%20mature%20female.pdf>

CLEAR CUT EVIDENCE:

- 1) Sayyidina Ibn Abaas RA relates: the Prophet SAW stated: 'A mature woman has more right over her affair in regards to **Nikah** than her own guardian.' (Sahih Muslim vol 1, p455/ Sunan Nasai p276/ Sunan Abu Dawood p286/ Jami Tirmidhi vol 2, p164)

- 2) Sayyidah Umme Salama RA related that after the death of the husband of Subai'ah Aslami RA , two weeks after his passing away she gave birth to a baby (therefore her Iddah was complete). Following this, she was sent proposals for marriage from two men, a mature individual and an elderly man. The elderly man, seeing this situation advised her: 'it is not **Halal** for you to accept a proposal yet as your guardians/housefolk are not present (they were travelling).' To understand the truth of this man's advice, Sayyidah Subai'ah Aslami RA presented her case to the Prophet SAW. The Prophet SAW stated to her: 'Verily, it is **Halal** for you! Which ever of them you wish to do **Nikah** with, you may.' (Muwatta Imam Malik#156 /Sunan Nasai vol 2, p114)

- 3) A woman presented herself to the Prophet with the intention of being married to him . On this the Prophet remained silent. A companion of the Prophet who was present stated: 'O Prophet of Allah , if you do not desire to marry her, I would like to do so.' On the request of this companion and the acceptance of the woman, the Prophet performed their Nikah. The guardian of the woman was not present at this occasion. (Sahih Bukhari vol 2, p767, Muwatta Imam Malik #9 , Sunan Nasai# 3255)

- 4) Sayyidah Umme Salama RA related, when her Iddah was completed following the death of her husband, the Prophet SAW sent her a proposal for marriage. She responded to the Prophet SAW : 'my guardian is not present here.' The Prophet SAW responded: 'whether your guardians are present or not, they will not disapprove of this Nikah.' Then Umme Salama RA said to her young (immature) son: 'O Umar come accompany me at my Nikah.' (Sunan Tahawi vol 2, p8/ Sunan Nasai vol 2, p72)

In this Hadith, **Umar** bin Abi Salama RA was an immature boy. (Sunan Tahawi vol 2, p8)
It is proven that in **Shariah** it is not permissible to have an immature child acting as a guardian for a woman in the matter of **Nikah**. He was only included in the **Nikah** out of affection, if he was a capable guardian the **Prophet** SAW would have appointed him as such.

5) Sayyidah Ai'sha RA relates: 'A mature woman who had not been married previously complained with regards to her father to the **Prophet** SAW, who without her consent, got her married. She stated: 'O **Prophet** of **Allah** SAW, whatever my father has done (in relation to my **Nikah**), I am not happy with.' The **Prophet** SAW called her father into his company. The woman further stated: 'O **Prophet** of **Allah** SAW, whatever my father has done is in the past now, what I really wish to ask is that in this matter of **Nikah**, doesn't a woman have a right?!' (On the questioning of this woman the **Prophet** SAW stayed silent showing approval of her dispute). (Sunan Nasai vol 2, p77#3274/ Sunan Abu Dawood vol 1, p285/ Sunan Ibn Majah p135)

The scholars of Ahadith have stated that the chain of narration here is correct (Sahih). (Fathul Bari vol 9, p196/ Umdadul Qari, vol 20, p130)
Further this was the first engagement of this young woman. (Sunan Ibn Majah p135)

6) Sayyidina **Ali** RA used to advise the people to perform **Nikah** with the permission of their guardians. However, if a **Nikah** had been performed without the guardian's permission, Sayyidina **Ali** RA would not annul the marriage. This is further proof to the fact that **Nikah** without the guardian is permissible. (Kanzul Aamal, vol 16, p531)

7) **Allah** says in the Holy Qur'an: 'And when you have divorced women and they have fulfilled the term of their Iddah, do not prevent them from marrying their former husbands, if they mutually agree on a reasonable basis.' (s2,v232)

8) **Allah** says in the Holy Qur'an: '...then when they have fulfilled their term, there is no blame on you for what they do for themselves in a lawful manner (with regards to marriage); and **Allah** is aware of what you do.' (s2,v234)

In this verse of the Qur'an, upon the completion of Iddah, a woman is given the authority to do as she pleases in the matter of her own **Nikah**.

To just go round accusing the **Hanafi** and generalising the rule as a common thing and then taking it way out of context is nothing but ignorance and an attempt to cause fitnah.

As it has been said many many times before, The **Hanafi Fiqh** is backed

with evidence from the Quran and Hadith and if necessary, with the evidence from the Sahabah.

The position of the Hanafi Madhab is that marriage is valid but Guardians can approach the Qadi for Faskh if the match is not appropriate, here is the daleel from Muwatta Imam Malik:

CLEAR CUT AUTHENTIC proof from the action of Sayyida Aisha (RA) in Sha'rh Maani Al-Athaar from Imam Tahawi (RA)

الحديث رقم: 2735

القاسم بن الرّحمن عبّ عن ، أخبره مالكاً أنّ ، وهب ابنُ أخبرتنا : قال ، يونسُ حدّثنا (موقوف حديث) 36 ، الزبير بن المُنذر الرّحمن عبّ بنت حفصة زوجت هاداً " وسلم عليه الله صلى النبي زوج عائشة عن ، أبيه عن عائشة فكلمت ؟ عليه ويفتات ، هذا به يصنع أملي : قال ، الرّحمن عبّ قدم فلماً بالشام غائب الرّحمن وعبّ عبّ حفصة فقريت ، قضيتُه أمراً أردتُ ما : الرّحمن عبّ فقال ، الرّحمن عبّ بيد ذلك إنّ : المُنذر فقال ، الرّحمن عبّ عن ، اللّيثُ أخبرني : قال ، وهب ابنُ أخبرتنا : قال ، يونسُ وحدّثنا . " طلاقاً ذلك يخن ولم ، القاسم عن ، وأفلح ، حنظلة أخبرني : قال ، وهب ابنُ أخبرتنا : قال ، يونسُ حدّثنا . مثله بإسناده فذكر ، القاسم ذلك بمثل ، حفصة في محمد بن .

It was reported in Al Muwatta' on the authority of `Abdur-Rahman ibn Al Qasim from his father from `A'ishah (may Allah be pleased with her) that she gave Hafsa bint `Abdur-Rahman in marriage to Al Mundhir ibn Az-Zubayr while `Abdur-Rahman was away in Syria. When `Abdur-Rahman arrived, he said: "Shall someone like me have this done to him? Am I the kind of man to have something done to him without his consent?" `A'ishah (may Allah be pleased with her) spoke to Al Mundhir ibn Az-Zubayr, and Al Mundhir said: "It is in the hands of `Abdur-Rahman." `Abdur-Rahman said: "I will not oppose something that you have already completed." Hafsa stayed with Al Mundhir, and there was no divorce. [Muwatta Imam Malik]

Hanafees are guilty as charged!

Guilty of understanding the Hadeeth of Rasul-ullah (Sallaho Alaihe Wassallam) as understood by his own wife!

The version which is quoted in Arabic is from Sha'rh Maani Al-Athaar from Imam Tahawi (RA) while the English is from Muwatta.

[The end result is that we are guilty of following Sayyida Aisha \(RA\).](#)

<http://www.muftisays.com/forums/the-true-salaf-as-saliheen/6270/marriage-%28nikah%29-without-wali-%28guardian%29.html>

By Ebrahim Saifuddin

Introduction

Women require a wali (guardian) who ensures and secures their rights. The question over here is whether the woman needs permission from her wali to marry or whether she has the right to marry anyone whom she likes without permission. The Shafi'i, Maliki and Hanbali schools say that Nikah entered into by a woman herself, without the permission of her wali, is invalid and void. The Hanafi ruling on this matter is that a woman can enter into a marital contract by herself without permission from her wali. The definition of such a "woman" will come later on and it does not incorporate every woman.

The position of all the four schools in Ahl al-Sunnah wal Jama'a is that the rulings of all four schools of thought are valid. However, the ghair muqallid accuse the Ahnaf of following an opinion contrary to hadith. This allegation of theirs is quite baseless and it is only due to their superficial knowledge of Hadith as well as of the ruling of the Hanafi school that they raise such allegations.

Hanafi Position

Before we go into the evidences, it is better to clarify what the Hanafi position is regarding this matter. It is stated that an adult, sane woman, virgin or previously married, has the right to carry out her Nikah without the permission of her wali (guardian) to someone who is suitable. This step is to be used as a last resort when all other steps have been exhausted to obtain permission from the father. It is stated in Imdad ul-Mufteen pg 440:

"Nikah of a woman without permission of father is valid but if this woman marries without permission in the absence of a valid legal reason, then she is sinful. Firstly, it is a sin to displease the father without any valid cause. Secondly, to marry without permission of the wali is also a shameless act and not void of sin."

Hence it is seen that a woman should marry herself off to someone suitable only if it is extremely necessary. However, if the woman marries herself off to someone who is unsuitable, then such a marriage has not taken place. It is stated in Durr al-Mukhtar vol.2 pg 29:

"If a woman marries a ghair kufu' (unsuitable) man without the permission of her wali, then this is invalid."

The marriage will only be valid if the woman marries a kufu'. If her wali, however, gives permission for her to marry a non-kufu' then the marriage will be valid.

This was the gist of the Hanafi position regarding marriage of an adult,

sane, free woman who is a virgin or previously married, without the wali's permission.

Evidence for Maliki, Shafi'i and Hanbali schools

Qadhi Abu'l Waleed Muhammad bin Ahmed Ibn Rushd Maliki (rh), in Bidayatul Mujtahid vol.2 pg. 6-7, writes:

"Imam Maliki (rh), in Ashhab's narration from him, said that there is no marriage without a guardian and that it (guardianship) is a condition of validity.

. . . .The fourth opinion is Malik's (rh), as derived from ibn al-Qasim's narration that its stipulation as a demand is Sunnah, but not Fardh. This is because it is narrated from him that he used to view inheritance among parties married without a guardian (as valid), and permitted an unchaste woman to appoint a man as her guardian for her marriage, and he held as recommended that a deflowered woman present a guardian who could contract on her behalf. Thus, guardianship for him is one of the complementary demands and not a condition for validity, as against the statement of Malik's (rh) disciples from Baghdad, who consider it a condition of validity and not that of perfection. The reason for their disagreement is the absence of a verse or tradition that is apparent, not to say explicit, about the stipulation of guardianship as a condition of marriage."

In Sharh Muslim vol.9 pg 205 [Publication: Matba'a Misriyya bil Azhar; 1929], Imam Nawawi (rh) states:

"There is disagreement in the issue of permission by wali for the Nikah to be valid. Imam Maliki (rh) and Imam Shafi'i (rh) have said the validity of the Nikah rests on the permission of the wali.

. . . .Imam Maliki (rh) and Imam Shafi'i (rh) have derived their opinion from the Hadith 'la Nikah ila biwali' (There is no Nikah without wali)."

It is stated in al-Mughni vol.7 pg 5, by Ibn Qudama (rh):

"Nikah without wali is not valid and a woman can neither do her own Nikah nor do someone else's nikah. A woman cannot make a non-wali her wali and if she does this then such a Nikah will be invalid. 'Umar, 'Ali, Ibn Mas'ud, Abu Hurraira (rha) and 'Ayesha (raa) had the same view. Sa'eed bin Musaib, Hasan, 'Umar bin Abdul Aziz, Jabir bin Zaid Thawri, Ibn Abi Laila, Ibn Shabirma, Ibn al-Mubarak, Shafi'i, Ishaq and Abu 'Ubaid also hold the same opinion. And it is narrated from Ibn Sireen, Qasim bin Muhammad, Hasan bin Salih, Abu Salih and Abu Yusuf that Nikah without permission of wali is not correct and if she does the Nikah then the validity depends on the permission of the wali.

. . . .And our evidence is the Hadith where Prophet Muhammad SAW has said 'la Nikah ila biwali' (There is no Nikah without wali). Imam Ahmad (rh) and Yahya (rh) have declared this Hadith to be sahih."

Evidence by the Hanafi School

The **Hadith** 'la **Nikah** ila biwali' is reported in Jami' Tirmidhi, Kitab an-Nikah, as follows:

"Abu Musa (ra) reported that Allah's Messenger SAW said, 'Marriage is not performed if (consent of the) guardian is not there."

This **Hadith** has also been reported in Ahmad, Abu Dawood, Ibn Majah and Darmi.

Maulana Shah Abdul Haq **Muhaddith** Dehalwi in Ashi`-`at al-Lama'at, Sharh Mishkat vol.4 pg 286 writes:

"There has been kalam (discussion) whether this **Hadith** is sahih or not. Many a'imma **Hadith** do not accept it to be sahih."

In Sharh Ma'ani al-Athar vol.3 pg 17-18, Imam Tahawi writes:

"The people of the first opinion (la **Nikah** ila biwali) consider as evidence that which has been narrated from Abu Ishaq through Israel. He narrates from Abu Barda who narrates from his father that the **Prophet Muhammad** SAW said, 'no **Nikah** without (consent of) the wali.'

So the evidence against them is that according to their rules it is not correct to use this **Hadith** as proof because those people who have stronger memory than Israel, like Sufyan and Shu'bah, have narrated it 'munqati'an' (broken) from Abu Ishaq.

. . . .If they say Abu 'Awanah narrated this **Hadith** marfu'an like Israel, Abu 'Awanah narrates from Ishaq who narrates from Abu Burdah who narrates from Abu Musa that, the **Prophet Muhammad** SAW said, 'no **Nikah** without (consent of) wali.'

Then we will say that this **Hadith** has been narrated through Abu 'Awana like you have said but we have checked the origin of the **Hadith** and it is narrated from Abu 'Awana from Israel and he narrates it from Abu Ishaq and thus the narration of Abu 'Awana also returns to Israel.

Mu'alla bin Mansoor Razi says that Abu 'Awana narrated to me from Abu Ishaq through Israel from his sanad similar to this.

Hence this negates that Abu 'Awana had anything from Abu Ishaq directly."

Dr. Maulana Fadhal Ahmed, in his commentary on the English translation of Jami' **Tirmidhi** vol.1 pg 403 has noted:

"As for the **Hadith** of Abu Musa (ra) it is not a worthy piece of evidence because there is a contradiction in its reporting and connection. Imam **Tirmidhi** (rh) has himself confirmed this. Hence, the correct position is that this **Hadith** is mursal, as Imam Tahawi also confirms, while Ibn Hajr Asqalani (rh) said that it is not correct to deduce from it."

A slight variant of this **Hadith** is reported in Ibn Majah as follows:

"The **Prophet** SAW said, 'There is no **Nikah** without (the permission of) the

wali,' and in the narration of 'Ayesha it is added, 'the sultan is the wali of the person who has no wali.'"

Abul Hasan Muhammad bin Abdul Hadi as-Sanadee, in Sunan Ibn Majah bi Sharh as-Sanadee wa Misbah az-Zujajah fi Zawa'id Ibn Majah vol.2 pg 428 [Publication: Darul Ma'rifah, Beirut; 1996], comments on this hadith:

"According to al-Zawa'id, its isnad contains in it al-Hajjaj who is Ibn Artaah. He is mudallis. He has transmitted it through 'an'ana and he has not heard from 'Ikrama. He transmits from 'Ikrama on the authority of Dawood bin al-Husain. Imam Ahmad held this opinion. Hajjaj did not hear from Zuhri. 'Abbad bin Zuhri said this. Sulaiman bin Musa is in agreement with him in it and he is reliable. Zuhri reported 'Ayesha (raa) on the authority of 'Urwa as saying the word: 'Any woman who marries without the consent of her guardian (her marriage) is invalid,' as the scholars of sunan transmitted it. I said: 'The scholars and devotees of Hadith have criticized this isnad also.'"

Another strange point is observed by Maulana Muhammad Qasim Amin, in his brief commentary of the Urdu translation of Sunan Ibn Majah, where he writes that Shafi'i generally do not accept Hajaj bin Artaah and Ibn Luhai'ah but in this case they are using their narration as evidence. He further adds in, Sunan Ibn Majah vol.2 pg 31:

"Some Hadith experts have stated that three ahadith are not proven to be from the Prophet Muhammad SAW and one of them is the Hadith 'la Nikah ila biwali' and this is why it has not been recorded in the Sahihain; there is extreme ikhtilaf in the hadith."

Allama Badruddin al-'Ainee, in 'Umdatul Qari, vol.20 pg 165 [Publisher: Darul Kutub al-'ilmiyyah; 2001] comments on a similar Hadith narrated from Abu Huraira:

"As for the Hadith of Abu Hurairah, al-Mugheerah ibn Musa is in the chain of narrators about whom Bukhari said, 'munkar al-hadith' and Ibn Hibban said, 'he narrates from people of trust that which does not resemble confirmed hadith,' so he is not taken as hujjah anymore."

Further, these ahadith cannot be taken to be general and apparent in meaning as they will then act as evidence against those who oppose the Ahnaf. As Imam Shafi'i (rh) deems the Nikah of an adult man without wali to be permissible, these ahadith will go against Imam Shafi'i (rh) as they do not mention whether the condition is restricted to males or females. Hence if the apparent and general meaning is taken then the Nikah of an adult male will also be void without a wali, thus going against the opinion of Imam Shafi'i.

The Hadith of 'Ayesha (ra) is reported in the following words in Jami' Tirmidhi:

"'Ayesha (raa) reported that Allah's Messenger SAW said, 'If any woman marries without the consent of her guardian then her marriage is void.

Her marriage is void. Her marriage is void. If he cohabits with her then for her is the dower as the man enjoyed her. And if her awliya dispute with each other then the ruler is the wali of the one who has no wali.”

Mufti Ahmed Yar Khan Na’eemi, in Mir’atul Manajih vol. 5 pg 48 writes:

“This Hadith is da’eef and troubled just like the one preceding it. . . .Ibn Jareej says, ‘I asked Ibn Shuhab about this Hadith and he denied it (Mirqat).’”

Maulana Manzoor Ahmed, in Fadhl al-Ma’bud vol. 3 pg 285, writes:

“Zuhri denied this hadith”

Maulana Mohammad `Aqil, in Ad-Durrul Mandhud vol.4 pg 35, says:

“One of the replies given in regards to this Hadith is that its da’eef and it has Sulaiman bin Musa in the chain of narrators and he is weak. Bukhari said it was weak and Nasai said something (wrong) is in this hadith.”

However, we will take all these ahadith to be of a sound chain. Yet, as explained previously, their apparent meaning cannot be taken. Even in this hadith, note that it mentions, if the man cohabits with the woman then she will get the dower. Dowry is something that is given to the wife. If the Nikah would have been invalid, like how the opposition of the Ahnaf state, then this is a case of zina (fornication). And zina cannot be legalized by paying dowry to the woman. Thus it is obvious that “her marriage is batil (void)” cannot be taken literally to mean that the Nikah never took place.

It is also important to note that the Hadith which the opposition quotes from `Ayesha (raa) is contrary to her action. Ghulam Rasool Sa’eedi, in Sharh Muslim vol. 3 pg 828, quotes a Hadith from Musannaf Abi Sheeba which is as follows:

“Qasim bin Muhammad says that `Ayesha (raa) did the Nikah of the daughter of `Abdur Rahman bin Abi Bakr with Mundhir bin al-Zubair. At that time `Abdur Rahman was not present. When he came, he became angry and said, ‘O slaves of Allah! Is it done to a person like me that his daughter is married without his consultation? `Ayesha got angry and asked, ‘do you dislike Mundhir?’”

A variant of this Hadith is also recorded in Sharh Ma’ani al-Athar by different chains, where Mundhir stated that `Abdur Rahman has the authority and `Abdur Rahman said that he will not cancel anything which has been decided by `Ayesha (raa).

In light of this one can come up with two conclusions. The first being, that `Ayesha (raa) did not consider the Hadith ‘Her marriage is void. Her marriage is void. Her marriage is void,’ to be sahih and thus she acted opposite to it as seen in the Hadith above. In this case, the former Hadith cannot be used as evidence. The second being, that she does hold the

former **Hadith** to be true but the sense she implies is not what the opposition understand.

Allama Badruddin al-'Ainee, in 'Umdatul Qari vol.20 pg 163, observes:

"But its meaning refers to kamal (perfection) like in the **Hadith** of the prophet ﷺ about prayer when he says "no prayer (is valid) unless in a masjid."

Mufti Sa'eed Ahmed Palanpuri, in Tuhfatul Alma'ee vol.3 pg 518 adds:

"Imam A'zam says that this **Hadith** is to threaten against something and in such ahadith the deficient is declared as banned. This is seen, for example, in the **Hadith** in Kitab at-Tahara where it is stated that a man who sleeps with a menstruating woman or enters his wife from behind or goes to soothsayer to ask about things of ghaib has rejected the **Deen** which has been revealed onto **Muhammad SAW**. This **Hadith** is to threaten and in it deficient iman has been talked about as being banned. Hence no one will do takfir of such a person. Over here also, deficiency in **Nikah** has been expressed as banned. And the evidence (daleel) is that the **Prophet SAW** has said that such a woman married without a wali, with whom the husband has cohabited, will get the dowry.

. . . .And the meaning of the **Hadith** is that if a woman does her **Nikah** without consent of wali, then if the wali objects and the judge cancels the nikah, then if is **Wajib** on the husband because the **Nikah** was correct and the husband benefitted physically from his wife after a proper nikah. Thus dowry becomes wajib."

Moreover, in their apparent meaning, these ahadith also contradict the Qur'anic verse:

fala taAAaduloohunna an yankihna azwajahunna

Do not prevent them from marrying their husbands - [Qur'an 2:232]

This verse is evidence for the **Hanafi** as it attributes the right of **Nikah** to the women and also that the wali has no right to interfere in the matter of the woman. However, people who oppose **Hanafi** say this verse is evidence for their stand as the Qur'an forbids something to the wali and something can only be forbidden for someone who has authority over it.

Mufti Taqi Uthmani (db) responds to this in Dars e **Tirmidhi** vol.3 pg 377:

"The answer is that Shari'i or legal opposition by the wali is not referred to in this verse. In fact, ethical and social pressure is referred to here. Hence this verse was revealed at the time of the matter of Ma'qil bin Yasaar (ra) who was stopping his sister from marrying her previous husband. This subject of the verse is clarified by attributing **يَنْكحْنَ** to the women."

The second verse which the **Hanafi** use as evidence is as follows:

faitha balaghna ajalahunna fala junaha AAalaykum feema faAAalna fee anfusihinna bialmaAAroofi

When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. - [Qur'an 2:234]

Mufti Muhammad `Aashiq Ilahi, in *Tafsir* Anwar ul Bayan vol.1 pg 297, writes:

"Once her `iddah has expired, she is at liberty to do as she pleases on condition that she conforms with the Shari'ah. In this way, if she wishes to remarry, none can stop her."

The Quran also mentions:

Fain tallaqaha fala tahillu lahu min baAAdu hatta tankiha zawjan ghayrahu
Thereafter, if he divorces her, she shall no longer remain lawful for him unless she marries a man other than him. - [Qur'an 2:230]

Mufti Taqi Uthmani (db), in Dars e *Tirmidhi* vol.3 pg 377, writes:

"This verse also attributes marriage to the woman which is evidence by 'Ishaaratun Nass' that woman can do her nikah."

The opposition cites a verse in the Qur'an which is as follows:

Waankihoo alayama minkum

Arrange the marriage of the spouseless among you - [Qur'an 24:32]

They say that the awliya are addressed in this verse and thus conclude that women do not have the right to marry without permission of the awliya.

In the footnotes of Dars e *Tirmidhi* (by Mufti Taqi Uthmani) vol.3 pg 375, it is explained:

"From this verse Allama Qurtubi *Maliki* (rh), in his *Tafsir* and other muhaqqiqeen have used this to support the view of the majority.

But the answer to this is that 'Ayami' is the plural of 'Aym' and it is referred to someone who has no spouse whether it is a male or a female just as Allama Qurtubi (rh) has mentioned. In light of this, the verse would thus mean that it is preferred for both men and women that they should not take steps for *Nikah* without wali.

As for the issue that if someone does do it without the wali then what is the hukm, the verse remains silent regarding it.

Then if both adult males and females come under the meaning of 'Ayami' then as the *Nikah* of a man who enters in it without wali is considered to be valid, similarly it would be valid if a woman does it without a wali."

Apart from the mentioned evidence, the Ahnaf derive their evidence from another *Hadith* which appears in Sahih Muslim, in Kitab an-Nikah, and is as follows:

"Ibn Abbas (ra) reported Allah's Messenger SAW as saying: An unmarried woman (al-Aym) has more right to her person than her guardian. And a virgin should also be consulted, and her silence implies her consent."

There is a disagreement among the scholars regarding the meaning of 'al-Aym'. Its basic meaning is 'an unmarried woman'. The disagreement lies in whether it means a previously married woman only or does it include an unmarried virgin (bikr) as well. Some have considered it to mean 'thaib' and these are the people who say a woman cannot do **Nikah** without permission of wali. The others have said 'al-Aym' includes a woman who was never married. This latter meaning is confirmed by the ahl al-lughah. Imam Nawawi (rh) confirms this in his Sharh **Muslim** vol.9 pg 203 and adds that this was said by **Ibrahim** al-Harbi and Isma'eel al-Qadhi and others.

Allama Shabbir Ahmed Uthmani, in I'laa us-Sunan, writes:

"If one asks why the **Prophet** SAW mentioned bikr again if Aym was supposed to include it, I say, bikr was mentioned so that one does not think bikr is not included because she is shy, so the **Prophet** ﷺ mentioned her to confirm hukm on her. So this is takhsees (specialization) after ta'meem (generalization) to show difference between the 2 permissions."

In Sahih **Muslim** other variants of this **Hadith** are also transmitted where the word 'thaib' is used. Thus those opposing the **Hanafi** opinion say 'al-Aym' means 'thaib'.

Mufti Taqi Uthmani (db), in Dars e **Tirmidhi** vol.3 pg 379, explains:

"If we accept the **Tafsir** of Imam Shafi'i and state that 'Aym' means 'thaib' only, even then the argument agrees and supports the **Hanafi** view. This is because it at least proves that a woman who has been previously married (thaib) has more rights on her **Nikah** than the wali. (Imam Shafi'i says thaib cannot enter into contract by herself)" - text in parenthesis added

In Muwatta Imam Malik, Kitab at-Talaq (Chapter: The 'iddah of the widow if she is pregnant), a **Hadith** appears as follows:

"Umm Salama said, 'Subai'a al-Aslamiyya had delivered after her husband's death by half a month. Two men asked to marry her. One was young, and the other was old. She preferred the young man. The old man said, 'You are not free yet (to marry).' Her family was away, and he hoped that when her family would come, they may prefer him over the other man. She came to the Messenger of **Allah** SAW and he said, 'You are free (of the 'iddah), marry whoever you desire'."

This **Hadith** supports the view of the Ahnaf and the authority to marry was clearly given to the woman by **Prophet Muhammad** SAW.

Mufti Taqi Uthmani (db), in Dars e **Tirmidhi** vol.3 pg 378, lists a number of ahadith to support the **Hanafi** view:

"There is a **Hadith** reported in Muwatta Imam **Malik** (Kitab an-Nikah; Chapter: What was said in the dower and un-returnable gifts) and Sahih Bukhari (Kitab an-Nikah; Chapter of the woman who gives herself in marriage to salih man), which states that a woman came to **Prophet Muhammad SAW** and said, 'Messenger of Allah! I have given myself to you.' The **Prophet SAW** maintained silence and the woman stood there for long. Then a man got up and said, 'Messenger of Allah, marry her to me if you have no need of her.' The **Prophet SAW** asked him what dowry he can afford to give after which he said, 'I have married her to you for what you know of the Quran.'

At this time there was no wali of the woman present.

It is mentioned in Tahawi (Kitab an-Nikah; Chapter of marriage without wali of authority), 'Umm Salmah narrates that after the death of Abu Salmah the Messenger of **Allah SAW** came and proposed to me. I said, 'O Messenger of Allah! At this moment I do not have any wali present.' He said, 'No wali of yours, whether present or away, will dislike your marriage with me.' So Umm Salmah said to her son, 'O 'Umar! Get up and do my **Nikah** with the Messenger of **Allah SAW**. Hence, he did their nikah.

This **Nikah** also took place without any wali as 'Umar bin Abi Salmah was a minor and hence it was not proper according to **Shari'ah** for him to carry out the nikah. This was just a formality and to say that this **Nikah** was carried out under the universal guardianship of the **Prophet SAW**, then this is something farfetched because such a guardianship is in effect when guardians from among the family are not alive."

Further he states:

"There is a narration in Kanz ul 'Ummal (vol.12 pg 532) that 'Ali (ra) used to tell people **Nikah** without wali is impermissible but if such a **Nikah** would take place then he would declare it valid.

(And there is another narration in Kanz ul 'Ummal vol. 12 pg 530) from Sa'eed bin al-Musaib who said that 'Umar ibn al-Khattab (ra) said, 'the woman does not get married off unless with the permission of her wali or permission of someone responsible ((عالم الرأي good judgment or the sultan.'

So in this way he permitted the **Nikah** without the permission of a wali, provided someone of sound judgment or responsibility from among the relatives allow even if the person is not a wali."

Ghulam **Rasool** Sa'eedi, in Sharh **Muslim** vol.3 pg 828 mentions a narration from Musannaf Abi Sheeba:

"It has been narrated from 'Ali (ra) that he validated the **Nikah** of a woman whose **Nikah** mother married her off with her agreement without consent of any wali."

He further writes, while quoting from Musannaf Abdul Razzaq:

“Mu’amar says, ‘I asked Zuhri the ruling on someone marrying without a wali. He said that if it is done in kufu’ then it is valid.’”

When asked, “What are the basic requirements for Islamic Nikah,” Maulana Ahmed Mirpuri (rh) who was one of the leading scholars of the ghair muqalid, replies, in Islamic Verdicts (Fatawa Sirat-e-Mustaqeem) pg 228:

“We have the following conditions for Nikah: 1) Acceptance from both sides, 2) Two witnesses, 3) Mahr (dowry). Basically, these are the requirements for a nikah. In some cases, the bride’s attorney is also conditional, and is recommended in some cases. Proper conduct of the ceremony, the **Khutbah** and explanation of the duties after marriage, are all considered as **Sunnah** but not a condition.”

While many ghair muqalid try to criticize the **Hanafi** regarding their ruling on this issue, one of their scholars has given a ruling similar to the **Hanafi** opinion.

Conclusion

It is thus seen that the position of Imam **Abu Hanifa** (rh) is by far the strongest position in this matter. There is also a matter of Qiyas here whereby the Ahnaf say that just as an adult man can utilize his property may marry properly by word, so also a woman who can utilize her property may marry by her word. Hence as she has right over her property she has right over her person. For the Ahnaf, ahadith like ‘la **Nikah** ila biwali’ hold the meaning that the compulsion for the presence of wali is for immature or slave women and not for adult, sane women. And in light of the evidence given to support the **Hanafi** view, one cannot interpret the narrations used by the opposition in any other way.

<http://peopleofsunnah.com/fiqh/rulings/marriage/62-marriagewithoutwali.html>