

Preliminary Discussions

1) The Definition of ‘Authority’ (walaya)

Al-Raghib; the famous Arabic philologist says in his al-Mufradat: “ ‘wala’ and ‘tawalli’ is when two or more things occur side by side without anything external to them being between them. This is used metaphorically to indicate spatial, familial, religious, personal, political or ideological proximity. ‘Wilaya’ is aiding or backing, while ‘walaya’ is when one takes charge of an affair.

It has been said that ‘wilaya’ and ‘walaya’ are like ‘dilala’ and ‘dalala’ (i.e. there is no difference between their meanings), but the correct opinion is that ‘walaya’ indicates taking charge of an affair. ‘Wali’ and ‘mawla’ therefore are used in relation to this meaning”¹

According to this, the guardian (wali) of an orphan is the one who has charge of his affair, and a king may be described as: ‘the guardian of the affairs’. Thus, the permission to act is part of the meaning of the word. Therefore the claim of some who interpret ‘*wilaya*’ to mean only ‘love’ is not something that can be supported linguistically.

This is because if the intention was to speak of mere love, which is a matter of the heart, the expressions ‘love’ or ‘affection’ – the antonyms of ‘hatred’ and ‘dislike’ – would have been used. However, guardianship gives the meaning of taking up another’s affairs, and its antonym is ‘enmity’, which is transgressing against and infringing upon others’ affairs.

Therefore, acting for the benefit of another is guardianship whilst acting to harm another is enmity, and both are related to physical actions (not a mere affection). Allah, the Exalted, has said in the Holy Qur’an:

“And (as for) the believing men and the believing women, they are guardians of each other; they enjoin good and forbid evil” (9:71).

Here, Allah, the Blessed and Exalted, mentioned the mentioning of good and the forbidding of evil as

examples of the guardianship of the believers over one another. Obviously, enjoining good and forbidding evil is in most instances physical action. Similarly, in the narration of Ghadeer: “*whoever I am his guardian, then Ali is his guardian*”, the Prophet (pbuh) meant to affirm for Ali (as) the same authority to act and the same precedence that belonged to the Prophet (pbuh) himself.

This precedence is mentioned in the Holy Qur’an:

“The Prophet has precedence over the believers with regards to themselves...” (33:6).

The meaning of guardianship here is the authority to act and manage the affairs for the benefit of the Muslim community.

2) The Difference between Guardianship and Representation (or power of attorney) (al-Wilaya versus al Wikala)

a– Guardianship is a right bestowed by Allah while representation is a right given by the one who is being represented.

b– Unlike guardianship, representation can be widened or narrowed according to the desire of the one giving representation.

c– Representation becomes void at the death of the one being represented, whereas guardianship becomes void in the absence of the conditions (of a guardian).

3)The Meaning of Jurist

What is meant by ‘jurist’ here is one who is a ‘Mujtahid’ (one with the power of deducing Islamic laws) and who possesses the eight conditions which will be mentioned in the fifth chapter of this treatise.

4)The Points of Dispute about the Guardianship of the Jurist

Firstly: does the jurist have any guardianship?

Secondly: is the guardianship of the jurist general or limited?

In order to clarify the meaning of general or limited guardianship of the jurist, one must first explain the possible positions a qualified jurist (i.e. one who meets the conditions) may take, and which may be his task and which he would have authority over. These are many, and here we discuss the most important ones among them:

1) The authority to give legislative rulings (fatawa) in non-fundamental issues and deductive issues, which the ordinary person must follow.

- 2) The authority to judge in litigation.
- 3) The authority over orphans, the insane and the foolish in the absence of a father, grandfather or trustee.
- 4) The authority over the wealth of those who are absent, such as the one who is absent due to travel, imprisonment or unknown whereabouts. In this situation, it is permissible for the jurist to rule regarding him in the presence of sufficient evidence and to sell his wealth and pay off his debts while he is absent.
- 5) The authority to use the wealth of the Imam (as) – which is made up of half of the Khums– as well as a wealth whose owner is unknown and a wealth which has no heir. Because it is necessary to rule regarding this wealth and to use it in its correct usage, someone must perform this task and there is no one more appropriate to do this than the qualified jurist. In fact, he is the one whose authority in this field is certain, whilst the authority of others is doubtful.
- 6) The authority to solemnize or dissolve marriages in general, as agreed on unanimously by the scholars. An example is his authority to solemnize a marriage for someone who is not fit to make decisions due to insanity or similar things and who does not have a guardian. Another example is his authority to dissolve a marriage in favour of a woman whose husband is missing despite investigation.
- 7) The authority of the qualified jurist in these six areas is unanimously agreed upon. In fact, his authority in these situations is considered a necessary part of the Shi'a jurisprudence.

The authority to implement punishments and reprimands: there is dispute about his authority in these matters in the period of occultation. Sheikh a-Mufeed (al-Muqni'a:810), Sheikh al-Tusi (al-Nihaya: 732), Shahidul Awwal, Shahidul Thani (al-Lum'a and Sharhul Lum'a), al-Hurr al-Amili (Wasailul Shia, the chapters on the preliminaries to punishments, chapter 28) and most of the later scholars such as al-Fadhil al-Hindi in Kashful Litham (2:149) and al-Fadhil a-Miqdad in Tanqeehul Rai' (1:579) are of the opinion that the qualified jurist does have authority here.

In fact, it is related that this is the famous opinion. Yes, there is apparent hesitancy in the words of al-Muhaqqiq al-Hilli in al-Sharai because he says: 'it has been said that it is permissible for the jurists who are knowledgeable– of the legislative rules– to implement the punishments in the period of the occultation of the Imam (atfs)' (Sharai'ul Islam).

However, the author of al-Jawahir found this hesitancy strange and said: 'the doubt of some scholars regarding this issue is strange. It is as if he has not tasted anything of the taste of jurisprudence, nor understood anything from their words or symbols' (Jawahirul Kalam, 21:397). This statement gives the impression that the authority of the jurist in these matters is a self evident fact in our jurisprudence.

- 8) Authority in all matters established directly for the infallible Imam (as), including running the Muslim community and its assets. The most important of these matters are the political affairs of the Muslims

and the leadership of the Islamic government.

According to this, it is the obligation of the jurist to work out every task that belonged to the infallible Imam (as) as the leader of the Muslim community, and then to give whatever task was found to be so to the qualified jurist. Thus, the qualified jurist would be the one with the authority to rule with regards to the wealth and lives of the people according to what he sees to be the general benefit.

Therefore, general guardianship of the jurist is that which includes the last type of authority, considering that the other seven are unanimously agreed upon. Thus if one says that the jurist does not have general guardianship, they mean that his authority does not apply in the last category– or the last two categories at most.

It has become clear from this that what is meant by the general or unconditional guardianship is that which is different to the guardianship limited to the individual non–fundamental issues. General or unconditional guardianship does not mean that his authority is above the divine law or that he has authority without any limitation or condition.

Perhaps the expression of ‘general guardianship’ (**al walaya al a’mma**) used in the past is better than the term ‘unconditional guardianship’ (**al walaya al mutlaqa**) which has become famous recently. This is because the latter expression leaves room for misunderstanding for the one who does not have sufficient knowledge of the subject.

The Types of the Power of Authority (i.e. the eighth type of authority listed above)

- a– Independence of the guardian jurist in his own actions, without taking into consideration whether the actions of others need his permission or not.
- b– The lack of dependence of others in acting and their actions needing his permission.

The Types of Permission of the Guardian Jurist for the Action of Others

- a– in the form of representation: such as the representative of the guardian jurist.
- b– in the form of delegation and appointment such as appointment for bequest on behalf of the guardian jurist.
- c– in the form of agreement such as the permission of the guardian jurist for another person to pray

on a deceased person who has no guardian.

Thirdly: is the designation of the guardian jurist by appointment or election?

We shall discuss all the above matters in the coming chapters.

1. In this translation, 'wilayat' will be translated as guardianship and 'wali' will be translated as 'guardian'

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