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## **Woman's Marriage Age in *Sharī'ah*: Traditional and Modern Approaches**

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### **Abstract**

Marriage is called *zawāj* or *nikāh*. The word *Nikāh* comes from the Arabic verb *nakaha* which means "to marry".<sup>1</sup> The time of marriage starts when people feel prepared physically, financially and emotionally. Adolescence is a natural phenomenon that occurs at varying ages in different individuals. The issue among *Ulamā* and Parliament is "Age" for marriage of woman, is very important and controversial issue in our society. In *Sharī'ah* the term "*Bulūgh*" and "*Rushd*" are used to determine the age of marriage and different countries based their laws according to the spirit of *Sharī'ah* in which a woman would be capable of handling the responsibilities of marriage. In Pakistan the age in different provinces is discussed and recently law is passed to fix the marriage age in Sindh and KPK. In Punjab and federal territory, the Child marriage act amendments are circulated among Parliament, National Assembly, Senate and Council of Islamic Ideology for final decision about fixation of marriage age of women. The Islamization of laws by Modern scholars are criticized by conservative or traditional *Ulamā*. The aim of the present research is to analyze the issue of marriage age of Muslim women in Pakistan and to study the Traditional and Modern Approaches regarding the matter.

Key words: Pakistan, Age of Marriage, *Bulūgh*, *Rushd*, *Modernist*, *traditional approach*

### **Significance of Marriage as Institute in *Sharī'ah***

Marriage (*Nikāh*), in Islam is a highly sacred contract. However, it is not religious in the sense of creating a ceremony, but rather in the sense of understanding the spirit of Islam. It is an agreement between spouses which allow them to have sexual relations and procreation of children in a legal way.<sup>2</sup>

It is also defined as

*“Marriage in Islamic law has the purpose to make the sexual intercourse legal and to reproduce the children in a legal way. It is a contract between couple and concluded with their consent. For the validity of this contract the religious ceremony is not required”*<sup>3</sup>.

In Qur'ān it is defined that everyone who is physically, emotionally and monetarily proficient of so doing has the responsibility of entering into a marital relation.

وَأَنْكِحُوا الْأَيَّامِي مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

*“Marry those among you who are single, or the virtuous ones among your slaves, male or female, if they are in poverty, Allah will give them means out of his grace, and Allah is encompassed all and knowing all.”*

In verse 33 of Surah Nūr Allah says:

“وَلْيَسْتَعْفِفِ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ.....”

*“let those who find not the means for marriage keep themselves chaste, until Allah gives them out of his grace.....”*

The man and woman are required to have lawful relationship for the procreation of children. In words of Allah and *Sunnah* of Prophet ﷺ used the terminology of *Nikāh* for this lawful relationship. In the verse of Surah Nur 32 the owners of slave girls and the *walī* of unmarried female and male are ordered to marry them off.

“وَأَنْكِحُوا الْأَيَّامِي مِنْكُمْ”

[And marry the unmarried among you.....]

In the Tafsir of This verse Muftī Muhammad Shafī in his Maa'rif ul Qur'ān states that:

*“Ayāma (أَيَّامِي) is the plural of Aym (أَيْم) which means the person who is not married, divorcee or widow. The Walī is ordered in this verse that he should conclude the marriage of unmarried person”*<sup>7</sup>

*Fuqaha* are agreed that according to this verse the arrangement of marriage through guardians is preferable and *masnūn* way rather to arrange directly<sup>8</sup>. To arrange the marriage by woman herself looks indecent in traditional society. The door of offensiveness will be open for all by this act of woman. There are some traditions of Prophet ﷺ in which the marriage without guardian is not allowed.<sup>9</sup>

Imam Abu Hanīfah and some other scholars are in view that the

instruction is given to describe the chosen way by Prophet ﷺ the contract of marriage. According to them, if the girl is adult and she contract her marriage in her kuf' then it will be considered valid marriage<sup>10</sup>. But the preferred way is the guardian permission as it is sunnah. She can practice without guardian but in unavoidable circumstances<sup>11</sup>.

The Qur'an prohibits accusing women who perform her *Nikāh* without restrictions and without a consent of guardian<sup>12</sup>, as in Surah Al Baqara it is stated:

“..... فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْتُمْ فِي أَنْفُسِهِنَّ مِنْ مَّعْرُوفٍ”

“.....but if they leave (the residence) there is no blame on you what they do with themselves provided it is reasonable.....”

In Tafsir Dur Mansoor, Allama Jalal-ud-deen Sayuti explains that, there is no sin upon women if she wants to marry with other person after the death of her husband. She is free if she wants to take good decision about herself.<sup>14</sup>

On the other hand, the Hanbali, Shafi'i and Malikī schools are in view that guardians are authorize to contract the marriages for women who have no right in this regard<sup>15</sup>,

As specified by the Hadith:

“Hazrat Ayesha (RA) narrated that the Prophet said that “the woman who is married without the consent of guardian her marriage is void. He has used these words three times.”<sup>16</sup>

Marriage is the Sunnah of Holy Prophet ﷺ. In sahih Bukhari it is narrated:

“ حَدَّثَنَا عَبْدَانُ عَنْ أَبِي حَمْزَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ قَالَ بَيْنَا أَنَا وَأُمِّئِي مَعَ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ فَقَالَ كُنَّا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَنْ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَخْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ الصَّوْمُ فَإِنَّهُ لَهُ وَجَاءُ”<sup>17</sup>

“It is narrated from ‘Alqama (RA): I was walking with Hazrat ‘Abdullah (RA) he said, that the person who can have resources should marry, because the marriage will help him to stay away from gazing other woman, and for the safety of his private parts from doing illegal sexual relation; and who do not have enough means to marry should fast as it will help him to reduce sexual power”

Marriage is clearly declared as sunnah of the messengers and the sunnah of the Holy Prophet ﷺ himself.

“ حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ حَدَّثَنَا آدَمُ حَدَّثَنَا عِيسَى بْنُ مَيْمُونٍ عَنْ الْقَاسِمِ عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ النِّكَاحُ مِنْ سُنَّتِي فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي وَتَزَوَّجُوا فَإِنِّي مُكَاثِّرُ بِكُمْ الْأُمَمَ وَمَنْ كَانَ ذَا طَوْلٍ فَلْيَنْكِحْ وَمَنْ لَمْ يَجِدْ فَعَلَيْهِ الصِّيَامُ فَإِنِ الصَّوْمُ لَهُ وَجَاءُ”<sup>18</sup>

*Hazrat Ayesha RA narrated that Prophet ﷺ said that “Marriage is my Sunnah and the person who does not follow my sunnah he has nothing to do with me”*

The remaining part is the same which is narrated by Hazrat ‘Alqama (RA).

There are many other traditions available in *Haith Books* in *Kitab un Nikāh* which elaborate the importance of Nikāh and defined its status in Islam.

### **Age of Marriage in Traditional Islamic Law**

Traditional Jurists are in view that the age of Marriage for a girl and a boy is puberty and puberty is the age of majority<sup>19</sup>. The validity of marriage depends upon the possession of full legal capacity by both spouses. Both of them should have marriageable age and of sound mind. The existence of puberty is considered eligibility for marriage in classical Islamic law.<sup>20</sup>

The verse of *Surah an-Nisa* is taken by the Jurist for the condition of Puberty and *Rushd* for Nikāh.

“وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ”

“And make trials of orphans till they reach the age of marriage.....”

The puberty in a girl is assumed the period of menstruation and in a boy the indications of physical development is the emission of semen. According to *Imam Abu Hanīfa* if these signs are not present, then the puberty in female will be the seventeen years and in males not later than eighteen years.<sup>22</sup> At these ages the male and female will not be considered minors. In civil law the age for marriage is not the same as the age of legal majority, the two age limits may nonetheless parallel.<sup>23</sup> Only the puberty is not enough for marriage. Adulthood is also an important feature for the consummation of marriage which is physical maturity. The Fuqaha are agreed about the “*Nikāh*” of minor but for *Rukhsatī* they have difference in their opinion. The reason is the difference in definition of “*Rushd*”. Regarding the legal capacity of male and female the *Shafi’i School* and the *Hanbalī School* set the age of fifteen years to marry, and the *Malikī School* differs here at this point and set the line at seventeen years.<sup>24</sup> According to *Hanaḥfi School* the girls reach the puberty in nine years and boys reach the age of puberty at twelve years.<sup>25</sup> In Pakistan the *Hanaḥfi* law is followed that’s why traditional Muslim presumed that the age of marriage for a girl is nine as this is the age of puberty and the boy becomes adult in the age of

twelve at least<sup>26</sup>. “Hanafīs and some others holding this point of view that since Islam gave women the right to contract in financial matters without interference or guardianship from anyone, women should be equally able to contract their own marriage without the need of a *walī*”<sup>27</sup>

All schools are agreed that *walī* can arrange marriage of his daughter before reaching the age of puberty<sup>28</sup>. The consummation of marriage cannot take place before puberty that’s why guardian must wait till that time<sup>29</sup>. The female has right of “option of puberty”. She can exercise it while having age of puberty and maturity.<sup>30</sup> The classical jurists are agreed that a female can exercise this “option of puberty” when marriage of minor is not concluded father or grandfather.<sup>31</sup> But justice Tanzil ur Rehman defined that this option can be exercise by female on attaining puberty whether the nikah is concluded by any of guardian including father and grandfather<sup>32</sup> The three year time period is given after reaching the age of marriage or till the 18 year of age is the time of exercising the right of “*Khāyar al Bulūgh*”<sup>33</sup>.

The muftis given on fatwa regarding the annulment of marriage when a girl becomes mature after her marriage is concluded by the guardian. According to, *Durr al-Mukhtar* and Ibn ‘Abidin’s *Hashiyat Rad al-mukhtar*, verdict that she can exercise her right of “*Khāyar al Bulūgh*” but through *Qadi* or court decision, she can annul her marriage<sup>34</sup>.

In Islamic law the consent of both, male and female, is required for concluding the marriage contract.<sup>35</sup> But in our society it is arranged by guardian and mostly the consent of male and female is not taken. Sometime minor does not have mental maturity to give the consent. The guardians give the argument in support of the child marriage that Prophet ﷺ marry to Hazrat Ayesha (RA) when she was seven years old.<sup>36</sup> Today the verdict of *Mufī* is also based on Marriage of Hazrat Aisha (RA) for the prove of early marriages in Islam. Fuqaha are in view and agreed upon that the *Nikāh* of minor can be arranged by her/his *walī*. And *Nikāh* of minor is considered “permissible”.<sup>37</sup> *National Institute of Child Health and Human Development* mention that in medical science the age of marriage is puberty. Puberty in girls are counted from the age of 10 to 14 years and in boys 12 to 16 years of age on the basis of physical changes.<sup>38</sup>

The argument is this regard is given by the scholars that the minor is not in need of *Nikāh*, as the core objective of *Nikāh* is to fulfill the sexual desire and procreation and minor absolutely have no power over any one. Secondly all the rulings of *Nikāh* are applied upon getting

adulthood that's why there is no need to perform *Nikāḥ* of Minor.<sup>39</sup>

### **Modern Development in Sharī'ah Laws**

In Muslim states *fiqh* is taken as a source of law but not in all matters sometime by some states. *Fiqh* is mostly referred in cases of family matters or personal status. The reform in Islamic law in Modern period posed a problem.<sup>40</sup> The reformers who wanted to do reforms in Islamic law, thinks that Islamic law can be changed and amended according to the circumstances by the state. The conservatives on the other hand, who are majority Muslims, do not allow reform and changes in Islamic law. The legislation of laws also arose the problem between Modernist and traditionalist. According to traditional Approach the codification of laws and its interpretation by non-Muslim is not acceptable.<sup>41</sup>

In Modern time the new text books on Islamic laws are written by Muslim and non-Muslim scholars and according to modern standard and they made it part of syllabus for law student.

The books written by Modern scholars are different from the traditional text. The Modern text referred their cases to European courts. These changes in the text of legal document gave birth to new system of legal theory and practice e.g Anglo Muhammadan Law or Droit Musulman Algerian and these are different from traditional Islamic law.<sup>42</sup>

The Major areas of reforms in Family laws taken place after the Independence of Pakistan. The Muslim Family law ordinance 1961 make changes in the Law<sup>43</sup>. The Major areas of Reform were:

- 1) Formalities of Marriage
- 2) Marriage age fixation
- 3) Polygamy and its prohibition
- 4) Husband right of divorce & restrictions
- 5) Judicial separation provisions<sup>44</sup>

In Muslim countries including Pakistan the movement of modernization of laws of Islam made two groups which opposed each other regarding different matters, called Modernist and conservatives/orthodox.<sup>45</sup> The traditional *ulamā* never accused the modernists that the western ideas inspired them. The modernists claimed that they followed opinions and precedent of many of the respected classical Muslim jurists and juristic school and nothing is written in the new law which could be against the Sharī'ah or classical Jurists.<sup>46</sup>

The reformers of laws always tried to interpret laws and to amend those according to the requirement of time and this idea made some

problems in social system of Pakistan. The Problems includes Concept of nation state, legislation of laws by the state, problem in doctrine of Ijtihād and Taqlid, problems in method of exercising Ijtihād and sectarian Interpretation.<sup>47</sup>

Maulana Muhammad Jafar Phulwari states his views in Ten Year report of Council of Islamic Ideology. He, while giving his views about MFLO 1961, describe that the ordinance stops the marriage of minor which is not against the Sharī‘ah Law. It is according to Qur’ān. Further the reference of *Surah an-Nisā* verse 6 is given according to which the legal capacity to hand over the property is Bulūgh and “Rushd” which is Puberty and Maturity and *Rushd* is the understanding of Ups and downs of life and to distinguish between profit and loss.<sup>48</sup> The *Nikāḥ* cannot be perform before the age of puberty. According to him the matter of *Nikāḥ* is more sensitive than property. The detailed view on *Nikāḥ* of Minor on the basis of Hazrat Ayesha *Nikāḥ* is given by him in the Report.<sup>49</sup> The arguments supported the view that even the age of Hazrat Ayesha RA at the time of *Nikāḥ* was not 9 years and Rukhsatī also performed at the age of 11 or 18/19.<sup>50</sup>

Muftī Muhammad Hussain Naeemi, Nazim Jamia Naeemia, has given his opinion about Muslim Family Laws. According to which the marriage age is not defined by Qur’ān and *Sunnah*. The guardian can perform *Nikāḥ* of Son or daughter according to his circumstances. If the country’s law required to fix the marriage age then for a girl 15 and for a boy 17 years of age can be fixed. However, parents can give application to chairman Union Council for early marriage if required. The reason should be mentioned in application for early marriage and chairman may allow after satisfaction. Otherwise the application may move to the court for further consideration.<sup>51</sup>

Mulana Umar Ahmad Usmāni in *Fiqh ul Qur’ān* discussed the matter and elaborated his view.<sup>52</sup> According to him the age of marriage according to verse 4:6 is the age of “Puberty”. Before puberty the marriage is not allowed.<sup>53</sup> It is argued from the verse of surah Nisa by Qazi Abu Shabarma and Abu Bakr Al A’sam that *Nikāḥ* of minor is not recommended.<sup>54</sup>

Imran Ahsan Khan Nyazee has modern approach and he has given his arguments in negation of child marriage.<sup>55</sup>

In July 2019 the at Peshawar Press Club (PPC) an awareness raising session, regarding child marriages organized under the supports of Centre for Communication Programs Pakistan. Maulana Mohammad Sharif and Tahir Abbas from the Centre for Communication Programs

shared reasons, consequences and legal framework to address the issue of child marriage.<sup>56</sup>

Maulana Mohammad Sharif said that Islam does not promote child marriage as Qur'ān says that besides attaining puberty, someone also needs to be mature enough before getting married. According to him someone may achieve puberty at the age of 18 years, but he/she may still not be mature enough to handle the responsibilities of a family and marriage. He further explained that in Islam neither early marriage is obligatory nor forbidden<sup>57</sup>.

Tahir Abbas said that “the recent data of the Pakistan Demographic and Health Survey (PDHS) 2017-18 illustrate that 29 percent of women (age 25-49) were married by age of 18, as equated to five percent of men (30-49). About 13.5 percent of young girls aged 15 to 19 are married and 13 percent give birth by age 18.”<sup>58</sup>

They further stated that Organization of Islamic Council (OIC) had called upon all Muslim countries through the Khartoom Declaration 2009 to take all required actions to abolish all systems of discrimination against woman and all injurious traditional or customary practices such as child marriage.<sup>59</sup>

#### **Recommendations by Council of Islamic Ideology and other Institutes**

A bill was presented in 2019 to increase the marriage age from 16 to 18 for a female and passed by the Senate in April. It was opposed by some scholars but passed by members of senate.<sup>60</sup> But it is still under the consideration of standing committee of National Assembly. National Assembly discussed the matter under their 19<sup>th</sup> and 20<sup>th</sup> meeting of the “standing committee on Law and Justice” held on 20<sup>th</sup> August. The Child Marriage Restraint (Amendment) Bill, 2019 was moved by Dr. Ramesh Kumar Vankwani, MNA for discussion. Further Council of Islamic Ideology reserve their views to discuss and finalize the matter in next meeting in September 2019.<sup>61</sup>

The Council of Islamic Ideology in Pakistan<sup>62</sup> made recommendation regarding the age of marriage in its different reports at different time. First of all, in the period of Justice *Tanzil ur-Rehman* the issue of child marriage was raised. On August 19, 1980 the decision of CII was presented in Report of 1980-1981. According to that “As in Family laws ordinance the marriageable age for a boy is 18 and for a girl is 16 years of age. So the amendment is not required in law. Council does not consider to limit the maximum age for marriage.” The council consider the “*Bulūgh*” for marriage<sup>63</sup>.



Second time on February 13 1983 in the meeting of CII the Child marriage Restraint Act 1929, Muslim Family Laws ordinance 1961 and the last report of CII (1980-1981) were under consideration to set the marriageable age. the council recommended that “if the last report of CII is unsatisfactory for the government then it is necessary to consider that in Sharī‘ah if a male and a female met the age of puberty and under the law before reaching the set age they must take permission from the chairman of Union Council first”. The council’s recommendation was accepted.<sup>64</sup>

In the period of Dr. Khalid Masood, the council in its 162th meeting gave some recommendations regarding the Nikāḥ of Minor. “After attaining the age of “Bulugh” the child may get married and all the laws which were made to fix the minimum age for marriage are not Islamic” the nikah of minor can be concluded by the guardian. However, “*rukhsatī* could be performed only after reaching the age of puberty”<sup>65</sup> In the report of 2007-2008 Nikāḥ of minor was allowed but for *rukhsatī*, the age set by law in country was recognized<sup>66</sup>.

Next in the Period of Muhammad Khan Sheerani, council received a letter from Ministry of religious affairs in 2012 for their recommendation regarding child marriage bill amended in 2009. Council in its 189 meeting discussed the act of 1929 and amended bill of 2009 according to which the child marriage is punishable offence.<sup>67</sup> The view of Research wing was considered according to which the marriage of minor is allowed by Qur’ān, Sunnah and *Ijma’*. Jurist also allow the marriage of minor and any law against this is not authorized.<sup>68</sup> The Amendment in 2009 were considered un-Islamic<sup>69</sup>.

The council review their own recommendations and decisions in different periods. The Council of Islamic Ideology (CII) called for initiating awareness campaigns against child marriages instead of passing legislation against the practice in 2018. A member of CII said in 212th meeting that “marriage of minor and legislation to set the marriage age for minor may lead towards many difficulties”<sup>70</sup>. The bill was opposed by ministers and religious parties. The council also suggested that the government should take necessary steps to reduce the trend of child marriage in Pakistan by solving the issues of poor parents”.<sup>71</sup>

There are the clauses in Child Marriage Act 1929 according to which the age of child is defined. For the male the minimum marriage age is was 18 and for female the age was 16 and according to law whoever conflict with this law will be punished. National commission

on the status of Woman (NCSW), *Aurat* Foundation and some other Human Rights organizations working in Pakistan to resolve the woman related issues. The NCSW published their manual with the name of “*Review of Muslim Family Laws*” in 2011. The amendments were suggested in 2007 and 2008 in seven laws. Guardian and ward act, 1890, child Marriage (Restraint) Act, 1929, Dissolution of Muslim Marriage act, 1939, Muslim Family Laws 1961, Family Court Act 1964, Dowry and Bridals gifts (Restrictions) Act 1979, and Labor Laws are Included.<sup>72</sup> The purpose of review of laws were to examine the laws in present perspective and to enact the changes according to circumstances and make law up to date for the betterment of society<sup>73</sup>. The *Fiqh* Academy India in its 57th Sessions of Women's Committee of United Nations to be held from 4 to 15, March, 2013 decided that neither girl not boy should be permitted to marry before the age of 18 years.<sup>74</sup> After marriage the boys or girls at the age of 18 years are the owners of their body completely and no prohibition is allowed on their sexual satisfaction.<sup>75</sup>

The age for marriage is set by different countries according to their custom and cultural system. Socio-economic development level is another factor to set the age. The climate also affects the physical development of girls and boys. The physical maturity is an important factor because health problem may cause serious problem in married couple's life. The family pressure is sometime become the reason of early marriage and it is important factor behind unhappy and unhealthy marriages, which is a serious threat for the harmony of society.<sup>76</sup>

In Muslim countries the marriage age is almost fixed to 18. In Egypt the age is 18 for female and 21 for male. In Libya the age is 20 years for marriage but with the permission of court it can be performed before this age. In Jordan, Mauritania, Morocco, Tunisia, Iraq, Aman, Syria, Albania the age for marriage for both is 18 years. In Bangladesh 21 is for male and 18 for female is fixed. In Pakistan the age of male is 18 and 16 for female is fixed in MFLO 1961.<sup>77</sup>

### **Conclusion and Recommendations**

It comes in knowledge after analyzing literature of early marriages in Islam that “*Bulūgh*” and “*Rushd*” is the qualification for marriage. The responsibilities of man and woman after marriage connected with the age of majority in which they can understand and perform their duties and to fulfil the obligations of marriage upon them. After the period of Prophet Muhammad ﷺ and *Khulafa e Rashideen Sahābah*, *Tabieen* and their successors, Early Jurists, later Jurists up till now the

rulers and the knowledgeable people follow Islam and its teaching and trying to solve the problem of Ummah regarding *Zannī* matters in which people need guidance. *Ulamā* are doing *ijtihad* in the matters where clear Nass is not available. Age of marriage is one of the issues which is not fixed by Qur'ān and Sunnah. The cultural system of Pakistan does not allow woman to give consent in marriage. In urban areas woman are educated and they can say something for their right especially in case of Marriage. But in Rural areas they don't have any right upon their marriage. Islam has given full right to women regarding their choice in marriage. Even the puberty and specially maturity is also defined for handling the marriage responsibilities.

The issue under consideration is very important especially its religious and social aspect cannot be ignored. The family laws amendments are made by legislator in different time periods in Pakistan. In Sindh the age of marriage was fixed 18 years for woman in 2014 later in KPK bill is passed but in Punjab the bill is under discussion. The change in the tradition of early marriage change in mind set of people is required, only the change in law on paper is fruitless.

In Pakistan the development of human rights and especially women rights campaigns are mostly criticized and declared un-Islamic, thus less-taught and excessively emotional people from Pakistani society get puzzled between religious minded people and present-day Modern people. The CII need to discover any center method to make Islam and current majority rules system compatible.

Protection of religion, life, Intellect, offspring's and property are the essential elements of *Sharī'ah*. Classical and contemporary Jurist tried to take special care of *Maqasid e Sharī'ah* for the ease of people in life. Early marriage or marriage before the age of puberty, set by the state according to present circumstances, sometimes creates the problem for young girls and sometime even for boys. So it is concluded here that a middle way is required by adopting which the protection of all the essential elements may possible for all citizens of Pakistan.

## References

- <sup>1</sup> Ibn Manẓūr, Muḥammad ibn Mukarram, 1232-1311 or 1312. *Lisan Al-Arab*. Qum, Iran :Adab al-Hawzah, 1405 1984.
- <sup>2</sup> Esposito, John L., and Natana J. DeLong-Bas. *Women in Muslim Family Law*. (Syracuse, NY: Syracuse Univ. Press, 2004), 15
- <sup>3</sup> Nasir, Jamal J., *The status of women under Islamic law and modern Islamic legislation*, 3rd ed., (Brill's Arab and Islamic laws series. Vol. 1, 2009), 31.
- <sup>4</sup> Nūr:32
- <sup>5</sup> Nūr:33
- <sup>6</sup> Nūr:32
- <sup>7</sup> Mufti Muhammad Shafi, *Tafsir Maa'riful Quran*, Trans. Prof. Muhammad Hasan Askari, Prof. Muhammad Shamim, Revised: Justice Mufti Muhammad Taqi Usmani, Tafseer surah An-Noor verse 32.
- <sup>8</sup> Ibid.
- <sup>9</sup> Ibid.
- <sup>10</sup> Margīnānī Burhan-ad-deen, *The Hedaya* , trans. Charles Hamilton, (Lahore: Premier Book House, 1957), 34.
- <sup>11</sup> Mufti Muhammad Shafi, *Tafsir Maa'riful Quran*.
- <sup>12</sup> M. Hussain, "Islamic Law on Child Marriages," The Network for International Law Students United Kingdom Law Review, accessed December 12, 2019, [https://www.academia.edu/36458509/Islamic\\_Law\\_on\\_Child\\_Marriages](https://www.academia.edu/36458509/Islamic_Law_on_Child_Marriages), 163-174.
- <sup>13</sup> Al Baqara:240
- <sup>14</sup> Imam Al-Suyuti, *Tafseer Dur-e-Mansoor*, Urdu Trans. by Maulana Muhammad Khalid Khan Gharhi, Tafsir Surah Al Baqara:240
- <sup>15</sup> Ibn Rushd, *The Distinguished Jurist's Primer: Bidayat al-Mujtahid waNihayat al-Muqtasid*, Vol 2, (Ithaca Press, 1999), 10. E. Y. Krivenko, *Women, Islam and International Law. Within the Context of the Convention on the Elimination of all Forms of Discrimination against Women* (2009), 60. The main reason given for the necessity of the guardian's contribution is the need to protect the woman, El Alami, *Legal*

*Capacity with Specific Reference to the Marriage Contract*, 193. However, most Islamic jurists agree that the guardian has the obligation to secure the approval of the bride.

<sup>16</sup> Sunan Abi Dawud, *Marriage (Kitab Al-Nikah)*, Chapter: Regarding The Guardian, book 11, hadith # 2078. <https://sunnah.com/abudawud/12/38>

<sup>17</sup> Sahih Bukhari, vol 1, *Kitabun Nikah*, hadith # 1831

<sup>18</sup> Sunan Ibn Majah, *Kitabun Nikah*, Vol. 2, Hadith # 2.

<sup>19</sup> Mona Siddiqui, *The Concept of Wilaya in Hanafi law: Authority versus Consent in al-Fatawa al-Alamgiri*, “Yearbook of Islamic and Middle Eastern Law, Volume 5 (1998-1999),” Brill (Brill, July 30, 2004), <https://brill.com/view/title/11461>, 174.

<sup>20</sup> El Alami Dawoud Sudqi, *The Marriage Contract in Islamic Law: in the Shariah and Personal Status Laws of Egypt and Morocco* (London: Graham & Trotman, 1992), 49

<sup>21</sup> An-Nisa:6

<sup>22</sup> Laleh Bakhtiar and Kevin A. Reinhart, *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools* (Chicago: ABC International Group, 1996), 403.

<sup>23</sup> L. Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), 63

<sup>24</sup> M. Zahraa, *The Legal Capacity of Women in Islamic Law*, Vol. 11 No. 3 Arab Law Quarterly (1996), 245-263, 250. See also L. Bakhtiar, (1996), 403

<sup>25</sup> Arif Ali. Khan and Tauqir Mohammad. Khan, *Encyclopedia of Islamic Law* (Kuala Lumpur: Crescent News, 2006), 48

<sup>26</sup> Ibid.

<sup>27</sup> Al-Hibri, A. Y. Islam, “Law and Custom: Redefining Women’s Rights”. *American University Journal of Law and Policy*, 12(1), (1997).

<sup>28</sup> N. J. Coulson, *A History of Islamic Law*, (1964), 178; M. Zahra, *The Legal Capacity of Women in Islamic Law*, 259; D. Pearl & W. Menski, *Muslim Family Law*, 3rd Edition (1998), 154

<sup>29</sup> M. Zahraa, *The Legal Capacity of Women in Islamic Law*, 259

<sup>30</sup> Ibid., 259; D. Pearl & W. Menski, *Muslim Family Law*, 143; F. Rahman, *A Survey of Modernization of Muslim Family Law*, Vol. 11 No. 4 International Journal of Middle East Studies, 455 (1980) If the ward is ignorant of the marriage the option of puberty is lost only if not exercised upon the discovery of the marriage. In contrast, being ignorant of the option of puberty itself does not conserve the right to object, K. Hodkinson, *Muslim Family Law: A Sourcebook*, (1984), 231

<sup>31</sup> Hashim Kamali, *Law in Afghanistan. A Study of the Constitution, Matrimonial Law and the Judiciary*, (1985), 107; I. Schneider, Registration, Court System, and Procedure in Afghan Family Law, 12 Yearbook of Islamic & Middle Eastern Law 209-234 (2005/2006), 222. Jamal J. Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, 29 , K. Hodkinson, *Muslim Family Law: A Sourcebook*, 231

<sup>32</sup> Tanzil ur Rehman, *Majmooa Qawaneen e Islam*, vol 1, (Islamabad: Idara Tehqiqat e Islami, 2004), 43

<sup>33</sup> Ibid. 43

<sup>34</sup> Muhammad Munir, "Challenging State Authority or Running a Parallel Judicial System? 'Ulama versus the Judiciary in Pakistan", LUMS Law Journal 2017: 4(1), 5. Also can be accesses: Munir, Muhammad. "Professor Dr Muhammad Munir." Academia.edu. Accessed December 12, 2019. [https://www.academia.edu/35828856/Professor\\_Dr\\_Muhammad\\_Munir](https://www.academia.edu/35828856/Professor_Dr_Muhammad_Munir).

<sup>35</sup> Jamal J. Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, 28

<sup>36</sup> El Alami, *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco*, 51 and R. Shaham, *Family and the Courts in Modern Egypt. A Study Based on Decisions by the Shari'a Courts, 1900 – 1955*. (1997), 53.

<sup>37</sup> Syed Muhammad Anwar, *Nikah main Wali ki Haysiyat*, Wahdat Foundation Pakistan (1999), 110

<sup>38</sup> <https://medlineplus.gov/puberty.html>

<sup>39</sup> Justice Tanzil ur Rehman, *Majmooa Qawaneen e Islam*, 215

<sup>40</sup> *International Conference on Islamic Laws and Women in the Modern World: Islamabad, December 22-34, 1996* (Islamabad: Giant Forum, Global Issues Awareness for National Thrust, in collaboration with Womens Development Fund CIDA Islamabad, 1996), 28

<sup>41</sup> *International Conference on Islamic Laws and women in the Modern World*, 28

<sup>42</sup> Ibid 29

<sup>43</sup> Ibid.

<sup>44</sup> Ibid. 29

<sup>45</sup> Ibid., 30, *In the definition of Modernist the people who are westernized in their education, thought and life style are included. In conservatives traditional Ulama and their followers are included who adhere to tradition.*

<sup>46</sup> Mumtaz Ahmad, *The Muslim Family Laws Ordinance* in Pakistan, *International Journal on World Peace*, Vol. 10, No. 3 (September 1993), 37-46, Paragon House, 39. retrieved from 182.190.87.78 on Sun, 25 Aug 2019, <https://about.jstor.org/terms>

<sup>47</sup> *International Conference on Islamic Law in the Modern World*, 30

<sup>48</sup> Jafar Phulwari, *M. Muslim Family Laws and Islam*, Tenth Report CII, (1062-1972), 221

<sup>49</sup> Ibid.

<sup>50</sup> Ibid. 222

<sup>51</sup> Mufti M Naeemi, *Muslim Family Laws review*, Tenth Report CII (1962-1971), 208

<sup>52</sup> Umar Usmani, A. M, *Fiqh-Ul-Qurān , Khandani Mu‘amlat* (Nikah, divorce etc), 2nd edition (Idara-e- Fikr-e-Islami, Kashana-e Hafeez, 240, eserdas street, Garden east, Karachi, 2002), 112-113

<sup>53</sup> Usmani, Umar, A. M, *Fiqh-Ul-Qurān , Khandani Mu‘amlat*, 488

<sup>54</sup> Ibid. 499

<sup>55</sup> Imran Ahsan, “The Council of Islamic Ideology (CII) and Child Marriage,” SSRN, November 6, 2014, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2519471](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2519471),

<sup>56</sup> <https://fp.brecorder.com/2019/07/20190707495157/>

<sup>57</sup> Ibid.

<sup>58</sup> <https://fp.brecorder.com/2019/07/20190707495157/>

<sup>59</sup> Ibid

<sup>60</sup> <https://www.thenews.com.pk/print/465743-minimum-age-for-marriage-ideological-divide-in-pti-a-challenge-for-imran>

<sup>61</sup> Letter No. F.7(1)/2019-com-I-Vol-VI/part File, the Notice of meeting agenda dated August 19 2019, received from CII research wing in September 2019.

<sup>62</sup> CII is a constitutional body of the government of Pakistan, responsible for giving advice on Islamic issues to relevant government institutions and legislators. The Council was founded in 1962 as an Advisory Council of Islamic Ideology and later renamed as the Council of Islamic Ideology in 1973. See Mehdi, R., *The Islamization of the Laws in Pakistan*, Curzon Press, (1994), 206. See also Yilmaz, Ihsan, and Zahid Shahab Ahmed. 2018. "Islam and Women Rights in Pakistan." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3229025>, 12.

<sup>63</sup> Yearly Report 1980-1981, CII, 138

<sup>64</sup> "The Muslim Family Laws Ordinance 1961." n.d. Accessed December 11, 2019. <http://punjablaws.gov.pk/laws/777a.html>.

<sup>65</sup> Report of CII 2013-2014, 142-143.

<sup>66</sup> Ibid.

<sup>67</sup> Report 2012-2013, 39.

<sup>68</sup> Ibid, 191.

<sup>69</sup> Ibid.

<sup>70</sup> <https://www.dawn.com/news/1480153>

<sup>71</sup> <https://www.pakistantoday.com.pk/2019/05/03/cii-opposes-child-marriages-but-wont-support-legislation/>

<sup>72</sup> "Review Study for the National Commission on Status of Women." n.d. Accessed December 11, 2019. [http://www.af.org.pk/gep/images/publications/Research Studies \(Gender Based Violence\)/NB NCSW JIRGAS.pdf](http://www.af.org.pk/gep/images/publications/Research%20Studies%20(Gender%20Based%20Violence)/NB%20NCSW%20JIRGAS.pdf), 1.

<sup>73</sup> Ibid.

<sup>74</sup> [http://www.ifa-india.org/english.php?do\\_home&pageid=Seminar\\_English22](http://www.ifa-india.org/english.php?do_home&pageid=Seminar_English22)

<sup>75</sup> Ibid.



<sup>76</sup> Statistical, Economic and Social Research and Training Centre For Islamic Countries (SESRIC), OIC Outlook Series June 2015 The State of Children in OIC Member Countries, Organization Of Islamic Cooperation Statistical, Economic And Social Research And Training Centre For Islamic Countries See Haloi A., and Limbu, D. K. *Socio-Economic Factors Influence the Age at First Marriage of Muslim Women of a Remote Population from North-East India*, Antrocom Online Journal of Anthropology, vol. 9. no. 1, (2013), 75-79.

<sup>77</sup> *Council of Islamic Ideology, Recommendations, meeting # 212*, dated 26-27 (September 2018), 1.