



Clarifying the Islamic Position on Child Marriage

On January 10, 2017, changes to the Muslim Marriage and Divorce Ordinance were brought for public debate in the Parliament, and the Opposition retained temporary senators from both the Muslim and Hindu communities air their perspectives on the matter. The Muslim position was largely rejected by society – including some Muslims, as evidenced by the public response on print and digital media. **What exactly is the Islamic position as it related to Child Marriages?**

1. What is (was) the parameters within the Muslim Marriage and Divorce Ordinance?

The Muslim Marriage and Divorce Ordinance recognized the age of consent – persons attaining the age of 18 years were free to enter into marriage. The Muslim Marriage and Divorce Act Section (8) titled ‘Age limit and consent’ recognizes Muslims can marry without the need for consent from the age of eighteen years.

The Ordinance contained the provisional exceptions to the age of consent, i.e. the marriage of a minor or minors – and outlined provisions governing these exceptions. One such provision was the establishment of a minimum age for marriage of minors, “the age at which a person, being a member of the Muslim community, is capable of contracting marriage shall be sixteen in the case of males and twelve in the case of females.”.

The section goes on to say in cases where either person is under the age of eighteen years but at or above the ages specified by gender, consent to the marriage by the parents (within stipulations) or a person appointed by the President needs to be obtained by the Marriage Officer. Section (9) titled ‘Consent to marriage in certain cases’ treats with marriage of minors where consent required by law is absent, and allows the President to appoint a person to evaluate the situation and declare in writing. The Marriage Act (45:01) Section (23) titled ‘Consent to Marriage’ deals with consent being obtained from the parent or parents for the marriage of a minor. Section (24) titled ‘Power of Judge to dispense with consent’ treats with the situations where a person where consent, required by law, is absent, unobtainable or not forthcoming, a Judge of the High Court may be petitioned to assess, decide and declare a marriage be solemnized, this being equivalent to consent.

2. How Can Islam Allow Marriage of a Child?

2.1 Marriage in Islam

In Islam, marriage is the only legitimate basis for sexual relations between individuals (Quran 23:5-7). Muslims are encouraged to get married (Quran 24:32; 30:21; 5:5).

There are a number of requirements, regulations and responsibilities associated with the institution of marriage in Islam, and alongside these there are many associated benefits that result – at the individual level and for society as a whole.



2.2 Marriage of ‘Youth’

Marriage is a right given to those who have reached the age of puberty, enshrined in the Quran (Quran 24:59). Puberty in Islam (bulugh) is recognized as the point in the development of a person where they cease being a child, and become a youth, until they attain the age of forty years (the age of responsibility) (Quran 46:15).

Marriage, of any person, in Islam, must meet certain criteria for it to be considered valid. These criteria are consistent with and contained within the Muslim Marriage and Divorce Act (45.02) section (6) titled ‘Requisites of marriage’, which enumerates requisites including capability of contracting marriage in terms of mental capacity, free consent etc.

2.3 Marriage and What it Entails

Marriage in Islam is comprised of 2 parts – the nikkah (equivalent to engagement or betrothal) and the consummation. In Islam, the term ‘marriage’ is used in reference to the performance of the nikkah, and therefore separate and distinct from consummation. Nikkah in Islam can be performed by those with decision-making authority for a person at any time, and at any age*. Consummation of a marriage, however, can only be done once a person has attained the age of puberty.

**There are conditions around this that manifest in Islam. For a full treatment, please refer to Majlis ul Ulamaa, ‘Marriage in Islam’, Section 6: The Validity of Marriage, Marriage Ceremony and Walima, accessible at <http://majlistt.com/final-papers/marriage-in-islam/>*

3. Is it Right to Allow Minors to Marry?

3.1 Marriage of ‘Minors’

Marriage of minors is established precedent in many religious and secular legal codes throughout the world. This is based on the biological fact that persons attaining the age of puberty (which varies by gender) become sexually mature, and augmented by the recognition that marriage provides an important safeguard for individual welfare (to mitigate such risks as unsafe abortions, suicide, elopement, emancipation of minors, protection, economic mobility and social dignity), as well as to preserve the social values that permeate the community (for instance the Islamic value system that sees marriage as the only legitimate basis for sexual intercourse).

The acceptable age for marriage in many cultures historically varied between 9 years or at the onset of puberty – the specific option varying depending on the specific civilization being considered. The main exception was North-western Europe – where marriages at early ages were rare. The age of marriage was also subject to manipulation by governing actors to further political and economic interests – for example, to influence the power of clans in the affairs of state, or at the times of world wars or great sickness or famine.

In the Muslim Marriage and Divorce Ordinance, the minimum age imposed was 12 years for females, by which time some would have biologically undergone and completed the stages of puberty. This does not mean they would automatically be married or are encouraged to be married off, but rather that if they choose to exercise the right that Islam allows them, they are free to do so from a legislative standpoint.



3.2 Age of Marriage of Minors

As it stands today, the UN FPA notes the age of 18 as the age where persons have the choice individually on whether to get married or not. 146 countries of the world allow for marriage of minors as exceptions, and whose laws allow exceptional marriages for males and females younger than 18, provided that parental consent is given. This demonstrates the universality of the principle in various cultures.

We recognize that the concerns for the marriage of minors set by international bodies – especially within the UN system (such as the General Assembly, the FPA Population and Development Branch, the Human Rights Council, the Commission on the Status of Women, the World Health Organisation) identify associated risks, including physical health effects of early intercourse and pregnancy; vulnerability of being married to older persons or into a household without the freedom of being an adult; and being denied opportunity for education and economic gain by early pregnancy and culturally-imposed marriage responsibilities and obligations.

We agree that persons can attempt to use the accommodation of marriage of minors to their advantage, which can result in exposure to abuses or denied opportunity. But we are also mindful of the rights of our youths to seek marriage and permission to marriage if they choose to do so. Therefore, to regulate the provision of exceptions makes sense, and is necessary.

We encourage the other pieces of legislation to impose a minimum age of marriage of minors, similar to that of the Muslim Marriage and Divorce Ordinance, so that our children would be protected.

We further urge all the processes defined to regulate marriage of minors across the various pieces of legislation to be streamlined, consistent and uniform, so that the state can effectively govern the circumstance, the provisions and impact of these on the quality of life of the parties involved.

4. Conclusion

We endorse the position of the Majlis ul Ulamaa, of which we are part, which recognizes marriage as an individual right that is given to our youths. We also fully endorse any and every measure to safeguard minors from potential abuse. There are mechanisms which can be preserved, extended or pursued which can enforce safeguards preventatively and provide for corrective action, while at the same time preserve the rights Islam affords to persons who qualify and who wish to pursue marriage as a minor.

It is hoped that all persons recognize the value system that Islam espouses – that of no sexual intercourse before marriage – is consistent with those values that underpin the age of consent, and furthermore the provisions which are applicable across the board as it relates to marriage of a minor are respected as part of the Laws of the country, and like all other laws must be given its due respect.

Finally, it is hoped that the Muslim community continues to be fully integrated into the national social fabric with the recognition of our theological requirements and the accommodations thereof as enshrined in legal code, so that we can all espouse with pride “here every creed and race find an equal place”.

The MAI Institute is dedicated to providing accessible, authentic Islamic education efficiently and effectively, and supports the Islamic position on issues that affect Islam and Muslims of Trinidad and Tobago.
