

**Child marriage in the light of objectives of Shari'ah and Islamic  
jurisprudence  
(An Analytical study of prevalent practices in Pakistani Society)**

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**Abstract**

*Islam envisages marriage as a source of productivity and prosperity for mankind. This is a legal contract between two mature persons, thus it must be in harmony with the objectives of Islamic Shari'ah namely the protection of lineage and protection of honour. Marriage as a pivotal part of an Islamic society must fulfill the before-mentioned objectives of Shari'ah. Among other concerns regarding the matter of marriage, one of the important is the issue of child marriage. Keeping that in view, this study has analyzed whether child marriage fulfills these objectives or not or at what cost. Further, this study has figured out the opinions of four jurists of Islam regarding the issue at hand and has provided a synthesized solution. This research has also delved into highlighting the possible factors leading to child marriage in Pakistani society, and the pros and cons of child marriage. The descriptive and analytical methodology has been used in this study. Moreover, suggestions are put forth to deal with the primary concerns of child marriage in the light of Islamic Sharia'.*

**Keywords:** *Child-Marriage, Objectives of Shari'ah, Juristic opinions, Pakistani society*

## Introduction

Islam is a complete code of life that covers all spheres of human life and fulfills all the requirements of nature. Islam has given the name of Nikkah *or* marriage to the legal relationship of intimacy between a man and a woman and has taught them manners that will help them in upholding this relationship properly. The Quran has been revealed to address and guide human society and the family is the primary unit of human society. The family structure stems from an essential contract between two adult people which is a contract of marriage. This is the reason Islam does not confine marital contracts to achieve only physical needs and tranquility, rather Islam recognizes marriage as the first school for fostering future generations. In the Qur'an and the Hadith, chastity has been made the foundation for establishing an atmosphere of social purity. The purpose of marriage in Islam is to create a better and more prosperous society.

The Quran has endorsed marriage as a significant part of one's life. The below-mentioned verse recommends marriage to every single person,

﴿وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ﴾

*Marry those among you who are single, or the virtuous ones among yourselves, male or female. (Quran 24:32)*

Quran has also used a parable of clothes in surah al-Baqarah to highlight the role of the spouse.

﴿هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ﴾

*They are apparel for you, and you are apparel for them. (Al-Quran 2:187)*

This Parable indeed indicates a beautiful relationship that requires the maturity of two people to preserve its beauty.

## Significance of Study

This study aims to analyze whether child marriage fulfills the objectives of Shari'ah. Further, it figures out the opinions of four jurists of Islam regarding the issue of child marriage and intends to provide a synthesized solution. This research also encompasses the possible reasons leading to child marriage in Pakistani society, and the merits and demerits of child marriage.

## Literature Review

The significance of marriage is highlighted in various verses of the Quran and the ahadith of the Prophet (p.b.u.h.). One of the forms of marriage which are prevalent in Pakistani society is child marriage. Renowned contemporary scholars Maulana Maududi (1999) and Hammudah Abdul A'ti (2008) in their books have addressed this issue and have discussed the aspect of the binding authority of the guardian. Multiple researchers have analyzed this issue of child marriage. Muhammad Shakil Auj (2014) in his article has argued that underage marriages are against the teachings of the Quran and mental soundness is also a condition for getting married.

Aatir Rizvi and H. Imran Ahmed Qureshi (2022) in his article has identified some prevailing customs in different tribal and rural areas of Pakistan which is one of the causes of child marriage in Pakistan.

### Research Methodology

This research employs both analytical and descriptive approaches to figure out the conformity of child marriage with the objectives of Shari'ah. Further, it provides a synthesis of the opinions of the four jurists of Islam regarding the issue at hand. Moreover, suggestions are put forth to deal with the primary concerns of child marriage in the light of Islamic Sharia'. The collected data for the mentioned purpose is based on the verses of the Quran, sayings of the Prophet (p.b.u.h.), English and Arabic dictionaries, books, research articles, and authentic websites.

### Discussion and Analysis

According to the UN Convention (Convention on the Rights of the Child, 1989) the definition of a child is as follows:

*Child means every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier.*

The definition of a child according to Pakistani Law (Child Marriage Restraint Act, 1929) is as under:

*Child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age; and child marriage" means a marriage to which either of the contracting parties is a child<sup>1</sup>*

In the Holy Qur'an and the Sunnah of the Prophet (p.b.u.h.), the first condition for marriage is that a man and a woman become adults. Generally, our national law sets the age limit for marriage at 16 years for a girl and 18 years for a boy. (Child Marriage Restraint Act ,1929). Nevertheless, there is no specific age is mentioned in the Qur'an and Sunnah for adulthood. According to a renowned Arabic dictionary, *Childhood is a period between childbirth and adulthood* (Team,n.d.) Every human being under the age of puberty is a child. In this regard, the Qur'an sets the age of puberty for a kid to be considered an adult.

### Stipulations for marital contract

In the light of the Quran and Ahadith following are primary stipulations for marriage:

- **Physical and mental soundness:** In Islam marriage is encouraged between persons who have reached physical puberty and have attained mental maturity to discriminate between right and wrong.

Allah says in the Quran:

وَأْتَبَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَانَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ

*And test the orphans until they attain puberty; then if you find in them maturity of intellect, make over to them their property (Quran 4:6)*

Shakil Auj in his article (Auj,2014) has discussed this verse and he is of the view that, in this verse, the word "marriage" is used instead of "puberty", which shows that marriage connotes puberty. Therefore, underage marriages do not seem appropriate according to the Qur'an. He further highlighted that for marriage *rushd* that is mental maturity is important. He added that this verse is indeed about the Qur'anic command to own property, that is, to return property, but it is very clear that if the property is so important that it cannot be given to mentally retarded people how the life of a person can be bound to a person who is not mentally mature. The secret of strength and continuity, happiness and harmony in married life lies in the balance between these two abilities and the absence of either of them turns the joys of married life into sorrow and despair.

According to the Hanafis, the marriage of a child and a mad person cannot take place because it is necessary to have a sound intellect to get married. (Masood, 1986)

"فَلَا يَنْعَقِدُ نِكَاحُ الْمَجْنُونِ وَالصَّبِيِّ الَّذِي لَا يَعْقِلُ؛ لِأَنَّ الْعَقْلَ مِنْ شَرَائِطِ أَهْلِيَّةِ التَّصَرُّفِ"

It implies that if a person is physically mature but not mentally which is the condition for managing wealth, then wealth cannot be handed over to him. Similarly, if a person is physically mature for marriage but is not yet mature mentally and intellectually, then he cannot enter into marriage. Thus, we hold that in the light of the Holy *Quran*, there are two basic conditions for *Nikah* or Marriage; (1) physical maturity (بلوغت) and (2) maturity of intellect (رشد)

- **Consent of both parties:** Shamreeza Riaz in her article states that all Muslim jurists have a consensus on one element for conducting a marriage, which is offer and acceptance from both parties. (Riaz,2013)

#### ***Nikah* (Marriage) in the light of Maqasid-e-Shari'ah:**

The purpose of marriage in Islam is to protect the chastity of both men and women. That is why Islam urges every one of its followers to get married. Every rule of Shari'ah has a specific purpose because no rule of Shari'ah can be devoid of wisdom. Therefore, if the objectives of *Nikah* (marriage) are studied in the light of Shari'ah, then the following are the main objectives of *Nikah*:

- **Preservation of Lineage (نسل):**

Man naturally wants to preserve his identity and his name. According to Islamic teaching, the real purpose of marriage is the protection and survival of the human race. So, the Qur'an has declared the wife to be a field for the man.

(بِسَاوَاتِكُمْ حَرْثٌ لَّكُمْ فَاَتُوا حَرْثَكُمْ اَنَّى شِئْتُمْ)

*Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish (Quran 2:223)*

In these four words, the Islamic philosophy of marriage has stated that the purpose of marriage is not merely sexual gratification but reproduction and protection of the progeny. Protection of lineage is not compromised even in child marriage.

- **Preservation of chastity (عصمت):**

The second important purpose of marriage is the protection of chastity and the fulfillment of man's physical needs in a legal way. That is why marriage is called a part of faith in Islam. The Qur'an has interpreted married men and women as "محصن" and "محصنه" which means fortified. Allah said in the Qur'an:

(وَاَجَلٌ لَّكُمْ مَا وَّرَاءَ ذٰلِكُمْ اَنْ تَبْتَغُوْا بِاَمْوَالِكُمْ مُّحْصِنِيْنَ غَيْرِ مُسْفِحِيْنَ)

*And it is lawful for you to marry other women if you pay their dower, maintain chastity, and do not commit indecency (Quran 4:24)*

It is as if through marriage a person protects himself in the fortress of chastity and the devil cannot control him. In the case of child marriages usually, such intimacy leads to sexual abuse of the girl child who is not physically and mentally strong enough to maintain a such relationship.

- **Preservation of life:**

The protection of human life is of crucial importance in the Islamic Shari'ah. It is illegal for an individual both to murder another individual unjustly and to commit suicide. If we look closely underage marriages lead to underage pregnancies which is one of the causes of premature births and maternal mortality. In Pakistan, one woman dies every 20 minutes during childbirth and the major cause of the high maternal mortality ratio of 276 per 100,000 live births is child marriage. (Child Marriage: What Are the Laws in Pakistan?, n.d.)

Indirectly the life of a child's mother and infant is being put at stake because of this practice. The absence of pure food, polluted environment, malnutrition, and many other factors are involved to produce a physically weak generation and when we bind them in wedlock in childhood they are unable to cope with marital requirements and challenges both emotionally and physically.

To attain the above-mentioned purposes of marriage, men and women should be mature both physically and mentally to fulfill all these purposes excellently and vigilantly. In this regard, if we look at child marriage, in any case, these goals cannot be achieved. Therefore, physical maturity, as well as mental maturity, is necessary for marriage.

### **Opinions of Islamic Jurists about Child Marriage**

- **Age:** The four Jurists of Islam gave primary importance to attaining both puberty and *rushd* or mental soundness by both parties who are involved in the marital contract.

According to the Imam –e- Aazam Abu Hanifa, the age of puberty of a boy is 18 while that of a girl is 17 and 15 according to Imam Shafai, these figures are in the case there are no signs of physical maturity yet appeared (Aloosi, n.d.). In case of no sign of physical change, puberty will be presumed at the above-mentioned age. Many contemporary commentators of the Quran have referred to this condition in which a male or female reaches the age of puberty but they do not have started sleep orgasm and menstruation respectively, for example:

Maulana Syed Abul Al'a Maududi says:

*Whether menstruation has not been started because of young age or because some women have menstruation at a very late age and very rarely it also happens that some women do not have menstruation throughout their life. (Maududi,1974)*

And Pir Mohammad Karam shah Al- Azhari referred to:

Those women who are still minor or those who do not have menstruation but mature according to age (Al- Azhari, n.d)

Tahir Mansoori in his book has stated the view of Muslim Jurists. He has divided them into two groups: the former are Ma'utazilites jurists, Shubrumah and Abu-Bakr-al Asam and they believe that child marriage is illegal. These jurists based their argument on the following verse of the Quran (Mansoori, 2012)

وَأَتَّبِعُوا اللَّيْمَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَانَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ

*And test the orphans until they attain puberty; then if you find in them maturity of intellect, make over to them their property (Quran 4:6)*

And argue that it goes against the Quranic ruling which entails puberty, discretion, and sound judgment in the parties to a marriage contract. So according to them if child marriage is allowed, it will nullify the Quranic injunction.

The latter category is of four mainstream jurists namely Hanafi, Maliki, Shafi'i, and Hanbali. All of them hold that child marriage is legitimate only if it is contracted by the father, grandfather, brother, or uncle of the paternal side who acts as guardian in the marriage contract. (Mansoori,2012)

Tahir Mansoori further explains that the mainstream jurists recognize that such marriages can be annulled under certain stipulations and circumstances by the party involved in, reaching puberty which is called the “option of puberty. These Jurists also recognize that marriage at a minor age is merely a contract that is supposed to be consummated at a later date. (Mansoori, 2012)

- **Marriage custodianship:**

According to the four main jurists of Islam, the contract of marriage of a minor can be made by the guardian who is competent to protect the rights of the minor. It is the legal authority given to

the father or closest paternal males namely grandfather, brother, or uncle. Nevertheless, the jurists belonging to these schools of thought disagreed on the authority of the guardian and the legal status of such marriage (Ati, 2008)

The stance of the jurists can be comprehended well by mentioning the conditions they put forth:

- **Hanafi school of thought:** In the Hanafi school of thought the marriage contracted by the father or any other guardian can be cancelled through the court only if, it is established that the marriage was vividly against the favour of the minor and the future husband is not compatible with the girl in status and social standing. (Mansoor, 2009)
- **Shafi school of thought:** With a little difference in conditions, the Shafi school of thought proposes that marriage can only be annulled if the prospective husband is hostile to the girl, does not share equal status like hers, and is unable to pay a reasonable dower to her otherwise such marriage is binding and cannot be annulled. (Mansoori, 2012)
- **Malikis's school of thought:** According to Malikis's school of thought, only the father has the authority to bind the marriage contract of the minor girl, and is irrecoverable in their opinion even after attaining puberty. (Mansoori, 2012)
- **Criticism of Contemporary Scholars:**

A few contemporary scholars maintain that the above-mentioned views are not based on any legal text of the Quran and Hadith. Maulana Maududi has called it only an *ijtihadi* opinion of the jurists. (Maududi, 1999)

In the opinion of Hammudah Abdul A'ti, there are no proofs in the Quran and in the Seerah of Muhammad (p.b.u.h.) where such marriages have been approved and binding authority has been given to the father or any other guardian to engage their kids in marital contracts without their consent. And there are many reports where such marriages were annulled by the Prophet(p.b.u.h.). (Ati, 2008)

According to our study, half of the opinion of contemporary scholars is right while the other half needs to be addressed. They are right in saying that the opinions of the Muslim jurists are based upon their *Ijtihad*, whereas it cannot be right to say that no such situations are referred to, in the Quran and Seerah of the Prophet (p.b.u.h.). Let us elaborate our point by quoting a few references: Ibn-e-kasir in his tafsir of the Quran and Jalal ad-Din al-Mahalli in his *Tafsir-al-Jalalain* and explain the verse of the Quran:

وَأَلْيَ يَيْسُنَ مِنَ الْمَجِيضِ مَنْ نَسَأَكُمْ مِنْ نِسَائِكُمْ إِنْ أَرْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّيْ لَمْ يَحِضْنَ

*If you have any doubts, regarding a wife who has ceased menstruating and one who has not yet menstruated, the period of waiting shall be three months. (Quran, 65:4)*

They maintain that this verse is referring to the women whose menstruation cycles are ceased because of old age and those who are minors and they have not menstruated yet, their term will

be three months. This explanation highlights that in Arab culture binding the marriage of a minor by postponing its consummation to a later date was not a strange thing.

Further, Aisha reported God's Messenger as saying:

*If any woman marries without the consent of her guardian her marriage is void, her marriage is void, her marriage is void. (Mishkat :3131)*

Another hadith:

*Narrated Al-Qasim: Khansa' bint Khidam was given by her father in marriage against her will, then the Prophet (ﷺ) cancelled that marriage. (Bukhari: 6969)*

By analyzing the above discussion, we believe that the marriage of minors was acceptable in Arab society as referred to, by the above-mentioned verse of the Quran. And the two ahadith which have been selected reflect that there were present proper conditions to bind the marriage of a minor if necessary. By integrating these two ahadith we came to the point that the guardian has the authority to bind the wedlock of a minor as long as it is for the true benefit of the child for a real and clear interest to be served. Since this is not a violation of her rights, as is said in the guardian's dealings with the orphan's money. It is permissible for him to buy and sell on his behalf without obtaining his consent if there is clear and real interest and benefit. If a person has the authority to dispose of the affairs or wealth of others, then it is not allowed for him to do whatever he wants, he has to choose what is in his dependee's interest and he must consider the compatibility of the spouse.

Moreover, if the kid on achieving puberty and sound judgment does not want to continue the marriage then according to the previously mentioned conditions mentioned by the jurist court can null the marriage. The Prophet (p.b.u.h.) was the agreed-upon supreme judge in the state of Madinah and upon finding that the marriage was against the consent of the girl he had cancelled it. Furthermore, we endorse that minor marriage is not something recommended or encouraged, or commanded by the Quran, Sunnah of the Prophet(p.b.u.h.), and even by mainstream jurists of Islam. We will address it in great detail in the last part of our research paper.

#### **Factors leading to child marriage in Pakistani society:**

There witness multifarious factors which are the cause of child marriage in Pakistan. We shall briefly elaborate on them below: (Rizvi & Qureshi, 2022)

#### **Customs:**

Aatir Rizvi in his article *Causes and Consequences of Child Marriages: A Pakistani Perspective* has identified some prevailing customs in different tribal and rural areas of Pakistan which is one of the causes of child marriage in Pakistan. These customs are mentioned below:

- **Vani:**

This is a common custom in the tribal areas of Pakistan where girls are married for reconciliation or compensation for a crime committed by a male, and in place of money to be paid by the family as debt or punishment. (Rizvi & Qureshi, 2022)



- **Valwaar:**

Valwaar is a good amount of money that the family receives and in return, they give consent to marry their daughters and such money sometimes becomes a cause of child trafficking. (Rizvi & Qureshi, 2022)

- **Swara:**

To resolve disputes, young girls are given into marriage bonds by force to members of different clans. (Rizvi & Qureshi, 2022)

- **Pait Likkhi:**

This is a tradition in tribal areas where the parents bind the wedlock of the unborn children or they are married underage which consummates them later in their teenage. (Rizvi & Qureshi, 2022)

- **Addo Baddo:** This is a tradition where daughters are married to boys of other clans in their childhood. (Rizvi & Qureshi, 2022)

- **Jirga/ Panchayat Decisions:**

In rural areas of Pakistan, the council of elders decides the destiny of young girls and nobody can challenge their decision. In the majority of cases, they bind girl children into marriages as a penalty or compensation for a mistake made by their family members. (Rizvi & Qureshi, 2022)

- **Poverty:** Poverty is one of the main reasons for child marriages. Financial insecurity often compels parents to minimize the number of persons in their family and they are inclined to give their minor girls into marriage as soon as, they get any marriage offer.
- **Family honor:** Protection of the child's sexuality and family honor is one of the main responses received from those who wish to support child marriage in rural areas.
- **Gender discrimination:** It is also one of the main reasons for child marriages because girls are still treated lower than boys and parents want to get rid of them as soon as possible.
- **Non-implementation of laws:** The relevant authorities in such cases sometimes may show negligence in the matter or even most of the cases are not reported to the authorities and where they are reported, the authorities tend to consider them as personal matters of the parties. This negligence leads to a dilemma as far as that child is concerned.
- **High illiteracy rate:** Illiteracy is also a reason why religion is interpreted in a way that is wrong and such people think they are following the maxims given by Islam. For example, they usually quote the marriage of Aisha (r.a) with the Prophet (p.b.u.h.) without a proper understanding of the incident. (Rizvi & Qureshi, 2022)

### **Consequences of child marriage:**

Child marriage can lead to many social, psychological, domestic, and physical consequences. Briefly, these are:

1. Early pregnancy is a result of such marriages, which leads to many problems for both mother and the child.

2. The death of the mother is at the highest rate in cases of child marriages.
3. Death of newborn
4. High Illiteracy rate as educational opportunities gets abandoned.
5. Poverty is a cause as well as a result of such marriages.
6. Domestic violence is also common in such marriages, as the child bride is not so mature to handle daily household matters, which results in domestic violence.
7. More probabilities of divorce at later
8. Trading of children is the main issue in such marriages in many under-developed countries, which later on are used for domestic work or sex slaves as the case may be.
9. Child marriages also impact the economic growth and development of the country issues. (Rizvi & Qureshi, 2022)

### **Conclusion and Recommendation**

After analyzing the concept of marriage in Islam and the stipulations which Islam made mandatory for marriage, the objectives of Shari'ah, the Opinions of Islamic jurists, the ground realities which are reasons for child marriage in Pakistan, and the pros and cons of child marriage, this study concludes:

At first, that minor marriage is not illegal in Islam, however, it only enjoys the permissible status and can be bound in exceptional cases if necessary. The real idea of marriage which is highly recommended in the Quran, the sunnah of the Prophet (p.b.u.h.), and encouraged by the Islamic jurists is a contract that must be made between physically and mentally mature parties by their mutual consent. Who are capable to retrain the sanctity of this relationship and not only procreate rather foster their kids well for both worlds. Child marriage is a matter of by-law and is not a divine injunction. It implies that though Islam has kept flexibility regarding the matter of the age of marriage, it would be permissible for the Muslim government and Islamic ideology council to fix the age of marriage considering the ground realities, problems, and challenges of their country. This by-law about the age of marriage should be made considering the objectives of Shari'ah. In 2017, Senator Sehar Kamran present a bill in the National Assembly to increase the minimum age for girls to marry from 16 years to 18 years. Nevertheless, this bill faced opposition from Rehman Malik and his party declaring it against the Islamic Shari'ah. The bill was then referred to the Council of Islamic Ideology, where in 2018, the chairman of the Council of Islamic Ideology announced that a verbal marriage can be performed at any age but the consummation can only take place after the age of 18. (child-marriage-what-are-the-laws-in-pakistan, n.d.)

Secondly, Islam does not endorse any man-made tradition or custom which is against the stipulations of marriage set by Islam and the objectives of Shari'ah. Thus all the forms of local custom which assist in prevailing child marriage are against the teachings of Islam.

At last but not least, we are facing ethical and economical downfall as a nation. It is the utmost demand of the time to provide an ethical environment at home and on a national level for our

youngsters so that before reaching the age of marriage they can guard their chastity. So much influence of media and unchecked usage of the internet causes much sexual agitation in our young generation leading them to immoral choices. Like economically Pakistan is facing a recession which is influencing the lives and choices of people badly. This is one of the major factors, poor people tend to child marriage or trade their girls. Government should do measures to upgrade the economical and moral standards of the common people. Besides that teachers and religious scholars also have to play their role to create awareness among the generation about their rights and limitations.

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