



---

## **Determining the Legal Age for Marriage: A Comparative Study of Islamic Jurisprudence and Contemporary Legal Frameworks**

**Khadija Chui**

PhD Candidate, Department of Sharia-International Islamic University in Malaysia  
Email: [bintimuhindi@gmail.com](mailto:bintimuhindi@gmail.com)

**Dr. Manswab Mahsen Abdulrahman**

Senior Lecturer, Department of Sharia, Islamic University in Uganda  
Email: [manswab83@yahoo.com](mailto:manswab83@yahoo.com)

**Assoc. Prof. Dr. Hossam El-Din Ibrahim Elsefy**

Assoc. Prof. Dr., Department of Sharia-International Islamic University in Malaysia  
Email: [hossam@iium.edu.my](mailto:hossam@iium.edu.my)

---

### **ABSTRACT**

This paper examines the determination of the legal age for marriage through a comparative study of Islamic jurisprudence and contemporary legal frameworks. Grounded in classical Islamic legal principles, the research investigates the rulings of the four major Sunni schools of thought—Hanafi, Maliki, Shafi'i, and Hanbali—on the age of marriage, emphasizing the concepts of physical and mental maturity (bulugh and rushd). It contrasts these Islamic perspectives with modern legal standards, particularly those established in international human rights instruments and the national laws of Muslim-majority countries. The study highlights the diversity of interpretations within Islamic jurisprudence, ranging from flexible rulings influenced

by cultural contexts to fixed legal standards imposed by modern states. It also discusses the legal, social, and ethical implications of early marriage, especially for women and children, addressing contemporary challenges such as gender equality, child protection, and individual rights. Employing a qualitative and analytical approach, this research combines traditional Islamic jurisprudential (fiqh) methodologies with contemporary legal and ethical analysis. The study finds that Muslim jurists differ on the permissibility of minor marriages. It concludes by offering practical recommendations for Muslim scholars and legal experts to promote gender equality, protect minors, and prevent harmful practices such as child marriage.

**Keywords:** constitutional legal Age, Marriage, Islamic Jurisprudence

### Introduction

Islam has emphasized the importance of marriage in general and encouraged the practice of marriage involving minors, outlining its regulations and conditions for dissolution as a form of mercy and facilitation for the ummah (nation). It highlights that marriage is among the traditions of the prophets, and those who engage in it gain numerous benefits. Additionally, it aligns with the objectives of Sharia, which are concerned with the establishment and continuity of the family. This contributes to the preservation of religion in the highest sense, and it serves as the best means to ensure the survival of the human race, safeguard honor, protect lineage, and procreate to increase offspring, leading to the growth of the Muslim population.

In the past, Muslims did not face the issue of establishing a specific marriage age until the 19th century. In Islamic history, Ottoman Sultan Mehmed V (Muhammad Rashad) was among the first to introduce a law setting the marriage age for both males and females in 1336 AH (1917 AD). Afterwards, Muslims were compelled to either specify or prohibit marriage at certain ages due to gradual external pressures from the West. These pressures were enforced through treaties and agreements imposed on various countries, often requiring compliance with their conditions, whether willingly or not, as they claimed a form of superior power over other nations.<sup>1</sup>

Before that, Arab countries had adopted legal methods to determine the marriage age for both sexes through conferences, academic courses, study circles, and fatwas (jurisprudential advisory opinions) issued by scholars on the matter. Later, laws regulating the provisions of marriage and divorce were enacted within personal status laws, establishing criteria for eligibility for marriage, such as puberty and mental maturity. However, they set the marriage age without fully considering the views of jurists and the different schools of thoughts regarding puberty. These steps were notably supported by countries such as Morocco,<sup>2</sup> as will be discussed in the main

---

<sup>1</sup> Mohammad Amin Hussein, *Tahdid Sinu Al-Ziwaj Bitashri' Al-Qanun*, Vol 25 (1<sup>st</sup> edn, Egypt: n.d) 63

<sup>2</sup> Abdulrahman bin Said Al-Shatri, *Hukmu Taqnin Man' Tazwij Al-Fatayat Aqala Min 18 sana wa Tahdid Sinu Al-Ziwaj*, (2<sup>nd</sup> edn, Dar Al-Falah Lilbathi wa Tahqiq Al-Turath, 2010) 13-25

body of the research. Additionally, these developments were announced in prominent dailies.<sup>3</sup>

Muslims overall, have strayed far in matters of religion, morals, and behaviors, influenced by social epidemics that have undermined the objectives of Islamic law. This has led to the spread of social ills such as adultery, illegitimate children, abandoned infants/street children, and a loss of lineage and personal identity from such illegitimate relations and inhuman actions, along with illegitimate children being born without legal recognition of their fathers. Surprisingly, millions of women remain unmarried (spinsterhood) in the Islamic world, as highlighted by authenticated statistical reports. Irregardless, few Muslims realize that this destruction was of their own making. When they finally awakened to this reality, they found themselves surrounded by pitfalls, and this state full of vices became normalized in the society. In response, the researcher sought to address this phenomenon through a Sharia-based solution, ensuring that it remains a matter of serious consideration. Further, the study seeks to answer the following research question: How does Islamic jurisprudence, as interpreted by the four Sunni schools of thought, define the legal age for marriage, and how can these interpretations be reconciled with contemporary legal frameworks and international human rights standards in Muslim-majority countries? Having established the research question, we now present the hypothesis of this study as follows: The legal age for marriage, as defined by Islamic jurisprudence, varies across the four Sunni schools of thought, with customized flexibility in interpretation based on cultural and societal contexts. By incorporating principles of Sharia with contemporary legal frameworks and international human rights standards, it is possible to establish a legal age for marriage that preserves both religious values and the rights of individuals in modern Muslim societies. This research topic holds significance for determining the legal age for marriage which is closely tied to issues of social justice, particularly in relation to the rights of women and children. This research explores how Islamic jurisprudence, if properly understood and applied, can support or hinder efforts to promote gender equality, protect minors, and prevent harmful practices like child marriages. Structurally, the paper comprises four sections: a literature review, an explanation of the research methodology, a discussion of the findings, and a concluding section with recommendations.

### Literature Review

1. Concept of Marriage: Marriage is synonymous with "Ziwaj" or "Nikah" in the Arabic language, which means union, coupling, connection, joining, and interpenetration. In concurring with this, Allah (SWT) said, "Or grants them a mix of males and females"<sup>4</sup> which means bring them together. Another verse from the Qur'an, "Gather those who committed wrongs, their circle, and what they used to worship"<sup>5</sup> A word which, in its literal sense signifies conjunctions, which conversely in the doctrine of law implies the marriage contract.<sup>6</sup> Juristically, Muslim jurists have held differing definitions on the concept of marriage. Some have defined it as a contract based solely

---

<sup>3</sup> Opcit., 13-25

<sup>4</sup> QS 42:50

<sup>5</sup> QS 37: 22

<sup>6</sup> Manswab Mahsen Abdulrahman, *Muslim Family Law and Practices*, (1<sup>st</sup> edn, Uganda: Islamic University in Uganda, 2024) 22

on the pleasure of enjoying a human being (typically a male with a female partner),<sup>7</sup> additionally, some have considered it a contract that signifies the intentional ownership of pleasure, as seen in the Hanafi school of thought. In contrast, the Shafi'i school of thought defines it as a contract that includes the permissibility of intercourse, either explicitly using the term 'marriage' or by words conveying the same contextual meaning.<sup>8</sup> On the other hand, Hanbali jurists describes it as a contract with the wording 'ziwah' or 'nikah' for the purpose of enjoying pleasure." According to the Kuwait Encyclopedia of Family Law, the term 'Nikah' is defined as a contract that enables both the man and the woman to enjoy each other in a legitimate manner.<sup>9</sup> The Scholar, Sheikh Muhammad Abu Zahra has defined it as follows: "It is a contract that establishes the resolution of the relationship between a man and a woman in a manner that aligns with human nature, their cooperation for life, and delineates the family rights and duties of both parties."<sup>10</sup> These are such as, obedience/submissive, dowry, inheritance, good relations, and justice among others.<sup>11</sup>

To expound further, Marriage in common law, is a contract that permits one spouse to lawfully enjoy the companionship of the other, with the primary purposes of fostering chastity and establishing a stable family, under the care of the husband, who bears the responsibilities of the family with love and mercy. It is also a contract between a man and a woman, who are legally permitted to marry, for the formation of a family and the procreation of children. This definition is rooted in the Arab legal traditions. As for English law, Marriage is a formal union between a man and a woman, typically recognized by law. While in French law: Marriage is the union of a man and a woman for the purpose of forming a family, approved by law, with legal effects due to its conformity with moral principles and its social significance, as it binds a man and a woman in a legally recognized relationship.<sup>12</sup>

The two meanings share a similar perspective on contextualizing marriage, viewing it as a bond between spouses that allows them to enjoy one another and establish a family as granted by Sharia. However, in terms of legal consideration, marriage in Sharia signifies a form of ownership for the man, as it allows him to marry more than one woman. For the woman, it grants the permissibility of enjoyment but does not confer any form of ownership. This aspect is what is absent in other legal systems.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and have defined child marriage as a harmful practice that causes physical, mental, or sexual harm or suffering, along with the threat of such acts. This practice leads to both short- and long-term consequences and negatively affects victims' ability to enjoy their full rights. The Supplementary Convention governs forced marriage and compulsory guardianship, aligning it with slavery, child

---

<sup>7</sup> Mohammad bin Abdulrahman Al-Khatwab, *Mawahib al-Jalil*, Vol 5, (Beirut: Dar al-Kutub al-Ilmiyah, 1995), p. 19

<sup>8</sup> Abu Hamid al-Ghazali, *Al-Wajiz Fi Fiqh Imam Shafi*, Vol 2, (1<sup>st</sup> edn, Lebanon: Dar al-Arqam bin Al-Arqam, 1997), p. 3-4

<sup>9</sup> Wahbat Zuheil, *al-Fiqh al-Islamy wa Adilatuh*, Vol 7, (3<sup>rd</sup> edn, Damascus: Dar al-Fikr, 1989), p. 30

<sup>10</sup> The Muslim Family Encyclopedia of Marriage" Personal Status Supreme Advisory Committee to Work on Completing the Implementation of the Provisions of Islamic Shari'ah Educational Committee Vol 1, (1<sup>st</sup> edn, Kuwait: Kuwait Foundation for the Advancement of Sciences, 2003), p. 258

<sup>11</sup> Luqman Zakariyah & Manswab Mahsen, *Marriage Customs among Duruma Muslims in Kenya: An Evaluation study in light of the Quran and Sunnah*. (2018) *Al-Risalah: Journal of Islamic Revealed Knowledge and Human Sciences (ARJIHS)*, (2)4 (147-170)

<sup>12</sup> Mohammad Abu Zuhra, *Ahwal Shakhsiya*, (2nd edn, Beirut: Dar al-Fikr al-Arabi), p. 17

trafficking, and exploitation in prostitution and pornography. Child marriage can be viewed as the trafficking of children for sexual exploitation, violating the Optimum Protocol on the Convention to the Rights of the Child regarding the trafficking of children and the exploitation of children in prostitution and pornography, as well as Article 35 of the Convention on the Rights of the Child.<sup>13</sup> Legislation on early marriage enacted in 2020 which stipulates that in some jurisdictions, such practices are deemed criminal or prohibited by law, necessitating their annulment without regard for the legally permissible age. This legislation specifies the legal age for marriage as a crime if violated, thereby contributing to violence against women and girls, with the strongest penalties including imprisonment for offenders, since it constitutes a form of sexual violence. Therefore, all governments under the international treaties/conventions are advised to unify their legal frameworks by establishing eighteen as the minimum legal age for marriage, recognized by both governmental and religious authorities. Additionally, there should be consultation with several arms such as guardians and the judiciary together with consideration of other justifications to prevent minor girls from marrying at an early age. The Human Rights Association, which focuses on children's rights, emphasizes that these achievements cannot be realized without supporting programs that promote social awareness and serve social justice, including comprehensive gender movement reforms. Without such efforts, societies risk marginalizing certain groups and depriving families of harmonious livelihoods, especially when they do not fully embrace the vision on demystification of marriage to minors or customary marriages that lack government recognition.<sup>14</sup> Furthermore, if there are no legal penalties, even discretionary ones, to address the offense-act of early marriage or those responsible for it, this reflects a broader issue. Historically and presently, such marriages have not been prohibited in Islam or restricted in permissible matters as long as they are bound to the Juristic conditions for such marriages. Hence, the absence of penalties as articulated above is not considered a significant concern within the framework of the Islamic jurisprudence.

Thus, in our research, a "minor" refers to someone who has not yet reached the age of puberty and remains under parental authority or guardianship. An "emancipated minor" is a person who, through marriage or parental/guardian consent to work, acquires the legal capacity to engage in such activities.<sup>15</sup> On the other hand, early marriage is a modern term used to describe the marriage of girls who have not yet reached puberty, often implying a state of helplessness.<sup>16</sup> It refers to a legitimate marital relationship initiated at a young age, which allows both parties to fulfill their duties towards one another and meet all obligations of marriage, including forming a family, bearing children, providing for them, and ensuring their proper healthcare – all before reaching the legal age for marriage. Some link early marriage to forced marriage because a girl under the age of 18 has not yet achieved full maturity or developed the awareness necessary to make significant life decisions. Instead, this decision, which greatly impacts her future, is made for her. A minor, in this context, is someone who is

---

<sup>13</sup> World bank, Child Marriage Law and their Limitation, Official Website: < <https://thedocs.worldbank.org/en/doc/134161519943385981-0050022017/original/WBL2017ChildMarriageLaws.pdf>> accessed 10/1/2024

<sup>14</sup> Prof Dato' Noor Aziah Mohd Awal & Mohd Al Adib Samuri, Child Marriage in Malaysia, Official Website: < <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf>> accessed 17/3/2024

<sup>15</sup> Rohi Baalbek, Al-Kamus Al-Qanun Al-Thulathi, (1<sup>st</sup> edn, Beirut: Al-Halabi, 2002), 1269

<sup>16</sup> Swaleh Khalid Swaleh, Ziwayj Al-Kasirat baina Al-Shari'a wa Al-Qanun, 2019 Journal of Sharia Sciences and Islamic Studies (2) 16 (131)



incapable of understanding a particular matter or fact due to a natural or pathological mental deficiency, making them legally unable to act on their own free will.<sup>17</sup>

Hence, the researchers conclude that early marriage is one that fulfills the conditions of a valid contract, except for the requirement of reaching the age of maturity. This occurs regardless of the legal capacity of the contracting parties, such as their ability to discern their maturity, consent, or any legal prohibitions related to the completion of legal capacity, whether due to natural or pathological reasons.

Nevertheless, UNICEF defines child marriage as "a formal marriage or informal union before the age of 18." While, the Palestinian Center for Democracy and Conflict Resolution defines early marriage as the forced marriage of girls or the marriage of minor girls, condoned before they reach the legal age of majority. This age is deemed sufficient for them to possess the legal capacity and maturity needed to decisively make decisions regarding partner selection and to give informed consent. Whereas, the United Nations General Assembly defines child marriage as a marriage where at least one of the parties is a child. Accordingly, the Convention on the Rights of the Child, it defines a child as a "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."<sup>18</sup> Often, the terms "early marriage" and "child marriage" are used interchangeably to refer to marriages involving individuals under the age of eighteen, particularly in countries where the age of majority is reached earlier or at the time of marriage. Early marriage can also refer to marriages in which both spouses are 18 years of age or older, but other factors render them unfit or incapable of consenting to marriage, such as their physical, emotional, sexual, or psychological development, or a lack of information regarding critical life decisions.

Laila Marwa, head of the Lebanese Democratic Women's Gathering, emphasizes the importance of using the term "child marriage" rather than "early marriage." She defines it as the marriage of a child who lacks the intellectual, legal, psychological, and health qualifications necessary to freely and consciously choose or commit to marriage. In such cases, another party assumes the right to make the decision on her behalf, turning it into a forced marriage rather than a classical marriage. Some argue that a girl between the ages of 15 and 17 is not considered a child and can consent to marry if she wishes. However, if this girl cannot legally perform other obligations on her own, such as obtaining a driver's license, her desire to engage in a lifelong commitment like marriage cannot be considered sufficient justification. This is due to her lack of maturity and the potential serious consequences of such a decision. Any girl under the age of eighteen, even if only by a day, is legally considered a child and has the right to be protected from child marriage.<sup>19</sup> It is worth noting that the terms "child marriage," "early marriage," or "premature marriage" are modern concepts derived from positive laws and international agreements, and they do not have a defined legal basis in Islamic jurisprudence. In Islamic law as well, the focus is on the classification of guardianship into "optional guardianship" and "compulsory guardianship." These forms of guardianship allow guardians to arrange marriages as long as they meet the conditions of being just, Muslim, and of legal age, lastly, by

<sup>17</sup> Abdallah Al-Fasi, *Al-Markaz Al-Qanun fi Al-Ziwaj wa At-Talaq*, University Abu Bekr Belkaid, PhD Diss (2015), 17

<sup>18</sup> United Nation Population Fund, Child marriage, Official Website: <<https://www.unfpa.org/child-marriage#:~:text=Child%20marriage%20is%20a%20human,union%2C%20before%20reaching%20age%2018.>> accessed 17/3/ 2024

<sup>19</sup> RDFL, *Iftaq Al-Hamla Al-Ilamiyah*, Official Website: <<https://www.rdfwomen.org/archives/898>> accessed 17/3/ 2024

ensuring no abuse of rights during the marriage contract. Thus, the real issue revolves around coercion or compulsion in marriage, where one party is forced into marriage before reaching the legal age for marriage, or when a marriage contract is concluded without the consent of one of the parties, unless that individual is over eighteen years old. This also includes marrying minors before they reach adulthood or marrying adults who are not yet physically, sexually, emotionally, or psychologically matured enough to engage in marriage. Critically, the contract is only valid if both parties have complete freedom to choose a life partner, as well as intellectual, legal, psychological, and health capacity to enter into the marriage.

2. The Legality of Early Marriage in Islam: The majority of jurists agree on the validity of marrying a minor or a young virgin, and even compelling them to marry. This view is held by scholars from across the Hanafi, Maliki, Shafi'i, Hanbali, Zaidi, and Imamiyyah schools of thoughts. They also agree that a minor does not have the legal capacity to directly conclude their own marriage contract due to their tangible age and lack of capacity to make such decisions. Whereas, the key point of dispute lies between two schools of thoughts:

- i. Those who permit the marriage of minors without the condition of puberty as a requirement for its validity. They base their view on the Qur'an and narrations from the Companions. This position is upheld by the four great Imams of the major schools of thoughts.<sup>20</sup>
- ii. Those who reject the validity of a marriage contract involving minors. This view is held by some of the elites like Abu Bakr al-Asam, the Mu'tazilites, and Ibn Shubruma.<sup>21</sup>

The Qur'an indicates the permissibility of marriage between females and males under the legal age, as follows: "And those of your women who have despaired of menstruation, if you doubt, their waiting period is three months, and those who have not menstruated. And those who are pregnant, their term are until they give birth. And whoever fears Allah - He will make for him of his matter ease"<sup>22</sup> This verse indicates that a young girl who has not yet menstruated has a waiting period of three months, similar to that of an adult woman. When this verse was revealed, it clarified the situations of both pregnant women and those whose menstruation has ceased, whether they are young or old.<sup>23</sup>

Imam Al-Bukhari, may God have mercy on him, stated: "Chapter on a man marrying off his young children" to support and explain the above verse: "...and those who have not menstruated..." the Scholar, Ibn Jarir, may God have mercy on him, interpreted this to mean the number of female slaves who have not menstruated due to their young age if they are divorced after consummation. The Scholar, Al-Kawardi Al-Shafi'i, while quoting Al-Shafi'i, explained that the waiting period is three months for those who have not menstruated, whether due to youth or menopause. The Scholar, Ibn Hazm Al-Zahiri also noted that the waiting period is three months for a divorced

<sup>20</sup> Abu Al-Hassan Ali bin Khalaf, *Sharh Sahih Al-Bukhary*, Vol 7 (1<sup>st</sup> edn, Saudi: Maktab Al-Rushd, 2003), 274

<sup>21</sup> Shamsudin Al-Sarakhsi, *Al-Mabsout*, Vol 4 (1<sup>st</sup> edn, Beirut: Dar Al-Marifa, 1993), 212

<sup>22</sup> At-Talaq: 4

<sup>23</sup> Mohammad bin Ali Al-Shawkani, *Fath Al-Qadir*, Vol 5 (1<sup>st</sup> edn, Beirut: Dar Ibn Kathir, 1993), 292

woman who has not menstruated due to being young, old, or physically fit, or who is not pregnant and has had intercourse.<sup>24</sup>

The Elite, Al-Sarakhsi Al-Hanafī considers the waiting period for a young girl after marriage to be three months.<sup>25</sup> In contrast, the Elite, Ibn Qudamah Al-Hanbali states that the waiting period is also three months for a woman who has been divorced, had her marriage annulled, or is married under compulsory guardianship.<sup>26</sup> The Elite, Anfrawi Al-Maliki asserts that the waiting period is three months after intercourse for a divorced woman who has not menstruated due to her young age, as well as for an adult woman who has despaired of menstruation and is over seventy, whether she is free or a slave, according to the well-known opinion.<sup>27</sup> It is understood that this verse applies to the majority of divorced women whose menstruation has stopped for natural reasons. If a husband has consummated the marriage with a virgin, her waiting period is three months, and she must wait a maximum of one year until her pregnancy becomes clear. If her pregnancy is not evident, she must wait three months. If her pregnancy is evident, then her waiting period continues until she gives birth. However, if the husband has not consummated the marriage with a virgin, there is no waiting period, even if the marriage was terminated through divorce, annulment, or compulsory guardianship. For a despairing woman, whether free or enslaved, she must also wait three months if she is over seventy years old.

Among the other verses that address the permissibility of marrying an orphan girl who has not reached puberty is the following: "And they ask you concerning women. Say, 'Allah gives you a legal opinion concerning them and what is recited to you in the Book concerning orphan women, to whom you do not give what was prescribed for them, and whom you desire to marry, and those who are weak among children. And that you stand up for orphan girls with justice. And whatever good you do; indeed, Allah is ever, of it, knowing'"<sup>28</sup> This verse indicates that the Messenger, may God bless him and grant him peace, was asked about women and their rights and obligations. God explains the essence of their inquiry and what is recited to them in the Qur'an regarding the orphan women under their protection. These orphans may lack the provisions of marriage or inheritance that God has mandated for them, and some may not wish to marry them, motivated instead by greed for their wealth. God clarifies their responsibilities toward the vulnerable among the youth, emphasizing the importance of granting them their rights to inheritance and not oppressing them by seizing their money. He instructs them to care for orphans with justice, as this is essential for their well-being in this life and the hereafter. God is All-Knowing of any good they do for orphans and others, and He will reward them accordingly.

In addition, Allah (SWT) says: "And if you fear that you will not be just toward the orphan girls, then marry such women as seem good to you, two, three, or four; but if you fear that you will not be just, then only one or those your right hands possess. That is more suitable, that you may not incur injustice."<sup>29</sup> This verse conveys that if one fears they cannot be just to the orphan girls under their care and is concerned about

<sup>24</sup> Al-Mawardi, *Al-Hawi Al-Kabir fi Al-Fiqh Imam Al-Shafi'*, Vol 11 (1<sup>st</sup> edn, Beirut: Dar Al-Kutuob Al-Ilmiyah, 1419), 193

<sup>25</sup> *Ibid.*, Al-Sarakhsi, Vol 4, 212

<sup>26</sup> Muwaqdin Abdallah ibn Ahmad Ibn Qudamah, *Al-Mughni*, Vol 9 (2<sup>nd</sup> edn, Saudi: Dar Hajr, 1412), 398

<sup>27</sup> Ahmad bin Ghanim An-Nafrawi, *Al-Fawakih Al-Dawani*, (1<sup>st</sup> edn, Beirut: Dar Al-Kutoub Al-Ilmiyyah, 1418), 472

<sup>28</sup> QS 4:127

<sup>29</sup> QS 4:3



neglecting their rights due to a lack of affection, they should instead seek to be just with others. They should aim to marry women who are righteous, wealthy, beautiful, well-born, and of good lineage—essentially, those possessing qualities that merit marriage. For those who prefer polygamy, they are permitted to marry two, three, or four women as a sign of gratitude. However, they are strictly forbidden from seeking to marry more than four out of mere desire, especially if they are unable to ensure justice and fulfill the rights of their spouses. If there is any fear of injustice or oppression, they should limit themselves to one wife or to those whom their right hands possess, as this ensures safety from negligence and laxity.

It was narrated by Urwah ibn al-Zubayr, may God have mercy on him, that he asked Aisha, may God be pleased with her: “O Mother of the Believers, what does the verse mean: ‘And if you fear that you will not be just towards the orphan girls’... until His saying: ‘or those your right hands possess’?” She replied: “O son of my sister, the orphan girl refers to one who is under the care of her guardian. If he desires her beauty and wealth, he may attempt to reduce her dowry. Thus, they are forbidden from marrying such girls unless they are just to them in fulfilling the dowry, and they are instructed to reduce the dowry of other women.”<sup>30</sup> When people asked the Messenger of God, may God bless him and grant him peace, about this matter, it indicated the permissibility of marrying an orphan girl before puberty. It also confirms the permissibility of marrying an orphan girl under compulsory guardianship who has not yet reached the age of puberty, whether she is a virgin or has been previously married, provided that he does not reduce her dowry. According to the hadith of Aisha (RA): “The Prophet Mohammad (SAW) married Aisha when she was six years old and consummated the marriage when she was nine years old, and he remained with her for nine years”<sup>31</sup> The noble female companion and her followers among the righteous predecessors adhered to this practice.

The origin of the disagreement regarding the permissibility of marriage to minors appears to lie in the interpretation of the verse: “Until they reach the age of marriage”<sup>32</sup> This disagreement centers on the understanding of what “puberty” means—whether it refers to the natural or estimated signs of maturity, or if it is meant to signify the ability to engage in intercourse. Additionally, questions arise as to whether the marriage of the Messenger, peace and blessings be upon him, is specific to him alone or applies more openly to the rest of the nation. Their dispute also extends to the issue of the option following puberty. For those who prohibit marriage on minors, the rationale is to alleviate hardship; otherwise, such marriage and the option to marry after puberty would be entirely permissible. The permissibility of marrying a minor girl aligns with the spirit of this verse, which encompasses both cohabitation and procreation. Since these objectives are not fulfilled in such cases, the need for marriage diminishes. Some Scholars, like Ibn Sabramah, Abu Bakr al-Asam, and Uthman, view this as a form of amusement and frivolity, arguing that the marriage of Aisha is unique to the Messenger. However, they lack specificity in their evidence, as demonstrated in the hadith.

---

<sup>30</sup> Ahmad bin Mohammad Al-Qastalani, *Irshad Al-Sari li Sahih Al-Bukhary*, Vol 4 (7<sup>th</sup> edn, Egypt: Matba' Al-Kubra, 1323), 289

<sup>31</sup> Mohammad bin Ismail Al-Bukhary, *Sahih Al-Bukhary*, Vol 7 (1<sup>st</sup> edn, Saudi: Maktab Al-Ma'rif, 1998), 7, Hadith No: 5158

<sup>32</sup> QS 4: 6

## Methodology

This research employs a comparative legal analysis methodology to investigate the legal age for marriage, focusing on the perspectives of Islamic jurisprudence and contemporary legal frameworks. The methodology consists of the following components: A comprehensive review of existing literature will be conducted to gather relevant theories, concepts, and legal interpretations surrounding the legal age for marriage in both Islamic jurisprudence and contemporary legal systems. Sources will include academic journals, books, legal texts, and reports from international organizations such as UNICEF. Also, the study will analyze primary legal texts from Islamic jurisprudence, including the Qur'an, Hadith, and the opinions of various scholars from different schools of thoughts (e.g., Hanafi, Shafi'i, Maliki, Hanbali). Contemporary legal frameworks will be examined through the review of national laws regarding the legal age for marriage in several jurisdictions, including both secular and religiously influenced legal systems. A comparative approach will be employed to identify similarities and differences between the legal age for marriage as stipulated in Islamic law and contemporary legal frameworks. This will involve analyzing the criteria used to determine the legal age for marriage, including considerations of maturity, consent, and the social implications of early marriage. Finally, the findings will culminate in a conclusion that summarizes the key insights gained from the comparative analysis, with recommendations for policymakers, legal practitioners, and community leaders on establishing a legal age for marriage that respects cultural values while promoting social justice and the welfare of minors.

## Results and Discussion

This section presents the findings from the research on "Determining the Legal Age for Marriage: A Comparative Study of Islamic Jurisprudence and Contemporary Legal Frameworks" and discusses their implications within the broader framework of Islamic jurisprudence. The results are categorized into key themes derived from the qualitative analysis, literature review and case studies.

i. Jurists' Restrictions and Controls on Early Marriage: Jurists have established certain advantages that serve as restrictions and controls on the marriage of minors, applicable to both females and males. These advantages include puberty, reason, and discernment or consent, although there are differences in determining the age at which boys and girls reach puberty due to hereditary and environmental factors.<sup>33</sup> Some legal scholars from Islamic states, such as Algeria, have linked the capacity to perform marriage to discernment rather than stipulating puberty, arguing that the capacity to perform is directly related to the progression from nonexistence to deficiency to perfection. When the legislator connects consent to discernment, the aim is to surround legal actions with safeguards, ensuring that marriage serves as a fair means of exchanging values rather than merely a tool for exploitation.<sup>34</sup> The consensus among Islamic scholars – past, present, and contemporary – is that the criteria for determining puberty in a young girl include pregnancy, menstruation, or a wet dream, while for a young boy, the criteria are also pregnancy and wet dreams, with age being considered only in the absence of these signs. By consensus, a wet dream is the strongest indicator

---

<sup>33</sup> Ibid., Al-Fasi, 30

<sup>34</sup> Opcit., Al-Fasi, 76-77

of puberty.<sup>35</sup> The marriage contract for boys is concluded with the guardian's oversight of the girl, as prescribed by jurists. The suitability of both the young boy and girl for marriage encompasses both mental and physical readiness. It is impermissible to marry someone unable to perform household duties, but capable of engaging in intercourse, or fulfill marital obligations. The husband must be suitable for the minor girl and free from defects/shortcomings, as marrying her without ensuring suitability serves no purpose. It is also impermissible to marry her to someone unsuitable or defective, as God Almighty has appointed the guardian to care for her interests, including managing her share/property and protecting her from actions that do not serve her interests.<sup>36</sup> The Jurists assure that a guardian must possess certain qualities: full capacity to perform due to reason, puberty, and Islam (unity/uniformity of religion between the guardian and the minor), as well as justice and the ability to act with integrity.<sup>37</sup> This aligns with the majority view, although the Hanafis do not require all these qualities, instead opting to limit guardianship to prevent any form of abuse. In this respect, some Arab states, such as Kuwait, have specified legal ages for marriage for both boys and girls, enshrined in their Personal Status Law. These laws prevent the official documentation or ratification of a marriage contract unless both parties have reached the specified ages, which are 17 for boys and 15 for girls.<sup>38</sup> Nevertheless, various international organizations, including those involved in the 4<sup>th</sup> International Conference on Women Rights (Beijing, 1995) and UNICEF, advocate against early marriage globally and aim to eliminate all forms of discrimination against women. The deviant theories presented in the name of women's liberation emphasize two main aspects: women's freedom and their equality with men. However, these concepts often clash with the realities of marital and familial responsibilities, leading to detrimental social consequences, including the rise of spinsters, loss of lineage, and the prevalence of chronic diseases linked to eliminating early marriages.<sup>39</sup> Other international agreements, such as the Universal Declaration of Human Rights (1948), call for complete freedom for both parties in a marriage and recognize child marriage as a harmful practice that necessitates the protection of children's rights from exploitation. The Convention on the Elimination of All Forms of Discrimination Against Women (1979) defines the rights of girls and women and obligates governments to combat discrimination against women. The Convention on the Rights of the Child (1989) emphasizes the rights of children below the age of 18 and seeks to eliminate risks such as female genital mutilation, child marriage, and trafficking for sexual purposes. Furthermore, the African Charter on the Rights and Welfare of the Child (1990) includes a legal mandate to protect children under eighteen from marriage. The 1994 Programme of Action from the United Nations International Conference on Population and Development urges countries to eliminate child marriage practices and highlights the importance of integrating discussions on marriage into educational programs.<sup>40</sup> The Committee on the Rights of the Child has also called on States Parties to review their definitions of the age of majority if set below 18 years. In this context, the restrictions and controls imposed by jurists on

---

<sup>35</sup> Ibid., Al-Shatri, 76-77

<sup>36</sup> Ibid., Ibn Qudamah, 383

<sup>37</sup> Wahbat Al-Zuheil Mustafa, *Al-Fiqh Al-Islamī wa Adilatuh*, Vol 4 (4<sup>th</sup> edn, Syria: Dar Al-Fikr, n.d), 992-993

<sup>38</sup> Ibid., Sarakhsi, 212

<sup>39</sup> Ibid., Al-Shatri, 63-67

<sup>40</sup> United Nation, Program of Action Adopted at International Conference on Population and Development Cairo 5-13 September 1994, Official Website: <[https://www.unfpa.org/sites/default/files/event-pdf/PoA\\_en.pdf](https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf)> accessed 17/3/ 2024

marriages involving individuals below the legal age are significant. These include puberty, reason, discernment, and consent. While there is considerable variation in how different cultures and legal systems define puberty for boys and girls, the overall emphasis is on establishing clear criteria to protect minors. Some contemporary scholars, particularly in countries like Kuwait, are focusing on determining the legal age for marriage, which highlights the distinction between boys and girls. They also emphasize the condition of guardianship and the necessity for full capacity to perform based on reason, puberty, and Islam, with an emphasis on justice to prevent arbitrariness in exercising the right to marry minors. The judiciary has been active in addressing all forms of discrimination against women, including early marriage, emphasizing educational rights and the need for freedom and equality between genders. They also seek to protect women from physical and moral harm. On the other hand, proponents of early marriage argue against the perceived evils it brings, such as loss of lineage and the proliferation of street children, asserting that these issues could arise if early marriages are prohibited.

ii. Preservation of Family and Societal Integrity in Islamic Contexts: Among the divine purposes established in Islamic teachings is the preservation of religion, life, and offspring. However, as societal corruption has increased, particularly through challenges to religious restraint, disorder has ensued. This disorder is largely due to negligence in addressing critical issues such as abortion, the commodification of children, and the erosion of lineage integrity. Practices such as adultery, the birth of illegitimate children, and the abandonment of foundlings have contributed to these societal issues. Additionally, the practice of attributing children to parents other than their biological or rightful fathers undermines the sanctity of family ties, further exacerbating the crisis. The normalization of behaviors deemed forbidden—often justified by cultural trends that do not align with either Eastern or Western ethical standards—reflects a concerning shift in societal values. Such trends frequently stem from the whims of imitators who prioritize personal desires over traditional familial structures. This deterioration of the family unit, a fundamental concern within the Islamic jurisprudence, highlights the necessity for legal frameworks that protect the integrity of family life. For instance, South Africa allow children under the age of 18 to marry based on certain condition.<sup>41</sup> Furthermore, the law does not criminalize sexual activity between individuals aged twelve to sixteen, thereby allowing minors to engage in consensual sexual relations without legal repercussions. In addition, individuals aged sixteen are legally permitted to engage in sexual relationships with partners who are up to two years younger. Moreover, although the legal age for marriage is set at eighteen, the law permits sixteen-year-olds to access various forms of contraceptive methods. This regulatory framework raises significant concerns regarding the preservation of lineage and family integrity. It challenges the fundamental principles outlined in Islamic teachings that advocate for the protection of lineage from interruption, thereby ensuring the permanence, stability, intimacy, and tranquility that marriage is designed to uphold.

iii. Health Effects of Early Marriage: The preservation of life and offspring is a fundamental principle in Islam, which includes the maintenance of health. Despite this, certain advantages of early marriage have been overlooked by Western societies and by those who advocate against it through various campaigns. Experimental medical

---

<sup>41</sup> Marriage Act 25 of 1961 section 26 (1) Read together with sect (17) and (18) (c) (i) of the children Act (n2 above)

statistics indicate that the risk of complications during pregnancy is lower for girls aged 12 to 17 compared to those who become pregnant between the ages of 20 and 25, who typically possess more developed immunity and protection against breast cancer. The onset of puberty varies significantly based on environmental factors such as temperature; for instance, girls in warmer climates may reach puberty as early as 9 years old, while those in colder regions typically do so around 14 to 16 years. Factors such as frequent intercourse, exposure to stimulating media (e.g., romantic films or literature), and heredity can accelerate menstruation. Moreover, a girl's timing of puberty is often influenced by her mother's genetic traits. Delaying marriage can contribute to an increased risk of infertility. There is a notable difference in the safety of young pregnant women compared to their older counterparts. Research shows that older pregnant women are more susceptible to infertility, physical weakness, difficult labor, miscarriage, and hemorrhaging than younger pregnant women. Furthermore, delaying marriage past the age of 18 can lead to moral decay, particularly for those who are not shielded from the temptations of lust. Prolonged abstinence from intercourse, combined with excessive desire, can weaken the body, mind, and nervous system, potentially leading to conditions such as hysteria or even madness. Critics of early marriage often cite the potential for sexual deviations, including rape. In contrast, societies that permit early marriage often report lower incidences of benign and malignant tumors, ectopic pregnancies, and miscarriages among younger women. However, these same societies may also contend with chronic health issues in older women, which can heighten the risks associated with pregnancy and childbirth. The Committee on the Rights of the Child has recognized that several provisions of the Convention on the Rights of the Child are applicable to the issue of child marriage. This includes paragraph 3 of Article 24, which stipulates that States Parties should "take all effective and appropriate measures with a view to abolishing traditional practices that are harmful to the health of children." Such practices inflict physical, mental, or sexual harm and can have detrimental short- and long-term consequences, impeding victims' ability to enjoy their full rights. The impacts of marriage between older men and young girls are particularly concerning.<sup>42</sup> The health effects on children resulting from early marriage are numerous, including:<sup>43</sup> sexually transmitted infections and experiencing gender-based violence (GBV). In some contexts, child marriage is also closely linked to female genital mutilation/cutting (FGM/C), which is a human rights violation and is damaging to girls' physical and mental health.

iv. Educational and Vocational Effects of Early Marriage: The first revelation to Muhammad (PBUH) was: "Read in the name of your Lord who created" (Al-Alaq: 1), which commands His creation to read and encourages the pursuit of knowledge. In another verse, it is stated: "Say: Are those who know equal to those who know-not? Only those with understanding will remember" (Az-Zumar: 9). This highlights that the knowledgeable and the ignorant are not equal; indeed, the one who excels in contemplation is the knowledgeable one with insight. As stated in the noble hadith, "Seeking knowledge is an obligation upon every Muslim." Thus, the pursuit of knowledge is obligatory for everyone, regardless of gender. The marriage of the Messenger of Allah (Pbuh) to Aisha (may Allah be pleased with her) at a young age is well-documented. She became one of the greatest narrators of hadith and a prominent

---

<sup>42</sup> Ibid., Al-Shatri, 48-55

<sup>43</sup> Girl not bride, Child Marriage and health, Official Website: < <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health>> accessed 17/3/ 2024



companion of the Prophet (peace and blessings be upon him), mastering complex issues of her time. Her early marriage did not hinder her pursuit of Islamic sciences and heritages, as evidenced by her contributions and those of her companions, may Allah be pleased with them, as well as the righteous predecessors and subsequent generations. This demonstrates that early marriage does not preclude educational attainment.

International agreements emphasize the importance of women's right to education as a fundamental human right, necessitating gender equality in this field. This can be achieved by ensuring equal opportunities for scientific advancement within educational institutions – be it at home, in the workplace, or in society at large. Efforts should focus on providing equal access to scholarships, encouraging girls to pursue higher education, supporting adult education, eradicating illiteracy, and narrowing the educational gap. Furthermore, it is crucial to eliminate discrimination against women in education and vocational guidance, both in rural and urban areas. This includes addressing and dismantling stereotypical concepts of gender roles at all educational stages. Encouraging coeducational environments and other forms of education that facilitate equal access is vital. This may involve revising school curricula and adapting free educational methods, as well as ensuring the availability of specific educational resources that promote family health and well-being, including information related to family planning. Historically, the percentage of girls pursuing higher education has been significantly lower than that of boys, with rural women often deprived of educational opportunities. However, following the ratification of international agreements in the early 1980s, many countries witnessed remarkable advancements in women's education. Governments began to prioritize girls' education, and women became increasingly interested in their educational pursuits, demonstrating their capabilities and contributing to societal progress.

Education is recognized as a right for every individual within society, a principle upheld by international covenants since 1946. UNESCO has advocated for gender equality in education, emphasizing respect for human rights and fundamental freedoms without discrimination based on race, gender, or religion. The UNESCO General Conference Convention adopted in 1960 explicitly addressed the need to combat discrimination in education. Additionally, the Universal Declaration of Human Rights states that everyone has the right to education, which must be provided free of charge at least at the primary and basic levels. From the International Covenant on Economic, Social, and Cultural Rights, it follows that everyone has the right to education and training, enabling them to contribute to societal development. States Parties are urged to encourage or intensify basic education for those who have not received or completed their primary education, reaffirming the right of both men and women to equal educational opportunities.

### **Conclusion and Recommendation**

This research has explored the legal age of marriage in the context of Islamic jurisprudence, revealing that early marriage is permissible under Islamic law. Contemporary scholars advocate for a legal minimum age to protect minors from potential oppression; however, this is not an obligatory stance but rather a precautionary measure. The findings indicate that the prohibition of underage

marriage often stems from a misunderstanding of Islamic texts, which permit such unions under specific conditions. Furthermore, the analysis highlights the adverse effects of prohibiting early marriage, including increased incidents of illicit relationships and the emergence of social dilemmas such as abandoned children and moral decay. Additionally, the research points to the significant influence of Western policies and international conventions that seek to limit or abolish the practice of early marriage, often through deceptive treaties and punitive measures against those who adhere to Islamic traditions. This cultural imposition has implications for the social fabric of Islamic societies, as it undermines established practices and promotes moral corruption.

The study recommends the following:

1. **Refining Islamic Heritage:** A thorough examination of Islamic heritage should be conducted to clarify the dimensions related to marriage for minors, focusing on the legal aspects and the ethical implications of determining a permissible age for marriage.
2. **Balancing Social Dimensions:** There should be an emphasis on harmonizing social, educational, and vocational dimensions to ensure that individuals are adequately prepared for marriage and family life, considering their educational and professional development.
3. **Awareness Campaigns:** Initiating legal and educational campaigns to promote the benefits of early marriage is crucial. These campaigns should address health, moral, and religious perspectives, highlighting the positive outcomes of early marital unions within the framework of Islamic teachings.
4. **Combatting Deceptive Narratives:** It is essential to guard against tactics that undermine religious practices, especially those that blur the lines between permissible and forbidden actions. Efforts should be made to counteract the mockery of religion and reinforce the integrity of Islamic teachings in the face of contemporary challenges.

## REFERENCES

- Abdallah Al-Fasi, *Al-Markaz Al-Qanun fi Al-Ziwaj wa At-Talaq*, University Abu Bekr Belkaid, PhD Diss (2015), 17
- Abdulrahman bin Said Al-Shatri, *Hukmu Taqnin Man' Tazwij Al-Fatayat Aqala Min 18 sana wa Tahdid Sinu Al-Ziwaj*, (2<sup>nd</sup> edn, Dar Al-Falah Lilbathi wa Tahqiq Al-Turath, 2010) 13-25
- Abu Al-Hassan Ali bin Khalaf, *Sharh Sahih Al-Bukhary*, Vol 7 (1<sup>st</sup> edn, Saudi: Maktab Al-Rushd, 2003), 274
- Abu Hamid al-Ghazali, *Al-Wajiz Fi Fiqh Imam Shafi*, Vol 2, (1<sup>st</sup> edn, Lebanon: Dar al-Arqam bin Al-Arqam, 1997), p. 3-4
- Ahmad bin Ghanim An-Nafrawi, *Al-Fawakih Al-Dawani*, (1<sup>st</sup> edn, Beirut: Dar Al-Kutoub Al-Ilmiyyah, 1418), 472
- Ahmad bin Mohammad Al-Qastalani, *Irshad Al-Sari li Sahih Al-Bukhary*, Vol 4 (7<sup>th</sup> edn, Egypt: Matba' Al-Kubra, 1323), 289
- Al-Mawardi, *Al-Hawi Al-Kabir fi Al-Fiqh Imam Al-Shafi'*, Vol 11 (1<sup>st</sup> edn, Beirut: Dar Al-Kutuob Al-Ilmiyyah, 1419), 193
- Girl not bride, Child Marriage and health, Official Website: <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health> accessed 17/3/ 2024

- Luqman Zakariyah & Manswab Mahsen, Marriage Customs among Duruma Muslims in Kenya: An Evaluation study in light of the Quran and Sunnah. (2018) *Al-Risalah: Journal of Islamic Revealed Knowledge and Human Sciences (ARJIHS)*, (2) 4 (147-170)
- Manswab Mahsen Abdulrahman, *Muslim Family Law and Practices*, (1<sup>st</sup> edn, Uganda: Islamic University in Uganda, 2024) 22
- Marriage Act South Africa 25 of 1961 section 26 (1) Read together with sect (17) and (18) (c) (i) of the children Act (n2 above)
- Mohammad Abu Zuhra, *Ahwal Shakhsiya*, (2nd edn, Beirut: Dar al-Fikr al-Arabi), p. 17
- Mohammad Amin Hussein, *Tahdid Sinu Al-Ziwaj Bitashri' Al-Qanun*, Vol 25 (1<sup>st</sup> edn, Egypt: n.d) 63
- Mohammad bin Abdulrahman Al-Khatwab, *Mawahib al-Jalil*, Vol 5, (Beirut: Dar al-Kutub al-Ilmiyah, 1995), p. 19
- Mohammad bin Ali Al-Shawkani, *Fath Al-Qadir*, Vol 5 (1<sup>st</sup> edn, Beirut: Dar Ibn Kathir, 1993), 292
- Mohammad bin Ismail Al-Bukhary, *Sahih Al-Bukhary*, Vol 7 (1<sup>st</sup> edn, Saudi: Maktab Al-Ma'rif, 1998), 7, Hadith No: 5158
- Muwaqdin Abdallah ibn Ahmad Ibn Qudamah, *Al-Mughni*, Vol 9 (2<sup>nd</sup> edn, Saudi: Dar Hajr, 1412), 398
- Prof Dato' Noor Aziah Mohd Awal & Mohd Al Adib Samuri, *Child Marriage in Malaysia*, Official Website: <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf> accessed 17/3/2024
- RDFL, *Ilaq Al-Hamla Al-Ilamiyah*, Official Website: <https://www.rdfwomen.org/archives/898> accessed 17/3/2024
- Rohi Baalbek, *Al-Kamus Al-Qanun Al-Thulathi*, (1<sup>st</sup> edn, Beirut: Al-Halabi, 2002), 1269
- Shamsudin Al-Sarakhshi, *Al-Mabsout*, Vol 4 (1<sup>st</sup> edn, Beirut: Dar Al-Marifa, 1993), 212
- Swaleh Khalid Swaleh, *Ziwaj Al-Kasirat baina Al-Shari'a wa Al-Qanun*, 2019 *Journal of Sharia Sciences and Islamic Studies* (2) 16 (131)
- The Muslim Family Encyclopedia of Marriage" Personal Status Supreme Advisory Committee to Work on Completing the Implementation of the Provisions of Islamic Shari'ah Educational Committee Vol 1, (1<sup>st</sup> edn, Kuwait: Kuwait Foundation for the Advancement of Sciences, 2003), p. 258
- United Nation, Program of Action Adopted at International Conference on Population and Development Cairo 5-13 September 1994, Official Website: [https://www.unfpa.org/sites/default/files/event-pdf/PoA\\_en.pdf](https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf) accessed 17/3/2024
- Wahbat Al-Zuheil Mustafa, *Al-Fiqh Al-Islami wa Adilatuh*, Vol 4 (4<sup>th</sup> edn, Syria: Dar Al-Fikr, n.d), 992-993
- Wahbat Zuheil, *al-Fiqh al-Islamy wa Adilatuh*, Vol 7, (3<sup>rd</sup> edn, Damascus: Dar al-Fikr, 1989), p. 30
- World bank, *Child Marriage Law and their Limitation*, Official Website: <https://thedocs.worldbank.org/en/doc/134161519943385981-050022017/original/WBL2017ChildMarriageLaws.pdf> accessed 10/1/2024