

# FIXING THE LEGAL AGE OF MARRIAGE IN THE MMDA OF SRI LANKA: AN ISLAMIC ANALYSIS

Dr. M.B. Fowzul (PhD)

*Department of Islamic Studies, Faculty of Arts and Culture,  
Eastern University, Sri Lanka*

[fowzulbuhary@gmail.com](mailto:fowzulbuhary@gmail.com) / [fowzulb@esn.ac.lk](mailto:fowzulb@esn.ac.lk)

## Summary

*Defining the age of marriage has been a controversial issue in Sri Lanka because of the feminist's lobby. However, Islam explicitly establishes maturity as the dividing line to define the majority and minority while the man-made laws worldwide consider diverse ages according to traditional, cultural, ethnic, and geographical diversity. Thus, this study aims to analyse the discourses on defining the minimum age of marriage in the MMDA (Muslim Marriage and Divorce Act) of Sri Lanka. Subsequently, it explores the opinions of the classical and modern jurists as well as the discourses between the All-Ceylon Jam-e-athul Ulama and the women activists in Sri Lanka based on the data collected by the expert interviews and the secondary data. Consequently, this study endeavors to enlighten the Islamic perspective on defining the age of marriage to bridge the gap between the jurists and the feminists.*

## Introduction

Defining the minimum age of a Muslim girl for marriage has been debated in most countries, especially in Sri Lanka. Nonetheless, the Qur'an (al-Nisā':6) defines puberty (bulugh) as the dividing line between the minor and the adult boys and girls. Hence, all schools of law and sects do not fix the minimum age for marriage. Consequently, the MMDA in Sri Lanka determines the age of marriage. However, the Act prohibits the registration of any marriage contracted by a Muslim girl who has not attained 12 years old. Unless the *Qāḍī* for the area which the girl resides has the power, after such inquiring as he may deem necessary, to authorise the registration of the marriage (Marsoof 2001).

Therefore, criticising the MMDA for allowing child marriage, the reform proponents emphasise to criminalise child marriage applying the criminal law to every citizen of Sri Lanka regardless of their religious beliefs as mentioned in the general law ordinance act No: 19 of 1907, as amended by Act No:18 of 1995, the legal age of marriage is 18 for either party. Parties under 18 cannot marry even with the consent of parents or guardians. Also, having sexual intercourse with a girl

under 16 is considered ‘rape’ under subsection 363 of the penal code, even though it was with her consent (Savitri, 2000, 18).

Likewise, A survey published in 2013 reveals that most child marriages break down within a short period, and the sexual relations in teen ages cause a detrimental effect on the young brides’ minds and bodies. Quoting such findings, the reform proponents claim to fix the age of 18 considering the legal reform of the Muslim countries such as Tunisia, Egypt, and Iraq (Hasanah, 2015, 21).

Hence, it is noteworthy to analyses the international laws on the age of marriage as well as the opinions of the Islamic jurists in this regard.

### **History of fixing the minimum age for marriage**

The minimum age requirements of 12 years old for females and 14 years old for males were written into English civil law. By default, these provisions became the minimum marriage ages in colonial America. This English common law inherited from the British remained in force in America unless a specific state law was enacted to replace them. In the United States, as in most developed countries, age restrictions have been revised upward so that they are now between 15 and 21 years of age.

The United Nations Population Fund stated: “In 2010, 158 countries reported that 18 years was the minimum legal age for marriage for women without parental consent or approval by a pertinent authority. However, in 146 [of those] countries, state or customary law allows girls younger than 18 to marry with the consent of parents or other authorities; in 52 countries, girls under age 15 can marry with parental consent. In contrast, 18 is the legal age for marriage without consent among males in 180 countries. Additionally, in 105 countries, boys can marry with the consent of a parent or a pertinent authority, and in 23 countries, boys under age 15 can marry with parental consent.

The United Nations Convention on the Rights of the Child defines a “child” as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Art. 1 of the UN Convention on the Rights of the Child, which was adopted in 1989 in terms of General Assembly resolution 44/25 of 20 November 1989 and became binding on all member states of United Nations except the United States in 1990).

According to that, in recent years, many countries in the EU have tightened their marriage laws, either banning marriage under 18 completely, or requiring judicial approval for such marriages. Countries which have reformed their marriage laws in recent years include Sweden (2014), Denmark (2017), Germany (2017),

Luxembourg (2014), Spain (2015), Netherlands (2015), Finland (2019) and Ireland (2019). Many developing countries have also enacted similar laws in recent years: Honduras (2017), Ecuador (2015), Costa Rica (2017), Panama (2015), Trinidad & Tobago (2017), Malawi (2017) ( [https://en.wikipedia.org/wiki/Marriageable\\_age](https://en.wikipedia.org/wiki/Marriageable_age) ).

### **Minimum age of marriage in some countries**

Marsoof (2001, 19) expresses that:

*“The term child marriage could connote to different types of marriages. First, the marriage of a child who has not attained puberty is contracted by the marriage guardian (Walī) with or without the child’s consent. Second, the marriage of a child who has attained puberty contracted by the child (with or without the approval of the Walī) or by the Walī (with or without the consent of the child)”.*

It is evident that the countries all over the world define different ages as the minimum age for marriage as follow:

The 2019 Revision of the Marriage Law (1974) of Indonesia raised the marriage age for female from 16 to 19 years, equalizing it to that of males. However, grooms and brides under the age of 21 are required to get their parents' permission before marriage. While parents can ask the court to grant permission in the case of the grooms or the brides. If they are under the age of 19, the revision stipulated that the court can grant such permission only if there are urgent reasons as well as supporting evidences to back them.

Likewise, in Malaysia, a special marriage licence granted by the Chief Minister must be obtained for female sixteen (16) years and above but under the age of eighteen (18) years.

### **Views of the Jurists on the Age of Marriage and Child Marriage**

Nonetheless, the jurists hold differing opinions on defining maturity whether it is defined by natural signs or age as elucidated below:

## 1. Maturity Defined by Natural Signs

	Countries	Without Parental Consent		With Parental Consent		With Judicial Consent	
		Male	Female	Male	Female	Male	Female
1	Afghanistan	Puberty	Puberty	Puberty	Puberty	-	-
2	Bangladesh	21	18	-	-	-	-
3	Brunei	18	18	14	14	14	14
4	China	22	20	22	20	20	-
5	France	18	18	18	18	16	16
6	Hong Kong	21	21	16	16	-	-
7	India	21	18	-	-	-	-
8	Indonesia	21	19	-	-	-	-
9	Iran	18	15	15	13	-	-
10	Italy	18	18	18	18	16	16
11	Kuwait	17	15	-	-	-	-
12	Lebanon	18	17	17	15	15	14
13	Malaysia	21	21	18	18	18	16
14	Norway	18	18	18	18	16	16
15	Qatar	18	16	-	-	-	-
16	Russia	18	18	18	18	16	16
17	Saudi Arabia	18	18	-	-	15	15
18	Spain	18	18	18	18	16	16
19	Turkey	18	18	17	17	16	16
20	Yemen	15	15	-	-	-	-

Source: [https://en.wikipedia.org/wiki/Marriageable\\_age](https://en.wikipedia.org/wiki/Marriageable_age)

The four Sunni schools emphasise that the natural signs will define maturity. Some signs will be familiar such as physical change and the growth of pubic and armpit hair. Some signs will be exclusive such as ejaculating semen while awake or sleeping for boys and the beginning of the menstrual cycle for girls (Al-Jazīrī, 2003).

Simultaneously, Dāwūd al-Zāhirī argues that ‘no one can attain maturity without puberty even though he reached forty years old (Abdul Mu’min, 2008, 10). Likewise, Ibn Qudāmah (1992, 345) elaborates that attaining puberty is crystal clear evidence of maturity.

## 2. Maturity Defined by Age

Nonetheless, in the absence of natural signs, the jurists advise considering the age of bulūgh. The jurists of Shāfi‘ī, Ḥanbalī schools, Abū Yūsuf and Muḥammad ibn ḥasan from Ḥanafī school state that ‘the age of bulūgh for male and female children is fifteen’ (al- Kāsānī, 2003, 172) citing the *Ḥadīth* narrated by ‘Abdullah bin ‘Umar:

“The Messenger of Allah (PBUH) inspected me on the battlefield on the Day of Uhud, and I was fourteen years old. He did not allow me (to take part in the fight). He inspected me on the Day of Khandaq, and I was fifteen years old, and he permitted me (to fight), Nafī’ said: I came to ‘Umar bin ‘Abd al-‘Aziz who was then Caliph and narrated this tradition to him. He said: Surely, this is the demarcation between a minor and a major. So, he wrote to his governors that they should pay subsistence allowance to fifteen years old but should treat those of lesser age among children (Muslim, Ḥadīth No:1868).

Nevertheless, Abū Hanīfah, al-Zamakhzarī, Mālik and some others suggest the age of bulūgh as eighteen years old for a young boy and seventeen years old for a young girl. They elaborate that the bulūgh means maturity and perfection, but both would be materialised only in these ages (Abū Zahrah, 1994, 48). Hence, elucidating the Quranic verse, “And come not near to the orphan’s property, except to improve it, until he (or she) attains the age of full strength” (al-An‘ām:152), Ibn ‘Abbās suggests ‘Bulūgh al-Ashaddu’ means attaining eighteen years old.

Nonetheless, when it comes to defining the age of marriage, there are three views among the classical jurists and the modern jurists. The first group of jurists allow child marriage even before maturity, whereas the second group of jurists refute it before maturity. However, the third group allows the marriage of female children before puberty while they do not allow the marriage of male children before puberty.

### 3. Supports for Child Marriage

The jurists of Ḥanafī, Mālikī, Shāfi‘ī and Ḥanbalī schools allow the child marriage drawing on the following evidence from Qur’an, Sunnah, Athar and Ijmā (Al-Nidāf, M. M., & Al-Kurdī, R. ‘Alī, 2015). Most jurists assume that this Quranic verse is excellent evidence for child marriage as the Prophet’s companions absorbed it from this Qur’anic verse:

“And those of your women as have passed the age of monthly courses, for them the *‘iddah* (prescribed period), if you have doubt (about their periods), is three months; and for those who have no courses [(i.e. they are still immature) their *‘iddah* (prescribed period) is three months likewise, except in case of death”( al-Ṭalāq:04).

Furthermore, the jurists elaborate that the Qur’anic verse:

“And if you fear that you shall not be able to deal justly with the orphan-girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (the slaves) that your right hands possess. That is nearer to prevent you from doing injustice” (al-Nisa’:03) recognises the marriage of orphans.

Indeed, an orphan is a child whose father is dead. In *Shari‘ah*, the word ‘Yatāmā’ denotes the orphan girls who did not attain puberty, as it was narrated by ‘Alī (R.A); ‘I memorised (a tradition) from the Messenger of Allah (PBUH): There is no orphanhood after puberty’ (Abū Dāwūd, Ḥadīth No:2873). Hence, Ibn Ḥajar states that this verse allows the marriage of orphans before puberty (al-‘Asqalānī, 1995, 241).

Likewise, there is ample evidence in the life of Prophet (PBUH) and his companions, as Ā‘ishah (R.A) reported: “Allah’s Apostle (PBUH) married me when I was six years old, and I was admitted to his house when I was nine years old (Muslim, Ḥadīth No:1422).

The opponents argue that this is a unique privilege provided exclusively to the Prophet (PBUH), such as the polygamous marriages to more than wives (al-Zāhirī, 459). However, the proponents respond to them that ‘there is no evidence to prove this privilege’s speciality only to the Prophet (PBUH). Moreover, if this was an exclusive privilege only for the Prophet (PBUH), the Sahaba did not trespass the rule (al-Nidāf, & al-Kurdī, 2015). Nonetheless, there were numerous child marriages in Islamic history. The Prophet (PBUH) married off the daughter of Ḥamzah (R.A.) to Salma bin Abī Salamah (R.A.) when they both were children

(Sunan Bayhaqī, Ḥadīth No:13697). Similarly, ‘Alī (R.A.) married off his daughter to ‘Umar (R.A.) when she was a child (Ibn Qudāmah, 1992, 487).

Ibn Qudāmah (1992, 487) says: the jurists showed their consensus on child marriage. If a female child were married off to an efficient bridegroom, it would be permissible without dissents. Likewise, Ibn al-Munthir also states ‘there is consensus on the permission granted for female and male children’s marriage (Ibnul Mundhir al- Naysābūrī, 1999, 103).

#### 4. Oppositions of Child Marriage

Nonetheless, some jurists such as Ibn Shubrumah, Abū Bakr al-Asammu, ‘Uthmān and Ibn al-Baṭṭī oppose child marriage (Nawāḥidah and al-Mu’minī, 2010, 94) quoting the Qur’anic verse: “And try orphans (as regards their intelligence) until they reach the age of marriage” (al-Nisā’:06). Al-Sarkhasī says, “this verse insists the attainment of puberty as an obvious sign for the end of childhood. Hence, if child marriage is permissible, there would be no value for this verse (al-Sarkhasī, 224).

Besides, they cite the *Ḥadīth*:

“A matron should not be given in marriage except after consulting her, and a virgin should not be given in marriage except after her permission.” The people asked, “O Allah’s Messenger (PBUH)! How can we know her permission?” He said, “Her silence (indicates her permission)” (al-Bukhārī, Ḥadīth No:5136).

This *Ḥadīth* indicates that the marriage will not be arranged without the permission of the virgin and widow. Zarkasī says: when it comes to getting permission, it is impossible to get it from a child, whether by expression or silence. So, child marriage is not permissible (al- Zarkashī, 2002, 342).

Citing a *Ḥadīth*, “O young people! Whoever among you is able to marry should marry” (al-Bukhārī, Ḥadīth No:5065). This *Ḥadīth* directs only to youths, not to children, as well as this *Ḥadīth* stipulates the physical and fiscal capacity which could not be anticipated from children (Sahā, 2010, 16).

Moreover, they argue that the *Ḥadīth* “the woman is accountable to her husband’s house and children” explicitly elucidate the responsibilities and duties such as house management, caring for children, advising, and assisting her husband (Ibn Ḥajar al- ‘Asqalānī, 1995, 06). However, such responsibilities will not be affordable for children.

Besides, Nazir Ullah, Nadia and Idrees (2010, 68) argue that the majority of Muslim scholars support child marriage considering the marriage of the Prophet (PBUH) with Ayishah (R.A.) at her very young age. However, her age during her marriage is still controversial and debatable among Muslim scholars. Some of them view that her marriage was consummated with the Prophet (PBUH) at the age of nine years while others estimate that it was fifteen years old. Particularly, they emphasize that it can be calculated that the Prophet consummated (PBUH) with Ayishah (R.A.) at her 19 years old according to the historical evidence of Ibn Kathir in *al-bidayah wa al-nihayah*.

However, the proponents for child marriage argue that it is intended to fulfil the social interests and social security, citing the commands of Prophet (PBUH) to 'Alī (R.A.), "O Ali! Three are not to be delayed: Salat when it is due, the funeral when it is presented, and (marriage) for the single woman when someone compatible is found" (Tirmidhī:1075). Hence, defining the age and waiting for attaining puberty would be a dissent opinion to the Prophetic advice. So, when an eligible spouse is found, the marriage should be arranged regardless of puberty and age (al-Nidāf, & al-Kurdī, 2015, 09).

Hence, considering the above arguments, it is suggested to decide the age of marriage based on the physical, fiscal, familial, and societal conditions of a bride.

In contrast, the women activists in Sri Lanka raise the voice to curb child marriage entirely and confine the marriage's minimum age as eighteen. Consequently, the demand leads to the deadlock between the jurists and the feminists in Sri Lanka.

## **5. Discourse on Fixing the Minimum Age of Marriage in Sri Lanka**

The women activists criticise that MMDA does not delineate a minimum age for marriage. It allows the marriage of the child under the age of 12 years with the *Qāḍī*'s permission, as section 23 of the MMDA describes that: "a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act, unless the *Qāḍī* for the area in which the girl resides has, after such inquiry as it may deem necessary, authorized the registration of the marriage" (Ministry of justice). Hence, the MWRAF alleges that "the minimum age of marriage for Sri Lankan Muslims is zero according to Section 23 of the Act" (BISTHAN, 2017 ,02).

Besides, the women activists concern that because of the unlimited permission of MMDA, "nearly 6% of the Muslim female children aged between 12-17 years were either married, widowed, divorced, or separated" (BISTHAN, 2017 ,03) which is contrary to the Sri Lankan common law and the U.N. conventions as it



establishes that: “a child means every human being below the age of eighteen years unless under the applicable to the child majority is attained earlier” (Article 1 of the U.N. Convention on the Rights of the Child).

Furthermore, the women activists reveal that:

“The records on Muslim marriage registration in Kattankudy indicates that in 2015, 22% of registered marriages were with the bride below 18 years old. According to the *Qāḍī* for Colombo east, that was a considerable increase from 2014 when the figure was 14%. There are also many instances of early marriages happening in areas like Mattakkuliya and Maradana. The *Qāḍī* for the minority Muslim community in Colombo also mentioned that girls mostly get married between 15 and 17. Because according to him, the value of the girl decreases after she is 17” (Hyshyama and Hasanah, 2016, 08).

Moreover, the MWRAF argues that even though the Qur’anic verse defines that the age of marriage is *bulūgh al-Nikah* which means attaining puberty, the same verse constitutes the sound judgment attained at the age of discretion (*rushd*) explicitly delineates the age of majority (Interviewee – 02).

Therefore, the women activists lobby to fix the age of marriage at 18 years old and to incorporate section 363 (e) of the penal code, which establishes that:

“A man is said to commit “rape” who has sexual intercourse with a woman (e) with or without her consent when she is under sixteen years old unless the woman is his wife who is over twelve years of age and is not judicially separated from the men” (The Penal Code Act No: 22 of 1995, Section 363 (e)).

Nonetheless, since the penal code recognizes copulation with a person's wife below the age of sixteen but above the age of twelve, ACJU advocates fixing the age of marriage for males at 18 years and females at 16 years. Because ACJU (2017) argues that the empirical research conducted by sociologists such as Bandula Padmakumara and Lakshman Dissanayake Confirms the gradual rise of pre-marital sex among teenagers. Hence, to protect the youngsters from the sins of having illegal affairs out of wedlock, the marriage should be contracted when the appropriate spouses are found even in the teenage.

Moreover, when we analyses the minimum age of recruitment for children, the minimum recruitment age of children stood at 14-years; however, the Department of Labour said that the decision to increase the minimum age of

recruitment was reached to 16 years old in order to improve the safety of children, ensure they are allowed to complete education and to improve the physical / mental health of children (<https://www.newsfirst.lk/2021/02/23/minimum-age-of-recruitment-revised-to-16-years-labour-department>).

However, ACJU (2017, 53) argues that some vulnerable teenage girls necessitate marriage for their safeguard, such as:

1. “A mother who is a widow is unable or facing difficulty in fulfilling the livelihood of her and the children under her guardianship, or if she is feared that her daughter is not safe without a proper male protection”.
2. “A person who finds his daughter becoming corrupt in her conduct and behavior and if she is not given in marriage her situation might become worse. At the same time, a suitable bridegroom also is ready to marry her. Nevertheless, if the age of marriage becomes a barrier and *Qāḍī*'s approval becomes tough for a girl whose age is just above twelve years, he will see his daughter being corrupted in front of his own eyes. He will not have any other alternative for this scenario”.
3. “When a person who is hopeless of life due to his weak health, wish to contract the marriage for his daughter”.
4. “When a suitable partner is found, and the parents fear that they do not find someone similar in the future”.

Hence, it is evident that the MWRAF advocates fixing the age of marriage at 18 years old without any exception to ensure the rights of teenage girls for education, while the ACJU (2017, 55) concerns over the psychological and sexual behaviors of the teenage girls from the Islamic perspective. Because the numbers of illegal sex and pre-marital pregnancies are higher than the legal teenage marriages in Sri Lanka regardless of races.

Meanwhile, since the bridegrooms prefer the youngest brides, the girls' value decreases when their ages increase. Therefore, the parents who have daughters endeavor to contract their daughters' marriages as early as possible (Interviewee – 03).

Nevertheless, teenage or child marriages are becoming rare among Sri Lanka Muslims due to social change and educational reform. Therefore, the president of the ACJU responded that the ACJU is now ready to accept the restriction of marriageable age to 18 years old, but with the afore-mentioned conditional exceptions that allow the vulnerable teenage girls to protect themselves from illegal sex and violators (Interviewee: 01).

When both parties' arguments are compared, the standpoint of the ACJU is more appropriate to the Sri Lankan context. Otherwise, the numbers of illegal affairs will rise as it is high among the teenagers of non-Muslims in Sri Lanka. Simultaneously, when the *Shari'ah* position is analysed, it can be understood that even though the *Shari'ah* does not delineate any age, it describes the physical and mental maturity for the marital life as bulugh al-nikah. Hence, when the bride and bridegroom attain the bulugh al-nikah, they are allowed for the marriage by the *Shari'ah* which cannot be nullified by any other act.

## **6. Challenges in fixing the minimum age of marriage**

Even though the international conventions and the women activists' endeavor to elevate the minimum age of marriage to 18 years old, there are some rigid challenges that resist their demands as follow:

1. Religious opinions
2. Cultural practices (younger age is preferred in the marriage market, protection from sexual abuse, and unexpected pregnancy)
3. Economic crisis

Hence, the reform proponents should find alternative solutions to mitigate these challenges.

## **Conclusion**

The women activists allege that "there is no minimum age of marriage for Sri Lankan Muslims since the MMDA allows a girl under 12 years old for marriage with the endorsement of the *Qāḍī*. Therefore, they demand to fix the age at 18 years old for bride and bridegroom and to punish if they violate the rule".

Nonetheless, even though the ACJU does not agree to fix the age at 18 years old, they stress to give excellent excuses for the girls who are in exigencies for the marriage due to their poverty or insecurity when they are below 18 years.

Meanwhile, the views of the jurists reveal that the Shariah neither fix the age of marriage and nor impose any punishment for those who are below 18 years old. Therefore, the demand of women activists to punish the couples who marry under 18 years old is not an Islamic tradition.

Hence, it was found that the opinion of the ACJU will be rational and supportive for the vulnerable parents who are in need to contract the marriage of their daughters below 18 years old for acceptable justifications, if the 18 years old would be promulgated as mandatory and minimum age for the marriage.

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### **Interviews:**

1. Interviewee – 01, the president of the ACJU.
2. Interviewee – 02, a prominent women activist and lawyer (female)
3. Interviewee – 03, a prominent preacher.