

Journal of Religion & Society (JR&S)

Available Online:

<https://islamicreligious.com/index.php/Journal/index>

Print ISSN: 3006-1296 Online ISSN: 3006-130X

Platform & Workflow by: [Open Journal Systems](#)**The Age of Majority in Islamic Law and the Pakistani Legal System: An Overview****Amr Ibn Munir***

Lawyer and Independent Researcher

amribnmunir2000@gmail.com**ABSTRACT**

Underaged marriages are one of Pakistan's biggest banes today. Minors entering into marriages is an unfortunate scenario but a harsh reality. Under Islamic law, in order for one to enter into any sort of legal relationship, one must have ahliyyah (the legal capacity) to do so. A person is presumed to have ahliyyah when he reaches the age of majority. The Qur'an and the Sunnah have not specifically stipulated an age of majority, while one Companion and the Muslim jurists have stipulated different ages of majority. A person is presumed to have attained the age of majority when he attains puberty or physical maturity. However, this is only one requirement, there is a major requirement of mental maturity as well, otherwise one cannot become a major. In Pakistan, previously, the law did not provide a uniform age of majority and provides separate ages for both male and female. The Pakistani Superior Courts have also at first considered only physical maturity as the major criteria in underaged marriage cases before venturing into the added prerequisite of mental maturity as well. One Court has even recommended raising the age of girls to 18 by the legislature and has declared such a law to be Islamic. This was eventually done in 2025 where the ages of both genders have been uniformly declared to be 18 years. While this is a welcome development, owing to the socio-economic conditions of Pakistan, such legislation must also come with certain exceptions for marriages under 18 years of age such as cases of poor or orphaned girls with an added stipulation of education being provided by the boy who wishes to enter into marriage with her or his family as the case may be. The methodology used in this paper is doctrinal.

Keywords: *Age of Majority, Age of Marriage, Ahliyyah, Sabi, Sabi Mumayez.*

Introduction

One of the major problems in Pakistan today is the issue of underage marriage, particularly for females. Such underage marriages usually occur either by force or by consent through eloping. The major question is whether said girl has the legal capacity to enter into a marriage? Is she aware of the legal consequences or legal ramifications of what she is about to go through? Hence, the legal issues related to capacity to marry are very complex and have the potential to cause more problems thereon. It is pertinent to explore these issues from an Islamic law perspective. Islamic law attaches great importance to a person's life and liberty. Therefore, it would be good to explore the protection of a minor's life and liberty, especially regarding the marriage of minors. Additionally, underage marriage also comes with lots of

* The author is grateful to his father, Dr Muhammad Munir, Visiting Professor, Department of Law, International Islamic University, Islamabad and ex-Regional Advisor of International Law and Islam for his comments on a previous draft of this article. Any remaining mistakes and simplifications are to be solely attributed to the author.

medical problems as well. These problems include *inter alia*, problems such as negative impact on the girl's education, health, psychological well being and even the health of their offspring, such as being at an increased risk for premature birth and subsequently, neo-natal or infant death.¹ Additionally, it also increases the risk for depression, sexually transmitted infection, cervical cancer, malaria, obstetric fistulas, and maternal mortality.² Hence, it is necessary that child marriages be prevented so as to prevent both legal and medical problems that are caused thereafter.

Thus, this paper shall answer the pertinent questions as to what is the age of marriage under Islamic law; what is meant by *ahliyyah*; what is meant by *sabi* and how is it different from *sabi mummayez*; whether an age of marriage is stipulated by the primary sources of Islamic law; whether the Companions of the Prophet Muhammad (peace be upon him) or Muslim jurists have stipulated an age of majority, especially for marriage; whether the requirements of the age of majority apply to marriage as well; what is the position of statutory law in Pakistan about the age for marriage; how have the Pakistani Superior Courts interpreted it; and whether raising the age of marriage to 18 for both males and females is allowed under Islamic law?

What is *Ahliyyah*?

In society, people enter into legal relationships for the sake of different purposes. It could be a relationship of marriage; it could be a relationship for business purposes or it could be relationship for any other personal or professional reason. Hence, in order for a society to function properly, legal relationships are required to be made. It is the foundational principle upon which many different legal principles are enunciated, with the biggest example of it being, the law of contract.

However, not everyone can enter into a legal relationship for the reason that there are certain impediments against it. One needs to have the right under law to enter into it and also be able to bear obligations imposed under the said legal relationship as provided under the law. Or to be more precise, there are certain prerequisites for being able to enter into such a relationship. The biggest prerequisite is that of *ahliyyah* (capacity), that is to say, whether a person has the capacity or is he capable to enter into such a relationship. Or in other words, whether he has the legal qualification to enter into such a relationship? If the relationship is that of a professional kind, where there is a contract involved, can such a person enter into the said contract? Has he reached the appropriate age to undertake certain duties or obligations? Hence, *ahliyyah* is one of the most important principles which is needed for the sake of entering into a contract or even for the sake of marriage.

Abdur Rahim observes that “the fitness (*ahliat juwla*) of a person for the application of law to his actions is called (*dhimma jui*) or legal capacity. *Dhirama* is defined as the quality by which

¹ Nawal M Nour, “Child Marriage: A Silent Health and Human Rights Issue” *Rev Obstet Gynecol*, 2 no. 1, (2009): 53-54. < <https://pubmed.ncbi.nlm.nih.gov/articles/PMC2672998/#sec3> > accessed 24th November 2024.

² Ibid.

man becomes fit for what he is entitled to (*ma lahn*) and what he is subject to.”³ It is divided into two parts, namely receptive and active legal capacity.⁴ The former refers to capacity for the inherence of rights and obligations, while the latter refers to the capacity for discharge of rights and obligations.⁵ Hence, mankind by its birth is vested with certain rights. However, they are unable to discharge those rights and obligations due to a lack of maturity. This maturity comes up gradually overtime as the person ages.⁶

Hence, by *ahliyyah*, we usually mean whether a minor or a child has attained the age of majority. That is to say, whether a child has become an adult. Of course, in the case of an adult or major who loses his sense of rationality or sanity due to some reason, in which case he is unable to make any sensible or reasonable decision using his mental faculties for the sake of his own interest or benefit, he will be deemed to have no *ahliyyah*. Abdur Rahim observes that there are other ways which effect legal capacity generally due to the fact that it affects a man’s faculties such as idiocy, lunacy, weakness of intellect not amounting to idiocy and death.⁷ Additionally, he also mentions that such factors could cause its forfeiture to be entailed either wholly or partially by reason of hostility to the law such as in the cases of apostasy, unbelief and slavery or cause its suspension in order to safeguard the rights of others such as death-illness and insolvency.⁸

However, for the purposes of this paper, we shall exclusively focus on the case of a minor. Hence, a minor is also presumed to have no proper understanding or ability to reason for the sake of his own interest or benefit, similar to an adult who has been deprived of it temporarily. However, in the minor’s case, it is presumed that he has no *ahliyyah* simply due to his age. This principle is also incorporated within the Contract Act, 1872 as well. Section 11 of the same provides that any person who has reached the age of majority as per the law, is of sound mind and is not disqualified by any other law is competent to enter into a contract.⁹ Hence, by taking this into consideration, we can see that anyone who is a minor under the law applicable to him or is insane or has been disqualified due to some other applicable law is unable to enter into a contract.

Hence, from the deliberation hereinabove, we can conclude that *ahliyyah* refers to a person’s legal qualification or legal capacity to enter into legal relations or the competence of a human being to acquire rights, bear obligations and conduct actions and transactions that are able to produce their legal effect.¹⁰ A person with full legal capacity is, therefore, a living human being

³ Abdur Rahim, “*The Principles of Muhammadan Jurisprudence*” (London: Luzac & Co., 1911), 28.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid, p. 29.

⁸ Ibid.

⁹ The Contract Act, 1872.

¹⁰ Muhammad Naim Omar, “*The Concept of Impediments to Legal Capacity (Awarid Al-Ahliyyah) in Islamic Law of Contract and the Egyptian Civil Code of 1948*”, (unpublished doctoral thesis submitted to the School of Theology, Religious Studies and Islamic Studies, University of Wales Trinity Saint David, 2006), pp. 10-11. <<https://repository.uwtsd.ac.uk/1031/1/503585.pdf>> accessed 20th June 2024.

of mature age and understanding, free, of Muslim faith not seized with death illness and solvent.¹¹

Ahliyyah and Sabi (Minor)

As already discussed hereinabove, a *sabi* (minor) is presumed to have no *ahliyyah*. While the minor does have rights and in certain cases, he can also bear obligations but in this context, we are referring to entering into contractual relations. This comes under the principle of capacity for execution. He thus, cannot enter into a contract. However, there is also the *sabi mumayaz*. The *sabi mumayaz* is a child who is able to use his mental faculties and his reasoning to make decisions for the sake of his own interest and benefit. Hence, in his case, he has yet to attain physical maturity but he has nonetheless attained mental maturity. He may have some level of *ahliyyah* but has not yet completely attained it. He will attain it once he becomes physically mature as well.

Hence, now that we have understood the concept of *ahliyyah* and *sabi*, we shall now move onto to whether the age of majority as specified by the jurists also mean that the said person can also be married.

The Age of Majority: An Islamic Perspective

The primary sources of Islamic Law are the Qur'an, the Sunnah of the Prophet Mohammad (peace be upon him),¹² *Ijma* and *Qiyas*. There are also secondary sources used by the schools of thought. All of the schools of thought differ in what they each consider the secondary sources of Islamic Law and their respective methodologies in deriving a rule of law from their respective sources. They may agree on one thing and disagree on another. One of the many things they disagreed on was the age of majority. Before coming to this, we may first see what the first two primary sources state about the age of majority. The Qur'an does not specifically stipulate for any age of majority. However, certain verses can be related to it. The Qur'an¹³ states that: "And test the orphans till they attain the age of wedlock, then if you perceive in them a discretion, handover to them their property..."¹⁴

According to Maulana Abdul Majid Daryabadi, the age of wedlock provided herein refers to the age of majority.¹⁵ When it comes to the second line, he comments that this refers to when the maturity of intellect or the capacity to manage one's affairs is attained.¹⁶ Mufti Muhammad Shafi Usmani states that the former line is referring to those who have attained

¹¹ Rahim, *supra* note 3, at 29.

¹² On every occasion in this article where reference to Prophet/Messenger Muhammad appears, words "Peace Be Upon Him" shall be assumed. Additionally, where the reference to the Companions of the Prophet is made, the words "May the Mercy of Allah be upon him" shall be assumed.

¹³ The translation of the Qur'an in this work unless otherwise indicated is taken from Abdul Majid Daryabadi's, "*Tafsir-ul-Qur'an: Translation and Commentary of the Holy Qur'an*", (Lucknow: Academy of Islamic Research and Publications, 3rd ed., 2007).

¹⁴ Qur'an, 4:6.

¹⁵ Abdul Majid Daryabadi's, "*Tafsir-ul-Qur'an: Translation and Commentary of the Holy Qur'an*", 3rd ed., vol. 1 (Lucknow: Academy of Islamic Research and Publications, 3rd ed., 2007), 303.

¹⁶ *Ibid*.

puberty,¹⁷ while the latter line is referring to testing the children through giving them small assignments of buying and selling so as to determine their ability to conduct themselves in transactions of their own.¹⁸ He further comments that this process of practical assessment should continue right through the age they become eligible for marriage, that is to say, when they attain puberty.¹⁹ Hence, from this, we can surmise that majority is attained at puberty but, in this context, puberty does not just mean physical maturity but also mental maturity. In fact, in this context, it is qualified with ‘sound judgement.’²⁰ The reason for assigning puberty with sound judgement is because it is presumed that once a person attains puberty, he is able to possess sufficient understanding and maturity.²¹ Hence, by puberty, we are referring to mental maturity as well as physical maturity. By physical maturity, we specifically mean when a person’s physical features go through maturity. For a boy, puberty is assumed when he is having nocturnal emission or getting pubic hair, while for a girl, it is at the start of her menstruation or getting pubic hair.²² According to Mufti Shafi Usmani, while once again commenting on this verse, he observes that real maturity is not tied up with any particular amount of years but rather it depends upon particular indicators and signs that are experienced by adults when they enter the threshold of adulthood.²³ A person would be deemed fit to marry should they attain these particular indicators and signs regardless of whether they have reached the age or not.²⁴ However, should such signs of maturity do not show up in a child, then he shall be considered mature in terms of age which varies according to the opinion of the jurists.²⁵

Hence, from his observation, we can conclude that there is a presumption of a person who has attained sound judgement or sufficient understanding once they attain physical maturity or puberty, however this presumption is rebuttable as such indicators and signs cannot be easily ascertained and in which cases, the ages fixed by the jurists shall be applied. It will be assumed that such a person has attained puberty by reaching this particular age.

The famous companion, Ibn Abbas stipulated 18 as the age of majority.²⁶ As for the Muslim jurists, as already discussed hereinabove, they have disagreed over what the age of majority is. “Some fix eighteen years for boys and seventeen for girls; some others have fixed fifteen years for both.”²⁷ Imam Abu Hanifa stipulates the age of majority for a boy to be 18 years,

¹⁷ Muhammad Shafi Usmani, “*Ma’ariful Qur’an: A Comprehensive Commentary on the Holy Qur’an*” in Muhammad Shamim (tr.), vol. 2 (Karachi: Maktaba-e-Darul-‘Uloom, 1974), 322.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Mudrasa Sabreen, ‘The Age of Criminal Responsibility and its Effect on Dispensation of Justice’, *Pakistan Law Review*, 8, (2017): 105. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3418167> accessed 20th June 2024.

²¹ Ibid, p.106.

²² Ibid, pp.105-106.

²³ Shafi, *Ma’ariful Qur’an*, *supra* note 17, at 323.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Sabreen, *supra* note 20, at 105.

²⁷ Shafi, *Ma’ariful Qur’an*, *supra* note 17, at 323.

while for a girl, he stipulates 17 years.²⁸ Although, in another tradition he presumes the age of majority of a boy to be 19 years.²⁹ For Imam Maliki, he presumes the age of majority to be 15 years according to one report, while in another report, he presumes it to be 18 for both sexes.³⁰ Imam Abu Hanifa's disciples, Imam Abu Yousuf and Imam Muhammad As-Shaybani disagree with Imam Abu Hanifa and presume 15 years as the age of majority.³¹ This is also the opinion of Imam Shafii and the Hanbali jurists.³² Interestingly enough, the Zahiris do not fix any particular age.³³ However, despite this disagreement between the schools of thought, they all agree that the earliest age in which majority can be attained by giving proof is 12 years for a boy and 9 years for a girl.³⁴ It should be noted that this difference of opinion regarding the age of majority is not just exclusive for marriage but rather each and every right and duty that becomes attached after attaining majority.

Maulana Ashraf Ali Thanwi stipulates that a female should be 15 and a half years of age while a male should be 21 years of age for marriage.³⁵ further stipulates that the female should also be able to run a household and the male should be able to earn money as primary prerequisites for marriage of both respectively.³⁶ He further states that neither should be married unless and until both of them acquire both physical and mental maturity.³⁷

The Major Prerequisite for the Age of Majority

While we have already discussed hereinabove that a person is considered an adult once he reaches puberty, however this is the supplementary requirement. The first major requirement is the attainment of sufficient understanding or sound judgement. Hence, in such cases, it is necessary that not only has the person reached the age of puberty but he has *rushd* (intellectual maturity), which means he has *aql* (intellect/discernment) and *tamyiz* (discretion or right judgement) as well.³⁸ Hence, the major prerequisite is that of mental maturity, especially in cases of *mu'amalat* (civil transactions).³⁹ Albeit, for of *ibadat* (religious duties), puberty in itself is sufficient.⁴⁰ After attaining puberty and after confirming their intellect and their ability to use their discretion, then the child has the *ahliyat* (capacity) to perform their tasks.⁴¹

The question remains as to how exactly shall the child's intellect be ascertained? That has been sufficiently answered by Mufti Shafi hereinabove. The major determinant shall be the

²⁸ Sabreen, *supra* note 20, at 105.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid, p. 108.

³⁵ Ashraf Ali Thanwi, *Islami Shadi*, (np, nd), 179. < <https://archive.org/details/islami-shadi-by-maulana-ashraf-ali-thanvi/Islami%20Shadi%20%28Digital%20Book%29/>> accessed 27th March 2026. He makes this opinion on the basis of the ages of Hazrat Ali and Hazrat Fatime at the time of their marriage.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

particular indicators and signs experienced by adults entering the threshold of adulthood. Hence, it will be determined whether the child has the intellect to sufficiently understand and make decisions which are to his best interest or benefit, like any reasonable person would.

Marriageable Age

Now that we have discussed the age of majority under Islamic law, we shall discuss marriageable age as well. By age of majority, we refer to the age where one person becomes an adult. It is natural that a person who is an adult and can make mature decisions for his own sake can also be married. We know that a person who is both physically and mentally mature is considered a major. Thus, he has no problem getting married should he wish to, provided he follows the necessary prerequisites of marriage. The question is whether a *sabi mummyaz* can be married? That is to say, one who has reached mental maturity but not physical maturity. We shall discuss this hereinbelow.

Marriage is made obligatory on each and every Muslim, albeit a specific age of majority is not specified therein.⁴² Although, as already discussed hereinabove, an age of majority is referred therein. Similarly, marriage is also made obligatory by the Sunnah as well but it also does not specify an age for marriage.⁴³ Some however argue that Mohammad's marriage to Hazrat Aisha may be considered as guidelines for the specified ages of marriage. However, the actual age of Hazrat Aisha at the time of consummation of her has always been disputed. Rather, there is more evidence to suggest that Hazrat Aisha was 18 or 19 when the marriage was consummated rather than 9 years old.⁴⁴ Additionally, another *hadith* that may be giving certain guidelines is the *hadith* regarding the Prophet's refusal of marrying his daughter to Hazrat Abu Bakr and Hazrat Umar because she was young. The *hadith* is narrated as follows: It was narrated from 'Abdullah bin Buraidah that his father said: "Abu Bakr and 'Umar, may Allah be pleased with them, proposed marriage to Fatimah but the Messenger of Allah said: 'She is young.' Then 'Ali proposed marriage to her and he married her to him."⁴⁵

Hence, we can possibly surmise from the narration hereinabove that the Prophet had a certain age for marriage in his mind, although it is not specified. The last line mentions 'then' which signifies a time lapse between the two events and it is clear that Ali's marriage to Fatima did not happen immediately thereafter. It is also possible that following the last line, in which Hazrat Fatima was given to marriage after Ali's proposal, there is far bigger chance that he was far more concerned with the age difference between Hazrat Abu Bakr, Hazrat Umar and his daughter as Hazrat Ali was closer to age to Hazrat Fatima than the former two.

⁴² See: Qur'an, 24:32-33.

⁴³ Muhammad bin Yazid Ibn Majah al-Qazvini, "Sunan Ibn Majah" The Chapters on Marriage, vol. 3, book 9 (np, nd) 1846. < <https://sunnah.com/ibnmajah:1846> > accessed 20th July 2024.

⁴⁴ For more information, see Muhammad Munir, "Rights of the Child in Islam: Theory, Mechanisms, Practices and Convention on the Rights of the Child", (Islamabad: Iqbal International Institute for Research and Dialogue, 2017), pp. 143-147.

⁴⁵ Abū 'Abd ar-Raḥmān Aḥmad ibn Shu'ayb ibn 'Alī ibn Sinān ibn Baḥr al-Khurāsānī, *Al-Sunan al-Sughra*, The Book of Marriage, vol. 4, (np, nd), 3223. < <https://sunnah.com/nasai:3221> > accessed 20th June 2024.

Hence, we can conclude that both the primary sources of Islamic law have not specified any age for the sake of marriage. The jurists have specified their own ages of majority on the basis of attaining puberty or reaching physical maturity as it is assumed that one who is physically mature is also mentally mature. However, this is a rebuttable presumption as the major prerequisite is the attainment of *aql*, or mental maturity, not physical maturity. There are people who are physically mature but are not mentally mature. Such people are considered insane as they lack the ability to rationally look at things and make decisions for their own benefit. Such a person cannot enter into contracts or any other type of legal relationship as they are unaware of the legal consequences or legal effects. Then, this can also apply *vice versa*. A child who has not yet reached puberty or physical maturity but has nonetheless reached mental maturity should also be unable to enter into any marriage due to their deficiency of the former attribute. While he may be able to acquire certain rights, he will still be unable to perform certain obligations. A male *sabi mumayyez* for example would be unable to provide for his wife as he will be severely underqualified for any employment and will not be able to properly run any business. A female *sabi mumayyez* would be unable to give birth to any children or commit to any household chores or enter into any employment. Hence, as both are unable to perform their prescribed duties under the marriage, how can they be married?

The Age of Majority and Pakistani Law

In Pakistan, there are multiple pieces of legislations that provide multiple ages of majority for different purposes. Hence, a person is considered a child for different purposes. For marriages, previously a male child is someone under 18 while a female child is someone under 16 in all provinces except for Sindh. However, from 2025 onwards, there was a trend in legislation towards specifying a uniform age of 18 for both genders. We will return to this point below. Previously, when the age was 16 for females and 18 for males as provided by the Child Marriage Restraint Act, 1929 (“CMRA”) which criminalises such underage marriages and even punishes those who conduct it but does not declare the marriage itself to be null and void.⁴⁶ Although, the female under the age of 16 may have the marriage dissolved as per Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939, provided that she was unwillingly given into such marriage by her father or guardian before becoming 16 and that the marriage was not consummated. This provision also provides that the girl may even repudiate her marriage if she is under the age of 18 provided it was not consummated. The Pakistani Superior Courts when dealt with such situations have either considered whether the girl had attained puberty or not in light of the principles of *Shar‘iah* but would not

⁴⁶ *Mushtaq Ahmad v Mirza Muhammad Amin*, PLD 1962 (W.P.) Karachi 442. See also: *Zafar Khan v Muhammad Ashraf Bhatti*, PLD 1975 Lahore 234, *Allah Bakhsh v Safdar*, 2006 YLR 2936 [Lahore], at para 4, *Muhammad Azam v The State*, 2018 P Cr. L J Note 175 [Lahore], at para 4, *Muhammad Khalid v Magistrate 1st Class*, PLD 2021 Lahore 21, at para 8. This position was most recently reasserted by the Federal Constitutional Court of Pakistan in the case of *Shahbaz Masih v. Additional Sessions Judge, Lahore*, F.C.P.L.A. No. 536/2025. < <https://www.fccp.gov.pk/download/eyJpdil6litXazgxUTNjMVpJsk1zWVprTXVvNIE9PSIsInZhbHVlIjoilNmxDdUVGSDlVRWFxRzBlcjE5THlvUT09IiwibWFjIjoilOWQ0NmI3MwVhZGUYnN2E4ZjFjMjJhMTA0MDk0NjJmNWFiOThhMzIzZGM0NDgxOTBiMjY5NzBiN2ZmOTRiNzZhZCIsInRhZyI6Ij9>> accessed 31st March 2026.

rely on the work of the classical jurists and would mostly consult the arbitrary compilation of a non-Muslim scholar, D.F. Mulla.⁴⁷ They would just ascertain whether in terms of Mulla's treatise, whether the girl has crossed the age of 15 or not. Although, in recent times, while the courts still keep the main determinant to be whether the girl in question has attained puberty or not, some courts in some cases have considered whether the girl in question also has the requisite capacity or mental faculties to understand the implications and consequences of marriage.⁴⁸ They have even applied the Convention on the Rights of the Child ("CRC"), which provides for the age of a child to be less than 18 years of Age under Article 1 of the same.⁴⁹ One Court even went as far as declaring the age of a child to be 18 on the touchstone of the CRC.⁵⁰

Hence, we can conclude that the Superior Courts at first were only concerned whether the girl in question had attained physical maturity without any regard to her mental maturity, although this has changed in recent times and now the girl's mental maturity is also put under consideration. The Courts do not bother applying the CRMA, although they have correctly identified that the CRMA itself does not make such marriage void in the first place as mentioned hereinabove. Hence, the Courts resort to judicial law-making by applying their (mis)interpretations of Islamic Law due to their over reliance on non-Muslim scholar's treatises as discussed hereinabove.⁵¹ This can all be avoided by having the legislature either amend the existing legislation and increase the age of the child to 18 regardless of gender or promulgate new legislation just like the Sindh Provincial Government had done so.

As already discussed hereinabove, there is no specific age specified by the *Shariah* itself and the main determinant is mental maturity as opposed to physical maturity and this way, the obligations imposed under the CRC can also be upheld as Pakistan has ratified it and is also party to it. Of course, whatever amendments or new legislation is made as was made by all the provinces, it also has to consider exceptional circumstances in which a marriage of a child under 18 is allowed, such as an orphaned girl, or girl with a poor family who cannot take care of her, with the understanding that she will also continue her education as well.

Is the Child Marriage Restraint Act, 1929 repugnant to the *Shariah*?

In *Farooq Omar Bhoja v. Federation of Pakistan*,⁵² where Sections 4,5 and 6 of the CMRA were challenged in the Federal Shariat Court for being repugnant to the injunctions of the Shariat. Anwer J. held that the in principle, a minor girl may be married by her *wali* (guardian) but such marriage is contingent upon it being consummated after the girl attains adulthood.⁵³

⁴⁷ *Bakhsi v Bashir Ahmad*, 1970 SC 323, *Mauj Ali v Syed Safdar Hussain Shah*, 1970 SCMR 437, *Ghulam Hussain v Nawaz Ali*, 1975 P Cr. L J 1049 [Karachi], at para 2, *Zarina Khatoon v District Magistrate, (South). Karachi*, PLD 1978 Karachi 374, *Allah Bakhsh v Safdar*, 2006 YLR 2936 [Lahore], at para 4, *Allah Nawaz v Station House Officer, Police Station Mahmood Kot District, Muzaffargarh*, PLD 2013 Lahore 243.

⁴⁸ See, *Zafar Khan v Muhammad Ashraf Bhatti*, PLD 1975 Lahore 234.

⁴⁹ The United Nations General Assembly, Convention on the Rights of the Child, 1989.

⁵⁰ *Mumtaz Bibi v. Qasim*, 2022 PLD Islamabad 228, at para 24.

⁵¹ *Ibid*.

⁵² PLD 2022 FSC 1.

⁵³ *Ibid*, at para 2.

Additionally, he observes that the *rukhsati* of the girl consummation of marriage in such a case should be made after the girl attains adulthood, however such age is medically variable depending upon the cast, creed of the girl and the weather conditions of the area where the girl lives and brought and as well as the girl's diet and the socio-economic condition of the family.⁵⁴ It is appreciative how he relied on the settled medical principles for the attainment of a girl's 'marriageable age.' He also observed that the marriage of a minor girl is permissible according to the majority view of the jurists with the minority dissenting view being that of Imam Ibn-e-Shabarma and Qazi Abu Bakr Al-Ism amongst others.⁵⁵ The Court also mentioned that Tanzeel-ur-Rehman has dedicated a whole section towards this issue in his book, *Majmooa-i-Qaqaneen-e-Islam*.⁵⁶ Finally, when it came to the question of an age for marriage, he held that setting a threshold of a minimum age at 16 years will at the very least help the girls get basic education as his her basic right ensured by Islam.⁵⁷

It seems a good opinion though but such a *dicta* may not be appropriate in a Court's case. Many married women pursue education and are not hindered by kids and house-hold chores as well as other matrimonial duties. Although, this too is contingent on many different factors such as the relevant societal norms that is prevalent in the said area, the attitude of the husband and his family towards this etc. In *Abdul Razaq v The State*,⁵⁸ the Islamabad High Court after analyzing the verses of the Qur'an, consulting Islamic Jurisprudence, D.F. Mullah and the CMRA, observed that under the CMRA, it is an offence for a person to give a girl below the age of 16 years in marriage, that a sui juris Muslim girl can enter into marriage without the consent of her *wali* at the age of 18 years.⁵⁹ The Court further observes on the ages of majority as provided by Imam Abu Hanifa (18 for a male and 17 for a female) and D.F. Mulla (15 years for both) respectively.⁶⁰ The Court lastly observes that for the purposes of *nikah*, both genders must attain mental and as well as physical maturity.⁶¹

This is indeed a good observation. The Court has correctly held that a person for the purposes of entering into marriage must not just be physically mature but also mentally mature as well. The Court also held that the Federal Government should legislate upon the matter as in light of the judgement of the FSC regardless of the fact that no age for marriage has been specified by the Holy Qur'an.⁶² Therefore, there is no bar on the State to make such legislation.⁶³

Notwithstanding the Court's reliance on D.F. Mulla, this is a very good judgement. The Court was correct to say that there is no age limit provided by the Qur'an to enter into a marriage and that the state should legislate on the matter as the Sindh Provincial Government had done

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid, at para 9.

⁵⁸ 2022 P Cr. L J 953 [Islamabad].

⁵⁹ Ibid, at para 14.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid, at para 15.

⁶³ Ibid.

so.⁶⁴ Following this, the Province of Punjab,⁶⁵ the Province of Balochistan⁶⁶ and the Islamabad Capital Territory⁶⁷ have also established the age of 18 as the age for marriage for both genders. Hence, such steps being undertaken is a great sign of progress and as already contended, not unislamic. However, certain exceptions of being able to enter into marriage under 18 such as a poor or orphaned girl with an added stipulation of also being provided education by the boy who wishes to marry her or by his family as well should also be incorporated therein. Additionally, all of these legislations still face the same problem of the marriage still being deemed valid as was the case before. Albeit, Balochistan government has stipulated that a marriage with a child will be *void ab initio* where the child has been forcefully or deceitfully made to marry.⁶⁸

Conclusion

From the discussion hereinabove, we can conclude that *ahliyyah* refers to a person's legal capacity or legal qualification to enter into a legal relationship such as that of a marriage or contract. A *sabi* is someone who is presumed to have no *ahliyyah*, albeit he has certain rights. A *sabi mumayyez* is a minor child who is also mentally mature enough to use his mental faculties to make decisions for his own benefit or self-interest. However, he has still not yet attained full legal capacity as he has yet to become physically mature or attain puberty as well. The primary sources of Islamic law do not stipulate any specific age of majority for marriage although marriage itself is stipulated as an obligation therein. The companion, Ibn Abbas has stipulated 18 years of age as the age of majority. The jurists have stipulated different ages of majority but they all agree that the minimum age of majority that can be accepted is 12 years for a boy and 9 years for a girl, which must be proved by the claimants themselves as well. This applies to the case of the *sabi mummayyez*.

Hence, there is not unanimity among Muslim jurists on the age of majority under Islamic law. When the age of majority is discussed, the essential element is usually the presence or lack thereof of puberty or physical maturity. However, in order for a person to have full *ahliyyah*, a person must also acquire *rushd* (intellectual maturity) as well, that is to say, he/she must be able to use his or her mental faculties to distinguish between right and wrong for their own benefit or self-interest. Hence, he must be able to use his *aql* (discernment) as well. Therefore, in order for one to attain full *ahliyyah*, one must have both physical maturity and mental maturity. The presence of the latter is the biggest requirement. Anyone who is physically mature but is not mentally mature would not be able to understand the consequences of his actions, legal or otherwise and thus cannot enter into any legal relationship, particularly that of marriage.

⁶⁴ See: The Sindh Child Marriage Restraint Act, 2013.

⁶⁵ The Punjab Child Marriage Restraint Ordinance, 2026. It should be noted that this is an Ordinance whose validity lasts only for 120 days from the date of its promulgation. Punjab has also brought forth this law in the shape of a Bill with the ambition of having it passed as binding statute the same as Sindh and Islamabad have done.

⁶⁶ The Balochistan Child Marriage Restraint Act, 2025.

⁶⁷ The Islamabad Capital Territory Child Marriage Restraint Act, 2025.

⁶⁸ The Balochistan Child Marriage Restraint Act, 2025, s. 7.

Similarly, anyone who has acquired mental maturity but not physical maturity is also not eligible for marriage. The male *sabi mummayez* would not be able to make a living, how will he provide for his family? Similarly, the female *sabi mummayez* would not be able to take care of her family or give birth. Thus, in both cases, both parties will be unable to fulfill their obligations under the marriage, then how can they be married? Hence, for a person to be able to enter into a marriage, he must be both physically as well as mentally mature. Both are essential requirements without which one cannot be considered mature and enter into marriage. In Pakistan, previously there was no uniform age of majority and anyone who is under 18 and 16 for males and females respectively is considered a child for the purposes of marriage except for Sindh. Additionally, the law does not provide that such underage marriage shall be null and void but it merely criminalises those who conduct such marriages. However, this all changed in 2025 where all provinces repealed the CMRA and promulgated their own variants wherein they stipulated the age of 18 for both genders. However, with the exception of Balochistan which provided for the marriage with a child to be *void ab initio* in cases where the child is forcefully and deceitfully married, the rest do not provide for such marriage becoming invalid, thereby suffering from the same fatal flaw as the original CMRA. Additionally, the Pakistani Superior Courts when dealt with such cases applied the principles of Islamic law as understood by non-Muslim scholars rather than the scholarly literature of the past over 1400 years and would only consider whether the girl has attained puberty rather than determine whether she is mentally mature to be allowed to enter into marriage in the first place. However, in the 21st century, the courts have started applying the CRC as well and have also started to consider whether the girl in question is mentally mature for such marriage as well. The Federal Shariat Court has even declared the CRMA to be not against the injunctions of Islam. Some courts have even recommended the amendment of the law in question. They have recommended that the age of the girl for marriage be raised to 18 years of age just like Sindh as this is not against the tenants of Islam. The courts are correct to say this and the legislature should take endeavours to amend the legislation and raise the age of the girl to be 18 years of age as it is not unislamic to do so. The Provinces of Sindh and more recently, Punjab and the Islamabad Capital Territory have already taken such steps as mentioned above to make the age for the purposes of marriage 18 years. Albeit, such legislation should also keep in mind certain exceptions to allow marriage under 18 years of age such as the cases of an orphan girl, a very poor family who is unable to care for her with the added condition of having the family who marries such a person to let her continue her education.

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