

## EARLY MARRIAGES, CHILD ABUSE

Muhammad ShakilAuj\*

**Abstract:** Nikah is a social contract between two persons who are mature and rational and accept each other with their full consent. But it is an irony that in our society it is a social contract which can be settled for two mature and rational persons by a third person also and more interesting thing is that those for whom this contract is made sometimes does not even know because of their young age and immaturity that their elders have decided for their future life with their own powers and now nothing else could be done than to accept their decision without questioning.

In the rural areas of Pakistan especially Sindh, Punjab and Baluchistan these types of Nikkahs are very frequent. Probably for this reason when their man grow up and step into practical life then they marry once more with their own choice and hence leave their first wives as a useless person, while in order to compensate this attitude they make them partner in their moveable and immoveable property. In this way both wives become the victims of the man's cruelty.

In this regard Islamic teaching is that we should stop such kinds of Nikah. Because the age of Nikah starts after adolescence and this adolescence is physical as well as mental. Until both kinds of adolescence are not happened, this kind of relation should not be established (Exceptions are however not included in this general rule).

According to the Qurān Nikah is conditional to puberty.

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ (١)

‘And take care of the Orphans, until they reach (the age of) Nikah.’

In this verse, the word ‘Nikkah’ is used instead of ‘Puberty’ which shows that Nikkah presupposes puberty. Hence early marriages do not seem to be appropriate according to the Qurān.

According to the Imam –e- Aazam Abu Hanifa , the age of puberty of a boy is 18 while that of a girl is 17 and 15 according to imam Shafai.(2)

Here it must be noted that only physical puberty is not enough for marriage but mental maturity is also necessary, as is mentioned with.

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\* Dean, Faculty of Islamic Studies, University of Karachi, Pakistan

فَإِنْ أَنْتُمْ مِنْهُمْ رُشِدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ (٣)

‘And of you find mental maturity in them then give their property to them.’(4)

In this sentence the age of Nikah has been referred along with reason (mentalmaturity). It is true that this verse is about the Qurānicinjunction of returning the property i.e.the ownership of property, but it is quite clear from it that if the property is so important that it could not be given to mentally immature people, then how could it be possible to give some one’s life on the basis of only physical puberty. Do we see someone’s ‘life’ and ‘existence’ as even cheaper than property which could be given without feeling any need of rationality (mental maturity)?

Besides, there are certain cases when physical changes do not appear even at the age of puberty also, then in such cases mental puberty (reason) is the only standard which could give the justification of Nikkah. Therefore it is a requirement of the Qurān that the mental ability must be considered along with the physical, in exactly the same measure as is supposed to be in case of giving property.

The secret of the strength and continuation, happiness and joy and mental compatibility in a married life actually lies in a balance between these two abilities and the absence of any one of them would change the ultimate joys and happiness of marital life into sorrow and hopelessness.

Parents generally think that their responsibility is just to let their children marry. They show such quickness and keenness in fulfilling their responsibility that they do not even wait for their children to grow up and engage them with anyone, and then think for themselves that they have fulfilled their responsibility. While the first and foremost responsibility of parents is to give good education and brought up, create the virtues in them and enable them to earn according to their abilities so that they can survive themselves. As far as marriage is concerned it is the right of their children and they should be given an opportunity to exercise their right, however they should be guided in this respect. Such kind of brought up creates a sense of responsibility in them which results in the prosperity and betterment of their married life in future.

We find a reference for the condemnation of early marriages from this verse also:-

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ (٥)

‘Hence marry those women who are good, nice and pious’

First thing is that (فَانكِحُوا) is a commanding word, i.e. it is a lawful command and it could never address a person who does not understand it. Hence a child, because of his young age, is not an addressee of this command.

Therefore he cannot marry. Secondly, (مَا طَابَ لَكُمْ) shows that men are commanded to marry those women who are good and pious, and in his young age a child can not judge the goodness and piety of a woman which also shows that Nikkah is not possible in a very early age. Thirdly, the word (النِّسَاءِ) itself points out very clearly that for marriage it is necessary that the partner is a ‘Woman’. Hence this verse very clearly and openly condemns the marriage in childhood.

This verse also argues about the condemnation of child marriages:-

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَجِلُّ لَكُمْ أَنْ تَرْتَبُوا النِّسَاءَ كَرِهًا (4)

“O” Believers! It is not legitimate for you to be the heirs of the women forcefully.”

When forcing the adult women is forbidden then marrying minor girls is a highest degree of forcing them , for a minor girl is supposed to be unable to express or choose and consent and even if she expresses, it would rendered unauthentic according to the Shariah, law and morality. Because expressing a choice is a different thing and being a partner in a contract is a totally different thing. Nikah is not the name of just an expression of likeness but practically making a contract.

Here is another verse in favor of our argument against early marriages:-

وَالْمُطَلَّغَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ (٧)

‘And the divorcee women should wait for three menstrual cycles.’

In this verse the term (Iddat) for a divorced woman who is still in touch with her husband is described as three (قُرُوءٍ)(menstrual cycles or puberty) which shows that Nikah of minor girls cannot be right. For otherwise in case of divorce along with inter course there would be no limit of the term (Iddat). Because of not having menstrual periods, the condition of purity also could not be applied on them as menstrual periods are necessary for being pure afterwards and in a minor age this is not possible.

It would be appropriate here to explain the word (فُرُؤٌ). (فُرُؤٌ) is a plural of (قُرْءٌ) and (قُرْءٌ) actually means to enter into a condition of menstrual periods from the condition of purity. In other words, this word has two meanings. Therefore both conditions have been collected in it. That is why it could be applied to any one of the two meanings. And this is not particular to this word only but any term which is devised for two meanings could be used for the two separately in different situations. Like the word ‘maidha’ (مانده) which is devised for table cloth and food both but it is used for anyone of them also.(8) Hence (ثَلَاثَةَ فُرُؤٍ) would mean a women’s entering into the condition of menstrual periods thrice. This word also shows that in ordinary situations Nikah in a minor age is not understandable.

Another verse showing that early marriage is forbidden is this:-

نِسَائِكُمْ حَرْثٌ لَّكُمْ فَأَثُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنْفُسِكُمْ (٩)

‘Your women are tilth for you (to cultivate). Hence go to your tilths when ever you want, and send (something) ahead for you.’

In this verse wives are said to be the tilths for men. This resemblance very clearly and openly shows the puberty of women. Because the real purpose of intercourse (which is inevitable in Nikah) is to increase the race of human beings and obviously a minor girl is not able to serve as a tilth for cultivation therefore cannot be able to increase human race.

The verse concerning menstrual periods also clearly shows a reason for forbidding the Nikah in a minor age.

وَيَسْأَلُونَكَ عَنِ الْمَجِيزِ قُلْ هُوَ أَذَىٰ فَاعْتَزِلُوا النِّسَاءَ فِي الْمَجِيزِ وَلَا تَقْرَبُوهُنَّ حَتَّىٰ يَطْهَرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ (١٠)

‘And(they) question you about menstrual periods. Tell them this is harmful. Hence get away from your wives in the condition of menstruation but do not even get closer (for intercourse) to them, till they are cleared. When they bath very carefully then go near them (for intercourse), Just like your Allah has ordered you.’

Here the nature of the question seems to be about the intercourse during menstruation which we see from the answer. That is why (هُوَ أَذَىٰ) points out intercourse and not menstruation, i.e. menstruation in itself is not harmful. However, intercourse in such condition is harmful for both, that is why it is forbidden.

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The order of forbidding to go near the wives in menstrual condition implies that those women are completely mature. It also shows that the Nikah of a woman in her minor age is not required in Islam.

Those who favor early marriage have made a verse of the Qurān their basis for the argument. It seems necessary to take a look of that also:

وَالَّذِي يَخْتَلِفُ أَلْفًا مِنْ الْمَجِيزِ مِنَ نَسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُمْ ثَلَاثَةُ أَشْهُرٍ وَالَّتِي لَمْ يَحِضْنَ (١١)

Tr. 'And those of your women who are hopeless of menstruation, if you doubt then their term is 3 months and who do not have menstruation (because of some disease, their term is also 3 month)'.

Generally our interpreters have taken the meaning of (لَمْ يَحِضْنَ) as those girls who are minor and from this they have tried to prove 'Nikah in immaturity'. But it must be noted that the issue of term (Iddat) becomes meaningful after intercourse. Therefore 3 months of Iddat in a minor age means that intercourse is possible with a girl also in her immaturity, because there is no Iddat without intercourse.

Now imagine such a Nikah and think whether this is not a cruelty with the girl that nature has not prepared her for this purpose and we are using her for our sexual desire and more than that, assuming it according to 'shariah'. Can we give meat for food to a child who is only capable of taking milk yet? Can we let a child run who has yet not learned even to walk properly? Can we use such a girl for intercourse who does not have any knowledge of sexual matters and also not capable of bearing the partner? Do our scholars forget the legal issue that intercourse with a (حُرَّةٌ بِالْغَةِ) (mature free woman) is not possible without her consent and will. Then how cruel is it that on the one side the nature of issue has been like this and on the other there is an insistence upon intercourse with a minor girl by force who is still unable to understand the need of Nikah even then how can she tell her consent on such an act?

Obviously what ever would be done with such a girl is absolutely one sided and forcefully. Let us not talk about (let alone) Islamic society, we think such kind of oppression can not be tolerated in any human society.

We think it is a result of taking the meaning of (لَمْ يَحِضْنَ) here as 'minor'. However our interpreters have taken another meaning also, with minor, and in our opinion that meaning is correct but unfortunately it could not gain acceptance although it is correct. However, we can only thank Allah

that it has acquired a secondary status at least. What could have we done other wise.

To elaborate this later meaning we have those Qurānic references from which forbiddance of early marriage have been proven (which are mentioned above). While those who have favored this marriage has no argument accept this single place in the Qurān and you can see whatever the status and truth of this argument is in favor of them.

It should be noted that just like the puberty of a man is determined by 'Ehtelam' (احتلام) or age, similarly the puberty of a woman is determined by menstruation or age. It means clearly that if a woman does not have menstruation it does not imply that she is a minor. Hence the women are supposed to be mature with respect to their age if not menstruation. We hold that in this verse such types of women have been mentioned. In 'TafseerRuh-ul-Ma'ani' it is written that there are certain women who do not have menstruation through out their life.(12)

Following are some quotations from those interpreters who have interpreted (لَمْ يَحِضْنَ) in both the ways:

Maulanasyed Muhammad Naeem-uddinMuradabadi says:

i.e. those who are minor or reach the puberty but their menstruation has not yet started , for them also the term (Iddat) is 3months.(13)

2) MaulanasyedAbulAl'aMaududi says:

Whether menstruation has not been started because of youngage or because some women have menstruation in a very late age and very rarely it also happens that some women do not have menstruation through out their life.(14)

3) Pir Mohammad Karam shah Al- Azhari says:

Those women who are still minor or those who do not have menstruation but mature according to age.(15)

4) MaulanaSalahuddinyousuf says:

It should be clear that very rarely it happens that a woman reaches the age of puberty but does not have menstruation.(16)

Above mentioned four interpreters have interpreted (لَمْ يَحِضْنَ) in its second meaning as those women who are physically strong enough to be taken as mature but because of some reason their menstruation is not started.

Therefore if such woman engaged in Nikah with someone then they should not be supposed as 'minor' and Nikah as well as intercourse with such women, who are physically strong and mature according to their age, would be quite legitimate.

At this point a foot note by Maulana Hafiz Farman Ali (Shia' Translator) is worth noticing. He says, with this, those women are not meant who are still not mature. Because there is no term (Iddat) for them, but those women are meant who have reached the age of menstruation but because of some reason menstruation blood does not come. Their term (Iddat) is 3months.(17)

It means that he has interpreted (لَمْ يَحِضْنَ) here in one meaning only and this is the same which we are mentioning. Interpreting (لَمْ يَحِضْنَ), Maulana Umer Ahmed Usmani has made a very nice scholarly and analytical discussion. I would like to quote this discussion in his own words. Here it is:-

“It should be clear that in Arabic language only (لَا and مَا) are used for simple negation while the word of 'لَمْ' is used for 'نفي جحد' negation. i.e. a negation which consists of denial, which means that for (لَمْ) it is necessary that in front of it there is really something or as a context, which has an opposite argument whose denial is required. The difference between (مَا حَضْنَ) and (لَمْ يَحِضْنَ) is that (مَا حَضْنَ) means they do not have menstruation. Where ever negation of menstruation is required you can say (مَا حَضْنَ) but (لَمْ يَحِضْنَ) can only be said when your addressee is claiming that menstruation has started but actually it is not.

It is called a negation of denial and (جحد). (مَا حَضْنَ) does not have such intensity as in (لَمْ يَحِضْنَ). Those girls who are mature, in that case it is requirement of their condition but even that they have menstruation periods. Denial of this word cannot be done only with the word (مَا حَضْنَ) but (Arabic word) would be necessary for its denial and (جحد). On the contrary to this, for those girls who are young and minor, there is no claim or argument that they have menstrual periods and it is also not the requirement of their condition and implication. Therefore, to say (لَمْ يَحِضْنَ) for them is principally wrong and contrary to the explanation. For them (مَا حَضْنَ) would be appropriate to say. To apply (وَأَلَيْ لَمْ يَحِضْنَ) on minor girls is semantically also wrong”.(18)

According to the tradition another argument which is often given in favor of early marriage is the age of Nikah of Hazrat Ayesha which is 6 according to Imam Bukhari and 7 according to Imam Muslim and 'Rukhsati' happened in 9 years of age. Various answers could be given in this regard:

- (1) In our view this marriage is particular to Hazrat Muhammad (p.b.u.h), because the injunctions of Nikah and divorce seem to be different for Hazrat Muhammad (p.b.u.h) and this matter itself requires a detailed discussion.
- (2) This marriage took place much earlier than the revelation of the Qurān about marriage and Nikah. That is, this marriage took place in Macca while all the injunction of Nikah revealed in Madina. Hence this Nikah seems right under (أَلَّا مَا قَدْ سَلَفَ) (i.e. except what has been done earlier).
- (3) Scholars have written detailed arguments for the traditions of Bukhari and Muslim Allama Niaz Ahmed's, 'كشفت الغممة عن عمر ام الامه' (2 vol.) Allama Habibur Rehman Siddiqui Kandeharvi's 'Umr -e- Ayesha Siddiqua' and Maulana Umer Ahmed Usmani's 'Fiqh - Ul- Qurān' can be consulted in this regard.
- (4) Hazrat Muhammad (p.b.u.h) has said at various occasions that the Nikah of a pious woman should take place out of her will and consent.(19)
- (5) Obviously Nikah of minor girls could not be put in this category. Hence such Nikkah are also contrary to the saying of our Holy prophet (p.b.u.h) and we should avoid them.

**Notes and References**

1. Al-Nisa/6
2. (عن الامام الاعظم ان السن للغلام تمام ثمانى عشرة سنة وللجارية تمام سبع عشرة سنة)  
Syed Mahmood Aloosi Baghdadi (d.1270H) 'الجزء الرابع' p.204,  
maktaba-e-imdadia, Multan (date of published not mentioned)
3. Al-Nisa/6
4. HazratUmerFarooq says that a man's reason reaches its ultimate limit when he is 25 and doctors say that whoever has reached 25 has reached his ultimate reason. Here Ultimate limit means "rushd" (see TafseerRuhulma'ani, vol.4, p.206).
5. Al-Nisa/3
6. Ibid/19
7. Al-Baqarah/228
8. Imam Raghīb Isphahani (d.502H) Al-mufradat. Fi gharibul Qurān, kitab-ul-qa'af, p402, Noor Muhammad KarkhanaTijaratkutub, Aram Bagh, Karachi. Date not mentioned.
9. Al-Baqarah/223
10. Ibid/222
11. Al-Talaq/4
12. (بعض النساء الى ان يمئن ولا يحضن) (vol.28, p.137)
13. (خزائن العرفان فى تفسير القرآن) publisher Mujaddid Ahmed Raza Academy, footnote on relevant verse, Sura-e-Talaq
14. Tafhimul Qurān, vol.5, idara-e-tarjuman-ul-Qurān, Lahore, 4<sup>th</sup> edition1974,foot note no.13, Surah al-Talaq.
15. Zia-ul-Qurān, vol.5, Zia-ul-Qurān, publications, Gunj Buksh road, Lahore, 1400H, foot note no. 13, Surah Al-Talaq.

16. Qurān Karim with urdu translation and tafseer, Shah Fahad Qurān Kareem printing complex, Saudi Arab, foot no. under the verse, Surah Al-Talaq.
  17. Qurān Majeed translated, Pir Muhammad Trust, Karachi 5, date not mentioned, foot note for the verse relative, surah al-Talaq.
  18. Fiqh-Ul-Qurān, KhandaniMu’amlat (Nikah, divorce etc), Idara-e-Fikr-e-Islami, Kashana-e-Hafeez,240, eserdas street, Garden east, Karachi3, 2<sup>nd</sup> edition, 2002,p.112-113
١٩. (والبكر تستاذن في نفسها اذنها صماتها. الصحيح المسلم، رقم الحديث: ٣٣٧٣-٣٣٧٢،  
والبكر يستاذنها ابوها في نفسها واذنها صماتها، الصحيح المسلم- رقم الحديث: ٣٣٧٤)

