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An Analytical Study of the Recommendations of the Council of Islamic Ideology (CII) Regarding the Law of Minor Age Marriage in the context of Hadīth

Abdul Qayyum*

Lecturer Islamic Studies, The United College, Ahmad Pur East

Abstract

In the Islamic Republic of Pakistan, the concept of supreme sovereignty and the idea of legislation in accordance with the Qur'ān and Sunnah formed the basis of the Islamic Ideological Council. After the establishment of Pakistan, this organization was established in various provisions of the constitution and finally came into existence in the name of "Islamic Ideological Council" in the constitution of 1973. Article 230 of the Constitution of 1973 defines the duties of the Council. The Council of Islamic Ideology is a constitutional body established to make recommendations to the Majlis Shura so that the laws can be adapted to the Islamic style and formulate such principles. Although, it is compatible with the spirit of Islam and Parliament and Assemblies can take guidance from them while enacting legislation. While fulfilling its official duties, the Council made recommendations from time to time regarding the laws made in Pakistan at different times. According to the prevailing family laws of Pakistan, a girl must be at least 16 years old and a boy must be 18 years old at the time of marriage. And after discussing the queries in their meeting, they made suggestions. In this article, a research and analytical study of the Council's recommendations related to the laws of early marriage will be carried-out in the light of Hadīth and Sunnah.

Keywords: Minor Age Marriage, Council of Islamic Ideology (CII), Hadīth, Sunnah

Introduction

According to current laws in Pakistan, Muslim Family Laws Ordinance 1961 and Minor Marriage Prohibition Act 1929, marriage between a minor boy or girl is prohibited and according to the laws, the minimum age of a boy is 18 years and the age of a girl is 16 years. Council Revised the laws and made various recommendations regarding minor marriage in response to various queries received at different times.

During the tenure of Justice Tanzil-ur-Rehman, a letter from the CMLA Secretariat was first received by the Islamic Ideological Council on November 1979. The Islamic Ideological Council took the following decision in its meeting held on August 19, 1979.

* Email of corresponding author: abdulqayyumgoraya3410@gmail.com

"It was determined that under the Ordinance of Family Law, the minimum age of marriage for a boy is 18 years and the age of a girl is 16 years. Therefore, there is no need for further amendment in this constitution and the maximum age for marriage is fixed. The council does not consider it necessary."¹

In the above mentioned recommendation, regarding the determination of the age of marriage, the Council has endorsed the prevailing laws according to which puberty is mandatory for marriage.

Minor Marriage Prohibition Act 1929

The council deliberated on the Minor Marriage Prohibition Law 1929 in its meeting held on February 13, 1983 in Islamabad under the chairmanship of the Council's Chairman Justice Tanzil-ur-Rehman. Before this, the Chairman Council, Maulana Attaullah Hanif (Member Council) and the Research Department submitted a detailed note about it to the members of the Council, have been done. The previous amendments proposed by the Council on Family Law Enforcement were also taken into consideration and in this context, Sharia and legal age of majority were also discussed.²

The Council unanimously approved the following recommendation: The Council has already made a recommendation on the issue under consideration. If the previous recommendation is not accepted by the government, it is very important that if the boy and girl are not of legal age, before reaching the prescribed age, they should be allowed to marry with the permission of the Chairman Local Council under the law.³

In the above mentioned recommendation, the council made legal maturity as a criterion for marriage, but made the permission of the chairman municipal council mandatory in case of not reaching the age specified in the prevailing law.

The 168th meeting of the council was held on (January 11, 2008) under the chairmanship of Chairman Council Dr. Khalid Masood, in which a recommendation was made regarding the marriage of minors after further consideration. And this recommendation was duly approved in the 169th session of the Council.

There should be no legal ban on the marriage of young children. And that is because it is necessary in certain situations to protect the honor and dignity of the children themselves. However, it is necessary to determine the age in law for separation and both men and women should have the right to refuse and accept marriage on this occasion.⁴

In the above mentioned recommendation, the Council declared the marriage of minors to be permissible for the protection of children's honor and dignity, but made their departure conditional upon the specified age.

Prohibition of Marriage of Children (Minors) Amendment Bill 2009. Message from the Ministry of Religious Affairs.

The Ministry of Religious Affairs Islamabad, Government of Pakistan has sent its letter dated February 27, 2012 through which he requested that the Council give its opinion on the Prohibition of Child (Minor) Marriage Amendment Bill, 2009.⁵

The said bill was presented in the 188th meeting of the council and after that the council declared that the working paper based on the recommendations of the council and its review on the original act 1929 and the amendment bill 1929 and the research note regarding Sharī'ah will be presented in the next meeting.

Council's Meeting and Stance

As directed, the original Act of 1929 and the Amendment Bill of 1929 were presented in the 189th session of the Council.

And the research note was also presented for study. In which the provisions of the bill 3,4,5,6 and 7 in which the marriage of minors has been declared as a punishable offense and arrestable by the police and various fines have also been fixed for this crime. The following position was taken regarding: It is clearly proven from the Qur'ān and Sunnah, Ijmaa, and the jurists of the Ummah that the marriage of a minor boy or girl is legally valid and legislation against it is unreliable, and such legislation in which minors Marriage has been prohibited and has been declared a punishable crime, this is such a boldness in which there is a serious fear of committing blasphemy, because when the Lord of the Worlds, peace and blessings be upon him, married Umm-ul-Mu'minin Hazrat Ayesha (RA), at that time her marriage, she was only six years old. So according to this law, this blessed act "Al-Iyaz-Billah" will also fall into the category of crime, which is against the belief of the Muslim Ummah about the infallibility of the Prophets and also entails blasphemy. ⁶

Council Members' Opinions

In the light of the research note, the members of the council reviewed the bill and after discussion unanimously declared that the position presented by the research department in the research note is absolutely correct, the Sharī'ah in the correct conduct of the marriage of minors. Therefore, there is no obscenity and prohibition. Therefore, it makes no sense to declare it as a crime. Further, in the said bill, all persons below the age of 18 years are included in the definition of "child". This definition of child. It is not valid according to Sharia. ⁷

Puberty and its Standing in Sharī'ah and Law

Meaning of the word puberty (Na-baligh): The literal meaning of maturity is intellect, to reach, it is a verb, balagh is the active participle. In the vocabulary of Raghīb, the meaning is to reach the end, puberty is meant. ⁸

Puberty in Sharī'ah refers in Islamic Shari'a, children end their childhood, become mature, develop sexual energy, develop intellectual power and energy. This is the real standard of adulthood. Puberty in law means in Pakistan's Family Laws 1961, the words "Had Balogh" and 'Khyar Balogh' have been used. It is meant that a girl should be 16 years old and a boy 18 years old for marriage. ⁹

The Prohibition of Child Marriage Amendment Bill 2009 is totally illegal and un-Islamic. It is clearly proven from the Qur'ān and Sunnah, Ijmaa, and the jurists of the Ummah that the marriage of a minor boy or girl is legally valid and legislation against it is not valid, and such legislation in which minors Marriage has been declared prohibited and has been declared a punishable crime, this is such a boldness that there is a serious fear of committing blasphemy. Because when the Prophet peace be upon him, married Umm-ul-Mu'minin Hazrat Ayesha (RA), then She was only six years old, so according to this law, this blessed act of "Al-Iyaz Billah" will also fall under

the category of crime, which is the belief of the Muslim Ummah that the prophets are infallible, and it will also entail blasphemy. And the definition of a child in this bill is not correct according to Sharia law. According to Sharia, the signs of puberty in a boy after the age of 12 years (ejaculation, etc.) and the signs of puberty in a girl after the age of 9 years, or the signs like ejaculation, menstruation, etc. appear, then they will be considered adults. And if the signs of puberty do not appear, then boys and girls will be considered adults when they reach the age of 15. This definition of Shari'ah should be observed in all laws related to puberty. Also, the council does not agree with the objectives stated at the end of the bill and these objectives reflect purely western mentality. Such legislation is an attack on our Muslim society, family system and Islamic values.¹⁰

During the reign of Maulana Muhammad Khan Sherani, the issue of minor marriage was once again discussed in the council: Sections 4,5 and 6 of the Child Marriage Prohibition Act, 1929 were discussed by the Council in its 194th session. In which the punishment for an adult man marrying a child, the punishment for performing the marriage of a minor child and the punishment for fathers and guardians related to the marriage of a child were discussed.¹¹

After discussion in the council meeting the following decision was taken as: There is no Shari'ah wrong in conducting the marriage of minor children. Of course, pre-pubescent marriage is not free from evils. Therefore, it is necessary to impose a legal ban on marriage and impose punishment for violating it.¹²

Message from Dr. Waseem Akhtar (Member. Punjab Assembly):

Dr. Waseem Akhtar (Member.Punjab Assembly) sent copies of three bills approved by the Punjab Assembly (one of which was the Child Marriage Prohibition Punjab (Amendment) Act 2015) through his letter dated 15 March 2015 to the Chairman Islamic Ideological Council. He Requested that the council examines them in the light of Sharia and the laws of Pakistan and gives their opinions. As per the instructions, the chairman council included the above mentioned bills in the agenda of the next meeting. A research note was prepared by the council's research department about these bills, the summary of which is as follows:

The bill approved by the Punjab Assembly is based on the concept of "legal prohibition of child marriage". However, the concept of prohibition of marriage and its effects and consequences are all illegal. The Qur'an and Sunnah, the Interaction of the Companions and the Consensus of the Ummah are clearly against it. Therefore, the Council has declared such a law as an illegal law in the previous recommendation.¹³ Council members also submitted written and oral opinions.

After deliberation, the Council resolved that: "There are previous recommendations of the council on the above laws. And by making a table of the recommendations of the council with the original and amending provisions of the bills under consideration, one copy to Dr. Waseem Akhtar (Member Punjab Assembly) and one copy to Mr. Speaker (Punjab Assembly) should be sent to".¹⁴

Analysis

The Council has also revised its recommendations several times while revising the prevailing laws regarding under-age marriage. For example, during the tenure of Justice Tanzeel-ur-Rehman, he supported the prevailing law regarding the age of

marriage and recommended setting the age of marriage at 18 years for a boy and 16 years for a girl. However, later the council reconsidered and made Shari'a puberty as a criterion for marriage, but still made the permission of the Chairman Municipal Council, a condition in case of not being of age according to the law. After that, Chairman Council Dr. Khalid Masood. During the reign of the Council declared the marriage of minors as permissible, but their departure was conditional upon the age specified by the prevailing law. After that, during the reign of Maulana Muhammad Khan Shirani, the Council made the marriage of minor boy and girl, declared it absolutely permissible in the light of the Qur'an and Sunnah and declared the legislation against it as illegal and unreliable. So we proposed punishment by imposing ban on leaving before puberty. The marriage of a minor boy and a girl is valid according to the Shari'ah and its proof is found in the Qur'an, Sunnah and the statements of the jurists. So Allah says:

”وَالَّذِي يَسْتَنُّ مِنَ الْمَجْزِيِّ مَنْ نَسَاكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْ”¹⁵

And among your women who have lost their menstruation, if you have doubts, then their period is three months, and the same (their period is three months) who have not had period.

In this verse, the period of Iddah is mentioned for those divorced women who have stopped menstruating due to old age or those who do not get menstruation due to minor age. The reason for Iddah is Sharia marriage. If it was not permissible, then why would it be obligatory to divorce after Idda?

According to this verse, commentators and jurists have written that the words ”وَالَّذِي لَمْ يَحِضْ” in the verse are intended to indicate the iddah of immature girls. Iddah takes place after divorce or annulment of marriage. And annulment of marriage and divorce happen after marriage. In this way, this verse proves the legitimacy of marriage of an immature girl.

The commentators have described the revelation of this verse in the same way that Hazrat Ubai bin Ka'b (RA) asked the Prophet (PBUH) that the iddah of immature girls, older women and pregnant women was not mentioned in the Book of Allah. This verse was revealed. In Hadīths, the marriage of a minor is justified and even happens. Therefore, the Prophet's marriage to Umm-ai-momineen Hazrat Aysa (RA) is a clear proof of the legitimacy of the marriage of a minor. In Bukhari Sharif:

”عن عائشة رضي الله تعالى عنها أَنَّ النَّبِيَّ ﷺ تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ وَبِخَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ”¹⁶

Hazrat Ayesha (RA) narrates that when the Messenger of Allah (peace be upon him) married her, she was six years old and When she left her father's house to go with the Prophet of Allah (S.A.W), she was nine years old.

Similarly, there is another authentic Hadīth in Sunan Abu Dawud.

عَنِ ابْنِ عَبَّاسٍ قَالَ: إِنَّ جَارِيَةً بَكْرًا أَتَتْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَتْ أَنَّ أَبَاهَا زَوَّجَهَا وَهِيَ كَارِهًا فَخَيَّرَهَا النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.¹⁷

Hazrat Ibn Abbas (RA) narrates that a minor girl came to the Messenger of Allah (ﷺ) and she said that her father had married her while she

disliked him. The Prophet (peace be upon him) gave him the option (to maintain or dissolve the marriage).

It is also known from this Hadīth that the marriage of a minor is permissible, that is why the Prophet (peace be upon him) gave the authority to maintain or dissolve the marriage. Because if the marriage does not take place, how can the marriage be allowed to be maintain or to dissolve? All the jurists have also clearly mentioned the validity of the marriage of a minor and in its justification, they argue from the incident of the marriage of Hazrat Aysha (RA). Thus in al-Mabusut is:

“أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَهَا، وَهِيَ بِنْتُ سَيْتٍ، وَبَنَى بِهَا وَهِيَ بِنْتُ تَيْسَعٍ” فَفِي الْحَدِيثِ دَلِيلٌ عَلَى جَوَازِ النِّكَاحِ الصَّغِيرِ الصَّغِيرَةَ بِتَزْوِيجِ الْآبَاءِ.¹⁸

When she was six years old, the Messenger of Allah (peace be upon him) married her, and When she left her father's house to go with the Prophet of Allah (S.A.W), she was nine years old.

Similarly, early marriage has been justified in Fiqh Maliki. Thus, Ibn Abdul-Barr al-Namiri Al-Qurtabi writes in Al-Kafi fi fiqh Ahl al-Madinah al-Maliki.

“وَلِلرَّجُلِ أَنْ يَزُوجَ ابْنَهُ الصَّغِيرَ عَلَى النَّظَرِ لَهُ الْبَيْسِ ذَلِكَ”.¹⁹

And it is permissible for a man to marry of his minor son keeping in mind his good wishes.

It has also been declared permissible in Hanbali jurisprudence. So it is in Al-Mughni:

“وَإِذَا زَوَّجَ الرَّجُلُ ابْنَتَهُ الْبِكْرَ فَوْضِعَهَا فِي كِفَايَةِ فَالنِّكَاحُ ثَابِتٌ وَإِنْ كَرِهَتْ كَبِيرَةٌ أَوْ صَغِيرَةٌ”.²⁰

And when a man marries his virgin daughter in Kufu, that marriage is valid, even if the girl does not like it, and whether the girl is big or small.

In the light of these details, it is clear from the Qur’ān and the Sunnah, the consensus of the Ummah and the jurists that the marriage between a minor boy and a minor girl is valid in the Sharī’ah sense, and legislation against it is not credible. According to the majority of jurists, the marriage of minor children is permissible, as it is explained above. However, according to a small group of jurists, the marriage of a minor boy/minor girl is not permissible. As Imam Sarkhsi writes in al-Mabusut:

“يَقُولُ ابْنُ شُبْرَمَةَ وَأَبُو بَكْرٍ الْأَصْمُ أَنَّهُ لَا يَتَزَوَّجُ الصَّغِيرَ وَالصَّغِيرَةَ حَتَّى يَبْلُغَ الْقَوْلُ تَعَالَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَلَوْ جَازَ التَّزْوِيجَ قَبْلَ الْبُلُوغِ لَمْ يَكُنْ لِهَذَا فَاثَنَةً”.²¹

The opinion of Ibn Shubarmah and Abu Bakr al-Asam is that a minor boy or a girl should not be married until they reach puberty, because if the marriage of a minor boy or girl before puberty was permissible, then there is no use of words in the Holy Qur’ān.

Conclusion

Considering the council recommendations and members opinion, the study can be summarized that the opinion of JusticeTanzilur Rehman is so appropriate, for which the permission of the chairman of the local council was made conditional in the case that puberty is not the standard for the age of minor boy or girl according to the

prevailing law. I need to come forward to remedy the damage caused by pre-pubescent marriages. Even in the Hadīths, there is justification for marrying a minor, i.e. before puberty, but it is not encouraged to the people for marrying before puberty. According to the majority of jurists, marriage before puberty is permissible but not necessary and obligatory. In order to remedy the problems, it is more appropriate to make Shari'a puberty as the standard for marriage and in case of not being of age according to the prevailing law, the permission of the chairman of the local council should be made conditional.



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Notes & References

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