

Legal Competency for Marriage: In an Islamic and Pakistan Law Perspective

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Abstract

Marriage in Islam is more contractual ('aqd') in nature than ceremonial or sacramental. This esteemed tie-up of spouses conveys legal rights and obligations to each spouse. The fabric of society is made up of family institutions. Islam places high value on establishing a balanced, well-behaved relationship between spouses for a happy home. Islamic jurisprudence considered its primary purpose to be to make intercourse lawful and to legitimate the resulting offspring in a matrimonial contract. For its formation, specific competency is required, including physical and intellectual. Islamic law defined the jurisprudential basis for marriage capacity and pended its determination on interpretation. It concerns gender, age, mental capacity, religion, relationship with each other, marital status, etc. The ultramodern way of life and the advancement of technological and scientific achievements have introduced alarming changes in family relationships also. Lack of a jurisprudential approach to marriage leads to imbalanced marriage contracts and results in disturbed marital life as well as for the children, the future generations. A jurisprudential approach to marriage contracts will resolve present contemporary issues such as child marriage, forced marriage, and polygamy. The current study looks at marriage competency through the lens of Islamic injunctions. It emphasizes the fundamental regulations governing the legality of marriage contract. This paper examines the legal capacity for marriage and outline the requirements for a marriage contract to achieve its true objectives. It also leads to increased success factors in marriage and fewer breakdowns in Pakistan. Furthermore, this study also analyzes the contemporary juridical approach to the marriage contract. It, finally, brings recommendations to review the marriage laws of Pakistan. This paper follows qualitative and descriptive research methodology along with an analytical research method.

Keywords: Family Law, Marriage, Legal Competency, Child Marriage, Islamic Law, Pakistan.

Introduction

The family is one of the most esteemed social institutions in the world. It has the status of a fundamental building block for human society. This institution has a sacred position in all civilizations, particularly in the religious world, irrespective of the diversity of its formations. The ever changing world in modern times has introduced new zones in matrimonial matters. It is critical to revise and describe the competence of marriage in the light of jurisprudence to compete with the present issues. The very lack of research in family laws is the legal jurisprudence prevailing in these laws. There are a number of writing papers on the pro and con of child marriage, but with no line on its regulations. Now it is the time to define the regulations of Muslim family law, just like in other legal areas. This article explores the legal competency and jurisprudence of marriage contracts. It discusses the capabilities of marriage couples in legal and juridical science. Marriage is not only about women's and children's rights: it is also the hallmark of today's highly mechanized global community. Social scientists have to diagnose criteria for marriage contracts in order to ensure their stability and that of society. This institution is inextricably linked not only to individual happiness but also to societal happiness (the Ummah). That is why jurists describe its pivotal importance as a *lubnah* (brick) essential for the establishment of society.¹ Islamic law has detailed provisions on marriage contracts, i.e., their formation, classification, and regulations. Whereas, Pakistani law has ambiguous sections on this zone. However, higher juridical verdicts contributed here. This paper describes the legal competency for marriage prescribed by Islamic law. After that, it analyses the Pakistani laws and their gaps. Islamic jurisprudence placed matrimonial matters on the list of primary objectives of *Sharī'ah*. Being a social institution, it is a civil contract that rests on the same footing as other contracts. Its validity is determined by the capacity of the contracting parties, which is defined by Islamic Law as having a majority (*bulugh*) and discretion. Mutual consent and public declaration of the marriage contract are its essentials. It includes gender, prohibited degree of people, religion, mental and physical maturity, age, relationship to each other, marital status, etc. A contract requires the particular competency of parties, such as physical, intellectual, and legal. In regard to the formation of marriage, some factors have direct discussion, such as gender, religion, consent, waiting period, age, relationship to each other, marital status, etc. Islamic law has introduced chapters on regulations on which a sound and stable family life can be established. *Al-Baqarā* (the Cow), *Al-Nisā* (the Woman), *Al-Noor* (the Light), *Al-Ahzāb* (the Congregation), *Al-Talaq* (the Divorce), and *Al-Tahrīm* (the Prohibition) are the six permanent chapters containing the holy provisions on the regulation of matrimonial matters. The primary legal text, the Holy *Qur'ān*, has more than a third of its ruling provisions on family issues. There is a need to describe fundamental regulations of marital regulations in Muslim society.

1. Significant Formation of Marriage

Marriage is an acknowledged part of life, both in the family and in society. Its universality in different societies and cultures is attributed to numerous basic social and personal functions. In Islamic society, it is considered a religious duty, a moral safeguard, and a social commitment as termed *Mithaqn Ghaleez* (strong bond) as stated:

“And how could you take it when you've gone in unto each other and they've taken a solemn covenant from you?”²

Marriage was mentioned in the Qur'ān as a sign from God.

“And one of Allah’s signs is that He creates for you mates from yourselves, that you may dwell in tranquilly with them, and has ordained between you love and mercy.”³

It is recognized as the basis of society and a means for the continence of the human race, as traced back to the creation of the first human, Adam, and the creation of Hauwa as his companion.

Similarly, the Holy Prophet (PBUH) marked it as:

“There is no better structure founded in Islam other than marriage”.⁴

1.1. Religious Duty

Generally, marriage is a religious duty for a Muslim unless contrary circumstances appear. A general rule is revealed in the holy text:

“Marry the single people from among you and the righteous slaves and slave-girls. If you are poor, Allah will make you rich through His favor: and Allah is bountiful and all-knowing.”⁵

The Prophetic command is:

“Marriage is part of my Sunnah, and whoever does not follow my Sunnah has nothing to do with me. Get married, for I am heartened by your great numbers before the nations.”⁶

Marriage and family institutions have a pivotal place in the legal system of Islam. It can be seen from the fact that jurists considered the protection of marriage among the five basic objectives of Shari‘ah. It is an esteemed tie-up between spouses in every society. It is defined as a civil contract for the object of procreation and the legalizing of children. This contract has social, economic, psychological, and legal aspects. It creates legal rights and obligations for each partner.⁷ It is a natural desire for every human being and has many positive outcomes, of which the most:

1. Development of society through the formation of family institutions, as well as providing security and peace of mind;
2. Satisfaction of natural sexual desire in a secure and serene environment and protection from physical and psychological disorders;
3. Continuity of human procreation in a legal relationship.

For these purposes, spouses are intended to establish a union of love in order to live in peace and procreate and nurture children. It is well-acknowledged that both spouses have a common origin of equality, as the holy book identified the creation of a single soul;

“He who created you from a single soul, "Nafs," and therefrom did him make his mate, so that he might dwell in tranquilly with her.”⁸

In regard to classification, a marriage contract has three major types in Islamic law: valid, voidable, and void nature of marriage. On the other hand, there is no provision in Pakistani law to investigate a concrete definition of a marriage contract. As per regulation, section 5 of the Muslim Family Laws Ordinance, 1961 imposed mandatory registration of this contract.⁹ Violation of this provision causes punishment for the parties but doesn’t lead to invalidating the marriage.

2. Legal Competency

Islamic jurisprudence has defined legal competence (ahliyyah) as an essential segment to judge the fitness of parties to enter into obligations to bind and be bound. This competence

may have two aspects: i.e. eligibility for duty, which is attributed by virtue of humanity irrespective of gender and age, etc. The other aspect is its practical performance, also called "executive competence." It may be affected by gender and age factors.¹⁰ Muslim jurists identified the main ingredients of a marriage contract into the classification of foundations (arkan) and conditions (shurut). They play a pivotal role in the process of its conclusion at distinct stages. Hanafi jurists determine its status based on the fulfilment or non-fulfillment of the aforementioned elements, but they distinguish between irregular (fasid) and void (batil) contracts.¹¹

2.1. Gender Rule

Islamic law introduced the formation of marriage contracts only between humans and just male and female partners, not otherwise. In regard to gender, Muslim marriage can be formed only by opposite spouses as the legal divine provisions are texted,

"O mankind! We have indeed created you from a male and a female, [from] Adam and Eve"¹²"And we created you in pairs."¹³

The creation of distinct spouses is a sign of Allah Almighty, and between them is a special love and affection, which is an indication for wise people. The divine text is:

"And one of His signs is that he created for you from yourselves mates, so that you may find tranquility in them; and he placed affection and mercy between you; indeed, those are signs for a thinking people."¹⁴

Another verse mentioned:

"O mankind! Be mindful of your responsibilities to your Lord, who created you from a single soul and from it a mate, and from them a multitude of men and women have been born. Be mindful of your obligations to Allah, Whom you claim (your rights) from one another and the wombs that bear you. Lo! Allah hath been a watcher over you."¹⁵

Further Allah says:

"And [We had sent] Lot when he said to his people, Do you commit such immorality as no one has preceded you with from among the worlds? Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people"¹⁶

The underlying Rule for the establishment of family institutions is expressed in these verses. Marriage and family formation and nature are approached differently in the Muslim world than in the Western world. The Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW) has widened the definition of family beyond the natural limits mentioned above.¹⁷ The unisex family is a western concept provoked by Beijing, plus Conference 1994-5 or CEDAW, which is totally unnatural and lawless.¹⁸ Other than human beings, no gender has the competence to become a family spouse.¹⁹ A human family institution is constituted of two distinct spouses, male and female, and not otherwise.²⁰ The above-mentioned marriage competence is universally recognized as a fundamental requirement in Islam. Since the Anglo-Saxon period, same-sex or similar relationships have been illegal on the subcontinent. Pakistan has upheld this provision entitled "Unnatural Offences" under section 377 of the Pakistan Penal Code, 1860 (PPC) as:

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment ... for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine."²¹

Aside from it, the Hudood Ordinances of 1977 stipulated severe punishments for this nature of relationship.²²

2.2. Prohibited Degree Rule

Islamic law introduced a list of prohibited degrees to marry with, expressly as stated:

“You are forbidden to take as wives your mothers, daughters, sisters, paternal and maternal aunts, the daughters of brothers and daughters of sisters, your milk-mothers and milk-sisters, your wives’ mothers, the stepdaughters in your care- those born of women with whom you have consummated marriage, if you have not consummated the marriage, then you will not be blamed- wives of your begotten sons, two sisters simultaneously- with the exception of what is past: God is most forgiving and merciful”.²³

Muslim jurists described the regulations of consanguinity, affinity, and fosterage with regard to the absolute incapacity of marriage relationships whereas, such expressed regulations are not found in Pakistani laws. In this regard Qur’ān says:

“Do not marry idolatresses unless they believe. A believing woman is better than an idolatress, even if you like her. Nor should you give your daughters in marriage to idolatrous men, unless they believe. A believing man is better than an idolater, even if you like him. These invite to Hell, whereas God invites to Paradise and forgiveness at His discretion. Clarifies his revelations to the people so that they may take heed.”²⁴

2.3. The Rule of Guardianship (Wilayah)

In Islamic legal jurisprudence, various doctrines were introduced to ensure matrimonial freedom and women's empowerment in marital matters. For this purpose, the Rule of guardianship (wilayah) is used to secure the interests and honor of spouses and their families. A guardianship (al-wilayah) means, here, the authority to decide, independent of approval from others. It is possible to say that a legal authority has the authority to regulate the affairs of another person who lacks the necessary capacity.²⁵ In marriage contracts, a wali is someone who has been granted the authority to consent to marriage on behalf of someone.²⁶ Therefore, the Holy Qur’ān instructed, “you may marry them with the permission of their awliya (guardians) and give them their dower so that they may live a decent life in wedlock.”²⁷ The Prophet (PBUH) says: “Any woman who is married (or enters into marriage herself) without the permission of her wali, her marriage is void, void, void... If they are in dispute, the ruler is wali for those who have no wali.”²⁸

There are differing points of view on what constitutes a lack of experience warranting compulsory guardianship in marriage.²⁹ However, all schools of thought recognized the importance of the Guardianship Rule in matrimonial matters. The jurists, insisting on its compulsory segment, consider it a duty rather than a right of the guardian.³⁰ The intermediate view in this regard is that it is essential for the ideal contract of marriage to have the consent of the woman and her guardian.³¹ The Hanafi school of thought allowed major females who were legally competent to enter into marriage contracts of their own volition. However, they brought a high standard of kafā’a (equality) between spouses.³²

2.4. The Rule of “Marriage Equality” (Kafā'ah)

As stated in the doctrine of equality for marriage contracts, Islam ensures balanced steps in

all fields of life. In marriage, kafa'ah refers to the equality, suitability, and proportionality of the prospective spouses. For example, non-Muslims are unable to kafa'ah with Muslims due to religious differences. It stipulated that the husband must be on par with his wife (or her family) in a number of areas, including lineage, financial standing, and occupation. This verse states a moral and social general rule, and the marriage contract is the beginning of a new phase of social life. It is noted that social satisfaction is one of the primary essentials for the prolongation of matrimonial life. This rule has veracity in its determination of its boundaries and is unanimously acknowledged by all Muslim jurists. Therefore, the evolutionary process of human society lost the significance of the doctrine of marriage equality. However, educational and professional equality and other factors have become more contributive elements these days in matrimonial matters.³³

A contemporary jurist, Mufti Muhammad Shafi, discussed the issue of equality in marriage (kafd'ah). According to him, the absence of homogeneity in the temperaments of the spouses disturbs the purpose of marriage. Therefore, Shari'ah has ordered that kafa'ah (mutual likeness) should be taken into consideration.³⁴ Religion, being a free person, lineage, and profession are the four main factors to consider when determining whether a man is compatible with a woman. Therefore, a Muslim woman cannot marry a non-Muslim. A free woman will not marry a slave. A woman with an established lineage will not marry someone with an unknown lineage. A woman with a good profession will not marry someone with a lowly job.³⁵ There are many divine texts indicating the importance of this doctrine of marriage equality as:

“Wicked women (are) for wicked men, and wicked men (are) for wicked women: and good women (are) for good men, and good men (are) for good women. Those who are (declared) quit of whatever they (i.e., of what the wicked ones say) say: they will have forgiveness and an honorable provision.”³⁶

Another text is placed as follows: “And let those who cannot find someone to marry maintain chastity until Allah makes them rich through His favors.”³⁷

The legal divine text is:

“Marry those of you that are single, (whether men or women), and those of your male and female slaves that are righteous. If they are poor, Allah will enrich them out of His Bounty. Allah is Immensely Resourceful, All-Knowing. Let those who cannot afford to marry keep themselves chaste until Allah enriches them out of His Bounty.”³⁸

Another prophetic instruction is:

“Do not marry women for their beauty for it may lead to their doom. Do not marry them for their wealth, for it may lead them to fall into sin. Rather, marry them for their religion. A black slave woman with piercings who is religious is better.”³⁹

It is directed to choose a reasonable partner for a marriage contract and give priority to piouness, not financial capacity. This section also instructed that guardians should facilitate contact with those who are single and have the capability of discharging the responsibilities of married life. The Islamic state is advised to spend a part of the Zakat collections on the regulation of this area. It is also an instruction that one should not reject a pious and virtuous suitor merely because he happens to be poor. Young men, on the other hand, have been advised not to continue postponing their marriages unnecessarily in order to wait for better times; even if one's income is insufficient, one should marry with full faith in Allah.

The Prophet (PBUH) says that: "A lady is married for one of four reasons, wealth, rank, beauty or piety. Choose the possessor of piety and achieve success."⁴⁰

Our present society shouldn't incorporate the rule of equality from a foreign civilization other than our Islamic heritage.

2.5. The Rule of Witness

Islamic law protects vulnerable people's rights, including women and children. For these purposes, it is texted:

"No marriage can take place without the presence of a guardian and two trustworthy witnesses: any marriage that was not conducted in this manner is void, and the Muslim ruler is the guardian of anyone who does not have a guardian."⁴¹

The Holy Prophet (PBUH) instructed in these words: "Announce this marriage, and beat the sieve for it."⁴² Another Hadith is: "What differentiates between the lawful and the unlawful is (beating) the Daff and raising the voices (in song) at the time of marriage."⁴³ It is noted that secrecy in marriage contracts is forbidden by the divine provisions.⁴⁴ It is stated that two mature, sane, free Muslim witnesses, either two men or a man and two women, are required to witness the marriage of two Muslims.⁴⁵

2.6. The Rule of Waiting Period

The legal provision is mentioned as:

"There is no blame upon you whether you hint at a marriage proposal to such women or keep the proposal hidden in your hearts. Allah knows that you will think of them in that connection. But do not make any secret engagement with them and speak openly in an honorable manner. Do not resolve on the marriage tie until the ordained term has come to its end."⁴⁶

Islamic law encourages conducting engagements (marriage proposals). This verse forbids marriage during a period of waiting. It is also prohibited to use secrecy in marital contracts. It is an esteemed Rule of Islamic jurisprudence not found in any other legal system. Islamic law defines marriage contracts as valid, irregular/voidable, and void, while the laws of Pakistan have not expressly expressed this identification.⁴⁷ However, the Federal Shariat Court indicated this classification as a marriage before the completion of the period of *iddat*, which is to be deemed an irregular marriage but can't be treated as un-Islamic or void.⁴⁸ Islamic legal jurisprudence minutely identified the difference in rulings on the classification of marriage contracts. Therefore, it is necessary to describe the nature of an irregular marriage as equal to a void contract.

2.7. The Rule of Free Consent

The divine provision is texted as:

"Believers! It is not lawful for you to become heirs to women against their will. You should not impose a constraint on them that you may take away any of what you have given them (unless they are guilty of brazenly immoral behavior)."⁴⁹

It means that women have human dignity and require honourable treatment. This text forbids all types of relationships with women against their consent. It is noted that consent of spouses for marriage is a paramount element and coercion in religion itself is forbidden, and how much more so with respect to marital issues!⁵⁰ Marriage is an acknowledged subject

of consent for both men and women, but the practice of child marriage, arranged marriage, exchange marriage, compensation marriage, etc., deprives a couple's freedom. Similarly, religion is pronounced a basic right and a matter of freedom in Islam and in the Constitution of Pakistan.

The notion of "forced marriage" describes the conduct of marriage without consent or will. In the 19th century, the Ottoman Empire codified the first family law entitled "Ottoman Law of Family Rights" (OLFR). It was abrogated after two years in the empire, but Muslim countries incorporated this model later on. This admirable enactment defined legal competency for marriage.

The right to marriage is protected by the Constitution of Pakistan under article 35. It says, "The State shall protect the marriage, the family, the mother and the child." It is the right and desire of a spouse to marry a person of his/her choice and no one, including the court, can dictate to disconnect a marital tie just at the parents' wish or to strike a balance in society.⁵¹ And it is mandatory to ensure free consent of spouses, either themselves or their agents, and the contract of marriage should be witnessed by two adult witnesses.⁵²

Moreover, a Muslim adult female can marry without the consent of her wali.⁵³ The judicial approach to marital life explains further that the police or any other state agency has no authority to interfere in the marital life of a couple where they are *sui juris* and have contracted marriage with their free consent.⁵⁴ Aside from that, the judicature of Pakistan adopted the Islamic rule for a girl's marriage: a woman, without a husband, must not be married until she is consulted, and a virgin must not be married until her permission is sought.⁵⁵

2.8. The Rule of Dower

As mentioned, Islamic law denoted the Rule of dower in marriage contracts to empower and dignify the women, as mentioned: "Give women their bridal-due in good cheer (considering it a duty): but if they willingly remit any part of it, consume it with good pleasure."⁷

Another provision is:

"And if you divorce them before touching them or settling a bridal gift on them, give them half of what you have settled, unless either the women act leniently and waive their claim, or the man whose hand the marriage tie is in acts leniently (and pays the full amount). If you act leniently, it is closer to God-fearing. And forget not to act gracefully with one another."⁵⁶

The Holy Prophet (PBUH) says: "Pay dower (mahr) to your wife, even if it is a ring made of iron".⁵⁷

Islamic law strictly protects women's financial interests and dignity as well as secures women's right to bridal-due. It is a mandatory segment of the marriage contract. According to Muslim law, a dower is a sum of money or property promised by the husband to be paid or delivered to the woman in exchange for marriage, even if the dower is not formally proclaimed at the time of marriage.⁵⁸ Section 10 of MFLO 1961 deals with the dower and declares it mandatory.⁵⁹

2.9. The Rule of Polygamy

The holy text prescribes:

"If you fear that you might not treat the orphans justly, then marry the women that seem good

to you: two, or three, or four. If you fear that you will not be able to treat them justly, then marry (only) one, or marry from among those whom your right hands possess. This will make it more likely that you will avoid injustice.”⁶⁰

A number of views are noted on the interpretation of the above text. However, it is acknowledged that its revelation tended to empower women, such as by securing the interests of orphan girls and limiting the number of wives. In other words, it is instructed that the Muslims marry up to four wives to the extent they possess the capacity to treat them equitably. This text provoked the concept of justice and equity with regard to women. This verse stipulated more than one wife with the restriction of fair treat. It is clear that polygamy is not evil itself and is not expressly banned.

It is certainly denounced in disregard of the legal jurisprudence of the Qur’ān, leading to its abolition. Indeed, there isn’t a single word advocating for the abolition of polygamy.⁶¹ This provision’s jurisprudence makes it clear that, in response to complaints from wives about unequal treatment, the Islamic state has the authority and right to intervene and redress such grievances.

2.10. The Rule of Child Marriage

A heated debate is raging over the issue of marriage age, as well as child marriage and underage issues. Islam didn’t prescribe a specific age for marriage but gave a jurisprudential approach with some reference:

The divine provision is:

“Test the orphans until they reach the age of marriage, and then if you find them mature of mind hand over to them their property, and do not eat it up by either spending extravagantly or in haste, fearing that they would grow up (and claim it). If the guardian of the orphan is rich let him abstain entirely (from his ward’s property): and if he is poor, let him partake of it in a fair measure. When you hand over their property to them let there be witnesses on their behalf. Allah is sufficient to take account (of your deeds).”⁶²

This text indicated that mental maturity is essential for important matters such as financial security for children’s rights. Marriage contracts, it should be noted, also include financial provisions, but their importance is greater than that of others. This provision exceptionally allows parents to hand over children’s matters in case of determination of their managing capacity.⁶³ Similarly, early marriage is permitted in exceptions when the guardian or state/judge is satisfied with the physical and intellectual competence of minors. However, generally, attainment of puberty and mental maturity—i.e., the capacity to manage their affairs in a sound and appropriate manner—both are essential for a marriage contract.

Another provision is here:

“And marry those among you who are single [a man without a wife and a woman without a husband] and [also marry] the *saliheen* [pious, fit, and capable] of your [male slaves and maid-servants]. If they are poor, Allah will enrich the Mout of his bounty. And Allah is all sufficient for his creatures.”⁶⁴

Another Qur’ānic verse is a landmark reference for the condemnation of every type of coercion, including underage and forced marriages: “O believers! It is not legitimate for you to be the heirs of the women you forcefully married.”⁶⁵

It is stipulated that there be no minimum or maximum age specified, but that one must attain

puberty, sound judgment, and comprehensive maturity before entering into a marital contract. It is a stated Rule that a marriage contract should include the ability for spouses to understand and fulfil their rights and responsibilities. To return the property or to hold ownership, mental maturity and physical capacity are required to prevent the loss. It is a priority to fix the mature age for marriage as it affects the whole life.

It is important to note that exceptional permission to conduct child or underage marriage is also for the preservation of children's or girls' rights, not otherwise. Although child marriage is prohibited, marriage is regarded as an act of maturity. Moreover, it is implied that true objectives may only be achieved through mature spouses. The determination of age is one of the major issues in the field of fiqh and law, and there is no concrete consensus among jurisprudence and Islamic scholars in this regard. However, all scholars unanimously agree that the proper time and age for marriage is when an individual reaches sexual as well as mental maturity. The primary objective of marriage is to procreation of offspring. It can be achieved with healthy spouses. Preservation of health and promotion of intellectual through education come under the concept of fundamental objectives of Islam as: *Hifz-ul-nasl* and *Hifz ul Aql*.⁶⁶ Marriage is required for Muslims who have physical health and financial means to disburse marital rights of a wife, as instructed by the Holy Prophet (PBUH):

“O assembly of youths, whoever among you is able to have, he should marry, for it is a restraint to the looks and he who is not able let him keep fast.”⁶⁷

The natural aim of marriage is to obtain sexual satisfaction, and the purpose of reproduction is natural. And a child, however, negates either purpose. It is worth noting that Islam permitted but did not encourage child marriage by guardians. This practice is permissible in exceptional cases and as a matter of grace, not of right. The right to marriage is related to spouses and requires free consent while a child has no capacity to give proper consent. A pre-arranged marriage may be annulled if either spouse wishes so. The Hanafi school of thought holds that a guardian has no absolute authority to confine the child to marriage. In fact, all Sunni schools unanimously forbid the coercive nature of marriage. An important purpose of marriage is to attain psychological, emotional and spiritual companionship. Under the Child Marriage Restraint Act 1929 (CMRA), the minimum age of marriage is fixed at 16 years for girls and 18 years for boys. Violation of these specifications is backed by the penal clause. The criticism is designated as:

1. No exceptional permission is allowed while Islamic law is permitted.
2. The penal code made this permissive nature act a crime.

The Federal Shariat Court upheld the legality of provisions 4, 5, and 6 of CMRA 1929 regarding the determination of age for marriage in the laws of Pakistan. The honorable court identified the marriage contract and the consummation of marriage.⁶⁸ The well-known scholar Dr. Tanzee-ul-Reham also commented that underage marriage is not only a religious matter but it also requires study as a social issue. Besides, it is only a permissible matter, not of a mandatory nature. Islam empowers the state to enact and implement laws for the betterment of the masses. The state may introduce administrative laws and impose restrictions in the best interest of the people. This authorization is allowed only within the limits of *Shari'ah*, as the divine instruction is to obey those in authority among you. Therefore, the state may set an age for marriage with regard to securing the public interest.⁶⁹ Early marriages are the huge propellers that cause the surge of instability in society.⁷⁰

Conclusion and Recommendations

In human history, the family has held the defining position in social institutions. Islamic law organizes its primary list of rulings in a different way than modern concepts. It is a settled legal rule that changes in propositions alter rulings. All laws have concrete regulations on which legislation, interpretations, and reliance rely. Unfortunately, Muslim family laws lack the jurisprudential basis required to explore the legal regulations in this area. Marriage is the first step to establishing a family institution on which some regulations of competence are explored. Muslim family law prescribed a detailed provision on legal competence for marriage, while the contemporary law of Pakistan missed it. In Pakistani society, the regulations of equality, guardianship, suitable bridal-due, and determination of age are misinterpreted regularly. It is time to study divine texts and explore the legal regulations to ensure matrimonial freedom. The Islamic legal heritage has a rich legal jurisprudence on family prepositions. Academicians and researchers should take notice and highlight it. Ultimately, this type of work will result in an efficient contribution to the understanding of family laws by legislators, judges, and legal philosophers. There are some recommendations:

1. Pakistan is an Islamic state and its legislation needs to be confirmed with Islamic injunctions provided in the Qur'ān and Sunnah. It is recommended to raise public awareness of the significance of family institutions in Islamic rulings.
2. The legislature should introduce provisions in family laws by applying regulations of Islamic jurisprudence to compete with present issues.
3. The legal persons should interpret and resolve matrimonial issues in accordance with the regulations of Islamic legal jurisprudence.
4. The universities should teach a proper subject on the legal regulations of Muslim family law to provoke the Islamic legal wisdom to solve the new marital problems.
5. Regulations of equality, guardianship, and payment of bridal-due should be strictly observed and applied. The government should place them as part of the documentation.
6. Early marriage and coercive marriage contracts must be discouraged and regulated by the implementation of laws.
7. A policy of encouragement should be applied rather than strict punishments.
8. There is a need to assure the consent of spouses, particularly the girl's consent at the time of Nikah. The government may proclaim a mandatory consent declaration before a judge, particularly in the case of child marriage, to bar forced marriages.
9. The present era can't deny the significance of monetary and professional status for sound and solid marital life.

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