

Marriage of Young People in Islamic Jurisprudence

Dr. Raghad Mahdi Abdul Amir Al-Rubaie

University of Muthanna / Faculty of Education of the Human Sciences Department of Quran
Sciences 2018 - 2019

Abstract:

This research is entitled "Marriage of the Young in Islamic Jurisprudence", falls into four topics. The first topic is about the definition and importance of marriage, the second is entitled "Conditions of Marriage", the third is about "The guardianship and the Agency in Marriage", while the fourth topic deals with the "Marriage of Minor In Islamic "Fuqih" jurisprudence), with conclusion that includes an outline of the most important findings the research has come out with.

The First Topic: Definition & Importance of Marriage

Keywords: Marriage, Young, Islam, Jurisprudence

I. INTRODUCTION

Praise be to Allah, Lord of the Worlds, and peace and blessings be upon the most honorable of all creatures, Muhammad and his pure family.

Marriage is one of the most serious decisions, which one makes in one's life, as it relates to the establishment of the family and the formation of future generations. So any imbalance in such a decision will have a far reaching impact both on the individual and society at large.

The marriage of minors is an alarm for the violation of the rights of childhood that requires not only the care of parents but also the care of the entire community. Although their marriage underlies a narrowing of the provisions, the religion did not legislate for what it may be difficult for the human, but for the sake of ease and benefit in this world and the Hereafter.

This research is entitled "Marriage of the Young in Islamic Jurisprudence", falls into four topics. The first topic is about the definition and importance of marriage, the second is entitled "Conditions of Marriage", the third is about "The guardianship and the Agency in Marriage", while the fourth topic deals with the "Marriage of Minor In Islamic "Fuqih" jurisprudence), with conclusion that includes an outline of the most important findings the research has come out with.

The First Topic: Definition & Importance of Marriage

First: the Arabic word "Zawj" "marriage is linguistically defined to as pairing of a husband and a wife, or a male and a female, coupling of things in pairs. The pair is different from the individual, it means that the individual has a mate; in addition the word pair means two, it means –as was said- the male and the female. Allah (swt) says, " ***That he did create in pairs -male and female.***" This Koranic verse indicates that the pair means the male and the female, and the wife's spouse "ba'laha" is her husband and the man's spouse "zuj" is his wife.

Second: The idiomatic meaning of marriage is a legal contract "matrimony contract" (Nikah – Namah) between two people, as Allah (swt) says, " ***And among His signs is that He created for you wives from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your hearts.***" Despite differences in the idiomatic arrangement among the Islamic schools of jurisprudence, they agreed on one meaning of marriage represented in bonding of two people. Imaniyates' scholars defined marriage as a contract that embraces an offer and a consent of the two parties to the contract or of their representatives, such as Wakil or Wali "representative and the guardian". Accordingly, a contract cannot be considered valid if it based on wilayah only.

Imam AbuIt Hanifah was quoted as saying that marriage is a contract that promotes love and pleasure "qasdan" "intentionally" and it is Sunnah and obligation that has the elements of offer and consent of the suitor and fiancé. Imam Shaf'ii said it was a contract according to its consummation or marriage becomes permissible. Imam Malik said it was a contract legitimizing "Nikah" having sexual intercourse with a non-haram female or a Magi from the people of "The Books" in the form of a mahr or Rajl seed. As for the Hanbalis, it is said that it is a contract of marriage, and a stipulation is to be given to him, unless he is distracted from it. The common sense of the term may reflect some differences in its usage, but it has the same meaning in accordance with all Islamic schools of jurisprudence, as a generalized association in all religions, it is important for the happiness of the individual and the continuation of race and the preservation of society from evil and to protect individuals from being engaged in haram.

Third: The importance of marriage in Islam

Marriage is of great importance in Islam and other heavenly religions. There are many signs in the Koran that urge marriage. The noble Sunnah also supported the Koranic signs that emphasize its importance; Allah (swt) says, **"And among His signs is that He created for you wives from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your hearts."**

The Prophet (peace and blessings of Allaah be upon him) said: **"marry of women who seem good for you"** as Allah Almighty says **"We created you in pairs."**

Islam took great interest in the issue of marriage because it properly meets the desires of both male and female and since the Koran is an infallible text of which provisions and teachings are taken, the above mentioned signs are considered clear-cut statements indicating marriage is a universal sign. Islam affirmed the formation of the family and establishing its pillars, even the Prophet (PBUH) counted that as a reason to preserve half the religion. As stated in both the Koran and Sunnah due to the fact that the issue of marriage in Islam holds great importance.

The Prophet (pbuh) said: **"there is nothing that prevents a believer from taking "Ihlan lahu" a wife, May Allah reward him with a soul that fills the earth with the word "there is no Lord but Allah."** the Messenger of Allah also said **"O young men, whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding one's chastity. Whoever cannot afford it, let him fast, for it will diminish his desire."** there is another hadith about the importance of marriage, narrated from Abi Abdullah (p) said: The Messenger of Allah (pbuh) said: **"When a person gets married, he or she has completed half of religion, then fear God in the other half of it."**

What was narrated about the importance of marriage in Islam that a group of three men came to the houses of the wives of the Prophet asking about how the Prophet worshipped (Allah), and when they were informed about that, they considered their worship as insufficient and said where are we from the Prophet as his past and future sins have been forgiven." Then one of them said, "I will offer the prayer throughout the night forever." The other said, "I will fast throughout the year and will not break my fast." The third said, "I will keep away from the women and will not marry forever." Allah's Messenger came to them and said, "Are you the same people who said so-and-so? By Allah, I am more submissive to Allah and more afraid of Him than you; yet I fast and break my fast, I do sleep and I also marry women.

So he who does not follow my tradition in religion, is not from me (not one of my followers.)

All of these Koranic verses and the prophetic Hadiths indicate the importance of marriage in Islam. So when the time of marriage is high, and man does not marry, he or she will get corrupted, as if the ripen fruit, when unharvested, it gets rotten. Marriage protects both husband and wife against corruption, and against gazing at those who are God's prohibitions and prevents the individual from involving with satanic acts. Marriage is protection for the society against evildoings. It also promotes love and modesty and enjoyment of the spouses and maintains race to continue on the earth because Nikah is what man desires to preserve the kind and the building of the family.

The second Topic: Conditions of marriage

First: Definition of Condition as a word and term

The Arab word "Shart" condition means to adhere to something as an obligation to be committed in the sale or so on, its base is "sharata" to stipulate (plural: shurot) conditions. And the "shart" with a mark on the letter "Ra" means a token and its plural "Ishrat" such as the ishrat of the Hour as Allah Almighty says: **(Do they then only wait for the Hour,- that it should come on them all of a sudden?)**

As for the idiomatic meaning of the word "shart" a "term or condition": plus its original function, it is a duty or an obligation imposed legally or socially; thing that one is bound to do by contract, promise, moral responsibility, whether or not this obligation is beneficial for the one or ones to the contract.

Under the Islamic Shariah, the coupling of the condition of marriage with a contract is to regulate the life of the society and this is true in all current transactions of various kinds between people. Sharia also granted the parties to the contract a right to stipulate in the "Shart". Contracts are different in their "Shtratah" (conditions); some may be applicable and some are not. The Islamic conditions as a sacred bondage of specific privacy prescribed by Allah to promote love, tranquility and mercy between husband and wife and maintain their kind.

Second: Conditions of Marriage under Shari'ah and Law

The schools of Fiqh have their own opinions about the conditions that must be available for marriage to be completed, and to continue in the way satisfactory for the two parties to it; these conditions are divided as follows;

1-Conditions of the Contract

2-Conditions of the Validity of the Contract

3-Conditions for the effectiveness of the contract

4.Conditions for the Necessity of the Contract

5.The Legal Conditions Necessary for the Validity of the Marriage Contract

The following is a breakdown of each of these conditions, and the clauses that each condition embraces and opinions of the Islamic Maddhab about what should be provided in the condition and what should not.

The conditions of the marriage contract are those that are required to be provided in the contract or established in the contract. If a condition is not met, the contract is considered invalid. They are divided into two types; conditions related to the contractors and conditions related to the formula of contract.

The condition of the validity of the contract are the conditions that must be provided in the contract to arrange the legal effect, and any default in these condition renders the contract as null and void; they also fall into two types, one related to the validity of the contract that requires the woman not to be of God's Prohibitions and one related to the presence of witnesses

The condition of the effectiveness

The contract shall become effective and to be deemed effective as of the date it is already concluded and becomes valid. It has several types; first the eligibility of the bride and groom, and secondly; it is not *Negotiorum gestio*.

The condition of the necessity

As soon as the contract acquires the condition of necessity, it becomes irrevocable and binding for the two parties. It shall not be fraud; under which the bride and groom are free of defects, and the groom is capable to hold such responsibility.

The condition of legality necessary for the validity of the contract shall include important matters such as the marriageable age, the discrimination of the two parties, and in order for the marriage to take place in a legal manner, it shall satisfy all the previous conditions for the satisfaction of the two parties alone or the acceptance of their representative are not sufficient to make the contract valid. It shall not include any legal barrier that impedes the marriage. The establishment of the marriage contract is a legally legitimate behavior; it cannot be valid unless it satisfies two kinds of conditions; the substantive

conditions of legality and the formal legal conditions as stipulated in the Personal Status Law under Article 5 that: "The marriage contract shall be valid in accordance with the legal and legitimate conditions of both parties. Article 10 of the same law stipulates that: "A marriage contract shall be registered in the competent court without a fee in a special register as per the following conditions;

1.the two parties shall provide a statement that identifies their characters, ages, eligibility, the amount of dowry and their being void of any legal impediment of marriage. The statement shall also include the legal condition and all other aforesaid conditions under legitimate conditions. It shall also include their signatures and shall be documented by the mayor of the district or the village.

2. The two parties shall produce a medical report that certifies their being free from communicable diseases and health constraints because if the medical report is not accurate and negligibly received by the court, the spouses may develop diseases that will affect them first and then their children. Sometimes, such diseases, which are not detected by examination or are ignored, may prevent the couple from having children. Therefore, their safety and maintenance of their having children shall be seriously taken into consideration.

The law requires some official documents to have the marriage contract such as:

a) The official identity cards of both the bride and groom to know their ages and marital status (M / 37 of the Civil Status Law) or passport and residence book for foreigners

- B) Their nationality certificates
 C) The approval of the competent authority, ie, the suitor's authority "office"
 D) The certificate of an irrevocable divorce of a major degree of the divorced or divorcee or the death certificate of the guardian if he is a deceased person or the ex-husband to make sure of the termination of the waiting period.
 E- A Memo from the suitor's Civil Status Department confirms his being free from any impediment , based on the generalization of the Presidency of the Republic, 1 / 1409 on 27/1/1985.
 D. if one of the parties has a different nationality (non-Iraqi), including the Arab citizens, the court must obtain the approval of the Directorate of Residence on marriage.
- 3.The content of statement shall be recorded in the register and signed by the signatories or fingerprinted , in the presence of the judge, who documents the contract. The spouses shall be given a marriage certificate, then, the file shall be submitted to the personal status judge, to hear the recital of the offer and acceptance, as well as the age, then take all other procedures that convert them from unmarried into married in the court registrations.
4. The content of the certificates recorded in accordance with their origins are applicable without evidence as regard the dowry, so if the wife filed a lawsuit to claim the husband of her marital rights, such as the alimony or dowry and the husband denied, the certificate issued by the court is considered a sufficient evidence. These are the legal conditions necessary for the conclusion of the marriage contract to facilitate the process of marriage and avoid forgery, and falsehood and to preserve the rights of the spouses. The original conditions are fixed, but the differences may be risen in some clauses of the conditions, for instance, Imamate School of Fiqh has stipulated the following
1. The offer and acceptance: the contract consists of the recital of the formula (Seegha) which contains the offer of the bride and the acceptance of the bridegroom, and consent alone is not enough but in case of the dumb and deaf.
 2. It shall be recited in proper Arabic language.
 3. The offer shall be recited by the bride and the acceptance by the bridegroom.
 4. The offer shall be recited first and properly articulated : zawjt, ankahit, mata't.
 5. The pronunciation of words shall not be in correct to change the meaning.
 6. the effectiveness shall not be put off as per a condition or specific time.
 7. Pursuance and non-separation between the offer and acceptance.
 - 8.The bride and bridegroom shall be sane, mature and capable
 - 9.the selection of the wife
 10. being void of unmarriageable impediments.
 - 11.Admiration of witnesses, and this indicates the validity of the contract without being testified.

Malikis classified the conditions of Nikah according to the contract, to contracting parties and to formula "Seegha"; they stipulated that the formula should contain the following conditions; offer and acceptance, to be recited orally and immediately, without insisting on the testimony of the witnesses, which is required at consummation, the necessity of the wife assignment and consent, sanity and puberty, freedom from unmarriageable muharamat "taboos", while Shaf'ites classification of the conditions is often similar to that of Imamates' except for the condition of testimony as enacted by Hanafis and Hanbils, who added the condition that the contract of marriage is not valid unless it is certified by witnesses.

They also stipulated that Seegha should contain the offer by the bride and the acceptance by the bridegroom, to be orally recited before Qathi through the recital of the words Nikah and Zawj and ghor, and this was what they agreed upon with Imamtes, Shaf'iis; yet Hanbalis did not stipulated the "ghor", they ascertained the following:

- 1.Eligibility
- 2.Offer and Acceptance
- 3.Recital of the offer and acceptance
- 4.Unmarriageable constraints
- 5.Testimony

All schools of Fiqh agreed to these condition despite tiny differences; all of them sought to attain God's orders correctly in the marriage contract to avoid mistakes that may lead to prejudice or termination of the contract; therefore all these conditions should be taken into consideration as being legal and legitimate.

Third Topic: Wali (guardian) and Wakil (agent)

First: definition of wilayah (guardianship) as a word and idiom:

The Arabic word "Wilayah" means kinship, and a Wali "guardian" is a person who is entrusted with a task to conduct and look after the person and property of another person, who is defined as a ward.

The terminological definition of the Wilayah is a power in accordance to which a person will be able to establish contracts and other legal conducts, execute them and bear the consequences thereof. There is no marriage in except with a wali as agreed by the Islamic schools of jurisprudence, as it was stated in the Koran that the wali has the power in both marriage and authority

" And marry the unmarried among you."

Abu Abdullah (p) narrated as saying, "Don't marry virgins unless their fathers' consents are sought." The Prophet of Allah also said , "**There is no marriage except with a wali.**" During Jahiliah "the pre-Islamic era" The father was the head of the family, who looked after the interests of his children, when he was dead, either his brother or his grandson occupied his position in the issues of marrying of his daughters, particularly, the virgins.

Hanafis denied the principle of marrying of a sane mature woman except with a guardian, based on the noble Hadith "The daughter has more right to herself than her wali."; in that he cannot marry her unless he seeks her oral consent because she has more right to herself than him. Therefore, the negligence of the father's guardianship in the contract of marriage underlies precautions and errors that may lead the woman in case of a hasty marriage to a man of polygyny, and that her being inexperienced and enticed by her husband's nice word, may culminate in divorce. That's why the father's role assumes certain importance in Islam. But if his role contrasts with the daughter's interests, such as staying her unmarried to look after him, the daughter in such a case can complain her father to the judge, and the judge will marry her to the person whom she wants.

Imamate scholars said: "A wise mature woman, whether a matron or a virgin, has the right to establish any kind of contracts, even marrying herself directly to the person she want, without seeking her father's consent, and her decision is considered irrefutable, bringing forth an evidence from the Koran, "**when ye have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands.**"

The puberty is a period during which adolescents reach sexual maturity and become capable of reproduction, which also brings about dramatic emotional and intellectual alterations, which can be divided into visible and invisible parts:

The visible changes includes the germination of hair, roughness and amplification of sound and the breasts growing and pelvis enlargement, menstruation, while the invisible ones refers to the bodily changes undergone, especially by the reproductive organs and their ability to reproduce.

Shaf'I, unlike other Mathahib scholars, affirmed that the polygyny of the guardian does not prevent his wilayah, as indicated by the Koran , "**And marry the unmarried among you.**" And due to his having freedom, sanity and maturity and capacity of marrying himself, he is permitted to a guardian in the marriage contract for his polygyny does not impede the wilayah in Nikah.

Custody as a type of guardianship

There are two types of guardianship; guardianship regarding one's self, which is concerned with the authority to conduct one's affairs by one's self, whereas guarding regarding other means "the carrying through of a decision affecting a third person whether the latter's wishes are taken into consideration or not. This type of guardianship falls into two categories:

- 1.Gurandianship of Person; and
- 2.Gurandianship of Property

Guardianship of Person is the power and conduct of taking care of the ward's personal affairs such as marriage, education, discipline, medical care, career prospects, and the like. Guardianship of Property , on the other hand, is the power to conduct, administer and conclude contracts and other legal conduct relating to the property of the ward.

There is also another type of guardianship, which includes the guardianship of Person and Property together under which the wali takes care for both the Person and Property .

The research focused on the guardianship of Person because it is closely related to the family system and interests, under which the guardian takes care of custodian's affairs, conducts what benefits him. Therefore, the legislator took great interest in the selection of the guardian from the closest people to the ward.

The guardianship of Person is divided into sections, in accordance with the agreement of most jurisprudents; guardianship of compulsion and guardianship of freedom as advocated by Hanafis, Shafis, Imamates and

Hanabils, whereas the guardianship according to Malikis, is divided into private and general guardianships. The first is given to six types of persons; the father, his testator, blood relative, guardian, and governor, whereas the general is given to under one reason, which is Islam in that it is given to every Muslim. As for the guardianship of compulsion, it is obligatorily imposed to the capable, based on four reasons in accordance with Hanafis; kinship, ownership, allegiance, and Imamate, under Shafis' it is given to the father and the grandfather, as per Hanabils, given to the father and his testator, to the governor, whereas in Imamates, there is no guardianship in marriage but to the father and the grandfather, the testator, guardian and the governor. The guardianship of choice is given to the mature sane woman, who can marry herself without seeking the consent of the guardian. As for the ranks of guardians, all Fiqh scholars agreed to the guardianship of the father, despite their differences in the categorization of the guardians; Hanafis gave it to the grandfather to the father, brother, step-brother, brother's son, uncle, cousin. After father for Malikis comes the recommended son, even if he is an adulterine, then the brother, the brother's son, the grandfather and the uncle, then the governor. As for Shafis, after the father, comes the grandfather, the brother, the step brother, the brother's son, the uncle, and the cousin, while for Hanabils, they arranged them as follows, the father and his recommended testator, then closest, the closer, the close heirs, then comes the governor. While Imamates gave it to the father and grandfather as confined to the small child, boy or a girl and he has not right to the mature adult.

The Wilayah as a hierarchy, if it lacks any condition, it is given to the next as per the classification of each Mathhab. They agreed that the guardian should be mature, Muslim, reproductive male, while justice falls to the governor, not the blood relative. Hanabils regarded justice as obligatory for every guardian whether he is a governor or relative.

In spite of all agreements or disagreement, Al-Wilayah is an important principle. Some tribesmen consult their daughters in about whether their suitors are equal to them in nobility and descent, so that they enable their daughters to choose their partners in accordance with personal characteristics, such as generosity, courage, intelligence, and manners. Widows and divorcees have the right to themselves, and they can choose the suitable husband. When her hand is asked by someone she wants him, she asks him to ask her father for her hand. No one can prevent her to marry him if she wants him except for being not capable or competent, her brother is entitled to prevent her if the father is not found. Some women talk and discuss their suitor.

And it happens that a woman when she admires some competent man, she sends to him to ask her hand. The best example for this was Al-Sayyida Khadijah the first wife of the Prophet (PBUH), who was one of Quraish noble ladies; she sent to the Prophet (PBUH) to ask her hand from her uncle. The Prophet's uncle, Abu Talib, engaged her to the Prophet, who married her. These differences over the issue of the guardianship belonged the pre-Islamic period, but with the advent of Islam, they were modified in a way to comply with new ideals of Islam related to man's will and respect.

Before and after Islam, the guardianship in marriage was confined to the father, grandfather, and brother, who care for and protect the daughter's interests in a way that she could live happily and conduct a positive role in life such as building of family and rearing of children for a better generation.

Second: Definition of the Agency

The Arabic word "Wikalah" (agency) is derived from the Arabic base of the verb "wakala", which means to authorize an agent to act on behalf of.

While terminological definition of agency refers to a consensual relationship created by contract or by law where one party, the principal, grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with a third party, underling offer and acceptance in word and deed.

The agent shall take his authority from the client to carry out his duties. The agency shall be a kind of guardianship to enable the agent to act on behalf of the client, such as the relation between the guardian and the ward. The agency is applicable in many contracts, including the marriage contract for the marriage contract underlies characteristics that should be observed and taken into account to achieve an end of legislation.

In marriage contract, both the bride and the bridegroom can appoint an agent to act on behalf of provided that they are sane and mature as indicated by Hanafis' Fiqh that since the woman has the right to marry herself to whom she wants, she can appoint an agent to act on her behalf in the marriage contract. The majority of Fiqha, except for Hanafis, agreed that the woman cannot appoint someone rather than her very guardian to act on her behalf in the marriage contract, if she does not have the right to herself. This is one of the rules established in the Islamic legislation; " that whoever has the right to act by himself, or to appoint another, as long as the act accepts the prosecution, and whoever does not have the disposition of himself, does not have the right to appoint others in his initiation.

Like in all contracts, the agent in marriage shall comply to certain conditions so that his power can be properly effective.

- The agency is considered valid if done in writing.
- The client shall not appoint an unknown agent.
- The agent is not authorized to appoint someone else to act on behalf of unless the client's approval of the is obtained first.
- The Agency is a legal contract by both parties. Therefore, both client and agent can terminate the contract.
- The Agency shall terminate if one of the parties dies.

All schools of Fiqh has agreed to most matters of agency and its conditions, except for some almost minor differences, and whenever a woman appoints an agent in her marriage, he has to marry her to an equitable person because she usually does not who is not equal to her and who her parents refuses. The agent is considered valid either by the two parties or one of them if they are mature, and if they are underage, by their guardians. The client must determine the affairs of marriage that he or she wishes, so that the agent can execute even if they were against the agent's interest. When a woman appoints an agent to marry her to a husband, he can marry her by himself, provided that he understood the conditions generally, and obtained her consent, the marriage contract is among the contracts that can be executed by the parties as long as it meets all legal conditions.

The fourth topic: Marriage of Minors in Islamic Jurisprudence

First: Age of marriage

Although there is no legally specific age for marriage, minors are authorized to marry as long as they reach the age of puberty, as the age of natural maturity, yet it varies according to people and communities and be influenced by climate factors and the nature of the environment, where minors reach puberty so early in hot areas, the girl at the age of nine or ten, and the boy at 12- or 13, while in cold areas, the girl becomes mature at the age of 15 or 16 and the boy at 17 or 18, whereas in moderate area it happens in between.

Legitimately speaking, a minor girl is legalized to marry a husband as indicated by several Koranic verses, which scholars interpreted as an allowance of minors' marriage.

Allah Almighty says: "***Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three months, and for those who have no courses.***"

In this sign Allah (swt) made for the minor, who does not menstruate, a prescribed period of three months, which is assigned only for the married woman. Accordingly, the contract is considered valid without seeking her consent for she is of the age at which her consent is not considered as referred to by the sign "***And marry unmarried women among you.***" Where the Arabic word "al-im" refers to "an unmarried woman whether minor or mature and this is a sufficient evidence for the validity of marrying the young woman.

The noble Sunnah authorized such marriage, based on Aa'shah's Hadith (the Prophet's wife) as saying: "The Prophet married me at the age of six and at the age nine, he had consummation with me." It was also narrated from Al-Hussein Bin Ali from Ali Bin Yaqtin from his brother Al-Hasan Bin Ali Bin Yaqtin said: I asked Aba Al-Hasan (p) "May I marry the maid as a girl of three years, or May I marry the boy at the age of three and what is the minimum age in which they can marry? And what did she do when the girl reached the age of puberty and did not accept him. He said: There is nothing wrong with that if her father or her guardian agreed. The fuqaha differed in determining the age of puberty. Shaf'is and Hanbalis said that both young girl and boy reach puberty at age of fifteen, and Malikis said at the age of seventeen; Hanafi specified the age of eighteen for the boy and seventeen for the girl.

Under Shari'a, The age of marriage is determined according to the age of puberty, as the age of their natural perfection, where Islam sees that marriage at early can be performed with the permission of the guardian for the benefit of them and it is considered legitimate, because the guardian does it for the benefit of his children.

While the law stipulates, in addition to puberty age, that they become eligible at the age of sixteen, and this eligibility becomes liable at the age of eighteen for both the male and female. The Iraqi law stipulates in Article 7: "The eligibility of marriage requires reason and maturity." And in Article 8: the eligibility of marriage becomes perfect at the age of 18). These laws, when determining the age of marriage, whether in Shari'a or in law, do not have to impose people to marry at this age, but register it for the purpose of documentation.

The marriage contract is important and very influential, as being the foundation of the stable family, as the community interest requires that the couple shall be able to bear the burden of marriage and acknowledge its value and sanctity,

but taking into account what the people in the countryside used to marry their children after puberty and maturation of the body, to attain an interest or to treat some ailment such as marrying a mentally ill person, and maybe there is absolute necessity in marriage, so the Iraqi legislator sees a clear interest in the judge's decision of that permits to marry them, since it meets both the social interest and interest of the parties to the contract. In order to explain cases of marriage outside the courts which lead to many negative effects if the marriage is not registered for being under the legal age, the second amendment No. (21) of 1978, which came into force on 20/2/1978 of the personal status law including the abolition of the old text and replace it with the new text, which reduces the age of marriage by making it fifteen years instead of sixteen provided that the consent of the guardian and the judge's permission are obtained.

Article 8 of the Personal Status Law provides that: "whosoever completes the age of fifteen and claims to marry, the judge may authorize him if his eligibility and physical fitness are proven to him after the consent of his legal guardian. If the guardian refuses the judge's request for his consent during a period determined by him, he did not object or his objection was not worthy, judge authorize him to marry provided that the following conditions must be met:

1. Every person who has completed the age of fifteen has the right to marry and this is the age, in which as per Shari'a a young girl and boy reaches puberty, despite differences because it is related to the commission.
2. An application of marriage shall be submitted to the judge, who may approve the application after having ascertained of evidences and data.

– 33. The consent of the legal guardian, and in case the guardian objects to the marriage contract, he has to explain the reasons, if the objection is reasonable, the judge will adopt it and otherwise the judge marry them. The early marriage is cherished by Islam and Muslims because it represented the natural institution which Islam paid great attention to its composition, cohesion and persistence of great interest, many families sought to marry their children at an early age, especially in religious families for fear of their children falling into taboo and sins.

One of the causes of early marriage (ie at an early age) is poverty, ignorance, lack of education, awareness, culture and the large number of children.

Despite the fact that marriage at an early age was not opposed by the sharia law but by their children at an early age.

All this requires that the couple have awareness and understanding of marital life. When the girl goes to her husband's house at an early age and is unaware of the responsibilities, duties and rights that she has to bear there, she may be exposed to negative effects that will lead to conflict between her and her husband and their families.

However, early marriage has begun to disappear gradually except for some rural places where it is still applicable.

Young people are now reluctant to marry for several reasons; the most important among them are the high cost of dowry, the desire for education, initiation of career, and the possibility of securing the wife's requirements, particularly her refusal to live with the husband's family at the present time. Such reasons drive the young to provide an accommodation. Almost a large number of girls still want to marry at an early age. The age of spinsterhood in our countries is much lower than that in the West countries. If the girl is not married before the age of twenty, she starts to fear of spinsterhood, Therefore most marriages occur before the age of twenty. It is not possible to say that the reasons behind marrying minor girls or virgins at an early age are attributable to one specific factor, but to different factors according to the culture and society.

Second: The effects of the marriage of young people

Formal and objective conditions are not enough to make marriage successful, though they are important for the validity of the contract. The contract alone is not enough to achieve success and purpose of the marriage. It is mere a legal bond. While its object is to establish love between the couple as a bond that generates attraction between the sexes to achieve the goal of marriage and the continuation of life in ethics, which cannot be achieved unless moral and physical qualities are available in the spouses, which attract them together. The fuqaha affirmed that early marriage was valid, even the spouses were under the age of puberty, based on the Koran and the events that took place during the time of the Prophet (PBUH) and his Sahabit (companions), where they empowered the guardian to marry minors if it is in their interest, but this early marriage may be

harmful to them, as the boy and the girl finds himself after puberty forced to marry a person without taking his opinion into account, a person who may not consist with his mood, morality and habits.

We know that Islam has worked to create the causes of marriage and facilitate its means, so that both men and women enjoy it, and as per the Islamic law, the purpose of the determination the age of marriage was to restrain self from falling in sinful adultery. Yet, many families violated the Islam ideals and followed those of the western countries such as the amoral sexual exercise. Therefore, young people are cautious in choosing their spouses, even some of them are not willing to marry due to the high cost of dowry and the large expenses incurred on them by their spouses. Such reasons have made young people think deeply to choose women who are suitable for them.

The marriage of young people has negative effects that cause harm to both spouses including:

- the Sharia courts are heavily engaged with the lawsuits of maintenance and divorce, which are held because of early marriage and the girl's lack of awareness of her new responsibilities, and the lack of her parents' advices about her rights and duties, which made the husband find that his wife does not take care of him, her home, and her children's education. Similarly, the husband's failure to meet his wife's simplest needs drives spouses to divorce.

- Pregnancy and childbirth are the qualities which are required from women after marriage. Reproduction is the purpose of marriage, and the Arabs preferred their wives to give birth to boys to girls so as to increase their number. If the wife gave birth to a girl, her husband deserted her and married another one, and this phenomenon is repeated in most Arab societies, where husbands abandon their wives and marry other wives to have male children from them. The marrying of young girls may cause them to develop diseases when they get pregnant as required by the husband and his family for their bodies are still so young to bear the burdens of pregnancy and childbirth.

- Islamic families suffer great deal of problems that result in divorce due to the sudden shift in intellectual, social and economic life of society since the beginning of this century such as the emergence of the independent personality of the head of the family, which makes women feel isolated and the emergence of such personality results from education and liberation, And divorce may occur either because of the narrowness and hardships of life, or extravagance and good qualities of some privileged families, which after marriage reveal their bad manners. In order to block the gap between the wife and husband that may lead to divorce, moral values should be revived and parents be the good example for them.

The marriage of the young has negative effects, although Islam insisted on it to prevent sinful actions, such marriage was applied in the past, to both small boys and girls, without taking their opinion in more or most of the times, but now young people are conscious of the difficulty of married life and what it needs; that's why they oppose such marriage and with confidence and reject their parents' requests. The girls were less rejecting the marriage of young people, but now they understand what marriage is when they are young and how it affects their lives and how they are transferred to another families that may differ from the theirs in lifestyle. Therefore, they may think that marriage will prevent them from many things, especially that many girls are now seeking to complete their education and their opinions to be taken into account in choosing their life partners.

Similarly, young boys are also seeking to complete their education and have a career and accommodation so that they can be able to meet the requirements of marital life and children. It is necessary to raise awareness among the members of the community, to make the individual choose his partner voluntarily, and to understand the laws and regulations that determine the age of legal marriage for the interests of the individual, because the society of today is different from what it was in the past.

But if both boys and girls want to marry at an early age and both sides agree, the law should be considered if they are physically and materially capable to marry.

II. CONCLUSION

At the end of the research and after having addressed various aspects of the subject, including the definition of the importance of marriage and all its requirements and consequences, we found the following results

- 1.The marriage is of great importance in Islam, and was mentioned in the Holy Quran and the noble Sunnah, and the call to apply the provisions of religion and comply with the orders of God Almighty.
- 2.Marriage keeps both spouses away from taboos and being dragged in the whims of Satan.
- 3.Marriage has a great role in the continuation of human offspring with a Muslim nation that fills the world with the truth that there is no god but Allah.
4. Marriage regulates the life of society by being conditioned as defining the rights of both spouses to apply the conditions in accordance with Islamic law, and the law has a significant impact on the preservation of the right of the individual and looking after him.
- 5.The presence of the guardian in marriage is necessary, because he is the caretaker of those whom he acts for so that they can live happily.
- 6.The absence of a specific legal age for marriage led to the adoption of the age of puberty as legitimate age in Shari'a. Legally speaking , marriage age is determined by the physical maturity of most individuals.
- 7.The marriage of young people without awareness of marital life under the pretext of applying the provisions of Sharia by the parents, has a negative impact on both spouses, where it is necessary to ensure that the individual is able to bear the burdens of married life before going into the arena of life.
- 8.The guardian must choose the competent for his daughter or his son and make him or her ready to enter into the new life because the lack of awareness and knowledge of the marriage importance and effects on life, may lead eventually to divorce and dispersal of children.
9. the differences of interests between spouses and the diversity of life requirements have an impact in pushing the marital relationship to the worst, if it is not built on a well-established foundation.
- 10.The marriage of young people may lead women to be unable to bear marital life and homework, which affects her negatively.
- 11.The early marriage of girl may lead to physical diseases and psychological problems.
- 12.It is necessary to take care of individuals and marrying them as soon as they are prepared for it without depending on puberty only.
- 13.The right guidance and education must be available to individuals to be aware of the future and ready for what they will face in life.

REFERENCES

-The Holy Quran

- 1.Ibn Qudaamah, Muwaffaq al - Din Muhammad, (d. 541 - 620 e) Al-Maghi: Investigation: Abdullah Abdul Mohsen and Abdul - Fattah, Dar world books, e.1,
- 2.Ibn Majah, Abu Abdullah Muhammad ibn Yazid, (275 AH) Sunan Ibn Majah, with the comments of Bouhairi, (p. 804) (1419 – 1998)
- 3.Ibn Manzoor, (711 AH), San'a Al-Arab, Correction: Amin Mohamed Abdel Wahab and Mohamed Aref, Beirut, Lebanon, Revival of the Arab Heritage, e.3, (1419AH- 1999AD).
- 4.Abu Lahya, Nur al-Din, the marriage contract and terms of vision Makassidih, House lights, E.2, (1436AH – 2015AD).

5. Istanbul, Mahmoud Mahdi, TUFAT AL-ARUS, Cairo, Egypt,
6. Bukhari, Abu Abdullah Muhammad Ismail bin Ibrahim, (256 e), Sahih Bukhari, Beirut, Lebanon, Dar I, (1418AH – 1997AD).
7. Turkmen, Abdul Salam, ZWAJ IND AL ARAB IN JAHILAH AND ISLAM, Kuwait, National Council for Culture and Literature, (1404 AH-1984AD).
8. Hatem, Jamil Fakhri, The Marriage Contract in Jurisprudence and Law, Amman, Jordan, Dar Al-Hamed Publishing and Distribution, 1, (1430AH – 2009AD).
9. Husseini, Muhannad Saleh, the provisions of women conform to the religious authority of the religious authority Sayyid Sadiq al-Husseini al-Shirazi, Qom, Iran, Foundation of the Apostle Akram (r) Cultural, E.6, (1428AH – 2007AD).
10. Al-Dardair, Ahmed bin Mohammed, AL-SHARH AL SAGHIR ALA AQRAB AL MASALIK, AL HAMISH Ahmed Mohammed, directed by: Mustafa Kamal Wasfi, Cairo, Egypt, Dar Al Ma'arif, (1119 AD).
11. Al-Zuhaili, Wahba, Islamic Jurisprudence and its Equivalence, Damascus, Syria, Dar Al-Fikr, E.2, (1405 AH-1985AD).
12. Zaki El-Din, Shaaban, Theory of conditions associated with the contract, Cairo, Egypt, Dar al-Nahda al-Arabia, E.1, (1635AH – 1968AD).
13. Sibai, Mustafa, (1384 AH) Women between Jurisprudence and Law, by Al-Baqar Abdul Qader Mahmoud, Cairo, Egypt, Dar Al-Salam for Printing and Publishing, (1431 AH – 2010AD).
14. Al-Sistani, Ali al-Husseini, MINHAIJ AL SALHIN, Najaf, Iraq, Dar al-Bazrah, E.14, 1433 AH - 2012).
15. Al-Sherbini, Shams al-Din Muhammad, MUGHJI, AL MIHTAJ ILA MARIFAT MA'NI ALFAGH ALMINHJ ALA MATIN ALNEWAWI ALSHA'FI, Ibn Zakaria, Yahya ibn Sharaf, (1481AH - 1997AD).
16. Al-Saduq, Husayn ibn Babawiyah al-Qami, (381 e), MAN AL YAHDHRAHU AL-FAQIH, Beirut, Lebanon, the media of publications, E.1, (1426AH – 2005AD).
17. Tabas, Mohammed Jawad, read and then married, Qom, Iran, Dar al-Huda, E.2, (1425 - 2004)
18. Al-Tusi, Abu Jaafar Mohammed bin al-Hassan, (460 e), ALISTBSAR FI MAKHTALAFAT MIN AL KHBAR, Beirut, Lebanon, the media of publications, E.1, (1426 – 2005)
19. Fadlullah, Muhammad Hussein, Jurisprudence of Sharia, Dar Al-Malak, 2, (1422 AH-2001AD)
20. Faqih, Shubar, Contemporary Arab Women and the Problem of the Masculine Society, Beirut, Lebanon, Dar Al-Hilal Library and Library, 1 st, (1430AH – 2009AD).
21. Kashkol, Muhammad Hassan and Al-Saadi, Abbas, Explanation of Personal Status Law No. 188 of 1959 and its amendments, Baghdad, Iraq, Legal Library,
22. Al-Kulini, Abu Jaafar Mohammed Yaqub, (328 AH), Al-Kafi, Beirut, Lebanon, the media of publications, 1, (1426 AH 2005AD).
23. Al - Maliki, Abu Muhammad Abdul Wahab, (v. 422 e), AL ISHRAF ALA NUKITAT MASA'L AL KHILAF, IKHRAJAHU: Habib bin Dahir, Dar Ibn Hazm, E.1, (1420AH – 1999AD).
24. Mustafa Ibrahim and others, AL MUJAM AL WASIT, Istanbul, Turkey, Dar Dawa, E.1,(1410 AH 1989AD)
25. Mughniyeh, Muhammad Jawad, Jurisprudence on the Five Schools of Thought (Al-Jaafari, Hanafi, Al-Malki, Shafei, Hanbali) Tehran, Iran.
26. Mehrizi, Mahdi, QAGHAH ISLAMIYAH NAHWA FIQH AL MARAH YUWAKIP AL HAYAT, Translated by Khalil Al-Assi, Beirut, Lebanon, Dar Al-Hadi, E.1, (2002).
27. Al-Nasafi, Abu Barakat Abdullah bin Ahmed, (710 e) AL BAHAR AL RAIQ FI TAFSIR AL DAQAIQ , with Hanafi, Ben Njeim Zinedine ibn Ibrahim, (T 970 e) AL BAHAR AL RAIQ FI TAFSIR AL DAQAIQ, with Damascene, Mohammed Amin (T 1252 e) HAWASH AL KHALIQ FI AL BAHAR AL RAIQ FI TAFSIR AL DAQAIQ, by Zakaria Omirat, Beirut, Lebanon, Dar al-Ketub al-Ulami, E.1, (1997)

28. Al-Nawawi, Muhammad al-Din, (676 AH), Saheeh Muslim, BI SHARH AL MINHAIJ, AKHRAJAHU: Mohamed Fouad Abdel-Albani AL KITAB TASHIL AL MANFA' WA TIFAT AL ISHRAF LL Hafiz Al-Mazli,(2000)

Copyright of Talent Development & Excellence is the property of International Research Association for Talent Development & Excellence (IRATDE) and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.