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## Can References to the Practice of Early and Forced Marriage (Child Brides) Be Found Specifically in Islam?

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### Abstract

From past to the present, the institution of marriage undoubtedly has a religious and traditional infrastructure in almost every society. Marriages that happen at an early age or that are forced also have such a background. An evaluation of the practice of early and forced marriages will be performed in terms of the religion of Islam in this article. In order to do this, how Islam in society comes to raise the status of women in stages will firstly be exemplified; secondly, by also considering the matter in terms of the purpose of engagement and the requirements of forming this engagement, the opportunities for girls of a young age will be discussed.

### Keywords

Child brides • Islam • Guardian • Marriage contract

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From the past to the present, one of the grievances of women that live in certain geographical locations is that they are made to get married at an early age and through the use of force. The problems that come with being forced to marry at an age when girls can't yet bear the responsibility of marriage (biologically, psychologically, socially, and so on) have an impact on areas far beyond the deterioration of physical and mental health which they experience in this situation. This is because when the structure of a family cannot be placed on a solid foundation, more problems will surface later in social dimensions.

"Child brides," an expression used for girls who have been victimized, carries contradictions because it combines the words child and bride to also include girls who got married of their own free will before coming of age, and alludes to a meaning that exceeds its intention. For this reason, the author would like to express that she doesn't find this definition to be appropriate. However, this expression will also be used in quotes to ensure the unity of discourses that have "child bride" in the title of the study.

Without a doubt, the institution of marriage, as much as it is legal in nearly all societies, was formed from a set of traditional and religious infrastructures. Therefore, the impact of these institutions on the problems as well as the soundness that can be experienced from marriage becomes a current issue.

In fact, many of the methodologies and contexts of the Islamic disciplines pivot around the issues of women and marriage. The reason for criticisms that are directed toward women's perceptions of Islam include the accompanying changes in mentality that have formed since the 19<sup>th</sup> century in what we call the Modern Era, up until today, especially with emphasis on fiqh (Islamic Jurisprudence), tafsir (exegesis of the Quran), hadiths, religious sociology, and Ilm al-Kalam (Islamic scholastic theology), and these issues have caused further distortion as a result of these changes. This article will discuss the marrying of girls at a young age along the meanings that Islam raises with respect to two essential issues: women and marriage.

In order to perform a proper analysis of this social phenomenon, it is necessary to evaluate its conception and development in a socio-cultural and historical context. This situation is also the topic at hand in regard to the female understanding of the religion of Islam. In this sense, the social, legal, political, and economic situation of the family life of women from the beginning of Islamic society until today have been formed under the influence of many variables. Religious rules, social and political environments, ethnic structures, and the cultural heritage that came before Islam can be counted among these variables. It should first be stated that the points of the world that have come with time in terms of the rights and responsibilities that Islam has brought to women cannot be perceived separately from the other elements that are counted here. For this reason, we cannot claim that the status and situation of women within the Muslim world has been static in terms of region and time.

Within this study, this perspective will not be argued with its individual reasons. It will refer instead to the value that has been placed on women's greater meaning and security as well as their self-realization. Secondly, it will focus on the meaning that has been placed upon the conditions that establish marriage and upon the family institution that is formed in terms of the basic teachings of Islam. In the evaluation section, the reality of "child brides" in terms of the meaning that has been placed on women and marriage will be assigned on a religious basis. In this way, it is hoped that by comparing the psychological content of women and the conditions and purpose of marriage, the contradiction will become clear between this and forcing one to act against one's will (making someone marry).

### Improving the Status of Women

The emergence of Islam has contributed to shaping the mindset of all members of society, male and female, by bringing fundamental changes to the socio-cultural fabric of its geography. In doing so, one is confronted with numerous social realities that constitute to the social norms of the day (religious, customary, political, legal, economic); in which some of them have been accepted, whilst others have been revised and finally some completely ignored.

**Ontological understanding.** As it is known, the religion of Islam had emerged in the 7<sup>th</sup> century in which the region had possessed economical, legal, societal, and ethnic injustices. Back then, discrimination regarding gender was mercilessly applied that even the right to life for little girls was not recognized; they could be buried alive at birth (Savaş, 1992, p. 29). The Quran abolished this inhuman practice in the first period of revelation (Quran 16:58-59; 81:8-9).<sup>2</sup> The process that began this way continued to evolve towards an area of understanding that saw men and women as ontologically equal. The concept of men being head of the family is due to a degree of superiority described as "kavvam" (Quran 4:34), and is nothing more than functional superiority, a required set of abilities for them to provide livelihood, security, and representation; in the case of divorce it also provides alimony, child support, and the cost of milk (Yazır, 1960, p. 1348).

**Understanding in terms of religious responsibility.** According to Islam, the human experience of life in the world began with the prophet Adam<sub>sa</sub> and his wife (Eve) being expelled from heaven due to eating the forbidden fruit. In Judaism and Christianity, this error of Adam<sub>sa</sub> was instigated and encouraged by his wife. As a result, "original sin" was actually caused by Eve, or in other words, by woman. Yet as this story is frequently told in the Quran, Adam<sub>sa</sub> and his wife performed this crime together by obeying the suggestion of the devil (Quran 2:35-36; 7:16-22).

<sup>2</sup> There are also claims from Islamic Historians that the custom of killing baby girls was not common (Hasen, 1987, p. 87). However, if this is determined to be true, the comment can be made that Allah (swt) considers it enough of a horror to do this even once.

In fact, there is also emphasis that the sin was particular to Adem (Quran 20:12). The teachings of Islam, which have made appeals to women since its inception, have placed women and men as partners in the context of religious responsibility, (Quran 3:195; 9:71) and Allah stated that humanity was created as a ruler without the mentioning of gender (Quran 17:70; 27:62; 39:10; 91:7). Basic areas of servitude are common to both sexes, such as the development of the Earth and reformation of individuals and societies (Quran 4:24), the arrival of the judgment of Allah<sub>swt</sub> and His messengers (Quran 33:36), guidance and searching for the truth (Quran 2:187; 3:138; 13:21), and seeing the result of ones behaviour in terms of both good and bad actions performed (Quran 3:195; 33:37; 99:7-8). Hence, there is no distinction in terms of faith, manner of worship, or ethics. Qualification is not sought by virtue of gender but in the meaning of principle, worthiness, and superiority (Quran 49:13).

**Understanding in terms of education and developing personality.** The first command of the divine declaration “Read!” encourages all humans, men and women, to have knowledge and wisdom through thinking, reasoning, contemplation, learning and not speaking aimlessly. The value of information for humans irrespective of gender is indicated through verses such as “Are the wise and the ignorant equal?” (Quran 39:9) and “My Lord, increase my knowledge, too” (Quran 20:114). Harith Ibn Nauman’s daughter, Umm Hisham said “I learned Surah Qaf directly from the Prophet<sub>saws</sub>. He would read it in every Friday sermon,” (Muslim, Cuma, 50). This situation is noteworthy because it shows how often she went to his mosque and how often she received training. The esteemed Aisha said that the Prophet<sub>saws</sub> had stated in a relaxed dialogue with her on specific topics related to women: “How good are the women of Ansar, that their modesty does not prevent them from learning their religion.” (Bukhari, Ilim, 50).

**Understanding in terms of saying women and men needing each other.** “O people! Beware of disrespecting your Lord, who created you from a single soul, and created from it its mate and dispersed from both of them many men and women,” (Quran 4:1). Woman and man are each one of the two elements that the human race sprang from.

The points that this study has attempted to summarize above should be read as a complete redefinition of women’s issues and the maturation of personality that describes the value of women’s assets ontologically, their rights and responsibilities towards divine authority, activities directed towards their education, and finally towards each gender, male and female along the lines of these needs. The second part of this study will discuss the “child bride” phenomenon in the context of the Islamic term “marriage of minors” through the goals and conditions of the institution of marriage which Islam envisages to facilitate through a marriage agreement.

### The Meaning Placed on the Institution of Marriage

There are also Islamic scholars who acknowledge that marriage is a form of worship in a general sense because of the realization of works that please Allah, such as the establishment of a family by men and women, carrying the responsibility of the family and raising children to benefit society (Atar, 1998, p. 112-117).

**The purpose and nature of the marriage agreement.** The institution of marriage, based on law and society, is also a religious institution according to Islam. For this reason, it is encouraged both by the Glorious Quran and by the Sunnah of the Prophet <sup>saws</sup>. The Prophet <sup>saws</sup> stated that it would boast the growth of Muslims and that marriage was also the Sunnah of prophets before him (Bukhari, Nikah 1; Tirmidhi, Nikah 1). Defining marriage in modern studies on this topic and in the wording of legislation as “maintaining and protecting one’s lineage,” a “life partnership,” a “life friendship,” and “reciprocation of the rights and obligations of spouses” is meaningful and precious (Aydm, 2005, pp. 282-283).

Spouses are recommended to meet before marriage and have equitable requirements to ensure a happy and long-lasting marriage. This concept, “kefâet” in classical literature, consists of criteria such as ancestry, being Muslim, freedom, occupation, religion, and economic power. The issue of age equality in marriage has also been assessed by Shafi jurists (fakih) under kefâet (Aktan, 1998, pp. 166-168).

The marriage agreement must not contain a restrictions (ta’likî) or destructive requirements (infisâhî) in order to ensure its soundness and legitimacy. This is so the establishment or failure of the marriage cannot be connected to a future event or time. Even in the moment of making the marriage agreement, the wording for requirements and acceptance is not patterned in the present or present continuous tense (muzari); it is patterned in the past tense out of sensitivity (mazi) to show the precise point of the statement (Atar, 1998, pp. 112-117).

In Islam, the role of the head of the family is given to men, provided they can fulfill its requirements. Hence, the Quran states that the marriage agreement is a firm guarantee that men give to women (Quran 4:21). Within this guarantee are obligations such as mehir that women are recommended to receive as a right before marriage to ensure them security, representation, and income for the home during marriage, and alimony payments for the wife and children should the marriage end.

There is no ban on divorce in Islam as there is in Christianity. But one is asked not to end a marriage without a serious reason because of its power, sanctity, and kindness; prophetic warnings were made in this regard by saying “the worst of what Allah has made permissible is divorce,” (Abu Dawud, Talak, 3; Nasai, Talak, 34). When a marriage has ended in spite of everything, the ban of marrying each other’s mother or father remains in place for the separated spouses due to legal kinship.

The conditions and meaning of marriage is of course not limited to these summary assessments. However, enough time has been spent on this; considering the main topic of the study, the issue will now pass on to the marriage of minors under the heading of guardianship in marriage.

**Issue of marriage of minors (children).** In Islamic law, the issue of marrying minors who have not reached puberty has been discussed under the basic heading of the elements of marriage in the framework of competence. The elements of marriage occur with the marriage proposal *ibaj* (offering) from one of the parties and its acceptance by the other. In addition to these elements, the requirements of establishing a marriage are listed as the absence of any barriers to marriage, the assembly's cooperation, the marriage must be unconditional, and the competency to marry. The meaning of competency as related to our topic is to be able to decide with one's freewill, without another person's authority. More clearly put, it can be said that this situation requires being mature and intelligent, expressing competence as the ability to marry without the need of someone's permission or authorization (Döndüren, 1995, p. 155).

The factor of age which expresses the capacity to marry can be said to be the effective age of the family structure from the first century of Hijra as certainly contained in the Islamic Law which defines this structure and as an age of common understanding. With regard to the marriage of minors, signs of traditional values which possess historical roots can be seen in the dogma of Islamic family law and the many examples from the life of the esteemed Prophet's <sup>saws</sup> family (Acar, 2003, p. 127). According to the majority of the *fuqaha* (jurists), children who are not adolescents yet but have the ability of discernment (to distinguish good from bad) can be married of with the permission and intermediation of their guardian (father or grandfather) as their legal representative. Those who held these opinions were the leaders of the juridical schools such as Abu Hanifah, Imam Shafi, Imam Malik, and Ahmad b. Hanbal, in which they based their claims on certain verses and hadiths.<sup>3</sup> As for the core of their logic, there is the presumption that a father or grandfather, because of the belief that they have more rights on girls than the girls do, would not consent to a marriage that would not be in the best interest of a child (Shafi'i, n.d.) Since guardians should place emphasis on this subject, there are a number of benefits in marriage that can be provided, but only when people who are evenly matched marry. In this case, a minor can be married if there is a good opportunity that shouldn't be missed; in

<sup>3</sup> "O Muhammedsaws, they want you to give a ruling about women... Allah gives you a ruling about them and [about] what has been recited to you in the Book concerning the orphan girls to whom you do not give what is decreed for them - and [yet] you desire to marry them - and concerning the oppressed among children and that you maintain for orphans [their rights] in justice." (Quran 4:127). The comment was made about orphan women as girls without mental maturity (Ibnü'l-Arabî, 1988, p. 405) also ...those who no longer menstruate, if you doubt, the period of waiting is three months (Quran 65:4) in the ayet "women who haven't seen their period" is understood as girls who have not yet reached puberty (Ibnü'l-Arabî, 1988, p. 285; Serahsî, 1986, p. 457), "take care that women only marry their protectors, and women only marry their equals" (Beyhakî, n.d., p. 133; İbn Mansûr, 1985, pp. 150-151).

this way, they are also focused on a rational, grounded approach (Ebû Zehrâ, 1957, pp. 109-110; Kâsânî, 1986, p. 240). Children are told when they reach the age of maturity, if they are of the opinion that they have fallen into a situation where they don't want to be married, they can end their marriage through a court order.

Corresponding to the opinion summarized above, a group of Islamic scholars in the early period considered the marriage of a minor who didn't know the meaning or nature of marriage nor had need to marry as unacceptable. İbn-i Şübrûme, Osman el-Bettî, and Ebu Bekir el-Esam were some of these scholars. Moreover, they also based their opinions on the verse "And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them." (Quran 4:6); they also expressed that the period before puberty did not meet the requirements for the age of marriage (Sarakhsi, 1986, p. 212).

As mentioned before, women are present as a party in the marriage contract according to verses in the Quran (2:235). One can talk about different tales in regard to the authority of parents in a marriage agreement. Namely; while there are the Prophet's <sup>saws</sup> words relating to young females "not being able to conduct a marriage agreement without their parents." (Tirmidhi, Nikah, 14; Ibn Majah, Nikah, 15, and so on) in Islamic sources, there are also hadiths that state marriage agreements are invalid if the parent conducts the marriage agreement in which he is a party of. (Abu Dawud, Nikah, 26; Ibn Majah, Nikah, 12). The deviation on this issue from the Prophet's <sup>saws</sup> words by Islamic scholars is a societal phenomena from the Sharia due to the tolerance of minors' marriages. Behind this leniency can be said to be a requirement and need of the society within that particular time and order; it was not merely a response through the intervention of Sharia to provide certain benefits but an issue entirely dependent on social conditions and preferences (Bardakoğlu, 1991, pp. 12-15).

Finally, it would be appropriate to remember here the first Family Law Decree of 1917, issued near the end of the Ottoman Era. This text is the first text prepared in the area of family law in the history of Islamic law. This decree was made mandatory since dogmas and solid content about the marriage of minors had not been made clear and a number of problems on this issue had resulted back then; legalization had been made according to individual eras on many family matters including the acceptable age children could marry. One important provision of this decree is that it also invalidates marriages that occur through the use of violence or force (Article 57).

### Evaluation

This study, which was conducted to assess the status of "child brides" and forced marriage at a young age in terms of Islamic religion, has reached the following conclusions:



1. Social phenomena should be understood along the lines of its own historical, cultural, geographical, and ethnic backgrounds. The event of women and marriage in general and of the marriage of minors in particular which have been performed throughout the history of Islam should be viewed from this perspective.
2. To say that the status of women was enhanced in the practices of the Qur'an and the Prophet <sup>saws</sup> according to the social conditions of back then would not be an exaggeration. A new mission and identity was reinforced for women in many areas (ontological, legal, social, and familial etc.), identifying them in a place where their decisions were respected and they could have social standing. In this way, forcing girls in a decision that involves their whole life, such as in forced marriages, is unacceptable in terms of the basic teachings of Islam.
3. The main purpose of marriage can be expressed as satisfying one's biological, psychological, and social needs in a peaceful environment, and as continuing one's lineage in this peaceful environment. One of the minimum requirements for realizing these objectives is that spouses must have mental and physical maturity and be of the minimum age recommended for marriage.
4. The basic components of wedding agreements such as ijab (offering or proposal), acceptance, declaration, witnesses, and mehir are evidence of the importance and seriousness that Islam gives to this issue. Wedding agreements involve putting the marriage on a solid foundation and protecting the sensitivity of women to the extent that even the spouses' acceptance of the marriage is said using the past tense.
5. Parents are a factor in the marriage of minors in Islamic law, based on the favorable assumption that parents won't make a decision that goes against their child. It is known that the right to speak to relatives about marriage is recognized in almost every society. In Islam, however, it's understood from the diversity of jurisprudence on this issue that the recognized authority of parents is neither mandatory nor without limit. Because of the multiple views on this issue, it cannot be discussed with certainty.
6. In the Family Law Decree of 1917, which brought a specific age limit to the marriage of minors and the condition that girls aged 17 and boys aged 18 or older have the full-fledged right to marry without the permission of their parents can be understood as a manifestation of the human-centered perspective of Islam on this issue over the centuries.
7. If it is not in the basic teachings of Islam, it should be able to be moved to the interest of the public by means of the state's power, as in the provisions related to the Family Law Decree, just like this practice with its various references to Islamic tradition.

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