

Determining The Legal Age Of Marriage In Algerian Family Law And Its Impact On The Sustainability Of Marriage And Its Effects On The Social Environment

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Abstract

This research addresses the issue of determining the legal age of marriage in Algerian family law and its impact on the social environment. It is a controversial matter between what Islamic jurisprudence has traditionally established and what has been adopted by positive (civil) laws, including Algerian family law, particularly in light of differing views regarding marriage eligibility, its conditions, and limitations. Accordingly, this issue is presented through a comparative analysis between the rulings of the four major Islamic schools of thought and the provisions of Algerian family law.

The controversy revolves around the legitimacy of legally setting a minimum age for marriage, the extent to which this aligns with Islamic legal rulings, and the resulting jurisprudential and social implications, especially in cases of marriage below the legal age or when a judge refuses to grant permission for marriage to those under 19 years old.

This study aims to clarify the Islamic legal ruling on setting a marriage age, analyze juristic opinions, present the position of Algerian legislation on the matter, and assess the extent to which this legal provision achieves social benefit and whether it aligns with the higher objectives (maqāṣid) of Islamic law in preserving the family and society.

The study adopts the inductive method to collect relevant legal and Sharia-based texts, the analytical method to examine relevant opinions and arguments, and the comparative method to juxtapose the views of the four Sunni schools with Algerian family law.

The study reached several conclusions; among them, the majority of jurists affirm that eligibility for marriage is attained upon reaching puberty, without setting a specific age. However, the higher objectives of Sharia require considering the benefit (maṣlaḥa) and the ability to bear the responsibilities of marriage to ensure its sustainability. The study also revealed that the determination of the legal age of marriage in Algerian law aims to protect minors from the negative consequences of early marriage and to safeguard society at large. However, this legal standard may, at times, conflict with special cases that require legal flexibility and Sharia-based guidelines.

The study emphasized that strictly adhering to a legal age without considering actual maturity or eligibility may lead to legal and social complications. It concluded that Islamic law places significant importance on marriage as the foundation of the family and society, and that its rulings aim to realize the mutual benefit of both spouses and ensure marital continuity. The establishment of a legal marriage age in Algerian legislation serves as a civil safeguard for minors; Still, it requires greater alignment with juristic principles to achieve a balance between legal protection and Sharia objectives. The reality underscores the need to harmonize legislation and jurisprudence to ensure social stability and marital sustainability.

INTRODUCTION

All praise is due to Allah, Lord of the Worlds, and may peace and blessings be upon the most noble of prophets and messengers, our Prophet Muhammad, and his family and all his companions. To proceed:

The family is considered the fundamental unit in the structure of society. For this reason, Islam has given great attention to organizing its rulings, including the marriage contract, which is one of the most consequential and binding contracts. It is strongly tied to the sustainability of marriage and its impact on individuals and communities. One of the issues associated with the marriage contract that has sparked wide legal and jurisprudential debate is the determination of the legal age for marriage, due to its direct connection to the eligibility of the contracting parties, as well as its implications for psychological and social stability and the protection of the legal and religious rights of both parties.

The majority of jurists have held that the onset of puberty constitutes the minimum threshold for marriage eligibility, basing this opinion on evidence from the Sunnah and consensus (ijmāʿ). However, contemporary practices have revealed new challenges related to early marriage and its psychological and social effects. This has prompted some Muslim countries to establish a legal minimum age for marriage. Among these is Algeria, where the Family Law sets the legal age of marriage for both males and females at 19 years, while permitting exceptions through judicial authorization for those below this age.

The central problem of this study is evaluating the extent to which this legal determination aligns with Islamic legal rulings, the legitimacy of state intervention in setting a specific age for marriage, and the resulting social implications. It questions whether this legal stipulation serves the interests of the family, promotes the sustainability of marriage, and prevents harm, or whether it contradicts what Islamic law permits in allowing marriage upon puberty. Thus, this study aims to shed light on this issue from a jurisprudential perspective, analyzing the relevant provisions in Algerian Family Law while also tracking the social impacts resulting from the determination of marriage age.

SIGNIFICANCE OF THE STUDY

The importance of this study lies in its engagement with an issue that intersects religious, social, and legal dimensions. This significance is reflected in the following aspects:

1. Academic Importance:

This study addresses a contemporary issue that attracts the attention of legislators, judges, and researchers. It is a matter where jurisprudential rulings intersect with legal legislation and societal interests. As such, it provides fertile ground for comparative analysis between Islamic legal schools and modern legal systems.

2. Practical Importance:

The findings of this study may contribute to offering a balanced perspective on the legitimacy of determining a legal age for marriage. It can assist in guiding legislative efforts to ensure alignment with Islamic Sharia while simultaneously considering the social and practical changes occurring within Algerian society.

RESEARCH PROBLEM

The main research problem addressed in this study is:

To what extent is the legal determination of the age of marriage in Algerian Family Law legitimate from the perspective of Islamic jurisprudence, and what are its effects on the family and the broader society?

This central issue branches into several questions, including:

- What are the Islamic legal evidences concerning the determination of the age of marriage?
- What is the position of the various Islamic schools of thought on marriage before reaching the legal age?
- Does setting a legal age for marriage contradict Islamic Sharia?
- What is the social impact of determining the legal age of marriage on the family and Algerian society?

RESEARCH METHODOLOGY

This study adopts several scientific methodologies:

1. **The Inductive Method:**
By tracing the relevant Islamic legal texts, the views of jurists from the four Sunni schools, and the stipulations of Algerian Family Law.
2. **The Analytical Method:**
By analyzing jurisprudential and legal opinions and deriving the Islamic legal ruling through a maqāṣid-based (objectives-oriented) approach.
3. **The Comparative Method:**
By comparing the various jurisprudential stances with the position of Algerian Family Law, highlighting areas of convergence and divergence.

OBJECTIVES OF THE STUDY

This study aims to:

1. Clarify the Islamic legal ruling on determining the age of marriage.
2. Analyze the position of Algerian Family Law regarding the legal age of marriage.
3. Present the Sharia-based perspective on the legal regulation of marriage in Algerian Family Law.
4. Identify the social impact of setting a legal marriage age, particularly on family dynamics.

RESEARCH QUESTIONS

1. What are the Islamic legal evidences concerning the determination of the age of marriage?
2. What is the stance of Algerian Family Law regarding the legal determination of the age of marriage?
3. What is the Islamic Sharia perspective on regulating marriage through legislation such as the Algerian Family Law?
4. What are the social implications of determining the legal age of marriage within Algerian society?

PREVIOUS STUDIES

1. "The Legal Dilemma of Determining the Age of Marriage in Algerian Family Law"

Author: Aliyan Adda

Journal: Journal of Research in Law and Human Sciences, University of Relizane, Algeria, Vol. 8, No. 1, June 2022.

This article examined Article 7 of the Algerian Family Code, which sets the legal age of marriage at 19 years. It analyzed this age as the point at which both men and women attain full legal capacity to marry, from both a Sharia-based perspective and the standpoint of the Algerian legislator. The study addressed the legal and religious problems arising from the legal determination of marriage age.

2. Bougrara, Sami. (2015). The Age of Marriage in Algerian Legislation and the Position of Islamic Jurisprudence.

Master's Thesis, University of Algiers.

This study explores how Algerian legislation was influenced by Mālikī jurisprudence and other Islamic schools of thought. Although traditional Islamic jurisprudence does not specify a fixed age for marriage, the Algerian legislator determined it to be 19 years, while permitting marriages under that age with judicial authorization. The study highlights how legislative reality is shaped by social and cultural particularities.

3. Salem, Ahmed. (2019). The Social Effects of Early Marriage in Algeria.

A field study was published by the National Center for Social Research.

This study documented the social consequences of early marriage among various segments of Algerian society. It revealed a correlation between early marriage and increasing divorce rates. Economic, cultural, and societal factors were identified as the most influential drivers of the phenomenon.

What distinguishes this study is its integration of jurisprudential, legal, and social dimensions, with a focus on Islamic jurisprudential positions and the Algerian Family Law, moving beyond a purely theoretical framework.

HISTORICAL INTRODUCTION TO THE DETERMINATION OF THE LEGAL AGE OF MARRIAGE IN ALGERIAN FAMILY LAW

Given that the Algerian people had firmly rooted Islam in their beliefs and deeply embraced faith in their hearts, it was not easy for them to submit to French colonial laws or abandon their Islamic principles. The Algerian society thus continued to uphold the rulings of Islamic Sharia in organizing family affairs, both before and during the colonial period. There was absolute rejection of colonial policies, despite the oppression and violence, and despite all the attempts made by the French colonizers to change the legal rules applied to Algerians, particularly regarding civil matters such as family formation. (al-Misri, 2010, p. 13; Boufroua & Chareqi, 2018, p. 4).

Among the French legislator's unsuccessful attempts to interfere with Islamic family law and the structure of Algerian society were, for example (but not limited to), the law issued on May 2, 1930, regarding engagement and the legal age of marriage; the decree dated May 19, 1931, concerning the legal status of Algerian women (in which the French legislator imposed French local laws over Islamic rulings); and the order issued on November 23, 1944, relating to the organization of Islam judiciary.

The French colonial administration came to realize the difficulty of eradicating Islam entirely, especially in matters such as marriage and divorce, which hold deep religious significance. As a result, France permitted Muslim judges to rule on these matters based on Islamic legal principles.

Accordingly, after Algeria gained independence in 1962, several laws and legal provisions were issued to regulate family matters. These included the Law of June 29, 1963, concerning the regulation of the age of marriage and the verification of marital relationships, as well as a series of orders, including the order of June 23, 1966; the order of September 16, 1969; and the order of September 22, 1971. Ultimately, the Algerian Family Law emerged 22 years after independence, under Law No. 84-11 dated June 9, 1984. It was later amended nearly 21 years later, under Order No. 05-02, dated February 27, 2005. (Djazaress, 2014; Boufroua & Chareqi, 2018, p. 4).

ANALYSIS OF THE ARTICLE RELATED TO THE LEGAL DETERMINATION OF THE AGE OF MARRIAGE

Article 7 of the Algerian Family Code addresses the determination of the legal age of marriage at the time of contracting the marriage, setting it at **19 years**, which is considered the age at which both males and females attain full legal capacity for marriage. (Ḥajayliyya, 2018, p. 8).

"Legal capacity" refers to the legal status that enables a person to engage in various transactions that result in valid and legally recognized effects. (Boufroua & Chareqi, 2018, p. 22).

Marriage eligibility requires both **mental competence and physical maturity**, meaning that both spouses must be of sound mind and have reached puberty. This is because the marriage contract is considered a legal transaction that necessitates legal capacity. (Belḥāj, 2017, Vol. 1, p. 117).

Anyone under the specified legal age may not have their marriage contract officially registered by the authorized official **without prior authorization from the judge**, who may grant such permission based on what he deems to be in the interest or necessity of the parties involved, provided their ability to enter into marriage is established.

Legal capacity is defined as the legal status that permits an individual to engage in various transactions with the consequences that are legally valid and recognized. (Boufroua & Chareqi, 2018, p. 22).

This article also stipulates that **a minor spouse acquires the capacity to litigate** with regard to the legal consequences of the marriage contract, such as rights and obligations. This means that "the legislator grants civil capacity in a limited scope, specifically regarding the legal consequences of marriage, including responsibilities such as financial maintenance, children, and disputes related to personal status matters". (Belḥāj, 2015, p. 204).

In determining a specific minimum age for marriage, the Algerian legislator followed the example of Egyptian law, which sets the legal age of marriage at 18 years for males and 16 years for females, and strictly prohibits the courts from hearing any marital claims involving parties under these ages, regardless of their maturity or consent. This legislation was based on the opinion of Ḥanafī jurists regarding the permissibility of assigning legal authority (ta'yīn al-qaḍā') by time, place, or type of ruling, as issued by a fatwa from the Grand Mufti of Egypt and the Shaykh of al-Azhar.

Paragraph two of Article 366 of the procedural code states:

"No marriage contract shall be conducted or validated—whether current or retroactive—unless the age of the wife is at least sixteen years and the age of the husband is eighteen years at the time of contract". (Riḍā et al., 1397 AH, Vol. 2, p. 69).

The Algerian legislator also borrowed from **comparative legal systems** that prohibit the marriage of minors who are unable to bear the financial and moral responsibilities of marital life. For example:

- In the **United Arab Emirates**, the minimum age of marriage is **18 years**.
- In **Morocco**, it is also **18 years** following the 2003 amendments.
- In **France**, the same standard was adopted after the 2006 legal reforms.
- In **Libya**, the legal age is set at **20 years** for both men and women.

- In **Tunisia**, the age is **20 for men** and **17 for women**. (Belhāj, 2017, p. 117).

DISCUSSION OF THE OPINION

From the foregoing, it appears that there is no explicit Sharia basis for determining a specific age for marriage, as setting such an age is not a fundamental pillar of the marriage contract. Marriage remains valid under Islamic law without specifying an age and produces all its legal effects. (Khilāf, 1938, p. 34).

This is further supported by the fact that the Lawgiver (Allah) did not specify an age for marriage, as indicated in the verse:

"And marry those among you who are single and the righteous among your male slaves and female slaves. If they are poor, Allah will enrich them out of His bounty. And Allah is All-Encompassing, All-Knowing". [An-Nūr: 32]

Likewise, the authentic hadith narrated by 'Abdullāh ibn Mas'ūd, in which the Messenger of Allah ﷺ said:

"O young people, whoever among you can afford to marry, let him do so, for it is more effective in lowering the gaze and safeguarding chastity. But whoever is not able to, then let him fast, for it will be a protection for him".

(al-Bukhārī, 1422, no. 5065; Muslim, n.d., no. 1400)

This means that whoever is capable of marrying and able to afford it should marry; otherwise, they should fast. (al-Ṭibī, 1997, Vol. 7, p. 2257).

Neither the Quranic verse nor the hadith establishes a specific numerical age for marriage.

Moreover, this legal stipulation contradicts prevailing customary practices prior to the enactment of these laws, where it was common to marry off boys and girls after they had reached puberty. This legal change led to public and scholarly rejection. Muḥammad Rashīd Riḍā stated:

"This law caused great disruption in Egypt; it was rejected by the majority of the scholars of al-Azhar and affiliated religious institutions, as is evident from their statements and the articles published in newspapers. Shaykh Muḥammad al-Khuḍarī Bīk supported the law, but others refuted him. Many respected scholars inquired about our opinion, and we clarified the various prevailing harms of the law and its supposedly intended but less significant benefits". (Riḍā et al., 1397 AH, Vol. 2, p. 63)

It is also notable that this law aligns with the **United Nations General Assembly resolution of 1965**, which mandates that marriage should not occur below the age of eighteen. It states:

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution".

(Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages)

Nevertheless, such a requirement contradicts the Sharia-based texts, which do not set a specific age for marriage but instead link the permissibility of marriage to **ability and capacity**. Moreover,

setting a minimum age is not a necessary pillar of the marriage contract, which remains valid and effective under Islamic law without it. (Khilāf, 1938, p. 34)

This legal provision is also considered among the manifestations of **formal or superficial equality**—that is, equality for the sake of equality, with no real connection to the essence of the marriage contract. Rather, it appears to be a mere response to international conventions, particularly the CEDAW convention, which promotes equality between spouses in terms of marriage age. Following the amendment of Article 7 of the Algerian Family Code, both spouses must now be 19 years old, marking an effort to eliminate discriminatory legal provisions between men and women. As a result of this amendment, the minimum legal age for marriage was increased by one year for women and reduced by two years for men, reflecting a legislative attempt to correct traditional gender disparities in the law. (Nazzār, 2020, p. 209)

Furthermore, the amended Article 7 of the Algerian Family Code fails to mention the legal implications of conducting a marriage before reaching the legal age or without the consent of a guardian, even though such cases involve minors.

THE SOCIETAL IMPACT OF THE AMENDMENT ON MARRIAGE AGE DETERMINATION

The United Nations has adopted practical measures to protect the family structures it endorses. Through its international charters, it has included numerous provisions that reduce the likelihood of sustaining traditional family models, one such measure being the rejection of early marriage. (Dhabeḥ, 2023, p. 15)

Accordingly, Article 7 of the Algerian Family Code sets the legal age for marriage at 19 years for both men and women. Marriages involving minors, whether male or female, are subject to certain conditions as per the same article, most notably, the requirement of a judicial authorization. The judge holds discretionary power to approve or deny a marriage involving an underage girl. Consequently, many men who seek to marry an underage girl resort to ‘urfī (customary) marriage as a way to avoid legal procedures or in response to a judge's refusal to issue the required authorization. (Moussa, 2024)

The establishment of a legal minimum age for both males and females is grounded in the ruler's authority to restrict what is otherwise legally permissible (taqyīd al-mubāḥ) for the sake of public interest, particularly that of the family and society. However, a judicial exception was incorporated into the law, allowing marriage below the specified age in cases of necessity or evident benefit. This exception was introduced to prevent manipulation of the law and to block any unlawful circumvention, thereby discouraging families—especially in rural or traditional communities—from resorting to ‘urfī marriage when they have specific reasons for marrying off their children at a younger age.

Experts argue that this amendment is procedural and does not affect the substantive validity of the marriage contract before official authorities. From the community's perspective, the problem lies not so much in early marriage as in the rising rates of spinsterhood and delayed marriage. Therefore, setting a legal minimum age is not viewed as a fundamental cause of the spread of ‘urfī marriage, especially since obtaining judicial authorization remains relatively accessible for underage applicants.

Based on this, it can be concluded that the amendment establishing a minimum marriage age has no significant impact on the prevalence of customary marriage in Algeria.

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