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POSITION PAPER # 7

MARRIAGE IN ISLAM

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ABOUT THE MAJLIS UL ULAMAA (MAJLISTT)

The Majlis ul Ulamaa is a forum to facilitate the collaboration of Islamic Scholars resident and active within Trinidad and Tobago. It seeks to define the authentic Islamic position as it relates to Islam and the Muslim community of the country, considering the various scholastic positions and schools of law. To this end, it deliberates on issues of importance, and defines the Islamic position. The due process is meticulous, spanning the issuing of a draft position paper, inviting stakeholders and public comment and consultations before a final position is issued.

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Bismillaahir Rahmaanir Raheem
Allahumma salli alaa sayyidinaa Muhammadin wa baarik wa sallim

MARRIAGE IN ISLAM

With recent legislative changes to the various acts and ordinances pertaining specifically to the age of marriage in Trinidad and Tobago, and in part to the acceptable age of marriage in Islam, Majlistt has been approached by persons and institutions to clarify the Islamic position as it relates to Marriage. This paper covers the issues of:

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1. MARRIAGE AS AN INSTITUTION IN ISLAM

The Majlis understands marriage in Islam to be a contract between male and female which establishes social rights, obligations and duties between the individuals, between the couple and their children, other family members, and within wider society. We note as well that marriage represents a social institution and is a ‘cultural universal’ – it is common to all cultures globally, manifest throughout the history of human civilisation.

Marriage is recognized and encouraged in Islam. Marriage is referred to in the Quran as ‘meethaaqun ghaleez’ (translated to mean a strong covenant). It is recognized in the Qur’an:

"We indeed sent messengers before you (O Muhammad), and we assigned them wives and children" [Qur’an 13:38]

“And they say, "Our Lord, let our spouses and children be a source of joy for us, and keep us in the forefront of the righteous." [Qur’an 25:74]

"Our Lord, and admit them into the gardens of Eden that You promised for them and for the righteous among their parents, spouses, and children. You are the Almighty, Most Wise." [Qur'an 40:8]

There is no act of devotion that has remained prescribed for us since the time of Hazrat Adam (upon whom be peace) up to this moment and which is to be continued in paradise except Nikah and Imaan. (Durrul Mukhtar, Kitaab un Nikah). Allah (swt) encourages Marriage in the Holy Quran:

"Today, all good food are made lawful for you. The food of the people of the scripture is lawful for you, [and your food is lawful for them]. Also, you may marry the chaste women among the believers, as well as the chaste women among the followers of previous scripture, provided you pay them their due dowries. You shall maintain chastity, not committing adultery, nor taking secret lovers. Anyone who rejects faith, all his work will be in vain, and in the Hereafter he will be with the losers." [Qur'an 5:5]

"Marry those among you who are single, or the virtuous ones among yourselves, male or female: if they are in poverty, Allah will give them means out of His Grace: for Allah encompasseth all, and He knoweth all things." [Qur'an 24:32]

"Among His proofs is that He created for you spouses from among yourselves, in order to have tranquility and contentment with each other, and He placed in your hearts love and care towards your spouses. In this, there are sufficient proofs for people who think." [Qur'an 30:21]

This is also espoused in Books of Hadith, in which the Holy Prophet Muhammad (peace be on him) is reported to have said:

"When the servant of Allah marries, he has fulfilled half the (responsibilities laid on him by the) faith; so let him be God conscious with respect to the other half". (Mishkat)

"Marriage is from my Sunnah, whoever disregards my (Sunnah) path is not from me." (Ibn Majah)

"Whoever is able to marry, should marry." (Bukhari)

"O assembly of youths! Let him marry who amongst you is able to support a wife and is greatly shuts up eye sight and protects the private parts and whoso is not able, he should keep fast and it is (as it were) castration for him." (Bukhari and Muslim)

"For two mutual lovers, you will find nothing like marriage." (Ibn Majah)

"Declared that marriage is one of his sacred practices and added; "Whoever dislikes my way of life is not of me." (Bukhari)

"When a man has married he has fulfilled half of religion. Then let him fear Allah for the remaining half." (Baihaqi)

Majlis notes the institution of marriage is a social mechanism that serves a number of roles in society:

- It is the basis for living together of unrelated individuals, including companionship spiritually, emotionally, financially, and otherwise:

"And of His signs is this: He created for you mates from yourself that you might find solace in them, and He ordained between you love and mercy. Lo, therein indeed are signs for folk who reflect". [Qur'an 30:21]

Prophet Muhammad (peace be on him) is reported to have said, as narrated by Abu Huraira: "A woman is married for four things: her wealth, her family status, her beauty and her religion. So you should marry the religious woman (otherwise) you will be unsuccessful." (Bukhari and Muslim)

- It is the **only** acceptable basis for legitimate sexual relations in Islam:

"Let those who find not the wherewithal for marriage keep themselves chaste, until Allah gives them means out of His Grace." [Qur'an 24.33]

"O assembly of youths! Let him marry who amongst you is able to support a wife and it greatly shuts up eye sight and protects the private parts and whoso is not able, he should keep fast and it is (as it were) castration for him. [Bukhari and Muslim]

- It is the mechanism for legitimate reproduction and establishing the rights of inheritance:

"O mankind! Be careful of your duty to your Lord, Who created you from a single soul and from it created its mate and from them has spread abroad a multitude of men and women" [Qur'an: 4:1]

"It is He who created the human being from water, then invested him with ties of blood and marriage, and your Lord is All-Powerful." [Qur'an 25:54]

2. ON WHY MUSLIMS MARRY

Marriage is a religious duty and consequently a moral safeguard as well as a social necessity. Islam recognizes that marriage provides an important safeguard for individual welfare (for example, it can mitigate such risks as unsafe abortions, suicide, elopement, emancipation of minors, protection, economic mobility and social dignity), as well as to preserve the social values that permeate the community (for example the Islamic value system that sees marriage as the only legitimate basis for sexual intercourse; bringing communities together).

Islam takes a middle-of-the-road position on sexual relations – it neither condemns it like certain religions, nor does it allow it freely. Islam urges us to control and regulate our desires, whatever they may be, so that we remain dignified and not become like animals. The emphasis in Islam is marriage on the basis of piety, and is open across different backgrounds of class, race, social standing or intellect.

“And arrange for the marriage of those among you who are single (i.e. a man who has no wife and the woman who has no husband) and (also marry) the Salihoon (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allah will enrich them out of His Bounty. And Allah is All-Sufficient for His creatures needs, All-Knowing (about the state of the people)” [Qur’an 24:32]

“A woman may be married for four things: for her wealth, for her noble descent, for her beauty or for her religion. Choose the one who is religious, lest your hands be rubbed with dust!” [Bukhari and Muslim]

Marriage should not be to satisfy lust.

“But as for him who feared standing before his Lord, and restrained himself from impure evil desires, and lusts. Verily, Paradise will be his abode.” [Qur’an 79:40-41]

“...all others are lawful, provided ye seek (them in marriage) with gifts from your property, - desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed” [Qur’an 4:24]

3. ON THE ISSUE OF WHO MUSLIMS CAN MARRY

The emphasis in Islam is marriage on the basis of piety.

“And arrange for the marriage of those among you who are single (i.e. a man who has no wife and the woman who has no husband) and (also marry) the Salihoon (pious, fit and capable ones) of your (male) slaves and maid-servants (female slaves). If they be poor, Allah will enrich them out of His Bounty. And Allah is All-Sufficient for His creatures needs, All-Knowing (about the state of the people)” [Qur’an 24:32]

“...you may marry the chaste women among the believers, as well as the chaste women among the followers of previous scripture, provided you pay them their due dowries. You shall maintain chastity, not committing adultery, nor taking secret lovers.” [Qur’an 5:5]

“Do not marry idolatresses unless they believe; a believing woman is better than an idolatress, even if you like her. Nor shall you give your daughters in marriage to idolatrous men, unless they believe. A believing man is better than an idolater, even if you like him.” [Qur’an 2:221]

Abu Hurairah reported that the Holy Prophet (pbh) said: “A man should not lie with another man, and a woman should not lie with another woman without covering their private parts.” [Abu Dawood]

3.1 Relatives whom we cannot marry

Muslims are instructed on persons we cannot marry in the Qur’an:

“And marry not women whom your fathers married- except what is past: It was shameful and odious- an abominable custom indeed.” [Qur’an 4:22]

“Prohibited to you (For marriage) are:- Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful.” [Qur’an 4:23]

“Also prohibited are the women who are already married, unless they flee their disbelieving husbands who are at war with you.” [Qur’an 4:24]

3.1.a Relatives we are Prohibited from Marrying

The limitations can be further specified and detailed as follows:

[1] Your mother, grandmother, great grandmother, etc.

[2] Your daughter, granddaughter, great granddaughter, etc.

[3] Your sister, your sister's daughter, granddaughter, etc.

[4] Your niece (your brother's daughter in this case), your niece's daughter, granddaughter, etc.

[5] The sister of your father, grandfather, etc (paternal aunt)

[6] The sister of your mother, grandmother, etc. (maternal aunt)

[7] All of the above from a breastfeeding relationship (if a wet nurse breastfed you as an infant).

This means that if you were breast fed by other than your birth mother, then your wet nurse takes the ruling of your mother, and her daughter takes the ruling of your sister, and so on. This is based on the statement of the Prophet (sallallaahu 'alayhewasallam):

"Breastfeeding makes forbidden all that is forbidden due to blood relations." [Agreed upon by al-Bukhaaree and Muslim]

[8] The wife or ex-wife of your father, grandfather, great grandfather, etc. (even from a breastfeeding relationship) [Qur’an 4:22]

[9] The wife or ex-wife of your son, grandson, great grandson, etc. (even from a breastfeeding relationship) [Qur’an 4:23]

[10] Your wife's mother (your mother-in-law), your wife's grandmother, etc. (even from a breastfeeding relationship) whether the marriage was consummated or not. [Qur’an 4:23]

[11] Your wife's daughter (your step-daughter), your wife's granddaughter, etc. (even from a breastfeeding relationship) only if the marriage was consummated. [Qur’an 4:23]

[12] The mother, grandmother, etc. and daughter, granddaughter, etc. of a woman you mistakenly had sexual intercourse with, thinking she was your wife (may Allah protect us from such trials)

For example: A woman chooses a representative (walee) for her marriage other than her father without his permission. This remains unknown until after the marriage is consummated. Then it becomes known and the contract is thus ineffective, the marriage is invalid, and they are separated. In such a case, the woman's mother, grandmother, etc. and daughter, granddaughter, etc. are all the man's muharramaat and he can never marry them.

Other examples: A woman marries someone during her 'iddah, the marriage is consummated, this later becomes known, the contract is thus ineffective, and they are separated. Or a man somehow initiates sexual intercourse mistakenly with a woman other than his wife. These kinds of errors cause the woman's mother, grandmother, etc. and daughter, granddaughter, etc. to be the man's muharramaat whom he can never marry.

[13] The mother, grandmother, etc. and daughter, granddaughter, etc. of a woman you had illegal sexual intercourse (zinaa) with (may Allah protect us from such trials)

[14] The mother, grandmother, etc. and daughter, granddaughter, etc. of a man you had homosexual intercourse with (may Allah protect us from such trials)

[15] Your ex-wife whom you accused of committing adultery in a Mulaa'anah case in an Islamic court (may Allah protect us from such trials) [Qur'an 24:6-9]

Mulaa'anah is when a man accuses his own wife of adultery but does not have the four witnesses required to prove it. He is then required to swear by Allah four times in front of a judge that he is truthful in his accusation, adding the fifth time, "And may Allah's Curse be upon me if I am lying." The accused wife may then defend herself by swearing by Allah four times that he is lying, adding the fifth time, "And may Allah's Anger be upon me if he is truthful." The couple is then separated and can never re-marry.

3.1.b Relatives we are Temporarily Prohibited from Marrying

There are women you are temporarily prohibited from marrying, who you may be able to marry in the future under certain circumstances...

[1] Your current wife's sister or aunt [Qur'an 4:23]

The aunt (paternal or maternal) takes the ruling of a sister in this case. You can marry her once you are separated from your current wife by death, divorce, or annulment of the marriage contract.

[2] A fifth wife. A man is forbidden from marrying a fifth wife. [Qur'an 4:3]. If you have four wives, then it is not permissible for you to marry another woman. You can marry a fifth wife once you are separated from one or more of your current wives by death, divorce, or annulment of the marriage contract.

[3] Another man's wife. You can marry a woman once she is separated from her husband by death, divorce, or annulment of the marriage contract, and she has completed her 'iddah (legislated period of waiting).

[4] A woman during her 'iddah or *istibraa'*. *Istibraa'* is a period of waiting after *akhul'*, or after rape, fornication, etc. when there is a need to ensure the absence of a pregnancy. You can marry her once her 'iddah or *istibraa'* is completed.

[5] A woman who you fornicated with (may Allaah protect us from such trials). You can marry her after sincere repentance, and after she has finished her *istibraa'* (period of waiting).

[6] Your ex-wife whom you have divorced. When can you marry her? You can marry her only after she (1) finishes her 'iddah, (2) marries another man with a legally binding contract, (3) consummates that marriage, (4) becomes separated from him by way of death, divorce, or annulment of the marriage contract, (5) and then she finishes her 'iddah from that. [Qur'an 2:230]

[7] Any woman while you are in a state of *ihraam*

Once you have entered a state of *ihraam* for Hajj or 'Umrah, then you are not allowed to marry anyone, due to the statement of the Prophet (sallallaahu 'alayhewasallam):

"The *muhrim* (one in a state of *ihraam*) is not to marry, nor is he to propose." [Saheeh Muslim]

When can you marry her? You can marry her after you finish your rites of Hajj or 'Umrah and are no longer in a state of *ihraam*.

[8] Any woman in a state of *ihram*. You can marry her after she finishes her rites of Hajj or 'Umrah and is no longer in a state of *ihraam*.

[9] A polytheist woman. However, you can marry her after she has accepted Islam. [Qur'an 2:221] Exempted from this rule are chaste Jewish and Christian women. [Qur'an 5:5]

3.2 Marrying Persons of Other Religions

Islam does not encourage the interfaith marriages. The general rule of Islam is that Muslims should marry Muslims. The only exception is given to Muslim men who are allowed to marry the chaste women from among the People of the Book.

The Quran specifies that the male can marry a Christian or Jewish woman.

“(Lawful unto you in marriage) are chaste women who are believers and chaste women among the people of the book before your time when you have given their due Mahr (bridal-money given by the husband to his wife at the time of marriage), desiring chastity (i.e. taking them in legal wedlock) not committing illegal sexual intercourse, nor taking them as girlfriends.” [Qur'an 5:5]

Persons who are marrying People of the Book should think of the consequences of these actions, and the future regarding children, etc.

All schools of thought prohibited a Muslim woman from marrying a man who is non-Muslim.

“Do not marry polytheistic women until they believe. A slave woman who believes is better than an unbelieving woman, even though if she attracts you. And not marry (your girls) to unbelievers until they believe. A man slave who believes is better than an unbeliever, even though if he attracts you. Unbelievers do (but) beckon you to the fire but Allah beckons by His grace to the garden (of bliss) and forgiveness, and makes His signs clear to mankind; that they may receive admonition.” [Qur’an 2:221]

“O you who have believed, when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them. But give the disbelievers what they have spent. And there is no blame upon you if you marry them when you have given them their due compensation. And hold not to marriage bonds with disbelieving women, but ask for what you have spent and let them ask for what they have spent. That is the judgement of Allah; He judges between you. And Allah is Knowing and Wise.” [Qur’an 60:10]

If a Muslim is married to a mushrik(a), how do we treat with this situation? Theologically, the marriage would be considered null and void, but the situation has to be treated with carefully and with patience and wisdom. The Quran tells us:

“But verily your Lord – to those who do wrong in ignorance, but who thereafter repent and make amends – your Lord after all this, is Oft-Forgiving, Most Merciful.” [Qur’an 16.119]

Where conversion to Islam is required, the person who is conducting the marriage should try to ensure that the persons who are required to become Muslim are converted as soon as possible before the day of marriage.

Marriage to the followers of Mirza Ghulam Ahmad (Ahmadiyyah; Qadiani)

Prophet Muhammad (peace be on him) was the final messenger, according to the Quran and Sunnah. Whoever claims prophethood after this, then he is a liar and this includes Mirza Ghulam Ahmad. His claim of prophethood is a lie, and those who believe he was a Muslim are not among the believers. The judgment of the Islamic Scholars was passed regarding the followers of Mirza Ghulam Ahmad that they are unbelievers because of their ideology and therefore marriage to them is prohibited until they believe.

4. ON THE AGE OF MARRIAGE

Islam tells us when persons reach marriageable age and wish to get married, they should be allowed to do so. If not, they are advised in Islam to restrain themselves:

“And arrange for the marriage of those among you who are single, or the virtuous ones among your slaves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah encompasseth all, and He knoweth all things.” [Quran 24:32]

“Let those who find not the wherewithal for marriage keep themselves chaste, until Allah gives them means out of His grace.” [Quran 24:33]

These provisions help to preserve the value system and ensure those who are able to would do so with the commitment to shoulder the accompanying responsibilities. Sexually mature persons within the community should not be exposed to unregulated sexual promiscuity and immorality – with the accompanying health risks. Nor should these persons shirk their responsibilities, or be left to shoulder parenting responsibilities alone. Rather, they should inculcate the values of commitment, fidelity, cooperation, dignity, love, respect and responsibility that are associated with marriage.

While Islam does not recognize a minimum age of marriage (Nikaah), some scholars are of the view that the consummation of marriage should take place when the person reaches the age of puberty. The Holy Prophet (peace be on him) is reported to have said:

"O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power." (Bukhari)

We recognise a person remains a child until such time that he or she attains puberty (in the Quran: bulugh). The defining characteristic at the first stage of transition from childhood to youth is the attainment of the age of puberty, at which time individuals undergo physical development initiated by hormones and become capable of sexual reproduction. This occurs at different ages for individuals, and in different age ranges for the different genders (McCoy & Wibblesman 1992; Harris 1994; Steinberg 1997; Simpson 2001; Kail & Cavanaugh 2010) as follows:

- For girls it tends to start at ages 10 – 11 and end at ages 15-17
- For boys it tends to start at ages 11-12 and end at ages 16-17

Marriage is a right given in Islam to those who have reached the ‘age of marriage’, at which age a male or female can assent to marriage. However, it is permissible for a guardian (wali) to arrange the marriage (Nikaah) of his dependent before he / she reaches the age of puberty. The Holy Prophet (peace be on him) is reported to have said

“O young people! Whoever among you is able to marry, should marry, and whoever is not able to marry, is recommended to fast, as fasting diminishes his sexual power.” [Bukhari]

Abu Hurairah narrates that the Messenger of Allah (peace be on him) said “When one with whose religion and character you are satisfied asks your daughter in marriage then accede to his request. If you do not do so then there will be disorder in the earth and extensive corruption.” [Tirmidhi]

It must be noted that these complement other rules that govern Marriage in Islam. There are various parameters which must be maintained in getting married. The Holy Prophet (pbh) is reported to have said:

Al Mughirah Ibn Shu’bah said “I got engaged to a woman at the time of the Prophet (peace be on him). He asked me “Have you seen her?” I said “No”. He said “go and have a look at her, because it is more fitting that love and compatibility is established between you.” (Nasai)

Persons cannot be forced to marry. In a hadith narrated by 'Abd-Allah ibn Buraydah:

“A virgin woman came to the Prophet and said “O Messenger of Allah, my father married me to his nephew to raise his status through me, and he did not consult me. Do I have any say in my affairs? “The Messenger of Allah (peace be on him) said to her “Yes”. She said to him “I do not wish to turn down what my father has arranged. But I wished that women should know whether they have rights over their affairs or not (Boseeri).

4.1 Marriageable Age in Western Countries

Majlistt notes the construct of the Marriageable Age in our societies today – the age specified in individual countries at which persons can get married by their own volition. Most religions and legal systems (123 of the 195 countries of the world, or 63%) recognise the importance of marriage and allow for individuals to get married by their own volition from the marriageable age.

As it stands today, the UN FPA notes the age of 18 as the age where persons have the choice individually on whether to get married or not, established by the UN 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (Signed by 55 parties, including Trinidad and Tobago). The agreement to establish a minimum age for marriage was also adopted by 123 parties to the 1956 Supplementary Convention on the Abolition of Slavery (Trinidad and Tobago is a party to this as well). Of this, 55 countries (28%) have agreed that the marriageable age is 18 years. This is different in Islam, where parental consent is encouraged for marriage of youths, although it is not necessary. Parents are instructed to assess certain conditions, and as parents have to meet certain conditions.

Majlistt notes that the marriageable age has over the years proven to be a tool that is subject to manipulation based on economic, health, social and political intent. As an example, the age of marriage was manipulated by one religion to influence the power of clans in the affairs of state. In other instances, some governments varied the age of marriage at the times of world wars or great sickness or famine.

The acceptable age for marriage in many cultures historically varied between 9 years or at the onset of puberty – the specific option varying depending on the specific civilisation being considered. The main exception was North-western Europe – where marriages at early ages were rare. From the onset of the French Revolution the ages of marriage imposed by the revolutionary

legislation was 13 years for girls and 15 for boys, and these ages increased under the Napoleonic Code to 15 for girls and 18 for boys. In the pursuit of gender equality, in 2006 the marriageable age for girls was equated to that for boys at 18 years in some jurisdictions.

Majlistt notes the legal age for marriage without parental consent varies by country¹ and range from 15 – 21 years and older:

Country-State	Marriageable Age without Parental Consent - Male	Marriageable Age without Parental Consent - Female
Bangladesh	21	18
China	22	20
Indonesia	18	16
Kazakhstan	18	17
Luxembourg	18	16
Malaysia	21	21
Malta	16	16
Republic of Moldova	18	16
Slovakia	16	16
United States – Mississippi	21	21
United States – Nebraska	19	19
Scotland	16	16
Spain	16	16

4.2 Marriageable Age of Minors – with Parental Consent

Marriage of minors (i.e. children beneath the age of puberty) is allowed in Islam – under certain conditions which must be met. This is also established precedent in many religions and secular legal codes throughout the world, and based on the biological fact that persons attaining the age of puberty (which varies by gender and also individually) become sexually mature. In many jurisdictions the laws allow marriage by exception for males and females younger than 18, provided that parental consent is given.

“In 2010, 158 countries reported that 18 years was the minimum legal age for marriage for women without parental consent or approval by a pertinent authority. However, in 146 countries, state or customary law allows girls younger than 18 to marry with the consent of parents or other authorities; in 52 countries, girls under age 15 can marry with parental consent. In contrast, 18 is the legal age for marriage without consent among males in 180 countries. Additionally, in 105 countries, boys can marry with the consent of a parent or a pertinent authority, and in 23 countries, boys under age 15 can marry with parental consent.”
[UNFPA 2012]

That 146 countries of the world allow for marriage of minors – albeit as exceptions – demonstrates the universality of the principle in various cultures, except those of Northwestern Europe:

¹ This data was compiled at the time of research and may have subsequently been subject to change.

Country-State	Marriageable Age with Parental Consent - Male	Marriageable Age with Parental Consent - Female
Denmark	15	15
Estonia	15	15
Lithuania	15	15
Slovenia	15	15
Spain	14	14
UK - England	16	16
United States - Georgia	15	15
United States – Mississippi	17	15
United States - Missouri	15	15
United States – New Hampshire	14	13
United States – Texas	14	14
United States – Virginia	16	16 (or younger if pregnant)
Iran	15	13
Iraq	15	15
Yemen	15	15
Angola	16	15
Laos	15	15
Tanzania	14	14
Myanmar	14	14

This is also consistent with religious codes dominant throughout the world:

	Male	Female
Canon Law of the Catholic Church (Canon 1803 (1))	16	14
Judaism (Mishnah)	13	12
Islam	Age of Puberty	Age of Puberty
Hinduism (Manusmriti)	Age of Puberty	Age of Puberty

That the will of the UN bodies would be to steer the cultural and value systems of the world's civilisations towards a particular paradigm, and not to accept a cultural universal, is highly circumspect.

4.3 Arguments Against Marriage with Parental Consent

Majlitt notes with great concern an outcry by some societies for any provisions that allow for marriage of persons under the marriageable age (Child Marriage). There are many institutional initiatives that work to prevent child marriages, including:

- UN General Assembly: International Day of the Girl Child (11 October 2012): Ending Child Marriage
- UN FPA Population & Development Branch and Sexual and Reproductive Health Branch – Marrying Too Young
- UN Human Rights Council: Resolution against Child, Early and Forced Marriages – recognising child marriage as a human rights violation and planning its elimination in post-2015 global development agenda
- UN Commission on the Status of Women (2014): agreeing to eliminate child marriage
- World Health Organisations: Highlight the risks of Child Marriage as a method of prevention

Arguments are typically made highlighting the consequences that result from early marriage or child marriage, which speak in part to concerns with prevalence of teenage pregnancy, and that of denied educational and economic opportunity by especially women as a result of marriage at these ages. On these, Majlistt notes the following:

1. ***Those issues which accompany early sexual intercourse and pregnancy*** – which we can only conclude based on the statistics as being conducted outside of wedlock within our society. The age of marriage is seemingly not the main issue but rather the prevalence of sexual promiscuity and the associated negative effects which manifest from such activities. From our research, there is no evidence to suggest that married girls are at a higher risk of pregnancy than unmarried cohorts. Nor is there evidence to suggest that married girls are more sexually active than many unmarried ones.

Rather, the focus on abstinence until such time as the individual is prepared to make the commitment for marriage and deal with the consequences responsibly, as espoused in Islam, along with the option to do so in a responsible monogamous relationship under free consent and with the stated obligations, would serve to ensure that the individual acts responsibly and with commitment on one part, as well as mitigate the exposure to STDs and other related risks often accompanying promiscuity.

2. ***Denial of opportunity for education and economic gain*** – this we recognise may be an issue facing some cultures globally – particularly in the Middle East, Africa and Indian sub-continent. However, the cultural norms and values that manifest in those countries (of which some of our scholars on Majlistt are native) – along with the routine non-compliance by society with the established ages of acceptable marriage – are not comparable to our society within Trinidad and Tobago. More severe restrictors that perpetuate this seem to be correlated with poverty and proximity to urban areas, rather than marriage beneath the marriageable age, and therefore warrants further study.

Further, there is yet to be presented local evidence to indicate that marriage is an impediment to educational development – which in Islam is strongly encouraged on each individual “from the cradle to the grave”. In fact, from a gender context, the education of women in Islam is

given greater importance for the wellbeing of society. Hence marriage is not a valid reason for the prevention of education of women in Islam.

4.4 On Accusations of Islamic Sanction of Pedophilia, and the Age of Hazrat Ayesha (R.A.)

Majlistt is aware of accusations in the public domain asserting that Islam sanctions pedophilia. Often these accusations are defended inaccurately using references of Hadith:

Hisham ibn Urwa narrated that Hazrat Ayesha (r.a.) is reported to have said: “The Prophet entered into marriage with me when I was a girl of six; and at the time of joining his household I was a girl of nine years of age.” (Bukhari)

Majlistt views this perspective as an unfortunate consequence by those who in part rely on non-Arabic translations, and without a study of the science of interpretation of the Qur’an and Hadith (i.e. Usool-e-Fiqh and Usool-e-Hadith). On another part, Majlistt notes some persons omit to consider the breadth of references in making assertions, disregarding the fact that the issue has proven to be contentious.

The permitted age of marriage in Islam is already established previously in this section, and it needs to be reiterated that (1) marriage as a social arrangement is permissible once certain preconditions are met, and (2) marriage as an arrangement and consummation of the marriage are distinct elements that are not manifest concurrently.

Majlistt places on record its support of the fact that the marriage to Hazrat Ayesha (R.A.) by Prophet Muhammad (peace be on him), was not, in any way, something against the law of nature or against the law of Islam. While it is true that Hazrat Ayesha (R.A.) was a very young woman at the time of her marriage to the Prophet (peace be on him), it is not correct to accuse him of being a pedophile. The Prophet’s (peace be on him) marriage to Hazrat Ayesha (R.A.) was not based on lust, or any other material consideration. The Qur’an tells us that the Prophet (peace be on him) never said or did anything on the basis of his or personal desire. Allah says:

“Your comrade (i.e. Prophet Muhammad) does not err; nor is deceived. Nor does he speak of his own desire.” (Quran 53:2-3)

The Prophet (peace be on him) used to wait on Divine Inspiration even when he was asked questions; so that for him to take such an important decision he had to be inspired in order to do so. He confirms this by narrating the following:

[Hazrat] Ayesha narrates that the Prophet (peace be on him) said to her: You have been shown to me twice in my dream, I saw you pictured on a piece of silk and someone said to me, this is your wife. When I uncovered the picture I saw it was yours. I said; if this is from Allah it will be done. (Bukhari).

At the time of marriage to Hazrat Ayesha (R.A.) she had already attained the age of puberty. This can be concluded on the basis of the fact that it was the custom in Arabia to marry girls upon the attainment of puberty; and as Ayesha was already engaged to Jubair, one can conclude that she was a mature person. This engagement to Jubair was later dissolved. Then she was married to the Prophet (peace be on him). This marriage was consummated three years later.

Historians are of the view that although Hazrat Ayesha says that she got married at the age of six, she could have been much older at that time. They base their conclusions on evidence deduced from events that occurred from the beginning of Islam until the time she got married to the Prophet (peace be on him). Because what the historians say is based on their deductions there are differences among them regarding the exact age of Hazrat Ayesha (R.A.) at the time of her marriage to the Prophet (peace be on him).

According to the Traditions recorded in Tabari, the children of Hazrat Abu Bakr, i.e. Asma and Hazrat Ayesha, (R.A.) were born in pre-Islamic era, based on the reasoning that within the first year of the receipt of the first revelation of the Holy Qur'an, Hazrat Abu Bakr and his two daughters Asma and Hazrat Ayesha (R.A.) accepted Islam. This fact is also supported by Ibn Ishaq, who says that in the first year of Islam, Hazrat Abu Bakr and his family including little Ayesha accepted Islam and became Muslims, after the first Revelation came to the Prophet (peace be on him). (Ahmad). If she (Ayesha) was old enough to recite the Shahadah, then she would have been born at least two or three years before the first revelation. This is supported by hadith:

Ever since I can remember (or understand things) my parents were following the religion of Islam. (Bukhari)

If Hazrat Ayesha (R.A.) was born two or three years before the first revelation came, it means that at the time of her marriage to the Prophet (pboh) she would have been *at least* thirteen years of age. This is because Hazrat Khatija died ten years after the first revelation came; and the Prophet (peace be on him) married Hazrat Ayesha (R.A.) three years later. This means that she would have been sixteen years when the marriage was consummated. We note other scholars have given reasons to support their belief that Hazrat Ayesha (R.A.) could have been more than sixteen years old when the marriage was consummated.

Within the Majlistt there are scholars who accept Hazrat Ayesha's (r.a.) narration that she was six years old when she was married and nine years old when the marriage was consummated. Other scholars are of the view that the historians are correct, and there could have been an error in reporting.

Whatever would have been the exact age of Hazrat Ayesha (r.a.) at the time of her marriage to the Prophet (peace be on him), it is clear that the marriage was valid and done in accordance with the laws of Islam.

Majlistt reiterates that:

1. The Holy Prophet's marriage to Hazrat Ayesha (R.A.) was not for personal reasons, or lust.
2. Hazrat Ayesha (R.A.) was a mature person at the time, and was capable of contracting marriage in accordance with Islamic Shariah.
3. There was wisdom in his marriage to Hazrat Ayesha (R.A.); as, she was able to remember, comprehend and transmit a lot of the Traditions.

The Majlistt is of the view that there is wisdom in everything that the Prophet (peace be on him) did, whether a person can understand the reasons or not. As a result the Majlistt wishes to advise,

that no one should try to defame the noble Messenger (peace be on him); based on partial information that was proven to be contentious, and which may not necessarily be accurate.

As it pertains to pedophilia, Islam does not sanction illegitimate sexual relations. It is reiterated that marriage is the only legitimate basis for sexual relations. Based on our understanding of Islam from the Quran and Sunnah, it is not acceptable to have sexual relations with someone who has not yet attained the age of puberty.

5. POLYGAMY IN ISLAM

Islam recognizes two types of marriages: Monogamy (one man married to one woman) and limited polygamy (specifically polygyny – one man married to two, three or at the most four wives).

This was not introduced by Islam, but was manifest in preceding societies (such as Babylonians, Assyrians Persians and Hindus) and is still manifest in societies throughout the world today on different continents. It is important to note that in many cases polygamy manifested (and still manifests) with no restriction as to the number of wives a man might have. Historically polygamy is more common than monogamy (Murray in Wetzstein 2000).

Islam permits polygamy; it neither forces nor requires it. Research indicates it represents up to 2% of married males practice polygamy (al_kholy 2006). This is similar to the position of other major religions in the world. Hebrew patriarchs equally revered by Judaism, Christianity, and Islam were polygamous:

- Abraham had three wives (Genesis 16:1, 16:3, 25:1)
- Moses had two wives (Exodus 2:21, 18:1-6; Numbers 12:1)
- Jacob had four wives (Genesis 29:23, 29:28, 30:4, 30:9)
- David had at least 18 wives (1 Samuel 18:27, 25:39-44; 2 Samuel 3:3, 3:4-5, 5:13, 12:7-8, 12:24, 16:21-23)
- Solomon had 700 wives (1 Kings 11:3)

Polygamy in Islam is based on mutual consent – a woman cannot be forced to marry any man, including a married man. It is recognized that polygamy is a vehicle that can be used in different scenarios, some of which include (but are not limited to) the following, as narrated by scholars (Rizvi):

- To provide protection from or inclusion into a community
- To preserve a woman's dignity and welfare in society
- To provide for a woman and her family
- To take women (slaves) out of bondage
- To fulfill the commands of Allah
- To establish or cement family ties
- To join a family
- To set an example

Islam regulates polygamy by limiting the number of wives a man can have, and imposes conditions of responsibility for its practice (this is in addition to other conditions on marriage). The Quran establishes a maximum number of wives a man can have:

“... marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly with them, then only one.” [Qur’an 4:3]

Islam requires equal treatment to all wives. The Muslim husband is not permitted to differentiate between his wives in regards to sustenance and expenditures, time, and other obligations of husband. The Qur’an tells us:

“but if you fear that you will not do justice (between them), then (marry) only one...” [Qur’an 4:3]

“And you do not have the ability to do justice between the wives, even though you may wish (to do so)...” [Qur’an 4:129]

Based on such verses, some Islamic or Muslim-dominant states (such as Iran and Egypt) regulate the provision of polygamy: the man who intends to marry a second wife has to seek approval from the family court and prove the need for a second wife and the ability of providing for both in an adequate manner. This opinion has been codified into the official positions of various schools of Fiqh. The **Hanbali** and **Shaafi’i** schools of jurisprudence assert that it is held recommended for a Muslim male to have only one wife, even if he may act equitably with more than one woman.

- **Ibn Qudaamah** from the Hanbali School of jurisprudence, said in *Ash-Sharh Al-Kabeer*: “It is more appropriate to marry only one wife. The author of *Al-Muharrar* [i.e. Abul Barakaat Al-Majd ibn Taymiyyah] said this, based on the saying of Allaah (which means) {...But if you fear that you will not be just, then [marry only] one}.” [Ash-Sharh Al-Kabeer authored by Shams-ud-deen Ibn Qudaamah].
- **Al-Maawardi**, from the Shaafi’i School of jurisprudence, said: “Allaah has permitted a man to marry up to four wives, saying: {...two or three or four...}, but Allaah advised that it is desirable for man to marry only one wife, saying: {...But if you fear that you will not be just, then [marry only] one}” [al-Hawi al-Kabir 11/417].
- **Ash-Shirbeeni** from the Shaafi’i School of jurisprudence, said: “It is a Sunnah not to marry more than one wife if there is no apparent need.” [Mughni al-Muhtaj 4/207].
- **Imam Ahmed ibn Naqib al Masri**, from the Shaafi’i School of jurisprudence, said “It is fitter to confine oneself to just one” [Umdatul Salik].
- **Imam Ghazali**, from the Shaafi’i School of jurisprudence, stated: “It does not call for two wives, [since] plurality may render life miserable and disrupt the affairs of the home.” [Kitab al Nikah, Ihya Uloomud Din].

Majlistt is of the position that it is better to have one wife, but it is permissible to have more than one wife as conditions manifest.

Majlitt notes a common question that arises on this matter is whether a man is required to inform his first wife if he marries again. We note that this is an individual matter that has to be dealt with carefully, with wisdom, understanding and justice.

6. THE VALIDITY OF MARRIAGE, MARRIAGE CEREMONY AND WALIMA

Marriage is a 2-tiered process in Islam

- a. Nikaah can happen at any age, but both parties have to give free consent (by the individuals or their Wali as applicable). For the Nikaah to be valid in Islam, there must be
 - Ijaab (Giving in marriage) and Qabul (acceptance)
 - a *Wali (Guardian) and 2 male witnesses or 1 male and 2 female witnesses
 - Mahr (Promise of a specified gift given by the groom to the bride)
 - Marriage must be between a male and a female

**In the Hanafi school, a wali is highly recommended but not compulsory, if the persons are adults.*

These conditions have to be met regardless of the type of ceremony that is being conducted.

- b. Consummation (which can only happen after the person has attained the age of puberty). We note that there may be exceptions to this requirement, which must be dealt with on a case by case basis.

The marriage itself is considered valid if it is witnessed by two male witnesses (shahidayn), or one male and two female witnesses in addition to the other basic requirements of an Islamic marriage contract being fulfilled, and the couple will not be guilty of involvement in an unlawful illicit relationship.

Hazrat Ayesha (r.a.) narrates that the Holy Prophet (peace be on him) said, “There is no marriage except with a wali and two witnesses of good character.” [Bayhaqi]

If only two males witnessed a couple’s marriage and no other person, their marriage is valid in Islam according to the Hanafi school, and in other schools of Fiqh a Wali or representative must also be present. This is the position of most classical jurists, including the Hanafi, Shafi’i and Hanbali Schools. The Walima is also a Sunna and not a pre-requisite for the validity of one’s marriage. (See for the Hanafi School: *Radd al-Muhtar* 3/21-22, for the Maliki School: *Hashiyat al-Dasuqi ala ‘l-Sharh al-Kabir* 2/342-343), for the Shafi’i School: *Mughni al-MuhtajSharh al-Minhaj* 3/194, and for the Hanbali School: *Kashshaf al-Qina’* 4/60)

Mahr: Mahr must be specified and given to the girl (or promised to be given and is owing until it is given). Islam tells us:

“Thus, whoever you like among them, you shall pay them the mahr decreed for them. You commit no error by mutually agreeing to any adjustments to the mahr. Allah is Omniscient, Most Wise.” [Quran 4:24]

“And give the women (on marriage) their mahr as an obligation; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer.” [Quran 4:4]

Mahr cannot be recanted or negated:

“But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for mahr, take not the least bit of it back: Would ye take it by slander and manifest wrong? And how could ye take it when ye have gone in unto each other, and they have Taken from you a solemn covenant?” [Quran 4:20]

And do not make difficulty for them, that ye may Take away part of what ye have given them, - except where they have been guilty of open lewdness; [Quran 4:19]

Marriage in the Mosque: It is Sunnah to have the nikaah in the mosque, although it remains valid wherever it is conducted.

Marriage Khutbah: It is Sunnah for the marriage khutbah to be given before the Nikaah.

Waleemah (Marriage Feast or Reception): It is Sunnah (commendable) to have a waleemah. Majlistt notes the main purpose of the waleemah is the announcement to the public of the marriage of the 2 persons, so that the public is aware of their union.

Sayyiduna Anas ibn Malik (r.a.) narrates that the Messenger of Allah (peace be on him) saw a yellow mark on Abdur Rahman ibn Awf (r.a.) and said: “What’s this?” He replied: “I have married a woman with the mahr being gold to the weight of a date-stone.” The Messenger of Allah (peace be on him) said: “May Allah bless you (in your marriage), perform a Waleema, even if it is only with a goat.” [Bukhari]

The Messenger of Allah (peace be on him) himself provided a Walima after many of his marriages. He provided meat and bread on the occasion of his marriage with Zaynab bint Jahsh (RA), Hays (a type of sweat-dish cooked with dates, cheese & butter) on the occasion of his marriage with Safiyya (RA) and barley on another occasion. [Bukhari & Muslim]

Time of Waleemah: The waleemah should be done as early as possible after the consummation of the marriage.

Majlistt notes a common questions is whether the waleema be deferred or delayed. It can be delayed up to 3 days, but should not go beyond this time since this defeats the purpose of waleemah. It is not Sunnah to have the waleemah before the consummation of the marriage. The practice of having the reception before consummation is not considered to be waleemah, but it satisfies the principle of announcing the marriage. If one wants to preserve the Sunnah, they can have a Waleemah (even if for a smaller number of people) after the marriage is consummated.

Invitation to the Waleemah: One should invite family-members, relatives, friends, associates, scholars and pious people and others. It is wrong to invite only rich people or those who are regarded to be from the upper-class.

Abu Huraira (RA) states: “The worst food is that of a wedding banquet (waleemah) to which only the rich are invited whilst the poor are not invited.” [Bukhari and Muslim]

It is Sunnah to accept a waleemah invitation.

The Holy Prophet (peace be on him) is reported to have said “If one of you is invited to a wedding banquet (waleemah), then he must accept the invitation.” [Bukhari]

The Holy Prophet (peace be on him) is reported to have said “Accept this (marriage) invitation if you are invited to it.” And ‘Abdallah ibn Umar used to accept the invitation whether to a wedding banquet or to any other feast, even when he was fasting. [Bukhari]

Marriage Ceremonies: Seating the bride on stage it is not haraam or forbidden, (with the groom after nikkah or with her mahram before the nikkah), with proper dress (her body should not be exposed).

It is Sunnah and encouraged for the bride to be asked in her private chamber to answer the questions to satisfy nikkah. The wakeel goes to the room and ask the bride and the nikaah is completed. The bride can then be brought into the public area subject to their preference.

Exchange of Rings: This is not a requirement in Islam. If people want to do it, it is mubah (allowed), but it must be ensured that the ring for the groom is not gold.

Exchange of Vows: is a practice of western culture, and is not a part of Islam.

Toasting / Drinking of Sharbat: Toasting is a practice of western culture, and is not a part of Islam. Drinking of Sharbat is Sunnah. It must be non-alcoholic, and the Sunnah is to sit and drink the beverage.

Cutting of Cake: is mubah (allowed). It is not required for a nikaah but it is permissible.

First Dance: Any form of dancing in the public is haraam.

Grand Ceremonies and Incurring Debt: As Muslims, we should not do things that appear to be extravagant.

Split Ceremonies: It is not permissible to have an Islamic ceremony and a ceremony of another religion for the same marriage.

7. MARRIAGE RESPONSIBILITIES

Islam tells us “The husband is a garment for the wife and the wife is a garment for the husband.” [Quran 2:187]. The role of garments is acknowledged to include:

- Protection from the environment
- Guard and protect a person’s modesty
- Adornment to beautify a person

Husbands and wives should perform these functions in relation to each other.

We are instructed to live with each other on a footing of kindness and equity, and not treat each other with harshness [Quran 4:19]

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. [Quran 4:34]

Both should strive to maintain love and affection amongst themselves.

Righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. [Quran 4:34]

Contrary to the dominant culture in some parts of the world, women are allowed to work and earn income (subject to the agreement between the husband and wife), but there is no obligation on the part of the woman to maintain the household from her personal income.

The relationship between both husband and wife should be based on justice, and each person must be familiar with their rights and duties to each other. It must be understood that both parties in a marriage have equal rights to each other, referenced in the Quran [2:228].

8. DIVORCE

After marriage, divorce may become a necessity in some cases. Divorce is defined as the legal dissolution of a marriage either according to Islamic theology and/or national law. Majlistt notes that divorce in Islam is a broad subject with considerable aspects that are treated with across many schools of Fiqh. A comprehensive treatment of the subject would be the focus of a separate paper to be treated with subsequently. However, it is useful for some aspects of divorce to be considered in relation to the subject of marriage.

Divorce is allowed but disliked in Islam.

In a hadith reported by Ibn Umar (r.a.) the Holy Prophet (peace be on him) is reported to have said "With Allah, the most detestable of all things permitted is divorce." [Abu Dawood]

Majlistt notes that people in our society may ask for divorce for a number of general reasons, and some of the causes and/or accusations include the following:

- Unfaithfulness by one or both persons in the marriage
- Abuse
- By the first wife when men take other women as wives
- Women accuse men (rightfully or not) of being too controlling, jealous, or restrictive of their actions
- Men harbour resentment against wives who are more successful (financially or in their careers) than them
- Interference of the families and/or friends of the spouse
- Accusations of loyalty to families and/or friends over that of the husband or wife
- Impotence
- Lack of attraction
- Changes to behaviour or religion after marriage

Types of Divorce: There are a number of ways that divorce can be effected in Islam, and different conditions are applicable apply to effect a valid divorce in Islam.

- Khul’a, or divorce initiated by the wife
- Talaq, or divorce pronounced by the husband

We remind all persons that once a divorce is conducted in accordance with Islamic Theology, it is valid in Islam – whether or not the national legal proceedings have been initiated or completed, or not.

Divorce is seen as the most disliked permissible act in the sight of Allah. The Quran and Ahadith give explicit guidance on the conditions that apply to divorces being valid. For example, references include Quran 2: 229-231; 241, and Sahih Muslim Book 9, Chapter 4 (3498 – 3506); Sahih Muslim Book 9, Chapter 1 (3473 - 3490); (Sahih Muslim, 3557)

Divorce Process

Muslims are cautioned that divorce is not something that should be taken lightly or done thoughtlessly, but should be a definitive step after other attempts are made at a resolution.

When couples are experiencing marriage problems, attempts should be made to reconcile. For example, the Quran instructs us [Quran 4:129] to appoint two arbiters – one from either family of the couple, who should work together to help resolve the problems.

If a divorce is being pursued, Muslims are reminded that it should not be with enmity, hatred and spite. The Quran says, “...[the parties should] separate with kindness.” [Quran 2:229]

Majlistt is of the view that the community should not look down on the divorced, and treat them as second-class or dishonorable.

Frequent conflicts as a result of the Divorce

There can be the tendency for both parties in a divorce to try to get as much as they can in settlements. We wish to remind the Muslims that the Quran says

“...let them forgive and overlook, do you not wish that Allah should forgive you? For Allah is Oft-Forgiving, Most Merciful.” [Quran 24:22]

- **Character Assassination:** Majlistt notes that ill-speaking the other party... can be classified as backbiting and slander, etc. and this is haraam in Islam.
- **Children:** There can be the tendency for one or both parties in a divorce to use children as pawns – children are expected to pick sides, send messages or put down the other party; This is haraam in Islam.
- **Custody and related rights:** There are also issues regarding custody, visitation and maintenance obligations. Majlistt notes there is specific Islamic Jurisprudence regarding these issues, and both parties are expected to be guided accordingly.

May Allah guide us on the Straight Path.

"Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous." [Quran 25:74]

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