

## THE RELIGION OF ISLĀM

The word *khataba* which means *he addressed* (another) also signifies *he made a proposal of marriage*. The infinitive noun *khutba* means *an address* and *khitba* means *a proposal of marriage*. When a man, who wants to marry, has satisfied himself about a woman, he makes a proposal of marriage either to the woman in question or to her parents or guardians. When a man has made a proposal of marriage to a woman, others are forbidden to propose to the same woman, till the first suitor has given up the matter, or has been rejected (Bu. 67:46). A woman may also make a proposal of marriage to a man (Bu. 67 : 33), or a man may propose the marriage of his daughter or sister to a man (Bu. 67 : 34); generally, however, it is the man who makes the proposal. When assent has been given to the proposal of marriage, it becomes an engagement, and usually a certain time is allowed to pass before the nikāḥ (marriage) is performed. This period allows the parties to study each other further, so that if there be anything undesirable in the union, the engagement may be broken off by either party : it is only after the nikāḥ has been performed that the two parties are bound to each other.

No particular age has been specified for marriage, in the Islamic law; in fact, with the difference of climatic conditions, there would be a difference as to the marriagable age in different countries. But the Holy Qur'an does speak of an age of marriage which it identifies with the age of majority : "And test the orphans until they attain (the age of) marriage (*nikāḥ*); then if you find in them maturity of intellect, make over to them their property, and do not consume it extravagantly and hastily, anticipating their attaining to full age" (4 : 6). Thus it will be seen that the age of marriage and the age of maturity of intellect

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are identified with full age or the age of majority. And as marriage is a contract the assent to which depends on personal liking, as already shown on the basis of the Holy Qur'an and Ḥadīth, and since this function cannot be performed by any one but the party who makes the contract, it is clear that the age of marriage is the age of majority, when a person is capable of exercising his choice in matters of sexual liking or disliking. A man or a woman who has not attained to puberty is unable to exercise his or her choice in sexual matters and unable to decide whether he or she will like or dislike a certain woman or man as wife or husband.

It is true that Fiqh, following the general law of contracts, recognizes, in the case of a marriage contract, the legality of the consent of a guardian on behalf of his ward, but there is no case on record showing that the marriage of a minor through his or her guardian was allowed by the Holy Prophet after details of the law were revealed to him at Madīna. His own marriage with 'Ā'ishā, which took place when she was nine years of age, is sometimes looked upon as sanctioning the marriage of a minor through his guardian, but there are two points worth consideration in this matter. In the first place, 'Ā'ishā's nikāḥ at nine was tantamount only to an engagement, because the consummation of marriage was postponed for full five years, to allow her, no doubt, to attain majority.<sup>1</sup> In the second place, 'Ā'ishā's nikāḥ was performed in Makka long before the details of the Islamic law were revealed to the Holy Prophet, and therefore her marriage at nine can be no argument for the marriage of a minor. There is no reliable ḥadīth showing that marriages were contracted by minors through their guardians in the time of the Holy Prophet, after the

1. I have discussed the question of the age of 'Ā'ishā fully, in my *Early Caliphate*.

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revelation of the fourth chapter which identifies the age of marriage with the age of majority. In the chapter headed "The giving in marriage by a man of his minor children" (Bu. 67 : 39), two arguments are brought forward; first the report relating to 'Ā'ishā's marriage which has just been dealt with; and, secondly, a verse of the Holy Qur'an (65 : 4), whereon light is thrown in the next paragraph. Similar chapters in other books (M. 16 : 10 ; AD. 12 : 33) mention simply the case of 'Ā'ishā.

Support is sometimes sought for the marriage of minors from the verse which speaks of women not having their courses, as being divorced: "And for those of your women who have despaired of menstruation, if you have a doubt, the prescribed time shall be three months, and of those too who have not had their courses" (65 : 4). But it is wrong to identify women who have not had their courses with minors, for there may be cases in which a woman reaches the age of majority though she has not had her courses, and it is with such exceptional cases that this verse deals. At any rate, there is no mention anywhere in the Holy Qur'an or Ḥadīth of minors being married or divorced. Fiqh, however, recognizes the legality of the marriage of a minor when contracted by a lawful guardian. This subject is further discussed under the heading "Guardianship in marriage."

Marriage is called a *mīthāq* (covenant) in the Holy Qur'an, a covenant between the husband and the wife: "And how can you take it (*i. e.* the dowry) when one of you has already gone in to the other and they have made with you a firm covenant (*mīthāq-an ghalis-an*)" (4 : 21). The marriage contract is entered into by mutual consent expressed by the two parties, the husband and the wife, in the presence of witnesses, and that is the only essential. This mutual consent is technically called *ijāb* (affirmation