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Marriageable Age in Islam and the Indian State: Religious Permissibility, Legal Validity and Criminal Liability

MOHAMED SAJID NADWI*

ABSTRACT

This article explores how Islamic law and Indian statutes address the minimum age of marriage. Islamic law emphasises puberty and capacity rather than a fixed age, while Indian law enforces strict minimum ages with penal consequences, regardless of religion. This article analyses recent judicial decisions and statutory frameworks to show that Indian marriage-age requirements are both binding and compatible with Islamic principles. The article highlights ongoing judicial disagreements and stresses the need for a clear Supreme Court ruling to resolve the issue.

Keywords: *Shariah Law, Islamic Jurisprudence, Marriage, PCMA, POCSO*

I. INTRODUCTION

On 23 September 2026 the Delhi High Court, in *Bilal v. State (NCT of Delhi)*, dismissed a petition seeking to quash criminal proceedings for rape under the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Protection of Children from Sexual Offences Act, 2012 (POCSO) against a man who had married a girl of sixteen by nikah.[1]

The Court refused to quash the FIR, which had been registered under Section 64(1) of the BNS and Section 6 of POCSO. It held that constitutional liberty 'protects choice; it does not create an exception to POCSO or the BNS', and that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 does not 'contain any such immunity'.[2]

Before the Court's reasoning is examined, it is necessary to clarify what the Shariah says about the age of marriage. At least three questions require consideration: (1) Does the Shariah prescribe a specific minimum age for marriage? (2) How did classical Sunni jurists determine the capacity to marry and the validity of a marriage? (3) What do the Hadith say about the marriage of minors?

* Author is an Advocate at the High Court of Madras, Chennai, Tamil Nadu, India.

[1] *Bilal v. State (NCT of Delhi)*, W.P. (Crl.) No. 2976 of 2026, 2026:DHC:8343, ¶¶ 1–3, 81 (Del. HC Sept. 23, 2026) (India).

[2] *Id.* ¶¶ 66–67.

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II. The Shariah position

The Quran does not prescribe any specific age of marriage for Muslims. It says: 'Test [the competence of] the orphans until they reach a marriageable age. Then if you feel they are capable of sound judgment, return their wealth to them'.[3] The verse instructs guardians to assess whether an orphan has reached the relevant stage of maturity and possesses sound judgment before handing over the orphan's property. It uses two expressions: first, 'marriageable age'; second, 'capable of sound judgment'.

Classical exegetes of the Quran, such as Ibn Kathir, interpreted this verse to mean that orphans are not to be given control of their property until they reach the age of marriage and show sound judgment; Ibn Kathir, following Mujahid, identifies the age of marriage as the age of puberty.[4] Once a person reaches puberty, he can manage his own affairs, including marriage.

Reaching puberty is thus the minimum threshold for marriage: a Muslim 'can' marry when he reaches puberty. Imam Bukhari records in his *Sahih* a saying of the Prophet on marriage: 'O young people! Whoever among you can marry, should marry'.[5] This saying does not prescribe a specific age for marriage; rather, it emphasises the ability to marry and the capacity to bear the responsibilities that follow marriage.

The four Sunni schools of law also do not prescribe a uniform numerical age for marriage; their figures concern the age at which puberty is presumed. In the Hanafi school, Abu Hanifa himself placed puberty, in the absence of physical signs, at eighteen years for a male and seventeen for a female.[6] His two leading disciples, Abu Yusuf and Muhammad al-Shaybani, placed it at fifteen for both, and later Hanafi authorities treat their view as the prevailing position of the school.[7] The Shafi'i and Hanbali schools agree that puberty is presumed at fifteen lunar years for both males and females.[8] Maliki scholars maintain that puberty is reached at eighteen, although other

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[3] *Qur'an* 4:6 (Mustafa Khattab trans., The Clear Quran) (alteration in original), https://quran.com/an-nisa/6; *cf.* The Qur'an 4:6 (M.A.S. Abdel Haleem trans., Oxford Univ. Press 2004) ('Test orphans until they reach marriageable age; then, if you find they have sound judgement, hand over their property to them.').

[4] 2 Ismā'īl ibn 'Umar Ibn Kathīr, Tafsir Ibn Kathir (Abridged) (Safiur-Rahman al-Mubarakpuri ed., Darussalam 2000) (commentary on *Qur'an* 4:6), https://quran.com/an-nisa/6/tafsirs/en-tafisr-ibn-kathir.

[5] Sahih al-Bukhari, Kitab al-Nikah (Book of Marriage), Hadith 5066, https://sunnah.com/bukhari:5066; *see also* Sahih Muslim, Kitab al-Nikah (Book of Marriage), Hadith 1400.

[6] Dar al-Ifta al-Misriyyah, *Legal Guardianship in Marriage* (June 24, 2005), https://www.dar-alifta.org/en/fatwa/details/4588/legal-guardianship-in-marriage (stating the view of Abu Hanifa); *see also* Thomas Patrick Hughes, A Dictionary of Islam (1885), *s.v.* Puberty, https://juancole.com/library/dictionary-of-islam-hughes/puberty (citing the *Hidayah*, Charles Hamilton trans., vol. 3, at 488).

[7] Dar al-Ifta, *supra* note 6 (Abu Yusuf and Muhammad); Hughes, *supra* note 6 (the two disciples); Abdul-Rahim Reasat, *How Do I Know If I Am Pubescent?*, SeekersGuidance (Oct. 18, 2023), https://seekersguidance.org/answers/general-answers-feeds/how-do-i-know-if-i-am-pubescent/ (citing Ibn 'Abidin, *Radd al-Muhtar*, for the fifteen-year rule as 'the dominant position in the Hanafi school').

[8] Dar al-Ifta, *supra* note 6; *see also* Sahih al-Bukhari, Kitab al-Shahadat (Book of Witnesses), Hadith 2664, https://sunnah.com/bukhari:2664 (Ibn 'Umar, refused for the Battle of Uhud at fourteen and admitted for the Battle

opinions within the school give fifteen, seventeen or nineteen.[9] These numbers are legal presumptions of when puberty occurs and should not be construed as the proper age for marriage. Nor did the jurists prohibit marriage below or above those ages.

The classical Islamic jurists thus created legal rules concerning puberty, guardianship and marital capacity, but set no specific age of marriage. Under Shariah law, therefore, one cannot authoritatively say that the age of marriage must be puberty. Shariah law treats puberty as important for determining various aspects of legal responsibility, such as managing property, but it cannot be construed as imposing a legal obligation to marry on reaching puberty.

Put simply, the answer to the question 'When may I marry?' is 'When you reach puberty'. It is not 'You must marry when you reach puberty'. The nuance is minor, but the difference is major.

III. The Indian statutory framework

Under Section 3 of the Majority Act, 1875, the age of majority is eighteen. Section 2 of the Majority Act is a saving clause: nothing in the Act affects the capacity of any person to act in matters of marriage, dower, divorce and adoption.[10] Section 2(a) of the Prohibition of Child Marriage Act, 2006 (PCMA) provides that a 'child' 'means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age'. Section 2(f) defines a 'minor' as 'a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority'. Under Section 3, every child marriage is voidable at the option of the contracting party who was a child at the time of the marriage, subject to statutory exceptions. Under Section 9, a male adult above eighteen years of age who contracts a child marriage is punishable with rigorous imprisonment of up to two years, a fine of up to one lakh rupees, or both.[11] Sexual intercourse with a child below eighteen years of age is punishable under POCSO, an Act to protect children from offences of sexual assault, sexual harassment and pornography, which also provides for the establishment of Special Courts to try such offences.[12]

IV. Shariah and the state regulation of the age of marriage

The central question is whether a Muslim can act in accordance with the law of the land. It calls for a detailed answer that combines Islamic jurisprudence with India's prevailing marriage

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of the Trench at fifteen; 'Umar bin 'Abd al-'Aziz treating fifteen as 'the limit between childhood and manhood').

[9] Dar al-Ifta, *supra* note 6 (noting other opinions within the Maliki school of fifteen, seventeen and nineteen).

[10] The Majority Act, No. 9 of 1875, India Code (1875), §§ 2(a), 3.

[11] The Prohibition of Child Marriage Act, No. 6 of 2007, India Code (2007), §§ 2(a), 2(f), 3(1), 9.

[12] The Protection of Children from Sexual Offences Act, No. 32 of 2012, India Code (2012), long title, §§ 2(1)(d), 3–6, 28.

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statutes. A Muslim who wishes to satisfy his conscience may examine the statutes on marriage through the lens of Islamic jurisprudence, to ensure that compliance with them does not require him to violate Islamic principles. The submission advanced in *Bilal*, examined below, proceeded on the footing that the statutory age limits yield to Muslim personal law on marriage.

First, the Quran and Hadith do not prescribe a uniform age range, such as eighteen to twenty-one, and equally they do not prohibit marriage below or above such ages. It is therefore permissible for a Muslim to marry at any age from puberty. This permissibility does not, however, necessarily prevent a state from regulating the matter in the interest of public welfare.

Islamic jurisprudence has evolved significantly over time. Its principles remain the same and trace their origin to the Quran, the Hadith and the classical Islamic jurists, but their application responds to changing social circumstances. This does not mean that Islamic laws are freely changeable; it means that their applications may differ. Islamic jurisprudence includes the concept of *maslaha*, which requires consideration of welfare and the public interest in making laws.[13] An Islamic state may prescribe an age limit for marriage without penalising those who marry below that limit.

The International Islamic Fiqh Academy (IIFA), a subsidiary organ of the Organisation of Islamic Cooperation (OIC), adopted Resolution No. 217 (1/23) on Young Girls' Marriage between the Right of the Guardian, the Girl's Welfare, and the Extent of the Ruler's Authority in its Prevention or Regulation, from a Shariah Perspective.[14] The resolution states that Islamic law does not set a particular age for the marriage contract, and that the age of marriage is determined by the circumstances of time and place and by the capacity of both parties to enter into a marriage contract and establish a family.[15] It further states that each country has the right to determine the appropriate marriage age, according to what it sees as realising the welfare of the girl, the family and the community, and to determine an appropriate punishment for whoever forces a young girl into marriage without the judge's permission.[16]

The resolution states the Academy's position on the age of marriage clearly. Its legal reasoning is that matters not assigned an immutable numerical rule in the foundational texts may be regulated by public authority, provided relevant Islamic legal principles justify the regulation, and the doctrine of *maslaha* can justify such regulation. It may therefore be concluded that a

[13] ABDUL AZIZ BIN SATTAM, SHARIA AND THE CONCEPT OF BENEFIT: THE USE AND FUNCTION OF MASLAHA IN ISLAMIC JURISPRUDENCE (I.B. Tauris 2015).
[14] INT'L ISLAMIC FIQH ACAD., *Resolution No. 217 (1/23) on Young Girls Marriage between the Right of the Guardian, the Girl's Welfare, and the Extent of the Ruler's Authority in Its Prevention or Regulation, from Shariah Perspective* (23d Sess., al-Madinah al-Munawarah, Oct. 28–Nov. 1, 2018), https://iifa-aifi.org/en/6252.html.
[15] *Id.* ¶ 2.
[16] *Id.* ¶ 8.

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state, including a secular state, may legislate on the age of marriage for the welfare of the girl, the family and the community.

Darul Uloom Deoband's Fatwa No. 938/938/M=1431 states expressly: 'When a girl attains puberty and a suitable proposal is available, she should be married away. Islam has not fixed any age limit. Unnecessary delay creates evils. There is no matter whatsoever if someone has an excuse. The Indian law too is not inapplicable, if the situation is satisfactory, marriage can be performed according to Indian law.'[17]

The fatwa does not say that Indian law is religiously invalid or that Muslims must disregard it. On the contrary, it expressly acknowledges that a marriage can be conducted under Indian law.

Following Indian law therefore cannot be presented as religiously invalid, nor can it be said that Shariah law overrides Indian law, particularly on the matter of age.

V. JUDICIAL TREATMENT

A. The Delhi High Court in *Bilal*

The principal submission in *Bilal* was founded on Muslim personal law. The petitioners relied on Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 and on 'the principle stated in Mulla's Principles of Mahomedan Law that a Muslim of sound mind who has attained puberty is competent to contract marriage, puberty being presumed, in the absence of evidence, upon completion of fifteen years'.[18] They argued that 'once the marriage is recognised in law, the subsequent cohabitation, including the physical relationship between the parties, cannot attract criminal liability'.[19] The girl, a minor, consistently maintained that she had married of her own free will and was living happily with the accused, her husband.[20]

The Court identified two distinct questions: 'One concerns the legal character and consequences of a nikah solemnised by a Muslim girl who has attained puberty but is still below eighteen. The other is whether that nikah, by itself, places subsequent sexual intercourse beyond the reach of POCSO and BNS while she remains a child under those statutes.'[21]

The submission advanced in *Bilal* is partly correct. A Muslim is indeed competent to marry on attaining puberty, but, as seen above, the classical Islamic jurists differed considerably on the

[17] DARUL IFTA, DARUL ULOOM DEOBAND, *I Just Want to Know, Is the Age of Girl for Marriage Defined in Islam . . .*, Fatwa No. 938/938/M=1431 (1431 AH), https://darulifta-deoband.com/home/en/nikah-marriage/22760, *also available at* https://islamqa.org/?p=24427.
[18] *Bilal*, *supra* note 1, ¶ 7.
[19] *Id.* ¶ 8.
[20] *Id.* ¶¶ 1, 4.
[21] *Id.* ¶¶ 11–12.

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age of puberty. It is inaccurate to treat a permission as an obligation, and where marriage at puberty is not an obligation, following state-enacted law is neither forbidden nor a violation of Islamic principles.

The Delhi High Court concentrated on the second question. Even if the marriage is assumed to be valid, that does not settle the position under the penal statutes. The Court distinguished the validity of the relationship from the criminal character of the act, holding that 'the legal status of the relationship and the criminal character of an act within it are separate questions'.[22]

Reading POCSO and the BNS together, the Court described a deliberate legislative arrangement: 'POCSO fixes eighteen as the threshold for sexual consent. The BNS fixes the same threshold and expressly withholds the marital exception where the wife is below eighteen. The Prohibition of Child Marriage Act, 2006 separately defines a female below eighteen as a child and attaches penal consequences to an adult male contracting a child marriage'.[23]

Referring to *Society for Enlightenment and Voluntary Action v. Union of India*,[24] the Delhi High Court observed that the Supreme Court had itself been careful about the limits of its conclusion: it noticed the conflicting views on whether the PCMA overrides personal law, but left that wider question open.[25] The Delhi High Court likewise did not decide whether the nikah was valid, void or voidable, and confined itself to the point that 'the existence of the marriage does not place sexual intercourse with a wife below eighteen beyond POCSO'.[26]

B. The Allahabad and Kerala High Courts

In an earlier judgment, *Rubi v. State of U.P.*, the Allahabad High Court[27] expressed complete agreement with the reasoning of P.V. Kunhikrishnan, J. in *Moidutty Musliyar v. Sub Inspector, Vadakkencherry Police Station*[28] that 'no personal law can wipe out the prohibition of child marriage brought about by the PCMA, and the effect of the POCSO Act, which renders sexual intercourse with a child, that is a person below 18 years, a crime under that statute'. In the Court's considered opinion, the age of marriage for every citizen of the country, irrespective of religion, is that spelt out by the PCMA.[29]

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[22] *Id.* ¶¶ 13–14.
[23] *Id.* ¶ 17; *see* The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023), §§ 63 Exception 2, 64(1).
[24] *Soc'y for Enlightenment & Voluntary Action v. Union of India*, 2024 INSC 790, 2024 SCC OnLine SC 2922 (India).
[25] *Bilal*, *supra* note 1, ¶ 24; *see Soc'y for Enlightenment*, *supra* note 24, ¶¶ 212–14.
[26] *Bilal*, *supra* note 1, ¶¶ 13, 25.
[27] *Rubi v. State of U.P.*, Crim. Misc. Writ Petition No. 4846 of 2026, 2026:AHC:130283-DB, 2026 LiveLaw (AB) 361 (All. HC July 1, 2026) (India).
[28] *Moidutty Musliyar v. Sub Inspector, Vadakkencherry Police Station*, Crl. M.C. No. 2515 of 2016, 2024:KER:56284, 2024 SCC OnLine Ker 4188 (Ker. HC July 15, 2024) (India).
[29] *Rubi*, *supra* note 27, ¶ 6.

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In *Moidutty Musliyar*, the Kerala High Court reasoned that, by Section 1(2), the PCMA applies to all citizens of India, within and beyond India, irrespective of religion, and that a person is a citizen of India first and only thereafter a member of a religion.[30] It held that, because the PCMA prohibits child marriage, it supersedes Muslim personal law, and that every citizen is subject to it irrespective of his or her religion.[31] That every Indian is first a citizen of the country and must adhere to the law of the land is not in doubt. The tenets of a religious faith, however, cannot be dismissed outright. Reconciling the two is a delicate challenge, and resolving it requires both philosophical grounding and practical wisdom.

The Allahabad High Court accordingly dismissed the writ petition, brought by persons accused of obstructing the police and a Child Line team who had intervened to stop the marriage of a girl of about sixteen, holding that Muslim personal law, in permitting a girl to marry at puberty, runs counter to the PCMA and POCSO, and that no personal law can wipe out the prohibition of child marriage mandated by the PCMA or override POCSO.[32]

C. The question before the Supreme Court

In dismissing the petition, the Allahabad High Court also noted the conflicting opinions on whether Shariah law overrides the PCMA. It observed that the controversy had surfaced again before the Supreme Court after the Punjab and Haryana High Court held in *Javed v. State of Haryana* that a Muslim female aged fifteen could marry a person of her choice, of her own will and consent, and that the marriage would not be affected by Section 12 of the PCMA.[33] On 13 January 2023 the Supreme Court, entertaining the challenge brought by the National Commission for Protection of Child Rights in *National Commission for Protection of Child Rights v. Javed*, issued notice and directed that, pending further orders, the High Court's judgment should not be relied on as a precedent in any other case.[34] On 19 August 2025, however, the Supreme Court dismissed that challenge on the ground that the Commission had no locus standi, without deciding the question of law.[35] Since there is no authoritative pronouncement on the point, the High Courts have gone their separate ways.[36]

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[30] *Moidutty Musliyar*, *supra* note 28, ¶ 21.
[31] *Id.* ¶ 23.
[32] *Rubi*, *supra* note 27, ¶¶ 2, 6, 11, 14.
[33] *Javed v. State of Haryana*, CRWP No. 7426 of 2022 (O&M) (P&H HC Sept. 30, 2022) (India), *as described in Rubi*, *supra* note 27, ¶ 8.
[34] *Nat'l Comm'n for Prot. of Child Rts. v. Javed*, SLP (Crl.) Diary No. 35376 of 2022 (SC Jan. 13, 2023) (India) (order), *quoted in Rubi*, *supra* note 27, ¶ 8.
[35] *Nat'l Comm'n for Prot. of Child Rts. v. Gulaam Deen*, SLP (Crl.) No. 10036 of 2022 (SC Aug. 19, 2025) (India) (order also disposing of SLP (Crl.) Diary No. 35376 of 2022, *Nat'l Comm'n for Prot. of Child Rts. v. Javed*), *quoted in Rubi*, *supra* note 27, ¶ 10; *see also Bilal*, *supra* note 1, ¶¶ 31–32.
[36] *Rubi*, *supra* note 27, ¶¶ 9–11; *Bilal*, *supra* note 1, ¶¶ 35–40.

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VI. Conclusion

Islamic law does not prescribe a fixed numerical age for marriage and points instead to puberty and capacity, but it can be inferred that it recognises the state's authority to regulate the age of marriage in the interest of public welfare. That inference rests within the limits of Islamic jurisprudence itself. Indian law, through statutes such as the PCMA, POCSO and the BNS, sets clear minimum ages and attaches penal consequences to their violation, irrespective of religious background.

The recent decisions examined here hold that the validity of a marriage under personal law does not override the protective provisions of these penal statutes. Compliance with Indian statutory law on the age of marriage and sexual consent is therefore not only legally mandatory but also consistent with the basic principles of Islamic jurisprudence. The continuing divergence among the High Courts demonstrates the need for a definitive pronouncement by the Supreme Court to resolve these conflicts and to clarify the relationship between personal law and secular statutory requirements.

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