

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO. 2494 OF 2025

MUHAMMAD RIAZ

VS

LEARNED DISTRICT & SESSIONS JUDGE, (EAST) ISLAMABAD, ETC.

Petitioner by : Ms. Shumaila Rafique Awan, Advocate.
Respondents by : Mirza Irfan Ghazanfar Advocate, for Respondent No. 3 and 5.
Ms. Ramsha Khalid, State Counsel.
Assisted by : Ms. Amna Danial Khawaja, Judicial Law Clerk.
Date of hearing : 11.07.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the “**Constitution**”), Muhammad Riaz (“**Petitioner**”) has challenged the Order dated 23.06.2025 (“**Impugned Order**”) passed by the learned District Judge, Islamabad-East (“**Respondent No. 1**”) whereby petition u/s 491 Cr.P.C for the recovery of detainee namely Mst. Madiha Bibi wife of the Petitioner, has been dismissed.

2. Brief facts of the case as per contents of the petition are that the Petitioner contracted love marriage with Mst. Madiha Bibi (alleged detainee) according to Muslim Family Laws Ordinance on 30.05.2025 at Tehsil Courts Complex Taxila, District Rawalpindi, against the whim and will of the Respondents No. 2 to 8. On 21.06.2025 at about 03:30 PM, Respondents No. 2 to 8 came to the house of the Petitioner by trespassing and forcibly took away the detainee with them. The Petitioner requested the Respondents No. 2 to 8 to hand over the custody of alleged detainee to him but of no avail. Upon refusal, the Petitioner filed a petition under Section 491 Cr.P.C before learned Sessions Judge, Islamabad-East, which has been dismissed vide Impugned Order. Being aggrieved by the Impugned Order, the Petitioner has filed the instant petition.

3. The learned counsel for the Petitioner has argued that the learned Trial Court did not appreciate the documents submitted by the Petitioner while passing the Impugned Order; that the custody of the alleged detainee is illegal, and if the detainee remains in the custody of the Respondents No. 2 to 8, there is great apprehension to the life, honor and dignity of the detainee; that the Petitioner being husband of the detainee is entitled to reunion with his wife/detainee, but the learned Trial Court while passing the Impugned Order overlooked this important aspect of the case; that the Impugned Order is full of surmises and conjectures and is against the principle of law and criminal jurisprudence. Lastly, learned counsel prayed for acceptance of instant petition, setting aside of the Impugned Order and handing over the custody of the alleged detainee to the Petitioner being her husband.

4. On the other hand, learned counsel appearing on behalf of Respondents No. 3 & 5 argued that the Impugned Order is well-reasoned and does not call for any interference; that the alleged detainee is not in the custody of Respondents No. 2 to 8; that the alleged detainee was not *sui juris* at the time of solemnization of her Nikkah. Lastly, learned counsel prayed for dismissal of instant petition.

5. I have heard learned counsel for the parties and perused the available record with their able assistance.

6. Upon meticulous examination of the record, it appears that Mst. Madiha Bibi/alleged detainee and the Petitioner contracted marriage on 30.05.2025 at the Tehsil Courts Complex, Taxila, District Rawalpindi. The *Nikahnama* does not specify the precise date of birth of the alleged detainee; instead, it vaguely records her age as 'almost 18 years'. It is further noteworthy that the Birth Certificate of the alleged detainee, produced by the Respondents, was registered with NADRA on 12.06.2025, subsequent to the solemnization of the marriage. The date of birth of the alleged detainee i.e. 15.09.2009, on the said certificate reflects that she is currently 15 years old. In view of the conflicting material on record, the age of the alleged detainee emerges as a disputed question of fact, which necessitates recording of evidence and adjudication by a competent forum of plenary jurisdiction. Consequently, this Court while exercising its Constitutional jurisdiction is not empowered to conclusively decide the question of age.

7. During the course of arguments, reliance was placed by the Respondents upon the judgment reported as “Mst. Mumtaz Bibi v. Qasim and others” (PLD 2022 Islamabad 228), to contend that marriages contracted between a minor and an adult are considered void *ab initio*, as the same constitute a criminal offence under the Child Marriage Restraint Act, 1929 (“CMRA, 1929”). Furthermore, it was brought to the attention of this Court that the Islamabad Child Restraint Marriage Act, 2025 (“ICRMA, 2025”) has amended the statutory definition of a 'child', raising the minimum age for females from sixteen years to eighteen years, thereby bringing it at par with the age prescribed for males. Prior to this amendment, the threshold age was sixteen years for females and eighteen years for males under the said legislation.

8. On the other hand, the Petitioner whilst resisting the above argument has relied upon “Mst. Bakhshi Versus Bashir Ahmad” (PLD 1970 Supreme Court 323), “Mauj Ali Versus Safdar Hussain” (1970 SCMR 437) and “Muhammad Khalid Versus Magistrate 1st Class and others” (PLD 2021 Lahore 21) in order to assert that the marriage contracted is valid under the Muslim Family Laws Ordinance, 1961 (“MFLO, 1961”), therefore, the Petitioner has the right to recover his wife and protect their lawful union.

9. Before delving deeper to examine the merits and legal intricacies of the present case, it is imperative to first consider the definition of child under the previous as well as the newly amended law. The relevant provisions of CMRA, 1929 are reproduced herein below for ready reference: -

2. Definitions. — *In this Act:*

- (a) “child” means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age;
- (b) “child marriage” means a marriage to which either of the contracting parties is a child;
- (c) “minor” means person of either sex who is under eighteen years of age.
(Emphasis added)

10. Under the ICRMA, 2025, the amended definitions are as follow:

2. Definitions. — *In this Act, unless there is anything repugnant in the subject or context.*

- (a) “child” means a person male or female who is under eighteen years of age;
- (b) “child abuse” means as defined under the Islamabad Capital Territory Child Protection Act, 2018, and shall also include the marriage of a child or solemnization of marriage of a child with any person over the age of eighteen years or with another child;
- (e) “child marriage” means an act of solemnizing marriage or Nikah where both or either of the contracting party to the marriage is a child.
(Emphasis Added)

11. A child marriage, in our legal context, refers to a matrimonial union where at least one of the contracting parties is under the minimum legal age prescribed by law, which is 18 years for both males and females under the ICRMA, 2025. While Islamic jurisprudence traditionally permits marriage upon attainment of puberty, present statutory law in Pakistan criminalizes child marriage with an aim to prevent exploitation, abuse, and premature burdening of the minors. Keeping in view the above position, following moot questions have emerged for consideration:

1. Whether a marriage valid under Islamic law/Shariah can be considered void under statutory law, particularly in light of the ICRMA, 2025?
 2. Whether a marriage contract, wherein both or one party is minor, stands on a distinct footing from contracts governed by the Contract Act, 1872;
 3. In presence of ambiguity or legal silence regarding the validity of child marriage under statutory law, can Islamic principles and jurisprudence prevail in determining the legality of such unions?
 4. Whether the case of child marriage would fall within the definition of Section 375, P.P.C., thereby constituting "rape"?
 5. Whether the Court is obligated to engage Child Protection Officers under the Islamabad Child Protection Act, 2018, to conduct welfare assessment before and/or after determining the custody, care, or the validity of the marital union involving a minor?
1. Whether a marriage valid under the Islamic law/Shariah can be considered void under the statutory law, particularly in light of the Act of 2025?

12. Child marriage is deemed valid under the Shariah/Islamic Jurisprudence on the basis of consent and attainment of puberty, however, the same is criminalized

under the ICRMA, 2025, if the marriage is contracted under the age of eighteen. Therefore, such a marriage contracted *inter se* both or either of the contracting party under eighteen is not void under the Shariah, it is nonetheless punishable by law and treated as contrary to public policy, especially where it undermines the minor's physical, emotional, and educational development. By adopting a progressive legislative approach aimed at mitigating the adverse societal impact of child marriages, the legislature had enacted the CMRA, 1929, which represents a laudable step toward child protection. The provisions of the CMRA, 1929 have been carefully and objectively structured, wherein penal consequences have been imposed upon the adult contracting party (i.e. an individual above 18 years of age), as well as upon other individuals including *inter alia* the parents, guardians, or facilitators who help arrange, solemnize, conduct, or cause a child marriage to take place. The ICMRA, 2025 establishes a punitive deterrent for the contravention of its provisions. It is manifestly clear that the legislation does not attribute any culpability to the minor party to the marriage. It is pertinent to mention herein that the ICMRA, 2025 does not render the marriage itself void; instead, as elaborated above, it confines criminal liability to specific categories of individuals responsible for the commission of a child marriage. As marriage is governed under MFLO, 1961, Dissolution of Muslim Marriages Act, 1939 and the West Pakistan Family Courts Act, 1964 in Pakistan, the provisions of CMRA, 1929 do not override them. The latter being a separate law punishes those who are responsible for an underage marriage, however, the ICMRA, 2025 does not nullify the marriage itself. Reliance in this regard is placed upon judgement titled "Nasreen Bibi Versus Station House Officer and others" (2024 P Cr. LJ 2058), wherein the Lahore High Court, whilst keeping in view the CMRA, 1929, commented on the legality and validity of the marriage contracted by observing that:

"21. The Act of 1929 applies to all citizens of Pakistan regardless of religion. Since Respondent No.3 has married a minor, he may be prosecuted under the Child Marriage Restraint Act. *The case of Mst. Bakhshi v. Bashir Ahmad (PLD 1970 SC 323) is quite instructive although it pertains to a Muslim marriage. In the said case a 15-year-old girl, whose mother had remarried and whose father had died when she was quite young, had contracted a marriage of her own will. The mother lodged FIR accusing the daughter's husband of kidnapping her. After examining her medically, the doctor estimated the girl's age to be between 16 and 17 years old. The husband moved an application under*

*section 491 Cr.P.C. before the High Court to obtain his wife's release. The High Court released the young girl and allowed her to choose who she wanted to live with. **The Hon'ble Supreme Court upheld the decision noting that the husband or other persons who helped to solemnize the marriage could be charged with the crime but the marriage itself would not be void if a girl under the age of 16 married in violation of the Act of 1929.***” (Emphasis added)

13. Furthermore, the contention that this Court should not recognize the marriage between the Petitioner and Mst. Madiha Bibi, as it is in violation of the ICMRA, 2025, has no force. The Verse 6 of Surah Al-Nisa lays down two preconditions when contracting marriage, i.e., Majority or Bulugh; and Mental maturity or Rushd.

*“And test the orphans [in their abilities] until they **reach marriageable age.** Then if you **perceive in them sound judgement,** release their property to them.”*

In “Mauj Ali Versus Syed Safdar Hussain Shah and another” (1970 SCMR 437), the august Supreme Court of Pakistan held:

*“Mr. A.G. Choudhri, learned counsel for the Petitioner, has contended that the High Court should not have accepted the application filed by the Respondent under Section 491, Cr.P.C. Mst. Musarrat being a minor girl should have been ordered to go with her father. He further contended that as a case was pending against Respondent No. 1 under Sections 363/366, P.P.C., the High Court should not have entertained an application under Section 491, Cr.P.C. **The contention of the learned counsel has not impressed us. It is not disputed that Mst. Musarrat has attained the age of puberty and she had married with Respondent No.1 of her own free will. Such a marriage is valid according to Muhammadan Law. It was urged that such marriage is invalid under the Child Marriage Restraint Act and, therefore, it should not have been recognized by the High Court. This contention also has no force. Since the marriage is valid under the Muhammadan Law, Respondent No.1 is the guardian of Mst. Musarrat and the High Court was perfectly justified in allowing her to go with her husband.***” (Emphasis added)

The above view was reiterated in “Mst. Bakhshi Versus Bashir Ahmad and another” (PLD 1970 SC 323) and followed in “Tahira Bibi Versus Station House Officer and others” (PLD 2020 Lahore 811), “Muhammad Safeer Versus Additional Sessions Judge (West) Islamabad and others” (PLD 2018 Islamabad 385), “Mst. Shazia and another Versus S.H.O. Police Station Kumb,

District Khairpur and others” (2011 Y L R 493), “Allah Bakhsh Versus Safdar and others” (2006 YLR 2936), “Ghulam Qadir Versus the Judge Family Court, Murree and another” (1988 CLC 113), “Zafar Khan Versus Muhammad Ashraf Bhatti and another” (PLD 1975 Lahore 234), “Ghulam Hussain Verses Nawaz Ali and another” (1975 P Cr.LJ 1049), and “Mushtaq Ahmad Versus Mirza Muhammad Amin and another” (PLD 1962 (W. P.) Karachi 442).

14. The validity of the marriage, contracted with the minor, has not been targeted in the ICMRA, 2025; rather the latter has been enacted merely to punish the party contracting, arranging and/or solemnizing a marriage with a child. Reliance in this regard is further placed upon “Allah Nawaz Versus Station House Officer, Police Station Mahmood Kot District, Muzaffargarh” (PLD 2013 Lahore 243) in order to reiterate a settled principle. The relevant portion in the judgement is reproduced hereunder:

*“In this respect reference may be made to the case "MST. HAJRA KHATOON and another v. STATION HOUSE OFFICER, POLICE STATION FATEH JANG, DISTRICT ATTOCK and 2 others" (PLD 2005 Lahore 316), wherein it has been held that "Nikah/Marriage contracted by a woman, not having attained the age of majority, as defined in law, but having attained puberty as defined in Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is valid and not void." **Furthermore, even the Child Marriage Restraint Act (XIX of 1929), does not declare marriage of a girl who is pubert but under the age of sixteen years to be invalid or void. Had the legislators any intent to declare the marriage of a girl below the age of majority invalid, a specific clause could be inserted in the Child Marriage Restraint Act (XIX of 1929). In the absence of any such specific provision in the Act, ibid, it would be highly unjust to import a negative intent which was not considered by the legislators at the time when said law being formulated.**” (Emphasis added)*

Thus, the ICMRA, 2025 (or previously the CMRA, 1929) does not lay down that the marriage so performed will be invalid, nor has it ever been held that such a marriage will be void *ab initio*.

15. This Court, keeping in view the dictum laid down by the apex Courts of Pakistan, is unable to agree with the findings in Mst. Mumtaz Bibi (PLD 2022 Islamabad 228), wherein the marriage contracted in violation of CMRA, 1929 is to be considered void *ab initio*. The concept of “attainment of puberty” is not confined solely to the domain of Muslim Personal Law in Pakistan; rather, it finds express recognition within the statutory framework, thereby blurring the lines

between personal and codified law. For instance, Section 2(a) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 defines an “adult” as a male who has attained the age of eighteen years or a female who has attained sixteen years, or in either case, has attained puberty. This statutory reference to puberty, as a determinant of legal majority in certain contexts, gives rise to an interpretive overlap between personal law and general legislative principles. Similarly, Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 explicitly acknowledges the right of a female to repudiate a marriage on attaining the age of sixteen years, provided the marriage was not consummated, thereby linking legal agency with both age and the status of puberty.

16. This statutory incorporation of the concept is further affirmed by judicial interpretation. In “Tahira Bibi v. SHO and others” (PLD 2020 Lahore 811), the Lahore High Court reaffirmed the doctrinal basis of *khiyar-ul-bulugh* (option of puberty), noting that a female who has attained puberty may repudiate a marriage contracted on her behalf during minority, provided the repudiation occurs before the age of eighteen and the marriage remains unconsummated. Thus, while the notion of puberty originates in Muslim Personal Law, its integration into statutory provisions like the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and the Dissolution of Muslim Marriages Act, 1939 demonstrates that it has become embedded within Pakistan’s broader legal framework, making it a legally significant criterion beyond personal law alone.

17. It has been overserved that the legal framework surrounding child marriages in Pakistan reveals a deep-rooted contradiction between personal law (incorporated into certain laws as mentioned above) and statutory enactments. On one hand, under Islamic jurisprudence, a marriage contracted with a minor who has attained puberty and consents to the union is deemed valid. On the other hand, the ICMRA, 2025, while stopping short of rendering the marriage void, imposes penal consequences on the adult party and facilitators of a child marriage. This bifurcation, where the marriage is considered valid under one body of law but criminal under another, creates a legal paradox that risks frustrating the very objective of the statute, which is to act as a deterrent against child marriages and protect minors from premature unions that could harm their physical, emotional, and educational well-being.

18. If child marriages were to be rendered void *ab initio*, complex issues of legitimacy of children born out of such unions in certain cases and recognition of spousal rights would arise, leading to significant social, legal, and procedural complications. However, by validating such a marriage even though the statute criminalizes the act, it would inadvertently weaken the deterrent effect of the ICMRA, 2025. This duality creates legal uncertainty and provides room for parties to circumvent protective legislation under the guise of religious permissibility, thereby undermining the legislative intent and weakening enforcement mechanisms aimed at eradicating child marriage. In light of these contradictions, it is recommended that the Federal Government undertake a harmonization exercise to reconcile personal law with child protection legislative framework.

2. Whether a marriage contract, wherein both or one party is minor, stands on a distinct footing from contracts governed by the Contract Act, 1872:

19. Moreover, Section 11 of the Contract Act, 1872 stipulates that a person is competent to contract if he/she has attained the age of majority as prescribed by the law applicable. This necessitates reference to Section 3 of the Majority Act, 1875, which provides that every person domiciled in Pakistan shall be deemed to have attained majority upon reaching the age of eighteen years. However, in instances where a guardian has been appointed by a Court for the person or property of a minor, or where the Court of Wards has assumed superintendence over the minor's property, majority is deemed to be attained upon completion of twenty-one years of age. These provisions are subject to Section 2 of the Majority Act, 1875 which reads as under:-

2. *Savings: - Nothing herein contained shall affect:*
- (a) *the capacity of any person to act in the following matters namely, marriage, dower, divorce and adoption;*
 - (b) *the religion, religious rites and wages of any class of Her Majesty's subjects in Pakistan; or*
 - (c) *the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.*

Notably, Section 2 of the Majority Act, 1875 expressly excludes from its ambit family matters pertaining to marriage, divorce and dower. A harmonious reading of Section 11 of the Contract Act, 1872 and the relevant provisions of the Majority Act, 1875 reveals that these enactments do not govern a person's legal capacity

in matters such as marriage, which continue to be regulated by MFLO, 1961, Dissolution of Muslim Marriages Act, 1939 and Family Courts Act, 1964. Reliance in this regard is placed on judgement cited supra (2024 P Cr. LJ 2058), wherein the Lahore High Court observed the following:

“25. Section 2 of the Majority Act expressly excludes marriage and divorce from its application. A combined reading of this provision and section 11 of the Contract Act would show that they have no bearing on the capacity of a person to act in some matters, including marriage, which are left to be governed by the individual's personal law - unless the Parliament has enacted a special law in that regard. As a result, the CMA and the Divorce Act of 1869 govern Christian marriage and divorce in Pakistan. The Child Marriage Restraint Act, 1929, does not override them. It is a separate law that punishes those who are responsible for an under-age marriage but does not nullify the marriage itself.” (Emphasis added)

20. Furthermore, the question of what amounts to consent for purpose of entering into a marriage contract was addressed by the learned Federal Shariat Court in “Muhammad Aslam Versus The State” (2012 PCr.LJ 11) wherein it was held that a consenting adult is a person who has come of age responsible enough to understand the consequence of marriage and the responsibilities that it entails. The relevant portion is reproduced as under:

“10. Marriage involves a consent which is quite distinct in definition and in differentiation from all types of other consent, e.g., common consent, mutual consent, or implied or express consent. Consent for marriage is eloquent and declaratory, being more specific and expressive. Consent for marriage has deeper and wider implications for criminal, civil, and family laws, e.g., inheritance, etc. Therefore, free consent, for marriage, does not mean just acceding to or saying 'yes' to the circumstantial or situational dictate. While analyzing quality, value or worth and features of such a free consent, following need to be considered: Ability of exercising free choice; capacity (legal capacity: not only sane, but mature mind, i.e., not only puberty, mere majority but age of responsive and conscious consent); capability to use that capacity; depending upon capacity, impediments to or assistance available for application of mind e.g., availability of assistance of wali and wakil (guardian-counsel and supporter-protector); in one's own interest or benefit; extent of free availability of possible options to choose from; environ of freedom.”

21. In light of the foregoing legal framework, it is evident that a marriage contract stands on a distinct footing from contracts governed by the Contract Act, 1872, owing to the personal, religious, and sociocultural dimensions uniquely

attached to matrimonial unions. While Section 11 of the Contract Act prescribes that contractual capacity is attained upon reaching the age of majority as defined under the Majority Act, 1875, Section 2 of the Majority Act expressly excludes matters pertaining to marriage, dower, and divorce from its application. Unlike commercial contracts, which are founded purely on legal capacity, marriage contracts are governed under special enactments, wherein the determination of age has not been made categorically by the legislature, thereby allowing the involvement of personal laws.

3. In presence of ambiguity or legal silence regarding the validity of child marriage under statutory law, can Islamic principles and jurisprudence prevail in determining the legality of such unions?

22. In the context of a minor girl attaining puberty, the developed Islamic jurisprudence has consistently recognized her capacity to contract a valid marriage, provided she gives free and informed consent. Under the Muslim Personal Law, puberty is presumed at the age of fifteen, and once attained, a Muslim female is considered *sui juris*, capable of entering into a marital contract without the necessity of a guardian's consent. Reliance in this regard is placed on a judgement titled "Ghulam Qadir Versus the Judge Family Court, Murree and another" (1988 CLC 113), wherein the Lahore High Court held the following:

"Points arising for our decision in the appeal are as to the age of the respondent at the time of her marriage with appellant and the effect of section 23 of Family Courts Act on the claim set up by the respondent. For proper decision of these points, reference to principles of Mohammadan Law on the subject of marriage is necessary. In regard to capacity of marriage, para-251 of Mohammadan Law by Mulla states that every Mohammadan of sound mind who has attained puberty may enter into a contract of marriage. In the absence of evidence, puberty is presumed to have been attained on completion of the age of fifteen years. By section 13 of Muslim Family Laws Ordinance 1961, in clause (VII) of section 2 of Act No. VIII of 1939 (Dissolution of Muslim Marriages Act 1939), the word '15' was substituted by the word '16'. This amendment, however, does not lay down that the female attains puberty at that stage only. It simply enables a girl to exercise the option of puberty when she attains the age of 16 years, whereas, in accordance with the unamended clause (VII), if given in marriage before a female attained 15 years, she could exercise her right of option of puberty after attaining the age of 15 years and before reaching the age of 18 years provided the marriage was not consummated. See Zafar Khan v. Muhammad Ashraf Bhatti and others; PLD 1975 Lahore 234. It may also be observed that the provisions of Child Marriages Restraint Act (XIX of 1929) do not render the marriage

invalid though it makes punishable a marriage made in violation of its provisions.”

23. This position has been reaffirmed through various judicial pronouncements, wherein the Courts have held that while such marriages may constitute an offence under the CMRA, 1929, they are not rendered void or invalid merely on account of the girl being under the statutory age of sixteen or eighteen, if she has attained puberty and consented. Reliance in this regard is placed upon “Muhammad Azam Versus The State and another” (2018 P Cr. L J Note 175), wherein the Lahore High Court held that:

“There is no cavil about the proposition that Nikah of girl under the age of sixteen years is violative of Child Marriage Restraint Act, 1929 but in the light of dictum laid down by this Court in the case reported as Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh (PLD 2013 Lahore 243), Mst. Atia Bibi, a Muslim girl below sixteen years of age who has otherwise attained puberty and was a consenting party to the marriage, her marriage with the petitioner though, is prima facie, an offence under Child Marriage Restraint Act, 1929 carrying maximum sentence of imprisonment exceeding upto six months yet, the same cannot be termed as invalid marriage.”

24. In situations where statutory law appears to criminalize an act otherwise valid under Shariah, and where the statute does not explicitly declare such a marriage void, Islamic principles shall prevail, particularly in matters of personal law as preserved under Article 227 of the Constitution read with provisions of the Enforcement of Shari’ah Act, 1991 (hereinafter referred to as the “**Act, 1991**”). Sections 3 and 4 of the Act, 1991 state the following: -

3. Supremacy of Shari'ah. (1) The Shari'ah that is to say the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah, shall be the supreme law of Pakistan.

*(2) Notwithstanding anything contained in this Act, the judgment of any Court or any other law for the time being in force, the present political system, including the Majlis-e-Shoora (Parliament) and Provincial Assemblies and the existing system of Government, shall not be challenged in any Court, including Supreme Court, the Federal Shariat Court or any authority or tribunal:
Provided that nothing contained herein shall affect the right of the non-Muslims guaranteed by or under the Constitution.*

4. Laws to be interpreted in the light of Shari'ah. For the purpose of this Act: -

(a) while interpreting the statute-law, if more than one interpretation is possible, the one consistent with the Islamic principles and jurisprudence shall be adopted by the Court; and
(b) where two or more interpretations are equally possible, the interpretation which advances the Principles of Policy and Islamic provisions in the Constitution shall be adopted by the Court.

25. Therefore, in cases of ambiguity or legislative silence regarding the validity of such unions under the ICMRA, 2025, the Shariah-compliant marriages have to be given recognition, unless there exists a clear and unambiguous legislative intent to override personal law through a special statute or provision contained therein. Therefore, when there is ambiguity present in a statute, external sources of Islamic principles and jurisprudence in the light of Section 3 and 4 of the Enforcement of Shari'ah Act, 1991, can be made applicable with a view to determining the factum of legality of the marriage. Section 3 of the Act, 1991 unequivocally declares that the Shari'ah, as laid down in the Qur'an and Sunnah, shall be the supreme law of Pakistan, while Section 4 mandates that laws must be interpreted in a manner consistent with Islamic principles where multiple interpretations are reasonably possible. In this context, when the ICMRA, 2025, criminalizes the act of child marriage without expressly declaring such marriages to be void, the statutory silence on the question of validity cannot be presumed to imply an intent to override settled Islamic principles. To infer such an intention, otherwise absent in the legislative language, would itself amount to reading into the law, which is prohibited as held in the *Allah Nawaz's case (supra)* (PLD 2013 Lahore 243). It is thus respectfully submitted that Shari'ah-compliant marriages, as long as they are not explicitly declared void by the Legislature, are to be given legal recognition in cases where the statute is silent. Reliance herein is placed upon *"Ghulam Hussain Verses Nawaz Ali and another"* (1975 PCr.LJ 1049), wherein the Court held the following:

*"There can, therefore, be no doubt that though under sixteen she is a pubert, which fact has not been disputed. All that is said is that she is under 16 years of age and could not have contracted a marriage without the consent of her guardian, that is the petitioner, not only under the Muhammadan Law but also under the provision of the Child Marriage Restraint Act, 1929. The detenu was produced in Court pursuant to an order dated 9th August 1974, and we have examined her. She has stated that she has married respondent No. 1, Nawaz Ali Dero, willingly and that she was living with him of her own free will and accord. As against the petitioner she stated that he used to beat her and make false allegations against her. She also expressed her desire to live with her husband. **In the***

context of the above statement and the fact that she is pubert, we do not see how she cannot contract marriage on attaining puberty under the Muhammadan Law without her father's consent a law is well-settled and, in this view of the matter, the consent of the father was immaterial. Even the validity of the marriage cannot be assailed for tne effect of the Child Marriage Restraint Act would merely be to punish the male for contracting a marriage with a child." (Emphasis added)

26. It is important to mention herein that the principles contained in Mohammedan Law could only be consulted as a reference book, therefore, they cannot be termed to be statutory law having binding effect upon which any presumption could be drawn against a person. However, it does serve the purpose of providing guidance in matters related to personal law, which can be relied upon in order to reach a holistic viewpoint. The real legal and ethical dilemma arises when the child involved in a marriage is between the ages of tender years, who may have attained puberty, but might not have Rushd (mental maturity). Indubitably, a child of tender age lacks the physical, emotional, and psychological maturity to comprehend or withstand the obligations of marital life, even after attaining puberty. If such a marriage is validated, either due to statutory silence or under the Islamic personal law, it can lead to grave and irreversible consequences, including physical harm, psychological trauma, denial of education, and exposure to abuse or exploitation. Recognizing such marriages as valid also risks normalizing child exploitation and effectively defeats the purpose of protective legislation such as the ICMRA, 2025. The law must, therefore, adopt express and firm stance that balances religious principles with the constitutional and moral obligation to protect children from harm.

27. Furthermore, Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), which was not mentioned in *Mst. Mumtaz Bibi (Supra)*, mandates that every child capable of forming their own views shall have the right to express those views freely in all matters affecting them, and that such views must be given due weight in accordance with the age and maturity of the child. For ready reference, Article 12 of UNCRC is reproduced hereunder:

"Article 12:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters

*affecting the child, the views of the child being given due weight in accordance **with the age and maturity of the child.***

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” (Emphasis added)

This obligation is binding upon States and reinforces the principle that children are not passive subjects, but active rights-holders. In judicial proceedings, especially those involving custody, guardianship, or protection matters, the Courts are therefore bound to assess both the age and maturity of the child before determining the weight to be given to their opinion. This also aligns with Islamic jurisprudence, which similarly recognizes the concepts of *bulugh* (puberty) and *rushd* (mental maturity) as essential criteria for determining legal competence and decision-making capacity in minors.

4. Whether the case of child marriage would fall within the definition of Sections 375 and 377A, P.P.C. thereby constituting "rape"?

28. In *Mst. Mumtaz Bibi* (2022 PLD Islamabad 228), the Islamabad High Court stated that a marriage contract involving a child under 18, being contrary to Sections 375 and 377A of the PPC, is executed for an unlawful purpose, and is therefore void *ab initio*. Such a contract cannot be registered or enforced, as doing so would undermine child protection laws and Article 9 of the Constitution. However, this issue was discussed prior in time in the judgement titled *Allah Nawaz (Supra)*, wherein the Court determined whether the case of child marriage would fall within the definition of Section 375, P.P.C., thereby constituting "rape"? Relevant portion of the judgement is reproduced hereunder: -

“5. It is therefore, held that marriage of a muslim girl, she may be below the age of sixteen years who has otherwise attained puberty and is also a consenting party to the marriage and there being no factor whatsoever to disbelieve the said factual position is valid for all intents and purposes. The next question would be whether the case of such a couple would fall within the definition of section 375, P.P.C. and this relationship can be termed as "rape"? In order to elucidate this point, Section 375 PPC is reproduced hereunder: -

"375. Rape: - A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions: -

(i) against her will;

(ii) without her consent;

(iii) with her consent, when the consent has been obtained by putting her in fear of death or hurt;

(iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

(v) with or without her consent when she is under sixteen years of age."

Although section 375(v), P.P.C. provides that in case of sexual intercourse of a man with a girl under the age of sixteen would amount to rape, whether such act is committed with, or without the consent of such girl, but I am afraid this section, cannot be made applicable to the case where a girl, though under the age of sixteen years, in explicit terms admits to have entered into marriage, as is the case in hand. The word 'rape' has been defined in BLACK'S LAW DICTIONARY-SIXTH EDITION as under:

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"Unlawful sexual intercourse with a female without her consent. The unlawful carnal knowledge of a woman by a man forcibly and against her will. The act of sexual intercourse committed by man with a woman not his wife and without her consent, committed when the woman's resistance is overcome by force or fear, or under other prohibitive conditions.

A male who has sexual intercourse with a female not his wife is guilty of rape if: (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (c) the female is unconscious, or (d) the female is less than 10 years old."

Keeping in view the above reproduced definition of word "rape" in Black's Law Dictionary Sixth Edition, the relationship of Mst. Janaeela Bibi with Muhammad Iqbal respondent No.2 cannot be equated with "rape". In the same terms it may be held that performance of conjugal rights by the spouses, even though the girl may be below the age of sixteen years but has attained puberty and is also consenting party to such marriage, cannot be termed as "unlawful sexual intercourse" so as to attract section 375, P.P.C. in order to initiate proceedings against them.

6. For what has been discussed above, since, Mst. Jameela Bibi claims herself to be pubert and by admitting her willful nikah with

Muhammad Iqbal respondent No.2 deposed to accompany her husband, therefore, the instant petition is found to be devoid of merit, resultantly the same is dismissed and Mst. Jameela Bibi is set at liberty. (Emphasis added)

29. The consistent judicial position has been that a Muslim girl, who has attained puberty and freely consents to marriage, has the right to contract marriage, even if under sixteen years of age. These precedents clearly hold that while such a marriage may amount to an offence under the CMRA, 1929, it does not render the marriage invalid, nor can consummation within such a marriage be treated as “rape” under Section 375 of the Penal Code. The element of lawful relationship and consent within marriage fundamentally distinguishes such cases from exploitative acts that Sections 375 and 377A PPC were designed to penalize.

30. To render marital relations void *ab initio* solely on the basis of statutory age as done in *Mst. Mumtaz Bibi Supra*, while disregarding the attainment of puberty and the existence of lawful consent, may give rise to grave legal and societal consequences, including but not limited to the question regarding the legitimacy of a child born out of such wedlock, severe emotional and psychological distress to the minor, potential physical harm, the real and pervasive risk of honor-based violence, and exposure to maltreatment or domestic abuse within the familial environment. On the other hand, legalizing child marriage carries grave consequences of its own, particularly for girls in rural and underprivileged communities, where limited access to education, healthcare, and economic opportunities already prevail. Early marriages often lead to forced pregnancies, poor reproductive health, domestic violence, and lifelong socio-economic marginalization. These marriages deny the minors their right to education, personal development, and autonomy, thereby perpetuating gender inequality and intergenerational poverty. Reliance in this regard is placed on Para No. 9 in the judgement titled “Tahira Bibi Versus Station House Officer and others” (PLD 2020 Lahore 811).

5. Whether the Court is obligated to engage Child Protection Officers under the Islamabad Child Protection Act, 2018, to conduct welfare assessment before determining the custody, care, or the validity of the marital union involving a minor?

31. In cases involving underage or child marriages, where issues qua puberty, consent, psychological maturity, or potential harm to the minor arise, it is

imperative for the Courts to undertake a case-specific inquiry. Such determination must account for multiple contextual factors, including the attainment of puberty, voluntariness of consent, medical examination to assess bone age, socio-economic background of the minor, and the character and age differential of the adult party to the marriage, which may create a power imbalance. The overarching principle of welfare of the minor remains paramount, irrespective of the nature of the proceedings. Courts are therefore obligated to adopt a child-centric and child-sensitive approach, ensuring that the minor's mental, physical, and emotional well-being is thoroughly assessed and protected through appropriate judicial and administrative safeguards. The risk of coercion, psychological manipulation, and social pressure is considerably higher in child marriage cases, thereby warranting even greater judicial vigilance and child-sensitive adjudication. Applying child-centric approach to cases of child marriage, the Court must explore whether the minor has voluntarily, independently, and knowingly consented to such a union. This includes evaluating their maturity, developmental stage, and any power imbalances, particularly in instances involving significantly older spouse. The presence of cultural or religious justification cannot eclipse the legal requirement to assess and ensure the holistic welfare of the child. In Tahira Bibi's case (*supra*) PLD 2020 Lahore 811, the Lahore High Court, keeping in view the welfare of the minors involved, observed the following:

“Examining this proposition while seeing it through the prism of rule “loco parentis” is observed that the paramount consideration before the Courts has always been the welfare and betterment of a minor. The Courts always act in loco parentis position while keeping in view a variety of considerations. A formalistic approach commonly associated with the adjudication of adversarial civil disputes may not be conducive to the exercise of parental jurisdiction by this Court. A more proactive role shall have to be adopted so as to ensure the protection of the best interest of the minor. The expression welfare shall have to be construed in a way as to include in its compass all the dominant factors essential for determining the actual welfare of the minor/child with a progressive outlook enabling him to prove as a useful entity. Technicalities of law are not supposed to circumvent the exercise of jurisdiction and powers by the Courts in dealing with the matters pertaining to the minor/child. All courts are therefore, supposed to exercise their jurisdiction proactively to forestall any endeavor to cause a breach to the fundamental rights of the children, the protection/provision of which essentially is also in the welfare of the minor/child.”

32. In view of the above, it is imperative that all Courts dealing with cases involving alleged child marriages adopt a participatory, protective and trauma-informed approach, one that treats the minor not merely as a subject of parental or spousal authority, but as a rights-bearing individual whose voice must guide the inquiry and whose welfare must define the outcome. In accordance with the Islamabad Child Protection Act, 2018 (ICPA, 2018), the Child Protection Officers (CPOs) should be engaged by the Courts to provide professional assistance and to ensure that the welfare of the child remains paramount. Pursuant to Section 12 of the said Act, 2018, the CPOs must conduct an initial assessment upon receiving information from the Court that the child may be in need of care and protection. This assessment includes engaging the child, parents, or guardians, and evaluating the immediate environment to determine if protective measures are warranted. For ready reference, Section 12 of the ICPA, 2018 is reproduced hereunder: -

“12. Initial assessment.—(1) Whenever a Child Protection Officer receives a report that a child is in need of protection and care, he shall carry out, as soon as possible, an initial assessment as prescribed to determine whether the child requires care in accordance with the provisions of this Act.

(2) During initial assessment, the Child Protection Officer may request that the child and his parents, legal guardian or any other person responsible for the care of the child, if any, attend at such premises as may be specified by the Child Protection Officer, as may be prescribed.

If the initial assessment under Section 12 indicates potential harm, neglect, or abuse, the Child Protection Officer is obligated under Section 13 to carry out a comprehensive assessment of the child and the family environment within thirty days, whilst incorporating the child's own views where they demonstrate sufficient age and maturity. Should this assessment reveal a credible risk to the child, such as the threat of honor killing, domestic violence, exploitation or psychological abuse, the CPO must develop a Child Care Plan under Section 14. Furthermore, where necessary, an application for care and placement is to be made to the Court under Section 16, and the Court, upon consideration of representations from the family and the CPO's report as mandated under Section 17, may pass such orders as are necessary to secure the child's safety, including placement in appropriate alternative care. This collaborative judicial-administrative mechanism ensures that the child's best interests are assessed and

protected through a legally structured and evidence-based process, rather than presumptive adjudication. Sections 16 and 17 of the ICPA, 2018 are also reproduced hereunder for the ease of understanding:

“16. Care and placement of a child. — Notwithstanding the provision of section 15, where the child care plan specifies that the child will be at risk of significant harm, abuse or exploitation if he remains in care of his parent, legal guardian or other current carer, if any, an application shall be made immediately to the Court for the care and placement of the child in an appropriate form of alternative care.

17. Application to the Court and its procedure. — (1) Subject to the provisions of the Guardians and Wards Act, 1890 (VIII of 1890), any application to the Court for care and placement of a child or to implement child care plan under this Act shall be made by the Child Protection Officer.

(2) Before making any order the Court shall—

(a) order parents, legal guardian or current carer, if any, of the child to make representations to the Court;

(b) consider the reports of and take evidence from the child Protection Officer and any other relevant parties to the proceedings;

(c) consider the Child Care Plan which must be filed as part of the application; and

(d) seek views of the child where the child is of sufficient age and level of maturity.

(3) Upon the application under sub-section (1), the Court may make such order as it deems necessary to ensure that the child is provided with appropriate care or alternative care services, as the case may be:

Provided that the Court shall specify the length of time for which the care and placement order is applicable.”

33. In view of the sensitive and complex nature of cases involving underage or child marriages, it is mandatory that all Guardian Courts, Family Courts, and Courts exercising jurisdiction under Section 491 Cr.P.C. shall, in the larger interest and welfare of the minor, call upon the Child Protection Officers (CPOs) appointed under the Islamabad Child Protection Act, 2018, to assist the Court through a statutory welfare assessment. The Courts shall consider such assessments and reports as essential tools in evaluating the welfare of the child, and no final determination regarding custody, marital status, or care shall be made

without due consideration of the findings and recommendations of the CPO. This direction is issued to ensure that decisions affecting minors are grounded in a child-centric, legally structured, and evidence-based process, consistent with the mandates of the ICPA, 2018 and the constitutional obligation to protect the best interests of the child under Articles 9, 14, 25, and 35 of the Constitution.

34. In the present case, the alleged detainee was produced by Mr. Shabbir, S.I., before this Court on 11-07-2025, wherein the alleged detainee unequivocally affirmed that she had contracted marriage with the Petitioner of her own choice and expressed her desire to reside with him, explicitly declining to return to her parents. It is noteworthy that even during her stay at the Crisis Centre, Islamabad, she has consistently maintained this position. Accordingly, in view of the fact that the alleged detainee has attained puberty and appears to have given free and voluntary consent, she shall be at liberty to reside with the Petitioner. In these circumstances, the instant petition is **disposed of**. The ICMRA, 2025 does not invalidate their marriage, rather it has stipulated punishment for those participating or promoting the same. Therefore, the marriage contracted *inter se* the parties in the instant case cannot be said to be in contravention to the injunctions of Islam or any statutory provision.

35. Before parting with this judgment, this Court deems it appropriate to make certain recommendations in aid of legislative clarity and institutional consistency:

RECOMMENDATIONS:

- I. Given the sensitive nature of cases involving underage or child marriages, it is hereby directed that all Guardian Courts, Family Courts, and Courts exercising jurisdiction under Section 491 Cr.P.C. must engage Child Protection Officers (CPOs) under the Islamabad Child Protection Act, 2018 to conduct a statutory welfare assessment. The CPO's report should be treated as an essential aid in determining custody, care, or marital status of the minor. This approach ensures child-centric, evidence-based decision-making in line with constitutional protections under Articles 9, 14, 25, and 35.
- II. In light of the inconsistencies across various statutes qua the determination of age, it is recommended that the Federal Government must urgently undertake a legislative review. Harmonizing these laws

with the ICPA, 2018, and Pakistan's obligations under the UNCRC to essentially protect minors, uphold constitutional rights, and ensure legal clarity. For the convenience of the Federal Government, the discrepancies in different statutes are highlighted as under: -

- (i) The definition of adult under Section 2(a) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, wherein an adult is defined to be a person who has attained, being a male, the age of eighteen years or, **being a female, the age of sixteen years, or has attained puberty.**
- (ii) Section 2(vii) of Dissolution of Muslim Marriages Act, 1939 states "that she, having been given in marriage by her father or other guardian **before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years:**
Provided that the marriage has not been consummated.
- (iii) Section 21 of the Guardian & Wards Act, 1890 talks about the capacity of minors to act as guardians. "**A minor is incompetent to act as guardian of any minor except his own wife or child** or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.
- (iv) The Majority Act, 1875. Section 2 of which states the following
Savings: - **Nothing herein contained shall effect.-**
(a) the capacity of any person to act in the following matters (namely), marriage, dower, divorce and adoption;

Section 3 states that the age of majority, of persons domiciled in Pakistan, would be attained on becoming 18 years old.
- (v) 375. Rape:- A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,
 - (i) against her will,
 - (ii) Without her consent,
 - (iii) With her consent, when the consent has been obtained by putting her in fear of death or of hurt,
 - (iv) With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or**(v) With or without her consent when she is under sixteen years of age.**
- (vi) 377A. Sexual abuse. Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent **where age of**

person is less than eighteen years, is said to commit the offence of sexual abuse.

(vii) The National Commission on the Rights of Child Act, 2017.

2. Definitions-- In this Act, unless there is anything repugnant in subject or context,--

(b) **"child" means any person below the age of eighteen years;**

(c) "child rights" mean and include, but limited to, rights of child in the United Nations' Convention on Rights of the Child and in any other domestic law;

(viii) Juvenile Justice System Act, 2018

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,--

(b) **"child" means for the purposes of this Act a person who has not attained the age of eighteen years;**

(ix) Islamabad Capital Territory Child Protection Act, 2018.

Definitions: - (1) In this Act, unless the context otherwise requires,-

(d) "child" means a person who has not attained the age of eighteen years;

III. It is recommended that the Federal Government adopt a clear statutory stance regarding the marriage contracted involving minors, even if they have attained puberty and show signs of mental maturity. It is necessary to do so in order to protect children of tender age. To uphold constitutional rights and safeguard minors from harm, statutory clarity is urgently needed.

IV. The District Administration and license-issuing authorities shall ensure that all Nikah Registrars are fully informed about the provisions and penal consequences under the ICMRA, 2025. They must be trained to strictly avoid solemnizing or registering any marriage involving a minor, as registration of child marriages deals with the root cause.

V. In the event of a complaint against a Nikah Registrar who facilitates or registers a child marriage, the Chief Commissioner, Deputy Commissioner, and Chairman Union Council shall immediately revoke the license of the concerned Registrar and initiate criminal proceedings under the ICMRA, 2025 against all involved parties. It is the legal obligation of all Nikah Registrars and officiants to thoroughly verify the age and free consent of both parties before solemnizing a marriage, ensuring that no minor is subjected to marriage in violation of child protection laws.

VI. NADRA and relevant marriage registration authorities must integrate the Birth Registration Certificate into their systems, ensuring verification of age before issuing a Marriage Certificate, to prevent the registration of underage marriages. All birth and marriage records must be accurately recorded in NADRA's central database. If any inconsistency arises regarding the age or date of birth, the subsequent marriage document shall not be issued without a valid Court order or legal verification.

VII. In view of Articles 35 and 37 of the Constitution, which obligate the State to protect the institution of marriage, the family, the mother and the child, and to promote social justice and eradicate social evils, it is strongly recommended that the Federal Government launch a sustained and comprehensive awareness campaign to educate citizens, public officials, Nikah Registrars, and community leaders about the harmful consequences and legal implications of child marriages.

36. In view of the foregoing recommendations, the Office is directed to transmit copies of this judgment to the Law and Justice Commission of Pakistan, the Ministry of Law and Justice, the Ministry of Human Rights, the Ministry of Interior, the Chief Commissioner, Islamabad Capital Territory, the Director General, NADRA, the Secretary of the Council of Islamic Ideology, and the Secretaries of the relevant Union Councils. Additionally, copies shall be sent to all District & Sessions Judges, Guardian and Family Judges, and Magistrates exercising jurisdiction under Section 491 Cr.P.C. within the Islamabad Capital Territory, for their information and necessary compliance.

(MUHAMMAD AZAM KHAN)
JUDGE

Approved for Reporting
Blue Slip added.

//Sajid//**