IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

Present

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN.
MR.JUSTICE SALAHUDDIN MIRZA.

Shariat Petition No.6/I of 2004. L.W
Shariat Petition No.27/I of 1992.

1. Muhammad Fayyaz S/o Bundoo Khan,
   R/o Ward No.5, School Mohallah,
   Mandi Bahauddin.
2. Abdul Salam son of Abdul Aziz,
   Resident of Vehari. .....Petitioners.

VERSUS

1. Islamic Republic of Pakistan
   Through Secretary, Ministry of Religious Affairs,
   Islamabad.

2. Public-at-Large.

3. Shahida Naseem D/o Muhammad Y

4. Muhammad Faizan S/o Muhammad
   Residents of Phalia (Near Jamia Masj ama
   Yaqoob Shah), District Mandi Baha-ud-D

5. Federation of Pakistan through
   Secretary, Ministry of Law, Justice (Justice Divis
   Islamabad.

.....Respon

Counsel for Petitioner In Sh.P.No.6/I of 2004.	....	Mr.Muhamm Advocate.
Counsel for Petitioner In Cr.A.No.27/I of 1992.	....	Nemo.
Counsel for the State.	....	Sardar Abdul Majeed, Stand Counsel for Federal Government.
Date of Institutions	....	05-07-2004 and 23.5.1992, Respectively.
Date of hearing.	....	07-05-2007.
Date of decision.	....	8-6-2007

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JUDGMENT

DR.FIDA MUHAMMAD KHAN, J.— The petitioner Muhammad Fayyaz son of Bundoo Khan has, through his counsel, challenged Section 3 of the Majority Act IX of 1875 and has prayed that the same, according to him being repugnant to the injunctions of Islam, may be declared as such.

2. Another petitioner Abdul Salam son of Abdul Aziz has also called in question the said section read with section 11 of the Contract Act, IX of 1872 and has prayed that the same be declared repugnant to the Injunction of Islam.

3. Since both the petitioners have challenged one and the same section, we dispose both the Petitions by this single judgment.

4. For easy reference the said section is reproduced hereunder:-

Section 3 of the Majority Act IX of 1875

> "Subject as aforesaid every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the C.P.C. has been or shall be appointed or declared by any court of Justice before the minor has attained the age of 18 years and every minor of whose property, the superintendence has been or shall be assumed by any court of Wards before the minor as attained that age, shall not-withstanding anything contained in the Indian Succession Act (No. X 1865 or in any other enactment, be deemed to have attained his majority when he shall have completed his age of 21 years and not before.

> Subject as aforesaid, every other person domiciled in [Pakistan] shall be deemed to have attained his majority when he shall have completed his age of 18 years and not before".

5. We may point out that the petitioner Muhammad Fayyaz has also sought personal relief against the maintenance of his son who according to him has attained puberty and has prayed that the order passed by the learned Judge Family Court Phalia on 22.5.2004 whereby he has rejected an application moved by him in this respect be declared void, besides the prayer that an injunction in favour of the petitioner be passed with the direction that he should not be harassed and taxed for the maintenance of his son Respondent No.4, till the final adjudication of this petition.

6. So far as the grant of relief in personem sought by petitioner Muhammad Fayyaz, as mentioned in para 5 supra, is concerned that is admittedly beyond the jurisdiction of this Court and therefore, it cannot be granted. However, the question concerning the impugned law raised in the petition needs consideration.

7. We have heard learned counsel for the petitioner as well as the learned Standing Counsel for Federal Government.

8. Learned counsel for the petitioner vehemently contended that the age of 18 years as mentioned in the impugned section is

against the Injunctions of Islam and a source of botheration for the father as he has to provide maintenance to his son till the age of 18 years inspite of the fact that his son might have much earlier attained puberty according to Islamic Injunctions. The other petitioner in his written arguments has made identical submissions and placed reliance on a Hadith and opinion of Muslim Jurists. Learned counsel on behalf of the State, however, opposed the same contentions and stated that there is nothing in the said section which could be called in question and considered as repugnant to the Injunctions of Islam.

9. We have thoroughly considered the contentions raised by learned counsel for the petitioners. Before dealing with these contentions, we would like to make it quite clear that this Court is empowered to examine Laws, as defined in Article 203-B(c) of the Constitution of the Islamic Republic of Pakistan, only on the touch-stone of Injunctions as contained in the Holy Qur'an and Sunnah of the Holy Prophet (PBUH). So far as the opinions of Muslim Jurists, as relied upon by the learned counsel for petitioner, are concerned, we have great regard for their opinions and always feel highly pleased and inspired to obtain guidance from the same. However, according to the constitutional requirements, we cannot declare any law or its

provisions repugnant to the Injunctions of Islam merely on the basis of an opinion expressed by a Muslim Jurist. Regarding the question under consideration, we have minutely gone through the relevant injunctions contained in the Holy Qur'an and Sunnah of the Holy Prophet (PBUH) but have been unable to find any specific Verse or authentic Hadith, in this particular matter, that could be quoted to support the contentions raised by the learned counsel for petitioner. It is also worth mentioning that mere manifestation of the physical symptoms of attaining puberty, as submitted by the learned petitioner, are not by themselves sufficient to hold that the concerned person has also attained the age of majority/maturity. Beside that, there are definitely other mental, emotional and psychological aspects also that form necessary basis for that purpose. The Holy Qur'an has, in certain matters, considered and referred to the same, as we may conveniently find in verse No.6 of Surah Annisa and verse No.59 of Surah Annoor. Moreover, it is noticeable that the ages in attaining physical puberty vary from place to place and from person to person and no definite criteria can be specified to exactly determine who attained puberty and on which date. This is the reason why even the renowned Muslim Scholars are not unanimous on this point and have held divergent

opinions in respect of age of puberty. It will be appreciated to note that, for the purpose of legislation a specific age limit has to be fixed by the legislature so that the parties who enter litigations in this respect are conveniently bound by a definite law to follow the same, without indulging in further controversies and complications for determination of puberty. We may also add that the verse and other citations relied by the petitioners are general in nature and do not at all support the contentions raised by them.

10. In this view of the matter, we have found both these Shariat Petitions as misconceived and therefore dismiss them accordingly.

JUSTICE DR.FIDA MUHAMMAD KHAN

JUSTICE HAZIQUL KHAIRI
Chief Justice

JUSTICE SALAHUDDIN MIRZA

Announced on 8th June 2007
at Islamabad.
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Fit for reporting.
8.6.2007