

SHARIAT PETITION NO. 27/1/92

The Petitioner has challenged section 3 of the Majority Act on the ground of its being contrary to the Islamic Injunctions as laid down in the Holy Quran and Sunnah of the Holy Prophet. The relevant section is reproduced hereinbelow.

Age of Majority of persons domiciled in Pakistan.

"Subject as aforesaid, every minor of whose persons or property a guardian, other than for a Suit within the meaning of chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Ward before the minor has attained that age shall not willing anything contained in the succession act 1885 or for any 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 where he shall complete his age of majority on 18 years and not before"

In this law, two matters have been discussed, the first one is that the person, whose property is under Court of ward, will attain the age of majority after completion 21 years not before. The second one is that other person domiciled in Pakistan will attain the age of majority after completion of 18 years.

In Shariat, a person who has not attained the age of majority or is unsound mind is not Considered as Mukallaf <sup>مكلف</sup> liable to perform his religious as well as Civil responsibilities. It is appeared in the books of Ahadis, that: <sup>فتح</sup>

عن ثلاث عن النابت حتى يستيقظ  
المجنون حتى يفيق وعن الصبي  
حتى يكمل - (بخاري طبع 11)

Three persons are not liable for their acts, firstly a sleeping person, till he wakes up, secondly an unsound mind person, till he recovers and thirdly a child, till he attains the age of majority? When a person attains the age of majority? There is divergence of opinion amongst the jurists. Bulugh is determined firstly by physical changes in male and female. A male can attain the age of majority when he can discharge semen while a female can attain the age of majority when she has monthly courses. In case, the age of majority is not determined by physical changes than the jurists have fixed certain period, on completion of that period, age of majority can be ascertained.

According to Imam Abu Hanifa, a male can attain the age of majority after completion of 18 years while the female can attain this age after completion of 17 years. Imam Malik has fixed 18 years both for male and female while according to Jushoor, age of majority can be attained after completion of 15 years. As far as the age of majority of that persons whose property is under Court ward is concerned, the law has fixed 21 years. While Shariah lays emphasis on rushd and Tameez. That is to say, the minor must have capability to manage and administer his property and affairs betterly.

In this context it is appeared in the Holy Quran that -  
 وَيَتْلُوا  
 الْكِتَابَ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ - فَإِنْ لَمْ يَجِدُوا مِنْكُمْ دِينَ وَلَا عِلْمًا فَادْعُوا  
 الْيَتِيمَ إِلَىٰ أَوْلِيَٰهِمْ - (4: 6)

"make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them". 4:6.

From the above verse it become evident that there are two criteria for release of property of minor. Firstly the age of Bulugh when they are able to marry and secondly sound judgment, Bulugh is determined by the aforementioned procedure but mere Bulugh is not sufficient to make the minor independent of supervision as regard his property and to let him manage it as he likes. This shall

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In this context it is appeared in the Holy Quran that- *ويتلوا*

*التي هي اذ بلغوا التكليف فان لهم منعه دستر فادفعوا*

*اليهم اموالهم - (6:4)*

"make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them". 4:6.

From the above verse it become evident that there are two criteria for release of property of minor. Firstly the age of Bulugh when they are able to marry and secondly sound judgment, Bulugh is determined by the aforementioned procedure but mere Bulugh is not sufficient to make the minor independent of supervision as regard his property and to let him manage it as he likes. This stage is reached

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after rushd "دشد" and sound judgment. The jurists have not fixed any particular time for the attainment of this faculty. It is appeared in Al Jamiul Ahkamul Quran by Qurtubi that a property of a person will not be handed over to him unless he reaches the maturity of the intellect and the capacity to manage his own affairs properly even if he is hundred years old.

ولا يدفع الى التيم ماله وان كان شيخاً حتى يرنس منه دشداً لا يعطى التيم وان

بلغ مائة سنة حتى يعلم منه اصلاح ماله. الجامع لاحكام القرآن للتبريزي ج 3 ص 37

The same view is expressed by Imam Malik also. According to Imam Abu Hanifa the maximum age fixed by him was 25 years on the ground that if a person reaches that age and is still stupid *سفيه* he cannot improve himself beyond that age and the property of such person should be handed over to him at the age of 25 years. *الاسوال والتفريغ العقد 344*

It is pertinent to mention here that this Court, while examining contract act 1872 on its own motion (SSM No 1 of 1982) had made elaborative discussion on these matters and had declared the impugned provision of majority act not repugnant to the Islamic Injunctions. It is not out of place to reproduce below the relevent portion of the said Judgment:-

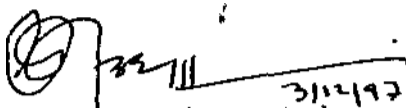
"The Contract Act does not fix any age but it refers to the law fixing the age which in this country is the Majority Act. It fixed the age of majority at 18 years except in the case of a person for whom there is a guardian appointed by Court, in which case the age is fixed at 21 years. There is nothing repugnant in it with the Quran and the Sunnah!"

Since Fixation of such age limit is based on expediance "*مصلحة*" and Juristic view is

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also there in support, in prevailing circumstances the Impugned provision appears to be not repugnant to the Islamic Injunctions.

  
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