

A MUSLIM'S VIEW ON THE PROPOSALS OF THE GOVERNMENT OF TRINIDAD AND TOBAGO TO RAISE THE MINIMUM MARRIAGE AGES FOR MUSLIMS

by Zainol A. Khan

(The following is the full text of a letter written by the above-mentioned and published in full in "The Trinidad Guardian Newspaper" on Tuesday June 21, 2016)

Mr. Editor.

I trust you will publish this submission, which I believe will clarify the Islamic viewpoint on the issue of the proposed changes to the minimum age of marriage, in its entirety.

I must first state that, among other activities, I have served:

- (a) for over seven decades actively in various Executive positions in the Muslim community,
- (b) nearly three decades in various positions on the Executive of the Inter Religious Organisation (including President for three years),
- (c) on seven Cabinet-appointed Committees (either as a representative of the Muslim community or of the I. R. O.),

In addition, I have:

- (i) authored five books on various aspects of Islam and one on local Islamic history (the first of its kind),
- (ii) edited numerous magazines etc. on Islam, and written many articles on various aspects of the religion. All my publications are distributed free.

Islam, a complete way of life

One must understand, first of all, that Islam means "complete submission to the Will of the One God in every aspects of one's life". Thus the *Shariah* (Islamic Law) covers every aspect of a Muslim's life: business, social, political, marriage, husband-wife relations, inheritance, relations with non-Muslims etc., etc.

In so far as the requirement regarding the age of marriage is concerned, the *Shariah* requires, among other conditions, that the parties **must have reached the age of puberty and, if one of the parties is below that age, the consent of the parent or guardian must be obtained.**

While on the question of *Shariah*, I must point out that "in a Muslim State, the non-Muslims enjoy special privileges according to *Shariah* (Islamic Law). They are granted freedom of movement and religious worship, and freedom from external threats. In the event that the Muslim State goes to war, the citizens who are not Muslims can either choose to join the army, or refrain from doing so. In the latter case they must pay a special tax called *Jizyah*"

In light of the *Shariah* as regards non-Muslims in a Muslim country, as stated in the preceding paragraph, is it too much to expect that where Muslims are in a minority (as in this country), they should be afforded the full opportunity to practise their religion, especially in accordance with the provision in the Constitution of this country that guarantees "*freedom of conscience and religious belief and observance*"?

The Muslim Marriage Act

The vast majority of Muslims and Hindus in this country are descendants of indentured labourers from India who began arriving in the country from 1845. These people worked under

very trying conditions without being given the same facilities as the Christian community. One of these was the non-recognition of marriages contracted under *Shariah* (Islamic Law). As a result children born out of Muslim marriages were considered illegitimate, and this was indicated on their birth certificates. In addition, when the husband died, neither wife nor children could inherit the deceased's property because the marriage was not considered legal. (The deceased's property would revert to the State.) As a consequence, great financial stress was placed on untold thousands of citizens. A similar situation existed with respect to Hindu marriages.

Trinidad and Tobago then being a Colony of England, representations were made to the British Government by both individuals and organisations from as early as 1915 to have both Hindu and Muslim marriages (and in the case of Muslims – divorces) recognised by the then Colonial Government. These repeated representations eventually resulted in the passing of legislation – the Muslim Marriage and Divorce Ordinance, in the case of Muslim marriages and divorces.

The following extract of the address of the then Honourable Attorney General (an expatriate, like most of the senior Government officials when Trinidad and Tobago was a Colony of England), in moving the second reading of the Bill on the first November, 1935 is pertinent:

“The Bill constitutes a very liberal effort to satisfy the aspirations of the Muslim community in relation to their Civil Status in matters of marriage, legitimacy and divorce. The Bill was forwarded to the Secretary of State for the Colonies who submitted same to the Authorities in India. Certain suggestions were made by different authorities consulted, and by some of the Muslim Associations here and in India. In so far as it has been practicable, these have been embodied in the present Bill. Every endeavour has been made to meet the wishes of the Muslim community. It has not been possible to satisfy them in every respect, but it is believed that the Bill in its present form is acceptable to the members of the community.”

The above will illustrate the extent of the research and care the British Government took to ensure its overseas subjects were given full freedom to practice their religion. Perhaps the present Hon. Attorney General will advise us as to who are his advisors in this matter.

Is it not ironic that when we were a Colony, our Colonial masters, who we have criticised so much, enacted legislation to give their Hindu and Muslim subjects in this country freedom to practise their religion, and that now we are an independent nation the representatives we voted to rule us are in the process of taking away those privileges, which are embodied in our Constitution?

UN Resolutions on the Convention on Consent to Marriage, Minimum Age for Marriage and the Registration of Marriages.

These are two General Assembly Resolutions on the matter: 1763 A dated 7 November 1962 and 2018 (XX) of 1 November 1965. The former states the State Parties “*shall take legislative action to specify a minimum age for marriage*” but does not specify an age.

However, a minimum age of fifteen years was subsequently recommended in the Second Resolution. Principle 11 reads as follows : “Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending parties.”

Fifty five of the one hundred and ninety two member States have signed the Convention. Among these are:

- (i) The United States of America, where each of the fifty States has its own marriage laws. In thirty two of the States (64%) the age of consent is sixteen years, with provisions for marriage at a younger age with parental or judicial permission.

(ii) England, where 45% of the population are Christians, and one can marry at the age of sixteen with parental permission.

(i) Italy, where members of the Roman Catholic faith comprise 87.8 % of the population, and the marriage age is sixteen years with parental consent.

The Government proposes to make the legal minimum age for marriage for the Trinidad and Tobago, regardless of one's religious beliefs, to be eighteen years, which is that advocated by a declining Christian community (52.9% of the population in 2000 and 48.8% in 2011).

If 15-16 years is an acceptable age for marriages in the countries to which reference has been made in the paragraph before the last, on what basis has the Government determined that the minimum age in Trinidad and Tobago should be as much as 18, regardless of one's religious beliefs?

Marriage Age: a secular, not a religious, matter?

Some persons have contended the minimum age for marriage is purely a secular matter. I would draw their attention to the following:

(i) The Constitution of the Republic of Trinidad and Tobago begins as follows-

“Whereas the people of Trinidad and Tobago

(a) Have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the Supremacy of God, faith in fundamental rights and freedom, the position of the family in a society ...”

(ii) **Part 1 Rights enshrined No. 4 provides as follows: “freedom of conscience and religious belief and observance.”**

(ii) in the swearing-in ceremony for many officials in the country the official takes the oath of office holding one of the sacred books,

(iii) religion is taught in schools, holidays are given to mark some of the religious observances of minority groups, etc.

Child Marriages vs. Child Pregnancies

The Honourable Attorney General has been able to obtain statistics from the relevant Ministry regarding marriages of persons between the ages of 12 and 16, the number of which totalled 548 in 10 years. This would average 54.8 persons per year. The Government is spending a lot of effort endeavouring to impinge on the religious rights of slightly over 20% of the population. Compare this with its dismal failure to take positive action on many major issues affecting much larger numbers of the population: e.g.:

(a) the over 2,500 teenagers who the Minister of Education revealed become pregnant every year, most of whom do not return to school (Trinidad Express 10th. February 2014. (There are no statistics of the number of abortions that took place.)

(b) the murder rate in 2015 (403), which ranks our country as having the 13th. highest murder rate in the world.

(c) the 15,312 reports of cases of domestic violence between the period 1 January 2004 to 28 February 2014 (an average of slightly over 1,000 a year), and that is just the number of reported cases.

Seventeen groups are in favour of the Government's proposals

Seventeen groups have so far been named as being in favour of the proposals. I would suggest that the relevant authority verify the *bona fides* of these groups in order to ascertain whether or not they are representative organisations (and if so, of who and what) or “paper” bodies, and are truly representative of the population as a whole on this issue.

The thin edge of the wedge

One must consider whether the proposed changes would be the thin edge of the wedge and, if the move is successful, further incursions would soon follow on the ability of

minority religious groups to practise their faiths. **One may therefore see in the future legislation which will make it illegal:**

- **For Muslim ladies to wear the *hijaab* and items of adornment which would identify them as Muslims (as already exists in at least one country in Europe),**
- **For Muslim men to wear a beard and/or a *topi* (similar to a skull cap),**
- **To slaughter animals as prescribed by Islamic law,**
- **To give religious instruction in all schools etc., etc.**

Proposals came like a thief in the night.

One expects that any party seeking to govern a country would have indicated in their Election Manifesto that, if elected, they would enact legislation to impinge on the religious beliefs of any of its citizens, especially when they number nearly twenty five percent of the population and have made considerable contributions in all aspects of the country's successes.

In the circumstances I would suggest that the affected communities should take the following steps:

- (a) Lobby for the parties in Parliament to afford their members to vote according to their conscience,
- (b) Petition the President of the country to appoint two temporary Senators to present the views (one Hindu and one Muslim who must be versed in their respective religions) of the two faiths when the matter comes before the Senate,
- (c) Lobby their Parliamentary representatives urging them to reject the proposal as it impinges on their religious beliefs and the Constitution.

Amendment to the National Anthem

Finally, if the proposed amendment is made into law it would obviously be necessary, as a corollary, to amend our National Anthem by deleting the words "*here every creed and race find an equal place*".

Zainol A. Khan