



HOW DO WE ANSWER THOSE WHO CRITICISE THE MARRIAGE OF PROPHET MUHAMMAD WITH LADY AISHA?

LEGAL CONSENT AGE OF INDIVIDUALS

Those who choose to criticise Islam tend to target their hatred towards Prophet Muhammad, may Allah's salutations and peace be upon him and in particular his marriage to Lady Aisha, may Allah be pleased with her. They fail to recall his marriage to Lady Khadija who was fifteen years his senior and twice widowed. They highlight this as Lady Aisha was nine years old when she married the Prophet. She was over the age of puberty and psychologically ready for marriage and it was culturally accepted for two individuals who were over the age of puberty with the correct state of mind, to marry. Is this unusual to Islam? Is this unusual to Prophet Muhammad? Evidently not from what I have seen; but the purpose of this paper is to explore what was and is currently termed consenting within the West as that seems to be, according to some, the current benchmark for progression, equality and justice.

In Islam there is no difference between consenting and marriage as it is illegal to consent to sex, even if between two adults (whose definition is debated). Sex is only permissible when the couple are legally married in which consent is obtained from both.

Is it correct to compare 'cultural practices' of 1400 years ago to cultural and socially acceptable norms now?

Let us start by exploring the West's view on consent.

In the USA the age of consent varies from state to state and starts as low as 12 for females in the state of Massachusetts, in fact Mississippi and California has no age limit when parental consent exists, up to the age of 18. The standard age of consent varies between 16 and 18.

In fact a large number of states permit marriage of minors which in some cases is 14 or lower if a pregnancy has taken place, once parental and/or judicial consent is sought and obtained. The deciding point is 'when it is in the best interest of the minor.' This was recorded by the Global Justice Initiative in 2011 (<http://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf>).

This is the same as the age of consent in Europe which also varies from the age of 13 up to the age of 18 across the various countries.

Historically speaking, the Age of Consent appears in secular law in 1275 in England, hence prior to that there was no law preventing marriage or sex between two individuals of any age, no mention of puberty or any other criteria. Sir Edward Coke interpreted the term 'within age' from the statute to mean twelve years old.

However this law was difficult to enforce as juries did not feel it appropriate to judge by age alone and looked at each individual situation case-by-case to determine whether the female was a child and hence a victim. It was only until the end of the 19th century that a fixed age was brought about.

(Stephen Robertson, "Age of Consent Laws," in Children and Youth in History, Item #230, <http://chnm.gmu.edu/cyh/teaching-modules/230> (accessed November 3, 2013)).



In fact Robertson details the development of consent laws from the late 19th century until 2007.

Source

Date compiled from the following sources: Hirschfeld, Magnus. *The Homosexuality of Men and Women*. Translated by Michael Lombardi-Nash. Amherst, New York: Prometheus Books, 2000; Killias, Martin. "The Emergence of a New Taboo: The Desexualization of Youth in Western Societies Since 1800." *European Journal on Criminal Policy and Research* 8 (2000): 466; Odem, Mary. *Delinquent Daughters: Policing and Protecting Adolescent Female Sexuality in the United States, 1885-1920*. Chapel Hill: University of North Carolina Press, 1995; "Worldwide Ages of Consent," AVERTing HIV and Aids, www.avert.org/aofconsent.htm (accessed November 29, 2007).

Primary Source Text

Age Limit in Age of Consent Laws in Selected Countries

	1880	1920	2007
Austria	14	14	14
Belgium	-	16	16
Bulgaria	13	13	14
Denmark	12	12	15
England & Wales	13	16	16
Finland	-	12	16
France	13	13	15
Germany	14	14	14
Greece	-	12	15
Italy	-	16	14
Luxembourg	15	15	16
Norway	-	16	16
Portugal	12	12	14
Romania	15	15	15
Russia	10	14	16
Scotland	12	12	16



1880 19202007

Spain	12	12	13
Sweden	15	15	15
Switzerland	various	16	16
Turkey	15	15	18
Argentina	-	12	13
Brazil	-	16	14
Chile	20	20	18
Ecuador	-	14	14
Canada	12	14	14
<i>Australia</i>			
New South Wales	12	16	16
Queensland	12	17	16
Victoria	12	16	16
Western Australia	12	14	16
<i>United States</i>			
Alabama	10	16	16
Alaska	-	16	16
Arizona	12	18	18
Arkansas	10	16	16
California	10	18	18
Colorado	10	18	15
Connecticut	10	16	16
District of Columbia	12	16	16
Delaware	7	16	16
Florida	10	18	18
Georgia	10	14	16
Hawaii	-	-	16

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1880 19202007

Idaho	10	18	18
Illinois	10	16	17
Indiana	12	16	16
Iowa	10	16	16
Kansas	10	18	16
Kentucky	12	16	16
Louisiana	12	18	17
Maine	10	16	16
Maryland	10	16	16
Massachusetts	10	16	16
Michigan	10	16	16
Minnesota	10	18	16
Mississippi	10	18	16
Missouri	12	18	17
Montana	10	18	16
Nebraska	10	18	17
Nevada	12	18	16
New Hampshire	10	16	16
New Jersey	10	16	16
New Mexico	10	16	17
New York	10	18	17
North Carolina	10	16	16
North Dakota	10	18	18
Ohio	10	16	16
Oklahoma	-	-	16
Oregon	10	16	18
Pennsylvania	10	16	16

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1880 1920 2007

Rhode Island	10	16	16
South Carolina	10	16	16
South Dakota	10	18	16
Tennessee	10	18	18
Texas	10	18	17
Utah	10	18	16
Vermont	10	16	16
Virginia	12	16	18
Washington	12	18	16
West Virginia	12	16	16
Wisconsin	10	16	18
Wyoming	10	16	16

"Age of Consent Laws [Table]," in Children and Youth in History, Item #24, <http://chnm.gmu.edu/cyh/primary-sources/24> (accessed November 3, 2013). Annotated by Stephen Robertson

One can clearly see that it was just over 100 years ago when it was legal in most parts of the West for a female as young as ten to marry. Prophet Muhammad married over 1400 years ago and Lady Aisha was the only female of all his wives he married that was of this age. Others were much older.


Could we apply age limits in cultures which live very differently than ours?
Is there an age of consent amongst Amazonian tribes or is it when a boy becomes a man and a girl a woman?

Hence social customs varied and continue to vary across the world and as a result the age of consent varied and was accepted by the people of that time, place or culture.

This is the same context in which we find the marriage of Prophet Muhammad and Lady Aisha.

As social norms and customs have changed hardly any Islamic scholar would permit the marriage of a person of 10 or so as that type of psychological maturity required hardly exists now in our societies across the world. Let's not forget in parts of Europe and the US consent age is still below the individual's teens, even more so when judicial and parental consent exists. Having said that – Islamic scholars clearly take into consideration the laws of the society hence will not consider marriages if they would be considered illegal.

The question then arises is why is it that this topic is picked on? Is it to show consideration of minors, according to current Western laws, being married forcibly? Well if that was the case why isn't this issue being raised in the various states and countries mentioned above? Especially those who permit under-16



marriage in the 21st century? An additional point which is relevant at this juncture is that in Muslim-majority countries the age of consent is no different than current Western laws.

So what is the real motive? Jeremiah Bowden states that the motive for this is the view of some to caricature Islam to regard it as a 'morally-deprived' and to accuse the Prophet Muhammad of carrying out an act which I struggle to type in the same sentence. (Bowden, J. Marriageable Age in Islam, Islamic Law and Legal Theory 436, 2010)

Simply put – it is to defame and dishonour our Prophet Muhammad and then by association the religion he preached and propagated.

So one needs not to be apologetic, or feel the need to 're-interpret' or change the historical facts, but rather one needs to remove the inferiority complex or the slavery of the mind and see this for what it is – which is an islamophobic attack on two great individuals of Islam and understand the application of Shari'a in varying circumstances.

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