



BĀLEĠ

BĀLEĠ, an Arabic term meaning full age, adult, mature, in contrast to the term *ṣaġīr* (minor). According to various schools of Islamic law, including the Shi'ite school, there is a clear distinction between girls and boys attaining the age of majority. Presuming sanity, the age of *bolūġ* (majority) for boys is said to be between thirteen to fifteen (some have said ten for boys and nine for girls). The only undisputed traditional criterion for majority is either on reaching orgasm or growing pubic hairs (in male or female). Reference is usually made to Qur'ān 24:58 which indicates that the children attain the age of puberty by having venereal (wet) dreams. No reference is made to manipulated ejaculation by the youth, as masturbation is a major sin in Islam. Qur'ān 4:5 commands to take care of orphans until they reach the age of marriage. Shaikh Fakr-al-Dīn Ṭorayhī (d. 1085/1674-75) in *Majma' al-baḥrayn* states that majority is attained by anyone who (a) has grown rough pubic hairs or, (b) has reached orgasm, or (c) has reached the age of nine for girls or ten to fifteen for boys. Šams-al-Dīn Abū 'Abd-Allāh Moḥammad b. Makkī 'Āmelī Šāmī, known as the First Šahīd, executed in Damascus in 786/1384 (*al-Lom'a al-demašqīya*), Shaikh Bahā'-al-Dīn Moḥammad 'Āmelī known as Shaikh Bahā'ī, (*Jāme'-e 'abbāsī*, Tehran, 1363 Š./1984, pp. 164-65), and Sayyed Moḥammad-Kāžem Yazdī (*'Orwat al-wotqā*) and others record the consensus that the age of majority for girls is nine. Moḥaqqueq Ḥellī (d. 676/1277-78) in his most authoritative *Šarāye' al-Eslām* says that the age of majority for boys is prima facie fifteen or any one of the other two physical criteria as recorded before, whichever occurs first. Ḥājj Mollā Hādī Sabzavārī in *Šarḥ-e Nebrās* writes that adulthood in either male or female is established by either "having venereal



dreams,” or having rough pubic hairs, or alternatively reaching the age of nine for girls and the age of fifteen for boys. Any one of these criteria is sufficient. Sabzavārī then goes on to philosophize and justify why women become mature under Islamic law earlier than men. His grounds of justification *inter alia* are: The figure of nine is a perfect figure and the Almighty knows that women are much fairer and weaker than men and die earlier, thus the Almighty has compensated women by granting them an earlier status of majority than men. Ayatollah Komeynī (*Tawẓīḥ al-masāʿel*, question 2252) states three criteria for reaching the full age: growing rough pubic hairs, ejaculation, and the completion of fifteen lunar years of age for boys and nine lunar years for girls. Notably Ayatollah Komeynī regards the first two criteria common to both sexes whereas other Shiʿite jurists have expressed different views. For instance, Ayatollah Moḥammad Waḥīdī (*Tawẓīḥ al-masāʿel*, question 2260) considers the completion of the age of nine lunar years the only criterion of *bolūḡ* in women, whereas for men he states the following three: completing the age of fifteen lunar years, growing rough pubic hairs, and having wet dreams.

Those who have not attained the age of *bolūḡ*, as in Roman law, are divided into two categories: 1. Those younger children who can be termed as pupils and have no power to enter into any contract whatsoever and 2. young persons under the age of *bolūḡ* who can be termed minors and who have the capacity to be a party to a contract from which they benefit, e.g. by accepting an offer of gift gratuitously (article 1212 of the Iranian Civil Code). Apart from this distinction pupils and minors have no contractual capacity under Shiʿite law. Thus any contract which purports to have been made by a pupil or minor is, as a rule, void and therefore unenforceable with the possible exception that if necessities are supplied to a pupil or a minor, he or his guardian must pay a reasonable price for them. Article 212 of the Iranian Civil Code states that a contract made by a person who had not reached the age of *bolūḡ* is void. Nevertheless, a minor’s estate, but not a pupil’s, is liable for tort (‘A. Šāyegān *Hoqūq-e madanī-e Īrān*, 3rd ed., Tehran, 1324 Š./1945-46 p. 225).

Usually the age of majority is discussed by Shiʿite jurists for four purposes. First, and most importantly, for the sake of *taklīf*, i.e., full capacity in the eyes of God for performing all *wājibs* (ritual obligations such as saying daily prayers and keeping fast in Ramaẓān). Secondly for purposes of entering into contractual obligations and in particular the contract of marriage (cf. Qurʾān 4:5, which states that orphans should be looked after until they reach the age



of marriage; then if they are mentally mature one is to give them all their estate). Thirdly, for purposes of criminal responsibility as there is a presumption in Islamic law that a pupil is incapable of committing crime; thus *bolūg* is a major criterion in the definition of a criminal under Islamic law. Under the 1982 Iranian Law of Retribution (pars. 138-58), children below the age of *bolūg* who engage in adultery or sodomy cannot be punished. Lastly, a person who has not reached the age of *bolūg* cannot sue or be sued, although a minor (not a pupil) can sue his guardian for failure in the provision of support (article 96 of the Iranian Law on Guardianship).

Orthodox Islamic law imposes no age qualification whatever for marriage, and there is thus no bar to the marriage of minors concluded by their guardians. Indeed the father's permission is considered essential for the marriage of any bride by many Emāmī jurists (including Ayatollah Khomeynī) as well as under article 1042 and 1043 of the Iranian Civil Code 1313-14, although the latter article allows the registration of civil marriage by a female without her guardian's approval if the guardian having been given notice of the proposed marriage fails to satisfy the registrar why the marriage should not be registered. However, as stated by Sayyed Moḥammad-Kāẓem Yazdī (d. 1337/1918-19), it is prohibited to consummate the marriage with a minor wife under the age of nine whether she is "free, a slave, permanent wife, or temporary wife" (*Orwat al-wotqā*, 2nd ed., 1392/1972, p. 99). Such an "arranged marriage" can be set aside by the husband only after he reaches *bolūg*. Thus Āqā Sayyed 'Alī Ṭabāṭabā'ī (d. 1231/1815-16) states that divorce by a youth is not valid until he has had a venereal dream (*Riāz al-masā'el*).

The age of majority under secular, civil law (Articles 1208-10 of the Iranian Civil Code) which was in force in Iran prior to the revolution of 1358 Š./1979 was eighteen for both men and women. Articles 1209 and 1210 of the Iranian Civil Code imply that anybody, male or female, who is under the age of eighteen years, is a minor under Iranian law and as such lacks any legal capacity to administer his own estate by Article 1207 (S. Ḥ. Emāmī, *Hoqūq-e madanī* I, Tehran, 1333 Š./1954-55, pp. 166). Under article 1180 of the Iranian Civil Code, a minor is subject to the legal authority of the father and paternal grandfather. Article 1041 of the Iranian Civil Code disallowed the marriage of girls below the age of fifteen and boys below the age of eighteen, but authorized the court to grant exemption from this age limit in exceptional circumstances to girls over thirteen and boys over fifteen. Under article 1168-72 of the Civil Code the custody of the children rests with the father but



the mother has priority to take custody of male children less than two years old and of female children under the age of seven. By the Custody of Children Act 1982, children whose fathers died were allowed to remain under the custody of their mothers.

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