**Section III: Minor Marriage in the Moroccan Family Law and the Question of Implementation**

1. **The Role of Islamic Policy in Orienting adjudications**

It is important to mention that the issue of minor marriage has always been at the heart of religious debates among scholars, especially in the light of their different contexts and cultures where they perform their work.

Many scholars who exert intellectual effort in Islam were in charge of judicial courts in many Islamic eras, and issued excellent decisions that took into account people’s changing conditions. Among these scholars was the judge Ibn Shibrima[[1]](#footnote-2) who disagreed with his colleagues about minor’s marriage by considering that this marriage can only prevent children from their rights, and bring no benefits to them neither in logic nor in Islam.[[2]](#footnote-3) By doing this, he was a model of a judge who demonstrates the importance of interacting with people and understanding how judicial decisions can bring harm or benefits to them. This is important to mention in the paper about the issue in hand.

It is worth mentioning that this judge emphasized on the need to combine mastering the judicial provisions and the ability to extract and seek the right decisions from the existing texts especially in issues like marriage.

In the early Islamic eras, it was very common among judges to find some texts and sayings that don’t match with the need of providing a fair and just adjudication, this is what pushed him to use his reasoning to link between the supremacy and finalities of the Islamic Shari’a and people’s public good. By doing this, the judge is placed the position of the governor who is in charge of preserving the society’s public interests. The judge then is responsible of estimating this interest despite of dealing with individual cases, especially that in previous eras some judges combined the two positions (ruler and judge) which is never possible today.

It is important to know that the “Islamic policy” which is undertaken by the ‘imams’ (rulers) is based on understanding the partial texts in the light of ultimate purposes of chari’a, also based on the awareness of the lived reality (fikh al-waki’e) which allows the judge to make the right decision.[[3]](#footnote-4)

What counts here is to show how the ruler (imam) can view \_due to his position and holistic approach\_ what is closer to the public interest, although this can seemingly be contradictive with the rigid jurisprudence. Ibn Al-Qayyim agrees with this view saying: “There are many ways with which God shows his purpose to establish justice among people, and any way was found to serve this interest does not contradict the religion”.[[4]](#footnote-5)

The Islamic policy has a humanitarian nature in managing people’s affairs in their diverse doctrines and situations which requires suitable authority to preserve the religion and the nation with ultimate wisdom, which is usually viewed by the ruler, even if it gains no consensus or is not mentioned in the prophet’s ‘Sunnah’. Ibn ’okail wisely states that there is a difference between saying “what Islam says” and “what Islam aims to achieve”, and good policy is the one that follows the closest decisions to people’s interest.[[5]](#footnote-6)

Islamic policy entitles the ruler authority to preserve the interests and avoid the harms for the nation. Thus, it is necessary to consider the damage that minor and forced marriages can bring to society, especially if this becomes the norm. in this regard, the Sultan of Morocco Sulaiman (1822 A.D. / 1238 Hijri)[[6]](#footnote-7) consulted the scholar Mohamed Errahoni (1818 A.D / 1230 Hijri) to prevent parents from enacting marriages for their daughters to gain personal interests that go against their daughters’. The scholar replied agreeing with this opinion but pointing out to some difficulties in implementation related to maneuvering the law and some cases when listening to justifications of the parents are necessary.[[7]](#footnote-8)

It is noticeable throughout the following years that the tendency to reform this domain increased. An example is the OthmanianCalif Mohamed Rachad, who considered the need to eradicate minor marriage, and backed up this by the opinion of judge IbnChibrima and Abu bakr al Asam in the Othmanian family law in 1917,arguing that children need to reach puberty to decide about their marriage.

A reflection over the subsequent reasoning about this issues would make us infer that the rulers along with the judges are responsible to discern and look for the public interest as this is essential in the Islamic Chari’a. The judicial reasoning is therefore requested in all cases despite being different from previous jurisprudences because every context requires its own reasoning.[[8]](#footnote-9)

The need to renew jurisprudence expands to the current time as lot of changes have occurred at many levels.[[9]](#footnote-10) One noticeable aspect of change is the late age of puberty among girls today, this is related to new psychological and sociological criteria of judging girls’ readiness to get married in a manner that wouldn’t harm her.[[10]](#footnote-11)

This issue falls entirely under the responsibility of rulers as they are required to match the legislative laws with the awareness growth of the people. This aim was clearly observed in the current era of King Mohamed VI as he is the commander of the faithful, which entitleshim to supervise the reform of the family code. He showed the will to conciliate current transformations with the ultimate aims and finalities of the Islamic Chari’a in his speech stating that: “I cannot, as Commander of the Faithful, permit what God has forbidden and forbid what God has permitted.”[[11]](#footnote-12). Among the provisions advanced in the new family law, an article related to minor marriage which revealed high competency of scholars and legislators dealing with achieving the public interests for Moroccans. Notably, this played a great role in bringing together diverse ideological orientations.

The most important remark that characterized the new family law was its ability to open the gate of *Ijtihad*(reasoning), and based on it, it advanced all provisions that don’t conflict with the clear Islamic texts. Its philosophy held the motto of equality, justice and good coexistence within the family, departing from the tolerant principles of religion and the *maliki* school of jurisprudence.[[12]](#footnote-13)

**2- Minor Marriage and the Moroccan Family Law**

Demands of reform were aiming to raise the age of marriage for girls to 18 in order to make it equal to the legal age of men’s marriage too. This required gathering a set of qualified scholars and thinkers in all fields to decide about new provisions for the family Law, among which is the issues of minor marriage. in the end, this gathering produced a law that gained a general consensus as it tried to conciliate social transformations and progressive demands with the Islamic *Chari’a.*

The current Moroccan family law links the legal age of marriage to the condition of reaching complete 18 years old as stated in article 19. However, in article 20, it gives the right to the judge to be flexible in authorizing marriages under 18 in condition of providing a report that justifies his decision after listening to the minor’s parents (or her legal tutor) and performing a medical checkup or a social investigation.[[13]](#footnote-14)

Judge ZhorAlhor[[14]](#footnote-15) explains how this provision was produced as a result of discussions among all parts of civil society and scholars who belong to different trends and have diverse departure points. The main demands were as follows:

**Group 1: asked for raising the age of legal marriage to 18 for both sexes based on the following justifications:**

1. The age of marriage is not specified neither in Quran nor in Sunnah (prophetic tradition) and it is a controversial issue among Muslim scholars
2. Early marriage for girls especially in the country side, without enacting the contract (only through a gathering and witnesses) poses the problem of possible repudiation of her and her children by the husband
3. Raising the legal marriage to 18 is compatible with the international conventions of human rights, among which the declaration of children’s rights defines the child he who is bellow 18 years old.
4. Early marriage contradicts with state policies to popularize education. And in case of raising the age of marriage this will increase the chances for girls to access education.
5. The girls with the age of 15 are unable to carry the responsibility of the family because of incomplete physical, mental and psychological maturity, let alone the harm that early marriage may cause to her in case of giving birth.
6. Raising the age of marriage helps to minimize the rate of violence against girls and women
7. Approval of minor marriage can be at the age of 17 exceptionally and after the permission of the judge.

**Group 2: asked for keeping the legal age of marriage for girls at 15 and for boys at 18 and this was justified as follows:**

1. This age coincides with the age of puberty
2. Raising the age of marriage can cause moral decadence, and early marriage is a protection for the girl.
3. Raising the age of marriage is a violation of personal freedom

**Group 3: asked for raising the age of marriage for girls to 16 and presented the following justifications**

1. 16 years old is the most suitable age for legal marriage (completion of primary school + the age of criminal responsibility –formerly-)
2. 16 years old is the age of girls’ puberty
3. Society now has the problem of late marriage not early marriage, and raising the age of marriage encourages sexual relations out of marital wedlock

**Group 4: viewed that the age of marriage is associated with the age of puberty without specifying a certain age. This will limit adultery and marriages out of wedlock.[[15]](#footnote-16)**

After negotiating all opinions and viewpoints in the committee, and in the framework of conciliation and consensus, it was agreed to adopt the opinion of raising the age of marriage to 18, with the possibility to go bellow this age in exceptional cases according to the following conditions:

1. Listening to the minor and her parents or her legal tutor
2. Making use of the medical checkup to make sure of the minor’s physical and psychological ability to start the marital life.
3. Performing a social investigation by the social assistant to recognize the social and financial conditions of the minor and her surrounding, also of the person who wants to marry her and his ability to burden the responsibility of marriage
4. Making sure that the marriage has a certain interest for the minor and it is not expected to cause any harm to her.
5. Justifying the approval by the judge in a sufficient way in order to guarantee its validity [[16]](#footnote-17)

It is noticeable here that these restrictions are made to legally justify the decision in a convincing way. This somehow ensures that there is a supervision over the work of the judge who has to consider that his adjudication is just an exception that needs to be practiced only in the extreme need of it.

Noteworthy, despite the fact that these restrictions are hard to overcome, some civil society associations and social activists criticize the discretion given to the judge as his decisions are usually influenced by different personal and cultural factors. For this reason, the law that regulates minor marriage is agreed among scholars as very challenging and related to intricate issues as we will see.

**Models of approval reports for minors’ marriage.**

Among the reports presented in Berchid city (near Casablanca), there is a report that shows that the judge abided by the provisions of the family code related to minors’ marriage two years after its issuance. The report states: (..) based on the social investigation performed by the family court, and with the presence of her parents who are willing to accept her marriage, and the man who proposed to her, the social investigation revealed her ability to get married. And as the girl who was born in 01 – 01 – 1989 according to her birth certificate presented to the court, and based on the discretion of the attorney general which aims to implement the law, and as the interest behind approving this marriage is to protect and save her for her husband in the marital life, and as the external observation of the girl shows her ability to burden the responsibility of marriage as she owns indications that prove physical, psychological and moral aptitude for marriage, and as the relation that gathers her and the man who wants to marry her is of respect and compassion to establish a stable family under their mutual responsibility, and based on the provisions of article 20 and 21 from the family code, we approve for …. to get married.[[17]](#footnote-18)

These measures and standards are found in all courts of Morocco for what concerns minor marriage. this is another sample that shows the adherence of a judge from beni Mellal to these measures in the same year. The report states: “as the minor is 17 years old and almost 4 months (she is only 8 months far from the legal age), and as the girl along with her father declared during investigation that she is able to handle the responsibility of marriage, and as her psychological and physiological ability is proven through a medical checkup informing that no harm is expected to happen to her at the level of her reproductive health, and as the legislator allows minors’ marriage when her interest is proven, we approve this marriage as investigation in this case shows their will to establish a family based on mutual respect and compassion especially that she dropped out of school as proven from her school administration, this is beside the fact that the husband has a good salary that can cover her needs and her children’s…”[[18]](#footnote-19)

Through these two samples it becomes clear that the judge seeks to adhere to the provisions in a strict way. But interestingly, these strict conditions which were expected to decrease the rate of minors’ marriage, were not successful to do so. This can be because of problems related to implementing the law or maybe exceeding the judge’s power as we will see. Despite this, responsibility cannot fall entirely on the judge because there are some social and cultural circumstances that influence his work, and can push him to approve some cases of minors’ marriage, and it’s all about the authority of Discretion given to him.[[19]](#footnote-20)

As we have seen in the above samples, the two judges adhered to the provisions of the legal text, and presented a report of justification, but they neglected the following:

1. Performing a medical checkup. Instead, they only depended on the abstract external observation
2. Backing up their approval of the minors’ marriage with documents that prove psychological aptitude.

In the second report, the psychological readiness of the minor is merely judged based on the physiological state of the girl.

Noteworthy, this does not defect the work of the judge because the legal text stipulates either performing a medical checkup or a social investigation, though each one is not sufficient without the other. Besides, the law does not oblige the judge to ask for the psychological checkup, so he can mention it without presenting a document. This matter was noticed by a judge in Rabat family court. Thus, he declared the need to combine the medical checkup and the social investigation as this shall provide more assurance for the court that provisions are clear enough.

What can be considered a deficiency in these reports, which is mainly related to the legal texts, is the accusation addressed to some judges for being careless in their implementation, which made some civil society activists and human rights organizations call for closing the door of exceptions, which, once again, did not help to decrease the number of minors’ marriage. This also pushed the legislative and executive authorities to look for methods that can stop this phenomenon by strict legal measures that control the discretion given to the judge. In this regard, the minister of justice passed a correspondence on 05/12/2006 to all judges in the family courts to warn them against the deficiencies that occur in the reports, and to urge them to firmly deal with minor marriages implementing the law strictly. The letter states:

“It is well known that marriage is a sacred contract that requires full aptitude and maturity to burden its responsibility in order to establish a stable and prosperous family that enjoys the atmosphere of respect and compassion between the husband and wife.

For this reason, the legislator has raised the legal age of marriage from 15 to 18 for both sexes in order to avoid the possible threats and harm of early marriage, and in compatibility with the international conventions. But in consideration of the objective justifications and real reasons why we can allow marriage bellow 18 occur, the legislator has given the judge the right to estimate the validity of this marriage based on the conviction that he will make the right decision to serve the prospected interests after listening to the minor’s parents or her legal tutor, and depending on a medical checkup or a social investigation.

The reason for not specifying a minimum age of marriage by the legislator is very conditioned by fulfilling the requirements that ensure the citizen’s ability to burden the responsibility of marriage. But, it was showen \_through reports and statistics related to minor’s marriage approvals\_ that these requirements are \_sometimes\_ not applied appropriately, and this goes against the aims of the legislator, and causes negative results and leads to generating criticism. Thus, it raises questions about the extent to which judges really understand the changes made in the family law about raising the age of marriage.

Considering the fact that approval of minors’ marriage for men and women is an exception linked to conditions given only to the judge to estimate according to the aims of the legislator, and in accordance with the situation of Moroccans living in certain countries that ban minors’ marriage, these important explanations are followed by the following commands:

* Implementing the above mentioned provisions in the right and appropriate way to ensure that providing approval to minor’s marriage is based on the fulfillment of all the required conditions.
* Provide the ministry with accurate and precise statistics about the period from the 1st of January to 31 December 2006, and frequently at the end of every 3 months as shown in the attached form.
* Notify the Moroccan citizens living abroad and willing to get this permission that some countries do not approve marriage contracts of minors.

Regards[[20]](#footnote-21)

In fact, such memorandums and pamphlets are not of great efficiency when the judge is governed by certain conditions that go beyond his power, such as

* The lack, if not the absence of social assistance agents in some regions.
* The possibility that parents can resort to bribing some corrupt doctors and judges to obtain the legitimacy of the approval.
* The absence of the psychological checkup which was neglected by the legislator in the first place despite its importance.
* Poverty and ignorance especially in rural areas.
* Early dropping out of school, especially among girls in rural areas.
* Distance from urban centers which entails persistence of parents to get the approval as quick as possible, which makes the judge sometimes lenient.

This is beside the ambivalence of the article related to minors’ marriage who are under the legal age, as it avoided getting into details of the conditions, and their subsequent possibilities. In addition to that, there is the accumulation of files presented to the court, and the shortage of human resources that can manage these files.

The above mentioned conditions are actually in need to be treated in a comprehensive way that is not limited to the legislative approach, but also to preventing the reasons that cause minor’s marriage from happening. Thus, the judge will not be put in dilemmas.

Indeed, the problem is not as much related to the adherence of the judge to the law as to the circumstances that are difficult to control. Obviously, this is the essence point that was lacking in the discussions over reforming the legislative provisions which were seen as the sole way of combating minors’ marriage. After one year of heated debate among social activists and legislative and executive institutions, even among political parties, 2012 witnessed a major tendency towards issuing a new law assumed to limit the increasing number of minors’ marriage, which came as follows:

“The judge in the family courts has the right to approve men and women’s marriage under 18 according to article 19 in condition that their age is not below 16, and providing a report of justification of the interest and reasons for this marriage, after listening to their parents or their legal tutor, with a compulsory resort of medical checkup and social investigation.”[[21]](#footnote-22)

In this way, it becomes impossible to allow marriage before 16 even in case of the exception. Stating clearly this matter played a role in satisfying the demands of human rights advocates and civil society activists, despite the fact that it kept being contingent to the discretion of the judge who tries to stick to the legal age except in very necessary cases.

With this, the judge remained on the horns of a dilemma between the obligations of the law and the compulsions of the complex reality. So, he has to approve, very rarely, the marriages bellow 16 in a way that doesn’t make it a phenomenon as some human rights activists tried to show. Statistics presented by the ministry revealed a decrease in marriages of minors who are close to 18, while most exceptional approvals were permitted to minors of 17, followed by minors of 16. But for minors bellow this age (between 14 and 15), their rate of approval was not very significant as we will see in the next section.

3- **Statistics of the underage marriage and their interpretation:**

1. **Rates and figures concerning the under-age marriage:**

There is no doubt that the male and female’s qualification for marriage has become a commonly important issue. There is almost a consensus about 18 years old as the age of puberty. It is the age in which Moroccan pupils get their high school degree (baccalaureate) and become ready to undergo a training entitling them to start their professional career, such as teachers in elementary schools, nurses and other technical jobs, and to sign contracts, including marriage contract.

One of the evidences revealing the raise of awareness about the importance of being qualified for marriage is the decline in the rate of marriage of girls under 17 years old. We can even say that marriage applications submitted by spouses who are under 16 years old are almost nonexistent. This could not be achieved before the endorsement of the Moroccan Family Code (Mudawwana) that stipulates strict conditions for the underage marriage.

These are statistics that reflect the new reality and positive changes concerning underage marriage:

**The 14 year-old marriage rates compared to the total marriages[[22]](#footnote-23):**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2007** | **2008** | **2009** | **2010** | **Rate** |
| **Overall marriage applications** | **297 660** | Data not available | **314 400** | **313 356** |  |
| **14 year-old Marriage applications approved** | **159** | Data not available | **129** | **69** |  |
| **The rate (14 years old/total marriages)** | **0,05%** | - | **0,04%** | **0,02%** | **0,04%** |

**The rates: 0.04% against 99.96% (the rate of other marriages)**

The rate for 2009

The rate for 2007

The rate for 2010

**The 17 year-old marriage rates compared to other underage marriages:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2007** | **2008** | **2009** | **2010** | **Rate** |
| The total marriages of minors | **33 596** | Data not available | **42 741** | **41 098** |  |
| The 17 year-old Marriage applications approved | **23 346** | Data not available | **30 512** | **32 100** |  |
| The rate (17 y.o/ the total marriages of minors) | **69,49%** | - | **71,39%** | **78,11%** | **73,20%** |

|  |
| --- |
| The 17 year-old marriage applications approved |

**The three years rate: 73% against 27% (the rate of other underage marriages)**



**73**

**%**

**27**

**%**

**\_**

**The 17 year-old applicants compared to other under-age marriages**

**\_17 year-old marriage applications approved**

**\_\_**

**\_**

**Other applications**

**\_**

**\_**

**The rate of male and female applications:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2007** | **2008** | **2009** | **2010** | **Rate** |
| Male applications | **379** | **308** | **174** | **149** | **1 010** |
| Female applications | **38 331** | **39 296** | **46 915** | **44 423** | **168 965** |
| The male applications rate | **0,98%** | **0,78%** | **0,37%** | **0,33%** | **0,59%** |
| The female applications rate | **99,02%** | **99,22%** | **99,63%** | **99,67%** | **99,41%** |

**The rate for male and female applications from 2007 to 2010:**

**The female applications rate: 99.4%**

**The male applications rate: 0.6%**

**The rate for employed and jobless applicants:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2007** | **2008** | **2009** | **2010** | **Rate** |
| The number of employed applicants | **598** | **419** | **134** | **266** | **1 417** |
| The number of jobless applicants | **38 112** | **39 185** | **46 955** | **44 306** | **168 558** |
| The rate of employed applicants | **1,54%** | **1,06%** | **0,28%** | **0,60%** | **0,83%** |
| The rate of jobless applicants | **98,46%** | **98,94%** | **99,72%** | **99,40%** | **99,17%** |

**The employed applicants’ rate: 0.8%**

**The jobless applicants’ rate: 99.2%**

1. **Conclusions concerning the figures above mentioned:**

The reading of these figures aims to uncover some facts that are ignored in Morocco while talking about underage marriage, and overcome the exaggeration of some civil associations and mass media in their debate and discourse on this issue.

1. On the basis of the previous figures, it is noticed that the awareness about the importance of male and female qualification for marriage in the last years has significantly increased. The marriage of 14-year-old girls is almost nonexistent because it has declined from 151 applications in 2007 to only 69 applications in 2010. This shows that the phenomenon of the marriage of 14-year-old girls has decreased. Besides, there is a significant decline in the marriage rate of 15-year-old girls. The judge rarely approves the marriage applications of 15-year-old girls in exceptional cases.
2. The majority of underage marriage applications involve 17-year-old applicants that reached 78.11% in 2010 compared to other underage applicants. Yet, it had recorded 69.49% in 2007. It means that the exceptional cases referred to in laws are fairly confined to 17 year-old applicants. Accordingly, the early marriage issue involves today this category of girls who are 17 years old.

There is no doubt that the increase in the marriage rate of 17 year-old girls is a positive indicator that needs to be reduced today. Also, the marriage authorization given by the judge to minor girls is considered as an exception and not a phenomenon.

1. It is noticed that female applications for early marriage, that reached 99.67%, are much more than male’s applications. This rate reveals that women are more interested in underage marriage, which means that they are likely to lose their right to education.

At the age of 16 or 17 years old, girls are mostly studying in secondary or high school, and need few years to reach the baccalaureate level. But their early marriage deprives them from pursuing their study[[23]](#footnote-24) in higher education and professional training centers. This reality should push officials to work on equal opportunities between men and women to engage women in society. These facts must result in the rise of the average marriage age.

1. The vast majority of early marriage applications involves jobless females that reached 99.19% between 2007 and 2010. Since they would not be able to join a professional career after their drop out of school, they seek to get married as their sole purpose in life. Therefore, they are not fully qualified to be active members in society, serve their community and contribute to the common good.

This high rate of jobless female applicants is merely the outcome of their dropping out of school supposed to offer girls various options other than marriage. Therefore, getting married before reaching the legal age is an escape from life failure, rather than being a free choice of a social situation and a life-long partner.

1. **Necessary procedures for reform:**
2. **Human rehabilitation:**

In fact, the reform of Article 20 in the Moroccan Family Code is a response to the challenges of lived realities. The judge is allowed by virtue of law to authorize the marriage of 16-year-old girls as an exceptional case that occurs in the lived realities that were the basis of the 2004 personal status law reform in Morocco. At that time, it was said that the fact of not stipulating a minimum age does not mean to authorize marriage of girls below 16 years old, but it is rather a gradual application of law. Overtime, the marriage of 16 year-old-girls will be overstepped out of various factors including schooling.

Nowadays, although early marriage is limited to exceptional circumstances, the problem of the aptitude for marriage has not been solved yet. The question is not merely related to the prevention of minor girls from getting married, but rather to the need of being qualified for marriage, including those who reached the legal age for marriage. Therefore, the reform should not consider the age as a strong indicator of maturity, puberty, aptitude for marriage and the key solution to reform the degrading situation. The fact of setting the marriage age at 18 years old, in compliance with the international laws, does not indicate the ability to get married. This age complies with the social reality in developed countries, where all villages have schools and children do not drop out of school or work at an early age. They also have equal opportunities, humanitarian living conditions in villages, and the social situation of families is supervised by the State. In these countries, children are considered as the future of the nation and, therefore, cannot be left with irresponsible parents.

It is difficult to be fully qualified for marriage in light of the current conditions in Morocco, although the applicants are legally compelled to be 18 years old. The reform that identifies the spouses’ qualification should be based on a global vision that comprises legal, psychological, social, educational and religious approaches. It should raise awareness about the real responsibilities of spouses and the importance of their welfare and well-being to build their community.

The question of the qualification of spouses should not be confined to the prevention of early marriages, but also include the protection of minors from going astray, feeling marginalized and being emotionally hurt after this prohibition.

It is necessary to eradicate the real reasons of immorality of minor girls so that fathers would not be obliged to give their daughters in marriage. The sexual immorality of minor girls adversely affects them and their community as a whole, because of the resulting abortion, foundlings and family disputes.

Protecting minor girls and boys should be through the raise of awareness about the danger of illegal relationships that stimulate their sexual needs and push them to unwillingly accept getting married because of a passing fancy. Such marriage is clearly a precarious solution[[24]](#footnote-25).

Yet, forcing a minor girl to marry her rapist is the most dangerous measure that dishonors and underestimates her as a human being. This relationship cannot generate a successful family. For this reason, this question should be reconsidered wisely and minors should be protected from prostitution and drug addiction to be able to contribute to build their community in the future.

The young generation should be entitled dignity, rights and duties and be aware of their responsibility to be active women and build their community.

To this end, a radical reform should be undertaken to overcome ignorance, crimes and the students’ dropout of school. Therefore, being aware of the importance of preparing citizens who are able to assume responsibility is necessary in the process of reform and development. This awareness protects individuals from illiteracy, crimes and immorality.

In fact, the psychological stability and education are aspects that influence the public expenditure. Although honesty and integrity protect individuals from going astray and generate devoted citizens, these virtues are rarely stressed. In fact, legislations are meant to organize and codify the common values in society.

The political discourse in Morocco and other Arab-Muslim countries calls for raising awareness about the importance of being qualified. But what is missing in this discourse is the real will to hit the target. It is noteworthy that officials should be aware of the fact that they are part of their community, wherein the family is a unit that influences the whole society.

Dignity should be respected through social justice and equality so that citizens would consider themselves as an integral part of their community. Children in cities and countryside should have equal opportunities by building schools, close hospitals and roads in villages. The girl, like the boy, in rural areas should be supported by a working guardian and be afforded means of transportation to attend school. She also needs to have access to the mass media to raise her awareness, as well as cultural and social institutions. In this way, the nation can move forward with the reform of legislations.

1. **The legal approach as part of the reform:**

Law is one of the factors that contribute to the civilization and development of any human community. Being enacted and organized by an organism, the laws and ethical principles should be combined in compliance with the culture and identity of a given society.

People interested in women’s issues in Morocco became aware of the importance of enacting new legislations that go in line with social changes in the Moroccan community. Activists, human rights organizations and people interested in the questions of family and women have been debating the early marriage issue considering it as a violation of childhood, and calling for its end, especially that Morocco is engaged in a series of international agreements requiring setting the marriage age at 18. After long lasting discussions that brought together different entities from the civil society, a series of recommendations were made, including:

* A minimum age of marriage should be set so that the judge would not be allowed to decide on it. In this regard, a law project, that sets the minimum age of marriage at 16 years old, was submitted lately to the parliament to be approved.
* The medical certificate should be verified.
* The authorization of the judge should be contested in case the relatives of the minor girl believe that this marriage is harming her.
* Abrogate Article 20 of the Family Code, standardizing the legal procedures in all the national courts, and condemning early marriages in all Moroccan regions.
* Undertake social studies that provide figures and facts that can be used to follow-up this issue, and unveil the reasons of this marriage and the resulting problems.
* Train legal coaches to meet the requirements of social change in order to train judges and produce materials that would guide them.
* Reform the whole legal system. It should not be confined to the institutions but rather include laws, as the Moroccan minister of Justice and Liberties announced in a statement.

1. **Parallel reforms[[25]](#footnote-26):**

* Provide the family courts with social assistance along with materials for work.
* Develop a national strategy to engage women in the economic, social, cultural and political development.
* Provide income-generating projects for poor families.
* Raise awareness nationally through the Ministries of Justice, Education, Communication, Culture and Islamic Affairs.
* Protect children and give them the right to education, training and health coverage.
* Promote the role of associations in combating the underage marriage.
* Undertake and publish the outcomes of fieldworks on this issue.
* Combat all forms of violence against women.
* Develop public policies for gender equality.

To this end, other steps should be taken:

1. To appoint judges who are in charge of hearing specific cases and reject dealing with other issues. In this vein, Mr. Mustapha Ramid, the Minister of Justice, called for training specialized judges instead of founding specialized courts. In this case, when judges in the family courts are specialized in early marriage cases, the rate of underage marriage is likely to decline through the guidance and expertise of these judges.
2. The judge’s decision in the case of early marriage should be pronounced after discussion with other judges, and people specialized in psychology and sociology. The judge should be aware of the Islamic provisions, purposes of Islamic law and the applicants’ culture and situation. Thus, the last decision must be based on consultation (Shūrā) referred to in the Hanafi, Hanbali and Sahfi’i doctrines.
3. Raise awareness through education and dialogue. This can be achieved by founding social institutions in charge of family guidance on the basis of Islamic values, promoting cooperation between pertinent institutions and upholding the official institutions in charge of religious guidance, such as the Center for Studies and Research on Values affiliated to Rabita Mohammadia des Oulémas that should plan to combat early marriage.
4. Encourage fieldworks that follow-up the issue of underage marriage; introduce interesting ideas and strategies to understand this “phenomenon”; search its causes and suggest solutions by establishing centers for scientific studies interested in the questions of women and children.
5. Open radio stations and TV channels that take into account religiosity and Islamic values of citizens, the holistic vision of the Qur’an and the main purposes of human beings’ creation such as justice, human dignity, equality and education.
6. Establish centers for psychological analysis for free, that aim to promote the relationship between the family members, follow-up the problems of teenagers and evaluate the community mental health.
7. Address the causes of child marriage, including poverty and ignorance. Also, a religious, social, cultural and economic approach should be adopted.
8. Organize cultural activities for children in deprived and marginalized regions to raise their awareness about the functions of marriage in building the community, and training sessions for mothers in these regions to show them the outcomes of underage marriage.

Through these methods, minor girls may refuse to get married in an early age when they are aware of the importance and purposes of the bonds of matrimony. This can certainly generate strong families capable of building a glorious community.

1. Ibn Chibrima died in 144 (Hijri year). And Imame malik died in 179 (Hijri year). See the book in Arabic *Almojtahidona fi Al-kada’.* [the reformists in judiciary]. P. 29 and its introduction [↑](#footnote-ref-2)
2. See the book in Arabic *Almojtahidona fi Al-kada’.* [the reformists in judiciary]. P. 28 [↑](#footnote-ref-3)
3. Youssef Qaradawi. Assiyasa Char’iya fi daw’ nosos chari’a wa maqasadiha. [the Islamic Policy in the light od Islamic texts and their finalities]. P. 265 [↑](#footnote-ref-4)
4. See Ibn Al-Qayyim Aljawhiya « Attoroq alhakamiya fi siyasa char’iya ». [the adjudication ways in Islamic policy]. verification of Sayed imran. P. 17 [↑](#footnote-ref-5)
5. Ibid., p. 19 [↑](#footnote-ref-6)
6. Including the A.D. date is necessary here as it is most commonly used these days. [↑](#footnote-ref-7)
7. Almahdi Alwazzani. Annawazil Assoghra. [the small occurences]. P. 28 - 29 [↑](#footnote-ref-8)
8. Youssef Qaradawi. Chari’at al islam, kholodoha wa salahoha littatbiq fi koli zaman wa makan. [the Islamic law, its eternity and validity for all times and places]. Dar Almaarifa. Casablanca. Edition 2. P. 24 [↑](#footnote-ref-9)
9. It is not meant here that scholars have the right to abolish god’s orders, but to suspend these orders when the objective reasons of executing them do not exist. Like what happened when Khalif omar Ibn alkhattab stopped cutting the thief’s hand in the year of famine (Ramada) [↑](#footnote-ref-10)
10. Abdel wahab khalaf. Ahkam al ahwal chakhsiya fi chari’a l Islamiya wifka madhab abi hanifa. [the adjudications of personal status in the Islamic law according to Abi hanifa doctrine]. P 34 [↑](#footnote-ref-11)
11. Extract from the royal speech in October 2003 [↑](#footnote-ref-12)
12. Kadaya al osra min khilal ijtihadat almajlis al a’la. [Family issues through the reasoning of the highest council]. P. 35 - 36 [↑](#footnote-ref-13)
13. Moroccan Family Law. P. 32 [↑](#footnote-ref-14)
14. Zhor Alhor, the former head of a court department in the court of cassation, in her intervention titled “Minor’s marriage between the judicial text and the actual reality” held in the framework of a seminar “marriage of the raped between the judicial texts and the actual reality”. Series of Court of cassation seminars in Rabat ع 5/2012.. Dr. zhor Alhor was also a member in the committee in charge of formulating the new family code. [↑](#footnote-ref-15)
15. Zhor Alhor. Intervention titled “Minor’s marriage between the judicial text and the actual reality” held in the framework of a seminar “marriage of the raped between the judicial texts and the actual reality”. Series of Court of cassation seminars in Rabat ع 5/2012.. p. 63 - 64 [↑](#footnote-ref-16)
16. This is in detail of what exists in article 20 in the family law. Dr. Zhor Alhor presented it in her above mentioned intervention. P. 67 [↑](#footnote-ref-17)
17. A report of a judge in charge of family court in the Court of First Instance in Berchid in 03-08-2006. File number 06/34. See: the selected in judges’ work in implementing the family law. P. 30 - 31 [↑](#footnote-ref-18)
18. A report of a judge in charge of family court in the Court of First Instance in beni mellal in 0328-04-2006. File number 06/86. See: the selected in judges’ work in implementing the family law. P. 30 [↑](#footnote-ref-19)
19. Moroccan Family Law. P. 32 [↑](#footnote-ref-20)
20. Memorandums, pamphlets and practical forms related to provisions of the family code, issued since family code introduction in 5 February 2004. Kingdom of Morocco. Ministry of justice and liberties. October 2012. P. 51-52 [↑](#footnote-ref-21)
21. See the website of the parliamentary member abd latif ou’amrou. <http://www.ouammou.net/ar/1387.html> [↑](#footnote-ref-22)
22. These statistics are extracted from a publication of the Ministry of Justice entitled “Statistics of Family Jurisdiction Departments” from 2007 to 2011, submitted by Mr. Abdelhadi Battah, the head of Family Jurisdiction Department, Civil Affairs Directory, Ministry of Justice and Liberties. [↑](#footnote-ref-23)
23. The marriage of minor girls at the secondary or high school stands against their education. However, getting married at the university level does not go against their study because the conditions and methodology of higher education is different from other levels. And the student is mostly over 18 years old at the higher education. [↑](#footnote-ref-24)
24. Mostly, this marriage is contracted to get rid of shame. Therefore, the husband does not respect and trust his wife, who has the same feeling towards her husband, and finds that she became unable to fulfill her dreams out of a passing fancy. Being often marginalized and disgraced, the minor bride seeks to suicide and end her sufferings. In this regard, the issue of Amina El-Filali that stirred up the public opinion in 2012 is a good example. [↑](#footnote-ref-25)
25. Some of these proposals were extracted from the recommendations of some conferences held on the question of early marriage in 2012. [↑](#footnote-ref-26)