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The Requirement of Muslim Marriage Registration in Sri Lanka: From the *Maqasid al-Shari'ah* Perspective

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Abstract

In Islamic jurisprudence, marriage registration is controversial between classical and modern scholars. However, this is a mandatory feature of common law in many countries. This study highlights the importance of marriage registration in Sri Lanka from the perspective of *Maqasid al-Shari'ah*. In this study, legal analysis methods were employed using both primary and secondary data. It was determined that the Muslim Marriage and Divorce Act no. 15 of 1951, which is unique to Muslims in Sri Lanka, is not strong enough to enforce the registration of marriages on a mandatory basis. Due to its lack of the draw, women face the consequences of protecting the legal status of their heirs, protecting the chastity of women, denying them economic rights, increasing child marriages, depriving them of inheritance rights, and subjecting them to social stigma as a result of luck in the act. Moreover, the highest objective of implementing Islamic jurisprudence is to protect the community's dignity and economic standing. Therefore, it is possible to eliminate various evils by requiring marriage registration under the Muslim Marriage and Divorce Act.

Keywords: Marriage Registration, *Maqasid al-Shari'ah*, Sri Lankan Context, Muslim Marriage and Divorce Act, Sri Lankan Muslim

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Introduction

Sri Lanka is a pluralistic country with a multi-ethnic, cultural, and religious background (Sachithanatham P, 2021; Saujan, Razick, et al., 2022a). The Sinhalese constitute 70.19% of the total population. They have Sinhalese and Indo-Aryan languages as their mother tongues, followed by Tamils (15.37%) as the primary minority ethnic group. These include Sri Lankans and Indian Tamils. Subsequently, Muslims (9.4 million) constituted second largest ethnic minority (Fowsar et al., 2020). Hindus and Muslims speak Tamil as their mother tongue (Razick et al., 2021). Tamils and Muslims have historically been concentrated in the north and east of Sri Lanka (Long et al., 2023).

Between 1505 and 1948, Sri Lanka was governed by three foreign powers (Saujan, Razick, et al., 2022b; Sornarajah, 2023). This has resulted in numerous changes in the political, cultural, economic, and infrastructure sectors of Sri Lanka. Among these, the transformation of Sri Lanka's legal system is particularly significant (Saujan & Mazahir, 2021; Sornarajah, 2023). While the country's common law generally governs the criminal matters of

Sri Lankan citizens, there are numerous separate legal provisions (special Laws) to govern civil procedures, which in legal force, are known as "Personal Laws" (Rizwan & Gafoordeen, 2021; Cooray, 2003). In Sri Lanka, distinct legal provisions address the marriage affairs of ethnic groups. Roman-Dutch law, sometimes known as the common ordinances law, governed marriage and divorce procedures for Sinhalese and Tamils other than Jaffna Tamils in Sri Lanka's coastal regions (Rizwan & Gafoordeen, 2021).

The common law of the country includes elements of Roman-Dutch law, which have a deep connection to Sri Lanka's legal past (Nafees, 2014; Rizwan & Gafoordeen, 2021). An analogous procedure is observed in private laws that permit Jaffna Tamils to register marriage under the Thesawalamai Act or the General Marriage Ordinance (Gupte, 1947; Nafees, 2014). Additionally, the Muslim Marriage and Divorce Act No. 13 of 1951 governs marriage and divorce issues for Muslims in Sri Lanka (Dawood, 2024; Nafees, 2014; Ruana, 2011). Interestingly, these personal rules have been in place for a long time due to the nation's citizens' religious, cultural, and customary influences. Therefore, the rules governing marriage registration and the registration



process itself differ depending on the religious, cultural, and customary norms of the nation's citizens (Nafees, 2014; Rizwan & Gafoordeen, 2021). This has presented a practical challenge in providing remedies to these cases and determining which legal provision should be filed.

No historical record of the Civil Registration System exists in Sri Lanka since the period of the Ancient Kings to the colonial period of the Portuguese (Munasinghe, 1990). However, evidence suggests that under Dutch rule, a system known as "School Thambos or Parish registers" was maintained in Colombo and Galle, Sri Lanka, to register marriages, births, and deaths (Appuhamy, 2022; Munasinghe, 1990). Following Dutch rule, Sri Lanka was captured by the British in 1815, and Regulation No. 7 of 1815 declared that all Sri Lanka's affairs were brought under British jurisdiction. The British acknowledged and accepted the legal and administrative aspects of Sri Lanka that the Dutch rulers had established. Marriage registration is considered one such feature (Cooray, 2003). Additionally, all marriages solemnized by Christians were registered by the Christian churches on a customary basis (Munasinghe, 1990). However, no legal provision in force mandates the registration of marriage, divorce, and death.

Accordingly, Regulation No. 9 of the 1822 Act was promulgated with minor modifications to customary registration procedures. Consequently, it became a legal requirement to register the births and marriages of the indigenous population of Sri Lanka and the non-European residents in the coastal regions (Appuhamy, 2022; Munasinghe, 1990). Furthermore, each province's educators and government officials of state-run educational institutions were appointed as Registrars. The Registrar General instructed the respective Registrars to transmit the recorded data to the Registrar General in Colombo (Appuhamy, 2022; Munasinghe, 1990). However, the relevant legislation cannot be implemented as a universally applicable law for all citizens. Muslims and the Kandyan Sinhalese, who are governed by customary laws, were exempted from applying this legislation.

Ordinance No. 6 of 1847 represented the initial attempt to introduce a uniform registration system for the documentation of births, deaths, and marriages of all inhabitants of Sri Lanka. Nevertheless, the Kandyan Sinhalese and Muslims were exempt from this ordinance (Rizwan & Gafoordeen, 2021). This exemption was because the Kandyan Sinhalese were governed by Kandyan customary law, while the Muslims were subject to their distinct code of Muhammadan law (Munasinghe, 1990). This act was subsequently amended by Act No. 10 of 1896 and Ordinance No. 19 of 1900, leading to the formulation of Marriage Registration Ordinance No. 19 of 1907. However, the act came into effect on 1st of January 1908. Minor amendments were made to specific provisions of the act between 1955 and this day, and the act remains in force. The General Marriage Registration Ordinance applies to all citizens of Sri Lanka, except Kandyan Sinhalese and Sri Lankan Muslims.

The Muslim Personal Law for Sri Lankan Muslims is founded on Islamic Shari'a and customary law. Islamic jurisprudence

anticipates various objectives and outcomes from its implementation in society. Considering this, *Maqashid Shari'ah* is identified as a source of law originating from *ijtihad*. The impetus for this study arose from the researchers' perceived necessity to approach marriage proposals based on *Maqashid Shari'ah*.

Problem Statement

The absence of Islamic legal evidence advocating the general Registration of Muslim marriages has necessitated *ijtihad* in this matter. Furthermore, divergent opinions persist among Islamic legal scholars regarding registration of marriages. In this context, the lack of provisions in the Muslim Marriage and Divorce Act of Sri Lanka, which exclusively pertains to Sri Lankan Muslims and is based on Shafi and Hanafi *Madhhab* (schools of thought), has engendered debates among Sri Lankan Muslims on this issue. Additionally, while marriages between other ethnic groups in Sri Lanka are registered under the General Marriage Ordinance of Sri Lanka, the absence of such legal provisions in the Muslim Divorce Act has given rise to various social issues. Specifically, birth certificates for children are not properly obtained, *Mahar* for women are not appropriately issued, and due to inadequate marriage registration, these are not included in the divorce act, preventing the legal recovery of expenses for the wife and child. Consequently, this study examined the necessity and feasibility of registering Muslim marriages in the Sri Lankan context.

Objective of the Study

1. The primary objective is to determine the *Maqashid Ashari'ah* underlying the mandatory requirement for marriage registration under the Muslim Marriage and Divorce Act of Sri Lanka.

Materials and Methods

This study was conducted qualitatively, and a social and legal analysis approach was initiated. All data required for the study were obtained from primary and secondary sources. The general marriage ordinance, Muslim Marriage and Divorce Act, Marriage Registration Ordinance, and reports on marriage registration in Sri Lanka were used as primary data. In addition, emphasis was given to the results of past research, scholarly articles, proceedings, online publications, and articles as secondary data. All the data were reviewed, and the study results are presented on a discussion basis in the articles, subtitles, and quotations.

Results and Discussion

Given Sri Lanka's pluralistic legal system, the laws implemented in the country vary according to the religious, cultural, and customary practices of different ethnic groups. Consequently, this section is structured under two main sub-headings: the Sri Lanka Marriage Registration System and an analysis of the mandatory Registration of Muslim marriages under the Muslim Marriage and Divorce Act, which is examined through the lens of *Maqashid Shari'ah*. The aspects are discussed in the following manner:

1. Marriage registration procedure in Sri Lanka



The Sri Lankan marriage registration process varies according to the legal provisions of public and private laws in force in the country. Marriage (general) Registration Ordinance No. 19 of 1907 and private laws such as the Kandyan Marriage and Divorce Act of 1952, Muslim Marriage and Divorce Act No. 13 of 1951, and Jaffna Matrimonial Rights and Inheritance Ordinance (JMARIO) are prevalent in the country and governing particular groups of people.

This section delineates the legal registration procedures in the three primary private laws in Sri Lanka: Kandyan Law, Thesawalami, and Muslim Personal Laws. Kandyan Law is the ancient national Sinhala Law and customary law that has undergone legislative modifications (Rizwan & Gafoordeen, 2021). Before 1859, no codified laws for the Kandyans (Munasinghe, 1990). According to Munasinghe (1990), marriages were conducted following their customary practices and the marriage registration process was not initially observed (Firdous, 2016). Instead, marriage was performed in the presence of public witnesses from the community's people, and the individuals concerned were considered witnesses to the marriage contract. Polygamy and polyandry practices were also prohibited in society. Ordinance No. 13 of 1859 made marriage registration essential for the legal validity of Kandyan marriages, along with proscribed the prohibition of practices such as polygamy and polyandry. This act was amended several times in the country's history and was ultimately superseded by the 1952 Kandyan Marriage and Divorce Act.

Those who contract marriages under the above-mentioned act can register their marriage under either the Kandyan Act or the country's common law at their discretion. The common law of the land is represented by Marriage (general) Registration Ordinance No. 19 of 1907. The introductory text of the pertinent Kandyan law is as follows:

Subject to the provisions of the Kandyan Marriage and Divorce Act.

- a. *A marriage between persons subject to Kandyan law shall be solemnized and registered under this act or under the Marriage Registration Ordinance and*
- b. *Any such marriage which is not so solemnised and registered shall be invalid (Kandyan Marriage and Divorce Act, 1952).*

It can be inferred that the relevant act has made marriage registration obligatory.

The matter of Muslim marriage registration in Sri Lanka has been a topic of substantial discourse and contention within the country, as the traditional practices and legal frameworks encompassing this aspect of personal law have been subjected to increased scrutiny and debate in recent years. A salient aspect of this discussion has been the advocacy for a more formalized and standardized system of marriage registration, remarkably because the Muslim population in the country has been steadily increasing. The debate surrounding the necessity and implications of marriage registration

for Muslims in Sri Lanka is not unique to the country, as similar discussions have occurred in other Muslim-majority nations, such as South Africa and Indonesia (Dadoo & Cassim, 2012; Sulfian, 2023; Azizah, 2020).

The registration of marriage has been a debated issue for decades. In the 1880s, Siddi Lebbe lobbied for enacting marriage registration as mandatory for every Muslim to mitigate the consequences and malpractice of unregistered marriages, mostly unregistered polygamous ones. In contrast, there was severe opposition to this lobby¹. However, the registration of marriage was promulgated as an act of MMDA section 16, which makes the registration of marriage optional, and section 81 recognizes the validity of marriage without registration, though it imposes a fine for non-registration². Nonetheless, the women activists demand that section 16 of the MMDA be amended to make marriage registration mandatory for the marriage's validity and amend section 81, as it should consider the persons who do not register the marriage as guilty of an offense³.

In Indonesia, for instance, the significance of marriage registration has been emphasized, with the recognition that it serves as "authentic evidence" for a couple's legal union and provides a level of legal protection and recognition that may not exist in the absence of such a formal process (Azizah, 2020). This sentiment is echoed in the South African context, where the Muslim Marriages Bill, introduced in 2003, sought to provide a statutory framework for the legal recognition of Muslim marriages and their consequences.

2. Muslim Marriage registration under Islamic Law

The absence of marriage registration can lead to numerous social issues, while its implementation offers various benefits. It is pertinent to consider whether it is feasible to establish marriage registration as one of the fundamental requirements for the solemnization of marriage based on *Siyasa Shar'iyya*. Adherence to the law can generally be regarded as an ethical standard. However, it is essential to note that such adherence is only merited when it results in positive outcomes. Conversely, when a violation of the law leads to negative consequences, it may be viewed unfavorably from a religious perspective. For instance, a driver who stops at a crosswalk to allow a pedestrian to cross may be considered virtuous. The merit in this case lies not in the mere act of following the law but in providing the pedestrian with a safe and stress-free crossing experience. In some instances, the safe passage of pedestrians may even be viewed as a form of supplication for driver. The Marriage Registration Act should be considered in a similar context. While registration of marriage is not considered one of the conditions of *Siyasa Shar'iyya* for the validity of marriage, it indirectly contributes to securing legal and social recognition for both parties. Thus, marriage registration may be

¹ Ameen, *History and Culture of Sri Lankan Muslims (1870-1915)*, 99.

² Jaldeen, *The Muslim Law of Marriage, Divorce and Maintenance in Sri Lanka*, 241.

³ Marsoof, "Report of the Committee Appointed to Consider Amendments to the Muslim Marriage and Divorce Act," 18.

viewed as a meritorious act. However, there is no possibility of it being converted through *Siyasa Shar'iyya*. If implemented for other purposes, it may not carry any religious merit or demerit.

In recent years, there has been a perception in Sri Lanka that Muslim marriage registration can be structured based on the *Siyasa Shar'iyya*. It is posited that the Collector can promulgate a matter in the community's interest. However, in the Sri Lankan context, no Islamic state or Islamic ruler can declare marriage registration as law. Furthermore, the question arises about who would have the authority to declare it law. Given the absence of permanent Muslim leadership or a recognized Shari'ah legal authority in Sri Lanka, it is noteworthy that there are limited opportunities to declare the registration of marriage as one of the mandatory conditions for its validity.

The practice of legislating or passing judgements in the interest of human welfare (Maslaha Mursala) is not a continuous or periodic endeavor but instead aims to enforce a matter as law based on timely and effective responses to specific issues. The procedure ends when the problem is resolved or after an appropriate duration. Similarly, Legislation, presents a flawed argument. This authority belongs exclusively to Allah and His Messenger. If action is established as a religious obligation, the reward for its fulfilling and the consequences for failing to fulfill it should be clearly defined. The primary concern is how this process will be implemented in the case of marriage registration.

Consequently, marriage registration under civil law can be made compulsory, and non-compliance can be introduced as a punishable offense. However, civil law has lags behind in its implementation. Specifically, civil law does not mandate compulsory marriage registration in writing.

Section 16 of the General Marriage Registration Ordinance (MRG) provides:

"Just because a marriage is registered does not mean that the marriage has actually taken place, nor does the fact that a marriage is not registered does not mean that the marriage has not taken place. On the other hand, registration is the best evidence sufficient to prove that a marriage has occurred, and it is not conclusive evidence."

Customary marriages and marriages by habit or repute are nonregistered marriages in Sri Lanka. It is noteworthy that cases can be filed in the court or in the Quazi courts even if marriage is not registered. This principle also applies to other marriage arrangements. The fact that appeals can be made without registration of marriage indicates that recognition can be granted even without formal registration. Therefore, documentation for registration should be provided in all cases of marriage of any type. However, it cannot be made mandatory in Muslim personal law as long as it is strictly enforced. Furthermore, it cannot be concluded that a marriage is invalid if it is not registered.

The incorporation of this concept into Muslim Personal Law is a potential consideration. However, such integration would be

feasible only if the Sri Lankan government were to establish marriage registration as a common law. Its inclusion in Muslim Personal Law poses certain challenges. Should this proposal be presented in Parliament. There exists the possibility that proponents of customary marriage and marriage by habit and repute may express opposition and criticism.

3. Importance of Registration of Muslim Marriages in Sri Lanka

There are many benefits to registering for a marriage. At the same time, not registering also creates some problems.

Legal recognition for descendants

The legal registration of marriage formally acknowledges the family unit comprising two individuals (male and female), conferring various rights and responsibilities upon them. To ensure legal protection for these granted rights and duties, it is imperative that marriages be duly registered under the law. Marriages that are not correctly registered under the act cannot be redressed in court. In such situations, women are more vulnerable than men. This has led to the abandonment of women and an increase in female-headed families.

From the perspective of the objectives of *Shari'ah*, one of the aims of Islamic law is to preserve offspring. The law recognizes offspring between a husband and wife as legitimate only when the parents' marriages is duly registered and recognized under Sri Lankan Law. Consequently, when the courts in Sri Lanka do not certify that inheritance is transmitted to the respective descendants, a child cannot legally identify his parents explicitly or implicitly. Conversely, a customary practice exists of registering marriages by lizards without formal partitioning under the law. The courts do not consider this registration process legal.

Therefore, marriages must be appropriately registered under the law to prevent future problems in identifying a child's parents. This is significant from the perspective of Islamic *Shari'ah* regarding protecting offspring.

Legal protection and financial rights to the spouse

Islamic jurisprudence provides various rights and obligations between a bridegroom and a wife through marriage contracts. Among these rights is the affection the wife should extend to her husband. In addition to physical rights, both the husband and wife are endowed with emotional, physical, and economic rights. These rights provide legal protection to both spouses in registered marriages. The wife, in particular, enjoys certain economic rights during the marital union and after its termination.

The right of mahar for a woman at the time of marriage, the right to nafaqah during cohabitation, and the right to maintenance after the dissolution of marriage are paramount. When a husband does not adequately provide for them, the economic rights of the woman are compromised. In general Islamic jurisprudence, the husband is obligated to grant his wife the rights mentioned earlier. However, under the Muslim Marriage and Divorce Act, marriage must be

legally recognized to exercise these rights. The wife cannot approach the court to obtain the relevant entitlements if the marriage is not registered under the law.

Consequently, marriage registration is essential to secure women's rights and ensure that the husband fulfills his/her obligations. Furthermore, courts require a common legal remedy or registration of marriages that safeguards the right of a person's wife and children to inherit property after their death. Therefore, marriage registration is crucial to protect women's rights legally.

Ensuring the economic rights of posterity

The assets acquired by an individual should be transferred to their spouse, descendants, and relatives upon their death. Similarly, when a spouse passes away, the property should be distributed to the partner, children, and relatives, as stipulated in Islamic jurisprudence regarding inheritance. The relationship between the parties determines the ownership of the property. Consequently, property right can only be established when the marriage is legally formalized.

An objectives of Islamic Shari'ah is the protection of property. Legal recognition of marriage is essential for ensuring the property rights of the heirs. Furthermore, marriage registration is crucial for maintaining an equitable distribution of property, as prescribed by Islamic jurisprudence, between foster children and biological children and to mitigate potential injustices during property division.

Prevention of Child Marriage

The proper registration of marriages under the law provides an opportunity to prevent child marriages that violate legal statutes. In Islamic jurisprudence, the age of marriage is debated among Islamic scholars. The Muslim Marriage and Divorce Act of Sri Lanka permits the marriage of children under the age of 14, and a child under the age of 12 can marry with the permission of the Quazi. In contrast, the General Marriage Act registration of marriage for girl under 16 years of age (Saujan et al., 2024). Furthermore, the Penal Code of Sri Lanka classifies the marriage of a child under 16 years of age as a punishable offense.

In general, according to the findings of studies conducted on the prevalence of child marriages in Sri Lanka, it has been observed that such marriages negatively impact children's right to education and have physical and psychological consequences. It is noteworthy that the highest number of divorces in Sri Lanka occurs among those who marry as minors. Consequently, the Government of Sri Lanka has decided to revise the legal age of marriage in the future, placing greater emphasis on the age of marriage when registering parental marriages. Early marriages are likely to increase when marriages are not correctly registered.

Marriage registration is essential for the eradication of malpractices in society

In contemporary times, women have made significant advancements in numerous fields. Their progress is evident in employing, health, and education. Conversely, the number of

divorced and financially independent women is also decreasing. Those who have experienced divorce often exhibit a disinclination toward remarry (Saujan et al., 2022). This phenomenon has led to various social issues, with divorced women frequently facing stigma.

Furthermore, inadequate registration of marriages under the law is detrimental to the self-respect and dignity of women. This situation has given rise to numerous controversies regarding the paternity of children born within marry and the legitimacy of subsequent marriages. In addition, in cases where Quazi courts dissolve marriages, significant challenges arise in terms legally terminating and remarrying, as the Quazi courts' authorities is often sought. If this trend persists, there is a potential for numerous adverse effects on the behavior of women in society.

Conclusion

Based on *Siyasa Sharaiyya*, the probability of marriage registration in the Sri Lankan context is considerably low. Nevertheless, there exists the potential to implement it as mandatory legislation in civil law, predicated on *Mahasid Shari'ah*. However, cooperation with the Sri Lankan government is a prerequisite. In Sri Lanka, only a small number of marriages remain unregistered. This phenomenon is attributable to the lack of awareness regarding marriage registration among some Muslims residing in rural areas who have possessing lower levels of education. It has been observed on numerous occasions that Muslim marriage registrars often exhibit inflexible and uncompromising attitudes toward marriage registration. This rigidity can be viewed as a positive attribute. It facilitates consistent behavior in matters related to marriage registration. Numerous benefits accrue from registration.

Consequently, it is imperative for Muslims to raise awareness the necessity of this practice. Thus, the disadvantages associated with non-registration of marriages can be mitigated. Holistically, marriage registration does not contravene Islamic Shari'ah. Rather, the pertinent question is whether it constitutes one of a *shari'ah* regulations. The contemplation an alternative by modifying a minor component of *shari'ah* laws could be understood as an infringement Allah's legislative authority. It is anticipated that the aberrations related to the non-registration of marriages can be rectified through amicable means or concerted individual efforts.

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