



Safeguarding Women's Rights and Heirship: An Evaluation of Mandatory Muslim Marriage Registration in Sri Lanka

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Abstract

Marriage registration serves as a pivotal legal mechanism for safeguarding the rights of spouses and heirs. In Sri Lanka, while marriage registration is obligatory for most communities, it remains optional for Muslims under the Muslim Marriage and Divorce Act (MMDA) of 1951. This study examines the necessity of mandatory Muslim marriage registration in Sri Lanka through the framework of *Maqāṣid al-Sharī'ah*. Utilizing legal analysis, this study assesses the impact of optional registration on women's rights and the legal status of heirs, highlighting challenges such as inheritance disputes, economic vulnerabilities, and child marriage. It also highlights the historical context of marriage registration in Sri Lanka, comparative practices in other Muslim-majority countries, and the perspectives of Islamic scholars on marriage registration. The findings emphasize the alignment of mandatory registration with the objectives of preserving lineage (*ḥifẓ al-nasl*), wealth (*ḥifẓ al-māl*), and dignity (*ḥifẓ al-'ird*). The article concludes by proposing policy recommendations for legal reforms to the MMDA to mandate marriage registration, thereby enhancing the protection of the rights and well-being of the Muslim community in Sri Lanka.

Keywords: Women's Rights, Registration of Marriage, MMDA, Maqāṣid al-Sharī'ah, Heirship

Introduction

The registration of marriage is a fundamental mechanism for the legal recognition of marital status, thereby establishing a framework of rights and

obligations for both spouses.¹ Within the Muslim community in Sri Lanka, the significance of marriage registration extends to safeguarding the rights of women and ensuring the legitimate status of heirs.² This formal documentation can provide essential legal protection, particularly for women, in matters ranging from economic entitlements such as mahr (dowry), maintenance, and property claims, to personal rights including consent and protection from abuse.³ Furthermore, it plays a crucial role in securing the legal standing of heirs, especially concerning inheritance and legitimacy.⁴ The absence of a robust system for marriage registration can lead to vulnerabilities for women and children, potentially undermining the stability and security that marriage is intended to provide.⁵ This precarious situation directly conflicts with the core tenets of *Maqāṣid al-Sharī'ah*, the objectives of Islamic law, which fundamentally aim to prevent harm and promote welfare within the family and society.⁶

It is important to examine the historical backdrop of marriage and death registration in Sri Lanka revealing a gradual evolution influenced by various ruling powers. Before the colonial period, a formal civil registration system was

¹ Ikbal Ali Muhammad, "Rights And Obligations Of Husband And Wife According To Islamic Law In Constructing Sakina Family," *Al Mashaadir Jurnal Ilmu Syariah* 3, no. 2 (2022): 130-42, <https://doi.org/10.52029/jis.v3i2.94>; Mohammad Sadekur Rahman and Hossain Mohammad Younus Sirazi, "Post-Divorce Maintenance (MAA'TA) For Muslim Women in Bangladesh, Pakistan and India," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 23, no. 2 (2018): 1-10, <https://doi.org/10.9790/0837-2302030110>.

² Mohamed Buhary Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective," *Global Journal of Arts Humanities and Social Sciences* 4, no. November (2024): 11, <https://doi.org/10.5281/zenodo.14228890>.

³ M. Zamroni and Fajar Rachmad Dwi Miarsa, "Legal Aspect of Marriage Registration in Indonesia," *Jurnal Reformasi Hukum* 1, no. 2 (2018): 83-88.

⁴ Noraini Binti Md Hashim, "Registration of Marriage In Malaysia: A Socio-Legal Study of Runaway Marriages Among Muslims" (International Islamic University Malaysia, 2009).

⁵ Sarawat Rashid and M Zulfiquar Ali Islam, "Fading Futures: Understanding the Connection of Early Marriage, Child Rights Violations, and Abusive Behaviors," *International Journal for Multidisciplinary Research (IJFMR)* 5, no. 4 (2023): 1-9; Kelvin Zhanda et al., "Women in the Informal Sector amid COVID-19: Implications for Household Peace and Economic Stability in Urban Zimbabwe," *Cities & Health* 6, no. 1 (2022): 37-50, <https://doi.org/10.1080/23748834.2021.2019967>.

⁶ Iqbal Saujan, Abi Huraira Rifas, and MS Fathima Juhi, "Fundraising and Zakat Distribution in Poverty Alleviation in Maruthamunai, Sri Lanka: A Maqashid Sharia Perspective," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 8, no. 1 (2024): 1-17, <https://doi.org/https://doi.org/10.30659/jua.v8i1.40193>.

largely absent under the native kings and the subsequent Portuguese rule.⁷ Among the Sinhalese population, marriage practices were often informal, characterized by ease of divorce and a strong emphasis on familial strategies in partner selection. For the Kandyan community, marriages were based on customary rites and public recognition before the introduction of codified laws.⁸ Notably, historical records from this era do not explicitly detail formal registration practices specifically for Muslims in Sri Lanka.⁹ The Dutch, who ruled coastal Sri Lanka from 1658 to 1796, marked the initial introduction of a system for recording vital statistics.¹⁰ They maintained "School Thambos or Parish registers" in Colombo and Galle, documenting marriages, births, and deaths, primarily concerning the Dutch population and town residents.¹¹ This registration was partly driven by the desire to base property claims on the legally recognized lineage.¹² This period established a precedent for state involvement in the formal recording of significant life events.

The British era (1796-1948) witnessed more comprehensive attempts to establish a uniform registration system across Sri Lanka. Early legislative efforts, such as Ordinance No. 6 of 1847, aimed to create a general system for births, deaths, and marriages for all inhabitants.¹³ However, both the Kandyan

⁷ P. Appuhamy, "The Practice of Death Certification by Grama Niladhari and the Birth and Death Registration Act: A Review with Reforms," *Medico-Legal Journal of Sri Lanka* 10, no. 2 (2022): 22, <https://doi.org/10.4038/mlj.v10i2.7464>.

⁸ Seeni Mohamed Nafees, "The Law Governing Marriage, Divorce and Related Issues in Sri Lanka," in *UUM International Conference on Governance 2014 (ICG)* (Indonesia.: UUM College of Law, Government and International Studies, Universiti Utara Malaysia. In Collaboration with: Fakultas Ilmu Sosial dan Politik, Universitas Muhammadiyah Malang, 2014), 1-2, <https://repo.uum.edu.my/id/eprint/12932>; J.M. Rizwan and N. Gafoordeen, "Divorce Among the Kandyan Muslims in Sri Lanka," *Muallim Journal of Social Science and Humanities* 5, no. 2 (2021): 12-21, <https://doi.org/10.33306/mjssh/117>.

⁹ Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective."

¹⁰ Appuhamy, "The Practice of Death Certification by Grama Niladhari and the Birth and Death Registration Act: A Review with Reforms."

¹¹ Bente de Leede and Nadeera Rupesinghe, "Registering and Regulating Family Life: The School Thombos in Dutch Sri Lanka," *Law and History Review* 41, no. 3 (2023): 501-21, <https://doi.org/DOI: 10.1017/S0738248022000499>.

¹² R. Silva, E. Souza, and S. Simelane, "Marriage , Divorce Registration and Vital Statistics," *Centre of Excellence for CRVS Systems, United Nations Population Fund.*, 2024, <https://idl-bnc-idrc.dspacedirect.org/bitstreams/c1ebfb9b-6564-4126-b1a5-9161f17be13d/download>.

¹³ Appuhamy, "The Practice of Death Certification by Grama Niladhari and the Birth and Death Registration Act: A Review with Reforms"; de Leede and Rupesinghe, "Registering and Regulating Family Life: The School Thombos in Dutch Sri Lanka."

Sinhalese and Muslims were exempted from this ordinance.¹⁴ This exemption was rooted in the recognition of Kandyan customary law and the distinct code of Muhammadan law governing the Muslim community.¹⁵ Subsequently, the Marriage Registration Ordinance No. 19 of 1907 was enacted, applying to all citizens of Sri Lanka with the continued exception of Kandyan Sinhalese and Muslims.¹⁶ Later, the Kandyan Marriage and Divorce Act of 1952 made registration an essential requirement for the validity of Kandyan marriages.¹⁷ For the Muslim community, the Muslim Marriage and Divorce Act (MMDA) was enacted in 1951.¹⁸ While the British administration recognized the importance of registration for legal and administrative purposes for most of the population, the continued exemption for Muslims created a legal landscape with lasting implications.

The Muslim Marriage and Divorce Act (MMDA) has been a subject of ongoing debate and reform arguments for several decades due to its perceived discriminatory provisions impacting Muslim women and girls.¹⁹ Key areas of

¹⁴ Jan Kok, "The Thombo Treasure. Colonial Population Administration As Source for the Historical Demography of Early Modern Sri Lanka," *Australian Economic History Review* 60, no. 1 (2020): 105-21, <https://doi.org/https://doi.org/10.1111/aehr.12190>.

¹⁵ Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective."

¹⁶ D N D Kannangara and Banm Balachandra, "Exploration on Principles of Uniformity , Impartiality and Relevancy Based on the Applicability of Law of Evidence within the Process of Administration of Justice in Sri Lanka," *General Sir John Kotelawala Defence University, Sri Lanka*, no. 14 (1978); Rose Wijeyesekera, "A Critical Evaluation of the Law of Divorce under the General Law and Special Laws of Sri Lanka" (University of Colombo, Sri Lanka, 2003), https://www.academia.edu/download/68239778/A_Critical_Evaluation_of_the_Law_of_Divorce_Under_General_Law_and_Special_Laws_of_Sri_Lanka.pdf.

¹⁷ Chathuprabha Induwarie Kasthuriarachchige and Sri Lanka, "Reviewing the Efficiency and Reality of Prevention of Domestic Violence Act , No. 34 of 2005 Through the Lens," *KDU Journal of Multidisciplinary Studies (KJMS)* 6, no. 2 (2024): 141-50.

¹⁸ Shamila Dawood, "Islamic Law and Gender Equality : Challenges and Reforms in Sri Lanka ' s Muslim Marriage and Divorce Act," *Journal of Islamic Law* 5, no. 2 (2024): 288-305, <https://doi.org/https://doi.org/10.24260/jil.v5i2.2833>; Nafees, "The Law Governing Marriage, Divorce and Related Issues in Sri Lanka"; Iqbal Saujan, Seen Mohamed Mohamed Nafees, and Yusuf Sani Abubakar, "The Causes and Consequences of Child Marriage Among Muslim Community : With Special Reference to the Cases Identified in the Eastern Province of Sri Lanka The Causes and Consequences of Child Marriage Among Muslim Community : With Special Reference to the Cases," *Quru': Journal of Family Law and Culture* 2, no. 3 (2024): 278-305, <https://doi.org/https://doi.org/10.59698/quru.v2i3.214>.

¹⁹ Mohammad Ismath Ramzy and Simin Ghavifekr, "Women Quazi in a Minority Context: An Overview of Sri Lankan Experience," *Societies* 9, no. 1 (2019), <https://doi.org/10.3390/soc9010013>; Dawood, "Islamic Law and Gender Equality : Challenges and Reforms in Sri Lanka ' s Muslim Marriage and Divorce Act."

concern include the minimum age of marriage, the necessity of bride's consent, divorce rights, the practice of polygamy, provisions for maintenance, and the functioning of the Quazi court system.²⁰ Within these reform discussions, the issue of mandatory marriage registration has emerged as a potential solution to address some of the challenges faced by Muslim women. Resistance to comprehensive reform, however, persists from conservative religious groups, notably the All Ceylon Jamiyyathul Ulama (ACJU). Advocates for reform have also called for the option for Muslims to marry under the General Marriage Registration Ordinance (GMRO), which currently excludes them.

In contrast to the MMDA, the Kandyan Marriage and Divorce Act of 1952 mandates registration as a prerequisite for the legal validity of Kandyan marriages.²¹ Furthermore, individuals subject to Kandyan law also have the option to register their marriage under the General Marriage Registration Ordinance.²² The Kandyan Marriage and Divorce Act outlines specific procedures for providing notice of a prospective marriage, making declarations, and the process of registration.²³ This legal framework demonstrates that mandatory marriage registration within a specific community's personal law is both feasible and legally established in Sri Lanka. The Thesawalamai Code, governing the Tamil inhabitants of Jaffna, has a history rooted in customary law that has undergone legislative modifications.²⁴ While customary marriages are recognized under Thesawalamai Code, there is an increasing trend towards registration to ensure legal validity. Additionally, the Marriage Registration

²⁰ Dawood, "Islamic Law and Gender Equality : Challenges and Reforms in Sri Lanka ' s Muslim Marriage and Divorce Act"; Shamila Dawood, "Married Women Property Rights under Muslim Marriage and Divorce Act of Sri Lanka : A Critical Analysis," *ATSK Journal of Law* 1, no. 1 (2024): 33-41, https://www.researchgate.net/profile/Shamila-Dawood-2/publication/380164573_Married_Women_Property_Rights_under_Muslim_Marriage_and_Divorce_Act_of_Sri_Lanka_A_Critical_Analysis/links/662e6d1006ea3d0b7413d2ac/Married-Women-Property-Rights-under-Muslim-Marriage-and-Divorce-Act-of-Sri-Lanka-A-Critical-Analysis.pdf.

²¹ Rizwan and Gafoordeen, "Divorce Among the Kandyan Muslims in Sri Lanka."

²² de Leede and Rupesinghe, "Registering and Regulating Family Life: The School Thombos in Dutch Sri Lanka."

²³ Silva, Souza, and Simelane, "Marriage , Divorce Registration and Vital Statistics."

²⁴ Thivyaa Sivakunalan, "Navigating Gender Equality In Thesawalamai: Customary Challenges And Legal Reforms In Sri Lanka," in *Proceedings of the International Research Conference of the Open University of Sri Lanka (IRC-OU SL 2024)*, 2024, 1-4, http://repository.ou.ac.lk/bitstream/handle/94ousl/2607/IRC-OU SL2024_66_Sivakunalan.pdf?sequence=1.

Ordinance is applicable to individuals governed by Thesawalamai Code.²⁵ This evolving practice suggests a growing recognition of the benefits associated with formal legal documentation of marital status within the Thesawalamai system.

Despite the recognized need for reform and the existing models of mandatory registration within Sri Lanka's legal system, mandating Muslim marriage registration faces several conflict areas. These include religious objections based on interpretations of Islamic law that permit unregistered *Nikah* marriages.²⁶ Cultural reasons, such as adherence to traditional practices and a lack of awareness regarding the benefits of registration, also contribute to resistance. Concerns exist about potential conflicts arising between mainstream Sri Lankan law and Muslim personal law if registration is strictly enforced as a condition for the validity of marriage. Political sensitivities and the influential role of conservative religious bodies like the ACJU further complicate reform efforts. Moreover, the exclusion of marriages under personal laws, including the MMDA and Kandyan Law, from the scope of the Reciprocal Recognition, Registration, and Enforcement of Foreign Judgments Act raises concerns regarding equality before the law.

Problem Statement

The absence of mandatory registration for Muslim marriages under the Muslim Marriage and Divorce Act (MMDA) of Sri Lanka presents a significant problem with far-reaching legal and social consequences. This issue is underscored by an analysis of relevant Sri Lankan case law, which, while not exclusively focused on Muslim marriages, illuminates the challenges arising from unregistered marital unions. For instance, a case concerning a marriage solemnized according to Roman Catholic rites, but not registered under the General Marriages Ordinance, was deemed legally valid as a recognized customary marriage. This highlights the legal system's acknowledgment of non-

²⁵ United Nations Children's Fund UNICEF and UN.ESCAP, "Civil Registration in South Asia: Regulations, Relationships and the Role of ICT," *United Nations Children's Fund (UNICEF) UN.ESCAP*, 2020, <https://hdl.handle.net/20.500.12870/6926>.

²⁶ Linda Hanafiyah, "Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)," *International Conference on Islamic Studies (ICIS)* 2, no. 2 (2022): 704-12.

registered unions in specific contexts, yet it also emphasizes the potential ambiguity and lack of formal processes that can arise without mandatory registration. The broader discussion on marriage registration in Sri Lanka indicates that while registration under the General Marriage Ordinance is not strictly mandatory, it serves as the best evidence of a marriage. This contrasts sharply with the MMDA, where non-registration does not invalidate the marriage, creating a legal landscape where proof of marital status for Muslims can be particularly challenging.

Furthermore, the optional nature of registration under the MMDA can exacerbate vulnerabilities, especially in cases involving underage marriages.²⁷ Even the limited safeguard of requiring Quazi permission for the marriage of girls below twelve years of age is absent in unregistered Muslim marriages, leaving minors even more susceptible to exploitation.²⁸ While case law interpreting the MMDA exists, it does not always directly address the specific problems stemming from the lack of mandatory registration. However, the Act itself imposes a duty to register a marriage on certain individuals, even though non-registration does not affect its validity.²⁹ This inherent contradiction within the legal framework contributes to the problem statement: the optional nature of Muslim marriage registration in Sri Lanka, while seemingly respecting religious customs, creates significant legal uncertainties and vulnerabilities, particularly for women and children, in disputes concerning marital rights, inheritance, and protection from harmful practices like child marriage.

To further illustrate the core problem, the following table outlines the implications of optional marriage registration under the MMDA across various legal issues:³⁰

²⁷ Saujan, Nafees, and Abubakar, "The Causes and Consequences of Child Marriage Among Muslim Community : With Special Reference to the Cases Identified in the Eastern Province of Sri Lanka," *The Causes and Consequences of Child Marriage Among Muslim Community : With Special Reference to the Cases.*

²⁸ Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective."

²⁹ Muslim Personal Law Reform Action Group MPLRAG, "What Is the Muslim Marriage and Divorce Act (MMDA)?," MPLRAG, Muslim Personal Law Reform Action Group, 2017, https://www.mmdasrilanka.org/aboutmmda/?utm_source=chatgpt.com.

³⁰ MPLRAG.

Table 1: Implications of Optional Marriage Registration under MMDA

Legal Issue	Potential Challenges due to Unregistered Marriage
Divorce	Difficulty in proving the existence of the marriage, leading to challenges in initiating or defending divorce proceedings.
Inheritance	Lack of clear legal documentation of the marital relationship can complicate inheritance claims for widows and children, potentially leading to disputes and disenfranchisement.
Child Custody	Establishing parentage and marital status is crucial for child custody disputes, which can be significantly hindered by the absence of a registered marriage.
Mahr (Dowry)	Enforcing the payment of mahr, a fundamental right in Muslim marriage, becomes problematic without official documentation of the marriage contract.
Maintenance	Women in unregistered marriages may face significant obstacles in claiming maintenance from their husbands, both during the marriage and after divorce.
Child Marriage	The absence of mandatory registration allows child marriages to occur without official record, making it difficult to monitor, prevent, and prosecute such illegal unions.
Legal Recognition	Unregistered marriages may not be fully recognized by state institutions, leading to difficulties in accessing various rights and services that depend on proof of marital status.
Social Stigma	Women and children from unregistered marriages can face social stigma and discrimination within their communities due to the lack of formal recognition of their family unit.
Polygamy Oversight	Mandatory registration could provide a mechanism to better track and regulate polygamous marriages, ensuring compliance with any legal conditions and protecting the rights of all wives. The lack of registration allows men to marry multiple times without official record.

This table clearly illustrates the multifaceted challenges that arise from the optional nature of Muslim marriage registration in Sri Lanka, highlighting the urgent need for reform to better safeguard the rights and well-being of the Muslim community, particularly women and children. This study aims to address these complexities by focusing on the following objectives: To evaluate the necessity of mandatory Muslim marriage registration in Sri Lanka through the lens of *Maqāṣid al-Sharī'ah* and to analyze the legal and social challenges arising from the current optional registration system under the MMDA.

The novelty of this article lies in its exploration of mandatory marriage registration as a legal safeguard for Muslim women's rights and heirship in Sri

Lanka. Unlike general studies on marriage laws, this article highlights how unregistered marriages can lead to the denial of women's rights in divorce, inheritance, and legal identity. It uniquely connects Islamic legal principles with civil law, showing that formal registration aligns with *maqasid al-shari'ah* by protecting justice and preventing harm. The paper also provides contextual and practical insights through real cases, making it a significant contribution to legal reform and women's protection in pluralistic societies.

To achieve these objectives, the study will be guided by the following research questions:

1. How does the current optional Muslim marriage registration system in Sri Lanka impact women's rights and the legal status of heirs from the perspective of *Maqāṣid al-Sharī'ah*?
2. What are the key legal and social challenges faced by women and children due to unregistered Muslim marriages in Sri Lanka, as evidenced by case law and societal experiences?

Method

This study uses a qualitative normative legal research approach, integrating Islamic jurisprudence (*Maqāṣid al-Sharī'ah*) with Sri Lankan legal frameworks. Focusing on the Muslim Marriage and Divorce Act (MMDA) of 1951, the research examines the legal and social implications of optional marriage registration, particularly for women and children. Data is drawn from primary sources such as statutes, case law, and expert interviews, as well as secondary sources including academic publications and Islamic legal literature. Comparative analysis with countries like Malaysia, Indonesia, and Pakistan is also included. The study employs three methods: normative legal analysis to assess legal protection for women, *maqāṣid*-based analysis to evaluate the impact on key Islamic principles (*ḥifẓ al-nasl*, *ḥifẓ al-māl*, *ḥifẓ al-'ird*), and thematic analysis of case studies and field data. Triangulation ensures the reliability of findings. The interdisciplinary approach provides a comprehensive

view of the challenges surrounding non-mandatory marriage registration in Muslim communities in Sri Lanka.

Legal Framework of Muslim Marriages in Sri Lanka

The legal framework governing Muslim marriages in Sri Lanka is primarily enshrined in the Muslim Marriage and Divorce Act (MMDA) of 1951. This Act contains specific provisions pertaining to the registration of marriages contracted between Muslims.³¹ Section 16 of the MMDA explicitly states that the Act shall not invalidate any marriage solemnized between Muslims in accordance with the principles of Muslim law, even if such a marriage has not been registered under the MMDA.³² This provision essentially permits the legal recognition of Muslim marriages based solely on their adherence to Islamic law, irrespective of formal registration.³³

While the MMDA does not mandate registration for the validity of a Muslim marriage, Section 17 outlines the duty of causing such marriages to be registered. This responsibility is placed upon the bridegroom, the wali (guardian) of the bride (if their consent is required under the relevant school of Muslim law), and the individual who conducted the *Nikah* (marriage ceremony).³⁴ These parties are obligated to inform the designated Registrar of Muslim Marriages about the details of the *Nikah*, including the date, time, and place, and to request the Registrar's presence for the purpose of registration.³⁵ Furthermore, they are required to provide the Registrar with all necessary assistance to facilitate the registration process immediately following the *Nikah* ceremony. In instances where the Registrar neglects or refuses to register the marriage, the responsible individuals are mandated to send a written report to

³¹ Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective."

³² Dawood, "Islamic Law and Gender Equality : Challenges and Reforms in Sri Lanka ' s Muslim Marriage and Divorce Act."

³³ Hashim, "Registration of Marriage In Malaysia: A Socio-Legal Study of Runaway Marriages Among Muslims"; Hanafiyah, "Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)."

³⁴ MPLRAG, "What Is the Muslim Marriage and Divorce Act (MMDA)?"

³⁵ Fowzul, "The Requirement of Muslim Marriage Registration in Sri Lanka: From the Maqasid Al-Shari'ah Perspective."

the District Registrar within seven days, detailing the marriage and the Registrar's refusal.³⁶ Failure to take these necessary steps to ensure the registration of a Muslim marriage is considered a punishable offense under the MMDA.³⁷ Section 81 of the MMDA pertains to the registration of divorces, further indicating the Act's involvement in documenting key aspects of Muslim personal law.

The implication of this legal framework, particularly the optional nature of registration under Section 16, is significant.³⁸ While it respects the religious validity of marriages performed according to Islamic law, it simultaneously creates a system where proof of marriage can be challenging to establish in legal and administrative contexts.³⁹ This lack of mandatory registration can lead to a range of difficulties for individuals, especially women and children, in accessing their rights and seeking legal remedies. The duty to register outlined in Section 17, although present, is not sufficiently enforced as a condition for the legal validity of the marriage, thereby allowing many Muslim marriages in Sri Lanka to remain unregistered. This situation presents a fundamental challenge to ensuring the protection of women's rights and the legal status of heirs, which are central concerns from the perspective of *Maqāṣid al-Sharī'ah*. The legal permissibility of unregistered marriages, despite the provision for registration, creates a loophole that undermines the intended benefits of a formal legal system for marriage, particularly in safeguarding the rights of vulnerable parties.

Maqāṣid al-Sharī'ah: An Analytical Framework

Maqāṣid al-Sharī'ah, which translates to the objectives or purposes of Islamic law,⁴⁰ provides a comprehensive framework for understanding the

³⁶ a N Act Et AL., "Marriage And Divorce (Muslim) Marriage And Divorce (Muslim)," no. 1 (1975).

³⁷ Act et al.

³⁸ Act et al.

³⁹ Hanafiyah, "Marriage Registration Obligation Policy (From Fiqh Munakahat to Marriage Law)."

⁴⁰ Mohammad Hashim Kamali, "Maqāṣid Al-Sharī'Ah: The Objectives of Islamic Law," *Islamic Legal Theory: Volume 1* 1, no. 2 (2017): 407-22, <https://doi.org/10.4324/9781315251721-29>.

underlying wisdom and goals behind the divine legislation.⁴¹ These objectives are not merely abstract ideals but are intended to guide the application and interpretation of Islamic law in a manner that achieves overall benefit (*maṣlaḥah*) and averts harm (*mafsadah*) for individuals and the community as a whole. Marriage and family law constitute particularly important domains where the principles of *Maqāṣid al-Sharī'ah* are actively applied to regulate interpersonal relationships, ensure the well-being of family members, and promote a just and harmonious social order. Evaluating the necessity of mandatory Muslim marriage registration through this lens involves assessing whether such a requirement aligns with and serves the fundamental objectives of Islamic law within the context of family formation and stability.

The primary objectives of *Maqāṣid al-Sharī'ah* are the preservation of lineage (*ḥifẓ al-nasl*), the preservation of wealth (*ḥifẓ al-māl*), and the preservation of dignity (*ḥifẓ al-ʿird*).⁴² These three objectives are particularly relevant to the discussion of marriage registration and its impact on the Muslim community in Sri Lanka.

1) *Ḥifẓ al-nasl (Preservation of Lineage)*

This objective underscores the importance of establishing families through legitimate means and ensuring the clear and verifiable lineage of children.⁴³ It encompasses the protection of children's rights, including their right to a legally recognized parentage, which in turn has significant implications for inheritance and social standing.⁴⁴ Unregistered marriages inherently pose a challenge to this objective as they can obscure lineage,

⁴¹ Ibnu 'Asyur and Muhammad Al-Tahir, *Maqāṣid Al-Syarī'Ah Al-Islāmiyyah* (Qatar: Wazarah Al-Auqaf Wa Al-Syu'un Al-Diniyyah, 2004).

⁴² 'Asyur and Al-Tahir; Ag Omar Pg Mohd Faezul Fikri and Hajimin Mohd Nur Hidayat Hasbollah, "The Roles of Zakat Towards Maqasid Al-Shariah and Sustainable Development Goals (SDGs): A Case Study of Zakat Institutions in East Malaysia," *International Journal of Zakat* 8, no. Special (2023): 68.

⁴³ Ahmed Ali Dabash, "The Egyptian Constitution and Transgender Rights: Judicial Interpretation of Islamic Norms," *Journal of Law and Emerging Technologies* 3, no. 1 SE-(various) Research and Studies (April 10, 2023): 33-58, <https://doi.org/10.54873/jolets.v3i1.108>.

⁴⁴ Mohammad Fadel, "DNA Evidence and the Islamic Law of Paternity in Light of Maqāṣid Al-Sharī'a," *The Muslim World* 112, no. 3 (2022): 311-23, <https://doi.org/https://doi.org/10.1111/muwo.12441>.

leading to disputes regarding parentage and creating vulnerabilities for children. The absence of formal documentation can make it difficult to establish legal relationships, impacting a child's right to be recognized by their father and to inherit from them. Mandatory marriage registration directly supports *ḥifẓ al-nasl* by providing an official record of the marital union and the resulting family, thereby safeguarding the rights and well-being of children and ensuring the continuity of legitimate lineage. If the preservation of lineage is indeed a fundamental aim of Islamic law,⁴⁵ then mandatory registration serves as a necessary instrument to achieve this *Maqṣad* by providing the requisite legal certainty and documentation.

2) *Ḥifẓ al-māl (Preservation of Wealth)*

This objective focuses on ensuring the proper management, protection, and just distribution of wealth within the family and society, including the establishment of clear inheritance rights.⁴⁶ It also includes the protection of the financial rights of spouses, particularly women, such as the entitlement to mahr and maintenance.⁴⁷ Unregistered marriages can significantly complicate inheritance disputes, leaving widows and other family members in precarious financial situations due to the lack of formal proof of the marital relationship. Moreover, women in unregistered marriages may face considerable difficulties in claiming their mahr or securing maintenance from their husbands, both during the marriage and in the event of divorce. Mandatory registration contributes to *ḥifẓ al-māl* by providing the necessary legal documentation to establish marital status, thereby facilitating the enforcement of women's economic rights and ensuring the just distribution of inheritance in accordance

⁴⁵ Ali Abubakar, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of *Ḥifẓ Al-Nafs* as Law 'Illat," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 153-73, <https://doi.org/10.22373/sjkh.v5i1.9256>.

⁴⁶ Muhammad Munir, "Maqāṣid Al-Sharī'ah Between Classical and Postmodern Periods: An Advanced Islamic Juridical Context," *Ma'ārif-e-Islāmī* Decmber, no. 25 (2023): 1-12, <https://ssrn.com/abstract=3994622>.

⁴⁷ Raihanah Hj Azahari, Mohamad Salfiyudin Mohd Pandi, and Asmak Ab Rahman, "Wealth Planning Parameters Based on Maqāṣid Al-Sharī'ah According to Ibn 'Āshūr's View: A Preliminary Study," *Uluslararası İslam Ekonomisi ve Finansı Araştırmaları Dergisi* 7, no. 1 (2021): 31-46, <https://doi.org/10.25272/ijisef.841295>.

with Islamic principles. If the preservation and fair distribution of wealth are indeed objectives of Islamic law, then mandatory registration acts as a crucial mechanism to prevent financial insecurity and injustice that can arise from unregistered marriages.

3) *Ḥifẓ al-ʿird (Preservation of Dignity)*

This objective emphasizes the importance of protecting the honor, reputation, and social standing of individuals and families within the community.⁴⁸ It involves safeguarding individuals, particularly women, from social stigma and ensuring their recognition as legitimate spouses within the community. Unregistered marriages can often lead to social stigma and vulnerability, especially for women and children, due to the lack of formal recognition of the marital union. In societies where formal marriage is the norm, the absence of registration can cast doubt on the legitimacy of the relationship and the status of any children born from it. Mandatory registration upholds *ḥifẓ al-ʿird* by providing official legal recognition to marriages, thereby protecting the dignity and social standing of women and children and ensuring their full inclusion and acceptance within the community. If the preservation of dignity is a fundamental objective of Islamic law, then mandatory registration serves as a vital measure to prevent the social marginalization and potential dishonor that can result from unregistered marriages.⁴⁹

Islamic Scholars' Opinion on Registration of Marriage

Islamic jurisprudence presents diverse views on the necessity of marriage registration. Classical and modern scholars hold differing opinions on whether

⁴⁸ Sayyed Mohamed Muhsin, Afiqah Fatunah binti Awang, and Alexis Heng Chin Boon, "Ethical Considerations in Human Genome Editing: Exploring CRISPR Technology through the Prism of Qawā'id and Maqāṣid," 2024, https://d1wqtxts1xzle7.cloudfront.net/111020271/Ethical_Considerations_CILE_Research_Center_for_Islamic_Legislation_and_Ethics-libre.pdf?1706686016=&

⁴⁹ Maqasyid Syariah, "Bausung Pengantin Dalam Adat Tradisi Banjar Perseptif Maqasyid Syariah," *Multidisplanry Journal of Knowledge* 2, no. 2 (2024): 1-8, <https://e-journal.stai-almaliki.ac.id/index.php/mk/article/view/163>.

registration is a religious requirement for the validity of a marriage.⁵⁰ According to the majority of scholars, marriage registration is not considered one of the fundamental pillars or conditions for a marriage to be valid under Islamic law.⁵¹ The essential elements generally include the full consent of both partners, a proposal (*ijab*) and acceptance (*qabul*), the presence of the wife's guardian (*wali*), and the presence of two Muslim witnesses.⁵² As long as these conditions are met, the marriage is considered valid from a religious perspective.

However, many contemporary Islamic scholars argue for the obligatoriness or strong recommendation of marriage registration, especially in modern times, to protect the rights of both spouses and children. They highlight several benefits of registration: Preservation of Rights - Registration helps maintain the mutual rights between spouses, such as the wife's rights to residence, maintenance, and the deferred dowry (*mahr*), as well as the husband's rights. It also secures the rights and lineage of children. Prevention of Disputes - An official marriage certificate serves as proof of the validity of the marriage and its terms, helping to avoid future disputes. Combating Illegal Marriages: Registration can help prevent invalid or illegal marriage contracts, such as marrying a woman during her waiting period (*iddah*) or marrying prohibited individuals. Avoiding Suspicion - In societies where unregistered cohabitation may be viewed with suspicion, a marriage certificate provides legal and social legitimacy to the relationship, protecting the couple's honor. Compliance with Laws - In many countries, including Sri Lanka, the state requires marriage registration for legal recognition. Obeying the laws of the land, as long as they do not contradict Islamic law, is considered an obligation in Islam.

Classical scholars such as Ibn Qudamah, Imam Al-Shafi, Ibnu Hazm and Imam Malik meanwhile, contemporary scholars such as Ibn Uthaymeen, Abdul

⁵⁰ Maulidia Mulyani, "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance," *Legitima: Jurnal Hukum Keluarga Islam* 06, no. June 2024 (2024): 1-12.

⁵¹ Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (2023), <https://doi.org/10.3390/rel14040463>.

⁵² Erkoc Baydar; Mulyani, "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance."

Aziz bin Baz, Yusuf al-Qaradawi, Mufti Taqi Usmani, Sheikh Ali Gomaa, Sheikh Salij al-Fawzan Nuh Ha Mim Keller emphasize that while the core Islamic marriage contract (*Nikah*) does not inherently require state registration for its religious validity, the current social and legal landscape necessitates it to safeguard individual rights and ensure legal recognition. Failure to register can lead to significant harm, particularly for women, who may face difficulties in proving their marital status and claiming their rights in the absence of official documentation.

Therefore, while there might be differing opinions on the original religious necessity of marriage registration, a strong consensus exists among contemporary Islamic scholars on its importance and recommendation, and in some cases, its obligation in the present context to protect individual and familial rights and to comply with state laws.

Challenges Arising from Unregistered Muslim Marriages

The practice of unregistered Muslim marriages in Sri Lanka gives rise to a multitude of legal and social issues that disproportionately affect women and children. One of the primary challenges faced by women in unregistered marriages is the difficulty in proving their marital status in various legal and administrative contexts. Without a formal marriage certificate, women may struggle to assert their rights in matters of divorce, inheritance, and child custody. The absence of legal documentation can make these marriages easily deniable by the husband, leaving women without effective legal recourse in situations of marital dispute or abandonment.

Children born from unregistered marriages also face significant challenges, particularly concerning their legal recognition and rights. Obtaining birth certificates that accurately reflect their parentage can be problematic, and establishing their legal relationship with their father can be arduous, directly impacting their rights to inheritance, maintenance, and overall legal status. The lack of mandatory registration has been shown to lead to consequences for protecting the legal status of heirs. Furthermore, children from unregistered marriages may be considered illegitimate in the eyes of the

state, even if the marriage was valid according to religious customs, leading to a violation of their rights and creating barriers to claiming their father's rights or inheritance.

The economic rights of women in unregistered Muslim marriages are particularly vulnerable. Mahr, which is a mandatory component of a Muslim marriage contract, may be difficult to claim or enforce without official documentation of the marriage. Similarly, women in unregistered marriages often struggle to obtain adequate maintenance from their husbands, both during the subsistence of the marriage and after divorce. Establishing property rights and claims arising from the marital relationship can also be exceedingly difficult in the absence of legal proof of the marriage, leaving women economically insecure and dependent. The denial of these economic rights, such as mahr, maintenance, and property claims, is a significant consequence of optional registration. The very purpose of registering a marriage is to provide protection for women and children, and the failure to do so undermines this fundamental aim.

Moreover, the optional registration system under the MMDA inadvertently facilitates the harmful practice of child marriage. Unregistered marriages can effectively mask the occurrence of such unions, making it exceedingly challenging for authorities to enforce age-related marriage laws. The MMDA currently permits the marriage of girls below the age of twelve with the permission of a Quazi, and there is no stipulated minimum age for marriages that remain unregistered. This lack of oversight allows for the perpetuation of child marriages outside the purview of legal scrutiny. Furthermore, there have been observations of age falsification in marriage registers as a means to circumvent existing age restrictions, further highlighting the inadequacy of the current system. The increase in child marriages is a documented consequence of the lack of mandatory registration, representing a grave violation of the rights and well-being of children.

Case Law Examples:

While specific case law directly addressing inheritance disputes arising from unregistered Muslim marriages in Sri Lanka is limited in the provided snippets, the case of *Alitamby and Four Others v. Bastianpillai* highlights the application of the Muslim Law of Intestate Succession in Sri Lanka. In this case, the court determined the inheritance shares of a husband and daughter based on the Shafei sect of Sunni Muslims, which is followed in Sri Lanka. Although the marriage registration status was not the central issue, the case underscores the legal framework governing Muslim inheritance, which can be complicated by unregistered marriages due to difficulties in proving the marital relationship and the legitimacy of heirs.

Comparative Perspectives

Examining the approaches to marriage registration in other Muslim-majority countries reveals a significant trend towards mandatory registration as a means of ensuring legal validity and protecting the rights of all parties involved. In Indonesia, for example, the registration of Muslim marriages is a mandatory requirement, conducted at the Office of Religious Affairs (KUA).⁵³ This formal registration provides official documentation of the marital status, which is crucial for various legal and administrative purposes. Similarly, Malaysia mandates the registration of marriages under its Islamic Family Law Act and has established penalties for non-compliance, underscoring the importance of formalizing marital unions within the legal framework.⁵⁴

⁵³ Adriaan Bedner and Stijn van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A Plea for Pragmatism," *Utrecht Law Review* 6, no. 2 (June 2010): 175-91, <https://doi.org/10.18352/ulr.130>; Muhammad Jazil Rifqi, "Marriage Registration for All Religions at the Office of Religious Affairs: Between Debate and Promoting Moderation," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 1 SE-Articles (June 9, 2024): 25-45, <https://doi.org/10.15642/alhukama.2024.14.1.25-45>.

⁵⁴ Nurulbahiah Awang, "The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 SE-Article (June 30, 2024): 58-70, <https://doi.org/10.14421/ahwal.2024.17104>; Hervin Yoki Pradikta, Aan Budianto, and Habib Shulton Asnawi, "History of Development and Reform of Family Law in Indonesia and Malaysia," *KnE Social Sciences* 9, no. 12 SE-Articles (April 4, 2024): 316-331, <https://doi.org/10.18502/kss.v9i12.15863>.

Morocco has undertaken significant reforms to its Family Code (Moudawana), which now includes specific and strengthened requirements for marriage registration. These reforms also address issues such as polygamy, requiring the wife's explicit consent during the marriage documentation process.⁵⁵ Tunisia has gone even further by exclusively recognizing civil marriages, which must be registered with civil authorities to be legally valid.⁵⁶ This approach applies to all Tunisians, regardless of their religious affiliation. In Egypt, while marriage laws are closely tied to religious personal status laws, civil marriage registration is available for foreigners, and the government has been considering amendments to its personal status laws, including aspects related to marriage.⁵⁷

The widespread adoption of mandatory marriage registration in numerous Muslim-majority countries signifies a global recognition of the need to formalize Muslim marriages within the legal system. This trend aims to provide legal certainty to the marital status, protect the rights of all parties involved, particularly women and children, and align with the broader principles of justice and equity that underpin *Maqāṣid al-Sharī'ah*. By examining the legal frameworks implemented in these other nations, Sri Lanka can gain valuable insights and potential models for its own efforts to reform the system of Muslim marriage registration.

However, assessing the applicability of these models to the specific Sri Lankan context requires careful consideration of the country's unique legal and cultural landscape. Sri Lanka already has the MMDA in place, which governs Muslim personal law, and there exists a diversity of interpretations of Islamic

⁵⁵ Karima Nour Aissaoui, "The Current Debate on the Moroccan Family Code 'Mudawwanat Al-'Ussra,'" *Ijtihad Journal for Islamic and Arabic Studies* 1, no. 1 SE-Articles (June 15, 2024): 195-209, <https://journal-ijtihadcenter.com/index.php/ijias/article/view/29>; Miyase Yavuz-Altıntaş, "Fātiḥa Marriage in Morocco: Between Legislation and Judicial Practice," *Hawwa* 20, no. 1-2 (2020): 10-33, <https://doi.org/10.1163/15692086-12341384>.

⁵⁶ A Marotta, "Migrations and Legal Reforms in Tunisia Among Physical and Digital Circularity" (Routledge, 2024), <https://doi.org/10.4324/9781003488569-27>.

⁵⁷ Dina M Taha, "Marriage Economics, Bargaining and Strategic Agency: Egyptian-Syrian Inter-marriage Practices in the Context of Displacement," *International Journal of Intercultural Relations* 101 (2024): 101995, <https://doi.org/https://doi.org/10.1016/j.ijintrel.2024.101995>; Romli Muhammad, Luth Thohir, and Hamidah Siti Sulistyarini Rachmi, "Legal Consideration of Legal Conversion in Different Religious Marriage in Indonesia," *RJOAS* 12, no. 16 (2020): 89-98, <https://doi.org/https://doi.org/10.18551/rjoas.2020-12.11>.

law within the community. Therefore, any reforms must be sensitive to these existing structures and beliefs. While learning from the experiences of countries with similar legal systems or social demographics can be beneficial, the implementation of mandatory registration in Sri Lanka needs to be tailored to its own specific needs and concerns. This includes acknowledging the importance of cultural sensitivity and ensuring that any proposed reforms are acceptable to the Sri Lankan Muslim community. A nuanced approach is essential, one that respects religious and cultural values while simultaneously prioritizing the fundamental rights and overall well-being of all individuals, consistent with the overarching principles of *Maqāṣid al-Sharī'ah*.

Policy Recommendations

To effectively safeguard the rights of Muslim women and ensure the legal status of heirs in Sri Lanka, it is imperative to introduce legal reforms to the Muslim Marriage and Divorce Act (MMDA) of 1951 that mandate the registration of all Muslim marriages. This can be achieved by amending Section 16 of the MMDA to explicitly state that marriage registration is a prerequisite for the legal validity of Muslim marriages within the country. Simultaneously, the enforcement mechanisms outlined in Section 17 need to be significantly strengthened to ensure widespread compliance with this mandatory registration requirement. This could involve introducing clear and proportionate penalties for failure to register a marriage without legitimate reasons, thereby discouraging non-registration and promoting adherence to the law. Furthermore, it is crucial to ensure the accessibility of the registration process across all regions of Sri Lanka, making it convenient for all Muslim couples to comply with the mandatory requirement. Provisions should also be made for late registration in exceptional circumstances, accompanied by appropriate safeguards to prevent abuse.

Beyond legal amendments, the effective implementation of mandatory marriage registration necessitates a comprehensive and multi-faceted approach. Culturally sensitive awareness campaigns should be developed and launched to educate the Muslim community about the importance and numerous benefits of marriage registration. These campaigns should

proactively address any religious or cultural concerns that may contribute to resistance towards registration, emphasizing how it aligns with the broader objectives of Islamic law in protecting families and rights. Training programs should be conducted for Quazis and marriage registrars to ensure they are thoroughly knowledgeable about the new legal requirements and are equipped to facilitate the registration process efficiently and effectively. Collaboration with community leaders and influential religious organizations is also essential to garner support for mandatory registration and encourage its widespread adoption within the Muslim community. To ensure that registration services are readily available to all, particularly those in underserved areas, efforts should be made to provide accessible and affordable registration options. Finally, the establishment of a centralized and secure national database for all registered Muslim marriages would be invaluable in facilitating the verification of marital status, preventing fraudulent activities, and ensuring the integrity of marriage records across Sri Lanka.

Conclusion

The findings of this analysis underscore the critical importance of mandatory marriage registration for the Muslim community in Sri Lanka. The current optional system under the MMDA has been shown to create significant legal and social challenges, particularly for women and children, leading to vulnerabilities in areas such as divorce, inheritance, child custody, and economic rights. By making marriage registration a legal requirement, Sri Lanka can take a decisive step towards safeguarding the rights of Muslim women, ensuring the legitimate legal status of heirs, and promoting greater stability and justice within the community. These reforms are not only legally necessary but also deeply aligned with the fundamental objectives of *Maqāṣid al-Sharī'ah*. Mandatory registration directly supports the preservation of lineage (*ḥifẓ al-nasl*) by providing clear legal documentation of family ties. It contributes to the preservation of wealth (*ḥifẓ al-māl*) by facilitating the enforcement of economic rights and ensuring the fair distribution of inheritance. Furthermore, it upholds the preservation of dignity (*ḥifẓ al-ʿird*) by providing formal

recognition of marital status, thereby protecting individuals from social stigma and ensuring their rightful place within the community. Ultimately, mandating Muslim marriage registration in Sri Lanka is a crucial reform that will advance the principles of justice (*'adālah*) and prevent harm (*mafsadah*) within Muslim family law, thereby fulfilling the core tenets and overarching goals of *Maqāṣid al-Sharī'ah* and fostering a more equitable and secure society for all members of the Muslim community.

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