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The detail report on proposed Amendment Act to  
amend the Muslim Marriage and Divorce Act

Unanimously agreed by the Muslim Members of Parliament.

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Cover letter

8<sup>th</sup> June 2023

Hon. Dr. Wijedasa Rajapaksha, PC. MP.,  
Minister of Justice, Prison Affairs & Constitutional Reforms,  
Ministry of Justice,  
Colombo 12

Dear Sir,

The detail report on Proposed Amendment Act to amend the Muslim Marriage and Divorce Act signed by the Muslim Members of Parliament.

Muslim Marriage and Divorce Act (MMDA) facilitates Muslim citizens of Sri Lanka to exercise their religious values in matrimonial affairs, these rights are protected by the constitution of the country. Thus, it is important to assure any amendments to this personal law should comply with the sources of Islamic Shari'ah, viz, The Holy Qur'an, Holy Hadees, Ijma' and Qiyaas. Further, the proposed amendment to MMDA must mitigate the shortcomings, also there should be a clear emphasis on whether these reforms validate and re-assure the privileges the Muslim community enjoy, identity of Muslim community and the peaceful existence of the Muslim community.

We all agree that there is a necessity to reform the Muslim Marriage and Divorce Act to overcome its existing drawbacks, which have been emphasized constantly over the years. However, we fear that the Proposed Amendment Act has certain elements which contradict our religious principles and has the potential to lead our people into new plights. When we scrutinize the provisions of the Proposed Amendment Act, we have quite a few concerns about its key characteristics particularly the age of marriage, rulings regarding 'Wali' (guardian), polygamy, changes proposed on the Quasi system, the appointment of Quazis and marriage registrars, compulsory registration of marriage and few more, because we fear that provisions of the proposed Amendment Act have the potential to negatively impact in our community.

The following is the detail report which critically analyze the prospects and consequences of the proposed Amendment Act. We Muslim Members of the Parliament request the Hon. Justice Minister to consider our recommendations stated in this report and do the necessary amendments to the Muslim Marriage and Divorce Act accordingly. Further, we would like to specifically emphasis here that this report is final and conclusive.

Yours Truly,  
Muslim Members of the Parliament

## 1. Introduction

Muslim Marriage and Divorce Act (hereinafter referred to as Principal enactment) facilitates Muslim citizens of Sri Lanka to exercise their religious values in matrimonial affairs, these rights are protected by the constitution of the country. Thus, it is important to assure any amendments to this personal law should comply with **the sources of Islamic Shari'ah, viz, The Holy Qur'an, Holy Hadees, Ijma' and Qiyaas**. Further, the proposed amendment to MMDA must mitigate the shortcomings, also there should be a clear emphasis on whether these reforms validate and re-assure the privileges the Muslim community enjoy, identity of Muslim community and the peaceful existence of the Muslim community.

Further, a healthy disciplined Islamic community shall be built upon a strong and protective family structure. In the Islamic family structure every member of the family has their roles and responsibilities by which the protection and wellbeing of females and children have been assured. Islam emphasizes the importance of the family structure and facilitate the existence of this structure with its guidance. Any amendment to MMDA that has the potential to destroy or harm this family structure shall not be permitted.

We all agree that the present Muslim Marriage and Divorce Act needs to be amended, but we fear that the Proposed Amendment Act has certain elements which contradict our religious principles and has the potential to lead our people into new plights. When we scrutinize those recommendations of the Proposed Amendment Act, we have quite a few concerns about its key characteristics particularly the age of marriage, rulings regarding 'Wali' (consent of a guardian), polygamy and changes proposed on the Quasi system, the appointment of Quazis and marriage registrars, compulsory registration of marriage and few more, because we fear that the proposed reforms have the potential to negatively impact in our community.

## 2. Substantive Law

We consider the absence of clarity regarding the Substantive Law in the proposed Amendment Act, is not advisable.

Buddhism followed in our country, is based on the Therawada sect. In case any issues related to Buddhism, the Mahayana sect is not referred, rather the sect followed by the majority of the Buddhists of this country is referred, which is Therawada.

Similarly, for more than 1200 years, all aspects including judgments, education of the Muslims of this country, have been carried out based on the Shafie School of Thought. As Shafie School of Thought has been the utilized fundamentally to derive Islamic religious rulings, its teachings have been learnt, taught and practiced by the Muslims of Sri Lanka throughout history. The Arabic Madrasas and Quran Madrasas of Sri Lanka have developed their academic curriculums based on the Shafie School of Thought.

During the early 1700s, some Muslims were exiled from Java Islands, Indonesia. They were able to engage in all their affairs conveniently along with the local Muslims of Sri

Lanka as they were following the Shafie School of Thought, which was similar to the practice of their country, Indonesia.

The Java Muslims conducted Quran Madrasas in which they taught the children to recite the Holy Quran and the fundamental Islamic religious teachings. As the Muslims of both nations followed the same Shafie School of Thought, the children found it easy to acquire their knowledge from their teachers, although they were from a different country.

### 3. Aim

To develop necessary insights on the Proposed Amendment Act by examining the closely associated opportunities and challenges.

#### 3.1 Objectives

- To critically review the Proposed Amendment Act to MMDA.
- To identify and determine the potential outcomes of the Proposed Amendment Act.
- To examine the negative impact of the Proposed Amendment Act.
- To conclude the significance of adopting a dependable mechanism while making the reforms to the MMDA.

### 4. Analysis

This section discusses the key drawbacks of the Proposed Amendment Act pertaining to (a) fixing the age of marriage, (b) rulings regarding 'Wali', (c) polygamy (d) changes proposed on the quasi system, (d) appointment of Quazis (e) appointment of marriage registrars, (f) compulsory registration of marriage and few more.

#### 4.1 Title of the principal enactment (MMDA – Chapter 115)

The proposed amendment act replaces the word "MUSLIMS" with the words "PERSONS PROFESSING ISLAM". There is no proper finding to prove a person whether he or she is professing Islam or not, other than a declaration by themselves. This will lead to misuse of the law and will create new plights in the community. thus, the title of the principal enactment shall prevail as it is. Further any sections related to this tile also shall remain the same.

#### 4.2 The word "Nikah Ceremony"

The proposed amendment act proposes to replace the word "Nikah Ceremony" with the word "solemnization" in the principal enactment. 'Nikah' is a unique word that is globally understood and accepted to specify the Solemnization of a Muslim marriage. we don't find any valid reason why the word 'Nikah' to be removed from the Muslim Marriage and Divorce Act that is applicable only to Muslims in Sri Lanka. We strongly recommend that the word "Nikah Ceremony" in the primary enactment shall prevail as it is.

#### 4.3 Consent of a bride and the role of her Wali in a Muslim marriage

According to Islamic principles, obtaining the consent of a bride is a mandatory requirement to validate a marriage. So, there is no ground to oppose this arrangement. But in the Proposed Amendment Act to the MMDA, it is included that, making the bride sign the marriage registration document is mandatory. Further, since the bride placed her signature, gaining the signature of her Wali (guardian) has been recommended to be not mandated. This is where this Proposed Amendment Act contradicts the religious guidance. It is to be highlighted here that the bridegroom and the Wali of a bride are the contracting parties in a Muslim Marriage. The Proposed Amendment Act proposes amendments to the very sections define the role of Wali (sec 16,17, 19, 18, 21 and form III of the first schedule) to make the bride the contracting party and it makes Wali of a bride optional ("if any, if opted by the bride").

The bride shall sign in the Marriage Registration document to express her consent to the Marriage explicitly. However, this recommendation **shall not invalidate the mandatory requirement of 'Wali's Signature'** as one of the contracting parties of a Marriage.

Any sections or schedules which define the role of the Wali of a bride in the primary Act (MMDA) shall not be repealed or amended. The new section 18 (1A) of the Amendment Act shall not be inserted.

#### 4.4 Registration of a Marriage

Registering a marriage is mandatory. But the law should facilitate recognizing customary marriages too. In Islam the customary marriages are valid. In the Proposed Amendment Act, it is stated that failing to register a marriage will invalidate such marriage. Here we all must notice that, If the law does not recognize customary marriages, women who engage in customary marriages do not get any marital rights including property rights from their husbands. Also, children born in such marriages do not get any legal recognition in terms of inheriting the properties of their fathers. Conclusively not recognizing customary marriages will place women and children in a plight.

Registration of a marriage shall be made mandatory. Non-registration of a marriage shall not invalidate any Muslim Marriage. However, the registration of the Marriage should take place within the day of Nikah and any delay of registration will be a punishable offense (this will help to encourage registrations).

#### 4.5 Marriage Registrars

Appointing female marriage registrars will cause some practical difficulties. – Islam guided us the discipline of segregation between men and women in gatherings. This guidance is followed by the Muslim community in the marriage gatherings too. Thus, it is made a tradition that the Marriage registration take place with a large number of male participations and other rituals will take place with large number of female participations and only a few permitted male participants. since marriage registration is a largely male-participated event, appointing female registrars is impractical in this

system traditionally followed by Muslims in Sri Lanka for decades. Also, it is our cultural tradition that most Islamic marriages take place in mosques. Women cannot go to mosques in certain circumstances. Hence, it creates many practical difficulties when appointing female marriage registrars.

It is not permitted to delete the word "male" and the pronouns referring to it in sections 8, 9 and 10 dealing with the appointment of Registrars of Muslim Marriage, Temporary Registrars and Special Registrars and any other sections or schedule that defines the role and responsibility of Muslim Marriage registrars.

#### 4.6 Appointment of Quazis

According to the opinion of the Islamic Scholars based on Islamic religious principles, it is the role and responsibility of males to be act as a Quazis. Also, Quazis play the role of a guardian in certain circumstances. Thus, we recommend that the Judicial Service Commission shall evaluate all the applications for the post of Quazi by inquiring within the locality of the applicant considering the Academic qualifications, Good Conduct and the credibility of the applicant and shall appoint a suitable person accordingly.

#### 4.7 Age of marriage

The Proposed Amendment Act defines the minimum age of marriage as 18 without any proviso for the very section.

According to the latest statistics produced in Sri Lanka in 2012, the number of marriages under 15 was 3204, among them; only 471 were encountered in the Muslim community. Also, the marriages conducted between 15 to 19 were 87633 and around 12000 among them have occurred in the Muslim community. It must be highlighted that these marriages were held in the context where the general marriage ordinance explicitly reveals that the minimum age of marriage is 18, whereas MMDA has not specifically stated a minimum age of marriage. These statistics have scientifically revealed that fixing the minimum age of marriage to 18 is not going to eradicate the number of childmarriages in our country. Also, this statistic demonstrates to us there were still realistic situations, those required marriages before the age of 18.

According to the penal code (amendment) Act No.22 of 1995, girls above the age of 16 can consent to have sex. This recognition is giving a valid ground to argue to make the minimum age of marriage as 16 under the MMDA because Muslims who are governed by the MMDA is not allowed to have extramarital relationships.

UN resolution states as follows "Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses."

Even western civilized countries like the UK, the USA and others have accepted 18 as the age to marry only when the parties themselves engage in marriages without the consent of their parents or guardian. Also, they have the facility in their laws the parties can marry before 18 in exceptional circumstances with the consent of their parents, guardian or court. In Islam, the consent of the Wali (guardian) of a bride is a mandatory requirement for a valid marriage. So, the 'age of marriage of 18' is not applicable to a Muslim bride.

We all have a common opinion that we must eradicate child marriages from our community, no doubt about that, perhaps fixing 18 as the minimum age of marriage is not going to resolve this issue. Instead, educating and building proper awareness in our community in order to eradicate child marriage would be the pivot mechanism. Although there are valid grounds to demand and make the minimum age of marriage as 16 years, still we are considering cope-up with the international standard which explicitly standardizes the minimum age of marriage as 18. However, we demand to provide a proviso to the very section to fix the minimum age as 18, to accommodate needy marriages before the age of 18. As previously stated, the demand for the proviso is sensible and a fair requirement, which is justified scientifically.

Thus, the minimum age of marriage for males and females shall be fixed as 18 years with a proviso for the very section. The proviso shall permit marriages aged between 16 (Sixteen) and 18 (Eighteen) with the approval obtained from Quazi.

Any section which fixes the minimum age of marriage as 18 years without a proviso shall not be permitted and any sections or schedule of the principle enactment in relation to the age of marriage shall not be amended contrary to the recommendation stated above.

#### 4.8 Changes on 'Quazi' system

##### (a) Quazis

The Quazi system was established in the 1930s to resolve marital disputes under the MMDA. The Quasi system is very viable for people who are governed by the MMDA for the following reasons.

- Easy to access.
- Not expensive.
- Not time-consuming.
- Parties are being heard in private)
- Three distinct appealing options
  - Board of Quazis
  - Court of appeal
  - Supreme court

We all agree that the existing Quasi system has many shortcomings too, but those drawbacks can't be considered as a ground to destroy the system. Necessary amendments are to be made to the law to fix the deficiencies and make the system efficient.



In the Proposed Amendment Act we notice that the powers vested in the Quazi system has been drastically reduced and it has been proposed to make the role of a Quazi is equivalent to a marriage conciliator by doing the following changes in the Principal Enactment which are not acceptable and to be highly condemned.

- Incorporating Part II A, (Marriage Conciliation by Quazis),
- Repealing section 12 and replacing it a new section 12 of the proposed amendment Act,
- Repealing Sections 27, 28, 29, and replacing these sections with section 27, 28, 29, 29A, 29B, 29C and 29D of the Amendment Act,
- Repealing sections 13, 14, 30, 31, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 64, 65, 66, 73, 74, 75, 84, 90, 93,
- Repealing sections 34, 35, 36, 37, 38, 39 (Part V) and Replacing with new Part V of the Amendment Act,
- Repealing section 67 and replacing it with a new section 67 of the Amendment Act,
- Repealing section 94 and replacing it with a new section 94 and 94A of the Amendment Act,
- Inserting new sections 95A and 95B of the Amendment Act,
- Amending sections 17(2), 32, 40, 55, 56, 59, 68,70,71, 76, 83, 96, 97,
- Amending the title of part VI (removing the words 'Quazis' and 'Board of Quazis'),
- Amending section 91(a), and inserting new section 91A, 91B in Amendment Act,
- Amending 58 and inserting 58A and 58B.

By proposing the above said changes, the proposed Amendment Act attempt to reduce the powers and duties vested on the Quazis to a certain extent, where there are possibilities to many marriage dispute cases will be directed to other Courts.

If the jurisdiction in relation to marriage disputes presently vested in the Quasi system is transferred to other courts, it will affect the Muslim community adversely (expensive, time-consuming, burden of seeking lawyers' assistance, etc..), specifically, it will make most of the Muslim women refrain from seeking remedy for any kind of marriage dispute committed on them. It will increase their mental depression, also it is harmful to their mental well-being. This is entirely a cultural issue we must put under the spotlight before making a radical change to the existing Quazi-system. The reforms we are trying to do on MMDA -with the title that 'we have to ensure the rights of women in our community or 'save them from discrimination and ill-treatment', should not put them in a miserable situation or an unacceptable plight.

We recommend that Part II A of the proposed Amendment Act shall not be incorporated in the MMDA. New sections 27, 28, 29, 29A, 29B, 29C, 29D (sections which transfer all powers vested on Quazis to other courts) shall not be inserted. Further any sections or schedules in the principal enactment defines the powers and duties of Quazis shall not be repealed or amended in a manner that reduce any powers and duties presently vested on them.

## (B) Board of Quazis

The Board of Quazis has the first appellate jurisdiction in the Quazi system. In the Principal enactment, the Board of Quazis was vested with the powers equivalent to the provincial high court in Muslim matrimonial affairs.

The Proposed Amendment Act by

- Repealing sections 15, 62, 63, 65, 73, 75, 89, 90, 93,
- Repealing section 60 and replacing sec 60 of the proposed Amendment Act,
- By amending sections 68, 70, 91, 92, 97,
- Repealing section 94 and replacing it with a new sections 94 and 94A of the Amendment Act.
- Amending the title of part VI (removing the words 'Quazis' and 'Board of Quazis').

It removes the Board of Quazis from the Quazi system and transfers all the powers and duties of the Board of Quazis to the provincial High Court.

We can observe that amendments proposed on the Quazi system by the Proposed Amendment Act is a clear attempt to eradicate the one hundred years old privilege that the Muslim community owns as equal citizens of the nation. We as responsible representatives of the Muslim community in Sri Lanka, in any circumstances will not support the attempt which eradicate the privileges being entertained by the Muslim community in this country.

### 4.9 Polygamy

We all agree that subsequent marriages have to be regulated by the law. The arrangement inserted by the new section 24 of the proposed Amendment Act is acceptable.

However,

- (a) The appeal against the decision of a Quazi for a subsequent marriage application shall be made to the Board of Quazis (not to District Courts).
- (b) Any subsequent marriages conducted contrary to provisions of the very section shall not be considered as invalid but shall define a penalty which shall prohibit such subsequent marriages.

### 4.10 Divorce

- a. Not to remove the word 'Divorce' in sections 16 and 98(2) of the Muslim Marriage and Divorce Act. Since both marriage and divorce should be governed according to the Muslim law governing the sect to which the parties to such marriage or divorce belong.

b. Divorce out of Courts

Where a person pronounces Divorce out of Courts, section 30 of the Principal enactment acknowledges such pronouncement and records it accordingly as the Islamic law validates it. We recommend the Section 30 of the Principal enactment shall be prevail as it is. However, we also recommend to impose penalty to the person who pronounce such declaration of divorce out of courts, in order to discourage such practice.

c. When declaring reasons for Faskh, it should be based on the Muslim law governing the sect to which the parties belong; any reasons other than what is prescribed in shari'ah cannot be taken as reasons for Faskh.

d. Khula' divorce

The Khula' divorce shall be defined and included explicitly in Section 28. Also, the consents of both spouses are a necessary condition for the validity of Khula', and if Khula' takes place under compulsion, the Khula' is not valid. Based on the above under no circumstances Quazi should force either party to establish a 'Khula' type of separation.

#### 4.11 Mata'a

Mata'a shall be paid to the wife/divorced wife of any divorce or separation (Talaq, Faskh or khula). The wife/divorced wife shall not be the cause of divorce or separation (matrimonial fault) to be eligible for Mata'a.

a) In the following circumstances Mataa' shall be paid to the wife/divorced wife.

- Talaq - when there is no matrimonial fault on his wife,
- Khula - because of the shortcomings of her husband,
- Faskh - because of any shortcomings or matrimonial fault of her husband,

b) the Quazi should declare the payment of Mataa', in his discretion.

c) In determining the quantum (Amount) of Mata'a to be awarded, Sec 34 (2) of the proposed amendment act shall be included.

#### 4.12 Representation of Attorney at Law

It is not recommended to enable any party or witness to be represented by an attorney at law on behalf of them in any proceedings before a Quazi, thus, we endorse not to make any changes to section 74 of the Act.

#### 4.13 Muslim Marriage and Divorce Advisory Board




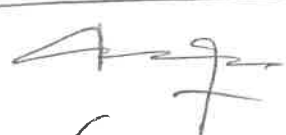



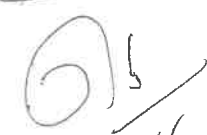
Sections related to MMDAB (sec. 4, 5, 6 and 7) shall not be repealed. It is recommended to appoint professionals to the MMDAB (Men and Women). It should be made mandatory to appoint not less than 2 Mufti's out of 7 members.

#### 5. Recommendations

Following are the recommendations that have been unanimously agreed by Muslim Members of Parliament to be followed in the process of amending the Muslim Marriage and Divorce Act No.13 of 1951.

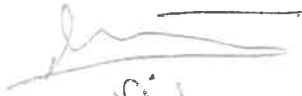
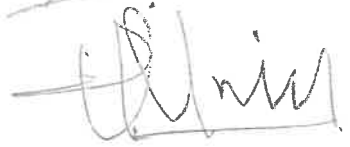








1. The word "MUSLIMS" in the Principal enactment shall not be replaced by the words "PERSONS PROFESSING ISLAM".
2. The word "Nikah Ceremony" in the Principal enactment shall not be replaced by the word "solemnization"
3. Section 16 of the present MMDA will remain as it is. It shall not be repealed.
4. The bride shall sign in the Marriage Registration document to express her consent to the Marriage explicitly. However, this recommendation **shall not invalidate the mandatory requirement of 'Wali's Signature'** as one of the contracting parties of a Marriage.
5. Registration of a marriage shall be made mandatory. However, non-registration of a marriage shall not invalidate any Muslim marriage. Rather a reasonable penalty shall be imposed on contracting parties of marriage for non-registration within the prescribed period of time.
6. Appointing female marriage registrars will cause practical difficulties for the traditions followed by the community for a very long time. Hence, appointing female marriage registrars shall not be permitted.
7. All the applications to the post of Quazis, shall be evaluated by the Judicial Service Commission whom shall appoint a suitable person among them.
8. The minimum age of marriage for males and females shall be fixed as 18 years **with a proviso for the very section.**
9. The Quazi system shall not be degraded, Board of Quazis shall not be eradicated from the system. The powers and duties vested on Quazis and Board of Quazis in the Principal enactment shall prevail as it is.

10. Polygamy shall be regulated by the law.
  - The appeal against the decision of a Quazi for a subsequent marriage application shall be made to the Board of Quazis (not to District Courts).
  - Any subsequent marriages conducted contrary to provisions of the very section shall not be considered as invalid but shall define a penalty which shall discourage such subsequent marriages.
11. Not to remove the word 'Divorce' in sections 16 and 98(2).
12. Section 30 of the Principal enactment shall prevail as it is. A penalty shall be imposed on the person who pronounce such declaration of divorce out of courts, in order to discourage such practice.
13. The words 'Talaq' and 'Faskh' shall not be removed from the Principal enactment and The Khula' divorce shall be defined and included explicitly in Section 28 of the Principal enactment.
14. The provision about Mata'a shall be incorporated, Quazi shall determine the quantum of Mata'a. Parties can appeal against the decision of Quazis to Board of Quazis.
15. Section 74 of the Principal enactment shall not be repealed.
16. Muslim Marriage and Divorce Advisory Board shall not be eradicated. Amendments can be made to make the MMDAB as a more efficient body.

No.	Name of the Member of Parliament	Signature
1.	A. H. Q. Fouzia	
2	Kabir Hasim	
3	ALM. Athaullah	
4	RISHAD BATHI UDDEEN	
5	Nawaz Ahmad	
6.	M. S. Tawfeeq	
7)	ISHAQ Rahman	
(8)	Imthiyas Bakir Makar.	

NAME

SIGNATURE

- |                        |   |
|------------------------|---|
| (9) S.M. MANTAWAR      |    |
| (10) MAJAN FACEREC     |    |
| (11) M.H. Abdul Haleem |    |
| (12) K. Kader Masthan  |    |
| (13) H.M.M. HARVEED    |    |
| (14) S.M.M. Musjheem   |    |
| (15) Faizal Cassim     |   |
| (16) ALI SABRI RAHEEM  |  |
| (17) IMRAN MAHAROOF    |   |
| (18) M. Muzammil       |   |