JHIES : Jurnal Hukum Islam dan Ekonomi Syariah
Journal Link: https://cabiskarya.com/jhies/id
Volume 1, Nomor 2 (2025)
ISSN : XXXX-XXXX

The Importance of *Fiqh al-Aqalliyyat* in Reforming Muslim Family Laws: A Study Focused on the Muslim Marriage and Divorce Act of 1951

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Submitted : Desember 9, 2025 **Accepted :** Desember 28, 2025 **Published :** Desember 30, 2025

A B S T R A C T

The provisions contained in the Muslim Marriage and Divorce Act (MMDA) of 1951 have been subject to widespread criticism, due to facilitating child marriage, the absence of any compulsory consent of the spouse, and institutionalizing gender discrimination in divorce and judicial practice. Those elements are incompatible with the international human rights standards (including CEDAW and CRC) and Islamic principles of justice (*Adl*) and mercy (*Rahmah*). This paper analyzes *Fiqh al-Aqalliyyat* (Islamic jurisprudence of Muslim minority) as a valid solution to justifying comprehensive reform. This paper demonstrates that the MMDA is a hybrid man made and colonial era code (descended from a Dutch implemented code of 1770) and is therefore subject to ijtihad using *Usul al-Fiqh* methods (particularly the *Maqasid al-Shari'ah* of higher objectives). Some principles like *Maslaha* (public interest), and *Tayseer* (ease) are entirely reform supportive including requiring a minimal age of marriage of 18 and the right of equality in divorces. The findings recommend practical legal and institutional changes based on the *Fiqh al-Aqalliyyat* to reorient the MMDA with the core values of Islam and the Sri Lankan principles of equal citizenship.

Keywords: *fiqh al-Aqalliyyat*, Muslim Marriage and Divorce Act (MMDA), muslim community.

Introduction

The family laws on Muslims are undergoing severe reform calls. These calls are related to the attempts to balance between the traditional provisions of religion and modern human rights principles and gender equality (Dawood, 2024a; Saujan, Mohamed, et al., 2025). As an example, Indonesian courts have explicitly applied the *Maqasid al-Shari'ah* (Islamic objectives) to the family law (Nawir et al., 2024), which guarantees that legislation does not undermine human rights and equality between women (Norhartijah & Kurniawan, 2025). In several Muslim majority nations, such as Malaysia, Indonesia, Morocco, and Tunisia, family codes have been updated over the last several decades to incorporate contemporary

issues (Wigati et al., 2022). This international environment has come to realise that the development of Islamic law may be achieved by going back to its original purposes as opposed to adhering to strict literal interpretation.

There are strong demands in reforming Muslim family laws. These are pressures that are a result of trying to balance traditional religious specifications with human rights and gender equality of today (Bielefeldt, 2012). As an example, the *Maqasid al-Shari'ah* (Islamic goals) have been explicitly incorporated into the family law by the Indonesian courts, and the laws are meant to respect human rights and equality of women (Norhartijah & Kurniawan, 2025). The family codes of many Muslim-majority countries, such as Malaysia, Indonesia, Morocco, and Tunisia, have been revised in the last decades to meet the modern concerns (MPLRAG, 2017). This worldwide scene is gradually turning into the acceptance of the notion that Islamic law can be reformed by returning to its original purpose instead of using strict literalism.

In Sri Lanka, Muslims (constituting around 9.7 percent of the population), are regulated by MMDA (1951) in marriage and divorce, in addition to general civil law (Saujan, Mohamed, et al., 2025). The pluralist environment is created by this dual system. Nevertheless, there are different challenges when personal law is applied in minor case like Sri Lanka (Saujan, Abubakr, et al., 2025). Reform can not be built solely on using the ruling of other Muslim dominated societies, it must be sensitive to the constitutional provisions and cultural context in Sri Lanka. Importantly, the jurisprudence of Islam perse - in terms of its concept of *Maqasid al-Shari'ah* (higher objectives), *Ijtihad* (independent reasoning), and Maslaha) also offers internal means of change. This paper assumes that the MMDA reform is not only the act in reaction to the outside criticism but rather the act of Islamic law: the elevation of laws to justice (*Adl*) and mercy (*Rahmah*) in line with universal Islamic ethics.

Research Method

The study is a comparative analysis of Islamic law based on a doctrinal study. It analyzes first primary sources (*Quran, Hadith*), *Usul al-Fiqh* (principles of jurisprudence) in the prism of the *Maqasid*. It also checks literature of prominent supporters of *Fiqh al-Aqalliyyat* (e.g. *al-Qaradawi*, *al-Alwani*) to contextualize the minority. It then critically examines the MMDA text and its historical background. Lastly, it does a comparative legal study by examining more recent family law reformation in Morocco, Tunisia and Malaysia the jurisdictions offering insights into striking a balance between Islamic ethics and contemporary realities. All through, this paper incorporates both official documents (like CEDAW/CRC reviews of Sri Lanka) and secondary sources on minority rights in Islam, as a way of supporting its arguments.

The existing MMDA has some discriminatory clauses that establish systemic inequality and especially of the Muslim women and children. Some of the major issues are: (a) Child Marriage the Act does not provide minimum marriage age, which permits marriage of girls as young as 12 (with concern of Quazi) (BBC News, 2017), which is in conflict with the Sri Lankan general law (18 years old) and international standards; This loophole effectively exempts underage brides of statutory rape (Saujan, Nafees, et al., 2024). (b) (Lack of Consent) Signing of marriage contracts by a bride is unnecessary, the male *Wali* (guardian) is sufficient (Fowzul, 2024). This deprives Muslim women of their agency and makes them passive in marriage (Dawood, 2024). (c) Gender discrimination in Divorce: Husband may repudiate (*talaq*) unilaterally without much difficulty and a wife has to petition Quazi court faskh and demonstrate fault (which may involve two witnesses) (Fowzul, 2023). This imbalance is against the Islamic concepts of *Tayseer* (facilitation) and compromising the rights of women. (d) Quazi Courts the whole Quazi court system is plagued by administrative and procedural shortcomings and does not include women. Board of Quazis is a male only institution (no lawyers can work there) (MPLRAG, 2017), and women are legally forbidden to be Quazi judges (Marsoof, 2017). As an example, the main clerical institution in Sri Lanka (ACJU) publicly stated its objection to the appointment of women Quazi (Marsoof, 2017), although most Muslim nations (such as Malaysia, Pakistan, Indonesia) do not have a problem with a qualified female judge (Ismath Ramzy & Ghavifekr, 2019). Critics of reform (usually citing tradition or religious authority) have represented the MMDA as being an unalterable divine law. As an example, the ACJU in 2016 claimed that the Quran joins justice but not equality (Marsoof, 2017), which implies the fact that equal rights are not obligatory. These arguments abuse theology to stand against change. As a matter of fact, the MMDA is not a direct product of shari'a but rather a colonial creation (see below). This misframing has brought an impasse: on one side, the law discriminates against Muslim women and child, and on the other, there is no powerful Islamically based counterargument on the part of reformers.

The study is important as it provides an internal and religiously based explanation of the MMDA reform. This study challenges the idea that the provisions of MMDA are divinely ordained by breaking down the colonial background of the document (De Livera, 2019). As a matter of fact, the source of MMDA is that of a Dutch code in 1770 in Sri Lanka (MPLRAG, 2017). The fact that it is an artificial hybrid law undermines the claim of opposition that reform would go against the *shari'a*. Reform is therefore re structured as the fix of human error (a misguided understanding) instead of rebellion against God. This is essential to the rebranding of the changes as they attempt to convince the communities and policymakers who are Muslims to accept that changes are not un Islamic.

In addition, this study has offered the means to overcome internal resistance by using *Ijtihad* and *Maslaha*. This demonstrates that the reforms, including the increase of the marriage age to 18 or the election of female *Quazi*, can be supported in the area of Islamic jurisprudence. The diversity (*ikhtilaf*) of the global scholarship and the superior goals (*maqasid*) of the *Shari'ah* (justice, protection of life and intellect) support these changes. Practically, this study makes sure that the argument of reforms does not lose the religious viability. A change in the legislation is recommended by the women groups of Sri Lanka, but as one of the observers points out in a UN forum, it is decades old, but the proposals are being swept under the carpet in hesitance by the government (Iqbal, 2025). This research will help overcome this deadlock and harmonize the personal law of the Muslims in Sri Lanka with faith and human rights by providing it with a strong doctrinal support.

Results and Discussion

Jurisprudence of Muslim Minorities and Foundational Principles of *Fiqh al-Aqalliyyat*

Fiqh al-Aqalliyyat is a form of the jurisprudence that was developed during the late 20 th century to help guide the Muslim minorities within the non Muslim dominated rule. It was officially presented in the 1990s by theorist *Taha Jabir al-Alwani* and *Yusuf al-Qaradawi* (Fishman & Hudson Institute, 2006). The term was coined in 1994 (North American Fiqh Council fatwa) by *Al-Alwani* and wanted flexibility in the law to make sure that Muslims would not become isolated but would be able to interact with the society in a positive manner (Fishman and Hudson Institute, 2006). According to this approach, Islamic law has to be changed to suit new circumstances in a way that preserves core values through the use of Maslaha and other principles (*ta'ayyur* - changeable). According to Fishman, FA is involved in the daily issues of the Muslim minorities and attempts to solve the conflicting issues between the Islamic norms and the principles of the host society (Fishman & Hudson Institute, 2006). Qaradawi also stressed tayseer (facilitation), the possibility of making compromises but without compromising the Muslim identity. Overall, FA offers a theory of Contextual Ijtihad: it allows scholars to make rulings that are appropriate to the distinct cultural and constitutional environment of a minority community and does not just impose the rules of the majority world.

There are a number of usul principles that are core to the FA. The most basic one is the *Maqasid al-Shariat* (higher objectives): the preservation of religion, life (*nafs*), intellect (*aql*), lineage (*nasl*), and property (*mal*) (Paryadi, 2021; Saujan, Rifas, et al., 2024). The legal decisions made under the FA should further these purposes, that is, justice, mercy, and dignity and welfare to individuals. An illustration of this is where a literal interpretation of traditional *fiqh* would lead to an outcome that would obviously be detrimental to child welfare or educational

development, the outcome is overridden by the superior goals (Amberi, 2023). *Maslaha* (public interest) doctrine allows jurists to supersede a given form of law to the greater good. Similarly, *Tayseer* (elimination of unnecessary suffering) requires permitting the community to have alternatives of less difficulty. These principles combined are such that out and out compliance with the rulings of one school will not supersede the spirit of *Shariah* (Abubakar, 2021). These values are explicitly used by the FA to make innovative rulings. As an example, *Maslaha* and *Maqasid* are strong supporters of raising the marriage age to 18: it safeguards *hifz al-nafs* (life/health) and *hifz al-aql* (intellect) of offspring so that they may mature (*rushd*) before being married, which is strongly supported in the spirit of Islam (Saujan, Nafees, et al., 2024). Equally, judicial equality to women and their consent signify *adl* (justice) and *rahma*h (compassion). By so doing, the FA makes the case that such blind obedience to tradition (e.g. marriage at puberty age) should be replaced by the welfare of the whole.

Historical Development and Hybridity of the MMDA in Sri Lanka

The existing Muslim family law in Sri Lanka is not a clear *Shariah* law but one that has come about because of history and colonialism (Dawood, 2024a). This was as a result of the MMDA, which was enacted in 1951 and was initially applied in 1770 in Batavia (now Jakarta) as a Dutch ordinance (MPLRAG, 2017). It took over Malay practices and colonial regulations with time. As a case in point, *kaikuli*, a dowry given by the family of the bride to the groom, is a peculiarity of the law that does not exist in the mainstream Islam, and that is *haram* (forbidden) according to many researchers (MPLRAG, 2017). The naming of the Act, namely the Muslim Marriage and Divorce Act, contradicts its hybrid roots: it was formulated by the colonial authorities and Sri Lankan politicians based on the Applicable Dutch and Burmese laws (Wettimuny & Rajap, 2018). The formalities of the MMDA statutory regulation (registration, witnesses, particular provisions) are based upon this history not upon the classical *fiqh*. According to Muslim Personal Law reformers, the MMDA is a hybrid law with a foreign code having some Islamic elements (MPLRAG, 2017). Its colonial veneer indicates that assertions of immutability are mislaid: Muslims do not need to adhere to it internally (the court structure is an anti colonial importation), and its weakness (such as *kaikuli*) has no foundation in the real *shari'a* law.

This creation myth renders invalid the idea that reform would be a breach of the divine law. It is true that, in case the problematic provisions of the MMDA are historical custom or civil compromise they can be abrogated through maslaha. In Sri Lanka, the Supreme Court of the land in 2018 affirmed that the main aim of the MMDA was administrative convenience, and not the creation of a new religious teaching (MPLRAG: Muslim Personal Law Reform Action Group, 2021). In this way, FA points to the fact that the MMDA is *mutaghayyir* (changeable): it is a human law that has to be aligned with the ethical aspirations of Islam.

Scholarly and Political Debates on MMDA Reform

There has been an extended history of calls to reform MMDA. The groups of Muslim Women (e.g. the Muslim Women Research and Action Forum) have fought decades more than 40 years according to reports of the civil society (Iqbal, 2025). The problem has been addressed by commissions of enquiry and reform committees on a number of occasions. As an example, the Farouque Committee (1972) suggested prohibiting marriages of girls who were below 14 (in the case of 12-14 it was permitted with Quazi permission) (Marsoof, 2017). Subsequent committees (1984, 1990, 2009, 2018) also suggested an increase in the marriage age, female consent, and female judges. In 2018, a high committee led by Justice Marsoof, came up with comprehensive draft reforms in this regard. Politics has however lagged. A NGO pointed out: The reforms of MMDA have been languishing over 40 years by women groups and the new Draft MMDA Amendment Bill is filling up the dustbins of Parliament. (Iqbal, 2025).

The conservative clerical bodies are the primary opposition to this. *All Ceylon Jamiyyathul Ulama* (ACJU) and its allied bodies have strongly protested numerous changes citing that they would water down the Islamic law. Indicatively, the applications of ACJU to reformers indicated clearly that it was opposed to the appointment of women Quazi (Marsoof, 2017) and understood gender equality as not binding. Muslim lawyers and women associations on the other hand argue that this opposition is a misinterpretation of Islam. These divisions have been discussed in state forums yet they have not been solved so far. Lack of this reform (up to a very recent time) has attracted heavy criticism in the international arenas: the UN experts and the CEDAW have demanded that Sri Lanka should reform the MMDA and abolish child marriage and discrimination based on gender. In this way, the academic/political debate is enshrined: those who want reform should demonstrate that this change is not an external imposition but rather it is justified by Islam itself.

Fiqh al-Aqalliyyat* as a Theoretical Lens for Contextual *Ijtihad

Since MMDA is minority and colonial, the theoretical perspective of reform is provided by *Fiqh al-Aqalliyyat*. FA demands that *ijtihad* against the MMDA must be contextual sensitive to the realities of Sri Lankan culture, law, and constitution. It does not imply merely adopting the decisions of mostly Muslim nations (with much different circumstances) but finding solutions according to the Islamic principles which are applicable to the local needs. FA practices a number of tools in practice.

Darurah and *Haja* (necessity and need): two provisions, where the legal provision leads to unjust hardship or social harm, the FA will review whether or not there should be a darurah exception or a new ruling granted. An example of this would be the fact that legalizing a child marriage at age 12 to a child who is physically or mentally unfit would be perceived to be darurah to be avoided.

Change to Public Interest (*Maslaha*): FA changes focus to Maslaha when the MMDA does not produce the results that are higher in the sharia (e.g. the safety of a child, the dignity of a woman). The Tayseer doctrine requires the elimination of unnecessary suffering. Practically speaking, FA does not interpret unreasonable MMDA regulations as a divine will, but as something dispensable: the good of the community takes precedence over rigid ritual patterns.

Mutaghayyir (Changeable Law): FA understands the MMDA to be *mutagayyir* (changeable). Human beings have created it and therefore correcting its fault is not poisoning *shari'ah* but cleansing it. Reformers may then claim that internal corrections are needed in form of amending discriminative clauses (e.g. increasing the age, legitimizing the consent of women), which are necessitated by the ethos of the *shari'ah*.

The application of FA in Sri Lanka also involves the consideration of *Fiqh al-Muwatana* which is a relatively new notion that Muslim citizens have rights as much as the rest of the citizens do (Duderija & Rane, 2019). According to this conception, Islam does not offer any scapegoat to minorities to enjoy fewer civil rights. Maintenance of *Muwatana* entails that, the law of the Sri Lankan Muslims does not keep its citizens as the second ranking citizens. That is, the need to support equality based MMDA reforms is not a political compromise but a religious obligation to achieve Quranic principles of justice to everyone.

Integration of *Maqasid al-Shari'ah*

In the course of reform process, the supreme guide is *maqasid al-shari*. The *Maqasid* stress the welfare maintenance: they insist that any decision (including the human ones) should conform to the primary purpose of Shariah, i.e. justice, mercy and human dignity (Muawaffaq et al., 2021). Practically, *Maqasid* analysis eliminates strict literalism. An illustrative example is a purely biological concept of maturity (*bulugh*) as a precondition to marriage, which will disregard the maqasid of safeguarding a sound mental state (Islam et al., 2021). Interpreting the law according to the *rushd* (maturity) and *aql* (intellect) in its turn is the adherence to *hifz al-nasl* and *hifz al-aql*, meaning, safeguarding progeny and intellect, respectively (Paryadi, 2021). Therefore, the FA submissions of increasing the age are based on the demonstration that it will achieve these maqasid objectives, against the fact finding of the narrow precedent. Concisely, the *Maqasid* approach changes the debate on the reform: it evidences that it is within the spirit of the Islamic law to amend the MMDA so that the education, health, and fairness can be improved (Hj Azahari et al., 2021).

Child Marriage and Lack of Spousal Consent

The most condemned loopholes in MMDA include the lack of minimum age at which one should be before marriage. Practically, it implies that girls at the age of 12 (or younger with Quazi permission) can be registered as a married couple (BBC News, 2017b). This clearly contradicts the general marriage age law of Sri Lanka

(18 years) and goes against the international child protection norms (CEDAW, CRC). It also causes a life threatening loophole: the girls legally married in the MMDA are not entitled to the statutory rape provisions of the Penal Code. According to human rights observers, statutory rape law is not applicable against Muslim girls below the age of 16 that are legally married under the MMDA thus the law is practically permitting predatory marriage to be unpunished (Iqbal 2025). The consequences of this are the real human cost such as teen age pregnancies and school drop outs within the Muslim community.

MMDA does not also require the signature of brides on marriage contracts. The male Wali (guardian) is the only person who signs the register and thus the consent of the bride is not noted. This leaves Muslim women as passive objects in marriage, as one commentator simply explains it - they simply cannot sign their contracts (Iqbal, 2025). The refusal to give written consent is a continuation of patriarchal rule on the contrary of the Islamic contractual ethics, which stipulates that both parties must concur on the agreement.

In the case of FA, this scenario demands some remedial intervention. Increasing the age to 18 is a recourse to Maslaha and the Maqasid of the protection of children (*hifz al-nafs, hifz al-aql*). It changes the standard of the simple puberty to objective maturity and considerations of welfare. Equally, the need to sign the bride is congruent with adl and *ta'yin* (making sure that the parties are completely consenting). To conclude, implementing FA implies that these reforms are needed to support Islamic goals and not frustrate them.

Gender Inequality in Divorce Procedures

The MMDA formalizes the profound disparities in divorce. A Muslim man may divorce his wife unilaterally (*talaq*) without any formal warning and in any case, the marriage is at once destroyed. A Muslim wife, on the contrary, has no similar right of repudiation; she must obtain a judicial divorce (*fasakh*) in Quazi courts (Marsoof, 2017). In order to achieve success, she needs to demonstrate certain reasons (e.g. cruelty, abandonment) before the Board of Quazis, and frequently two male witnesses are required to prove every fact. It is both time consuming, expensive and is often rejected under insurance schemes. This in reality deprives many women of timely relief. Cases of Prophetic examples and Quran underline the fact that divorce is easy and kind, rather than heavy litigation (Marsoof, 2017). The asymmetry of the law will obviously be against *Tayseer* (facilitation).

FA offers a set of tools to deal with this problem. Debating by relying on *Tayseer*, the reformers believe that women should not be overburdened by the divorce law. Egalitarian jurisprudence (as evidenced by most Islamic teachings) is the belief that men and women should be equally allowed to divorce. Thus, suggestions to harmonise the evidences and demand the judicial review of talaq is in line with Islamic justice and maslaha. These would eliminate the present legal

two tier decision, which meets the Shari'ah objective, where divorce is done in the most appropriate manner and at the minimum inconvenience (Qur'an, 2:236).

Institutional Failures

Quazi court system has institutional flaws. The quazi courts do not have standard legal practices and most of the Quazis are not trained lawyers, which has contributed to the unequal ruling. The level of oversight is poor; hence, corruption and inefficiency are still present. Besides, the legislation explicitly forbids the election of the women as Quazi judges or registrars. It is not a divine bar of law, but a bare one; In fact, the official position of the ACJU has been that women have been unable to serve as Quazis (Marsoof, 2017). This stand is difficult to defend using theological arguments, as the most prominent Muslim scholars have affirmed that women can be judges as long as they are qualified. Indeed, decades ago most of the Muslim majority countries such as Malaysia, Indonesia, Pakistan and Egypt all have women Qadis in sharia courts.

The Sri Lankan can recognize these tolerant academic attitudes with the help of the FA principle of *Ikhtilaf* (acceptance of diverse opinions). No clear scriptural ban about women judges exists; the ban itself seems to be founded upon the local patriarchal tradition. Thus, it can be contended by reformers that allowing and even requiring the qualified female *Quazi* is the use of *ikhtilaf* within the minority context. This would open up a larger talent base and will guarantee a treatment that is fair to female litigants. Concisely, the lifting of the ban on female judges is entirely in tandem with the Maqasid of adl and rahmah, and history in other Muslim countries proves that the service of women does not go against Islam.

The Case of Kaikuli (Customary Dowry)

One surprising manifestation of the MMDA colonial hybridity is the payment of bride price, Kaikuli, in the form of dowry, by the bride family to the groom, which is stipulated by the law. In the Islamic tradition, the bride is not required to pay the groom a dowry; rather the groom is expected to pay the bride. A significant number of scholars view Kaikuli as an alien practice (having no grounds in shari'a), and even haram (MPLRAG, 2023). However, MMDA makes the application of Kaikuli legally binding, and inflicts financial strain on the families of brides, which supports patriarchal rules in the process.

FA provides an apparent solution: since Kaikuli does not have an Islamic legitimacy and goes against the Quranic principle of hifz al-mal (protection of property), it can be abolished based on the principle of maslaha. That is, the expulsion of Kaikuli out of the law is in no way a secular construct but rather a cleansing of the law itself. This can be compared to other Muslim nations (such as marriage revolutions in 2000 in Egypt), that abolished un Islamic marriage practices. In Sri Lanka, Kaikuli would be abolished and this will free families and serve the Islamic justice spirit.

The Potential Role of *Fiqh al-Aqalliyyat* in Guiding Reforms

The methodological range of *Fiqh al-Aqalliyyat* allows adhering to the MMDA as a text that changes. Since the provisions of MMDA are human made, the FA believes that the term of reform being conceived as Western assimilation is a fallacy. Instead, FA contends that renewal (correction of unfair laws) is an in house obligation, which is required by Islam. The notion of reform is represented as a pious thing: to conform the law with adl (justice) and rahmah (mercy). As an example, the rewriting of the MMDA to reflect the general law standards of Sri Lanka (e.g. the universal minimum age of marriage is 18) is not culturally displacing Muslims but is safeguarding the well being of the community as a maslaha of the state. By doing so, FA will be turning reform into an expression of Islamic morality: a Muslim dominated law that now causes obvious harm will have to evolve to become the embodiment of the values of the Shari'ah.

Comparative Analysis with Other Muslim Contexts

A comparison with other nations establishes that the reform activities of Sri Lanka are in a broader pattern of rights based modifications of the Islamic law. The successful precedents provide strategic modelling. The reformed family code in Morocco has been quoted as an example to other majorities of Muslims countries. The 2004 Moudawana increased the legal marriage age to 18 years of both genders and gave the woman increased rights with respect to marriage and divorce. Importantly, the reforms in Morocco were reached in an internal process that was based on Sharia. Analysts focused their studies on Maqasid and Ijtihad. As an example, the code acknowledges female freedom of choice of husbands and divorce, removes the power of husbands (qawama within fixed conditions) and places polygamy under rigid court scrutiny. It is important to note that Article 19 of the code of Morocco establishes the minimum age to marry at 18 (Article 20 gives the judges a certain level of flexibility) (Pellegrino, 2024b), which is explicitly motivated by the Maqasid of safeguarding children and intellect. The example of Morocco demonstrates that even a thorough reform on the basis of equality can be realized in an Islamic context without any concerns about secular encroachment.

The historic Code of 1956 in Tunisia made even more drastic steps. It officially abolished polygamy and repudiation, established a mutual consent to marriage, and established a secular divorce between both spouses (Polygamy and Family Law, n.d.). It also established one minimum age of marriage at 18 of both sexes. These reforms were also introduced through revolutionary political leadership and to a great extent they bypassed the traditional clerical approvals. Although the Sri Lankan approach can be seen as more incremental, the success of Tunisia is still a model of how Islamic ethics (when viewed through the prism of daunting ijtihad) can be the foundation of full gender equality. The Tunisian case also highlights the importance of maqasid reasoning: in one example, its jurists interpreted 4:3 and 4:129 in combination and came to a conclusion that polygamy

is effectively impossible (since it is impossible to treat people equally) (Polygamy and Family Law, n.d.).

The dual legal system in Malaysia has lessons to offer. In IFLA (Syariah Criminal Enactment 1964 and other State enactments), the civil age is 18 of both sexes. Nonetheless, the Islamic law conventionally permits marriages at the age of 18 among men and 16 among women (excluding exceptions by the court). This has in effect resulted in numerous cases of child marriages and this has forced reforms. It is interesting to note that the age in which women marry has been increased by Malaysian states to 18 years. An example is that Kedah State revised its legislation to establish the minimum age of Muslim girls in Nigeria at 18 (as well as Selangor, which did the same in 2018). These actions of the state were excused by maslaha (defending the welfare of girls). Another example of how rigorous control can be incorporated within the law is that Malaysia also stipulates that men seeking polygamy must seek permission of the Shariah court and demonstrate their financial ability. In the case of Sri Lanka, the example of Malaysia demonstrates the necessity of registration and judicial scrutiny of marriages (to eliminate instances of under-age marriages and child marriage) and indicates that the age should be increased to 18, which is not only a reasonable but also Islamically acceptable solution.

Overall, these comparisons demonstrate a distinct pattern: several Muslim states are adjusting the laws concerning the personal status in accordance with the maqasid informed ethics. It is not inappropriate to accept that Sri Lankan reformers can use these precedents in the construction of internally consistent arguments. As an example, one can refer to the use of Maqasid to reform Moudawana in Morocco (Pellegrino, 2024), or reforms on polygamy in Malaysia to refute the idea that the Sri Lankan changes are nothing more than secular aping.

The analysis determines that the MMDA is not something that is holy and cannot be touched but a human made set of rules that has been affected by the history of colonialism. Its discriminatory clause particularly child marriage, forced consent, unequal divorce, and gender bias courts are really a fundamental violation of the core values of the Shari'ah adl and rahmah. Under Fiqh al-Aqalliyyat we can observe that remedy is mandated by Islamic law itself. The Islamic approach helps the reform to a great extent by focusing on the Maqasid and practicing Contextual Ijtihad. Importantly, the equality before the law does not mean the opposite of faith, on the contrary, the Fiqh al-Muwatana presupposes that Muslim nationals in Sri Lanka have the rights to be the full citizens of the country. In this regard, the existing criminal sanctions against the Sri Lankan Muslims (e.g., criminal protection of child brides removed) are morally unacceptable and should be removed. Such reforms like increased age of marriage or election of female judges are thus not only civil niceties but also religious requirements in our situation. These considerations are worth considering as one domestic expert noted during

the UN review process, although to be respectful of the freedom of belief (MPLRAG, 2023).

Proposed Recommendations for Legal and Institutional Reform

To embody these principles, the following reforms are recommended:

First, Minimum marriage Age: Reform the MMDA to have a standard minimum age of 18 years of marriage between males and females without exception. This reform is based on Maslaha and Ijtihad: it safeguards hifz al-nafs (health) and hifz al-aql (intellect), so that hifz will be made sure that only adult men and women marry. Such a norm is the norm internationally (e.g. CRC-compliant laws) and was specifically anticipated by reform committees. Simultaneously, mandate that all marriage applications below the age of 18 years be reported to the state authorities to be reviewed which is in line with international standards of child protection.

Second, Consent and Integrity of Contract: Obligatory consent The bride must sign a written, informed consent to every marriage contract. This secures her as a complete contracting party. The law ought to specify that without the signature of the woman there can be no registration of marriage. Also, require every Muslim marriage (civil and religious) to be registered, as a result of which the marital relations and the children are documented in the law. These measures will guarantee contractual fairness, which is in accordance with the Islamic ethics (as mutual consent is imperative) and the Quranic objective of securing the personal dignity.

Third, Divorce Equality: Change the divorce laws to bring equality in the grounds and procedures between men and women. To take one example, insist on judicial oversight of talaq by a council (to protect against arbitrary repudiation), and ease evidentiary rules of fasakh, therefore that a wife can be granted divorce without being burdened with unduly burdensome evidence. These transformations refer to Tayseer: they become an eradicator of injustice through the provision of equal results. The right of women to divorce is found in the example of Islam jurisprudence several times (since the days of the Prophet and early classical fiqh). These reforms can be regarded in legislation as consistent with the principles of jurisprudence without violating any Shari'i borderline.

Fourth, Polygamy: The MMDA needs to be very strict in regulating, or even should be prohibited, polygamy. At least, the law of marriage should oblige Muslim man to seek the approval of the court before taking a second wife proving the capability to treat the first wife/wives fairly. This is reminiscent of models in Malaysia and Syria which require permission of a judge and (in some jurisdictions) first wife consent to polygyny. This type of protection is in accordance with the Shari'i restriction that polygamy is only permissible in cases where justice is possible. This makes such requirement statutory, which would help Sri Lanka to

curtail detrimental polygamous practice (which leaves women destitute) without crossing into Islamic territories.

Fifth, Kaikuli: Abolish all the provisions of kaikuli. This practice is not found in the shari'a, and is against the Maqasid of hifz al-mal (property). Its legislative elimination will alleviate family unfair financial liability. The causes to support the abolition can also be explained in FA as a means of repairing a non-Islamic relic in the interest of the citizens.

Sixth, Women Qadis: Within two months, make amendments to the MMDA to permit and encourage women to become and be appointed Quazi judges and marriage registrars. This takes advantage of the FA principle of Ikhtilaf: numerous Muslim scholars have outsourced or even approved female judges. Having women in the judicial system will help to bring balance and accessibility to the system. It is ironical and unfair that the law now demands the judges to be Muslim men of good position. The elimination of this gender limitation is quite in line with the Islamic ideals of adl.

Seventh, Quazi Training and Oversight: This is to be achieved through mandatory professional training and legal qualifications of all the Quazis. Establish an oversight institution to check Quazi courts, in order to be consistent, transparent, and accountable. These institutional reforms are informed by Maslaha: they reinforce the administration of the Islamic law in the service of the public trust.

Eighth, Gender Sensitization in Courts: Have women appointed as legal officers/counselors in the Quazi court system. They would extend procedural support to the litigating Muslim women to ensure that the gender-discriminatory practices would be detected and eliminated. This is a practical move, which will be led by Maslaha and will enhance the experiences of women in the courts and create trust in justice.

Ninth, Fiqh al-Muwatana (Citizenship): Incorporation of Fiqh al-Muwatana into the public policy. The government ought to state that MMDA reforms would not contradict the equality provisions of the Sri Lankan Constitution. The policy statements and educational programs must confirm that it is the responsibility of Muslims to make sure that they are not regarded as lesser citizens. Framing of this kind assists in reconciling Islam and citizenship, demonstrating that equal treatment under the law is totally ethically fulfilling to Islam (not to the contrary).

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Conclusion

Reformation of the Muslim marriage and divorce act in Sri Lanka is not just a political or secular matter but also a jurisprudence dictum necessitated by the ethical codes of Islam. Reformers can use the *Fiqh al-Aqalliyyat* to provide a unified methodology and theology to turn the MMDA into a modern and rights-based law (now institutionalizing injustice). With the higher goals of the *Shari'ah* (*Adl*, *Maslaha, Tayseer*) in mind, it is obvious that the amendments (mentioning the 18 years old marriage age and equal access to divorce) are pious acts, rather than betrayals of the religion. These modifications serve the Godly goal of the law by safeguarding life, intellect and dignity. Contextual Ijtihad, in a way, makes the Sri Lanka Muslim family law reconcile with the teachings in The Islamic faith and the equality of citizenship. Through such beliefs, the Sri Lankan Muslim community will be able to show that religion and modernity do not conflict but rather are resolved in the Shari'ah strong belief in universal good and justice.

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