MINISTRY OF JUSTICE & PRISON REFORMS

&

MINISTRY OF POSTAL SERVICES AND MUSLIM RELIGIOUS AFFAIRS

JOINT CABINET MEMORANDUM

Amendments to the Muslim Marriage and Divorce Act

Background

The Muslim Marriage and Divorce Act and its amendments govern the registration of marriages and divorces of Muslims in Sri Lanka. There were some concerns in the Muslim community as well as among human rights activists that certain conditions presently existing are outdated and need to be amended.

Proposal

02. Accordingly, after discussions with all relevant parties, Muslim Parliamentarians have proposed to amend the Muslim Marriage and Divorce Act to introduce changes to areas such as Age of Marriage, Registration Procedures, Appointment of Quazis, Consent of Marriage etc. A note on the proposed amendments to the Muslim Marriage and Divorce Act is attached hereto as Annex I. A note on the additional proposals are attached hereto as Annex II.

Approval

03. In view of the above, the approval of the Cabinet of Ministers is sought -

(a) to direct the Legal Draftsman to draft legislation to amend the Muslim Marriage and Divorce Act in line with the concept note attached hereto as Annex I.
(b). to forward the contents of this Cabinet Memorandum including Annexures I and II to the Hon. Chief Justice and the Judicial Service Commission for their consideration.

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Ministry of Justice and Prison Reforms
Colombo - 12

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Amendments to the Muslim Marriage and Divorce Act

1. Age of Marriage:
   a. Provide for 18 years for both men and women without a difference.
   b. Exceptions are provided for 16 – 18 years with the approval of the Qazi.
   c. It shall be an offence if a marriage is solemnized without the permission of the Qazi or below 16 years.
   d. Penal Procedure - How who should initiate penal procedure has to be deliberated
   e. Punishment – 1-2 years imprisonment and Rs.100,000

2. Registration –:
   a. Registration and Nikah are mandatory to be taken place at the same time
   b. Failure to register : Non registration shall be a punishable offence
   c. Status of children: Children born out of unregistered marriages should be considered legitimate and all their rights must be ensured by law

3. Sects / Mazhabs. Provide to keep the sect intact as per section 16, subject to introducing new provisions as follows:
   a. Every Sri Lankan Muslim is presumed to be following Shafi Mazhab for the purposes of this Act, unless he/she declares to be otherwise. However, following any sect will subject to the provisions of this act
   b. Parties to a Muslim marriage belong to two different sects, can mutually agree to be governed by a particular sect in the declarations made by them prior to marriage
   c. One or both parties to a Muslim marriage do not belong to any sect, or where the parties to the marriage belong to two different sects but they have not mutually agreed to abide by any sect, in the declaration made by them prior to the marriage, all the matters relating to the said marriage, shall be governed by Muslim Law within the limits of four Mazhabs namely Shafi, Hanafi, Hanbali and Maliki
   d. Where in any situation falling within the provisions of the preceding subsections of this section, any question of difficulty arises in regard to the validity or otherwise of a marriage or the status, rights and obligations of the parties to the marriage in any
proceedings in the Quazi Court or any other court that is required to make a
decision or order, such court may consult the Muslim Marriage and Divorce
Advisory Board by a reference addressed to the said Board. In making its
determination, the said Board may consider the applicable principles of Muslim law
within the limits of the four Mazhabs namely Shafi, Hanafi, Hanbali and Maliki
and shall set out in its determination in clear detail the applicable principles with all
necessary explanations.

4. Role of male Wali – Role of male Wali will remain as it is, subject to the inclusion of
the consent of the bride

5. Consent / Signature of the Bride
   a. Provide for the consent of the bride to be mandatory to validate the marriage in
      addition to the consent of the Wali

   b. Accordingly provide for the bride to place her signature or thumb print in the
      marriage register in addition to the signature of the Wali.

6. Polygamy with conditions:

   Provide for the Polygamy to be restricted as follows:
   a. A Muslim woman should be empowered at the time of registration to enter into a
      prenuptial contract stating that she is entitled to Fasakh divorce if he contracts
      another marriage without her consent while being married to her
   b. If wife doesn’t give consent, wife has the right to apply for Fasakh divorce
   c. For a subsequent marriage to solemnized, it is mandatory to obtain the permission
      of the Qazi
   d. Polygamy without Quazi’s approval and without fulfilling the conditions laid down
      in 8-e cannot be solemnized and registered
   e. Subsequent marriage without the approval of the Qazi, shall be a punishable offence

   f. Approval of the Quazi shall be subject to the fulfillment of following conditions for
      subsequent marriage:
      i. Adequately looking after wives
      ii. Adequately looking after children
      iii. Adequately looking after future wife
      iv. Financial capacity to look after all
      v. Informing present wife/wives
7. Mataa / Compensation

a. Provide for payment of Mata’a (lump sum compensation) for Talaq, and Khula’a.

b. Provide for compensation (Consolatory payment) for Fasakh only if it is proved that the wife has been compelled by duress exerted upon her by her husband to seek a Fasakh divorce in order to evade the payment of Mataa.

8. Kaikuli / dowry and Mahar

a. Provide for recovery of kaikuli / dowry to be expanded to include movable and immovable properties.

b. The definition of “kaikuli” in section 97 to be amended to mean “any sum of money paid, or other movable or immovable property given or any sum of money or any property promised to be paid or given to a bridegroom for the use of the bride, prior to, at the time of, or even after entering into the contract of marriage, by a relative of the bride or by any other person.

c. Mahar is to be determined by the bride.

d. Provide for Mahar to be recovered subject to ruling of the sect.

9. Role of Women

a. Provide for adequate representation for males/ females in Muslim Marriage and Divorce Advisory Board and Board of Quazi’s.

b. Provide for a women to be Registrar of Muslim Marriage by removing the word “male”.

10. Maintenance and Custody of the children

a. Provide for the custody to be brought under the Qazi court if the Qazi courts are upgraded as proposed.

b. Set up a maintenance fund as proposed in the MMDA report.

11. All amendments agreed upon by consensus in the MMDA report:

a. Provide for all unanimously agreed upon other matters in the MMDA committee report submitted by Justice Saleem Marsoof that should come in the Act to be included in the Bill.

b. Provide for all unanimously agreed upon other matters in the above MMDA committee report that fall within the scope of regulations should be gazetted by the Minister of Justice along with the Amendment Bill.
Other Amendments

1. Qualification of Quazis and Upgrading of Quazi courts—

Provide to elevate the institution of Quazi to the status of a court, be recognized as an integral part of the Sri Lankan Judiciary and to enhance the status of a Quazi to that of a permanent and full-time Judicial Officer of such class and grade as may be determined by the Judicial Service Commission. The amending legislation to provide that persons to be appointed as Quazis, Temporary Quazis and Special Quazis, should be Attorneys-at-law having a sound knowledge of Muslim law. *(Subject to keep section 74 intact/Lawyers cannot appear at Quazi Courts in their professional capacity)*

2. Restructuring the Board of Quazis and making it more accessible to the Provinces

Provide to redesignate the Board of Quazis as the “Quazi Appellate Court”, and that its Chairman should be a full-time Judicial Officer of such class and grade as may be determined by the Judicial Service Commission with such qualifications and attainments that may be prescribed by the Judicial Service Commission. It is also recommended that the number of members of the Board (to be re-designated as the Quazi Appellate Court) be increased from the current 5 to 9 to facilitate more regular sittings in at least three outstation centres.

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