

Married Women Property Rights under Muslim Marriage and Divorce Act of Sri Lanka: A Critical Analysis

Shamila Dawood

Dept. of Commercial Law, University of Colombo, Sri Lanka

Email: shamila@law.cmb.ac.lk

Abstract: The Muslim Marriage and Divorce Act (MMDA) of Sri Lanka has faced criticism for its perceived inadequacy in safeguarding the property rights of women. Along this way, the practice of dowry/kaikuli can lead to financial hardships and contravene Islamic principles. Consequently, there is a growing call for amendments to the MMDA that promote gender equality and adhere to Islamic values, aimed at addressing concerns and refining the legal framework governing Muslim marriages and divorces. This study delves into the challenges experienced by Muslim women in Sri Lanka, with a specific focus on their financial and property rights concerning dowry, kaikuli, and mahr during marriages, as well as issues of alimony and maintenance in divorce proceedings, and the joint-owned matrimonial properties. The main objective is to investigate the legal frameworks and societal norms regulating these domains and assess their impact on women's rights within the ambit of the MMDA. Employing a combination of doctrinal analysis and a descriptive-analytical approach, this research endeavours to identify potential avenues for legal and social reform.

Keyword: Married; Women; Muslim; Divorce; Sri Lanka.

1. INTRODUCTION

Sri Lanka is a nation characterized by a rich diversity of ethnic, cultural, and religious groups. Within this multi-ethnic society, various laws govern private affairs such as marriage, property, and divorce. These laws, known as personal laws, are territorially based and apply differently to different groups within the country – namely Kandian law, Thesewalamai, and Muslim law. The Muslim law exclusively applies to the Muslim community in Sri Lanka and is considered a purely personal law. Muslim Law in Sri Lanka encompasses a comprehensive set of legal provisions specifically designed to regulate family-related matters within the Muslim community. The cornerstone of Muslim personal law in Sri Lanka is the Muslim Marriage and Divorce Act, No.13 of 1951, along with subsequent amendments. This legislation governs the procedures and regulations pertaining to marriage, divorce, and other related issues within the Muslim community. It provides a structured framework for the solemnization and dissolution of marriages, ensuring adherence to Islamic principles and customs. Issues concerning intestate succession and donations among Muslims are addressed under the Muslim Intestate Succession Ordinance No 10 of 1931, and any

subsequent amendments. This ordinance outlines the rules and procedures governing the distribution of property and assets in cases where a Muslim individual passes away without leaving a valid will. It aims to ensure equitable distribution among heirs in accordance with Islamic law. The Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956, regulates the establishment, administration, and management of mosques and charitable trusts within the Muslim community. This legislation provides guidelines for the proper functioning and governance of mosques and charitable institutions, ensuring compliance with legal and religious principles.

The Constitution of the Democratic Republic of Sri Lanka ensures the applicability of personal laws as well as the freedom of following one's religion and customs. For instance, Article 16(1) holds significance in this context. It stipulates that all written and unwritten laws existing before the 1978 Constitution remain valid and operative. Moreover, the Sri Lankan constitution acknowledges the freedom of thought, conscience, and religion, including the freedom to have or adopt a religion or belief of one's choice. It further asserts that all existing written and unwritten laws shall retain their validity and applicability.

Sri Lanka stands out as a prime example of a nation that celebrates multiculturalism and religious diversity, with its legal system reflecting this inclusive ethos by recognizing and valuing the rights of all individuals. However, certain facets of personal laws hinder women's rights, particularly in accessing and administering matrimonial properties, navigating divorce procedures, and achieving gender equality. This research endeavors to tackle these issues, specifically focusing on the property rights of married women under the Muslim Marriage and Divorce Act (MMDA), encompassing dowry, *kaikuli*, *mahr*, *mata'a*, and other matrimonial properties.

2. METHODOLOGY

The methodology employed in this study centers on the analysis of matrimonial properties concerning married women as governed by the MMDA. The examination of pertinent provisions within the Act is conducted with a primary focus on Sharia law principles. Additionally, concise discussions regarding other jurisdictions are included for a better understanding of the diverse perspective, especially in contexts where Muslim law is practiced within minority communities. Given the intricate multi-ethnic and religious landscape of Sri Lanka, only select aspects of Muslim law apply to Muslims as personal law. Consequently, any proposed reforms or modifications to the MMDA must strictly adhere to Sharia Law, rooted in the Quran and Sunnah. Thus, rather than presenting an extensive jurisdictional analysis of other legal systems, the study adequately addresses the comparison with Sharia Law.

3. MARRIAGE RELATED PROPERTIES

In Sri Lanka, Muslim marriages involve various financial arrangements that have legal and religious implications under Sharia law. Dower, commonly known as *mahr*, is a payment or gift from the groom to the bride at the time of marriage. It is an essential part of the marriage contract (*nikah*) and is considered a fundamental right of the wife in Islam. On the other hand, *kaikuli* refers to the dowry or gifts given by the bride's family to the groom or his family as a consideration for marriage. This

practice, influenced by external factors, has permeated Muslim culture. However, it contradicts Sharia law, as it may result in financial exploitation and undue pressure on either party involved. Additionally, this practice was unknown during the time of Prophet Muhammad (peace be upon him), thus constituting an innovation observed by Sri Lankan Muslims. Accordingly, *kaikuli* violates the principles of fairness and equity in marital contracts. In contrast, *mahr* reflects a cherished tradition that holds deep significance in the lives of Muslim couples, embodying the values of partnership, commitment, and mutual respect in marriage.

In Muslim marriages, the dissolution process raises critical concerns regarding property matters, notably *mata'a*, jointly owned properties, the recovery of *mahr*, and the handling of *kaikuli*/dowry. The existing mechanisms within the MMDA often fall short of addressing these complexities effectively, thus creating challenges for married women in asserting their rights. This highlights the need for reforms to ensure fairness and equity in property matters within Muslim marriages.

4. FORMATION OF MARRIAGE CONTRACT

In the formation of a marriage contract, alongside other prerequisites for validity, *kaikuli* and *mahr* frequently emerge as focal points of negotiation, serving as considerations for marriage. Extensive discourse surrounds the sum and valuation of property negotiated by the bride's family, overshadowing the significance of the *mahr* payment. This trend underscores a predominant mindset among men and their kin, perpetuating a hierarchical framework where the bride and her family are expected to conform to the dictates established by the groom's family, commonly known as "*mapilla veedu*". This hierarchical mindset can constrain the bride and her family's capacity to engage in discussions regarding the *mahr*. Moreover, given that many women often rely on their husbands and their earnings, they may be predisposed to accept terms with minimal negotiation. During the *nikah* ceremony, while the *mahr* is formally disclosed by the registrar, *kaikuli* or dowry typically go unrecorded. It is assumed that any immovable property bestowed in this context may be registered in the bride's name by

her parents. Upon receiving significant property value, the perceived ascendancy of married women over their husbands sometimes becomes apparent, as evidenced by remarks such as "We did not marry you for nothing; my parents gave generously." Concerns often arise that daughters should not wed without substantial assets, lest they be treated as mere servants by their husbands. Additionally, some women endorse the dowry system, benefiting from houses and properties gifted by their parents. This intricate dynamic underscores the complex interplay of religious and cultural norms, financial considerations, and power dynamics within the marital framework.

Mahar and Kaikuli (and Dowry): In Islamic tradition, the institution of marriage is governed by various legal and ethical principles, among which the concept of mahr holds significant importance. Mahr, the payment made by the groom to the bride, symbolizes care, commitment, and financial security within the marital relationship. This seeks to explore the Islamic perspective on mahr, its legal mandate, its ethical implications, and its distinction from the cultural practice of dowry. According to Shariah law, mahr is mandated as an essential component of Muslim marriage contracts. The Quran explicitly emphasizes the obligation of mahr, portraying it as a means for the husband to provide for his wife and ensure her financial stability, particularly in the event of divorce. Quranic verses such as "Give women 'you wed' their due dowries (mahr) graciously" underscore the importance of fulfilling this obligation with generosity and fairness. This concept embodies the principles of gender equity and fairness within marriage, as emphasized in Islamic teachings. Unlike dowry, which places financial burdens on the bride's family and may perpetuate inequalities, mahr signifies mutual consent and financial provision primarily on the husband.

While the Quran does not stipulate a specific amount for mahr, the sunnah guides by citing examples from the life of the Prophet Muhammad (peace be upon him). The mahr of the Prophet's daughter and wives, set at 400 dirhams of silver, serves as a reference point for Muslims. However, Islam cautions against extravagance or excessive demands in setting the mahr, as it may hinder the marriage process and contravene the principles of moderation and financial prudence. In contemporary Muslim societies, mahr practices

vary considerably, influenced by cultural norms and economic factors. Nonetheless, the overarching principles of fairness and financial stability remain paramount, facilitating flexibility in negotiation and agreement between spouses, thereby nurturing mutual respect and understanding within the marital bond.

Ibn Taymiyyah stresses the significance of moderation and simplicity in determining the mahr. He contends that it reflects ignorance and imprudence to demand an excessively high mahr, especially when considering that the daughter of Prophet Muhammad (peace be upon him) received modest amounts. This underscores the Islamic ruling which permits mahr demands but strongly discourages excess. Conversely, requesting dowry from the bride or her family, such as substantial sums of money, property, or material possessions, runs counter to Islamic principles. Such demands stem from cultural traditions unrelated to Islam and can indeed be considered sinful. The essence of marriage in Islam lies in mutual respect, compassion, and adherence to Islamic teachings, rather than materialistic expectations or cultural norms that deviate from the faith's core values.

According to Islamic law, a marriage is not considered valid without mahr. Therefore, mahr plays a significant role in determining the validity of marriage within the MMDA in Sri Lanka, which no one can dispute. However, when comparing mahr with kaikuli, it's evident that the mahr amounts are relatively low. For instance, if a husband gives Rs 300,000/=, he may demand substantial amount of gold jewellery or a portion of land or house in return in consideration of marriage. If kaikuli exceeds the mahr, the fundamental purpose set by Islam might not be fulfilled.

"Kaikuli" is a Tamil term originally signifying a small gesture of assistance or a gift from the bride's family aimed at facilitating the establishment of the newlywed couple's household. However, over time, this practice has evolved into a fully-fledged dowry system akin to those observed in other communities. Regrettably, the essence of kaikuli has transformed into a burdensome dowry practice. In the present context, distinguishing between kaikuli and dowry, locally termed "cheethanam," has become increasingly challenging. Some may prefer to use the term kaikuli rather than cheethanam due to its less

formal connotations, particularly as they perceive *kaikuli* as distinct from *cheethanam*, which is entirely prohibited in Islam. However, regardless of the terminology used, any properties acquired through demands made during the marriage, whether originating from the groom's family or parents and regardless of whether they are transferred to the bride's name, are considered dowry in the context of marriage arrangements.

The act of giving dowry often places immense financial strain on fathers, particularly if they have multiple daughters. In such cases, fathers may find themselves working tirelessly day and night to meet the demands of dowry expectations. Failing to provide the agreed-upon amount or property as dowry during marriage can lead to significant psychological distress and may even result in domestic violence. These issues frequently contribute to the breakdown of marriages and serve as a substance for divorces.

Despite the inherent contradictions with Islamic principles, the removal of provisions related to *kaikuli* from the Act may prove challenging due to its deeply rooted practice among Muslims in certain regions of Sri Lanka. Consequently, there might be insufficient evidence to reclaim movable and immovable property associated with marriage. This paradox undermines the intended purpose of Islam, as the concept of *mahr*, a recognized Islamic dowry, is overshadowed by the prevalent practice of *kaikuli*. In practice, women often receive a lower value in *mahr* while being expected to contribute significant monetary or property sums to the groom. Thus, there is a pressing need for legal provisions that prioritize the recovery of *kaikuli* over *mahr*. The MMDA assigns equal importance to provisions regarding these concepts despite their inconsistency with Islamic law, necessitating a nuanced understanding of these legal complexities to align statutory provisions with the fundamental principles of Islamic law. Section 25 of the MMDA, concerning the criteria for a valid marriage, notably omits explicit mention of *mahr*, a significant oversight considering Islam considers *mahr* a prerequisite condition for marriage.

Provisions related to Mahr and Kaikuli in MMDA: Part 5 of the MMDA specifically addresses the issues of *mahr* and *kaikuli*. Sections 37-39 of the MMDA outline the procedures for recovery. Under Section 47(1), Quazis hold general powers regarding inquiries and adjudications

concerning several claims, including those for the recovery of claims by a wife, a legitimate child, and maintenance claims by a child, mother, or any person on behalf of a child. These claims encompass matters such as *mahr*, maintenance claims, claims for increases or reductions in the amount of *mahr*, claims for *kaikuli*, and claims for lying-in expenses.

Section 37 allows the representative of women to claim *mahr* or *kaikuli*, while Section 38 deals with the disposal of money received by the Quazi in claims where a party is represented under Section 37. Section 39 provides a timeframe for the prescription or limitation of an action for the *mahr*. Section 47(1) covers the general power vested with the Quazi, which generally deals with claims for the recovery of such. In addition to the aforementioned provisions, the interpretation section further defines the term *kaikuli*. Accordingly, section 97 provides that,

“any sum of money paid, other movable property given, or any sum of money or any movable property promised to be paid or given to a bridegroom for the use of the bride, before or at the time of marriage by a relative of the bride or by any other person”

This definition encompasses monetary payments or movable property. In practice, immovable properties such as houses, land, or buildings are often provided to the bridegroom as consideration for marriage, although this arrangement is typically informal and not recorded or falls under the definition of *kaikuli*. Therefore, immovable properties may be considered as dowry or “*cheethanam*” for which the Act does not provide a provision. Notably, while the Act defines *kaikuli* comprehensively, it does not provide a specific definition for *mahr*, indicating a lesser emphasis compared to *kaikuli*. The Justice Marsoof Committee Report introduces a comprehensive explanation clause for *mahr*, defining it as “a mandatory gift that may take the form of money, movable or immovable property, or any other valuable item given or promised to be given by or on behalf of the bridegroom to the bride as a token of respect to her at the time of marriage, thereby deeming it her property.” This definition serves the purpose. Further, the Committee strongly advocates the inclusion of provisions in the Act that explicitly prohibit the giving or taking of any dowry, as outlined in Section 97 of the Act.

Additionally, the Committee underscores the necessity to exclude *kaikuli* from the definition of dowry, acknowledging the prevalent confusion and complication within Muslim communities where *kaikuli* is often misconstrued as a form of dowry. Consequently, despite its inconsistency with Islamic principles, there is a contention for the necessity of establishing provisions related to *kaikuli* due to its widespread prevalence in society. Thus, the Committee proposes a comprehensive definition of *kaikuli*, which includes;

“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 any other person. [Emphasis added]”

The Committee asserts that broadening the scope and interpretation of *kaikuli* would be advantageous for the bride. However, it's important to note that the notion of the "use of the bride" could potentially be interpreted as a precondition for marriage, which is not aligned with Islamic principles. Despite being referred to as *kaikuli*, such transactions essentially constitute dowry in general terms. Therefore, present research argues that any sort of assertion that any demand for properties by the bridegroom in consideration of marriage is strictly prohibited and undermines the very essence of *mahr*. As a result, if the MMDA reforms prioritize adherence to Sharia law, the prohibition of *kaikuli* may be justified.

Islamic principles recognize the right of married or unmarried women to own properties in their own names. Islam places significant emphasis on men/husbands being the primary breadwinners and bearing the foremost responsibilities towards their wives. While gender equality is emphasized across various contexts within the MMDA, Islam holds women in high esteem concerning property-related matters, particularly in terms of the right to receive *mahr*. In cases where the groom possesses substantial financial means, he may have the capacity to provide valuable properties as *mahr*, which is widely acknowledged as a form of financial security for women. However, a concerning issue arises when husbands who do not contribute financially use their wives' properties and subsequently divorce them, leaving them

vulnerable and unsupported. This presents a pressing societal concern that needs to be addressed.

5. DISSOLUTION OF MARRIAGE AND PROPERTY-RELATED RIGHTS

First and foremost, divorce is highly discouraged in Islam. Allah says in the holy Quran, “Those who take an oath not to have sexual relations with their wives must wait for four months, then if they return (change their idea in this period), verily, Allah is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then Allah is All-Hearer, All-Knower.” [Al-Baqarah 2:226-227]. Prophet Muhammed (peace be upon him) highlighted Allah's displeasure with divorce, saying: "Allah did not make anything lawful more abominable to Him than divorce." [Book 6, Number 2173]. These teachings underscore the importance of preserving marriages and avoiding divorce whenever possible.

In the event of a divorce, women are entitled to various forms of support and financial provisions from their husbands. Firstly, the woman has the right to claim any unpaid amount of the *mahr*, which is the predetermined amount agreed upon in the marriage contract and promised to the wife by the husband. Secondly, if the dowry or *kikuli* is given in consideration of marriage to her husband, she is entitled to recover it. Thirdly, the husband is typically obligated to provide financial support, known as maintenance, to his wife and any children resulting from the marriage. This support is intended to cover living expenses, housing, healthcare, education, and other essential needs. Finally, if the woman is unable to support herself financially, she may be entitled to receive *alimony*, also known as *mata'a*. *Alimony* is provided by the husband to the wife following the dissolution of the marriage to ensure she can maintain a standard of living comparable to what she had during the marriage. These provisions are designed to ensure that women are not left financially disadvantaged or without means of support following the termination of their marriage.

It is commonly understood that mahr, though a significant aspect of Islamic marriages, typically does not encompass high-value assets unless it includes items of substantial worth such as gold jewellery or other valuable possessions. Consequently, the pursuit of recovering mahr during the dissolution of marriage may not always be fervently contested, unless it involves such tangible assets. Traditionally, mahr is bestowed upon the bride at the onset of marriage, often comprising a monetary sum that the groom can readily provide, thus rendering it relatively modest in amount. It is pertinent to note that in many instances, the mahr property may be utilized and depleted over the course of the marital union. Nevertheless, the Act must incorporate provisions pertaining to mahr and the recourse for seeking unpaid mahr during divorce proceedings, because she is entitled to it. For instance, in an Indian case, *Mohammed Ahmed Khan v. Shah Bano Begum*, in 1978, the wife was expelled from her marital home and subsequently divorced by her husband. Seeking maintenance, she approached the court under Section 125 of the Criminal Procedure Code. The Supreme Court's judgment emphasized that dower (mahr) is a symbolic gesture of respect from the husband to the wife, and it may constitute an amount payable either at the time of marriage or upon its dissolution. The court affirmed that women in such circumstances are entitled to maintenance under Section 125. However, it's crucial to note that according to Islamic law, mahr is an absolute right of the wife, and the husband cannot recover it as it is considered prohibited and sinful. Quran condemns husbands who take back the mahr given to their wives, emphasizing the sanctity of the marriage covenant and fairness in dealings between spouses.

The provisions concerning the recovery of *kaikuli* are of fundamental importance due to the significant financial transactions involved. However, the existing provisions related to *kaikuli* in the relevant Act are deemed insufficient. Furthermore, while the marriage registration form includes a space to specify the value of *kaikuli*, it often remains unfilled. This omission raises concerns regarding the proper recording of *kaikuli* transactions, leading to challenges in recovering both movable and immovable properties associated with it. Despite *kaikuli* not being a familiar concept within Islamic jurisprudence, its prevalence underscores the necessity for meticulous legal

frameworks to address its complexities. Critics argue that the lack of robust regulation regarding *kaikuli* poses obstacles to property recovery in the event of marriage dissolution. To align with Sharia law principles, it is imperative to discourage the transfer of properties through *kaikuli*, considering its prohibition. Instead, emphasis should be placed on concepts such as mahr, maintenance, and *mata'a*, as these provide more acceptable means of supporting women during and after the dissolution of marriage. By prioritizing these avenues, the Act can pursue reforms that resonate with the principles of justice and equity embedded in Sharia law.

Maintenance is a fundamental aspect of Islam, rooted in the Quranic principle that governs marriage. Islam prohibits certain marriages if a man cannot adequately provide for his wife and children. Maintenance encompasses essential provisions such as food, clothing, shelter, and other necessities required for a dignified human existence. According to Quranic verses men are designated as the maintainers of women, as they are entrusted with the responsibility to excel in providing for their families. It emphasizes that men are to spend out of their property for the welfare of their families. The Quran also highlights the importance of obedience and guardianship among women in maintaining the family structure and upholding Islamic values. Payment of maintenance also depends on the type of divorce as well as the financial terms of a wife.

The concept of financial contributions or assets provided to the bride during the termination of marriage, commonly known as *mata'a*, is a significant facet of Islamic matrimonial practices. Both mahr and *mata'a* constitute financial obligations and contributions that are not only permissible but also duly recognized in Islamic marital frameworks. These financial provisions are inherently linked to women, encompassing both the establishment of the marriage contract and its subsequent dissolution. In light of the aforementioned, it is imperative to consider the amendment of existing legal provisions, ensuring their alignment with Islamic principles. This necessitates a nuanced examination of Sharia law, with due diligence given to the insights provided in previous Committee reports and proposed amendments. According to Indonesia's Law No. 1 of 1974 Article 41 (c) provides that, "the court can require the former husband to pay alimony and/or

fix a certain obligation on the former wife's part. Thus, although the alimony provision in the law does not specify any criteria for determining the duration or the amount of alimony payments, it still opens the way for Islamic courts to require husbands to pay alimony.

The proposed amendments outline specific criteria for determining *mata'a*. Accordingly, when issuing an order concerning *mata'a*, various relevant factors will be taken into consideration, such as;

- i. The means of the husband including his monthly income
- ii. The social and economic standing and educational attainments of the husband and wife;
- iii. The age of the husband and that of the wife;
- iv. The duration of the marriage;
- v. The number of children falling within the custody and care of the husband and/or the wife

The proposed amendment defines the term *mata'a* as “means a consolatory payment determined by court in the absence of any express agreement between the parties payable to a wife who is divorced by the husband under section 27 of this Act or under 28(1) of this Act upon proof of the matrimonial fault of the husband”

6. MATRIMONIAL PROPERTY AFTER DIVORCE – PRE-NUPTIAL & POST-NUPTIAL AGREEMENTS

In the modern marital contract, pre-nuptial and post-nuptial agreements are essentially important. These agreements are made between spouses before and after marriage respectively. As per Cherlin, a prenuptial agreement is a contract made by a couple before their wedding ceremony, while a postnuptial agreement is made after they are married. Both types of agreements establish the financial entitlements of each spouse, covering aspects such as property division, alimony, inheritance rights, and the legal procedures to follow in case of divorce. Accordingly, these

agreements may cover various aspects, including property division, financial support, business ownership, insurance, employment benefits, matrimonial home, shares, and inheritance rights. These agreements provide couples with clarity and control over their financial futures, and they can help prevent disputes and streamline the divorce process if the marriage ends. Meanwhile, however, within the framework of Islam, specific mandatory financial requirements, such as *mahr* (dower) and maintenance in case of divorce, are emphasized, ensuring the protection of women's rights. Additionally, Islam recognizes and upholds property rights for women, allowing them the entitlement to inherit and hold properties under their names. Should prenuptial or postnuptial agreements be permitted, meticulous drafting is imperative to ensure compliance with these mandatory Islamic financial provisions and to safeguard the interests of both spouses.

These types of agreements are not enforceable in Sri Lanka, including under the MMDA, representing a significant gap in the contemporary legal framework. Nevertheless, they would ease the process of property division when a marriage dissolves. In modern times, with women increasingly participating in the workforce on par with men, couples often jointly acquire assets during their marriage.

Drawing upon the example of the Singapore Muslim Marriage Rules, which address such concerns, it is evident that the inclusion of mechanisms like an "agreed matrimonial property plan" holds substantial merit. This plan, endorsed by both spouses, outlines their mutual agreement regarding the division of assets, particularly in the context of Housing and Development Board (HDB) matrimonial assets. In Indonesia – properties acquired during the marriage are considered joint property of the husband and wife. For instance, under Indonesian Marriage Law (Arts. 35-36), wealth that is brought to the marriage or which is inherited or received as a gift constitutes individual wealth, which the individual may dispose of as he wishes; wealth gained during the marriage, however, constitutes joint wealth, which cannot be acted upon without the agreement of the spouses. Further authors argue that this rule makes the spouses equal and is somewhat disadvantageous to creditors because they must always get both spouses to commit themselves on

matters involving joint property. Also, it is possible that creditors could be deceived regarding whether -an asset is joint or not.

It is important to highlight that pre/post-nuptial agreements should only cover jointly owned properties. Alkhateeb advocates that, typically, prenuptial agreements are overseen by legal counsel, necessitate full and transparent disclosure of earnings and property and aim to resolve all financial matters between a couple in the event of divorce or death. Conversely, when Islamic marriage contracts are regarded as straightforward enforceable contracts, the mahr stipulation is seen as an addition to other legal obligations between spouses, encompassing the wife's entitlement to inheritance, community property, and alimony. Several countries recognized prenuptial agreements such as Australia, Brazil, Canada, China, Finland, and France. While prenuptial agreements can help delineate property rights, their acceptance and recognition under Islamic principles need to be further analyzed in accordance with Sharia law.

7. CONCLUSION

In the realm of Islamic jurisprudence, the concept of financial rights intricately weaves through the stages of marriage contract formation, dissolution, and management of jointly owned matrimonial assets. At the heart of this framework lies the institution of mahr, representing a nuanced fusion of legal obligation, ethical standards, and pragmatic considerations. It stands as a profound testament to the principles of commitment, mutual consent, and financial security inherent in Islamic

unions. Embodying values of equity, moderation, and mutual respect, mahr encapsulates the essence of Islamic marital relationships, echoing the timeless relevance of Islamic teachings in contemporary society. Its mandatory practice underscores Islam's commitment to elevating the status of women, ensuring their financial security within the marital bond.

However, the disconnect between the ideal and reality often blurs this noble purpose. Despite meticulous adherence to Sunna in determining mahr amounts, there exists a disconcerting trend where some demand exorbitant dowries, known as *kiakuli*, contradicting Islamic principles. This incongruity highlights a significant departure from the intended essence of mahr, compromising its role as a safeguard for women's rights. The transformation of *kiakuli* into a dowry system brings forth numerous challenges, including financial strains, psychological distress, and the perpetuation of unhealthy marital dynamics, leading to domestic discord and divorces.

To navigate these complexities, contemporary approaches such as agreed matrimonial property plans or pre/postnuptial agreements may offer viable solutions, provided they align with Islamic principles. Nevertheless, such measures necessitate careful scrutiny for conformity and validity within Islamic jurisprudence, urging further research and exploration. Additionally, revisions to relevant provisions of the Muslim Marriage and Divorce Act are imperative to better reflect Islamic values and teachings, ensuring the preservation of property rights and equitable treatment within marital unions.

REFERENCES

- [1] Section 2 provides that, "It is hereby declared that the law applicable to the intestacy of any deceased Muslim who at the time of his death was domiciled in Sri Lanka or was the owner of any immovable property in Sri Lanka shall be the Muslim law governing the sect to which such deceased Muslim belonged."
- [2] Chapter III of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.
- [3] In the Qur'an, the concept of mahr (dower) in Islam is elucidated through four distinct terms: *ajr* (reward), *ṣadaqa* (marriage gift), *farīda* (legal obligation), and *niḥla* (graciously). Essentially, the mahr represents an obligatory bridal gift or reward presented by the bridegroom to the bride with kindness, exclusively within the context of marriage (see Q. 4:4, 24, 25; 5:5, 33:50; 60:11). Although the term "mahr" itself is not explicitly mentioned in the Qur'an, it is equated with the aforementioned Qur'anic words to underscore its significance in Islamic matrimonial practices. See, Tirkey, Sunil. A critical analysis of dower (mahr) in theory and practice in British India through court records from 1800 to 1939. 2020. American University in Cairo, Master's thesis. AUC Knowledge Fountain. <https://fount.aucegypt.edu/etds/1490>.
- [4] Abu Dawood (2125) and al-Nasaa'i (3375) narrated from Ibn 'Abbaas that 'Ali said: "I married Faatimah (may Allaah be pleased with her) and said: 'O Messenger of Allah, let me go ahead with the marriage.' He said: 'Give

- her something.' I said: 'I do not have anything.' He said: 'Where is your Hutami shield?' I said, 'I have it with me.' He said, 'Give it to her.'" (Classed as saheeh by al-Albaani in Saheeh al-Nasaa'i, 3160.)
- [5] The Justice Saleem Marsoof Committee Report of 2018 serves as a valuable resource containing summaries of previous committees and detailed suggestions for reforms related to the Muslim Marriage and Divorce Act. This comprehensive report meticulously addresses legal and Sharia law perspectives, providing a thorough examination of the proposed reforms based on the insights gathered from previous committees.
- [6] Mohd. Ahmed Khan vs Shah Bano Begum And Ors on 23 April, 1985; Arab Ahemadhia Abdulla And Etc. vs Arab Bail Mohmuna Saiyadbhai And Ors. ... on 18 February, 1988.
- [7] Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded." (4:34)
- [8] Katz, June S., and Ronald S. Katz. "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems." *The American Journal of Comparative Law*, vol. 23, no. 4, 1975, pp. 653–81. JSTOR, <https://doi.org/10.2307/839240>. Accessed 22 Mar. 2024.
- [9] A copy of the Report is available at, <https://www.moj.gov.lk/images/2023/muslim-arriage&Devorce.pdf>
- [10] Cherlin, Andrew J. (2009). *The Marriage Go-Round: The State of Marriage and the Family in America Today*, New York: Knopf. Cited in Maha Alkhateeb, *A Resource Guide for Legal Professionals, Advocates, Imams & Communities, Islamic Marriage Contracts*, 2012.
- [11] Administrative Muslim Law Act (Chapter 3, Section 145) Muslim Marriage and Divorce Rules [2001 Edi. CAP 3] section 2 which provides, "agreed matrimonial property plan" means a plan, signed by both parties to a marriage, setting out the parties' agreement as to the way in which an HDB matrimonial asset is to be divided.

Received on 29-08-2024

Accepted on 15-09-2024

Published on 25-09-2024

© 2024; Shamila Dawood; Licensee ATSK Publishers.

This is an open access article licensed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>) which permits unrestricted, noncommercial use, distribution and reproduction in any medium, provided the work is properly cited.