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THE CONSENT OF THE BRIDE UNDER MUSLIM PERSONAL LAW IN SRI LANKA: A STAKEHOLDER-BASED REASSESSMENT THROUGH *MAQĀSID AL-SHARĪ'AH*

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Abstract

According to the Islamic law, the consent of the bride is generally crucial and it has significant importance. Under the Hanafi school of law, such consent is a fundamental requirement to the validity of marriage rooted in the principles of dignity, justice, and personal autonomy. The Muslim Marriage and Divorce Act (MMDA) 1951 in Sri Lanka however, although formally acknowledging consent, does not mandate explicit or verifiable procedures such as the bride's direct verbal affirmation or signature. This omission has generated persistent concerns regarding coerced marriages and the erosion of women's agency. This article examines the consent of the bride as stipulated by the MMDA through a *Maqāsid al-Sharī'ah*-based reassessment informed by stakeholder perspectives. Adopting a qualitative socio-legal methodology, the study combines doctrinal analysis of Islamic legal sources, statutory provisions, judicial decisions, and international human rights instruments with empirical data from semi-structured interviews with 10 participants from various backgrounds. The findings reveal a broader consensus among the stakeholders that existing legal framework and its practices inadequately protect women's autonomy and fail to ensure genuine consent. Drawing on the objectives of *Sharī'ah*, this article argues that the requirement of explicit consent and documented proof are both Islamically justified and legally necessary. The experience of other Muslim family law jurisdictions support adopting a *supra-madhab* approach to reform, aligning the Sri Lankan Muslim family law with contemporary human rights standards, while remaining faithful to *Sharī'ah* law and its objectives.

Keywords: Consent, Bride, *Wali*, Gender Justice, *Maqasid al-Shari'ah*, Sri Lanka, MMDA

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Introduction

Marriage is a contract between a man and a woman to form a harmonious family based on the mutual willingness and love and thereby making the relationship legally binding as per the norms of *Sharī'ah* and fostering a bond of mutual dependence, support and fulfillment in the domestic life (Sallom, 2022). In this context, consent of the bride (*riḍā al-mar'ah*) constitutes a crucial element of a blessed marriage in the Islamic law grounded in the Quran, Prophetic Sunnah, and classical juristic discourse (Muhammad & Bibi, 2012). It reflects core Islamic values of human dignity (*karāmah*), justice (*'adl*) and personal autonomy, particularly in matters that profoundly influence the life, body and social status of a woman (Abdul-Rauf, 2000). While Islamic jurisprudence historically developed nuanced doctrines regarding guardianship (*wilāyah*) and consent, there is broad agreement that a marriage contracted against the consent of the woman is incompatible with the spirit of *Sharī'ah* (Mansoor, 2024).

The Muslim Marriage and Divorce Act (MMDA) No. 13 of 1951, together with its subsequent amendments, constitutes the cornerstone of the Muslim Family Law in Sri Lanka governing marriage, divorce and other related matters of the Muslim community, primarily in line with *Shāfi'ī* jurisprudence and local customs (Dawood, 2024). Even though the MMDA formally acknowledges the need of consent, legal provisions that allow the *walī* to contract the marriage on behalf of the bride and the absence of a mandatory requirement of the bride's signature have raised serious concerns regarding forced marriages and erosion of women's agency (Human Rights Commission of Sri Lanka, 2025). These problems have turned into one of the continuous legal reform debates and national discussion in Sri Lanka.

Thus, this article seeks to address the gap where limited attention has been paid to how consent is understood, implemented, and contested by key stakeholders by examining their perspectives on the consent of the bride within the scope of MMDA in Sri Lanka through a *Maqāṣid al-Sharī'ah*-based reassessment. By employing such framework, the study critically assesses whether existing legal norms and institutional practices meaningfully uphold the ethical purposes underlying consent.

Conceptual Framework of the Study

The core conceptual framework underpinning this study is *Maqāṣid al-Sharī'ah*, which refers to the higher objectives and purposes of Islamic law and it is employed as a dynamic philosophical tool (Ramadhania, 2025) to evaluate the MMDA in Sri Lanka and guide its reform towards greater gender justice.

The term *Maqāṣid al-Sharī'ah* in its technical sense refers to the ends, purposes, and goals that the *Sharī'ah* seeks to realise through its teachings and rulings (Rifai, 2021). *Maqāṣid al-Sharī'ah* is rooted in the idea that the ultimate intention behind all Islamic legal rulings is the realization of human welfare (*maṣlahah*) and the prevention of harm (*mafsadah*) in this world and the hereafter (Auda, 2011). Accordingly, the conceptual framework integrates the essential values (*al-kulliyāt al-khams*) which are religion, life/soul, intellect, lineage, and wealth (Saiman & Mahadzir, 2024a) with necessary extensions relevant to gender justice, aligning the bride's consent with the purpose of creating a harmonious, affectionate, calm, fair, and compassionate family environment (Hamid, 2021).

Preservation of Religion (*Hifẓ al-Dīn*) includes safeguarding the ability of both men and women to practice their faith without coercion or discrimination (Afridi, 2016). Protecting human life (*Hifẓ al-Nafs*) encompasses both physical and psychological well-being. Women's right to life extends beyond protection from physical harm to include safeguarding against domestic violence, neglect, emotional abuse (Dalimunthe, 2024) and discriminatory practices that endanger their health and safety (Dalimunthe, 2024). The Preservation of Intellect (*Hifẓ al-'Aql*) emphasizes protecting mental faculties, promoting education, and ensuring sound judgment (*rushd*) (Ahmed, 2023). The Preservation of Progeny (*Hifẓ al-Nasl*) mandates rights and responsibilities of the spouses and the children and insures legitimacy of the lineage and family stability (*sakīnah*) (Karim & Muhsin, 2025). Consent allows the spouses and their guardians to ensure compatibility (*kafā'ah*), which is one of the factors of achieving happiness and safeguarding women against failed marriages (Sallom, 2022). The Preservation of Property (*Hifẓ al-Māl*) is applicable in the financial well-being and the security of the individuals concerned. Consent to a certain extent, confirms the legality of the marriage, which, in turn, secures the bride's right to the dower (*mahr*) and future financial support (*nafaqah*) (Engelcke et al., 2025).

The contemporary application of *Maqāṣid al-Sharī'ah* takes into consideration broader ethical goals and transforms traditional legal concepts in accordance with the human welfare (Niazi, 2016). The pursuit of justice (*al-'adl*) is a paramount objective informing the necessity of consent of bride in marriage (Maryam, 2024). The requirement of free and full consent supports the protection of women's legal and human rights (Saeed, 2018). The requirement for the bride's consent is intrinsically linked to the preservation of her individual rights and dignity (*karāmah*), particularly against coercion. Islam grants women the right to exercise choice in matters affecting their lives, including marriage (Elatrash et al., 2023).

The *Maqāṣid* framework also supports dynamic legal interpretation (*ijtihād*) to transcend literalist interpretations as the core religious texts remain fixed, the realities faced by Muslim societies continue to evolve according to the principle of 'the change of rulings with the change of places and times' (*tagayyuru al-ahkām bi tagayyuri al-amkinah wa al-azminah*), and therefore legal rulings must adapt to ensure the continued realization of welfare (*maslahah*) and the prevention of harm (*mafsadah*) specifically in non-definitive scriptural texts (*zammī* provisions) (Rachmadhani et al., 2024; Suryana et al., 2025). Likewise, contextual analysis includes some legal maxims and principles such as 'repelling harm (*mafsadah*) takes precedence over procuring benefits (*maṣlahah*)' (*dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*) (Hasyim, 2015; Falatehan et al., 2023) Similarly, the principle of blocking the means to harm (*sadd al-dharī'ah*) operates as a preventive mechanism in Islamic law, whereby an act that is originally permissible may be restricted if it is strongly likely to lead to harm (*mafsadah*) or a prohibited outcome such as physical danger, family breakdown, and lack of justice (Rachmadhani et al., 2024).

The supra-*madhhab* ideology developed by Muhammad 'Abduh and Rashīd Riḍā argues that inflexible adherence to the stringent *madhhab* system is polarizing and advocates the use of a comprehensive Muslim legal code that would incorporate the perspectives most conducive to the welfare (*maṣlahah*) of the particular Muslim community when there is no precise rule of *fiqh* available (Stilt et al., 2018). Given that the Sri Lankan MMDA primarily follows the restrictive *Shāfi'ī madhhab* (Fowzul, 2024), *Takhayyur* (Eclectic Choice) allows reformers to select more progressive views from other recognized *Sunni* schools (Zin, 2017).

In summary, this conceptual framework provides the necessary ethical and philosophical mandate to argue that reforming the MMDA is not merely a political necessity, but a religious obligation required to realize the ultimate objectives of *Sharī'ah* itself.

Research Methodology

This study adopts a qualitative socio-legal research design combining both doctrinal and non-doctrinal data with empirical inquiry to examine the consent of the bride under the MMDA of Sri Lanka. The doctrinal element, referred to as the black letter approach, examines the primary sources of law including the Holy Quran, Sunnah, the texts on *Maqāṣid al-Sharī'ah*, the Muslim Marriage and Divorce Act 1951 of Sri Lanka, the international legal instruments, relevant domestic statutes and judicial decisions. The non-doctrinal approach on the other entailed the accumulation and examination of secondary data in the form of scholarly literature, reports, policy papers which contextualize legal provisions in real-world scenarios.

The empirical component relies on semi-structured interviews of ten stakeholders that comprised of a religious scholar, two academics, a family counselor, a legal practitioner, a women rights advocate, a social activist, a policy maker and two *Maqāṣid* scholars. The selection of the participants was done through purposive sampling technique which involved individuals who have direct professional or experiential engagement with the subject matter. The data was collected from multiple regions to capture institutional and social diversity.

Crucially, the interpretation of Islamic sources employed a *Maqāṣid* oriented approach adopting the purposes and intentions of the *Sharī'ah* as a framework for analyzing legal issues and challenges (Hamid, 2021). This interpretive methodology enabled the study to support its arguments on ethical foundation of Islamic jurisprudence.

Results and Discussion

The legal, social and cultural implication of the issue of consent of bride is significant in the context of Sri Lanka where the MMDA is operating within the legal framework of the country particularly in the protection of rights and autonomy of women in marriage. This part critically analyzes the legal provisions, its interpretation, enforcement and challenges associated with the subject matter and how the law enhances or stifles gender justice.

Social and Legal Challenges of Consent

The Islamic concept of marriage is defined as *mīthāqan ghalīẓan* (solemn covenant) established to obey God's commands and carry them out in worship (Rohana, 2024). It is also characterized as a legal contract that makes a relationship between a man and a woman lawful and sets forth rights and obligations (Parsa & Rostami, 2018). It is undeniable that the Marriage requires free and full consent (*riḍā*) from both contracting parties (Riaz, 2013). It must be based on the willingness and love between the two parties (Bustan et al., 2025). The marriage contract requires the offer (*ījāb*) from the man and the acceptance (*qabūl*) or consent from the woman or her representative, which formally signifies the approval of both sides (Harahap, 2025).

Even though the MMDA recognizes marriages conducted with the involved parties' consent as specified in Section 25 (Dawood, 2024), it does not explicitly mandate the consent of the bride of *Shāfi'ī* sect for entering marriage, nor does it require her signature for marriage registration as the her *walī* (male guardian) provides his signature or thumbprints representing her consent (Tegal et al., 2018). Nevertheless, such a process does not always guarantee that a bride has been obtained with an authentic consent (Hussein, 2016). A legal practitioner raised concerns about lacking formal procedures ensuring bride's active marriage process involvement as he noted,

"The current system is silent on how to prove that a woman has truly consented. The absence of a signature or thumbprint leaves a gaping hole, making it far too easy for forced marriages to slip through the cracks." (Participant 5).

Similarly, another woman's rights advocate pointed out this deficiency within marriage solemnization conditions by emphasizing,

"Marriage is an agreement that takes place between two parties, the husband and wife, as they enter into a life together. To state that one party, the bride, has no place to sign the agreement is not just discrimination but a violation of human rights. This is because, under the current Sri Lanka's Muslim Family Law, the marriage contract is seen as being between two men, the bride's guardian (walī) and the groom. However, Islam does not specify this. The meaning of requiring the woman's consent is that, in modern practice, it implies her signature. This does not suggest that a guardian (walī) is not necessary, but rather that her preference should take precedence, which is the essence of the concept." (Participant 6).

The Qur'an and *Sunnah* prohibit forced marriage and coercion (*ikrāh*) (Hafidzi & Septiani, 2020). The Qur'an states, *"There shall be no compulsion in religion"* (Qur'an, 2:256), a principle that extends to all aspects of life, including marriage (Banoo & Ahmed, 2024). This emphasis on free will is integral to accountability, as one cannot be held responsible for choices made without freedom (Naguib, 2024). The Prophet Muhammad (PBUH) explicitly required the consultation and permission of the woman (Aljudai, 2018). He stated that:

"A previously married woman should not be married until her consent has been sought, and a virgin should not be married until her permission has been sought" They said: *"O Messenger of Allah, what is her permission?"* He said: *"If she remains silent."* (Bukhari, 6970).

In another instance, the Prophet annulled a marriage when a young girl complained that her father had married her to a man she did not love.

Narrated Al-Qasim: "A woman from the offspring of Ja'far was afraid lest her guardian marry her (to somebody) against her will. So, she sent for two elderly men from the Ansar, 'Abdur Rahman and Mujammi', the two sons of Jariya, and they said to her, "Don't be afraid, for Khansa' bint Khidam was given by her father in marriage against her will, then the Prophet (PBUH) cancelled that marriage." (Bukhari, 6969).

In another *ḥadīth*, it was narrated from ‘Aishah (RA):

“A girl came to her and said: ‘My father married me to his brother’s son so that he might raise his own status thereby, and I was unwilling.’ She said: ‘Sit here until the Prophet comes.’ Then the Messenger of Allah came, and I told him (what she had said). He sent word to her father, calling him, and he left the matter up to her. She said: ‘O Messenger of Allah, I accept what my father did, but I wanted to know whether women have any say in the matter.’” (Sunan an-Nasā’ī, 3269).

These *ḥadīth* texts explicitly clarify that Islam has never denied women their freedom of choice; instead, it maintains the doctrine that a woman’s consent is indispensable in matrimonial matters, thereby preventing an adult woman from being married by her father or any guardian absent her voluntary agreement (Asman, 2024).

Nevertheless, Islam acknowledges the inherent modesty of a virgin girl when her father seeks her matrimonial consent. Consequently, her silence or demure laughter in such circumstances is understood as indicating approval, as it demonstrates the traditional expression of modesty in these contexts. However, this provision applies exclusively to the father, excluding other guardians. On the other hand, when the father asks her and she cries, laughs mockingly or even remained quiet but her face expresses that she is angry or not comfortable with something e.g. blushing as a result of distress, this is taken to be a definite sign of refusal (Muhammad & Bibi, 2012).

There has been broad consensus among stakeholders for reform recommendations for mandatory explicit verbal consent and signature/thumbprint and this perspective directly tackles the legal gap by implementing progressive *Maqāṣid* principles within existing law. Because consent procedure requirements are not definitively articulated in textual sources (*nūsūs*) (Aljudai, 2018), the principle of *Maslahah Mursalah* applies (Ali, 2014). This principle maintains that when a regulation promotes collective wellbeing (*maslahah*) or averts widespread harm (*mafsadah*), it merits adoption, assuming no contradiction with core *Sharī‘ah* texts (Ali, 2014). A policy maker stated,

“Requiring formal consent procedures, such as a signature, would help protect women’s rights and prevent the abuse of power. It would align legal practices with contemporary understandings of autonomy and individual dignity.” (Participant 8).

Mandating explicit consent (verbal/signature) constitutes a transparent mechanism for preventing forced marriages (Aljudai, 2018). This transformation prioritizes the absolute rejection of harm (*dar’ al-mafsadah*) resulting from coercion over maintaining the non-explicit MMDA status quo. Moreover, employing explicit consent also harmonizes with spirit of *Sharī‘ah* and contemporary social norms because the *ḥadīth* treating silence of a virgin as her consent to marriage (Bukhari, 6970) was context-specific to cultures where silence signified agreement. As silence no longer reliably expresses consent today, it cannot be conclusively understood as a woman’s agreement to marriage. (Aljudai, 2018). A social activist engaged in women’s empowerment remarked,

“We need to change the law to make sure a woman’s voice is heard in the marriage process. Her autonomy and decision-making power should be fully respected, and this is what these reforms aim to achieve.” (Participant 7).

An academic observed that the MMDA creates opportunities for guardians to apply pressure, occasionally forcing women into unions as he remarked, “*The approval of the walī is supposed to protect the woman but, unfortunately, not too often, it is being used as a tool of coercion. The concept of the consent is distorted when it becomes a formality instead of genuine choice.*” (Participant 3).

This view aligns with the existing research findings that indicate certain male guardians exploit their authority to force women into marriage (Hamin & Issadeen, 2016; Saujan et al., 2024), revealing a substantial deficiency within the Act (Fowzul, 2021). Consequently, the autonomy of the bride is occasionally compromised and safeguarding of her consent is largely shaped by the integrity of guardians and social actors rather than guaranteed through legal procedure (Muslim Personal Law Reform Action Group, n.d.-a).

In *Yaseem v. Noor Naeema* (3 MMDLR 113) case, a father belonging to the *Shāfi‘ī* sect, like most Sri Lankan Muslims, functioning as his daughter’s *walī*, registered her marriage without her awareness or approval. The daughter filed for divorce claiming she had been uninformed of the registration and had not consented to the union. However, the court decided that she was not entitled to relief since the marriage was legitimate because the father possessed the authority to arrange his daughter’s marriage without her consent under *Shāfi‘ī* law (Marsoof, 2006; Nafees & Ahmad, 2020). Likewise, in the *Nabisa Umma et al. v Salih* (2 M.M.D.L.R. 188) case, the Board of *Quazis* held that child marriage between parties adhering to the *Shāfi‘ī* school remains binding even after the girl reaches puberty. Under *Shāfi‘ī* law, according to the Board of *Quazis*, she lacks the legal capacity to annul the marriage upon reaching maturity (Marsoof, 2018; Marsoof, n.d.) thus eliminating her ability to dissolve a union arranged during her minority.

Moreover, the absence of definite consent practices is a *dharī‘ah* (means) which brings the forbidden practice of forcible marriage (a *mafsadah*) (Rachmadhani et al., 2024). In this regard, signing and verbal confirmation is a potent *sadd al-dharī‘ah* (preventing the means to hurt) to make the marriage coercion-free.

Thus, the signature or thumbprint guarantees that persons are actively working and exercising their minds and sound judgment (*Hifz al-Aql*) and maturity when entering serious legal contracts. This procedure ensures brides are fully aware of their rights and responsibilities, promoting family institution welfare by seeking psychological and mentally mature partners (Mahmudi & Sa’diyah, 2018).

It is worth noting that the Sri Lankan *Dawoodi Bohra* community, a minority group within the *Shi‘a* tradition which is estimated to consist of approximately 2,500 individuals, mostly residing in Colombo, employs a distinctive marriage procedure incorporating a formal protocol to secure the consent of the bride, requiring her to personally sign, thereby providing a clear and documented indication of her approval (Jones et al., 2022; FGM/C Research Initiative, n.d.).

The described dilemma in terms of consent, male guardians (*walī*), and the absence of mandatory bride signature in the MMDA, presents a strong contradiction between the traditional

interpretation of *Sharī'ah* law and the ethical demands of *Maqāṣid al-Sharī'ah* in general. The interpretation of the MMDA marriage clauses, particularly relating to the consent and *walī*, utilizing the *Maqāṣid al-Sharī'ah* approach will therefore focus on the dilemma between adhering to traditional legal frameworks and the overall Shariah aim of safeguarding human welfare (*maslahah*) and avoiding harm (*mafsadah*) (Ali, 2014).

Lack of Formal Proof of Consent and the Preservation of Human Rights

The absence of formal proof of consent in the MMDA raises serious concerns for the protection and preservation of human rights in both local and international laws. The fundamental rights are guaranteed by the Chapter III of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka including the right to equality before the law (Article 12(1)) and protection from sex-based discrimination (Article 12(2)). Such guarantees under the constitution extend to all citizens (Government of Sri Lanka, 2022), establishing a structure to safeguard women's rights to voluntary consent in marriage.

In contrary, Article 16(1) of the Constitution states that: “*All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter*”. The provision effectively excludes MMDA which regulates the marriages of Muslims in Sri Lanka, from compliance with fundamental rights guaranteed to all citizens (Jones et al., 2022). Consequently, this signifies that should any written or unwritten laws, including the MMDA, breach or compromise an individual's fundamental rights, such breaches cannot be disputed or litigated in courts (Muslim Personal Law Reform Action Group, n.d.-c).

In (General) Marriage Registration Ordinance (GMRO) of Sri Lanka, Section 24 mandates marriage registration to confer legal recognition and protections for involved parties. Under this law, marital consent is documented through signature, with a designated space for the bride's signature (Nafees, 2014). However, the Sri Lankan legal system contains no explicit provisions addressing forced marriages (Balasooriya, 2019).

Although the GMRO appears equality-focused, it explicitly excludes Muslims marrying within their faith from its application by declaring “*(It is) an ordinance to consolidate and amend the law relating to Marriages other than the marriages of Muslims*”. Such marriages rather fall under the MMDA. Muslims seeking to marry non-Muslims, however, must register through the GMRO (Muslim Personal Law Reform Action Group, n.d.-b).

As a result, the co-existence of the Muslim family law alongside national legislation causes some complications as religious personal laws maintain considerable independence, and legal pluralism occasionally produces contradictory standards (Muslim Personal Law Reform Action Group, n.d.-d), particularly when it comes to the issue of consent, making efforts to align these laws for uniform protection of women's rights essential.

At the international level, the right to voluntary and complete consent in marriage is prescribed in various human rights documents. Article 16(2) of the universal declaration of human rights (UDHR) declares that that marriage shall occur exclusively with the voluntary and complete consent of prospective spouses (United Nations, 1948). Similarly, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly condemns forced marriage

and demands steps that would guarantee consent and autonomy of marriage decisions among women. Article 16 of CEDAW provides that

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.”

As a consequence, the national laws of Sri Lanka including the MMDA necessitates that domestic legislation must be amended to uphold and protect the right to voluntary consent due to its commitments under these conventions (The Global Campaign for Equality in Family Law et al., 2025). Thus, the conflict between preserving religious freedoms and satisfying international human rights requirements, particularly with regard to the consent, presents a considerable obstacle for Sri Lanka’s Muslim family law framework.

From the perspective of *Maqāṣid al-Sharī’ah*, the fundamental issue that the MMDA fails to mandate formal proof of Muslim women’s consent directly challenges the core objectives of marriage and the principle of justice in Islamic law. A *Maqāṣid* scholar pointed out, *“Consent is not a technicality. It is the essence of a legitimate marriage. If the bride’s will is ignored or coerced, the contract fails to meet the ethical and spiritual objectives of Sharī’ah.”* (Participant 9).

Within the scope of *Maqāṣid al-Sharī’ah*, matrimony is an act of worship (*ibādah*) and piety, and the consent guarantees the fulfillment of the divine purpose of preserving the faith (*Hifz al-Dīn*) (Fatimah, 2022). In Quran 4:21, marriage is described as solemn covenant (*mīthāqan ghalīẓan*) (Ullah et al., 2021; Rohana, 2024). This sanctity cannot be accomplished through a contract without willingness or resulting in injustice (Riaz, 2013). Marriage also upholds preserving religion by providing a lawful outlet for human nature and preventing immoral acts like adultery (Al-Sheha, 2007). The consent ensures that the union is founded on the desire to submit to God (Hafidzi & Septiani, 2020). The consensual character of marriage demands the active and free will of both prospective spouses (Aljudai, 2018). An academic stated that:

“Sharī’ah requires clear ijāb and qubūl from both parties. When the bride is unable to express her approval at will, the marriage fails to comply with the Islamic ethical standards in full though it is recognized as legal” (Participant 2).

Similarly, an Islamic scholar emphasized,

“Marriage, in Islam, is a contract that binds the parties through consent. Forcing a woman into marriage violates the essence of this contract. The MMDA should reflect this foundational principle of mutual consent.” (Participant 1).

Since the Islamic marriage contract validity relies on consent from both bride and groom subject to juristic differences and discussions, a coerced marriage (*mafsadah*) violates the basic religious principle of mutual agreement (Aljudai, 2018). Additionally, the lack of assured consent jeopardizes life/soul preservation (*Hifz al-Nafs*) and overall wellbeing because forced marriages often result in resentment, psychological harm, and susceptibility to domestic abuse (Aljudai, 2018). Similarly, such circumstances demonstrate a clear breach of the objective of *karāmah*

(dignity) and this consequence contradicts the goal of establishing tranquillity (*sakīnah*) within the family structure (Kakar, 2025). According to a family counselor working with women in post-marriage counseling shared that forced marriages frequently result in long-term emotional trauma as he stated,

“When a woman is forced into marriage, it affects her mental and emotional well-being over a period of years. This emotional distress usually occurs in the form of depression, anxiety and relationship problems, which contradicts the peaceful and harmonious goals of marriage in Islam.” (Participant 4).

In addition, the preservation of the intellect (*Hifẓ al-’Aql*) is associated protecting sound judgment, maturity, and intellectual development. In contrast, marriage without consent may restrict intellectual growth, denies access to education, and fails to respect the woman’s ideas and maturity concerning her future, thus violating *Hifẓ al-’Aql* (Kuyateh, 2023). Individuals to attain sound judgment (*rushd*) before entering a serious contractual agreement like marriage, they should be fully aware of the rights and responsibilities involved (Pertek & Abdulaziz, 2018). Forcing a woman deprives her of the actual internal will and free choice, which are foundational to sound consent (Gill & Hamed, 2016).

As maintaining justice constitutes a vital *maqṣad*, refusing a woman the explicit and verifiable right to consent violates this essential principle of justice and individual rights that Islamic law aims to safeguard (Wardi et al., 2023).

The Role and Abuse of the *Walī* Authority

The necessity of consent is agreed upon across the major schools of jurisprudence (*madhāhib*), but variations exist regarding the role of the guardian (*walī*) and the form of consent required, particularly for a virgin.

In the *Hanafī* school, the presence of a *walī* is generally considered a condition for the execution of the marriage contract rather than a fundamental pillar, which means that an adult, sane, and free woman may validly contract her own marriage without her guardian’s representation (Mubarak & Januddin, 2022). However, her consent remains essential regardless of whether she is a virgin (*bikr*) or previously married (*thayyib*) since they only regard minority as the ground for the power of *ijbār* (right to compel) whether she is a virgin or not (Mohd & Kadir, 2020). Even though, for a virgin, silence may be interpreted as consent due to customary modesty, though any explicit objection nullifies the marriage, a previously married woman must express her consent verbally and clearly for the contract to be valid (Pirzada, 2022b).

In the *Mālikī*, *Shāfi’ī*, and *Hanbalī* schools, the presence of a *walī* is regarded as a fundamental pillar for the validity of the marriage contract, meaning a marriage is not considered valid without the guardian’s involvement or consent (Mubarak & Januddin, 2022). Generally, the guardian has the authority to contract the marriage of an adult virgin woman, though consultation with her is strongly encouraged, particularly in *Shāfi’ī* scholarship (Pirzada, 2022a). In terms of consent, a virgin’s agreement is typically recognized through her silence, reflecting modesty norms, whereas the consent of a widow or previously married woman must be expressed clearly and verbally (Sallom, 2022).

In this context it is worth mentioning the *ijbār* right. *Walī mujbir* (guardian with the right to compel) is a guardian, typically the father or paternal grandfather in *Shāfi'ī madhhab*, who has the right to marry off his daughter with or without her permission, subject to certain conditions (Asmara, 2021; Kusmardani, 2026). The conditions include that there should be no visible hostility between the father and the daughter. Secondly, the marriage should be arranged with a man of equal status. Thirdly, the daughter is married with *mahr al-mithl*, determined by the local currency, and the husband must have the ability to pay the *mahr* (Mohd & Kadir, 2020). This right is historically seen as absolute, but modern interpretations advocate giving the daughter an opinion (Asmara, 2021).

By differentiating *ijbār* and *ikrāh*, while some interpretations allow for the *walī mujbir*'s *ijbār* right, this is generally understood by contemporary scholars as a form of protection and responsibility, not genuine coercion (*ikrāh*) which is defined as compulsion without right or logical reason, a violation of humanity (Andiko & Nurdin, 2023). Forced marriage that is carried out without full awareness and willingness (*tarāḍin*), resulting from *ikrāh*, is strictly forbidden by Allah in the Qur'an 24:33 that states “*And let those who do not have the means to marry keep themselves chaste until Allah enriches them out of His bounty. And if any of those 'bondspeople' in your possession desires a contract 'to buy their own freedom', make it possible for them, if you find goodness in them. And give them some of Allah's wealth which He has granted you. Do not force your 'slave' girls into prostitution for your own worldly gains while they wish to remain chaste. And if someone coerces them, then after such a coercion Allah is certainly All-Forgiving, Most Merciful 'to them'.*” as it causes negative effects (Agustina, 2023). The argument that a guardian's coercion is improper stems from the idea that just as a guardian cannot compel a woman to accept certain food, drink, or clothing, he cannot compel her to enter a relationship with someone she hates (Gill & Hamed, 2016).

The application of *Maqāṣid al-Sharī'ah* in this context is consistent with the key principles of *fiqh* relating to the removal of harm such as *lā ḍarara wa lā ḍirār* (no harm shall be inflicted or reciprocated), *dar' al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ* (preventing harm takes precedence over attaining benefits), and *al-ḍararu yudfa'u bi-qadr al-imbān* (harm must be removed as far as possible), which emphasize the need to prevent the harm caused by forced marriages and prioritize the avoidance of the negative consequences of forcing a woman into an unwanted marriage and reinforce the obligation to minimize and prevent the emotional, psychological, and social harm women may face in such situations (Agustina, 2023). In this sense, coercion (*ikrāh*) is considered an illegal act and a violation of humanity (Andiko & Nurdin, 2023).

As a consequence, the utilization of *maqāṣid* necessitates a substantive reinterpretation of the *walī mujbir*'s (guardian with the right to compel, or *ijbār*) right to *ijbār*, to harmonize religious text with the broader objectives of justice and welfare (Halim et al., 2024). Accordingly, modern interpretations supported by *Maqāṣid al-Sharī'ah* advocate that the *ijbār* right should be viewed not in the sense of coercion (*ikrāh*) rather as a form of protection, responsibility, or direction (advice) (Hafidzi & Septiani, 2020). The authority of the guardian aims to safeguard the interest (*maslahah*) of the girl by insuring that she obtains an equal/suitable husband (*kufū*), maintaining her religious quality, and protecting her welfare and safety from potential abuse (Andiko & Nurdin, 2023).

The jurisprudential ideal is the *wilāyat mushārahah* (guardianship-partnership) between the father-guardian and the daughter (Rafiq, 2015). This relationship necessitates mutual

consultation (*shūrā*) and mandates that the father seriously considers the personal view of the daughter, aligning the process with the higher objectives of protecting the mind, life, and future offspring (Pirzada, 2022c). As a consequence, this approach, careful regard for the present and future well-being of the parties, aligns with *Maqāṣid al-Sharī‘ah* and is consistent with the human rights principles upheld in international legal frameworks (Pirzada, 2022c). This right is also supposed to be interpreted as safeguarding the prospective bride’s interests such as ensuring an equal husband and maintaining religious quality (Andiko & Nurdin, 2023).

Within the scope of the MMDA, the requirement of a *walī*’s approval for Sunni brides (non-*Hanafi*) and the contrast with the *Hanafi* position directly (Marsoof, 2017) highlights different interpretations of *fiqh* but necessitates a *maqāṣid* evaluation when abuse occurs.

The primary function of the requirement of *walī*, according to classical interpretation, is to protect the interests and rights of the bride (Büchler & Schlatter, 2013). The goal of this role is to avoid harm (*mafsadah*) by guaranteeing partner compatibility (*kufū*) and contract soundness, thereby supporting lineage preservation objectives (*Hifz al-Nasl*) and achieving marital stability (Saiman & Mahadzir, 2024b). A *Maqāṣid* scholar clarified,

“The purpose of the walī in traditional Islamic thought was to ensure the woman’s welfare. It is an unfortunate distortion when this role is abused and used as a tool of coercion, violating the very goals the Sharī‘ah set for the preservation of dignity and life.” (Participant 10).

When male guardians use their authority to pressure or force women into marriage, this action constitutes clear *mafsadah* (Aljudai, 2018). This abuse subverts the *walī*’s intended protective role and violates several key *maqāṣid*. As an illustration, , protection of Life and Soul (*Hifz al-Nafs*) is the most relevant core tenet against forced marriage, as coercion threatens the woman’s physical, emotional, and psychological well-being (Simamora & Pasaribu, 2025). Forced marriage is a source of harm (*ḍarar*) that frequently leads to severe negative consequences, including domestic violence, psychological trauma, depression, family conflict, infidelity, social ostracism, and even suicide due to despair (Agustina, 2023). As a consequence, protecting women from these dangers is viewed as a mandatory obligation as the marriage aims to establish a family characterized by tranquillity, love, and mercy (*sakīnah, mawaddah, raḥmah*) as stated in Holy Qur’an 30:21 (Putri et al., 2025). Genuine willingness and pleasure are required to realize these goals (Subeitan, 2022).

For most Sri Lankan Muslim women, Sunni brides not belonging to the *Hanafi madhhab* require *walī*’s approval according to Section 17 of the MMDA before marriage can proceed to the registration (Jones et al., 2022). The provisions granting the Quazi authority to permit a marriage when the *walī* unreasonably refuses consent under Section 47(2) of the MMDA or when a woman lacks a *walī* under Section 47(3) of the MMDA such as in the case when no male relatives exist or when she is a Muslim convert (All Ceylon Jamiyyathul Ulama, 2017; Musawah, 2019), strongly corresponds with the aim of maintaining justice (*iqāmat al-‘adl*) and protecting individual welfare (Wardi et al., 2023). The judge intervenes to discharge guardianship responsibility by emphasizing the woman’s optimal interests (*maslahah*) (Prettitore, 2015).

Advocacy for Mandatory Explicit Consent through Other Jurisdictions

Comparative examination of other nations applying Muslim family law reveals that legal reforms explicitly mandating bride's consent and procedural protections have successfully promoted gender equality in marriage.

Malaysia, for instance, while officially follows the *Shāfi'ī madhhab* like Sri Lanka, partially adopts the Hanafi perspective and recognizes woman's right to consent in marriage. Section 13 of the 1984 Islamic Family Law (Federal Territories) Act requires consent from both parties, the man and woman, irrespective of her virginity status along with *walī*'s consent for marriage validity (Mohd & Kadir, 2020). Section 52(g) of the Act additionally protects women's rights by permitting court applications to invalidate marriages contracted by her *walī* during minority (Mohd & Kadir, 2020).

Comparably, Indonesia's 2011 Compilation of Islamic Law (Kompilasi Hukum Islam – KHI) No. 12 explicitly mandates consent from both prospective spouses for marriage validity (Subeitan, 2022). Article 17 of the KHI specifies this requirement: (1) Prior to marriage solemnization, the Marriage Registrar must secure consent from both bride and groom before two marriage witnesses; (2) Absent either party's consent, the marriage cannot proceed; and (3) For speech-impaired or deaf prospective brides, consent may be conveyed through written communication or intelligible gestures (Subeitan, 2022).

In Singapore, both prospective spouses must consent to marriage irrespective of age (Musawah, 2017). Although Section 95(1)(a) of the 1966 Administration of Muslim Law Act mandates *walī*'s consent for prospective brides entering marriage (The Law Revision Commission, 2020), Section 95(1)(c) permits a kadi to serve as guardian when a *walī* is unavailable or when the guardian's marriage opposition is deemed unreasonable by the kadi.

Notably, the 2004 reformed Family Code, the Moudawana, of Morocco, unlike the Maliki *madhhab* of most Morocco Muslims, did not mandate the female guardianship of the marriage. It gives women, whether unmarried or widowed, the legal capacity to marry without the need of a guardian. Adult women no longer need a guardian, irrespective of the presence of a father or an orphan (Awaliyah, 2022). Article 24 establishes that marriage guardianship is a right granted to women, with adult women exercising this right according to personal choice and interest, while Article 25 clarifies that adult women possess authority to contract their own marriages or may designate their father or delegate a brother to act on their behalf (Awaliyah, 2022).

Under Articles 14-15 of Jordan's Personal Status Law No. 36 of 2010, in this *Shāfi'ī madhhab*-dominant country unmarried women aged less than 40, single, divorced, widowed, are assigned to a male relative (*walī*) serving as guardian. Article 19 specifies that guardian consent is required for a woman's initial marriage. This requirement is, however, not applicable when the woman over 18 years of age proves to be reasonable and has previous marriage experience. Marriage contracts typically involve signatures between the husband and woman's guardian (UNDP et al., 2018). Exceptions exist for women entering subsequent marriages, who require no family consent, or when a judge determines the guardian's marriage objection lacks reasonableness (UNDP et al., 2018).

These models illustrate the ways in which Islamic legal principles can be harmonized with the comprehensive protection of women rights and highlight the necessity to adopt a supra-*madhhab* approach to this issue, drawing from the objectives of *Shari'ah* rather than strict adherence to a single school of law, thereby offering viable models for the reforms in MMDA.

Conclusion

The social-cultural and legal complexity in Sri Lanka has challenged the realization of the genuine consent despite the existing legal provisions within the MMDA. Applying *Maqāsid* principles offers a strong framework to better protect the rights and autonomy of women by harmonizing the Islamic ethical principles with the modern human rights standards. Strengthening the bride's consent not only fulfills the higher objectives of *Shari'ah*'s but also promotes gender justice, social welfare, and family stability and maximizes public benefit (*maslahah*) by preventing pathways to significant harm in the modern context. By integrating stakeholder experiences with a *maqāsid*-oriented legal analysis, this study argues that safeguarding the bride's consent is not merely a procedural requirement but a substantive *Shari'ah* imperative. This article ultimately contributes to ongoing reform discussions by proposing a context-sensitive reinterpretation of consent that aligns Islamic legal objectives with contemporary demands for gender justice, legal certainty, and the protection of women's rights within a minority legal framework.

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