

*Challenges in application of Islamic personal law of  
Myanmar: Solemnization of marriage*

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Although Islamic personal law is applicable in Myanmar for Muslim families, there are a lot of challenges in application. One of the fundamental challenges facing application of Islamic personal law in Myanmar could be seen in solemnisation of marriage. Main challenges in application of Islamic personal law in the country is no legal framework governing the solemnization of marriage. Matters, relating with marriage are often decided based on precedents. Therefore, judicial pronouncements are used both to decide disputes brought before the civil courts and to define the scope of the application of Islamic personal law.

In the case of **Maung Kyi and others v. Ma ShweBaw**[1] ,

*“The essentials of valid marriage stipulated as the proposal made by or on behalf of one of the parties, acceptance of the proposal by or on behalf of the other in the presence of two male witnesses or one male and two female witnesses who must be sane and adult Muslims. The proposal and acceptance must be expressed at one meeting; however, the religious ceremony is not mandatory at all. In the absence of direct proof like the fact in this case, a marriage can still be presumed where a man and a woman have lived as husband and wife for a long term and acknowledgement of children as legitimate children of the husband.”*

It was similarly held in the case of **Imambandi v. Mutssadi**[2] that:

*“The oral testimony regarding the solemnization of marriage was unsatisfactory, but that the marriage was nevertheless proved by the subsequent acknowledgement by the husband of the legitimacy of his children.”*

These cases are leading authorities on essentials of valid marriage in Islamic personal law of Myanmar and they have been referred to in other cases such as **Ma Khatoon v. Ma Mya and others**[3], **U Ba Pe v. Ma Saw Yin**[4] and **Abdul Malik v. Ma Aye**[5].

According to the Islamic personal law, it shall be considered that if there is no evidence of Nikah, there is no marriage and the children shall not be legalized. However the principle of marriage stipulated in **Maung Kyi V Ma Shwe Baw** is totally different from the prescription of Quran and Sunna, basic principle of Islamic personal law, Muslims of Myanmar have to accept that.

Another challenge in application of Islamic personal law in Myanmar can be seen in **Maung Musa v. Ma Win Myint** [6], *Ma Win Myint* and *Maung Musa* are Muslims and they married at the *Chaung Oo* Township Court on **5.7.1975**. *Ma Win Myint* married again with *Qurban @ Maung Hla Pe* according to the Islamic personal law, on **30.12.75**. When *Maung Musa* got to know this marriage, he accused *Maung Hla Pe* and 2 others according to Criminal law section 497/114 on **31.12.75**. Then *Ma Win Myint* filed a suit against *Maung Musa* to declare that she and *Maung Musa* were not husband and wife, alleging that their marriage which was done at *Chaung Oo* Township court was not valid because it was not performed according to the Islamic personal law. *Maung Musa* defended that both of them were matured and it was performed in accordance with their mutual consent, therefore it was valid and they were legally married couple. In this civil case, the main issue is:

***“Is this true that the marriage which was done on 5.7.75 at Chaung Oo Township court is not valid because it was not performed according to the Islamic personal law?”***

The learned court decided in the favour of *Ma Win Myint* and *Maung Musa* appealed first to the High Court and then to the appellate court where it was held that;

*“If the parties are Muslims, disputes for marriage between them shall be decided according to the Islamic personal law as prescribed in Sec 13 (1) of Burma Laws Act. In this case, there is no dispute that both parties are Muslims. So to decide their marriage is valid or not shall be decided in accordance with the Islamic personal law. According to the Islamic personal law, these facts are needed to be a valid marriage. These are; - proposal on one side and acceptance of another, these must be done at the same mass and in the presence of sane, adult and Muslim two male witnesses or one male and two female witnesses. Therefore, according to the defendant Maung Musa’s testimony, the ordinary court decision that this marriage cannot be decided as a valid marriage is not wrong. Because*

*he admitted that there are two witnesses; one female and one male. Though the female is a Muslim, but the male is Buddhist.”*

Therefore, although married parties are Muslims and married at the court, it was not constructed as a valid marriage because it did not fulfil the essentials of marriage in accordance with Islamic personal law of Myanmar. This kind of contradiction is a common feature in the administration of Islamic personal law in Myanmar.

This challenge worthy to be noted for registration of marriage under Islamic personal, apply in Myanmar that Muslim marriages can enter into contract legally without being endorsed by the government officials. There is legal disparity in the registration of Islamic personal law of marriage between Muslims and other types of marriage in Myanmar. Though Islamic marriage is recognized as a civil contract, it cannot be registered at the court or government office, however, it can be registered at any Muslim community. Every Muslim community has a marriage register book which is recognized by the government and the deed of marriage issued can used as a valid document in the government courts and offices. Besides, it has a binding force on contracting parties. Where, however, the marriage solemnization takes place between a Muslim man and a Buddhist woman, the marriage can be registered either in the court or government office.

Although Muslim marriages used to be solemnised at the court or government office sometimes ago, no Muslim marriage is allowed to be performed at the court or government offices anymore.

## References

- [1] (1929), A.I.R, Ran 341 see also (1929) I.L.R, 7 Ran, 777
- [2] (1918), A.I.R, (P.C), 11
- [3] (1936), A.I.R, Ran 448
- [4] (1951), B.L.R (H.C), 113
- [5] (1957), B.L.R, (H.C), 11
- [6] (1984), B.L.R,170