

UNEQUAL CITIZENS:

MUSLIM WOMEN'S STRUGGLE
FOR **JUSTICE** AND **EQUALITY**
IN SRI LANKA

Hyshyama Hamin & Hasanah Cegu Isadeen
| October 2016 |



TABLE OF CONTENTS

ABOUT THE STUDY	2
Methodology	3
Limitations	3
LEGISLATIVE OVERVIEW OF THE MUSLIM MARRIAGE AND DIVORCE ACT (MMDA)	5
Administration of MMDA	6
ISSUES FACED BY WOMEN AND GIRLS UNDER THE MMDA	7
1. Lack of minimum age of marriage	7
2. Lack of autonomy and decision making for Muslim brides	10
3. Kaikuli/Kaikooli (Dowry)	12
4. Unequal provisions for divorce	14
5. Polygamy	17
6. Maintenance	19
7. Quazis	22
Legal exclusions under other national laws	29
AN OVERVIEW OF CIVIL SOCIETY INTERVENTIONS	31
THE STRUGGLE FOR REFORMS	37
BARRIERS AND CHALLENGES TO REFORM	38
RECOMMENDATIONS AND KEY CONCLUSIONS	53
ANNEXE: STRATEGIC ACTION POINTS	58



ABOUT THE STUDY

As Muslim women working in the area of human rights and addressing gender-based violence, the primary motivation of the study is derived from the harsh realities experienced by the thousands of Muslim women in Sri Lanka. In our respective lines of work, we came across a number of instances of harrowing experiences of women under the purview of Muslim Marriage and Divorce Act (MMDA) of 1951 and Quazi court system that was set up to administer it. There are innumerable cases due to the law itself, the manner in which the law is implemented and the culture that the law has allowed to flourish.

We were moved by the distressing and confounding stories of affected women who share our faith, and their long struggles for justice and equality, that we were motivated to design and undertake a study that would further the understanding of the complexities within the Muslim community with regard to MMDA and reforms.

Recently, the MMDA reform discussion has gained greater traction among the Muslim community beyond the narrow confines of activists and conservatives. This in tandem with constitutional reforms process that Sri Lanka is currently undergoing and the discourse about aspiring for a 'rights-based constitution' has raised some critical questions with regard to what it means to be minority Muslim women in Sri Lanka. What effect and impact does the MMDA law and its implementation have on the lives of women who are governed by MMDA in country? Despite wide recognition of the shortcomings in the law and in its implementation, and despite dedicated efforts by many, why has reforms to MMDA been elusive to date?

In answering the above questions the study is structured in the following manner: Part 1 of the study sets out to analyze some of the main practical implications of the parallel legal system of marriage and divorce for Muslim women and girls. Part 2 gives an overview of some of the efforts made by civil society organizations in supporting women in addressing these issues and in working towards MMDA reforms. Part 3 assesses the main barriers and challenges that have been limiting reforms of the MMDA from taking place in the past 25 years in Sri Lanka, despite multiple national level attempts. And based on these findings, Part 4 of this study ventures to make some recommendations on MMDA related reforms, and also frames it in light of the present constitutional reforms process.

This study is timely given an opportunity to articulate demands of 'equality', in a climate of heightened attention on minority rights and rights as citizens. Discussion around the need to subject all laws including personal laws to the test of equality and judicial review by repeal of Article 16 (1), has also become a rallying point for addressing the negative impact of MMDA particularly on women and girl children.

This study is principally driven by the desire to change the status quo that is so damaging and detrimental to the everyday life of many Muslim women. This is inherently turning the inquiry inwards, to the community we ourselves belong to. And it is in essence our contribution at this time to the struggles of Sri Lankan Muslim women to be recognized as equal citizens in the country, with full guarantee and protection of our rights. We are grateful for the women and men who had given their time and shared with us their perspectives. We dedicate this study to our courageous Sri Lankan sisters, those who are struggling against injustices in their lives and communities and those who have dedicated themselves, against enormous odds, to work towards a better deal for women.



Methodology

For the purpose of this study, primary data and secondary information were collected and reviewed. Primary data was collected through key informant interviews with individuals from Colombo, Puttalam, Batticaloa, Mannar and Ampara, and focus group discussions primarily in Puttalam and Batticaloa. With regard to key-informant interviews - 49 key informant interviews (32 women and 17 men) were conducted, through semi-structured and open-ended questions, in order to obtain the perceptions of the diverse actors and individuals around the issues of MMDA, reforms, blocks and challenges to progress, and strategies for furthering the reforms process. Careful attention was paid in choosing key informants who held different perspective on these issues. It was ensured that a wide spectrum of persons was chosen, from reform-oriented activists to religious conservatives who were keen to maintain the status quo.

Interviewees included relevant civil society actors, women's rights advocates and counselors who work with Muslim and non-Muslim women on obtaining legal redress on matters of marriage, divorce and other issues such as domestic violence. Interviews were also undertaken with individuals who are well versed with the issues and challenges of the MMDA; Quazi Court judges; registrars and Quazis from the Bohra and Memon communities; lawyers who have worked on MMDA cases; members of the 2009 Muslim Personal Law (MPL) Reforms Committee; and government officials from the Judicial Service Commission, Law Reforms Commission, National Commission on Women, Ministry of Women and Child Affairs and Prime Minister's Office.

Focus Group Discussions (FGD's) were primarily conducted in Puttalam and Batticaloa with volunteers and board members of two civil society organizations. The organizations chosen are those working directly with women and the Quazi courts on a day-to-day basis and are often the first responders supporting women during situations of discrimination.

Secondary data was collected through a review of literature of major publications on the MMDA and the reforms process in Sri Lanka, as well as relevant publications and papers about Muslim family law and reforms processes from other countries.

Limitations

While there are extensive documentation on discriminatory provisions to women in the MMDA and to some extent the practical issues that women face in the Quazi courts, there is little documentation on the varying perceptions and challenges to reforms. Therefore, much of the information gathered for this study has relied upon key informant interviews. Where suitable and relevant, the team has attempted to verify information on cases and contemporary issues from multiple sources.

The authors were unable to obtain interviews with some key individuals within the 2009 MPL Reforms Committee, as well as Muslim MP's and the Minister of Justice despite multiple attempts. Notwithstanding extensive questioning from each key informant, the limited time frame of the study meant that the team was unable to continue to pursue key informants who were either reluctant to be interviewed or not reachable at the time.



**PART 1:
IMPACT OF MUSLIM MARRIAGE
AND DIVORCE ACT (MMDA) ON
MUSLIM WOMEN AND GIRLS**



LEGISLATIVE OVERVIEW OF THE MUSLIM MARRIAGE AND DIVORCE ACT (MMDA)

'*Sharia*' is referred to as "the general normative system of Islam as historically understood and developed by Muslim jurists, especially during the first three centuries of Islam". *Sharia* pertains to much more than just legal principles and norms, but where applicable legally - it is often designated as 'Islamic law'. Islamic law encompasses a wide range of legal aspects and Muslim Family/Personal Law is just one of the most common aspects of Islamic law that is implemented to varying degrees in about 44 different countries around the world.

The restriction of *Sharia* to mainly matters pertaining to family law (i.e., marriage, divorce, custody, maintenance, inheritance) in countries with dual legal systems is a development that came about in the late nineteenth and early twentieth century and can be attributed to colonial influences¹. In Sri Lanka too, one such remnant of the colonial period has been with regard to the continuation of "indigenous laws" such as personal laws applicable for a specific community, parallel to the common and more secular law generally applicable to all citizens. With specific regard to marriage and divorce, this has resulted in personal laws for the Muslim and Kandyan Sinhalese communities, in addition to the (General) Marriage Registration Ordinance.

The 1907 Sri Lankan (General) Marriage Registration Ordinance² (GMRO) is applicable to all citizens of the country with the exception of Muslims who marry within faith³. Two communities – the Kandyan Sinhalese and Sri Lankan Muslims have separate Acts for marriage and divorce, on the basis of ethnicity (with a geographic qualifier), and religion respectively. Kandyan Sinhalese have the option to marry under the 1952 Kandyan Marriage and Divorce Act as well as the GMRO. However this option does not extend to Muslims as only the Muslim Marriage and Divorce Act 1951 (MMDA) governs, "inhabitants of Sri Lanka who are Muslims" and who marry another Muslim (including converts to Islam). Muslims however are allowed to marry partners who are of a different ethnicity or religion under the GMRO.

The origin of the MMDA stems from a code of law on marriage and divorce exported from Batavia (present day Indonesia) in 1770 during Dutch rule. Between 1806 and 1951, this code of law went through a process of codification, review and modification, led on each of these occasions by a few prominent legal and religious individuals at the time⁴. The present-day Muslim Marriage and Divorce Act (MMDA) was enacted in 1951 and embodies substantive provisions found in the preceding ordinances and codes, but also includes additional provisions based on Islamic legal practices and local customs, such as that of *kaikuli* (dowry) followed by Sri Lankan Muslims at the time⁵.

¹ Ed. Abd Allāh Ahmad Na'im, 2002, '*Islamic Family Law in A Changing World: A Global Resource Book*'. Law and Religious Program Emory University, USA

² The Sri Lankan General Marriage Registration Ordinance, No 19 of 1908

³ Long title of the General Marriage Registration Ordinance No 19 of 1908

⁴ Ed. Zackariya F, Kodikara C, 2014 . '*Women Claiming Rights and Spaces: Activism to Reform Muslim Personal Law in Sri Lanka*.' Muslim Women's Research and Action Forum (MWRAF), Colombo, Sri Lanka

⁵ Kodikara, Chulani 1999. '*Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women*'. Muslim Women's Research and Action Forum (MWRAF)/Women Living Under Muslim Law (WLUML).



Administration of MMDA

Muslims in Sri Lanka currently account for 9.66 percent⁶ or 1,967,523 million⁷ (1,011,819 women and girls) of the total population of 20.3 million people. The districts with the greatest number of Muslims include Ampara, Colombo, Kandy, Trincomalee, Puttalam and Batticaloa in that order respectively⁸. The ‘Muslim community’, as it is often referred to is diverse and comprises of many different minority communities based on ethnic origin – including Sri Lanka Moors, Coastal Indian Moors, Malays, Bohra’s (including Dawoodi Bohra’s) and Memons⁹. The community also includes members of the two main sects - Sunni (in majority) and Shi’a.

The MMDA established a Quazi (Muslim judge) court system, including a Board of Quazis¹⁰ and an Advisory Board. There are 65 Quazi courts in Sri Lanka with one Quazi each, serving a population of approximately two million Muslims. Most Quazis have geographical jurisdiction, however certain Quazis such as the Quazis for the Bohra and Memon communities, have island-wide jurisdiction irrespective of where community members reside.

The Board of Quazis is a five-member board¹¹ tasked with overseeing appeals that arise from Quazi court judgments or proceedings, and provide clarification on “any question of Muslim law which may arise in connection with the administration of the MMDA or of any regulation made thereof”. The hearings of the board of Quazis are held in Colombo and Kalmunai only. In the event that the cases are left unresolved or parties are aggrieved by the decisions of the Board of Quazis – an appeal shall lie with the Court of Appeal. Furthermore as per the MMDA, the Magistrate court has the jurisdiction to make enforcement orders for default on payment of maintenance. The District Court has jurisdiction with regard to child custody and recovery of sums due on claims pertaining to dowry (*mahr* and *kaikuli*).

The Judicial Service Commission (JSC) is mandated with handling the appointment of Quazis who may be any “Muslim male of good character and position and of suitable attainments”¹², as well as undertaking terminations and transfers of Quazis and Board of Quazi members. JSC is also tasked with taking action on complaints regarding Quazis, however it only has the mandate to inquire into the complaint and terminate/transfer depending on the outcome of the inquiry.

⁶ Of the total Muslim population 51.4% are female and 48.6% are male.

⁷ Census of Population and Housing 2012 – Department of Census and Statistics <http://www.statistics.gov.lk/>

⁸ Census of Population and Housing 2012 – Department of Census and Statistics <http://www.statistics.gov.lk/>

⁹ Nuhuman, M.A, 2007, *Sri Lankan Muslims: Ethnic Identity within Cultural Diversity*. Colombo: International Centre for Ethnic Studies.

¹⁰ Also referred to as ‘qadi’, ‘qazi’ or ‘kazi’.

¹¹ Section 15 of the 1951 Muslim Marriage and Divorce Act (MMDA)

¹² According to the JSC Quazis are chosen based on 4 attainments: they are either lawyers, Moulvis or Alim (religious scholar), retired public officer in the staff grade, and/or a graduate.



A note on the MMDA Advisory Board

Section 4 of the MMDA provides for the establishment of a Muslim Marriage and Divorce Advisory Board with four to nine members but without giving a gender or religious specification. The Chairperson of the Board is to be the Registrar General with each member holding the post for up to three years. The duty of the Board is to advise the Registrar General on all issues connected with the administration of the MMDA. Despite being mandated by the MMDA, in the 65 years since the Act was passed, an Advisory Board has never been appointed. A likely reason being that the provision could be read to include qualified women and non-Muslims to be on the Board.

A functioning Board has the potential for monitoring the Quazi court system for inconsistencies of procedure and violations of the Act. Women members within the board could likely highlight the issues faced by women under the MMDA and facilitate discussion about possible recourse within the framework of the Act or beyond if it becomes necessary. Even in its current condition it is imperative that this Advisory Board be appointed forthwith by including qualified individuals who have the expertise and experience on the MMDA and are able to advise the Registrar General on related matters. It should be made a prerequisite that the Advisory Board comprises of at least 50% women.

ISSUES FACED BY WOMEN AND GIRLS UNDER THE MMDA

Outlined below are some pertinent aspects of the MMDA that gives an insight into the nature and extent of issues being faced by women and girls.

1. Lack of minimum age of marriage

The provisions: Whereas an amendment of the GMRO in 1995 required that both parties marrying under the GMRO be at least 18 years of age at the time of marriage, the MMDA fails to stipulate a minimum age of marriage for Muslims. Thus a primary and pertinent concern emanating from the current MMDA is that it legally allows child marriage for Sri Lankan Muslims.


Section 23 of the MMDA includes provisions restricting registration of marriages of Muslim girls below the age of 12 without prior inquiry and authorization by a Quazi, however the solemnization of such a marriage without approval is still considered valid¹³. Non-compliance with this provision amounts to a criminal offence, however the penalties are insubstantial resulting in a fine “not exceeding a hundred rupees or imprisonment not exceeding six months or both”¹⁴.

According to the Sri Lankan Penal Code¹⁵ sexual intercourse with a girl below 16 years of age, with or without consent, amounts to statutory rape. However, pushback from mainly Muslim religious leaders and politicians, during the time the Penal Code was being amended in 1995 to include statutory rape provisions, meant that the provision does not apply to married Muslim

¹³ Section 16 of the 1951 Muslim Marriage and Divorce Act (MMDA) indicates that non-registration of marriages does not render the marriage null and void “according to the Muslim law governing the sect to which the parties...belong”.

¹⁴ Section 82 of the 1951 Muslim Marriage and Divorce Act (MMDA).

¹⁵ Section 363 of the Penal Code of Sri Lanka.



girls under the age of 16 and above the age of 12, unless judicially separated¹⁶. As a result, in the case of Muslims, the relevant age for statutory rape is 12 years¹⁷. Furthermore, because there is no provision for judicial separation in the event of a *talaq*¹⁸ divorce and the wife is required to stay at the husband's residence for a period of up to three months (*iddat* period) after the first pronouncement of divorce. Women are not protected by the Penal Code provision even in the event that forced sexual intercourse (marital rape) occurs during this time.

The problems and consequences: During literature review, systemic documentation highlighted impact of these provisions on the plight of many Muslim girls and women¹⁹. The ill-informed have cast the issue of early marriage aside as a few isolated cases or that all such cases when they occur are instances when girls are found to be having love affairs. In reality cases coming to the attention of women's organizations working at the community level, as well as Quazi courts, indicate many instances of early marriage. Marriages arranged by guardians are occurring between 14 and 17 years of age, in districts like Puttalam and Batticaloa as gathered through focus group discussions. Records on Muslim marriage registration in Kattankudy indicate that in 2015 - 22% of all registered marriages were with a bride below 18 years of age. This is a considerable increase from 2014 when the figure was 14%. According to the Quazi for Colombo East, there are also many instances of early marriages happening in areas like Mattakkuliya and Maradana. The Quazi for the minority Muslim community in Colombo also mentioned that girls of the community mostly get married between 15 and 17 years of age because according to him "the value of the girl decreases after she is 17".

Another argument put forward is that girls who are given in marriage are deemed 'mature' and able for married life, by her guardians. However this argument is highly problematic as it does not ensure a full childhood, right to education, bodily maturity and the ability to consent freely to marriage and sexual intercourse (which is determined by the Penal Code and should be one age for all citizens). In one specific case from the Eastern Province, a 15 year old girl with down syndrome and maturity of a much younger girl, was given in marriage to a 20-something year old man. The man abandoned the girl after 3 months of marriage.

According to women volunteers who assist affected women, one of the main reasons that husbands seek divorce from wives who are minors is because they are "unfit to have sex" and "unable to do housework". The plight of young girls who are divorced becomes precarious. Education of young women and girls who get married early is more often than not discontinued²⁰, thereby significantly limiting their higher educational and economic opportunities. This compels them to be highly susceptible to grave financial difficulties in the event that husbands are unable or unwilling to provide maintenance, in case of death of husbands, polygamy, divorce or abandonment.

¹⁶ In 1995 after extensive lobby by civil society organizations including women and child rights groups, the Penal Code (Section 363) was amended for statutory rape to mean sexual intercourse with any girl below the age of 12, with or without her consent "...unless the woman is his wife who is over twelve years and not judicially separated from the man", thereby applicable only to Muslim girls.


¹⁷ UNICEF Sri Lanka, July 2013, 'Emerging Concerns and Case Studies on Child Marriage in Sri Lanka'

http://www.unicef.org/srilanka/2013_Child_Marriage_Case_Studies.pdf

¹⁸ Divorce initiated by husband.

¹⁹ A 2015 study was conducted by FOKUS Women in collaboration with the Muslim Women's Development Trust (MWDT) in Puttalam involving 1000 Muslim female heads of household on their access to economic, social and cultural rights. The study found that 42% of respondents had been married below the age of 18 for reasons primarily to do with family tradition and customs (55%) and economic reasons including protection and security (23%). The study also showed a significant difference in the educational attainment of girls who were married before 18 years and those married after 18 years. The majority of respondents who married before 18 years had only studied up to grades 1 – 5. (Source: *FOKUS Women: Survey on Status of Muslim Female Heads of Household and their Access to Economic, Social and Cultural Rights in Puttalam District 2015*)

²⁰ Case 11 – Source: Gul, Begum Safana, 2014. '*Is Equal Justice Possible*', Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka



Data from a 2011 UNFPA report 'Extent, Trends and Determinants of Teenage Pregnancy in Three Districts in Sri Lanka' revealed that, "An increased risk for teenage pregnancy was observed when the ethnicity of the women or the spouse was Muslim and/or were followers of the Islamic faith²¹". Girls who marry young are also at a higher risk of reproductive and maternal health problems given lack of bodily maturity and decision making over sexual, reproductive choices and family planning²². They are also at an increased risk of gender-based violence, including domestic violence and forced sexual intercourse (marital rape).

Standard minimum age of marriage for all citizens

Regardless of the number of cases, whether isolated or many, child marriage is unacceptable and for the Muslim community this needs to be addressed by removing the legal cover that MMDA accords.

Child marriages happens due to a number socio-economic and cultural reasons and is prevalent in other communities as well, such as through early co-habitation. But the key difference is that in the Muslim community it is legal and State has not taken any action in this regard, whereas in other communities the State actors and civil society are actively working to eliminate the practice in the interest of the children and rightly so. In fact it is observed that national level discussions by State actors about child marriage (early co-habitation) and teenage pregnancies leave out the Muslim community under the pretext that the issue is 'too complicated'.

Those who are not in favor of setting a minimum age of marriage for Muslims, often give the example of some states in the United States of America that has a low minimum age of marriage as an attempt to call out the 'hypocrisy of the West' on child rights. However, the fact that Muslim majority countries such as Algeria, Jordan, Morocco, Tunisia, Turkey and Lebanon have set a minimum age of marriage in keeping with international human rights standards are never considered in the same vein.

At the same time Muslim politicians²³, religious leaders, as well as some individuals and organizations in support of MMDA reforms believe that the minimum age of marriage for Muslims should be decided from within the Muslim community and mandated by the MMDA. However, the minimum age of marriage is a contested topic even *within* the Muslim community and is highly subjective, dependent upon the theological viewpoint of the various parties supporting or opposing the establishment of a minimum age. Therefore, in the current context, it is unlikely that all the stakeholders in the Muslim community in Sri Lanka would agree and reach consensus on 1) raising the minimum age of marriage to 18 years and 2) deciding that the State should set the minimum age of marriage for all citizens.


It is important for the Sri Lankan state to recognize and protect the rights of all citizens to enjoy his/her culture, traditions and freedom of religion. However in provisions such as establishing a minimum age of marriage – it is the responsibility of the State to ensure that child rights are not compromised in the name of culture and religion.

²¹ UNFPA, 2012. 'Extent, Trends and Determinants of Teenage Pregnancies in Three Districts of Sri Lanka'

<http://srilanka.unfpa.org/publications/extent-trends-and-determinants-teenage-pregnancies-three-districts-sri-lanka>

²² Global data indicate that girls who conceive before the age of 15 are 5 times more likely to die in childbirth. Source: Girls Not Brides <http://www.girlsnotbrides.org/what-is-the-impact/>

²³ See comments made by Minister Rauff Hakeem in March 2015 <http://www.sonakar.com/?p=80151>



Sri Lanka is a party to the Convention on Rights of the Child (CRC)²⁴ and Convention for Elimination of All forms of Discrimination Against Women (CEDAW) among other international human rights instruments, and is thus required to adhere to global benchmarks on child rights and women's rights. The CRC recognizes anyone under the age of 18 as children and explicitly states in Article 2 that no child can be treated unfairly on any basis including religion, ethnicity or gender. Article 19 of the CRC also states that children need to be protected from all forms of violence, including "from being hurt and mistreated, physically or mentally".

As per CEDAW, early and forced marriage is considered a "harmful practice" that the state needs to take serious action to reduce and eliminate. If it is the State that sets the provision that citizens need to be a certain age to be able to make an informed decision to vote, then the very same logic should apply to the minimum age of marriage, which has impactful consequences on the individuals in question, and the country as a whole. If the State determines that adolescents and children marrying before 18 years is detrimental to their health, education and wellbeing then it should apply to all children in the country irrespective of which ethnic or religious group they belong to.

DEMAND: Sri Lanka needs to ensure that the minimum age of marriage is 18 years for all citizens regardless of religion or ethnicity. Also since, Islamic legal jurisprudence does not stipulate a particular age and some scholars even considers setting any age limit not permissible, it is therefore imperative that government takes responsibility for setting the minimum age of marriage as it does for all other citizens. This would require removing this provision from the jurisdiction of the MMDA (which is subject to review and reform based on context and/or arbitrary decision making of individuals) and ensuring that the MMDA reflects the application of the State stipulated age.

2. Lack of equal autonomy and decision making for Muslim brides


The provisions: Especially for Sunni Muslims, the MMDA does not mandate bridal consent as a prerequisite for a marriage to be contracted and as per the Act, the *wali* (closest male guardian)²⁵ of the bride has the right to give the bride in marriage. In cases where the bride has no *wali*, the Quazi is required to make an order authorizing the marriage²⁶. The GMRO has explicit provision for women to consent as equal party to the marriage and sign official marriage documents, however the marriage documents required for a Muslim marriage have no provision for the bride's signature or thumbprint. From the bride's side, the *nikah* (marriage) ceremony and registration process only requires the declaration (and signature) of the *wali* of the bride.

In Islamic Law the 'requirements' of consent actually differs according to different *madhabs*. A '*madhab*' is a school of thought within Sunni *fiqh* (Islamic jurisprudence). There are currently four main Sunni *madhabs* based upon the schools of thought established by four main Imams

²⁴ Art 24 (3) of Child Rights Convention (CRC) refers to the obligation of a State Party to "take effective and appropriate measures to abolish traditional practices prejudicial to health." And the CRC General Comment on HIV/AIDS (GC No 3 para 11) recognizes that early marriage comes within the meaning of a "harmful traditional practice".

²⁵ "*Wali* - In the context of marriage, a marriage guardian. Usually recognized by some Schools as the father or paternal grandfather who has authority to contract the marriage on behalf of the bride". (Source: Women Living Under Muslim Law 2006, *Knowing our Rights: Women, Family and Law in the Muslim World* http://www.mediterraneas.org/IMG/pdf/kor_2006_en.pdf)

²⁶ MMDA Section 47(3) - In instances where the woman does not have a *wali* such as in the case of a female head of household with no male relatives, or a convert to Islam, the male Quazi is required to make an order authorizing the marriage.



around the 10th century AD. These include: Abu Hanifa (Hanafi school), Malik (Maliki school), Shafi'i (Shafi'i school) and Ahmad (Hanbali school).

Under the Shafi'i *madhab*, on which the MMDA is based, a bride must have the permission of her *wali* to marry. While under the Hanafi *madhab*, the marriage of an adult (and sane) woman without the approval of her *wali* is valid if she marries a person who is deemed 'legally suitable' (*kuf'u*). However, ignorance about this provision or option, or general customary practice of the *wali*, means that in the majority of cases regardless of whether the bride identifies as Hanafi, Shafi'i or from any other *madhab*, the *wali* signs and consents on her behalf²⁷.

The practice is different for the Dawoodi Bohra community of the Shi'a sect, in which the community has a unique marriage form, which has a provision for the bride to sign as a method of guaranteeing official consent.


CASE STUDY: A 15-year-old girl from the Eastern province was continually harassed by a man in her village who was asking her to marry him. She kept refusing him as she was still attending school and was not interested in marriage. One day when she was alone at home, the man had entered her house and when she was changing her clothes he had tried to molest her. She had screamed and neighbors had come from outside to help her, and had found the man in her bedroom. Shortly afterwards they had taken both the girl and the man to the mosque committee, and the mosque committee had insisted that the girl marry this man on the basis that she now had a "bad reputation" and therefore that no one else would want to marry her. The girl had refused but was forced into marriage, and because it was ordered by the mosque committee her family had not objected. After marriage the man was with the girl for only one month, after which he abandoned her. The girl who had dropped out of school has been living alone and fending for herself with little family support for the past 2.5 years.

The problems and consequences: In the MMDA adult Muslim women are considered minors, as they are unable to enter a marriage of their own free will and require the permission of a male guardian. The concept of *wali* restricts women's individual and equal agency and autonomy in familial matters. These provisions are entrenched in the patriarchal notion that women's decision-making ability in marriage is controlled by male members of her family and by extension - community.

The study found cases in which this has resulted in forced marriage of girls by *walis* who abuse their legal authority and compel women and girls into marriages even at a young age. One such case is that of a young divorcee in Mullaitivu who said that she had been forcibly given in marriage at the age of 14 by her *wali*. She had been informed that it was the wedding of her aunt's daughter and had no indication of her marriage until the first night when she was locked into a room with her (former) husband. She continues to be highly traumatized by the experience. So practically, the lack of mandatory provision in ensuring the consent of the bride significantly increases the chances for women and girls to be coerced into marriage or forced to marry with or without their knowledge.

An excuse that is usually given by registrars and Quazis about why women are unable to sign their marriage forms is that nikah ceremonies are mainly conducted in mosques, many of which

²⁷ Marsoof, Saleem 2012, *Muslim Matrimonial Law – Some Grey Areas* https://www.academia.edu/9905307/Muslim_Matrimonial_Law_-_Some_Gray_Areas



afford limited access to women. However, if religious leaders, registrars and family members were genuinely considerate about getting the consent signature of the bride, then this amounts to a matter of logistics. It was noted that the Bohra community conducts most of their nikah ceremonies at homes or in private spaces accessible to both genders, and the registrar for the community has been insisting for the past many years that brides too must sign their marriage registration forms as an act of consent “mandated by Islam”.

Brides who are not Hanafi have no way of declaring and signing consent during the nikah process. This study noted a case in which the Shafi'i bride, who wanted to sign her marriage registration forms, was asked by a Hanafi registrar to declare herself as Hanafi in order to add her signature. However this practice is rare.

While ‘parental blessing’ and approval is a general consideration for all couples regardless of faith or ethnicity, under the GMRO the decision making power for entering a marriage is equal for the adult bride and groom. This is not the case with regard to the MMDA, thereby also bringing out the inherent link between consent and individual rights as a Sri Lankan citizen. The denial of women’s right to fully consent to marriage by their own free will also denies women their right to personhood and citizenship.

A signature or thumbprint is the basic requirement for every legally binding procedure and document in Sri Lanka, and furthermore Islamic religious text and practices historically demonstrate that women are entrusted with the decision making power to enter into contracts and of their own accord. Ensuring that the bride’s signature is mandatory will not guarantee that coercion or force doesn’t become a factor in the marriage, however it will, to a great extent, make women aware that they are entering a legally married life.

DEMAND: Muslim women as Sri Lankan citizens are entitled to equal autonomy and decision-making with regard to entering their own marriages and must not require the ‘permission’ of any male relative or Quazi to enter a marriage. They should have the equal rights as their husbands-to-be to consent on principle and in paper. Signature/thumbprint of all official marriage documentation must be made mandatory for groom and bride.


3. Kaikuli/Kaikooli (Dowry)

Kaikuli is a form of dowry practiced among primarily Sri Lankan Moors that is unknown to Islamic law and rather is a customary practice presumably influenced by extant Sinhalese and Tamil marriage practices. The bride’s family provides a dowry, usually given to the bridegroom to ‘keep in trust for the bride’. The MMDA only recognizes movable assets²⁸ like gold or money as *kaikuli*, however in practice other assets like house/apartments, land and vehicles are also asked for by the groom’s side.

Section 47 of the MMDA allows for the bride/wife to recover *kaikuli* for movable assets, during marriage or after the dissolution of the marriage by filing an application with the Quazi²⁹. However the Quazi has no jurisdiction to inquire about immovable properties and the woman has to file a case in the District court in order to recover property or land.

²⁸ Section 97, 1951 Muslim Marriage and Divorce Act (MMDA)

²⁹ Section 47 (1)(f), 1951 Muslim Marriage and Divorce Act (MMDA)



CASE STUDY: A 16-year-old girl from the Eastern province was given in marriage to a man from the same district after he had approached her mother and brother with a marriage proposal. The man asked for a big *kaikuli* (dowry) so the family sold half of their plot of land and bought him a motorbike, and gave the remainder in cash as *kaikuli*. After the *nikah* she had gone to live with him. After the third day of marriage, the man had pressured the girl into asking her family to sell the remainder of their land and property and give the money to him. To this she had objected saying that her family would have no place else to live if they did so. The man then began to be severely physically abusive towards her, and on the 10th day after marriage she was attacked with a helmet causing her serious injuries so that she had to be taken to the hospital. In the hospital she said that her injuries were because she had fallen, as she was too embarrassed and scared to mention the domestic violence to anyone. The husband had then dropped her at her mother's house and abandoned her thereafter. Now at 18 years of age, she has obtained a *fasah* divorce but was unable to get back any of the *kaikuli* except the motorbike.

The problems and consequences: Demanding dowry from the bride side is considered as '*haram*' or forbidden in Islam, but due to the prevalent practice among Moor Muslims, it is recognized in the MMDA. However the registration/recording of *kaikuli* in the marriage registration form is merely optional, therefore many bridegrooms either do not register it or register a reduced amount, which poses challenges for wives seeking to recover their *kaikuli* if the marriage is unsuccessful. Immovable assets go unrecorded, as there is no provision during the *nikah* ceremony to record them.

In most instances, bridegrooms often say that they did not ask for *kaikuli* and the bride's family willingly gave it, but social pressure and forms of coercion are usually at play during matchmaking and marriage discussions. *Kaikuli* is a common reason for tension between families, ill treatment of daughters-in-law, domestic violence and divorce. Women have been divorced for reasons of not giving the "promised" amount of dowry or following demands for a bigger dowry. In many cases of *talaq* or *fasah* divorce, the Quazi neglects to ensure that women get their *kaikuli* back and most often do not even know they have the jurisdiction to decide on the matter of movable assets³⁰. Quazis and women themselves are often unaware that *kaikuli* is recoverable even if it is not recorded in the marriage registration form, as Quazis can decide on oral evidence³¹. In practice when the husband refuses to pay back the *kaikuli*, some Quazis often negotiate with the husband to pay at least a minimum sum without consulting the wife or giving her options or alternatives³².

As per the focus group discussions, one of the prevalent reason for polygamy is in order for husbands to obtain *kaikuli*. When's husbands *talaq*/divorce their wives, most often Quazi's do not consider the return of *kaikuli*, which was given to him by the wife's family as part of the divorce process. Many women end up losing the *kaikuli*, which rightfully belongs to them.

³⁰ Case 42, Source: Gul, Begum Safana, 2014. '*Is Equal Justice Possible*', Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka

³¹ P. 18, Source: Gul, Begum Safana, 2014. '*Is Equal Justice Possible*', Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka

³² Case 52 Source: Gul, Begum Safana, 2014. '*Is Equal Justice Possible*', Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka,

DEMAND: *Kaikuli* is not only an un-Islamic practice, but also grievously harms Muslim women and their families and must be removed from the MMDA. However, given the current context, in order to eliminate the practice, stringent and mandatory record of all *kaikuli* dealings (moveable and immovable assets) must be stipulated during the marriage registration. There also has to be clear procedures to recover *kaikuli* during any point of time in the marriage, separation period or divorce.

4. Unequal provisions for divorce

The MMDA differentiates between the types, conditionality and procedures for divorce for men and women. Under the MMDA husbands have the provision to proclaim ‘*talaq*’ divorces, while wives have the provision to obtain ‘*fasah*’ divorces.

According to the Board of Quazis³³, most appeals received by them are with regard to the judgments given by Quazis on divorce cases. The highest number of appeals is primarily from the Eastern Province (especially the Kinniya and Sammanthurai areas), followed by the Colombo district.

4.1. *Talaq* (divorce by husband)

The provisions: *Talaq* (which literally translates as a proclamation of “I divorce you”) is a type of divorce that is initiated by the husband. *Talaq* does not require the husband to have any specific basis or reason to divorce. Furthermore the MMDA disallows the Quazi from recording the alleged reason/grounds on which divorce may be sought should there be any³⁴.

There are specific methods of *talaq* divorce depending on whether or not the husband intends the divorce to be irrevocable or revocable. The MMDA allows for a revocable form of divorce called ‘*talaq ahsan*’ whereby ‘*talaq*’ is pronounced by the husband thrice over a three-month period (once every month for three months). After the husband gives notice, the Quazi needs to begin a 30-day process of reconciliation³⁵. In the case that reconciliation does not happen, the divorce is finalized only upon completion of the three months (also known as the *iddat* period), and in the case of the wife being pregnant, after the delivery of the child³⁶.

The problems and consequences: The MMDA requires that the husband who seeks *talaq* give notice to the Quazi of the area in which his wife resides. But because the pronouncement of *talaq* does not require the presence of the wife, women’s groups have reported many instances when the wife is unaware of her husband’s intention to divorce until the Quazi informs her of it. Quazis do not always pursue mandatory mediation and there are many cases where Quazis have been strong-armed or bribed into finalizing divorce as quickly as possible, sometimes within a day.


Talaq is also sought in instances of polygamous marriages when maintaining multiple wives and families becomes burdensome. Women volunteers in Puttalam have come across cases where

³³ 1951 Muslim Marriage and Divorce Act (MMDA) Section 60 (1) mandates that “Any party aggrieved by any final order made by a Quazi under the rules in the Third Schedule or in any inquiry under section 47 shall have a right of appeal to the Board of Quazis.”

³⁴ Second Schedule, 1951 Muslim Marriage and Divorce Act (MMDA)

³⁵ Kodikara, Chulani 1999. ‘*Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women*’. Muslim Women’s Research and Action Forum (MWRFAF)/Women Living Under Muslim Law (WLUML).

³⁶ Section 30, 1951 Muslim Marriage and Divorce Act (MMDA)



the Quazis themselves have recommended divorce as an option to men who are unable to maintain their wives and families. In talaq divorces - where husbands are required to provide maintenance during the *iddat* or confinement period, there are cases where Quazis have granted divorce prior to establishing payment of maintenance for children, return of *kaikuli* or settlement of *mahr*, leaving women (and girls) in difficult and vulnerable situations financially and socially.

4.2. *Fasah* (divorce by wife)

Fasah is a type of divorce that is initiated by a Sunni wife, without the consent of the husband, on the basis of a matrimonial fault on the part of the husband. It is reported by many Quazis as well as women volunteers to be the most frequently occurring form of divorce. Grounds for *fasah* include ill-treatment, cruelty, domestic violence (including verbal abuse), failure to maintain and desertion, and other grounds amounting to “fault” under “Muslim law governing the sect to which the parties belong”³⁷. *Fasah* can also be obtained on non-fault grounds such as impotency and insanity³⁸.

As per the third schedule outlined in the MMDA, if mediation fails the Quazi is required to hold hearings with both parties for adjudication by himself and three Muslim male jurors³⁹. Witnesses (at least two) from the wife’s side are required to corroborate the evidence and claims of the wife, unless the husband admits to being guilty of the fault.

Under the MMDA there is provision for the (unwritten) law of the sect to apply for *fasah* divorces. Therefore, if a particular sect or *madhab* does not recognize divorce by wife (*fasah*) then women of those sects or *madhabs* are unable to initiate divorce even on fault grounds and only *talaq* divorce by the husband is recognized. As a result women would require ‘permission’ from their husbands for divorce no matter the circumstance. Therefore the provision for divorce is also not equal to women across sects or *madhabs* in Sri Lanka. According to the Quazi for the Memon community, there is no provision for *fasah* divorce under Hanafi *madhab*, therefore any *fasah* cases received by him from the Memon community are referred to a Quazi who follows Shafi’i *madhab*.


The problems and consequences: Women who are in abusive marriages face additional barriers and challenges in obtaining divorce in terms of presenting evidence, witnesses and giving testimony before adjudicators. Women who have faced severe emotional abuse or psychological trauma and who may not have ready witnesses to support their case face significant problems in obtaining a divorce. Furthermore, women and girls presenting their cases in hearings, which could range from non-maintenance to serious physical and sexual abuse, are put through the additional traumatic task of articulating to an all-male panel, the members of which are not professionally trained to evaluate and give judgment in such cases.

It has also been noted by Quazis that stringent due process is to be followed for *fasah* divorces, failing which the divorce is rendered null and void. Husbands can appeal to the Board of Quazi on grounds of procedural error (for instance not holding hearings) which if proven can overturn a

³⁷ Section 24, 1951 Muslim Marriage and Divorce Act (MMDA)

³⁸ Kodikara, Chulani 1999. ‘*Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women*’. Muslim Women’s Research and Action Forum (MWRAF)/Women Living Under Muslim Law (WLUML).

³⁹ Rule 7 required the Quazi to empanel 3 Muslim accessors to support him in hearing of the *fasah* application (Source: Kodikara, Chulani 1999. ‘*Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women*’. Muslim Women’s Research and Action Forum (MWRAF)/Women Living Under Muslim Law (WLUML)



fasah divorce judgment. According to a representative of the Board of Quazis, in the event that the wife has already remarried and has children, the marriage is voided and the children considered illegitimate until such time as the previous divorce case is resolved. Furthermore *fasah* divorce is contingent upon the *madhab* to which the applicant or the Quazi belongs.

According to women activists, there are cases where husbands force/compel their wives to get a *fasah* divorce, instead of proclaiming a *talaq*. In a particular case shared by volunteers from Puttalam - a husband wanted to divorce his wife, but didn't want to pay *matah* (compensation) that he may be obligated to pay if he opted for a *talaq* divorce. Instead he resorted to severe domestic violence and battery of his wife until she was compelled to get a *fasah* divorce. As per the conditions of *fasah* divorce she obtained no compensation, and similarly there were no legal consequences for her husband. Under the GMRO a man is obliged to maintain wife no matter what her economic standing is. If the wife has 'sufficient independent means' then she is obligated to maintain her spouse. In both instances it is until the decree of divorce, unless a separate order for permanent maintenance is obtained as part of the divorce⁴⁰.

CASE STUDY: Within the first two months of marriage a woman of a minority Shi'a sect who was married to a man also from the same community, experienced emotional abuse and controlling behavior from her husband, which culminated in physical abuse as well. Unable to continue being in such a marriage, she had to separate from her husband. Despite attempts at reconciliation, the woman decided that she would not return to the marriage given her experiences of being abused but was unable to get a *fasah* divorce under the MMDA as the law of the sect requires the consent of the husband for divorce, regardless of circumstance. She received strong support from her family, community and religious leaders in this regard and they put immense pressure on the husband to permit the divorce. However despite this the husband did not grant her a divorce for three years simply because he was able to withhold it as a right granted to him by (unwritten) provisions in the law pertaining to the sect.

4.3. Divorces permitted under Sunni madhabs but absent in the MMDA: *Mubarat* and *Khula*


Mubarat is divorce by mutual consent that is recognized by some madhabs of the Sunni sect but not specifically stipulated in the MMDA. *Mubarat* divorce however has been granted by Quazis on the basis of Section 98 of the MMDA which stipulates that - "...all matters relating to any Muslim marriage or divorce, the status and the mutual rights and obligations of the parties shall be determined according to the Muslim law governing the sect to which the parties belong".

Khula is when a wife can obtain a divorce if she is no longer happy in the marriage and she makes a compensatory payment to the husband. Under the MMDA, women can apply for *khula* divorce under Section 28(2)⁴¹, however she must be willing to pay compensation, requires the consent of her husband for the divorce and also needs to "establish that it is impossible for the parties to live together in peace and harmony"⁴².

⁴⁰ Muttetuagama, Ramani, 1997. *Parallel Systems of Personal Laws in Sri Lanka*. Muslim Women's Research and Action Forum (MWRAF)

⁴¹ Section 28(2) of the MMDA states that "Where a wife desires to effect a divorce from her husband on any ground not referred to in subsection (1), being a divorce of any description permitted to a wife by the Muslim law governing the sect to which the parties belong, the procedure laid down in the Third Schedule shall be followed..."

⁴² Kodikara, Chulani 1999. 'Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women'. Muslim Women's Research and Action Forum (MWRAF)/Women Living Under Muslim Law (WLUML).



The problem and consequences: In the course of the study it was identified that in instances where women are choosing *fasah* divorce due to marital fault, the Quazi instead compels the parties to pursue a *mubarat* divorce. One reason given was that it was an amicable decision of both parties and less likely to cause hostility or “bad feelings”. Another reason given by a Quazi was that there was no chance of an appeal of the Quazi judgment if a *mubarat* divorce was given. There are cases of *mubarat* divorce where the wife does not receive any maintenance for herself or the children, as the mutual nature of the divorce is thought to relieve the father of his duties. However, there is no such exception for the father to not pay child maintenance in the MMDA and it is usually an arbitrary decision made by the Quazi.

With regard to *khula* divorce, the requirement of the husband’s consent is highly problematic. Case law analyzed by Chulani Kodikara in ‘*Muslim Family Law in Sri Lanka*’ shows additional challenging circumstances whereby wives have been ordered to pay back their *mahr*, *iddat* and other property in the form of compensation when they seek to obtain *khula* divorces.

DEMAND: Beyond merely permitting different types of divorce under Islamic law, it is also important to assess the societal implications of these different types of divorce, the way they can be used/misused and the consequences on spouses and families. Unilateral divorce and divorce without reason by either husband or wife, has dire impact on spouses and families and must be removed from the MMDA. It is also highly problematic that different types of divorces apply to different segments of Sri Lankan Muslim women on the basis of sect or madhab. Therefore reforms to MMDA must entail uniformity of divorce for husband and wife, with valid grounds for divorce, and effective and efficient process of divorce applicable to all Muslim men and women across sexes and sect/madhab.


5. Polygamy

The MMDA allows for a Muslim man to marry up to four wives legally and any subsequent marriage thereafter is not considered illegal, but ‘irregular’ (temporarily invalid without any legal repercussions). Unlike in countries like Malaysia, for husbands deciding to enter into plural marriages, the MMDA does not require prior consent of the current wives nor does it require an inquiry by the Quazi into whether or not the husband has the ability to maintain and provide for multiple wives and families.

Section 24 of the MMDA requires that the husband gives 30 day notice to the local Quazi where his present and intended wives reside about the proposed marriage. The Quazi is entrusted with the responsibility to place notices in the main mosque of the area (and other conspicuous places) regarding the marriage. The MMDA requires compulsory registration of marriages⁴³, however there is no provision in the registration form to indicate ongoing or previous marriages. The groom has to declare previous marriages at the time of registration of marriage, however the penalty for false declaration is a minimal fine of Rs. 100/- or 6 months imprisonment, without any effect on the validity of the marriage.

There is limited coordination between the Quazi who issues the notices and the registrar who registers the marriages and in most instances the registrar does not inquire with the Quazi.

⁴³ Section 16 and 17, 1951 Muslim Marriage and Divorce Act (MMDA)



The problems and consequences: The provisions under the MMDA leaves the sole decision making power of taking multiple wives at the discretion of the husband without in any way considering the psychological, social and financial impacts of such a marriage on the previous wives and children. The unrestricted ‘right’ of polygamy means that Muslim men who are unable to maintain plural marriages are still able to enter them, thereby placing multiple women and children in vulnerable situations. Many Muslim women who find themselves in polygamous marriages were unaware that they were part of plural marriages and were unable to exercise any agency and autonomy on the matter.

The objective of posting notices regarding a subsequent marriage of the husband, according to senior lawyers is to “place social pressure on the husband entering into plural marriages”⁴⁴. However according to women activists in Puttalam, notices are not properly pasted, as sometimes the Quazi asks the husbands to paste notices and they do not do so, or some mosques do not allow for notices to be pasted on the premises. Muslim women are more often than not prohibited from entering mosques, and mosques that do grant access, do so during limited days/times.


For women, attempts at speaking out about the husband’s decision to take another wife is likely to result in ill-treatment, domestic violence and mental trauma. In some instances women are threatened and forced to live in plural marriages. Furthermore, family and Quazis often blame women when their husbands take another wife. Thus there are also serious financial consequences for wives and children in polygamous marriages. Anecdotal evidence suggests that husbands have divorced previous or subsequent wives on the basis of being financially incapable of sustaining plural marriages. This is despite specific conditions for polygamy as laid down in Islamic texts such as the Quran itself, which makes it a prerequisite that the husband must be able to equally support, all his wives.

Men are also engaging in plural marriages in order to obtain *kaikuli* from the new bride. In a particular case the husband transferred the wife’s property into his name following marriage, married for the second time and expelled the previous wife from the house that was rightfully hers. In another case a man sent his wife to work abroad and send money to build a house. He subsequently married another woman and lives with her on the first wife’s earnings. In some instances, Sri Lankan Muslim husbands have spouses and families in multiple districts and also in neighboring countries like the Maldives, which has similar Muslim family law.

It is also highly improbable that women willingly consent to polygamous marriages should they have a clear, unforced and informed choice. Muslim men see polygamy as a ‘divine right’ given to them as a result of their faith and gender. It is also seen as a ‘privilege’ that Muslim men have which men of other faiths do not have, as the GMRO renders plural marriages as bigamy and a criminal offence. This attitude makes it very difficult for anyone opposing polygamy, as well as for Muslim women who do not want to be in plural marriages to challenge the practice.

The main justification among those who support polygamy is that it is the ‘divine right’ of a Muslim man. Other social justifications include that it is an arrangement, which would give social and economic security for unmarried and elderly women, women in low-income situations, who are divorced, widowed, or middle aged. In reality in Sri Lanka polygamous marriages account

⁴⁴ Marsoof, Saleem, 2011. ‘The Quazi Court System in Sri Lanka and Its Impact on Muslim Women’, Muslim Women’s Research and Action Forum (MWRAF)/Women Living Under Muslim Law (WLUML)



for one of the main reasons for abandonment and non-maintenance of Muslim women by their husbands, as well as the high rate of divorce among Muslims.

Different countries with Muslim majorities have approached polygamy differently. Countries like Malaysia have stringent prerequisites for polygamous marriages, including thorough investigation by the judge of the area about the husband's financial standing, the permission of previous wives and the opportunity for previous wives to draw up a contract conditional on their permission. Other countries like Turkey criminalized polygamy in 1926, and Tunisia banned it in 1956 by declaring the practice archaic and no longer possible or relevant in a modern context.

DEMAND: Polygamy is clearly an example of unequal treatment of men and women by law. Although polygamy is permitted in Islamic law, it is conditional as stipulated in the Quran. Whether or not the liberties that polygamous men take are conforming to Islamic principles is highly questionable. Sri Lankan Muslims have to seriously reflect whether or not polygamy is actually contributing to the welfare of women and families and whether it is relevant and applicable in Sri Lanka today.

Given the current context, if the practice of polygamy is to remain in the MMDA, reforms has to bring in provisions for couples to draw up Islamic marriage contracts before marriage, with full right to opt out of a polygamous marriage. A woman should be informed in advance of marriage whether or not her husband may opt for polygamy. Prior to taking subsequent wives, the husband should get the consent of all wives and to-be wife/wives, in addition to this the Quazi must authorize the polygamous marriage after inquiry into the husbands capacity to maintain equally (especially financial capability). All current marriage must be mandatorily stipulated in marriage registration forms.


6. Maintenance

6.1. Maintenance during separation

The provisions for wife maintenance: Under Section 47 of the MMDA, the wife can file an application in the Quazi court to obtain maintenance due to her in the event that the husband defaults on his responsibility (i.e. is unable or unwilling) to provide maintenance. A woman must be separated from her husband on the basis of a "reasonable cause" in order to be entitled to maintenance⁴⁵. As per the Quazi and Board of Quazi respondents, defaulting on maintenance payments is a leading reason for cases to appear before the Quazi courts.

The provision for child maintenance: Under the MMDA a man is obligated to maintain his children (both legitimate and born out of wedlock). In terms of child maintenance, Section 35 of the MMDA states that a child or any person on his/her behalf is not entitled to claim or receive maintenance for the period that the child is living with or supported by father. Unlike the GMRO, which stipulates that a father's liability of child is till 21 years of age, the MMDA does not stipulate such an age.

⁴⁵ Kodikara, Chulani, 2011. *"Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women"*. Muslim Women's Research and Action Forum (MWRAF), Sri Lanka



The problems and consequences: There are problematic provisions in the MMDA with regard to the conditions for maintenance. Firstly, the claim for maintenance excludes the period in which the wife is/was living with the husband even if she was not getting maintenance, on the assumption that she will be properly looked after during this time. Therefore, women who do not receive any support during the time they are living with their husbands are unable to file for maintenance, unlike the GMRO. Secondly, as per the procedure outlined in the MMDA, wives are only able to seek maintenance from the date of application and not from the time in which her maintenance stopped.

The above provisions apply for child maintenance as well, where child maintenance cannot be claimed if the children are living with the father even if they are not being looked after properly.


A common occurrence that was noted by women's rights organizations working closely with affected women was that Quazis decide upon maintenance amount arbitrarily. They often times order insufficient amounts of maintenance and are reluctant to increase the amount despite appeal by the wives, and sometimes decrease the amount if the husband disagrees with paying a certain amount. Under the GMRO there are generally agreed upon ways that the magistrates use in arriving at monthly maintenance which is also contingent upon the income of the husband, however most Quazis do not follow such a system.

There are also cases wherein Quazis themselves withhold maintenance once obtained from the husbands and have used the funds for their own purposes while asking the wife to collect it on another date⁴⁶. This accounts for a lack of stringent oversight into how funds are managed at the Quazi courts on the part of agencies like the Judicial Service Commission (JSC) and is in stark contrast to maintenance handled by secular courts under the GMRO.

Enforcement Orders: In the event that a husband defaults in his payment of maintenance, Section 66 of the MMDA allows for Quazis to obtain an enforcement order from the Magistrate court. However, there are cases where Quazis have been unaware of the mandatory duty of husbands to provide for maintenance and of the provision for obtaining enforcement orders, and thus have allowed for husbands to convince them of their inability to pay maintenance or to pay an inadequate amount. In many of these instances, it has been women's organizations that have insisted that women obtain enforcement orders.

Enforcement orders, however, are obtained from Magistrate courts in the location of the husband's residence, placing additional logistical burdens on women. In the event that the courts are in a different district, women collecting maintenance often travel long distances to obtain small amounts of maintenance amounting to Rs. 3000 – 5000/-, usually spending considerable money and time in travelling. Quazis mentioned that usually women are immensely frustrated with the process and forsake their right to the maintenance because of it.

⁴⁶ Case 13 - Gul, Begum Safana, 2014. *'Is Equal Justice Possible'*, Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka



CASE STUDY: A young married woman from the Eastern province, with two children, aged 3 years and 11 months faced serious difficulties in her marriage. Her husband, who had a second wife, was not providing any maintenance and financial support for her children or herself. The woman went to the local Quazi to file for a maintenance case, but her husband had refused to pay maintenance. When the woman asked the Quazi if there was an alternative way to get the husband to pay maintenance – the Quazi’s response had been “Go home to your children, squeeze their necks and kill them but don’t come asking for maintenance”. The woman had thereafter complained to the District Secretariat, who is known to be helpful to the community on mediation matters. The District Secretary had put a note on asking the Quazi to look into the matter. However, when the Quazi had read this note he had become further agitated and started scolding the woman saying he would not let the woman get any maintenance from her husband under any circumstance.

6.2. Maintenance during and after divorce

6.2.1. *Iddat* maintenance

The *iddat* period is a waiting period after divorce or death of the husband lasting three menstrual cycles (three months), or if pregnant at the time - until the baby is delivered. As per the MMDA, the wife is entitled to maintenance during the *iddat* period as well as expenses related to her lying in (pregnancy) period⁴⁷.

6.2.2. *Matah* (Alimony)

Under the MMDA there is only provision for the wife to receive three months *iddat* maintenance or lying in (pregnancy) expenses if she is pregnant. Some Quazis have ordered husbands to pay a lump sum compensation of *matah* payment in the event of a *talaq* divorce, based on the practice of other Muslim countries, however this is a fairly arbitrary practice done by some Quazis at their discretion and there is no stipulated provision for it in the MMDA.


The problems and consequences: While there have been cases where Quazis have ordered for *matah* in the form of monetary compensation for women especially following a *talaq* divorce, the lack of compulsory provision in the MMDA makes *matah* arbitrary and dependent on the discretion of individual Quazi. A case is currently pending in the Supreme Court where a former husband has challenged a Quazi who ordered *matah* on the grounds that the MMDA does not have any provision for it⁴⁸.

Under the GMRO when a divorce or separation takes place a woman is secured with monetary compensation/ alimony⁴⁹ which can be paid in a lump sum, or in annual or monthly installments as decided by the courts. Therefore in contrast to the GMRO, the protection and financial support accorded for spouses following a divorce are not offered under the MMDA.

⁴⁷ Section 47(1)(d), 1951 Muslim Marriage and Divorce Act (MMDA)

⁴⁸ Fathima Minnah vs. Tuan Muthalif Tuan Nazar SC SPI LA 174/13

⁴⁹ Section 615: (1), Civil Procedure Code of Sri Lanka: “The court may, if it thinks fit, upon pronouncing a decree of divorce or separation, order for the benefit of either spouse or of the children of the marriage or of both, that the other spouse shall do any one or more of the following:- (a) make such conveyance or settlement as the court thinks reasonable of such property or any part thereof as he may be entitled to ; (b) pay a gross sum of money; (c) pay annually or monthly such sums of money as the court thinks reasonable; (d) secure the payment of such sums of money as may be ordered under paragraph (b) or paragraph (c) by the hypothecation of immovable property or by the execution of a bond with or without sureties, or by the purchase of a policy of annuity in an insurance company or other institution approved by court. (2) The court may at any stage discharge, modify, temporarily suspend and revive or enhance an order made under subsection (1)”



There are many situations in which in the event of a *talaq* divorce, a woman is likely to find out about the husband's intention to divorce from the Quazi or at the time of pronouncement, leaving her completely unprepared for the divorce. There are cases where husbands do not pay maintenance⁵⁰ ordered by the Quazi.

Early marriage, restrictions on education and employment opportunities contribute to increased dependency of Muslim women on their husbands for economic support and they are often left in vulnerable situations following divorce. This is especially true for women who observe the three-month *iddat* period (or longer in the event she is pregnant). *Iddat* maintenance is often minimal and the '*iddat*' period requires that women avoid leaving their residence or interacting with persons who are not immediate family members. When issues regarding the financial difficulties faced by women after *iddat* is raised with Quazi, the response is usually that it is sufficient for a man to only pay the *iddat* maintenance, as divorced women thereafter can seek another husband to support her.

In the event the woman is pregnant during the time of the divorce, the maintenance stops as soon as she delivers; however it is the period immediately after delivery in which she requires financial support especially in the event she is unemployed. There is little option for women to seek livelihood opportunities during the period immediately following the divorce, especially post-childbirth.

DEMAND: At minimum, the MMDA reforms process should recommend for the MMDA to stipulate specific conditions for the provision and directions for the calculation of all types of maintenance and not leave it to the arbitrary decision making of the Quazi. Maintenance should include provision for recovery of maintenance from the time the maintenance was stopped and not the time the application was filed. This allows for a more robust way in which calculation for maintenance is done and limits the discretion and bias of Quazis. There should also be an effective system to recover maintenance including when the husband/ or father of children is abroad.

7. Quazis

There are 65 Quazi courts in Sri Lanka, with more courts in areas with a high concentration of Muslims. Section 12 of the MMDA mandates the Judicial Service Commission (JSC) to appoint any "Muslim male of good character and position and of suitable attainments" as Quazi of an area. A recent Supreme Court regulation stipulated attainments for Quazis to include lawyers, Moulavis or Alim (religious scholar), retired public officer in the staff grade, and/or a graduate⁵¹. However, in practice there are individuals recruited as Quazi who do not fit these attainments. Many Quazis are also appointed after being recommended by mosque committees and mosque federations or through political connections.

⁵⁰ Cases 2, 16, 17, 20: Gul, Begum Safana, 2014. '*Is Equal Justice Possible*', Islamic Women's Association for Research and Empowerment (IWARE), Batticaloa, Sri Lanka

⁵¹ Personal Interview Judicial Service Commission Representative, March 2016.



7.1. Lack of suitable qualifications and provisions for Quazis

According to the JSC there have been significant challenges to finding Quazis due to limited salary and resource provisions. In addition to this in some areas, the reputation of previous Quazis for taking bribes and being corrupt means that qualified individuals are unwilling to apply for Quazi positions. This has resulted in ad hoc appointments, such as an appointment in Kalkuda whereby an office assistant of the previous Quazi was recruited as Quazi, after multiple attempts at trying to fill the position.

In the words of a representative of the Judicial Service Commission –

“A few months ago an advertisement was gazetted calling for the post of Quazi for 6 areas. We still haven’t received any applications for Hambantota and Hatton. Generally there is no competition in some areas, so the JSC appoints whoever is deemed suitable and willing. The issue is that qualified people are not applying because the salary is low (only Rs 6000 a month). Also it is required that the Quazi should be from the same area, so most of them have relatives and families in those areas, therefore don’t want to apply. In some areas the Quazis or the system is so corrupt, so respectable people are not willing to apply for the position.”


It was noted during the study that the Quazi position in Hambantota has been vacant for over one and a half years, in other areas like Colombo South the Quazi has changed multiple times in the past 18 months. The JSC representative also mentioned that no age of retirement for Quazis means that some Quazis, due to their age and health issues find it difficult to undertake their duties effectively and are unable to sit long hours in the courts.

7.2. Lack of sensitivity and inappropriate behavior and attitude of Quazis

The most problematic issue with regard to the Quazi court system is the behavior and attitude of many Quazis towards women who access the courts. According to the JSC representative interviewed, the highest number of complaints received is with regard to inappropriate and insensitive behavior of Quazis towards women and girls. Women’s organizations note numerous cases where treatment has been biased against women seeking divorce or maintenance orders. Certain Quazis are entrenched in preconceived notions of the specific roles of women/wives, are against divorce and/or in favor of practices like polygamy. This bias and the lack of professional training contribute towards prejudiced judgments against women. For instance, women and girls who have faced domestic violence and cruel treatment at the hands of husbands are often dismissed by the Quazis and asked to tolerate this treatment from their husbands.

CASE STUDY: In 2014, a girl in the Eastern province was married at the age of 14 after her schooling was stopped. After a few months of marriage she applied for *fasah* divorce due to severe sexual torture by her husband. The Quazi instead of dealing with the case in a sensitive and appropriate manner chose to interrogate her for over two hours asking her specific details about the sexual violence. This in turn caused the girl further psychological trauma so that she attempted suicide and faced severe depression.

There is no fixed working week (days and hours) in which Quazis are supposed to hold court. According to women’s organizations, certain Quazis hold court in their residences at inappropriate hours of the night. This further places additional difficulties on women in accessing the Quazi courts. It is a common occurrence in some areas for the Quazis to extend flexibility of



visiting hours or location for rich persons. As one women activist from Batticaloa noted, “the poor visit the Quazi courts, the rich get visited by the Quazi in their homes in order to protect their identity and dignity”. In a recent case, the Quazi refused to call the respondent of a case to the Quazi court stating that, “He (the husband) is rich, funds the mosque a lot, and has much influence among the politicians, so it will not be proper to call him to the Quazi court”. In this particular case the Quazi advised the wife to tolerate the mistreatment and go back to living with her husband.

The lack of state oversight and monitoring mechanism into the functioning of the Quazi court system has meant that other than complaints referred to the JSC, there are no other means through which supervision and rectification can be provided by the state.

There are also highly disturbing cases of Quazis who have taken bribes from one or both parties appearing before the Quazi courts and giving judgments based on the desired outcome of the said parties. The JSC representative interviewed also stated that allegations and complaints about bribery are brought to the JSC, however the JSC has no mandate to pursue legal action beyond dismissal of Quazis following some form of investigation. It is unclear at this time to what extent the JSC pursues inquiry into the complaints brought to the JSC and the nature of follow-up action taken with regard to the respective Quazis.

7.3. Significant gap in knowledge about MMDA, procedures and jurisdiction

There is no formal, structured and mandatory training about the MMDA or code of conduct and etiquettes for Quazis by the JSC, unlike for other judicial officers in national courts who are given training periodically. This is highly problematic especially as prior knowledge about or experience of working with the MMDA is not a requirement to be a Quazi. Civil society organizations like Muslim Women’s Research and Action Forum (MWRAF) had undertaken trainings once a year for a few years, however given the high turn over rate, many Quazis who are trained may not be available for follow-up trainings. As a result many Quazis enter the position and undertake duties with little or no knowledge about the MMDA and are thereby unable to implement the provisions and procedures outlined. There is also no standardized system followed by all Quazis by which case files are maintained and judgments are recorded. Also in the event of transfers and resignation there is a lack of handing over procedures.

Quazi interviewed mentioned that they did not officially receive a copy of the MMDA when they assumed duties. Most of the Quazis are also unaware of their realm of legal jurisdictions and the limits to it. Certain Quazis give decisions on matters of child custody, recovery of *kaikuli* (dowry) and *matah* (compensation for wife), which are beyond their jurisdiction.

7.4. Women disallowed from professions

In Sri Lanka, there are no restrictions for Muslim women to pursue legal careers as judicial officers and judges within the state court system, but they are unable to become Quazis, Board of Quazi members, adjudicators or marriage registrars as per the MMDA. Section 8 of the MMDA on ‘Registrar of Muslim Marriages’, Section 12 on Quazis and Section 15 on Board of Quazis members all restrict these respective positions to ‘male Muslims’. Thus, as a result of this restriction qualified Muslim women are unable to apply for these positions.



The issue of ‘Female Quazis’ and MMDA reforms

The provision for whether or not Muslim women can be Quazis under the MMDA is by far the most controversial and a highly contested issue with regard to MMDA reforms. Highly conservative groups and individuals articulate the following reasons against female Quazis:

Perceived ‘Islamic’ reasons given by some religious leaders and conservatives:

1. There is lack of evidence of women leaders in Islamic history;
2. The practice of segregation means that women are unable to interact with men who are not closely related;
3. The perception that under some interpretations of Islamic law women’s testimony is half of that of a man’s;
4. The perception that according to religious text, women are prohibited from taking up leadership positions.

Perceived biological reasons:

- A popular myth, as articulated by one of the Quazis interviewed is that women are unable to make/give credible judgment during their menstruation period because it renders them “emotional and irrational”.

According to a committee member on the Muslim Personal Law (MPL) reforms committee, the issue of female Quazis is not a priority especially because it is perceived as “the one issue that is blocking the entire reforms process”. The fact that countries like Indonesia and Malaysia have reformed family law using options within Islam to justify female Quazis, is often cast aside as “not applicable to Sri Lankan Muslims”. Certain Ulema have also cast off these countries’ attempts to allow women to be Quazis as a ‘western influence’ or that these countries practice ‘English law’. A grave irony considering that, while the MMDA accommodates provisions of different sects to apply their practices, the option for women to be Quazis as allowed under Hanafi *madhab*, predating any modern family law reforms processes, has been completely disregarded.

It is to be noted that certain aspects of the MMDA such as enforcement of maintenance orders, recovery of *kaikuli* and *mahr* and child custody cases as well as inheritance cases under the Muslim Intestate Succession and Ordinance (1931) are taken up in civil courts. These courts also have female judges, who decide on cases. In the case of inheritance, presiding judges (both Muslim, non-Muslim, male and female) also interpret Islamic law-based legal jurisprudence as per the Muslim Intestate Succession Ordinance.

DEMAND: The positions stipulated in the MMDA with regard to the Quazi court system must not be excluded for women. Disallowing women for the positions of Quazis, adjudicators, marriage registrars and Board of Quazi member positions is a direct violation of the equal right of a Muslim woman as a Sri Lankan citizen to pursue her profession of choice. These are government salaried and tax-funded positions from which women are excluded on the basis of gender and it therefore also amounts to a direct discrimination of the State against Sri Lankan Muslim women. The MMDA must make it mandatory that in cases requiring a jury panel, there must be at least two of the jurors are women. There needs to be a systematic oversight mechanism by JSC of the Quazis and the operation of the Quazi courts.



7.5. Quazi intervention in gender-based violence cases

There are added complexities in addressing gender-based violence within the Muslim community, especially with how the cases of affected women and children are addressed at the Quazi courts. The MMDA and the Quazi system do not hold any legal mandate to deal with cases of domestic violence, rape or incest. However, the predominant perception is that Muslim women should not seek state remedies, or approach ‘non-Muslim’ institutions for support with these violations, because solutions need to be sought ‘within the community’.

7.5.1. Community interventions in domestic violence

Physical violence is a criminal offence under the Penal Code and the Prevention of Domestic Violence Act. No 34 of 2005 (PDVA) recognizes other forms of domestic violence such as emotional abuse and grants a civil remedy through the provision of protection orders.

Previous study conducted on domestic violence interventions indicate that a small fraction of women victim-survivors⁵² access protection orders through the PDVA, but less so among Muslim women.


Organizations working with community women speak of many cases where women go to Quazi courts for *fasah* divorce - the reason is usually on grounds of cruelty and domestic violence. As Quazis have a duty to mediate divorce cases, they often refer these to mosque committees, mosque federations⁵³ and/or other counseling groups for mediation and possible reconciliation. In many instances, mosque committee or federation members also act as jurors who advise Quazis on cases.

Cases from districts such as Puttalam and Batticaloa indicate that mosque committees and federations consisting only of men - have ‘Family Reconciliation Committees’ wherein all kinds of family disputes including serious domestic violence cases are brought forward and mediated. It was noted by women’s organizations that police and organizations working specifically on domestic violence issues are not the primary referral point despite evidence of violence. Respondents from a mosque committee in Puttalam informed the study team that there is a difference in opinion among mosque committee members about “what is Islamic and what is not” and that this results in arbitrary action.

Serious concerns thus are whether or not informed decisions are being made about the nature, extent and degree of violence that determine invoking police intervention or sending for counseling on reconciliation, who is making the decisions, and whether or not women are informed of their options.

Some Quazis also refer cases to Muslim women’s led counseling initiatives like NGO’s, and other groups that are religiously affiliated. Where cases have been referred to rights based NGO’s counselors are more likely to inform women of the option of going to the police and accessing Prevention of Domestic Violence (PDVA) legislation. The All Ceylon Jamiyyathul Ulama (ACJU) based in Colombo has also initiated counseling services for ladies. According to their counselors, effort is made to resolve the issues within the families rather than through legal mechanisms such as the PDVA. The ladies counseling group in particular has received many referrals from the Quazi courts for mediation and counseling, especially with regard to family disputes and maintenance issues, including a few involving domestic violence.

⁵² Chulani, Kodikara, ‘*Domestic Violence Intervention Services in Sri Lanka: An exploratory mapping 2009-2011*’. International Center for Ethnic Studies, Colombo, Sri Lanka.



Additional concerns with the above mentioned counseling and mediation done by community-based organizations and Quazis is firstly the arbitrary nature in which cases and issues are handled. Secondly, there also appears to be a significant lack of understanding about what exactly constitutes domestic violence, as physical violence is often perceived as the only damaging form of violence⁵⁴ and verbal and emotional abuse is generally not considered harmful.

7.5.2. Summary justice for a criminal offence: Rape and incest

Another disturbing aspect that was noted in relation to community based interventions on family matters was that there may be instances of summary justice for criminal offences like rape and incest occurring at the community level. Summary justice in this study is meant to refer to a type of vigilante justice “meted out by fellow citizens without recourse to law⁵⁵”. Women’s rights organizations have noted that, similar to domestic violence, victim-survivors of rape and incest and/or their families have sought remedy and redress from within the community first without approaching the police. This has meant the involvement once again of Quazis, mosque committees and federations who are the first point of contact for some of these cases. In a particular case mentioned the perpetrator of a rape had been asked by mosque committees to pay a sum of compensation to the victim, with no action on their part to report the incident to the police.

Unfortunately, fear of shame and stigma from the incidents, as well as fear of communal repercussion has meant that victim-survivors and their families choose to be silent about the incidents, and action is taken informally rather than through the police. The hesitation to go to the police with cases is also largely due to limited language assistance as police officers present are unable to speak the language or do not sensitively handle the case and persons involved, especially when women seek support.

The exact numbers, frequency, nature and extent of summary justice and extra-judicial settlements is unknown at this time, and more information needs to be gathered to assess just how widespread this practice is around the country. There is a significant security risk for Muslim women and girls from the community if cases of rape and incest are being handled outside the state criminal justice system.

7.5.3. ‘Hadd’ punishments – flogging for adultery


‘Hadd’ (singular of Hudud) is punishment recognized under Islamic law for certain crimes⁵⁶ which include sexual relations out of wedlock and/or illicit sexual relations/adultery, as well as making unproven accusations of illicit sexual relations among others. The MMDA of Sri Lanka does not acknowledge or have any provision outlining regulations or punishments relating to *hadd* crimes, and adultery is not considered a criminal offence under the Penal Code.

However while conducting field interviews, it was reported that flogging punishments do take place under the order the former Quazi in the Eastern Province. According to the particular Quazi interviewed – cases of adultery came to his notice when the husband or wife appears

⁵⁴ One of the women counselors of ladies counseling group interviewed mentioned that women are told not to tolerate physical violence because remedies like divorce and separation exist within Islamic norms. However they are usually counseled to tolerate verbal abuse and other “lesser” forms of gender based violence like economic control and restrictions to mobility.

⁵⁵ Morgan, Rod, 2008. *Summary Justice: Fast but Fair?*. Center for Crime and Justice, Kingos College London, UK
<http://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Summary-justice.pdf>

⁵⁶ Oxford Islamic Studies Online, 2016. *The Oxford Dictionary of Islam*. <http://www.oxfordislamicstudies.com/article/opr/t125/e757>



before the Quazi courts for divorce or maintenance and it is then informed or inquired by the Quazi that their spouse is having an extra-marital affair. He would order both the man and the woman to get 100 lashes if unmarried, and 110 lashes if married. The Quazi would carry out the punishment before four witnesses from the mosque federation who are always men.

As adultery is not a criminal offence, flogging punishments rendered by the Quazi could amount to torture⁵⁷ i.e. cruel, inhuman or degrading punishment and a violation of fundamental rights, carried out by the Quazi who is a government employee.

From FGD's it was gathered that flogging punishments on persons suspected of adultery is occurring at the community level, either commissioned by mosque committees and mosque federations. The exact nature of how the punishments are carried out for men and women, or the number and frequency of such incidents are unclear⁵⁸. Civil society groups working in the areas stated that the community perceives the practice as a norm and a legal and legitimate punishment as part of *Sharia* and therefore allowed under the MMDA, hence it has not been questioned or challenged. In the course of finalizing this study, a case⁵⁹ from the Puttalam emerged in the media. A twenty-five year old woman who had been a victim-survivor of rape was accused of alleged adultery and given 100 lashes by members of an administrative panel at her local mosque. With the help of a lawyer she had filed a case, and due to the intervention of the judge had gotten the four men remanded. Women, who are courageous to seek redress from these issues, often face severe intimidation by the community.

It is a concern that in addition to the physical and psychological trauma, the social stigma and 'shame' that is placed upon individuals (both men and women) can have serious consequences on their wellbeing. Therefore further inquiry into whether or not this practice is occurring and immediate steps towards criminalizing it is warranted.

DEMAND: Quazis should not adjudicate on matters, which are considered criminal under the penal code, domestic violence act and other similar laws. Given that MMDA regulates personal matters pertaining to marriage and divorce, in the event that the Quazis comes across reasonable suspicion of criminal act in the case being brought before them, it should be made mandatory that these cases are to be referred to relevant authorities dealing with such criminal acts.

⁵⁷ Article 11 of the 1978 Constitution states that "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

⁵⁸ Organizations such as Muslim Women's Research and Action Forum (MWRAF) raised the issue in the 1999 publication 'Between Two Worlds' wherein it was noted that the punishments are usually 'symbolic' and carried out with a coconut husk.

⁵⁹ Daily Mirror 24th October 2016. *Four remanded for beating sexually abused woman*
<http://www.dailymirror.lk/article/Four-remanded-for-beating-sexually-abused-woman-118021.html?fbrefresh=refresh>



LEGAL EXCLUSIONS UNDER OTHER NATIONAL LAWS

Article 12(2) of the 1978 Constitution of Sri Lanka states that:

“No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such groups”.

However, Article 16(1) of the constitution supersedes this provision:

“All existing written and unwritten laws valid and operative notwithstanding any inconsistencies with the preceding provisions of the (Bill of Rights) Chapter”.

The existence of Article 16 means that Muslim women and men are unable to seek remedy and redress for any violation of their fundamental rights, which occur under the MMDA. This is further restricted by Article 80(3), which prevents judicial review of Acts once passed through Parliament. Therefore despite the whole gamut of issues discussed arising with regard to the MMDA, Muslims who feel discriminated against and are not treated equally before law are not able to challenge the violations caused by the Act or its implementation, nor do they have the choice to opt out and marry under the GMRO instead.

There are however cases where two Muslims have got married under the GMRO. A particular Quazi revealed that such cases included instances: 1) when the couple chooses to marry without involving family (e.g. in cases of elopement); 2) where the bride may not have a *wali* guardian to sign on her behalf (e.g. in cases of conversion to Islam and lack of family approval) and; 3) when the registrar facilitating the marriage is either unaware that there is an exclusion for Muslims under the GMRO or that the question of religion has not factored in at any point during the registration process.

According to legal expert Professor Savitri Goonesekera the marriage of two Muslims who get married under the GMRO, while both were Muslim at the time of marriage, is rendered null and void. If so this raises questions pertaining to marriage of said individuals and their children, especially if problems with divorce, custody and maintenance were to come up subsequently. At the time of this study, it is unclear what the legal implications are for Muslim couples who do marry under the GMRO, albeit out of ignorance and slipping through the system.

Through the key interviews, it was identified that the majority perception of Muslim lawyers, activists and advocates is that the MMDA should continue to be mandatory on Muslim marriages and no option should be given under the GMRO. This implies that there is little or no alternative recourse through other state mechanisms and Muslims are forced to comply with the MMDA despite the many problems it poses.



**PART 2:
OVERVIEW OF CIVIL SOCIETY
INTERVENTIONS ON ADDRESSING
MMDA RELATED ISSUES
AND TOWARDS MMDA REFORMS**



AN OVERVIEW OF CIVIL SOCIETY INTERVENTIONS

Although there are numerous civil society organizations in Sri Lanka, there is a limited number working on addressing Muslim women issues. This study looked at a sub-section of organizations who have been working on addressing issues faced by Muslim women more broadly, and MMDA reforms more specifically. These organizations also highlight the work done at different levels and across the urban-rural divide, in Colombo, Puttalam, Batticaloa and Mannar, despite challenging, sensitive and limiting circumstances. It is important to note that efforts undertaken by long-standing organizations have also been supported and reinforced by work of many ground level activists and community-based organizations.

Some key strategies adopted by these organizations are highlighted as follows:

1. Networking and solidarity building


Since its inception period, organizations such as the Muslim Women's Research and Action Forum (MWRAF) have been closely involved with international groups working on similar issues such as Women Living Under Muslim Law (WLUML), which has enabled the sharing of experiences of Muslim women from other countries. As articulated by staff members, through this link, MWRAF was able to understand that a "homogenous Islamic or Muslim world is a myth" considering the diverse societies that Muslims live in. It also led to the understanding that patriarchal control and ideology cuts across various contexts, resulting in similar experiences of inequalities faced by Muslim women around the world and cross sharing of ideas on how to address them.

Muslim activists from countries that have debated reforms to Muslim family laws and have adopted them have engaged with a range of alternate discourse within the 'Islamic framework' about topics such as gender equality, marriage, divorce, female leadership. The 'Islamic framework' includes, but is not limited to, exploring alternate interpretations of Quranic verses, options in fiqh (Islamic jurisprudence), engaging with different opinions from all the schools of thought (*madhabs*) and comparing Islamic legal practices in other Muslim contexts.

In this regard another key learning from networking with WLUML, that supported MWRAF in articulating and relating to the local context, was that despite the same sources of the Quran and *Sunnah* (traditions of the Prophet), there are diverse and alternative ways in which Muslim law and legal jurisprudence are interpreted and implemented depending on changing times and the priorities of states and communities. This supported MWRAF in undertaking action-based research on the MMDA and strategizing towards the reforming of family law in Sri Lanka, drawing on international and local experiences.

It also expanded the space for conversation about the role of concepts such as '*ijtihad*'⁶⁰ or 'intellectual reasoning' on matters of Islamic jurisprudence that considers current contextual and rational thought processes to influence laws and legal systems.

⁶⁰ "It was contended that the element of human reasoning during the process of *ijtihad* had been the reason for the existence of gender biased interpretation of the rules relating to matrimonial laws, which had consequently jeopardized the status of women. Thus, it was argued that there were needs for the reinterpretation of the matrimonial laws, which were based on religious sects, and to go beyond the opinions of the jurists. This effort was crucial in order to give back to women their former status as had been accorded to them during the Prophet's period." (Source: Khan Noor Ephroze, *Women and Law*, Rawat Publications, Jaipur, New Delhi, 2003)



With regard to local grassroots level networking and solidarity building – community based organizations such as the Muslim Women’s Development Trust (MWDT) in Puttalam, the Mannar Women’s Development Federation (MWDF) in Mannar and the Mullaiteevu Women’s Development Rehabilitation Foundation (MWDRF) in Mullaitivu have been part of a Women’s Action Network (WAN) – a coalition of eight organizations in the North and East. WAN has been a forum through which the concerns of Tamil and Muslim women with regard to war, post-war and gender based violence issues have been articulated and addressed through collective action.

One of the issues that WAN has taken up is violations faced by Muslim women in the context of the MMDA. It has enabled non-Muslim staff and counselors from organizations like MWDF to learn from the approaches and experiences of MWDT in working with Quazis and dealing with cases of affected women. Activists noted that the shared context of war that Muslim and Tamil women faced in the North and the East was crucial in building solidarity and a common cause for justice, whereby issues faced by Muslim women are not seen as “Muslim issues” but of violation of women’s rights.

2. Creating a knowledge base

Organizations working with Muslim women have not only understood the importance of researching and documenting the experiences of Muslim women in Sri Lanka but also looked at the historical evolution of laws, Islamic scholarship and how the laws are applied at the individual and community level. From Board of Quazi Law Reports between the years 2001 and 2010 by MWRAF, to case study compilations by Islamic Women Association for Research and Empowerment (IWARE) – these publications have enabled a better understanding of how Muslim women have been affected by the Quazi court system.

Muslim activists from countries that have debated reforms to Muslim family laws have adopted a range of alternate discourse within the ‘Islamic framework’ about topics such as gender equality, marriage, divorce, female leadership. The ‘Islamic framework’ includes, but is not limited to, exploring alternate interpretations on Quranic verses, options in fiqh (Islamic jurisprudence), engaging different opinions from all the schools of thought (*madhabs*) and comparing Islamic legal practices in other Muslim contexts.

In Sri Lanka, after recognizing the gap in information and publications about these related topics in Tamil, Sri Lanka Development Journalist Forum (SDJF) formulated two publications in 2015 covering the topics of gender equality within the ‘Islamic framework’ including: equality in worship, marriage, divorce, polygamy, education and economic rights, women as witnesses in *Sharia* law, intimate partner violence and MMDA.

These documents have helped create awareness about gendered issues affecting the community and dispel the myths about Islamic law. These publications have proven to be very useful tools to engage the community in conversation from a religious standpoint. Organizations like IWARE have begun using the publications in Muslim women’s study circles, taking each topic as a discussion point and engaging in lengthy discussions about the common and alternate understanding of various issues, Quranic and Sunnah interpretations, and consequences for Muslim women.



3. Capacity building and support services for women

Women's organizations through their work at the community level have undertaken legal literacy programs, capacitating and mobilizing community women in being able to give legal advice on the MMDA. MWRAF also established a legal component to their work, facilitating cases and supporting women in taking up court cases and appeals through the Board of Quazis and appellate court (e.g. for enforcement orders).

MWDT and IWARE have also been working to increase the knowledge and capacity of community women in Puttalam and Batticaloa respectively, to become knowledgeable about the MMDA and the procedures in the Quazi courts. These women have been able to provide counseling and vital legal information to women who face issues. They also provide support in preparing documentation such as affidavits, accompanying women to Quazi courts and following up on cases and Quazi judgments. Above all, women's organizations have provided solidarity and acted as a support system to hundreds of women across the country. This has included assistance during personal emergencies, psychological strengthening and confidence building, as well as accompanying them as they go through the Quazi courts system.

4. Working on strengthening the existing Quazi court system

Women's organizations have and continue to engage with Quazis through trainings on the MMDA and the procedures outlined in the Act. MWRAF has also published a module⁶¹ for Quazi training in 2011 and a Code of Ethics for Quazis in this regard.

Over time, more grassroots women's organizations have been able to build acceptance within the community in districts like Puttalam, Batticaloa and Mannar. After a significant effort in attempting to get access to Quazi courts in Puttalam, a few Quazis have allowed women counselors and volunteers to sit in the court and assist with cases, especially where women may require support. Women accessing the Quazi courts note that they are treated differently when accompanied by women counselors and volunteers.

In areas like Puttalam, Batticaloa and Mannar, Muslim women volunteers and counselors from the local women's rights organization who are trained on MPL are invited by the local Quazis themselves to sit in on court hearings and gather information from women where appropriate. On certain occasions the Quazi also asks the opinion of the volunteers and counselors about certain cases, such as a reasonable amount for maintenance etc. Muslim women trained by these organizations have the knowledge, capacity and experience to themselves be Quazis, and the gender specification in the MMDA is the only barrier stopping them from attaining the position.

“Because of the trust and respect for my knowledge about MPL and the honest work I do in supporting Muslim women in Quazi courts, many community members and even mosque committee members are in favor of me becoming a Quazi. However, because of the restriction they put an idea forward that my husband should apply for the position and I would be the one to support him in making all the decisions and giving judgments. It is a very unfair situation.”

- Juwairya Mohideen, Founder of MWDT Puttalam

⁶¹ Module for Training of Quazis, 2011. Muslim Women's Research and Action Forum (MWRAF)



5. Muslim men as advocates and allies

The activism towards reforming the MMDA has primarily been led by Muslim women. However, it was recognized very early that it was vital that Muslim men, including Quazis, were part of the reforms process. Over the years notable influential male advocates including the late Al Haj S.M.A. Jabbar, Justice Saleem Marsoof and Justice A.M Mohamed Mackie primarily through their wealth of legal expertise have been engaged. They have contributed significantly to the conversation, literature and advocacy for both substantive and procedural reforms of the MMDA.

Other media organizations like SDJF have attempted using mainstream Tamil media and through radio dramas, programs and newspaper articles discussed issues arising from divorce and polygamy, among other pertinent topics. This was effective to the extent that it stirred some degree of conversation within the Muslim community, especially in the Eastern province, which has previously not engaged in dialogue of this nature. The initiative also helped organizations like SDJF better understand the different questions and misconceptions that the general Muslim public have in this regard, and gauge the reactions and perspectives particularly from religious leaders and groups.

6. Non-Muslim women as advocates and allies

“Being a non-Muslim doesn’t affect my work. Everyone in our team sees it as a women’s issue and no one approaches Muslim women’s issues from “a non-Muslim perspective” but rather a women’s rights perspective. Even the Quazi respects the work of our organization”.

- Kurushanthan Mahaluxmy Coordinator of MWDF Mannar

It is noted that there is only a handful of non-Muslim individuals and organizations that are willing to engage with Muslim women on Quazi court matters and this is primarily from post-war areas such as Mannar, Batticaloa and Vavuniya. Shared trauma and solidarity on issues have meant the concerns of Muslim women with regard to family and community are seen as “women’s issues” rather than “Muslim issues”. MWDF is an example that portrays the positive impact non-Muslim organizations and allies can have if only they make the attempt to engage and understand, and approach the issue out of concern for the wellbeing of women rather than from a cultural-relativist standpoint.

For instance, MWDF in Mannar started receiving complaints and requests for support from Muslim women in the area during the early days of its work. The organization liaised with sister organizations like MWDT in Puttalam, gained the required knowledge and information about the MMDA and proceeded to support Muslim women in their cases. Similar to MWDT and the Islamic Women’s Association for Research and Empowerment (IWARE), MWDF staff members assist Muslim women, accompanying them to court and following-up with judgments, including offering counseling and emergency support. There have also been instances when MWDF has helped women file complaints where unfair treatment or judgments have been given to women.

Likewise Suriya Women’s Development Center⁶² a well-established organization based in Batticaloa approaches Muslim women’s issues as women’s rights issues, while also closely liaising with organizations like MWRAF in terms of specific referrals of MMDA cases. It was noted by the Manager of Suriya that in instances where Muslim women have had difficulties raising concerns of violations that occurred within the community (due to fear of negative repercussions), Suriya has been approached and has willingly taken up activism on cases.

⁶²Suriya Women’s Development Center website <http://suriyawomen.org/about/>

7. Specific actions towards reforming the MMDA

Organizations like MWRAF have significantly contributed towards MMDA reforms processes over the years and two of its members have been a part of the 1990 Committee on Muslim Family Law reforms, as well as the 2009 committee headed by Justice Saleem Marsoof. MWRAF members have also given testimonies and statements in these committees, as well as provided information and resources to the respective committees. In 2005, MWRAF initiated the Independent Committee for Muslim Personal Law Reforms (ICMPLR) as a people's initiative following many years of inaction at the national level. This was following a government committee set up in 1990 headed by Dr. Shahabdeen known as the 'Shahabdeen Committee', which also made recommendations for MMDA reforms. The ICMPLR, which is reported⁶³ by MWRAF as having engaged in a wide consultative process with many actors, prepared also comprehensive report on MMDA reforms. According to MWRAF, the report contributed as the initial documentation and was the precursor to the 2009 Cabinet appointed committee.

Although the earliest attempt at reforms can be traced back to 1954, the reforms process gained significant momentum from the mid 1980's. Over the years different aspects of the MMDA have been highlighted for reforms by different groups, however specific provisions have been suggested by the MWRAF, which has been the most active organization advocating for reforms since 1984. However since 2011, other community-based organizations have also articulated additional provisions and changes. Groups such as the Women Action Network (WAN) are advocating for completely removing the minimum age of marriage from the jurisdiction of the MMDA⁶⁴ and for the minimum age to be 18 years for all citizens including Muslims.

In February 2016, Muslim women in Puttalam and the North and East went before the district level hearing of the Peoples Representation Committee (PRC) on Constitutional Reforms asking for the removal of Article 16(1) in the Constitution, which enables the MMDA to be valid and operative despite conflicting with the non-discrimination and equality clause in the fundamental rights chapter.

More recently especially in light of the constitutional reforms process, a new generation of Muslim women activists, such as through lobby groups like Muslim Personal Law Reforms Action Group (MPLRAG)⁶⁵, have emerged. Such groups have been going beyond the usual call for reforms and advocating for reforms that would make MMDA comply with the equality and non-discrimination guarantees accorded to all citizens of Sri Lanka.

In the course of finalizing this study, it is observed that the conversation around MMDA reforms and rights of Sri Lanka Muslim women is emerging in mainstream discourse and there is growing support for reforms of the MMDA, as well as constitutional guarantees of rights of Muslim women and girls, from within and outside the Muslim community.

⁶³ Ed. F.Zakariya, C. Kodikara 2011. *Women Claiming Rights and Spaces: Activism to Reform Muslim Law in Sri Lanka*. Muslim Women's Research and Action Forum (MWRAF). Colombo, Sri Lanka.

⁶⁴ Women Action Network, April 2016 Statement: [Scrap Sri Lanka's Archaic Underage Muslim Marriage Law: WAN](https://www.colombotelegraph.com/index.php/scrap-sri-lankas-archaic-underage-muslim-marriage-law-wan/?platform=hootsuite). Colombo Telegraph., News Stories. <https://www.colombotelegraph.com/index.php/scrap-sri-lankas-archaic-underage-muslim-marriage-law-wan/?platform=hootsuite>

⁶⁵ Muslim Personal Law Reforms Action Group (MPLRAG) www.mplreforms.com



**PART 3:
BARRIERS AND CHALLENGES TO
REFORM OF MMDA**

THE STRUGGLE FOR REFORMS

The process whereby the MMDA came into existence and the subsequent amendments thereafter to some procedural aspects is well documented⁶⁶. Notable amendments include - the amendment to the appointment of Quazis by the Judicial Service Commission in 1964⁶⁷. Many committees for law reforms have been set up starting with the 1956 general committee on customary law reform that looked at the option for a uniform civil code, which garnered much opposition from the Muslim community. Subsequent committees specifically on Muslim Family Law reforms that were set up included:

1. In 1970 – a committee headed by Dr. H.M.Z Farouque which provided recommendations for reforms that included substantive and procedural amendments to the MMDA, including raising the minimum age of marriage⁶⁸;
2. In 1984 – a committee was set up but disbanded subsequently without any concrete progress;
3. In 1990 – a committee was set up and headed by Dr A.M.M. Shahabdeen, which has been the committee most successful to date, in terms of preparing a report within two years and submitting to the government. The process ended with a lack of legislative action, as the MMDA reforms were not a political priority for the Muslim leaders or the government at the time;
4. In 2009 - an 18 member Committee on Reform of Muslim Family Law headed by former Supreme Court Judge and President's Counsel Justice Saleem Marsoof was set up by the then Minister of Justice⁶⁹.

The 2009 Committee continues to be in operation, and as per the time of writing this study the committee has thus far not submitted its report to the government. Various media reports however have indicated multiple dates⁷⁰ throughout the 2016 as to when the MPL committee would finalize the report. But it is reliably learnt that given the recent ratcheting up of the pressure by multiple groups the committee is poised to submit its final report and recommendations in November 2016⁷¹.

At the time of finalizing this study, another Cabinet sub-committee⁷² was set up by the current Minister of Justice Wijedasa Rajapakse to look into MMDA reforms. The committee consists of, Kabir Hashim (Minister of Public Enterprise Development), Rauff Hakeem (Minister of Water Supply and Drainage), Rishard Bathiudeen (Minister of Industry and Commerce), Faiszer Mustapha (Minister of Provincial and Local Government), M.H.M. Haleem (Minister of Muslim Affairs and Postal Services), Chandrani Bandara (Minister of Women and Child Affairs) and Dr. Sudharshani Fernandopulle (Deputy Minister of Water Supply and Drainage). The mandate of the committee is unknown at this point. Also it is not clear if it would consider the pending report by Justice Saleem Marsoof's committee or will start afresh and call for any fresh representations.

⁶⁶ Ed. F.Zakariya, C. Kodikara 2011. *Women Claiming Rights and Spaces: Activism to Reform Muslim Law in Sri Lanka*. Muslim Women's Research and Action Forum (MWRAF). Colombo, Sri Lanka.

⁶⁷ Act No 1. Of 1965

⁶⁸ S. Goonesekera, 2000. *Muslim Personal Law in Sri Lanka- Some Aspects of Law on Family Relations*. Muslim Women's Research and Action Forum (MWRAF), Colombo, Sri Lanka

⁶⁹ Article - *Cabinet Has Approved A Proposal Of Reforms To Muslim Matrimonial Law And Upgrading Quazi* <http://target.lk/article.php?article=407>

⁷⁰ Muslim law reforms report to be finalized <http://nation.lk/online/2016/07/02/muslim-law-reforms-report-finalized.html>

⁷¹ Imtiaz, Zahrah *Long awaited Muslim Personal Law reforms in November* . Daily News, October 4. 2016. <http://www.dailynews.lk/2016-10-03-193000/local/94818> ,

⁷² Imtiaz, Zahrah, . *Sub-committee on Muslim Marriage Act appointed* Daily News October 27, 2016 <http://dailynews.lk/2016/10/27/local/97245> .



BARRIERS AND CHALLENGES TO REFORM

It is understood that with regard to reforming the MMDA, both legal and religious aspects need to be taken into consideration. This in and of itself makes for a complicated and arduous process. However, upon a more nuanced analysis of actors involved - additional barriers and challenges have been identified in the context of Sri Lanka.

The main reasons that this study identified are as follows:

1. The State: lacking in leadership and evading responsibility

The Sri Lankan government with its related ministries and agencies, have made very little effort towards addressing issues related to the MMDA and has been largely indifferent to concerns faced by Muslim women and girls as a result of MMDA.


Concerns with regard to the MMDA, especially, age of marriage, divorce, as well as statutory rape provisions in the Penal Code have been raised repeatedly in Shadow Reports submitted to the CEDAW Committee by Sri Lankan civil society organizations. However, the state has chosen to put the onus of responsibility for reforms back onto the Muslim community. For instance, the combined third and fourth report of 1999 by the Sri Lankan government to the CEDAW Committee, with regard to these issues, acknowledged discriminatory personal laws, however it withdraws from any State obligation to act by stating that, *“The discriminatory features are mainly those which are deeply rooted in cultural and religious beliefs. In an environment that calls for sensitivity to pluralistic religious and ethnic beliefs, it has not been possible to address these issues. A call for change from within the affected communities would certainly facilitate reform.”*⁷³.

Despite voices calling for reforms from within the Muslim community for the past many decades, the state has hesitated to take up dialogue with anyone beyond the usual primarily male conservative interlocutors who claim to represent the community and/or also claim to argue the “Islamic perspective”. State actors have placed the obligation on the Muslim community to come up with solutions to problems affecting Muslim women, as well as build a consensus on reforms. Dissenting viewpoints within the Muslim community, both with regard to Islamic jurisprudence and public opinion, have been ignored by the State.

This has meant that government representatives have conveniently excluded Muslim women’s specific issues from national action plans that deal with women’s rights, child rights or human rights; law enforcement and local government agencies have turned a blind eye to violations against women when committed by community groups; general laws such as the Penal Code have exceptions for statutory rape of Muslim girls under 16, and Sri Lanka legally allows for child marriage of their Muslim citizens, among many other examples.

At this time it is also unclear whether the Ministry of Justice, Ministry of Muslim Affairs, Ministry of Child Development and Women’s Affairs, National Commission on Women, Judicial Service Commission, Women’s Parliamentarian Caucus, National Child Protection Authority and other relevant government bodies and Muslim MP’s are even adequately aware of the legal and justice related issues affecting Muslim women. It is certain that many grave violations have been

⁷³ CEDAW/C/LKA/3-4. Committee on Elimination of Discrimination Against Women (CEDAW) 1999, Consideration of reports submitted by State parties under article 18 of the Convention on All Forms of Discrimination Against Women <http://www.un.org/womenwatch/daw/cedaw/cedaw26/lka3-4.pdf>



allowed to occur at the level of the Quazi courts, due to lack of state oversight including monitoring, mandatory reporting and stringent action with regard to complaints. For instance, it is unclear what the JSC does with all the complaints it receives of Quazis - even those that are directed to the JSC by the Board of Quazis - and how these are addressed (eg. bribery cases) beyond terminations and transfers.

The State has also ignored calls at the international level to take action. For instance a recent example in which the Sri Lankan government has been called upon to take action with regard to reforming the Muslim Family Law was during the 54th session of the International Committee on Economic, Social and Cultural Rights in November 2010 in Geneva. The committee made the strong concluding observations⁷⁴ in the light of consideration of the report submitted by the State parties under Article 16 and 17 of the International Convention for Economic, Social and Cultural Rights.

Particularly relevant is the point made by the committee that the Sri Lankan state has an urgent obligation to ensure equality for women and that it - **“cannot be conditioned to willingness of concerned communities to amend their laws”**. These concluding observations were also referred to by the fourteenth session of the Human Rights Council (HRC) Working Group on the Universal Periodic Review on Sri Lanka⁷⁵, in August 2012 and *reads as follows*:

‘The Committee is concerned that in spite of repeated recommendations made by treaty bodies since 1998, the State party has still not repealed statutory and personal laws that discriminate against women and girls, such as the 1935 Land Development Ordinance and the provisions of the Muslim Personal Law allowing early marriage of girls as young as 12 years old, and has taken limited steps to address the persistence of stereotypes, attitudes and patriarchal traditions on family and societal roles of men and women. The Committee notes with serious concern that the State party relies on the communities themselves to amend their personal status laws and that the Women’s Bill does not protect women and girls from all communities from early and forced marriage. (Art. 3)

‘The Committee reminds the State party that the equal right of men and women to the enjoyment of all economic, social and cultural rights is an immediate obligation of the States parties which cannot be conditioned to willingness of concerned communities to amend their laws. The Committee therefore calls upon the State party to take immediate action to repeal all statutory laws that discriminate against women and to amend the Muslim Personal Law and to put it in conformity with its national legislation with the view to outlaw early marriage. The Committee also encourages the State party to vigorously promote equality between women and men at all levels of society, including through targeted educational programmes and mass media campaigns against stereotypes which prevent women from enjoying their economic, social and cultural rights. The Committee draws the attention of the State party to **its** general comment No. 16 (2005) on the equal right of men and women.’

⁷⁴ E/C.12/LKA/CO/2-4. Concluding observations of the Committee on Economic, Social and Cultural Rights on Sri Lanka. Committee on Economic, Social and Cultural Rights, Forty-fifth session. Geneva, 1-19 November 2010

⁷⁵ A/HRC/WG.6/14/LKA/2. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Sri Lanka, 13th August 2012 14th Working Group of the Universal Periodic Review.



2. Muslim Leaders demonstrated a lack of political will and inadequate attention to women's concerns

Over the last few decades, Muslim political leaders have held key government portfolios and could have facilitated, expedited and accomplished reforms to the MMDA. An example that is commonly cited is that of Minister Rauff Hakeem, current leader of the Sri Lanka Muslim Congress. There was hope and anticipation from pro-reforms advocates that as a member and political leader of the Muslim community, Minister Hakeem would champion the MMDA reforms when he was Minister of Justice between the years 2012 and 2014. Activists note that he had stated on multiple occasions that he would take forward the reforms process given the agreement by the religious *ulama*, however there was no publicly notable effort made on his part to engage in dialogue with the said parties, expedite the reforms process and lead it towards resolution.

Other Muslim politicians who are well aware of the issues affecting a key part of their constituencies too have neither demonstrated the interest nor the ambition publically to give their support in addressing these concerns thus far. Whether this is due to the perceived fear of losing the support of the religious leaders and voter constituency, or due to a belief that any conversation about reforming the MMDA will diminish the value of Muslim political identity in Sri Lanka, or due to personal convictions or due to vested interest in maintaining the status quo, is not certain.

Muslim politicians usually pass off the MMDA reforms as a subject that the *ulama* (religious scholars) would not accept. Whether the fear is based upon experience of sincere attempts at dialogue or discussion between the political and religious leadership on the subject aimed at resolving differences or is just a convenient excuse for inaction and choice of path of least resistance remains a big question.

Likewise, there is no evidence at this time to suggest that politicians have adequately engaged with their own constituencies on concerns that have emerged regarding the MMDA, or to gauge opinions on reforms. Beyond tokenism, the Muslim political leaders have not attached much importance to systematically consult with their women constituents in this regard placing almost exclusive reliance on the assessment and analysis of conservative men and religious bodies made up exclusively of men. While not demonstrating required political accountability on this issue to the women, they have also been very vociferous in guarding the communal boundaries. For example when non-Muslim politicians, raise questions about issues involving Muslim women in parliament or public forums, these discussions are not positively facilitated by Muslim politicians and Muslim media, but rather attacked and silenced. Women's solidarity across communal lines is looked down upon.

Despite direct calls for reform from Muslim advocates, activists and the affected community, there has been no sustained engagement with the government about reform by these leaders. It is likely that the limited and ad hoc engagement of civil society with government actors is a result of lack of trust and confidence that any effort would be made by the said government parties, and the wariness of approaching politicians who may commit in words but not take any concrete action.



3. Interlocutors between the Muslim community and the State do not necessarily promote Muslim women’s perspective and experiences nor aspire for reforms based on equality

The interlocutors who are generally considered as ‘representatives’ and the ‘voice’ of the Muslim community primarily consists of male Muslim politicians, influential legal and other professionals by default due to their social status, reputation and professional accomplishments, and national level religious leaders and bodies from within the Muslim community.

Among the key interlocutors, it is observed that most are amenable to some limited reform of the MMDA and Quazi court system and see it as a necessary undertaking in light of the many issues expressed from within the Muslim community. However, due to multiple reasons stemming primarily from patriarchal notions of Muslim women’s standing and social status within the community, the views articulated by the main interlocutors are problematic and deficient. In this regard interlocutors who hold a more conservative interpretation of Islamic law and viewpoint on reforms, are resisting change, framing the discourse and influencing politicians to delay or stagger reforms or to canvas for a very limited set of reforms that doesn’t meet the widely accepted standard of equality and non discrimination before law for men and women.

“When you look at the historical trace, constraints and blocks, it has been either the Muslim religious elites or the political elites”.

- Faizun Zakariya

3.1. Muslim male politicians and persons of influence as interlocutors

In addition to a lack of political will and inadequate attention to women’s concerns as demonstrated by Muslim politicians, influential professionals who are considered as representatives of the Muslim community too have articulated viewpoints that are considered ‘safe’. While they may be supportive of some type of reforms, their articulation of demands are not based on the issues faced by the community, but rather constrained based on external reasons, such as how the issue would be perceived by the non-Muslim community, including non-Muslim leaders. They are also concerned whether more attention to MMDA issues would invite a scrutiny of the MMDA by extremist groups and give ‘fodder’ for further racism against the Muslim community. This perspective is also bolstered by the fact that the Muslim community was affected by incidents of racism and anti-Muslim sentiments in the recent past and there is fear among such interlocutors that these could be exacerbated should the Bill for reforms reach the Parliament for debate.

There are some who are of the opinion that reforms should be done on a ‘piecemeal basis’ based on their understanding of what would pass through parliament unscathed - such as administrative changes and upgrades to the Quazi court system, while more critical reforms including substantive provisions should be left for a more ‘favorable’ time. This is despite the fact that there has been no reforms made, piece meal or otherwise for the past 30 years thereby debunking this line of reasoning.

It has been observed that this first set of interlocutors; often use religious bodies such as All Ceylon Jamiyyathul Ulama (ACJU) as a scapegoat attributing the delay in the reforms process on them. Recommendations such as the provision for female Quazis have been cited as an example by this group as to why the reforms process has been delayed, because reform committee members have not been unable to reach an agreement on the issue due to conservative viewpoints.



3.2. Muslim religious leadership as interlocutors

There are numerous religious entities originating from the different communities, or ideology groups in Sri Lanka. Once such body – the All Ceylon Jamiyyathul Ulama (ACJU) is considered as the “apex religious body of Islamic theologians that provides religious and community leadership to the Sri Lankan Muslims”⁷⁶. The organization has been involved with MMDA reforms discussions since 1977. The President and the General Secretary are members of the 2009 MPL Reforms Committee. While the ACJU does not have legal authority or formal connection with Quazis or the Board of Quazis, it does provide religious advice and an occasional training to Quazis. ACJU has conducted two training for Quazis with UNDP support in 2009.

While there is currently a difference in opinion among major Muslim ideological groups about whether or not MMDA reforms is needed, the main religious groups such as the ACJU is supportive of certain reforms and reject others on the basis that they are ‘not Islamic’. For instance while being supportive of improving the standard of Quazi courts, they are of the view that provisions such as allowing women to be Quazis, marriage registrars or adjudicators should not be considered for reform as Muslim women cannot hold such positions. Individuals who hold this perspective have significant socio-religious influence within the Muslim community and significant political influence over state actors like Muslim and non-Muslim MP’s.

As one of the primary interlocutors on religious matters it is highly unlikely that ACJU is not aware of the prevalent practices and its impact within the Muslim community such as those affecting Muslim women due to the Quazi court system. Thus a major question remains with regard to the exact nature of advice and action taken by the ACJU on these matters, as they continue to occur and come to light regularly. The ACJU with its political and community influence it is believed could have made much more of an effort to address violations that have been happening within the Muslim community for decades. They could have achieved much by engaging either through dialogue and awareness raising with local religious leaders and constituencies, lobbying Muslim MP’s and seeking state support in addressing issues.


4. Divergent viewpoints within the Muslim community about MMDA and need for and possibility of reforms

Sri Lankan Muslims are not only a diverse community based on ethnicity and schools of jurisprudence and ideology, but also with regard to opinions about matters such as reforms of the MMDA. One of the main challenges to reforms have been due to these divergent viewpoints that makes engaging with them and arriving at consensus a complex task.

4.1. Differences in perspectives due to lack of awareness and sufficient information

Firstly, within the Muslim community there is a grave lack of awareness and understanding about the MMDA itself and how it applies to the Muslims of Sri Lanka. Despite awareness raising efforts on the part of organizations and individuals, even the basic details, let alone the nuances, have not penetrated the broader community. The MMDA is not a topic discussed

⁷⁶ The ACJU has 145 branches island-wide and handles all matters concerning Islamic Jurisprudence including assisting the Muslim community in an advisory capacity⁷⁶. Source: <http://www.acju.lk/about-us>



within the community generally and nor is it a topic talked about with couples prior to marriage, or one that is taught as part of religious education. Until recently, beyond a limited circle of people, there has not been an awareness that the demand for reforms is emanating from a large groups of affected Muslim women, nor has there been a discussion about reforms or a search for alternative recourse within the Islamic framework and/or the legal system among Muslims in Sri Lanka.

This lack of awareness has allowed for certain myths and misconceptions about the MMDA to prevail. It has also been in the interest of some conservative segments to keep it this way. For instance such ignorance has helped conflate MMDA with Sharia by not recognizing the local cultural practices that have seeped into MMDA and also by papering over the rich diversity in Islamic jurisprudence and practice on this issue. This conflation leads to claims like ‘*Sharia* or Islamic law cannot be touched’ and is used as a conversation stopper when MMDA reform is broached.

This is also indicative of a larger problem with regard to the lack of understanding of the practical impacts of discriminatory provisions within the MMDA on Muslim women and girls. People who believe that the MMDA is solely based on *Sharia* law and thus cannot be changed will also be impervious to discriminations and violations against women and girls in relation to the law. This may be due to their belief emanating from faith that Muslim women are given proper status and ‘protected’ by Islam and therefore laws based on *Sharia* such as the MMDA are not inherently discriminatory against women and girls and should not be changed. It may also be due to their perceived lack of agency when this is presented as ‘divine law’. The lack of awareness therefore has been debilitating.

The pro-reforms actors on the other hand have been repeatedly clarifying that reforming the MMDA is not about changing Islamic law or the *Sharia*, rather about addressing consequences stemming from how that law has been codified, interpreted, and practiced in Sri Lanka. Advocates for reforms have and continue to present research, evidence and comparative examples from other majority Muslim countries of reforms having taken place based on progressive interpretation of jurisprudence and in aspiration of international human rights standards.

However these efforts have managed to only convince a small percentage of people. Whereas those whose position is to maintain the status quo have a wider reach through their religious structures and authority. Their vehement opposition has also restricted other moderate actors in engaging with the reforms process even when they know it is necessary. Religious leaders and community elites have allowed myths to go unchallenged and have often used it as a basis to silence and invalidate pro-reform voices.

4.2. Divergent viewpoints within Islamic jurisprudence

Another obstacle observed in the wider Muslim community is the lack of appreciation of diversity within the community and the richness of the Islamic jurisprudence that accommodates these differences and provides creative possibilities for reforms. Instead the community is straight jacketed through MMDA. What State and other non-Muslim and Muslim civil society actors fail to give due recognition is that on many aspects of the MMDA, there are divergent viewpoints among the different schools of Islamic jurisprudence. What has been chosen as the MMDA and often articulated as “strictly *Sharia* law” by interlocutors is in-fact one version of the various

scholarly opinions under the main schools of thoughts. Often times it is the strictest of interpretations.

There are two major sects of Islam – Sunnis and Shi’as. There are four main *madhabs* of the Sunni sect that are based upon the schools of thought established by four main Imams around the 10th century AD. These include: Imam Abu Hanifa (Hanafi school), Imam Malik (Maliki school), Imam Shafi’i (Shafi’i school), Imam Ibn Hanbal (Hanbali school). The majority of Sri Lankan Sunni Muslims have been classified as under the Shafi’i madhab (e.g. Moors and Malays), but there are also minority Hanafi’s (e.g. the Memon community). The Shi’a sect, is in turn divided into three sub-sects Ithna’Ashari, Ismaili (e.g. Dawoodi Bohra) and Zeydi⁷⁷. Thus each sect and in turn each madhab within them have different interpretations on the same issues found in MMDA like minimum age of marriage, consent of brides, *wali* (guardianship) provisions, types of and conditions for divorce, women as judges, matters of maintenance and child custody etc.

In order to illustrate the nature and extent of divergent viewpoints on a single MMDA issue the following are differences of opinion between Sunni madhabs with regard to female Quazis⁷⁸:

Shafi’i, Maliki, Hanbali madhab	Hanafi madhab	Muhammed ibn Jarir al-Tabari and Abu Muhammed Ibn Hazm (leading Islamic jurists)
<p>Women are disqualified as judges because of an interpretation of the Quran verse Surah an-Nisa 4:34, stating that men are “protectors of women”. However there is a minority view among Malikis that women could be appointed as judges. Shafi’is also allow the concept of women as judges if their services are needed. Only the Hanbali school is unanimous in the view that women should not be judges.</p>	<p>A minority viewpoint of the Hanafi school is that the authority of a judge is not valid unless the judge possesses the qualifications necessary for a witness.</p> <p>The Hanafi madhab allows women to be judges in all cases except Hudud crimes and Qisas (murder) cases.</p>	<p>Individual views of leading jurists are that women can be judges in all cases without exception as long as she fulfills the requirements of the position. The basis of this appears to flow from an interpretation of the Quran verse Surah al-Taubah 9.71 that believing men and women are each other’s “<i>awwaliya</i>” (protecting friends and guardians).</p>

Rather than give credence to this diversity as a basis for reform, the key interlocutors insist on the most conservative of the views.

To compound the above differences there are also discernible divergence even among those who articulate a need for reform albeit from different standpoints. These types of variations are to be expected in matters relating to religion and law and conversations across them are to be encouraged to arrive at best balance.


⁷⁷ Marsoof, Saleem 2012, *Muslim Matrimonial Law – Some Gray Areas* https://www.academia.edu/9905307/Muslim_Matrimonial_Law_-_Some_Gray_Areas

⁷⁸ Source: Dr Nik Noriani Nik Badlishah & Yasmin Masidi, 2009. “*Women as Judges*”. Sisters in Islam, Malaysia http://www.sistersinislam.org.my/files/downloads/women_as_judges_final.pdf

But in the Sri Lankan context, these divergences are (a) considered too complex to be engaged with and hence used as an excuse to go back to the default position of engaging with the conservative male interlocutors and (b) preventing meaningful coordination between those who are seeking reform from different bases in their struggles. As a result these divergent viewpoints are unlikely to be taken into consideration by State actors and they are comfortable dealing with interlocutors who often articulate that any opinion outside the 'Islamic framework' should be disregarded. This means State actors and non-Muslim civil society tend to comply with the opinion of male interlocutors, without considering the myriad of opinions on MMDA issues, in addition to different, often contradictory, Islamic-law based jurisprudence as indicated above.

In order to illustrate the nature of divergent viewpoints on a single MMDA issue the following are some general perspectives gathered in this study with regard to minimum age of marriage:

Conservative Muslim view	Reformist Muslim view	Rights-based view
Viewpoint		
<ul style="list-style-type: none"> • There should be no minimum age of marriage as per Sunna (traditions of the Prophet) and <i>fiqh</i> (Islamic jurisprudence); • Early marriage is not an issue for Muslims in Sri Lanka; • There are only rare cases of early marriage. 	<ul style="list-style-type: none"> • Early marriage is an issue for Muslim girls in Sri Lanka and there are many cases; • Minimum age of marriage should be raised to 16 as per the Shahabdeen committee recommendations; 	<ul style="list-style-type: none"> • Early marriage is an issue for all communities in Sri Lanka • Age of marriage should be completely removed from the jurisdiction of the MMDA, as it is a question of child rights, which the State has primary responsibility to protect. • The State should establish 18 as the minimum age of marriage for all citizens.
Opinion on MMDA		
<ul style="list-style-type: none"> • Secular laws governing these marriage and divorce should exempt Muslims who should be governed by their own laws; • Age of marriage must remain unspecified because it would be 'un-Islamic' to specify a higher age. 	<ul style="list-style-type: none"> • Secular laws governing marriage and divorce, including minimum age of marriage should exempt Muslims who should be governed only by Muslim family law; • MMDA must raise the age of marriage to 16 for girls and 18 for boys, or higher for both genders. 	<ul style="list-style-type: none"> • Remove minimum age of marriage from MMDA jurisdiction, make it 18 or above for both genders and all citizens. • Removing minimum age of marriage from MMDA jurisdiction will ensure that future committees on MMDA reforms will not decide arbitrarily to lower or increase age.
Who thinks this way?		
Some religious scholars including Ulama, some Muslim political leaders, some interlocutors as discussed above.	Some women's organizations working with Muslim women and girls.	Some Muslim activists, human rights activists. Some women's organizations working with Muslim women and girls.



The above-mentioned divergent viewpoints have also contributed towards disparate approaches among reformists (those who seek reform based on Islamic perspective and those who seek reforms based on rights-based perspective) on articulating and undertaking reforms of the MMDA.

Note on strategies for Muslim Law Reform adopted in other countries

Reforms of Muslim Family Law can be traced back to the early 1990's in the Middle East with the Ottoman Law of Family Rights in which a few major approaches were adopted. Many Muslim majority countries thereafter used these approaches individually or in tandem to varying extents. These include:


1. *Takhayyur** – which is exercising preference between the different schools Islamic Law (eg: between the four madhabs) and choosing the “most desirable rule from the perspective of women and children”. For instance in Malaysia – invoking the Hanafi madhab to justify that women can also become Quazis;
2. *Talfiq** or ‘patching’ – which involves taking into consideration two or more different rules (or parts of rules) and forming a hybrid rule which may or may not be recognized by any single school of Islamic Law, despite being derived from Islamic legal options;
3. Reinterpretation of textual sources of Quran and the Hadith*;
4. Removing the topic/theme (eg. age of marriage) from the court’s jurisdiction and thereby not engaging in either of the above option but rather opting to render it beyond the judicial application of the particular Muslim Family Law or court system.

(*Source: Noor, Zanariah, 2007. *Gender Justice and Islamic Family Law Reforms in Malaysia. Kajian Malaysia, Jld. XXV, No. 2, December 2007*)

5. Lack of appreciation for the diversity in Muslim community found in Sri Lanka and limited engagement of different Muslim minority communities on reforms

The approach of many reformists over the past few decades has been to primarily articulate Sri Lankan Muslims as one group. The perception that the ‘Muslim community’ in Sri Lanka is homogenous and has the same opinion about religion, law and practices as represented by Muslim elites and interlocutors, has marginalized diverse voices within the community. Thus the diversity of the Muslim community in terms of cultural and legal practices (including the jurisprudence of different sects) has not been made a focus in the reforms process. Muslim minorities such as Malay, Borah and the Memon communities, and Muslims in central and southern provinces have generally been excluded in dialogues about and initiatives towards reforms.

This has sadly also meant that examples of discrimination faced by women of a specific sect under the MMDA have not been highlighted – for instance under the Sunni Hanafi sect, as well as in the certain Shi’a sects – there is no provision whatsoever for a woman to get a divorce of her own accord. Also the Malay community has been visibly absent from any conversation, decision- making, advocacy or initiatives about the MMDA or reforms. Many Malays condemn



the practice of *'kaikul'* as being completely un-Islamic and it is not part of Malay marriage practices. However these perspectives have never been articulated or advocated by reformists.

Similarly there has also been a lack of appreciation of experiences of Muslim women due to geographic differences. Muslim women from the Southern and Central Provinces have been largely left out of rights-based initiatives in the country. This is highlighted by the fact that there is a lack of active women's organizations working on Muslim women's rights in these areas. For example, the district of Kandy has the third highest Muslim population (next to Ampara and Colombo), however the grievances of Muslim women in this part of the country are often disregarded and/or not raised in activism on reforms, unlike those from northwest, north and eastern parts of the country.

"In Sri Lanka, the minority Muslim community is largely considered (by the majority communities) as a religiously homogeneous group when, in fact, they are splintered into various denominations which espouse different interpretations of Islam, values and practices. This ignorance of the plurality within the Muslim community and its internal politics could be a contributing factor to much of the prejudices held by individuals against the community".

- Source: "Fracturing Community Intra-

In areas such as Puttalam, and other Northern and Eastern districts women activists have been able to gather critical information and evidence of violations and discriminations faced by Muslim women with regard to the MMDA and Quazi courts. However, there is little or no information from Southern and Central districts with regard to issues. In certain areas such as Hambantota and Hatton there has been no Quazi for over one and half years, so the plight of women in matters of marriage and divorce and the hardships faced with regard to obtaining justice and redress is unknown. The failure to engage with Muslim women beyond some districts is also likely to contribute towards misconceptions and myths about MMDA reforms.

The above-mentioned barriers and challenges also point to a bigger question with regard to broad-based support for MMDA reforms. While there is a large segment of the community that is adversely affected by the current MMDA, Whether or not there is a critical mass that is knowledgeable about the MMDA, aware of the issues that community members face under the MMDA and most importantly – supportive of reforms of the Act remains a concern.

6. MMDA issues not on the agenda of broader Muslim and non-Muslim civil society because of limitations in strategies

An analysis of the strategies adopted by groups that have been advocating for reforms for the past many years, as well as those adopted by group-rights activists and mainstream civil society organizations in addressing issues faced by Muslim women has also contributed to limited progress on reforms. In the case of the former, strategies appear to have been fairly insular and guarded, while in the latter they have been exclusionary and ambivalent.



6.1. Limitations in strategies adopted by Muslim pro-reforms groups

6.1.1. *Limitations of working within the ‘Islamic framework’*

Seeking and finding solutions to problems within Muslim communities has been an approach adopted by many Muslim activists and other pro-reforms advocates too. While this approach has been successful to some degree in Muslim majority contexts like Malaysia and Indonesia, in regulating polygamy and allowing for female Quazis for instance, other countries like Tunisia and Turkey have had to rely on more secular arguments and a rights-based approach for reforms.

The ‘Islamic framework’ is dependent upon and defined by the madhabs, Islamic jurisprudence, alternate interpretations, ideological influences etc. For instance alternate interpretations of Islamic law or religious texts are vastly different among scholars and religious leaders themselves depending on where they were trained and/or which Islamic theology is influencing their thought processes and practices. This often means that the opinions and interpretations of the individuals who hold more power and influence in society and trained in religious scholarship, hold more weight than others.

Activists note feeling trapped in a never-ending gameplay between and among religious *ulama* and the Muslim community of “**whose interpretation is right and who has the authority to decide?**” when working within the Islamic framework in addressing rights issues. This poses particular problems for those outside the community who are not conversant with the Islamic theology or jurisprudence. They fail to recognize that their seemingly cultural-sensitive and neutral question of ‘what does Islam say about it?’ to determine their responses and positions often ends up reinforcing the views of those who hold power and influence in the community.

6.1.2. *Leaders of the Muslim women’s groups policing the boundaries on MPL reform*

Muslim women’s groups in Sri Lanka too have, until recently, articulated MMDA reforms as an issue that only Muslims should deal with. One of the disadvantages of this is that other civil society organizations have perceived the issue of MMDA reforms as being the ‘territory of some Muslim women’s organizations’ and this has contributed to reluctance in their engagement. Over the period it has also meant that the non-Muslim women’s groups have become distanced from the issue with little understanding about the nature and gravity of the problem faced by Muslim women and girls.

Respondents from Muslim community-level organizations stated that while they were knowledgeable about the MMDA, for many years it was mostly seen as a Colombo-based “high level” process to which they had little access and decision-making role to play. “Activism on MPL reforms itself is hierarchical”, stated a women’s rights activist, and this has resulted in a level of disconnect between community groups and Colombo based organizations, which has contributed towards the lack of significant collective mobilization and collaboration on reforms in the past many years.⁷⁹

⁷⁹ This issue unfortunately is not very different from how advocacy has taken place in other areas in Sri Lanka on issues beyond the Muslim community.



6.2. ‘Liberals’ and civil society advocates for Muslim (minority) group-rights have refrained from taking up intra-community issues

This study interviewed Muslim ‘liberals’ and ‘group rights advocates’, many of whom are actively engaging with promoting social, cultural and political rights for the Muslim minority community in the context of a non-Muslim state. Their activism and advocacy included dealing with critical and often controversial issues such as the rights of Northern-Muslim displacement; addressing virulent anti-Muslim perceptions and propaganda; advocating for socio-economic and property rights; voicing out for religious and cultural rights; and promoting political participation and representation, among other issues.

A notable observation was that there was, in some instances an unconscious, and in other instances deliberate disconnect, when formulating the rights of the Muslim community within the state, and the rights of Muslim women within the Muslim community itself. This is because the very same logic and reasoning used to articulate the rights of Muslims within a majoritarian state, is not extended to Muslim women who face similar hegemonic pressures.

The dissonance is stark among many activists and leading ‘moderates’ in the community and the reasons for that have to be explored. The tendency of group-rights advocates, who form a sizeable chunk of the active Muslim civil society, to shy away from or completely ignore issues affecting the Muslim community in the domestic and private realm has contributed to only a few actors (primarily women’s organizations) being vocal about MMDA reforms from within the Muslim community. **The silence of the liberals/moderates means that the conservative viewpoints dominate the discourse within the community.**

6.3. ‘Mainstream’ rights based organizations have been reluctant to view ‘Muslim issues’ as human rights issues


(Intersectionality is) “The view that women experience oppression in varying configuration and in varying degrees of intensity. Cultural practices of oppression are not only interrelated, but are bound together and influenced by intersectional systems of society. Examples of this include race, gender, class, ability, and ethnicity”.

- Kimberle Crenshaw (Scholar)

Intersectionality or the working principle that social issues and patterns of oppression faced by some women based on ethnicity or religion (for example), cannot be separated from the oppression they experience as a woman and that is experienced by all women, has been articulated and promoted by the women advocates and activists in Sri Lanka. However, mainstream Sri Lankan women’s rights and human rights organizations have been absent in Muslim women’s struggles for justice in any systematic way. Other than a few individual non-Muslim allies, it has been observed that there is a notable reluctance to engage with the issues primarily due to perceived sensitivities around ethnic, religious and cultural demarcations.

“It’s a Muslim issue, so there is nothing we can do about it”

In an attempt to be ‘culturally sensitive’, it is likely that inequalities and discriminations faced by women within a religious, ethnic or cultural group are overlooked. This is relevant especially in ‘multicultural’ countries with activists and advocates whose work is informed through a human rights and feminist perspective.



Professor Susan Moller Okin articulated in her paper 'Feminism and Multiculturalism: Some Tensions' - *"Indeed, attempts to create equality and tolerance between groups may unwittingly serve to actively reinforce power hierarchies within groups, leaving already disempowered members further vulnerable to injustice in a 'paradox of multicultural vulnerability'⁸⁰".*

This paradox also plays out in the Sri Lankan context, where 'islands of activism' exists among women's rights and human rights activists. Muslim women's issues are perceived as being under the preview of Muslim organizations, therefore non-Muslim activists hesitate to engage with Muslim issues or have been excluded by actors within the said identity groups. It is also likely that both civil society and State actors view anything to do with Muslim law as "too complicated" as it involves conversations about Islamic law and jurisprudence, as well as raising difficult questions with regard to a community that is already facing Islamophobia. And as a result the inconvenience of engaging with and issues affecting Muslim women, is one that is seen as best left to the Muslim community to deal with.

For the purpose of this study, key women's rights activists were asked why they and their organizations have not advocated specifically on MMDA reform. The response was very much in line with the above tensions in trying to be culturally sensitive, in waiting for Muslim women to take initiative and then waiting again to be "invited" by them as allies. It has been a convenient play of diplomacy by both sides. The consequences of this have likely contributed to further prolonging the MMDA reforms process, as well as keeping this issue away from mainstream discourse and action.

More adversely, it has isolated Muslim women and girls to be classified as a 'special category' of second-class citizens for whom seemingly arguments raised with regard to ending child marriage, human rights, and citizenship rights in the family setting, do not apply. Women's solidarity cutting across ethnic and religious lines that seems to obtain to some extent among other communities in Sri Lanka sadly seems not to include Muslim women and girls when it comes to matters of rights.


7. Sri Lanka's sensitive ethno-religious dynamics pose multiple challenges

"As (Muslim) women we have religious leaders and self-appointed community leaders who condemn us, want to define us and want to contain whatever we are saying. On the other hand we have racists who want us just to remain in the posture of victims."

– Deeyah Khan (Global activist)

Muslim women in Sri Lanka also face multiple socio-cultural, legal and security concerns in the broader context of post-war, political and legal processes and a patriarchal society in general. In the recent past they have also been impacted by radical anti-Muslim sentiments and racist action that are directed towards the Muslim community as a result of negative perceptions about Islam, globally and locally. Those directing hate speech and/or hate crimes range from extremists' factions among religious groups such as the Bodu Bala Sena (BBS) and Sinhala Ravaya, to politicians and ordinary citizens.

⁸⁰ Okin, Susan Moller, 1998. *Feminism and Multiculturalism: Some Tensions*. Ethics, Vol. 108, No. 4 (Jul., 1998), pp. 661-684. The University of Chicago Press. <http://eclass.uoa.gr/modules/document/file.php/PRIMEDU143/Okin,%20Multiculturalism%20%26%20feminism.pdf>



While the 2014 ‘Report of the Leader of the Opposition’s Commission on The Prevention of Violence Against Women and The Girl Child’ failed to adequately document the pressing discriminations and violations faced by Muslim women in Sri Lanka with regard to the MMDA and the Quazi court system, it did highlight the nature of violence faced as a result of racist attitudes. It stated that violence by extremist Buddhist groups like BBS, while targeting the Muslim community as a whole, has also specifically targeted Muslim women, calling for a ban on the *niqab* (face veil) and leading to harassment rendered towards those who wear Islamic clothing.

Anti-Muslim sentiments are not just present in and affect only limited areas or institutions in the country, but they can permeate urban cities and institutions as well, and affect women from all strata, professions and locations. A recent case that came up in the process of writing this report is that of Fatima Shanaz Allaudin who won her fundamental rights case⁸¹ in the Supreme Court against the University of Colombo for deliberately withholding her appointment as lecturer based on the grounds that she is a Muslim. What incidents like these mostly demonstrate is that Islamophobia and anti-Muslim propaganda and sentiments further restrict Muslim women’s access to education, employment, mobility and decision-making in Sri Lanka. They also further cut off their opportunities for accessing support services and reaching out beyond the community for redress from issues because of the perception that they are perceived negatively, will be treated differently or will be ignored and insulted due to their faith.

With regard to MMDA reforms, anti-Muslim sentiments have contributed to resistance from within the community to discussing issues affecting women. There is fear that any conversation outside the community about these issues will lead to the possibility of calls from anti-Muslim groups such as the BBS to repeal the MMDA and abolish the Quazi court system on the premise that “*Sharia* law violates the rights of women”. According to an MPL Reforms Committee member, 2012 anti-Muslim incidents had some effect in delaying the MMDA reforms process. Thus Muslim women are most affected by Islamophobia in a myriad of ways. On the other hand when speaking to Muslims and non-Muslims alike about cases of summary justice punishment or community policing of actions of women and girls, it is attributed to a “recent phenomenon” due to the “rising trend of radicalization/extremism” and an influence of ‘fundamentalists’, ‘Wahhabis’ or ‘Islamists’. These words are thrown around in conversations about conservative Muslims and while most fail to explain or identify the underlying complexities and multifaceted religious and political ideologies, it is the general understanding that ideologies are inherently gendered.

The extent of conservative influences in the socio-cultural sphere and family life and the impacts on women and girls in the country have not been closely observed or researched in recent times. It is likely that perceptions about religion, levels of religiosity, social controls and gender norms within Muslim groups in Sri Lanka fluctuate and are dependent on many factors over time including - conflict and displacement; political landscape and leadership. They are also dependent on monetary and theological influence and support from other countries like Saudi Arabia, as well as religious leadership in the specific communities and inter-community relationships at that given time period.

While it is difficult to pinpoint a specific trend as experiences within the Muslim community are vastly different according to ethnic group or geographic locations, there are always heightened consequences for Muslim women as narrow or broad interpretations of Islamic gender norms, rules and teachings directly impact their lives the most.

⁸¹ SC/FR 236/2011. https://www.colombotelegraph.com/wp-content/uploads/2016/02/sc_fr_236_2011.pdf



**PART 4:
KEY RECOMMENDATIONS**



KEY RECOMMENDATIONS

Clearly the status quo with respect to MMDA is untenable. There are serious shortcomings in the law and in its implementation. This has had an adverse impact on the rights and wellbeing of women and girls in the community. Constitutional provisions like Article 16(1) have prevented those affected from being able to seek redress against discriminatory aspects of the law and has rendered Muslim women less than equal as citizens. The struggle of Muslim women for reform against heavy odds has been led by few committed activists, admirable and long suffering but also riven with limitations.

In this backdrop, discussed below are consolidations of views obtained from those who had been intimately informed in this struggle as well as from review of literature on comparative experiences from other countries. This is also informed by independent analysis by the authors. These are put forward as strategic directions for taking the struggle forward. Even if some limited progress is achieved through current reform process, these directions will remain valid as what we are aspiring for is a fair, just and equal society.


A. State must be held responsible as primary duty bearer

In Sri Lanka, the government has the primary duty to address issues faced by Muslims under the MMDA and the Quazi court system, which was established, administered and is funded by the state. The Sri Lankan government has foremost responsibility to ensure that State laws protect the rights of citizens and is not in turn causing discrimination and injustice on the basis of gender and religion. In this regard the Sri Lankan government cannot grant any religious or ethnic group the onus to decide on whether or not the individual and fundamental rights of citizens can be forgone in the name of the cultural and religious rights of the group to which they are affiliated. Especially so in a democratic state that has secular laws, which by default, should apply for each and every citizen.

On certain issues such as minimum age of marriage, the Sri Lankan government is mandated to establish an age that is suitable for all citizens and protect child rights and promote education, health and wellbeing. Putting perceived cultural and religious rights before child rights and legally allowing for Muslim minors to be given in marriage at an earlier age and legally exempting their protection under the Constitution and Penal Code is a serious violation of this State responsibility.

Abd Allāh Ahmad Naʿīm in his resource book *‘Islamic Family Law in A Changing World’* which studied the implementation of Islamic family law in 38 countries states that transformation of Islamic family law has been happening to different extents because in the vast majority of countries in which it applies, *“The law is enacted in statutory form by the state, rather than being derived from traditional sources of Sharia... Moreover, whether a judgment is based on statute or a selection by a judge, it is **legally binding and enforceable only by the authority of the State**”*⁸².

⁸² Abd Allāh Ahmad Naʿīm, 2002. *Islamic Family Law in A Changing World: A Global Resource Book*. Law and Religious Program, Emory University. Zed Books Ltd. London, New York



He further writes that because of this – the administration of justice by the State is different from voluntary compliance out of religious commitment. Ahmad Na'im argues that, *"...it is better to recognize openly that this field (Sharia law) like all other law, derives its authority from the political will of the State"*. Thus implying that the realm of personal laws based on *Sharia* if and when mandated by the State becomes the responsibility of the same to address the consequences of the law and to reform, amend or rescind where necessary.

B. Ensuring equality in the Constitution and allowing for judicial review

The ongoing constitutional reforms process provides the Sri Lankan government with a timely opportunity to address exemptions like article 16 that violate the supremacy of the constitution and allow infringement of the fundamental rights of some of its citizens. Since district level consultations organized by the Public Representations Committee (PRC) began in early 2016, both men and women activists, advocates and affected persons particularly in the North and East have testified and given statements before the commissioners calling for a review of the MMDA as well as an option to marry under the GMRO. There have been extensive calls for repeal of Article 16(1), and inclusion of constitutional provisions that guarantee the rights of women and children by Muslim women from different parts of the country. The Human Rights Commission of Sri Lanka too has recommended the inclusion of judicial review of all laws including in light of an expanded bill of rights. It is therefore the State's responsibility to also ensure that the new Constitution encompasses the demands articulated by the public in this regard.

It is imperative that Constitution grants full equality and protection of fundamental rights to all its citizens, regardless of ethnicity, gender, religion or sect, in order to ensure a standard set of basic rights for all. Thus in the guise of trying to be "culturally sensitive", failing to address human rights violations of Muslim women by deeming it to be allowed under Islamic law as selectively interpreted and articulated by a few male members of the community, is a weak excuse. This is merely intended to disregard issues in order to avoid perceived outcry or backlash from Muslim men who want to maintain the patriarchal status quo.

C. Awareness on MMDA must improve among Muslim men and women throughout the country

The lack of knowledge about the MMDA and the Quazi court system as well as civil rights and liberties is at the heart of the problems affecting the Muslim community in Sri Lanka. Despite the dualistic legal system that Muslims are governed by in terms of MMDA and state laws, many members of the community, especially women are unaware of the jurisdiction of each of these systems e.g. on domestic violence. Also it is clear that knowledge about the existence, provisions, applicability and procedures of the MMDA is very low among the Muslim community in Sri Lanka, and this is a big concern, because it will invariably contribute to the prevalence of myths about the MMDA and resistance towards reforms. Awareness about the law(s), issues and alternate perspectives to Islamic law is very important at this juncture, firstly because women and men alike need to know exactly what the MMDA entails, and secondly when reforms to the MMDA are debated, it is best that Sri Lankan Muslims understand the necessity and benefits that reforms will bring to the whole community.



D. MMDA reforms should not be considered a zero sum game on Muslim identity

As stated previously, the MMDA is seen as an identity marker for the Muslim community despite its problematic provisions and practical consequences. Many individuals are indoctrinated with this opinion to the extent that they feel Muslims should not even have the option to marry under the GMRO, regardless of whether the MMDA is reformed. Similarly, any reservations towards amending Article 16(1) of the Constitution is based on the fear that the MMDA may come under serious review and potentially be abolished, and Muslims would lose this identity marker. As a result, certain Muslim political, religious leaders, influential individuals and community members have a highly protective attitude towards the MMDA.

However, this argument is not logical due to a number of reasons. The Sri Lankan Muslim community is diverse and heterogeneous in practice and perceptions, and relate to identity differently. There are at least four different minorities within the Muslim community- that differ in terms of ethnic origin, culture, language, dress code and religious practices. There are also multiple ideology-based groups that differ based on the Islamic schools of thought and sects.


It can no longer be argued that the MMDA includes provisions of Islamic law that the entire Muslim community of Sri Lanka seeks to follow, because firstly this myth dismisses the fact that the Sri Lankan Muslim community is also heterogeneous in practice and perceptions about Islam. Secondly the Islamic law and various schools of jurisprudences within it allows for diversity for different *madhabs* and sects, thus the MMDA does not encompass the wealth of Islamic jurisprudence that for instance allows for women to consent and be Quazis, among other provisions. And thirdly the MMDA has provisions like *kaikuli*, which are not recognized by Islamic law and well as secular elements of law.

In other instances, protection of this minority ethno-religious identity manifests in stringent regulations and controls for women with regard to marriage, divorce and community life including intra-community interventions for criminal offences, policing of the opinions of Muslim women⁸³ among other forms. This communal policing and control while based on the primary notion of 'protecting' and 'safeguarding' Muslim women's 'morality, honor and reputation' is intrinsically linked with marriage and the 'marriageability' of women and girls and therefore to inequitable family laws.

Any laws that deem adult women as minors under the guardianship of male family members inherently allow for the same community and society in which these laws apply - to police and control their actions, decisions and life choices. And thereby place limitations on women's individual citizenship, social, political, economic and cultural rights.

Muslim women in Sri Lanka are facing grave issues under the MMDA not because of their religious affiliation, but as a result of patriarchy and power that has used a religious and legal basis to disqualify women from equal protection under the law and reinforce subordination of

⁸³ An example of community policing is that of two 17-year old girls in Kattankudy in July 2011, who were assaulted after they went into a cyber café to use the internet when returning home from tuition. This incident led to a temporary and 'unofficial' ban on women wearing the face veil, as a way, activists say to identify who is going where. Interestingly other activists have noted that since then there has been a resurgence of the face veil in the district of Batticaloa, because women feel more anonymous and have more mobility to travel without being 'policed' and recognized by other members of the Muslim community.



women. Therefore, the argument that amendments to the MMDA will negate Muslim identity is one that reinforces this patriarchal notion and threatens the status quo, which privileges Muslim men above women.

As one young Muslim activist affirmed, *“My Muslim identity is not made stronger by unjust laws implemented in the name of my religion, but rather it is strengthened by my ability to have full rights to equality and non-discrimination as a Sri Lankan citizen. And for these rights to be guaranteed by the Constitution and the State, as all others.”*

E. Cultural sensitivity should not mean condoning injustices done in the name of culture and religion

In the recent past, young Muslim and non-Muslim activists, especially those advocating for minority-group rights, have been very engaged when it comes to speaking out about anti-Muslim rhetoric, on reconciliation efforts, good governance and democratic values. But have largely remained silent about the MMDA, reforms and other related issues affecting the Muslim community from within the community. Whether this is generally because of lack of information and knowledge about the MMDA and related issues or a deliberate choice to not engage, is not clear.

It is important that the issues affecting Muslim women are not seen as ‘Muslim issues’ but rather ones that concern child rights and women’s rights. There is significant potential for progress and dialogue if more voices join the fold in support of MMDA reforms, protection of Muslim women’s legal rights, and in formulating solutions that will help address the concerns of the Muslim community. Muslim minority group-rights advocates must understand that in order for Sri Lankan Muslim women to attain full rights as citizens and in protection of community wellbeing, it is imperative that MMDA issues be addressed. After all domestic and family life is where the individual sense of religious and cultural identity is most saliently reinforced.

It is also time for more nuanced conversations on addressing gender inequality and forms of gender based violence within the Muslim community by civil society actors and related government agencies. Muslim women must be included in the broader conversation about equality, legal and citizenship rights with the state. Non-Muslim actors and allies should be able to engage in constructive dialogue with Muslim actors about potential strategies and collaborations in doing so. Political correctness, and extra-cautious cultural sensitivity has its time and place, but it is certainly not warranted when human rights violations are taking place.



**ANNEXE:
STRATEGIC ACTION POINTS**



ANNEXE: STRATEGIC ACTION POINTS

The below are a consolidated, but not an exhaustive, list of recommendations that came up in the interviews, focus group discussions and authors analysis.

1. Obligating state responsibility

1.1. Ensuring MMDA reforms process is facilitated and expedited;

- The MPL Reforms Committee is in its seventh year of formulating recommendations for MMDA reforms. The Ministry of Justice has to ensure that the Committee concludes the process and submits its report as a matter of priority;
- Ministry of Justice must publish the report and ensure awareness raising on its contents and issues. Since it has been a closed process a critical appraisal of the report will be required to see if it meets the equality and non-discrimination test;
- All relevant stakeholders have the responsibility to ensure that a draft amendment Bill to the MMDA, based on the recommendations, meets the demands of the women who have been struggling for reform and also lives up to international obligations that Sri Lanka is signatory to. The bill should ensure that Muslim women and girls are not subject to discrimination and unequal treatment before law as Sri Lankan citizens
- Leaders, organizations and allies that have been working with the Muslim community need to collectively build a coalition to get the Bill passed.

1.2. Addressing ongoing violations

1.2.1. Mandating a monitoring mechanism for MMDA cases and Quazi procedures

- The JSC must take an active role in addressing grievances with regard to the Quazi courts and establish a more stringent monitoring mechanism especially on financial matters and code of conduct for Quazis;
- The JSC needs to record and report the number of complaints it receives and the action taken on these cases to Ministry of Justice;
- Bribery and other cases of criminal offence by Quazis cannot result in just their dismissal but stronger action, and the JSC needs to ensure that cases are referred to relevant investigative bodies such as the Bribery Commission;
- The Board of Quazis has the responsibility to note the trends and patterns with regard to appeals (for instance more appeals from a particular area may mean serious concerns with regard to the Quazi involved) and liaise with the JSC and Ministry of Justice for relevant action;
- Civil society actors have to get relevant and recent information about what types of cases the Board of Quazi and the JSC is receiving and how these cases are followed up and addressed. It would also be revelatory to note the type and frequency of cases that go beyond the Board of Quazi to the Court of Appeals.



1.2.3. Ensuring the Police undertake due process to address cases

- Police officers and women's desks in police stations and hospitals need to be made aware of relevant aspects of the MMDA such as the jurisdiction of the Quazi under the MMDA;
- Police must provide information and support services for Muslim women in accordance with state policies and procedures applicable to all citizens, especially for victim-survivors of domestic violence or other forms of abuse;
- It must be ensured that police desks in respective areas are well staffed with women officers and officers with language skills that match that of the community;
- Muslim organizations and groups that offer counseling services, as well as mosque committees and federations must not attempt to mediate or counsel domestic violence cases that falls within the ambit of Prevention of Domestic Violence Act or other criminal offence cases without informing the Police, instead they need to make referrals to the police for action.

1.2.4. Clarifying the role and mandate of religious bodies

- The Ministry of Muslim Affairs has to closely assess the role of mosque committees and federations and establish a grievance mechanism whereby any issues and complaints that arise can be investigated and acted upon by the ministry;
- The Ministry of Muslim Affairs must also issue a directive with information to mosque committees and federations around the country to refer relevant domestic violence and other criminal offence cases to the police rather than pursuing mediation or intervention without informing the Police;
- Community awareness must be raised about the exact role of the mosque committees and federations and it must be made clear to the community by the governing bodies that these committees and federations cannot mediate or interfere in domestic violence and criminal offence cases without informing the Police;
- ACJU and other relevant religious bodies must prioritize addressing grave issues from within the community and facilitate a solution to ensure that the rights of Muslim women are not violated.


1.2.5. Ensuring relevant issues are taken up by respective ministries and agencies:

- The Ministry of Education, Ministry of Women and Child Affairs (MWCA) and related agencies such as the NCPA must take up the issue of minimum age of marriage as a child rights concern. If representations and complaints are made to the NCPA regarding Muslim children and youth, appropriate action must be taken in accordance with state laws and policies;
- Relevant ministries such as MWCA need to acknowledge MMDA related issues faced by Muslim women and incorporate strategies to address these in their national action plans and ministry initiatives.

2. Pursuing justice through state mechanisms

2.1. Ensuring that Constitutional reforms guarantee equality

- The Steering Committee for Constitutional Reforms and Members of Parliament must ensure that Article 16(1) be repealed unconditionally without exemption for any laws, provide for judicial review of all laws and ensure supremacy of the constitution;

- 
- Civil society actors need to step up and sustain their advocacy to ensure that fundamental rights of any citizen, including Muslim women, to be treated equally and without discrimination on the basis of gender, ethnicity, religion and nationality.

2.2. Amendment of GMRO and Penal Code

- The Ministry of Justice and civil society actors must follow-up on implementing recommendations in reports previously submitted by the General Family Law Reforms Committee of 2009 that recommended Muslims also be given the option to marry under the GMRO;
- In addition to ensuring that the minimum age of marriage is set at 18 for all citizens, the Ministry of Justice, MWCA, NCPA, the Law Commission and civil society actors must ensure that Section 363 of the Penal Code on statutory rape is amended to include all girls under 16 years.

3. Mainstreaming issues affecting Muslim women

Efforts must be made to ensure that women's and child rights organizations and youth groups are made aware of the MMDA issues and collective actions should be encouraged.

3.1. Through public forums and media

- Civil society actors should consistently bring into public discourse issues affecting Muslim women and the community through newspaper articles, opinion and advocacy pieces, open letters, statements and press releases both locally in all three languages and internationally;
- Journalists and media personalities must be encouraged and urged to take up stories about MMDA reforms and investigate, gather information and highlight the various concerns faced at the community level;
- Public education initiatives like posters, pamphlets and notices outside Quazi offices and mosques, targeting the Muslim community must be issued with information about the jurisdiction of Quazi courts,
- Information about the jurisdiction of the police, procedures for filing cases on issues such as domestic violence and gender based violence among Muslim women through state legal processes.

3.2. Through intra-community dialogue and initiatives

- Dialogue and discussion about the MMDA and reforms must be expanded to minority Muslim communities like Malays, Memons and Bohras (among others), as well as around the country to districts and areas (such as Southern and Central districts) that are usually left out of initiatives regarding the MMDA;
- Community-based associations such as Malay associations and other organizations need to hold workshops, discussions and undertake educational initiatives about the MMDA and Quazi court system within their constituencies;
- Members of minority Muslim communities themselves need to ensure that they are part of the dialogue, consultations and national level discussions about MMDA reforms and seek to address the challenges that the Sri Lankan Muslims face.



4. Strengthening the evidence base

4.1. Gathering and corroborating information

- Perceptions surveys should be collected that will help determine what community members, men and women feel about various aspects of the MMDA and should be conducted engaging different Muslim minorities in Sri Lanka and across a geographic spread;
- Surveys could include perceptions of the community on having women Quazis, age of marriage, polygamy, choice of marrying under the GMRO;
 - These could be collected from different areas, or through online polling, or other mainstream and social media avenues;
 - These perception surveys will also allow for a deeper and more nuanced understanding of misconceptions, and help in designing interventions and discussions around these issues at the community level.
- On issues like early marriage within the Muslim community, gender disaggregated statistics from around the country need to be collected
- A qualitative and quantitative study on the nature, extent/prevalence, patterns and impacts of polygamy, divorce, *kaikuli* matters, maintenance issues and *hadd* punishments, (among others identified by individual actors) need to be obtained in order to supplement efforts for MMDA reforms;
 - Other information needed includes contributing information such as the number of enforcement orders filed by each Quazi court, the type of complaints being received by the JSC;
- Findings need to be to be shared broadly in the media and with relevant authorities observing ethical reporting practices and protecting the identities of and information about victim-survivors.

5. Inclusive approach by agencies offering technical assistance

- Agencies offering technical assistance to relevant ministries in relation to women's rights, gender based violence, child rights, legal reforms (including constitutional reforms) as well as with individual parliament members, must ensure MMDA issues are taken up and government action is pursued;
- Organizations working on addressing gender based violence and advancing women's rights and gender equality need to address rights violations of Muslim women in their programming, instead of only providing small-scale economic activities that reinforce gender norms.

"My Muslim identity is not made stronger by unjust laws implemented in the name of my religion, but rather it is strengthened by my ability to have full rights to equality and non-discrimination as a Sri Lankan citizen. And for these rights to be guaranteed by the Constitution and the State, as all others."

