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காதி நீதிமன்றம்
புத்தளம்
QUAZI COURT
PUTTALAM

INSIDE THE QUAZI COURTS OF SRI LANKA

BY
ERMIZA TEGAL AND HASANAH CEGU ISADEEN

CHANGE HUMANITARIAN ORGANIZATION
PUTTALAM, SRI LANKA

MARCH 2021

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March 2021

CHANGE Humanitarian Organization

No: 55A, 2nd Cross Street,

Puttalam

Sri Lanka

Tel: 0322 266 207

Email: change.px@gmail.com

Acknowledgements

CHANGE Humanitarian Organization acknowledges with gratitude the commitment of the staff of CHANGE and the enumerators M.F. Fathima Waheeba , M.T.M Zahran, N.S. Farlina, Muhsin Musraj, Mohamed Ansari Mafahisa Begam, Nagoor Fathima Rislal, Abdul Riyal Risna Banu, Mihlar Fathima Askiya, Abdul Cader Adhly and M. M. Fathima Mirsha Zain for their valuable work and considerate input into this report. CHANGE also acknowledges all the stakeholders that have encouraged, assisted and shared their insights to ensure that this report is truly reflective of careful consideration and aspirations of those engaged in the reform movement over the Muslim Marriage and Divorce Act of Sri Lanka. CHANGE also recognizes the efforts of its staff team in this endeavour.

This report was prepared by Hasanah Cegu Isadeen and Ermiza Tegal. CHANGE is grateful for their untiring effort to explore these sensitive and timely issues.

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Executive Summary

Reform of the Muslim Marriage and Divorce Act of 1951 (MMDA), a family law applicable to the minority Muslim population of Sri Lanka, has been a highly contentious public policy and law reform issue during the past six years. Despite the generation of official reports, initiation of formal processes for reform, and consistent advocacy by Muslim women's groups over 30 years, no reforms have yet been effected. The barriers to reform are ideological and political. Some of the challenges identified are the ethno-religious national and local political dynamics, limitations imposed by interpretations of an Islamic framework that does not recognize the harm caused or does not value justice, policing of Muslim issues by leaders within the Muslim communities, the failure of broader civil society to advocate these reforms and the overall marginalization of reform affecting women's right to equality, non-discrimination and protection from violence.

It is within this context that this study of the perceptions of users of the Quazi court system, particularly concerning access to justice, was envisioned. The decades of advocating for reform have privileged a focus on the substantive discriminatory provisions of the MMDA. Evidence of challenges to access to justice within the Quazi system in Sri Lanka have been highlighted in the past, however it was necessary to examine issues in this area more closely to better inform public policy debate on required changes to the administrative system or institution that is expected to deliver justice.

This study is a result of a purposive survey of 268 respondents, 212 women and 52 men, from 26 locations in 12 Districts across Sri Lanka. Survey respondents were between the ages of 18 and 75 and were all persons who had direct experience of the Quazi system, through either interacting with a Quazi for their own case or accompanying a person to the Quazi. 3 focus group discussions and 10 key informant interviews provided additional in-depth qualitative information and informed the interpretation of the survey data.

The study found that

1. **Access to the Quazi and the Quazi court** was not easy for people. People depend largely on informal networks for information about Quazi and Quazi courts, the availability of Quazis was restricted to a few days a week and sometimes even less, and there was uncertainty about the Quazi's availability. Quazi were found generally to be unavailable during the month of Ramadan. Litigants spent much time, money and were also compelled to make arrangements relating to children in order to attend court. Litigants,

mainly women, required support from family members to attend court. Some survey respondents also spoke of the social stigma attached to attending Quazi courts.

The court premises were in varied types of locations including public schools, halls and even private residences. This lent to a sense of lack of formality and lack of protection. Premises not being secure also meant that litigants in those courts did not feel safe.

2. **Nature of the Quazi court space** was found to be public and not conducive for constructive family dispute resolution. All survey respondents said that the Quazi and court proceedings were in the language of their first preference, which was Tamil. Eighty nine percent (89%) of the survey respondents did not perceive the Quazi court structure or personnel to be friendly. Key informants also described the lack of basic facilities at the Quazi courts to include lack of drinking water, lack of space for those litigants and those accompanying them (i.e. some places people had to stand outside even in bad weather), and absence of arrangements for mothers who needed to feed and attend to their infants or young children.
3. **Efficiency of the Quazi and court** depended very much on the particular Quazi and how he responded in each case. There was no prescribed process or timeline that provided litigants with a sense of what to expect. It was found that litigants are compelled to visit the Quazi several times. Of those who visited the Quazi more than times, 33% stated that a case that they had filed had been completed. Close to 70% of the survey respondents said their case was accepted on the first day, but the others experienced having to return with further documents or people (presumably as witnesses). There was also lack of consistency and formality about how the Quazi communicated the date of the hearing. From the Eastern province, women described having to deliver the summons themselves to the *grama sevaka niladari* (local administrative officer) in the area that their husband was living.
4. **Fair treatment by Quazi** was not a common experience. Women described their requests for Quazi intervention in matrimonial disputes or maintenance being converted to divorce proceedings either by the Quazi on his own initiation or on the request of the husband. Not being afforded a hearing was a common complaint. Women described being silenced, scolded or threatened, and feeling marginalized in the Quazi system. Several observations were made of Quazis being partial as a consequence of being influenced by close relationships to the other party, not taking action against men who did not attend court or adhere to orders, taking the side of men, and taking bribes. These experiences

seemed to lead to a common perception particularly amongst women of Quazis and the court system as unfair and unjust.

- 5. Decisions of Quazi** were perceived as unjust by many. A majority of the decisions (54%?) by Quazis were Fasah divorce decisions (divorce initiated by wife for stated reasons), 22% of the decisions were said to be Talaq divorces and 24% of the divorce related decision were 'other divorces'. Twenty four percent (24%) of women and 61% of men were unhappy about the Fasah decisions, and 75% of women and 36% of men were unhappy about the Talaq decision. A study finding that could not be easily explained and requires further exploration is that women and men said to have initiated their divorce proceedings were unhappy with the decisions they received.

Maintenance payments ordered were very low and did not reflect the cost of living and practical needs of people. The lowest amount of child maintenance ordered was Rs.1000 per month and the highest (reported by one respondent) was Rs 35,000 per month (which was reportedly not paid). On average, the reported monthly maintenance ordered was Rs. 4,700. Many women reported that subsequent to the order, payments were not made or that payment orders were difficult to enforce. In the case of wife maintenance, it was noted that women did not always make an application for maintenance. On average, reported wife maintenance ordered was Rs. 5,500 per month.

- 6. Support for female Quazis was overwhelming.** Overall, 78% of the survey respondents were in favour of the appointment of females who were capable and educated as Quazis. Sixty four percent (64%) of men and 88% of women were in favour of female Quazis. Reasons of equality and a fairer experience for women were used to justify introducing women as Quazis. Key informants described prevailing regressive social attitudes against women participating, even assisting litigants, within the Quazi courts. Some expectation of social resistance to women Quazis was described, particularly from Batticaloa and Puttalam, and yet challenging this limited resistance was seen by informants as necessary.
- 7. Other concerns.** The study also found that there was a need for setting basic qualifications for selecting Quazis, introducing mediation as part of the family dispute resolution mechanism in a manner that focussed on assisting where possible the parties before court, reforming the appeal process to ensure timely justice, addressing the stigma attached to having a separate Quazi for 'refugees' (meaning internally displaced persons) by renaming that Quazi position and removing the word refugee from the description, reforming the procedure for enforcement of maintenance orders, and

ensuring that access to justice will not be affected if lawyers are to be introduced at the Quazi courts.

The study offers lessons learnt for reforming the Quazi court system to improve accessibility, justice and fairness, which are set out as follows:

1. Quazi courts must be in locations that are publicly accessible and must provide security to those coming to courts.
2. Information on Quazi courts, procedures and forms must be publicly accessible to people. Quazis must be available to serve the people in their area and the number of disputes in the area, and the days and times of their availability must be public known. Quazi must be available during the month of Ramadan. As a principle, any application must be filed in the area where the woman resides.
3. Quazi court premises must be chosen and organised for privacy of hearing, to ensure that family disputes are adjudicated in a confidential, constructive and confidence-inducing environment. There must be a balance of genders represented in the panel of assessors and jurors at the Quazi courts. The premises must also provide all facilities such as waiting areas, accessible to the elderly and persons who are disabled, provide drinking water and have arrangements for mothers to feed infants and care for young children.
4. Details of procedures must be accessible and available in written form for those accessing the Quazi court. Timelines must be set for the different procedures to guide the Quazis. Women must not be required to carry out the serving of summons to their husband. Quazis must officially in writing inform parties of the dates of hearing without requiring people to travel to the Quazi to obtain this information. Quazis must give written reasons for their decisions, particularly if they have decided to refuse to proceed with an application. Enforcement certificates must be issued without delay at the first instance the woman brings a complaint of non-payment. Quazis should be empowered to make orders to places of employment for maintenance payments to be deducted from salaries. The law should be reformed to ensure that men are not permitted to accumulate arrears in payment of maintenance, both the Quazi and the Magistrate must be empowered to make orders to ensure that all maintenance payments are paid up at all times. The law must be strengthened to deal with men absconding from court in maintenance applications.
5. Quazi must be trained and monitored by the Judicial Service Commission to treat all litigants fairly and not discriminate. Quazi must not be permitted to convert an

application from the request made by the litigant to other forms of relief determined by the Quazi or the other party without the full and informed consent of the applicant. Quazi must advise litigants and make orders regarding all legal rights including child maintenance, wife maintenance, living in expenses, Iddah maintenance and Ma'taa claims.

6. Quazis must provide fair and equal hearings to both parties to the dispute. Conscious effort must be taken to ensure privacy of hearings. If speaking to women privately, Quazis must permit the women to have persons to accompany or support her during the private hearing. Hearings must be properly documented and must be conducted in an inquisitorial manner. Quazis must not read out loud for others to hear or make public information disclosed by either party to the dispute.
7. Guidance must be provided in the law or in the form of mandatory guidelines to be followed regarding computing reasonable amounts of child maintenance, wife maintenance, Iddah maintenance and Ma'taa. Consideration must be taken of income and earning capacity, wealth, cost of living and other necessary factors.
8. Guidance must also be provided for Quazis to ensure that the wife's property, either dowry, *Kaikuli* or other property brought into the marriage by the wife, is returned to the wife before the granting of divorce orders in Talaq cases. Similarly, Ma'taa payment must be made before the order of divorce in Talaq cases.
9. Women must be permitted to apply for and hold the position of Quazi.
10. Educational qualifications required for the position of Quazi must include knowledge of the law including general law and procedure, the Muslim Marriage and Divorce Act, administrative law, constitutional law and other relevant family laws including laws relating to domestic violence. The criteria for selection must ensure that persons having reached the general retirement age should not be permitted to hold the office of Quazi.
11. Quazis must be adequately remunerated, and facilities and support must be provided by the State to ensure that they are able to carry out their functions efficiently and effectively.
12. Without strong mechanisms for legal aid and support of litigants, it is not recommended to introduce legal representation for litigants. Legal representation may have the benefit of strengthening the litigant who is unable to present their case well. However, that financial inequality between litigants may further compound inequality in legal representation, particularly between men and women, is a fact that must be recognized. In any event, people must be able to represent themselves before the Quazi courts.

13. Appeal processes must be completed within a reasonable time and delays must not be permitted. The time period for completion of the appeal case must be defined in the law. The Quazi must provide litigants with written information regarding the appeal process when any Quazi court order is made. Legal aid must be provided for litigants who wish to pursue an appeal. Non-governmental organizations or community-based groups may also organize and provide financial and other support for litigants who wish to pursue appeals.
14. The Board of Quazi must function at least two days per week (as opposed to once a week which is the current practice) and must conduct sittings in Provinces/Districts from which there are a high number of appeal cases.
15. Create public awareness by posters on the public notice board of the Quazi premises about the offence of bribery and corruption, the punishment and encouraging the public to take action and make complaints regarding such activities. Every Quazi court premises must publicly display information about how complaints relating to bribery can be made. Complaints must be forwarded to the Judicial Service Commission, the Human Rights Commission and the Bribery Commission. The Bribery Commission should take timely action in response to complaints, must ensure effective punishments are delivered and officials are removed from office. Non-governmental organizations or community-based groups working to assist Quazi court litigants are encouraged to assist litigants with complaints of bribery and corruption to make official complaints and to support people through the complaint process.

1. Introduction

Muslims constitute 9.7% of the population in Sri Lanka, numbering 1,967,227 at last census.¹ Historically, and under the present Constitution of Sri Lanka, personal laws specific to Jaffna Tamils, Kandyans and Muslims have been recognized. Muslim personal law relates to family law, intestate succession and administration of charities. These laws draw on a hybrid system of Islamic jurisprudence, customary norms, Roman Dutch law and English law. Muslim family law is adjudicated, unlike all other personal laws, by a system of Quazis.

1.1 The current Quazi system

There are currently 65 Quazi courts across Sri Lanka. Quazis are appointed in terms of the Muslim Marriage and Divorce Act of 1951 by the Judicial Service Commission. The only requirement of a Quazis is that they be male Muslims “of good character and position and of suitable attainments”.² There are no requirements relating to minimum qualification specified in the MMDA. By Gazette³, the Judicial Service Commission set out criteria for minimum qualification in the call for applications for Quazi in January 2021. The Gazette required as follows:

- Applicant should be a Muslim male who is a graduate of a recognized University or a Moulavi holding a certificate from an institution recognized by the Ministry in charge of Muslim Religious and cultural affairs or a holder of the al-alim certificate issued by the Department of Education or an Attorney at Law or a holder of other similar qualification or a retired public servant who has held office in staff grade.
- Applicant should be married and over 40 years, should be physically fit and of good character and standing in the community and possessing a sound knowledge of the law relating to Muslim marriage and divorce.

The Gazette also specified that it was a legal requirement that a Quazi should reside in the area for which he is appointed and that a monthly allowance of Rs 7,500/= and an all exclusive allowance of Rs 6,250/= per month for the cost of support services, stationary and postal expenses would be the remuneration to be expected.

¹ Census of Population and Housing in Sri Lanka, 2012. This is the last available census data.

² Section 12(1) of the Muslim Marriage and Divorce Act of 1951

³ Gazette number No. 2,200 dated 1st January 2021 published under Part I Section (IIA) - Advertising.

Appeals from the Quazi is to the Board of Quazis⁴ and thereafter to the Court of Appeal and then Supreme Court.

On average each Quazi serves a population of approximately 30,100 persons.⁵ The areas in which the population served exceeds the average are Anuradhapura (71,493 persons per Quazi) Puttalam (50,135 persons per Quazi), Badulla (47,192 persons per Quazi) and Matale (45,682 persons). In 2017, this system administered 1498 divorces. The most recent of available statistics also demonstrate that in 2017, Quazis received 15,960 complaints and disposed of 7,965 and in 2018, Quazis received 17,790 complaints and disposed of 9,011 complaints.⁶ No information is available to understand the District-wise distribution of complaints received and disposed of and the types of complaints received and disposed of. While it does not give an accurate sense of the workload of each Quazi, based on available statistics it can be calculated that on average each Quazi received approximately 274 complaints in the year 2018. This study sheds some limited understanding on the respective workloads of Quazis.

1.2 Brief history of Muslim marriage and divorce law reform in Sri Lanka

The British Government in 1926 appointed a Select Committee of the Legislative Council to recommend reform of the law relating Muslims. The Committee was chaired by Mr. M.T. Akbar the then Acting Attorney General. The Committee recommended the establishment of Quazi Courts with original jurisdiction and a Board of Quazis with appellate jurisdiction to deal with matrimonial disputes among the Muslims of Sri Lanka.⁷ The Muslim Marriage and Divorce Registration Ordinance of 1929 was enacted to give effect to the recommendations of the Justice Akbar Committee and the Ordinance was promulgated in 1937.

Issues with the implementation of the system resulted in the then Governor appointing a Committee in 1939 to consider further amendments. This Committee was chaired by Mr. P.E.

⁴ Section 60 of the Muslim Marriage and Divorce Act of 1951

⁵ Calculation is based on statistics of the Muslim population by District in the Census of Population and Housing 2012, Sri Lanka by the Department of Census and Statistics
<http://www.statistics.gov.lk/pophousat/cph2011/pages/activities/reports/finalreport/population/finalpopulation.pdf>. See Annexure 1.

⁶ Performance report 2018 by the Ministry of Justice and Prison Reforms in Sri Lanka, page 111.
https://www.moj.gov.lk/web/images/pdf/progress_report/2018/English.pdf

⁷ The Report of the Justice Akbar Committee has been published as Sessional Paper No. XX of 1928.

Peiris, the Registrar General at the time, and consisted of Dr. T. B. Jayah, and M.C.Abdul Cader, S.M.Aboobucker, Mohomad Macan Markar, A.H.M.Ismail and M.I.M.Haniffa. The Committee made several recommendations in its unpublished report with regard to substantive and procedural law. This led to the formulation of the Muslim Marriage and Divorce Act of 1951 (MMDA) which came into force in 1954. The call for reforms continued.

In 1972, the Muslim Law Reform Committee chaired by Dr. H.M.Z. Farouque was convened to recommend reforms to the MMDA. Among the recommendations made regarding the Quazi system were (1) to relax the rule that a Quazi should be a resident of the area for which he is appointed, (2) enhancing the status, powers and duties of Quazis and to address the difficulties in the enforcement of orders of Quazis. No reforms followed.

In 1990, the Minister of State for Muslim Religious and Cultural Affairs appointed a fifteen member Muslim Law Reform Committee under the chairmanship of Dr. A.M.M. Sahabdeen. Some of the committee's recommendations relating to the Quazi system included establishing a Quazi Service Commission and introducing provisions prescribing minimum educational qualifications for Quazis and the Board of Quazis and removing hardships caused to litigants in relation to the enforcement of orders of Quazis and the Board of Quazis. No reforms were implemented on the basis of these recommendations.

In 2009, the Committee Appointed to Consider Amendments to the Muslim Marriage and Divorce Act, was appointed by the then Ministry of Justice. In 2018 the report of this Committee chaired by Justice Saleem Marsoof PC, made recommendations⁸ to the effect that Quazi's must have a minimum qualification of Attorneys at Law, that there be the introduction of a closed Quazi service of full-time public officers in permanent employment with security of tenure and adequate disciplinary controls. This report also recommended, by a majority decision, that women be permitted to hold office of Quazi, and that legal representation be permitted.

Muslim women's groups have advocated for reform of the MMDA for over 30 years, organizing at the level of the community, assisting women to navigate the Quazi system, and documenting the discrimination, injustice and violence perpetrated within the system and the failure of the State to address these issues. The pioneering work of Muslim Women Research and Action

⁸ Details about the Committee and the full report is available on the Ministry of Justice, Sri Lanka website, at https://www.moj.gov.lk/web/index.php?option=com_content&view=article&id=114&Itemid=230&lang=en

Forum (MWRAF) laid instrumental groundwork. Several community based and advocacy organizations have carried the call for reform, such as Muslim Women's Development Trust (MWDT) in Puttalam, Mannar Women's Development Federation (MWDF) in Mannar and the Mullaitivu Women's Development Rehabilitation Foundation (MWDRF) in Mullaitivu as part of Women Action Network (WAN), Islamic Women's Association for Research and Empowerment (IWARE) in Kattankudy, Muslim Personal Law Reform Action Group (MPLRAG) in Colombo, Human Elevation Organization (HEO) in Akkaraipattu and most recently, Sisterhood Initiative. Solidarity and support for reform has also been extended by organizations including Suriya Women's Development Centre in Batticaloa, Women and Media Collective (WMC), Hashtag Generation, Law and Society Trust (LST), Liberation Movement and, international groups and organizations such Women Living Under Muslim Law (WLUML) and in more recent years Musawah. The advocacy for reform has also seen engagement by human rights activists, journalists, professionals, academics, progressive Islamic scholars, and parliamentarians including the Sectoral Oversight Committee on Women and Gender during the period 2018-2020, in the form of creating space for dialogue, debate and negotiating reform within Sri Lanka's socio-political spaces.

1.3 Literature on Quazi system reforms

As part of the methodology, the literature available on reform of the Quazi court system was reviewed. The need for administrative reform appears to have been overshadowed in discursive literature by substantive law concerns relating to the Muslim Marriage and Divorce Act (MMDA). There is a considerable amount of information about the substantive experience within Quazi courts, for example on minimum age of marriage, polygyny, conduct of Quazis. These areas have also been the sites of contestation between interpretations of religious law and debates on constitutional safeguards.

On the administrative and procedural aspects of the Quazi system the following publications were available in English and Tamil.

In 2011, Justice Saleem Marsoof discussed some aspects of the Quazi system including appeals, role of lawyers and treatment of women by Quazis.⁹

⁹ Justice Saleem Marsoof PC, 'The Quazi Court System in Sri Lanka and its Impact on Muslim Women' Muslim Women's Research and Action Forum/ Women Living under Muslim Laws, 2011.

In 2012, Anton Cooray reviewed the Quazi system and identified a series of shortcomings.¹⁰ He goes on to identify the positives as follows:

“A special feature of Quazi courts is that they are within the easy reach of Muslim communities who are concentrated in certain areas of Sri Lanka. Quazi courts are inexpensive especially because legal representation is not permitted. Quazis do not seem to have a heavy workload and disputes seem to be settled quite expeditiously. Most Muslim communities belong to the poorer sector of the Sri Lankan Society and the amounts involved either as maintenance or return of marriage gifts are very small to justify time consuming, expensive and oppressive judicial processes. It is for this reason that there have not been any demands from any Muslim interest group for the abolition of the system of Quazi courts”

Anton Cooray concludes that modernization is essential and will ensure that the Quazi courts are a great value to the Muslim Community of Sri Lanka by providing an easily accessible system which is in line with religious beliefs and is also just and fair.

In 2016, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”¹¹ by Hyshyama Hamin and Hasanah Cegu Isadeen dedicated particular attention to Quazi Court reforms and shed light on the lack of criteria and qualifications for selecting Quazis, lack of sensitivity and inappropriate behaviour by Quazis and lack of knowledge about MMDA, procedures and jurisdiction and the issue of females legally prevented from appointment as Quazis.

Between 2018 and 2020 there were three Tamil language publications that studied aspects of the workings of the Quazi courts and orders.¹² Their findings include irregularities in the procedure adopted, lack of knowledge of the procedure, inconsistency in knowledge and training persons holding office of Quazi, perceptions of injustice in relation to orders made by Quazis.

In 2020, Justice Saleem Marsoof PC in “Muslim Matrimonial Law Reforms – The Way Forward” drew attention to the fact that the 2009 Committee considering reform had reached a consensus

¹⁰ Anton Cooray (Professor, Associate Dean of Law, Dean of Law) (2012) Access to Non-Judicial Justice Through Islamic Courts in Sri Lanka: Palm Tree Justice or Accessible Justice?, Asia Pacific Law Review, 20:1, 113-134

¹¹ Found at <https://mplreforms.com/unequal-citizens-study/>

¹² (1) Qualification of Quazis in Sri Lanka: An Islamic Field Analysis – MIM Jazeel, MB Fowzul, Sri Lanka Journal of Arabic and Islamic studies Vol1, issue 1, 2018. (2) Court Procedures And Trials: An Empirical Analysis on the Quai Courts in Sri Lanka – by MIM Jazeel and MB fowzul, Sri Lanka Journal of Arabic and Islamic Studies, 02 (02), 2019. (3) The judgements of Quazi Courts in Sri Lanka: An Analysis – by MIM.Jazeel, MB.Fowzul, and ARF.Rakeeza – MJSSH online: vol4- issue1 (January 2020)

on the fact that Quazi Courts should be upgraded and that the difference of opinion was on the question of what the minimum qualification of a Quazi should be.¹³

The question of women Quazis has received focussed attention in the literature and several publications were dedicated to this issue.¹⁴

Having reviewed the literature above it is noted that practical aspects of ease of litigants' access to Quazis, nature of the space of the Quazi hearings, accessibility of proceedings before the Quazis, and litigants' perceptions of fairness of Quazi decisions and procedures did not feature in a substantive manner.

It is hoped that this report can contribute to the on-going discussions, both the public discourse as well as the policy discourse, on improving the system for Muslim citizens in the resolution of family matters.

¹³ Justice Dr. Saleem Marsoof, *Muslim Matrimonial Law Reforms – The Way Forward*, Neethiya, 2020.

¹⁴ Shreen Saroor, *Muslim Women: Second Class Rights Holders in Sri Lanka's Quazi Court system*, Groundviews website, September 2016, Supporting Sri Lankan advocacy on reforming Muslim family law and Quazi courts, Musawah Blog, April 2019. Ismath Ramzy M, Ghavifekr S. *Women Quazi in a Minority Context: An Overview of Sri Lankan Experience*. *Societies*. 2019; 9(1):13. Position Paper on Women Quazis, Muslim Personal Law Reform Action Group (MPLRAG), February 2019.

2. Methodology

2.1 Purpose of study

This study was conducted as a direct response to the need for information regarding the workings of the Quazi system in Sri Lanka, especially from a litigant's perspective. Having considered the available literature, the Quazi system reforms under considerations and available information on the lived realities of people engaging with the Quazi system, the need for practical and procedural information on litigant experiences and its consequences was evident.

This study was designed to explore the experience of Quazi courts in Sri Lanka from a user's perspective. It recognized that much of the reform conversation relating to the Muslim Marriage and Divorce Act of 1951 stayed focused on substantive issues in law, and that little work had been done to assess the procedural aspects of implementation of the law.

2.2 Study methods

The methodology planned for this study included the administration of 500 survey interviews with persons who accessed the Quazi court either for themselves or as persons accompanying litigants in 35 locations across 18 Districts in Sri Lanka, 10 key informant interviews and 2 focus group discussions.

The study commenced in January 2020 with the development of the survey questionnaire, training of enumerators and planning of logistics for the conducting of the study. However, with onset of the COVID-19 pandemic and the restrictions on movement that were imposed to prevent spread, the logistics for the conducting of the survey was seriously impacted. The survey was rolled out in June 2020 when restrictions on movement were lifted and with additional measures to ensure safety of enumerators and participants.

The survey

The survey design was informed by existing knowledge from case studies and activist experiences on accessing Quazi courts in Sri Lanka. The survey sought to capture information and perceptions of users of their experiences from the point at which a relevant Quazi had to be initially identified to the point at which a decision was given. The survey to be administered to persons who had recent experience with Quazi courts in Sri Lanka. The survey inclusion criteria were that the respondent had to (1) be a litigant or a person assisting the litigant in a Quazi court and (2) consent to taking the survey.

The original target was to survey 500 persons, targeting 400 women and 100 men. The 4:1 ratio of women to men bias in design was to ensure that the nuance of women's experiences in Quazi courts was well represented owing to the concerns regarding Quazi courts being raised mainly by women and women's groups. The number of people finally surveyed for this study was 268, of whom 212 identified as women, 52 identified as men and 4 did not wish their gender to be disclosed. Of the originally planned 35 locations across 18 Districts in Sri Lanka, the surveys were finally administered in 26 locations in 12 Districts.¹⁵ The reduction in expected number of survey respondents was mainly as a consequence of restrictions associated with COVID-19 prevention measures. This was addressed by adjusting the numbers of survey respondents and focus group discussions and maintaining the ratio of gender representation in the surveys conducted.

The purposive recruitment of respondents for the survey was made mainly by liaising with individuals and organizations that worked closely with the Quazi courts. These organizations were community-based organizations that primarily were involved in assisting litigants access the local Quazi courts. The individuals were those whose contacts were obtained from lawyers and community activists and in some instances directly reaching out to the respective Quazi of the area. . In Puttalam, Mannar and certain parts of Batticaloa litigants were approached as they were leaving the Quazi Court. The majority of the interviews took place at the litigants' homes. The exceptions to conducting the survey at the homes of respondents were in Akurana, Kinniya, Nuwara Eliya, Mannar, Muttur, in the Puttalam District in Nagavillu and Puttalam town. In Nuwara Eliya, the survey was carried out in the mosque which is also the Quazi court and requisite preparations were facilitated by the local mosque. In Mannar the Quazi court was in a school building and the survey was administered in a separate part of the school building while the Quazi hearings were taking place in a different part of the building. In Nagavillu, the Quazi had rented out a portion of a house to conduct inquiries, a separate portion of the house was used for the administering of the survey. In Puttalam town, Kinniya and Muttur litigants who had come for their Quazi court inquiries were spoken to and if they consented the survey was administered while they waited outside the building premises in an area which they would not be disturbed by others. In Akurana, the Quazi permitted his residence to be used as a space to administer the surveys and the Quazi was not present when the surveys were administered. The enumerators stated that there was no interference by the Quazis at these locations. The surveys were administered between March and December 2020.

During the period the surveys were planned to be conducted, the COVID-19 restrictions on movement severely affected the original plan. As a result, the survey could not be conducted in

¹⁵ See Annexure 2.

the Kegalle, Galle, Matara, Ampara and Kalutara Districts. Only 3 interviews in Colombo District were possible. Access to these areas were considered high risk for reasons of COVID-19 infection and it was not possible to administer the survey, as such to ensure the safety of enumerators as that of the survey respondents. Although phone or online interviews for the surveys in these areas were considered, due to the sensitivity of the subject and the difficulties respondents may have in securing a private location for these conversations, it was not deemed appropriate.

It was only when restrictions on movement were lifted, even though COVID-19 prevalence was high, that the window opened up for key informant interviews that could not be conducted over a phone or online platform. In a few cases, pre-existing direct or indirect relationships between those conducting the study and some key informants ensured a level of trust which permitted interviews over the phone or over an online platform. However, this could not be extended to key informants with whom physical interviews were necessary as part conveying trustworthiness and confidentiality

All enumerators were Muslims. The main reason for this was that the context in which this survey was to be administered was not an easy one for the Muslim communities across Sri Lanka. The political and social context, also particularly on the issue of Quazi court reform, was fraught for the reason that public and political speeches from members of the majority community calling for the abolishing of Quazi courts were causing much apprehension within Muslim communities. Calls for reform based on unjust experiences were met with calls for 'one country, one law' in a manner that was felt to threaten the identity and identity-based practices of Muslim communities. Creating the safest possible space in which to have conversations about Quazi court experiences and being open about what the study was exploring was an important consideration in the approach in administering the survey.

Of the 10 enumerators, 8 were female and 2 were male. The female enumerators administered the survey to female respondents and male enumerators administered the survey to male respondents. A larger number of female enumerators were selected to ensure that sufficient Muslim women conversant in Tamil were available to administer the questionnaire to the female respondents. Cultural and social sensitivities meant that Muslim women would be most comfortable and share their views frankly with another Muslim woman.

It is important to note that the enumerators were new to the task of conducting surveys, although they all had prior experience in assisting litigants through Quazi court processes. The enumerators all attended the training conducted in January 2020. Their perceptions of the experience of administering the survey indicated that it was time consuming and required

multiple queries to better understand or verify the information provided. They also experienced having to respond in detail to questions posed by the respondents, especially relating to the organization conducting the study, the enumerators themselves and the purpose of the survey. Several persons expressed concerns about engaging in a discussion on Quazi court experiences, and it was only after explaining the purpose did some consent to undertaking the survey. It appeared to the enumerators that the socially beneficial purpose of the survey appealed to many respondents. It was clear from the enumerators' experiences that the study team's anticipation that the subject matter was socially and/or politically sensitive was correct. COVID-19 prevention restrictions on movement and physical conduct contributed to the tiring nature of the work for enumerators.

Key informant and group discussions

The ten key informants were persons who had long experience with the Quazi court system and were selected on their ability to provide more detailed information on the areas that the survey covered. Key informants included counsellors, lawyers, community activists and leaders and one interview representing experience of the Sri Lanka Quazi Judges Forum. They were from Ampara, Kattankudy, Colombo, Mawanella, Mullaitivu and Puttalam.

Three group discussions were conducted. One involved leaders of organizations and groups with experience of working on MMDA reforms on the current positions and community thinking on specific issues relating to reform. The second was with the enumerators to explore in detail their experiences with conducting the survey, their qualitative findings and insights from additional discussions they had with Quazis and others. With the enumerators, two group discussions were conducted, one in September 2020 and the other in January 2021. The third was a three-person group discussion in Galle to elicit views from Quazi court users their experience at the Quazi court and responses to proposed reform recommendations. The third discussion was conducted to consider views from court users from the Southern Province of Sri Lanka, an area in which the surveys originally planned could not be conducted.

2.3 Limitations

It was evident from the conceptualization of this study that due to social and political sensitivities surrounding the Quazi court system that data collection would be difficult, and that data collected would have to be interpreted in light of these sensitivities. The Muslim communities in Sri Lanka experienced fears in relation to their religious and customary practices in light of political rhetoric and realities related to state policies. The most significant policy issues at the time that the majority of the survey interviews were conducted was that the State had prohibited

burial and restricted the religious and cultural practice relating to funerals of Muslim persons who were identified as having died due to COVID-19.

The second limitation was that the study relies on a purposive sample, for the reasons of sensitivity of the topic, and the lack of a viable means of randomised selection of respondents from an existing sampling frame (of persons with direct experience of Quazi courts). In terms of representativeness, another limitation was that Quazis and Justice sector officials were not interviewed as part of the study design. The purpose of this study was to privilege the experience and opinion of users of the Quazi system, but it is important to note that the perspective of Quazis and officials are not reflected. During fieldwork, the survey team did incidentally speak to some Quazis who were willing to engage and these informal insights were helpful in the interpretation of the data. In contrast, one Quazi who became aware of the study had specifically threatened to complain against the conducting of the survey.

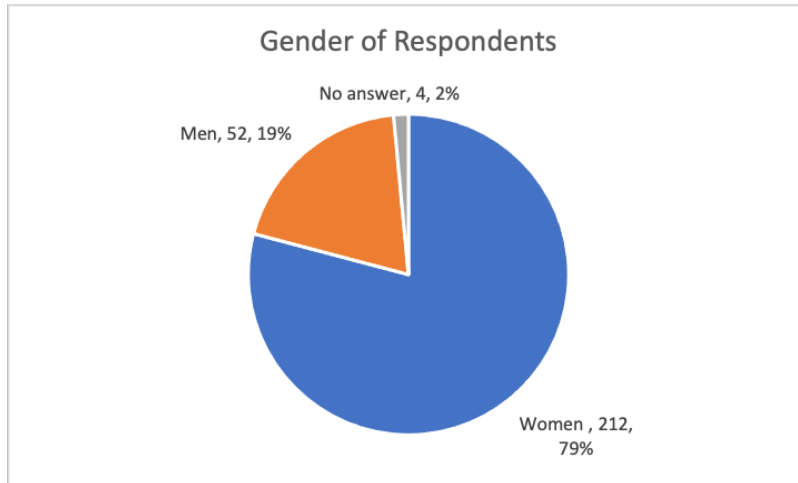
A third limitation experienced was that survey respondents were not aware of legal rights such as right to Iddah maintenance, Ma'taa payments and return of Kaikuli and as a consequence almost all respondents did not respond to the specific questions about these issues. However, some respondents had provided additional explanatory comments that demonstrated that in their individual cases at least there had been some discussion about the legal right, but that they had failed to secure it because their husbands had resisted the Quazi's intervention. It was also observed that expectations held by the public of Quazis outweighed the Quazis actual jurisdiction. Contradictions in the data related to certain topics raised concerns that analysis of responses on the basis of available data may not fully or accurately represent the experience of the respondents. For example, to the survey question 'how did you feel about your Quazi experience?' several survey forms had marked all available options 'poor, dissatisfied, satisfactory and good'. Also, to the questions on why respondents were happy or unhappy with the orders by the Quazi several contradictory responses were recorded such as the respondent being happy with the order, and the reason recorded as 'I have two children. Quazi did not order child maintenance, I do not know why'. As such this data and these topics have been excluded from analysis.

The restrictions relating to movement as a consequence of the COVID-19 prevention strategy had a significant impact on the method originally proposed.

3. Description of respondents

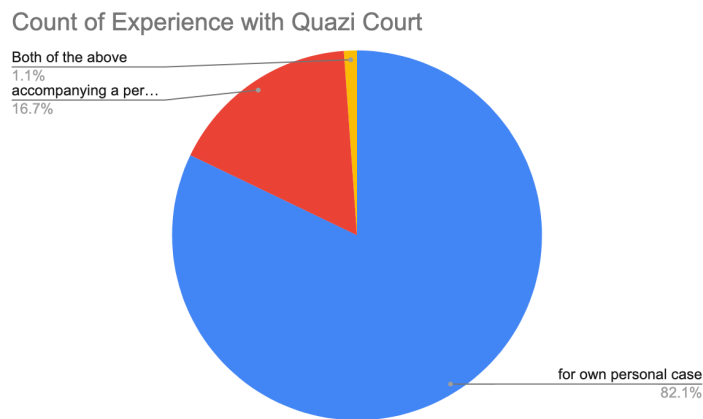
3.1 Number and gender of respondents

A total of 268 respondents participated in the survey that informs this study. There were 212 female respondents and 52 were men. 4 chose not to respond to this question.



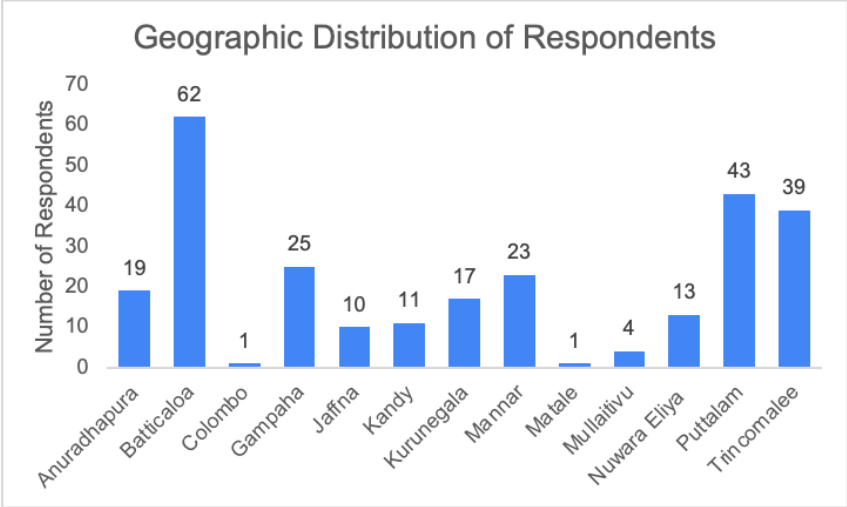
3.2 Respondents experienced the system as litigants and providers of support to litigants

A majority (82 percent) of the participants stated their experience with a Quazi was for their personal case. 17 percent said their only experience with a Quazi court was merely accompanying someone to the Quazi court or office. One percent (1%) stated their experiences with the Quazi have been both for their own case and accompanying someone else.



3.3 Geographical distribution of respondents

The majority (62) of the survey respondents were from the Batticaloa district. Thirty nine (39) were from Trincomalee, 43 were from Puttalam, 25 were from Gampaha and 23 from the Mannar district. There were under 20 participants from Kandy, Kurunegala, Jaffna, Nuwara Eliya, Anuradhapura and Mullaitivu districts. There was one respondent each in Matale and Colombo districts.



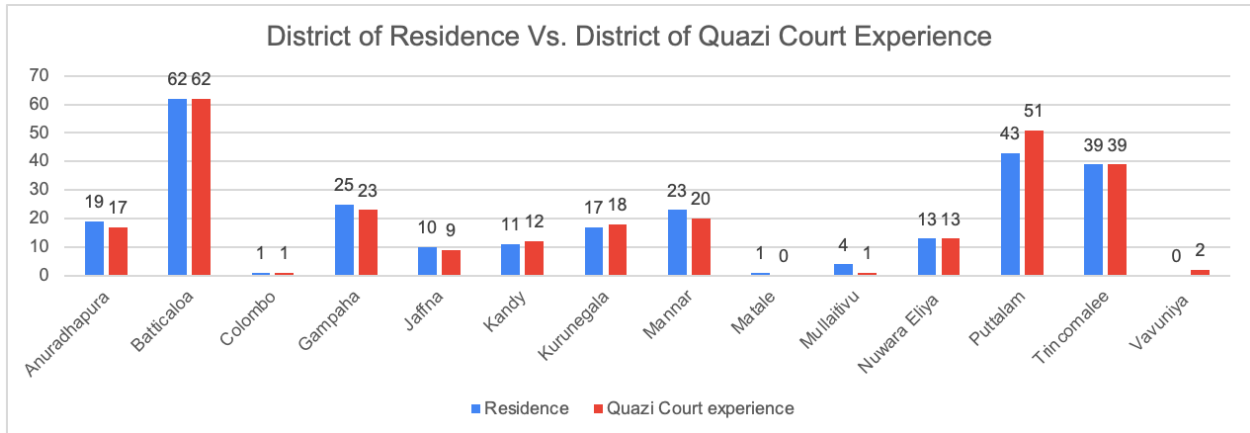
The 10 key informants interviewed for this study were from Ampara, Batticaloa, Colombo, Mawanella, Mullaitivu and Puttalam.

3.4 Geographical distribution of Quazi court experience

While almost all respondents had their Quazi court experience in the same District as their residence, the surveys revealed that 14 respondents travelled outside their districts to attend Quazi court.

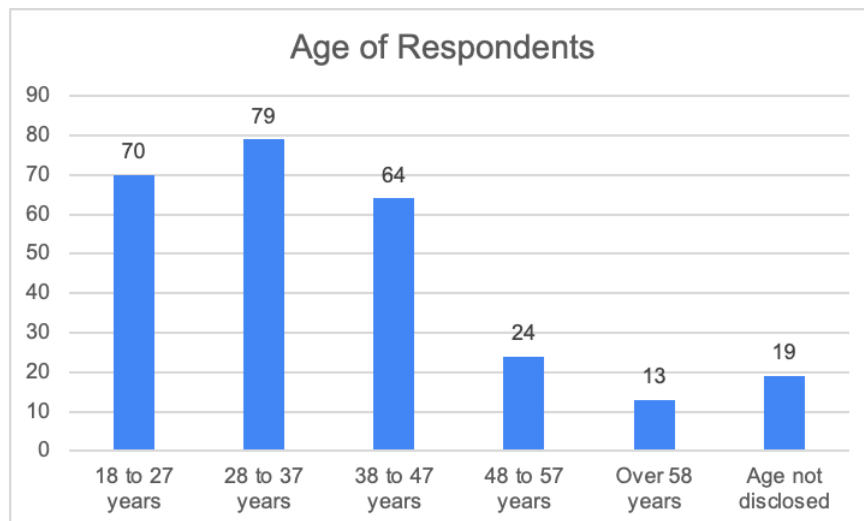
- One man living in Puttalam travelled to Gampaha for his case.
- Two persons from Anuradhapura (one woman and one man) travelled to Kurunegala and Puttalam respectively for their cases
- Three persons from Mannar (two women and one man) travelled to Puttalam for their cases.
- Three persons from Mullaitivu (all women) travelled to Vavuniya (2) and Puttalam (1) for their cases.
- One woman from Jaffna travelled to Puttalam for her case.
- Three persons (two women and one man) travelled from Gampaha to Puttalam for their cases.

- One woman from Matale travelled to Kandy for her case.



3.5 Age of respondents

Out of the total of 269 survey respondents, the majority were aged between 28 to 37 years (29.4%). Seventy respondents (26%) were between 18 to 27 years. Sixty four (23.8%) were between 38 to 47 years. Twenty four (8.9%) respondents were between 48 to 57 years. And 13 (4.8%) were over 58 years. Nineteen respondents (7.1%) did not list their age. The youngest respondents were 18 years old and the oldest respondent was 75 years old.



4. Findings of the study

The findings are presented under the following thematic areas

1. Accessing the Quazi and court
2. Nature of the Quazi court space
3. Efficiency of the Quazi and court
4. Fair treatment by Quazi
5. Decisions of Quazis
6. Support for female Quazis

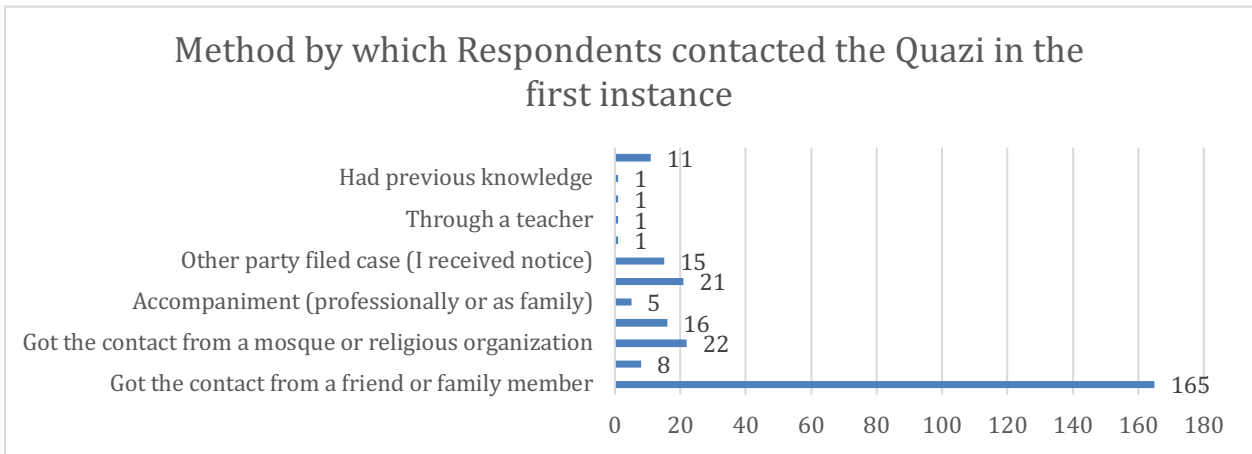


The findings of the survey are complemented with the comments and descriptions derived from the key informant interviews and focus group discussions in each of the thematic areas.

4.1 Accessing the Quazi and court

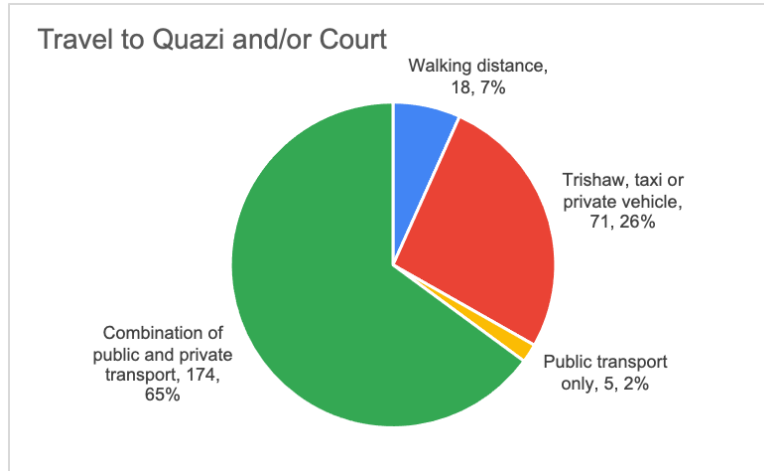
4.1.1 Getting in touch with the Quazi

Respondents mostly got in touch with the Quazi by making inquiries from friends and family members which demonstrates a high reliance on social connections. The next most popular means of finding out their Quazi was by inquiring from the local mosque, by finding it out on their own, or by getting that information from a non-governmental organization. This speaks to a lack of formally available information or failure to seek information through formal means regarding the local Quazi.

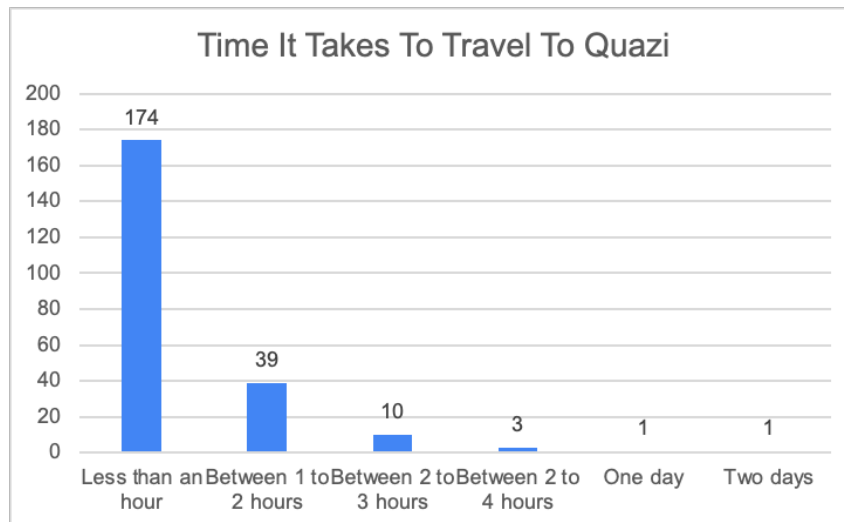


4.1.2 Travelling to the Quazi: Distance, Time, Cost and Other arrangements

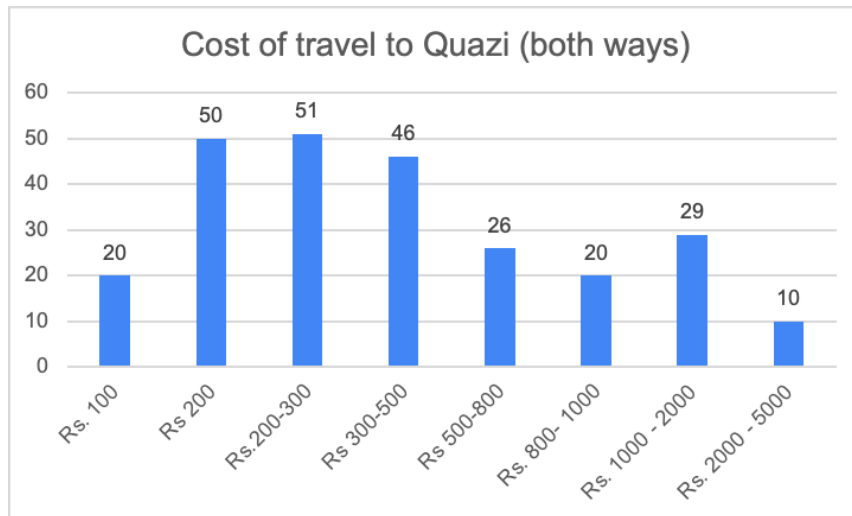
More than half the survey participants (65%) had to take a combination of public and private transport to reach the Quazi. Only 2 percent were able to reach the Quazi by public transportation exclusively. Twenty six percent of the participants found it necessary to take private transport, while 7 percent were able to walk to their Quazi.



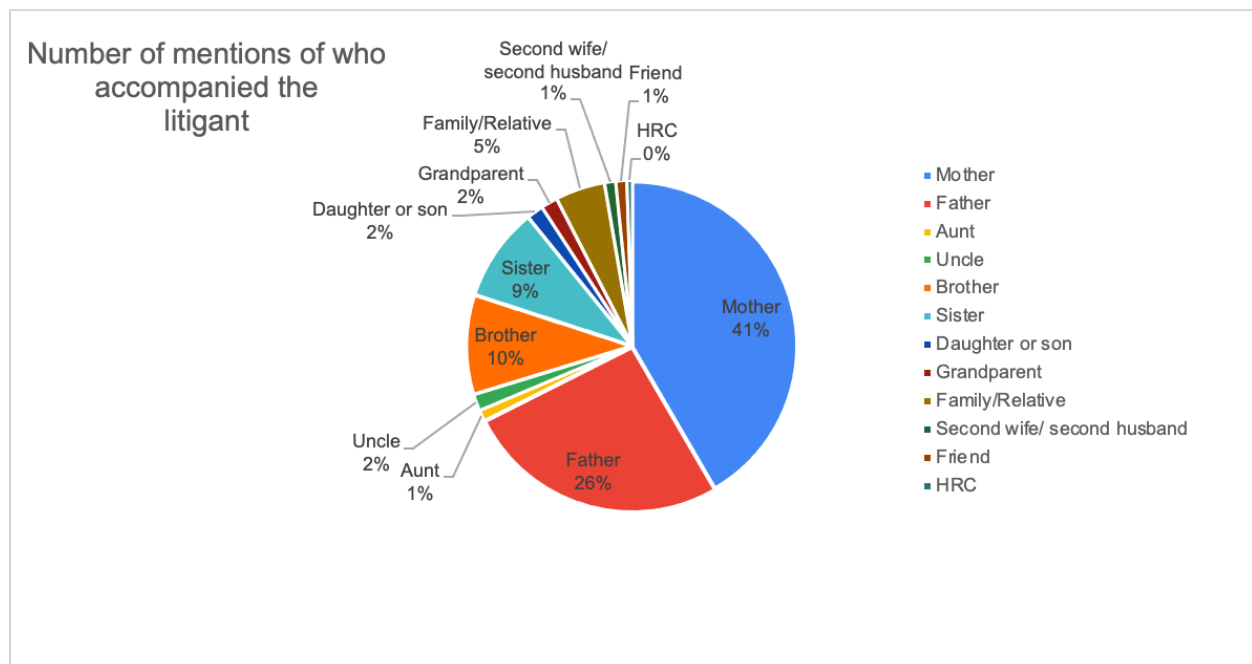
More than half the participants (65%) said it took them under an hour to travel from their residence to the Quazi court where their case was being heard. Fifteen percent said it took them under 2 hours, and a very small minority (1.4%) revealed it took them over 4 hours to reach the Quazi court. One male participant stated it took him two days to reach the Quazi which was the longest time recorded.



In terms of costs of travel, 167 respondents (66.3%) spent between Rs.100 and Rs.500 on travelling to the Quazi. Forty six respondents (18.2%) spent between Rs.500 and Rs.1,000, and 39 respondents (15.5%) spent between Rs.1,000 and 5,000 on travel to the Quazi. During the key informant interviews it became apparent that litigants from Mullaitivu, having no Quazi operating in their area, were compelled to travel to Puttalam for divorce applications as they were categorised as displaced persons, thereby incurring the greatest costs as they had to cover travel, accommodation and other incidental expenses.



From the survey results, it was possible to identify the number of times respondents stated that they were accompanied or that they accompanied the litigant to the Quazi court. These responses were documented to understand who provided support to litigants. Mothers were the primary supporters of litigants (41% of the responses identified 'mother'). The next was fathers (26%) with brothers and sisters being identified as the next supportive category (19%). The findings demonstrate that family members are largely depended on for support.



4.1.3 Social stigma attached to participation in Quazi hearings

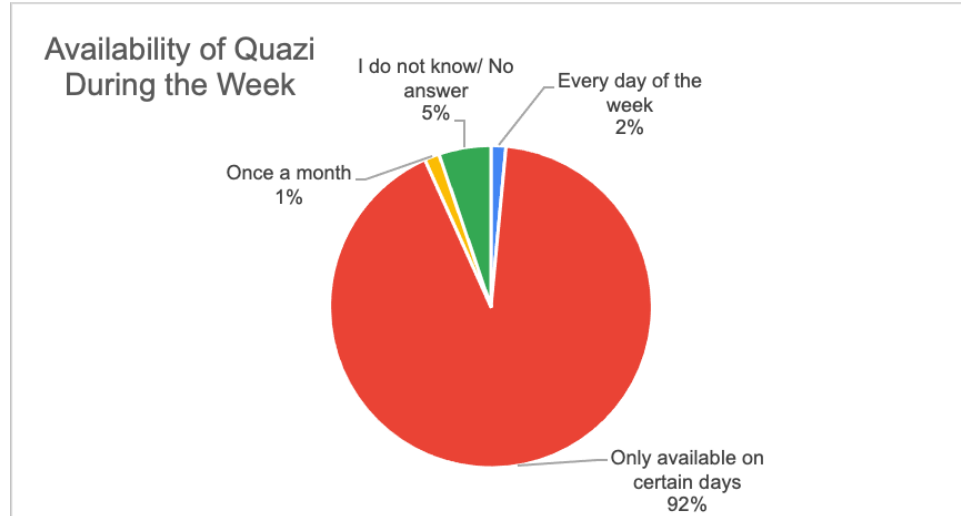
A large majority of respondents (70%) chose not to answer this question. Of the 76 persons who did respond, 33 said they did not want anyone to know that they had a case at the Quazi court (the responses recorded included no one should know, villagers, society, others, neighbours and friends). Some respondents gave multiple responses about who they did not want knowing about their case. Fifteen respondents did not want the neighbours to know. Fifteen respondents didn't want their family knowing about it, and 5 did not want friends knowing. Two respondents, both male, did not want the local mosque getting to know. One female respondent did not want men in general knowing about it. Another female respondent stated that her husband had told everyone about their case that she had no choice about keeping it a secret. Fourteen (13 women and 1 man) were not concerned about people 'finding out' about their case.

A key informant from the Eastern Province stated that *"Stigma is there. Once they step into the court, they think that they have come here and that's the last and they cannot leave without divorce. Then some say, 'she has been called from Quazi court and that's it'- due to this women don't want to go to Quazi court. If they go, they want it to be the final step. And when they come, they say, that woman saw me, this one saw me, that family saw me, they are also at Quazi court, my children will have problem, like that they think."*

4.1.4 Availability of Quazi

(i) Availability of Quazi During the Week

Ninety Two percent of the respondents said that the Quazi was only available during certain days of the week, while 1% (4 respondents) said that the Quazi was available only once a month. All the respondents who said the Quazi was only available once a month were from Jaffna.

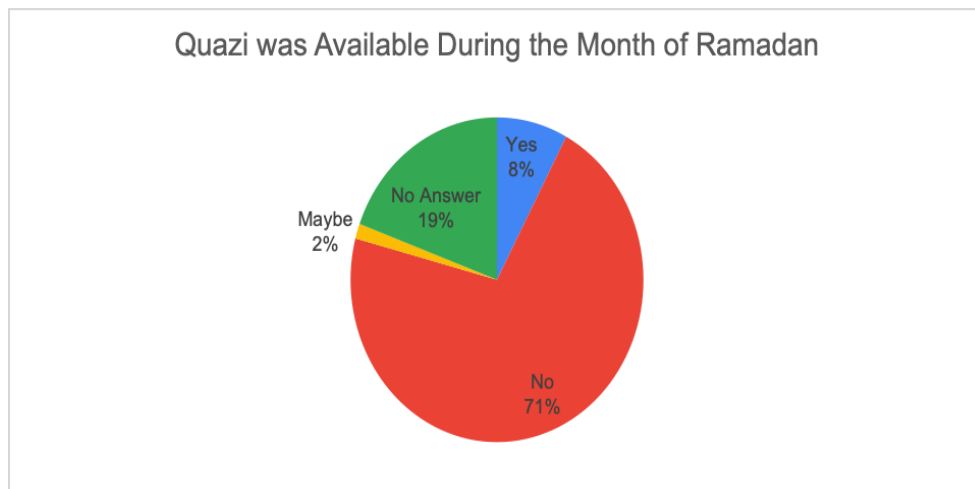


In Addalachenai, Quazi court hearings are on Saturday and administrative work is on Tuesdays and Thursdays. The Akkaraipattu Quazi conducts hearings on Saturdays for Akkaraipattu and on Tuesdays for Pottuvil. In Irakkamum, the only working day is Thursday. In Kattankudy, Quazi court functions on Saturdays and Sundays. It had been observed that some litigants appeared to have access to the Quazi at his home outside these official days or in the evenings. A key informant from the Eastern Province said that she had encountered the Quazi not being available in court without prior notice. This appeared to create uncertainty for the litigants, with some travelling to court only to return without being able to meet the Quazi. For Mullaitivu, the cases are only taken up by the Quazi based in Vavuniya once a month. It was stated that due to the small population of Muslims in the Mullaitivu area, once a month was sufficient. The Puttalam, the Puttalam Town and the Quazi for internally displaced persons only conducted hearings on Saturdays. In Sammanthurai, the Quazi functioned only on Saturdays, Tuesdays and Thursdays, as three days a week was deemed sufficient, but more recently the Quazi court had begun to function 5 days a week.

It was evident that satisfaction with Quazi availability depended very much on the number of cases the Quazi was expected to respond to. Some respondents said that the Quazi was allocating sufficient time, while others said that the caseload of the respective Quazi required more days allocated.

(ii) Availability of Quazi during Ramadan

Seventy one percent of the respondents said that the Quazi was not available during Ramadan, while 8% said that the Quazi was available. Respondents who said that the Quazi was available during Ramadan were from Batticaloa, Kurunegala, Mannar, Trincomalee and Nuwara Eliya. Respondents who reported that the Quazi was not available during Ramadan were from Anuradhapura, Batticaloa, Colombo, Gampaha, Jaffna, Kandy, Kurunegala, Mannar, Mullaitivu, Nuwara Eliya, Puttalam, Trincomalee, and Vavuniya. It is noted that respondents in Batticaloa, Kurunegala, Mannar, Nuwara Eliya and Trincomalee reported different experiences on this issue. This may have been either as a result of different respondents having different experiences relating to the same Quazi or respondents speaking of their experiences with different Quazis. It was not possible discern which from the data.



Unanimously, key informants said that Quazi court either not functioning or functioning in a very limited way during Ramadan was a concern. In Akkaraipattu, Samanththurai, Addalachennai and Kattankudy the experience was that if maintenance was received during the month of Ramadan by the Quazi, the litigants would receive a call asking them to come collect the payment. This would be the only activity these Quazis undertook during Ramadan.

One of the key informants from the Eastern Province stated that in her opinion the Quazi should not function during Ramadan because the Quazi uses such bad words on litigants that it is not acceptable conduct during a holy month.

4.1.5 Qualitative findings on location of and protection for Quazi Court

The details of the location, facilities and conditions of the Quazi courts described below are from the qualitative interviews and focus group discussions. Although the level of detail available varies between the sites, these accounts illustrate the diversity of issues encountered with these by litigants.

In Addalaichennai, the Quazi court functions in a building on the main road near the main mosque.

In Akkaraipattu, the Quazi court is close to the District Court and Magistrate court buildings. The Quazi functions in a premises that is 2 and half kilometers from the main road.

In Akurana, the court functioned from the Quazi's residence. There were no waiting facilities such as chairs, and people had experienced having to stand outside when it rained. The bus routes were also found to be some distance from Quazi court requiring litigants to pay for private transport (three wheelers) to access it.

In Colombo West, the Quazi conducts hearing in the Magistrate court of Mount Lavinia. The court is situated on the main road and is believed to be easily accessible to people.

The Galle Quazi conducts hearings of cases on the upper floor of the YMMA building. It is a large hall with a separate room for the hearings. However, all those present in the main hall can overhear the discussions of other cases that take place in the separate room. The place had many chairs to accommodate litigants, had toilet facilities and drinking water.

In Negombo, the Quazi conducted hearings in his residence. These premises were perceived as being in an area with a large population of Christians and some of the litigants had expressed feeling fearful to travel there after the Easter Sunday bombings.

The Irrakkamam Quazi functions in a very isolated area which is not easily accessible by public transport. Litigants find it difficult to go alone. Travelling to this court was felt to be difficult especially for women.

The Kurunegala Quazi conducted all work from his residence.

The previous Quazi court of Kattankudy was conducted in a community centre, which was a small room with a corridor. Men would sit on benches and women were given mats to sit on the floor. Everything was discussed in the open in the midst of a crowd. The Quazi conducted hearings on Thursdays and to address the difficulty women would have in telling their story in public he heard women on Wednesdays. Kattankudy itself is a fairly congested area, and the current court building is situated on the border of the town and next to a large grounds, which contributes to the perception that it is isolated. While there is a small separate room in which the Quazi conducts the initial interviews with clients, the hearings are usually taken up in the open space, meaning all others who have their cases for the same day can hear the other cases. The current Quazi in Kattankudy conducts hearings in premises situated in an isolated area. It was not perceived to be safe for the reasons that anyone could enter the premises and sometimes groups of men were also seen to gather in the area. The space near the premises is also sometimes used to park lorries and trucks. Women felt that unknown men could access the premises with ease. Litigants said they did not feel like they want to go back after their first visit. The Quazi has no police protection. There used to be a police officer assigned but later there wasn't. Respondents believe that the Quazi has refused police presence.

The Kalpitiya Quazi court was seen as relatively better than the court in Puttalam town or in Palavi. Hearings are conducted in a madrasa building. Many people are compelled to stand. There is no police protection and it was reported that people have engaged physical fights.

In Mannar, the Quazi court was conducted in a school and it was perceived that litigants were uncomfortable with the location.

In Mullaitivu, when displaced Muslim returned in 2011, there was no Quazi. After letters from women's groups and Mosque Board writing to the Judicial Service Commission, an acting Quazi from Vavuniya was appointed to look after issues of the Muslims in Mullaitivu. He visited once a month. There were no official jurors at the time. The community contributed to the Quazi's travel allowance. After some men in the community made allegations that the Quazi was biased towards women, he stopped coming to Mullaitivu and the litigants were compelled to go to Vavuniya for their cases. However, the litigants were informed that for divorce cases the relevant court was that of the Quazi for internally displaced persons in Puttalam and that they had to go there make applications for divorce. Travel to Puttalam from Mullaitivu is costly and time consuming, and litigants need to make arrangements for accommodation, meals etc. It sometimes

takes three days to travel to, participate in and travel back after the case. This especially affects women due to concerns of safety when travelling and finding suitable accommodation. Even to apply for child maintenance, having to travel to Vavuniya is not feasible for many. It seems that a Quazi who is from Mullaitivu is assigned to Jaffna. It is believed that he does not take on cases from Mullaitivu because he feels that it will create problems in the village because he is known to the parties.

In Muttur, the Quazi used the magistrate's court.

In Nuwara Eliya, the Quazi conducted hearings in a building located behind the local mosque. There was a separate room for the Quazi, a prayer room, a waiting room and adequate water and toilet facilities.

The Puttalam town, the Quazi previously conducted hearings at a cultural hall of the Grand Mosque of Puttalam. Sometimes A/Level students would be having seminars in one part of the hall and would be able to hear the cases being conducted in the other part of the hall. After community agitation, there was political intervention to establish a building for the Quazi court. The community also mobilized donors to fund the building. The building is small and consists of four rooms, a chamber, an open court area, a room for litigants to be seated and a room for police officers. Only around 10 people can sit inside the court premises, the rest have to stand outside. Everyone present can hear the proceedings of every case. It was reported that on occasion trishaw drivers have recorded Quazi court proceedings and shared it on Whatsapp, which was extremely damaging to parties, especially women. There is no place to rest, keep their children, or to breastfeed infants. Some people come from as far away as 70 kilometers. There have been known instances of people not returning to the Quazi court because there is no protection or it is too much of a burden.

The Quazi for displaced persons conducts hearings in Palavi (Puttalam). The Quazi and his wife have rented out a premises as a residence with their own money, and conduct court hearings in this premises.. As a result the Quazi has been known to shout at litigants asking them to be quiet as it may disturb members of his household. Hearings take place in a room, and people wait outside. However, everything that is discussed in each case can be heard through an open window. The Quazi reportedly wants to find a separate premises, but can only afford about Rs 3000 a month which limits options for this.

In Ratnapura, the Quazi conducts hearings in the Magistrate Court complex on one Saturday each month. However, after Covid-19 related measures, the Quazi conducts hearings at his offices in Ratnapura and Balangoda. Police protection is seen as important and the Quazi requests and obtains the services of two police officers, one male and one female, for the sittings.

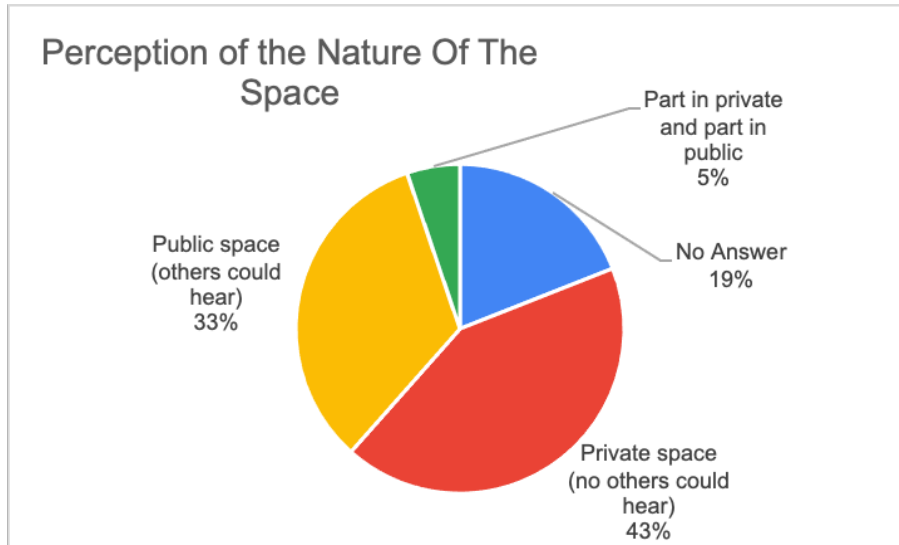
In Samanthurai, the Quazi functions at a premises that is on the Kalmunai- Ampara road. The Quazi court was previously close to the Magistrate court and District court buildings, and is now situated far from these official court structures but near the mosque and shops, The Quazi premises is secured with a boundary wall, and there is also a guard at the gate. Only people who come for cases are admitted into the premises. Men who accompany litigants have to stand under a tree. Sometimes some men peep through the window to look at the proceedings. The police officers have chased them away when they do so. Women who accompany litigants are permitted to sit in the hall. There is a separate section for men and women. People who come for cases are able to sit while waiting for the case. The space can accommodate about 50 persons.

Notably, it was generally the case that there was no room or separate space for mothers to breastfeed their infants or care for their young children.

4.2 Nature of the Quazi court space

4.2.1 Perception of Nature of the Space in which Quazi Proceedings Took Place

The responses to the question of space drew on respondents' experiences of both visiting the Quazi at his residence as well as their experience of the subsequent inter-partes hearings. This understanding is necessary in interpreting the responses given. Forty three percent of the respondents identified the Quazi court space as private (meaning others could not hear the discussion of their case) and 33% of the respondents identified the space as public (meaning others could hear). Five percent of the respondents identified the experience as partly private and partly public.

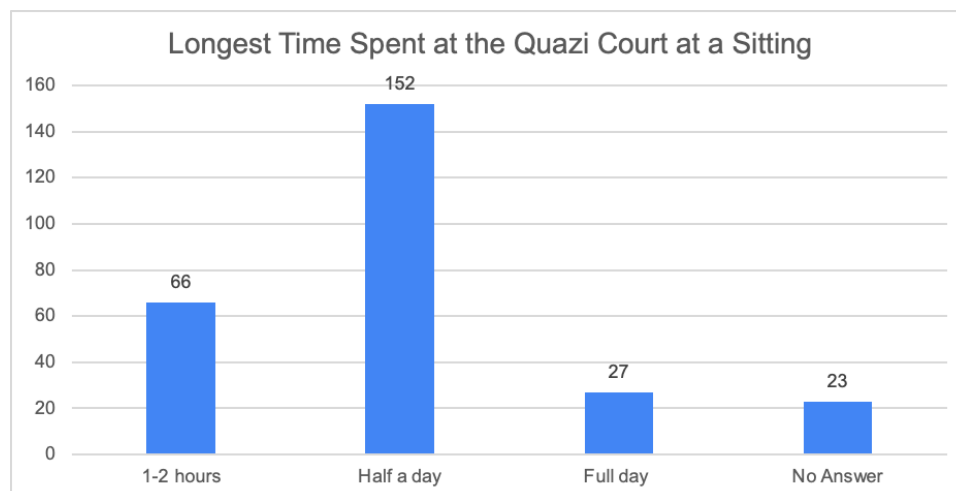


4.2.2 Language of Quazi and Quazi court

All the respondents said that the language of the Quazi and the Quazi court were in their first language, which was identified as Tamil.

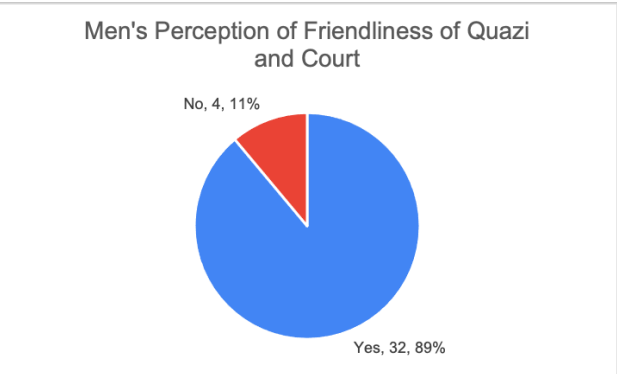
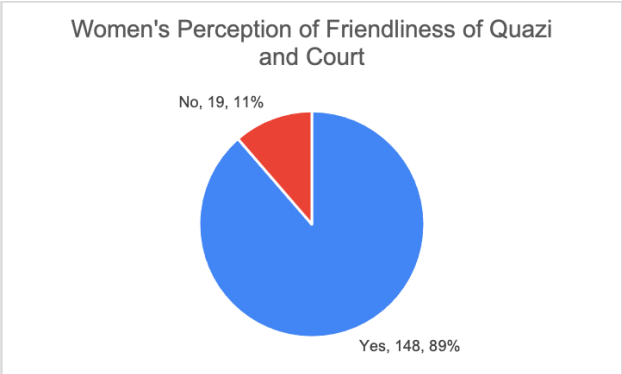
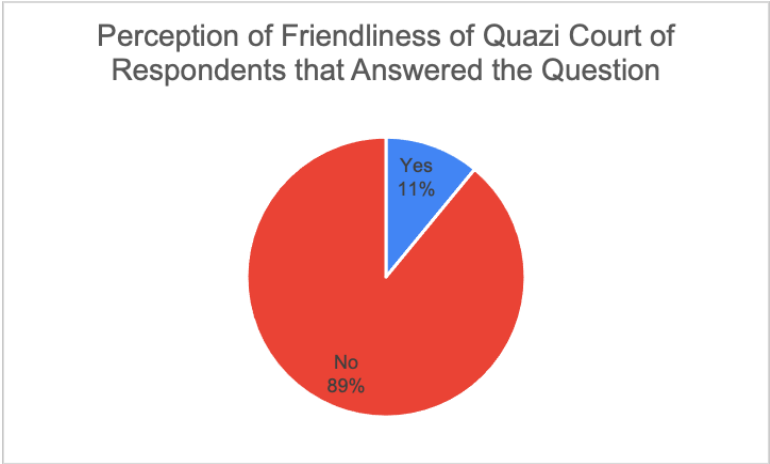
4.2.3 Longest time spent at the Quazi court at a sitting

Ninety two percent of the respondents answered this question. Ten percent of the respondents said they had spent a full day at the court, while 25% said they had spent 1 to 2 hours at the court. A majority of 57% said that the longest time they had spent at the Quazi court was half a day for a sitting.



4.2.4 Perception of court structure or personnel as friendly (people centered)

Of the 206 respondents that answered this question, 89 percent said they did not feel the court structure or personnel were friendly. Only 11 percent perceived that the structure and people within the court were friendly. 62 respondents out of 268 did not respond to this question. The perception between women and men were the same, 89% of the women respondents and 89% of the male respondents did not perceive the court structure or personnel as friendly.



As additional responses, six (6) respondents stated that they were supported by family and friends, four (4) specifically described male family members helping them and two (2) said that some women providing counselling assisted them.

A female respondent said that the Quazi was helpful and qualified the sentiment by saying "If we bribe him everything will be done in our favour". This was one of the answers that returned a yes to the question of perception of friendliness. Two other female respondents said "no opportunity was given to assist" and "how they conduct the court is totally against women". One female respondent stated that as a relative was the Quazi the experience was a friendly one.

Nine (9) respondents identified the Quazi was friendly without any further comment. One respondent said that mosque people had assisted with the Quazi court.

4.2.5 Key informant views on nature of the space

Unanimously, key informants saw the space used for hearings as either public or even if taken in separate areas the proceedings could be heard by others who were attending, sometimes even outsiders such as three-wheel drivers. In a most egregious experience one key informant described litigants representations being recorded and shared over Whatsapp. Privacy for family dispute resolution processes was valued by all key informants.

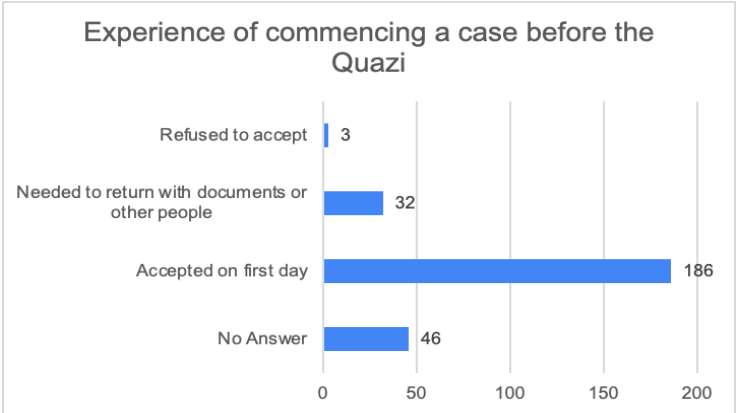
Enumerators found that generally litigants did not feel supported or that the Quazi court environment was kind or compassionate. There were a few Quazis and Quazi courts that were identified as an exception and it appeared to be dependent on how the particular Quazi was.

There were varying degrees of facilities for litigants. Some had space for litigants to sit, some didn't. None of the spaces had particular facilities for feeding mothers, children or other needs of litigants.

4.3 Efficiency of Quazis and courts

4.3.1 Lodging a case

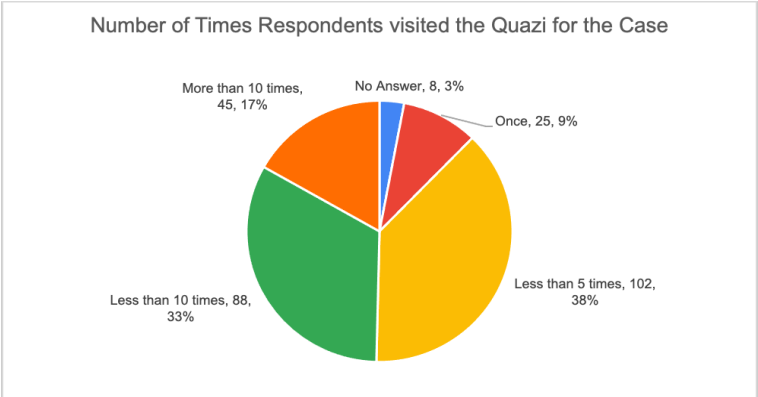
A majority, close to 70%, of the respondents said that the case was accepted on the first visit. 11% said that they had to return with either documents or with other people.



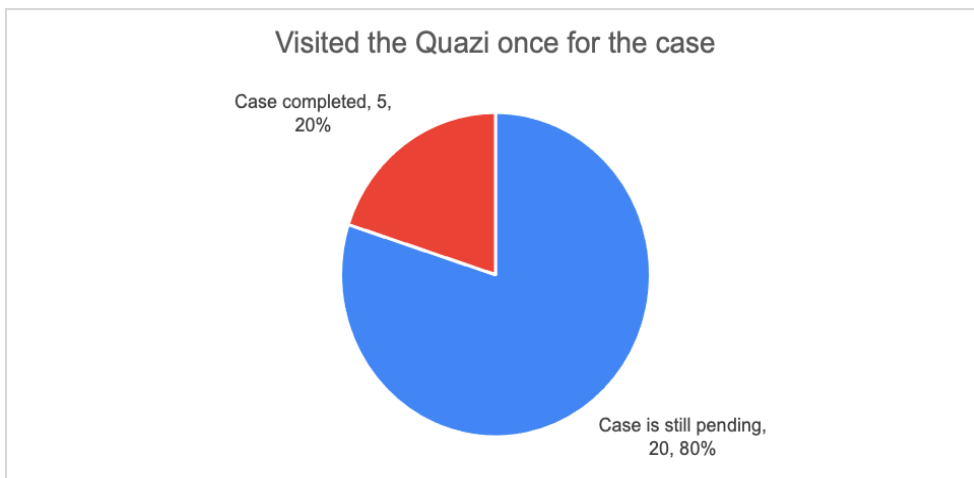
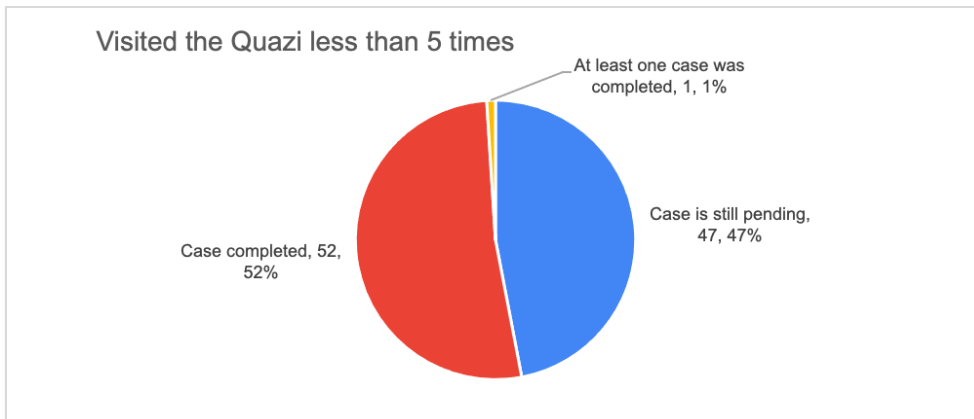
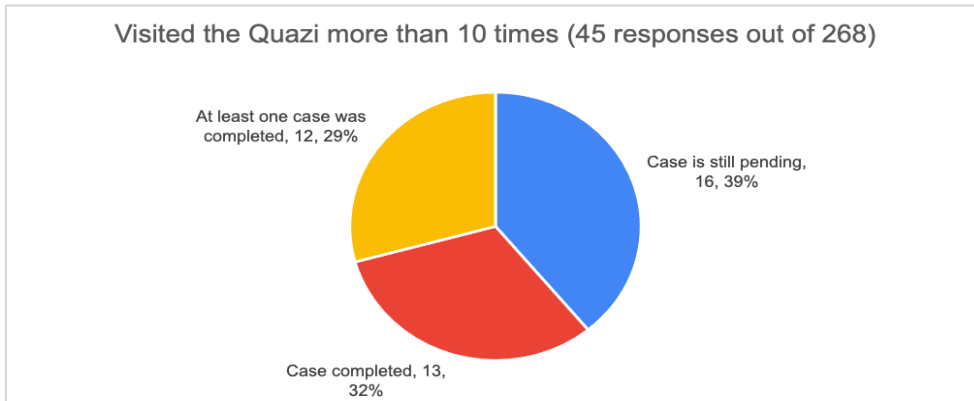
Of the three instances in which the Quazi had refused to accept the case, in one instance by way of further explanation the respondent stated that the Quazi had asked the female litigant to live with her husband. In additional comments one female litigant said that her husband had filed the case and she had to go to see the Quazi 8 times before the hearing was conducted. Another litigant stated that the 2nd date was after 6 months.

4.3.2 Number of times respondents visited Quazis

One Hundred and Two respondents (38%) stated that they had visited the Quazi less than 5 times for their case. Eighty Eight respondents (33%) stated that they visited the Quazi less than 10 times and 17% stated that they had visited the Quazi more than 10 times.



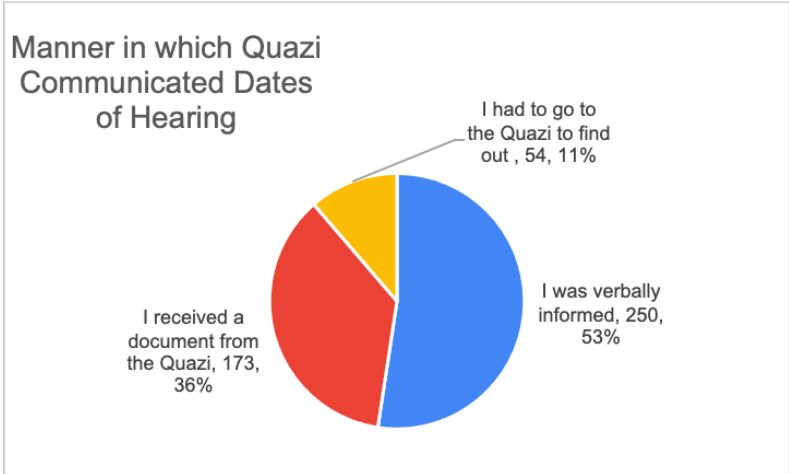
The above findings must be interpreted against how many of the respondents had cases pending or cases completed. It was interesting to note that of those who said they had visited the Quazi once, 80% still had the case pending before the Quazi. Of those who said they visited the Quazi more than 10 times, 39% said the case was still pending and 32% state the case was completed.



4.3.3 Manner in which Quazi communicated dates of hearing

Respondents experienced different ways in which the Quazi communicated dates of hearing, and the surveys recorded 477 responses from 268 respondents (as several respondents provided multiple answers). A majority, 53%, of the respondents experienced being verbally informed by the Quazi, 36% of the responses spoke to receiving a document and 11% of the responses identified having to visit the Quazi to find out the next date.

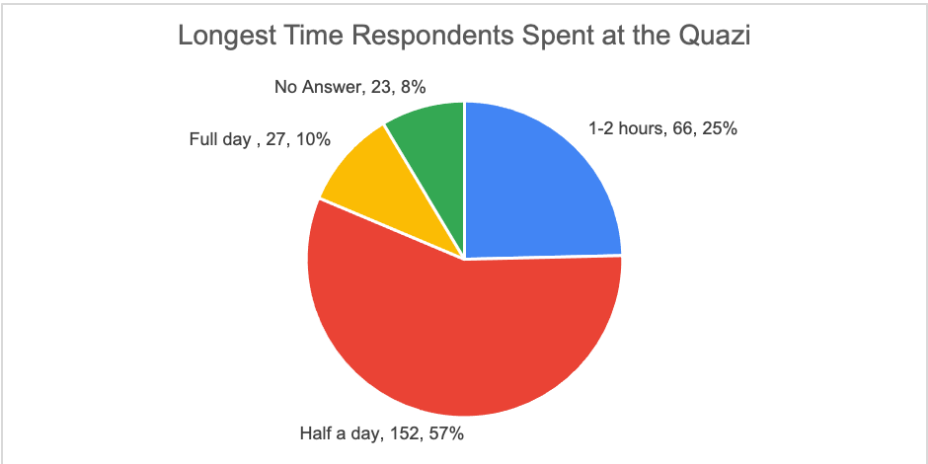
Those who said they had to go back to the Quazi to find out the next date were from Batticaloa, Mannar, Gampaha, Jaffna, Nuwara Eliya, Trincomalee, Anuradhapura, Vavuniya, Kandy and Kurunegala. The respondents included women and men.



One key informant from the Eastern province described an additional burden that was placed on women litigants in relation to service of summons. She said that the Quazi expected women to deliver the summons (the notice to be given to the other party) to the grama sevaka (local administrative officer) of the area in which the husband lives and after the grama sevaka delivers the summons, he endorses a copy and hands the endorsed copy back to the woman litigant to give back to the Quazi as proof of delivery. This practice results in women litigants spending much time and energy on a process that is the responsibility of the state official, the Quazi.

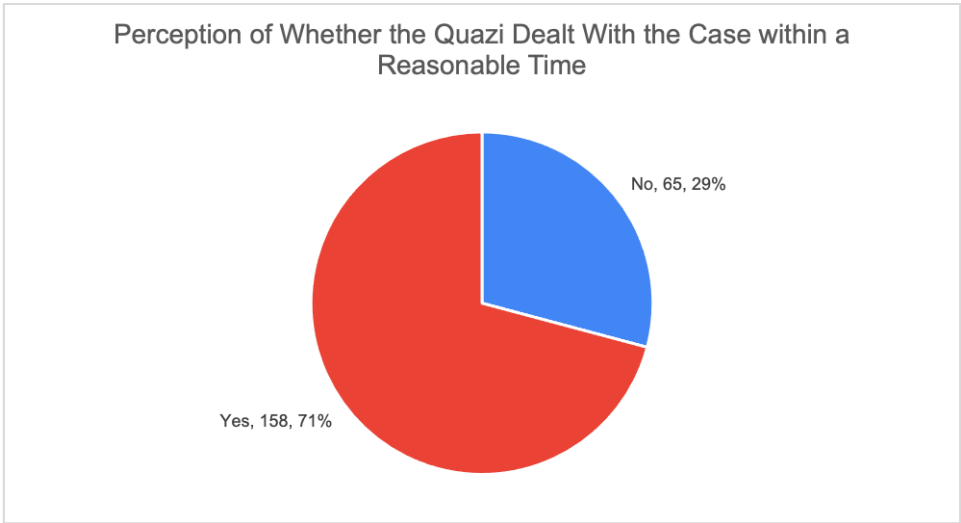
4.3.4 Long waiting periods on hearing dates

A majority of the respondents (57%) stated that the longest time they spent for the case to be called up and addressed at the Quazi court was half a day. Ten percent of the respondents spent a full day for the case.



4.3.5 Perception of whether the Quazi dealt with the case within a reasonable time

A large majority of respondents (71%) perceived that the Quazi dealt with the case within a reasonable time, while about 30% of the respondents felt that the Quazi did not.



4.4 Fairness by Quazis

The perceptions of fairness were captured from the descriptions given by the respondents of their Quazi experience. The responses to the survey questionnaire produced a contradictory set of results including that Fasah divorce orders were given with female litigants stating that it was unfair, or that orders for maintenance were not made but litigants describing this as both fair and unfair. It was clear that the results required interpretation and the additional comments and narratives of the case as recorded by enumerators were able to shed light on this seemingly contradictory set of responses. As it became clear that the data set relating to the theme of fairness of the Quazi decision did not straightforwardly reflect the lived realities of the respondents, it was decided that the quantitative data will not be used. Instead, the qualitative information provided by some of the respondents is described below to help us understand how some respondents perceived or interpreted fairness or justice of their Quazi experience.

4.4.1 Turning of Tables: Seeking assistance from the Quazi turns turned into divorce

Several narratives of women litigants who had filed for marriage dispute, child maintenance or wife maintenance, mentioned that the Quazi on his own or on the request of the husband changed the proceedings into a Fasah divorce case and granted Fasah divorce without compensation. These women litigants expressed that this was very unfair.

4.4.2 Not being afforded a hearing

Women litigants experienced many ways in which they were silenced and marginalized within the Quazi system.

It was interesting to note that some women litigants described their experience as happy with the decision of the Quazi, despite the decision not being beneficial to them, for the reason that they felt they had been heard.

Many women litigants described not being given an opportunity to speak, not being afforded sufficient time to speak, being intimidated by the fact that the premises in which the hearing took place was full of men and intimidated and embarrassed by the fact that the place of hearing was public. Women litigants also described feeling that orders were partial or affected by bias and favoured men over women.

One women litigant said “how can I expect fairness when only one side has been heard?”

A significant part of not being afforded a hearing was the cruel and intimidatory treatment by some Quazis. Key informants described extremely cruel language being used to restrain particularly women litigants from speaking. An enumerator described a woman litigant from Eravur saying that she had tried to kill herself because the Quazi had been so cruel to her.¹⁶

4.4.3 Perceived partial conduct by Quazis

A few respondents also related experiences of Quazis being partial to litigants based on close relationships with the other party. Instances of Quazi being related to the family of the other party or accessible socially to the other party were seen as reasons for the Quazi favouring the other party.

Some female respondents stated that when men did not attend the Quazi hearing no action would be taken against them, that orders were not made against men if they merely said they were not able carry out the order, and that it was extremely difficult to convince the Quazi to take action to enforce orders against men. These responses demonstrated a perception of bias amongst Quazis in favour of male litigants.

Several responses highlighted the practice of bribery by Quazis and described Quazi decisions consequent to bribes being accepted as being unfair.

4.4.4 Reasons for perceptions of fairness

In cases across the districts, women litigants appeared to believe that it was fair that the Quazi did not to order child maintenance for the reason that the husband had refused to pay such maintenance or had said that he had no income.

Some of the men litigants said that the Quazi’s decision not to order that they pay wife maintenance or Iddah maintenance was fair as they then did not have to make these payments.

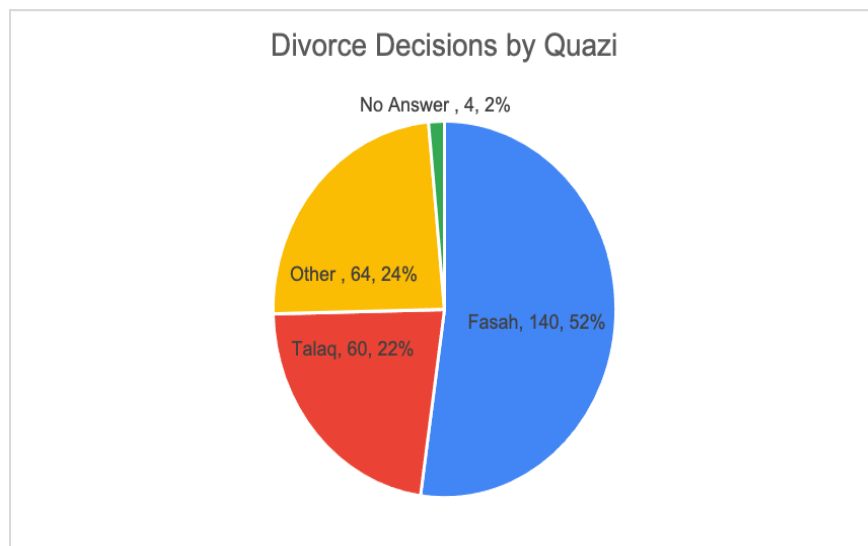
Fairness judgements also appeared to be made by litigants based on poor understanding of the powers and duties of the Quazi or a lack of knowledge of the litigants own rights .

For example, women litigants believed that if they initiated divorce (Fasah) they were not entitled to compensation or Iddah maintenance and that this was fair. In some instances, Quazi's had made orders in relation to custody, which the litigants had perceived as fair even though the Quazi is not legally empowered to make orders on custody. Some women litigants believed that if they were given custody of the children they could not also ask for child maintenance. This was especially noted in cases where women initiated divorce, and appeared to be a manifestation of a sense of satisfaction that she had got the divorce and the custody of children, and that to be entitled to monetary benefits over and above this was asking for too much. This self-imposed limit on entitlement to fairness reflected a harsh reality of the lived experience of Muslim women litigants.

4.5 Decisions of Quazis

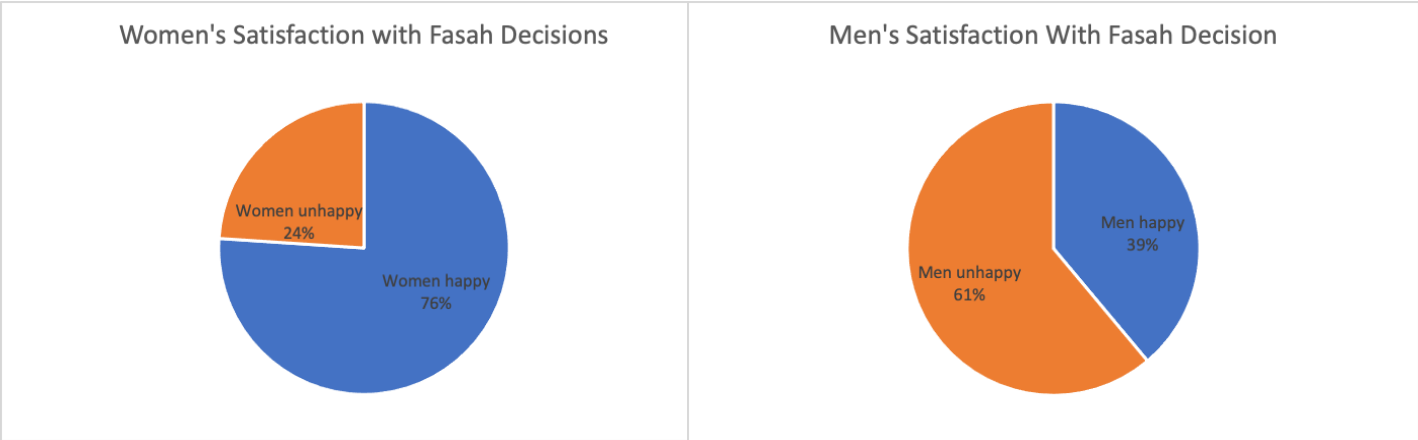
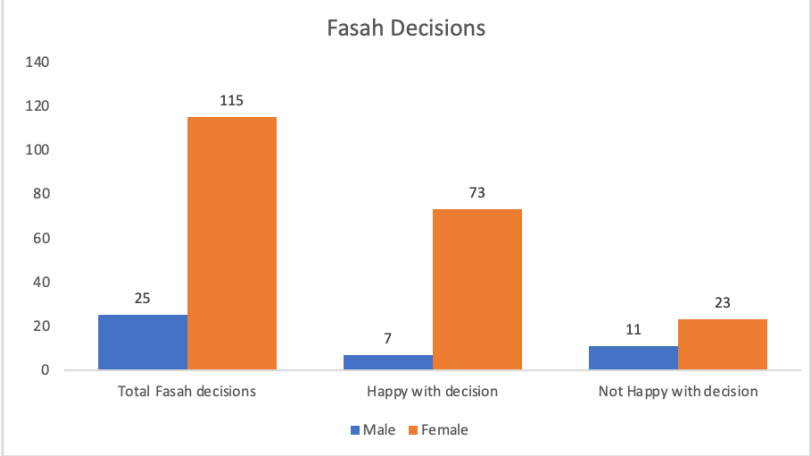
4.5.1 Decisions on divorce

140 respondents (52%) said the Quazi ordered a Fasah divorce. 60 respondents (22%) said the Quazi administered the Talaq divorce. 24 percent responded that Quazi had facilitated 'other' divorces and 1.5 percent did not answer the question.



Fasah decisions

The respondents had been party or witness to 140 Fasah decisions. 61% of men and 24% of women said they were unhappy with the Fasah decision.



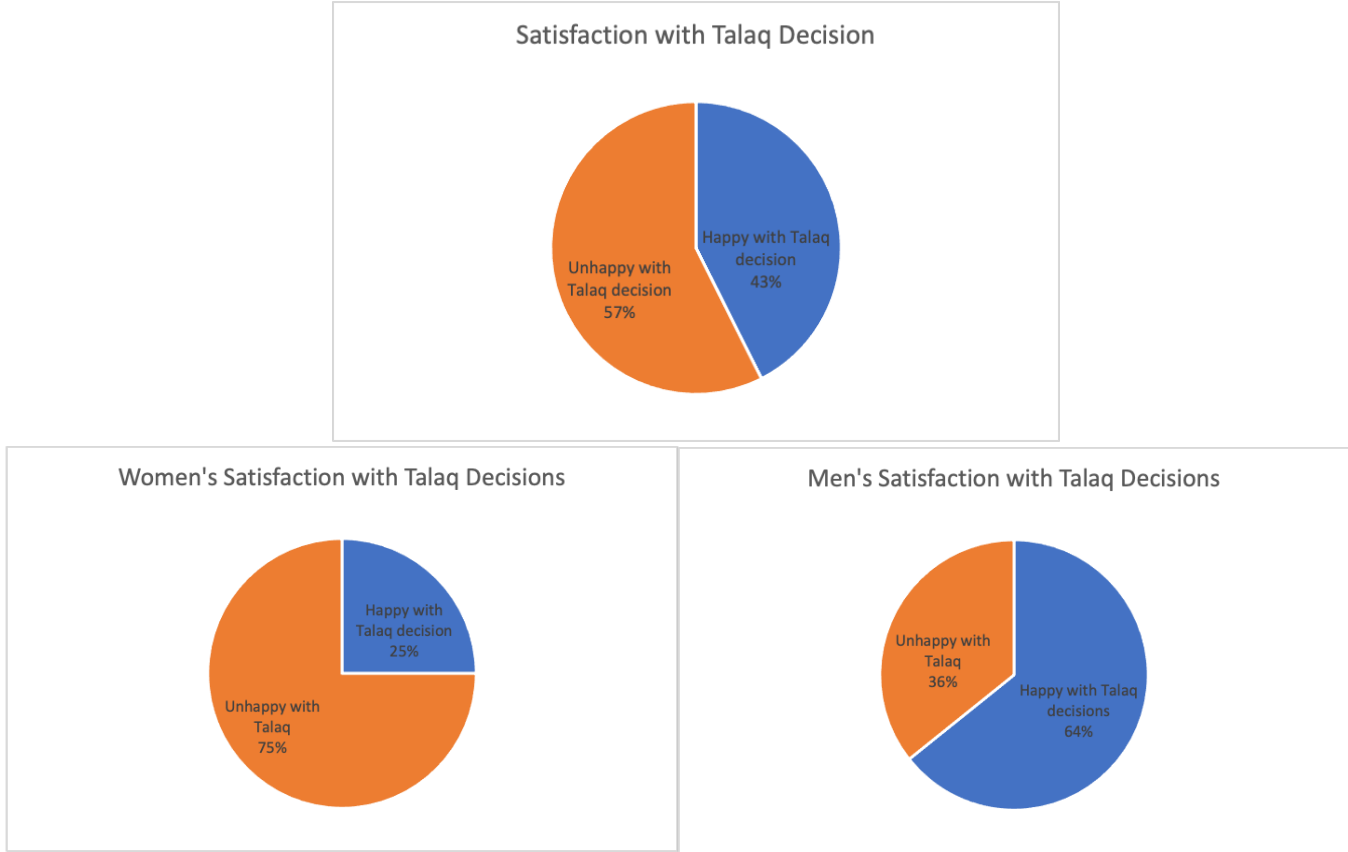
Key informant impressions of the Fasah decisions

From the Eastern province, a key informant spoke of the reluctance of some Quazis to grant Fasah divorce and the practice of converting the Fasah application to a wife maintenance application. She perceived it as practice that was undertaken perhaps to help women. However, she observed that these wife maintenance applications sometimes turned into Talaq applications as the husbands would come for the case, refuse to pay wife maintenance and ask for a Talaq divorce. She observed that the conversation of Fasah divorce applications to wife maintenance application did not necessarily benefit women by providing them with much needed finances, it also failed to respond to cases in which women litigants were attempting to end marriages in

which they were subject to violence and required a separation in the form of a divorce. She also observed that the failure by Quazis to order Ma'taa (or compensation) in Fasah decisions was unfair.

Talaq decisions

The respondents had been party or witness to 60 Talaq decisions. In terms of satisfaction 57% of respondents were unhappy with the Talaq decision and 43% percent were satisfied. Of the 44 women who reported a Talaq decision being given only 25% were satisfied, while of the 14 men, 64% were satisfied with the decision.

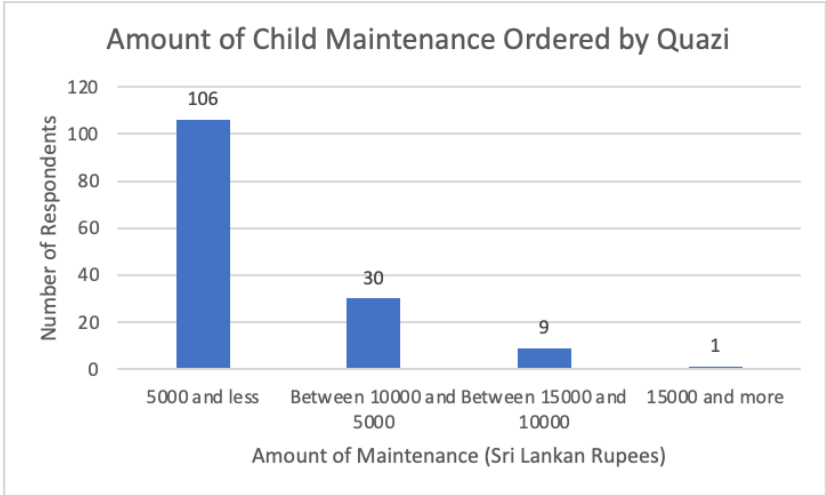


Key informant impressions of Talaq decisions

From the Eastern province it was observed that although the Talaq procedure meant no reasons would be given, which meant no complaint would be made against the wife, many male litigants were observed as making allegations. She observed that “They say all bad (things) about women”. It was also observed that in some cases the Quazi would ask for more reasons in an attempt to know more about the dispute. Sometimes men provide a letter stating the reasons for their divorce and these letters are read out in public to the women and they are told that it is for these reasons that your husband is divorcing you. She qualified her observations stating that she had also witnessed a few Talaq proceedings which did not engage in this very public blame laying practice. There were also descriptions of the failure to inform some women after the Talaq divorce was given. From Galle, a litigant described being compelled to sign a letter which she was not permitted to read and later finding out she had been divorced. Another observation was the failure to order child maintenance, wife maintenance, repayment of *Kaikuli* (dowry) or *Ma'taa* at the time of granting the Talaq divorce.

4.5.2 Decision on child maintenance

The responses to the survey revealed that 165 orders for child maintenance had been made by the Quazis. The lowest amount ordered was Rs.1000 and the highest amount was Rs.35,000. It is relevant to note that there was only one report of an order for Rs.35,000 and that it was not actually paid by the father. The average maintenance ordered by a Quazi was approximately Rs.4,700 per child per month. However, the survey form did not capture information about whether regular payments were made or not, as there were monthly payments involved. From the key informant interviews, however, it became apparent that non-payment and difficulties in enforcing orders in instances of non-payment, were serious concerns.



The study also looked at the nature of the applications for child maintenance made before Quazis. Of the 268 respondents, 106 respondents applied for Rs.5,000 or less, 30 respondents applied for between Rs 5,000 and Rs.10,000, 9 respondents applied for between Rs.10,000 and Rs.15,000 and one respondent applied for Rs.35,000. The highest amount asked was Rs.45,000 by only one participant. One hundred and twenty eight respondents did not apply for maintenance or did not answer the question. Some respondents commented saying they were satisfied with the child maintenance order despite the low amount ordered as 'it was something more than nothing'.

Almost all women litigants who had applied for child maintenance complained that the order was unfair. The cost of living/child's educational cost is not considered and this order is not to their benefit. A vast majority of the child maintenance ordered was approximately Rs. 3,000 per month. Women litigants who had been denied maintenance or received orders for clearly inadequate maintenance amounts expressed a perception of unfairness towards the orders.

4.5.3 Decisions on wife maintenance

Seventy nine respondents were involved in applications for wife maintenance to the Quazi. Twenty four percent of the orders were for Rs 5,000 and less, 33% of the orders were for between Rs.10,000 and Rs15,000 and one order each for Rs 10,500 and Rs 18,000. It is relevant to note that the order for 18,000 was not paid. As an average, Quazis ordered a sum of approximately Rs.5,500.00 per female spouse per month. One response by a female litigant additionally stated that she asked for wife maintenance, but the Quazi said 'he does not know and did not order'. It appeared from some of the additional comments given in the surveys that women rarely pursued enforcement orders in the case of non-payment of wife maintenance, unlike in child maintenance cases. Also, it appeared that if women had filed for Fasah, they refused or were satisfied with not receiving wife maintenance or Iddah maintenance.

4.5.4 Decisions on Ma'taa

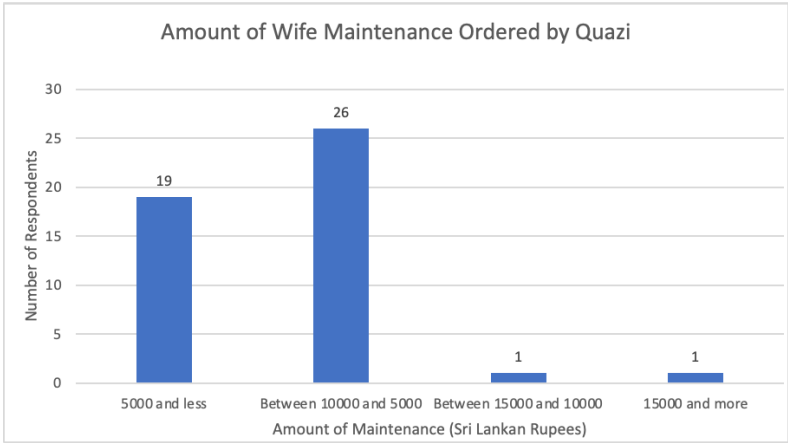
The MMDA currently does not refer to the word 'Ma'taa', which in Islamic jurisprudence refers to a consolatory payment made at the time divorce usually by the husband to the wife. It is similar to alimony. On the survey, to the question of whether the Quazi granted any other orders and Ma'taa being given as an option, no responses for this category were recorded. However, by way of additional comments a very few respondents stated that the Quazi had ordered Ma'taa but it had not been paid, and that in some instances the husbands had fought back about having to pay Ma'taa.

4.5.5 No fairness on matrimonial property

Women litigants clearly identified that the Quazi giving Talaq order without ordering return of their properties or ordering wife maintenance or Iddah maintenance was unfair.

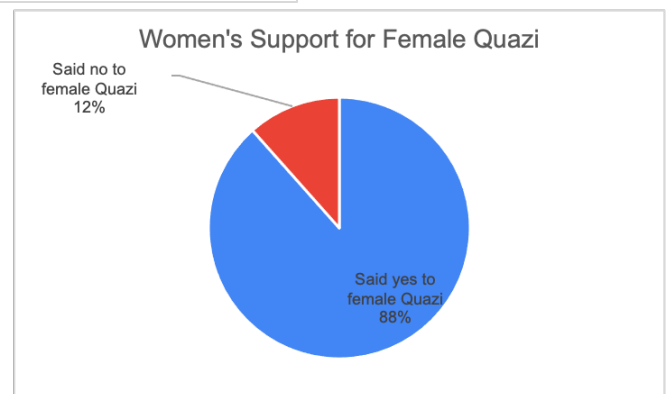
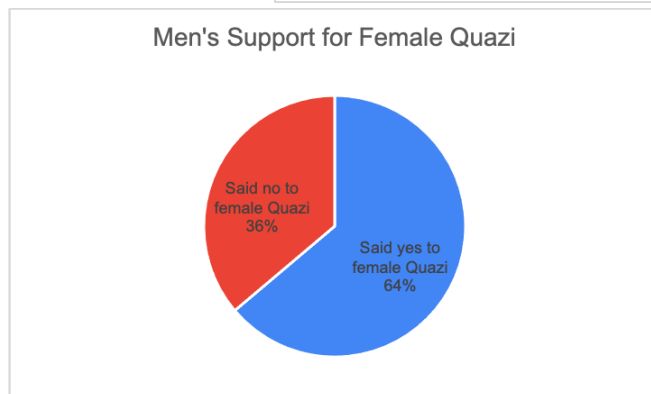
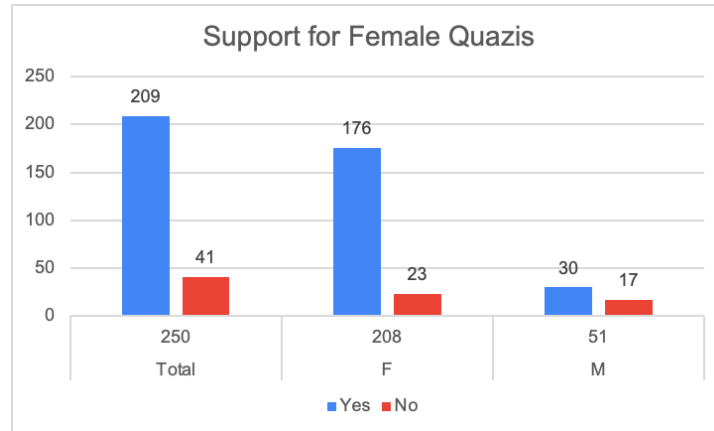
4.5.6 Iddah maintenance rarely ordered

Many of the women litigants who had been divorced by their husbands did not receive any orders for Iddah maintenance. They also said they were unaware that Iddah maintenance was an entitlement. Quazis had failed to inform them or ordered it. In light of the fact that Talaq divorces are readily granted the failure to ensure that divorced wife are adequately maintained is failure to ensure justice by this system. Most women litigants complained that while orders had been made in their cases for Iddah maintenance it was not paid.



4.6 Support for female Quazis

Overall, 78% of the respondents were in favour of female Quazis who were capable and educated. Eighty eight percent of female respondents and 64% of male respondents were in favour of a capable and educated woman assuming the position of Quazi. Some responded saying gender had no bearing on this position.



The key informant discussions allowed the study to explore what the informants perceived would be the community’s reasons for accepting or rejecting female Quazis.

“Why not women Quazis? All of the men lawyers are going in front of female judges. Moualvis, influential men, rich people all of them go to other courts listen to women judges and obey the orders. If they can do that there why should they say no for women Quazis?” (Interview from the Eastern Province of Sri Lanka)

All interviews endorsed the position that women be legally permitted to hold the position of Quazi.

The reasons for taking this position appear to be broadly based on two ideas (1) acceptance of female Quazis is necessary to communicate a message equality of women to the local Muslim community and (2) that experience of male Quazis has been a bitter one. Both men and women felt that women Quazis would result in fair justice for the reason that women would be heard.

On the position of equality, interviewees said it was compulsory, that it reflected a value of gender equality that is internationally recognized and that it was “an FR” (meaning a constitutional right).

Interviewees thought female litigants would experience greater ease.

“If women Quazis are there it will be good for women, where they can tell the Quazi (their case) directly” (interview from Ampara)

“Women in court face many issues and they are unable to share...they have issues related to sexual activities and sometimes internal wounds. They cannot tell this to a man and also a man will never understand” (Interview from Puttalam)

“When speaking to the male Quazi, women are tense and confused.” (Interview from Batticaloa)

Interviewees also attributed greater fairness by female Quazis. “Case will be decided by hearing both sides” (Interview from Ampara)

And finally, discussing the question of acceptance by the local community, there was a mixed reaction. It was felt that women would welcome it and that men in the community would find accepting it very difficult. An interviewee from the Eastern Province drew attention to the fact that men in the local community did not even want women to sit in the Quazi court observing the cases and that there was a recent incident of a defamatory facebook attack referring to women assisting litigants within the Quazi system as “prostitutes seated in the Quazi Court to tempt men”. It appeared that not only was there opposition to women as Quazis but that there was opposition by men within the Quazi court to women’s active presence in that space.

Interviewees expressed a view that local communities may find it difficult to accept female Quazis. Nevertheless, these thoughts were usually followed by opinions that there would be acceptance with time, that the present generation in fact thinks differently from the previous one, that currently there was more dialogue on this issue in the community and that there are religious scholars who endorse females serving in the position of Quazi. Regardless there was overwhelming agreement that women should occupy positions of jurors, counsellors and other official positions within the Quazi system.

Enumerators themselves believed that women would perform well as Quazis. It was expressed that regardless of gender Quazis ought to be young.

4.7 Other

4.7.1 Quazi Qualification

Key informants were unanimous in the recommendation that the Quazi qualification needing to improve. While many recommended that a legal practitioner be a basic qualification at least two of the 10 interviews did not feel it was necessary. One said there had been complaints by litigants against Quazi who were qualified lawyers. However, all stated that the Quazi must know the law while some stated that this includes the other laws of the country. One response suggested a basic qualification of being a graduate. Several mentioned that the Quazi ought to have a knowledge of Islamic law.

Two key informants recommended having two Quazis, with one further qualifying that it would be good to have one male and one female. There appeared to be a need to secure a balance and basic distrust in one gender being able to be fair by the other.

The age of the Quazi was also discussed. It was felt that an age of retirement ought to operate to prevent those over the retirement age from holding the office of Quazi. It was observed that older Quazi were not familiar with the issues faced by litigants such as drug abuse and misuse of social media to victimize. Some said Quazis should not be more than 57 or 60 years. It was felt by a few that it would be good if the Quazi was married. Several used the word 'mature' in describing a qualified Quazi. Similarly, several key informants spoke of the critical need for training.

4.7.2 Training

Key informants identified the following areas for training that the Quazis ought to receive, law relating to MMDA, law of the country, Islamic family law and principles, gender equality, violence against women and recognizing domestic violence, jurisdictions and powers of other state institutions that are relevant to family disputes (referral mechanisms), counselling, mediation and reconciliation skills.

4.7.3 Monitoring of Quazis

Key informant interviews identified a strong need for monitoring. There should be an efficient complaint mechanism and complaints relating to misuse of power and corruption must be addressed in a timely and effective manner.

4.7.4 Counselling

The role of counselling was believed to be important and all key informants mentioned the value of counselling. Comments such 'it is vital', 'Quazis need a ten-day training on counselling' and 'there must be a counsellor in every Quazi court' were made. Almost always the reference to counselling was followed by comments about the intimidating and violent conduct of the Quazi towards litigants and sometimes even towards counsellors.

There were observations of how the counselling skills of assessors/jurors assisting the Quazi had been useful. There were also observations of poor counselling skills of the Quazi and also of those who administered counselling recommended by the Quazi.

The enumerators noted that litigants had expressed a lack of confidence in the counselling offered by the Quazi. The counsellors were believed to be individuals who had retired from their respective professions and there was felt to be a significant age gap and as such understanding of the issues of the younger generation. There was seen to be sometimes too much of a focus on standards based on religious beliefs without an understanding of practical aspects of life.

A key informant engaged in counselling said that she could see the value of counselling before the adversarial environment of parties debating their issue before the Quazi. She also felt that Quazis themselves require training on counselling skills. Another key informant counsellor recalled hearing many experiences shared by women regarding sexual violence. Both key informant counsellors referred to the need to engage in individual counselling prior to couples counselling if needed. One said more women participated in counselling than men did and also that men sometimes acted aggressively towards counsellors.

4.7.5 Appeal Process

The enumerators noted that respondents were not aware of appeal procedures. One of the key informants from the North Western Province stated that the Board of Quazi is a dead body "maiaththu" expressing grave dissatisfaction in the Board. The delays appeared to be the main source of dissatisfaction. Appealing to the Board of Quazi was felt to be a waste of time and money.

4.7.6 Stigma of a Quazi for the internally displaced

One of the key informants stated that the separate labelling of the Quazi for internally displaced persons as the Quazi for 'refugees' (derogatory term in Tamil) caused emotional distress and prompted divisions between communities that have now lived together for several years. She was of the opinion that the court could function for all in the area without making that distinction. She also observed that some misused this categorization and had been able to evade the Quazi by stating that they were registered in a different area.

4.7.7 Enforcement

Enforcement was a concern raised by many of the key informants. From the Eastern province, one of the key informants said that enforcement operated differently from regular courts. For example in Irrakkamum some litigants experienced not being able to secure an enforcement order for 5 years. In contrast, in Akkaraipattu and Addalachennai enforcement order were available within 6 months either as a result of the Quazi's own inquiry or when non payment was raised by the litigant. It appeared that in response to a complaint of non payment, most Quazis would give the man, the respondent, 3 opportunities before an enforcement order is made. However, it was observed that male respondents engaged in the practice of coming on one occasion, making one payment and thereafter absconding the next few payments. Thereby incurring arrears which render the collection of monthly maintenance for sustenance futile. A key informant from the North Western Province held the impression that only 10% of the respondents pay maintenance to the Quazi and the other 90% will only pay if taken before the magistrate court. She commented that the burden on women in pursuing enforcement was very high.

4.7.8 Legal representation

Currently lawyers are not permitted to represent litigants before the Quazi.¹⁷ However, before the Board of Quazi lawyers are permitted and often necessary. The survey questionnaire did not explore litigant perception on this, yet a few survey respondents had commented or given their opinion. The method used to understand the pros and cons of introducing legal representation before the Quazi was the inclusion of this question in the semi structured interviews of the key informants.

The comments by litigants included that they did not have money for legal representation, that if they needed a lawyer, they would not have been able to file a case, and there would be delays and a positive perception by a female litigant was that the Quazi would "...keep quiet and listen to us. Our side will be heard as the lawyer is speaking".

¹⁷ Section 74 of the Muslim Marriage and Divorce Act of 1951.

The responses of key informants on whether legal representation would improve the system drew attention to similar considerations.

Two of the ten key informants were of the opinion that introducing lawyers to speak on behalf of litigants would be good for the reason that the Quazis had supervision and to strengthen the ability of the litigant to present facts to court. A similar observation is made by Justice Saleem Marsoof, that "Though it is true that the legal fraternity has a reputation of impaling settlement of disputes, it must not be forgotten that an Attorney-at-Law could be of assistance to a women particularly when a wealthy or influential husband chooses to resist the woman's attempt to seek redress in the Quazi Court"¹⁸. However, the two key informants who favoured introducing legal representation also mentioned that legal representation was costly and that a legal aid facility would be necessary to ensure that particularly women who are economically marginalized are able to access the system. One suggested accommodating both self-representation and legal representation. They acknowledged the delays at the appeal stage during which lawyers currently appear and felt that legal representation is likely to result in delays.

The issue of cost of legal representation was addressed by all key informants. A key informant working in a women's support organization in the Northern Province stated that the women they support did not even have money to travel for their case and as such will not have the means to secure legal representation. Even organizations such as hers are not in position to support such costs consistently. She also raised the question of what would happen to women in areas in which there were no women's support organizations. Similarly, a key informant assisting women through the Quazi process in the Eastern Province stated that "*The clients I dealt with were very poor. Most of the women who go to Quazi courts in that area are very poor. ... If legal aid can be provided, like for free, it will be good. But not all the people will do it properly if they are doing it for free or for the poor clients.*" A key informant from the North Western province noted that "*Unwanted divorces will not be filed fearing the cost.*" This last observation is also interpreted as a form of loss of access to justice.

The concerns in introducing legal representation were spoken of by the other key informants. One stated "*When a lawyer comes it's all about winning, this is a problem*". Lawyers were also seen as prolonging cases. Example of legal representation before the Board of Quazi was referred to and observation was made that "*Lawyers are professionals. Both lawyers agree for*

¹⁸ Justice Saleem Marsoof PC, 'The Quazi Court System in Sri Lanka and its Impact on Muslim Women' Muslim Women's Research and Action Forum/ Women Living under Muslim Laws, 2011, at page 64.

dates and the case is dragging. It takes a minimum of 2 years." In light of the time taken to dispose of cases (in 2018, 18.8% of the cases received were completed (disposed) and in 2017, 31% of cases were completed of the cases received)¹⁹ it is necessary to consider the impact of reforms on the issue of laws delays.

Another observation was that lawyers in presenting the case removed the 'reality' from it. This is interpreted as referring to the decisions made by lawyers on what facts to present to best fit the legal outcome pursued. The facts that are in reality felt to be important by the litigants may not be presented.

A key informant from the Northern province referred to the changing status and empowerment of women, saying that women were becoming stronger and starting to speak about their cases. She stated "*When they speak for themselves they will tell about things that they think important and how they affected them.*" She also recommended that it would be good if there was a proper judge with legal knowledge at perhaps a District Court level, and only parties are permitted to speak or to speak with the assistance of someone. A key informant from the North Western province stated that she had experienced poor litigants finding it difficult to contact their lawyer as their calls were not answered and that lawyers tend to respond when the organization calls.

¹⁹ Performance Report - 2018 by Ministry of Justice and Prison Reforms.

5. Lesson Learnt for Quazi Court Reform

This lessons learnt section is based on an analysis of the findings described above. The findings were analysed for themes relevant to the improvement of the Quazi system to ensure that litigant experiences inform discussions and decisions taken on reforming the system.

5.1 Location and Protection

Quazis must conduct administrative work and hearings at premises that are publicly accessible spaces located centrally within a given area. This means that the location should not be in isolated areas and must be accessible by public forms of transport. It should be an official premises and information relating to the official location of the Quazi should be available at local administrative and executive institutions (grama niladaris offices, police stations, and Divisional Secretariat information services).

When designating Quazi court premises consideration should be given to population served, cost of travel and other public accessibility related criteria.

Local Magistrate courts or local court complexes were believed to be the most suitable and most secure of locations for accessing Quazis. Consideration must be given to accessibility as Quazis are often more accessible in terms of physical distance than the local court complexes. The protection afforded by court complexes, includes the public perception of a place of law and justice, and the physical protection afforded by the police officials who are present within court complexes for security. There is a strong need to dissuade and ensure that no form of intimidation or violence between litigants takes place. It is deemed necessary to have female and male police presence for security.

5.2 Facilities within the Quazi court premises

Quazi court premises must conduct all administrative and hearing related activities. No works which involve interaction with the public should be conducted in private premises. This would help promote transparency and accountability.

The premises must have basic facilities such as availability of drinking water, sanitation facilities and a separate room for mothers who are nursing or caring for young children.

The court premises must be universally accessible meaning there should be consideration for elderly persons, persons with disabilities etc. The court premises should also have adequate space for litigants and those accompanying them to be seated and a waiting room which is separate from the room where the hearings are conducted.

5.3 Accessibility

Availability of the Quazi must be public information that is easily accessible. If it is adequate that Quazis only function on certain days, this information must be decided in advance and a time table should be publicized prominently at the Quazi court location. It would be helpful to maintain a website of Quazi court related information, including locations, days on which Quazis function or conduct hearings, hearing schedules, and any other notices. Notices relating to absence of Quazi on given days could be posted on the physical notice board at the Quazi court premises as well updated on the website.

When Quazi courts cease to function during the month of Ramadan, it causes difficulties for litigants who require urgent orders, particularly relating to maintenance. As a public service institution functioning for the benefit of the people, it is important for Quazis to be accessible during the month of Ramadan.

Jurisdiction relating to applications, meaning where applications must be filed or lodged, must be based on the place of residence of the female party. The, sometimes prohibitive, burden of travel for women requires special attention to be paid to where applications can be filed and maintained. The findings of this study clearly point to a disproportionate number of concerns and issues faced by women litigants travelling to Quazi courts.

5.4 Nature of the Quazi court space in which the hearing is conducted

It is important for the hearings of cases to be conducted in a private setting without other litigants or the public having the opportunity to listen to the hearings.

The private setting must include those persons who have accompanied the litigants for support. It must also ensure that other actors such as jurors or assessors who are present are not all of one gender as that may intimidate the litigant who is of the opposite gender. Basically, a female litigant must not encounter a full panel of male assessors and vice versa. This gender representation must be maintained.

5.5 Efficiency of proceedings before the Quazi

Details of the procedure must be made accessible. Litigants should be provided with written and verbal instructions about the process, they must be provided with forms to be filled depending on the nature of their application. All information about the procedures and forms must be public and easily accessible.

Timelines must be provided for each of the procedures before the Quazi. Quazis must also fix inquiries in such a way that it does not cause litigants to spend inordinately long periods of time in wait for their inquiry.

Quazis cannot refuse to accept applications. All applications must be accepted and if an application cannot be proceeded with, reasons must be recorded in writing to ensure that proper record, transparency and accountability is maintained.

Women litigants must not be asked to deliver summons and this burden cannot be placed on them. There is nothing in the law that obligates litigants to ensure that summons is delivered. Notices relating to dates of hearing must be notified by the Quazi to the applicant and the respondent in writing.

In the case of maintenance orders, certificates of enforcement must be issued at the first instance a litigant complains that there has been non payment. This means that the Quazi cannot delay the issuing of enforcement orders for any reason.

There should be powers granted to the Quazi to order places of work or employment to directly deduct and pay the maintenance from the salary of the respondents. Where possible, Quazis must ensure that respondents make payments directly to the bank account of the applicant for maintenance, to reduce the burden of coming before the Quazi to collect maintenance.

When maintenance orders are enforced, the law should ensure that the respondent is not able to frustrate the maintenance payments by only paying the arrears and not the monthly payment thereafter. At the time of enforcement, the Magistrate must be empowered to enforce the order in relation to arrears complained of and also check that all monthly payments thereafter have been paid.

The law must make provisions to deal with respondents (persons against whom cases are filed) in maintenance cases who abscond from the Quazi court and the Magistrate court.

5.6 Fair treatment by Quazis

The Judicial Service Commission must ensure that practices of Quazis and others within the Quazi system resulting in unfair or discriminatory treatment are identified and addressed through training, advice, supervision, and if needed disciplinary action. It is an important aspect of the Quazi function to be impartial, fair and just and to be perceived as such.

The practice of compelling women litigants to convert their claims for child maintenance or wife maintenance or their applications for Quazi intervention into matrimonial disputes, into Fasah divorce applications must be identified as wrong and Quazi must cease this practice.

Quazi must advise litigants regarding all their legal rights including child maintenance, wife maintenance, living in expenses, Iddah maintenance and Ma'taa claims. Quazi must make orders regarding all these legal rights when appropriate without the need for the litigant to specifically ask, particularly because litigants may not be aware of their rights and duties.

5.7 Hearings conducted by Quazis

It is important that both parties are given equal opportunity to be heard in full. This will give people confidence and improve their perception of fairness of the process.

Efforts must be consciously taken to ensure that hearing of family disputes are afforded the privacy that enables litigants to confidently present, with the least amount of censure, their grievance. Quazis must ensure that when speaking to women litigants in a private setting, that women are permitted persons to accompany or support her.

Hearings must be properly documented and a record of the proceedings available.

Hearings ought to be conducted in an inquisitorial manner. This means that Quazis must be trained to question parties and investigate grievances in a manner that does not humiliate, encourage accusations or acrimonious speech and behaviour.

Quazis must not read out or make public any information presented at the hearing, must not compel any party to sign any document, must explain all documents and procedures, must explain the law, rights and obligations of parties and must not use language that is disrespectful, cruel or harsh.

5.8 Decisions of Quazis

Guidance must be provided in the law or in the form of mandatory guidelines to be followed regarding computing reasonable amounts of child maintenance, wife maintenance, Iddah maintenance and Ma'taa. Consideration must be taken of income and earning capacity, wealth, cost of living and other necessary factors. Quazis must be guided not to accept denials of income or refusal to pay as adequate reasons for not making maintenance orders. Quazis must be empowered to call for information from employers or banks if needed.

Guidance must also be provided for Quazis to ensure that the wife's property, either dowry, *Kaikuli* or other property brought into the marriage by the wife, is returned to the wife before the granting of divorce orders in Talaq cases. Similarly, Ma'taa payment must be made before the order of divorce in Talaq cases. For Fasah divorces (where the husband is found to be at fault), the order for Ma'taa must be made by the Quazi at the same time the divorce order is given.

5.9 Quazis

Women must be permitted to apply for and hold the position of Quazi. Gender must not be a barrier to holding public office and such a barrier is contrary to the non-discrimination provisions, Article 12(1) and (2), of the Constitution of Sri Lanka.

It is important to set basic qualifications to apply for and be appointed as a Quazi. A key educational qualification is knowledge of the law including general law and procedure, the Muslim Marriage and Divorce Act, administrative law, constitutional law and other relevant family laws including laws relating to domestic violence. The criteria for selection must ensure that persons having reached the general retirement age should not be permitted to hold the office of Quazi.

Quazis must be well trained before undertaking their role as Quazi. Training should be provided on the law relating to MMDA, law of the country, Islamic family law and principles, gender equality, violence against women and recognizing domestic violence, jurisdictions and powers of other state institutions that are relevant to family disputes (referral mechanisms), counselling, mediation and reconciliation skills. There should be continuous training and supervision of the work of Quazis.

Quazis must be adequately remunerated and, facilities and support must be provided by the State to ensure that they are able to carry out their functions efficiently and effectively.

5.10 Legal representation at the Quazi court

On the question of introducing legal representation at the Quazi courts, there are two important considerations (1) will women litigants be deprived of their right to file cases because the cost of lawyers is too much?, and (2) after filing a case, will it increase the opportunity for exploitation of economically disadvantaged litigants?

Without strong mechanisms for legal aid and support of litigants it is not recommended to introduce legal representation for litigants. Legal representation may have the benefit of strengthening the litigant who is unable to present their case well. However, the financial inequality between litigants may further compound inequality in legal representation, particularly between men and women, is a fact that must be recognized. In any event, people must be able to represent themselves before the Quazi courts.

5.11 Appeals

Appeal processes must be completed within a reasonable time and delays must not be permitted. The time period for completion of the appeal case must be defined in the law. The Quazi must provide litigants with written information regarding the appeal process when any Quazi court order is made. Legal aid must be provided for litigants who wish to pursue an appeal. Non-governmental organizations or community-based groups must be encouraged to organize and provide financial and other support for litigants who wish to pursue appeals.

The Board of Quazi must function at least two days per week (as opposed to once a week which is the current practice) and must conduct sittings in Provinces/Districts from which there are a high number of appeal cases.

5.12 Tackling Corruption

Stringent measures must be introduced to arrest the practice of corruption within the Quazi system.

The concern of Quazis being residents in the area in which they function must be addressed to ensure that social connections and networks do not influence the decisions of the Quazi.

Create public awareness by posters on the public notice board of the Quazi premises about the offence of bribery and corruption, the punishment and encouraging the public to take action and make complaints regarding such activities. Every Quazi court premises must publicly display information about how complaints relating to bribery can be made. Complaints must be forwarded to the Judicial Service Commission, the Human Rights Commission and the Bribery Commission. The Bribery Commission should take timely action in response to complaints, must ensure effective punishments are delivered and officials are removed from office.

Non-governmental organizations or community-based groups working to assist Quazi court litigants must be encouraged to assist litigants with complaints of bribery and corruption to make official complaints and to support people through the complaint process.

ANNEXURE 1: Muslim Population Served by Quazis by District²⁰

	District	District Muslim Population (Census, 2012)	Population per Quazi	Number of Quazis in each District	
1	Ampara	281,987	31,332	9	Addalaichenai
					Akkaraipattu
					Irakkamam
					Kalmunai
					Nintavurpattu
					Pothuvil (Panampattuwa)
					Palmude
					Sainthamaruthu
					Sammanthurai
2	Anuradhapura	71,493	71,493	1	Anuradhapura
3	Badulla	47,192	47,192	1	Badulla
4	Batticaloa	134,065	33,516	4	Eravur
					Kattankudy (Manmunaipattu)

²⁰ Muslim population by District in the Census of Population and Housing 2012, Sri Lanka by the Department of Census and Statistics <http://www.statistics.gov.lk/pophousat/cph2011/pages/activities/reports/finalreport/population/finalpopulation.pdf> and number of Quazi area as reported in the Performance Report - 2018 by the Ministry of Justice and Prison Reforms found at https://www.moj.gov.lk/web/images/pdf/progress_report/2018/English.pdf

					Oddamavadi
					Valaichenai
5	Colombo	274,087	39,155	7	Awissawella
					Bhora Community
					Colombo East
					Colombo North
					Colombo South
					Colombo West
					Memon Community
6	Galle	39,267	39,267	2	Balapitiya and Elpitiya
					Galle
7	Gampaha	112,746	37,582	3	Biyagama
					Gampaha (Thihariya)
					Negombo
8	Hambantota	15,204	7,602	2	Hambantota
					Tangalle
9	Jaffna	2,363	2,363	1	Jaffna
10	Kalutara	114,556	28,639	4	Beruwela
					Horana
					Kalutara

					Panadura
11	Kandy	197,076	19,708	10	Akurana
					Harispattuwa and Pujapitiya
					Kandy
					Nawalapitiya
					Pahatha-Hewaheta
					Thumpane
					Udawalatha Gampola
					Udathalawinna (Pahathadumbara)
					Udunuwara
					Yatinuwara
12	Kegalle	61,164	30,582	2	Kegalle
					Mawanella
13	Kurunegala	118,305	39,435	3	Kuliyapitiya
					Kurunegala
					Maho
14	Mannar	16,512	16,512	1	Mannar
15	Matale	45,682	45,682	1	Matale
16	Matara	25,614	25,614	1	Matara

17	Monaragala	9,809	9,809	1	Monaragala
18	Nuwara Eliya	21,116	10,558	2	Hatton
					Nuwara Eliya
19	Polonnaruwa	30,465	30,465	1	Polonnaruwa
20	Puttalam	150,404	50,135	3	Kalpitiya
					Puttalam and Chilaw
					Internally Displaced Persons from North
21	Ratnapura	24,446	24,446	1	Ratnapura
22	Trincomalee	159,418	39,855	4	Kinniya
					Muthur
					Thambalagamuwa and Kantale
					Trincomalee
23	Vavuniya	11,972	11,972	1	Vavuniya
	TOTALS	1,964,943		65	

ANNEXURE 2: Locations and numbers of survey interviews

No.	District	Location	Number of interviews
01	Anuradhapura	Ikirigollawa	18
		Aluthgama	
02	Kurunegala	Polgahawela	19
		Kurunegala	
		Welpothuwewa	
		Pannava	
03	Kandy	Deldeniya	13
		Uguraspitiya	
		Akurana	
		Gelioya	
04	Mannar	Tharapuram	23
		Erikkalampitty	
		Musalai	
05	Jaffna	Jaffna Town	10
06	Trincomalee	Muthur	39

		Kinniya	
07	Puttalam	Puttalam	43
		Chilaw	
08	Nuwara Eliya	Nuwara Eliya	13
	Batticaloa	Valachchenai	
09		Eravur	
		Kattankudy	
10	Gampaha	Thihariya	13
11	Colombo	Colombo	2
		Avissawella	1
12	Kegalle	Mawanella	Originally planned but could not cover.
13	Galle	Galle Town	Originally planned but could not cover.
14	Matara	Weligama	Originally planned but could not cover.
15	Ampara	Nintavur	Originally planned but could not cover.
		Kalmunai	Originally planned but could not cover.

		Addalachchenai	Originally planned but could not cover.
		Samanthurai	Originally planned but could not cover.
		Akkaraipattu	Originally planned but could not cover.
16	Kalutara	Beruwala	Originally planned but could not cover.
17	Mullativu	Mullativu	10