

MUSLIM WOMEN'S DEMANDS

FOR REFORM OF THE SRI LANKAN MUSLIM MARRIAGE AND DIVORCE ACT (MMDA) 1951

SUBSTANTIVE LAW

Minimum age of marriage

Minimum age of marriage for all Muslims must be 18 years without any exceptions.

Women in Quazi court positions

Women should be eligible to be appointed as Quazis, Members of the Advisory Board, Board of Quazis, Marriage Registrars and assessors (jurors).

Application of MMDA

The MMDA must apply uniformly to all Sri Lankan Muslims without causing disadvantage to persons based on sect or *madhab* (schools of jurisprudence).

Capacity to enter into marriage

Signature/thumbprint of bride and groom is mandatory in all official marriage documentation. Adult Muslim women must be treated in law as having autonomy and decision making capacity and must not be required to obtain permission of any male relative or Quazi to enter into marriage.

Marriage registration and marriage contacts

Mandatory registration is required for legal validity of marriage.

Introduce, recognise and facilitate the concept of the marriage contract to be entered into by Muslim couples prior to marriage, where they can opt for monogamy, matrimonial property regime among other mutually agreed conditions.

Dowry (Kaikuli)

Abolish dowry. In the alternative, at a minimum, make it illegal to receive a dowry, including immovable property, without formally recording it during the registration of marriage and provide for recovery of same at the time of divorce.

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SUBSTANTIVE LAW contd..

Polygamy

Abolish polygamy. In the alternative, at a minimum, make polygamy permissible only under exceptional circumstances and specify conditions including: financial capacity of husband, consent of all parties involved, and procedure supervised by court.

Divorce

- Provisions of divorce must apply equally to women & men. Similar conditions to be imposed for obtaining Talaq and Fasah divorce.
- Procedures for divorce initiated by husband and wife must be the same, including appeal process.
- Types of divorce (including mutual consent divorce), grounds for divorce and effective and efficient process of divorce should be equally applicable to all who are governed by MMDA.

Maintenance & Compensation

- The MMDA must provide specific guidelines for the assessment and calculation of maintenance payments for women and children.
- The MMDA must make mandatory provision for payment of mata'a (compensation) by the husband to the wife in cases where fault of the husband has been established.



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Appointment of Quazis

- The MMDA must set out appropriate qualifications and competencies for Quazis. A Quazi must be an Attorney-at-Law, or at minimum, a person of good standing in society with an unblemished record of service and over 10 years in public service, social service, law, mediation and/or counseling or in a relevant profession. Quazis must have a sound knowledge of the MMDA.

Quality of Quazi courts

- There must be a systematic recruitment process including application with community referees and an interview process.
- Comprehensive training before placement and regularly while in service, must be provided.
- Quazi courts and proceedings must ensure privacy and security of all parties.
- All courts must have trained counselors, female and male, to support litigants during cases.

Oversight of Quazi courts

- Establish a system for regular monitoring of Quazi court proceedings and records;
- Public accessing the Quazi must be made aware of procedures and of complaints mechanisms including complaint format for the Judicial Service Commission.
- The JSC must inquire into complaints in a timely manner, update complainant of process and final decision, and where necessary to take appropriate disciplinary action.

MMDA MUST BE REFORMED COMPREHENSIVELY

The MMDA must be reformed to guarantee equality and justice for all Muslims. It should be reformed comprehensively to respond to the grievances of Muslims, particularly Muslim women and girls, in order to address contemporary and diverse challenges facing Sri Lankan Muslims living in a multi-cultural society. While the substantive law must ensure equality and justice for all, procedural law must be sensitive to needs of all members of the community including women. While taking this as the basic tenet we outline below four guiding principles that we believe should be adhered to in the substance and process of reform initiative.

GUIDING PRINCIPLES FOR REFORM

1. State's responsibility to ensure Equality, Justice and Non-Discrimination

The Sri Lankan state has a role and the responsibility to ensure all its citizens are treated equally and without discrimination. Equality before the law and equal treatment under the law is a fundamental right. The MMDA and the Quazi court system is a special law, and cannot be utilized to deny any Muslim citizen of Sri Lanka his/her fundamental rights and protections under the Constitution. If this is permitted, some Muslim citizens will effectively be rendered second-class citizens. Therefore, the reforms process must ensure that the MMDA provisions, procedures and implementation do not violate fundamental rights. Women are individuals with full autonomy and free will to consent to marriage and divorce, and MMDA has to recognize and mandate this principle.

2. Women as key stakeholders in reform

Muslim women have been the most affected by the MMDA and Quazi court system, and the mandate for reform is principally derived from their call for changes to MMDA. Therefore, women's experiences of the law, its implementation procedure and their just expectations must inform and shape the reform agenda. In the current reform initiatives which are underway, Muslim women must have a place at the table. Their voices and demands should be heard and engaged with as the key constituency that is most affected.

3. Respect for the heterogenous character of Muslim community and diversity of opinion

Muslims living in Sri Lanka are diverse and not homogenous (on the basis of ethnicity eg. Moors, Malays, Bohras, Memons and others) as well as on the basis of sect, *madhab* (school of jurisprudence) and religious ideologies. The reform process and the resultant law must recognize, respect and reflect this heterogeneity within the community. The scope of reforms should not be held hostage to the singular and narrow interpretations and opinions of a few, albeit a powerful and vocal, group of very conservative men.

4. Recognition of the dynamism of Islamic jurisprudence

Islamic jurisprudence is not static and has evolved in response to social, economic and cultural changes and the different contexts. We believe that the myth of homogeneity of Muslim laws is one of the biggest stumbling blocks to reform. A close look at the Muslim legal systems around the world reveal a diverse and immense range of interpretations of Quranic injunctions. Reform of Muslim laws to ensure justice and equality for women is possible through *ijtihad* (reinterpretation of Islamic jurisprudence), and through selection of the most gender progressive laws and principles from the different schools of law (eclectic choice or *Takhayyur*).