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Human Rights Commission of Sri Lanka

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Statement on Reforming the Muslim Marriage and Divorce Act and on Related Matters

Background

The Human Rights Commission of Sri Lanka, in terms of its mandate under section 10(d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, is empowered to ‘make recommendations to the government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards’. In this context, the Commission has reviewed laws pertaining to marriage and divorce in Sri Lanka with a view to identifying provisions that discriminate on the grounds of sex and gender and are incompatible with the best interest of the child.

Sri Lanka, despite its many laudable indicators with regard to women’s health and education, continues to be a context within which many forms of discrimination exist and where misogyny is rampant. Various forms of violence against women, ranging from intimate partner violence to technology enabled sexual and gender-based violence are rife. A recent study found that one in five women are victims of intimate partner violence and one in four women have experienced sexual and physical violence. Women face different forms of discrimination, gender-based workplace harassment, and limited access to leadership positions. Women’s labour force participation remains low mainly as a consequence of the inadequate recognition and support for care work.

In its commemoration of International Women’s Day (IWD) in 2025, the Commission drew attention to inadequacies in the law in guaranteeing that women citizens of the country are free from all forms of discrimination. Among the issues discussed was community based personal laws and their discriminatory provisions. The Kandyan Marriage and Divorce Act (KMDA) of 1952 and the Muslim Marriage and Divorce Act (MMDA) of 1951 were both discussed as containing provisions that require redress. Additionally, the Commission notes the need for reforming the Jaffna Matrimonial Rights and Inheritance Ordinance of 1911.

In its follow up work to the IWD event, the Commission has continued to engage the issue of gender-discriminatory laws through its thematic Subcommittee on Gender. Moreover, it considered the impact of such laws on the best interest of the child during

the national consultation on the recommendations of the United Nations Committee on the Rights of the Child organised by the Commission's newly established Child Rights Unit. In its Parallel Report to the Committee on the Elimination of Discrimination against Women submitted in January 2025, the Commission recommended that the KMDA and MMDA be amended to align with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Commission is privy to the detailed reports that have been produced in 2018 by the committee chaired by retired Justice of the Supreme Court Saleem Marsoof and in 2021 by the committee chaired by senior attorney-at-law Shabry Haleemdeen. The Commission is also informed that, in 2021, the Cabinet of Ministers decided to abolish the quazi system, ban polygamy, and to legislate an age of marriage. The Commission has recently been furnished with a copy of the draft bill to amend the MMDA and is in the process of analysing the said draft.

The Commission is informed that significant progress was previously made with respect to securing support from different Muslim groups and institutions with respect to the reform of the MMDA. The delays in bringing about the necessary legislation has led to a back and forth on such decisions leading to frustration among those working on the issue and the continued victimisation of those subjected to the problematic provisions of the MMDA.

Legal Standards

The Commission recalls that article 12(1) of the Sri Lankan Constitution provides: 'All persons are equal before the law and are entitled to the equal protection of the law.' Article 12(2) provides: 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.'

Accordingly, articles 12(1) and 12(2) of the Constitution require that all citizens of Sri Lanka, regardless of their sex, race or religion, be treated with equality and without discrimination, and have equal and non-discriminatory access to legal remedies in matters concerning marriage and divorce.

The Commission also recalls article 12(4) of the Constitution, which provides: 'Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.'

Meanwhile, the freedom of religion or belief is recognised in articles 10 and 14(1)(e) of the Constitution. Article 10 provides: 'Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.' Article 14(1)(e) provides: 'Every citizen is entitled to – the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.' Additionally, article 14(1)(f) provides: 'Every citizen is entitled to – the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language.'

Accordingly, under Sri Lanka's constitutional framework, equal and non-discriminatory access to legal remedies may be ensured within a plural legal system in which persons

are free to practice and abide by their customs and faiths in matters concerning marriage and divorce.

The Commission also recalls article 16 of CEDAW, which provides:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 3(1) of the Convention on the Rights of the Child (CRC) provides: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ Additionally, section 5(2) of the International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007, which incorporates certain provisions of the ICCPR into Sri Lanka’s domestic law, provides: ‘In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interest of the child shall be of paramount importance.’

Observations

Having regard to the principles of equality and non-discrimination enshrined in the Sri Lankan Constitution as well as CEDAW, and the best interests of the child standard found in the CRC and the ICCPR Act, the Commission wishes to make several observations with respect to the MMDA. It is noted that, while article 16 of the Sri Lankan Constitution affirms the validity of the MMDA regardless of its inconsistency with certain fundamental rights, this article does not prevent parliament from reforming the MMDA to make it compatible with such fundamental rights.

Applicability

The MMDA governs marriages between Muslims. The Marriage Registration Ordinance (MRO) of 1907 excludes ‘marriages contracted between persons professing Islam’ and, therefore, Muslims are compelled to marry under the MMDA. Sinhalese from the Kandyan region, however, have the option of marrying under the MRO.

At the outset, it is observed that the registration of marriages is not mandatory under the MMDA. The Commission observes that while unregistered customary marriages require recognition, it is imperative that state service providers are equipped to ensure that such unregistered marriages are recognised as valid, and no woman or child is disadvantaged purely by virtue of a particular marriage (i.e., a marriage contracted by the woman concerned, or a marriage contracted by the parents of the child concerned) being unregistered.

It is noted that section 2 of the MMDA contains ambiguity with respect to the applicability of the MMDA to ‘inhabitants of Sri Lanka who are Muslim’. For instance, the section requires amendment to ensure greater clarity with respect to the application of the MMDA to Sri Lankan Muslims who are not resident in Sri Lanka. Moreover, further clarity is required with respect to the provision of *matha* or compensation under the MMDA, and the definition of the term ‘sect’, which is found in a number of provisions of the MMDA.

Discriminatory provisions

The Commission identifies the following provisions of the MMDA as discriminatory and incompatible with articles 12(1) and 12(2) of the Constitution:

1. **Sections 8(1), 9(1), 10(1), 12(1), and 14(1)** of the MMDA stipulates that only *male* Muslims may be appointed as registrars, temporary registrars, special registrars, quazis, and special quazis. Quazis are appointed by the Judicial Service Commission (JSC) and administered by the Ministry of Justice.
2. The MMDA permits several types of divorce: *Talaq* initiated by the husband, *Fasah* and *Khula* initiated by the wife, and *Mubarat*, initiated by mutual consent (the latter three forms are permitted within the Act, but they are not specifically mentioned). However, the conditions for obtaining divorce initiated by husbands and wives remain different. A *Fasah* divorce (initiated by a wife without the consent of the husband) requires the wife to prove a matrimonial fault. Such fault includes ill treatment, cruelty, domestic violence (including verbal abuse), failure to maintain, and desertion. According to **paragraph 11 of the Third Schedule** of the MMDA, at least two witnesses should corroborate the evidence of the wife. On the contrary, in the case of a *Talaq* divorce – initiated by the husband – there is no requirement for a reason or just cause to be recorded.
3. **Section 28(1)** of the MMDA provides that, where the wife wishes to obtain a divorce, the Muslim law of the ‘sect’ to which the parties belong would apply. The Commission is not in a position to comment on the various schools of Islamic jurisprudence that may apply to the parties. However, it is noted that experts on the

subject have made representations to the Commission that certain schools of Islamic jurisprudence do not recognise a women's right to initiate a divorce unilaterally.

4. There is no provision in the MMDA that enables a wife to appeal the granting of a *Talaq* divorce. By contrast, husbands may appeal a divorce initiated by the wife on procedural technicalities before the Board of Quazis, and, thereafter, before the Court of Appeal.
5. The MMDA does not require the signature of the bride as an indicator of the bride's consent to marriage. The wali's signature is, however, mandatory.
6. **Section 24** of the MMDA permits the practice of polygamy. It is observed that the practice violates the women's right to non-discrimination as guaranteed in the Constitution. It also breaches the provisions of article 5(a) of CEDAW. In its General Recommendation No. 21: Equality in Marriage and Family Relations, the CEDAW Committee states:

Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.

Currently, the MMDA permits multiple marriages for men, requiring only that the quazi be informed and that the quazi inform the community through notices in the Jumma mosques in the locations where the man and the woman to be married reside. The Commission notes that the strict regulations that exist in many other Muslim contexts that permit polygamy do not exist under the MMDA. The Commission is informed that women who are part of polygamous marriages face psychological stress as well as challenges such as abandonment, physical violence, and the lack of financial support. Several Muslim majority countries have banned the practice and others have ensured that there are strict controls in place when the practice is permitted. The Commission is also informed that the current position among Muslim community groups is either the abolition of polygamy or the introduction of strict conditions for polygamy.

Minimum age of marriage

The Commission observes that the MMDA is incompatible with the best interests of the child standard, as it does not contain a minimum age of marriage.

Section 23 of the MMDA requires that the consent of the quazi be obtained for the registration of the marriage of a girl below the age of twelve years. However, such a marriage without the authorisation of the quazi may still be considered valid under section 16 of the MMDA if the marriage is valid under the relevant Muslim law of the 'sect' to which the parties belong.

Separately, the Commission recalls that section 363(e) of the Penal Code of 1883 includes the phrase 'unless the woman is his wife who is over twelve years of age and is not judicially separated from the man' as an exception to the offence of statutory rape.

In the Sri Lankan context, underage pregnancies and cohabitation are common among vulnerable communities across ethnic and religious divides. The impact on girl children in all cases is documented as physically and psychologically damaging, and the harm is often irreparable. The Commission, therefore, considers the MMDA's permitting of marriage of girl children as requiring urgent redress.

Quazi system

The Commission was informed of a previous decision by the Cabinet of Ministers in 2022 to abolish the quazi system and to have the MMDA come under the primary jurisdiction of the district courts. The Commission, however, received observations from a number of experts and stakeholders with respect to both the advantages and disadvantages of the quazi system.

It was submitted that certain aspects of the quazi system reflect legal pluralism, and ought to be retained. For example, the quazi system can be accessed in the language of the litigant's choice (generally Tamil) and, in many cases, in the area where the litigant resides. The system is not costly, as there is no fee for the services provided, the presence of a lawyer is not required, and costs are limited to travel and other logistics. The quazi is expected to adopt an inquisitorial approach and actively gather the required information from the parties, as opposed to adopting an adversarial approach, which is typically the case in the district courts. Moreover, in divorce proceedings, it was submitted that a divorce can be obtained without much delay in contrast to proceedings before a district court under the MRO.

The Commission additionally observes that the grounds for divorce under the MMDA include divorce by mutual consent, which is not possible under the MRO at present.

It was also submitted that the confidence in the quazi system to deliver justice, especially to women, is virtually non-existent. It was submitted that many aspects of the quazi system impact the litigants negatively. For example, it was submitted that quazis receive no training to carry out inquiries and calculate compensation and maintenance costs. Notably, there is no eligibility criteria applicable to the appointment of a quazi, except that the candidate must be a Muslim male of good character. The system was also observed as lacking adequate facilities as well as systems and processes, such as designated premises and regular schedules. The quazi's current remuneration with costs is under Rs. 20,000.00. It was also submitted that there was no oversight of the work of the quazis and the system lacks a procedure to ensure accountability for misconduct. Furthermore, the MMDA's substantive provisions denying women the opportunity of becoming quazis significantly impacts the gender responsiveness and procedural fairness by and within the quazi system.

The Commission observes that, although the JSC is responsible for the appointment of quazis under **section 12(1)** of the MMDA, the process through which an appointment may be cancelled by the JSC under **section 12(6)** remains unclear to litigants. For instance, it remains unclear as to whether a complaint can be made with respect to the misconduct of a quazi to enable the JSC to cancel an appointment if the misconduct is proven.

It was also submitted that there are only two locations in which appeals from the decisions of a quazi can be heard by the Board of Quazis (i.e., Colombo and Kalmunai) and this system has resulted in a significant backlog.

The Commission received submissions from experts and stakeholders that the current district court system can also be strengthened to ensure family law remedies are accessible and cost-effective. In this context, a new family court system was proposed as an alternative to the current district court system. It was suggested that some of the positive elements of the quazi system be retained in such a family court system.

Consultations

The Commission is aware of the fact that the current Government of Sri Lanka has begun consultations with regard to reforming the MMDA. Given the recommendations of the above-mentioned committees, and the previous consensus reached on key reforms, the Commission is of the view that any consultation process undertaken with respect to the MMDA be inclusive, but also expeditious. Reliance may be placed on the several consultative reports and studies on the problems to be addressed and on the recommendations to secure non-discrimination and the best interest of the child. Prolonged consultations that further delay urgently needed reform should be avoided.

Recommendations

The Commission recommends the amendment of all provisions in the MMDA (including those identified above), which are incompatible with articles 12(1) and 12(2) of the Sri Lankan Constitution.

The Commission recommends that the minimum age of marriage of persons marrying under the MMDA be stipulated as 18 years.

It additionally recommends that section 363(e) of the Penal Code be amended to delete the phrase ‘unless the woman is his wife who is over twelve years of age and is not judicially separated from the man’.

The Commission recommends that all persons in Sri Lanka, regardless of race or religion, be provided with the equal right to marry and divorce under the MRO.

The Commission recommends that a system of family law courts, which is adequately resourced, accessible, cost effective, and subject to meaningful oversight of the JSC, should be introduced to enable litigants to access appropriate legal remedies under the MRO, KMDA, and MMDA.

This system should embody the principles of legal pluralism while ensuring compliance with articles 12(1) and 12(2) of the Constitution. For instance, it is possible to conceive of certain divisions of such a court system whereby specially trained judicial officers can be allocated depending on the law applicable to the litigants. It is anticipated that the salutary aspects of the quazi system could be retained through the divisions of courts established throughout the country under such a court system. For example, family courts in a particular district could have special divisions specialising in the application of the MRO, KMDA, and MMDA respectively. Accordingly, specially trained judicial officers

with knowledge and expertise in the MMDA may be assigned to such divisions throughout the country. **It is imperative that the eligibility criteria for the appointment of such judicial officers are non-discriminatory on the basis of gender.**

In the interim, in anticipation of the introduction of a new family court system, the Commission recommends that the MMDA be amended to include the appointment of women quazis, formulate eligibility criteria for quazis, and that quazis be adequately remunerated. The Commission also recommends that the MMDA be reformed to specifically require that the JSC prepares strict guidelines and monitors the procedure of quazi courts, and that official premises are designated for quazi courts where court proceedings can be conducted.

The Commission recommends that the MMDA be reformed to remove provision for the practice of polygamy.

The Commission recommends that the consultations with respect to the reform of the MMDA – if considered necessary – be inclusive, expeditious and time bound. Such consultations should ensure participation of a broad, representative cross section of the Muslim population, with women included across all aspects of such a cross section. Consultations should also be carried out with organisations and individuals who provide services to women who engage with the quazi courts and include women who bear the consequences of early marriage, and domestic violence victims who have limited recourse due to the substantive and procedural shortcomings of the MMDA and the quazi system.

Justice L.T.B Dehideniya
Chairman
Human Rights Commission of Sri Lanka

25th August 2025