

# Sri Lanka: MMDA amendments: Polygamy becomes final hurdle

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Minister of Justice Dr. Wijeyadasa Rajapakshe told *The Sunday Morning* that he had asked the Advisory Committee headed by Attorney-at-Law Shabry Haleemdeen to find a solution to the disagreements over the abolition of polygamous marriages so that reforms to the Muslim Marriage and Divorce Act (MMDA) could proceed.

“I’m waiting for their report. We met a couple of times and now we are waiting for their final recommendations. There were some issues with regard to abolishing polygamy. The female members of the committee are against polygamy while the men want to allow it. I wanted the community to resolve it among themselves,” Minister Rajapakshe said.

## **Haleemdeen committee**

The 10-member Haleemdeen committee was appointed in December 2020 by the then Justice Minister Ali Sabry after the arrival of the incumbent Government.

This committee was appointed subsequent to the previous committee, headed by Justice Saleem Marsoof, appointed in 2009 by then Justice Minister Milinda Moragoda, in recognition of the call for reform of the Muslim personal law. That committee handed over its own report after almost a decade of deliberation to former Minister of Justice Thalatha Athukorala in January 2018.

Following six months of deliberation, the Haleemdeen committee submitted its report to Minister Sabry in June 2021. The proposed reforms were put before the Cabinet, which in turn recommended that polygamy be abolished while the legal age of marriage be raised to 18 and to do away with the Qazi court system.

In October 2021, then Minister of Justice Ali Sabry speaking to *The Sunday Morning* assured that the MMDA Reforms Bill would be presented to Parliament within three months, indicating that it would be presented to Parliament for debate by January 2022.

## **Polygamy the sticking point**

While the Advisory Committee came to a consensus on the other two matters, polygamy remained the sticking point due to its inclusion in the Qur’an, Shabry Haleemdeen told *The Sunday Morning*.

“Once Rajapakshe took over as the subject minister, we had a very brief meeting where we discussed the matter of abolishing polygamous marriages over which the Muslim community was not very happy, on the basis that it derives from the Qur’an and on a religious perspective. There were a lot of appeals made towards the politicians and the Government and so Rajapakshe wanted us to forward some proposals regarding it.”

He revealed that the committee was presently discussing and looking to propose retaining polygamy, but with strict conditions for such marriages to be allowed, similar to legislations in other nations like Singapore.

“So what is being proposed is allowing polygamous marriages but under stringent conditions. As of now there are no conditions attached at all. The statute does not specify any conditions for you to get married more than once. We are thinking of introducing some conditions which exist in other jurisdictions; for instance, the Singaporean Act or the Malaysian Act permit polygamy subject to conditions.”

Among the criteria would be that the husband has the required finances to support multiple wives; the quantity of wealth will only be decided on a case-by-case basis and not through the legislation itself.

“The few things under consideration are that the husband should be financially sound, which would enable him to support both wives (or more wives). Property settlement to the first wife is also another condition. In legislation you can’t lay down all conditions, so certain things will have to be formulated. The person conducting the inquiry should be satisfied that the husband is financially able to support. It would differ from each standard of life. If you take the wealthiest person, his wealth would be quite different to a person at a lower level, so we cannot impose rigid conditions; it depends on a case-by-case basis.”

Haleemdeen said that the conciliator - the office replacing the Qazi court system - would be the deciding authority on approving a polygamous marriage, adding that as per their recommendations, a conciliator could be either male or female and appointed on merit.

“All this will be done at an inquiry and permission should be obtained before you get married. This inquiry will be held by the conciliator. There is no gender discrimination on whom the conciliator should be. If you have the qualification, you can be appointed as the conciliator, whether you’re a man or woman. The appointments will be done by the Judicial Service Commission.”

He assured that the committee would submit its final recommendations within a period of 14 days to the Minister in charge: “The deliberations are almost at the final stages. We will have to agree on the conditions and submit them to the Minister. This should be done in about 10 days or two weeks at the most.”

### **MPLRAG calls for complete abolishment**

However, the Muslim Personal Law Reform Action Group (MPLRAG) asserted that polygamy of any kind must be abolished, as evidence from other countries showed that conditional polygamy did not prevent injustices faced by women and children of such marriages.

“MPLRAG is concerned that polygamy is being proposed to be regulated with conditions. Examples from other countries like Malaysia with strict regulations have shown that such conditions do not work in stopping injustice faced by women and children in such marriages. We believe polygamy must be abolished in order to guarantee equality and justice in families.

“We have always maintained that comprehensive MMDA reforms are the way forward. MPLRAG now and in the future will continue to push for full legal equality and justice for Muslim women and girls in Sri Lanka and continue to monitor the substantive and procedural reforms in the future,” MPLRAG Co-Founder Hyshyama Hamin told *The Sunday Morning*.

She said while it was encouraging to know that MMDA reforms were in the pipeline as Sri Lankan Muslim girls and women had been waiting for such reforms for decades, urgent enactment of the amendment was needed to prevent ongoing issues such as increase in child marriages and corruption in Qazi courts.

“The MMDA with its current provisions has caused significant discrimination and hardship for Muslim women and girls for over 70 years. This Act needs to be amended urgently because during the pandemic and in the context of the economic crisis we are hearing of more cases of child marriages, increased maintenance-related hardships, increased divorces, and more cases of corruption in Qazi courts. MMDA reforms and family law reforms are a priority reform for Sri Lanka today because of the socioeconomic conditions of families.”

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