

# Sri Lanka: MMDA amendments: Calls mount for progressive reforms

Saturday 5 August 2023, by [GUNASEKARA Skandha](#) (Date first published: 15 July 2023).

**While condemning the recent recommendations given by Muslim Members of Parliament (MPs) on proposed amendments to the Muslim Marriage and Divorce Act (MMDA), civil society groups and lawyers have urged the Ministry of Justice to opt for progressive reforms and refrain from allowing such efforts from being railroaded.**

Attorney-at-Law Sabra Zahid expressed concern that the current provisions for divorce in the MMDA violated the rights of Muslim women and girls, posing a threat to the progress made in advancing their rights.

“The recommendations by the Muslim MPs on proposed reforms to the MMDA is an appalling attempt at undermining the progress that could be made towards the rights of Muslim women and girls. From a legal perspective, the recommendations - including mandatory wali, keeping the current divorce provisions intact, and not allowing women as marriage registrars - violates the civil rights of Muslim women and the fundamental rights stipulated under Article 12 of the Sri Lankan Constitution.

“The current divorce provisions and processes under the MMDA is one of the most problematic aspects of the Act. There are significant legal issues with the way that talaq (unilateral divorce by husband) and fasah (divorce by wife) is currently practised. These types of divorce and processes for obtaining them must be reformed to ensure fairness for women, men, and their families going through divorce. Retaining them will mean retaining this discrimination in its entirety.”

Zahid emphasised the importance of appointing female Quazis to ensure gender equality for Muslim women within the legal system.

“The recommendations by MPs are very vague about the appointment of female Quazis. The legal barrier for women to be judges in Quazi courts is an urgent matter of concern for Sri Lanka, as the position of a Quazi judge is a State-funded, State-appointed judicial position under the Ministry of Justice and the Quazi system is funded by Sri Lankan taxpayers. It is the only ‘official’ judicial position that excludes women.”

Zahid expressed the view that exceptions to the minimum age of marriage should not be allowed and that the State had the responsibility to ensure a consistent minimum age of marriage for all citizens.

They also emphasised the need for comprehensive reform of the MMDA to address all areas of discrimination, stating that any diluted amendments would perpetuate injustices against Muslim women and girls.

“They have also recommended having exceptions to the minimum age of marriage. Age of marriage is a child rights issue and not a family law matter. The State has the sole responsibility to ensure the same minimum age of marriage applies to all citizens of Sri Lanka without exceptions. The MMDA

must be reformed comprehensively to address all the areas of discrimination. Any watered-down version of amendments is not acceptable as it will continue the injustices faced by Muslim women and girls.”

### **Diluting amendments**

The Muslim Personal Law Reform Action Group (MPLRAG) also highlighted that the recommendations made by Muslim MPs resulted in diluted amendments to the proposed reforms.

“MPLRAG is deeply concerned about the amendments proposed by the Muslim MPs. The amendments proposed by the MPs are a heavily-watered-down attempt to appease the male scholars and conservative members of the Muslim communities. These do not centre or address the issues affecting Muslim women and girls under the MMDA today.

“The MPs in cahoots with the ACJU are only recognising the Shafi school of thought for amendments to the MMDA, which severely restricts the diversity and richness of jurisprudence that is possible in Islamic law,” MPLRAG Co-Founder Hyshyama Hamin told *The Sunday Morning*.

She stressed that most of the other Muslim-majority countries had implemented progressive laws that ensured the protection of all individuals within a Muslim family.

“Comprehensive reforms are also very much in line with the diversity of Islamic schools of thought. Similar to other majority Muslim countries (like Indonesia and Malaysia) and minority Muslim countries, Muslim family laws, including the MMDA, must take into consideration that Islamic legal tradition is rich in tools and traditions that allow for reform that will be most beneficial to Muslim families.”

Meanwhile, in a statement released on Thursday (13), the MPLRAG urged these MPs to recognise the long-term consequences of their stance and to review and reverse their decision in support of these regressive proposals.

Furthermore, the group urged the MPs to publicly support the affected Muslim women and girls who will be negatively impacted by such regressive measures.

“The MPLRAG emphasises the importance of representing the broad interests of building a positive Muslim identity within Sri Lanka’s plural society. They call on the Muslim MPs to uphold truly Islamic values and consider the long-standing advocacy efforts by Muslim women on MMDA reforms.

“Recognising the potential harm that regressive positions on MMDA reform may cause, the group urges the MPs to reconsider their support and instead work towards progressive reforms that will positively impact the lives of Muslim women and children.

“In addition to the call directed at Muslim MPs, the MPLRAG also addresses the Minister of Justice, urging him to maintain focus on the legislative process of reform that has been adopted thus far. They emphasise the importance of not allowing these efforts to be derailed and call for the pursuit of progressive reforms that will have a significant positive impact on the lives of Muslim women and children.

“The MPLRAG urges the Minister to refrain from conceding to the egregious proposals put forward by all male Muslim MPs, as it undermines the decades-long advocacy by Muslim women regarding MMDA reforms.”

The MPLRAG's statement highlights the need for a balanced and inclusive approach to MMDA reform, one that respects the rights and dignity of Muslim women and girls while upholding Islamic values.

By reconsidering regressive positions and embracing progressive reforms, Muslim MPs and the Minister of Justice can contribute to a more equitable and just society for all Sri Lankans.

### **MPs refusing to sign**

It is also learnt that three Muslim MPs have either refused to sign or withdrawn their signature from the recommendation document which was handed over to the Minister of Justice.

Samagi Jana Balawegaya (SJB) MP Kabir Hashim told *The Sunday Morning* that he had withdrawn his signature over the issue of appointment of female Quazi not being included.

"There was some disagreement about certain conditions imposed by some of the MPs and the document they have signed. There was also the issue of female Quazi. Some MPs have introduced a paragraph saying that females cannot be appointed to the Quazi court. We disagreed because there is no religious stipulation that women can't be in positions of responsibility, so we said that won't work. That was the main disagreement."

MP Hashim revealed that there were others who had not signed the document, including Minister of Foreign Affairs Ali Sabry.

"MP Rauff Hakeem and Minister Ali Sabry didn't sign. I signed because I didn't see that clause, but when I read it I cut my signature off. There are few more who didn't sign. Mujibur Rahuman was an MP when this was being initiated so he hasn't signed and there are quite a number of others."

He added that the validity of the recommendations was in question as there was no common consensus among all the Muslim MPs.

"It's not a question of the numbers or the divisions, it's a matter of the MPs being unanimous in their recommendation and being able to work within what the the religion really stipulates, rather than following customary procedures that some have got used to in the past. All faiths have gone through these processes where customs have been incorporated as a part of a religion."

### **Haleemdeen committee**

Minister of Justice Dr. Wijeyadasa Rajapakshe, meanwhile, has referred the recommendations of the muslim MPs to the committee headed by Attorney-at-Law Shabry Haleemdeen.

"We have been asked to present our observations on the recommendations. There has been no timeline given. I would not think it possible to make changes to that set of proposals, because they completely move away from the entire scheme of what was proposed by the committee," committee member and Attorney-at-Law Ermiza Tegal told *The Sunday Morning*.

The committee headed by Haleemdeen was appointed by former Justice Minister Ali Sabry to advise on the proposed amendments to the MMDA.

Other members of the committee include university lecturer Hakeem Abu Bakar, All Ceylon Jamiyyathul Ulama (ACJU) General Secretary Arkam Nooramith, and Attorneys-at-Law Sabana Gulbegum, Sheikh Muees Buhari, and Namik Nabat.

Repeated attempts to contact Justice Minister Rajapakshe, State Minister of Justice Anuradha Jayaratne, and Justice Ministry Secretary Wasantha Perara proved futile.

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**Skandha Gunasekara**

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