

# SRI LANKA



Many areas of Muslim family law in Sri Lanka are governed by the Muslim Marriage and Divorce Act No. 13 of 1951. Personal law reforms committees were appointed in 1986 and 1990 to consider reforms to the whole gamut of personal laws. The 1986 Committee was dissolved after opposition from Muslim communities over discussions of minimum age of marriage; the recommendations of the 1990 Committee are yet to be acted upon. More recent attempts by Muslim women to reform these laws so as to give justice and equality to women have met with little success. In the face of identity-based politics, a fragile balance of power in Parliament and the ongoing conflict, women in the minority Muslim community have been unable to rely on the State to reform the Muslim personal law in Sri Lanka.

## Equality in the Family is Necessary

Several discriminatory provisions of the Muslim Marriage and Divorce Act (the Act) must be reformed if women are to enjoy full equality as guaranteed by the Constitution:

- ▶ **Age of Marriage:** There is no minimum age of marriage for Muslim girls. A *wali* who wishes to give his daughter under the age of 12 in marriage must get the prior permission of the *Quazi*. While child marriage is rare, isolated cases exist. There is evidence that child marriage is being revived within displaced Muslim communities in the North Western Province.
- ▶ **Consent of the Bride:** While the Act recognises that consent of both parties is essential for a valid marriage, there is no space in the marriage register for the signature of the bride.
- ▶ **Polygamy:** In the Act, there is no obligation on the *Quazi* to find out whether husbands are able to treat all of their wives equally and justly. Husbands are only required to give notice of their intention to marry a subsequent wife; they need not obtain existing wives' permission
- ▶ **Prenuptial Contracts:** The possibility of a woman entering into stipulations or conditions to the Muslim marriage contract that will protect her independence and autonomy is not specifically recognised in the Act.
- ▶ **Kaikuli:** *Kaikuli*, or money and gifts given by the bride's parents to the bridegroom to be kept in trust for the bride, has been statutorily recognised and is widely practised, though it is un-Islamic. *Kaikuli* places a heavy financial burden on brides' families, who have been known to go into lifelong debt to find *kaikuli* for their daughters. Most men are unaware of the fact that gifts given as *kaikuli* are to be kept in trust by the bridegroom for the bride, so it is often extremely difficult to retrieve the property on divorce or separation. *Quazi* courts have no jurisdiction in respect of property that has been given to the bridegroom; such property must be recovered from the District Courts.
- ▶ **Divorce by the husband:** A husband who wishes to divorce his wife need not give any reasons for doing so.
- ▶ **Maintenance for divorced women:** Muslim women are only entitled to maintenance for the period of *iddah*, though Qur'anic verses on maintenance convey that they are entitled to that which is equitable or responsible.
- ▶ **Women Quazis and Women Registrars:** Only male Muslims can hold the office of *Quazi* and marriage registrar.

## Equality in the Family is Possible

- ▶ A personal law reforms committee appointed in 1990 to examine the Muslim personal law made a number of recommendations that promote equality and justice in the family, though these recommendations have not yet been implemented.
- ▶ There have been some positive developments at the level of implementation in the *Quazi* Court System as a result of engagement by the Muslim Women's Research and Action Forum (MWRAF) with *Quazi* judges. The Board of *Quazis* now recognises the concept of *matah* and *Quazi* judges have been granting *matah* to women.
- ▶ In January 2006, MWRAF initiated an Independent Committee for Muslim Personal Law Reforms, comprised of the Former Chairman of the Board of *Quazis*, a few *Quazi* judges, a representative from the Judicial Service Commission and NGO representatives, to suggest reforms to the present Act. Members of this committee have held several consultative sessions with various sectors of the Muslim community, including mosque trustees and citizens within various jurisdictions, clients of barefoot legal counsellors of MWRAF, the *Quazi* Judges Forum, and a research team that has been studying the issues for a long time. The suggestions and recommendations generated through these consultations have been included in a new draft Muslim Marriage and Divorce Act. Further consultations based on this new draft will take place in the coming months.

Source: Report submitted to Musawah in English by Muslim Women's Research and Action Forum (MWRAF), an NGO registered in 1990 whose members began working on critical issues facing Muslim women in Sri Lanka in 1976 and were involved in the 1986 personal law reforms committee.