

# Report to the Global Movement for Equality and Justice in the Muslim Family

From  
Muslim Women's Research and Action Forum, Sri Lanka

## Part A: Introduction

This report is being submitted by MWRAF based on its own experience of advocacy for Muslim Personal Law Reform in Sri Lanka. The Muslim Women's Research and Action Forum was started in 1976 by a few Muslim women who gathered together at informal meetings to discuss critical issues facing Muslim women in Sri Lanka such as the low rate of literacy within the community, school drop out rates among girls, the small percentage of professional women emerging from the community and the discriminatory aspects of the personal law. When the government appointed a personal law reforms committee in 1986 to consider reforms to the whole gamut of personal laws, and the Muslim members of the committee broke away to form a separate sub committee to consider reform of Muslim laws, the group formally established as an NGO and engaged with the reforms process. It was registered as a NGO in 1990.

## Part B: Equality and Justice are Necessary: The Need for Muslim Personal Law Reform in Sri Lanka

The Muslim Women's Research and Action Forum since its inception has been studying and monitoring the implementation of Muslim Personal Law. The Muslim Personal law in its present form has several discriminatory provisions which need to be reformed if women are to enjoy full equality guaranteed by the Constitution of Sri Lanka. Below we highlight several areas and provisions under the present law which we feel is not in keeping with the Quranic spirit which recognises that women must be treated fairly.

### Age of Marriage

There is no minimum age of marriage for Muslim girls in Sri Lanka. The present law merely provides that 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 are rare in Sri Lanka, there are isolated cases. MWRAF has also documented the revival of child marriage within displaced Muslim communities in Puttalam, North Western Province of Sri Lanka.

### Consent of the Bride.

While the Muslim Marriage and Divorce Act No. 13 of 1951 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. We therefore recommend that the Muslim Marriage Register should be amended so as to allow a woman to sign the register.

### Polygamy.

In terms of the sec secs.24(1) –(4) of the Act of 1951 which now regulates polygamy in Sri Lanka, the husband is only required to give notice of his intention to marry a second , third or fourth time. It does not impose an obligation on the Quazi to find out whether the husband is in fact able to treat all his wives equally and justly or even obtain the wife/wives permission. This is a lacuna in our law, which needs to be filled.

### Prenuptial Contracts

Marriage in Islam is a contract, which both parties enter with free and full consent. This has important implications for women. Although legal provisions may place women in an unequal position, it is possible for women to enter into stipulations or conditions, which protect her independence and autonomy. The present Act needs to specifically recognise that parties about to embark on a Muslim marriage can enter into a pre-nuptial contracts. The right to enter pre-nuptial contracts was also recognised by the Committee appointed in 1990 and we endorse the Committee's recommendation to amend Form 4 – Section 18 (2) by the inclusion of a new cage under the heading "any other conditions".

### Kaikuli

Kaikuli (i.e. given by the parents of the bride to the bridegroom to be kept in trust for the bride) which has been statutorily recognised in Sri Lanka is completely unislamic. The concept of kaikuli has reduced Muslim marriage to a transaction between buyer and seller, and places a heavy financial burden on the bride's family. Parents of Muslim women have got into lifelong debt to find kaikuli for their daughters. Although gifts given as kaikuli are to be kept in trust by the bridegroom for the bride most men are unaware of this condition and it becomes extremely difficult to get it back on divorce or separation. The recovery of kaikuli on divorce has been further complicated by the fact that Quazi courts have no jurisdiction in respect of property, which has been given to the bridegroom. Property given as Kaikuli has to be recovered from the District Courts as well as other gifts which have not been entered in the marriage register.

The committee of 1990 merely recommended that all reference to kaikuli in the Act be substituted with the term "marital gifts". We feel that is totally insufficient to ensure the recovery of kaikuli by the wife.

We suggest that an amendment should be made to the Act on the following lines :

1. ensure that all transactions by way of kaikuli (whether cash, or property) is mandatorily entered under form 4. At present it is not obligatory to enter kaikuli in the marriage register form. Failure to do so should be made an offence punishable by law. The onus of entering the kaikuli in the marriage register should be placed on the wali, the bridegroom and the register of marriages.
2. Putting down of false entries should also be severely punished.
3. Furthermore, to recognise that kaikuli could include immovable property (such as land and houses) but make provision to ensure that immovable property which is given as kaikuli by the brides parents should be written in the brides name and not the bridegroom's name. Muslim law recognizes that a woman has the capacity to own, sell, buy and enter into any sort of contract on her own, so there is no need for the husband to act as trustee. Also make provision to ensure that transfer of property between husband and wife should be made under the authority of Quazi or other court.

### Divorce by the husband

Under the present provisions of the Muslim Marriage and Divorce Act (See Rule 3 of the Second Schedule), a husband who wishes to divorce his wife need not give any reasons for his doing so. This provision we feel can totally undermines efforts at reconciliation by the Quazi and should be amended. Although Islam recognises that where parties cannot live in

harmony together divorce should be allowed , it is also seen as the most repugnant thing allowed by god and should be restored to only when there is no other choice.

#### Maintenance for divorced women

Under the Muslim Marriage and Divorce Act a Muslim woman is only entitled to maintenance for the period of iddah. I.e. for three months after divorce. The Quranic verses on maintenance however make it clear that a Muslim woman on divorce is entitled to maintain which is equitable or responsible. We would like to suggest that in addition to iddah maintenance a divorced Muslim wife should be entitled to compensation or what is known under Muslim law as *Matah* to be decided by the Quazi taking into account the length of the marriage ,the financial means of the husband , and reason for divorce. For Muslims women do not even obtain a reasonable amount as *mahr* , which is the gift that a Muslim man must give his bride on marriage as a mark of respect for her. It is well known that mahr in Sri-Lanka is a very nominal sum amounting to Rs.101/- or 1001/-

#### Women Quazis & Women Registrars

In terms of the Act only male Muslims can hold the office of quazi and marriage registrar. We maintain that men and women should have equal right to be appointed as quazis and registrars of Muslim marriages.

#### Part C: Equality and Justice Are Possible

As a result of MWRAF engagement with Quazi judges in Sri Lanka, there have been some positive development at the level of implementation of Muslim Law through the Quazi Court System. The Board of Quazis have now recognized the concept of Matah and has been granting Matah to women.

In January 2006, MWRAF took the initiative to appoint an Independent Committee for Muslim Personal Law Reforms (ICMPLR) to suggest reforms to the present Muslim Marriage and Divorce Act. The committee comprises the Former Chairman of the Board of Quazis, a few quazi judges, a representative of the Judicial Service Commission, and representatives from MWRAF. This independent committee has had several consultative sessions with members of the Muslim community. These consultations included:

- quazi judges held islandwide public meetings with mosque trustees as well as ordinary citizens within their own jurisdictions
- barefoot legal councillors of MWRAF held discussions with their clients/ constituents and documented areas and issues of concern to them
- The Quazi Judges Forum also had separate discussions and sent in their views
- MWRAF research team which had worked on this issue over a long period of time sent their own suggestions.

The suggestions and recommendations which were generated through these consultations were collated, summarized and now included in a new Draft Muslim Marriage and Divorce Act which addresses the discriminatory aspects of the present law. Further consultations with the Muslim community based on this new draft will take place in the coming months. The first meeting to discuss the proposed draft bill with eminent persons of the Muslim community will take place on 2<sup>nd</sup> November 2008.

#### Part D: Needs

Muslim law in Sri Lanka has been reformed on the initiative of male elites of the community in 1929 and 1956 in an attempt to bring the law more in line with the 'true spirit of Islam'. More recent attempts by Muslim women to reform these laws so as to give

justice and equality to women have however met with little success. In the face of identity based politics and the fragile balance of power in parliament, minority Muslim women have been unable to rely on the state to reform MPL in Sri Lanka.

The agenda for reform of MPL in Sri Lanka advocated by MWRAF has consistently been reform from within the framework of Islam. However as a Muslim women's group questioning or reformulating 'Muslim Laws' has not been easy. MWRAF is constantly looking to improve its knowledge on the sources of these laws, feminist interpretations and progressive legislation in other countries.

### **List of MWRAF Publications on Muslim Personal Law in Sri Lanka:**

(2007) The Board of Quazis' Law Report (Vol -I) This is the 1st Volume of the completion of the orders made by the Board of Quazis from 2001 to 2002. After the publication of 6 volumes by the Government in relation to cases decided under the Muslim Marriage and Divorce Act decided from 1834 to 1990. MWRAF, undertook this task to compile judgments delivered by the Board of Quazis. This publication will be of immense value to judges, lawyers, researchers and to all those who have an interest in the subject

(2002) Divorce- Legal literacy Booklet No. 2 (Tamil & English) The booklet explains the Muslim law of divorce and the rights of women after divorce focusing on both positive and negative aspects of the law. It is written in a simple style and is colorfully illustrated.

Marsoof, Saleem (2001) The Quazi Court System in Sri Lanka and its impact on women. This publication analyses the Quazi Court System in Sri Lanka from the point of view of women highlighting the need for law reform to ensure equality and justice for women within Muslim law.

(2000) Marriage: Legal Literacy Booklet No. 1 (Tamil & English) This little booklet gives you an introduction to Muslim Law in Sri Lanka in the areas of Marriage, Dowry and Maintenance. Written from the point of view of women, it highlights both positive and negative aspects of the law and is colorfully illustrated for easy reference.

Goonesekara, Savitri (2000) Muslim Personal Law in Sri Lanka : Some Aspects of the Law on Family Relations. This is a history of Muslim personal law in Sri Lanka from colonial times to the present

Kodikara, Chulani (1999) Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women. This is a comprehensive study of Muslim Personal Law related cases in Sri Lanka in the areas of marriage, divorce, dowry, maintenance, custody of children and divorce settlements

Ramani Muttetuwegama (1997) Parallel Systems of Personal Law in Sri Lanka. This booklet compares the parallel systems of personal law applicable in Sri Lanka, and highlights the legal situations and provisions, which place Muslim women either in an advantageous, or disadvantageous position compared with women from other communities in Sri Lanka.

### **Articles about MWRAF work:**

Kodikara Chulani (2003) Engaging With Muslim Personal Law in Sri Lanka: The Experience of MWRAF in *Lines*, August 2003 at [www.lines-magazine.org](http://www.lines-magazine.org) and also published by the Social Scientists' Association, Sri Lanka.

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