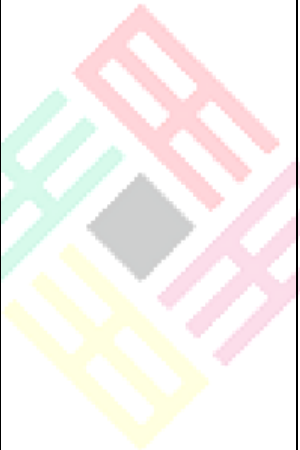


## SRI LANKA<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at 18 May 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or</i></p>	<p>There is a constitutionally enshrined provision on equality.<sup>23</sup></p> <p>However, Article 16(1) of the Constitution states that: “<i>all written and unwritten law that existed prior to the 1978 Constitution is ‘valid and operative’</i>. This exempts laws such as the Muslim Marriage and Divorce Act (MMDA) 1951 which governs marriages of Sri Lankan Muslims and the Muslim Intestate Succession</p>		<p>Sri Lanka has not made any specific reservations to CEDAW.<sup>8</sup></p> <p>In 2017, CEDAW Committee in its Concluding Observations on Sri Lanka recommended that the country accelerate its law reform process,</p>		<p>In 2021, Sri Lanka ranked 116 out of 156 countries in the World Economic Forum’s Global Gender Gap Index.<sup>12</sup></p>

- <sup>1</sup> This table was originally formulated as part of a 2016-2017 Musawah project to map Muslim Family Laws globally led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Sri Lanka country table, we would also like to thank Kierra Jones and Divya Srinivasan from Harvard Law School, and Walaa Kadhem for their inputs in its original preparation. This table was last updated in 2022 as part of the Campaign for Justice in Muslim Family Laws by Ermiza Tegal of Muslim Personal Law Reforms Action Group (MPLRAG), Sri Lanka with valuable feedback provided by Hyshyama Hamin and the Musawah Team.
- <sup>2</sup> Constitution of Sri Lanka, 1978, Art. 12. <http://www.parliament.lk/files/pdf/constitution.pdf>. Article 12 states “(1) All persons are equal before the law and are entitled to the equal protection of the law. (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.”
- <sup>3</sup> Constitution of Sri Lanka, 1978, art. 16(1). <http://www.parliament.lk/files/pdf/constitution.pdf>. Article 16 (1) states that “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.”
- <sup>8</sup> UN Women, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>
- <sup>12</sup> World Economic Forum, “Global Gender Gap Index 2016”, Table 3, pp. 10-11, [http://www3.weforum.org/docs/GGGR16/WEF\\_Global\\_Gender\\_Gap\\_Report\\_2016.pdf](http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf)

<p><i>are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Act 1931 which governs inheritance rights, from complying with fundamental rights guaranteed to all citizens.</p> <p>There is no specific constitutional provision recognizing marriage as a partnership between equals.</p> <p>The law relating to marriage is codified. The general law applicable to all except Muslims is the General Marriage Registration Ordinance (GMRO) of 1907, which is couched in a language of equality.<sup>4</sup> The Kandyan Marriage and Divorce Act of 1952 which is a personal law applicable to persons originating from a particular geography, has some gender specific language creating advantages and disadvantages for women based on class. The general law does not prevent Kandyans from choosing to marry under the general law.</p>		<p>with the full participation of women, and ensure, within a specific time frame, the review and repeal of all discriminatory laws that violate fundamental rights particularly all personal laws including Muslim law relating to inheritance, regulating legal capacity, marriage, divorce and child custody.<sup>9</sup></p> <p>The Committee also recommended that the State party</p> <p>(a) Prepare a unified family</p>		
--	--	---	---	--	--

<sup>4</sup> Marriage Registration Ordinance, 1907, [http://www.hrsl.lk/PFF/Library\\_Domestic\\_Laws/Legislation\\_related\\_to\\_children/Marriage%20\(general\).pdf](http://www.hrsl.lk/PFF/Library_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)

<sup>9</sup> MPLRAG website provides relevant information relating to the CEDAW Concluding Observations on Sri Lanka - <https://www.mmdasilanka.org/treaty-body-reporting/>

	<p>The Matrimonial Rights and Inheritance (Jaffna) Ordinance applies only to persons identifying as Jaffna Tamils. The law does not govern entry into marriage or divorce, only rights of spouses within a marriage. The main discriminatory provision embedding gender stereotypes is the one restraining wives from disposing matrimonial property unless consent is obtained from the husband.</p> <p>However, Muslims who marry within the faith are specifically and explicitly exempted from the GMRO<sup>5</sup>.</p> <p>The law applicable to Sri Lankan Muslims marrying within the faith is the Muslim Marriage and Divorce Act of 1951 (MMDA).<sup>6</sup> Muslims who wish to marry partners of a different faith can only marry under the GMRO and do not</p>		<p>code in conformity with the Convention in which equal rights of women and men in the family relations, including marriage, divorce, inheritance, property and land are addressed;</p> <p>(b) Amend the General Marriage Registration Ordinance to ensure that Muslim women have the free choice to opt out from the Muslim Personal Law, so as to be registered under the general law;</p> <p>(c) Ensure that property rights are</p>		
--	--	--	--	--	--

<sup>5</sup> See Full title of the Marriage Registration Ordinance, 1907 - "An Ordinance To Consolidate And Amend The Law Relating To Marriages Other Than The Marriages Of Muslims And To Provide For The Better Registration Thereof".

[http://www.hrcsl.lk/PFF/Library\\_Domestic\\_Laws/Legislation\\_related\\_to\\_children/Marriage%20\(general\).pdf](http://www.hrcsl.lk/PFF/Library_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)

<sup>6</sup> Muslim Marriage and Divorce Act, 1951, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

	<p>have the option of marrying under the MMDA.</p> <p>The Muslim community in Sri Lanka is diverse and includes members of the two main sects; Sunni (majority) and Shi'a. While the MMDA is based on the <i>Shafi'i madhab</i>, it provides space for the unwritten law of different sects to apply in certain instances<sup>7</sup> so what may be permissible for a Hanafi bride may not be permissible for a Shafi'i bride and so forth.</p> <p>Muslims are also exempted from making applications for maintenance on behalf of the child or spouse under the general law known as the Maintenance Act of 1999. The Maintenance Act applies to all other citizens and the language of law does not gender stereotyping. Muslim women and children are able claim maintenance only in terms of the MMDA. The scheme of the law is such that it recognizes men as primary providers and women are primary caregivers.</p>		<p>governed by general civil contractual and property law rather than religious law;</p> <p>(d) Increase the minimum age of marriage for all women in the State party to 18 years of age;</p> <p>(e) Eliminate any restriction on women's eligibility to be appointed as Quazis, as Members of the Board of Quazis, Marriage Registrars and adjudicators; and,</p> <p>(f) Amend article 363 of the Penal Code to ensure that the crime of statutory rape applies to all girls under the age of</p>		
--	---	--	--	--	--

<sup>7</sup> Muslim Marriage and Divorce Act, 1951, s. 16, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

			<p>16, without exception.<sup>10</sup></p> <p>In March 2020, as part of the followup to CEDAW's Concluding Observations, CEDAW recommended Sri Lanka "<i>Expedite the amendment of all Personal Laws, including the Muslim, Kandyan and Tesawalamai Personal Laws, to remove discriminatory provisions regulating ownership, inheritance, transfer and disposal of land and property, as well as provisions regulating legal capacity, marriage, divorce,</i></p>		
--	--	--	---	--	--

<sup>10</sup> MPLARG, "Treaty Body Reporting – CEDAW overview" January 2017 <https://www.mmdasrilanka.org/treaty-body-reporting/>

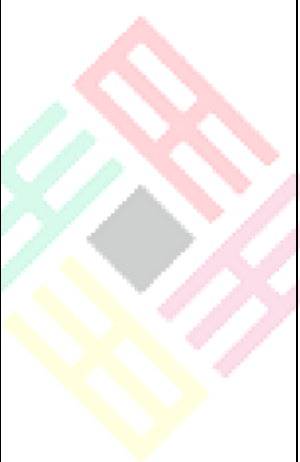
			<p><i>and child custody.”</i></p> <p>In 2020, a Memorandum dated 11.11.2020 was tabled in Cabinet by the Minister of Justice recommending approval for reforms to the MMDA. This memorandum was approved. In June 2021 a report was submitted by the Advisory Committee on Muslim Law Reforms to the Ministry of Justice purporting to propose comprehensive reforms addressing many areas of concern.<sup>11</sup> This report and the</p>		
--	--	--	---	--	--

<sup>11</sup> Daily News, “Advisory Committee on Muslim Law Reforms submits MMDA Reports”, 29 June, 2021  
<https://www.dailynews.lk/2021/06/29/local/252678/advisory-committee-muslim-law-reforms-submits-mmda-report>

			<p>consequent draft legislation has not been made public.</p> <p>In an unusual policy decision that appears to be attempting to restrict Sri Lankan Muslims marrying non Sri Lankans, a circular dated 18th October 2021 by the Registrar General was issued. It states that non-Sri Lankan persons will have to obtain Defence Ministry clearance prior to registering a marriage with any Sri Lankan citizen.</p>	
<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age</i></p>	<p>The GMRO prescribes that the minimum age for marriage for both men and women is 18 years.<sup>13</sup></p>	<p>Any case law of underage marriages involving Muslim? Would be good if you can name one or two highlighted cases- if any.</p>	<p>Since 2019 policy discussions at the highest level, Cabinet of Ministers, attempted to address the issue</p>	<p>For the years 2014 to 2016, there were a total 5491 marriages registered in which the bride was under the age of 18.</p> <p>These are statistics by the Registrar General's</p>

<sup>13</sup> Marriage Registration Ordinance, 1907, s. 15, [http://www.hrcsl.lk/PFF/Llibrary\\_Domestic\\_Laws/Legislation\\_related\\_to\\_children/Marriage%20\(general\).pdf](http://www.hrcsl.lk/PFF/Llibrary_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)



<p><i>without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>However, under the MMDA there is no minimum age of marriage specified for Muslims.<sup>14</sup> The Act only specifically states that for a Muslim child (male or female) under the age of 12 to marry, the Quazi judges' approval is required.<sup>15</sup></p> <p>According to the Sri Lankan Penal Code, sexual intercourse with a girl below 16 years of age, with or without her consent, amounts to statutory rape.<sup>16</sup> However, this provision does not apply to married girls between ages of 12 and 16, unless the spouses are judicially separated.<sup>17</sup> Since only Muslim girls between the ages of 12-16 are legally allowed to be married, this exception legally and practically</p>		<p>of introducing a minimum age of marriage of 18 years to the MMDA with an option for 16-17 year olds to marry with the permission of a Quazi.<sup>19</sup></p> <p>Memorandum dated 11.11.2020 presented by the Ministry of Justice to the Cabinet of Ministers recommending approval for reforms to the MMDA including introduction of a minimum age of marriage of 18</p>	<p>Department to the Committee considering reform to the Muslim Marriage and Divorce Act (2008-2018). The data only reflects registered marriages and not cases in which the age of the bride was falsified.</p> <p>Marriages registered for the years between 2012 and 2014 involved brides as young as 12 and 13 years of age. However, the ages in which the most number of Muslim underaged marriages were at 16 and 17 years. Case studies collected by women's organizations demonstrated that girls married at 16 and 17 do not complete their O'Level or A'Level exams, resulting in inability to pursue further studies, being subjected to domestic</p>
--	--	---	--	---

<sup>14</sup> Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 10, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en)

<sup>15</sup> Muslim Marriage and Divorce Act, 1951, s. 23, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>16</sup> Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

<sup>17</sup> Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

<sup>19</sup> Joint Memorandum by the Ministry of Justice and Prison Reforms led by Minister and Attorney-at-Law Thalatha Atukorale and the Ministry of Postal Services and Muslim Religious - 2019/Cab Memo/J/55 bearing reference to MOJ/I(I)/MUS.COM/2018(II)] and joint Cabinet paper dated 10 August 2019.



	<p>applies only in relation to Muslim girls.<sup>18</sup></p>		<p>years without any exceptions.<sup>20</sup></p>	<p>violence and having very limited employment opportunities (economic independence).</p> <p>Cases coming to the attention of women's organizations working at the community level, as well as Quazi courts, indicate early marriage is prevalent.</p> <p>Records on Muslim marriage registration in Kattankudy indicate that in 2015, 22% of all registered marriages involved a bride below 18 years of age.</p> <p>○ This is a considerable increase from 2014 when the figure was 14%. According to the Quazi for Colombo East, there are also many instances of early marriages</p>
--	---	--	---	--

<sup>18</sup> Savitri Goonasekere and Harini Amarasuriya, "Emerging Concerns and Case Studies on Child Marriage in Sri Lanka", *UNICEF*, 2013, p. 5, [https://www.unicef.org/srilanka/2013\\_Child\\_Marriage\\_Case\\_Studies.pdf](https://www.unicef.org/srilanka/2013_Child_Marriage_Case_Studies.pdf)

<sup>20</sup> Cabinet Paper No. 20/1865/330/035

					happening in areas like Mattakkuliya and Maradana. According to interviews by local activists, the Quazi for the minority Muslim community in Colombo also mentioned that girls of the community mostly get married between 15 and 17 years of age, because according to him, “the value of the girl decreases after she is 17.” <sup>21</sup>
<p><b>Women’s consent to marriage</b></p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women’s</i></p>	<p>Under the general law both parties to the marriage are required to consent and place their signature on the marriage registration forms.</p> <p>Under the MMDA, the consent of bride is not explicitly required to enter into marriage and her</p>	<p>In <i>Yaseem v. Noor Naeema</i>, a girl’s father, acting as her <i>wali</i>, had registered her marriage without her knowledge or consent. The girl petitioned for divorce on the grounds that she had been unaware of the registration and that</p>	<p>Between July and August 2019, Muslim members of Parliament agreed on some reforms to the MMDA. This culminated in a proposal to the Cabinet of Ministers (the institution vested</p>	<p>Every marriage concluded between Muslims needs to be registered immediately after the conclusion of the <i>nikah</i> ceremony.<sup>24</sup></p>	<p>There are several documented cases of forced marriage of girls and women by <i>walis</i> who abuse their legal authority and compel women and girls into marriage.<sup>26</sup></p> <p>It has been encouraging to observe participation of Muslim women in public</p>

<sup>21</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p.6, <https://mplreforms.com/unequal-citizens-study/>.

<sup>24</sup> Muslim Marriage and Divorce Act, 1951, s.17, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>26</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 11, <https://mplreforms.com/unequal-citizens-study/>. Adilah Ismail, “We sign everything else except our own marriage document” 4<sup>th</sup> July 2021 accessed at <https://www.sundaytimes.lk/210704/plus/we-sign-everything-else-except-our-own-marriage-document-447726.html>

<p><i>rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>signature is not required to register a marriage<sup>22</sup>.</p> <p>The practice is different for the Dawoodi Bohra community of the Shi'a sect, in which the community has a unique marriage form, which has a provision for the bride to sign as a method of securing consent in some formal manner.</p>	<p>she did not consent to the marriage. However, the <i>Quazi</i> held that the marriage was valid since the father had the right to give his daughter in marriage, without her consent.<sup>23</sup></p>	<p>with power to initiate law reform proposed by the government) Among these was to permit the bride to sign the marriage register.</p> <p>On 11<sup>th</sup> November 2020, a newly appointed government proposed to the Cabinet that the consent of the bride to a marriage must be mandatory.</p> <p>No reform to the law has been effected at the date of finalizing this document.</p>	<p>However, non-registration does not affect the validity of the marriage.<sup>25</sup></p>	<p>campaigns demanding for the right to sign their marriage documents<sup>27</sup> and speaking out against the legal disability to do so<sup>28</sup>. Very recently, there have been at least three known instances in which the signature of the bride was obtained during the registration of marriage (even though the form does not provide for it) in response to requests/insistence by brides and their families and as a result of marriage registrars willing to comply as a sign of good practice.</p>
<p><b>Women's capacity to enter into marriage</b></p>	<p>Under the MMDA, majority of adult Muslim women cannot</p>		<p>Between July and August 2019,</p>		<p>The social practice is largely to require a wali to</p>

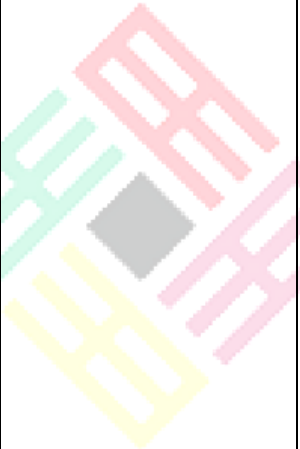
<sup>22</sup> Muslim Marriage and Divorce Act, 1951, s.19, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>23</sup> 3 MMDLR 113, as quoted in Eugene Cotran, M.Lau (eds.) *Yearbook of Islamic and Middle Eastern Law*, Vol, 10, 2003-04,p. 138 (Brill Academic Publishers, 2006).

<sup>25</sup> Muslim Marriage and Divorce Act, 1951,s. 16, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>27</sup> MPLRAG Let Her Sign campaign highlighting voices of Muslim women demanding the right to sign marriage documents - [https://www.youtube.com/watch?v=dhl\\_iID\\_zM0](https://www.youtube.com/watch?v=dhl_iID_zM0)

<sup>28</sup> Adilah Ismail, "We sign everything else except our own marriage document" 4<sup>th</sup> July 2021 accessed at <https://www.sundaytimes.lk/210704/plus/we-sign-everything-else-except-our-own-marriage-document-447726.html>

<p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>enter a marriage of their own free will and require the permission of a male guardian.</p> <p>Section 19 of the MMDA states that marriage register can only be signed by the <i>wali</i> of the bride, if having a <i>wali</i> is required by the Muslim law governing the sect to which the bride belongs.<sup>29</sup></p> <p>Section 47 of the MMDA states that the requirement of the <i>wali</i> can only be dispensed with if the woman complains that her <i>wali</i> is withholding consent unreasonably or if there is no <i>wali</i>, and the <i>Quazi</i> inquires into such situations and decides to dispense with the need for a <i>wali</i>.<sup>30</sup></p> <p>While under the Hanafi <i>madhab</i>, the marriage of an adult (and sane) woman without the approval of her <i>wali</i> is valid if she marries a person who is deemed 'legally suitable' (<i>kuf'u</i>). Therefore, technically a Hanafi woman can marry without a</p>		<p>Muslim members of Parliament decided to maintain the role of the wali in the marriage.</p> <p>In a summary released by the Advisory Committee on Muslim Law Reforms, it was stated that the role of marriage guardian should not be mandatory. Details were not provided.</p> <p>No reform to the law has been effected at the date of finalizing this document.</p>	<p>play the role of guardian in marriage proceedings. There is strong recourse to Islamic jurisprudence and sentimental reasons provided in justifying this guardianship role particularly by politicians</p> <p>·</p> <p>Ignorance about the ability of Hanafi women to consent to marriage with a wali means that in the majority of cases regardless of whether the bride identifies as Hanafi, Shafi'i or from any other <i>madhab</i>, the <i>wali</i> signs and consents on her behalf<sup>31</sup>.</p>
--	--	---	---	--

<sup>29</sup> Muslim Marriage and Divorce Act, 1951, Section 19, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>30</sup> Muslim Marriage and Divorce Act, 1951, Section 47, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>31</sup> Marsoof, Saleem 2012, Muslim Matrimonial Law – Some Grey Areas [https://www.academia.edu/9905307/Muslim\\_Matrimonial\\_Law\\_-\\_Some\\_Gray\\_Areas](https://www.academia.edu/9905307/Muslim_Matrimonial_Law_-_Some_Gray_Areas)

	<i>wali's</i> consent as the section 18.1(b) of the MMDA allows for the law of the sect to govern.				
<p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>Polygamy is permitted under the MMDA and a Muslim man is permitted to marry up to four women legally, and any subsequent marriage thereafter is considered "irregular".<sup>32</sup></p> <p>There are no conditions or criteria stipulated in the law for a man to marry more than one woman. There is no legal requirement for the man to obtain the permission of the existing wife. The man is only required to provide a 30 day administrative notice to the <i>Quazis</i> in the area he resides, his existing wife resides, and the intended wife resides.<sup>33</sup></p>		<p>In March 2021, the Cabinet of Ministers decided to abolish the provision enabling to polygamy in the MMDA.<sup>34</sup></p>	<p>There is no provision made in the marriage registration form to formally record existing marriages.<sup>35</sup></p> <p>The <i>Quazi</i> is required to post the notice at each of the <i>Jumma</i> mosques within his area, and also at a conspicuous place at the address of the existing or</p>	<p>According to activists, the unrestricted 'right' of polygamy means that Muslim men who are unable to maintain plural marriages are still able to enter them, thereby placing multiple women and children in vulnerable situations. Many Muslim women who find themselves in polygamous marriages were unaware that they were part of plural marriages and were unable to exercise any agency and autonomy on the matter.<sup>39</sup></p> <p>For women, attempts at speaking out about the husband's decision to take another wife is likely to result in ill-treatment,</p>

<sup>32</sup> Muslim Marriage and Divorce Act, 1951, Section 24, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>33</sup> Muslim Marriage and Divorce Act, 1951, s. 24, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>34</sup> Daily News, "Advisory Committee on Muslim Law Reforms submits MMDA Reports", 29 June, 2021 <https://www.dailynews.lk/2021/06/29/local/252678/advisory-committee-muslim-law-reforms-submits-mmda-report>

<sup>35</sup> Muslim Marriage and Divorce Act, 1951, Form IV, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>39</sup> MPLRAG Policy Paper on Polygamy in Sri Lanka (Updated March 2022) available <https://www.mmdasrilanka.org/wp-content/uploads/2022/03/UPDATED-2022-Position-Paper-3-Polygamy.pdf>

				<p>intended wives, as provided by the husband.<sup>36</sup></p> <p>However, in practice, <i>Quazis</i> often do not post this notice, leave the responsibility to the husband, or in some case, the mosques do not allow the posting of such notices.<sup>37</sup></p> <p>Furthermore, non-declaration of existing marriage at the time of registering another only</p>	<p>domestic violence and mental trauma. In some instances, women are threatened and forced to live in plural marriages.</p> <p>Furthermore, family and <i>Quazis</i> often blame women when their husbands take another wife. Thus, there are also serious financial consequences, including financial loss, for wives and children in polygamous marriages. Anecdotal evidence suggests that husbands have divorced previous or subsequent wives on the basis of being financially incapable of sustaining plural marriages.<sup>40</sup></p>
--	--	--	--	---	--

<sup>36</sup> Muslim Marriage and Divorce Act, 1951, s. 24(3), [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>37</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 18, <https://mplreforms.com/unequal-citizens-study/>, p. 18

<sup>40</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 18, <https://mplreforms.com/unequal-citizens-study/>.



				attracts a fine of Rs 100.00 (USD 0.66). <sup>38</sup>	
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce</i></p>	<p>There is no equal right to divorce under the MMDA. MMDA provides a form of divorce called “<i>talaq</i>” for men, and “<i>fasah</i>” for women. <i>Talaq</i> does not require the husband to have specific grounds or basis for divorce,<sup>41</sup> while <i>fasah</i> is fault based in the sense the wife has to prove a form of matrimonial fault or insanity or impotence. <i>Fasah</i> is the only form of divorce for a wife where she does not need the husband's consent for divorce.<sup>42</sup></p> <p>In case of unilateral divorce initiated by the wife, when the required mediation fails, the Quazi is required to appoint three Muslim males to hear and</p>			<p>The registration of divorce is provided for under the provisions of the MMDA.<sup>47</sup> However, lack of registration does not affect the validity of the divorce.<sup>48</sup></p> <p>The MMDA specifically prohibits the <i>Quazi</i> from recording the alleged reasons or</p>	<p>Women of the Shi'a sects cannot divorce without the prior consent of their husband, as sect law does not recognise women's right to divorce.<sup>50</sup></p> <p>As <i>talaq</i> entails a minimum compensation also being provided, there have been several reported cases of women being subjected to violence compelling them to file for <i>fasah</i> divorce, which as a practice does not result in compensation for the woman.<sup>51</sup> There were also experiences of women who had applied for child maintenance having their cases converted to <i>fasah</i></p>

<sup>38</sup> Muslim Marriage and Divorce Act, 1951, s. 85, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>41</sup> Muslim Marriage and Divorce Act, 1951, s. 27, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>42</sup> Muslim Marriage and Divorce Act, 1951, s. 28, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>47</sup> Muslim Marriage and Divorce Act, 1951, Part III, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>48</sup> Muslim Marriage and Divorce Act, 1951, s. 16, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>50</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 15, <https://mplreforms.com/unequal-citizens-study/>.

<sup>51</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 16, <https://mplreforms.com/unequal-citizens-study/>.



<p><i>delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>determine the case. At least two witnesses from the wife's side are required to corroborate her side of the story (unless the husband admits to fault).<sup>43</sup></p> <p>Since there is provision under the MMDA for the (unwritten) law of the sect to apply<sup>44</sup>, if a particular sect does not recognize <i>fasakh</i>, the option is then unavailable for the women of that sect. Two other forms of divorce, "<i>mubarat</i>"<sup>45</sup>(on mutual consent), "<i>khula</i>"<sup>46</sup> (if the wife is no longer happy and makes a compensatory payment, nevertheless with the husband's consent)</p>			<p>grounds on which the husband seeks to pronounce <i>talaq</i>.<sup>49</sup></p>	<p>divorce proceedings by the Quazi or even <i>talaq</i> proceedings on the insistence of the husband.<sup>52</sup></p> <p>Case studies also refer to administrative practices that burden women in divorce, such as insisting that the woman seeks the permission of the <i>wali</i> for the divorce, that the woman is only permitted to present male witnesses during <i>fasah</i> proceedings.</p> <p>Women have also reported practices of bribery by <i>Quazi</i> to proceed and conclude divorce proceedings.<sup>53</sup></p> <p>Case studies report instances of abandonment of the marriage relationship particularly as a result of the man securing another</p>
---	--	--	--	---	---

<sup>43</sup> Muslim Marriage and Divorce Act, 1951, Third Schedule, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>44</sup> Muslim Marriage and Divorce Act, 1951, s. 98, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>45</sup> Muslim Marriage and Divorce Act, 1951, s. 98, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>46</sup> Muslim Marriage and Divorce Act, 1951, s. 28(2), [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>49</sup> Muslim Marriage and Divorce Act, 1951, Schedule 2, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>52</sup> Tegal, E & Cegu-Isadeen, H., "Inside the Quazi Courts of Sri Lanka" Change Organization, Puttalam, 2020, p.42.

<sup>53</sup> Tegal, E & Cegu-Isadeen, H., "Inside the Quazi Courts of Sri Lanka" Change Organization, Puttalam, 2020, p.34 and 40.

					wife. This effectively ends the marriage, however, women find it practically difficult to initiate divorce proceedings as they are unaware of the man's whereabouts.
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage</i></p>	<p>Under Section 47 of the MMDA, the wife can file an application in the <i>Quazi</i> court to obtain maintenance due to her in the event that the husband defaults on his responsibility (i.e. is unable or unwilling) to provide maintenance.<sup>54</sup> A woman must be separated from her husband on the basis of a "reasonable cause" in order to be entitled to maintenance.<sup>55</sup></p> <p>Ma'taa is not provided for in the MMDA.</p>				<p>Quazis decide upon maintenance amounts arbitrarily. They often order insufficient amounts of maintenance and are reluctant to increase the amount despite appeal by the wives, and sometimes decrease the amount if the husband disagrees with paying a certain amount.<sup>56</sup></p> <p>In <i>khula</i> divorces, wives have been ordered to pay back their mahr, iddat and other property in the form of compensation when they seek to obtain <i>khula</i></p>

<sup>54</sup> Muslim Marriage and Divorce Act, 1951, s. 47, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)

<sup>55</sup> Kodikara, Chulani, *Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women* (Sri Lanka: Muslim Women's Research and Action Forum (MWRAF), Sri Lanka, 1999).

<sup>56</sup> Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 20, <https://mplreforms.com/unequal-citizens-study/>. Inside the Quazi Courts of Sri Lanka by Ermiza Tegal and Hasanah Cegu Isadeen (2021) published by CHANGE Humanitarian Organization, Puttalam.

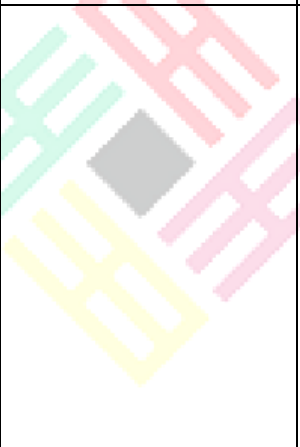
<p><i>in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>				<p>divorces.<sup>57</sup></p>
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>Custody is governed by the general law for all persons in Sri Lanka including Muslims. Under common law, which drew from principles of Roman Dutch law, the father was considered the natural guardian of the child and the mother the natural guardian of the illegitimate child.<sup>58</sup> The law has developed with decided cases<sup>59</sup> introduces the consideration of welfare of the child which relates to best interest.</p>			<p>Quazi judges have been known to overstep their jurisdiction and make orders relating to custody based on a biased notion of giving preference to the father. Only those litigants who are socially and financially capable and legally literate are able to challenge such orders.<sup>60</sup></p>
<p><b>Guardianship of Children</b></p>	<p>There is no distinct law</p>			

<sup>57</sup> Kodikara, Chulani, *Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women* (Sri Lanka: Muslim Women's Research and Action Forum (MWRAF), Sri Lanka, 1999).

<sup>58</sup> Ruwantissa Abeyratne and Anoma Abeyratne, "The Rights of the Child in Sri Lanka", 17 CILSA 348, 351 (1984)

<sup>59</sup> Premawathie v. Kudalugodarachchi 75 N.L.R. 398 and Fernando v. Fernando 70 NLR 534

<sup>60</sup> Information obtained from Sri Lankan Advocate, February 2017.

<p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>applicable for Muslim children.</p>				
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Abortion is a criminal offense under the Sri Lankan Penal Code, unless the act was done in good faith for the purpose of saving the life of the mother.<sup>61</sup></p> <p>Whoever performs an act of abortion that is prohibited under the Penal Code is punishable with imprisonment for a term of upto 10 years, or a fine.<sup>62</sup></p>		<p>The Sri Lankan government considers the issue of abortion to be an “unresolved health issue in terms of the woman and her right to determine her fertility.”<sup>63</sup></p> <p>The Sri Lankan Law Commission</p>		<p>The abortion rate is estimated to be very high in Sri Lanka, with the Government estimating that around 650 abortions are conducted in Sri Lanka every day.<sup>66</sup> Further, the lack of access to safe abortions has resulted in abortions contributing to 12.5% of all maternal deaths in Sri Lanka.<sup>67</sup></p>

<sup>61</sup> Sri Lanka Penal Code, 1883, s. 306, [http://hrlibrary.umn.edu/research/srilanka/statutes/Penal\\_Code.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf)

<sup>62</sup> Sri Lanka Penal Code, 1883, s. 306, [http://hrlibrary.umn.edu/research/srilanka/statutes/Penal\\_Code.pdf](http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf)

<sup>63</sup> Committee on Elimination of Discrimination Against Women, “Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Third and Fourth Reports of Sri Lanka”, 18 October 1999, para 140, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en)

<sup>66</sup> “Over 650 Abortions on a Daily Basis: Health Ministry Elaborates”, *News First*, 9 May 2016, <http://newsfirst.lk/english/2016/05/650-abortions-daily-basis-health-ministry-elaborates/136150>

<sup>67</sup> MS Suranga et. al. , “Perception on Abortion Laws in Sri Lanka: A Community-based study in the city of Colombo”, 61 *Ceylon Medical Journal* 171 (2016), <http://cmj.sljol.info/articles/abstract/10.4038/cmj.v61i4.8384/>

			has proposed a draft Bill for liberalizing the law related to abortion. <sup>64</sup> However, even the Law Commission's draft Bill only proposes exceptions to the criminalization of abortion in certain specific cases, like rape, where the woman is below 16 years old or when the fetus suffers from serious impairment. <sup>65</sup>		In a study on FGM in Sri Lanka, there was ad hoc reference to male spouses making unilateral decision on family planning. The study revealed a lack of understanding and lack of access to information on rights relating to bodily autonomy, pleasure and decision making within the family.
<b>Personal rights of spouses</b>  <i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain</i>	There are no laws governing such consent or the retention of her birth name.				In practice, to a large extent, Muslim women particularly in rural areas need the consent of their spouses or guardians to work, pursue a profession, travel and pursue higher studies.

<sup>64</sup> Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 85, - [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en)

<sup>65</sup> Law Commission of Sri Lanka, "Proposals of the Law Commission to Provide for the Medical Termination of Pregnancy in Cases of Rape and Serious Fetal Impairment", February 2013, [http://lawcom.gov.lk/web/images/stories/reports/medical\\_termination\\_of\\_pregnancy\\_proposals\\_of\\_the\\_law\\_commission\\_of\\_sri\\_lanka.pdf](http://lawcom.gov.lk/web/images/stories/reports/medical_termination_of_pregnancy_proposals_of_the_law_commission_of_sri_lanka.pdf)

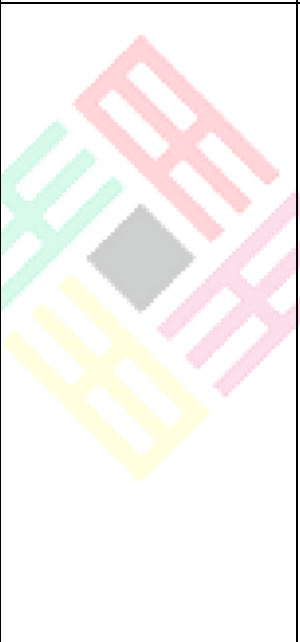
<p><i>her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>					
<p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u></p>	<p>The Sri Lankan Wills Ordinance gives right of disposition to every citizen including Muslims, under which a person is at liberty to bequeath the entirety of his/her property to anyone of their choosing.</p> <p>Intestate succession amongst Muslims is governed by the Muslim Intestate Succession Ordinance No. 10 of 1931, which provides that succession will be governed by the Muslim law applicable to each sect.<sup>68</sup> Legitimate sons are entitled to</p>		<p>A Bill to amend the Land Development Ordinance and provide women with equal rights to inheritance is pending before Parliament.<sup>70</sup></p>		<p>A 2006 study found that only 30% of women surveyed owned property.<sup>71</sup></p>

<sup>68</sup> Muslim Intestate Succession Ordinance No. 10 of 1931, [http://www.commonlii.org/lk/legis/consol\\_act/mis72383.pdf](http://www.commonlii.org/lk/legis/consol_act/mis72383.pdf)

<sup>70</sup> Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Eighth Periodic Report of Sri Lanka", 29 May 2015, para 21, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f8&Lang=en)

<sup>71</sup> Indika Bulankulame, "Property Ownership and Inheritance Rights of Women for Social Protection—The South Asia Experience: Synthesis Report of three studies" International Center for Research on Women, 2006, p. 74-6



<p>Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>twice the share of legitimate daughters.</p> <p>The civil law related to inheritance - the Land Development Ordinance, 1935, gives preference to male successors when an owner dies intestate.<sup>69</sup></p>				
<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p>	<p>The Penal code criminalizes many of the physical acts of violence such as assault, kidnapping, grievous hurt etc.<sup>72</sup></p> <p>Female genital mutilation is not criminalized. Circumcision was not believed to be practiced in the country. Since 2017 public debate and advocacy by women's groups have raised the concern.<sup>73</sup></p> <p>Marital rape is also not recognized as a crime, unless the wife is judicially separated from the husband.<sup>74</sup></p> <p>Domestic Violence Act of 2005 provides only for "protection</p>		<p>The CEDAW Concluding Observations of 2017 clearly make recommendations to address several of these issues:</p> <p>(a) Criminalize marital rape and expand the definition of torture in the Torture Act to include in it severe forms of sexual violence;</p> <p>(b) Amend the Prevention of</p>		<p>The Women's Wellbeing Survey reveals that women in Sri Lanka are more than twice as likely to have experienced physical violence from a partner (17.4% of all women experienced this in their lifetime) than from a non-partner (7.2% experienced this since age 15).<sup>76</sup></p> <p>In 2015, a literature review on intimate partner violence (IPV) observed that reported prevalence of IPV in Sri Lanka ranged from 20-72% with recent reports, based on the experience of legally</p>

<sup>69</sup> Land Development Ordinance, 1935, Third Schedule, <http://extwprlegs1.fao.org/docs/pdf/srl13623.pdf>

<sup>72</sup> Sri Lankan Penal Code, 1883, <http://www.refworld.org/docid/4c03e2af2.html>

<sup>73</sup> Ibrahim Z, and Tegal E, Towards Understanding Female Genital Cutting in Sri Lanka, December 2019, Family Planning Association of Sri Lanka

<sup>74</sup> Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

<sup>76</sup> Women's Wellbeing Survey 2019 - [http://www.statistics.gov.lk/Resource/reference/WWS\\_2019\\_Final\\_Report](http://www.statistics.gov.lk/Resource/reference/WWS_2019_Final_Report)



<p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>orders” and is a civil remedy with penal consequences attached to violating the protection order.<sup>75</sup></p>		<p>Domestic Violence Act to ensure Protection Orders, upon Court issuance, are immediately made available to the parties and effectively enforced, and remove any requirement to participate in mediation prior to pursuing a case in court;</p> <p>(c) Establish a special unit in the Attorney General’s Department to expedite the handling of cases of sexual violence and to introduce legislation to prohibit suspended sentences and stipulate mandatory</p>	<p>married women, estimating rates ranging from 25-35%. It also observed that women were likely to underreport particularly sexual violence.<sup>77</sup></p> <p>A briefing paper on Violence Against Muslim Women (FOKUS Sri Lanka 2017) based on interviews with Muslim women states that “18 of the 22 women interviewed had faced some form domestic violence ranging from verbal abuse to physical violence. 14 women had faced physical violence ranging from occasional beating to severe and frequent physical and/or sexual abuse, including one case of attempted murder resulting in serious medical conditions. Two women also shared experiences of forced abortion through physical violence.”</p>
--	---	--	---	--

<sup>75</sup> Prevention of Domestic Violence Act No. 35 of 2005, <http://www.refworld.org/pdfid/4c03ba2f2.pdf>

<sup>77</sup> Guruge, S., et al (2015) Intimate partner violence in Sri Lanka: a scoping review. Ceylon Medical Journal 2015; 60: 133-138

			<p>minimum sentences for acts of violence against women;</p>	<p>According to activists, Muslim women do not access the local Magistrate courts as they are familiar with and are led to believe that the Quazi is the forum for family dispute resolution. However Quazis have no jurisdiction over domestic violence complaints and cannot issue protection orders. The Quazi does not refer such complaints to the local Magistrate Court. In effect the manner in which Quazis deal with complaints creates a barrier for women legally seeking redress for the violence.<sup>78</sup> In some parts of the country, police officers do not record domestic violence complaints by Muslim women and have been known to say that it is a “Muslim issue” and that they cannot get involved.</p> <p>A concerning adoption of meting out “Hadd” punishments to women</p>
--	--	--	--	--

<sup>78</sup> Shreen Abdul Saroor, “Muslim Women: Second Class Rights Holders in Sri Lanka’s Quazi System”, *The Island*, 10 December 2016, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=156963](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=156963)

					<p>were reported from Batticaloa and Puttalam Districts by the local Mosque Committees which have the sanction of the community. The punishment which involves lashes is given to women believed to have committed adultery even though there is no provision in the law of such “punishment”. This practice is not supported by any law.</p> <p>Victims do not have a right to access state sponsored support services.</p> <p>There are two State run shelters and one or two non-governmental shelters for battered women, which is wholly inadequate to cater to needs of victims.</p>
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be</i></p>	<p>Sri Lankan law does not discriminate between men and women with regards to the conferment of citizenship on foreign born spouses.<sup>79</sup></p>				

<sup>79</sup> Committee on Elimination of Discrimination Against Women, “Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Third and Fourth Reports of Sri Lanka”, 18 October 1999, para 73, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en)

<p><i>arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>The Citizenship (Amendment) Act, 2003 amended the earlier discriminatory law to ensure that women could also pass on their citizenship to their children.<sup>80</sup> The Act confers this right retrospectively, which means that children who had previously been denied citizenship have the opportunity to apply now based on their mother's Sri Lankan citizenship.<sup>81</sup></p>				
--	---	--	--	--	--

<sup>80</sup> Citizenship (Amendment) Act No.16 of 2003, s.3, [http://www.commonlii.org/lk/legis/num\\_act/ca16o2003274/](http://www.commonlii.org/lk/legis/num_act/ca16o2003274/)

<sup>81</sup> Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 78, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en)

**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p>Family law is adjudicated for all Sri Lankans except Muslims by the District Court system. Muslim family law (except for custody and inheritance) is adjudicated by a Quazi system set out in terms of the MMDA.</p> <p>There are 54 District Courts functioning full time. On a very rough average, the court serves over 300,000 persons and handles all civil cases (land, money recovery, testamentary, etc). Has transparent and consistent access - open throughout the work week. State provides building and other facilities. District courts handle cases of divorce and alimony (not for Muslims) and custody (for everyone including Muslims). Only in courts in the Northern and Eastern provinces of the country is Tamil language more easily accessible within the court. Maintenance is handled by the Magistrate courts which are courts primarily handling criminal cases.</p>	<p><i>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</i></p> <p><i>In general practice do judges/Kadhis follow procedures?</i></p> <p><i>How much judicial discretion do judges/Kadhis have over marriage and family matters?</i></p> <p><i>Are there appeal processes?</i></p> <p>There are no available guidelines or policies guiding the procedure and decision making of judges and quazis relating to family matters.</p> <p>The broad procedures set out in the Civil Procedure Code, which is followed in all other civil matters and is not specific to family law, is adopted by the District Courts.</p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters?</i></p> <p><i>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>In the 2021 study on the Quazi system the following challenges were identified<sup>84</sup>:</p> <ol style="list-style-type: none"> <li>1. women cannot easily obtain information about where and how to access quazis. Quazis function on a part time basis on days selected by each one, and at locations that they themselves set up as opposed to an official location.</li> <li>2. Hearings are conducted in public with no privacy.</li> <li>3. Basic facilities such as drinking water, seating, space to care for children is not available.</li> <li>4. Discretion relating to procedure and time causes uncertainty and hardship.</li> <li>5. No fair treatment by quazis. Experiences included not being</li> </ol>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</i></p> <p><i>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p> <p>In the Quazi system it appeared that all Quazis spoke the language of the litigants and conducted affairs in the language of the litigant which is a positive feature.</p> <p>In cases before Quazis that opt for Mubharat divorce (consent divorce) a good practice by some Quazis has been to conclude the application and hearing in closed doors within a short time frame.</p> <p>The prevention of lawyers appearing before the Quazi has a positive benefit on litigants not having to incur prohibitive costs</p>

<sup>84</sup> Inside the Quazi Courts of Sri Lanka by Ermiza Tegal and Hasanah Cegu Isadeen (2021) published by CHANGE Humanitarian Organization, Puttalam.

<p>There are 65 part-time Quazis. One Quazi on average serves about 30,000 persons. People access services in the language of their choice, mainly Tamil speaking.<sup>82</sup></p> <p>The MMDA does not permit women to hold any administrative or judicial office in the administration of the law. In response to the entrenched notion that only men could hold positions of authority, a study in 2021, showed that 78% of the survey respondents were in favour of the appointment of females who were capable and educated as Quazis. 64% of men and 88% of women were in favour of female Quazis. Reasons of equality and a fairer experience for women were used to justify introducing women as Quazis. Key informants described prevailing regressive social attitudes against women participating, even assisting litigants, within the Quazi courts.</p>	<p>The procedure adopted by the Quazis appears to vary widely in practice. Although broad directions on procedure are set out in the schedules to the MMDA, in terms of timelines, privacy, requirement to disclose reasons, additional ad hoc requirements of involving wali in the divorce process have been adopted by Quazis causing delays that have been detrimental and led to serious injustice.</p> <p>There is no discretion in terms of the requirement of the law in a divorce matter before the District Court. The procedure adopted appears to have been eased in favour of litigants by facilitating 'no contest' divorces regardless of the fact that the law does not recognize consent based divorce and in fact discourages collusion between parties to end their marriage.</p> <p>With both the District Court and Quazi systems there are</p>	<p>afforded a proper hearing, no action against male litigants who did not comply with orders, believing in the version of facts of the male litigants, bribery.</p> <p>6. Unjust decisions such as very low maintenance payments.</p> <p>For a comparison of access to justice features between the District Court and Quazi system- see MPLRAG position paper on imagining a family court for Sri Lanka.<sup>85</sup></p>	<p>of litigation, litigants present their case in their own language and in their own words and are able to act with agency. However, insensitive or corrupt practices by some Quazis means that this for a positive experience can be denied and even misused to deceive the litigant about the process or to bully litigants.</p>
---	--	---	---

<sup>82</sup> Inside the Quazi Courts of Sri Lanka by Ermiza Tegal and Hasanah Cegu Isadeen (2021) published by CHANGE Humanitarian Organization, Puttalam. Also MPLRAG Position Paper on Family Court System for a Reformed Muslim Marriage and Divorce Act (November 2021) <https://www.mmdasrilanka.org/wp-content/uploads/2022/03/ENG-MPLRAG-Position-paper-Imagining-a-Family-Court-System.pdf>

<sup>85</sup> *MPLRAG position paper on imagining a family court for Sri Lanka* - <https://www.mmdasrilanka.org/wp-content/uploads/2022/03/ENG-MPLRAG-Position-paper-Imagining-a-Family-Court-System.pdf> .

<p>Lawyers are not permitted to represent clients before the Quazi.<sup>83</sup> However legal representation is not restricted for cases in appeal heard before the Board of Quazis. There is no formal state sponsored legal aid program for appeals. There are however some non-governmental organizations in a few areas that provide legal aid to litigants keen to pursue appeals.</p>	<p>provisions for two and three appeals respectively.</p>		
--	---	--	--

<sup>83</sup> Muslim Marriage and Divorce Act, 1951, Section 74, [http://www.commonlii.org/lk/legis/consol\\_act/mad134294.pdf](http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf)