

# **MMDA: Cultural and religious right for Sri Lankan Muslims but not at the expense of Muslim women's rights**

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**The Sri Lankan Government needs to move ahead with MMDA reforms before any more delays and scuttling by conservative groups with intentions to suppress Muslim women's rights in the name of culture or religion**

The Sri Lankan Muslim communities have been abuzz with debates about the reform of the Muslim Marriage and Divorce Act (MMDA) lately, with most segments agreeing that urgent reforms are needed. This article is aimed at those relying on the right to culture enshrined in international human rights instruments to deflect from the need for reforms to the MMDA and thereby deny and downplay the discrimination suffered primarily by Muslim women and girls enabled by this archaic piece of law.

The provisions that are referred to most often are Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 (2) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities (Declaration).

Article 27 of the ICCPR calls upon states to ensure the rights of ethnic, religious, or linguistic minorities to express their culture, religion, and language. Article 4 (2) of the Declaration calls on States to take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, and customs. It is not surprising that conservative male leaders from within the Muslim community would rely on these provisions to justify personal laws that are discriminatory and harmful to Muslim women and girls based on a "right to culture".

**The Sri Lankan Government also hides behind the veil of 'cultural rights'**

The Sri Lankan State has also relied on this "right to culture" of the Muslim community to evade their law reform responsibilities. In the combined tenth to seventeenth periodic reports of States parties due in 2015 to the committee on the Elimination of Racial Discrimination the Sri Lankan State refers to Muslim personal laws to demonstrate accommodation of plurality and diversity.

In 2015 in its eighth periodic report to CEDAW (Convention on the Elimination of All forms of Discrimination Against Women) Sri Lanka reported that personal laws are 'deeply rooted in custom' and reforms will be entertained 'when initiated by the respective communities'. The State further reports that the 'matter of Personal Laws is one of great sensitivity' and that calls for reforms to what is perceived as discriminatory laws should be approached with caution 'lest the communities to which the personal and customary laws apply consider it intrusive and a violation of their community rights'.

The State practice of overplaying the role of traditional elite Muslim males such as the ACJU (who do

not necessarily enjoy the power they claim to have and are distant from women's lived experiences), discounting the voices of women who have been at the forefront pushing for reforms have cost Muslim women and girls decades of harm and discrimination in the name of community rights.

### **Human rights cannot be violated in the name of culture or religion**

Customary family laws such as the MMDA, although symbolic of diversity, usually operate in spaces where human rights protections are denied, and discrimination can flourish. International human rights instruments which centre principles of equality and non-discrimination regularly reiterate that customs and religion are no excuse to contravening standards of equality and non-discrimination.

Article 2 read together with Article 26 of the ICCPR shed light on the fact that cultural rights cannot be used as a pretext to depart from equality and non-discrimination provisions. Article 4 (2) of the Declaration whilst urging states to create favourable conditions for minorities to enjoy their rights mentions in the same vein that these protections are not extended to practices that are contrary to international standards.

General Comments/General Recommendations issued by the treaty bodies providing guidance on the interpretation of treaty provision makes clear that there are non-negotiables in the areas of marriage and family, which includes principles such as equality and non-discrimination, dignity of women, and best interests of the child and practices that harm women and girls cannot certainly be justified in the name of religion, culture, or tradition.

The Human Rights Committee (the treaty body implementing the ICCPR) through General Comment 19 titled The Right to Family, the Right to Marriage and Equality of Spouses and General Comment 28 Equality of Rights between Men and Women reiterates that:

- States are required to treat men and women equally in regard to marriage and that men and women have the right to enter into marriage only with free and full consent. In this regard the HRC refers to the importance of setting a minimum age of marriage and ending the practice of male guardianship which prevents women exercising free choice in consenting to marriage.
- The HRC also notes that the practice of polygamy is incompatible with the equality of treatment with regard to the right to marry and that it is an inadmissible discrimination against women further pointing out that 'it should be definitely abolished wherever it continues to exist.'
- HRC further provides that grounds for divorce, decisions with regard to property distribution, alimony and the custody of children must ensure equality between men and women.

Most noteworthy - the HRC categorically states that the rights minorities enjoy under Article 27 of the ICCPR in respect to language, culture and religion does not authorise the violation of the right to equal enjoyment by women of any covenant rights. The HRC also calls on States to report on measures taken in relation to cultural or religious practices within minority communities that affect the rights of women.

Furthermore, in General Comment 28 the HRC notes that inequality faced by women is deeply embedded in tradition, history, and culture, including religious attitudes and that State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.

### **Islamic principles of justice are fully compatible with international human rights standards**

It is certainly encouraging that these traditional groups who previously rejected international human rights frameworks as antithetical to Islam are now increasingly referring to human rights norms.

However, they must certainly engage more meaningfully and comprehensively with these instruments to improve the conditions of constituents they claim to represent without seemingly cherry picking to justify inequality and discrimination of women in the name of Islam.

Women's groups like Musawah continue to reiterate that Islamic teachings and international human rights standards 'including the CEDAW convention are fully compatible', both are 'dynamic and constantly evolving' and that CEDAW principles of justice and equality for women are more aligned with Shariah than the Muslim family laws in many countries supposedly based on the Shariah.

CEDAW noting that 'inequality in the family underlies all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture' is instrumental in setting standards for equality in the family sphere providing in detail the rights and responsibilities within the family.

Article 16 of CEDAW provides in detail the rights and responsibilities within the family, for equality between women and men in all aspects of marriage and dissolution of marriage, prohibits child marriage, and requires State parties to enact a minimum age for marriage maintaining 18 as the earliest age marriage should be permitted and to require marriage registration as a prerequisite to validity.

The CEDAW Committee reiterates that regardless of the form or legal system, religion, custom, or tradition within the country, the treatment of women in the family both at law and in private must conform to principles of equality and justice. CEDAW, highlighting the concept of state due diligence, urges states to prevent, investigate and punish acts of violence against women committed by private actors, including in the context of the family. Through General recommendations and concluding observations CEDAW has repeatedly called for the abolition of harmful practices carried out in the name of culture, religion and tradition. Sri Lanka is due for its next CEDAW review in 2023.

### **The MMDA must be comprehensively reformed to ensure equality and non-discrimination**

It is more than clear that the MMDA as it stands is not deserving of protection since it does not pass the test for equality and non-discrimination between men and women. It uses patriarchal interpretations of Islamic jurisprudence to justify harmful treatment towards women and girls. The MMDA does not stipulate a minimum age of marriage for girls and the permission of the Quazi would suffice for a girl below 12 years to be married, has unequal provisions for divorce for men and women, does not provide for the bride to sign her marriage documents nor consent to her marriage leaving it to a male guardian to sign on her behalf, allows for unrestricted polygamy among a host of other harmful provisions.

Therefore urgent and comprehensive reforms to the MMDA are needed to ensure its compliance with international human rights standards of equality and non-discrimination thereby justifying its protection as a cultural right of the Sri Lankan Muslim community. The law reform process must be transparent and carried out centring Muslim women who are affected by the law instead of privileging and overplaying the role of traditional male leaders ignorant of the lived realities of the women they claim to represent.

The Sri Lankan Government needs to move ahead with MMDA reforms before any more delays and scuttling by conservative groups with intentions to suppress Muslim women's rights in the name of culture or religion. The MMDA needs to be comprehensively reformed now!

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